

立法會
Legislative Council

LC Paper No. CB(2)1828/12-13

Ref : CB2/H/5/12

House Committee of the Legislative Council

**Minutes of the 33rd meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 12 July 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 TAM Yiu-chung, 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 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 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:

Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, GBS, JP

Hon Alan LEONG Kah-kit, SC
Hon Kenneth LEUNG

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
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	Senior Council Secretary (3)7
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

Action

I. Confirmation of the minutes of the 32nd meeting held on 5 July 2013
(LC Paper No. CB(2)1568/12-13)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on his meeting with the Chief Secretary for Administration

2. The Chairman said that there was nothing special to report.

III. Business arising from previous Council meetings

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

Securities and Futures (Amendment) Bill 2013
(LC Paper No. LS71/12-13)

3. At the invitation of the Chairman, Legal Adviser ("LA") explained that the Bill sought to establish a regulatory framework for the over-the-counter ("OTC") derivative market in Hong Kong by amending the Securities and Futures Ordinance (Cap. 571) ("SFO"); and to incorporate amendments relating to the requirements of notifications and reports under SFO to be filed electronically, the enhancement of the Securities and Futures Commission's enforcement regime regarding market misconduct offences and providing for the courts' power to make disgorgement orders in respect of market misconduct offences, including confiscation orders to be made under the Organized and Serious Crimes Ordinance (Cap. 455).

4. LA further said that the Panel on Financial Affairs had been consulted on the legislative proposal to develop a regulatory regime for the OTC derivative market at its meetings on 3 January 2011, 2 April 2012 and 4 March 2013, and various concerns were expressed by members. LA advised that in view of the concerns of Panel members and the significant impact of the Bill on the financial market in Hong Kong, Members might consider setting up a Bills Committee to study the Bill in detail.

5. Mr James TO considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Mr James TO and Mr CHAN Kam-lam agreed to join the proposed Bills Committee.

(b) **Legal Service Division report on subsidiary legislation gazetted on 5 July 2013 and tabled in Council on 10 July 2013**
(LC Paper No. LS70/12-13)

6. At the invitation of the Chairman, LA briefed Members on the three items of subsidiary legislation (i.e. L.N. 118 to L.N. 120) which were gazetted on 5 July 2013 and tabled in Council on 10 July 2013.

7. Members did not raise any question on the three items of subsidiary legislation.

Action

8. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was to be 16 October 2013.

IV. Further business for the Council meeting of 17 July 2013

(a) Tabling of papers

Report No. 21/12-13 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2)1570/12-13 issued vide LC Paper No. CB(3)818/12-13 dated 11 July 2013)

9. The Chairman said that the report covered 18 items of subsidiary legislation the period for amendment of which would expire on 17 July 2013.

10. Regarding the six items of subsidiary legislation made under the new Companies Ordinance (28 of 2012) (i.e. L.N. 75 to L.N. 80), the Chairman informed Members that as the Administration would move three proposed resolutions at the Council meeting to amend three of these items of subsidiary legislation, Members would have the opportunity to speak on the relevant items of subsidiary legislation.

11. As regards the Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice (L.N. 71), the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (Commencement) Notice (L.N. 72), the Building (Minor Works) (Amendment) Regulation 2013 (L.N. 73) and the Buildings Legislation (Amendment) Ordinance 2012 (Commencement) Notice (L.N. 74), the Chairman informed Members that the respective Chairmen of the two Subcommittees on these items of subsidiary legislation had indicated their intention to speak on the subsidiary legislation. A motion would therefore be moved at that Council meeting to take note of the report in relation to these four items of subsidiary legislation.

12. The Chairman added that in accordance with Rule 49E(7) of the Rules of Procedure ("RoP"), if the motion related to more than one item of subsidiary legislation, the debate on that motion might be divided into sessions each of which related to one or more items of subsidiary legislation. The Chairman proposed that the debate on the four items of subsidiary legislation be divided into two sessions, one covering L.N. 71 and L.N. 72, and the other L.N. 73 and L.N. 74. Members agreed. The Chairman reminded Members that the speaking time limit for each Member was 15 minutes for each session.

