

立法會  
*Legislative Council*

LC Paper No. CB(2) 65/03-04

Ref : CB2/H/5

**House Committee of the Legislative Council**

**Minutes of the 1st meeting  
held in the Legislative Council Chamber  
at 2:30 pm on Friday, 10 October 2003**

**Members present :**

Hon Miriam LAU Kin-ye, JP (Chairman)  
Hon Fred LI Wah-ming, JP (Deputy Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon James TIEN Pei-chun, GBS, JP  
Hon Cyd HO Sau-lan  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon Martin LEE Chu-ming, SC, JP  
Dr Hon Eric LI Ka-cheung, GBS, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Dr Hon LUI Ming-wah, JP  
Hon NG Leung-sing, JP  
Hon Margaret NG  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon James TO Kun-sun  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Hon Bernard CHAN, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon LEUNG Yiu-chung  
Hon SIN Chung-kai  
Hon Andrew WONG Wang-fat, JP  
Hon WONG Yung-kan  
Hon Howard YOUNG, SBS, JP  
Dr Hon YEUNG Sum  
Hon YEUNG Yiu-chung, BBS  
Hon LAU Chin-shek, JP  
Hon LAU Kong-wah, JP  
Hon LAU Wong-fat, GBS, JP

Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk  
Hon Andrew CHENG Kar-foo  
Hon SZETO Wah  
Dr Hon LAW Chi-kwong, JP  
Hon TAM Yiu-chung, GBS, JP  
Dr Hon TANG Siu-tong, JP  
Hon Abraham SHEK Lai-him, JP  
Hon LI Fung-ying, JP  
Hon Henry WU King-cheong, BBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Michael MAK Kwok-fung  
Hon Albert CHAN Wai-yip  
Hon LEUNG Fu-wah, MH, JP  
Dr Hon LO Wing-lok, JP  
Hon WONG Sing-chi  
Hon Frederick FUNG Kin-kee  
Hon Audrey EU Yuet-mee, SC, JP  
Hon MA Fung-kwok, JP

**Members absent :**

Dr Hon David CHU Yu-lin, JP  
Hon CHAN Kwok-keung, JP  
Hon CHAN Yuen-han, JP  
Hon CHAN Kam-lam, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Timothy FOK Tsun-ting, SBS, JP  
Hon IP Kwok-him, JP  
Hon LAU Ping-cheung

**Clerk in attendance :**

Mrs Justina LAM Clerk to the House Committee

**Staff in attendance :**

Mr Ricky C C FUNG, JP	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mr LAW Kam-sang, JP	Deputy Secretary General
Mr Ray CHAN	Assistant Secretary General 3

Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Miss Odelia LEUNG	Chief Assistant Secretary (1)4
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Connie FUNG	Assistant Legal Adviser 3
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Monna LAI	Assistant Legal Adviser 7
Miss Lolita SHEK	Senior Assistant Secretary (2)7

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**I. Confirmation of the minutes of the meeting held on 3 October 2003**  
(*LC Paper No. CB(2) 3119/02-03*)

The minutes were confirmed.

**II. Matters arising**

**Report by the Chairman on the meeting with the Chief Secretary for Administration (CS)**

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2. The Deputy Chairman said that Mrs Selina CHOW had informed CS that she had written to him to convey the conclusions of the Subcommittee on United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002.

3. The Deputy Chairman further said that Mrs CHOW thanked CS for his co-operation during her tenure as Chairman of the House Committee, and expressed hope that the Administration and the Legislative Council (LegCo) would continue to improve their working relationship. The Deputy Chairman added that CS in turn thanked Mrs CHOW for her efforts in enhancing the co-operation and communication between the Administration and the Council.

**III. Business arising from previous Council meetings**

**Legal Service Division report on subsidiary legislation gazetted on 3 October 2003 and tabled in Council on 8 October 2003**

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(*LC Paper No. LS 2/03-04*)

4. The Legal Adviser said that there were five items of subsidiary legislation gazetted on 3 October 2003 and tabled in Council on 8 October

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2003.

5. The Legal Adviser explained that the Matrimonial Causes (Amendment) Rules 2003 amended the principal Rules to disapply certain provisions and prescribe new forms for use in the proceedings of an application by the respondent to a petition for divorce for the court to consider his financial position after divorce, and an application for ancillary relief. The Legal Adviser further explained that the Chief Justice appointed a working group in 1999 to consider streamlining and expediting the procedures on such applications. The working group had recommended that the reformed procedures should be tested by the implementation of a two-year pilot scheme which required that certain provisions of the principal Rules be set aside.

6. The Legal Adviser said that the Panel on Administration of Justice and Legal Services (AJLS Panel), the Women's Commission as well as prominent local women's groups and services agencies had been consulted on the pilot scheme. He added that these Rules would come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

7. Miss Margaret NG, Chairman of the AJLS Panel, informed Members that the Panel was briefed on the pilot scheme at its meeting on 27 January 2003. Most members supported the objective of the pilot scheme, and a member had suggested that the relevant parties, especially the women's groups, should be further consulted before the implementation of the pilot scheme. The Administration accepted the suggestion and subsequently provided a paper to inform the Panel of the outcome of the consultation exercise. Miss NG added that at the Panel meeting on 26 May 2003, members agreed that as the policy aspects of the pilot scheme had been considered by the Panel, the Administration could proceed to introduce the Amendment Rules.

