

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1568/12-13

Ref : CB2/H/5/12

**House Committee of the Legislative Council**

**Minutes of the 32nd meeting  
held in Conference Room 1 of the Legislative Council Complex  
at 2:30 pm on Friday, 5 July 2013**

**Members present:**

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

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

Hon LEE Cheuk-yan

Hon James TO Kun-sun

Hon CHAN Kam-lam, SBS, JP

Hon LEUNG Yiu-chung

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

Hon Emily LAU Wai-hing, JP

Hon TAM Yiu-chung, GBS, JP

Hon Abraham SHEK Lai-him, GBS, 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, BBS, 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, SBS, JP

Dr Hon LEUNG Ka-lau

Hon CHEUNG Kwok-che

Hon WONG Kwok-kin, BBS

Hon IP Kwok-him, GBS, JP

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

Hon Paul TSE Wai-chun, JP

Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon Albert CHAN Wai-yip  
Hon Claudia MO  
Hon James TIEN Pei-chun, GBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
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 Christopher CHUNG Shu-kun, BBS, MH, JP  
Hon Tony TSE Wai-chuen

**Members absent:**

Hon Albert HO Chun-yan  
Hon WONG Yuk-man  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon Frankie YICK Chi-ming  
Hon CHUNG Kwok-pan

**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
Miss Erin TSANG	Acting Principal Council Secretary (Complaints)
Mr Simon WONG	Head (Public Information)
Ms Joanne MAK	Chief Council Secretary (2)3
Mr Colin CHUI	Chief Council Secretary (2)4
Ms Amy YU	Chief Council Secretary (2)6
Ms YUE Tin-po	Chief Council Secretary (4)3
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Bonny LOO	Assistant Legal Adviser 3
Miss Carrie WONG	Assistant Legal Adviser 4
Miss Winnie LO	Assistant Legal Adviser 7
Miss Josephine SO	Senior Council Secretary (2)2
Mr Jove CHAN	Senior Council Secretary (2)6
Ms Judy TING	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

---

Action

**I. Confirmation of the minutes of the 31st meeting held on 28 June 2013**

*(LC Paper No. CB(2)1503/12-13)*

The minutes were confirmed.

**II. Matters arising**

**(a) 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' request for

Action

the Chief Executive ("CE") to give a clear indication on the timetable for public consultation on constitutional reform at the CE's Question and Answer Session to be held on 11 July 2013. The Chairman further said that the Deputy Chairman had indicated to CS that the Administration should facilitate public discussion on constitutional reform through various means with a view to fostering consensus in the community.

3. The Chairman informed Members that the Deputy Chairman had asked CS about the arrangement for inspection of the Companies Register under the new Companies Ordinance (28 of 2012). CS had advised that as various organizations in the community had put forward new views on the arrangement, the Administration needed time to consider the views in detail, and there was as yet no timetable for introducing the relevant subsidiary legislation.

(b) **Solicitors (General) Costs (Amendment) Rules 2013**

*(Paragraphs 6 to 9 of the minutes of the 31st meeting held on 28 June 2013)*

*(LC Paper No. LS69/12-13)*

*[Previous paper:*

*LC Paper No. LS65/12-13 issued vide LC Paper No. CB(2) 1475/12-13 dated 27 June 2013]*

4. At the invitation of the Chairman, Legal Adviser ("LA") said that at the last House Committee ("HC") meeting, Members noted that the Legal Service Division ("LSD") had written to seek clarification from The Law Society of Hong Kong ("The Law Society") on whether the Solicitors (General) Costs (Amendment) Rules 2013 (L.N. 110) was made by the Costs Committee as provided under section 74 of the Legal Practitioners Ordinance (Cap. 159). LA informed Members that The Law Society had stated in its reply that it would ask the Costs Committee to arrange to have the proposed amendments published in the Gazette again. In the light of The Law Society's response, L.N. 110 did not have any legal effect as it was not properly made. LSD would write to the Administration to ascertain how L.N. 110 was to be dealt with and would report further if necessary. LA advised that Members might form a subcommittee to study L.N. 110, if considered necessary.

5. Mr Dennis KWOK considered it necessary to form a subcommittee to study L.N. 110, so as to facilitate the public to have a clear understanding of the technical problems involved and how L.N. 110 was to be dealt with.

