

立法會
Legislative Council

LC Paper No. CB(2)1322/12-13

Ref : CB2/H/5/12

House Committee of the Legislative Council

**Minutes of the 28th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 7 June 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

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

Hon CHEUNG Kwok-che

Hon WONG Kwok-kin, BBS

Hon IP Kwok-him, GBS, JP

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

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
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
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 LEUNG Ka-lau
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC

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	Head (Public Information)
Ms Amy YU	Chief Council Secretary (2)6
Ms Anita SIT	Chief Council Secretary (4)1
Mr Kelvin LEE	Assistant Legal Adviser 1
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 27th meeting held on 31 May 2013

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

The minutes were confirmed.

II. Matters arising

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

(Letter dated 3 June 2013 from CS to the President regarding the 2014 Policy Address issued vide LC Paper No. CB(3)660/12-13 dated 4 June 2013; and

Letter dated 4 June 2013 from Dr Hon Kenneth CHAN (LC Paper No. CB(2)1285/12-13(01))

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2. The Chairman said that CS had advised that the Chief Executive ("CE") had decided to deliver his next Policy Address in January 2014 and, for the rest of the current term of the Government, CE would deliver his Policy Address in January, followed by the Financial Secretary's ("FS") Budget in late February or early March. CS had explained that narrowing the time gap between the Policy Address and the Budget would enable better coordination and interaction between policy formulation and budgetary planning. Such arrangement would also facilitate more comprehensive consultations and informed discussions with Legislative Council ("LegCo") Members, various stakeholders and the community at large, and ensure that initiatives announced in the Policy Address would obtain the financial resources required for implementation as early as possible.

3. The Chairman further said that he and the Deputy Chairman had indicated to CS that as Members would have different demands on the Policy Address and the Budget, it was hoped that CE and FS would conduct separate consultations on the two documents, instead of combining the consultations. CS had subsequently sent a letter to the President on the timing of the delivery of the 2014 Policy Address and future Policy Addresses, which was circulated to Members on 4 June 2013. The Chairman added that he had also received a letter dated 4 June 2013 from Dr Kenneth CHAN requesting the House Committee ("HC") to discuss the matter.

4. Dr Kenneth CHAN said that it was highly undesirable to shorten the time gap between the Policy Address and the Budget, as it would pose great difficulties to Members returned from geographical constituencies in conducting consultation on the two documents with the local communities, and reduce the room for making adjustments to the Budget in the light of public views received on the Policy Address. Dr CHAN stressed that consultations on the Policy Address and the Budget should be conducted separately.

5. The Chairman said that he would relay Dr Kenneth CHAN's views to CS at their next meeting.

III. Business for the Council meeting of 19 June 2013

(a) Questions
(*LC Paper No. CB(3)657/12-13*)

6. 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**

Supplementary Appropriation (2012-2013) Bill

7. The Chairman informed Members that the Administration had given notice to present the above Bill to the Council on 19 June 2013. HC would consider the Bill at its meeting on 21 June 2013.

(c) **Bills - resumption of debate on Second Reading, Committee Stage and Third Reading**

Education (Amendment) Bill 2013

8. The Chairman said that the Bills Committee on the above Bill had reported to HC at the last meeting, and Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) **Government motions**

Two proposed resolutions to be moved by the Secretary for Financial Services and the Treasury under section 48 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) in relation to the following two notices:

(i) **Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2013; and**

(ii) **Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2013**

(Wording of the proposed resolutions issued vide LC Paper No. CB(3)645/12-13 dated 31 May 2013)

(LC Paper No. LS58/12-13)

9. At the invitation of the Chairman, Legal Adviser ("LA") explained that the two proposed resolutions sought LegCo's approval of the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2013 and the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2013 to increase the minimum level and the maximum level of relevant income ("Min RI and Max RI") from \$6,500 per month to \$7,100 per month and from \$25,000 per month to \$30,000 per month respectively.