8. Referring to the Copyright (Amendment) Ordinance 2003 (Commencement) Notice 2003, the Legal Adviser informed Members that the Notice specified 28 November 2003 as the date on which the Ordinance would come into operation. He added that the Copyright (Amendment) Ordinance 2003 had been studied by a Bills Committee prior to its enactment.

9. The Legal Adviser said that the Panel on Commerce and Industry had not been consulted on the commencement date of the Ordinance. The Legal Service Division had asked the Administration what actions had been taken to prepare for the commencement of the Ordinance. In response, the Administration had outlined the actions taken and confirmed that there was no outstanding action or undertaking required to be implemented.

10. Mr SIN Chung-kai said that he was the Chairman of the Bills Committee which studied the Copyright (Amendment) Bill 2001. The Bills Committee

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had discussed and supported the commencement date of the Ordinance. Mr SIN further said that the Administration had intended for the Ordinance to come into operation earlier. However, as the Bill was passed by the Council in July 2003, it would be more appropriate for the Ordinance to commence operation after the summer recess. Mr SIN added that it was not necessary to set up a subcommittee to study the Commencement Notice.

11. The Legal Adviser said that no difficulties in relation to the legal and drafting aspects of the five items of subsidiary legislation had been identified. Members did not raise any questions on these items of subsidiary legislation.

12. The Chairman informed Members that the deadline for amending these items of subsidiary legislation was 5 November 2003, or 26 November 2003, if extended by resolution.

**IV. Further business for the Council meeting on 15 October 2003**

**Members' motion**

**Motion on "Better contingency mechanism and preventive measures on the Severe Acute Respiratory Syndrome"**

*(Wording of the motion issued vide LC Paper Nos. CB(3) 21 and 36/03-04 dated 3 and 8 October 2003 respectively.)*

13. The Chairman informed Members that the wording of Mr Michael MAK's motion on "Better contingency mechanism and preventive measures on the Severe Acute Respiratory Syndrome" had been issued to Members.

**V. Chief Executive's Question and Answer Session on 16 October 2003**

14. The Chairman said that the session would be held from 3:00 pm to 4:00 pm on Thursday, 16 October 2003. She invited Members to give suggestions on topics for the Chief Executive (CE) to answer questions on.

15. Ms Emily LAU said that she would like to raise questions on the calling on CE to step down and the review on constitutional development after 2007.

16. Mr Michael MAK said that the report of the Severe Acute Respiratory Syndrome (SARS) Expert Committee had not discussed CE's role in the handling of the outbreak. He considered that CE should answer questions on his role in the handling of the SARS outbreak.

17. Mr MAK further said that at its meeting on 30 May 2003, the House

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Committee had demanded for the appointment of a Commission of Inquiry to inquire into the handling of the SARS outbreak. However, no Commission of Inquiry had so far been appointed and CE should explain why.

18. Miss Margaret NG said that in reply to a written question raised by Dr YEUNG Sum at the Council meeting on 8 October 2003, the Secretary for Constitutional Affairs had informed Members that the Constitutional Affairs Bureau was conducting internal research on issues relating to constitutional development after 2007. Miss NG suggested that CE should be requested to provide information on the timetable and contents of the research, and whether the contents and outcome of the research would be made public.

19. Mr James TIEN said that he would like CE to talk about whether the Capital Investment Entrant Scheme would be extended to Mainland residents.

20. The Chairman said that she would convey these topics to CS at her meeting with him on Monday.

**VI. Business for the Council meeting on 22 October 2003**

(a) **Questions**

*(LC Paper No. CB(3) 30/03-04)*

21. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 22 October 2003.

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

**Road Traffic (Amendment) Bill 2003**

22. The Chairman informed Members that the Administration had given notice to introduce the above Bill into the Council on 22 October 2003, and the House Committee would consider the Bill at its meeting on 24 October 2003.

(c) **Government motion**

**Proposed resolution to be moved by the Secretary for the Environment, Transport and Works under the Western Harbour Crossing Ordinance**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 22/03-04 dated 3 October 2003.)*

*(LC Paper No. LS 1/03-04)*

23. The Legal Adviser said that the purpose of the proposed resolution was

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to seek the Council's approval for the Western Harbour Crossing (Amendment) Bylaw 2003. The objective of the Amendment Bylaw was to relax the speed limit inside the conduits of the Western Harbour Crossing from 70 km to 80 km per hour.

24. The Legal Adviser further said that the Panel on Transport had been consulted and was supportive of the proposal. The Amendment Bylaw would come into operation on 1 November 2003 if the resolution was passed at the Council meeting on 22 October 2003. The Legal Adviser added that no difficulties relating to the legal and drafting aspects of the proposed resolution and the Amendment Bylaw had been identified.

