

立法會
Legislative Council

LC Paper No. CB(2)1278/12-13

Ref : CB2/H/5/12

House Committee of the Legislative Council

**Minutes of the 27th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 31 May 2013**

Members present:

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

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

Hon Albert HO Chun-yan

Hon LEE Cheuk-yan

Hon James TO Kun-sun

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

Dr Hon Priscilla LEUNG Mei-fun, JP

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 Albert CHAN Wai-yip
Hon WONG Yuk-man
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 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:

Dr Hon LAU Wong-fat, GBM, GBS, JP
Dr Hon LEUNG Ka-lau
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, J P

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
Mr Colin CHUI	Chief Council Secretary (2)4
Ms Amy YU	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Miss Carrie WONG	Assistant Legal Adviser 4
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Clara TAM	Assistant Legal Adviser 9
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 26th meeting held on 24 May 2013
(*LC Paper No. CB(2)1228/12-13*)

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 relayed to CS Members' views and

Action

concerns about the letter dated 24 May 2013 from the Director of Public Prosecutions ("DPP") to the Chairman of the Public Accounts Committee ("PAC") regarding the criminal investigation of the former Commissioner of Independent Commission Against Corruption ("ICAC"). CS responded that the Administration had no intention at all to interfere with the operation of the Legislative Council ("LegCo"). CS explained that as PAC's public hearing might involve matters concerning the criminal investigation of the former Commissioner of ICAC, the Department of Justice ("DoJ") might be asked whether it had taken any step to reduce the risk of the criminal investigation being prejudiced should prosecution be instituted in the future. CS stressed that DPP's letter was only a gentle reminder to ensure that the Legislature and the prosecution authorities could fulfill their respective constitutional functions without jeopardizing the criminal investigation.

3. Ms Emily LAU sought clarification on whether it was CS's view that PAC's hearing would prejudice the criminal investigation of the case and future prosecution.

4. At the invitation of the Chairman, the Deputy Chairman said that subsequent to the last House Committee ("HC") meeting, DPP had called him on the matter. He had clearly relayed to DPP Members' view that PAC's hearing would not in any way prejudice ICAC's criminal investigation. He had also indicated to DPP that whether or not PAC's hearing might affect the court's judgment should prosecution be instituted on the case in the future was a matter for the court, not DoJ. The Deputy Chairman added that DPP had clearly taken note of Members' stance.

5. The Chairman said that he had also conveyed Members' views to the Secretary for Justice on an informal occasion. The Secretary for Justice had reiterated that DPP's letter was only a gentle reminder and the Administration had no intention at all to interfere with the operation of LegCo.

6. Ms Emily LAU stressed that it was not necessary for the Executive to remind the Legislature how to carry out its work, as Members were well aware of their powers and functions and had been discharging their duties in a responsible manner. It was important for the Executive and the Legislature to pay due respect to each other. She hoped that the Executive would not do anything which might affect the work of PAC.

7. The Chairman reiterated that he and the Deputy Chairman had already fully conveyed Members' views and concerns about DPP's letter to the Administration.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 24 May 2013 and tabled in Council on 29 May 2013

(LC Paper No. LS56/12-13)

8. At the invitation of the Chairman, Legal Adviser ("LA") said that a total of 22 items of subsidiary legislation were gazetted on 24 May 2013 and tabled in the Council on 29 May 2013.

Subsidiary legislation relating to trade descriptions

9. Regarding the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (Commencement) Notice (L.N. 72) and the Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice (L.N. 71), LA explained that L.N. 72 appointed 19 July 2013 as the day on which the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (25 of 2012) came into operation, and L.N. 71 specified the powers that were not exercisable by the Communications Authority in its enforcement in respect of commercial practices of licensees that are directly connected with the provision of a telecommunications service or broadcasting service under the relevant Ordinances over which it had concurrent jurisdiction with the Customs and Excise Department.

10. Ms Cyd HO considered it necessary to form a subcommittee to study in detail L.N. 71 relating to enforcement powers exercisable by the Customs and Excise Department. Members agreed that a subcommittee be formed to study both L.N. 71 and L.N. 72 in detail. Ms Cyd HO agreed to join the proposed subcommittee.

Subsidiary legislation relating to signboard control system

11. As regards the Building (Minor Works) (Amendment) Regulation 2013 (L.N. 73) and the Buildings Legislation (Amendment) Ordinance 2012 (Commencement) Notice (L.N. 74), LA said that L.N. 74 appointed 2 September 2013 as the day on which the enabling provisions of the Buildings Legislation (Amendment) Ordinance 2012 (24 of 2012) for the introduction of a statutory signboard control system ("SBCS") came into operation, and L.N. 73 provided for the details for the implementation of SBCS. The Panel on Development was briefed on the subsidiary legislation for introducing the SBCS on 7 January 2013 and members had expressed various concerns.

Action

12. Mr WU Chi-wai considered it necessary to form a subcommittee to study L.N. 73 and L.N. 74 in detail, in the light of the concerns expressed by members of the Panel on Development and the experience of the implementation of the Mandatory Window Inspection Scheme. Members agreed. The following Members agreed to join the subcommittee: Ms Cyd HO, Mr WU Chi-wai and Mr Tony TSE.

Subsidiary legislation made under the new Companies Ordinance (28 of 2012)

13. Regarding the third batch of six items of subsidiary legislation made under the new Companies Ordinance ("the new CO") (i.e. L.N. 75 to L.N. 80), LA informed Members that subsidiary legislation relating to the new arrangement for inspection of the Companies Register was not included in this batch. LA further informed Members that these six items of subsidiary legislation would be studied by the Subcommittee formed by HC on 8 February 2013 to study the subsidiary legislation to be made under the new CO. The Subcommittee would meet on 3 June 2013 to start the scrutiny of this third batch of subsidiary legislation.