Action

6. The Chairman said that while L.N.110 did not have any legal effect, the Legislative Council ("LegCo") should deal with it given that this item of subsidiary legislation had been published in the Gazette and tabled in Council.

7. The Deputy Chairman said that although L.N. 110 was not properly made, it had been published in the Gazette and LegCo had the constitutional duty to deal with it. He shared the view that a subcommittee should be formed to study L.N. 110 in detail to enable Members' views on the matter to be put on record during the scrutiny process. Members agreed. The following Members agreed to join the subcommittee: Mr James TO, Mr Ronny TONG, Dr Priscilla LEUNG and Mr Dennis KWOK.

### **III. Business arising from previous Council meetings**

#### **Legal Service Division report on subsidiary legislation gazetted on 28 June 2013 and tabled in Council on 3 July 2013**

*(LC Paper No. LS67/12-13)*

8. At the invitation of the Chairman, LA said that one item of subsidiary legislation, i.e. the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (L.N. 115), was gazetted on 28 June 2013 and tabled in Council on 3 July 2013.

9. LA explained that L.N. 115 was made by the Hong Kong International Arbitration Centre ("HKIAC") under the Arbitration Ordinance (Cap. 609) with the approval of the Chief Justice and would come into operation on 2 December 2013. It repealed the existing Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 609 sub. leg. B) and substituted them with a new set of Rules to provide for the procedures and fees for applying to HKIAC for the appointment of arbitrators and mediators or a decision on the number of arbitrators. The provisions in L.N. 115 were substantially the same as those in the existing Rules. LA further said that LSD had written to HKIAC to seek clarification on certain drafting issues, and a further report would be provided after considering HKIAC's reply, if necessary.

10. The Deputy Chairman considered it necessary to form a subcommittee to study L.N. 115 in detail. Members agreed. The following Members agreed to join the subcommittee: Mr Ronny TONG, Dr Priscilla LEUNG, Mr Dennis KWOK and Mr SIN Chung-kai.

11. The Chairman reminded Members that the deadline for amending L.N. 115 was 16 October 2013, or 6 November 2013 if extended by a resolution of the Council.

#### **IV. Further business for the Council meeting of 10 July 2013**

##### **(a) Tabling of papers**

##### **Report No. 20/12-13 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments**

*(LC Paper No. CB(2)1505/12-13 issued vide LC Paper No. CB(3)759/12-13 dated 3 July 2013)*

12. The Chairman said that the report covered one item of subsidiary legislation, i.e. the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013 ("the Notice"), the period for amendment of which would expire on 10 July 2013. As Mr TANG Ka-piu had indicated intention to speak on the Notice, he, as Chairman of HC, would move a motion to take note of the report in relation to the Notice.

##### **(b) Questions**

*(LC Paper No. CB(3)753/12-13)*

13. The Chairman informed Members that Dr LAM Tai-fai had replaced his oral question.

#### **V. Business for the Council meeting of 17 July 2013**

##### **(a) Questions**

*(LC Paper No. CB(3)752/12-13)*

14. 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**

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

(c) **Government motions**

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

*(Wording of the proposed resolution issued vide LC Paper No. CB(3)757/12-13 dated 3 July 2013.)*

16. The Chairman said that the Secretary for Financial Services and the Treasury had given fresh notice to move the above proposed resolution at the Council meeting. The relevant subcommittee had reported to HC at the last meeting.

(ii) **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:**

- **Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2013; and**
- **Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2013**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3)758/12-13 dated 3 July 2013.)*

17. The Chairman said that the Secretary for Financial Services and the Treasury had given fresh notices to move the above two proposed resolutions at the Council meeting. The relevant subcommittee had reported to HC at the last meeting.

(iii) **Proposed resolution to be moved by the Secretary for Constitutional and Mainland Affairs under section 8 of the District Councils Ordinance (Cap. 547)**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3)739/12-13 dated 27 June 2013.)*

*(LC Paper No. LS68/12-13)*

18. At the invitation of the Chairman, LA explained that the proposed resolution sought the approval of LegCo of the District Councils Ordinance (Amendment of Schedule 3) Order 2013 ("the Order") made by CE in Council on 25 June 2013 under section 8 of the District Councils Ordinance (Cap. 547). The Order proposed to amend Part 1 of Schedule 3 to the Ordinance to increase the number of elected members of nine of the 18 District Councils ("DCs") as from the fifth term DC commencing on 1 January 2016. The overall increase would be 19 elected members (from the present total of 412 elected members to 431).