25. Members did not raise objection to the Secretary for the Environment, Transport and Works moving the proposed resolution at the Council meeting on 22 October 2003.

26. The Chairman informed Members that the deadline for giving notice of amendments, if any, to the proposed resolution was Wednesday, 15 October 2003.

**(d) Members' motions**

**(i) Motion on "Indoor air quality"**

*(Wording of the motion issued vide LC Paper No. CB(3)40/03-04 dated 9 October 2003.)*

27. The Chairman said that the above motion would be moved by Miss CHOY So-yuk and the wording of the motion had been issued to Members.

**(ii) Motion to be moved by Hon CHAN Kam-lam**

28. The Chairman informed Members that the subject matter of the motion to be moved by Mr CHAN Kam-lam was "Elderly persons taking up permanent residence in the Mainland".

29. The Chairman informed Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 15 October 2003.

**VII. Position on Bills Committees/subcommittees**

*(LC Paper No. CB(2) 22/03-04)*

30. The Chairman said that there were 15 Bills Committees and four subcommittees in action as well as four Bills Committees on the waiting list.

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**VIII. Report of the Panel on Administration of Justice and Legal Services on the Hong Kong Law Society Professional Indemnity Scheme**

*(LC Paper No. CB(2) 19/03-04)*

31. Miss Margaret NG, Chairman of the AJLS Panel, said that the Council of the Law Society of Hong Kong was empowered to make rules concerning professional indemnity insurance for solicitors in Hong Kong under sections 73 and 73A of the Legal Practitioners Ordinance (Cap. 159), with the prior approval of the Chief Justice. The Solicitors (Professional Indemnity) (Amendment) Rules 2001, which came into operation on 1 October 2001, increased the contributions payable by solicitors to the Hong Kong Solicitors Indemnity Fund by 150%. In the course of scrutinising the Amendment Rules by a subcommittee, the Law Society, at the request of the subcommittee, undertook to conduct an independent review on the insurance arrangements and report on the progress of the review before 30 September 2003. The subcommittee had recommended that the AJLS Panel should follow up the progress of the review.

32. Miss Margaret NG further said that the Law Society had informed the AJLS Panel in June 2003 that its report would unlikely be available by the end of September 2003, as the consultants engaged to conduct the review had to defer their visit to Hong Kong due to the SARS outbreak.

33. Miss Margaret NG informed Members that a seminar was held by the Law Society on 18 September 2003, and a questionnaire was issued by the consultants on 9 October 2003 to members of the legal profession to seek their views. Miss NG added that she expected that the report would be ready by the end of November 2003, and the Panel would report to the House Committee upon receipt of the report.

**IX. Report of the Panel on Health Services on its proposal for a select committee to be appointed to inquire into the handling of the SARS outbreak**

*(LC Paper No. CB(2) 15/03-04)*

34. Dr LO Wing-lok said that Mr Michael MAK, Chairman of the Panel on Health Services (HS Panel), had asked him to present the report. Dr LO further said that the Panel had discussed the findings and recommendations of the report of the SARS Expert Committee at its special meetings on 2 and 6 October 2003. Panel members were generally dissatisfied that the Expert Committee had not found any individual "deemed to be culpable of negligence, lack of diligence or maladministration" in the handling of the SARS epidemic. The following motion was passed unanimously at the special meeting of the

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Panel on 6 October 2003 -

“That this Panel recommends to the House Committee to appoint a select committee to inquire into the Government’s and the Hospital Authority’s handling of the SARS outbreak, which should include eliciting the facts of the events of the outbreak, examining the performance and accountability of the Government and its officials and the principal officers of the Hospital Authority during the outbreak.”

35. Dr LO Wing-lok said that recently, there were rumours that the Government would appoint a Commission of Inquiry. In his view, the Government had missed the right moment to appoint a Commission of Inquiry. Dr LO pointed out that the Government had always stressed that the SARS Expert Committee was very independent and that its investigation would also look at the question of responsibility. The Expert Committee itself had also indicated that it would identify any individuals found to be culpable of negligence, lack of diligence or maladministration in the handling of the SARS epidemic. Dr LO said that the public in general was disappointed with the Expert Committee’s report and did not find its conclusion that no one should be held responsible acceptable. Even if a Commission of Inquiry was to be appointed by the Government right away, it would only be perceived by the public as an attempt to avoid an inquiry by LegCo. Such a move by the Government would also undermine the credibility of the Expert Committee and the Commission of Inquiry, if one was to be appointed. Dr LO considered it inappropriate for a Commission of Inquiry to be appointed by the Government at this stage, now that LegCo was considering the appointment of a select committee.

36. Dr LO Wing-lok further said that the determination of LegCo to set up a select committee should not be affected by rumours that the Government might appoint a Commission of Inquiry. Dr LO added that if a Commission of Inquiry was appointed, and if the public was not satisfied with its findings, it would then be too late for LegCo to consider the appointment of a select committee. Dr LO hoped that Members would agree that a select committee should be appointed by the Council to inquire into the handling of the SARS outbreak, and that a subcommittee should be formed at this meeting to undertake the necessary preparatory work.

