

立法會
Legislative Council

LC Paper No. CB(2)205/01-02
(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 fifteenth meeting
held on Tuesday, 26 June 2001 at 8:30 am
in the Chamber 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 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 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 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
Hon Audrey EU Yuet-mee, SC, JP
- 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 CHAN Yuen-han
Dr Hon Philip WONG Yu-hong
Hon Tommy CHEUNG Yu-yan, JP
Dr Hon LO Wing-lok

Public Officers : Mr Robin IP
Attending 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 Justina LAM
Attendance Assistant Secretary General 2

Staff in : Mr Jimmy MA
Attendance Legal Adviser

Mr Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Administration's response to points raised at previous meetings
(LC Paper No. CB(2) 1933/00-01(01))

Members noted the Administration's response to the points raised by members at the meeting on 19 June 2001.

2. Ms Audrey EU said that Article 73(9) of the Basic Law (BL) clearly set out the procedure for the removal of the Chief Executive (CE) from office. She could not see how the Administration could argue that CE could be removed from office under some other circumstances and arrangement, and not in accordance with BL 73(9).

3. Ms Audrey EU pointed out that the Administration had not responded to the views expressed earlier by the Hong Kong Bar Association. Referring to the reference made in the Administration's paper to the views of the Law Society of Hong Kong, she said that it was illogical to conclude that the power of appointment under BL 15 could be interpreted to include the power of removal, because the Basic Law of the Macao Special Administrative Region (SAR) expressly recognised the power of the Central People's Government (CPG) to remove the Chief Executive of Macao SAR from office. She further said that the legal advice given by the Legal Adviser (LA) concerning CPG's power to revoke the appointment of CE to which the Administration also made reference was wrong. She added that the particular speech of Mr JI Peng-fai LA quoted in his legal advice was totally irrelevant to the issue of removal of CE from office.

4. Ms Audrey EU strongly criticised that the Administration's arguments set out in its paper were groundless and completely failed to explain why CPG could remove CE from office under BL 2, 12, 15, 43 and 47. She said that what was provided for in these Articles was a manifestation of the high degree of autonomy enjoyed by the Hong Kong Special Administrative Region (HKSAR). The Administration's view that CPG could remove CE from office under these Articles seriously undermined the high degree of autonomy of the HKSAR.

5. Mr CHEUNG Man-kwong shared Ms EU's view that the Administration had failed to explain why CPG could remove CE from office under BL 2, 12, 15, 43 and 47. He said that the Administration's argument that the power "to appoint" in BL 15 included the power "to remove" was unacceptable. He further said that if BL 15 was intended to provide for the power of appointment and that of removal, "appoint and remove" would have been used instead of "appoint". He added that BL 48(5), which stipulated that the removal of any principal officials of the HKSAR Government should be recommended by CE to CPG, reflected the high degree of autonomy enjoyed by Hong Kong. He queried how the Administration could argue that by reading BL 15 and BL

48(5) in conjunction, it followed that "appoint" in BL 15 contained the power to remove.

6. Mr CHEUNG Man-kwong said that it was evident in the BL that the impeachment of CE was dealt with under BL 73(9), while the resignation of CE was dealt with under BL 52. He added that Article 15 of the Macao SAR Basic Law expressly recognised CPG's power to remove the Chief Executive of Macao SAR. He could not accept that it followed that Article 15 of the HKSAR Basic Law could be interpreted to include the power of removal, when the wording of the two Articles was different.

7. Mr CHEUNG Man-kwong added that the Administration's proposed clause 4(c)(v) of "any other circumstances under the Basic Law" could result in the CPG using any Article in the BL to remove the CE from office. The Administration's arguments had undermined its own credibility as well as the high degree of autonomy of the HKSAR.

8. Mr Martin LEE said that he agreed with the views of Ms Audrey EU and Mr CHEUNG Man-kwong. He said that as the Macao SAR Basic Law and the HKSAR Basic Law were drafted by the same government, the difference in wording between Article 15 of the Macao SAR Basic Law and Article 15 of the HKSAR Basic Law was deliberate. He also considered Mr Ji Peng-fai's speech quoted by LA irrelevant and that the Administration's proposed clause 4 would undermine the high degree of autonomy of the HKSAR.