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10. LA further said that if LegCo approved the two Notices, the new Min RI and Max RI would take effect on 1 November 2013 and 1 June 2014 respectively. The Panel on Financial Affairs was consulted on the proposed increase of Min RI and Max RI on 4 March 2013 and members raised no objection.

11. Mr LEE Cheuk-yan considered it necessary to form a subcommittee to study the two Notices in detail. Members agreed. The following Members agreed to join the subcommittee: Mr LEE Cheuk-yan, Mr WONG Ting-kwong, Ms Cyd HO and Mr SIN Chung-kai.

12. The Chairman said that in line with established practice and the arrangement agreed with the Administration, the Administration would be requested to withdraw its notices for moving the proposed resolutions so as to allow sufficient time for the subcommittee to scrutinize the Notices.

(e) **Members' motions**

Proposed resolution to be moved by Hon James TIEN under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013

(Wording of the proposed resolution issued vide LC Paper No. CB(3)664/12-13 dated 6 June 2013)

13. The Chairman said that Mr James TIEN, Chairman of the Subcommittee on the above Notice, would move a proposed resolution at the Council meeting to extend the scrutiny period of the Notice to 10 July 2013.

14. The Chairman also informed Members that debates on the following two Members' motions would be held at the Council meeting:

- (a) "Maintaining and enhancing Hong Kong's position as an international financial centre' to be moved by Mr NG Leung-sing; and
- (b) "Building a safe city" to be moved by Mr CHAN Kin-por.

IV. Report of Bills Committees and subcommittees

Report of the Subcommittee to Prepare for the Operation of the Select Committee on the Petition Presented at the Council Meeting of 8 May 2013

(LC Paper No. CB(4)748/12-13)

15. Mr IP Kwok-him, Chairman of the Subcommittee, referred Members to the Subcommittee's report for details of its deliberations on the terms of reference ("TOR"), membership size and procedure for the nomination and election of Members for appointment to the select committee to which the petition presented at the Council Meeting of 8 May 2013 was referred ("the Select Committee").

16. Mr IP Kwok-him said that the proposed TOR reflected the substance of the petition presented at the Council meeting of 8 May 2013. On the membership size of the Select Committee, the Subcommittee proposed that it should be 13, having regard to the membership size of previous select committees which was in the range of 11 to 15.

17. Mr IP Kwok-him further said that the procedure for nomination and election of Members for appointment to the Select Committee recommended by the Subcommittee was largely the same as that adopted by HC for the nomination and election of Members for appointment to the Public Accounts Committee, Committee on Members' Interests and Committee on Rules of Procedure at the beginning of this LegCo term. The only difference was that if the number of nominees for which a Member had voted exceeded the number required for appointment, all the votes which the Member had cast, and not just the vote(s) which the Member had cast in excess of the required number, would not be counted.

18. Members noted the Subcommittee's recommendations on the name and TOR of the Select Committee, and endorsed the Subcommittee's recommendations on the membership size of the Select Committee and the procedure for the nomination and election of Members for appointment to the Select Committee. Members also agreed that the nomination and election be held at the next HC meeting on 14 June 2013.

19. The Chairman said that he reckoned that Members would support the immediate activation of the Select Committee after the nomination and election of its members at the next HC meeting and their appointment by the President. Nevertheless, having regard to the limit on Members' time and the Secretariat's manpower, he suggested for Members' consideration at the next HC meeting that the number of select

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committees formed under Rule 20(6) of the Rules of Procedure ("RoP") operating at any one time should be capped at one. However, the cap would not apply to select committees formed and authorized by the Council to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance ("the P&P Ordinance") which, in line with past practices, could commence work immediately as soon as they were appointed.

20. At the invitation of the Chairman, the Secretary General ("SG") said that it was the established practice of the Secretariat to deploy a dedicated team of staff to provide support to select committees formed and authorized to exercise the powers under the P&P Ordinance by the Council. For the Select Committee under discussion, the Secretariat should be able to deploy existing resources to cope with the servicing work, having regard to its terms of reference. However, additional manpower resources would be required should more select committees be formed pursuant to RoP 20(6) in the future.

