

立法會
Legislative Council

LC Paper No. CB(2)281/00-01
(These minutes have been
seen by the Administration)

Ref : CB2/BC/13/00

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

**Minutes of the eleventh meeting
held on Tuesday, 5 June 2001 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon IP Kwok-him, JP (Chairman)
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Martin LEE Chu-ming, SC, JP
Hon NG Leung-sing
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 Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, 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)
Hon Eric LI Ka-cheung, JP
Prof Hon NG Ching-fai
Hon Timothy FOK Tsun-ting, SBS, JP

Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, 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

Administration's responses to submissions on the Bill

Members noted that the Administration had responded in writing to the views expressed by the deputations on the Bill (circulated vide LC Paper No. CB(2)1712/00-01(01)).

Amendments to the Bill proposed by the Democratic Party

2. Mr CHEUNG Man-kwong informed members that the Democratic Party had proposed a set of Committee Stage amendments (CSAs) to the Bill (circulated vide LC Paper No. CB(2)1712/00-01(03)). He briefed members on the proposed amendments.

Administration's responses to major issues previously discussed by the Bills Committee

(LC Paper No. CB(2)1712/00-01(02))

3. The Chairman invited comments from members and the Administration on the paper prepared by the Secretariat (circulated vide LC Paper No. CB(2)1712/00-01(02)), which summarised the major issues discussed and the Administration's responses to the views expressed by members on those issues.

Overlapping membership in Election Committee (EC)

4. Secretary for Constitutional Affairs (SCA) said that, as explained in previous meetings, the Administration proposed to move a CSA to the Bill to the effect that once an elected or nominated EC member became an ex-officio member by virtue of his election to LegCo or to the office of local deputy to the National People's Congress, the member would be deemed to have resigned from his membership in the elected or nominated subsector. SCA advised that the detailed arrangements would be set out in subsidiary legislation.

5. In response to Ms Eudrey EU, SCA said that legal advice obtained by the Administration was that the above proposal did not contravene the provision of the Basic Law (BL) on the term of office of the EC members.

British Nationality (Overseas) Passport holders disqualified from being nominated

6. Mr Martin LEE suggested that the Administration might consider introducing a requirement to the effect that a person who had been in possession of an overseas passport during the period of seven years before the nomination period would be disqualified from being nominated.

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Winning candidate to declare not a member of political party

7. Mr CHEUNG Man-kwong informed members that the Democratic Party was of the view that clause 32 of the Bill should be deleted.

Withdrawal of candidature

8. Mr CHEUNG Man-kwong said that the Democratic Party proposed that clause 19 of the Bill, which allowed a candidate to withdraw candidature after the close of nominations, should be deleted.

9. The Chairman said that the Democratic Alliance for the Betterment of Hong Kong shared the view that the withdrawal mechanism as proposed in clause 19 was not necessary.

10. SCA said that the Administration was prepared to consider amending the Bill if a majority of members of the Bills Committee did not support clause 19.

Election expenses limit

11. Mr CHEUNG Man-kwong said that the Democratic Party was of the view that an appropriate election expenses ceiling should be set for the election of the Chief Executive (CE).

12. SCA agreed to revert to the Bills Committee as soon as the Administration had made a decision on the matter. He added that an election expenses limit, if considered necessary, would be prescribed in subsidiary legislation. Ms Emily LAU and Mr CHEUNG Man-kwong said that it was important that the level of the election expenses limit should be determined having regard to public views and be subject to LegCo vetting.

Clause 4

13. Mr CHEUNG Man-kwong drew members' attention to the amendment proposed by the Democratic Party, which suggested a revised version for clause 4 as follows -

"Vacancy in office

The office of the CE becomes vacant

(a) on the expiry of the term of the CE;

(b) if the CE dies;

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- (c) if the CE resigns in accordance with BL 52 or otherwise; or
- (d) if the Central People's Government removes the CE from office upon the reporting to it by LegCo of a motion of impeachment passed against the CE under BL 73(9) because the CE refuses or is unable to resign despite being charged of serious breach of law or dereliction of duty (including the CE's failure to fulfil his duties for whatever reasons)."

14. Ms Audrey EU and Miss Margaret NG said that they considered that the above amended version of clause 4 was acceptable.

15. Mr TSANG Yok-sing reiterated the view that there was no question of the existing clause 4(c) of the Bill providing an additional power for the Central People's Government (CPG) to revoke the appointment of CE. However, he doubted the necessity of having a provision such as clause 4(c).

Adm 16. The Administration undertook to respond in writing to the suggested amendments to clause 4(c).

Adm 17. The Administration was also requested to consider whether other amendments to the Bill, such as to clause 5 and 6, would be necessary consequential to any amendments to clause 4.

Other issues

Clause 3

18. Mr HUI Cheung-ching asked what was the term of office of CE who was elected to fill a vacancy in the office of CE in the middle of a five-year term.