9. Ms Emily LAU expressed support for the views of Ms Audrey EU, Mr CHEUNG Man-kwong and Mr Martin LEE. She said that the Frontier objected to the Bill, as it considered that the "small circle" election of CE by an 800-member Election Committee was not really an election. Nevertheless, she had participated in the scrutiny of the Bill with a view to making improvements to the Bill. She further said that the Administration's proposed amendments to clause 4 of the Bill had given rise to much intense debate and public outcry. She queried whether the Administration was selective in its response to the views expressed by various parties on the Bill, as it had not responded to the views of the Bar Association. She added that the Administration should explain why Article 15 of the Macao SAR Basic Law could be used to argue that the power of appointment under Article 15 of the HKSAR Basic Law could be interpreted to include the power of removal.

10. Deputy Secretary for Constitutional Affairs (DSCA) responded that CPG's power to remove CE flowed from the BL and not the Bill. The Administration had explained many times that clause 4 was not an empowering provision that conferred additional powers on CPG to remove CE from office. It only reflected all the circumstances under which the office of CE would become vacant so as to tie in with other provisions in the Bill on the conduct of

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a CE election. The Administration's paper had explained that CPG had the power to appoint and remove CE. It had also explained that CPG's power to remove CE from office was not unlimited, but might be subject to constitutional, legal and conventional constraints. He added that the Law Society's view in respect of Article 15 of the Macao SAR Basic Law was quoted for members' information only.

11. Referring to the legal advice given by LA concerning the power of CPG under the BL to revoke the appointment of CE (LC Paper No. LS 102/00-01), Ms Emily LAU questioned why Mr JI Peng-fai's speech was quoted and why CPG could revoke the appointment of CE for the purpose of maintaining "Hong Kong's stability and administrative efficiency".

12. LA explained that the legal advice provided by the Legal Service Division had been written in plain language so that it would be easily comprehensible. Where complicated legal principles were involved, they were usually not given in detail so as to maintain the conciseness of the legal advice. In the preparation of the legal advice, the Legal Service Division had applied the common law principles, the continued application of which was provided for in BL 8. Although some academics and legal professionals might also apply other principles in the interpretation of the BL, he considered that the common law system was fundamental to the implementation of the "one country, two systems" principle and a high degree of autonomy in Hong Kong. On this basis, it was pointed out in the legal advice that -

- (a) whilst the power to appoint officials co-existed with the power to remove them under the Constitution of the People's Republic of China (the Constitution), it should be pointed out that similar interpretation might not be drawn in the interpretation of the BL;
- (b) the Court of Final Appeal had stated that in the interpretation of a constitutional instrument such as the BL, a purposive approach was to be applied. The court had usually relied on relevant extrinsic materials in ascertaining the legislative intent of a provision. However, as pointed out by some academics, there might still be some subjective judgement in the conclusion even if a purposive approach was applied in interpretation;
- (c) after the BL came into force, one of the difficulties legal practitioners and the court had generally encountered in the interpretation of the BL was the lack of materials relevant to the drafting of the BL, from which they could draw reference. The court had pointed out that the minutes of the closed-door sessions of the Sino-British Joint Liaison Group and documents of the Preparatory Committee for the HKSAR could not be relied upon as materials relevant to the interpretation of the BL; and

- (d) in the absence of authoritative official documents relevant to the interpretation of the BL, the Legal Service Division had drawn reference from the speech given by Mr JI Peng-fai, Chairman of the Drafting Committee for the Basic Law of the HKSAR, at the Third Session of the Seventh National People's Congress (NPC) which was similar in effect to speeches given by a public officer at the Second Reading debate on a bill.