21. In response to Ms Emily LAU, the Chairman further explained that given the constraint in resources, there was a limit to the number of committees which could be serviced by the Secretariat. For Bills Committees and subcommittees on policy issues, a quota had been set on the respective number of such committees which might be in operation at any one time and a queuing system would automatically be activated when the quota was reached. While Members generally agreed that the Select Committee could commence work immediately, the existing manpower resources of the Secretariat might not be able to cope with the additional workload should more such select committees be set up in the future. He therefore raised the matter for Members' discussion.

22. Ms Emily LAU said that LegCo's work should not be affected by manpower constraint. The Secretariat should seek additional manpower resources if necessary, apart from considering setting a cap on the number of select committees formed pursuant to RoP 20(6). Ms LAU requested the Secretariat to prepare a paper to facilitate Members' discussion of the matter at the next HC meeting.

23. Ms Cyd HO said that it was the first time that a select committee was formed by way of a petition. As such select committees could be formed with the support of only 20 Members, she understood the Secretariat's concern about the impact on its manpower resources should more such select committees be formed in the future. She agreed that Members should discuss setting a cap on the number of such select committees which might be in operation at any one time. She stressed that select committees formed pursuant to RoP 20(6) were different from

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subcommittees on policy issues and these two types of committees should not be placed under the same queuing system.

24. Mr IP Kwok-him agreed that there was a need to discuss the operation of select committees formed pursuant to RoP 20(6), given that there was no precedent of the formation of such select committees in the past. To ensure effective use of the Secretariat's resources and Members' time, consideration should be given to putting in place a queuing system for such select committees.

25. The Chairman said that the Secretariat would prepare a paper to facilitate Members' discussion of the matter at the next HC meeting.

V. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)1279/12-13)

26. The Chairman said that as at 6 June 2013, there were 14 Bills Committees, 10 subcommittees under HC (i.e. six 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.

VI. 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

(Paragraphs 56 to 93 of the minutes of the 27th House Committee meeting held on 31 May 2013;

Letter dated 4 June 2013 from Dr Hon CHIANG Lai-wan (LC Paper No. CB(2)1285/12-13(02)); and

LC Paper No. LS59/12-13)

27. The Chairman said that in response to the request of Members at the last HC meeting, the Legal Service Division ("LSD") had prepared a paper on issues relating to Article 79(6) of the Basic Law ("BL") (LC Paper No. LS59/12-13) for Members' reference. He then invited Mr WONG Yuk-man, Mr Albert CHAN and Dr CHIANG Lai-wan to speak one by one.

28. Mr WONG Yuk-man made a number of points in response to LSD's paper. First, the court had not decided on the applicability of BL 79(6) to suspended sentences. The cases of *CHAN Kin-sum v Secretary for*

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Justice [2009] 2 HKLRD 166 and *CHIM Pui-Chung v The President of the Legislative Council [1998] 2 HKLRD 552* cited in LSD's paper were not about suspended sentences, and any comments made by the court on the issue were only obiter dicta. Second, a suspended sentence was different in nature and severity from a sentence of imprisonment, and such factor should be taken into account in considering whether a suspended sentence met the requirements under BL 79(6). Third, given that section 109B of the Criminal Procedure Ordinance (Cap. 221) ("CPO") was the source of the court's power to impose a suspended sentence and as statute law prevailed over common law, the question of whether a suspended sentence of imprisonment was a sentence of imprisonment should be considered in the light of section 109B(5)(a) of CPO rather than common law. Fourth, in view of the serious nature of BL79(6), the expression "sentenced to imprisonment" should be given a strict and narrow interpretation, instead of a wide interpretation as suggested in LSD's paper.

