

立法會
Legislative Council

LC Paper No. CB(2)1158/00-01

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

**Legislative Council
Panel on Constitutional Affairs**

**Minutes of meeting
held on Monday, 19 February 2001 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 Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon Jasper TSANG Yok-sing, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon SZETO Wah
Hon Audrey EU Yuet-mee, SC, JP

Members Attending : Hon Cyd HO Sau-lan
Hon Henry WU King-cheong, BBS
Hon IP Kwok-him, JP

Members Absent : Hon James TIEN Pei-chun, JP
Hon Howard YOUNG, JP

Public Officers Attending : Item IV

Mr Michael M Y SUEN
Secretary for Constitutional Affairs

Mr Clement MAK
Deputy Secretary for Constitutional Affairs (1)

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 V

Mr Michael M Y SUEN
Secretary for Constitutional Affairs

Mr Clement MAK
Deputy Secretary for Constitutional Affairs (1)

Mr Robin IP
Deputy Secretary for Constitutional Affairs (2)

Ms Doris HO
Principal Assistant Secretary for Constitutional Affairs (4)

Mr LI Wing
Chief Electoral Officer of the
Registration and Election Office

Mr Parrish NG
Principal Assistant Secretary for Home Affairs (4)

Miss Julia HUI
Senior Statistician, Home Affairs Bureau

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

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Ms Eva LIU
Head, Research & Library Services Division

Miss Yvonne YU
Senior Assistant Secretary (2)7

Action
Column

I. Confirmation of minutes of meeting
(LC Paper No. CB(2) 798/00-01)

The minutes of the meeting on 18 December 2000 were confirmed.

II. Paper issued since the last meeting
(LC Paper No. CB(2) 754/00-01(01))

2. Members noted that the Administration's paper on "Main features of the 2001 Voter Registration Campaign" had been issued.

III. Matters arising

(a) Overseas duty visit by the Panel

3. The Chairman advised members that Dr YEUNG Sum had subsequently decided not to join the overseas duty visit because of work commitments. On his instruction, the Secretariat had issued a circular to invite other interested members to join the visit. He said that the original dates of the visit, i.e. from 6 to 15 June 2001 might need to be changed as the Germany Parliament would be in recess from 28 May to 17 June 2001. He had written to the Consul-Generals of the United Kingdom, France and Germany seeking their assistance in planning the visit. The Chairman suggested and members agreed that the itinerary and other arrangements of the visit should be left for the delegation to decide.

(b) Proposed outline for research study on "Parliamentary handling of non-ordinary bills"
(LC Paper No. CB(2)877/00-01(03))

4. At the request of the Chairman, Head, Research & Library Services Division (H/RL) briefed members on the proposed research outline on overseas

parliamentary experience in handling bills which were considered "not ordinary", i.e. the passage or non-passage of such bills might result in a change of Government or was of constitutional significance. Members endorsed the research outline which would cover France and the United Kingdom. H/RL undertook to complete the research study by the end of March 2001.

H/RL

(c) System of accountability for principal officials

Progress of study

5. The Chairman said that at the meeting on 14 October 2000, the Secretary for Constitutional Affairs (SCA) had advised the Panel that the Chief Executive (CE) was personally responsible for the study of the proposed system of accountability for principal officials. As four months had now lapsed, he invited SCA to provide a verbal update on this item to the Panel.

6. SCA said that the study was still in progress. As the study involved a lot of important and complicated issues, the Administration must proceed carefully and would revert to the Panel when it was in a position to do so. In the course of its study, the Administration would listen to the views of the public. In this connection, the Administration would attend the meeting scheduled by the Panel on 3 March 2001 to receive public views on the matter. SCA added that the Administration would also make reference to overseas experience by sending government officials to visit some foreign countries at an appropriate time.

7. Ms Emily LAU expressed concern about the progress of the study as CE had indicated that it would be completed within one year. On the proposed accountability system, she was of the view that candidates for principal officials should be required to appear before the Legislative Council (LegCo) to answer queries from Members, similar to the practice in the US where the Senate held public hearings for potential candidates for policy secretaries. Moreover, if the performance of a principal official was found to be unsatisfactory, LegCo should have the power to move a motion of no confidence on him/her. Ms LAU added that although principal officials of the HKSAR were appointed by the Central People's Government (CPG) as stipulated under the Basic Law, LegCo could still play an active role in the appointment process. In her view, it was only reasonable for principal officials to be accountable to the public through LegCo.

8. SCA reiterated that the Administration had commenced its study and would revert to the Panel when it was in a position to do so. SCA said that Ms LAU's suggestion regarding the role of LegCo would be considered in the light of the relevant provisions of the Basic Law. The question of who was to be responsible to whom would be one of the issues to be addressed in the study.

9. Ms Emily LAU urged the Administration to expedite the progress of its study, to prepare a document setting out its detailed proposals for public consultation and to ensure that there was sufficient time for consultation with LegCo before reaching any decision. SCA said that the Administration was aware of the timetable and considered that there should be enough time.

Recent appointment of Mr Antony LEUNG Kam-chung as the Financial Secretary

10. The Chairman asked whether the appointment of Mr Antony LEUNG was a move towards the proposed accountability system. SCA said that the appointment of Mr LEUNG had nothing to do with the proposed accountability system, the study of which had yet to be finalized.