13. LA said that the legal advice had been given objectively having regard to all relevant considerations. It could be concluded from the principles and materials as quoted in the legal advice that there was an implied power for CPG to revoke the appointment of CE. However, such a power had to be exercised reasonably, rationally and consistent with the basic principles and policies of the BL, namely, the principles of "one country, two systems" and maintaining the "high degree of autonomy of the HKSAR" as well as Hong Kong's stability and administrative efficiency. LA further said that besides the basic principles of "one country, two systems" and the "high degree of autonomy of the HKSAR", each provision in the BL had its own purpose. The purpose of maintaining "Hong Kong's stability and administrative efficiency" was quoted because in the event that the CE's office had been vacant for some time, a mechanism would be needed to resolve the situation. Depending on the facts giving rise to the situation, it might be necessary for CPG to exercise its power. However, whether such a power had to be exercised and how it should be exercised would be a matter for CPG.

14. LA added that the legal advice aimed to assist members in analysing the various issues pertinent to the discussion of clause 4 applying legal principles that were generally accepted and endorsed by courts. While the conclusion in the legal advice appeared to be similar to the Administration's views, many differences could be noticed if a more detailed comparison was made.

15. Ms Emily LAU considered that Mr JI's speech should not be given the weight of a legal document. She further asked whether situations where a CE had committed a serious breach of law outside Hong Kong or had committed a moral wrong could be dealt with by BL 73(9).

16. LA said that while the Bar Association took the view that situations where a CE had committed a serious breach of law outside Hong Kong could be dealt with under BL 73(9), it had not explained why it took such a view. He said that in the interpretation of the BL, he had applied the generally accepted principle that unless expressly provided otherwise, the application of a piece of legislation was confined to the territory of Hong Kong. Thus, the serious breach of law should be confined to acts within the territory of Hong Kong. As regards the question of moral wrong, the requirement that CE should be a person of integrity and dedicated to his duties also seemed to be

applicable within the territory of Hong Kong. BL 73(9) might therefore not be adequate for dealing with serious breach of law or moral wrong outside the territory of Hong Kong. At the Bills Committee meeting on 12 June 2001 which was also attended by a representative of the Bar Association, he had sought its views as to whether a judicial review could be sought in respect of decisions made by LegCo under BL 73(9). Unfortunately, there was insufficient time to discuss the issue. While he did not have a firm view on the subject, he was inclined to think that the seeking of such a judicial review would be difficult.

17. Ms Emily LAU asked about the meaning of dereliction of duty in BL 73(9) and whether it was confined to the territory of Hong Kong. LA responded that there was not a definite answer to the question. He added that it was not necessary for the Bill to stipulate expressly the situations under which vacancy in the office of CE would arise for the purposes of enacting an electoral law for the election of CE. He was of the view that clause 4 of the Bill could be appropriately deleted.

18. Dr YEUNG Sum said that the proposed clause 4(c)(v) amounted to giving up the "one country, two systems" principle and the high degree of autonomy of the HKSAR. It should thus be deleted. He considered that the drafting of the clause would allow CPG to remove CE from office under any circumstances as long as it was not in contravention of the BL. He added that if a provision found in the Macao SAR Basic Law, but not in the HKSAR Basic Law, was to be applicable to the HKSAR, it would mean that all the provisions in the Macao SAR Basic Law would be applicable to the HKSAR.

19. Miss Margaret NG said that Mr JI Peng-fai's speech had no relevance to the discussion of clause 4. She said that the Law Society's view that it could be derived from the Constitution that the one who appointed an official also had the power to remove that official was unconvincing. In this connection, the Bar Association had pointed out that where there was a power to remove, it would have been expressly provided for in the Constitution, such as in Article 63 of the Constitution. The Law Society had also failed to recognise that the BL and the Constitution were different documents. She further said that serious conflicts would arise if all relevant provisions in the Constitution were to be directly applied to Hong Kong. She added that the drafting of Article 15 of the Macao SAR Basic Law in fact indicated that there was no power to remove CE unless expressly provided for.

20. Referring to the Administration's CSA in respect of clause 4(c), Miss Margaret NG said that if the CE resigned under BL 52, CPG needed only to accept his resignation. There was no need for CPG to "remove" the CE under such a situation. She said that the same view was also found in the submission of the Bar Association.