29. Mr WONG Yuk-man further said that having regard to the above considerations, he was of the view that it was a breach of the law to apply BL 79(6) to a suspended sentence. He would consider making an application for judicial review should a motion be moved pursuant to BL 79(6) to disqualify him from office.

30. Mr Albert CHAN said that he respected LA's views on the matter. He stressed that Members' decision on whether or not to support the moving of a motion under BL 79(6) to disqualify a Member from office was clearly a political one, and legal issues were not the most important considerations. Mr CHAN criticized the means adopted by the Administration to suppress demonstrations for democracy and justice in recent years. He reiterated that should motions moved pursuant to BL 79(6) to relieve him and Mr WONG Yuk-man of their duties as LegCo Members be passed by LegCo, he would run for the by-election and use the opportunity to trigger another de facto referendum.

31. Dr CHIANG Lai-wan said that under BL 79(6), the President of LegCo should declare that a Member was no longer qualified for the office when the following two conditions were 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. The first condition concerned a fact, while the second condition the judgment of Members on the fact.

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32. Dr CHIANG Lai-wan further said that section 109B of CPO which provided for suspended sentences originated from the Criminal Justice Act 1967 of the United Kingdom ("UK"). It was provided in the sentencing guidelines issued by the UK Sentencing Guidelines Council that a suspended sentence was a sentence of imprisonment, and the imposition of a suspended sentence was subject to the same criteria as a sentence of immediate imprisonment. Furthermore, pursuant to section 24(1)(d)(i) of the District Councils Ordinance (Cap. 547), an elected member of District Councils would be disqualified from holding office if the member was convicted in Hong Kong, or any other place, of an offence for which the member had been sentenced to imprisonment, whether suspended or not, for a term exceeding three months. Dr CHIANG appealed to Members to support her proposal.

33. The Chairman put to vote the proposal of Dr CHIANG Lai-wan for the Chairman of HC to move motions under RoP 49B(1) to relieve Mr WONG Yuk-man and Mr Albert CHAN respectively of their duties as LegCo Members. Ms Emily LAU requested a division.

The following Members voted in favour of the proposal:

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, 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, Dr Elizabeth QUAT, Mr Martin LIAO, Mr TANG Ka-piu, Dr CHIANG Lai-wan, Mr Christopher CHUNG and Mr Tony TSE.

(24 Members)

The following Members voted against the proposal:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Ronny TONG, Ms Cyd HO, Dr LAM Tai-fai, Mr CHEUNG Kwok-che, Mrs Regina IP, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr Michael TIEN, Mr James TIEN, Mr Frankie YICK, Mr WU Chi-wai, Mr Gary FAN, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Dr KWOK Ka-ki, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG, Mr IP Kin-yuen and Mr CHUNG Kwok-pan.

(33 Members)

The following Members abstained from voting:

Dr LAU Wong-fat, Mr Jeffrey LAM, Mr Christopher CHEUNG, Mr POON Siu-ping and Ir Dr LO Wai-kwok.

(5 Members)

34. The Chairman declared that 24 Members voted for and 33 Members voted against the proposal and five Members abstained from voting. The Chairman declared that the proposal was negated.

VII. Proposal of Hon James TIEN to discuss the setting up of a select committee to inquire into issues relating to the surrender by the Hong Kong Mercantile Exchange Limited of its authorization to provide automated trading services; and the authorization of the select committee to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance

(Letter dated 4 June 2013 from Hon James TIEN (LC Paper No. CB(2)1285/12-13(03)))

35. At the invitation of the Chairman, Mr James TIEN said that the rule of law had all along been one of the most important bedrocks of Hong Kong. The Securities and Futures Commission ("SFC") played a crucial role in ensuring the orderly operation of the securities and futures market in accordance with the law. SFC's handling of the Hong Kong Mercantile Exchange Limited ("HKMEx")'s surrender of its authorization to provide automated trading services ("ATS") had aroused wide public concern. Questions were raised on when SFC learned about the financial difficulties of HKMEx and what actions it had taken.