19. The Administration replied that under BL 46, the term of a CE was five years. BL 53 provided that in the event that the office of the CE became vacant, a new CE should be selected within six months in accordance with BL 45. In any case, a new term of five years started with the new CE.

20. Mr Martin LEE said that if a vacancy in the office of CE arose before expiry of the term ending on 30 June 2007, according to the view of the Administration, the term of the new CE would end beyond 1 July 2007. He said that this could have an implication on the timing for implementation of paragraph 7 of Annex I to the BL which provided that the method for selecting the CE could be amended for the terms subsequent to the year 2007. Miss Margaret NG shared similar concern.

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Adm 21. The Chairman requested the Administration to clarify in writing the points raised by members.

Clause-by-clause examination of the Bill

22. Legal Adviser (LA) informed members that the Legal Services Division (LSD) had requested the Administration to respond to a number of questions raised on the Bill in a letter dated 29 March 2001. He invited members to note the Administration's reply (circulated vide LC Paper No. CB(2)1712/00-01(04)).

Clause 1(2)

23. Members asked when would the CE Election Ordinance come into operation and whether different parts of the Ordinance would become effective on different dates.

24. SCA said that the Ordinance would come into operation on the earliest possible date after the Bill was passed, subject to some technical issues which needed to be dealt with. For example, should a vacancy in the six LegCo seats returned by the EC arise in mid July 2001, one possible option might be to empower, in the Bill, SCA to commence the Bill after the conduct of the LegCo by-election to fill that vacancy. The advantage of this was that by so doing the LegCo by-election to fill the vacancy could be held by mid September 2001 under the existing arrangements provided for in the LegCo Ordinance, without the need to conduct an EC subsector by-election or supplementary nomination which would take a much longer time.

Adm 25. At members' request, the Administration undertook to provide a written reply on when the CE Election Ordinance should be brought into operation.

Clause 2

26. In response to Ms Cyd HO, the Administration advised that the definition of "prescribed public officer" in clause 2 of the Bill mirrored the one adopted in section 39 of the LegCo Ordinance. The definition took into consideration the nature of the functions and duties of the officers concerned, such as the power to conduct investigations and gain access to sensitive personal data etc, to see whether there would be a potential conflict of interest if they stood for election of the CE.

27. The Administration was requested to advise in writing on the criteria for drawing up the list of public officers to be disqualified from being nominated as a candidate for the CE election, in particular the reasons for including the

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persons specified in paragraph (f) and (g) under the definition of "prescribed public officers" in clause 2.

Clause 3

28. LA sought the Administration's view on whether it would be desirable to specify in the Gazette the date on which CE assumed office.

29. SCA responded that the appointment of CE and hence the date on which CE assumed office was a matter for the CPG. The Administration did not consider it appropriate for the Bill to provide for matters relating to the appointment of CE.

30. Miss Margaret NG opined that it might not be necessary to specify in the Gazette the date on which CE assumed office.

Adm 31. Mr TSANG Yok-sing suggested that the drafting of the Chinese version of clause 3(2) might need to be reviewed to ensure that the meaning of both the English and Chinese versions was the same. The Administration noted Mr TSANG's suggestion.

Clause 5

Adm 32. Assistant Legal Adviser pointed out that clause 5(2)(b) was intended to cover the situation where the CE office had already become vacant when the Acting CE declared the vacancy in office. However, it was possible that a revocation of the CE appointment did not take effect immediately but on a specified future date. He asked whether clause 5(2)(b) should be amended to read "specify the date on which the office became or becomes vacant" to cover the situation where the vacancy arose beyond the 21-day period referred to in clause 5(2)(a). The Administration agreed to review the matter.

33. In response to Ms Emily LAU, Deputy Secretary for Constitutional Affairs said that where the office of CE became vacant under clause 4(a), i.e. on the normal expiry of the term of CE, a polling date would be appointed by CE under clause 10(1). The Administration considered that there was no need to declare the vacancy by notice published in the Gazette in such a situation.

Clause 11

34. In order to prove that the CE-elect could not assume the CE office under clause 11(2), LA sought the Administration's view on whether it was desirable to introduce a procedure in the Bill for acceptance of the office by the CE-elect.

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35. SCA considered that the provision of a specific clause on acceptance of office could not deal with the many and varied possibilities of the successful candidate not being able to assume office. He added that the chance of a candidate refusing to assume the office of CE after being successfully returned at an election would be extremely slim.

36. On the point raised by members that a candidate returned at an election might not be able to assume the office of CE because of the failure of the CPG to issue the instrument of appointment under clause 3, SCA opined that such a situation was a political issue which could not be dealt with by way of domestic legislation.

Adm 37. After further discussion, members requested and the Administration agreed to explain -

- (a) the reason for the polling date under clause 11(1) to be determined by the Electoral Affairs Commission whereas that under clause 11(2) by the CE; and
- (b) the legal basis for the Administration's advice that nomination of candidates would be re-opened in the circumstances of clause 11(2).

