

立法會
Legislative Council

LC Paper No. CB(2)120/16-17

Ref : CB2/H/5/16

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, 4 November 2016

Members present:

Hon Starry LEE Wai-king, SBS, JP (Chairman)
Hon Dennis KWOK Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
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 POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon Eddie CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon Kenneth LAU Ip-keung, MH, JP
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim
Dr Hon LAU Siu-lai

Members absent:

Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Dr Hon KWOK Ka-ki
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon Pierre CHAN
Hon HUI Chi-fung
Hon Jeremy TAM Man-ho
Hon Sixtus LEUNG Chung-hang
Hon YAU Wai-ching

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
Ms Amy YU	Principal Council Secretary 1
Ms Alice LEUNG	Chief Council Secretary (2)6
Miss Joyce CHAN	Assistant Legal Adviser 1
Mr Richard WONG	Senior Council Secretary (2)6
Ms Jasmine TAM	Senior Council Secretary (2)8
Miss Connie AU	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

Action

I. Confirmation of minutes of meeting

Minutes of 3rd meeting held on 28 October 2016

(LC Paper No. CB(2)79/16-17)

The minutes were confirmed.

II. Matters arising

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

2. The Chairman said that the Chief Secretary for Administration ("CS") had advised that the Administration had arranged/would arrange the relevant bureaux to be the corresponding bureaux of the various subcommittees on policy issues formed under the House Committee ("HC") or the Panels to coordinate their respective responses.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 28 October 2016 and tabled in Council on 2 November 2016

(LC Paper No. LS7/16-17)

3. At the invitation of the Chairman, Legal Adviser briefed Members on the report prepared by the Legal Service Division on the three items of subsidiary legislation (i.e. L.N. 163 to L.N. 165) which were gazetted on 28 October 2016 and tabled in Council on 2 November 2016.

4. Mr James TO considered it necessary to form a subcommittee to study the Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016 (L.N. 165) in detail. Members agreed. Mr James TO, Mr WU Chi-wai and Mr Kenneth LEUNG agreed to join the subcommittee.

5. Members did not raise any question on the other two items of subsidiary legislation (i.e. L.N. 163 and L.N. 164).

6. Members noted that the deadline for amending these three items of subsidiary legislation would be the Council meeting of 30 November 2016, or that of 11 January 2017 if extended by a resolution of the Council.

IV. Further business for the Council meeting of 9 November 2016

Meeting arrangement for the Council meeting of 9 November 2016

7. The Chairman informed Members that the meeting would start at 11:00 am and be suspended at around 8:00 pm on Wednesday, 9 November 2016. The meeting would resume at 9:00 am and be adjourned at around 8:00 pm on Thursday, 10 November 2016.

Tabling of papers

Report No. 2/16-17 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2)81/16-17)

8. The Chairman said that the Report covered 36 items of subsidiary legislation (i.e. L.N. 119 to L.N. 154) and the period for amending these items would expire at the Council meeting of 9 November 2016. No Member had indicated intention to speak on these items of subsidiary legislation.

V. Business for the Council meeting of 16 November 2016

(a) Questions

(LC Paper No. CB(3)91/16-17)

9. The Chairman said that 22 questions (six oral and 16 written) would be dealt with at the meeting.

(b) Bill - 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

12. The Chairman said that the two Members' motions without legislative effect originally scheduled for the Council meeting of 9 November 2016 would be re-scheduled to the Council meeting of 16 November 2016.

Report of House Committee on Consideration of Subsidiary Legislation and Other Instruments

13. The Chairman invited Members to note the list tabled at the meeting (LC Paper No. CB(3)98/16-17), which contained two items of subsidiary legislation. The period for amending these items would expire at the Council meeting of 16 November 2016. She reminded Members to indicate their intention by 5:00 pm on Tuesday, 8 November 2016, should they wish to speak on any of these items of subsidiary legislation.

VI. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)80/16-17)

14. The Chairman said that as at 2 November 2016, there were seven subcommittees under HC and one subcommittee on policy issues under Panel in action, and two subcommittees on policy issues pending activation.

