

立法會
Legislative Council

LC Paper No. CB(2)57/01-02
(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 third meeting
held on Tuesday, 24 April 2001 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present : Hon IP Kwok-him, JP (Chairman)
Hon Andrew WONG Wang-fat, JP (Deputy 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 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 Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
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
Dr Hon LO Wing-lok
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members: Hon Martin LEE Chu-ming, SC, JP
Absent Hon Eric LI Ka-cheung, JP
Hon CHOY So-yuk
Hon Tommy CHEUNG Yu-yan, 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)

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

(LC Paper Nos. CB(2)1318/00-01(01); 1352/00-01(01); and LS83/00-01)

The Chairman drew members' attention to two papers provided by the Administration (LC Paper Nos. CB(2)1318/00-01(01) and 1352/00-01(01)). The former paper set out a comparison between the provisions of the Chief Executive Election Bill (the Bill) and the Basic Law (BL), while the latter was in response to the issues raised by the Bills Committee (BC) at the last meeting held on 3 April 2001. As requested by Mr Martin LEE at the meeting on 28 March 2001, the Legal Services Division of the Legislative Council (LegCo) Secretariat had prepared a paper (LC Paper No. LS83/00-01) highlighting those provisions of the Bill which were not prescribed under the BL.

Administration's response to points raised at the meeting on 3 April 2001
(LC Paper No. CB(2)1352/00-01(01))

Election Committee

2. Mr LAU Ping-cheung referred to the Administration's advice that 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 National People's Congress (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.

Mr LAU Ping-cheung raised the following points-

- (i) The Administration's paper had stated that members "accepted" that since the two categories of membership mentioned in paragraph 2(a) above were ex-officio in nature, little could be done about overlapping membership arising therefrom. However, no consensus was in fact reached at the last meeting on 3 April 2001 in this respect;
- (ii) Annex I of the BL prescribed that the term of office of EC should be five years. The Administration's proposal to require EC members specified in paragraph 2(b) above to give up his elected or nominated membership would amount to a violation of the requirement in the BL as to the term of office of EC members;

- (iii) The Administration's proposal to remove the subsector elected status of EC members under paragraph 2(b) above was unfair to the EC members concerned and to those subsector electors who elected them to EC. To achieve fairness, all EC members with overlapping membership should be treated equally; and
- (iv) Ultimately, the Administration's proposal just to deal with the problem of overlapping membership arising in paragraph 2(b) above would not achieve the purpose of bringing the absolute number of EC members to 800. It would be a waste of public money to arrange subsector by-elections only to fill the two vacancies arising therefrom.

3. Mr LAU Ping-cheung said that being an EC member in the category referred to in paragraph 2(b) above, he strongly objected to the Administration's proposal.

4. Secretary for Constitutional Affairs (SCA) responded that according to Annex I of the BL, a person was a member of EC if he held office as a LegCo Member or a Hong Kong deputy to the NPC. It was necessary to comply with this requirement in the BL as regards ex-officio membership in EC. He added that the Administration had considered the issue of overlapping membership between LegCo and the NPC offices in the context of the 2000 LegCo election. It had decided not to transfer the overlapping EC seats to other subsectors, since to do so would run the risk of not having sufficient seats to accommodate newly elected LegCo Members and Hong Kong deputies to the NPC should the extent of overlapping membership in the qualifying offices be reduced in future.

5. As regards overlapping membership in the situation of paragraph 2(b) above, SCA advised that the original proposal put forward in the Bill was that the EC members concerned might choose to give up their elected or nominated membership by tendering a resignation to the Electoral Registration Officer (clause 3 of the Schedule to the Bill). However, having regard to the views expressed by members, i.e. firstly, that it would be difficult for the EC members to take such a decision, and secondly, that the Administration should consider all possible measures to eliminate overlapping membership so that the number of EC members could be brought to as close to 800 as possible, the Administration now came up with the present proposal. Under the revised proposal, once a subsector elected or nominated EC member became an ex-officio member, hence acquiring dual membership, he would be deemed to have resigned from membership in the elected or nominated subsector. The vacancy would be filled when the EC was called upon to elect a new Chief Executive (CE) or a LegCo Member in a by-election.

6. SCA added that the new proposal was in line with clause 17 of the Schedule to the Bill, which proposed that no candidate should be allowed to stand in the subsector ordinary election or by-election if he had other qualifying capacities to become an EC member.

