

立法會
Legislative Council

LC Paper No. CB(2) 301/12-13

Ref : CB2/H/5/12

House Committee of the Legislative Council

**Minutes of the 9th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 30 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 CHAN Kam-lam, SBS, JP

Hon LEUNG Yiu-chung

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

Dr Hon LAM Tai-fai, SBS, JP

Hon CHAN Hak-kan, JP

Hon CHAN Kin-por, BBS, JP

Hon CHEUNG Kwok-che

Hon WONG Kwok-kin, BBS

Hon IP Kwok-him, GBS, JP

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

Hon Paul TSE Wai-chun, JP

Hon Alan LEONG Kah-kit, SC

Hon LEUNG Kwok-hung

Hon Albert CHAN Wai-yip

Hon WONG Yuk-man

Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon WU Chi-wai, MH
Hon Gary FAN Kwok-wai
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, JP
Hon Dennis KWOK
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, 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
Hon James TO Kun-sun
Dr Hon LAU Wong-fat, GBM, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Dr Hon LEUNG Ka-lau
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon CHAN Han-pan
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, JP

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
Mr Timothy TSO	Assistant Legal Adviser 2
Ms Wendy KAN	Assistant Legal Adviser 6
Mr YICK Wing-kin	Assistant Legal Adviser 8
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 8th meeting held on 23 November 2012

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

The minutes were confirmed.

II. Matters arising

Report by the Chairman on his meeting with the Chief Secretary for Administration ("CS")

2. The Chairman said that he had written to the Chief Executive ("CE") last Friday after the House Committee ("HC") meeting, inviting

Action

him to a CE's Question and Answer ("Q&A") Session to explain the unauthorized building works ("UBWs") at his properties at Peel Rise, The Peak and take Members' questions on the matter. CS indicated that she noted Members' request and believed that CE would come up with a decision timely. The Chairman further said that after his meeting with CS on that following Monday, the Legislative Council ("LegCo") Secretariat had been following up with the Administration on CE's reply. So far the LegCo Secretariat had not received any reply from the Administration.

3. Ms Emily LAU said that it had already been a week since the Chairman conveyed Members' request for CE to attend a Q&A Session. She stressed that CE had the responsibility to explain the matter to LegCo, and considered it unacceptable that CE had yet to respond to Members' request. She further said that she agreed with Mr LAM Woon-kwong, Convenor of the Non-Official Members of the Executive Council, that CE should provide clear and unambiguous answers to the public's questions on the matter, which had called his integrity into question and undermined the governance of the Administration. She sought the Chairman's view on what follow-up actions should be taken by HC.

4. The Chairman said that he would take up the matter with CS again at their next meeting and would convey to her Members' views and concerns accordingly.

5. Mr LEE Cheuk-yan considered it not necessary for Members to further follow up with the Administration on whether CE would come to LegCo. Mr LEE pointed out that Members had already requested CE to attend before the Council to give an account of the matter and it was incumbent upon CE to do so. He stressed that the integrity crisis faced by CE could not be resolved unless he explained the matter to the public and cleared their doubts. Mr LEE further said that he had written to the Chairman requesting HC to discuss his proposal to appoint a select committee to exercise the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the P&P Ordinance") to inquire into the UBWs at CE's properties on the Peak and related issues, including whether the Buildings Department ("BD") had covered up for CE. Should Members consider it necessary for CE to explain the matter frankly and transparently, they should support his proposal instead of requesting CE to respond to their request for his attendance before the Council.

Action

6. The Chairman advised the meeting that Mr Alan LEONG and Mr LEE Cheuk-yan had written to him on 28 and 29 November 2012 respectively, requesting to discuss at this HC meeting their respective proposals for authorizing the Panel on Development to exercise the powers under section 9(1) of the P&P Ordinance ("the powers") to inquire into the Administration's handling of the UBWs at CE's properties on the Peak and for appointing a select committee to inquire into the UBWs at the said properties and authorizing it to exercise the powers when conducting the inquiry. The Chairman explained that both requests were made after the deadline for proposing agenda items for this HC meeting. As Mr LEONG's proposal was to authorize the Panel on Development to exercise the powers under the P&P Ordinance, he had suggested that Mr LEONG should consult the Panel on his proposal first. He understood that Mr LEONG had already written to the Panel on Development on the matter. In accordance with the established procedures, he had instructed the Clerk to include the respective proposals of Mr LEONG and Mr LEE in the agenda for next week's HC meeting.