VII. Proposal of Hon Tanya CHAN to seek the House Committee's agreement for her to move a motion of no confidence in the President of the Legislative Council at the Council meeting of 9 November 2016

(LC Paper No. CB(2)86/16-17(01))

15. At the invitation of the Chairman, Ms Tanya CHAN said that following the Chairman's decision at the last HC meeting on 28 October 2016 that her proposal to move a motion of no confidence in the President of the Legislative Council ("LegCo") at the Council meeting of 2 November 2016 should not be discussed at the said HC meeting, she wrote to the Chairman again to put forward her proposal for seeking the agreement of HC, under rules 13(a) and 14(i) of the House Rules ("HR"), for allocation of a debate slot for her to move, at the Council meeting of 9 November 2016, a motion of no confidence in the President ("the proposed motion"). Ms CHAN further said that given the various queries raised in the last few weeks over Mr Andrew LEUNG's nationality and declaration of business interests, as well as his capability to conduct Council business in a fair and efficient manner, Mr LEUNG's suitability as the President had been called into question. Ms CHAN considered it necessary for Members to debate a motion of no confidence in the President at the Council meeting of 9 November 2016 and to make a decision on the proposed motion as early as possible.

16. The Chairman invited Members to consider whether HC would agree to the proposal for Ms Tanya CHAN to move the proposed motion at the Council meeting of 9 November 2016 in addition to the two Members' motions without legislative effect that had been scheduled for the said meeting, and to seek the President's permission under Rule 29(1) of the Rules of Procedure to dispense with the requisite notice for moving the motion.

17. Ms Claudia MO expressed support for Ms Tanya CHAN's proposal. She said that given that following Mr Andrew LEUNG's reversal of his earlier ruling made on 18 October 2016 and his decision on 25 October 2016 to defer the administration of oath/affirmation for Mr Sixtus LEUNG and Miss YAU Wai-ching ("the two Members concerned"), Members belonging to the pro-democracy camp had lost their trust and confidence in him. Ms MO also commented that the President had succumbed to the pressure of the Government, and failed to uphold the principle of separation of powers among the Executive Authorities, the Legislature and the Judiciary. She therefore considered it urgent to hold a debate on the proposed motion.

Action

18. Expressing concurrence with Ms Tanya CHAN's view, Dr CHENG Chung-tai said that he supported Ms CHAN's proposal. He further said that he was unconvinced of Mr Andrew LEUNG's decision made on the day of the Council meeting of 2 November 2016 to call the Police to take enforcement actions in the LegCo Complex on that day. Dr CHENG criticized that Mr Andrew LEUNG had failed to safeguard the dignity of LegCo. In his view, Mr LEUNG should explain openly the justifications for his decision.

19. Dr Fernando CHEUNG said that apart from the queries arising from the ways Mr Andrew LEUNG renounced his British nationality and declared his business interests when he ran for the election as the President, he also found it unacceptable that Mr LEUNG, after being pressurized by Members of the pro-establishment camp, reversed his earlier ruling without seeking further legal advice and disallowed the two Members concerned to take the LegCo Oath afresh at the Council meeting of 26 October 2016. He therefore supported Ms Tanya CHAN's proposal.

20. Expressing similar view with Dr Fernando CHEUNG, Mr LEUNG Yiu-chung said that he supported Ms Tanya CHAN's proposal. He further said that Mr Andrew LEUNG's capability to conduct Council business in an impartial and neutral manner had been called into question. He was worried that the President would succumb again to political pressure when considering whether an item of business should be placed on or removed from the Agenda of the Council in future.

21. Mr CHAN Hak-kan pointed out that debates on motions of no confidence in government officials or LegCo President initiated by Members had been held in Council before but the holding of such debates had all along been arranged in accordance with the established system for allocation of debate slots. Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") did not consider it necessary or appropriate for Ms Tanya CHAN to make a request for allocation of an additional debate slot to her at the Council meeting of 9 November 2016 as it was in effect jumping the queue for debate slots. Furthermore, although HR 13(a) provided that the holding of more than two motion debates initiated by Members at a Council meeting might be allowed by the President under special circumstances upon the recommendation of HC, DAB Members did not see any urgency for the proposed motion to be debated at the Council meeting of 9 November 2016. Given the above considerations, DAB Members did not support Ms CHAN's proposal.

