

立法會
Legislative Council

LC Paper No. CB(2)621/18-19

Ref : CB2/H/5/18

House Committee of the Legislative Council

**Minutes of the 11th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 11 January 2019**

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 Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, 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, BBS, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
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, BBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon 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
Dr Hon Pierre CHAN
Hon CHAN Chun-ying, JP
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Gary FAN Kwok-wai
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH
Hon Tony TSE Wai-chuen, BBS
Hon CHAN Hoi-yan

Members absent :

Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LAU Ip-keung, BBS, MH, JP

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 YICK Wing-kin	Senior Assistant Legal Adviser 2
Mr Kelvin LEE	Senior Assistant Legal Adviser 3
Ms Amy YU	Principal Council Secretary 1
Ms Hallie CHAN	Head (Public Information)
Ms Alice LEUNG	Chief Council Secretary (2)6
Mr Bonny LOO	Assistant Legal Adviser 4
Ms Clara TAM	Assistant Legal Adviser 9
Miss Connie AU	Senior Council Secretary (2)6
Mr Richard WONG	Senior Council Secretary (2)8
Miss Michelle TANG	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 minutes of meeting

Minutes of 10th meeting held on 4 January 2019

(LC Paper No. CB(2)552/18-19)

The minutes were confirmed.

II. Matters arising

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

The decision of the Secretary for Justice ("SJ") not to initiate prosecution in respect of the UGL case

2. The Chairman said that at her last meeting with the Chief Secretary for Administration ("CS"), the Deputy Chairman had conveyed his views to CS regarding the UGL case. At the invitation of the Chairman,

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the Deputy Chairman said that he had made it clear to CS that Members and the public had strong views on SJ's decision of not initiating prosecution against Mr LEUNG Chun-ying, the former Chief Executive ("CE"), without seeking legal advice from independent outside counsel, which was a departure from the briefing out policy and the past practice of the Department of Justice ("DoJ"). He had also urged SJ to attend before the Legislative Council ("LegCo") to fully explain the matter as soon as possible.

3. The Chairman said that she had pointed out to CS that Members of the pro-establishment camp had indicated at the meeting of the Panel on Administration of Justice and Legal Services ("the AJLS Panel") held on 19 December 2018 that they respected the prosecutorial decisions made professionally and independently by SJ. Besides, Article 63 of the Basic Law ("BL") stipulated that DoJ should control criminal prosecutions, free from any interference.

4. The Chairman further said that CS had reiterated that BL empowered DoJ to control criminal prosecutions, free from any interference, and that SJ had, in making the decision in respect of the UGL case, discharged the constitutional duty with impartiality. CS had also pointed out that SJ had undertaken to attend the AJLS Panel meeting on 28 January 2019 and explain to Members DoJ's prosecution policy in detail.

5. Mr Charles MOK said that Members did not find CS's response to the above matter satisfactory, and their views should therefore continue to be heard. Mr Kenneth LEUNG said that CS should remind SJ that there was much room for improvement in the way she handled media relations. In Mr LEUNG's view, SJ should take some training courses to improve her skills in this respect.

6. Ms Claudia MO considered that the legal profession and the public remained unconvinced of the explanation given by SJ on the decision of not initiating prosecution in respect of the UGL case. She recalled that during the CE's Question and Answer Session ("Q&A Session") held on 10 January 2019, in response to a question on the above matter, CE had remarked that she would safeguard judicial independence and the rule of law in Hong Kong. Ms MO commented that the "rule of law" being referred to by CE was not the rule of law generally understood by most people, but instead, was "rule by law" which might degenerate into "rule by man" at any time.

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7. Mr CHU Hoi-dick said that he would ask an oral question on "Prosecutorial decisions made by DoJ" at the Council meeting of 16 January 2019, and he wondered whether the Administration could confirm that SJ would attend the meeting and answer his question in person.