7. Mr Alan LEONG said that the Chairman of the Panel on Development had issued a circular to consult Panel members on the date of meeting for discussing his proposal for authorizing the Panel to exercise the powers under the P&P Ordinance to inquire into issues relating to the Administration's handling of the UBWs at CE's properties on the Peak. Mr LEONG criticized the failure of CE to make clear whether or not he would attend before the Council, which, in his view, was cowardice and was even worse than turning down the request. Mr LEONG requested the Chairman to follow up with CS at their next meeting on whether CE had decided on Members' request, and if not, the reasons for that.

8. Mr SIN Chung-kai said that he shared the view that CE should expeditiously give an unequivocal answer to whether or not he would attend before the Council to explain the matter.

9. Mr Ronny TONG said that since it was Members' stance that CE should come to LegCo to explain the matter, he considered that CE should be reminded to respond to their request. It was, however, up to CE to decide whether he would attend before the Council and should he refuse to do so, he had to bear the political consequences. Noting that the two proposals raised by Mr Alan LEONG and Mr LEE Cheuk-yan would be discussed at the next HC meeting, and that the scope of the proposed inquiry might cover acts committed by CE before his assumption of office and the subjects of investigation might include not

Action

only CE but also the relevant bureaux and government departments such as BD, Mr TONG requested the Legal Service Division ("LSD") to prepare a paper on the relevant legal and constitutional issues which Members should consider when deliberating on the proposals to facilitate their discussion next week.

10. Mr LEUNG Kwok-hung said that it was stipulated in the Basic Law that the Legislature had the responsibility to watch over the Executive. He doubted whether CE had the sincerity to give a frank and transparent account of the matter as he had publicly claimed. He added that he planned to initiate the impeachment procedure under Article 73(9) of the Basic Law and was soliciting support from Members.

11. Mr LEUNG Yiu-chung said that it was not the responsibility of Members, but that of CS and the staff in the CE's Office, to remind CE to respond to Members' request. He suggested that Members should consider setting a deadline for CE's response, say within the following week, and that after the deadline had expired, CE should not be allowed to come to LegCo to explain the matter even if he wanted to.

12. The Chairman reiterated that he would relay Members' views to CS at their next meeting.

13. Ms Emily LAU said that she might not agree to Mr LEUNG Yiu-chung's suggestion that CE should not be allowed to come to LegCo to explain the matter should he fail to respond by the deadline, given that it was the responsibility of CE to explain the matter to Members. She criticized CE for having handled the matter so poorly, which had infuriated many Members as well as members of the public. In her view, Members should request the President to set a date for CE to attend before the Council to explain the matter and take Members' questions thereon.

14. The Chairman said that CE should be well aware of Members' views. As he had mentioned earlier at the meeting, the respective proposals of Mr Alan LEONG and Mr LEE Cheuk-yan would be discussed at next week's HC meeting, and it was for CE to decide whether he would respond to Members' request before the next HC meeting.

15. Ms Emily LAU requested LSD to include in its paper for the next HC meeting the relevant considerations which should be taken into account by Members should an inquiry against CE be conducted and the past experience of LegCo in this regard.

Action

16. Dr Fernando CHEUNG said that given the confidence crisis the Administration faced, CE should give a prompt and direct response to Members' request for him to attend before the Council. In his view, the suggestions of setting a deadline for response or setting a Council meeting date for CE to come to explain the matter were reasonable and worthy of consideration by Members. He hoped that CE would seriously consider Members' request as it would provide a good opportunity for him to clearly explain the matter to the public.

17. The Chairman said that CE should take into consideration the latest developments, including HC's forthcoming discussion of the proposals of Mr Alan LEONG and Mr LEE Cheuk-yan, and decide as early as practicable whether he would attend before the Council.