(b) **Questions**

(LC Paper No. CB(3)806/12-13)

13. The Chairman said that Ms Emily LAU had replaced her oral question.

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

(i) **Child Abduction Legislation (Miscellaneous Amendments) Bill 2013**

(ii) **Toys and Children's Products Safety (Amendment) Bill 2013**

14. The Chairman said that the Administration had given notices to present the above two Bills to the Council on 17 July 2013. The House Committee ("HC") would consider these Bills at its next meeting to be held after the summer recess on 4 October 2013.

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

(i) **Trust Law (Amendment) Bill 2013**

(ii) **Pesticides (Amendment) Bill 2013**

15. The Chairman said that the Bills Committees on the above two Bills had reported to HC at the last meeting and Members did not raise objection to the resumption of the Second Reading debates on the Bills.

V. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)1569/12-13)

16. The Chairman said that as at 11 July 2013, there were six Bills Committees, seven subcommittees under HC (i.e. four 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. Four subcommittees on policy issues under Panels were on the waiting list.

VI. Paper of the Committee on Rules of Procedure

Proposed amendment to rule 24(h) of the House Rules

(LC Paper No. CROP47/12-13)

17. Mr TAM Yiu-chung, Chairman of the Committee on Rules of Procedure ("CRoP"), said that under the existing rule 24(h) of the House Rules ("HR"), if the attention of the chairman of a committee was drawn to the fact that a quorum was not present during a meeting, the chairman should direct members of the committee to be summoned and should close the meeting if a quorum was not present after 15 minutes had expired. He further said that in response to the concern raised by some Members about the lack of clarity of rule 24(h), CRoP had studied the issue. CRoP considered that while it was not specifically stated in rule 24(h) as to who could draw the chairman's attention to the absence of a quorum during a meeting, when this rule was read in conjunction with the other provisions in rule 24, it was logical to infer that the persons intended to be covered in rule 24(h) were members of the committee only. To make this explicit, CRoP proposed to amend rule 24(h) to specify that only members of a committee could draw the chairman's attention to the absence of a quorum during a meeting of the committee. He invited HC to endorse the proposed amendment to rule 24(h).

18. The Deputy Chairman expressed reservation about the proposed amendment to rule 24(h). He was concerned that if any non-committee Member attending a meeting could not request the counting of the quorum, members present who all belonged to the same political party or grouping might try to get through a motion in the absence of a quorum. He considered it more reasonable to specify in rule 24(h) that Members of the Legislative Council ("LegCo"), and not only members of the relevant committee, could draw the chairman's attention to an absence of a quorum.

19. Mr CHAN Kam-lam said that according to his understanding, a committee could not pass any motion when a quorum was not present.

20. Mr TAM Yiu-chung said that under the existing rules, while a non-committee Member could attend and speak at a meeting of a committee, he did not have any voting rights in respect of the business of the committee. Based on the same rationale, CRoP proposed that only members of a committee could draw its chairman's attention to the absence of a quorum during a meeting of the committee.

Action

21. Mr IP Kwok-him considered that the proposed amendment by CROp was reasonable. Regarding the concern expressed by the Deputy Chairman, Mr IP said that the validity of a motion passed by a committee when a quorum was not present would be subject to challenge. He trusted that Members would handle controversial matters in a prudent manner. He was concerned that the operation of a committee might be affected if Members who were not its members could request the counting of the quorum at any time during a meeting.

22. At the invitation of the Chairman, LA said that in accordance with rule 24(k) of HR, when it was necessary to order a division during a meeting of a committee, the chairman of the committee should ensure that a quorum was present before it proceeded with the division. However, where a division was not ordered, there was no express provision in HR stipulating the relevant procedure. In response to the Chairman, LA further advised that while a motion passed by a committee might not have any legislative effect, it would carry other effects.

23. The Deputy Chairman said that if a division was not ordered, it was possible for a motion to be passed by a committee when a quorum was not present during a meeting, given that there was no express rule in this regard. In his view, the question did not lie in whether such a motion had any legislative effect, but the public's perception that a motion had been passed by the committee on a specific matter.