Action

22. Mr WU Chi-wai said that Members belonging to the Democratic Party ("DP") supported Ms Tanya CHAN's proposal. Mr WU stressed that although DP Members disapproved the manner in which the two Members concerned took the LegCo Oath, DP Members considered that the President should have stood by his decision to allow the two Members concerned to take the LegCo Oath afresh and not overturn such decision lightly. Given that the neutrality of the President and his capability to ensure the efficient operation of LegCo had been called into question, it was necessary for Members to debate the proposed motion in Council as early as practicable.

23. Dr Junius HO considered it not necessary and a waste of the Council meeting time to debate the proposed motion in Council. He also considered it not necessary for LegCo to discuss the queries raised over the President's British nationality as those were mere speculation. Dr HO stressed that as the oath-taking saga had already seriously disrupted the last few Council meetings, Members belonging to the pro-democracy camp should duly perform the duties expected of them as LegCo Members and should not connive at the wrongful acts of the two Members concerned by distorting the facts.

24. Expressing support for Ms Tanya CHAN's proposal, Mr Charles MOK said that he could hardly trust Mr Andrew LEUNG to hold the office of the President given the various queries raised over his nationality and declaration of business interests. Mr MOK further said that it was unprecedented that the Council had not been able to transact any business for three consecutive weeks, with the President adjourning the last three Council meetings shortly after the meetings commenced. As the President had clearly failed to resume the smooth operation of the Council, it would be irresponsible on the part of Members not to move a motion of no confidence in the President.

25. Mr LAM Cheuk-ting expressed support for Ms Tanya CHAN's proposal. He said that the eligibility of Mr Andrew LEUNG for the office of the President remained in question given that he was allegedly still holding the British nationality when he enrolled for the election of the President. Furthermore, the reversal of his ruling in relation to the oath-taking by some Members clearly showed that Mr LEUNG had succumbed to the pressure of the Government and Members belonging to the pro-establishment camp. Mr LAM stressed that it was Mr LEUNG's failure to handle the Council business in an impartial manner and with integrity that led to the last few Council meetings being unable to be conducted in an orderly manner.

Action

26. Dr Priscilla LEUNG said that while she welcomed the decision of the President to take on board the suggestion of Members belonging to the pro-establishment camp to defer the administration of the LegCo Oath for the two Members concerned pending the Court's judgment on the relevant judicial review application, it was noteworthy that the President had not accepted these Members' suggestion to defer the administration of the LegCo Oath for Dr LAU Siu-lai as well. Dr LEUNG further said that Members belonging to the pro-establishment camp had no choice but to walk out from the Council meeting of 19 October 2016 to urge the President to address the grave public concern about the derogatory manner in which the two Members concerned took the LegCo Oath. She added that she supported the President's decision to request the Police's assistance in handling the storming of the Council meeting venue by some Members on 2 November 2016 for the sake of protecting the safety of the security staff of the Secretariat.

27. Dr YIU Chung-yim said that the varied and inconsistent decisions made by the President in the face of political pressure showed that he had failed to uphold neutrality and impartiality in handling the business of the Council. The President had also lost his credibility given his failure to prove that he had met the relevant qualification requirements under the Basic Law ("BL") at the time he enrolled for the election of the LegCo President. Given that both Members and the public had lost trust and confidence in the President, Dr YIU considered that there was great urgency to move a motion of no confidence in the President and he therefore supported Ms Tanya CHAN's proposal.

28. Mr CHEUNG Kwok-kwan said that the issue in question should be whether there was urgency for allocation of an additional debate slot to Ms Tanya CHAN at the Council meeting of 9 November 2016 for the purpose of moving a motion of no confidence in the President, and not whether the proposed motion should be moved in Council. As he did not see any urgency for the moving of the proposed motion in Council, Members who wished to do so should apply for a debate slot in accordance with the established system for allocation of debate slots.

29. Mr Holden CHOW said that he disagreed with Ms Tanya CHAN's proposal and did not see any urgency for the proposed motion to be debated in Council. Given that two Members' motions without legislative effect had been scheduled for debate at the Council meeting of 9 November 2016, there was no reason for holding an additional debate on the proposed motion which he considered unnecessary.

