

立法會
Legislative Council

LC Paper No. CB(2)1228/12-13

Ref : CB2/H/5/12

House Committee of the Legislative Council

**Minutes of the 26th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 24 May 2013**

Members present:

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

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

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

Dr Hon LAM Tai-fai, SBS, 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-yee, GBS, JP

Hon Paul TSE Wai-chun, JP

Hon Alan LEONG Kah-kit, SC

Hon Albert CHAN Wai-yip
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, 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 Chi-chuen
Hon CHAN Han-pan
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 KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
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
Hon LEE Cheuk-yan
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Dr Hon KWOK Ka-ki
Hon SIN Chung-kai, SBS, JP

Clerk in attendance :

Miss Flora TAI

Clerk to the House Committee

Staff in attendance :

Mrs Justina LAM	Acting Secretary General
Mr Jimmy MA, JP	Legal Adviser
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 Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Ms Wendy KAN	Assistant Legal Adviser 6
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

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I. Confirmation of the minutes of the 25th meeting held on 10 May 2013

(LC Paper No. CB(2)1168/12-13)

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 there was nothing special to report.

III. Business arising from previous Council meetings

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

Professional Accountants (Amendment) Bill 2013

(LC Paper No. LS51/12-13 issued vide LC Paper No. CB(2)1114/12-13 dated 9 May 2013)

3. At the invitation of the Chairman, Legal Adviser ("LA") said that the Member in charge for the Bill was Mr Kenneth LEUNG. The purpose of the Bill was to amend the Professional Accountants Ordinance (Cap. 50) to permit a sole certified public accountant (practising) to incorporate a company with only one shareholder and to register the company as a corporate practice, to prohibit the use of certain misleading descriptions by a body corporate in its name, and to make related technical and drafting amendments. The Panel on Financial Affairs was consulted on the legislative proposals on 5 November 2012 and members raised no objection.

4. LA added that the Bill contained generally the same legislative proposals as put forward in a Member's Bill which was intended to be presented by a former Legislative Council ("LegCo") Member to the Fourth LegCo. However, it was not able for the Bill to receive its First Reading before the Fourth LegCo stood prorogued.

5. Mr Kenneth LEUNG considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Mr Kenneth LEUNG agreed to join the proposed Bills Committee.

(b) **Legal Service Division report on subsidiary legislation gazetted on 16 May 2013 and tabled in Council on 22 May 2013**

(LC Paper No. LS54/12-13)

6. At the invitation of the Chairman, LA said that one item of subsidiary legislation, i.e. the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013 (L.N. 70), was gazetted on 16 May 2013 and tabled in the Council on 22 May 2013. It was to replace the Schedule to the Tate's Cairn Tunnel Ordinance (Cap. 393) with a new one, in order to reflect the increase of \$1.00 for tolls for motorcycles and motor tricycles and an increase of \$2.00 for tolls for all other types of vehicles and additional axle. The Panel on Transport was consulted on the Administration's proposal on 14 December 2012 and members were generally dissatisfied with the toll increase application by Tate's Cairn

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Tunnel Company Limited ("TCTC"). The Transport Advisory Committee had also been consulted on TCTC's toll increase application, and was of the view that such application was not unreasonable and was justified. LA further invited Members to refer to the Legal Service Division report for information on LegCo's power to amend L.N. 70, which would come into operation on 1 August 2013.

7. Mr WU Chi-wai said that members had expressed diverse views when TCTC's toll increase application was discussed at the Panel meeting. He considered it necessary to form a subcommittee to study L.N. 70 in detail. Members agreed. Mr WU Chi-wai and Mr TANG Ka-piu agreed to join the proposed subcommittee.

8. The Chairman reminded Members that the deadline for amending L.N. 70 was 19 June 2013, or 10 July 2013 if extended by a resolution of the Council.

IV. Business for the Council meeting of 29 May 2013

(a) Questions

(LC Paper No. CB(3)612/12-13)

9. The Chairman said that 22 questions (six oral and 16 written) had been scheduled for the meeting.

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

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

(c) Government motion

Proposed resolution under section 72A(10) of the Road Traffic Ordinance (Cap. 374) and section 4(3) of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to be moved by the Secretary for Transport and Housing

(Wording of the proposed resolution issued vide LC Paper No. CB(3)584/12-13 dated 14 May 2013)

11. The Chairman said that the Secretary for Transport and Housing had given fresh notice to move the above proposed resolution at the Council meeting. The subcommittee on the proposed resolution had reported to the House Committee ("HC") on 10 May 2013.

