

立法會
Legislative Council

LC Paper No. CB(2) 1449/11-12

Ref : CB2/H/5/11

House Committee of the Legislative Council

**Minutes of the 16th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 2 March 2012**

Members present:

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP

Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Tanya CHAN
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man

Members absent:

Dr Hon Samson TAM Wai-ho, JP

Clerk in attendance :

Miss Odelia LEUNG Clerk to the House Committee

Staff in attendance :

Ms Pauline NG Secretary General
Mr Jimmy MA, JP Legal Adviser

Mrs Constance LI	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General 4
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mr KAU Kin-wah	Senior Assistant Legal Adviser 3
Mr Stephen LAM	Principal Council Secretary (Complaints)
Mrs Sharon TONG	Principal Council Secretary (2)
Mr Simon WONG	Chief Public Information Officer
Mr Thomas WONG	Chief Council Secretary (2)2
Miss Flora TAI	Chief Council Secretary (2)3
Ms Amy YU	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Bonny LOO	Assistant Legal Adviser 3
Miss Kitty CHENG	Assistant Legal Adviser 5
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Clara TAM	Assistant Legal Adviser 9
Miss Evelyn LEE	Assistant Legal Adviser 10
Miss Josephine SO	Senior Council Secretary (2)7
Ms Judy TING	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

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I. Confirmation of the minutes of the 15th meeting held on 24 February 2012
(LC Paper No. CB(2) 1231/11-12)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration

2. The Chairman said that there was nothing special to report.

III. Business arising from previous Council meetings

(a) **Legal Service Division report on bills referred to the House Committee in accordance with Rule 54(4)**

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(Letter dated 28 February 2012 from the Director of Administration on "Proposed Order of Priority in the Scrutiny of Bills" (LC Paper No. CB(2) 1236/11-12(01))

(i) Construction Industry Legislation (Miscellaneous Amendments) Bill 2012

(LC Paper No. LS 39/11-12)

3. The Chairman said that the Bill sought to amend the Construction Workers Registration Ordinance (Cap. 583) and the Construction Industry Council Ordinance (Cap. 587) to dissolve the Construction Workers Registration Authority and transfer its functions to the Construction Industry Council. The Panel on Development had been consulted on the legislative proposals on 23 November 2010 and 28 June 2011. While Panel members in principle supported the proposals, some of them expressed concerns on a wide range of issues relating to the amalgamation. The Legal Service Division ("LSD") was still scrutinizing the legal and drafting aspects of the Bill.

4. Ms LI Fung-ying considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Ms LI Fung-ying, Mr CHEUNG Hok-ming, Mr WONG Sing-chi and Dr PAN Pey-chyou agreed to join the Bills Committee.

(ii) Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

(LC Paper No. LS 37/11-12)

5. The Chairman said that the Bill sought to amend the Trade Descriptions Ordinance (Cap. 362) to extend its coverage to services, prohibit certain unfair trade practices and enhance enforcement mechanisms. The Panel on Economic Development had been consulted on the legislative proposals on 24 May 2010 and 24 January 2011, and members had raised various concerns. LSD was continuing the scrutiny of the Bill.

6. Mr WONG Kwok-hing considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Mr Fred LI, Mr James TO, Mr Vincent FANG (as advised by Ms Miriam LAU), Mr WONG Kwok-hing and Miss Tanya CHAN agreed to join the Bills Committee.

(iii) Trade Descriptions (Amendment) Bill 2012
(LC Paper No. LS 40/11-12)

7. The Chairman said that the Bill sought to amend the Trade Descriptions Ordinance to broaden the rules of origin for goods qualified for preferential tariff treatment under certain trade agreements. The Panel on Commerce and Industry had been consulted on the legislative proposal on 19 July 2011 and members were supportive of it.

8. Members considered it not necessary to form a Bills Committee to study the Bill and did not raise objection to the resumption of the Second Reading debate on the Bill.

The Administration's proposed order of priority in the scrutiny of Bills

9. The Chairman said that the Director of Administration had written to her proposing that should the number of Bills Committees set up by Members exceed the number of vacant slots available, the first and second priority be accorded to the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 and the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 respectively.

10. Members agreed to the Administration's proposed order of priority in the scrutiny of Bills.

(b) Legal Service Division report on subsidiary legislation gazetted on 24 February 2012 and tabled in Council on 29 February 2012

(LC Paper No. LS 38/11-12)

11. The Chairman said that only one item of subsidiary legislation, i.e. the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2012 (L.N. 29), was gazetted on 24 February 2012 and tabled in the Council on 29 February 2012.

12. Members did not raise any queries on the Notice.

13. The Chairman reminded Members that the deadline for amending the Notice was 28 March 2012.

IV. Business for the Council meeting of 21 and 22 March 2012

14. The Chairman said that Members would speak on the Appropriation Bill 2012 at the Council meeting. She reminded Members that the first day of the meeting would start at 11:00 am and the second day at 9:00 am.

(a) **Questions**

15. The Chairman reminded Members that the cut-off date for registration of written questions to be raised at the Council meeting was 12:00 midnight on the day of the House Committee meeting.

(b) **Bills - resumption of debate on Second Reading**

Appropriation Bill 2012

(Members speak)

16. The Chairman reminded Members that each Member would have a speaking time limit of 15 minutes.

V. Report of Bills Committees and subcommittees

(a) **Report of the Bills Committee on Protection of Wages on Insolvency (Amendment) Bill 2011**

17. Mr WONG Ting-kwong, Chairman of the Bills Committee, made a verbal report on the deliberations of the Bills Committee. He said that the Bill sought to expand the scope of the entitlements under the Protection of Wages on Insolvency Fund ("PWIF") to cover the payment for untaken statutory holidays falling within the four-month period immediately before the employee's last day of service, and the payment for untaken annual leave of an employee's full statutory entitlement for the last leave year. The total amount of the pay for both untaken annual leave and untaken statutory holidays should not exceed \$10,500.

18. Mr WONG Ting-kwong further said that some members considered that as a payment ceiling of \$10,500 had already been laid down in the Bill, all limits on the period in respect of pay for untaken annual leave and for untaken statutory holidays should be removed. Some other members suggested that with the payment capped at \$10,500, the limit on the period in respect of pay for untaken annual leave should be relaxed to cover pay for untaken annual leave for the last two leave years payable upon termination of employment contract under the Employment Ordinance (Cap. 57). Other members considered that any proposal made should be in line with the prudent management of PWIF.

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19. Mr WONG Ting-kwong added that the Bills Committee had passed a motion requesting the Administration to amend the Bill so as to abolish the ceiling on the number of days for calculating the amounts of pay for untaken annual leave and the pay for untaken statutory holidays. After consultation with the PWIF Board and the Labour Advisory Board, the Administration agreed to propose amendments to the Bill to increase the period in respect of pay for untaken annual leave to two leave years. However, the Administration was of the view that the limit on untaken statutory holidays should not be abolished. Members did not raise objection to the Committee Stage amendments ("CSAs") proposed by the Administration. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 18 April 2012 and would provide a written report later.

20. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Thursday, 5 April 2012.

(b) Report of the Bills Committee on Road Traffic (Amendment) (No. 2) Bill 2011

21. The Chairman, in her capacity as Chairman of the Bills Committee, gave a verbal report on the deliberations of the Bills Committee. She said that the Bill sought to amend the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation to introduce a package of measures to improve the safety of operation of public light buses ("PLBs"). These measures included –

- (a) imposing a cap on the maximum speed (80 km/hour) at which a PLB might travel;
- (b) requiring every PLB to be fitted with a speed limiter approved by the Commissioner for Transport;
- (c) requiring newly registered PLBs to be fitted with an electronic data recording device ("EDRD") (commonly known as "blackbox");
- (d) requiring applicants for PLB driving licences to attend and complete a pre-service training course before issue of the licence; and
- (e) requiring every PLB driver to display a driver identity plate in the PLB when it was in passenger service.

