

立法會
Legislative Council

LC Paper No. CB(2)240/15-16

Ref : CB2/H/5/15

House Committee of the Legislative Council

**Minutes of the 4th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 6 November 2015**

Members present:

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

Hon MA Fung-kwok, SBS, JP (Deputy Chairman)

Hon Albert HO Chun-yan

Hon LEE Cheuk-yan

Hon James TO Kun-sun

Hon CHAN Kam-lam, SBS, JP

Hon LEUNG Yiu-chung

Hon Emily LAU Wai-hing, JP

Hon Tommy CHEUNG Yu-yan, GBS, JP

Hon Frederick FUNG Kin-kee, SBS, JP

Hon Vincent FANG Kang, SBS, JP

Hon WONG Kwok-hing, BBS, MH

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 CHEUNG Kwok-che

Hon WONG Kwok-kin, SBS

Hon IP Kwok-him, GBS, JP

Hon Mrs Regina IP LAU Suk-yee, 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, BBS
Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Gary FAN Kwok-wai
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, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
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, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members absent:

Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen, BBS

Clerk in attendance :

Miss Flora TAI

Clerk to the House Committee

Staff in attendance :

Mr Kenneth CHEN, SBS	Secretary General
Ms Connie FUNG	Legal Adviser
Miss Odelia LEUNG	Deputy Secretary General
Ms Anita SIT	Assistant Secretary General 1
Ms Dora WAI	Assistant Secretary General 3
Mr Matthew LOO	Assistant Secretary General 4
Mr Timothy TSO	Senior Assistant Legal Adviser 1
Mr Stephen LAM	Senior Assistant Legal Adviser 2
Mr Kelvin LEE	Senior Assistant Legal Adviser 3
Miss Erin TSANG	Acting Principal Council Secretary 1
Ms Hallie CHAN	Head (Public Information)
Ms Alice LEUNG	Chief Council Secretary (2)6
Mr Anthony CHU	Chief Council Secretary (4)1
Mr YICK Wing-kin	Assistant Legal Adviser 8
Miss Evelyn LEE	Assistant Legal Adviser 10
Miss Karen LAI	Senior Council Secretary (2)6
Ms Jasmine TAM	Senior Council Secretary (2)8
Mr Richard WONG	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

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I. Confirmation of the minutes of the 3rd meeting held on 30 October 2015
(*LC Paper No. CB(2)187/15-16*)

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 30 October 2015 and tabled in Council on 4 November 2015

(LC Paper No. LS5/15-16)

3. At the invitation of the Chairman, Legal Adviser briefed Members on the Legal Service Division report on the Post Office (Amendment) Regulation 2015 (L.N. 214) which was gazetted on 30 October 2015 and tabled in Council on 4 November 2015. Members did not raise any question on the Amendment Regulation.

4. Members noted that the deadline for amending the Amendment Regulation would be the Council meeting of 2 December 2015.

IV. Further business for the Council meeting of 11 November 2015

Meeting arrangement for the Council meeting of 11 November 2015

5. The Chairman informed Members that the meeting would start at 11:00 am and be suspended at around 8:00 pm on Wednesday, 11 November 2015. The meeting would resume at 9:00 am on Thursday, 12 November 2015 and be adjourned after conclusion of all the business on the Agenda.

(a) Tabling of papers

Report No. 3/15-16 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2)189/15-16)

6. The Chairman said that the Report covered 19 items of subsidiary legislation and the period for amending those items would expire at the Council meeting of 11 November 2015. No Member had indicated intention to speak on these items of subsidiary legislation.

(b) Questions

(LC Paper No. CB(3)108/15-16)

7. The Chairman said that Dr LAM Tai-fai had replaced his oral question.

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Members' motions without legislative effect to be dealt with at the Council meeting of 11 November 2015

8. The Chairman informed Members that the remaining proceedings of Dr Helena WONG's motion on "Extending the application of sections 3 and 8 of the Prevention of Bribery Ordinance to the Chief Executive" and the motion on "Strengthening vocational education" to be moved by Dr CHIANG Lai-wan would be dealt with at the Council meeting of 11 November 2015.

