

立法會
Legislative Council

LC Paper No. CB(2) 271/12-13

Ref : CB2/H/5/12

House Committee of the Legislative Council

**Minutes of the 8th meeting
held in Conference Room 1 of the Legislative Council Complex
at 4:05 pm on Friday, 23 November 2012**

Members present:

Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)

Hon Ronny TONG Ka-wah, SC (Deputy Chairman)

Hon LEE Cheuk-yan

Hon James TO Kun-sun

Hon CHAN Kam-lam, SBS, JP

Hon LEUNG Yiu-chung

Dr Hon LAU Wong-fat, GBM, GBS, JP

Hon Emily LAU Wai-hing, JP

Hon TAM Yiu-chung, GBS, JP

Hon Abraham SHEK Lai-him, SBS, JP

Hon Tommy CHEUNG Yu-yan, SBS, JP

Hon Frederick FUNG Kin-kee, SBS, JP

Hon Vincent FANG Kang, SBS, JP

Hon WONG Kwok-hing, MH

Dr Hon Joseph LEE Kok-long, SBS, JP

Hon Jeffrey LAM Kin-fung, GBS, JP

Hon WONG Ting-kwong, SBS, JP

Hon Cyd HO Sau-lan

Hon Starry LEE Wai-king, JP

Hon CHAN Hak-kan, JP

Hon CHAN Kin-por, BBS, JP

Dr Hon Priscilla LEUNG Mei-fun, JP

Dr Hon LEUNG Ka-lau

Hon CHEUNG Kwok-che

Hon WONG Kwok-kin, BBS

Hon IP Kwok-him, GBS, JP

Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Hon Paul TSE Wai-chun, JP

Hon Alan LEONG Kah-kit, SC

Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Han-pan
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen

Members absent:

Hon Albert HO Chun-yan
Dr Hon LAM Tai-fai, SBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man
Hon Claudia MO
Hon James TIEN Pei-chun, GBS, JP
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Hon IP Kin-yuen

Clerk in attendance :

Miss Flora TAI

Clerk to the House Committee

Staff in attendance :

Mr Kenneth CHEN, SBS	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mrs Justina LAM	Deputy Secretary General
Mr Andy LAU	Assistant Secretary General 1
Miss Odelia LEUNG	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
Miss Erin TSANG	Acting Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Ms Amy YU	Chief Council Secretary (2)6
Ms Anita SIT	Chief Council Secretary (4)1
Mr Kelvin LEE	Assistant Legal Adviser 1
Miss Carrie WONG	Assistant Legal Adviser 4
Miss Kitty CHENG	Assistant Legal Adviser 5
Miss Winnie LO	Assistant Legal Adviser 7
Miss Josephine SO	Senior Council Secretary (2)2
Mr Jove CHAN	Senior Council Secretary (2)6
Ms Judy TING	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

Action

I. Confirmation of the minutes of the 7th meeting held on 16 November 2012

(LC Paper No. CB(2) 230/12-13)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on his 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

Legal Service Division report on subsidiary legislation gazetted on 16 November 2012 and tabled in Council on 21 November 2012

(LC Paper No. LS 10/12-13)

3. At the invitation of the Chairman, Legal Adviser said that there was one item of subsidiary legislation, i.e. the Import and Export (General) Regulations (Amendment of Schedule 7) Notice 2012 (L.N. 173), gazetted on 16 November 2012 and tabled in the Council on 21 November 2012.

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

5. The Chairman reminded Members that the deadline for amending the Notice was 19 December 2012.

IV. Further business for the Council meeting of 28 November 2012

(a) **Tabling of papers**

Report No. 5/12-13 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2) 232/12-13 issued vide LC Paper No. CB(3) 164/12-13 dated 21 November 2012)

6. The Chairman said that the Report covered three items of subsidiary legislation, i.e. the Legal Aid (Amendment) Regulation 2012, Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2012 and Legal Aid Ordinance – Resolution of the Legislative Council (Commencement) Notice, the period for amendment of which would expire on 28 November 2012. As two Members had indicated intention to speak on these three items of subsidiary legislation, a motion would be moved at the Council meeting to take note of the Report in relation to the three items of subsidiary legislation.

