

立法會
Legislative Council

LC Paper No. CB(2)58/01-02
(These minutes have seen
by the Administration)

Ref : CB2/BC/13/00

**Legislative Council
Bills Committee on Chief Executive Election Bill**

**Minutes of the fourth meeting
held on Wednesday, 2 May 2001 at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members Present** :
- Hon IP Kwok-him, JP (Chairman)
 - Hon David CHU Yu-lin
 - Hon James TIEN Pei-chun, JP
 - Hon Cyd HO Sau-lan
 - Ir Dr Hon Raymond HO Chung-tai, JP
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon Eric LI Ka-cheung, JP
 - Hon NG Leung-sing
 - Hon Margaret NG
 - Hon CHEUNG Man-kwong
 - Hon HUI Cheung-ching
 - Dr Hon Philip WONG Yu-hong
 - Hon Jasper TSANG Yok-sing, JP
 - Hon Howard YOUNG, JP
 - Dr Hon YEUNG Sum
 - Hon Ambrose LAU Hon-chuen, JP
 - Hon CHOY So-yuk
 - Hon SZETO Wah
 - Hon TAM Yiu-chung, GBS, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon Tommy CHEUNG Yu-yan, JP
 - Hon Michael MAK Kwok-fung
 - Hon LEUNG Fu-wah, MH, JP
 - Dr Hon LO Wing-lok
 - Hon LAU Ping-cheung
 - Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** :
- Hon Andrew WONG Wang-fat, JP (Deputy Chairman)
 - Prof Hon NG Ching-fai

Hon CHAN Yuen-han
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, SBS, JP

Public Officers : Mr Michael M Y SUEN, GBS, JP
Attending Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs

Ms Doris HO
Principal Assistant Secretary for Constitutional Affairs

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting & Administration)

Ms Phyllis KO
Senior Assistant Law Draftsman

Mr Lawrence PENG
Senior Government Counsel

Clerk in : Mrs Percy MA
Attendance Chief Assistant Secretary (2)3

Staff in : Mr Jimmy MA, JP
Attendance Legal Adviser

Mr Stephen LAM
Assistant Legal Adviser 4

Mr Paul WOO
Senior Assistant Secretary (2)3

I. Meeting with the Administration

Matters arising from the meeting on 28 March 2001
(LC Paper Nos. CB(2)1352/00-01(02))

Judicial officers standing for election of the Chief Executive (CE)

Secretary for Constitutional Affairs (SCA) informed members that the Administration had conducted a research on the practices in seven foreign countries as to whether judicial officers were required to resign from office before running in elections. The survey showed that the situations varied between countries. The Administration's paper had set out the different practices.

2. SCA further said that as proposed under clause 14(b) and 14(c) of the Bill, judicial officers and prescribed public officers (as defined) were disqualified from being nominated as a candidate for the CE election.

3. Miss Margaret NG said that a considerable number of people had expressed concern about permitting former senior judicial officers to be nominated as candidates for the CE election. The concern arose because of the adverse impact this might create on the perception of the maintenance of judicial independence in Hong Kong. She pointed out that senior judicial officers, amongst them were judges of the highest court, quite often dealt with cases involving constitutionally or politically sensitive issues. It was thought that the wish of a judicial officer to be elected to the office of CE might result in justice and judicial independence being compromised when he handled important cases of such a nature. The concern was all the more pertinent in view of the fact that, until universal suffrage for the election of CE was in place, CE would be elected by an Election Committee comprising 800 members.

4. Miss Margaret NG asked whether the Administration would consider amending the Bill to the effect that judicial officers were disqualified from being nominated as candidates for the CE election, even if they had resigned or retired from their judicial office. She added that such a legal restriction could be reviewed if CE was to be returned by universal suffrage.

5. SCA said that the proposal had not been considered by the Administration. He agreed to provide a written response to explain the Administration's stance.

Action
Column

Matters arising from the meeting on 24 April 2001
(LC Paper No. CB(2)1405/00-01(01) and CB(2)1433/00-01(01))

Polling date

6. SCA informed members that the Administration, having considered some members' view that the election of CE should be held on a Sunday, proposed to revise the formula for fixing the polling date so that the election would fall on the first Sunday immediately preceding the date 95 days before the office of the CE became vacant under normal expiry of the term of office. Under the revised proposal, counting backwards from 1 July 2002 when the office of the CE would fall vacant, the polling date for the 2002 CE election would be 24 March 2002 which was a Sunday. The proposed date would avoid the Easter holidays in 2002. SCA added that the Administration would draft the relevant amendments for the consideration of the Bills Committee in due course, subject to members' acceptance of the proposal.

7. Mr Howard YOUNG informed members that he had previously heard of opinions expressed by some EC members and voters in the functional constituency elections that they considered that Thursday would be a better day than Sunday to produce a better voter turnout. He said that he also preferred Thursday to Sunday to be the polling day. He further opined that to enhance voter turnout rate, the day immediately preceding or following a long holiday should be avoided.

Adm 8. Members were concerned about whether the Administration's revised proposal would work in subsequent elections, say for the next five CE elections. The Administration was requested to provide information on the dates of the Easter holidays in the respective years in which the CE election would be held.

Adm 9. In response to the Chairman's request, the Administration also undertook to provide information on the date the Central People's Government (CPG) appointed the successful candidate, after the first CE election was held on 11 December 1996.

Vacancy in office (clause 4)

10. Members noted that under clause 4 of the Bill, the office of CE became vacant -

- (a) on the expiry of the term of office of CE;
- (b) if CE died; or
- (c) if the CPG revoked the appointment of CE.