14. LA added that the proposed amendments in the Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013 (L.N. 75) and the Companies (Disclosure of Information about Benefits of Directors) (Amendment) Regulation 2013 (L.N. 76) had been studied by the Subcommittee during the scrutiny of the second batch of subsidiary legislation. The Administration had originally planned to make the proposed amendments to the relevant Regulations (i.e. L.N. 34 and L.N. 35 of 2013) by way of resolutions at the Council meeting of 15 May 2013. However, the Administration was not able to do so, since the motion for extension of the scrutiny period of the subsidiary legislation could not be dealt with at or before the Council meeting of 24 April 2013. The Administration therefore introduced the proposed amendments to L.N. 34 and L.N. 35 by way of amendment regulations (i.e. L.N. 75 and L.N. 76.).

Subsidiary legislation relating to the alignment of fees and charges for municipal services

15. At the invitation of the Chairman, LA said that the object of L.N. 81 to L.N. 88 was to implement the plan announced by the Chief Executive in the 2013 Policy Address to align the different levels of fees and charges for similar municipal facilities and services in the urban areas and the New Territories based on the lower of the two levels. L.N. 81 would come into operation on 1 August 2013, and L.N. 82 to L.N. 88 on 19 July 2013.

Action

16. Mr Tommy CHEUNG opined that the proposed alignment of fees and charges based on the lower of the two levels was generally supported by Members. Mr CHEUNG further said that initially he had concern about the Administration's proposal to apply to both the urban areas and the New Territories 14 fee items which were currently charged for a service or facility in either the urban areas or the New Territories only. His concern was addressed after the Administration had explained that no user would be affected by the proposal, as the services and facilities concerned were currently provided in either the urban areas or the New Territories only. Mr CHEUNG considered it not necessary to form a subcommittee to study L.N. 81 to L.N. 88.

17. In response to Ms Emily LAU, Mr Tommy CHEUNG further said that it was his understanding that it was a comprehensive fee alignment exercise.

18. Mr WONG Kwok-hing said that the relevant concern had been discussed by the Panel on Food Safety and Environmental Hygiene. He shared the view that it was not necessary to form a subcommittee to study the subsidiary legislation.

19. Members raised no further question on L.N. 81 to L.N. 88.

Subsidiary legislation made under the Business Registration Ordinance (Cap. 310)

20. In respect of the Business Registration Ordinance (Amendment of Schedule 2) Order 2013 (L.N. 91), LA explained that it reduced the levy payable under the Business Registration Ordinance in relation to the registration of a business and a branch of a business from \$1,350 to \$750 for a three-year business registration certificate, and from \$450 to \$250 for a one-year business registration certificate. L.N. 91 would come into operation on 19 July 2013.

21. Ms Cyd HO said that Members belonging to the Labour Party considered it necessary to form a subcommittee to study L.N. 91 in detail, given that all money received from the levy would be paid to the Protection of Wages on Insolvency Fund. Members agreed. The following Members agreed to join the subcommittee: Ms Cyd HO, Mr CHEUNG Kwok-che and Mr TANG Ka-piu.

22. Members did not raise any question on the remaining three items of subsidiary legislation, i.e. L.N. 89, L.N. 90 and L.N. 92.

23. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 26 June 2013, or 17 July 2013 if extended by a resolution of the Council.

IV. Further business for the Council meeting of 5 June 2013

(a) Tabling of papers

Report No. 18/12-13 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2)1230/12-13 issued vide LC Paper No. CB(3)636/12-13 dated 29 May 2013)

24. The Chairman said that the Report covered eight items of subsidiary legislation, the period for amendment of which would expire on 5 June 2013. No Member had indicated an intention to speak on the subsidiary legislation.

(b) Questions

(LC Paper No. CB(3)633/12-13)

25. The Chairman said that Mr James TIEN and he himself had replaced their oral questions.

V. Report of Bills Committees and subcommittees

(a) Report of the Bills Committee on Education (Amendment) Bill 2013

(LC Paper No. CB(4)706/12-13)

26. Ms Cyd HO, Chairman of the Bills Committee, said that the Bills Committee had held two meetings and received views from deputations at one of the meetings.

27. Ms Cyd HO reported that the Bills Committee and the deputations supported the Bill and its early implementation to ensure that the retirement benefits of members of the Grant Schools Provident Fund and the Subsidized Schools Provident Fund would be under similar protection as that enjoyed by teachers in government schools and the majority of the workforce in the event of bankruptcy. She referred Members to the Bills Committee's report for details of its deliberations.

Action

28. Ms Cyd HO added that both the Administration and the Bills Committee had not proposed any Committee stage amendment ("CSA") to the Bill. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 19 June 2013.

29. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was 8 June 2013.

(b) Report of the Subcommittee on Poverty on setting the poverty line

(LC Paper No. CB(2)1225/12-13)

30. Mr Frederick FUNG, Chairman of the Subcommittee, said that as the Administration had decided to set a poverty line and had entrusted the Commission on Poverty ("CoP") with the task, the Subcommittee had held meetings with the Administration and deputations to discuss the matter. The Subcommittee had put forward five recommendations which were set out in paragraph 29 of the report. He referred Members to the Subcommittee's report for details of its deliberations.

31. The Chairman said that the report would be forwarded to CoP for consideration. Members noted the report.

VI. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)1229/12-13)

32. The Chairman said that as at 30 May 2013, there were 15 Bills Committees, seven subcommittees under HC (i.e. three 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.

