

立法會
Legislative Council

LC Paper No. CB(2)62/01-02
(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 thirteenth meeting
held on Tuesday, 12 June 2001 at 12:45 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon IP Kwok-him, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Martin LEE Chu-ming, SC, JP
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, 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 Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon LAU Ping-cheung

Members Absent : Hon Andrew WONG Wang-fat, JP (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing
Prof Hon NG Ching-fai
Hon Margaret NG
Hon CHAN Yuen-han
Hon Howard YOUNG, JP

Hon Ambrose LAU Hon-chuen, JP
Hon Tommy CHEUNG Yu-yan, JP
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

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

Mr Robin IP
Deputy 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

Ms Rayne CHAI
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 Raymond LAM
Senior Assistant Secretary (2)5

I. Clause-by-clause examination of the Chief Executive Election Bill
(The Bill, LC Paper No. CB(2)1711/00-01(01))

Members continued on clause-by-clause examination of the Bill.

Part 6 - Election Petitions

Clause 33 (Election may be questioned only by election petition made on specified grounds)

2. Deputy Secretary for Constitutional Affairs (DSCA) explained that "another person" as referred to in clause 33(1)(e) was a person other than the candidate. He said that clause 33(1) set out the specific grounds on which an election petition could be lodged. The provision was similar to that in section 61 of the Legislative Council (LegCo) Ordinance. He added that the persons who might lodge an election petition were set out in clause 34.

Clause 34 (Who may lodge election petition)

3. Referring to clause 34(3), Ms Emily LAU asked why a subscription by a member of the Election Committee (EC) to an election petition should not be withdrawn or revoked by the EC member.

4. DSCA responded that as clause 34(1) provided that an election petition had to be subscribed to by not less than 10 EC members, the withdrawal of a subscription by an EC member might cause an election petition to fall short of the subscription requirement and become invalid. He said that as the CE election was an important one, there was a need for an election petition to be processed expeditiously.

5. Assistant Legal Adviser 4 (ALA4) informed members that the Administration had agreed to move a technical amendment to delete the words "was validly nominated but" in clause 34(1)(b)(iii).

6. As regards clause 34(4), ALA4 informed members that he requested the Administration to explain the reasons for allowing an EC member disqualified from voting under clause 25 to subscribe to an election petition but not an EC member disqualified from making nomination under clause 16(5). The Administration had replied that the grounds and circumstances under which an EC member was disqualified from making nomination was exactly the same as those under which an EC member was disqualified from voting. Once an EC member was disqualified from making nomination, he was also disqualified from voting. Thus, the Administration considered that clause 34(4) was already sufficient to address both situations. ALA4 asked whether the Administration would expressly provide that an EC member disqualified from voting under clause 25 would not be allowed to subscribe to an election

petition.

Adm

7. DSCA responded that the Administration's view had been fully explained in its response. Nevertheless, it would consider whether the provision needed to be spelt out in clearer terms.

Clause 35 (Period within which election petition and appeal must be lodged)

8. Ms Emily LAU said that the periods proposed for lodging election petition and appeal in clause 35 were much shorter than those specified in the Court of Final Appeal Ordinance. She questioned whether there was adequate time for preparation by the relevant parties such as legal practitioners handling the election petition.

9. DSCA said that all election petitions must be lodged within seven working days after the declaration of election result under clause 35(1), and an application for leave to appeal to the Court of Final Appeal must be filed within seven working days after the day on which the Court of First Instance handed down judgment under clause 35(2). In view of the time constraints and importance of the CE election, the Administration hoped that any election petition and appeal lodged could be dealt with as expeditiously as possible. The Judiciary had been consulted and had confirmed that the proposed arrangement in the Bill was acceptable.

10. DSCA added that as the grounds on which an election petition could be lodged were clearly specified in clause 33(1), the proposed period of seven working days under clause 35(1) was considered to be adequate. As regards appeal against the determination of an election petition, DSCA said that the main issues of dispute should have become very clear when the election petition was heard. Hence, the proposed period of seven working days under clause 35(2) was also considered to be adequate.