37. The Chairman pointed out that at its meeting on 30 May 2003, the House Committee had passed a motion demanding “the Government to appoint an independent Commission of Inquiry in or before October 2003 to conduct an investigation to find out the truth and whether any person should be held responsible; if the Government refuses to do so, the House Committee will consider setting up a select committee”. The Chairman asked Members to give views on how the motion should be followed up, in addition to the

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proposal of the Panel.

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38. Referring to paragraph 7 of the Panel's paper, Ms Audrey EU said that the proposed scope of the inquiry was very wide, and doubted if it would be possible for the select committee to complete the inquiry before the end of the current term. Ms EU further said that based on the experience of the Select Committee on Building Problems in Public Housing Units, an inquiry by a select committee could take a very long time. A pragmatic approach might be to narrow down the scope of the inquiry so that the select committee could complete its work before the end of the current term. Ms EU agreed with Dr LO that a subcommittee should be set up to consider a work plan, and to identify specific areas of inquiry by making reference to the report of the Expert Committee. Ms EU added that the subcommittee should report to the House Committee at its next meeting on 17 October 2003.

39. Ms Audrey EU said that she still preferred the appointment of a Commission of Inquiry headed by a judge to the formation of a select committee, as judges were more professional in conducting inquiries. In response to Dr LO Wing-lok's earlier remarks about the lack of credibility of a Commission of Inquiry, Ms EU further said that should the Executive Council appoint a Commission of Inquiry which would be chaired by the Chief Justice, it would certainly have credibility and be able to gain the confidence and trust of the public.

40. Referring to the penultimate paragraph of the letter dated 9 June 2003 from the Chairman of the House Committee to CE, Ms Audrey EU pointed out that the Chairman had already indicated to CE that Members were disappointed with CS's response that the Administration had decided not to appoint a Commission of Inquiry, and that Members hoped that it was not the Administration's final position. Ms EU further pointed out that in CE's reply dated 28 June 2003, he did not directly respond to Members' request for a Commission of Inquiry and had only urged Members to give the Expert Committee a chance to complete its report before drawing any conclusion on what follow-up action was necessary. Ms EU suggested that the Chairman should write to CE to find out what his final decision was regarding Members' request, while the subcommittee would work on the terms of reference of the select committee in the meantime. The House Committee would then take a decision on the matter at its next meeting on 17 October 2003.

41. Dr LAW Chi-kwong said that Members belonging to the Democratic Party were of the view that the public in general was not satisfied with the report of the Expert Committee, and some people did not even trust the Government. These people would therefore have doubts about the credibility of a Commission of Inquiry appointed by the Government. Dr LAW further said that it would be more appropriate for LegCo to appoint a select committee to find out the truth about the outbreak and whether any person should be held

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responsible. Dr LAW added that the House Committee should take a fresh look at the motion passed on 30 May 2003 now that the report of the Expert Committee had been published.

42. Dr LAW agreed with Ms Audrey EU that the scope of the inquiry to be carried out by the select committee should be more focused so that the inquiry could be completed before the end of the current term. Dr LAW also agreed that a subcommittee should be formed right away to study and make recommendations to the House Committee on the terms of reference of the select committee, irrespective of whether a Commission of Inquiry would be appointed by the Government.

43. Ms Audrey EU reiterated that a subcommittee should be formed to consider the terms of reference of the select committee, so that a decision on the Panel's proposal of the appointment of a select committee by the Council could be taken at the next meeting of the House Committee on 17 October 2003. In the meantime, the Government should inform Members of whether a Commission of Inquiry would be appointed.

44. Miss Margaret NG said that she supported the setting up of a subcommittee to study and recommend the terms of reference of the select committee. She suggested that the select committee should be empowered to engage counsel to assist in the examination of witnesses to enable the inquiry to be conducted in a more efficient manner.

45. As regards the appointment of a Commission of Inquiry, Miss Margaret NG was of the view that it was clear from CE's reply dated 28 June 2003 that the Government had no intention of appointing a Commission of Inquiry. Miss NG did not consider it necessary for the House Committee to seek clarification with the Government on the matter. Mr Michael MAK concurred with Miss NG.

46. Mr Michael MAK said that it was the duty of LegCo to inquire into the handling of the SARS epidemic. Mr MAK further said that many members of the public had expressed their dissatisfaction with the report of the Expert Committee, and their demand for an independent inquiry to find out whether any person should be held responsible was loud and clear. Members should not let them down by deferring a decision on the appointment of a select committee by LegCo to conduct the inquiry.

47. Mr Michael MAK added that the House Committee should first take a decision on the appointment of a select committee at this meeting, before consideration was given to forming a subcommittee to undertake preparatory work. Mr MAK further asked whether there were any rules or legal restrictions on the appointment of a select committee by LegCo.