V. Business for the Council meeting of 18 November 2015

(a) Questions

(LC Paper No. CB(3)109/15-16)

9. 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

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

(c) Government motion

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

(d) Members' motions

(i) Motion on "Report of the Subcommittee on Hawker Policy" to be moved by Hon Steven HO

(LC Paper No. CB(3)76/15-16)

(ii) Motion on "Safeguarding Hong Kong from 'Mainlandization'" to be moved by Hon Claudia MO

(LC Paper No. CB(3)91/15-16)

12. The Chairman said that debates on the above two Members' motions would be held at the meeting.

Report of House Committee on Consideration of Subsidiary Legislation

13. The Chairman invited Members to note the list tabled at the meeting (LC Paper No. CB(3)116/15-16), which contained eight items of

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subsidiary legislation. The period for amending those items would expire at the Council meeting of 18 November 2015. He reminded Members to indicate their intention by 5:00 pm on Tuesday, 10 November 2015, should they wish to speak on any of these items of subsidiary legislation.

VI. Reports of Bills Committees and subcommittees

(a) Report of the Subcommittee on Live Television Link (Witnesses outside Hong Kong) Rules and Rules of the High Court (Amendment) (No. 2) Rules 2015

(LC Paper No. CB(4)161/15-16)

14. On behalf of Mr Dennis KWOK, Chairman of the Subcommittee, Dr Priscilla LEUNG briefed Members on the deliberations of the Subcommittee as detailed in its report. Members noted that the Subcommittee supported the two sets of rules, and would not propose any amendment to them.

(b) Report of the Subcommittee on Rules on Suitors' Funds

(LC Paper No. CB(4)141/15-16)

15. Dr CHIANG Lai-wan, Chairman of the Subcommittee, briefed Members on the deliberations of the Subcommittee as detailed in its report. Members noted that the Subcommittee supported the six sets of new or amendment rules related to suitors' funds, and would not propose any amendment to them.

16. The Chairman reminded Members that as the period for amending the eight items of subsidiary legislation studied by the above two Subcommittees would expire at the Council meeting of 18 November 2015, the deadline for giving notice of amendments, if any, to the subsidiary legislation would be Wednesday, 11 November 2015.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)188/15-16)

17. The Chairman said that as at 5 November 2015, there were 11 Bills Committees, 16 subcommittees under the House Committee ("HC") and seven subcommittees on policy issues under Panels in action. Three subcommittees on policy issues under Panels were on the waiting list.

VIII. Request of Hon Claudia MO 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 11 November 2015 on the relationship between the prohibition by the University of Hong Kong on the publication of materials concerning its Council meetings and the public's right to know
(*LC Paper No. CB(2)208/15-16(01)*)

18. The Chairman said that Rule 41(2) of the Rules of Procedure ("RoP") provided that reference should not be made to a case pending in a court of law in such a way as, in the opinion of the Chairman, might prejudice that case. He reminded Members that as the legal proceedings for the University of Hong Kong ("HKU")'s application for an injunction against the publication of materials concerning its Council meetings ("the case") were in progress in the High Court, they should avoid having too detailed discussion about the case.

19. At the invitation of the Chairman, Ms Claudia MO said that the institution of legal proceedings by HKU to prohibit publication of materials concerning its Council meetings was a matter of public interest and had aroused wide public concern over the public's right to know and the freedom of press. She was worried that the case would set a bad precedent for other public institutions to follow and this would stifle the free flow of information. In her view, it was incumbent upon Legislative Council ("LegCo") Members to monitor the performance of HKU, which was a publicly-funded institution, and to discuss matters of public concern. She considered that the proposed adjournment debate would not affect the Court's adjudication of the case.

20. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") did not support Ms Claudia MO's proposal to hold an adjournment debate under RoP 16(4) at the Council meeting of 11 November 2015. DAB considered it inappropriate to discuss sub judice matters as a court ruling was still pending in the case.

21. Mr LEUNG Kwok-hung said that it was stated clearly in the Basic Law that LegCo had the responsibility to debate any issue concerning public interests. The prohibition by HKU on the publication of materials concerning its Council meetings was a matter of public interest as it was related to the governance of a public institution. In his view, there was no cause for concern that the proposed adjournment debate would prejudice the case.

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22. Ms Cyd HO said that she supported Ms Claudia MO's proposal. She believed that Members would not touch on the details of the case during the proposed adjournment debate, but would rather focus on some broad issues of principles such as the public's right to know, access to information on the business of public institutions by the public and the protection for whistle-blowers in disclosing confidential matters which were of public interest. She stressed that LegCo Members had the responsibility to monitor universities which were publicly-funded institutions, in particular their performance in safeguarding institutional autonomy.

23. Mr Albert HO informed the meeting that he was the legal representative acting for Mr IP Kin-yuen and two HKU students in their applications to join the case as an interested party against the injunction application by HKU. He considered that the prohibition by HKU on the publication of materials concerning its Council meetings was a matter of great public interest and was concerned about its far reaching impact on institutional autonomy, academic freedom and freedom of press. While agreeing that Members should not make comment on the case as the legal proceedings were still underway, he considered that LegCo should not refrain from holding the proposed adjournment debate on issues of public interest on the ground of sub judice.

24. Dr CHIANG Lai-wan did not consider that the public's right to know should be accorded overriding importance over privacy and principle of confidentiality. She objected to Ms Claudia MO's proposal on the ground of sub judice as the court proceedings for the case were in progress. Moreover, the proposed adjournment debate could not facilitate a fruitful exchange of views between Members and a public officer. She considered that the issues relating to the public's right to know and the importance of privacy and confidentiality could, if necessary, be discussed by the relevant Panels.

25. Dr KWOK Ka-ki said that the issues relating to the governance of HKU were matters of public interest. He was worried that the case would set a bad precedent which, if followed by other public institutions, would deprive the public of the right to know. It was therefore appropriate for LegCo to hold the proposed adjournment debate so that Members could express their views on such an important and contentious matter. He supported Ms Claudia MO's proposal.

26. Mr CHAN Chi-chuen expressed support for Ms Claudia MO's proposal as the proposed adjournment debate was a matter relating to such important values as academic freedom and freedom of speech. In his view, publication of information of public interest was the duty of the

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media, irrespective of whether the information was confidential and how the information was obtained.

27. Mr YIU Si-wing said that the relevant parties/persons should honour the confidentiality undertaking subscribed to by members of HKU Council, and it was reasonable for HKU to take actions to protect the confidentiality of its Council meetings, particularly when the published information was obtained in breach of the confidentiality undertaking. He considered it important to uphold the principle of confidentiality to ensure freedom of speech by people taking up public positions. He objected to Ms Claudia MO's proposal.

28. Mr Albert CHAN said that if Members belonging to the pro-establishment camp genuinely considered it important for members of the HKU Council to honour their undertaking to uphold the confidentiality of the proceedings of the HKU Council, they should not have supported Mr LEUNG Chun-ying who was alleged to have repeatedly breached the Executive Council's confidentiality rule, before he took up the position of the Chief Executive. Given that HKU's recent attempts to prohibit the publication of materials concerning its Council meetings involved issues of public importance such as academic freedom and university autonomy as well as freedom of speech and freedom of the press, he saw no reason why Members should oppose the holding of the proposed adjournment debate.