VII. Request of Hon WONG Yuk-man for a debate slot at the Council meeting of 5 June 2013 to move a motion on "Vote of no confidence in the President of the Legislative Council"

(Letters dated 16 and 22 May 2013 from Hon WONG Yuk-man (LC Paper Nos. CB(2)1166/12-13(01) and CB(2)1196/12-13(01) issued on 20 and 23 May 2013 respectively))

33. At the invitation of the Chairman, Mr WONG Yuk-man explained his request to Members. Mr WONG said that he proposed to move a

Action

motion of no confidence in the President to protest against the President abusing his power in using Rule 92 of Rules of Procedure ("RoP") and Article 72(1) of the Basic Law ("BL") to end the joint debates during the Committee stage of the Appropriation Bill 2013 ("the Bill"). He considered that the President's decision was a serious affront to the freedom of speech in LegCo and the rights of Members. He considered that it had also given the public the impression that he was biased towards the Administration to facilitate the passage of the Bill. Mr WONG further said that he originally intended to move an adjournment debate on the matter, but was advised that it was procedurally not in order. He had also tried to secure a debate slot under the queuing system. However, since he had already been allocated a debate slot earlier this session, there was little chance that he could secure another one in the near future. He therefore requested the support of HC, under rule 13(a) of the House Rules ("HR"), for allocation of a debate slot at the Council meeting of 5 June 2013 so that Members would have the opportunity to express their views on the President's decision.

34. Mr LEUNG Yiu-chung expressed support for Mr WONG Yuk-man's request. He considered it unjust on the part of the President to pre-set a timeframe for the remaining proceedings on the Bill so as to ensure its passage before the Council meeting of 22 May 2013, without providing any explanation to Members. Mr LEUNG said that he could not think of any reason for setting such timeframe except that the Administration had indicated that the Bill should be passed by 23 May 2013.

35. Mr Albert HO also expressed support for Mr WONG Yuk-man's request. He said that the subject of the motion proposed by Mr WONG concerned Members' trust in the President which was important to the President who was entrusted with the duty to preside at meetings. If the President had lost Members' trust, he should step down as soon as possible. It was the normal practice for a motion of this kind to be treated as a procedural one which should be dealt with as a priority. Mr HO further said that having regard to the above considerations, priority should be given to Mr WONG's request for allocation of a slot for debating his proposed motion at the Council meeting of 5 June 2013. He appealed to Members to support Mr WONG's request, irrespective of their stance on the motion.

36. Ms Claudia MO said that she supported Mr WONG Yuk-man's request because she considered the means adopted by the President to end the filibuster on the Bill shameful, and Mr WONG would unlikely be able to secure a debate slot within the current session under the normal queuing system should his request not be acceded to.

37. Mr CHAN Chi-chuen said that as some Members had expressed distrust in the President, he considered that the best way to deal with the matter was to hold a debate in Council. Mr CHAN opined that in ending the filibuster on the Bill, the President might have acted beyond the powers given to him under RoP 92 and BL 72(1). He also expressed dissatisfaction about the manner in which the President issued his written ruling on allocation of time for the remaining proceedings on the Bill. He pointed out that the President had announced his decision to end the filibuster on the morning of 13 May 2013 and the debate on the amendments ended at around 1:30 pm on 14 May 2013, but his written ruling was not issued until 16 May 2013. Moreover, Members did not have the opportunity to discuss the matter in Council. The motion proposed by Mr WONG Yuk-man would provide an opportunity for Members to debate on the matter. He appealed to Members to support Mr WONG's request.

38. Mr WONG Kwok-hing said that the 15-day filibustering on the Bill had wasted some \$40 million of public funds, and seriously obstructed the normal operation of LegCo. He considered the President's decision to end the filibuster lawful and reasonable. Mr WONG added that he did not support Mr WONG's request or his proposed motion.

39. Ms Cyd HO expressed support for Mr WONG Yuk-man's request. She remarked that when the impartiality of a person in a high position was questioned, the queries and doubts should be addressed as early as possible. Ms HO stressed that Members had yet to agree on any rules or procedure for handling filibuster and it was important to ensure that Members had ample room in time to speak and express their views in Council. She hoped that the motion debate proposed by Mr WONG Yuk-man could be held as early as possible to enable Members of different political parties and groupings to express their views on the President's decision to end the filibuster and future handling of filibuster.

40. Mr Kenneth LEUNG indicated support for Mr WONG Yuk-man's request. He did not agree with Mr WONG Kwok-hing that the filibuster had wasted some \$2.25 million a day, as the cost involved was sunk cost.

41. Dr Priscilla LEUNG said that according to the court's judgment on the judicial review application made by Mr LEUNG Kwok-hung, the President's right to preside over and to exercise proper authority or control over meetings was provided for in BL, and the President might invoke the power under RoP 92 to deal with a situation not provided for in RoP. Dr LEUNG did not consider that holding a debate on a motion of no confidence in the President could help resolve the problem.

Action

Instead, Members should discuss whether and how RoP should be amended to provide more guidance on how the President should exercise the power under RoP 92.

42. Mr IP Kwok-him said that while some Members were of the view that the President had abused his power, it should be noted that 36 Members had signed a joint petition requesting the President to end the filibuster. Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") welcomed a debate in Council on the matter, but they were of the view that Members should follow the established queuing system for allocation of debate slots. They therefore did not support Mr WONG Yuk-man's request for the allocation of an additional debate slot at the Council meeting of 5 June 2013. He added that Members who supported Mr WONG's request should consider transferring their own allocated debate slot to Mr WONG for moving the motion.

43. Mr NG Leung-sing shared Mr IP Kwok-him's view that Members should follow the established queuing system for allocation of debate slots. Mr NG further said that the public had diverse views on the filibuster on the Bill. While certain operation cost of LegCo might be regarded as sunk cost, he agreed to the view that the filibuster on the Bill had wasted public money as it had achieved nothing constructive. Mr NG added that given the court's ruling on the powers of the President to preside over meetings, it would not be in the public interest to further discuss the matter in Council.

