

立法會
Legislative Council

LC Paper No. CB(2)482/14-15

Ref : CB2/H/5/14

House Committee of the Legislative Council

**Minutes of the 10th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 12 December 2014**

Members present:

Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
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
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
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 WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon Claudia MO

Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
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, SBS, 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, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
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, BBS

Members absent:

Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man

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
Ms Anita SIT	Assistant Secretary General 1
Miss Odelia LEUNG	Assistant Secretary General 3
Mr Matthew LOO	Assistant Secretary General 4
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Stephen LAM	Senior Assistant Legal Adviser 2
Mr KAU Kin-wah	Senior Assistant Legal Adviser 3
Ms Dora WAI	Principal Council Secretary 1
Ms Hallie CHAN	Head (Public Information)
Ms Amy YU	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Miss Josephine SO	Senior Council Secretary (2)6
Ms Jasmine TAM	Senior Council Secretary (2)8
Miss Karen LAI	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 9th meeting held on 5 December 2014

(LC Paper No. CB(2)432/14-15)

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

Legal Service Division report on subsidiary legislation gazetted on 5 December 2014 and tabled in Council on 10 December 2014

(LC Paper No. LS20/14-15)

3. At the invitation of the Chairman, Legal Adviser briefed Members on the Legal Service Division report on the seven items of subsidiary legislation (i.e. L.N. 144 to L.N. 150) which were gazetted on 5 December 2014 and tabled in Council on 10 December 2014.

4. Ms Cyd HO considered it necessary to form a subcommittee to study the Legislation Publication (Revision) Order 2014 (L.N. 150) in detail. Members agreed. Ms Cyd HO and Mr Alan LEONG agreed to join the proposed subcommittee.

5. Members did not raise any question on the remaining six items of subsidiary legislation (L.N. 144 to L.N. 149).

6. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was the Council meeting of 7 January 2015, or that of 28 January 2015 if extended by a resolution of the Council.

IV. Further business for the Council meeting of 17 December 2014

(a) **Tabling of papers**

Report No. 7/14-15 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2)434/14-15 issued vide LC Paper No. CB(3)275/14-15 dated 10 December 2014)

7. The Chairman said that the Report covered two items of subsidiary legislation, the period for amendment of which would expire at the Council meeting of 17 December 2014. No Member had indicated intention to speak on the subsidiary legislation.

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

(i) **Administration of Justice (Miscellaneous Provisions) Bill 2014**

(ii) Employment (Amendment) Bill 2014

(iii) Construction Workers Registration (Amendment) Bill 2014

8. Members noted that the Second Reading debates on the above three Bills would be resumed at the meeting.

Meeting arrangement for the Council meeting of 17 December 2014

9. The Chairman said that as the blockage of public roads allowing access to the Legislative Council ("LegCo") Complex had been cleared and the entrance/exit of the LegCo Carpark was no longer obstructed, the Council meeting of 17 December 2014 might continue until around 10 pm on Wednesday before the President suspended the meeting and ordered that it be resumed the following day for any unfinished business.

10. Mr TAM Yiu-chung said that he had expressed a wish to the President that the Council meeting of 17 December 2014 be suspended at around 8 pm on Wednesday, as some 40 Members would have to attend an event that evening. He added that it was worth considering whether future Council meetings should also be held until 8 pm only and be resumed the following day for any unfinished business.

11. Ms Emily LAU said that the Council meeting time was set after careful considerations and had been adhered to for years. Any proposal for making fundamental changes must be well-justified. She also found it odd to request the President to shorten the duration of the Council meeting on 17 December 2014 in order to facilitate some Members to attend an event.

12. Ir Dr LO Wai-ki pointed out that as Council meetings were usually suspended at around 8 pm in the past two months because of the "Occupy Central" movement, some Members might have made arrangements to attend events after 8 pm on 17 December 2014. In his view, the experience in the past two months showed that there were merits in suspending Council meetings at around 8 pm, as this would enable Members to participate in events held in the evening.

13. Mr LEUNG Kwok-hung said that if Members had so many other commitments, he wondered whether Council meetings should be held once a month only.

Action

14. Ms Claudia MO considered it unreasonable for Members belonging to the pro-establishment camp to make the request. She pointed out that Members belonging to the pan-democratic camp had made a request for earlier suspension of the Council meeting on 4 June 2014 so that they could attend the candle-light vigil commemorating the 4 June incident, but their request was not acceded to.