Action

30. Mr SHIU Ka-chun said that in his view, the President had behaved in an illogical manner at the Council meeting of 2 November 2016. He therefore was greatly concerned about the President's state of mental health. He believed that Ms Tanya CHAN's proposal was made with the good intention of urging the President to take more rest and attend to his psychological well-being. He therefore supported Ms CHAN's proposal and considered that there was urgency for the proposed motion to be debated in Council for the benefit of the President.

31. Mr James TO said that there was urgency for Members to debate the proposed motion in Council as a notable number of Members, including all Members belonging to the pro-democracy camp, did not trust the President and the holding of the proposed debate would enable all Members to express their views and take a vote on whether they had confidence in the President to continue to hold the presidency of LegCo. He stressed that it would not be beneficial to any party if the legitimacy of the President remained in question.

32. Mr Kenneth LEUNG said that he supported Ms Tanya CHAN's proposal. He further said that he doubted whether Mr Andrew LEUNG was psychologically and physically fit to continue to hold the presidency of LegCo since Mr Andrew LEUNG had made his rulings in an inconsistent manner. As Mr Andrew LEUNG had failed to conduct the Council meetings properly in the past three weeks, he saw an urgent need for Members to debate the proposed motion.

33. Mr CHAN Chi-chuen said that Mr Andrew LEUNG had made numerous mistakes when he chaired the last three Council meetings which had only lasted for less than an hour in total. Mr CHAN considered that the biggest mistake that Mr LEUNG had made was to reverse his ruling made on 18 October 2016 in relation to the oath-taking by the two Members concerned. In his view, there was urgency in debating Ms Tanya CHAN's proposed motion as Mr LEUNG was not suitable for the post of the President.

34. Sharing similar view with Mr CHAN Chi-chuen, Mr Andrew WAN said that Mr Andrew LEUNG had not only failed to conduct the Council meetings in a fair and impartial manner but also failed to maintain the order during the meetings. He considered that the proposed motion was an important matter which warranted an early debate by Members as an incompetent President should step down from his post as early as possible.

Action

35. Dr CHIANG Lai-wan pointed out that as stated in section 21 of the Oaths and Declarations Ordinance (Cap. 11), any person who declined or neglected to take an oath which he or she was required to take should vacate office or be disqualified from entering on it. Dr CHIANG considered that the President's decision on 25 October 2016 to reverse his earlier ruling in relation to the oath-taking by the two Members concerned was correct. However, she regretted that in explaining the reasons for making his decision, the President had included the walk-out from the Chamber by 39 Members belonging to the pro-establishment camp in a bid to forestall the taking of oath/affirmation by the two Members concerned on 19 October 2016 as one of the reasons.

36. Ir Dr LO Wai-kwok said that he objected to Ms Tanya CHAN's proposal. In his view, Ms CHAN should apply for allocation of a debate slot in accordance with the established system. He criticized that the views given by some Members belonging to the pro-democracy camp to support the proposed motion were mere sophistry, calling black as white, as these Members were those who had defied the rulings of the President and disrupted the order in the Council meetings. Ir Dr LO stressed that it was a proper decision for the President to request the assistance of the Police to handle the mayhem on 2 November 2016 which had led to the injury of six security staff members of the Secretariat.

37. Expressing support for Ms Tanya CHAN's proposal, Dr Helena WONG said that there was urgency for Members to debate the proposed motion. She further said that not only Members belonging to the pro-democracy camp did not support the presidency of Mr Andrew LEUNG, some Members in the pro-establishment camp, including Dr Priscilla LEUNG and Dr CHIANG Lai-wan, had also expressed disagreement with the ruling of the President made on 18 October 2016. Dr WONG stressed that the President should be able to defend the independence of the Legislature and to remain impartial when subjected to political pressure.

38. Mr Paul TSE said that in his view, it was not appropriate for LegCo to hold a debate on the motion of no confidence in the President at the present stage as LegCo and even the society were currently in a state of unrest. Should Members in the pro-democracy camp consider that there was an urgency in debating the proposed motion, they could transfer their own allocated debate slot to Ms Tanya CHAN in accordance with HR 14(e). Mr TSE added that he did not support the proposal as he saw no special circumstances to support Ms CHAN's proposal.