Action

19. LA further explained that the Order would come into operation in two stages. For the purpose of enabling arrangements to be made for the DC ordinary election in 2015, the Order would come into operation on the day on which the resolution approving the Order was published in the Gazette. The actual increase in the number of elected DC seats would come into operation on 1 January 2016.

20. Ms Emily LAU considered it necessary to form a subcommittee to study the Order in detail, in view of the various concerns, including whether there should be realignment of the boundaries of certain DCs, raised by Members. Members agreed. The following Members agreed to join the subcommittee: Ms Emily LAU, Ms Cyd HO, Mr IP Kwok-him, Mrs Regina IP, Mr James TIEN, Dr Kenneth CHAN, Mr LEUNG Che-cheung, Dr Helena WONG and Mr Christopher CHUNG.

21. The Chairman said that in line with the established practice and the arrangement agreed with the Administration, the Administration would be requested to withdraw its notice for moving the proposed resolution to allow sufficient time for the subcommittee to scrutinize the proposed resolution.

**(d) Members' motions**

**(i) Motion to be moved by Dr Hon LEUNG Ka-lau**

22. The Chairman said that the subject of the motion to be moved by Dr LEUNG Ka-lau was "Dissolving the Hospital Authority" and the wording had been issued to Members.

**(ii) Motion on "Following up the matter on Mr SNOWDEN's disclosure of the United States Government's hacking into the computer systems in Hong Kong" to moved by Mr MA Fung-kwok**

*(Wording of the motion issued vide LC Paper No. CB(3)763/12-13 dated 4 July 2013.)*

23. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above two motions was Wednesday, 10 July 2013.

**Report of HC on Consideration of Subsidiary Legislation**

24. The Chairman invited Members to note the list containing 18 items of subsidiary legislation tabled at the meeting, the period for amendment of which would expire on 17 July 2013. Members who wished to speak on the subsidiary legislation should indicate their intention by 5:00 pm on Tuesday, 9 July 2013.



## VI. Report of Bills Committees and subcommittees

### (a) **Report of the Bills Committee on Pesticides (Amendment) Bill 2013**

---

*(LC Paper No. CB(2)1508/12-13)*

25. Mr SIN Chung-kai, Chairman of the Bills Committee, said that the main object of the Bill was to implement the requirements of the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade in respect of pesticides. The Bills Committee had held eight meetings with the Administration and received views from the public at one of the meetings.

26. Mr SIN Chung-kai further said that the main issues deliberated by the Bills Committee included the regulatory regime on pesticides; measures to promote safe and proper use of pesticides; criminal and civil liability of the Government and public officers; and power of authorized officers to enter premises without warrant. As requested by the Bills Committee, the Administration had undertaken to follow up a number of issues to further promote the safe and proper use of pesticides. The Secretary for Food and Health would set out the follow-up actions to be taken in his speech to be delivered at the resumption of the Second Reading debate on the Bill.

27. Mr SIN Chung-kai informed Members that the Bills Committee had studied in detail the proposed exemption of the Government and public officers from criminal liability. While the Bills Committee noted that the Administration would adopt administrative measures to ensure public officers' strict compliance with the statutory requirements, members generally considered it unfair that public officers acting in official capacity would be expressly exempted from criminal liability when private operators and their employees were subject to criminal liability. In response to the request of the Bills Committee, the Administration would move Committee stage amendments ("CSAs") to the Bill to remove the exemption of public officers from criminal liability for an offence under the Pesticides Ordinance (Cap. 133).

28. Mr SIN Chung-kai further informed Members that the Bills Committee had also requested the Administration to consider amending the provisions relating to criminal liability of public officers in the Hazardous Chemicals Control Ordinance (Cap. 595), which was enacted in 2007 for the purpose of regulating non-pesticide hazardous chemicals to meet the requirements of the two Conventions, so as to bring them in line with the Administration's proposed amendments to the Bill. The Administration would also move CSAs to introduce textual amendments to the Bill to improve the clarity of certain provisions.

29. Mr SIN Chung-kai added that the Bills Committee agreed to the CSAs to be moved by the Administration, and supported resumption of the Second Reading debate on the Bill at the Council meeting of 17 July 2013.