36. Mr James TIEN further said that during the discussion on the regulation of ATS at the meeting of the Panel on Financial Affairs ("FA Panel") on 3 June 2013, Mr Ashley ALDER, the Chief Executive Officer ("CEO/SFC") of SFC, had failed to provide satisfactory answers to the questions put to him by Members. His proposal to invoke the powers under the P&P Ordinance would enable Mr ALDER to speak on the matter with the protection under the P&P Ordinance. It would also provide him with an opportunity to clarify the matter to the public and clear the name of SFC. Mr TIEN stressed that the scope of the proposed inquiry would not cover the alleged fraud associated with HKMEx under investigation by the Police. The focus of the proposed inquiry would be on whether SFC had given any special treatment to HKMEx in handling the matter.

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37. The Chairman invited Members' views on Mr James TIEN's proposal.

38. Mr SIN Chung-kai said that Members belonging to the Democratic Party ("DP") supported the proposal because the proposed inquiry by LegCo would only look into SFC's handling of the case of HKMEx, and not matters concerning the criminal investigations currently underway. Mr SIN considered it necessary for LegCo to conduct the proposed inquiry, given the significant impact of the issues at stake and the many unanswered questions raised over the matter.

39. Ms Claudia MO considered that the crux of the matter was whether any one had covered up for HKMEx, whether nepotism was involved and whether CE had any role in the matter. She expressed support for Mr James TIEN's proposal.

40. Mr WONG Yuk-man also expressed support for the proposal, in view of the gravity of the matter. He stressed that the involvement of Mr Barry CHEUNG Chun-yuen, who was a Non-official Member of the Executive Council, Chairman of the Urban Renewal Authority Board and Chairman of C Y LEUNG campaign office, in the criminal investigations associated with HKMEx had seriously damaged the Government's credibility.

41. Mr LEE Cheuk-yan said that Members belonging to the Labour Party supported the proposed appointment of a select committee. In his view, given the close ties between Mr Barry CHEUNG and CE and the many high-level public service positions he held, there were queries whether Mr CHEUNG had abused his power for personal gain and whether CE had assisted him in the process. An open and transparent inquiry into the matter by LegCo would enable the public to find out what had happened.

42. The Chairman said that should HC not support the proposal, any Member could move a motion in Council on his or her own accord for the appointment of the proposed select committee.

43. Mr Albert HO hoped that HC would support the proposed inquiry as it would reflect the consensual view of Members on the matter. He said that rumours about Mr Barry CHEUNG's financial situation had been circulating for some time and according to media reports, Mr CHAN Kam-lam, as a non-executive director of SFC, had also heard about the rumours a year ago. Mr HO found it strange that SFC had waited so long before taking actions on the matter. He stressed that the purpose of

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the proposed inquiry by LegCo was to find out the truth and restore SFC's reputation, and not to interfere with the criminal investigations underway. He expressed support for Mr James TIEN's proposal.

44. Mrs Regina IP said that since two law enforcement agencies, namely SFC and the Commercial Crime Bureau ("CCB") of the Police, were investigating the case of HKMEx, Members belonging to the New People's Party did not consider it appropriate for LegCo to conduct a parallel inquiry into SFC and therefore objected to Mr James TIEN's proposal. She appreciated that Members were dissatisfied with the responses given by CEO/SFC to their questions at the meeting of the FA Panel on 3 June 2013, and considered that the matter could be followed up by the Panel.

45. Ir Dr LO Wai-kwok said that Members belonging to the Business and Professionals Alliance for Hong Kong ("BPA") were of the view that at the present stage, what was most important was to bring the suspected offenders to justice so as to maintain the integrity of the regulatory system and Hong Kong's reputation as an international financial centre. Ir Dr LO said that according to media reports, SFC had initiated an investigation into suspected irregularities in the financial affairs of HKMEx, and in the light of the evidence obtained on suspected false documents, SFC had already referred certain matters to CCB. Members belonging to BPA therefore considered it premature at the present stage for LegCo to conduct an inquiry into the matter, which might prejudice the investigations currently underway. In their view, LegCo should consider the need for follow up actions at an appropriate forum after the investigations by SFC and CCB were completed. They therefore objected to Mr James TIEN's proposal.