18. Ms Emily LAU requested the LegCo Secretariat to also provide for Members' reference at the next HC meeting information on previous cases of LegCo's invitation to CE to attend before the Council, including how Members had handled those cases, if any, upon CE's refusal to come.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 23 November 2012 and tabled in Council on 28 November 2012

(LC Paper No. LS 11/12-13)

19. At the invitation of the Chairman, Legal Adviser ("LA") said that there was one item of subsidiary legislation, i.e. the Competition Ordinance (Commencement) Notice 2012 (L.N. 177), gazetted on 23 November 2012 and tabled in the Council on 28 November 2012. LA explained that the Notice sought to appoint 18 January 2013 and 1 August 2013 respectively as the days on which certain provisions of the Competition Ordinance as stated in paragraph 2 of the LSD report, which related mainly to institutional arrangements, would come into operation. Based on information contained in the LegCo Brief, the Administration expected that the Ordinance would come into full operation by around January 2014 at the earliest after all the preparation work had been completed.

20. Mr Ronny TONG considered it necessary to form a subcommittee to study the Notice in detail. Members agreed. The following Members agreed to join the subcommittee: Mr Andrew LEUNG, Mr Ronny TONG, Mrs Regina IP, Mr WU Chi-wai, Mr Charles MOK, Mr Dennis KWOK and Mr CHUNG Kwok-pan.

Action

21. The Chairman reminded Members that the deadline for amending the Notice was 19 December 2012, or 16 January 2013 if extended by a resolution of the Council.

IV. Further business for the Council meeting of 5 December 2012

(a) Tabling of papers

Report No. 6/12-13 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2) 273/12-13 issued vide LC Paper No. CB(3) 184/12-13 dated 28 November 2012)

22. The Chairman said that the Report covered five items of subsidiary legislation the period for amendment of which would expire on 5 December 2012, i.e. the five Amendment Rules made under sections 73 and 73A of the Legal Practitioners Ordinance (Cap. 159), which related to the handling of client's money by a solicitor. He further said that the Chairman of the relevant subcommittee had indicated intention to speak on these five items of subsidiary legislation. As the Administration would move a motion to amend two of these Amendment Rules, i.e. the Solicitors' Accounts (Amendment) Rules 2012 (L.N. 151) and the Accountant's Report (Amendment) Rules 2012 (L.N. 152), at the Council meeting of 5 December 2012, Members would have the opportunity to speak on the five related items of subsidiary legislation covered in the Report.

(b) Questions

(LC Paper No. CB(3) 183/12-13)

23. The Chairman said that Mr Christopher CHEUNG had given up his oral question slot and the slot had been allocated to Mr Martin LIAO.

V. Business for the Council meeting of 12 December 2012

(a) Questions

(LC Paper No. CB(3) 182/12-13)

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

Action

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

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

(c) **Government motion**

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

(d) **Members' motions**

(i) **Motion to be moved by Dr Hon Joseph LEE**

27. The Chairman said that the subject of the motion to be moved by Dr Joseph LEE was "Urging the Government to regulate health food products".

(ii) **Motion on "Vote of no confidence in the Chief Executive"**
(Wording of the motion issued vide LC Paper No. CB(3) 188/12-13 dated 28 November 2012.)

28. The Chairman said that the above motion would be moved by Mr WU Chi-wai, and the wording of the motion had been issued to Members.

29. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 5 December 2012.

Report on study of subsidiary legislation

30. The Chairman invited Members to note the list containing eight items of subsidiary legislation tabled at the meeting, the period for amendment of which would expire on 12 December 2012. Members who wished to speak on the subsidiary legislation should indicate their intention by 5:00 pm on Tuesday, 4 December 2012.

VI. Report of Bills Committees and subcommittees

- (a) **Report of the Subcommittee on Banking (Capital) (Amendment) Rules 2012, Banking (Specification of Multilateral Development Bank) (Amendment) Notice 2012 and Banking (Amendment) Ordinance 2012 (Commencement) Notice 2012**
(LC Paper No. CB(1) 230/12-13)

Action

31. Mr NG Leung-sing, Chairman of the Subcommittee, said that the Subcommittee had held two meetings with the Administration. The Subcommittee supported the three items of subsidiary legislation which were to provide for the first phase implementation on 1 January 2013 of the revised regulatory capital standards (known as Basel III) promulgated by the Basel Committee on Banking Supervision. The new standards, which would increase the level, quality and transparency of banks' capital base as well as the risk coverage of the capital framework, were designed to further enhance the resilience of banks and banking systems and improve the banking sector's ability to absorb shocks arising from financial and economic stress.