CE's response to a Member's question concerning the raising of the eligible age for elderly Comprehensive Social Security Assistance ("CSSA") during the CE's Q&A Session on 10 January 2019

8. Mr Charles MOK, Mr CHU Hoi-dick and Mr James TO expressed strong dissatisfaction with CE's remark that the raising of the eligible age for elderly CSSA had obtained Members' approval as the 2018-2019 Budget which included the relevant funding proposal had been approved by LegCo. Mr MOK considered that CE's remark misrepresented Members' views and was unfair to Members, arousing strong reaction among Members of both the pro-democracy camp and the pro-establishment camp. Mr TO said that Members were angered by the Administration's decision to raise the eligible age for elderly CSSA and that the trust between the Executive Authorities and the Legislature had been affected. He added that this might affect the scrutiny work of the next Budget.

9. Mr LAM Cheuk-ting said that in the past, Members, irrespective of whether they belonged to the pro-democracy camp or the pro-establishment camp, considered the Administration's proposals from the overall perspective in making decisions, and would only abstain from voting or vote against such proposals when they were inconsistent with the principles Members upheld. Mr LAM wondered whether the Administration hoped that Members in the future would vote against the Budget whenever they did not support certain policy initiatives or financial proposals therein.

10. The Chairman said that she would relay Members' views to CS during her next meeting with CS.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 4 January 2019 and tabled in Council on 9 January 2019

(LC Paper No. LS38/18-19)

11. At the invitation of the Chairman, Legal Adviser briefed Members on the report prepared by the Legal Service Division on three items of subsidiary legislation (i.e. L.N. 1 to L.N. 3) which were gazetted on 4 January 2019 and tabled in Council on 9 January 2019.

12. Members did not raise any questions on the three items of subsidiary legislation.

13. The Chairman reminded Members that the deadline for amending the three items of subsidiary legislation would be the Council meeting of 30 January 2019.

IV. Further business for the Council meeting of 16 January 2019

(a) Questions

(LC Paper No. CB(3)292/18-19)

14. The Chairman said that Dr CHENG Chung-tai had replaced his oral question.

(b) Bill - resumption of debate on Second Reading, Consideration by Committee of the Whole Council and Third Reading

15. The Chairman said that at the House Committee ("HC") meeting held on 4 January 2019, Members did not raise objection to the resumption of the Second Reading debate on the Electoral Legislation (Miscellaneous Amendments) Bill 2018.

V. Business for the Council meeting of 23 January 2019

(a) Questions

(LC Paper No. CB(3)293/18-19)

16. The Chairman said that 22 questions (six oral and 16 written) had been scheduled for the meeting.

(b) **Bill - First Reading and moving of Second Reading**

17. The Chairman said that the National Anthem Bill would be introduced into the Council at the meeting, and HC would consider the Bill at its meeting on 25 January 2019.

(c) **Bill - resumption of debate on Second Reading, Consideration by Committee of the Whole Council and Third Reading**

18. The Chairman said that at the HC meeting held on 7 December 2018, Members did not raise objection to the resumption of the Second Reading debate on the Conservation of Antarctic Marine Living Resources Bill.

(d) **Government motion**

Motion on implementing the Toll Adjustment Proposal to be moved by the Secretary for Transport and Housing
(*LC Paper No. CB(3)279/18-19*)

19. The Chairman informed Members that in accordance with Rule 36(5) of the Rules of Procedure, the speaking time limit for each Member at the debate was 15 minutes.

20. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above motion would be Wednesday, 16 January 2019.

(e) **Members' motions**

(i) **Motion under Article 73(5) and (10) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China to be moved by Hon Dennis KWOK**
(*LC Paper No. CB(3)299/18-19*)

(ii) **Motion on "Enacting legislation to protect the rights and interests of rare disease patients" to be moved by Dr Hon Fernando CHEUNG**
(*LC Paper No. CB(3)303/18-19*)

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- (iii) **Motion on "Creating opportunities to assist small and medium enterprises and promoting upward mobility of young people" to be moved by Hon Tony TSE**
(LC Paper No. CB(3)302/18-19)

21. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above three motions would be Wednesday, 16 January 2019.