21. Miss Margaret NG said that the Administration's position in respect of clause 4 reflected that although the BL provided the HKSAR with a high degree of autonomy, the Administration had undermined it with the introduction of unclear provisions in legislation. She said that if clause 4 of the Bill was not carefully dealt with, Hong Kong's reputation in the international community would be seriously undermined, as in the case of the seeking of the Standing Committee of NPC's interpretation of BL 24(2)(3) in 1999.

22. Mr TAM Yiu-chung considered that the Administration's proposed clause 4(c)(v) was acceptable and clearer than the previous clause 4(c)(iii). He said that the Administration's position was not tantamount to compromising the high degree of autonomy of the HKSAR. He agreed with the view that clause 4 was not an empowering provision. He also expressed agreement with LA's analysis. He said that CPG's power of appointment of CE was a substantive one and carried with it the power of removal. As the phrase "under the Basic Law" was found in clause 4(c)(v), CPG's power to remove CE from office was not unlimited, but subject to the provisions of the BL. He considered that the Administration should explain clearly the proposed amendments to clause 4 at the resumption of Second Reading debate on the Bill.

23. Mr SZETO Wah said that the Administration's proposed amendments to clause 4 were totally unacceptable. The arguments given so far by the Administration were unconvincing. He considered that the provision that CPG might remove CE "under any other circumstances under the Basic Law" would undermine the BL. He added that the Macao SAR Basic Law differed in many respects from the HKSAR Basic Law. It was therefore inappropriate to argue that because the Macao SAR Basic Law expressly recognised the power of CPG to remove the Chief Executive of Macao SAR, the power of appointment under Article 15 of the HKSAR Basic Law could be interpreted to include the power of removal. Referring to paragraph 14 of the legal advice, he commented that the meaning of the words "appears" and "implied" were not clear and definite.

24. Mr LEUNG Fu-wah said that in the enactment of legislation, it was not possible to have all possible scenarios written into the law. He expressed support for the view that clause 4 was not an empowering provision. It did not increase or reduce CPG's power to remove CE from office.

25. Mr Martin LEE said that he did not see how the speech of Mr JI Peng-fai could support the Administration's proposed amendments to clause 4. He pointed out that the speech was not about the relationship between the HKSAR and CPG, but the relationship between the executive authorities and the legislature.

26. LA said that the speech of Mr JI Peng-fai was referred to in the legal advice because it was about the relationship between the legislature and the executive authorities, and would be relevant for understanding the constitutional role of the legislature in the removal of a CE who was charged with serious breach of law or dereliction of duty under BL 73(9). He stressed that it was important for the exercising of power by CPG to be made in accordance with the BL. He added that the phrase "including the purpose of maintaining Hong Kong's stability and administrative efficiency" could be deleted without affecting the conclusion reached in the legal advice.

27. Mr Martin LEE asked whether the Administration would use the speech of Mr JI Peng-fai to support its arguments in respect of clause 4. DSCA responded that the Administration's paper had not quoted the speech of Mr JI Peng-fai. It was only quoted in the legal advice prepared by the Legal Service Division of the Legislative Council (LegCo) Secretariat.

28. Ms Emily LAU welcomed LA's deletion of the phrase "including the purpose of maintaining 'Hong Kong's stability and administrative efficiency'" in the legal advice. She asked how the words "appears" and "implied" in the legal advice should be interpreted.

29. LA said that the legal advice was prepared much earlier than the Administration's CSAs. The legal advice aimed to assist members in analysing the various issues pertinent to the discussion of clause 4. While it did not have a stance on whether CPG had the power to remove CE from office, it could be concluded that there appear to be an implied power for CPG to revoke the appointment of CE. He drew members' attention to the fact that the word "under" before "the Basic Law" of the English text of clause 4(c)(v) had a broader meaning than the Chinese version. He added that clause 4 could be appropriately deleted, as it was not necessary to stipulate expressly in the Bill the situations under which vacancy in the office of CE would arise for the purposes of enacting an electoral law for the election of CE.