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22. The Chairman further said that the Bills Committee had held six meetings and had received views from the public and deputations. Members in general supported the legislative intent of the Bill. Regarding the proposed mandatory installation of EDRD on PLBs, the Administration explained that the installation of EDRD, which recorded speed and maneuvering data of a vehicle, would facilitate fleet management and deter PLB drivers from improper driving. The data captured would help investigate service-related complaints against PLB services and enhance monitoring of PLB operation. To allow EDRD suppliers to have sufficient lead time to complete the design, testing and production of EDRD for new PLBs, it was expected that the new requirement might be applied to newly registered PLBs within 12 months after enactment of the legislation. Depending on the outcome and cost-effectiveness of installing the device on newly registered PLBs, further consideration might be given to retrofitting EDRD to existing PLBs.

23. The Chairman further reported that members had raised concern about the kinds of information to be recorded by EDRD, the storage period, the effectiveness of EDRB in enhancing the safety of operation of PLB, and usage of the recorded information. Some members considered it necessary to install EDRD on existing PLBs as well. The Administration explained that there were currently 17 PLB models in use in Hong Kong. If the entire PLB fleet was to be installed with EDRD, significant time and effort would be required to verify and test the different installation solutions and anti-tampering measures before the feasibility and cost of retrofitting could be ascertained.

24. The Chairman said that some members expressed concern about the need for mandating the installation of speed display device, speed limiter and EDRD altogether. According to the Administration, while different safety devices served different functions, all of them could help prevent PLB drivers from exceeding the set speed and deter them from improper driving.

25. Regarding the proposed mandatory attendance and completion of a pre-service training course, the Chairman said that the Bills Committee had requested the Administration to consider providing some form of subsidy to applicants enrolling in the course. In response to members' request, the Administration had approached the Employee Retraining Board ("ERB") to explore the possibility of taking forward the proposed pre-service course as a Skills Upgrading Scheme Plus Course of ERB, so that trainees under the part-time course might be subsidized according to the prevailing fee policy of ERB.

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26. The Chairman further said that as at the completion of work of the Bills Committee, no member had notified the Bills Committee of his/her intention to move amendments to the Bill. The Administration had indicated that it would move drafting amendments to the Bill in response to members' views. The Bills Committee did not raise objection to the amendments proposed by the Administration and supported the resumption of the Second Reading debate on the Bill at the Council meeting of 28 March 2012. A written report would be provided later.

27. The Chairman added that the deadline for giving notice of CSAs, if any, was Monday, 19 March 2012.

(c) Report of the Subcommittee on Rating (Exemption) Order 2012

28. Mrs Sophie LEUNG, Chairman of the Subcommittee, made a verbal report on the deliberations of the Subcommittee. She said that the Order sought to declare the exemption of all tenements from the payment of rates for 2012-2013, subject to a ceiling of \$2,500 per quarter for each rateable property. The Subcommittee had held two meetings to scrutinize the Order and had discussed the impact of the rates concession on landlords, tenants, corporations, the middle-class and the disadvantaged social groups. Some members were of the view that the Administration should allow the "unused" amount of rates concession under the ceiling of \$2,500 per quarter for each rateable property to be carried forward for paying the rates in the future within a certain time limit, making reference to the arrangement for the electricity charges subsidy from the Government in recent years.

29. Mrs Sophie LEUNG further said that Mr Albert CHAN had suggested limiting the amount of rates concession or the number of tenements to be exempted from the payment of rates in terms of each individual or company owning properties. The Administration considered it difficult to amend the Order to implement Mr CHAN's proposal, on the grounds that the criteria of the scope of exemption could not be stipulated in the Order in clear and certain terms and the proposal was not cost-effective. However, LSD was of the view that by virtue of the application of section 40(2) of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO"), it would appear that the power to declare certain class or classes of tenements to be exempted from the payment of rates wholly or in part included a power to impose reasonable conditions subject to which the exemption might be granted. As such, the power of the Legislative Council ("LegCo") to amend the Order under section 34(2) of IGCO should include the power to impose reasonable conditions, but such power was also subject to the charging effect restrictions provided in Rule 31(1) of the Rules of Procedures ("RoP").

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30. Mrs Sophie LEUNG added that Mr Albert CHAN would propose amendments to the Order. As the scrutiny period of the Order had been extended to 28 March 2012, the Subcommittee, at the request of Mr Albert CHAN, would hold a further meeting on 16 March 2012 to discuss Mr CHAN's proposed amendments. The Subcommittee would also consider whether it would move amendments. Upon completion of its work, the Subcommittee would provide a written report to the House Committee.

31. Mr Albert CHAN said that in response to his request, the Administration had provided information on the top 10 private companies which were expected to receive the highest amounts of rates concession. According to such information, the highest amount of rates concession expected to be received by a company amounted to some \$90 million. Given the substantial sums involved, he considered this a form of transfer of interest. In his view, his proposal of limiting the number of tenements to be exempted from the payment of rates to not more than three for each individual or company would do justice to people who could not benefit from any of the relief measures in the 2012-2013 Budget.

32. Mr James TO invited the Legal Adviser ("LA")'s view on whether LegCo had the power to amend the Order as proposed by Mr Albert CHAN.

33. At the invitation of the Chairman, LA said that LSD had provided a paper to the Subcommittee on the legal principles applicable to Mr Albert CHAN's proposed amendments. It was stated therein that by virtue of the application of section 40(2) of IGCO, it would appear that the Administration's power to grant an exemption included a power to impose reasonable conditions subject to which the exemption might be granted. Mr Albert CHAN had been seeking assistance from LSD on his proposed amendments.

34. Mr James TO said that since cost-effectiveness was one of the grounds given by the Administration for not considering Mr Albert CHAN's proposal, he suggested that the Administration should be requested to provide information on the estimated amount of reduction in the rates concessions to be granted by the Administration under Mr Albert CHAN's proposal and the administrative costs for implementing the proposal.

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35. Mr Albert CHAN said that according to the information provided by the Administration, the amounts of rates concession which were expected to be received by the top 10 private companies totalled about \$200 million. In his view, the costs for implementing his proposal should be much less than this.

36. Mrs Sophie LEUNG said that the Administration had advised that under the Rating Ordinance (Cap. 116), the valuation and collection of rates were conducted on the basis of individual tenements, and not individuals or companies owning tenements. The Rating and Valuation Department ("RVD") only maintained records of ratepayers and did not have information to verify whether a ratepayer was the owner of the property concerned. In order to implement Mr Albert CHAN's proposal, RVD would need to cross-check some three million property records with those at the Land Registry so as to identify the owner(s) of each property. According to the Administration, as the personal information provided by property owners to the Land Registry was for the purpose of property transaction, such information was protected by the Personal Data (Privacy) Ordinance (Cap. 486).

37. Mr James TO opined that Mr Albert CHAN's proposal could be implemented without infringing the privacy rights of property owners.

38. Mr Albert CHAN said that his draft amendments were being considered by the legal adviser to the Subcommittee.

39. Mrs Sophie LEUNG said that the Subcommittee would hold a further meeting on 16 March 2012 to consider Mr Albert CHAN's proposed amendments.

40. The Chairman reminded Members that as the deadline for amending the Order was 28 March 2012, the deadline for giving notice of amendments, if any, was Wednesday, 21 March 2012.

(d) Report of the Subcommittee on the Six Orders Made under Section 5(1) of the Public Bus Services Ordinance and Gazetted on 20 January 2012

41. Dr Philip WONG, Chairman of the Subcommittee, made a verbal report on the deliberations of the Subcommittee. He explained that the six Orders sought to formalize the service changes of five franchised bus companies introduced during the period between 1 October 2010 and 30 September 2011.

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42. Dr Philip WONG further said that while the Subcommittee in principle did not object to the six Orders, some members raised concern about bus trips failing to meet the schedule of service. According to the information provided by the Administration, the average percentage of bus trips deviating from the schedule of service in 2011 was 5.6%, with the relevant percentage of a district as high as 11.1%. The Administration acknowledged that the average percentage of deviation from the scheduled bus trips in 2011 was higher than the 3% to 4% in the last two years, and had requested the relevant franchised bus companies to make improvements. To ensure that the situation of bus trips not meeting the schedule of service was kept at a reasonable level, some members had indicated intention to move amendments to the Orders to add a benchmark on average deviation percentage. Members requested the Administration to consider installing electronic systems to gather data on bus departures and arrivals at bus stops so as to monitor bus services. Members also urged the Administration to consider taking actions against the franchised bus companies which failed to meet the relevant benchmark.