**(b) Report of the Bills Committee on Trust Law (Amendment) Bill 2013**

*(LC Paper No. CB(1)1424/12-13)*

30. Mr NG Leung-sing, Chairman of the Bills Committee, said that the Bills Committee had completed its scrutiny work. The object of the Bill was to modernize the trust law regime in Hong Kong to facilitate effective administration of trusts.

31. Mr NG Leung-sing informed Members that in the course of scrutiny, members were particularly concerned what impact the abolition of the rule against perpetuities might have on Hong Kong's asset market, and whether the definition of the term "gross negligence" in the provision regulating trustee exemption clauses was sufficiently clear.

32. Mr NG Leung-sing further said that although the proposals in the Bill to amend the trust law regime were not perfect and the Administration had not taken on board some of the proposals put forward by the trust industry, the legal sector and the Bills Committee, the Bill had incorporated the mainstream views of the trust industry and members considered it important that the first step in the reform of the trust law regime should be taken as early as possible to enhance Hong Kong's status as an asset management centre. Furthermore, the Administration had undertaken to further review the trust law regime in the near future. The Bills Committee therefore supported resumption of the Second Reading debate on the Bill at the Council meeting of 17 July 2013.

33. Mr NG Leung-sing added that the Administration would move CSAs which included amendments proposed in response to the Bills Committee's suggestions, textual amendments to improve the drafting of certain provisions and an amendment to specify the commencement date of the Amendment Ordinance. The Bills Committee would not propose any CSA to the Bill.

34. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, to the above two Bills, which were scheduled for resumption of Second Reading debates at the Council meeting of 17 July 2013, was Monday, 8 July 2013.

**(c) Report of the Subcommittee on Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice and Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (Commencement) Notice**

---

*(LC Paper No. CB(4)841/12-13)*

35. Mr SIN Chung-kai, Chairman of the Subcommittee, said that the Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice sought to specify the powers that were not exercisable by the Communications Authority ("CA") in its enforcement in respect of commercial practices of licensees under the Telecommunications Ordinance (Cap. 106) and the Broadcasting Ordinance (Cap. 562), and that the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (Commencement) Notice was to appoint 19 July 2013 as the day on which the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 came into operation.

36. Mr SIN Chung-kai further said that the Subcommittee had held one meeting with the Administration. The issues discussed by the Subcommittee included the repeal of section 7M of the Telecommunications Ordinance in relation to the prohibition of misleading or deceptive conduct; the enforcement powers exercisable by the Customs and Excise Department and CA; the civil compliance-based mechanism; publicity and public education; the complaints referral mechanism and the procedure for reviewing enforcement guidelines.

37. Mr SIN Chung-kai added that the Subcommittee supported the two items of subsidiary legislation, and would not propose any amendment.

**(d) Report of the Subcommittee on Building (Minor Works) (Amendment) Regulation 2013 and Buildings Legislation (Amendment) Ordinance 2012 (Commencement) Notice**

---

38. Ir Dr LO Wai-kwok, Chairman of the Subcommittee, said that the Subcommittee had completed its scrutiny work. The Amendment Regulation aimed to introduce a statutory regime, i.e. the Signboard Control System ("SBCS"), to control existing unauthorized signboards, and the Commencement Notice sought to appoint 2 September 2013 as the day on which the provisions relating to SBCS came into operation.

39. Ir Dr LO Wai-kwok informed Members that the Subcommittee had held three meetings and received views from the public at one of the meetings. One of the main concerns of members was the proposed five-year validity period under SBCS. Some members suggested

Action

shortening the validity period to three years so as to increase the frequency of inspection of the validated signboards to enhance their safety. According to the Administration, the proposed interval of five years aimed to strike a balance between tackling the building safety problems arising from existing unauthorized signboards and avoiding bringing undue inconvenience to business operators. All validated signboards would also undergo periodic safety inspection if they were situated at buildings which had joined the Mandatory Building Inspection Scheme. In addition, where a validated signboard subsequently became dangerous during the interval of five years, the Buildings Department might take enforcement action.

40. Ir Dr LO Wai-kwok further said that some members had expressed concern about the Administration's handling of those existing unauthorized signboards which might have been fixed to a building without the authorization of the property owner concerned. The Administration explained that while the Buildings Ordinance (Cap. 123) aimed to regulate the construction of buildings and associated works, the requirement of obtaining the property owner's consent for erecting signboards at the common parts of a building related to property right and building management issues which should be dealt with in accordance with the Building Management Ordinance (Cap. 344). The Buildings Department would require a signboard validation applicant to provide information on the relevant owners' corporation ("OC") and would take the initiative to notify the OC about the application. In response to members' concerns, the Administration would remind signboard validation applicants in the relevant notification form to pay attention to the conditions in the Deed of Mutual Covenant of the building, notify the property management company, the OC or the owners concerned, as well as purchase third party liability insurance.

