

立法會
Legislative Council

LC Paper No. CB(2)2222/00-01

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seen by the Administration)

Ref : CB2/PL/CA

**Legislative Council
Panel on Constitutional Affairs**

**Minutes of meeting
held on Tuesday, 17 July 2001 at 8:30 am
in the Conference Room B of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon Margaret NG
Hon Howard YOUNG, JP
Hon SZETO Wah
Hon Audrey EU Yuet-mee, SC, JP

Member Attending : Hon LEUNG Yiu-chung

Members Absent : Hon James TIEN Pei-chun, GBS, JP
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Jasper TSANG Yok-sing, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS

Public Officers Attending : Item II

Mr Clement MAK
Deputy Secretary for Constitutional Affairs (SD)

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs (SD)

Item III

Mr Clement MAK
Deputy Secretary for Constitutional Affairs (SD)

Mr Isaac CHOW
Deputy Secretary for Constitutional Affairs (2)

Ms Mable CHAN
Principal Assistant Secretary for Constitutional Affairs (3)

Clerk in Attendance : Mr Paul WOO
Acting Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Ms Eva LIU
Head, Research and Library Services Division

Miss Yvonne YU
Senior Assistant Secretary (2)7

Action
Column

I. Matters arising from the last meeting on 9 July 2001

System of accountability for principal officials

The Chairman said that as agreed by members at the Panel meeting on 9 July 2001, he had sent a letter to request the Secretary for Constitutional Affairs (SCA) to report on the present state of progress of the Administration's study on the system of accountability for principal officials, since there had been a lot of press reports on the matter recently. SCA had yet to reply. The item would be discussed together with the report of the delegation on the overseas duty visit at the meetings to be held on 27 August 2001 and 3 September 2001.

II. Restrictions on activities undertaken by a former Chief Executive
(LC Paper No. CB(2)2042/00-01(04))

2. Deputy Secretary for Constitutional Affairs (SD) (DSCA(SD)) briefed members on the Administration's paper (LC Paper No. CB(2)2042/00-01(04)). He said that the paper presented the findings of the preliminary research on the

Action
Column

arrangements applicable to heads of governments after they stepped down from office in Australia, Belgium, Canada, Germany, Japan, New Zealand, United Kingdom and United States. Except in the United States where a person who had been a President for two terms was not allowed to stand for Presidential election, the other countries did not have any rules governing a former head of government's involvement in political activities. As regards involvement in commercial activities, there was no specific rule except in Belgium, Canada and United Kingdom. The scope of benefits enjoyed by a former head of government in these countries varied. DSCA(SD) added that the study on the arrangement applicable to a former Chief Executive (CE) was still in progress. The Administration welcomed members' views and would revert to the Panel when it was in a position to do so.

3. Mr SZETO Wah said that the paper did not provide any information on the situation where the service of a head of government was terminated by removal, e.g. through the impeachment process. He asked the Administration to conduct further research in this respect for the information of the Panel. DSCA(SD) agreed.

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4. Ms Emily LAU raised two points. First, she asked whether the Administration considered it necessary to establish such a mechanism before the expiry of the term of office of the first term CE. Secondly, she asked whether the Administration had come up with any specific proposals.

5. DSCA(SD) said that although the Administration had no specific time frame in mind, it would endeavour to put in place a mechanism within a reasonable period of time before the expiry of the term of office of the first term CE. As the Administration had just completed the preliminary research, it had not formed any view on the issue.

6. Miss Margaret NG asked what criteria had been adopted by the Administration in arriving at the view that CE was comparable to heads of governments in overseas countries. She asked whether it was more appropriate to compare CE with senior civil servants.

7. DSCA(SD) said that CE was not a public servant, but the head of the HKSAR. In view of CE's unique constitutional position, it might not be appropriate to apply to the CE the existing arrangements applicable to senior civil servants. In undertaking the research on overseas practice, the Administration took note of the underlying spirit and principles of the arrangements applicable to heads of governments in overseas countries. The objective of the overseas governments to impose restrictions on certain activities of a former head of government was to ensure that he would not be involved in anything that might constitute a conflict of interest with his previous office.

8. Mr LEUNG Yiu-chung said that as the five-year term of office of CE would expire soon, he could not understand why so little progress had been made on the matter. In view of the limited time available before the expiry of the term, he asked the Administration to advise on the timing and process of consultation with LegCo and the public. DSCA(SD) reiterated that the study would be completed before the expiry of the term of office of the first term CE. Mr LEUNG asked which authority would be responsible for giving final approval to the recommendations of the study. DSCA(SD) said that while the Administration would generally seek approval from the Executive Council on important policy issues, the Administration had yet to decide how to deal with the issue under discussion.