43. Dr Philip WONG further reported that as the Administration held a different view on the proposed amendments, the Subcommittee had requested the Administration to provide a written response. The Subcommittee would convene another meeting on 8 March 2012 to discuss the Administration's response. Upon completion of its scrutiny work, the Subcommittee would provide a written report. He added that as the deadline for amending the six Orders had been extended by resolution to 21 March 2012, the deadline for giving notice of amendments, if any, was Wednesday, 14 March 2012.

VI. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)1232/11-12)

44. The Chairman said that there were 16 Bills Committees, six subcommittees under House Committee (i.e. two subcommittees on subsidiary legislation, two subcommittees on policy issues and two subcommittees on other Council business) and eight subcommittees under Panels in action. Three Bills Committee were on the waiting list, i.e. the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012, as well as the two newly formed Bills Committees on Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 and Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 respectively.

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45. The Chairman further said that as the Bills Committee on Protection of Wages on Insolvency (Amendment) Bill 2011 and the Bills Committee on Road Traffic (Amendment) (No. 2) Bill 2011 had provided verbal reports under agenda item V above, two slots could be vacated should Members agree that it was not necessary to await their written reports. Members agreed.

46. The Chairman said that as Members had agreed to the Administration's proposed order of priority, the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 and the Bills Committee on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 could commence work immediately. The Bills Committee on Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 would be placed on the waiting list.

47. Mr LEE Wing-tat said that the Administration had indicated that the Residential Properties (First-hand Sales) Bill would be introduced into the Council on 21 March 2012. Given the complexity of the Bill, he considered that its scrutiny should start as early as possible. He enquired about the availability of a vacant Bills Committee slot for the Bill.

48. At the invitation of the Chairman, Secretary General ("SG") said that the Bills Committee on Securities and Futures (Amendment) Bill 2011 was expected to complete work and vacate its slot in March 2012.

49. The Chairman invited Members to note that the following three Bills Committees would have to work beyond three months since commencement of their work -

- (a) Bills Committee on The Hong Kong Polytechnic University (Amendment) Bill 2011;
- (b) Bills Committee on Fisheries Protection (Amendment) Bill 2011; and
- (c) Bills Committee on Mediation Bill.

VII. Proposal of the Panel on Administration of Justice and Legal Services for introducing a mechanism to monitor the Government's progress in implementing the recommendations made by the Law Reform Commission

(Letter dated 28 February 2012 from the Chairman of the Panel on

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Administration of Justice and Legal Services to the Chairman of the House Committee (LC Paper No. CB(2) 1236/11-12(02))

50. Dr Margaret NG, Chairman of the Panel on Administration of Justice and Legal Services ("the AJLS Panel"), said that arising from public concern about the delay in implementing the recommendations made by the Law Reform Commission ("LRC"), the AJLS Panel had recently discussed the matter with the Secretary for Justice ("SJ"). The AJLS Panel was advised that the Administration had issued a set of guidelines under which bureaux and departments having policy responsibility over any LRC report were required to give consideration to LRC's recommendations within a specified timeframe.

51. Dr Margaret NG further said that to ensure that the relevant bureaux and departments would follow-up on LRC's recommendations within a reasonable timeframe, the AJLS Panel proposed for the endorsement of the House Committee the following mechanism for monitoring the Government's progress in this regard -

- (a) SJ to submit to the AJLS Panel for discussion an annual report flagging up the progress in respect of the LRC reports which had not yet been implemented;
- (b) the AJLS Panel to copy the annual report to the relevant Panels to facilitate their follow-up with the bureaux and departments concerned; and
- (c) the relevant Panels to include the Administration's responses to the respective LRC reports in their lists of outstanding items for discussion, and to invite members of the AJLS Panel and all other Members to join the future discussion.

52. Members endorsed the mechanism proposed by the AJLS Panel.

VIII. Proposals for invoking the powers under the Legislative Council (Powers and Privileges) Ordinance in connection with issues relating to the Chief Executive's acceptance of entertainment and advantage

- (a) **Letter from Hon LEE Wing-tat**
(Letter dated 27 February 2012 from Hon LEE Wing-tat to the Chairman of the House Committee (LC Paper No. CB(2) 1236/11-12(03))

(b) **Letter from Hon LEE Cheuk-yan, Hon Cyd HO and Hon CHEUNG Kwok-che**

(Letter dated 1 March 2012 from Hon LEE Cheuk-yan, Hon Cyd HO and Hon CHEUNG Kwok-che to the Chairman of the House Committee (LC Paper No. CB(2) 1266/11-12(01)))

53. Mr LEE Wing-tat said that the Chief Executive ("CE")'s acceptance of entertainment had aroused grave concern in the community. Although CE had attended a Special Question and Answer ("Q&A") Session on 1 March 2012 to answer Members' questions on the matter, only some 10 Members were able to put questions to CE and many Members were unable to do so due to the short duration of the Q&A Session on 1 March 2012 which lasted for only an hour. Furthermore, CE had refused to disclose important information, including the identities of the tycoons who had offered him the hospitality and whether these persons had prominent control over Hong Kong's property industry or public utilities companies. Mr LEE stressed that the public had the right to get a full picture of what had happened to ascertain whether any conflict of interests or transfer of benefits were involved. CE had also declined to answer Members' questions or provide information on the codes regulating his acceptance of entertainment. He therefore proposed to invoke the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the P&P Ordinance") to obtain information relating to CE's trips on private jets and yachts and his renting of a residential unit in Shenzhen. He had no strong view on which committee should be conferred with such powers. It could be the House Committee or the Panel on Constitutional Affairs ("CA Panel"). He appealed to Members to support his proposal as significant public interest was at stake.

54. Ms Cyd HO spoke on behalf of Members belonging to the Labour Party ("Lab P"). She said that at the Special Q&A Session held on 1 March 2012, only around 12 Members were able to put questions to CE and 20 Members who had indicated their wish to ask questions were unable to do so due to the short duration of that Q&A Session. Although CE had made an apology to the public, he had not provided the information requested by Members. Members belonging to Lab P therefore raised a proposal for invoking the powers under the P&P Ordinance to inquire into the matter. She cautioned that the series of events surrounding CE's acceptance of entertainment might involve a network of corruption, and considered it necessary for LegCo to conduct an inquiry into the matter in an open and transparent manner. To her knowledge, a Member would move a motion at the Council meeting of 21 March 2012 to seek the Council's authorization to exercise the powers

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under the P&P Ordinance to inquire into the matter. Should the motion be negated, Members belonging to Lab P would consider initiating the procedure for the impeachment of CE.

55. In response to the Chairman, Ms Cyd HO clarified that the proposal of Members belonging to Lab P was to seek the Council's authorization to appoint a select committee to exercise the powers under the P&P Ordinance to inquire into the matter.

56. Mr LEUNG Kwok-hung said that while he supported the invocation of the powers under the P&P Ordinance to inquire into the matter, he anticipated that the relevant motion would not be carried as Members belonging to the pro-establishment camp would unlikely support it after CE had apologized to the public. In his view, Members belonging to the pan-democracy camp should not waste time pursuing the invocation of the powers under the P&P Ordinance. Instead, they should initiate the impeachment procedure under Article 73(9) of the Basic Law ("BL 73(9)"). He sought information from LA on the procedures for the impeachment mechanism under BL 73(9), including whether the investigation must be carried out by an independent investigation committee chaired by the Chief Justice of the Court of Final Appeal ("CJ") and whether a LegCo inquiry under the P&P Ordinance could be conducted in parallel with the impeachment procedure.