41. Ir Dr LO Wai-kwok added that both the Subcommittee and the Administration would not propose any amendment. The Subcommittee would provide its written report later.

42. The Chairman reminded Members that as the deadline for amending the four items of subsidiary legislation which were studied by the above two subcommittees was 17 July 2013, the deadline for giving notice of amendments, if any, was Wednesday, 10 July 2013.

## **VII. Position on Bills Committees and subcommittees**

*(LC Paper No. CB(2)1504/12-13)*

43. The Chairman informed Members that as at 4 July 2013, there were eight Bills Committees, eight subcommittees under HC (i.e. five subcommittees on subsidiary legislation, one subcommittee on policy issues and two 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.

44. The Chairman reminded Members that under rule 26(c) of the House Rules, a subcommittee on policy issues should complete work within 12 months of its commencement and report to HC or relevant Panel as appropriate. Should such a subcommittee consider it necessary for it to work beyond that 12 months, the subcommittee should, after obtaining the endorsement of the relevant Panel if it was appointed by a Panel, report to HC and give justifications for an extension of the 12-month period. Unless there were special reasons, such subcommittees should complete work within 12 months.

## **VIII. Proposed duty visit to Taiwan and Japan by the Subcommittee on Poverty**

*(LC Paper No. CB(2)1515/12-13)*

45. Mr Frederick FUNG, Chairman of the Subcommittee, said that the Subcommittee sought the permission of HC to conduct a duty visit to Taiwan and Japan in August 2013 to study their experience in alleviating poverty, particularly elderly poverty and working poverty. He referred Members to the Subcommittee's paper for details and funding arrangements of the visit.

46. Mr Frederick FUNG further said that a total of nine Members including one non-Subcommittee Member had indicated interest in joining the visit. The Subcommittee would submit a report to HC after the visit. He appealed to Members to support the proposed visit.

47. Members agreed that permission be given for the Subcommittee to conduct the duty visit.

**IX. Request of the Panel on Information Technology and Broadcasting to discuss its proposal to invoke the Legislative Council (Powers and Privileges) Ordinance to inquire into the allegations of interference with the editorial independence of Radio Television Hong Kong by Mr Roy TANG, Director of Broadcasting, in handling the matter of the promotion of Mr SZE Wing-yuen (LC Paper No. CB(4)844/12-13)**

48. Dr Elizabeth QUAT, Deputy Chairman of the Panel on Information Technology and Broadcasting ("the Panel"), said that the Panel held a special meeting on 25 June 2013 to follow up issues relating to the editorial independence of Radio Television Hong Kong ("RTHK"). Apart from the Administration, 15 deputations and individuals, including RTHK Programme Staff Union, attended the meeting to give views on the matter.

49. Dr Elizabeth QUAT further said that the Panel noted that the majority of the deputations and individuals attending the meeting held the view that Mr Roy TANG, Director of Broadcasting ("D of B") had interfered with the editorial independence of RTHK, including allegedly asking Mr SZE Wing-yuen, Acting Assistant Director of Broadcasting (Television and Corporate Businesses), to carry out "political missions". Some Panel members were concerned that since assuming the office of D of B, Mr TANG had been taking steps to turn RTHK into a Government mouthpiece. These members surmised that Mr SZE's liberal editorial stance and his refusal to carry out political missions might have resulted in his not getting promoted. Some other Panel members, however, were of the view that there was no concrete evidence to support the allegations that D of B had interfered with the editorial independence of RTHK.

50. Dr Elizabeth QUAT added that Ms Claudia MO considered it necessary to invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the P&P Ordinance") to inquire into the allegations of interference with the editorial independence of RTHK by Mr Roy TANG in handling the matter of the promotion of Mr SZE Wing-yuen, and moved a motion in this regard. Ms MO's motion was put to vote. Six members voted for the motion and two members against it. The motion was passed by the Panel. The Panel therefore sought HC's support for its proposal. Should the proposal be supported by HC, it was for HC to decide whether the Panel or a select committee should conduct the inquiry and be authorized to exercise the powers under section 9(1) of the P&P Ordinance in the performance of such duties.