46. Ms Starry LEE said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong did not support Mr James TIEN's proposal to invoke the powers under the P&P Ordinance to inquire into the matter at the present stage, given the investigations currently being carried out by SFC and the Police. Ms LEE further said that in the light of the wide public concern about the matter and the gravity of the allegations made against SFC, she, as Chairman of the FA Panel, had arranged for the discussion of the matters at the Panel meeting on 3 June 2013. She expected that with the investigations by SFC and the Police, more information on the matter would gradually come to light and where necessary, she would convene meetings of FA Panel to follow up on the matter.

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47. Mr Christopher CHEUNG said that SFC adopted a stringent regulatory approach on small and medium-sized broker firms, and the trade was gravely concerned whether SFC had given preferential treatment to HKMEx. Since SFC had failed to provide satisfactory answers to many of the questions raised by Members at the meeting of the FA Panel on 3 June 2013, he had subsequently requested SFC to provide written responses to various issues such as the measures it had taken over the past year to ensure HKMEx's compliance with the relevant financial requirements and the reasons for not taking actions against HKMEx earlier. As SFC had undertaken to provide a detailed response, he considered it appropriate to allow time for SFC to explain the matter. Mr CHEUNG added that as the Police was conducting an investigation, he did not see any urgency for LegCo to conduct an inquiry into the matter at the present stage. He therefore did not support Mr James TIEN's proposal.

48. Mr Kenneth LEUNG said that The Professional Commons supported Mr James TIEN's proposal. In his view, there was no cause for concern that LegCo's inquiry might prejudice the criminal investigations, as Members knew how to discharge their powers and responsibilities prudently. Mr LEUNG stressed that financial services was an important economic pillar of Hong Kong, and LegCo had a role to play in finding out the truth of the matter so as to safeguard Hong Kong's reputation as an international financial centre as well as the integrity and transparency of its financial regulatory system.

49. Ms Emily LAU said that Members belonging to DP fully supported Mr James TIEN's proposal. She pointed out that it was of vital importance to maintain the credibility of SFC in order not to affect the confidence of local and overseas investors in Hong Kong as an international financial centre. Ms LAU said that it was reported in the press that the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region had met with some LegCo Members including Mr Abraham SHEK and requested them not to support Mr TIEN's proposal. She hoped that Members concerned could confirm whether this was the case. Ms LAU further said that it was also reported in the press that the Administration and SFC had met with Members belonging to BPA on the day before the HC meeting, and Members of BPA had accepted the Administration's explanation on the matter. Ms LAU stressed that the matter should be discussed openly.

50. Mr CHAN Kam-lam declared that he was a non-executive director of SFC. He expressed regret that Mr Albert HO had repeatedly stated that he knew about HKMEx's financial difficulties a year ago even after

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he had clarified the facts at the meeting of the FA Panel on 3 June 2013. Mr CHAN considered that SFC had all along been carrying out its regulatory functions in a professional and impartial manner, and it was important that Members' work should not affect the investigations currently being carried out by SFC and CCB.

51. Dr Priscilla LEUNG declared that she was a member of SFC's Process Review Panel ("PRP"). Based on her experience from participating in the work of PRP, SFC had put in place stringent procedures for handling complaints and licensing matters. In her view, as SFC had initiated an investigation into suspected irregularities in the financial affairs of HKMEx, it was inappropriate for LegCo to invoke the powers under the P&P Ordinance to inquire into SFC's handling of the case of HKMEx at the present stage.