44. Mr James TIEN said that Members belonging to the Liberal Party were all along opposed to filibustering. They had not signed the joint petition to the President referred to by Mr IP Kwok-him as they considered that the President should make his own decision on the matter. Mr TIEN added that after the President decided to end the filibuster, they indicated support for his decision. Given their stance on filibustering, Members belonging to the Liberal Party did not support Mr WONG Yuk-man's request.

45. Mr Paul TSE said that Members should focus their discussion on whether an additional debate slot should be allocated to Mr WONG Yuk-man under HR13(a), and not whether they supported the motion of no confidence in the President proposed by Mr WONG. Mr TSE shared Mr Albert HO's view that Members' trust in the President was of vital importance and the matter should be debated in Council at the earliest opportunity. He supported Mr WONG Yuk-man's request.

46. Mr Michael TIEN said that he did not support Mr WONG Yuk-man's request as he did not consider that the President had made a wrong decision in ending the filibuster. Mr TIEN further said that filibuster had its value in a democratic society as it was a tool for the minority to ensure that its voice was heard, subject to meeting the following three principles: there should be significant public support for resorting to filibuster; there was room for the Government to withdraw its proposal; and public services should not be paralyzed by the filibuster. Mr TIEN opined that the filibuster on the Bill did not meet any of these principles. He further said that since LegCo did not have any procedure for dealing with filibuster, it was simply a matter of time that the President had to end the filibuster. He agreed that the filibuster on the Bill could not be allowed to continue indefinitely and therefore opposed Mr WONG's request.

47. Mr Albert CHAN opined that the motion of no confidence in the President proposed by Mr WONG Yuk-man was a procedural motion which should have priority over substantive motions. He considered it important for Members to express their views and vote on the motion, as a notable number of Members had queried the impartiality of the President and LegCo should clearly express its stance on the President's handling of the filibuster by way of a vote on the motion.

48. The Chairman reminded Members that they should focus their discussion on whether an additional debate slot should be allocated to Mr WONG Yuk-man under HR 13(a).

49. Dr Kenneth CHAN expressed support for Mr WONG Yuk-man's request. He said that when the Members concerned first expressed their intentions to filibuster the Bill, his understanding was that joint debates would not be held on the amendments. However, the President subsequently decided that joint debates be held. Furthermore, when the President announced his decision to end the filibuster on the Bill, he set a time frame for ending the debates on all the remaining amendments. He criticized that the President had erred a number of times in his handling of the debates on the Bill, which had affected the work of Members and the operation of LegCo. In his view, the President should be held accountable. Dr CHAN agreed that the motion proposed by Mr WONG should be debated in Council as early as possible.

50. Mr LEUNG Kwok-hung said that while Members belonging to the pro-establishment camp criticized that the filibuster had wasted public money and obstructed the normal operation of LegCo, he queried whether they had done anything genuinely beneficial to the public. He pointed

Action

out that all motion debates moved by Members in Council were non-binding. Under BL 74, Members had only limited power to propose Bills. Mr LEUNG further said that he would seriously consider making an application for judicial review of the President's decision to end the filibuster on the Bill.

51. Ir Dr LO Wai-kwok said that he did not support Mr WONG Yuk-man's request. He did not subscribe to the criticism made by some Members on the President's handling of the debates on the amendments to the Bill. He considered that the President had exercised great care in handling the more than 700 amendments to the Bill and had clearly explained his decisions to Members. The President had also allowed sufficient time for Members to express their views in deciding to set a time frame for the remaining proceedings on the Bill. He further said that while the daily operation cost of LegCo could be regarded as sunk cost, it was important that such public fund should be used effectively and properly. In his view, Members should make good use of the remaining time in the current session to deal with the backlog caused by the filibuster rather than spending time on an additional motion debate. He reiterated his objection to Mr WONG's proposal.

52. Dr CHIANG Lai-wan did not agree to the view that the President had abused his power in handling the debates on the amendments to the Bill. She pointed out that the filibuster had gone on for weeks and the President had already allowed sufficient time for Members to speak. The President had the power and function to preside over meetings under BL 72(1). According to RoP 92, the President could decide the practice and procedure to be followed in the Council in dealing with any matter not provided for in RoP. Furthermore, the President had also consulted Members before making his decision to end the filibuster on the Bill but they were unable to reach a consensus on how to deal with the matter. Dr CHIANG expressed objection to Mr WONG Yuk-man's request.

53. Mr WONG Yuk-man said that he had made his request under HR 13(a) for allocation of a debate slot at the Council meeting of 5 June 2013 to enable a debate to be held on his proposed motion as early as possible. He stressed that the debate would provide an opportunity for all Members to express their stance on the matter.

54. Given Members' diverse views, the Chairman put to vote the request of Mr WONG Yuk-man for a debate slot at the Council meeting of 5 June 2013 to move a motion on "Vote of no confidence in the President of the Legislative Council". Mr WONG Yuk-man requested a division.

Action

The following Members voted in favour of the request:

Mr Albert HO, Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Dr Joseph LEE, Mr Ronny TONG, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Helena WONG and Mr IP Kin-yuen.

(23 Members)

The following Members voted against the request:

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Kwok-him, Mr Michael TIEN, Mr James TIEN, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr CHAN Han-pan, Miss CHAN Yuen-han, Mr LEUNG Che-cheung, Miss Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Christopher CHUNG and Mr Tony TSE.

(34 Members)

55. The Chairman declared that 23 Members voted for and 34 Members voted against the request and no Member abstained from voting. The Chairman declared that Mr WONG Yuk-man's request was negated.