51. The Chairman invited Members' views on the Panel's proposal.

Action

52. Ms Claudia MO said that RTHK, as the public service broadcaster of Hong Kong, should be the mouthpiece of the public. The fact that Mr Roy TANG was the Editor-in-chief of RTHK did not mean that he could do whatever he liked including carrying out "political missions". She noted that Mr SZE Wing-yuen had openly indicated his willingness to give a full account of what had happened if he was accorded protection under the P&P Ordinance. She considered it necessary for LegCo to provide Mr SZE with such protection so that he could speak the truth without fear of being sued by the Government for defamation. She added that Members should appreciate the immense stress, both mental and financial, of a defamation lawsuit, and appealed to Members to support the Panel's proposal.

53. Ms Cyd HO said that apart from affording legal protection to Mr SZE Wing-yuen and other RTHK staff, invoking the powers under the P&P Ordinance could also forestall Mr Roy TANG from telling lies, as witnesses summoned had to give evidence under oath. She believed that the truth about the chronology of events and the dialogues at the editorial meetings would be revealed if LegCo exercised the powers under the P&P Ordinance to inquire into the matter.

54. Dr Priscilla LEUNG cited her personal experience in lodging a complaint against a RTHK programme for defaming her during an election period. She said that she did not agree to the view that Mr SZE Wing-yuen should be given the protection under the P&P Ordinance so that he did not have to fear getting sued for defamation in speaking out on the matter. She pointed out that the party suing for defamation also had to bear risks if he was not telling the truth. She objected to the Panel's proposal.

55. Mr IP Kin-yuen considered that the personal experience cited by Dr Priscilla LEUNG was an isolated case and not relevant to the matter under discussion. He pointed out that at the special meeting of the Panel, Mr Roy TANG had expressed his wish for Mr SZE Wing-yuen to give a clear account of the matter, as failing to do so would severely harm RTHK. In Mr IP's view, invoking the powers under the P&P Ordinance to conduct an inquiry was the fairest way of handling the matter for all parties concerned, including Mr SZE, Mr TANG and RTHK. He appealed to Members to support the Panel's proposal.

56. Ms Emily LAU said that at the special meeting of the Panel, representatives of RTHK Programme Staff Union had stated that they were facing unprecedented interference and "white terror". RTHK, as the public service broadcaster, should operate in an independent, objective

Action

and professional manner, and the alleged pressure by D of B to interfere with the editorial independence of RTHK was unacceptable. She considered it incumbent upon LegCo to conduct a fair, impartial and independent inquiry to find out the truth. Ms LAU further said that according to many surveys, RTHK was rated the most credible media organization in Hong Kong. It was important for LegCo to stop any person from exerting pressure on RTHK staff. She hoped that Members would make a fair and objective decision to support the Panel's proposal having regard to the views of deputations and individuals given at the special meeting of the Panel.

57. Ir Dr LO Wai-kwok said that Members should have confidence in the established mechanism and procedures put in place by the Government to handle staff promotion. There were mechanisms for aggrieved civil servants to lodge their complaints and a civil servant would not be penalized for lodging a complaint which was made in good faith. As a listener/viewer of RTHK, he did not feel that the editorial independence of RTHK was at stake. He found it odd to propose that LegCo should invoke the powers under the P&P Ordinance to inquire into an individual case of staff promotion. He added that Members belonging to the Business and Professionals Alliance for Hong Kong objected to the Panel's proposal.

58. Mr LEE Cheuk-yan opined that the Government was trying to suppress freedom of the press by infringing upon the editorial independence of RTHK. As Mr SZE Wing-yuen was an obstacle to the Government attempt to undermine the editorial independence of RTHK, the matter was not simply an individual case of staff promotion. When members asked about the nature of Mr SZE's acting appointment at the special meeting of the Panel, Mr Roy TANG failed to provide any concrete answer and only indicated that the case was under consideration by the Civil Service Bureau ("CSB"). Mr LEE added that staff appraisal reports were written by supervisors and it was difficult for individual staff members to appeal against the assessment. He supported the Panel's proposal to invoke the powers under the P&P Ordinance to conduct an inquiry into the matter to find out the truth.