57. At the invitation of the Chairman, LA said that the procedure for the impeachment of CE as laid down in BL 73(9) comprised several key steps. The first step was the joint initiation of a motion by one-fourth of all LegCo Members charging CE with serious breach of law or dereliction of duty. Should CE refuse to resign and a motion for investigation be passed by LegCo, LegCo might give a mandate to CJ to form and chair an independent investigation committee. The conduct of an investigation by the committee chaired by CJ was a necessary procedure stipulated in BL. Upon the completion of the investigation by the committee and the submission of its findings to LegCo, a motion of impeachment might be moved if the investigation committee considered the evidence sufficient to substantiate the charges. If the motion of impeachment was passed by a two-thirds majority of all LegCo Members, it should be reported to the Central People's Government for decision.

58. Mr LEUNG Yiu-chung said that he supported both the proposals of triggering the impeachment mechanism and appointing a select committee to inquire into the matter. In his view, both proposals involved the conduct of an investigation and were not mutually exclusive. Information obtained with the powers under the P&P Ordinance could be the basis for triggering the impeachment mechanism. While CE had

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apologized to the public, he had not admitted any wrongdoing and had only indicated that there was a gap between the existing system and the expectations of Hong Kong people. CE had reiterated that he had paid to the owners of the private yachts and jets fares of the same journeys on public transport. However, it was his understanding that it was a breach of the relevant licensing regulations for owners of private yachts and jets to receive fares. He considered it necessary to conduct an in-depth investigation to find out the truth.

59. Mr WONG Yuk-man indicated support for triggering the impeachment procedure. He opined that although the relevant motion would likely be negated, it had great political significance as it would be the first time the Legislature triggered the procedure for the impeachment of CE. The recent series of events surrounding CE's acceptance of advantages had raised serious doubts about his political ethics and integrity. In his view, there was prima facie evidence to substantiate charges against CE for dereliction of duty. While he also supported invoking the powers under the P&P Ordinance to inquire into the matter, such motion would unlikely be passed. He appealed to Members belonging to the pan-democracy camp to support the triggering of the impeachment procedure after the motion for invoking the powers under the P&P ordinance had been negated; otherwise they would have to bear historical responsibility.

60. Dr Margaret NG said that Members belonging to the Civic Party considered Lab P's proposal for appointing a select committee to inquire into the matter preferable to Mr LEE Wing-tat's proposal for only ordering the production of relevant information. Given the many doubts about the matter, an inquiry conducted by a select committee in an open and transparent manner would enable the public to obtain more information. Regarding the impeachment mechanism under BL 73(9), she said that the Committee on Rules of Procedure ("CRoP") had deliberated at length the procedural arrangements for implementing the mechanism. Under the proposal discussed by CRoP, the impeachment procedure would be triggered when one-fourth of all LegCo Members initiated jointly a motion for investigation to give mandate to CJ to form and chair an independent investigation committee. The charges set out in the motion should be specific and could not be amended once the motion was initiated. In her view, the impeachment procedure should not be used as a political gesture. LegCo should invoke this constitutional power only as the last resort when there was clear evidence to substantiate charges against CE of serious breach of law or dereliction of duty and there was public consensus for him to resign but he/she refused to do so. At the present stage, she considered it more appropriate to appoint a select committee to investigate into the matter first.

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61. In response to Mr Andrew LEUNG, the Chairman said that the passage of a motion for investigation under BL 73(9) required a simple majority of each of the two groups of Members present: members returned by functional constituencies and those returned by geographical constituencies; while the passage of a motion of impeachment required a two-thirds majority of all Members.

62. Mr LEE Wing-tat clarified that his proposal was to seek the Council's authorization to exercise the powers under the P&P Ordinance to summon CE to give evidence and to order the production of the relevant information. Such powers could be exercised by a select committee, the CA Panel or the House Committee.

63. Mr WONG Yuk-man reiterated that he did not object to seeking the powers under the P&P Ordinance first. He was only pointing out the political reality that such a motion would unlikely be passed by LegCo. Should the motion be negatived, Members should then trigger the impeachment mechanism, which required the moving of a motion initiated jointly by 15 Members only. As the charges against CE had to be specific, he agreed on the need for Members to discuss the wording of the motion. In his view, Members would owe the public an explanation should they fail to exercise their power to initiate the impeachment procedure.

64. Mr Paul TSE considered it a waste of time and resources to invoke the powers under the P&P Ordinance. In his view, the impeachment mechanism under BL 73(9), which provided for the setting up of an independent investigation committee chaired by CJ, was more effective in conducting an inquiry into the matter. He did not subscribe to the view that the investigation by CJ was not as open as that conducted by a select committee. He was furious about Members' reluctance to trigger the impeachment procedure, which, in his view, was the obvious means to deal with the matter and required only a motion initiated jointly by 15 Members. Noting that CRoP had discussed the procedural arrangements for implementation of BL 73(9) on impeachment of CE, he sought information on whether the procedural arrangements had been put in place. Referring to Rule 49B of the Rules of Procedure ("RoP") which stated that no amendment might be moved to a motion to censure a Member under BL 79(7), he enquired whether there was a similar provision for a motion to impeach CE.

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65. Dr Margaret NG said that Members should not impute improper motives to other Members. She did not support triggering the impeachment procedure at the present stage as it must be supported by specific charges. Invoking the powers under the P&P Ordinance would facilitate Members' consideration of whether there was sufficient evidence to substantiate specific charges against CE which warranted the initiation of the impeachment mechanism. She recalled that CRoP's discussions on the impeachment mechanism commenced in around 2008. Given its importance, CRoP was of the view that specific procedural arrangements for implementing BL 73(9) should be drawn up. There was, however, no urgency in the matter as BL 73(9) could be implemented under the existing provisions in RoP. In the course of its deliberations, CRoP had consulted all LegCo Members and the Administration on various issues relating to the proposed procedural arrangements for implementing BL 73(9), and had further discussed the matter in the light of the Administration's response. She invited SG to brief Members on the relevant discussions of CRoP. She stressed that public powers should be exercised in a prudent manner and the impeachment mechanism should not be invoked lightly without thorough consideration of all relevant matters.

66. At the invitation of the Chairman, SG said that CRoP commenced its study on the procedural arrangements for implementing BL 73(9) a few years ago. The relevant discussions were summarized in the annual progress reports of CRoP. In the 2009-2010 legislative session, CRoP had proposed a more streamlined approach and formulated a revised proposal for the procedural arrangements. Members of various political parties or groupings and the Administration had been consulted on the proposal. The Administration had expressed concern about some implementation details such as the procedure for notifying CE upon the triggering of the impeachment procedure, which required further discussion by CRoP. There were also a number of procedural issues which might require further discussion. While CRoP had yet to complete its study on the matter, the key procedural steps laid down in BL 73(9), such as the moving of a motion for investigation and a motion of impeachment, could be taken under the existing provisions of RoP.

67. Dr Philip WONG considered it a waste of time to discuss the impeachment procedure at the House Committee meeting, as the impeachment procedure could be triggered by a motion initiated jointly by one-fourth of all LegCo Members without the need for obtaining the endorsement of the House Committee.

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68. The Chairman clarified that two proposals from Mr LEE Wing-tat and Members belonging to Lab P respectively for invoking the powers under the P&P Ordinance in connection with issues relating to CE's acceptance of entertainment and advantage were put forth to the House Committee for consideration. The impeachment mechanism was raised in the course of discussion as some Members considered it an alternative to the proposals of invoking the powers under the P&P Ordinance. The Chairman added that the initiation of the impeachment mechanism under BL 73(9) did not require the support of the House Committee.

69. Mr Albert CHAN agreed with Mr WONG Yuk-man that there was prima facie evidence to substantiate charges against CE for dereliction of duty. Compared to the case of Mr Antony LEUNG, the former Financial Secretary, who had purchased a car prior to his announcement of an increase in motor vehicles first registration tax in the Budget, Mr CHAN considered the CE's case far more serious. Hence, he saw no reason why CE should not resign. He appealed to Members belonging to the pan-democracy camp to support the proposal for initiating the impeachment mechanism should the motion to invoke the powers under the P&P Ordinance be negated at the Council meeting. He considered it necessary for LegCo to send a clear political message, through the initiation of the impeachment mechanism, of its disapproval of CE's acceptance of entertainment and advantage.