(b) **Questions**

(LC Paper No. CB(3) 161/12-13)

7. The Chairman said that Mr Albert HO and Mr Alan LEONG had replaced their oral questions.

V. Business for the Council meeting of 5 December 2012

Action

(a) **Questions**

(LC Paper No. CB(3) 160/12-13)

8. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

(b) **Bills - First Reading and moving of Second Reading**

9. The Chairman said that no notice had been received yet.

(c) **Government motion**

10. The Chairman said that no notice had been received yet.

(d) **Members' motions**

(i) **Proposed resolution to be moved by Hon Albert CHAN under the Legislative Council (Powers and Privileges) Ordinance**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 167/12-13 dated 22 November 2012.)

11. The Chairman said that the proposed resolution was for seeking the Council's authorization to appoint a select committee to inquire into the discontinuation of sound broadcasting service by Digital Broadcasting Corporation Hong Kong Limited and related issues.

12. The Chairman informed Members that the speaking time limit for each Member at the above motion debate was 15 minutes.

(ii) **Motion to be moved by Hon Michael TIEN**

13. The Chairman said that the subject of the motion to be moved by Mr Michael TIEN was "Executive Council as gate-keeper for MTR fares".

(iii) **Motion on "Supporting the development of the securities industry"**

(Wording of the motion issued vide LC Paper No. CB(3) 166/12-13 dated 22 November 2012.)

14. The Chairman said that the above motion would be moved by Mr Christopher CHEUNG, and the wording of the motion had been issued to Members.

15. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above motions was Wednesday, 28 November 2012.

Report on study of subsidiary legislation

16. The Chairman invited Members to note the list containing five items of subsidiary legislation tabled at the meeting, the period for amendment of which would expire on 5 December 2012. Members who wished to speak on the subsidiary legislation should indicate their intention by 5:00 pm on Tuesday, 27 November 2012.

VI. Report of Bills Committees and subcommittees

(a) Report of the Subcommittee on Five Sets of Amendment Rules made under Sections 73 and 73A of the Legal Practitioners Ordinance and Gazetted on 12 October 2012
(LC Paper No. CB(4) 169/12-13)

17. Mr Dennis KWOK, Chairman of the Subcommittee, said that the five sets of Amendment Rules were made by the Council of the Law Society of Hong Kong ("the Law Society") under sections 73 and 73A of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. According to the Law Society, the Amendment Rules sought to modernize and codify the requirements for solicitors to account to their clients for interests on money deposited with them under the Solicitors' Accounts Rules.

18. Mr Dennis KWOK highlighted the issues discussed by the Subcommittee. They included the proposed new rule stipulating the principles that a solicitor must observe in handling client's money; the proposed requirement that a client account must be an account at a bank located and licensed in Hong Kong and the waiver provision; and the drafting of certain provisions in the Amendment Rules. The Subcommittee supported the objects of the Amendment Rules and agreed that certain amendments should be made to improve the drafting of the Amendment Rules.

19. Mr Dennis KWOK further said that it was noted that no information such as that provided by the Administration in its Legislative Council ("LegCo") brief had been provided by the Law Society to explain the background to the Amendment Rules to facilitate Members' understanding of the amendments. He also made an observation that

Action

during the Subcommittee's deliberations, the Department of Justice ("DoJ") had not fully explained its role in the making of the Amendment Rules by the Law Society as a non-governmental body and in the course of scrutiny by LegCo. There might be a need to take a closer look, at an appropriate forum, into the respective roles of DoJ and the Law Society in future similar exercises.

20. The Chairman reminded Members that as the deadline for amending these five sets of Amendment Rules was 5 December 2012, the deadline for giving notice of amendments, if any, was Wednesday, 28 November 2012.

(b) Report of the Subcommittee on Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 and Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012
(LC Paper No. CB(4) 170/12-13)

21. Mr Charles MOK, Chairman of the Subcommittee, said that the Amendment Order sought to designate an additional frequency band (i.e. 2635 – 2660 MHz) while the Amendment Regulation to provide that auction was the method for determining the spectrum utilization fee ("SUF").

22. Mr Charles MOK further said that the Subcommittee had held one meeting to study the two items of subsidiary legislation. Issues discussed by the Subcommittee included the assignment of the available radio spectrum, licensing arrangements, SUF, licence fees and spectrum trading. At the Subcommittee's request, the Administration would provide a written response to whether the consultancy report on the feasibility of introducing radio spectrum trading in Hong Kong should be published.