59. Mr LEUNG Kwok-hung said that while one should not be afraid to speak out even without the protection under the P&P Ordinance, there was always a price to pay for telling the truth. He stressed that conducting an inquiry with the powers conferred by the P&P Ordinance would give legal protection to all parties concerned who wished to speak out, and Mr Roy TANG himself would have nothing to lose if he was telling the truth.



Action

60. Citing the public hearings recently conducted by the Public Accounts Committee in relation to Mr Timothy TONG, the former Commissioner of the Independent Commission Against Corruption, Mr Kenneth LEUNG said that invoking the powers under the P&P Ordinance was a win-win proposal for all parties concerned, as protection under the Ordinance could make people tell the truth. He stressed that the matter under discussion involved the core values of freedom of the press, freedom of speech and the editorial independence of RTHK, and not merely an individual case of the promotion of a civil servant. He expressed support for the Panel's proposal.

61. Mr Charles MOK said that since the appointment of an Administrative Officer to fill the post of D of B a few years ago, there had been a lot of grievances among the staff of RTHK. At the special meeting of the Panel, Mr Roy TANG and the other attending government officials failed to give satisfactory answers to the questions raised by members. In his view, it was not necessary to surmise the reason why Mr SZE Wing-yuen needed the protection under the P&P Ordinance to speak out on the matter, as the proposed inquiry should be conducted on the basis of public interest. He supported the proposal of the Panel.

62. Mr MA Fung-kwok said that he had attended the special meeting of the Panel, and had voted against Ms Claudia MO's motion because there was no factual basis to support the allegations made against Mr Roy TANG, which were mostly related to programme arrangements. As the Editor-in-chief, Mr TANG had the authority to discuss programme arrangements with his staff. Mr MA further said that the two allegations made against Mr TANG for interfering with the editorial independence of RTHK, i.e. he had allegedly criticized the decision of the production team of "City Forum" to put empty chairs on the panel to represent absent senior Government officials and exerted pressure on RTHK staff in demanding them to give an explanation for using Nazi characters in "Headliner", were both unfounded, as it was not appropriate for a production team to use empty chairs to represent absent guests and most people found Nazi characters repulsive. Mr MA added that Mr TANG had also given explanations on the matter at the meeting of the Panel and deputations attending the meeting had not raised further queries on his explanations. Furthermore, should any RTHK staff feel aggrieved, they could seek assistance from the relevant staff union. In the light of the above considerations, he did not support the Panel's proposal to invoke the powers under the P&P Ordinance to inquire into the matter.

63. Mr NG Leung-sing said that all along there had been controversy over whether RTHK enjoyed editorial independence. He pointed out that there were RTHK programmes which were critical of the

Action

Government and he could not understand some Members' comment that staff members of RTHK were facing "white terror". Mr NG added that he did not see anything wrong with the editor-in-chief of a media organization making decisions on editorial matters. He was told by some reporters that articles which were not to the liking of their editors would unlikely get published.

64. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong did not support the Panel's proposal. He shared Mr MA Fung-kwok's view that the allegations against Mr Roy TANG were unfounded. Mr Roy TANG had already explained the matter and no new evidence or argument had been advanced. Mr IP further said that he did not see any connection between the promotion of Mr SZE Wing-yuen and the editorial independence of RTHK. Should any RTHK staff feel aggrieved in staffing matters, he could seek recourse in accordance with the established mechanism.

65. Mr Alan LEONG said that the proposal under discussion was put forward by the Panel, which should carry more weight than one raised by an individual Member. Mr LEONG further said that he could not subscribe to the view that the matter was only a single incident involving staff promotion. There were rumours that one of the four "political missions" of the incumbent CE was to interfere with the development of RTHK by "drying up" its resources. In Mr LEONG's view, Mr Roy TANG should not be afraid of the invocation of the P&P Ordinance by LegCo to afford protection to all parties concerned to speak out on the matter if he had not been assigned such a political mission. Mr LEONG added that Members belonging to the Civic Party supported the Panel's proposal.

66. Mr James TIEN said that Members belonging to the Liberal Party did not consider it appropriate to invoke the powers under the P&P Ordinance lightly. He added that consideration should be given to the amount of manpower and efforts required for the inquiry work. As staffing disputes between senior civil servants were not uncommon and there was established mechanism for dealing with such disputes, LegCo should not interfere lightly in such matters. He considered that the promotion of Mr SZE Wing-yuen was an individual case and did not warrant the conduct of an inquiry by LegCo.