11. Some members expressed strong reservations about clause 4(c). In their opinion, clause 4(c) provided an unlimited power for CPG to revoke the appointment of CE which was not provided for in the Basic Law (BL). They pointed out that paragraph 1 of BL 45 only provided that CE should be appointed by CPG. There was no mention of CPG's power to remove CE from office. They queried whether clause 4(c) was consistent with BL.

12. Some members also expressed concern that under the present drafting of clause 4(c), CPG could revoke the appointment of CE at any time without giving any reasons. This carried the implication that a serving CE could be removed from office for political considerations or for other reasons not known to the people of Hong Kong. This would seriously undermine the principles of "one country, two systems" and "high degree of autonomy" of the Hong Kong Special Administrative Region (HKSAR). They considered that the need and legal basis for clause 4(c) must be fully clarified.

13. In response, SCA said that clause 4(c) did not provide additional powers for CPG to revoke the appointment of CE under any circumstances. He explained that CPG's power to revoke the appointment of CE originated from BL. BL 45 specified that CE should be appointed by CPG. While the power to remove CE was not expressly stated as such in BL, it flowed from the construction of BL, and in particular from BL 52 and BL 73(9), that CPG had both power of appointment and power of removal. He further pointed out that it was also a concept under common law that a power of appointment included a power of removal.

14. The Administration further advised that the resignation of CE under the circumstances stated in BL 52, or for whatever other reasons, would not take effect until it had been accepted by the CPG. If CE refused to resign under the specified circumstances in BL 52, the ultimate enforcement would be through the impeachment procedure under BL 73(9). Under BL 73(9), where a motion of impeachment was passed by two-thirds majority of Members of the Legislative Council, it must be reported to CPG for a decision. In this context, the "decision" would be a decision on whether or not to remove CE from office. The Administration said that all these inferences were consistent with BL 45 which stated that the CE of the HKSAR should be appointed by CPG.

15. SCA added that any decision by CPG to revoke the appointment of CE would not be taken lightly. In any event, such a decision had to be fully explained and justified. He stressed that the purpose of clause 4(c) was not to provide an unlimited power to CPG but to provide a catch-all provision to cover all unexpected situations of vacancy in the office of CE other than those specified in clause 4(a) and 4(b).

16. Mr TAM Yiu-chung and Mr NG Leung-sing opined that the power of CPG to appoint CE under BL was a substantive power and carried with it the power of removal.

17. Mr TSANG yok-sing said that the purpose of clause 4 was to set out the circumstances under which the office of CE would become vacant. He considered that clause 4(c) did not have the effect of providing CPG with an unrestrained power to remove CE from office.

18. Mr CHEUNG Man-kwong and Ms Audrey EU asked whether clause 4(c) would cover the situation of CPG refusing to appoint an elected candidate as CE.

19. SCA responded that cases of a candidate returned at an election not being able to assume the office of CE would be dealt with under clause 11(2). Clause 11(2) did not deal with situations of vacancy in the office of CE as envisaged in clause 4. He added that it would be extremely unlikely, if not entirely impossible, that CPG would refuse to appoint a duly elected candidate.

20. In reply to Ms Cyd HO, SCA said that no appeal mechanism had been considered in the context of revocation of the appointment of CE.

21. Miss Margaret NG said that the law should be as certain and as exhaustive as possible to avoid ambiguities in meaning. It would not be desirable to have a piece of legislation drafted with the pre-conceived idea that the courts could always be relied upon as the last resort for the interpretation of certain ambiguous provisions. In her opinion, the words "revoke" in English and "撤銷任命" in Chinese in clause 4(c) had a narrow meaning, and failed to provide a clear picture of the situations under which a vacancy in the office of CE would arise. She added that the common law interpretation of a power to appoint as including a power to revoke appointment did not mean that it was not necessary to specify the restrictions for the exercise of such power by CPG. She opined that the Administration should carefully revisit the drafting of clause 4 to reflect the legislative intent accurately.

22. Mr CHEUNG Man-kwong said that clause 4(c) should be reviewed in the context of the express provisions of BL to avoid possible abuse of the power to revoke the appointment of CE.

23. Mr Martin LEE suggested that the Administration should consider limiting the scope of clause 4(c) by specifying the circumstances under which CPG could remove CE from office e.g. upon the resignation of CE under BL 52 and upon the passage of a motion of impeachment against CE under BL 73(9).

- Adm 24. At members' request, the Administration undertook to provide written responses to the following points for further discussion of the Bills Committee-
- (a) The legal basis for maintaining that CPG had a power to revoke the appointment of CE, having regard to the fact that BL made no express reference to CPG's power in this respect;
 - (b) To consider the proposal of setting out the circumstances under which the appointment of CE could be revoked by CPG, such as those stated in BL 52 and BL 73(9), and other circumstances;
 - (c) As a vacancy in the office of CE arose either from the expiry of a term of office or other unexpected circumstances, the Administration should consider revising clause 4 to deal with the two sets of circumstances separately; and
 - (d) To consider revising the wording of clause 4(c) by replacing "revoke" and "撤銷任命" with other more appropriate word/phrase.

(Post-meeting note - The papers submitted by the Administration in response to the issues raised by members were circulated vide LC Paper Nos. CB(2)1518/00-01(01) and 1587/00-01(01))

II. Meetings to receive deputations

25. The Chairman reminded members that the next two meetings on 5 and 8 May 2001 would be for the purpose of receiving deputations on the Bill.
26. The meeting ended at 10:40 am.

Legislative Council Secretariat
15 October 2001