Clause 14

38. Mr CHEUNG Man-kwong asked whether the Chinese reference to 「身分」 in clause 14(e)(ii) should be amended to 「身份」. Deputy Law Draftsman replied that in the Immigration Ordinance, the Chinese version of "Certificate of Identity" was 「身分證明書」. It was desirable that the same Chinese reference should be used in the Bill.

39. LA pointed out that under section 39(1)(c) of the LegCo Ordinance, a person was disqualified from being nominated as a candidate and from being elected as a LegCo Member if he had been convicted of treason. However, there was no similar provision in the Bill. He asked whether the same disqualification provision should apply to a candidate for the CE election.

40. LA also pointed out that in relation to death sentence, there was difference in treatment between the provision in clause 14(f)(i) of the Bill and that provided for in section 39(1)(b) of the LegCo Ordinance

41. Mr CHEUNG Man-kwong said that he had reservations about including the disqualification provision relating to treason. He pointed out that examples could be found in overseas countries where a lot of renowned and well-respected politicians or leaders of state had been previously convicted of a

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political offence. In his view, it was unfair to deprive a person permanently of the chance to stand as a candidate. He considered that the present provisions in clause 14 were adequate to deal with the issue of disqualification.

42. Ms Audrey EU asked whether a candidate would be disqualified from being elected if he was convicted of any offence under clause 14(f) after the nomination but before the close of polling.

Adm 43. The Administration agreed to review the drafting of clause 14 in the light of members' comments.

44. Referring to the views she had expressed in previous meetings, Miss Margaret NG said that she would propose amendment to clause 14 to the effect that judicial officers would be permanently disqualified from being nominated as candidates for the CE election.

Clause 26

45. In response to Mr Howard YOUNG, SCA said that any round of voting could be conducted on a day after the polling date if the operation of clause 26 so required. Clause 10(5) provided for that situation.

Clause 32(2)

46. Referring to the meaning of "political party" specified in clause 32(2), LA pointed out that the term "political body" was used in section 2(1) of the Societies Ordinance (Cap. 151) and section 2(1) of the Electoral Affairs Commission Ordinance (Cap. 541) to describe an organization of similar nature.

47. The Administration advised that the definition of "political party" under clause 32(2) was largely modelled on that for "political body" under the Societies Ordinance and the Electoral Affairs Commission Ordinance, with some adjustments to fit in with the special circumstances of the CE election. The Administration saw no inconsistency between the two definitions.

Adm 48. Ms Emily LAU asked whether a member of a political party operating outside Hong Kong could stand for the CE election. The Administration agreed to respond in writing.

49. Mr Howard YOUNG said that paragraph (b) of the definition of "political party" provided that political party meant "a body or organization the principal function or main object of which is to promote or prepare a candidate for election as a member of the LegCo or any District Council". He said that this definition would exempt many organizations whose principal function was not to promote or prepare a candidate for election from clause 32(1). He

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invited the Administration to consider amending paragraph (b) of the definition of political party to "a body or organization whose function or object includes promoting or preparing a candidate for election...".

50. SCA said that to amend the definition as proposed would include non-political groups such as employers' associations or business organizations as political parties. This was undesirable.

51. Mr CHEUNG Man-kwong and Dr YOUNG Sum agreed that the observation of Mr Howard YOUNG had pinpointed a significant legislative loophole. They said that many influential groups such as large trade unions in Hong Kong, though not literally falling within the scope of the definition of political party as such, took on a very active role in a wide spectrum of social and political issues. These groups, however, under the present definition of "political party" in clause 32(2), would not be subject to the control mechanism prescribed under clause 32(1) which required the winning candidate to withdraw from membership of the group. They opined that under the present definition of "political party", the policy objective of clause 32 could not be achieved.

Adm 52. The Administration was requested to reconsider the drafting of clause 32 having regard to members' views.

II. Any other business

Draft CSAs

Adm 53. The Administration was requested to provide a set of draft CSAs to be moved by the Administration for the consideration of the Bills Committee at least a few days before the meeting on 19 June 2001.

Administration's response to LSD's letter dated 23 April 2001

Adm 54. The Administration was requested to provide a written response to LSD's letter dated 23 April 2001 for members' consideration at the next meeting.

(Post-meeting note - The Administration's reply was circulated vide LC Paper No. CB(2)1774/00-01(03))

III. Date of next meeting

55. Members agreed that depending on the progress of the next meeting scheduled for 8:30 am on 12 June 2001, another meeting would be held from

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12:45 pm to 2:15 pm on the same day to continue discussion with the Administration.

56. The meeting ended at 12:45 p.m.

(Post-meeting note - The papers prepared by the Administration in response to the issues raised by members at the meeting were circulated vide LC Paper Nos. CB(2)1782/00-01(01), 1786/00-01(01) and 1796/00-01(01))

Legislative Council Secretariat
5 November 2001