VIII. Proposal of Dr Hon CHIANG Lai-wan for the Chairman of the House Committee to move motions under Rule 49B(1) of the Rules of Procedure to relieve Hon WONG Yuk-man and Hon Albert CHAN respectively of their duties as Members of the Legislative Council

(Letter dated 28 May 2013 from Dr Hon CHIANG Lai-wan (LC Paper No. CB(2)1239/12-13(01))

(LC Paper No. CB(2)1250/12-13)

56. At the invitation of the Chairman, Dr CHIANG Lai-wan said that on 21 May 2013, Mr WONG Yuk-man and Mr Albert CHAN were convicted in the Eastern Magistrates' Court of unlawful assembly and were sentenced to imprisonment for six weeks and five weeks respectively. Under BL 79(6), when a LegCo Member was convicted and sentenced to imprisonment for one month or more for a criminal

Action

offence committed within or outside the Hong Kong Special Administrative Region ("HKSAR") and was relieved of his duties by a motion passed by two-thirds of the LegCo Members present, the President of LegCo should declare that the Member was no longer qualified for the office. Dr CHIANG further said that the matter had aroused wide public concern. There had been two occasions in the past where motions were moved pursuant to BL 79(6) to relieve the Members concerned of their duties. In accordance with the relevant provisions in BL and RoP and having regard to past practices, she proposed that motions under RoP 49B(1) be moved by the Chairman of HC to relieve Mr WONG and Mr CHAN respectively of their duties as Members of LegCo.

57. The Chairman explained that Dr CHIANG Lai-wan's proposal was to seek HC's support for him to move, in his capacity as Chairman of HC, motions under RoP 49B(1) to relieve Mr WONG Yuk-man and Mr Albert CHAN of their duties as Members of LegCo. Should HC not support Dr CHIANG's proposal, individual Members could still move motions in this regard in Council. He then invited Mr WONG and Mr CHAN to speak.

58. Mr WONG Yuk-man referred Members to his letter dated 31 May 2013 tabled at the meeting, in which he raised some legal issues in response to Dr CHIANG Lai-wan's proposal. He stressed that unlike the two previous cases where the procedure under BL 79(6) was invoked, the court had passed suspended sentences of imprisonment on him and Mr Albert CHAN. Mr WONG then drew Members' attention to section 109B(5)(a) of the Criminal Procedure Ordinance (Cap. 221) ("CPO"), which provided that "a suspended sentence which has not taken effect under section 109C shall be treated as a sentence of imprisonment for the purposes of all Ordinances except any Ordinance which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment". In his opinion, the exceptions stipulated in section 109B(5)(a) of CPO should cover the disqualification of a LegCo Member from office; hence the suspended sentences passed on him and Mr Albert CHAN should not be regarded as imprisonment for the purpose of BL79(6). He did not subscribe to the view that given BL's status as the mini constitution of HKSAR, it was not necessary to make reference to CPO in interpreting BL79(6). He considered CPO important as it was the source of the court's power to impose a suspended sentence. Mr WONG further pointed out that question was also raised on whether the procedure under BL79(6) could be triggered in the various scenarios which might arise where the court had exercised its power under section 109C(1) of CPO to deal with the suspended sentence of an offender on his conviction of a further offence. He invited LA to share with Members his views on the legal issues he had raised in his letter.

Action

(*Post-meeting note: Mr WONG Yuk-man's letter dated 31 May 2013 was circulated to Members vide LC Paper No. CB(2)1266/12-13 on 3 June 2013.*)

59. Mr Albert CHAN said that he had decided to appeal against his conviction and sentence. He very much welcomed Dr CHIANG Lai-wan's proposal. Should motions moved under RoP 49B(1) to relieve him and Mr WONG Yuk-man of their duties as LegCo Members be passed by LegCo, he would run in the by-election, which would provide him with an opportunity to trigger another de facto referendum on dual universal suffrage.

60. Ms Claudia MO expressed objection to Dr CHIANG Lai-wan's proposal for the reasons that Mr WONG Yuk-man and Mr Albert CHAN had not acted for personal gain; the imposition of suspended sentences by the court showed that the offences they had committed were not very serious; and they should not be disqualified from office for their political actions which were manifestation of their political ideology.

61. Mr Michael TIEN said that the fact that the disqualification of a Member from office under BL 79(6) required the passage of a motion by two-thirds of the LegCo Members present showed that it was the intent of BL 79(6) to leave the decision on whether a Member's conviction and sentence should result in his removal from office to the judgment of LegCo Members. In considering Dr CHIANG Lai-wan's proposal, regard had to be given to the nature and severity of the offences committed by Mr WONG Yuk-man and Mr Albert CHAN. While he did not condone the acts of these two Members who defied the law openly, he agreed with Ms Claudia MO that they did so not for personal gain. Furthermore, there was no injury in the protest and their breach of the law was not very serious as reflected in the court's imposition of suspended sentences on them.

62. Dr Helena WONG said that Members belonging to the Democratic Party ("DP") objected to invoking the procedure under BL 79(6) to relieve Mr WONG Yuk-man and Mr Albert CHAN of their duties as LegCo Members. Given the concern raised in some quarters of the community about the Administration's attempts to suppress opposing views as evidenced by the growing number of prosecutions brought against social activists in recent years, Dr WONG cautioned that Members should be prudent in considering Dr CHIANG proposal to trigger the procedure under BL 79(6) to remove Mr WONG and Mr CHAN from office. She shared the view that the nature and severity of the offences committed should be taken into account in considering the proposal. In her view, Members should leave it to the electors to decide in future elections whether they approved the means adopted by Mr WONG and Mr CHAN for expressing their political ideology.

Action

63. The Deputy Chairman said that Dr CHIANG Lai-wan's proposal for the Chairman of HC to move motions to relieve Mr WONG Yuk-man and Mr Albert CHAN was unnecessary. He added that such motions could be moved by any Member in Council and the Chairman of HC might express views different from those of Dr CHIANG when moving the motions. The Deputy Chairman stressed that whether or not to relieve a Member of his duties was a political decision. BL 79(6) had not set out the manner of execution of an order of imprisonment and it was his view that a suspended sentence was in nature a sentence of imprisonment. He considered that it might be more convincing for Mr WONG Yuk-man to argue his case on the basis of the nature of his acts, rather than from the legal perspective. The Deputy Chairman expressed objection to Dr CHIANG Lai-wan's proposal.