Action

39. Mr LEUNG Kwok-hung commented that if what Mr Paul TSE said was correct, the Central People's Government should not have contemplated the interpretation of BL at this juncture since the judicial review application in relation to the oath-taking by the two Members concerned ("the judicial review case") was being heard by the Court of First Instance ("the Court"). He considered that as Members belonging to the pro-democracy camp and Members of the pro-establishment camp had expressed disagreement with the President's rulings, a debate on the proposed motion should be held as early as possible.

40. Mr Abraham SHEK said that at present, the most pressing issue in LegCo was to end the chaos so that the operation of LegCo would get back on track. Only by doing so, Members could properly discharge the functions conferred on LegCo under BL 73 and regain the confidence of members of the public in the Legislature. He added that the President was being criticized by Members belonging to the pro-democracy camp for reversing his earlier ruling only because of their dissatisfaction with the President's decision to defer the administration of oath/affirmation for the two Members concerned.

41. Mr IP Kin-yuen said that the President's ruling on 18 October 2016 was reasonable since it was made after due consideration of legal advice. In contrast, there was no legal basis in the President's decision made on 25 October 2016 to reverse his earlier ruling. Mr IP further said that as Mr Andrew LEUNG had failed to conduct the Council meetings properly in the past three weeks, he doubted whether Council business could be dealt with smoothly under the presidency of Mr LEUNG. He considered that there was an urgency in the issue and supported Ms Tanya CHAN's proposal.

42. Mr KWONG Chun-yu said that he supported Ms Tanya CHAN's proposal. He considered that the President had made numerous questionable decisions in the past three weeks, leading to many Members of the pro-democracy camp losing confidence in him. Mr KWONG added that he was worried about whether Mr Andrew LEUNG was still physically and mentally fit to discharge his duties as the President, and the proposed motion debate would facilitate Mr LEUNG's and other Members' consideration of whether he should step down.

43. Mr Steven HO said that he concurred with the President's decision on 25 October 2016 to defer the administration of oath/affirmation for the two Members concerned, taking into consideration the developments following his previous ruling made on 18 October 2016. He considered it inappropriate to set a precedent for HC to agree to the allocation of an additional debate slot for a Member to move a motion of no confidence in the President, and therefore he objected to Ms Tanya CHAN's proposal.

Action

44. Ms Tanya CHAN reiterated her view that Mr Andrew LEUNG had lost his credibility and his capability in discharging the duties of the President was also in doubt. She called upon Members to support her proposal so that the motion of no confidence in the President could be dealt with at the earliest possible opportunity.

45. The Chairman put to vote the proposal of Ms Tanya CHAN to seek HC's agreement for her to move a motion of no confidence in the LegCo President at the Council meeting of 9 November 2016. The Chairman ordered a division.

The following Members voted in favour of the proposal:

Mr James TO, Mr LEUNG Yiu-chung, Prof Joseph LEE, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr WU Chi-wai, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Dr Helena WONG, Mr IP Kin-yuen, Mr Alvin YEUNG, Mr Andrew WAN, Mr Eddie CHU, Mr LAM Cheuk-ting, Mr SHIU Ka-chun, Ms Tanya CHAN, Dr CHENG Chung-tai, Mr KWONG Chun-yu, Mr Nathan LAW and Dr LAU Siu-lai.

(23 Members)

The following Members voted against the proposal:

Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Ting-kwong, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Michael TIEN, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Ms Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr Dr LO Wai-kwok, Mr Jimmy NG, Dr Junius HO, Mr HO Kai-ming, Mr Holden CHOW, Mr SHIU Ka-fai, Mr Wilson OR, Ms YUNG Hoi-yan, Mr CHAN Chun-ying, Mr CHEUNG Kwok-kwan, Mr LUK Chung-hung, Mr LAU Kwok-fan and Mr Kenneth LAU.

(33 Members)

46. The Chairman declared that 23 Members voted for and 33 Members voted against the proposal, and no Member abstained from voting. The Chairman declared that the proposal was not supported.