32. Mr NG Leung-sing further said that the Subcommittee was concerned about the impact of the implementation of the Banking (Capital) (Amendment) Rules 2012 on the costs and the lending business of the banking sector in Hong Kong. According to the Hong Kong Monetary Authority ("HKMA"), it was not envisaged that the implementation of Basel III capital standards would increase the costs of banks, given that their capital adequacy ratio had generally been maintained at a very high level, or affect banks' lending to small and medium enterprises, and hence the borrowing costs for the general business as well as members of the public.

33. Mr NG Leung-sing added that since the European Union ("EU") and the United States ("US") might experience some delay in implementing the first phase of Basel III requirements, some members were concerned whether their implementation in Hong Kong on 1 January 2013 might cause competitive disadvantage to banks in Hong Kong. According to HKMA, a number of jurisdictions in Asia, including Australia, Mainland China, India, Japan and Singapore, already issued final rules for Basel III implementation. Although there was possible delay in EU and US in implementing the first phase of Basel III requirements, some jurisdictions in EU, notably the United Kingdom and Germany, had taken preparatory actions. The US regulatory agencies had also been subjecting major banks and bank holding companies to stress-tests similar to the Basel III requirements.

34. Mr NG Leung-sing informed the meeting that the Subcommittee had invited views from the banking sector, including The Hong Kong Association of Banks ("HKAB"), on the implementation timetable of the first phase of Basel III requirements. The Subcommittee noted that HKAB had reiterated the importance of creating a level regulatory playing field and implementing Basel III standards globally. HKAB observed that while the timetable for implementing Basel III standards

Action

would vary across jurisdictions, the major jurisdictions across the globe were heading in the same direction over the longer term. HKAB considered that by adopting Basel III standards from 1 January 2013, Hong Kong would reinforce its position as a major financial centre, firstly by showing leadership in the implementation of the new standards, and also by giving banks clarity and stability with regard to the regulatory environment and their capital requirements. Mr NG added that the Subcommittee would not move any amendment to the three items of subsidiary legislation. He referred Members to the Subcommittee's report for details of its deliberations.

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

**(b) Report of the Subcommittee on Mediation Ordinance
(Commencement) Notice**

(LC Paper No. CB(4) 191/12-13)

36. Mr Dennis KWOK, Chairman of the Subcommittee, said that the Subcommittee had completed scrutiny of the Commencement Notice. He referred Members to the Subcommittee's report for details of its deliberations.

37. Mr Dennis KWOK further said that the Subcommittee supported the enactment of the Mediation Ordinance to provide a legal framework for mediation in Hong Kong. The main concern of members was the readiness on the part of the Government and the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") for the commencement of the Mediation Ordinance on 1 January 2013. HKMAAL was a non-statutory, industry-led accreditation body for mediators, which was incorporated in August 2012 as a company limited by guarantee. Members had expressed views on the future accreditation of mediators and mediation training for the consideration of the Administration and HKMAAL.

38. Mr Dennis KWOK informed the meeting that although the commencement of the Mediation Ordinance was not related to the operation of HKMAAL, members considered that the implementation of the Ordinance and the future operation of HKMAAL were important policy issues which should be closely monitored by LegCo. They agreed that the Panel on Administration of Justice and Legal Services should be invited to follow up the matter. Mr KWOK added that the Subcommittee did not object to the commencement of the Ordinance on 1

Action

January 2013 and would not propose any amendment to the Commencement Notice.

39. The Chairman reminded Members that as the deadline for amending the Commencement Notice 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) 272/12-13)

40. The Chairman said that as at 29 November 2012, there were five subcommittees under HC (i.e. two subcommittees on subsidiary legislation, one subcommittee on policy issues and two subcommittees on other Council business) and four subcommittees on policy issues under Panels in action.

VIII. Any other business

41. There being no other business, the meeting ended at 2:58 pm.

Council Business Division 2
Legislative Council Secretariat
6 December 2012