64. Mr CHAN Chi-chuen said that Dr CHIANG Lai-wan had indicated that she raised the proposal in accordance with BL and having regard to precedents in the past. Mr CHAN pointed out that Mr Paul TSE moved a motion under RoP 49B(1) to relieve Mr LEUNG Kwok-hung of his duties as a Member of LegCo at the Council meeting of 18 April 2012 for the sake of consistency with previous practice and fairness, and Mr TSE had actually voted against the motion. However, Mr CHAN did not believe that Dr CHIANG triggered the procedure purely for consistency in the implementation of BL 79(6), as she had openly indicated that she would vote for the motions moved under RoP 49B(1) to relieve Mr WONG Yuk-man and Mr Albert CHAN respectively of their duties.

65. Ms Cyd HO said that the Public Order Ordinance (Cap. 245) ("POO") was made during the colonial era as a tool for political suppression, and the prosecutions against Mr WONG Yuk-man and Mr Albert CHAN were political ones. She further said that according to Mr Martin LEE, a member of the Basic Law Drafting Committee, the intent of incorporating the requirement of a two-thirds majority vote of the Members present for the passage of a motion moved under BL 79(6) was to prevent the mechanism from being used as a means to suppress Members holding different political views. The fact that Mr WONG Yuk-man and Mr Albert CHAN had won the LegCo Election in 2012 was evident that their political beliefs and acts were supported by some electors. She stressed the need to respect the election results and objected to invoking the procedure under BL 79(6) to relieve Mr WONG and Mr CHAN of their duties as LegCo Members.

66. Mr James TIEN said that when Dr CHIANG Lai-wan first raised the proposal for triggering the procedure under BL79(6) with Members of the pro-establishment camp, he had indicated that Members belonging to the Liberal Party agreed to trigger the procedure but they would vote

Action

against the motions because Mr WONG Yuk-man and Mr Albert CHAN were given suspended sentences. Mr TIEN further said that from a practical point of view, such motions would unlikely be passed by two-thirds of the LegCo Members present, given the number of Members belonging to the pan democratic camp in the Council. He added that Members belonging to the Liberal Party would vote against Dr CHIANG's proposal.

67. Mr Dennis KWOK said that invoking the procedure under BL 79(6) to relieve a Member of his duties was a very serious matter. Mr KWOK considered that a suspended sentence was different in nature from a sentence of imprisonment, which explained the need for section 109B(5)(a) of CPO to bring a suspended sentence on par with a sentence of imprisonment other than for the exceptions stated therein. In his view, it was reasonable for Mr WONG to argue that a suspended sentence did not comply with the requirement of being "sentenced to imprisonment" under BL 79(6). Given such legal uncertainty, Members should not invoke the procedure under BL 79(6) lightly.

68. Mr NG Leung-sing did not agree that Mr WONG Yuk-man and Mr Albert CHAN had not acted for personal gain. He pointed out that it was not uncommon for politicians to engage in "extraordinary acts" in order to win the votes of electors. Given that the sentences passed on Mr WONG and Mr CHAN had met the threshold for invoking the procedure under BL 79(6), he supported Dr CHIANG Lai-wan's proposal which would provide an opportunity for Members to debate on the matter in Council.

69. In response to Mr LEUNG Yiu-chung, the Chairman said that he would move motions under BL 79(6) on behalf of Members only if Dr CHIANG Lai-wan's proposal was supported by HC. It was for the President to decide whether it would be procedurally in order to place the motions on the Agenda of the Council.

70. Mr LEUNG Yiu-chung stressed that if the pre-requisite of being sentenced to imprisonment specified in BL 79(6) had not been met in the cases of Mr WONG Yuk-man and Mr Albert CHAN, it would be inappropriate for Members to invoke the procedure under BL 79(6) to relieve them of their duties as LegCo Members and the relevant motions should not be placed on the Agenda of the Council. Mr LEUNG sought advice from LA on whether there was any difference between a sentence of imprisonment and a suspended sentence.

71. At the invitation of the Chairman, LA said that motions to relieve a Member of his duties pursuant to BL 79(6) had been moved in Council on

Action

two occasions in the past. The sentences passed on the Members concerned in those two cases were different from the present cases of Mr WONG Yuk-man and Mr Albert CHAN. Given that the question of whether a suspended sentence given under section 109B(1) of CPO should be treated as a sentence of imprisonment involved an interpretation of BL 79(6), the Legal Service Division ("LSD") had considered the question in the light of the principles of interpreting BL laid down by the Court of Final Appeal. In the cases of Mr WONG Yuk-man and Mr Albert CHAN, the court passed the sentences in accordance with the relevant provisions in the Magistrates Ordinance (Cap. 227) and POO. Suspended sentence was one of the sentencing options available to a court under section 109B of CPO. In his view, the expression "sentenced to imprisonment" in BL 79(6) should be given their natural and ordinary meaning. LA further advised that the exceptions in section 109B(5)(a) of CPO were not applicable to Members, as their disqualification was not based solely on conviction and being sentenced to imprisonment but also required the moving of a motion under RoP 49B(1) and the passage of such motion by two-thirds of the LegCo Members present, following which the President should declare that the Member concerned was no longer qualified for the office. LA further said that LSD would carefully study Mr WONG Yuk-man's letter tabled at the meeting and would provide further advice to Members, if necessary. LA added that the President would decide whether it was procedurally in order for motions under RoP 49B(1) to be placed on the Agenda of the Council in accordance with the relevant provisions in RoP.

