

立法會

Legislative Council

LC Paper No. CB(2)798/00-01

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Legislative Council Panel on Constitutional Affairs

Minutes of meeting held on Monday, 18 December 2000 at 2:30 pm in Conference Room A of the Legislative Council Building

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, JP
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 YEUNG Yiu-chung
Hon SZETO Wah

Public Officers Attending : Item III

Mr Clement MAK
Acting Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs (2)

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs (5)

Mr James O'Neil
Deputy Solicitor General (Constitutional)

Item IV

Ms Miranda CHIU
Deputy Director of Administration

Mr David LEUNG
Assistant Director of Administration

Miss Natalie LI
Assistant Secretary (Administration)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2) 493/00-01)

The minutes of the meeting on 31 October 2000 were confirmed.

II. Paper issued since the last meeting
(LC Paper No. CB(2) 487/00-01(01))

2. Members noted the paper provided by the Law Society of Hong Kong concerning the development of the political system of the HKSAR.

III. Legislation on the election of the Chief Executive (CE)
(LC Paper No. CB(2) 513/00-01(02))

3. Acting Secretary for Constitutional Affairs (SCA(Ag)) said that in response to members' request at the Panel meeting on 31 October 2000, the Administration had prepared a paper for the Panel setting out its preliminary legislative proposals for the CE Election Bill. In order to provide sufficient time for LegCo to scrutinize the Bill, the Administration would seek to introduce the Bill into LegCo in March 2001, instead of mid 2001 as earlier proposed. He hoped that members would give comments on the preliminary legislative proposals as soon as possible, so as to facilitate the drafting of the Bill.

Election Committee (EC)

4. Members noted the Administration's view that the EC for electing the second-term CE was the same one as the EC which had been formed in July 2000 to elect six Members to the second-term LegCo.

5. Dr YEUNG Sum asked the Administration to explain why it had not announced its decision earlier, despite members' repeated requests in the past. He said that this would lead people to suspect that the Administration had deferred making a decision on the matter until the composition of the EC, which was considered to be in favour of CE seeking a second term, was known. He opined that the Administration's late announcement of the decision would further undermine the credibility of the EC and the CE election.

6. SCA(Ag) said that when the Bills Committee scrutinized the Legislative Council (Amendment) Ordinance 1999, members had asked whether the EC provided in the Legislative Council (Amendment) Ordinance 1999 was the same one as the EC for electing the second-term CE. The Administration had advised the Bills Committee that its work at the time was to deal with the electoral arrangements for the second-term LegCo election, and that the EC provided in the Legislative Council (Amendment) Ordinance 1999 was to return six Members to the second-term LegCo. The Administration would introduce a separate bill on CE election at an appropriate time. SCA(Ag) said that the Administration was now in a position to put forward its preliminary proposals on the CE election for members' consideration. SCA(Ag) added that it was normal for the Administration to accord different priority to two pieces of legislation dealing with separate matters.

7. On the question of credibility of the EC and the CE election, SCA(Ag) said that the CE Election Bill to be introduced would be fully consistent with the Basic Law and subject to LegCo's scrutiny and passage before enactment. He could not see how the election of the second-term CE which would be conducted in accordance with the provisions of the local legislation and the Basic Law could lack credibility.

8. Mr Howard YOUNG considered that while the Administration's decision complied with the Basic Law, the delay in announcing the decision was inappropriate. He said that while some EC members were prepared that they would also be responsible for electing the CE, one could not preclude the possibility of litigation by some parties as a result of the Administration's decision. The Chairman doubted whether the question of litigation could be pursued before the CE Election Bill had become law. SCA(Ag) said that he would not comment on hypothetical questions.

9. Several members said that some people might have boycotted the EC election in July 2000 on the ground that it was a "small circle" type of election

and that it was only responsible to elect six LegCo Members. People might have acted differently had they known that the EC was also responsible for electing the CE. The fact that the Administration had not clarified the functions of the EC formed in July 2000 earlier had deprived some people's right to join the EC. In order to be fair to these people, Mr CHEUNG Man-kwong asked whether the Administration would consider re-electing the EC.

10. SCA(Ag) said that he could not comment on an individual's decision as to whether or not to stand as a candidate in the election for the EC. However, he disagreed with Mr CHEUNG's comment about the Administration depriving certain people of their right to join the EC. He recalled that the Secretary for Constitutional Affairs (SCA) had said publicly in June 2000 that if a person was interested in the election of the second-term CE, he should be equally interested in the election of the second-term LegCo. SCA(Ag) further said that there should be no question of having another EC election.