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48. The Legal Adviser said that the appointment of select committees was governed by Rule 78 of the Rules of Procedure. Under Rule 78(1), the Council could appoint one or more select committees to consider matters or bills which the Council referred to the committees. The Legal Adviser further said that there were no expressed restrictions in the Rules regarding the nature of a matter which was to be referred to a select committee.

49. In response to the Chairman, Assistant Secretary General 2 said that in the cases of the select committees appointed to inquire into matters relating to the Kwun Lung Lau landslip, departure of Mr LEUNG Ming-yin and the airport opening chaos, subcommittees were formed to undertake the necessary preparatory work. Assistant Secretary General 2 further said that in the case of the Select Committee on Building Problems in Public Housing Units, no subcommittee was formed by the House Committee, as the subject matter was discussed in detail at several of its meetings. In addition, the wording of the motion on the appointment of the select committee, which also set out its terms of reference, was available when Members were asked to take a decision on the matter.

50. Assistant Secretary General 2 added that in the present case, if a subcommittee was to be formed to draw up recommendations on the terms of reference, size of the select committee and procedure for nomination of Members for appointment by the President to the select committee, Members could request the subcommittee to report its recommendations at the next House Committee meeting on 17 October 2003.

51. Ms Emily LAU said that since the proposal of the HS Panel was on the agenda of this meeting, it was understandable that some Members would want to take a decision at this meeting. Ms LAU pointed out that the Government was fully aware that Members would be discussing the Panel's proposal today, and yet it had not come forward to say anything about whether a Commission of Inquiry would be appointed. Ms LAU therefore considered it unnecessary for the House Committee to seek clarification on the Government's position. Regarding the scope of the inquiry, Ms LAU agreed that a pragmatic approach should be adopted to enable the select committee to complete its inquiry within the limited time available. She suggested that either the scope should be narrowed down or the inquiry should be conducted by phases.

52. Ms Emily LAU further said that accountability was very important and she did not agree that the appointment of a select committee by LegCo to inquire into the handling of the SARS outbreak would politicise the matter. Ms LAU pointed out that in the previous inquiries carried out by LegCo, the public in general considered that the relevant select committees were able to complete their tasks satisfactorily and effectively. Ms LAU was of the view

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that Members should decide at this meeting whether LegCo should appoint a select committee, unless there were very good justifications for not doing so. Ms LAU added that LegCo should conduct its own inquiry, even if there were other inquiries being conducted at the same time. Ms LAU pointed out that it was common for the Congress of the United States to hold its own investigation into a certain matter, while a few other inquiries on the same matter were being conducted in parallel.

53. Ms Emily LAU said that setting up a subcommittee to undertake the necessary preparatory work for the appointment of the select committee would not cause delay, as the subcommittee should report its recommendations on the terms of reference and other related matters to the House Committee on 17 October 2003. The Chairman could then give notice to move a motion in Council, on behalf of the House Committee, on the appointment of the select committee. Ms LAU added that the select committee must complete its work before the end of the current term.

54. Mr James TIEN pointed out that at the House Committee meeting on 30 May 2003, Members belonging to the Liberal Party (LP) had indicated that they would decide on the need for a Commission of Inquiry or a select committee after they had seen the report of the Expert Committee. LP Members had therefore abstained from voting on the motion proposed by Dr YEUNG Sum at that meeting.

55. Mr James TIEN said that after studying the Expert Committee's report, he shared the views of other Members that the report had failed to address the question of accountability and this should be followed up by LegCo. Mr TIEN further said that LP Members supported that an independent inquiry should be carried out, either by a LegCo select committee or by a Commission of Inquiry appointed by the Government. LP Members would not support two separate inquiries, as this would be a duplication of efforts. Mr TIEN added that as the Administration had not indicated that a Commission of Inquiry would be appointed, LP Members would support in principle the appointment of a select committee by LegCo.

56. Mr James TIEN said that he shared Ms Audrey EU's view that it was necessary to narrow down the scope of the inquiry given the limitation of time. Mr TIEN expressed concern that if the scope was very wide, it would be necessary for the select committee to summon a large number of government officials and staff members of the Hospital Authority to give evidence, and this would affect their daily work. Mr TIEN also expressed concern that a prolonged inquiry might delay the implementation of the recommendations of the Expert Committee. Mr TIEN supported the formation of a subcommittee to propose the terms of reference and undertake other necessary preparatory work. He added that the subcommittee should report on its recommendations

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to the House Committee on 17 October 2003.

57. Dr YEUNG Sum said that some recent reports in the press had commented that LegCo did not have the determination to conduct an independent inquiry into the handling of the SARS outbreak, and that the Government had been sounding out Members on the appointment of a Commission of Inquiry. Dr YEUNG further said that Members belonging to the Democratic Party were of the view that a decision should be taken at this meeting on whether a select committee should be appointed by LegCo. Dr YEUNG considered that any delay in making the decision would send a wrong message to the public that LegCo had somehow lost its vigour and impetus in pursuing the matter. Dr YEUNG pointed out that the SARS outbreak had dealt a heavy blow to Hong Kong. Thousands of people were infected and 299 persons died. Members would owe the public and victims of the SARS outbreak an explanation, if no decision on the appointment of a select committee was taken at this meeting.