15. Dr KWOK Ka-ki expressed strong dissatisfaction with the request to shorten the duration of the Council meeting on 17 December 2014 merely to facilitate certain Members' attendance at an event. He stressed that it would adversely affect the operation of the Council.

16. The Deputy Chairman said that it was Members' duty to attend Council meetings and Members should respect the established meeting time of the Council. He considered it unacceptable in principle to shorten the duration of a Council meeting for the purpose of facilitating certain Members' participation in a social or public event. This was particularly so with the Council meeting of 17 December 2014 which had a heavy Agenda, and any unfinished business could only be dealt with at the next Council meeting scheduled for 7 January 2015.

17. Mr Abraham SHEK opined that holding lengthy Council meetings had adverse impact on the quality of the debates. He supported the proposal to suspend Council meetings at around 8 pm which could be resumed on the following day for any unfinished business if necessary.

18. Mr CHAN Chi-chuen said that while Members could discuss the need to adjust the timing for holding future Council meetings, he shared the view that it was inappropriate to suspend the Council meeting on 17 December 2014 at around 8 pm given the heavy Agenda for that meeting. He added that he might make frequent quorum calls during that Council meeting if the request was acceded to.

19. Mr Alan LEONG expressed support for resuming the practice of holding Council meetings until around 10 pm if necessary. In response to Ir Dr LO Wai-kwok's query on the cancellation of the meeting of the Public Works Subcommittee ("PWSC") originally scheduled for 8:30 am in the morning of the day of this House Committee ("HC") meeting, Mr LEONG said that he had been under the Police's detention from the previous evening to the early morning of the day of this HC meeting. During his detention, he had instructed the Clerk to PWSC to consult members whether the meeting should be held as scheduled. As 26 members had indicated that the meeting should be cancelled while 13 members had indicated otherwise, he decided to cancel the meeting based on members' replies.

Action

20. Mr James TIEN said that it was his understanding that Council meetings had suspended at around 8 pm recently with any unfinished business to be continued on the following day because of the "Occupy Central" movement, and it was not certain when the practice of suspending Council meetings at around 10 pm would be resumed. In his view, suspending the Council meeting at around 8 pm on 17 December 2014 would not have significant impact on the operation of the Council as the meeting could be resumed the following Thursday and Friday if necessary. He suggested that the Secretariat should consult all Members on their availability for the Council meeting of 17 December 2014, and the President could make a decision based on Members' replies.

21. Mrs Regina IP considered that there was a need for Members to review whether future Council meetings should last till 10 pm if there was unfinished business. She stressed that holding lengthy meetings was not tantamount to efficient conduct of Council business. Members should also take into account the long working hours of staff members of the Secretariat servicing these lengthy Council meetings.

22. Mr IP Kwok-him shared the view that the arrangement for Council meeting time should be discussed. He explained that some 40 Members had scheduled to attend an event in the evening of 17 December 2014 as it had been the arrangement over the past two months for Council meetings to suspend at around 8 pm if there was unfinished business. He criticized that those Members who made frequent quorum calls had prolonged unnecessarily the proceedings of Council meetings.

23. Mr CHAN Kin-por stressed that the event to be attended by some 40 Members in the evening of 17 December 2014 was related to people's livelihood. In his view, the filibustering and uncooperative movement initiated by some Members had far greater negative impact on the operation of the Council than the suspension of the Council meeting on 17 December 2014 at around 8 pm. He considered the criticisms made by these Members unreasonable.

24. The Chairman asked the Secretary General to relay Members' views to the President for his consideration.

V. Position on Bills Committees and subcommittees
(*LC Paper No. CB(2)433/14-15*)

25. The Chairman said that as at 11 December 2014, there were 11 Bills Committees, five subcommittees under HC and nine subcommittees on policy issues under Panels in action.

VI. Request of Hon Emily LAU to seek the House Committee's recommendation for an adjournment debate under Rule 16(4) of the Rules of Procedure at the Council meeting of 17 December 2014 on the validity of the Sino-British Joint Declaration and issues relating to Members of the Parliament of the United Kingdom being refused entry into Hong Kong
(Letter dated 8 December 2014 from Hon Emily LAU (LC Paper No. CB(2)447/14-15(01)))