70. Mr LEUNG Kwok-hung said that the recent events had shown that CE was neither clean nor law-abiding. In his view, the conduct of CE had pointed to a breach of law and dereliction of duty. The crux of the issue was whether the incumbent CE should continue to hold office. This was a matter of political judgment. Should Members consider that the incumbent CE should be removed, they should initiate the impeachment mechanism.

71. Mr LEE Cheuk-yan said that it was the intention of Lab P to invoke the powers under the P&P Ordinance to collect more evidence to substantiate the charges against CE. If the proposal for invoking the powers under the P&P Ordinance was not supported, he would support triggering the impeachment mechanism. He could not understand why Members belonging to the pro-establishment camp supported exercising the powers under the P&P Ordinance to inquire into Mr LEUNG Chun-ying's case, but not the case of CE, given that both involved allegations of conflicts of interests. He appealed to Members belonging to the pro-establishment camp to support the proposals for invoking the powers under the P&P Ordinance to inquire into the matter.

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72. Mr LEE Wing-tat said that as the matter involved allegations of breach of law and code of conduct of civil servants by CE, Members belonging to different political parties and groupings should express their stance. Although CE had apologized at the special Q&A Session on 1 March 2012, he had not admitted any fault on his part or reflected on his wrongdoing. More importantly, he had not made public all the relevant information and was still trying to hide the truth. Although Mr IP Kwok-him had indicated his acceptance of the apology tendered by CE, many members of the public still had doubts about CE's standards of behaviour expected of himself as head of the Government. In the light of these considerations, Members belonging to the Democratic Party ("DP") considered it necessary to invoke the powers under the P&P Ordinance to inquire into the matter. Should his proposal not be supported by the House Committee, he would move a motion at the Council meeting of 21 March 2012 to seek the Council's authorization to exercise the powers under the P&P Ordinance to summon CE to testify and to produce information on the matter. In the view of DP, it was prudent for Members to first invoke the powers under the P&P Ordinance to collect more information before considering the need for further actions. He pointed out that the impeachment mechanism was rarely invoked in western democratic countries such as the United States of America. He stressed that the impeachment mechanism should not be invoked lightly and due process must be followed before resorting to it.

73. Ms Cyd HO said that Hong Kong's reputation for a clean government was highly treasured by Hong Kong people. However, the recent events had revealed possible corruption at the power centre. She considered it necessary for LegCo to appoint a select committee to conduct an inquiry into the matter in an open and transparent manner to enable the public to understand the operation of the corruption network and how it had affected Government policies and decisions. She pointed out that in the case of the Severe Acute Respiratory Syndrome outbreak, the Government had appointed an expert committee and the Hospital Authority had also set up a review panel to look into the outbreak. However, it was the report of the Select Committee set up by LegCo to inquire into the outbreak which was most highly recognized by the public. The same was also true in the case of the post-service work of Mr LEUNG Chin-man. She was confident that the proposed select committee would operate effectively to facilitate the public to find out how the corruption network had worked and how it had affected Government policies. She requested the Secretariat to provide information on the past discussions of CRoP on the procedural arrangements for implementation of BL 73(9) on impeachment of CE, including the outstanding issues to be dealt with regarding the procedural arrangements.

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74. The Chairman requested the Secretariat to prepare the requisite information for Members' reference.

75. Mr Paul TSE said that he concurred with the view that Members should be prudent in exercising public powers. Hence, Members should be prudent in invoking the powers under the P&P Ordinance, which involved significant public money. In his view, an inquiry conducted by LegCo under the P&P Ordinance was neither effective nor efficient. With the few months remaining in the current LegCo term, he queried whether there was sufficient time and resources for LegCo to conduct an inquiry into the operation of the corruption network in Hong Kong as alleged by Ms Cyd HO. As CE had already admitted acceptance of entertainment, Mr TSE doubted the need to invoke the powers under the P&P Ordinance to collect more evidence. Instead of wasting time and resources on invoking the powers under the P&P Ordinance, he considered it more pragmatic for Members to initiate the impeachment procedure.

76. Mr WONG Yuk-man suggested putting the matter to vote. He said that unlike other democratic countries such as the United States of America, Hong Kong had not put in place a robust mechanism for preventing political corruption. In his view, the question was simply whether CE should resign and, if the answer was in the affirmative and should CE refuse to resign, the impeachment mechanism should be invoked.

77. Referring to the view that a lot of resources would be required to support the work of a select committee, Dr Margaret NG said that the conduct of an investigation by an independent committee chaired by CJ would also incur significant public expenditures. She cautioned that it was a serious matter to involve the judicial profession in a political procedure. This step should be taken should it be necessary. However, before doing that, prudence was called for. She also suggested that CRoP should hold a meeting to continue its deliberations on the procedural arrangements for implementing the impeachment mechanism.

78. Mr TAM Yiu-chung said that CRoP had discussed the procedural arrangements for implementing BL 73(9) in RoP a few years ago. Members then considered that there was no urgency in the matter. While CRoP would continue to discuss the matter given the recent events, it would be difficult to complete the discussion in the remaining few months of the current term.

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79. Mr TAM Yiu-chung further said that Members belonging to the Democratic Alliance for Betterment of Hong Kong were of the view that it was more appropriate for LegCo to adopt a step-by-step approach in following up on the matter. As the Independent Commission Against Corruption ("ICAC") had commenced an investigation into the matter, they considered that Members should await the outcome of the investigation before considering the need for further actions.

80. In response to Mr TAM Yiu-chung's enquiry on motion debates at the Council meeting of 21 March 2012 at which the Second Reading debate on the Appropriation Bill 2012 was to take place, the Chairman said that there was no provision in RoP which disallowed the moving of other motions with legislative effect at Budget meetings of the Council. She added that while Members concerned normally consulted the House Committee on their proposals for seeking the Council's authorization to exercise the powers under the P&P Ordinance, it was not a mandatory requirement. Irrespective of whether or not the House Committee supported their proposals, individual Members could move the relevant motions at Council meetings.

81. Ms Audrey EU pointed out that section 3 of the Prevention of Bribery Ordinance (Cap. 201) ("POBO") which prohibited the soliciting and acceptance of advantages by prescribed officers did not apply to CE. Although ICAC had commenced an investigation into the matter, the scope of the investigation was confined within ICAC's statutory powers and, as such, would be narrower than that of the proposed select committee. The latter could cover matters beyond POBO, such as whether CE's acts, while not necessarily amounted to a breach of the law, but dereliction of duty as to warrant the invocation of the impeachment mechanism under BL 73(9).

82. Mr KAM Nai-wai said that as ICAC was accountable to CE, concern was raised as to whether ICAC's investigation would be conducted impartially. Furthermore, in deciding whether to institute prosecution against CE, ICAC would seek advice from the Department of Justice ("DoJ"). As CE might also seek legal advice on the matter from DoJ, there would be a conflict of roles for DoJ. Given the public doubts about ICAC's investigation, he considered that an inquiry conducted by a select committee appointed by LegCo would better enable the public to ascertain what had happened.

83. Dr LAM Tai-fai indicated objection to the proposals for invoking the powers under the P&P Ordinance to inquire into the CE's case. He opined that the CE's case should not be compared directly with Mr LEUNG Chun-ying's case. In the latter case, the powers under the P&P

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Ordinance were invoked to inquire into the matter as the Administration had failed to disclose all the relevant information and Mr LEUNG Chun-ying had denied the allegations against him. In the former case, CE had apologized to the public, admitted acceptance of hospitality by his friends and assured the public that no conflict of interest was involved. CE had also decided to terminate the rental agreement of the residential flat in Shenzhen to address public concerns. As ICAC had already commenced an investigation into the matter, he was concerned that an inquiry conducted by the proposed select committee in parallel in an open manner would run against the confidential investigation of ICAC. In his view, Members should leave the matter to ICAC for the time being but monitor the progress of ICAC's investigation to ensure that it was conducted efficiently.

84. At the invitation of the Chairman, LA briefed Members on the relevant procedures to be followed by ICAC upon its completion of an investigation into a corruption complaint against CE. LA said that according to section 31AA of POBO, when, upon investigation by ICAC, there was reason to suspect that CE might have committed an offence under POBO, the Commissioner for ICAC might refer the matter to SJ. Where, as a result of such a referral, SJ had reason to suspect that CE might have committed an offence under POBO, he might refer the matter to LegCo for its consideration of whether to take any action under BL 73(9).