52. Mr Martin LIAO said that SFC was the regulatory body of the securities and futures markets, and allegations of its giving special treatment to HKMEx would adversely affect Hong Kong's reputation as an international financial centre. Given the significant public interests involved, he considered it appropriate for LegCo to invoke the powers under the P&P Ordinance to conduct an inquiry into the matter. However, he did not consider it appropriate for LegCo to do so at the present stage, as he was concerned that LegCo's inquiry would overlap with the investigations of SFC and CCB and might prejudice future prosecutions and legal proceedings initiated on the case of HKMEx. Furthermore, the credibility of SFC's investigation on HKMEx would be questioned should SFC itself become the subject of LegCo's inquiry. In the light of the above considerations, he did not support Mr James TIEN's proposal.

53. Mr CHAN Chi-chuen said that he had heard about Mr Barry CHEUNG's financial difficulties as early as March 2013 and found it hard to believe that the Administration and SFC did not know about the matter. In his view, conducting an inquiry into the matter was the best way to find out the answers to the questions of how long SFC had learned about the financial predicament faced by HKMEx, what course of action SFC had taken and whether there was any dereliction of duty on the part of the officials concerned. He expressed support for Mr James TIEN's proposal.

54. Mr LEUNG Yiu-chung said that the Neighbourhood and Worker's Service Centre supported Mr James TIEN's proposal, in view of the significant impact of the matter on Hong Kong's status as an international financial centre. HC's support for the proposal was important, as it signified the importance attached by Members to the matter. He did not

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agree to the view that it was inappropriate for LegCo to inquire into the matter given the investigations currently undertaken by SFC and CCB. Mr LEUNG referred to PAC's recent public hearings on Mr Timothy TONG's case and said that the parties concerned would be willing to give more information when given the protection under the P&P Ordinance.

55. Mr NG Leung-sing said that according to the account given by the CEO/SFC at the meeting of the FA Panel on 3 June 2013, SFC had taken actions promptly upon learning HKMEx's financial position, and SFC had not received any instruction from the Administration on the handling of the matter. Taking into consideration that LegCo's inquiry might overlap with the work of SFC and CCB and prejudice the investigations currently underway, Mr NG considered it inappropriate for LegCo to invoke the powers under the P&P Ordinance to conduct an inquiry into the matter at this stage.

56. Dr CHIANG Lai-wan said that while BL 73(10) provided that LegCo had the power to summon persons concerned to testify or give evidence, such power should only be exercised as required. Dr CHIANG further said that under BL 48(11), CE should decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before LegCo or its committees. Dr CHIANG said that in considering Mr James TIEN's proposal, Members should have regard to the need for conducting the proposed inquiry and whether security and vital public interests were involved.

57. Mr James TO said that Members belonging to DP were supportive of Mr James TIEN's proposal. Mr TO quoted from a press report of Apple Daily on 23 May 2013 which stated that according to Mr CHAN Kam-lam, SFC had known about the financial difficulties of HKMEx one year before. In Mr TO's view, this was strong evidence justifying the need for LegCo to look into SFC's handling of HKMEx's surrender of authorization as an ATS provider and he hoped that Mr CHAN would give evidence in this regard if an inquiry was to be conducted.

58. Mr Abraham SHEK said that he understood that Mr James TIEN had put forward his proposal with the good intention of protecting Hong Kong's status as an international financial centre. At the meeting of the FA Panel on 3 June 2013, CEO/SFC failed to answer Members' questions on the case of HKMEx, including those put forward by Members of BPA who were most concerned about its impact on Hong Kong's status as an international financial centre. Mr SHEK further said that on 6 June 2013, he and other Members of BPA met with the Chairman of SFC, CEO/SFC and the Secretary for Financial Services and the Treasury, and their prime

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concern had been addressed by SFC and the Administration during the meeting. Members of BPA therefore considered it unnecessary to invoke the powers under the P&P Ordinance at the present stage. He added that given the importance of the issue, he believed that everyone including the Central People's Government was concerned.

