

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of the second meeting
held on Tuesday, 3 April 2001 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present : Hon IP Kwok-him, JP (Chairman)
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
Prof Hon NG Ching-fai
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon CHAN Yuen-han
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members : Hon Andrew WONG Wang-fat, JP (Deputy Chairman)
Absent Hon David CHU Yu-lin
Hon Ambrose LAU Hon-chuen, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung

Public Officers : Mr Michael S M SUEN
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 Peter WONG
Deputy Solicitor General (Constitutional) (Acting)

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
Attendance Legal Adviser

Mr Stephen LAM
Assistant Legal Adviser 4

Mr Paul WOO
Senior Assistant Secretary (2)3

I. Meeting with the Administration

(LC Paper Nos. CB(2)1217/00-01(03) & (04) and 1235/00-01(01) - Administration's responses to issues raised by the Bills Committee at the meeting on 28 March 2001; LS83/00-01)

The Chairman invited members' general views on the Chief Executive Election Bill (the Bill).

2. Speaking on behalf of the Democratic Party and the Frontier respectively, Mr Martin LEE and Ms Emily LAU said that the "small circle" election of the Chief Executive (CE) by an 800-member Election Committee was undemocratic and hence unacceptable. They objected to the Bill in principle. However, as members of the Bills Committee scrutinizing the Bill, they would propose amendments to the Bill where necessary with a view to improving certain provisions. Miss Margaret NG said that in deliberating the Bill, the Bills Committee should do its best to achieve the greatest possible room for democracy in the election of the CE, within the constitutional framework laid down in the Basic Law (BL). Dr YEUNG Sum said that election of CE by universal suffrage should be implemented at an early stage. He urged the Administration to come up with proposals on the mechanism for amending the BL for consideration of the Legislative Council (LegCo) as soon as possible.

3. Miss Margaret NG asked whether provisions on regulation of election-related activities would be prescribed in the legislation. In reply, Secretary for Constitutional Affairs (SCA) said that under the Bill, it was proposed that the Electoral Affairs Commission (EAC) would supervise the CE election. After consulting the public, EAC would issue guidelines relating to the conduct of the CE election and the electioneering activities of candidates at the election. Also, a number of subsidiary legislation such as the regulations on electoral procedures would have to be made by EAC to regulate activities relating to the CE election. The subsidiary legislation would be submitted to LegCo for negative vetting after the Bill became effective.

Election Committee

4. Mr Martin LEE said that according to clause 8 of the Bill, members of the EC constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) (LCO) should be members of the first EC constituted under the CE Bill. He opined that this point was deliberately concealed by the Administration as it had evaded giving a definite answer to the question then raised by LegCo Members on whether the EC formed on 14 July 2000, apart from electing six Members of the second term LegCo in September 2000, would also be responsible for electing the CE in 2002. He considered that the Administration had been grossly irresponsible in dealing with the matter, and

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the way the Administration had acted was unfair to members of the EC as well as to the people who elected them to the EC. Ms Emily LAU shared a similar view.

5. SCA said that clause 8 reflected the BL requirement that the ECs referred to in BL Annexes I and II were one and the same. Legal advice sought by the Administration confirmed that the legality of clause 8 was in order. As regards Mr Martin LEE's criticism, SCA said that at the time when the LegCo (Amendment) Bill was discussed, he had explained that matters relating to the election of the second term CE would be dealt with separately in another Bill to be introduced by the Administration at a later stage. He said that having subsequently reviewed how things had been handled, he had already admitted on some previous occasions that the contentious issues in question could have been clarified in a better way.

6. Some members pointed out that the absolute number of members of the EC fell short of 800 because of the fact that a number of EC members were concurrently holding two seats in the EC. They asked how the Administration would address the problem of overlapping membership in the EC. Ms Emily LAU enquired whether the Administration would consider instituting a mechanism whereby EC members with dual membership would be required to give up one of the seats, and a by-election would be held to fill the vacancy arising therefrom. This would help to bring the physical number of EC members as close to 800 as possible. Mr SZETO Wah and Mr CHEUNG Man-kwong were of the view that such requirement should be specified in the Bill to eliminate overlapping membership in EC.