24. The Deputy Chairman further sought advice from LA on whether "committee" in the proposed amendment covered a Bills Committee. He was concerned that the scrutiny process of a bill might be affected if a quorum was not present during a meeting of a Bills Committee. LA advised that according to RoP 93(e), "committee" meant a standing or select committee or any other committee of the Council, including a Bills Committee.

25. In response to the Chairman, Secretary General ("SG") said that pursuant to rule 24(k) of HR, if a division was ordered, the clerk to a committee would remind its chairman to ensure that a quorum was present before a motion was put to a vote. SG further advised that the persons covered under the proposed amendment to rule 24(h) included only members, and not the clerk, of a committee.

26. The Chairman put to vote the proposal of CROp to amend rule 24(h) of HR. The Deputy Chairman requested a division.

Action

The following Members voted in favour of the proposal:

Mr CHAN Kam-lam, Dr LAU Wong-fat, Mr TAM Yiu-chung, 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, Dr LEUNG Ka-lau, 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 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 Wai-chuen.

(39 Members)

The following Members voted against the proposal:

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

(19 Members)

27. The Chairman declared that 39 Members voted for and 19 Members voted against the proposal and no Member abstained from voting. The Chairman declared that the proposal was carried.

VII. Proposal of Hon IP Kwok-him to follow up the matter of Mr Snowden's allegation of the hacking into computer systems in Hong Kong by the United States Government

(Letter dated 9 July 2013 from Hon IP Kwok-him (LC Paper No. CB(2)1593/12-13(01)))

28. At the invitation of the Chairman, Mr IP Kwok-him said that when an urgent oral question was asked and an adjournment debate was held on issues relating to Mr Edward Snowden's allegations of the hacking into computer systems in Hong Kong by the United States ("US") Government at the Council meeting of 19 June 2013, Members expressed strong dissatisfaction with the matter and requested the Government of the Hong Kong Special Administrative Region ("HKSAR") to follow up. He

Action

further said that there were cases in the past where Members followed up in the name of the Legislature fundamental issues of right and wrong involving actions of foreign governments. These cases included the bombing by the North Atlantic Treaty Organization ("NATO") of the Chinese Embassy in Yugoslavia in 1999 and the Manila hostage incident in 2011. He appealed to Members to support his proposal for the Chairman of HC to write to urge the US Senate and the House of Representatives to follow up the matter with the US Administration.

29. Mr WONG Kwok-hing agreed that LegCo should follow up the matter with the US Government. However, he considered it more appropriate for the President to do so on behalf of Members.

30. The Deputy Chairman enquired about past practice on whether such letters should be sent by the President or the Chairman of HC. While he agreed in principle that Members should follow up the alleged violation of the privacy of Hong Kong people, he considered that Members should not act hastily to denounce the US Administration before clarifying the details of the matter. He was also concerned whether the letters should be strongly or neutrally worded.

31. At the invitation of the Chairman, SG said that there were three occasions in the past where the Chairman of HC had written on behalf of Members to express concern about incidents which occurred in other countries. In July 1998, the Chairman of HC wrote to the President of the People's Republic of China ("PRC") about alleged human rights violations against ethnic Chinese in Indonesia. In May 1999, a letter was sent to the Commissioner of the Ministry of Foreign Affairs ("CMFA") of PRC in HKSAR by the Chairman of HC regarding NATO's bombing of the Chinese Embassy in Yugoslavia. In March 2011, the Chairman of HC wrote to the Chief Executive on the Manila hostage incident.

32. The Chairman said that the wording of the letters would be based on the views expressed by Members at this meeting.

33. Mrs Regina IP said that since Mr Snowden had left Hong Kong, she observed that US Government officials and public opinion in US had displayed a scornful attitude towards Hong Kong. In her view, the US Congress and courts had failed to properly perform their roles in monitoring the collection of foreign intelligence information by the US Administration, and LegCo should urge the US Congress to call the US Administration to account. She considered it more appropriate for the letters to be issued by the President of LegCo.

Action

34. Dr Priscilla LEUNG considered it necessary for LegCo to clearly express its stance on the matter. The letters should express strong dissatisfaction with the alleged surveillance of and intrusion into Hong Kong's communications networks by the US Administration and should be issued by the President.