59. Mr LEUNG Kwok-hung said that at the meeting of the Panel on Development on 22 January 2013, he had already raised concern about potential conflict of interests of Mr Barry CHEUNG, in the light of rumours about his financial situation. He expressed dissatisfaction that the Secretary for Development ("SDEV") had not taken any action in response to his concern. In his view, SDEV could not possibly deny any knowledge of Mr CHEUNG's financial situation and should be held accountable for the matter. He stressed that it was incumbent upon Members to discharge their duties of monitoring the Government by invoking the powers under the P&P Ordinance to inquire into the matter.

60. Dr LAM Tai-fai said that while he appreciated Members' grave concern about the matter, he did not consider it appropriate to invoke the powers under the P&P Ordinance to inquire into the matter at the present stage, in view of the investigations by SFC and CCB currently underway. He added that based on his experience in the work of select committees in the past, he did not consider that invoking the powers under the P&P Ordinance to inquire into the matter under discussion would help find out the truth. Dr LAM added that should the investigations of SFC and CCB fail to yield satisfactory results, he would not rule out supporting an inquiry by LegCo into the matter.

61. Mr Abraham SHEK declared that he had known Mr Barry CHEUNG for 18 years.

62. Dr Priscilla LEUNG did not subscribe to the view that it was contradictory for Members who had voted against the proposal to appoint a select committee to inquire into Mr Timothy TONG's case to subsequently join that select committee. She pointed out that as the select committee carried out its work in the name of LegCo, it was important that Members belonging to different political parties and groupings were represented in it.

63. Mr Albert HO said that a newspaper report published in Sing Tao Daily on 23 May 2013 quoted from Mr CHAN Kam-lam that SFC had already known about the financial difficulties of HKMEx one year before. In Mr HO's view, this raised concern about SFC's handling of the matter.

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64. Mr CHAN Kam-lam reiterated that he had already clarified what he had said to certain newspapers. He expressed dissatisfaction that some Members had insisted on misquoting what he had said. He trusted that the truth of the matter would be revealed after the relevant investigations were completed.

65. Mr James TO said that the remarks of Mr CHAN Kam-lam quoted in the two newspaper reports published on 23 May 2013 were generally consistent, and he did not subscribe to the view that the press reports were not convincing. He believed that the reporters might have Mr CHAN's remarks audio recorded.

66. Mr LEUNG Kwok-hung reiterated that Members were duty bound to invoke the powers under the P&P Ordinance to conduct an inquiry to clear the queries raised over the matter.

67. Mr James TIEN hoped that Mr Abraham SHEK could share with other Members the discussions held between Members of BPA and the Administration and SFC on 6 June 2013, which, according to Mr SHEK, had addressed the concern of Members of BPA about the matter. Mr SHEK said that he would give an elaboration on another occasion.

68. The Chairman put to vote the proposed appointment of a select committee to inquire into issues relating to the surrender by HKMEX of its authorization to provide automated trading services; and to authorize the select committee to exercise the powers under section 9(1) of the P&P Ordinance. Mr LEUNG Yiu-chung requested a division.

The following Members voted in favour of the proposal:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Ronny TONG, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr James TIEN, Mr Frankie YICK, Mr WU Chi-wai, Mr Gary FAN, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Dr KWOK Ka-ki, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG, Mr IP Kin-yuen and Mr CHUNG Kwok-pan.

(30 Members)

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The following Members voted against the proposal:

Mr CHAN Kam-lam, Dr LAU Wong-fat, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Mr Michael TIEN, Mr NG Leung-sing, Mr Steven HO, 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 Christopher CHUNG and Mr Tony TSE.

(34 Members)

69. The Chairman declared that 30 Members voted for and 34 Members voted against the proposal and no Member abstained from voting. The Chairman declared that the proposal was negatived.

VIII. Any other business

70. There being no other business, the meeting ended at 4:15 pm.