72. Mr WONG Yuk-man said that he had prepared a detailed response to Dr CHIANG Lai-wan's proposal to facilitate Members' consideration of the legal issues involved. He stressed that Members' decision on the matter was important, as it would become a precedent. He suggested deferring the decision on Dr CHIANG's proposal to the next HC meeting so as to allow Members more time to consider the matter thoroughly.

73. Dr Priscilla LEUNG said that during the discussion on Mr LEUNG Kwok-hung's case last year, she had queried whether the procedure under BL79(6) should be triggered when an appeal had been lodged by the Member concerned. It was pointed out during the discussion that the procedure could be initiated even when an appeal was pending, as the decision on whether to remove a Member from office was essentially a political one and Members could decide to vote against the motion if an appeal was pending. In the light of the query raised on whether the procedure under BL 79(6) could be triggered if the Member was given a suspended sentence, she supported the suggestion of deferring the decision on the Dr CHIANG Lai-wan's proposal.

Action

74. Mr LEUNG Kwok-hung recalled that during the proceedings of a court case in which he was involved, the judge had pointed out that there was difference between an order of imprisonment and a suspended sentence. He cautioned that Members should not lightly take the position that imposition of a suspended sentence met the requirement under BL79(6).

75. At the invitation of the Chairman, LA said that Members had raised the questions of whether the procedure under BL79(6) should be triggered while pending an appeal hearing or when the court had ordered, pursuant to section 109C(1) of COP, that the suspended sentence should take effect with the substitution of a greater or lesser term for the original term. Referring to the case of *CHIM Pui Chung v The President of the Legislative Council (HCAL No. 71 of 1998)*, LA said that the court had held that a motion under BL 79(6) could be moved even though an appeal had been lodged against conviction or sentence. The fact that two-thirds of the Members present had to vote for a Member's removal reflected the desirability of leaving the ultimate decision on whether a Member's conviction or sentence should result in his removal from office to the good sense of LegCo Members. The court had also observed that it was open to Members to defer the debate until the appeal had been heard. LA further said that a Member might move a motion to adjourn a debate without notice under RoP 40(1). This allowed a decision on a motion to be deferred until Members were in a position to do so.

76. Mr CHAN Han-pan expressed support for Dr CHIANG Lai-wan's proposal, which, in his view, was in compliance with the law and was justified. He did not consider it right to justify the unlawful behaviour of Mr WONG Yuk-man and Mr Albert CHAN as righteous acts or an expression of their political ideology. The argument that they had not acted for personal gain was mere sophistry. He stressed that since a sentence of more than one month imprisonment had been imposed on both Mr WONG and Mr CHAN respectively, the mechanism under BL 79(6) should be triggered to relieve them of their duties of LegCo Members.

77. Mr TAM Yiu-chung said that Dr CHIANG Lai-wan raised the proposal in accordance with the mechanism set out in BL and past practices. Members belonging to DAB had carefully considered the question of whether the procedure under BL 79(6) should be triggered in the light of the suspended sentences imposed on Mr WONG Yuk-man and Mr Albert CHAN. They noted that it was clearly stated in BL 79(6) that a motion to disqualify a Member could be moved if the Member was convicted and sentenced to imprisonment for one month or more for a criminal offence and there was no mentioning of whether the sentence of

Action

imprisonment was suspended or not. It was his understanding that BL 79(6) was intended to impose a high requirement on Members, with the threshold of invoking the procedure set at one month of imprisonment and the passage of the motion of disqualification requiring the support of two-thirds of the LegCo Members present. They also noted that the President, with the advice of LA, had indicated that a motion under BL 79(6) could be moved even if the convicted Member was given a suspended sentence. He appealed to Members to support Dr CHIANG's proposal.

78. Mr Paul TSE said that he was open-minded about whether the two Members concerned should be relieved of their duties as LegCo Members and Dr CHIANG Lai-wan's proposal would provide a forum for Members to discuss the matter in Council. Referring to the discussion on Mr CHIM Pui-chung's case at the special HC meeting on 5 August 1998, Mr TSE said that in response to Mr Andrew WONG, LA had explained at that time that a motion could be moved to remove a Member from office if he or she was convicted of a criminal offence and sentenced to imprisonment for one month or more, irrespective of whether the Member was given a suspended sentence. At that meeting, Dr Margaret NG, Mr SZETO Wah and Mr LEE Wing-tat had expressed the view that where a Member was convicted of a criminal offence and sentenced to imprisonment for one month or more, a motion under BL 79(6) should be moved to maintain the integrity of the Council, and it was not necessary to take into account the circumstances of the case. It would be for individual Members to decide whether to support the motion.

79. Mr Paul TSE further said that in his opinion, a motion to relieve a LegCo Member of his duties could be moved even if the case was pending appeal. Many Members had expressed the same view when discussing Mr CHIM Pui-chung's case. As regards the exceptions in section 109B(5)(a) of CPO, while his preliminary view was that the exceptions should not be an obstacle to the moving of such motions, he considered it necessary to further study the question carefully. Mr TSE added that it would facilitate Members' consideration if Mr WONG Yuk-man and Mr Albert CHAN could provide the transcripts of their verdict to Members for reference.

80. Mr Dennis KWOK expressed the view that BL 79(6) required that the sentence of imprisonment should be a *fait accompli*, given the use of past tense of the word "sentenced" in the English text of BL 79(6). A suspended sentence was however not a *fait accompli* as section 109B(1) of CPO provided that a court which passed a sentence of imprisonment might order that the sentence should not take effect, in which case the requirement under BL 79(6) was not met. He reiterated his view that if a suspended sentence was in nature a sentence of imprisonment, there was no need for section 109B(5)(a) of CPO.