58. Dr YEUNG Sum stressed that LegCo should conduct its own inquiry irrespective of what Government planned to do. Dr YEUNG said that the Government had been given ample chance to consider the appointment of a Commission of Inquiry, and the Members' request was clearly conveyed to CE by the Chairman of the House Committee in her letter dated 9 June 2003. Dr YEUNG pointed out that at the CE's Question and Answer Session on 15 May 2003, CE had told Members that the purpose of the Expert Committee was to focus on issues, and not on finding faults with anyone. Dr YEUNG added that the public had lost confidence in CE. They were disappointed with the Expert Committee's report, and they would not be convinced that a Commission of Inquiry appointed by the Government would summon CE to give evidence.

59. Dr YEUNG said that LegCo had its own constitutional role and should not be led by the Government. There was no substitute for an inquiry by a select committee given the high transparency of its open hearings and the independent status of LegCo. Dr YEUNG further said that a subcommittee should be formed to consider how the scope of the inquiry could be narrowed down and to work out other operational details. He urged Members belonging to various political parties and groupings to make their best efforts to participate in the work of the select committee.

60. Dr Eric LI agreed with Dr YEUNG Sum that Members should take a decision at this meeting; otherwise, Members would appear to the public and the Government as indecisive and this would be undesirable. Dr LI said that he supported the appointment of a select committee, and agreed that the operational details could be worked out later. Dr LI further said that the select committee would not have a lot of time to conduct the inquiry, as it would need to complete its work in July 2004. Dr LI added that since the Government had

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been silent about the appointment of a Commission of Inquiry, it was not necessary for Members to be concerned about its intentions.

61. Mr LEE Cheuk-yan said that it was now too late for the Government to appoint a Commission of Inquiry. Members had from the outset urged the Government to appoint a Commission of Inquiry to inquire into the handling of the SARS outbreak, and had given the Government ample chance to do so. Mr LEE further said that even if a Commission of Inquiry was to be appointed immediately, the public would suspect that the Government was only trying to avoid an inquiry by a LegCo select committee.

62. Mr LEE said that instead of dealing with the problems in the handling of the SARS outbreak with good sense, the Government had tried to do so by political means; hence its credibility was seriously undermined. Mr LEE further said that the Government had failed to address the concerns of the public regarding how the problems could have been dealt with more effectively for reference in the future, and whether any persons should be held accountable.

63. Mr LEE further said that it was reported in the press that LegCo Members had changed their stance on the appointment of a select committee to inquire into the handling of the SARS outbreak. Mr LEE found such reports unfair. He added that the Government should not rely on the media to disseminate information and to gauge the views of individual Members.

64. Mr LEE considered that a select committee should be appointed by LegCo, even if a Commission of Inquiry was to be appointed by the Government. Mr LEE said that the relevant facts relating to the handling of the SARS outbreak could be revealed through public hearings. Moreover, the public had confidence in an independent inquiry by LegCo. Mr LEE further said that a decision on the appointment of a select committee should be taken at this meeting, and that the scope of its inquiry should be narrowed down given the time constraint.

65. Dr LO Wing-lok agreed with Miss Margaret NG and Ms Emily LAU that the Government would have already informed Members of its intentions about the appointment of a Commission of Inquiry if it wanted to do so. It was therefore not necessary to seek clarification with the Government. Dr LO said that if Members belonging to different political parties did not object to the proposed appointment of a select committee by LegCo, Members should also decide on the setting up of a subcommittee to consider the scope of the inquiry and other related matters.

66. Dr LO said that Members would lose the respect of the public if they did not respect themselves. Dr LO further said that Members should not believe in hearsay and should have the courage to exercise the powers conferred by the

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Legislative Council (Powers and Privileges) Ordinance to perform their constitutional duty.

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67. Mr Frederick FUNG agreed that a decision should be taken at this meeting on the proposed appointment of a select committee to inquire into the handling of the SARS outbreak. Mr FUNG said that Members had previously made it clear to CE that in addition to focusing on factual and technical issues, the Expert Committee should look at the question of responsibility, but CE did not agree. The Chairman of the House Committee had also written to CE to convey Members' request for a Commission of Inquiry to be appointed, but so far the Government had not taken any action. Mr FUNG further said that the Government had failed to learn from its mistakes over the past six years and seemed to be counting on its luck to get away with facing an independent inquiry to answer questions on responsibility and accountability in the handling of the outbreak.

68. Referring to comments in some press reports that the matter would be politicised should LegCo conduct an inquiry, Mr FUNG said that the matter had already become a political issue, as CE had been evading the question of responsibility and accountability. Mr FUNG further said that although issues before the Council could be politicised, there also existed a balance of political forces in the Council, as Members were from various political backgrounds. While some Members might want to put the blame on CE, there were also Members who would defend him. Mr FUNG added that as the purpose of an inquiry by a select committee was to find out the truth, all parties concerned, including government officials, could give evidence.