Report of HC on Consideration of Subsidiary Legislation

22. The Chairman invited Members to note the list tabled at the meeting (LC Paper No. CB(3)298/18-19), which contained four items of subsidiary legislation the period for amendment of which would expire at the Council meeting of 23 January 2019. She reminded Members to indicate their intention by 5:00 pm on Tuesday, 15 January 2019, should they wish to speak on any of those items of subsidiary legislation.

VI. Reports of Bills Committees and subcommittees

- (a) **Report of the Subcommittee on Three Regulations to Exempt the Toll for Franchised Buses Using Government Tunnels as well as the Tsing Ma and Tsing Sha Control Areas**
(LC Paper No. CB(4)394/18-19)

23. Mr Frankie YICK, Chairman of the Subcommittee, briefed Members on the deliberations of the Subcommittee as detailed in its report. Mr YICK said that while the Subcommittee raised no objection to the three Regulations, it had passed a motion requesting the Administration to include non-franchised buses (residents' service) and green minibuses in the toll exemption arrangement. As the suggestion set out in the motion might have the charging effect, the Subcommittee would not propose amendments to the three Regulations in this regard.

24. The Chairman reminded Members that the period for amending the three Regulations would expire at the Council meeting of 23 January 2019, and the deadline for giving notice of amendments, if any, would be Wednesday, 16 January 2019.

(b) Report of the Subcommittee on Fugitive Offenders (France) Order

25. Mr James TO, Chairman of the Subcommittee, made a verbal report on the deliberations of the Subcommittee. He said that the purpose of the Fugitive Offenders (France) Order ("the Order") was to direct that the procedures for the surrender of fugitive offenders ("SFO") in the Fugitive Offenders Ordinance (Cap. 503) ("FOO") should apply as between Hong Kong and France.

26. Mr TO further said that the Subcommittee had held two meetings with the Administration and had completed its scrutiny work. The Subcommittee noted that an "alternative formulation" was adopted in the agreement on the SFO arrangements between Hong Kong and France, which did not list the offences for which SFO might be granted. Although the alternative formulation complied with the requirements of FOO, at the suggestion of members of the Subcommittee, the Administration had agreed to publish the lists of offences to be exchanged with France on the website of DoJ and as Government notice in the Gazette when the Order was about to commence.

27. Mr TO further advised that the Subcommittee had also made an article-by-article comparison of the provisions of the Order with those in the Model Agreement for the Surrender of Fugitive Offenders of the Hong Kong Special Administrative Region. In the course of examining the provisions, the Subcommittee had discussed in detail the SFO procedures, including the mandatory and discretionary grounds of refusal, postponed surrender, transit arrangements of a person surrendered, as well as how Hong Kong should handle concurrent requests for surrender of the same person from France, a third state, and any other part of the People's Republic of China ("PRC").

28. Mr TO added that regarding the handling of concurrent requests, the Administration had advised members of the Subcommittee that there was a provision in the agreement on the SFO arrangements between Hong Kong and France that for the Hong Kong Special Administrative Region, the provisions governing the handling of concurrent requests received from France and a third state should not affect the SFO arrangement between Hong Kong and any other part of PRC. The Administration explained that currently, there was no SFO arrangement between Hong Kong and any other part of PRC. However, if there was such an arrangement in the future, the request for surrender of the same person

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received from any other part of PRC would take precedence over the requests received from France and a third state.

29. Members noted that the Subcommittee raised no objection to the Order and would not move a motion to repeal it. The Subcommittee would submit a written report in due course.

30. The Chairman reminded Members that LegCo could only repeal but not amend the Order. As the period for repealing the Order would expire at the Council meeting of 23 January 2019, the deadline for giving notice of repeal, if any, would be Wednesday, 16 January 2019.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)553/18-19)

31. The Chairman said that as at 10 January 2019, there were 11 Bills Committees, seven subcommittees under HC and six subcommittees on policy issues under Panels in action. Eight subcommittees on policy issues were on the waiting list.

VIII. Any other business

32. There being no other business, the meeting ended at 2:50 pm.