11. The Chairman said that the crux of the matter was that the Administration had never confirmed to Members that the ECs prescribed in Annexes I and II of the Basic Law were the same one. SCA(Ag) responded that neither had the Administration said that the two ECs were not the same one.

12. Ms Emily LAU said that she opposed the "small circle" type of election and therefore had not cast her vote as an EC member to return six Members to the second-term LegCo. Likewise she would not participate in the election of the second-term CE, despite the fact that such election procedure was prescribed in accordance with the Basic Law. She considered it inappropriate for the Administration to add an additional function to the EC which was established in July 2000. She asked whether adding an important function to a body after its formation was an accepted principle of law making and whether there were any examples in which laws were made in such a fashion.

13. Deputy Solicitor General (Constitutional) (DSG) said that he was sure that there were examples of a body being given additional functions subsequent to its establishment. He added that as the functions of the EC were specified under the Basic Law, the Administration was obliged to give effect to the requirements of the Basic Law in domestic legislation. SCA(Ag) supplemented that it was a matter of according priority to two separate pieces of legislation, and not giving an additional function to the EC.

14. Mr SZETO Wah asked whether the establishment of a new EC, in addition to the EC formed under the Legislative Council (Amendment) Ordinance 1999, for the purpose of electing the second-term CE would contravene the Basic Law. SCA(Ag) said that the Administration's view was stated in paragraph 3 of the paper which read " ... In accordance with Annex I to the Basic Law, the CE shall be elected by an EC. This EC is one and the

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same as the EC which has been formed in July 2000 to elect six Members to the second-term LegCo." The Chairman requested SCA(Ag) to provide legal advice obtained on the issue.

15. Miss Margaret NG said that while she held the view that the ECs referred to in Annexes I and II were the same, she noted that some people had other views. She asked the Administration to explain why and when it had come to a decision that the ECs were the same one. In her view, if the Government had known from the outset that it was the same EC and had deliberately kept the public and Members in the dark, the integrity of the Government should be called into question.

16. SCA(Ag) disagreed that the Government had misled the public and Members on the question of the EC. He reiterated his earlier advice that the functions of the EC to elect six Members for the second-term LegCo and the second-term CE were specified in the Basic Law. The Administration had only tried to deal with enactment of local legislation in two stages.

17. In response to some members' further queries, SCA(Ag) said that SCA, in response to a question raised by the Chairman regarding the status of the EC referred to Annexes I and II of the Basic Law at the Council meeting on 1 March 2000, had replied that the Administration had yet to come to any conclusion. The Administration considered it better to address the question when it had formulated legislative proposals on the election of the second-term CE.

18. The Chairman said that the EC prescribed in Annexes I and II of the Basic Law was the same one provided that the EC was set up pursuant to Annex I and had the function of electing the CE upon its formation. As the EC established in July 2000, though consistent with Annex I, was established pursuant to Annex II and was for the sole purpose of electing six LegCo Members, one could argue that this EC could not be deemed to be the EC referred to in Annex I and responsible for electing the second-term CE. SCA(Ag) agreed to respond to the Chairman's view in writing.

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Membership of EC

19. Noting that the EC had a term of five years, Mr YEUNG Yiu-chung asked whether the 5-year term was also applicable to members of the EC. Mr James TIEN said that some EC members were elected because of their official capacity, e.g. chairmen of bodies/organizations, and asked whether there was a mechanism to provide for change of membership if these EC members were no longer holding such posts.

20. Deputy Secretary for Constitutional Affairs (DSCA) explained that the Legislative Council (Amendment) Ordinance 1999 had already provided a

mechanism for updating the ex-officio membership of the EC, (i.e. LegCo Members and Hong Kong deputies to the National People's Congress). If other elected or nominated members of the EC had died, resigned or ceased to be eligible for registration as LegCo geographical constituency electors, the Administration proposed to update the EC membership through by-election or, for the religious subectors, through nomination to fill the vacancies arising therefrom. Any by-election would be held before the CE election. Mr TIEN further asked whether a person who wished to resign as an EC member was required to give reasons. DSCA said that the Administration was prepared to listen to members' views on this issue.

21. Mr TIEN asked whether the EC membership of a LegCo Member who did not wish to vote in the CE election could be replaced. SCA(Ag) responded that the right of LegCo Members as ex-officio members of the EC was stipulated in the Basic Law and could not be removed lightly.