7. Referring to the requirement in BL Annex I which stipulated that "[t]he Election Committee shall be composed of 800 members", Miss Margaret NG opined that this provision carried the meaning that the absolute number of EC members should be 800.

8. SCA said that under BL Annex I, membership of the EC comprised some ex-officio members. They included, among others, Members of LegCo and the Hong Kong deputies to the National People's Congress (NPC). Overlapping membership in the EC might arise in any one of the following circumstances -

- (a) a person who was concurrently a LegCo Member and a Hong Kong deputy to the NPC; or
- (b) a person who first acquired his EC membership through election by the relevant subsector or nomination by the religious subsector, and subsequently became an ex-officio member by virtue of his election to LegCo and/or NPC office.

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SCA said that the proposal currently provided for in the Bill was that EC members under (b) above might choose to give up their subsector elected or nominated EC membership by tendering a resignation to the Electoral Registration Officer. The EAC would then arrange for a subsector by-election or supplementary nomination to fill the vacancy. As regards the situation under (a) above, the Administration was of the view that as the two categories of membership were ex-officio in nature, little could be done about overlapping membership arising therefrom.

9. SCA added that even if a member held more than one seat in the EC, the member could only vote once in each round of voting.

10. In reply to Ms Emily LAU, SCA said that there were currently six Members of LegCo with dual membership in EC. Of the six Members, four belonged to category (a) in paragraph 8 above, and two belonged to category (b).

11. Mr SZETO Wah asked whether at present there were restrictions on LegCo Members to take part in subsector elections to EC. SCA said that LegCo Members were disqualified from becoming a candidate for EC subsector elections (including by-elections) by virtue of section 17 of the Schedule to the CE Election Bill.

12. Miss Margaret NG said that it would be very difficult for a member with dual membership in EC to decide whether or not to give up the subsector elected membership. She considered that the Bill should prescribe the appropriate requirement.

13. Mr LAU Ping-cheung said that he held two seats in the EC, one acquired through subsector election and the other through election to LegCo. He opposed to the proposal that an EC member with dual membership would be required to give up the subsector elected status. In his opinion, this would amount to an infringement on the rights of the member who acquired the EC seats legitimately through elections.

14. Ms Emily LAU expressed the view that it would be even more unfair for the vast majority of Hong Kong people who were totally deprived of the opportunity to select the CE.

15. Ms Audrey EU said that when she first acquired her EC membership in July 2000 through the subsector election, she had not anticipated that she would subsequently run in a LegCo by-election to fill a LegCo vacancy. She said that she was not insistent on retaining both seats in EC and was prepared to go by the majority view on the issue of overlapping membership.

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Adm 16. The Administration was requested to explore various options to deal with the issue of overlapping membership in EC, including the proposal of making it a requirement that a member of EC holding both an ex-officio and non ex-officio seat at the same time should give up the latter seat so that a subsector by-election could be held to return another member to fill that seat. SCA agreed to consider the views expressed by members and provide a written response.

Adm 17. Miss Margaret NG also requested the Administration to clarify the requirements set out in clause 17(3) of the Schedule to the Bill governing eligibility to be nominated as a candidate in a subsector by-election.

Adm 18. Miss Margaret NG pointed out that clause 8(1) of the Bill stated that "[t]here shall be constituted a committee, to be known as the Election Committee, for the purposes of this Ordinance...". She opined that since clause 8(1) had yet to be enacted, the legality of clause 8(3), which provided that the EC constituted on 14 July 2000 should be regarded as the first EC under the Bill, might be in doubt. The Chairman requested the Administration to respond in writing to Miss Margaret NG's query.

19. Mr HUI Cheung-ching said that the term of office of the existing EC would expire on 14 July 2005. He asked what would happen if a vacancy in the office of CE arose after 14 July 2005. Miss Margaret NG said that in her opinion, the term of office of EC should correspond to that of CE.