30. Miss Margaret NG asked about circumstances under which a power could be inferred by implication. LA responded that this approach had been adopted in appropriate cases under the common law. He added that Francis BENNION had stated in the book entitled "Statutory Interpretation" that "The essence of the purposive approach is to give effect to the intention of the legislature.....even if it is achieved by disregarding the literal meaning of the terms of the legislation, and this is what sometimes called the strained meaning.". Although the latter part of the statement was debatable, it could be noted that it was an important principle in the interpretation of laws to give effect to the intention of the legislature. He informed members that recent court decisions had shown that the purposive approach had been adopted more readily by courts in the interpretation of statutes.

31. DSCA disagreed with LA's view that clause 4 of the Bill could be deleted. He said that clauses 4, 5 and 6 were interrelated. Clause 4 set out the circumstances under which the office of the CE would become vacant, clause 5 provided for the declaration of a vacancy and clause 6 provided for the election to fill the vacancy. Deputy Law Draftsman (DLD) added that different requirements, such as those in clause 13, were set out in the Bill for different circumstances under which the office of CE became vacant. As it was necessary to set out all the circumstances under which the office of CE would become vacant, clause 4 could not be deleted.

32. LA said that clauses 4, 5 and 6 were interrelated only because clauses 5 and 6 were drafted on the basis that there was a clause 4. He believed that if appropriate Drafting Instructions were provided to the government law draftsman, the provision in clause 4 might not necessarily be needed. He said that in order to achieve the main purpose of the Bill, it would only be necessary to provide clearly that the election procedures had to commence when vacancy in the office of CE arose.

33. DLD said that if the different circumstances under which the office of CE became vacant were not set out in the Bill, difficulties would be encountered in the determination of the polling date, which was different for a vacancy arising from a normal expiry of term of office and that arising from other circumstances.

34. DSCA said that all provisions in the Bill had been drafted in a prudent manner. As the provisions were interrelated, the deletion of a provision might lead to implementation problems.

35. The Chairman said that it was not unusual that a bill might appear entirely different if redrafted. Mr Martin LEE shared the same view. He said that the Administration was selective in listening to the views of LA.

36. LA said that his proposal of deleting clause 4 was subject to the premise that a declaration of vacancy would be made in accordance with clause 5(1) by the Acting CE.

37. Mr CHEUNG Man-kwong said that although the Administration had stressed many times that clause 4 only sought to set out all the circumstances under which the office of CE would become vacant, the Administration had incorporated a provision allowing CPG to remove CE from office under any other circumstances under the BL. He further said that provisions in the BL on circumstances under which the office of CE became vacant were confined to BL 52, which dealt with the resignation of CE, and BL 73(9), which dealt with the impeachment of CE. With the proposed clause 4(c)(v), the BL provisions under which CE could be removed from office would be substantially widened to include irrelevant provisions such as BL 2, 12, 15, 43 and 47. It would

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allow CPG to use any provision in the BL to remove CE from office.

38. DSCA reiterated that clause 4 was not an empowering provision. It did not confer additional powers on CPG to remove CE from office. CPG's power to remove CE flowed from the BL and not the Bill. Clause 4 only reflected all the circumstances under which the office of CE would become vacant. This was the necessary trigger for the declaration of a vacancy under clause 5 and the holding of an election under clause 6.

39. Mr Martin LEE said that the drafting of clause 4(c)(v) might allow CPG to remove CE from office without referring to the relevant BL provision, but arguing that the legislation of the HKSAR also provided for such a removal.

40. DSCA responded that the Administration had explained in a previous paper for the Bills Committee (LC Paper No. CB(2) 1647/00-01(01)) that CPG's power to remove CE from office was not unlimited, but subject to constitutional, legal and conventional constraints. The BL had legal force throughout the country and should be observed by all state organs including CPG.