85. Mrs Regina IP sought information from LA on the applicability of POBO and relevant common law offences to CE.

86. At the invitation of the Chairman, LA said that section 3 of POBO provided that a prescribed officer who, without the permission of CE, solicited or accepted any advantage was guilty of an offence. CE was not subject to the offence under section 3 as CE was not a "prescribed officer" as defined under POBO. Sections 4, 5, and 10 of POBO were applicable to CE. Section 10, which provided for the offence of maintaining a standard of living or controlling property disproportionate to one's official emoluments, stated that where CE was accused of having committed an offence under the section, the court should take into account the assets that CE had declared to CJ pursuant to paragraph 2 of BL 47. Under common law, CE could be prosecuted for the offence of misconduct in public office. The elements of the common law offence were enunciated by the Court of Final Appeal in *Sin Kam Wah v HKSAR (2005)*. The offence was committed when a public official in the course of his public office wilfully committed a misconduct and the misconduct in question was serious. Acts of misconduct included abuse of official position for personal gains.

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87. The Chairman invited LA to brief Members on the important points to note should a select committee be appointed by LegCo to exercise the powers under the P&P Ordinance to inquire the matter when the ICAC's investigation was underway.

88. Citing the Select Committee on Building Problems of Public Housing Units as an example, LA said that if there were pending criminal or civil proceedings arising from matters related to the subject of a select committee's inquiry, the select committee concerned should adopt measures to avoid possible prejudice to a person's interest in pending legal proceedings. These measures included (a) DoJ would be asked to keep the select committee informed on the development of the criminal proceedings concerned; (b) the chairman of the select committee would explain to each witness that the function of the select committee was not to adjudicate on the legal liability of any party or individual and advise him/her of the chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the chairman's opinion, prejudice the proceedings; (c) where it was considered necessary and justified, either on an application by a witness or on the select committee's own motion, closed sessions would be held to obtain evidence from a witness; (d) the select committee would provide a copy of its draft findings and observations to DoJ for its comment on whether the contents of the draft might prejudice pending criminal proceedings; and (e) the report of the select committee should not contain any material which might prejudice a pending criminal jury trial.

89. Dr PAN Pey-chyou said that before the Reunification in 1997, the Governors in Hong Kong were not bound by any local legislation. After the Reunification, the application of the relevant legislation on payment of taxes had been extended to CE. In addition, amendments to POBO were passed in 2008 to extend the application of certain sections of POBO to CE. While he considered that LegCo should look into the propriety of CE's acts, the investigation into whether he had committed an offence under POBO should be carried out by ICAC. He stressed that a breach of the law and improper conduct were two different matters. He considered it unfair to subject a person who had not committed any breach of the law to some form of public trial. In his view, it was already a severe punishment on CE for him to make an apology in public at the Special Q&A Session. He considered it more important for LegCo to focus on restoring public confidence in Hong Kong's institutions rather than passing moral judgment on CE. He expressed objection to the proposals for invoking the powers under the P&P Ordinance to inquire into the matter.

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90. Dr Priscilla LEUNG said that at the Special Q&A Session held on 1 March 2012, CE had not provided all relevant information in answering Members' questions, including the question raised by her. Furthermore, many Members were unable to put questions to CE due to the short duration of the Special Q&A Session which lasted for only an hour. She considered that CE should take the initiative to come to LegCo again as early as possible to respond to Members' questions on the matter. She enquired whether arrangement had been made in this regard. Should no such arrangement be made, she would support the proposals for invoking the powers under the P&P Ordinance. In her view, the scope of LegCo's inquiry should focus on the few incidents which had aroused grave public concern.

91. The Chairman said that at the Special Q&A Session on 1 March 2012, Members had already requested CE to attend another Special Q&A Session as early as possible. She requested the Secretariat to follow up on the matter with the Office of the Chief Executive.

92. Mr Paul TSE sought information from LA on the consequences should the select committee empowered to exercise the powers under the P&P Ordinance be unable to complete the inquiry before the end of the current term, and the application of the right against self-incrimination in the proceedings of the select committee. Mr TSE reiterated his view that triggering the impeachment mechanism was the obvious, reasonable pragmatic and timely way to address the public concern about CE's integrity and judgment and it was a waste of time and a cheat of public money to invoke the powers under the P&P Ordinance first to inquire into the matter as there was sufficient evidence to substantiate the charges. He pointed out that the impeachment mechanism under BL 73(9) had a built-in procedure for conducting an investigation and there was no need to invoke the powers under the P&P Ordinance to conduct an inquiry before triggering the impeachment mechanism. He added that he did not subscribe to the view that triggering the impeachment mechanism to deal with the matter was a waste of judicial resources on political issues.

93. At the invitation of the Chairman, LA said that section 9(4) of the Legislative Council Ordinance (Cap. 542) provided that the consideration of any bill or other business of LegCo was to lapse at the end of a LegCo term. RoP 78(4) also provided that a select committee should, as soon as it had completed consideration of the matter referred to it, report to the Council thereon. If the select committee was of the opinion that it would not be able to complete consideration of the matter before the end of a term, it should so report to the Council.

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94. LA further said that any claim of privilege against self-incrimination was subject to the limitations set out in section 16 of the P&P Ordinance, which provided that in any proceedings in the Council or a committee, any person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Council or committee should not, unless excused under section 13 of the Ordinance, be excused from answering any relevant question put to that person or producing any such paper, book, record or document.

95. Mr Ronny TONG said that inviting CE to attend another Special Q&A Session and invoking the powers under the P&P Ordinance were two separate matters. He considered it appropriate to invoke the powers under the P&P Ordinance to ascertain if any transfer of benefits was involved.

96. Ms Cyd HO said that the scope of work of the select committee, if formed, would be recommended by the relevant preparatory subcommittee. She expressed strong dissatisfaction with the view that the proposed appointment of a select committee to inquire into the matter was tantamount to cheating taxpayers' money. She considered such view absurd, irrational, unacceptable and an affront to the mechanism for the appointment of select committees.

97. Ms Audrey EU did not subscribe to the view that it was a severe punishment on CE for him to extend a public apology in LegCo. She pointed out that if similar allegations were made against a civil servant, disciplinary or even criminal proceedings should have been instituted. Regarding the scope of work of the proposed select committee, she shared the view that it could be discussed by the relevant preparatory subcommittee having regard to the timeframe for completion of work. She also clarified that Dr Margaret NG had not said that triggering the impeachment mechanism was a waste of judicial resources. Dr NG was only pointing out, in response to the view that it was a waste of public money to invoke the powers under the P&P Ordinance, that the impeachment mechanism would also incur public resources.

98. Ms Audrey EU further said that the ICAC's investigation would not be referred to LegCo for its consideration of whether to take any action under BL 73(9) if no criminal offence was suspected to have been committed by CE. Moreover, LegCo had no control over the timeframe of ICAC's investigation. She stressed that LegCo had substantial experience in conducting inquiries when there were pending legal proceedings and the mechanism had been established to ensure that the procedure was fair and seen to be fair.

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99. As there were divided views among Members, the Chairman put the proposals to vote. Mr LEE Cheuk-yan requested to claim a division.

100. The Chairman first put to vote the proposal of Mr LEE Wing-tat for seeking the Council's authorization to empower the CA Panel to exercise the powers under section 9(1) of the P&P Ordinance to inquire into issues relating to CE's acceptance of entertainment and advantage.

The following Members voted in favour of the proposal:

Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man.

(21 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Dr David LI, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP and Dr PAN Pey-chyou.

(29 Members)

The following Member abstained from voting:

Mr Paul TSE

(1 Member)

101. The Chairman declared that 21 Members voted for and 29 Members voted against the proposal and one Member abstained. Mr LEE Wing-tat's proposal was not supported.

102. The Chairman then put to vote the proposal from Mr LEE Cheuk-yan, Ms Cyd HO and Mr CHEUNG Kwok-che for seeking the Council's authorization to appoint a select committee to inquire into issues relating to CE's acceptance of entertainment and advantage.