69. Mr Michael MAK said that he was uncomfortable with comments that Members would politicise the matter if an inquiry was to be conducted by a select committee of LegCo, as they seemed to suggest that LegCo would not be able to conduct the inquiry in an impartial manner. Mr MAK stressed that all hearings of select committees were open and fair. He appealed to Members not to change their stance even if a Commission of Inquiry was later appointed by the Government.

70. Ms Cyd HO expressed support for the proposed appointment of a select committee. Ms HO said that the select committee was not asking for "heads to roll", but to find out the truth about what went wrong in the handling of the SARS outbreak. As the hearings of the select committee would be held in open sessions, the public and the media could monitor whether issues before the select committee were over-politicised. Ms HO added that the Government should not have released information through "informed sources" to try to influence Members. She commented that such a tactic was despicable.

71. Ms HO further said that as the current term of LegCo would end in July next year, the select committee might have to conduct its inquiry by phases

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based on events or stages of development in the SARS outbreak, and prepare a report upon the completion of each phase of inquiry. Ms HO considered that this approach would ensure that the efforts of the select committee would not be wasted if the overall inquiry could not be completed before July 2004. Ms HO added that Members should reach an understanding that should there be another outbreak of SARS, the inquiry should be suspended to enable the government officials and healthcare personnel concerned to concentrate on the battle against SARS.

72. The Chairman said that while the last Council meeting was scheduled for 7 July 2004, the current LegCo term would end on 30 September 2004. She further said that subject to CE's determination of the date on which LegCo would be prorogued for the purpose of holding a general election under the Legislative Council Ordinance, Members could continue with any outstanding work of the select committee after 7 July 2004, if necessary.

73. Dr TANG Siu-tong said that he agreed in principle that a Commission of Inquiry should be appointed to inquire into the handling of the SARS outbreak, and if the Government refused to do so, a select committee should be appointed by LegCo. Dr TANG pointed out that the motion passed by the House Committee at its meeting on 30 May 2003 had specified a timeframe, i.e. in or before October, for the Government to consider appointing a Commission of Inquiry. Dr TANG asked whether it was necessary for Members to first deal with that motion before considering the proposal of the HS Panel for the appointment of a select committee. Dr TANG also asked whether a select committee could engage counsel to put questions to witnesses on its behalf, as proposed by Miss Margaret NG.

74. Dr TANG further said that the scope of the inquiry proposed by the HS Panel was too wide. He considered that as the report of the Expert Committee had already identified shortcomings and problems in certain areas, the select committee could use it as the basis for its inquiry.

75. The Legal Adviser said that the motion passed by Members at the House Committee meeting on 30 May 2003 mainly served to confirm in formal terms the position that Members had taken at that meeting. The Legal Adviser further said that the motion was not legally binding, although it should be respected by Members and the Administration. He added that the motion did not preclude the House Committee from considering the appointment of a select committee under other circumstances. In the light of the discussion of the House Committee and Members' understanding of the current position of the Administration, it was not necessary for the House Committee to take any specific action in relation to the motion before it could proceed to take a decision on the proposal of the HS Panel.

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76. Regarding Miss Margaret NG's suggestion of engaging counsel, the Legal Adviser pointed out that select committees could engage consultants and experts to assist in their enquiries. The Legal Adviser informed Members that in the case of the select committee appointed to inquire into matters relating to the departure of Mr LEUNG Ming-yin, the select committee had sought legal opinion of an overseas counsel. In the case of the select committee appointed to inquire into matters relating to the airport opening chaos, the select committee had engaged the services of experts in information technology and mechatronics. The Legal Adviser suggested that it would be better if the question of whether counsel should be engaged to assist in the examination of witnesses was left to the select committee.

77. Dr LAW Chi-kong pointed out that in the case of the select committee appointed to inquire into the airport opening chaos, the House Committee gave agreement in principle to the appointment of the select committee before the detailed terms of reference were determined. Dr LAW said that Members could first agree in principle to the appointment of a select committee by the Council to inquire into the handling of the SARS outbreak. The wording of the motion on the appointment of the select committee, which would set out its terms of reference, could be worked out later. Dr LAW added that the select committee should look into the question of accountability and responsibility in the handling of the SARS outbreak.

78. Mr MA Fung-kwok said that the scope of the inquiry proposed by the HS Panel only covered the Government and the Hospital Authority. He suggested that the select committee should also look into the performance of the tertiary institutions.

79. On behalf of Members belonging to the Democratic Alliance for Betterment of Hong Kong, Mr TAM Yiu-chung expressed support for the appointment of a select committee to inquire into the handling of the SARS outbreak, as proposed by the HS Panel, and the formation of a subcommittee to undertake the necessary preparatory work. Mr TAM added that he had no objection to taking a decision on the proposal at this meeting. Mr TAM suggested that the subcommittee should be asked to consider whether the select committee could engage counsel to put questions to witnesses on its behalf, and whether witnesses could be represented by Counsel in answering questions.