VIII. Any other business

47. The Chairman said that she received a letter jointly signed by 26 Members ("the joint letter") and another letter from Dr Fernando CHEUNG at about noon of the day of this HC meeting requesting the Secretary for Justice ("SJ") and CS respectively to attend this meeting for the discussion of issues relating to the plan of the Standing Committee of the National People's Congress ("NPCSC") for an interpretation of BL 104. She also considered that the matter was of an urgent character and of public importance, and therefore she had immediately instructed the Clerk to relay these Members' requests to CS and SJ. However, it was advised that CS and SJ could not attend this meeting.

48. The Chairman further said that according to the reply of the Department of Justice ("DoJ"), it had informed the Court in the morning of the day of this HC meeting that the Administration had received notification from the Central People's Government the night before that the question of interpreting BL 104 had been included in the agenda for the NPCSC meeting, and it was inappropriate for SJ to comment on the subject at this stage. Furthermore, the inclusion of the question of interpreting BL 104 in the agenda for the NPCSC meeting was not requested by the Government.

49. The Chairman further advised that given that both CS and SJ could not attend this meeting and Members had no information about the content in relation to the interpretation of BL 104, Members might wish to consider pursuing the matter in the following manner: (a) as proposed by another joint letter from 26 Members to the President, the next Council meeting be advanced to be held to 5 November 2016 and a motion debate on the subject be held at that meeting; and (b) further liaison with the Administration be made after this meeting for holding a special HC meeting as soon as possible for the discussion of the subject.

50. At the invitation of the Chairman, Mr James TO, on behalf of the 26 Members who signed the joint letter, said that Members should be given the opportunity to discuss the subject before NPCSC actually made the interpretation of BL104, supposedly on 7 November 2016. These Members considered that it was incumbent upon SJ to provide an account of the Administration's stance on the subject and to respond to questions and concerns raised by Members at an open meeting at the earliest opportunity before the interpretation of BL by NPCSC. Mr TO hoped that the Chairman would ask SJ when he would be available to attend a special HC meeting to discuss such an important subject.

Action

51. The Deputy Chairman pointed out that SJ had earlier said that he was confident that the matters involved in the judicial review case could be handled within Hong Kong's legal system. Given that the question of interpreting BL 104 had been included in the agenda for the NPCSC meeting, he considered that SJ should provide an account to the public about the Administration's policy stance on the subject. He added that even if SJ was unable to attend this HC meeting personally, he could send representatives of DoJ to attend the meeting to brief Members on the Administration's stance. Ms Claudia MO expressed a similar view, adding that she considered that under "one country, two systems", it was incumbent upon SJ to safeguard the judicial independence of Hong Kong, and it was unacceptable that SJ refrained from commenting on the subject.

52. Mr WU Chi-wai, Dr Helena WONG, Mr Andrew WAN, Mr LAM Cheuk-ting and Mr KWONG Chun-yu expressed similar views that the inclusion of the question of interpreting BL 104 in the agenda for the NPCSC meeting before the Court's ruling on the judicial review case would jeopardize the rule of law of Hong Kong. Given the great public concern over the matter, it was imperative that an open meeting should be held within the next two days for CS and/or SJ to explain to the public the Administration's stance on the subject and for Members to express their views before NPCSC making the interpretation.

53. At the request of Dr Helena WONG, the Chairman said that the Clerk would liaise with DoJ for its reply to the joint letter to be issued for Members' reference after the meeting.

(Post-meeting note: the email reply from DoJ was issued to Members vide LC Paper No. CB(2)107/16-17(01) (Chinese version only).)

54. Mr LEUNG Yiu-chung, Mr Charles MOK, Dr Fernando CHEUNG, Mr SHIU Ka-chun and Mr Nathan LAW expressed similar concerns over the damage that would be done to the rule of law and the implementation of "one country, two systems" by the interpretation of BL to be made by NPCSC. In their views, it was unacceptable that Members could not express their views on the subject at a formal meeting of LegCo before NPCSC making the interpretation. Mr Eddie CHU also said that even without information on the exact content of the interpretation of BL 104 to be made by NPCSC, NPCSC's plan for interpreting BL 104 warranted discussion by Members. These Members considered that the Chairman should call a special meeting within the next two days for the discussion of the subject and invite CS and/or SJ to attend the meeting.