(d) **Members' motions**

(i) **Motion on "Enacting legislation on the right to collective bargaining" to be moved by Hon LEE Cheuk-yan**

(Wording of the motion issued vide LC Paper No. CB(3)592/12-13 dated 16 May 2013)

(ii) **Motion on "Safeguarding freedom of information, of the press and of the internet" to be moved by Hon Charles Peter MOK**

(Wording of the motion issued vide LC Paper No. CB(3)588/12-13 dated 14 May 2013)

12. The Chairman said that the deadline for giving notice of amendments to the above two motions had expired on 22 May 2013. The Chairman further informed Members that as a number of Members' motions with no legislative effect had stood over from the last few Council meetings due to the prolonged proceedings of the Appropriation Bill 2013, the Council meeting of 29 May 2013 would deal with three Members' motions, namely the motions on "The 4 June incident", "Democratic procedures for the election of the Chief Executive by universal suffrage in 2017" and "Enhancing the overall sustainable competitiveness of Hong Kong" to be moved respectively by Mr Albert HO, Mr Alan LEONG and Dr LAM Tai-fai.

V. **Business for the Council meeting of 5 June 2013**

(a) **Questions**

(LC Paper No. CB(3)611/12-13)

13. The Chairman said that 22 questions (six oral and 16 written) had been scheduled for the meeting.

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

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

(c) **Government motion**

Proposed resolution under section 727 of the Companies Ordinance (28 of 2012) to be moved by the Secretary for Financial Services and the Treasury

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(Wording of the proposed resolution issued vide LC Paper No. CB(3)600/12-13 dated 20 May 2013)
(LC Paper No. LS55/12-13)

15. At the invitation of the Chairman, LA said that the purpose of the proposed resolution was to seek LegCo's approval of the Companies (Unfair Prejudice Petitions) Proceedings Rules ("the Rules") made by the Chief Justice under section 727 of the Companies Ordinance (28 of 2012) ("the new CO") for regulating the proceedings under Division 2 of Part 14 of the new CO relating to remedies for unfair prejudice to members' interests. The Rules would come into operation on the day on which section 727 of the new CO came into operation, which was expected to be in early 2014. LA added that at the HC meeting on 8 February 2013, Members agreed to form a single subcommittee to study the subsidiary legislation to be made under the new CO.

16. The Chairman said that the proposed resolution would be scrutinized by the said Subcommittee. In line with established practice and the arrangement agreed with the Administration, the Administration would be requested to withdraw its notice for moving the proposed resolution so as to allow sufficient time for the Subcommittee to scrutinize the proposed resolution. Members agreed.

(d) Members' motions

- (i) Motion on "Maintaining and enhancing Hong Kong's position as an international financial centre"**
(Wording of the motion issued vide LC Paper No. CB(3)614/12-13 dated 22 May 2013)

17. The Chairman said that the above motion would be moved by Mr NG Leung-sing, and the wording of the motion had been issued to Members.

- (ii) Motion to be moved by Hon CHAN Kin-por**

18. The Chairman said that the subject of the motion to be moved by Mr CHAN Kin-por was "Building a safe city".

19. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above two motions was Wednesday, 29 May 2013.

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20. The Chairman further said that, as in the case of the Council meeting of 29 May 2013, the Council meeting of 5 June 2013 would also deal with three Members' motions with no legislative effect, namely the motions on "Actively promoting family-friendly policies", "Enacting legislation on the right to collective bargaining" and "Safeguarding freedom of information, of the press and of the internet" to be moved respectively by Ms Starry LEE, Mr LEE Cheuk-yan and Mr Charles MOK.

Report of HC on Consideration of Subsidiary Legislation

21. The Chairman invited Members to note the list containing eight items of subsidiary legislation tabled at the meeting, the scrutiny period of which would expire on 5 June 2013. Members who wished to speak on the subsidiary legislation should indicate their intention by 5:00 pm on Tuesday, 28 May 2013.

VI. Report of Bills Committees and subcommittees

Report of the Subcommittee on Proposed Senior Judicial Appointments

(LC Paper No. CB(4)673/12-13)

22. Mr Dennis KWOK, Chairman of the Subcommittee, reported that the Subcommittee had completed its work of examining the proposed appointments of The Honourable Mr Justice Joseph Paul FOK, SC, JP as a Permanent Judge of the Court of Final Appeal ("CFA"), The Honourable Mr Justice Patrick CHAN Siu-oi as a non-permanent Hong Kong judge of CFA, and The Honourable James SPIGELMAN, AC, QC and The Honourable William GUMMOW, AC as non-permanent judges of CFA from other common law jurisdictions. The Subcommittee supported these senior judicial appointments recommended by the Judicial Officers Recommendation Commission ("JORC")

23. Mr Dennis KWOK further reported that in the course of the deliberations of the Subcommittee, members had urged greater transparency in the senior judicial appointment process for better public scrutiny. Members had also raised concern about the appropriateness of the Secretary for Justice being a member of JORC. Mr KWOK added that the Subcommittee had no objection to the Administration giving notices to move motions to seek the endorsement of LegCo of the recommended appointments.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)1169/12-13)

24. The Chairman said that as at 23 May 2013, there were 14 Bills Committees, six subcommittees under HC (i.e. two subcommittees on subsidiary legislation, one subcommittee on policy issues and three subcommittees on other Council business) and seven subcommittees on policy issues under Panels in action. Three subcommittees on policy issues under Panels were on the waiting list.