67. Mrs Regina IP said that as an ex-civil servant, she understood that there was an established stringent mechanism to handle staff promotion within the Government, including preparation of staff succession plans and setting up of promotion boards with representation of CSB. Promotions to senior civil service ranks also required the endorsement of

Action

the Public Service Commission. Mr Roy TANG alone could not determine the promotion or otherwise of Mr SZE Wing-yuen. Mrs IP further said that the editorial independence of RTHK had been discussed at a number of meetings of the Panel and deputations had also been invited to give views on the matter. In her view, the promotion of Mr SZE and the editorial independence of RTHK were two separate matters. She did not consider it appropriate for LegCo to invoke the powers under the P&P Ordinance to interfere in the internal staffing matters of the Government. She did not support the Panel's proposal.

68. Mr WONG Ting-kwong said that when Mr Roy TANG first took up the position as D of B, he was not welcomed by the staff of RTHK and had to face "white terror" himself. In his view, invoking the powers under the P&P Ordinance had become a tool for creating "white terror". He did not support the Panel's proposal.

69. Mr Paul TSE said that it was important to consider whether public interests were at stake in the matters. In respect of the promotion of Mr SZE Wing-yuen, there was an established mechanism to handle staff management and promotion in the civil service and Mr SZE's case was under consideration by CSB. Regarding the allegations made against Mr Roy TANG for questioning the decisions of the relevant producers to put empty chairs on the panel of "City Forum" to represent absent senior Government officials and use Nazi characters in "Headliner", no prima facie case had been established to support the conduct of an inquiry by LegCo. In his view, there was no cause for concern that Mr SZE Wing-yuen might be sued by the Government for speaking out on the matter without the protection under the P&P Ordinance, as it was his understanding that no civil servant had been sued by the Government for defamation and the Government had also undertaken not to do so. Mr TSE cautioned that acceding to the Panel's proposal might open the floodgate for proposals to invoke the P&P Ordinance to inquire into internal staffing disputes among civil servants.

70. Mr CHAN Chi-chuen did not subscribe to the view that the matter was merely an internal staffing dispute of RTHK. He considered it necessary for LegCo to invoke the P&P Ordinance to find out the truth about the matter. He pointed out that invoking the powers under the P&P Ordinance to conduct an inquiry was a tool for eliminating, and not creating, "white terror". Mr CHAN added that the conduct of an inquiry by LegCo would afford legal protection to Mr SZE Wing-yuen to tell the truth and relieve Mr Roy TANG of the burden of the allegations made against him.

Action

71. Mr Jeffrey LAM said that he did not support the proposal to invoke the P&P Ordinance to inquire into the matter, as there was established mechanism in the civil service for handling disputes over staff promotion. He had heard of many complaints made by civil servants over promotion in recent years and he did not consider it right for LegCo to take on the task of inquiring into such complaints.

72. Ms Claudia MO said that apart from defamation, Mr SZE Wing-yuen might also be concerned about being prosecuted for revealing official secrets should he speak out on the matter without the protection under the P&P Ordinance. There was no guarantee that the Government would not take legal action against Mr SZE. She stressed that RTHK was different from private media organizations in that RTHK was the public service broadcaster funded by public money.

73. The Chairman put to vote the proposal of the Panel to invoke the P&P Ordinance to inquire into the allegations of interference with the editorial independence of RTHK by Mr Roy TANG, D of B, in handling the matter of the promotion of Mr SZE Wing-yuen. Ms Emily LAU requested a division.

The following Members voted in favour of the proposal:

Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Mr Ronny TONG, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG and Mr IP Kin-yuen.

(23 Members)

The following Members voted against the proposal:

Mr CHAN Kam-lam, Dr LAU Wong-fat, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, 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 Paul TSE, Mr James 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, Mr

Action

Dr LO Wai-kwok, Mr Christopher CHUNG and Mr Tony TSE.  
(37 Members)

The following Member abstained from voting:

Dr LEUNG Ka-lau.

(1 Member)

74. The Chairman declared that 23 Members voted for the proposal and 37 Members voted against it and one Member abstained from voting. The Chairman declared that the proposal was negated.

**X. Any other business**

75. There being no other business, the meeting ended at 3:35 pm.

Council Business Division 2  
Legislative Council Secretariat  
11 July 2013