29. Ms Starry LEE said that the recent controversy surrounding HKU had been widely discussed in the community and there were various other forums for Members to express their views on the matter apart from holding the proposed adjournment debate in Council. As the legal proceedings for the case were still in progress and it was provided under RoP that Members should not make comments which might prejudice a case pending in a court of law, Members belonging to DAB considered it not appropriate to debate the matter in Council at the present stage.

30. Mr James TIEN said that Members belonging to the Liberal Party supported the holding of the proposed adjournment debate to provide an opportunity for Members to speak on the matter. He added that while Members belonging to the Liberal Party considered that the principle of confidentiality observed by members of the HKU Council should be given precedence over the public's right to know, Members should express their views on the matter during the proposed adjournment debate, and not during the present discussion on Ms Claudia MO's proposal to seek HC's recommendation for holding an adjournment debate under RoP 16(4).

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31. Mr LEE Cheuk-yan said that he could not subscribe to the view that the proposed adjournment debate should not be held as there were various other forums for Members to express their views on the matter. He criticized some Members for adopting double standards in respect of the necessity for persons undertaking public service to uphold the principle of confidentiality, as evidenced by the fact that they had never denounced Mr LEUNG Chun-ying who had allegedly leaked confidential information on numerous occasions. As the recent controversy surrounding HKU had shown that academic freedom and institutional autonomy were under threat, he considered it necessary to hold the proposed adjournment debate having regard to the significant public interests at stake.

32. Dr Helena WONG supported the holding of the proposed adjournment debate to allow Members to give views on the matter at the Council meeting. She said that the Democratic Party had all along advocated democratic governance of public institutions (including universities) and that these institutions should enhance transparency of meetings and public access to information on their meetings. She added that the public were concerned whether there was any interference with the institutional autonomy of HKU.

33. Mr Paul TSE said that the application for injunction being dealt with by the High Court had nothing to do with freedom of press or the public's right to know, but merely about whether there was a breach of confidence. He drew Members' attention to Rule 13(a) of the House Rules which stated that an adjournment debate pursuant to RoP 16(4) in addition to not less than two such motion debates might be allowed by the President under special circumstances upon the recommendation of HC. While agreeing that the prohibition by HKU on the publication of materials about its Council meetings concerned public interest, he considered that there was no urgency in the matter and the present circumstances did not warrant such recommendation of HC. Mr TSE was also concerned that Members' discussions during the proposed adjournment debate might prejudice the Court's adjudication. Due to the above considerations, he opposed Ms MO's proposal.

34. Mr LEUNG Che-cheung shared the view of Mr Paul TSE that Members should respect the role of the Court and avoid discussion on issues relating to the case that might raise an issue of sub judice. He did not support Ms Claudia MO's proposal.

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35. Ms Claudia MO said that she was gravely concerned that the scope of the injunction sought by HKU against the publication of materials about its Council's meetings was unclear and that the precedent of seeking a court order by a public institution to prohibit the publication of information about its business would impede free flow of information. She reiterated that LegCo should play an important role to safeguard the public's right to know and monitor the performance and governance of public institutions.

36. The Chairman put to vote the proposal of Ms Claudia MO for moving a motion for adjournment, in addition to the two Members' motions, under RoP 16(4) at the Council meeting of 11 November 2015 to debate the relationship between the prohibition by HKU on the publication of materials concerning its Council meetings and the public's right to know. Ms Claudia MO requested a division.

The following Members voted in favour of the proposal:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr James TIEN, Mr 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, Dr Helena WONG and Mr CHUNG Kwok-pan.

(23 Members)

The following Members voted against the proposal:

Mr CHAN Kam-lam, Mr WONG Kwok-hing, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE, 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 TANG Ka-piu, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok and Mr Christopher CHUNG.

(26 Members)

37. The Chairman declared that 23 Members voted for and 26 Members voted against the proposal and no Member abstained from voting. The Chairman declared that the proposal was not supported.

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IX. Any other business

38. There being no other business, the meeting ended at 3:19 pm.

Council Business Division 2
Legislative Council Secretariat
11 November 2015