11. The Chairman said that the timetable of the CE election was very tight in view of the Basic Law requirement for a new CE to be elected within six months after the vacancy arose. Following the election, only about two months were left. Mr TAM Yiu-chung added that time should also be allowed for the CE elect to be appointed by the Central People's Government. On Ms LAU's concern, he was of the view that with the efficiency of legal practitioners in Hong Kong, the proposed periods for lodging election petition and appeal should not pose any problems.

Clause 36 (Respondent to election petition)

12. Mr LAU Ping-cheung asked whether any persons other than those specified in the clause might be made a respondent to an election petition. DSCA replied in the negative.

Clause 37 (Court to have jurisdiction to determine election petition)

13. Referring to clause 37(2), Ms Emily LAU asked when CJ would direct that an election petition be tried before more than one judge.

14. Deputy Solicitor General (Constitutional) (DSG(C)) responded that an appeal in respect of the determination of a Court of First Instance would go direct to CFA. Clause 37(2) would provide CJ with the discretion to direct that the election petition be tried by a panel of three judges, if he considered it appropriate, in the consideration of important constitutional and legal issues. DSCA added that a similar provision could be found in section 64(2) of LegCo Ordinance.

15. Ms Emily LAU asked whether all election petitions should be tried by a panel of three judges. DSCA responded that as many election petitions did not involve important constitutional and legal issues, there was no need for them to be tried by a panel of three judges.

Clause 38 (Determination of election petition)

16. Referring to clause 38(2), Ms Emily LAU asked why a determination of the court was to be announced by means of a written judgment.

17. DSCA explained that a written judgment was adopted because an appeal might be lodged in respect of a determination. He said that a similar provision could be found in section 67(3) of LegCo Ordinance.

18. ALA4 said that he had requested the Administration to explain the reasons for not adopting section 67(5) to (7) of LegCo Ordinance. DSCA said that some of the provisions of the LegCo Ordinance were not applicable to the CE election, e.g. it was not appropriate for the Court to report to Clerk to LegCo. However, the making of report by the Court to the Electoral Affairs Commission (EAC) could be achieved administratively.

Clause 39 (Acts of person not invalid if ruled not to be elected)

19. DSCA informed members that the provision was similar to section 71 of LegCo Ordinance. It provided that any acts clause by a CE would not be invalidated even if he was subsequently ruled to be not duly elected.

20. Ms Emily LAU said that under normal circumstances, a person whose election was questioned by an election petition should not be appointed until the outcome of the election petition was known. That was why an election petition should be settled as expeditiously as possible.

Action
Column

Adm

21. Secretary for Constitutional Affairs (SCA) said that one possible scenario that could be covered by the clause was when a serving CE who was re-elected was questioned by an election petition, and the legal proceedings in respect of the election petition took an unduly long time to complete. However, he undertook to further examine the drafting of the clause.

Clause 40 (Time limit for legal challenges)

22. Referring to the Administration's response under the heading of "General Observation" in LC Paper No. CB(2) 1712/00-01(04), ALA4 informed members that he had suggested that the Administration should provide for validity of acts of CE notwithstanding defects that might afterwards be discovered in his election or as to his eligibility to be CE. The Administration had replied that where a judicial challenge was mounted against the winning candidate and was finally proved successful, clause 39 of the Bill would provide the necessary protection. However, he was of the view that clause 39 could not provide for validity of acts of CE who was subject to legal challenges under clause 40.

23. Ms Emily LAU asked whether the elected person referred to in clause 40 had already assumed the office of CE when a judicial review was underway.

24. DSCA said that clause 40 dealt with the time limit for an application for leave to apply for judicial review or commence proceedings which put at issue whether a candidate declared to be elected could lawfully assume office. Clause 40(1) provided that such an application should be made not more than 30 days after the publication of the result of the election. However, an application could be made after the expiry of the 30 days with the leave of the Court under clause 40(2).

25. In response to Ms Emily LAU's question about the meaning of "interest of justice" in clause 40(2)(b), DSG(C) said that the clause provided the court with the discretion to extend the time limit for making a legal challenge. That discretion was usually qualified by "interest of justice" which meant that the purposes of justice would not be served if a strict time limit was applied.

26. Ms Emily LAU said that a similar provision should be incorporated in clause 35 to provide for the extension of the period within which an election petition or appeal should be lodged.