35. Mr Jeffrey LAM said that although the US Administration would unlikely respond to any request for clarification on its foreign intelligence surveillance activities, it was necessary for LegCo to express Hong Kong people's grave concern about the matter. He considered it more appropriate to convey Members' views through the Office of CMFA, given that the Central People's Government ("CPG") was responsible for matters relating to foreign affairs.

36. The Chairman remarked that communications between LegCo and another legislature did not necessarily have to be made through the Office of CMFA. Mr Jeffrey LAM said that he did not agree with the Chairman, as LegCo was the legislature of a special administrative region and not a national parliament.

37. Mr LEUNG Kwok-hung said that the US Government so far had not denied the allegations made by Mr Snowden. The letters to the US Senate and the House of Representatives should be strongly worded to denounce the surveillance of Hong Kong's communications networks by the US Administration.

38. Mr Albert HO considered it proper for LegCo to write to the US Congress to denounce the US Administration for such acts and to urge the US Congress to follow up the matter. He agreed that the letters should be issued by the President. However, should the President not accede to the request, the Chairman of HC should then write to the US Congress on behalf of Members.

39. Ms Claudia MO also supported Mr IP Kwok-him's proposal to call the US to account. She sought clarification on whether the wording of the letters to the US Senate and the House of Representatives should include denouncing the US Administration for its alleged surveillance activities on Hong Kong people.

40. The Chairman reiterated that the letters would be drafted on the basis of Members' views.

Action

41. Mr SIN Chung-kai supported the proposal for the President to write to the US Senate and the House of Representatives on the matter. While he shared the view that the letters should denounce the US Administration's surveillance activities on Hong Kong, he noted that Mr IP Kwok-him had only proposed to urge the US Congress to call the US Administration to give a full account of the matter without further delay.

42. Mr LEE Cheuk-yan said that LegCo had direct liaison with legislatures outside Hong Kong and it was appropriate for LegCo to write to the US Congress on the matter. In his view, the letters should express dissatisfaction with and denounce the alleged intrusion into Hong Kong's communications networks and violation of the privacy of Hong Kong people by the US Administration, and request the US Congress to call the US Administration to give a full account of the matter.

43. Mr WONG Yuk-man said that a letter should also be sent to the US Administration denouncing and protesting against its surveillance activities on Hong Kong, in addition to the letters proposed to be sent to the US Senate and the House of Representatives. He stressed that it was proper for LegCo to write to the US Administration on the matter.

44. Ms Cyd HO said that CPG had openly stated that the HKSAR Government handled Mr Snowden's case independently, which so far had not been treated as a matter of foreign affairs. She considered it inappropriate to involve the Office of CMFA in LegCo's handling of the matter.

45. Dr Helena WONG considered that letters should be sent to both the US Administration and the US Congress, and the letters should denounce the surveillance activities on Hong Kong by the US Administration and demand a full account of the matter.

46. Mr IP Kwok-him shared the view that the letters should express dissatisfaction with and denounce the alleged hacking into Hong Kong's communications networks by the US Administration, as well as urge the US Senate and the House of Representatives to demand the US Administration to give an account of the matter. He also supported the suggestion that the letters be issued by the President but considered it appropriate that they be sent through the Office of CMFA.

47. The Chairman concluded that Members agreed to request the President to write on behalf of Members to the US Administration, the US Senate and the House of Representatives to express dissatisfaction with and denounce the alleged hacking into Hong Kong's communications

Action

networks by the US Administration. The letters should also urge the US Congress to call the US Administration to give a full account of the matter. The Chairman further said that he would convey Members' request to the President. Should the request not be acceded to, he would write to the US Administration and the US Congress on behalf of Members.

48. Dr Priscilla LEUNG suggested that the letters should also urge the US Congress to conduct an inquiry and hold the US Administration accountable for the matter.

49. The Chairman said that the letters would be drafted with regard to Members' views.

(Post-meeting note: The letters dated 17 July 2013 from the President to the US President, the President of the US Senate and the Speaker of the House of Representatives respectively were issued to Members vide LC Paper No. CB(2)1629/12-13 on 19 July 2013.)

VIII. Any other business

50. There being no other business, the meeting ended at 3:22 pm.