26. At the invitation of the Chairman, Ms Emily LAU said that she had earlier on received an invitation to meet with the Foreign Affairs Committee ("FAC") of the House of Commons of the United Kingdom ("UK") Parliament, which had recently launched an inquiry into the UK's relations with Hong Kong 30 years after the signing of the Sino-British Joint Declaration ("the Joint Declaration"). As part of its inquiry, the FAC had planned to send a delegation to visit Hong Kong to take evidence on, among others, the monitoring of the implementation of the Joint Declaration by the Foreign and Commonwealth Office of the UK Government. Despite the fact that Members of the UK Parliament, as UK nationals, did not need visas for entry into Hong Kong, the Chinese authorities had made it clear that the FAC delegation was not welcome and would not be allowed to enter Hong Kong. Furthermore, during the emergency debate held by the House of Commons in early December 2014 on China's ban on FAC's visit to Hong Kong, a Member of the UK Parliament indicated that the Chinese authorities had conveyed to him the message that the Joint Declaration had become void following Hong Kong's return to Chinese sovereignty in 1997. Given the wide public concern about the validity of the Joint Declaration and Hong Kong's autonomy over immigration matters, she considered it necessary for LegCo to hold an adjournment debate on the matter. She also considered that the President should be requested to exercise his discretion to extend the duration of the proposed adjournment debate beyond one and half hours, so as to enable all Members wishing to speak at the debate to do so.

27. Mr WONG Kwok-hing said that he opposed Ms Emily LAU's proposal for several reasons. First, the Ministry of Foreign Affairs of the People's Republic of China as well as the Chinese Ambassador to UK had already responded firmly on various occasions that the affairs of Hong Kong, being a special administrative region of China, were purely China's internal affairs. Second, Article 13 of the Basic Law ("BL") clearly stipulated that the Central People's Government was responsible for the foreign affairs relating to Hong Kong. Given that the matter raised by Ms LAU concerned foreign affairs, LegCo being a local

Action

legislature should not discuss the matter to avoid contravening the relevant provisions of BL. In his view, Ms LAU's proposal was tantamount to inviting foreign powers to interfere in China's internal affairs, which would certainly not be supported by members of the public.

28. Mr Abraham SHEK referred to BL 18, which provided that national laws should not be applied in Hong Kong except for those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of Hong Kong as specified by BL. He added that he could hardly support Ms Emily LAU's proposal, which, in his view, was in breach of the relevant provisions of BL.

29. Ms Claudia MO said that as a signatory to the Joint Declaration, UK had a moral obligation to monitor the implementation of the Joint Declaration. While she appreciated that matters relating to defence and foreign affairs were the prerogative of the Central Government, she did not consider that the FAC's visit to Hong Kong would pose any concern in these regards given that Members of the UK Parliament were no terrorists and they were not representing the UK Government. She was gravely concerned about China's decision to deny entry of Members of the UK Parliament into Hong Kong and its view that the Joint Declaration had become void since 1997, as these had called into question whether and how far Hong Kong could exercise the high degree of autonomy under the "One Country, Two Systems" principle. Given the gravity of the matter, she supported the holding of the proposed adjournment debate.

30. Ms Cyd HO considered it worthwhile for the Council to hold the proposed adjournment debate, given the controversy over the matter. She stressed that it was the responsibility as well as the right of Members under the Rules of Procedure ("RoP") to debate matters of public concern by way of motions without legislative effect, and Members in the majority should not deprive Members in the minority of their right to raise a matter for discussion. She also expressed support for Ms Emily LAU's proposal to request the President to exercise his discretion to extend the duration of the proposed adjournment debate so that Members would have sufficient time to express their views on the matter.

31. The Chairman clarified that while Members had the right to apply for debate slots to move motions without legislative effect in Council, Ms Emily LAU's proposal to hold an adjournment debate under RoP 16(4) at the Council meeting of 17 December 2014, in addition to two other motion debates without legislative effect scheduled for that meeting, required the support of HC.

Action

32. Mr Vincent FANG said that it was apparent that the matter raised by Ms Emily LAU was a matter of foreign affairs. As BL had provided that the Central People's Government was in charge of such affairs, LegCo was clearly not in a position to debate the matter. Given that the intention of the Members of the UK Parliament was not to pay a general visit to Hong Kong but to carry out an inquiry into Hong Kong affairs, query had also been raised about the capacity in which they carried out such an inquiry. Having regard to these considerations, he opposed the holding of the proposed adjournment debate.