7. On the term of office of the EC vis-à-vis that of EC members, Legal Adviser (LA) said that the EC provided for in Annexes I and II of BL was one and the same. The EC constituted on 14 July 2000 under the LegCo Ordinance was the EC provided in BL which had a term of five years. However, the LegCo Ordinance did not provide for the term of office of EC members. It was a matter of general principle that the EC members' term should be the same as that of the EC unless there was clear legislation providing to the contrary.

8. The Chairman said that it was a majority view expressed at the last meeting that the Administration should consider the possibility of introducing an appropriate mechanism to deal with the issue of overlapping membership, including the option of making it a requirement that a member of EC concurrently holding both an ex-officio and non ex-officio seat should give up the non ex-officio seat.

9. Mr Andrew WONG said that the proposed requirement might prejudice the chance of the EC member concerned to get re-elected or re-nominated in the relevant subsector in the future. In his opinion, the member should be given the chance to decide on his own as to whether or not to give up the elected or nominated subsector seat.

10. Ms Audrey EU said that she was one of the two EC members with overlapping membership described in paragraph 2(b) above. She said that she held no strong view on the Administration's proposal and was prepared to go by the majority view of the BC.

11. Mr CHEUNG Man-kwong said that he was most concerned about whether overlapping membership might lead to possible abuse of the right to vote in the EC. SCA replied that clause 24(3) provided that an EC member was entitled to only one vote at the election, although the member's name might appear twice in the list of EC membership.

12. Ms Emily LAU asked whether the present revised proposal to deal with the issue of overlapping membership in the EC had been considered at the time when the Legislative Council (Amendment) Bill 1999 was discussed. SCA replied in the negative.

13. Ms Emily LAU said that she accepted the Administration's proposal in principle. Miss Margaret NG, Mr James TIEN and Dr YEUNG Sum also expressed support for the proposal.

14. In reply to Mr HUI Cheung-ching, SCA said that a vacancy in EC could occur due to a variety of reasons, such as death of a member. A vacancy would be filled when the EC was called upon to elect a new CE or a LegCo Member in a by-election.

15. Mr Andrew WONG asked whether the list of members of EC should be updated annually, as in the case of the voter register for the purpose of LegCo elections.

16. SCA responded that the functions of the EC constituted on 14 July 2000 were to elect six Members to the second term LegCo and to elect the CE in 2002. The former function would cease to exist at the expiry of the second term LegCo. Also, it would be very unlikely that a vacancy in the office of CE should arise suddenly which necessitated the EC to be called upon to elect a new CE. He said that the situations of the LegCo and District Councils elections were different. In both cases, the same voter register was used. Furthermore, each year, many young people reaching the age of 18 would be qualified to be registered as voters in the geographical constituencies. There was both a practical as well as a civic education need to update the register on an annual basis. The need, however, in the view of the Administration, did not exist in respect of EC members.

17. Mr LAU Ping-cheung said that Annex I of the BL specified that "The Election Committee shall be composed of 800 members". This could be interpreted as implying that the absolute number of EC members should be 800. He considered that the Administration should also make proposals to deal with the situation of overlapping membership arising from a person concurrently being a LegCo Member and a Hong Kong deputy to NPC.

Adm 18. The Chairman requested the Administration to respond in writing to the point raised by Mr LAU Ping-cheung.

Polling date

19. Regarding the issue of polling date, SCA advised that the proposal in the Bill was that CE should appoint a date within the six months before the expiry of his term as the polling date. The proposal of providing a flexibility of six months to CE was made on the basis of the requirement in BL 53 that, in the event that the office of CE fell vacant, a new CE should be selected within six months.

20. SCA further advised that in view of the concern expressed by members that the above proposed arrangement might be perceived as giving an unfair advantage to an incumbent CE seeking re-election, the Administration intended to put forward a revised proposal which prescribed a formula for fixing the

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polling date. This would ensure certainty and eliminate any perceived possibility of unfairness. The newly proposed provisions were -

(I) *In the event of normal expiry of the five-year term of office of CE*

Clause 10(1) of the Bill be amended so that the polling date

"...shall be -

- (a) where the first day of the period of 90 days expiring at the beginning of the day on which the vacancy will arise is a Thursday, that Thursday; or
- (b) where the first day of the period of 90 days expiring at the beginning of the day on which the vacancy will arise is not a Thursday, the Thursday immediately preceding the commencement of that period."