81. Mr LEUNG Yiu-chung pointed out that according to BL 79(6), a Member being convicted and sentenced to imprisonment for one month or more was the pre-requisite for the moving of a motion to relieve the Member of his duties. He sought advice from LA on whether the President could give approval for the moving of such motions when the nature of the sentences passed on Mr WONG Yuk-man and Mr Albert CHAN was in doubt, and the factors to be taken into account by the President in making his ruling.

82. At the invitation of the Chairman, LA said that the President of LegCo would take into account the wording of the motions and the advice given to him in considering whether to give approval for the moving of the motions. He further explained that according to BL, the President of LegCo could only declare a Member of LegCo not being qualified for the office when the following two conditions had been met: first, the Member was convicted and sentenced to imprisonment for one month or more for a criminal offence, and second, the motion to relieve the Member of his duties was passed by two-thirds of the Members present. In the event that the court made a ruling which rendered the first condition not being met after the President had made the declaration, the declaration would be void.

83. Mr Abraham SHEK said that while he did not support the acts of Mr WONG Yuk-man and Mr Albert CHAN or share their political ideology, he did not support Dr CHIANG Lai-wan's proposal as he considered that Members should leave it to the electors to decide using their votes in the next election whether they approved the means adopted by Mr WONG and Mr CHAN for expressing their political ideology. Mr SHEK further said that unlike the case of Mr CHIM Pui-chung who had been sentenced to immediate imprisonment, Mr WONG and Mr CHAN were given suspended sentences and they could continue to perform their duties as LegCo Members. Mr SHEK added that while it was the political decision of individual Members whether to support the motions of disqualification, it was necessary to sort out the legal issues before Members decided on the matter. He considered that more time should be allowed for Members to consider the response provided by Mr WONG Yuk-man.

84. Mr MA Fung-kwok said that it was his view that the procedure under BL 79(6) should be triggered when a Member had been convicted and sentenced to imprisonment for one month or more. Whether or not Members supported the motions when they were put to vote in Council was a separate matter. On the question of the nature of a suspended sentence, he accepted LA's view that a motion under BL 79(6) could be

Action

moved even if the Member concerned was given a suspended sentence. Nevertheless, he agreed that there was no urgency in the matter and Members should further consider the issue of suspended sentences before deciding on Dr CHIANG Lai-wan's proposal.

85. Mr Christopher CHUNG expressed the view that both Mr WONG Yuk-man and Mr Albert CHAN should be well prepared for the consequences when they resorted to the unlawful means to express their political ideology. In his view, there was no ambiguity on whether the procedure in BL 79(6) could be triggered in the cases of Mr WONG and Mr CHAN. He considered that a suspended sentence was in nature a sentence of imprisonment and it was only a question of the manner of execution of a sentence. Given that they had been sentenced to imprisonment for more than one month, it was clearly in compliance with BL 79(6) to move motions under RoP 49B(1) to relieve them respectively of their duties as LegCo Members. After the procedure under BL 79(6) was triggered, it was for individual Members to make their political decision on whether to support the motions.

86. Mr James TO said that Members belonging to DP did not support Dr CHIANG Lai-wan's proposal. He further said that while he shared LA's view that a motion to relieve a member of his duties could be moved even if the Member concerned was given a suspended sentence, he considered that the matter required careful study. It would facilitate Members' consideration of the matter if LA could provide a detailed analysis on the legal issues raised in Mr WONG Yuk-man's response tabled at the meeting. He considered it important for Members to study Mr WONG's response and the legal advice to be provided by LSD before coming to a decision on the matter.

87. Mr LEUNG Kwok-hung requested LA to provide written legal advice on the legal issues raised in Mr WONG Yuk-man's response for Members' consideration. Mr LEUNG added that unlawful acts were not necessarily wrong acts.

88. Mr Paul TSE said that in considering whether to trigger the moving of a motion under BL 79(6), Members should only take account of whether the Members concerned had been convicted and sentenced to imprisonment of one month or more, and not the nature of the offences or political considerations, which should be considered by Members when deciding whether or not to support the motions. As regards the word "sentenced" in the English text of BL 79(6), Mr TSE said that it was used because the provision was written in passive voice, and not as a past tense to indicate "*fait accompli*".

Action

89. Mr Abraham SHEK stressed the importance of considering the matter as a whole, i.e. taking account of both legal issues and political considerations.

90. Mr WONG Yuk-man stressed the differences between the previous two occasions on which the procedure under BL 79(6) was triggered and the present cases involving him and Mr Albert CHAN, and reiterated the need for a thorough examination of the legal issues concerning suspended sentences. He cautioned that a hasty decision should not be made on Dr CHIANG Lai-wan's proposal when there was uncertainty as to whether or not the requirements under BL 79(6) had been fulfilled. He suggested deferring the decision on the proposal in order to allow Members more time to consider the matter thoroughly.

91. Dr CHIANG Lai-wan cited the views expressed by some former LegCo Members, including Dr Margaret NG and Dr LEONG Che-hung, during HC's discussion on Mr CHIM Pui-chung's case, and stressed that she raised the proposal having regard to the importance of upholding the integrity and dignity of LegCo and the need to abide by the law. She appreciated that some Members had concern about the legal issues concerning suspended sentences. She suggested that LA should provide his advice to Members to clarify the issues, and HC should further discuss the matter at the next meeting after considering LA's advice.

92. The Chairman said that it was for Dr CHIANG Lai-wan to decide whether to put her proposal to vote at this meeting or withdraw her proposal. He reminded Dr CHIANG that should she decide to withdraw the proposal, she had to follow the procedure for proposing an agenda item if she wished to raise the matter for discussion again at a future HC meeting. Should the proposal be put to vote at this meeting and was carried, it was for the President to decide whether the moving of the motions under RoP 49B(1) was procedurally in order.

93. Dr CHIANG Lai-wan said that she decided to withdraw her proposal for the time being. She reiterated her request for LA to clarify the legal issues raised by Members at the meeting.

IX. Any other business

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