20. SCA replied that a mechanism was already provided for in BL 53, which specified that in the event the office of CE became vacant, a new CE of five-year term should be selected within six months in accordance with the provisions of BL 45. BL 53 also set out the arrangements during the period of vacancy. He added that in practice the term of office of EC could not tally at all times with that of CE because the office of CE could become vacant in any of the situations envisaged in clause 4 of the Bill.

Adm 21. Members requested the Administration to provide further information on the following -

- (a) the time required for constituting the EC under the Legislative Council (Amendment) Ordinance 1999;
- (b) the membership of the EC and whether there had been changes of membership since the EC was constituted on 14 July 2000; and
- (c) the number of EC members who voted in the 2000 LegCo election.

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Polling date

22. On the issue of polling date, SCA advised that clause 10(2) of the Bill specified that under normal circumstances, CE would appoint a date within six months before the expiry of his term as the polling date. The proposal was made on the basis of the requirement of BL 53 that, in the event that the office of the CE fell vacant, a new CE should be selected within six months. The proposal also provided a flexibility to CE to choose a polling date that was considered to be the most suitable in the circumstances.

23. Ms Emily LAU was concerned that the flexibility provided to CE under clause 10 might be conceived as giving an unfair advantage to an incumbent CE seeking re-election, so that the CE could appoint a polling date to his favour or to the disadvantage of his opponents. Ms Emily LAU and Mr CHEUNG Man-kwong said that in a fair election, all candidates should be allowed to compete on a level playing field. There should never be the presumption of a foregone conclusion, and one must prepare for the return of a candidate other than the incumbent CE at an election. Hence, the Bill should provide a mechanism to ensure that there was adequate time for candidates to prepare for the election, as well as for a smooth transition to take place in the event of the return of a new CE. In particular, the Bill should prescribe a minimum period before which CE had to announce the polling date.

24. Ms Emily LAU suggested that in the situation of a normal expiry of the term of office of the CE, the polling date should be fixed at a particular date before the date of expiry of the term of the serving CE. The Chairman asked the Administration to consider the option of adopting a fixed formula of "not later than certain days but not earlier than certain days from the date of expiry of the term of the serving CE", subject to the requirement of the six-month period specified in clause 10(2). Miss Margaret NG said that any formulation adopted should not give rise to unnecessary disputes and allegations of unfairness.

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25. Ms Emily LAU enquired whether the decision of the serving CE to appoint certain date as the polling date could be an issue for judicial review. Legal Adviser opined that as the Bill presently drafted, it would be difficult to challenge the decision.

26. Ms Emily LAU considered that the Bill should set out the criteria which CE should follow when determining the polling date.

27. Miss Margaret NG referred to clause 12 of the Bill which stipulated that a polling date appointed should be published by notice in the Gazette as soon as possible after the appointment. She considered that the reference to "as soon as possible" carried too much flexibility. She suggested that clause 12 might

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need to be revised to provide certainty as to when a notice on polling date was published in the Gazette.

28. The Chairman requested the Administration to provide a written reply on different options for determining the polling date and the pros and cons of the options, as well as to respond to the various other issues raised by members in connection with polling date.

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(Post-meeting note - The Administration's paper in reply to the issues raised by members at the meeting has been circulated vide LC Paper Nos. CB(2)1352/00-01(01))

II. Meetings to receive deputations

29. The Chairman informed members that two meeting sessions were originally scheduled for 5 and 12 May 2001 respectively to receive oral representation on the Bill from various organizations and individual members of the public. However, as the meeting session on 12 May 2001 clashed with other meetings, it would have to be re-scheduled. He suggested and members agreed that the meeting fixed for 8 May 2001 be used as the second session for public consultation.

III. Date of next meeting

30. The next meeting would be held on 24 April 2001 at 8:30 am.

31. The meeting ended at 10:30 am.

Legislative Council Secretariat
21 June 2001