23. Mr Charles MOK added that the Subcommittee generally supported the two items of subsidiary legislation. Some members of the Subcommittee had indicated intention to speak on the subsidiary legislation at the Council meeting of 12 December 2012.

24. The Chairman reminded Members that as the deadline for amending the subsidiary legislation was 12 December 2012, the deadline for giving notice of amendments, if any, was Wednesday, 5 December 2012.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 231/12-13)

25. The Chairman said that as at 22 November 2012, there were seven subcommittees under the House Committee ("HC") (i.e. four subcommittees on subsidiary legislation, one subcommittee on policy issues and two subcommittees on other Council business) and three subcommittees on policy issues under Panels in action.

VIII. Paper of the Committee on Rules of Procedure

Proposed arrangements for the provision and allocation of slots for moving motions not intended to have legislative effect

(LC Paper No. CROP 10/12-13)

26. Mr TAM Yiu-chung, Chairman of the Committee on Rules of Procedure ("CRoP"), said that with the increase in the number of Members in the Fifth LegCo from 60 to 70, Members of the Fourth LegCo had been consulted on the number and allocation of debate slots for moving motions not intended to have legislative effect at Council meetings in the Fifth LegCo. The outcome of the consultation was that a majority of the Members considered that the number of motion debate slots for each regular Council meeting should be maintained at two and allocation of these slots to Members should be counted on a term basis. A majority of the Members also agreed to the proposed arrangements for the allocation of motion debate slots in the Fifth LegCo as set out in paragraph 3 of the paper.

27. Mr TAM Yiu-chung further said that CRoP of the Fourth LegCo noted that while rule 13(a) of the House Rules ("HR") specified that the two debates initiated by Members at a regular Council meeting might be two motion debates, one motion debate and one adjournment debate or two adjournment debates, no Member who was allocated a debate slot had ever chosen to use the slot to move an adjournment debate. CRoP agreed that rule 13(a) of HR should be amended to specify that slots for debates at each Council meeting should all be utilized for motion debates.

28. Mr TAM Yiu-chung added that rule 13(a) of HR provided that more than two debates might be allowed by the President under special circumstances upon the recommendation of HC. In this connection, CRoP of the Fourth LegCo noted that most of the adjournment debates held pursuant to Rule 16(4) of the Rules of Procedure ("RoP") in the past were allowed by the President on the recommendation of HC. CRoP

Action

considered that this requirement should continue. On the recommendation of CRoP, HC endorsed at its meeting on 22 June 2012 the proposed amendments to the relevant rules of HR.

29. Mr TAM Yiu-chung informed the meeting that CRoP of the Fifth LegCo held a meeting on 13 November 2012 to discuss the arrangements for the provision and allocation of motion debate slots. CRoP noted that the proposed amendments to rule 13(a) and (b) of HR might have the unintended effect of removing the requirement that where two or more motion debates were already scheduled to be held at a Council meeting, a Member who wished to move a motion for an adjournment debate under RoP 16(4) at the Council meeting should first seek the support of HC on his request. CRoP agreed that this requirement should be maintained and rule 13 of HR should be suitably revised. The revised proposed amendments to rules 13, 14, 14A and 15 of HR were set out in Appendix II to the paper. Referring to paragraph 8 of the paper, Mr TAM pointed out that CRoP also considered that the allocation of slots made for motion debates and the unsuccessful applications for motion debate slots since the commencement of the Fifth LegCo should be taken into account in the future allocation of motion debate slots in the term, in accordance with the arrangements provided under the revised rule 14 of HR. He appealed to Members to support the recommendations of CRoP.

30. Members agreed to the revised proposed amendments to HR as set out in Appendix II to the paper and the proposed arrangement as set out in paragraph 8 of the paper.