41. Mr Martin LEE said that BL 19 provided that the courts of the HKSAR had no jurisdiction over acts of state. He asked how a person could seek redress in Hong Kong courts in respect of a decision of CPG to remove an incumbent CE, if CPG claimed that it was an act of state. Mr LEUNG Fu-wah asked whether redress could be sought in the courts of Hong Kong, before 1 July 1997, in respect of a decision of the British Government to remove a Governor. DSCA undertook to provide a written response.

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(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(2) 1988/00-01 on 28 June 2001.)

42. Mr SZETO Wah said that although the Administration had reiterated that clause 4 was not an empowering provision, it had described many BL provisions unrelated to the removal of CE from office as provisions under which CE could be removed from office. He questioned how the Administration could ensure that clause 4(c)(v) would not be interpreted as providing CPG with the power to remove CE from office. He added that if the Administration considered that CPG's power to remove CE was not unlimited, it should provide members with a list of all constraints. DSCA responded that the constraints were set out in the paper (LC Paper No. CB(2)1647/00-01(01)) provided by the Administration for the Bills Committee meeting on 29 May 2001.

43. Mr CHEUNG Man-kwong asked how CE could be removed from office under BL 12. DSCA responded that CPG's power to remove CE flowed from the BL. In the interpretation of the BL, a purposive approach was to be

applied and BL 12 was quoted in that context in the Administration's paper.

44. Ms Emily LAU said that it was stated in the Administration's paper on CPG's power to remove CE that there was no specific provision in the Constitution which covered CPG's exercise of power to remove CE from office and the BL had not been in operation long enough for relevant constitutional conventions to develop in the area. Thus, it could be concluded that there was practically no constraint on CPG's power to remove CE. LA said that the Administration should explain the meaning of "constraints" as appeared in the Administration's paper and the consequences for failure to comply with the constraints.

45. Deputy Solicitor General (Constitutional) responded that the constraints were those that applied in relation to the application of any constitution. In respect of the subject of constitutional laws, there were various ways of classifying the constraints which might be placed on an executive authority or an authority acting under a constitution. The powers of CPG must be exercised in accordance with the principle of constitutionality. The BL was a national law that must be observed by state organs including CPG. Regarding conventional consideration, the BL had not been in operation long enough for relevant conventions to develop in the area. However, many countries had relied on conventional constraints and conventions. He added that he was not in a position to provide information about the result of failure of CPG to act in accordance with the Constitution.

46. LA advised that there was no specific provision in the Constitution which set out CPG's power to remove CE from office. He added that in the examination of constitutional constraints, it should be noted that failure to comply with a constraint would not lead to direct sanction by the courts.

47. Mr Martin LEE opined that it was CPG which would possibly sanction the HKSAR rather than the reverse. He reiterated that clause 4(c)(v) might allow CPG to remove CE from office while claiming that the removal was made in accordance with local legislation.

II. Draft Committee Stage amendments proposed by Members (LC Paper No. CB(2) 1915/00-01(01) and (02))

48. Members noted the draft CSAs proposed by Mr Martin LEE.

49. Miss Margaret NG said that while she agreed in principle with the draft CSAs proposed by Mr Martin LEE, she had provided some suggestions on the drafting aspects to Mr LEE.

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50. Mr Martin LEE informed members that the draft CSAs would be revised having regard to the views of Miss Margaret NG. He welcomed other members' views on the drafting of the CSAs.

51. Mr CHEUNG Man-kwong informed members that the Democratic Party would consider voting against the Administration's CSA to disqualify a person from being nominated as a candidate if he had been convicted of treason.

52. Ms Emily LAU said that as the Administration's proposed CSAs were unacceptable, she would consider proposing amendments to clause 4.

III. Draft Committee Stage amendments proposed by the Administration

(LC Paper No. CB(2) 1915/00-01(03) and (04))

53. Members noted the revised draft CSAs proposed by the Administration. They also noted a marked-up copy of the Bill, which was tabled at the meeting, prepared by the Legal Service Division on the basis of the revised draft CSAs proposed by the Administration.

(Post-meeting note : The marked-up copy of the Bill tabled at the meeting was issued to members vide LC Paper No. CB(2) 1957/00-01 on 27 June 2001.)