27. DSCA responded that clause 40 was related to judicial review, while clause 35 was related to election petition. They differed in that the reasons for which an election petition could be lodged were less complicated, while important legal or constitutional issues might be involved in a judicial review. The time limit for applying for a judicial review was thus much longer. The Administration considered it unnecessary to provide a similar provision in

Action
Column

respect of election petition.

28. Ms Emily LAU said that the proceedings for a judicial review could be protracted. It was important that acts of a CE would not be invalidated even if he was later ruled to be unduly elected as a result of judicial review. She asked the Administration to consider the point raised earlier by ALA4 in paragraph 22 above. The Administration agreed.

Adm

Clause 41 (Chief Justice may make rules)

29. In response to Ms Emily LAU's question about the rules made under clause 41, ALA4 said that the rules would be made as subsidiary legislation for negative vetting by LegCo.

*Part 7 - Miscellaneous
Clauses 42 to 46*

30. Members made no particular comments about the clauses.

Clause 47 (Regulation)

31. DSCA informed members that regulations made under the clause would be introduced as subsidiary legislation in the next legislative session for negative vetting by LegCo.

32. Ms Emily LAU said that sufficient time should be allowed for scrutiny of the regulations. She considered that the regulations should be introduced for positive vetting by LegCo.

33. DSCA responded that similar regulations for the LegCo and District Council elections were also made as subsidiary legislation for negative vetting by LegCo in the past. He said that LegCo would have a period of 28 days, which could be further extended by one LegCo meeting, for scrutiny of subsidiary legislation. SCA assured members that the Administration would seek to introduce the regulations as soon as possible.

34. Mr CHEUNG Man-kwong asked whether regulations on election expenses limit in the CE election would be made under clause 47. DSCA responded that the issue was regulated by subsidiary legislation made under the Elections (Corrupt and Illegal Conduct) Ordinance, which provided that CE in Council might set a ceiling on election expenses for local public elections of all levels. He said that the relevant subsidiary legislation would also be introduced for negative vetting by LegCo.

Action
Column

Clause 48 (Amendment of Schedule)

35. Members made no comments about the clause.

Part 8 - Consequential amendments

High Court Ordinance

Clause 49 (Appeals in civil matters)

36. DSCA explained that the clause sought to provide for the "leap-frog" procedure such that an appeal against the decision of the Court of First Instance in relation to the CE election would be lodged to CFA direct.

Post Office Regulations

Clause 50 (Regulation amended)

37. DSCA informed members that the clause sought to replace relevant references in the Post Office Regulation to the LegCo Ordinance by references to the CE Election Ordinance.

Maximum Scale of Election Expenses (Legislative Council) Order

Clause 51 (Title amended)

38. Members made no particular comments about the clause.

Clause 52 (Interpretation)

39. DSCA informed members that the clause sought to replace relevant references in the Maximum Scale of Election Expenses (Legislative Council) Order to the LegCo Ordinance by references to the CE Election Ordinance.

Hong Kong Court of Final Appeal Ordinance

Clause 53 (Civil appeals)

40. DSCA explained that the clause sought to provide for the "leap-frog" procedure in respect of an appeal against a decision of the Court of First Instance.

Clause 54 (Applications for leave to appeal)

41. Members made no comments about the clause.

Electoral Affairs Commission Ordinance

Clause 55 (Interpretation)

42. DSCA explained that the clause sought to amend relevant definitions in the EAC Ordinance.

Action
Column

Clauses 56 to 60

43. DSCA said that the clauses sought to clarify relevant provisions in the EAC Ordinance and empower EAC to organise and supervise the CE election.

Clause 61 (Report on elections)

44. DSCA informed members that the clause sought to provide for the EAC to submit a report after a CE election was held.

Clause 62 (Members disqualified from nomination)

45. Members made no particular comments about the clause.

Other issue

(LC Paper No. CB(2) 1774/00-01(03))

46. Referring to the Administration's reply in respect of clause 20(1), ALA4 suggested that the Administration be requested to explain the legal basis for its view that the votes cast for a candidate disqualified during the course of polling would become invalid votes. The Chairman said that the issue might be discussed at the next meeting.

II. Date of next meeting

47. The Chairman reminded members that the next meeting would be held on 19 June 2001 at 8:30 am.

48. The meeting ended at 2:30 pm.

Legislative Council Secretariat

15 October 2001