25. The Chairman further invited Members to note that two Bills Committees, namely the Bills Committee on Pesticides (Amendment) Bill 2013 and the Bills Committee on Trust Law (Amendment) Bill 2013, would have to work beyond three months since commencement of their work.

VIII. Appointment of a subcommittee to prepare for the operation of the select committee to which the petition presented at the Council meeting of 8 May 2013 has been referred

(LC Paper No. CB(4)674/12-13)

26. Referring to the paper prepared by the Secretariat, the Chairman said that having regard to the arrangements for setting up select committees in the past and the fact that it was the first time that a select committee was formed pursuant to Rule 20(6) of the Rules of Procedure, it was recommended that a subcommittee be appointed by HC to undertake preparatory work for the operation of the select committee.

27. Members agreed to the proposed appointment of a preparatory subcommittee. The following Members agreed to join the subcommittee: Mr James TO, Ms Cyd HO, Mr IP Kwok-him and Mr Dennis KWOK.

28. The Chairman said that the Secretariat would issue a circular to invite Members to join the preparatory subcommittee.

29. In response to Ms Emily LAU's enquiry, the Chairman said that while no limit had been set on the membership size of the preparatory subcommittee, it was his understanding that during an informal discussion among some Members, there was a general agreement that the membership size of the select committee should be 13, and that those Members who would join the select committee should also be members of the preparatory subcommittee. The Chairman further informed Members that the President would decide the size of the select committee and appoint the chairman, deputy chairman and members thereof, taking into account HC's recommendations.

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30. Responding to Ir Dr LO Wai-kwok's enquiry on the timeframe for completion of work of the preparatory subcommittee, the Chairman said that the subcommittee would draw up its work schedule. In line with established practice, the Secretariat would issue notice of the first meeting of the subcommittee after consulting the Member who had the highest precedence on the preliminary membership list.

31. Mr Abraham SHEK said that as Chairman of the Public Accounts Committee ("PAC"), he received a letter from the Director of Public Prosecutions ("DPP") that morning before PAC's public hearing was held on Chapter 7 of the Director of Audit's Report No. 60 concerning the Independent Commission Against Corruption ("ICAC"). The purpose of the letter was to bring to the attention of PAC certain matters that might be relevant to the conduct of the hearing. He invited LA to brief Members on the letter.

32. At the invitation of the Chairman, LA said that DPP's letter was received shortly before PAC's public hearing was held that morning. In gist, DPP drew to PAC's attention that under Article 63 of the Basic Law, the Department of Justice ("DoJ") should control criminal prosecutions free from any interference; and given such responsibility, DoJ was keen to ensure that PAC would bear in mind the need to protect the integrity of the criminal investigation currently underway in relation to the former ICAC Commissioner, Mr Timothy TONG, when conducting the public hearing.

33. Mr Abraham SHEK said that while he appreciated that DPP had written that letter with good intentions, he considered it unnecessary for the Executive to remind LegCo Members what they should do as they were fully aware of how they should exercise their powers and functions as LegCo Members.

34. Mr Ronny TONG said that under the principle of separation of powers, he could not see any need for law enforcement agencies to remind LegCo Members how to carry out their work. He stressed that the objective of the public hearing was to find out the truth, which, in his view, would not prejudice the investigation or prosecution work of law enforcement agencies. DPP should rest assured that LegCo would exercise its powers and functions prudently.

35. Ms Cyd HO said that she had attended the public hearing of PAC held in the morning. As she was not a member of PAC, she did not have sight of DPP's letter. She wished that a copy of the letter could be sent to all Members for reference. Ms HO further said that Members were

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aware that ICAC was conducting criminal investigation into complaints against Mr Timothy TONG. Members were only trying to find out the truth and they knew full well what should and should not be done when discharging their powers and functions.

36. Ms Emily LAU expressed her dissatisfaction with DPP's letter. She pointed out that Members were accountable to the public for the work of LegCo and were well aware of how they should discharge their duties in a proper manner. She stressed the importance of safeguarding the dignity and independence of LegCo and considered it unnecessary for the Executive to remind LegCo how it should work. She requested the Chairman to relay Members' views and concerns to CS. The Chairman undertook to do so.

37. Mr Abraham SHEK agreed to make available a copy of DPP's letter for HC Members' reference.

(Post-meeting note: The letter was circulated to Members vide LC Paper No. CB(2) 1211/12-13 dated 27 May 2013.)

IX. Any other business

38. There being no other business, the meeting ended at 2:48 pm.