9. Mr SZETO Wah asked whether the proposed arrangement applicable to CE would be implemented in the form of legislation. If the Administration intended to introduce a bill into LegCo for such purpose, he asked whether the legislative process could be completed by March 2002 when the election of the second term CE was held.

10. DSCA(SD) replied that the study was still in progress and the Administration had not formed any view on the point raised by Mr SZETO. Even if there was no legislation, the Administration would promulgate guidelines which would be open, transparent and subject to the monitoring of LegCo and the public. Mr LEUNG Yiu-chung raised concern about enforcement of guidelines as they were not legally binding.

11. The Chairman said that the most important thing was that CE should not misuse his official position or information acquired in the course of his official duties to further his private interests after his departure from office. However, the Chairman considered that the issue was much wider in scope than that presented in the Administration's paper. In his view, the issue should be considered in the context of the study of the system of accountability for principal officials so that any restrictions and benefits applicable to CE should also apply to "political appointees" under the proposed accountability system and LegCo Members. Otherwise, the role played by LegCo Members under the constitutional system would be ignored. As the Administration's study did not provide information on arrangements applicable to "political appointees" and the legislature, it was considered too narrow in scope and only tailored-made for Mr TUNG Chee-hwa.

12. On the question of legislation vis-à-vis guidelines, the Chairman pointed out that while there were no rules governing the involvement of a former President of the United States in commercial activities, it had been a convention for the President not to enter into any employment after leaving office because the benefits he enjoyed were substantial.

13. Ms Emily LAU pointed out that it was important that a CE should not abuse his power or position for personal interests or gain in future. She stressed that the Administration must ensure that any system proposed should restrict a former CE from engaging in any activities which might give rise to any potential conflict of interests with his previous office. Ms LAU said that irrespective of whether the proposed system would be implemented by way of administrative arrangements, convention or legislation, the Administration must obtain LegCo's support and approval. In addition, the Administration should allow a reasonable period of time for discussion and consultation with LegCo. DSCA(SD) agreed that there should be a reasonable period of time for exchange of views with LegCo.

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14. The Chairman said that the Panel had previously considered whether the Research and Library Services Division (RLSD) of the LegCo Secretariat should be requested to conduct a research on the subject. He sought members' view. After discussion, members agreed that an independent research should be conducted by RLSD. The Chairman then sought members' view on the proposed scope of research.

15. Miss Margaret NG considered that comparing CE with heads of overseas governments who were directly elected through universal suffrage was not appropriate. In her view, it would be more appropriate to make reference to the existing arrangements applicable to senior civil servants. Reference should also be made to the experience of the People's Republic of China. As regards overseas experience, apart from legal restrictions, the research should also cover other forms of restriction, e.g. social conventions or restrictions imposed by the political party to which the head of government belonged. In arriving at an agreed system, she considered that wide consultation with the LegCo, the public and academics was necessary.

RLSD

16. The Chairman requested Head/RLSD to prepare a draft outline of the research for members' consideration.

III. Mechanism for amending the Basic Law

(LC Paper No. CB(2)2047/00-01(01), CB(2)1763/00-01(04) and CB(2)2058/00-01(01))

Progress on devising a system for amending the Basic Law (BL)

17. Deputy Secretary for Constitutional Affairs (2) (DSCA(2)) briefed members on the progress in devising a system for amending the BL. He said the Administration was in the process of consulting the Central Government. This process was necessary as the establishment of the mechanism for amending the BL involved issues relating to the LegCo, the local deputies to

the National People's Congress (NPC) and the CE which were inter-related. These were not issues that could be unilaterally resolved by the HKSAR on its own and the Administration needed to discuss these issues fully with the various parties concerned. The Administration would follow up the matter and would report to the Panel when there was further progress.

18. Mr LEUNG Yiu-chung raised concern about the timetable for devising the amendment mechanism. He said that according to the timetable previously provided by the Administration (paragraph 8 and Appendix III of the Background Paper prepared by the LegCo Secretariat - LC Paper No. CB(2)1763/00-01(04) refers), the time required for consultation with the Central Government and the Standing Committee of NPC was open-ended. Apart from this consultation process, the time required for those steps and procedures that were entirely within the ambit of HKSAR was about 15 - 22 months. He expressed regret about the little progress made in the past two years and cast doubt on the prospect of achieving further progress in the foreseeable future. Mr LEUNG further said that although the Administration had advised members that seven meetings were held with the Central Government, members knew nothing about the discussions held and the Administration's position. He requested the Administration to provide to the Panel the papers that it had prepared for its meetings with the Central Government.