33. Dr LAM Tai-fai said that the Central Government had the authority to decide which foreign politicians should or should not be allowed to enter Hong Kong, which was a matter of foreign affairs. Despite the problems facing Hong Kong, he trusted that the Central Government would render all necessary support and protection to Hong Kong and in no way would the Central Government allow interference in Hong Kong affairs by foreign politicians. He considered it a reasonable and appropriate decision for the Chinese authorities to ban the entry of Members of the UK Parliament, who, in his view, had the ill intention of stirring up troubles in Hong Kong. He also considered that it was beyond LegCo's powers and functions to discuss issues relating to the validity of the Joint Declaration and Members of the UK Parliament being refused entry into Hong Kong. He added that he did not support the holding of the proposed adjournment debate.

34. Mr TAM Yiu-chung said that it was noteworthy that the FAC delegation planned to visit Hong Kong to carry out an inquiry into Hong Kong affairs, and not to conduct a friendly visit. He considered it appropriate to deny the entry of these Members of the UK Parliament, as they had neither the power nor any basis to conduct such an inquiry in Hong Kong. Furthermore, it was clearly a matter of foreign affairs concerning Hong Kong, which were overseen by the Central People's Government under BL and hence should not be debated by LegCo.

35. Mr SIN Chung-kai pointed out that after the signing of the Joint Declaration by the Chinese and British Governments in 1984, the Joint Declaration had been registered at the United Nations. In his view, the British side, as well as the international community at large, had the right as well as the responsibility to monitor the implementation of the Joint Declaration, and the Chinese Government should not prevent the UK Parliament from doing so. He supported the holding of the proposed adjournment debate at the next Council meeting to enable Members to debate the matter as soon as possible.

36. Mr James TIEN said that while it could not be said that the Joint Declaration had become void after 1997, the basic policies of China regarding Hong Kong as set out in the Joint Declaration had already been stipulated in BL, which served as the only constitutional document for the Hong Kong Special Administrative Region ("HKSAR") requiring compliance after 1997. Furthermore, under the Joint Declaration and BL, UK did not have the so-called "residual power" to supervise the implementation of the Joint Declaration after the transfer of the sovereignty over Hong Kong to China in 1997. As the matter raised by Ms Emily LAU was a matter of foreign affairs which fell within the responsibilities of the Central People's Government under BL, he considered it inappropriate for LegCo to hold a debate on the matter. He therefore opposed Ms LAU's proposal.

37. The Deputy Chairman said that the matter under discussion was whether LegCo should hold an adjournment debate on issues relating to Members of the UK Parliament being refused entry into Hong Kong, and not whether the HKSAR Government had the power to decide whether Members of the UK Parliament should be allowed to enter Hong Kong to carry out its inquiry. He considered that some Members had misinterpreted the provisions of BL in arguing that the proposed adjournment debate constituted a breach of BL. He clarified that according to BL 73(6), LegCo could debate any issue concerning public interests and there was no precondition that the issue to be debated must be an issue within the limits of autonomy of Hong Kong. As the matter might have negative impact on the image and international standing of Hong Kong, he considered it necessary for Members to debate the matter in Council. He appealed to Members to support Ms Emily LAU's proposal.

38. Ms Emily LAU said that according to the reports made by FAC on Hong Kong in 1998 and 2006, members of the UK Parliament had visited Hong Kong and met with the senior officials of the HKSAR Government as well as Members of LegCo and the Executive Council to facilitate their preparation of the two reports. She criticized Members belonging to the pro-establishment camp for adopting a double standard in respect of the present inquiry conducted by FAC in claiming that supporting FAC's visit to Hong Kong was tantamount to inviting foreign powers to interfere in Hong Kong affairs. While she might initiate a debate on the matter through making an application for a debate slot, she had proposed to hold an adjournment debate on the matter having regard to the consideration that FAC's inquiry had been launched and it was the intention of FAC to visit Hong Kong as soon as possible to facilitate the conduct of its inquiry.

Action

39. The Chairman put to vote Ms Emily LAU's proposal to move a motion for adjournment of the Council, in addition to the two Members' motions, under RoP 16(4) at the Council meeting of 17 December 2014 for the purpose of debating the validity of the Joint Declaration and issues relating to Members of the UK Parliament being refused entry into Hong Kong. Mr WONG Kwok-hing requested a division.

The following Members voted in favour of the proposal:

Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Prof Joseph LEE, Mr Ronny TONG, Ms Cyd HO, 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 Dennis KWOK, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG and Mr IP Kin-yuen.

(20 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 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, Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Christopher CHUNG and Mr Tony TSE.

(38 Members)

40. The Chairman declared that 20 Members voted for and 38 Members voted against the proposal, and no Member abstained from voting. The Chairman declared that the proposal was not supported.

VII. Any other business

41. There being no other business, the meeting ended at 3:23 pm.