IX. Proposal of Hon Emily LAU to invite the Chief Executive to attend a Council meeting to explain the unauthorized building works at his residence on the Peak

*(Letter dated 14 November 2012 from Hon Emily LAU (LC Paper No. CB(2) 222/12-13(01)); and
Letter dated 15 November 2012 from the Private Secretary to Chief Executive to Hon Emily LAU (LC Paper No. CB(2) 222/12-13(02)))*

31. Ms Emily LAU said that her proposal was to seek HC's support to invite the Chief Executive ("CE") to attend before the Council as early as possible to explain the unauthorized building works ("UBWs") at his residence on the Peak. She further said that members of the Democratic Party had met with CE the day before the HC meeting, and had iterated the importance for him to give a full account of the matter as soon as possible, as it had called into question his integrity and undermined the governance of the Administration. Referring to the letter dated 15 November 2012 from the Private Secretary to CE in reply to her letter,

Action

which stated that CE would give a full account of the matter after all the legal proceedings had been cleared, Ms LAU pointed out that the Court of Final Appeal had already made its ruling on Mr Albert HO's applications for leave to appeal in connection with his election petition. Mr HO and many legal professionals had made it clear that all the relevant legal proceedings had been cleared, including the settlement of costs. She noted that Members belonging to different political parties and groupings had expressed grave concern about the matter on various occasions, and appealed to Members to support her proposal.

32. Mr Ronny TONG informed Members that CE had just issued a written statement on his property on the Peak, which was available on the Internet.

33. Ms Emily LAU said that CE could explain the matter to the public through any channel he considered appropriate, but there was no reason why he could not come to LegCo to give an account of the matter, given that he had already issued a public statement on it. She reiterated her request for inviting CE to attend before the Council to answer Members' questions on the matter as early as possible.

34. Mr IP Kwok-him said that in view of the wide public concern about the matter and completion of the relevant legal proceedings, he agreed that CE should explain it to the public as early as possible. He did not object to the Chairman conveying to CE some Members' wish for him to attend before the Council which was one of the avenues for CE to explain the matter. He added that it would be for CE to decide whether to accede to the request.

35. The Chairman said that he had requested the Secretariat to provide a copy of the written statement issued by CE to Members for reference.

36. Mr WONG Kwok-hing considered that as the relevant legal proceedings had ended, CE should fully explain the matter to the public expeditiously and answer questions from the media. In his view, this would be more expeditious than scheduling a Council meeting for CE to explain the matter.

37. Given the different views expressed by Members, the Chairman suggested that he would write to CE to convey to him that some Members requested him to give an account of the matter before the Council while some other Members considered that he should fully explain the matter to the public expeditiously.

Action

38. Ms Emily LAU was of the view that the Chairman should only convey in his letter Members' request for CE to attend before the Council to explain the matter. A vote should be taken if necessary.

39. Mr LEE Cheuk-yan agreed with Ms Emily LAU that the Chairman should convey only one clear message of inviting CE to attend before the Council to explain the matter. In Mr LEE's view, it was not enough to merely request CE to explain the matter to the public. CE should also attend a special Question and Answer Session to take Members' questions.

40. Mr SIN Chung-kai said that the Executive was accountable to the Legislature and it was the responsibility of LegCo to invite CE to explain the matter at a Council meeting. He shared the view that the Chairman's letter should focus on inviting CE to attend before the Council.

41. Mr Michael TIEN said that as CE had just issued a written statement on his property on the Peak, Members should take time to study the statement first before deciding whether to invite CE to attend before the Council. He added that Members could further discuss the matter at the next HC meeting if they still had doubts about the matter after considering CE's statement.

42. Mr WU Chi-wai opined that the written statement issued by CE could not clear all the doubts about his integrity, and Members' invitation to CE to attend before the Council would provide a good opportunity for him to openly explain the matter to the public. Mr WU shared the view that the Chairman should only convey to CE Members' invitation for him to attend before the Council and should not provide him with an alternative avenue for explaining the matter.

43. The Chairman explained that since two different views had been expressed by Members, he had merely suggested that both views should be reflected in his letter to CE.

44. Mr Alan LEONG said that CE had indicated in his written statement that while he had been negligent and careless, he had all along been handling the matter in an open and transparent manner and had no intention to cover up any facts. Mr LEONG queried whether the written statement issued by CE could clear all the doubts and considered it unsatisfactory for CE to merely issue a written statement and not provide an opportunity for Members to raise questions. In Mr LEONG's view, if CE was indeed being open and transparent, he should come to LegCo to answer Members' questions on the matter. He expressed support for inviting CE to attend before the Council to explain the matter and answer Members' questions thereon.