(II) *In the event of the office of CE falling vacant in other situations*

Clause 10(3) of the Bill be amended so that the polling date

"...shall be -

- (a) where the 120th day after the day on which the office becomes vacant is a Thursday, that Thursday; or
- (b) where the 120th after the day on which the office becomes vacant is not a Thursday, the Thursday immediately following the first-mentioned Thursday."

21. SCA further explained that the above new proposals were made having regard to the time that was reasonably required for the court to deal with legal challenges (if any) arising from the election, for the Central People's Government (CPG) to make the appointment, and for putting in place the necessary transitional arrangements.

22. Members generally agreed that there should be a formula for fixing the polling date. However, some members queried the rationale for fixing the polling date on a Thursday.

23. SCA replied that the Administration believed that as compared with other days in a week, Thursday would be most suitable. Friday might be the day when the Easter holiday began. Furthermore, many Hong Kong residents might be out of town during the week-end on business trips or for other personal activities.

24. Mr CHEUNG Man-kwong said that the above arguments could not stand. He said that the matter of fixing the polling date should be considered in the perspective of future elections of the CE in Hong Kong, not just to cater for the election of the second term CE. He said that to fix the polling date on a Thursday could give rise to the perception that it was to provide convenience to those EC members who were "big bosses" and who would like, for instance, to play golf in the weekends. He added that many EC members were employees in the relevant subsectors who could not afford to take time-off from their work to vote on a working day, particularly bearing in mind that the election might require more than one round of voting and hence considerable amount of time would be spent on voting. Mr CHEUNG said that he preferred the polling date to be fixed on a Sunday, similar to the existing arrangement for LegCo general elections which the people in Hong Kong had been accustomed to.

25. Ms Emily LAU, Ms Cyd HO, Mr SZETO Wah, Miss Margaret NG, Ms Audrey EU and Mr Andrew WONG said that they preferred a Sunday to Thursday to be fixed as the polling day.

26. Mr James TIEN said that he held no special preference as to which day in a week should be chosen as the polling day. However, if it were decided that the polling day should be a weekday, the exact time at which the polling would take place should be announced well in advance so that employers and employees could agree on the necessary arrangements to facilitate voting. Mr Howard YOUNG said that the CE election was similar to the functional constituency elections. Many electors might prefer to vote on a weekday.

27. Mr Andrew WONG expressed the view that in the case of vacancy arising from the normal expiry of the term of office of CE, the polling date should be as close to the date of the expiry of the term of the serving CE as possible. He considered that the Administration should illustrate the estimated time required for completing the relevant processes to justify the proposal that the polling date should be set at the beginning of a period of 90 days prior to the expiry of the term of the serving CE.

28. LA pointed out that BL 53(2) provided that "in the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law". He suggested that the Administration should clarify whether the six-month period applied only to the CE election or to both election and appointment by the CPG.

29. SCA said that legal opinion sought by the Administration on this point was that the timing of the appointment which followed an election was not subject to the six-month requirement. He agreed to give a reply in writing.

Adm

30. The Administration also undertook to explain the following matters in writing to facilitate further discussion by the BC -

- (a) The basis on which the Administration proposed that the polling day should be at least 90 days before the date when the office of the serving CE became vacant;
- (b) Whether the polling day should be fixed on a Thursday or on a Sunday, having regard to members' views;
- (c) The time schedule to submit the request for appointment by the CPG to fill the vacancy in the office of CE;
- (d) The procedure for appointment of CE by the CPG; and
- (e) The time schedule for accommodating election petition(s) and judicial review(s) so as to ensure that all the legal challenges against the result of the CE election could be settled within a period of six months from the date when the vacancy of the office of CE had arisen.

(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)1405/00-01(01) and 1433/00-01(01))

Vacancy in office (clause 4)

31. Ms Cyd HO pointed out that clause 4(c) of the Bill mentioned the power of CPG to revoke the appointment of CE. However, it appeared that there were no provisions in the BL on such power of removal. She said that the implications of clause 4(c) should be discussed in detail in future meetings.

II. Meetings to receive deputations

32. The Chairman reminded members that two meetings were scheduled for 5 and 8 May 2001 to receive oral representations on the Bill. So far, 51 interested organisations and individual members of the public had submitted requests to make representations before the BC.

III. Date of next meeting

33. The next meeting would be held on 2 May 2001 at 8:30 am.

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34. The meeting ended at 10:45 am.

Legislative Council Secretariat
15 October 2001