80. Mr SZETO Wah said that CE and the Government had already lost their credibility over the handling of the SARS outbreak. Mr SZETO further said that LegCo would stand to lose its credibility if Members did not take a decision at this meeting on whether a select committee should be appointed. Mr SZETO expressed agreement with Dr LO Wing-lok that Members should not believe in hearsay, and they should have the courage to exercise the powers

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conferred under the Legislative Council (Powers and Privileges) Ordinance to inquire into the handling of the SARS outbreak. He added that as the House Committee had already passed a motion at its meeting on 30 May 2003, a decision should be taken at this meeting that a select committee should be appointed, and that a subcommittee should be formed immediately to work out the operational details.

81. Referring to some reports in the press that the Government was considering the appointment of a Commission of Inquiry, Mr Martin LEE said that it was not necessary to clarify with the Government. Mr LEE further said that Members should follow the spirit of Rule 25(1)(i) of the Rules of Procedure which stated " a question shall not be asked whether statements in the press or of private individuals or private concerns are accurate".

82. Mr Andrew WONG said that at the House Committee meeting on 30 May 2003, Members agreed that the best approach would be for a Commission of Inquiry to be appointed under Cap. 86 in or before October, and if the Government refused to do so, then the House Committee would consider whether a select committee should be appointed by the Council. Mr WONG considered that the passing of the motion at that meeting was to give the Government a chance to consider appointing a Commission of Inquiry. As the Government had been given a long time to consider Members' request, he had no objection to Members taking a decision at this meeting on whether a select committee should be appointed. Mr WONG added that such a decision could serve as an ultimatum to the Government. His personal view was that should the Government decide to appoint a Commission of Inquiry before the motion for the appointment of the select committee was moved at the Council meeting, the notice should be withdrawn.

83. Mr Andrew WONG said that he agreed in principle that the select committee should primarily look at political accountability in the handling of the SARS outbreak. Mr WONG further said that a subcommittee should be set up immediately to work out the details of the scope of the inquiry and other operational details. Mr WONG added that the select committee should aim to complete its work in July 2004. He pointed out that even if CE agreed not to prorogue the Council in July 2004 to allow the select committee a bit more time to finish its inquiry, most Members would be busy with their electioneering activities.

84. Miss Margaret NG said that it would seem more logical for a subcommittee to propose the scope of the inquiry and the size of membership of the select committee before Members decided on the appointment of the proposed select committee. However, she respected other Members' view that this would give a wrong impression to the public that Members might have changed their stance on the matter, if a decision was not taken by the House

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Committee at this meeting.

85. Mr NG Leung-sing said that he had no objection to the appointment of a select committee if it was absolutely necessary and if there was no other inquiry being conducted at the same time, as public funds would be involved. Mr NG further said that given the limitation of time, the select committee should adopt a pragmatic approach in order that it could complete its inquiry before mid July next year.

86. Dr LO Wing-lok proposed and Members agreed that the following motion be moved for a decision at the meeting -

“本內務委員會決議在立法會提出成立專責委員會的議案，調查在「沙士」爆發期間，政府及醫管局的處理，並決議成立小組委員會，敲定專責委員會的職權範圍、工作方法及其他有關事宜，在十月十七日向內務委員會報告。”

“That the House Committee resolves that a motion should be moved at a Legislative Council meeting proposing the appointment of a select committee to inquire into the handling of the SARS outbreak by the Government and the Hospital Authority, and that a subcommittee should be set up to formulate the terms of reference and the methodology of the proposed select committee and other related matters, and it should report to the House Committee on 17 October.”

87. The Chairman put the motion to vote. Mr Michael MAK requested that the names of Members who voted be recorded. The following Members voted in favour of the motion -

Mr Kenneth TING, Mr James TIEN, Ms Cyd HO, Mr Albert HO, Ir Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Dr Eric LI, Dr David LI, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr Michael MAK, Mr Albert CHAN, Dr LO Wing-lok, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU, Mr MA Fung-kwok

(45 Members)

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88. No Member voted against the motion and no Member abstained from voting. The Chairman declared that Dr LO's motion was unanimously supported by Members present at the meeting.

89. The following Members agreed to join the subcommittee : Ms Cyd HO, Mr LEE Cheuk-yan, Mrs Sophie LEUNG, Dr LAW Chi-kwong, Dr TANG Siu-tong, Mr Michael MAK and Dr LO Wing-lok.

90. The Chairman said that the subcommittee would start its work immediately and report its recommendations to the House Committee at its next meeting on 17 October 2003.

**X. Vacancy in the Public Accounts Committee**  
(*LC Paper No. PAC 2/03-04*)

91. Dr Eric LI, Chairman of the Committee, informed Members that Mr Tommy CHEUNG had written to seek the President's permission to withdraw his membership from the Public Accounts Committee. Members agreed that a Member should be elected at the House Committee meeting on 17 October 2003 for appointment by the President to fill the vacancy.

**XI. Any other business**

92. There being no other business, the meeting ended at 4:25 pm.