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The following Members voted in favour of the proposal:

Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man.

(20 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Dr David LI, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP and Dr PAN Pey-chyou.

(30 Members)

The following Member abstained from voting:

Mr Paul TSE

(1 Member)

103. The Chairman declared that 20 Members voted for and 30 Members voted against the proposal and one Member abstained. The proposal from Mr LEE Cheuk-yan, Ms Cyd HO and Mr CHEUNG Kwok-che was not supported.

IX. Nomination of Members for appointment to the Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues

(LC Paper No. CB(2) 1257/11-12)

104. The Chairman said that at its meeting of 29 February 2012, LegCo passed the resolution to appoint the Select Committee to study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues ("the Select Committee"). In accordance with RoP 78(2), the President should decide the size of every select committee and appoint the chairman, deputy chairman and members thereof, taking into account the recommendations of the House Committee.

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105. The Chairman invited Members' views on the proposed membership size of 12 for the Select Committee and the proposed procedure for nomination of Members for appointment to the Select Committee as set out in the paper. She said that the membership size of previous select committees ranged from 11 to 15.

106. Mr LEUNG Kwok-hung said that according to the arrangement agreed by the various political parties and groupings, he would not be able to join the Select Committee. He proposed that the membership size of the Select Committee should be increased to 15.

107. Mr Albert CHAN criticized the approach adopted by the major political parties and groupings to decide among themselves on the nomination for appointment of Members to the Select Committee, which, in his view, operated in a "black box" and was unfair to Members belonging to small political parties. He stressed that all Members had the right and the constitutional duty to participate in the work of the Select Committee. In his view, no limit should be set on the membership size of the Select Committee so that all interested Members could join.

108. Mr WONG Yuk-man said that while it was common in a legislature for different political parties to agree on certain matters through consultation, he was dissatisfied with the arrangement of the pan-democracy camp on the membership of the Select Committee as he himself and two other Members respectively belonging to People Power and the League of Social Democrats had not been involved in the discussions. In his view, Members who had nominated candidates in the Fourth Term CE Election should not join the Select Committee. The credibility of the Select Committee would be called into question if the majority of its members had made nominations. He expressed interest in joining the Select Committee and appealed to Members to support him.

109. Dr Philip WONG proposed that the membership size of the Select Committee should be 12.

110. Dr Priscilla LEUNG said that in considering the composition of the Select Committee, Members should take into account the public's perception on the credibility of the Select Committee. She shared the view that as far as practicable, Members appointed to the Select Committee should be those who had not nominated any CE candidate. She also indicated interest in joining the Select Committee and appealed to Members to support her.

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111. Mr WONG Kwok-hing declared that he had not nominated any CE candidate and would not join the Select Committee. Emphasizing the need to ensure fairness and objectivity in the inquiry, he considered it inappropriate for Members who had nominated any CE candidates to participate in the work of the Select Committee. He pointed out that in the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai, there was no representative from DP or even the entire pan-democracy camp to avoid conflict of interests. He considered that the same principle should apply to the membership of the Select Committee to ensure the fairness and impartiality of its inquiry.

112. Ir Dr Raymond HO said that he had no intention to join the Select Committee. He recalled that since the First LegCo, the Council had appointed four select committees, the membership size of which was in the range of 11 to 15. Given the strong view expressed by some Members, he proposed that the membership size of the Select Committee be increased to 15. In his view, whether or not a Member had nominated any CE candidates should not be an important factor in considering the composition of the Select Committee. He pointed out that Members who had not nominated any CE candidate might have taken a stance or were supporters of a certain candidate while those who had made nominations might not necessarily vote for the candidate they had nominated. He stressed that members of the Select Committee should carry out their work in a fair and impartial manner, without any political agenda.

113. Mr Ronny TONG said that he did not agree with Mr WONG Kwok-hing's view. He pointed out that every LegCo Member had his/her own political stance. In his view, all Members had preference for a certain CE candidate, irrespective of whether they had made any nomination. Hence, he did not subscribe to the view that the membership of the Select Committee should be confined to Members who had not nominated any CE candidate. Referring to the remarks made by Mr WONG Yuk-man, Mr TONG said that Members should respect and accede to the request of Members of different political ideologies for representation in the Select Committee. In his view, if any Member with strong interest in joining the Select Committee was prohibited from doing so because of the limit on its membership size, it would be tantamount to placing the cart before the horse.

114. Mr LEE Cheuk-yan clarified that Members belonging to People Power or the League of Social Democrats were not being isolated or excluded from the membership of the Select Committee. If five of the 12 seats of the Select Committee were to be allocated to the

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pan-democracy camp, Mr WONG Yuk-man would be one of the nominees. He shared the view that the membership of the Select Committee should be open to all Members who were interested in joining. He considered the proposal of confining the membership of the Select Committee to Members who had not nominated any CE candidates infeasible, as all LegCo Members were members of the Election Committee ("EC") and had their political stance. He proposed that the chairmanship and deputy chairmanship of the Select Committee should be taken up only by Members who had not nominated any CE candidates.

115. Mr Paul CHAN said that he agreed with Mr WONG Kwok-hing's view. He had asked the President at the Council meeting of 29 February 2012 whether Members who had nominated CE candidates should vote on the motion for the appointment of the Select Committee. He noted that according to RoP, Members should not vote upon any question in which he had a direct pecuniary interest. Should Members not agree that the membership of the Select Committee should be confined only to Members who had not nominated any CE candidates, he was of the view that the Select Committee should have a balanced representation of Members from different political parties and groupings.

116. Mr WONG Kwok-kin said that Members belonging to the Hong Kong Federation of Trade Unions ("FTU") had abstained from voting on the motion for the appointment of the Select Committee at the Council meeting of 29 February 2012, as they were worried that the Select Committee would be used as a platform for political struggle, thus affecting the credibility of LegCo. Members belonging to FTU would not join the Select Committee. He added that Members should not conjecture the stance of other Members and stressed the need for Members to deal with the membership of the Select Committee in a fair manner.

117. Mr Andrew CHENG said that the Select Committee was different from the previous select committees in that it was highly political and its work might impact on the forthcoming CE Election. He pointed out that all LegCo Members had their political ideologies. Although he had not nominated any CE candidate, he had political inclination. While it was impossible to exclude all Members who had nominated CE candidates from joining the Select Committee, he considered it important for its chairmanship and deputy chairmanship not be taken up by Members who had nominated any CE candidate to ensure the credibility of the Select Committee.

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118. Dr PAN Pey-chyou said that Members belonging to FTU had abstained from voting on the motion for the appointment of the Select Committee at the Council meeting of 29 February 2012 because they did not consider it appropriate for LegCo to set up a select committee to inquire into the matter. They were worried that the Select Committee would become a platform for political persecution and the inquiry would become a farce, which would undermine the dignity and credibility of LegCo. He concurred with Mr WONG Kwok-hing's view and urged Members to seriously consider who should join the Select Committee. He also expressed disagreement with the view that Members who had not made any nomination of CE candidates also had their stance on the matter.

119. Dr LAM Tai-fai said that LegCo comprised Members belonging to different political parties and groupings and it was natural for Members to have different political stance. In his view, Members who had not nominated any CE candidate or indicated their stance were not necessarily politically neutral. Members who had made nominations were only fulfilling their right and duty as EC members. When Members made their nominations, they did not know that the Select Committee would be appointed. He stressed that making CE nominations and conducting an inquiry by the Select Committee were two separate matters. He agreed to Mr LEE Cheuk-yan's proposal that the chairmanship and deputy chairmanship of the Select Committee should be taken up only by Members who had not nominated any CE candidate. He added that he would not object to the proposals for increasing the membership size of the Select Committee or opening it up to all interested Members.