Illegal and corrupt conduct at CE election

22. Ms Emily LAU asked whether there were laws to prevent illegal and corrupt conduct in relation to the CE election. DCSA and DSG explained that all the provisions of the Elections (Illegal and Corrupt Conduct) Ordinance (ECICO) were in force and would apply to the CE election. However, some ECICO provisions would only apply effectively to the CE election after the electoral arrangements to be provided in the CE Election Bill were in place. Miss Margaret NG expressed concern about a legal vacuum to regulate illegal and corrupt conduct which would have been brought by the ECICO but for the late enactment of the CE Election Bill. She requested the Administration to provide information on the types of illegal and corrupt conduct which could be regulated under the ECICO. SCA(Ag) undertook to provide a reply in writing.

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IV. "Negative procedure" for vetting of subsidiary legislation (LC Paper Nos. CB(2) 498/00-01(03), 513/00-01(01) and LS 41/00-01)

23. At the request of the Chairman, Legal Adviser (LA) briefed members on the background to amendment to section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) in 1993 and the Legal Service Division's proposals to extend the vetting period of subsidiary legislation under the "negative procedure" (LC Paper No. LS 41/00-01).

24. At the invitation of the Chairman, Deputy Director of Administration (DD of Adm) briefed members on the two papers provided by the Administration (LC Paper Nos. CB(2) 498/00-01(03) and 513/00-01(01)). The latter paper proposed two options to extend the scrutiny period of subsidiary legislation. DD of Adm said that the Administration's Option (a), which proposed to extend the scrutiny period from the existing "one LegCo

sitting" to "one LegCo sitting or 21 days whichever is the later", was in fact the same as the proposal put forward by the Chairman at the last meeting.

25. Some members expressed support to the first proposal put forward by the Legal Service Division (paragraph 7 of LC Paper No. LS41/00-01 refers). Under the proposal, the scrutiny period was proposed to be 28 days plus a 21-day extension, but if there was no Council meeting at the expiry of the 21-day period, then the extension would be deemed to be further extended to the Council meeting next following the 21-day period.

26. Mr James TIEN expressed concern that the proposal might prolong the scrutiny period in the case that the extended period fell within LegCo's recess. The Chairman said that the proposed extension would not be unduly long given that recesses during a LegCo session, apart from the summer recess, usually lasted for about two weeks only. LA pointed out that given the time constraint under the present arrangement, some subcommittees formed to study subsidiary legislation had to make a verbal report, instead of a written report, to the House Committee. He considered that the proposed extension would improve the situation.

27. DD of Adm said that she shared the concern raised by Mr TIEN. Based on the past experience and the fact that many items of subsidiary legislation were simple and non-controversial, Option (a) proposed by the Administration was considered appropriate as it could strike a balance between the need to enable LegCo Members to have more time, where necessary, for the scrutiny of subsidiary legislation which was complicated and/or lengthy or had significant impact on the parties concerned, and the need to ensure that the scrutiny of simple and straightforward subsidiary legislation would be completed in an expeditious manner. However, having regard to members' views, the Administration would consider the first proposal put forward by the Legal Service Division and revert to members in due course.

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V. Development of the HKSAR's political system - System of accountability for principal officials
(LC Paper Nos. CB(2) 498/00-01(04) - (06))

28. Referring to paragraph 9 of LC Paper No. CB(2) 498/00-01(04) which set out the issues for public consultation and the suggestions made by her and Dr YEUNG Sum, Ms Emily LAU suggested that the list be suitably modified.

29. On the proposed overseas duty visit, the Chairman suggested that apart from visiting London, Paris and Berlin, the delegation should also visit Edinburgh in order to obtain first-hand information on the devolution of the Scottish Parliament. Members present raised no objection.

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30. As the meeting was overrun, members agreed that this item should be further discussed at the next meeting.

VI. Enhancing the role and functions of the District Councils

31. Members agreed that the item be deferred to the next meeting.

VII. Items for discussion at the next meeting

(LC Paper Nos. CB(2) 498/00-01(01) and (02))

32. Members agreed that the following items be discussed at the next meeting on 15 January 2001 -

- (a) Legislation on the election of the CE;
- (b) Enhancing the role and functions of the District Councils;
- (c) System of accountability for principal officials; and
- (d) HKSAR Precedence Table.

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On the last item, Miss Margaret NG suggested and members agreed that the Administration be requested to provide information on overseas practice, such as whether other countries had a similar precedence list, the purpose of having such a list, the persons included in the list, and the criteria for determining the order of persons on the list, etc.

33. The meeting ended at 4:30 pm.

Legislative Council Secretariat

2 February 2001