54. Miss Margaret NG expressed concern that the new clauses 3(3) and 11(3)(a) as presently drafted would be in conflict with each other. She said that while there was no problem with the policy aspects of the clauses, the phrase "...cannot assume the office of the Chief Executive on the day..." in the new clause 11(3)(a) could have the effect of making it necessary for a new polling date to be fixed even where the successful candidate could not assume office only temporarily, and not permanently. Similarly, a new polling date might have to be fixed if a vacancy arose on 1 July but the date on which the term of office of CE commenced was mistakenly published by notice in the Gazette as 29 June.

55. DSCA responded that he did not see any conflict between the new clauses 3(3) and 11(3)(a). DLD added that new clause 3(3) was only an administrative provision requiring the date on which the term of office of CE would commence to be announced by notice in the Gazette. He said that the meaning of the phrase "cannot assume the office of the Chief Executive" might be further examined. He further said that even where an incumbent CE was unable to discharge his duties on a particular day, he could still assume office on that day.

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56. Miss Margaret NG said that the appointment of an elected person as CE might be so controversial that CPG was unable to make a final decision on the appointment by the time the vacancy arose. Under such circumstances, the new clause 11(3)(a) might have the effect of making it necessary for a new polling date to be fixed. DLD undertook to provide a written response on the issue.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(2) 1988/00-01 on 28 June 2001.)

57. Mr CHEUNG Man-kwong informed members that the Democratic Party might propose amendments to clause 14, although it had not formed a final view on the issue.

58. Ms Emily LAU asked whether the Electoral Affairs Commission (EAC) Regulations made under clause 19(2) would be consistent with the withdrawal of candidature under the LegCo Ordinance. DSCA responded that the EAC Regulations set out the procedures rather than the policy in respect of the withdrawal of candidature. The arrangements for withdrawal of candidature were consistent with those under the LegCo Ordinance.

59. DSCA informed members that clause 21A sought to provide that if any candidate died or was disqualified after the close of nominations, the election of CE should be terminated and a new polling date appointed in accordance with clauses 10 and 11.

60. In response to Assistant Legal Adviser 4's (ALA4's) question about the effect of clause 21A(2), DSCA and DLD explained that the provision sought to clarify that if a candidate was eliminated at any round of voting, he would cease to be a candidate and it would not be necessary for a new poll to be held in the event of death or disqualification of this person.

61. Mr LEUNG Fu-wah said that under the current drafting of clause 21A, an election might never be held if candidates continued to be assassinated. DSCA responded that as explained at previous meetings, such a possibility was very low. The drafting of the provision had already taken account of different possible situations.

62. Ms Emily LAU asked how a new polling date was to be determined for an election terminated under clause 21A. DLD explained that the new polling date would be determined in accordance with clause 11(2). It would be the first Sunday 42 days after the termination of election proceedings.

63. In response to Ms Emily LAU's question about the reasons for the proposed deletion in clause 2, DSCA explained that the deletion was consequential to the new arrangement that a new poll would be held in the

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event of death or disqualification of any candidate after nominations were closed.

64. The Chairman asked whether the deletion in Table 5 in section 2 of the Schedule to the Bill would be accompanied by a renumbering of the subsequent items in Table 5. DLD responded that the renumbering of items would be carried out at the editorial stage after the Bill had been passed.

65. The Chairman said that the Bills Committee had completed scrutiny of the Bill and a report would be made to the House Committee at its meeting on 29 June 2001. He said that the Administration had given notice for resumption of Second Reading debate on the Bill at the LegCo meeting on 11 July 2001. He reminded members that the deadline for giving notice of CSAs was 30 June 2001. He also reminded members to notify the LegCo Secretariat if they wished to propose separate voting on particular clauses or CSAs.

66. ALA4 informed members that the Legal Service Division was still liaising with the Law Drafting Division of the Department of Justice on the drafting of the Chinese text of the Bill. If there were any matters requiring attention, he would report them to members in writing.

67. The meeting ended at 11:32 am.

Legislative Council Secretariat
30 October 2001