120. The Deputy Chairman said that according to the resolution passed by LegCo, the scope of the Select Committee's inquiry covered not only Mr LEUNG Chun-ying's involvement as a member of the Jury in the West Kowloon Reclamation Concept Plan Competition ("Competition"), but also related issues. In his view, the Select Committee should also look into related issues such as the reason for the Administration's disclosure of information relating to Mr LEUNG Chun-ying's involvement 10 years after the Competition, and whether the Administration had done anything wrong in its handling of the declaration of interests by Mr LEUNG. Regarding the size and composition of the Select Committee, he said that many members, included himself, had nominated CE candidates. While he objected to the proposal of confining the membership of the Select Committee to Members who had not nominated any CE candidate, he agreed that its chairmanship and deputy chairmanship should be taken up by Members

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who had not made any nominations. Citing the withdrawal of a large number of members from the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products, he indicated objection to opening up the membership of the Select Committee to all Members. He stressed that as the Select Committee would operate in an open and transparent manner, there was no cause for concern that it would be used as a platform for political persecution.

121. Prof Patrick LAU said that as he was a member of the Jury of the Competition, he would not join the Select Committee. He hoped that the Select Committee could find out the truth and address the concerns of the architectural industry about the fairness and impartiality of architectural competitions.

122. Mr Jeffrey LAM said that the Select Committee was to look into the allegations of conflict of interests, and not to investigate any CE candidates. In his view, it was inappropriate to link up the inquiry of the Select Committee with the CE Election. The fact that a Member had not nominated any CE candidate did not necessarily mean that he/she had no tendency to support a certain candidate. He suggested putting the matter to vote expeditiously.

123. Mr LEUNG Kwok-hung said that the discussions had reflected the absurdity of the forthcoming CE Election, a small-circle election at which only 1 200 EC members had the right to vote. He suggested putting the matter to vote.

124. Mr WONG Kwok-hing proposed that the Select Committee should comprise only Members who had not nominated any CE candidate. While he anticipated that his proposal would not be supported, he wished to put it on record to show to the public that some Members adopted double standards.

125. Mr CHAN Kam-lam sought clarification from LA on the terms of reference of the Select Committee.

126. At the invitation of the Chairman, LA said that the terms of reference of the Select Committee was set out in the resolution passed by LegCo for the appointment of the Select Committee at its meeting of 29 February 2012. According to the resolution, the Select Committee was to study Mr LEUNG Chun-ying's involvement as a member of the Jury in the Competition, and related issues.

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127. Mr CHAN Kam-lam said that according to its terms of reference, the scope of work of the Select Committee should be confined to issues relating to Mr LEUNG Chun-ying's involvement as a member of the Jury in the Competition. Issues not relating to Mr LEUNG's involvement in the Competition should not be covered in the study.

128. At the invitation of the Chairman, LA said that according to the practice of previous select committees, the Select Committee would, at the commencement of its work, draw up its major areas of study and its practice and procedure.

129. In response to Mr Albert CHAN's enquiry on the scope of Select Committee's inquiry, the Chairman reiterated that it was for the Select Committee to decide on its areas of study.

130. As no further question was raised, the Chairman invited Members to decide on the membership size of the Select Committee. She recapped that Dr Philip WONG had proposed a membership size of 12. She asked whether Members had other proposals.

131. Mr Ronny TONG proposed that the membership size of the Select Committee should be 15.

132. Mr LEUNG Kwok-hung proposed that no limit should be set on the membership size of the Select Committee.

133. The Chairman first put Dr Philip WONG's proposal to vote. Since a majority of the Members present voted in favour of Dr Philip WONG's proposal, the Chairman declared that Dr WONG's proposal was passed and the other two proposals raised respectively by Mr Ronny TONG and Mr LEUNG Kwok-hung were deemed to be negatived.

134. The Chairman then put to vote Mr WONG Kwok-hing's proposal that the Select Committee should comprise only Members who had not made any nomination in the Fourth Term CE Election. Mr WONG Kwok-hing requested to claim a division.

The following Members voted in favour of the proposal:

Mr WONG Kwok-hing, Mr Paul CHAN, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr WONG Kwok-kin, Mr IP Wai-ming, Dr PAN Pey-chyou, Mr Paul TSE, Mr Albert CHAN and Mr WONG Yuk-man.
(10 Members)

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The following Members voted against the proposal:

Ir Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr IP Kwok-him, Mrs Regina IP, Mr LEUNG Kwok-hung and Miss Tanya CHAN.

(38 Members)

135. The Chairman declared that 10 Members voted for and 38 Members voted against the proposal and no Member abstained. Mr WONG Kwok-hing's proposal was negatived.

136. Mr Jeffrey LAM moved a motion that in the event of further divisions being claimed in respect of any motions or questions under this agenda item, the House committee would proceed to each of such divisions immediately after the voting bell had been rung for one minute. Members agreed.

137. The Chairman then invited Members to decide on Mr LEE Cheuk-yan's proposal.

138. Dr Philip WONG sought information on precedents for the House Committee setting conditions on chairmanship and deputy chairmanship of a committee.

139. At the invitation of the Chairman, LA said that according to RoP, the House Committee could provide guidelines relating to the procedures of committees including election-related procedures.

140. The Chairman put to vote the Mr LEE Cheuk-yan's proposal that the chairmanship and deputy chairmanship of the Select Committee should be taken up by Members who had not made any nominations in the Fourth Term CE Election. The Chairman ordered a division.

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The following Members voted in favour of the proposal:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Dr PAN Pey-chyou, Mr Paul TSE, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man.

(25 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr IP Kwok-him and Mrs Regina IP.

(23 Members)

141. The Chairman declared that 25 Members voted for and 23 Members voted against the proposal and no Member abstained. Mr LEE Cheuk-yan's proposal was supported.

142. Members endorsed the procedure for nomination of Members for appointment to the Select Committee as set out in paragraph 8 of the paper.

143. In accordance with the procedure endorsed by the House Committee, the Chairman invited Members to make nominations. A total of 13 valid nominations were made with the following Members being nominated -

Dr Philip WONG
Mr Andrew CHENG
Mr Abraham SHEK
Mr LEE Wing-tat
Ms Cyd HO
Dr LAM Tai-fai
Mr Paul CHAN
Dr Priscilla LEUNG
Mr IP Kwok-him

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Mr Paul TSE
Mr LEUNG Kwok-hung
Miss Tanya CHAN
Mr WONG Yuk-man

144. The Chairman said that as the number of valid nominations exceeded the agreed membership size of the Select Committee, a vote would be taken by a show of hands. She reminded Members that they could not vote for more than 12 nominees, i.e. the agreed number of members on the Select Committee. The Chairman ordered a vote. The result was as follows -

Dr Philip WONG	34 votes
Mr Andrew CHENG	38 votes
Mr Abraham SHEK	37 votes
Mr LEE Wing-tat	34 votes
Ms Cyd HO	32 votes
Dr LAM Tai-fai	37 votes
Mr Paul CHAN	39 votes
Dr Priscilla LEUNG	38 votes
Mr IP Kwok-him	40 votes
Mr Paul TSE	31 votes
Mr LEUNG Kwok-hung	7 votes
Miss Tanya CHAN	28 votes
Mr WONG Yuk-man	42 votes

145. The Chairman declared that the following 12 Members were elected for nomination for appointment as members of the Select Committee -

Dr Philip WONG
Mr Andrew CHENG
Mr Abraham SHEK
Mr LEE Wing-tat
Ms Cyd HO
Dr LAM Tai-fai
Mr Paul CHAN
Dr Priscilla LEUNG
Mr IP Kwok-him
Mr Paul TSE
Miss Tanya CHAN
Mr WONG Yuk-man

146. The Chairman suspended the meeting for about 15 minutes to enable the 12 elected Members to decide among themselves as to who should be the Chairman and Deputy Chairman of the Select Committee.

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(The meeting was suspended at 6:10 pm and resumed at 6:24 pm.)

147. The Chairman informed Members that Mr IP Kwok-him and Mr Andrew CHENG were nominated for appointment as the Chairman and Deputy Chairman of the Select Committee respectively.

148. Members endorsed the proposed composition of the Select Committee.

149. The Chairman said that the chairmanship, deputy chairmanship and membership of the Select Committee would be submitted to the President for appointment.

150. There being no other business, the meeting ended at 6:26 pm.

Council Business Division 2
Legislative Council Secretariat
21 March 2012