19. DSCA(2) said that the Panel and the Administration had done a lot of work in the past two years. The Administration had completed a preliminary analysis of the major issues identified and had held a number of meetings with the Central Government to discuss the matter. The present indication was that the Central Government would require more time to study the matter which was complex. As the papers provided to the Central Government were internal documents, it would not be appropriate for the Administration to disclose them.

20. Ms Emily LAU raised two points. First, she asked whether the Administration would initiate discussion with the local NPC deputies. Secondly, she asked whether the Administration would arrange informal meetings for the "three concerned parties" referred to in BL 159, i.e. the LegCo, the local NPC deputies and the CE so as to expedite the process.

21. On the first point, DSCA(2) said that the General Office of the Standing Committee of the NPC had promulgated in late 1998 a set of guidelines to local NPC deputies on, inter alia, their discharge of duties in accordance with BL 159. The Administration would need to clarify whether the General Office of the Standing Committee of the NPC would issue more detailed guidelines on how the local NPC deputies should discharge their duties as laid down in BL 159, or whether the local NPC deputies would formulate their own rules of procedure. Pointing out that the guidelines were promulgated in

Action
Column

late 1998, Ms LAU asked when did the Administration seek clarification from the Central Government on the matter e.g. the specific date(s) of any correspondence addressed to the Central Government. DSCA(2) said that it would not be appropriate for the Administration to disclose the content of the discussions held with the Central Government. In further response to Ms LAU, DSCA(SD) agreed to raise the issue again with the Central Government at their next meeting.

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22. On Ms LAU's suggestion that informal meetings involving the "three concerned parties" should be arranged, the Administration agreed to convey the view to the Central Government at their next meeting.

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23. Ms Audrey EU asked whether it was the responsibility of the Administration that a mechanism for amending the BL should be established as soon as possible, and whether the Administration considered that its way of handling the matter would affect its credibility. DSCA(2) said that the Constitutional Affairs Bureau had made its best efforts to pursue the matter. There was no question of delay as the Administration must consult the Central Authorities on the matter which involved a lot of complicated issues. He did not agree that the credibility of the Administration would be adversely affected as a result.

24. Miss Margaret NG was of the view that no additional mechanism was required to give effect to BL 159. For example, no mechanism was required for LegCo and CE to discharge their duties under BL 159. As regards how the local NPC deputies should discharge their duties under BL 159, this was a matter for the NPC to decide. If the Administration considered it necessary to establish a mechanism for the implementation of BL 159, she said that the Administration might consider seeking guidance from the HKMAO or re-interpreting BL 159 by adding a provision to the Article. She cautioned that the Administration must consider carefully before proceeding further. Mr SZETO Wah agreed that BL 159 could be invoked by any one of the "three concerned parties" in the absence of any other mechanism. There were already two precedents.

25. Mr Howard YOUNG said that Members of the Liberal Party did not see any urgency to amend the BL and were concerned that demands to amend the BL would affect the stability of the HKSAR. While BL 159 made provision for amending the BL, he was not optimistic that the consent of two-thirds of the local NPC deputies could be easily obtained. While the Panel could continue discussion on a mechanism for amending the BL, it was unrealistic to expect that there would be a quick resolution to the matter.

26. Mr Howard YOUNG referred members to the English version of paragraph 5 of LC Paper No. CB(2)2047/00-01(01) which stated that "At a meeting with the Central Government to discuss certain issues in February

2001, the HKSAR Government raised this matter again in the margins of the meeting." He asked about the specific meaning of the word "margins". DSCA(2) replied the matter was neither included in the agenda of the meeting nor raised at the meeting. The Administration simply took the opportunity to bring the matter again to the attention of the Central Authorities.

27. The Chairman said that one should consider whether to support a proposal to amend the BL on the basis of the merit of the proposal. The Chairman said that he had voted on Mr LEUNG's two motions on the basis of the content of the motions. While he voted in support of the first motion, he voted against the second motion because he did not agree with its content. The Chairman pointed out that any one of "three concerned parties" under BL 159 could initiate a proposal to amend the BL, and when this occurred, it was the duty of the other two parties to respond. Such a proposal could come from the local NPC deputies, not necessarily from LegCo Members. Hence, he was of the view that a mechanism should be established as soon as possible.