Action

55. Ms Tanya CHAN said that to her understanding, BL 158 stipulated that an interpretation of the provisions of BL from NPCSC should be sought by the courts of Hong Kong. She expressed worries that the interpretation of BL 104 to be made by NPCSC was in fact adding new contents to BL. Mr Alvin YEUNG also pointed out that it would be unprecedented that an interpretation of BL was being made by NPCSC before the Court's ruling on the judicial review case. He considered that great damage would be done to the rule of law. Ms CHAN and Mr YEUNG shared similar view that the interpretation of BL was an extremely important matter and it was incumbent upon the Government officials to brief Members on the matter and respond to Members' concerns.

56. Mr LEUNG Kwok-hung said that given that neither did the courts of Hong Kong nor the Administration seek an interpretation of BL 104 from NPCSC, the Administration should explain to the public as soon as possible about who took the initiative to seek such an interpretation from NPCSC.

57. Dr Priscilla LEUNG stressed that according to BL 158 and the Court of Final Appeal's judgement on the case of *Lau Kong Yung & Others v Director of Immigration* (1999) 2 HKCFAR 300, the NPCSC's power of interpretation of BL was "in general and unqualified terms". She added that while it might be a better option if it were the courts of Hong Kong that sought an interpretation of BL 104 from NPCSC, it appeared to her that the courts of Hong Kong had no plans to do so. Expressing concurrence with Dr Priscilla LEUNG's view, Mr LUK Chung-hung said that he was convinced that the interpretation of BL 104 to be made by NPCSC would safeguard the implementation of "one country, two systems" as well as the national sovereignty.

58. Mr CHAN Hak-kan said that while it was incumbent upon Members to discuss such an important matter, it was unlikely that there would be any meaningful discussion if no information on the content of the NPCSC's interpretation of BL 104 was available. Mr CHAN and Mr LEUNG Che-cheung expressed similar view that it would be more appropriate for the Chairman to arrange a special meeting and invite the Administration to respond to Members' questions at that meeting. Mr Holden CHOW also said that given that SJ was one of the applicants for the judicial review, he considered it not appropriate for SJ to comment on the subject at this stage. Mr CHOW considered it more appropriate to hold a meeting for discussion of the matter after information on the content of the NPCSC's interpretation of BL 104 was available.

Action

59. Mr Paul TSE said that he had no strong view against inviting the Administration to respond to Members' questions and concerns on the subject at a special meeting. However, he could not subscribe to the view expressed by Mr Alvin YEUNG and Ms Tanya CHAN as NPCSC was vested with the power of interpretation of BL under BL 158.

60. Mr CHAN Chi-chuen said that given that the interpretation of BL was a matter of public importance, it was imperative that all Members could express their views on the subject at a meeting as soon as possible, so that NPCSC could take into consideration different views expressed by Hong Kong people before making any decision on the question of interpreting BL 104.

61. Dr Junius HO said that while he considered the subject a matter of public importance, he saw no urgency for a meeting be held for discussing the subject. He stressed that the NPCSC's power of interpretation of BL was beyond doubt, and he considered it reasonable for NPCSC to make an interpretation of BL 104 so as to safeguard national unity and territorial integrity.

62. Dr CHIANG Lai-wan said that BL 158(1) stipulated that the power of interpretation of BL should be vested in NPCSC, and she considered it appropriate for NPCSC to initiate an interpretation of BL 104 so as to avoid any possible negative impact which might arise from the Court's ruling on the judicial review case.

63. The Chairman undertook to liaise with the Administration immediately after the meeting and arrange to hold a special meeting as soon as possible, subject to the availability of CS and/or SJ.

(Post-meeting note: The Chairman had liaised with CS's Office soon after the meeting and relayed to CS the views given by Members on holding a special meeting before 7 November 2016 for discussion of the subject. Notice of the special HC meeting to be held on 9 November 2016 was issued to Members on 7 November 2016 vide LC Paper No. CB(2)119/16-17.)

64. There being no other business, the meeting ended at 4:14 pm.