Action

45. Dr KWOK-Ka-ki shared the view that LegCo was duty bound to invite CE to attend before the Council to give an account of the matter.

46. Mr Frederick FUNG said that the doubts surrounding the UBWs at CE's residence which had yet to be cleared had dealt a severe blow to his integrity. The matter involved not only the question of whether CE was responsible for the UBWs, but also whether he had told one lie after another to cover up the facts after the matter was exposed. He stressed that it was incumbent upon the Legislature to watch over the Executive and the doubts could only be cleared by means of questions and answers. He supported Ms Emily LAU's proposal.

47. Mr Charles MOK noted that CE had admitted in his written statement that he had been negligent in handling the matter. Mr MOK considered that the Chairman should convey to CE Members' strong request for him to attend before the Council to give an account of the matter and answer Members' questions. This would provide a good opportunity for CE to clearly explain the matter to the public and to do himself justice.

48. Ms Cyd HO said that while CE had explained about the UBWs at his residence and the relevant property transactions in his written statement, he had evaded the questions of whether he had told one lie after another to hide the facts after the existence of UBWs at his residence had come to light, including whether he had taken the initiative to call the editor-in-chief of Ming Pao Daily and whether some of the UBWs at his residence had been removed by the time the report came out. She considered it appropriate to invite CE to attend a Question and Answer Session to take questions from Members.

49. Dr Helena WONG expressed support for Ms Emily LAU's proposal given the public's right to know. It would also provide an opportunity for CE to explain the matter in an open and transparent manner to clear his name. She appealed to Members belonging to the pro-establishment camp to support Ms Emily LAU's request which, in her view, was reasonable.

50. Mr TAM Yiu-chung said that CE had already issued a written statement to give an account of the matter. While some Members had expressed the view that it should be for CE to decide on the appropriate forum to further explain the matter, some other Members considered that CE should attend before the Council. In his view, it was not necessary to put the matter to vote, and the Chairman could write to CE to convey Members' wish for him to attend before the Council. The decision whether or not to come to LegCo would rest with CE.

Action

51. Ms Emily LAU said that given that CE's integrity was at stake, she considered it incumbent upon LegCo to request CE to attend before the Council to give a full account of the matter as early as possible. She considered it a dereliction of duty on the part of LegCo if it did not make such a request. Ms LAU added that during the meeting between CE and Democratic Party members on the day before the HC meeting, she had requested CE to provide a chronology of events to clearly explain the matter to the public.

52. Miss CHAN Yuen-han said that Members belonging to the Hong Kong Federation of Trade Unions hoped that the Chairman would reflect Members' views to CE.

53. The Chairman said that as no Member had indicated objection, he would write to CE to invite him to attend a Question and Answer Session to explain the matter. Members agreed.

X. Proposal of Hon SIN Chung-kai to set up a subcommittee on electricity policy under the House Committee

(Letter dated 19 November 2012 from Hon SIN Chung-kai (LC Paper No. CB(2) 241/12-13(01)))

54. The Chairman said that Mr SIN Chung-kai had written to him proposing that a subcommittee on electricity policy be set up under HC. The Chairman further said that rule 22(t) of HR provided that two or more Panels might jointly appoint a subcommittee to study any matter of common interest to the relevant Panels. As the issues raised by Mr SIN were within the terms of reference of the Panel on Economic Development ("ED Panel") and the Panel on Environmental Affairs ("EA Panel"), he considered that it would be more appropriate for Mr SIN to first consult the two relevant Panels on the proposed subcommittee.

55. Mr SIN Chung-kai said that as the annual tariff review with the two power companies would be conducted towards the end of the year and an interim review of the Scheme of Control Agreements was scheduled to be carried out in 2013, he considered that there was an urgent need to form a dedicated subcommittee to study the matter which was of wide public concern. He had therefore put forward his proposal to HC as he was concerned about the time it would take to seek the views of both the ED Panel and the EA Panel. He noted that both Panels had scheduled to hold their regular meetings in the following week, and was agreeable to the Chairman's suggestion of consulting the two Panels on the proposed subcommittee.

Action

XI. Any other business

56. There being no other business, the meeting ended at 4:41 pm.

Council Business Division 2
Legislative Council Secretariat
29 November 2012