Speech of the Acting Secretary for Constitutional Affairs (Ag SCA) at the Council meeting on 4 July 2001

28. Ms Margaret NG referred members to the verbatim transcript of the speech made by Mr Clement MAK, Ag SCA, at the Council meeting on 4 July 2001 on the motion moved by Mr LEUNG Yiu-chung under BL 159 (LC Paper No. CB(2) 2058/00-01(01)). She was strongly dissatisfied that Ag SCA had said that "Mr LEUNG Yiu-chung has claimed (聲稱) to move a resolution for amending the Basic Law in accordance with Article 159 of the Basic Law...". The words "聲稱" were used in his speech on several occasions. As the President of LegCo allowed Mr LEUNG to move the motion, she considered that Ag SCA's statement was disrespectful to the decision of the President.

29. DSCA(SD), Ag SCA at the time, said that the Administration respected the decision of the President. However, this did not mean that the Administration was not entitled to a different view. He pointed out that Mr LEUNG had moved a similar motion at the Council meeting on 29 January 2000. His statement made at the Council meeting on 4 July 2001 reiterated the Administration's position that in the absence of a mechanism agreed to by all parties concerned at this stage, Mr LEUNG's motion was premature from the constitutional angle and could not be regarded as a proper way to set in train the procedure for amending the BL. DSCA(SD) further said that according to a number of commonly used Chinese dictionaries, the words "聲稱" meant "聲言", "公開表示" or "公開地用語言或文字表示". He stressed that the Administration did not and had no intention to attach any other meaning to the words.

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30. Miss Margaret NG asked the Administration whether it accepted that the debate held by the Council on 4 July 2001 was on a proposed resolution moved by Mr LEUNG under BL 159. DSCA(SD) replied that this was a legal issue and he would need to seek legal advice before reverting to the Panel. Miss NG was dissatisfied with the reply. In view of the seriousness of the matter, she suggested that the matter should be brought to the attention of the House Committee.

31. Ms Emily LAU asked whether the Administration would consider advising the President not to allow similar motions to be moved by Members in future. DSCA(SD) said that on both occasions, neither was the Administration consulted nor did it give any view on Mr LEUNG's proposed motions before the President made her decision. In response to the Chairman's further inquiry, DSCA(SD) said that nothing in writing had been exchanged on the matter between the President and the Administration. As regards the future, the Administration would decide what to do having regard to the circumstances at the time.

32. DSCA(SD) reiterated that the fact of the matter was that he had represented the Administration to attend the Council meeting and had spoken on the motion. The Administration respected the decision of the President to allow the motion to be placed on the agenda of the Council meeting. Nevertheless, the Administration had to state its position on the motion. He hoped members would appreciate that these were two separate matters.

33. The Chairman was of the view that the use of the words "聲稱" in the speech implied that the Administration considered that Mr LEUNG's motion was "illegal". This amounted to a challenge to the decision of the President. As suggested by Miss Margaret NG earlier on at the meeting, members agreed that the matter should be brought to the attention of the House Committee.

IV. Any Other Business

Roles and functions of the District Councils

34. Ms Emily LAU said that she and the Chairman had attended a special meeting of the Home Affairs Panel on 16 July 2001 to discuss the review of the roles and functions of the District Councils (DCs). In their view, it was inappropriate for the Administration to consult the public on the basis of the Report of the Working Group on District Councils Review released in July 2001. They were dissatisfied that LegCo had not been consulted before the Administration released the Report. The Chairman had proposed to form a select committee to review the roles and functions of the DCs under the present

constitutional system and she expressed support to the proposal.

35. Ms Emily LAU added that at the special meeting on 16 July 2001, the Administration had agreed to extend the consultation period which would end on 10 September 2001. While some members had proposed to discuss the matter by holding a number of joint Panel meetings, she considered that the Chairman's proposal a better arrangement to deal with this important issue. Ms LAU suggested and members agreed that the proposal of establishing a select committee to review the roles and functions of DCs be discussed at the next Panel meeting on 27 August 2001. Subject to the agreement of the Panel, a recommendation could be made to the House Committee. The Administration should also be invited to give its view on the proposal.

36. Mr SZETO Wah supplemented that an opportunity should be given to DC members for them to express their views on the matter.

V. Items for discussion at the next meeting

37. Members agreed that the following items be discussed at the next meeting on 27 August 2001 -

- (a) Proposal to form a Select Committee to review the roles and functions of the District Councils;
- (b) Report of the delegation of the Panel on duty visit to study the systems of executive accountability in the United Kingdom, France and Germany; and
- (c) System of accountability for principal officials.

38. The meeting closed at 10:50 am.

Legislative Council Secretariat
27 August 2001