11. Mr CHEUNG Man-kwong asked whether Mr LEUNG, like other principal officials, was required to undergo an integrity checking before appointment, and a sanitisation period before taking up employment in the business sector after he had left the Government. SCA said that the two requirements referred to by Mr CHEUNG were applicable to officers appointed on pensionable terms. However, as Mr LEUNG was appointed on contract terms and he did not have information on the details of the contract, he was therefore not in a position to give a reply to the question raised. Nevertheless, he would relay the member's concern to the Civil Service Bureau which was responsible for civil service appointment matters and the issue could be followed up by the relevant Panel.

12. Mr CHEUNG Man-kwong held the view that the two requirements, i.e. the pre-appointment integrity checking and restrictions on post-agreement employment should also be imposed on principal officials appointed under the proposed accountability system.

13. Mr SZETO Wah said that Mr LEUNG was appointed on a three-year contract. He queried why the length of his contract did not coincide with the term of office of CE. He asked whether it was necessary for Mr LEUNG to be re-appointed by the CPG when the second-term CE was in office.

14. SCA said that according to his understanding, the appointment of Mr Antony LEUNG was made in accordance with existing Government policy. At present, the Government could appoint employees on pensionable or contract terms. Apart from Mr LEUNG, Dr YEOH Eng-kiong, the Secretary for Health and Welfare, and Ms Elsie LEUNG, the Secretary for Justice were also appointed on contract terms. These were not political appointments. These officers were civil servants just like any other principal officials.

15. In view of the importance of the post of the Financial Secretary, Mr SZETO asked whether the contract of Mr LEUNG could be made public.

SCA said that the matter raised was outside the purview of the Constitutional Affairs Bureau. He would revert to the Panel with a reply after consulting the relevant bureau.

16. Ms Cyd HO said that she had just given notice to raise two LegCo questions. One was related to the appointment of Mr LEUNG as the Financial Secretary. As Mr LEUNG had been working in the business sector for over 20 years, she was particularly concerned about the restrictions imposed on the scope of activities undertaken by him after completion of agreement. The second question was related to CE. She would like to know the restrictions to be imposed on the political and commercial activities undertaken by a former CE in and outside HKSAR. If the Panel agreed to discuss these two issues, she would consider withdrawing the two LegCo questions. Members had no objection to her suggestion.

17. The Chairman pointed out that although the appointment of Mr LEUNG was a civil service matter, it was within the purview of this Panel to discuss the matter which was related to the issue of accountability of principal officials being studied by the Panel. Miss Margaret NG further said that to facilitate members to consider the proposed accountability system for principal officials, the Administration should provide a paper to explain the existing policies governing the appointment of principal officials and acceptance of outside appointments by principal officials after retirement or completion of agreement. The Chairman said that the paper should also include information such as the difference in conditions of service of principal officials appointed on pensionable terms vis-à-vis those appointed on contract terms, whether the conditions of service of persons appointed to be principal officials from outside the Civil Service such as Mr Antony LEUNG, Dr YEOH Eng-Kiong, Ms Elsie LEUNG were different from those offered to persons appointed to similar posts in the former Government such as Mr Michael THOMAS (former Attorney General) and Sir John Henry BREMRIDGE (former Financial Secretary). Members agreed that the Secretary for the Civil Service should be invited to attend the next meeting for discussion of the item.

IV. Election of the Chief Executive

(LC Paper Nos. CB(2)513/00-01(02) and 674/00-01(01))

Administration's response to issues raised by the Panel on 18 December 2000

(LC Paper No. CB(2) 674/00-01(01))

18. SCA briefly introduced the paper which outlined the Administration's responses to the two issues raised by members at a previous meeting, namely, the application of the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) to the CE election before the enactment of the CE Election Ordinance, and the legal advice on why the ECs referred to in Annexes I and II to the

Basic Law should be one and the same.

Election Committee (EC)

19. The Chairman said that it was his view that the EC formed in July 2000 for returning the six Members of the second-term LegCo though in conformity with Annex I was in pursuance to Annex II. In the circumstances, one could argue that a new EC should be formed in pursuance to Annex I for the purpose of electing the second-term CE. He further asked when legal advice was sought and given, and whether the legal advice could be made available for the reference of the Panel.

20. SCA said that the legal advice was sought in response to members' request made at the last meeting on 18 December 2000. While the Administration was not in a position to let members have sight of the legal advice, the gist of it had been incorporated in the paper presented to the Panel. In further response to the Chairman, SCA said that the Administration had also sought legal advice on the same subject on previous occasions and the advice obtained was more or less the same.

21. Mr CHEUNG Man-kwong said that the Administration had now advised that the Annex II EC was one and the same as the Annex I EC and that the meaning was clear and unambiguous from both the Chinese and English texts of the Basic Law. It looked as if the answer to the question of whether the two ECs were the same was very straightforward. Referring to the minutes of the Panel meeting on 18 December 2000 when the same subject was discussed, Mr CHEUNG said that the Administration was non committal on the issue on two occasions in 2000. In reply to a LegCo question at the Council meeting on 1 March 2000, SCA had advised that the Administration had yet to come to any conclusion on the issue. Mr CHEUNG said that he did not think SCA would give the response without seeking legal advice beforehand. Later in June 2000, SCA had publicly said that a person interested in the election of the second term CE should be equally interested in the election of the second term LegCo. Mr CHEUNG said that if this statement was meant to imply that the two ECs were the same, he queried the use of this roundabout way to state the Administration's position. Mr CHEUNG asked SCA to explain why the Administration could not come clean on its position on these two occasions if the meaning of the Basic Law was so clear and unambiguous.

22. SCA said that he had previously advised members that from the literal meaning of Annexes I and II, the two ECs were the same. However, on the procedural side, the Administration would have to deal with enactment of local legislation for the LegCo election and the CE election in two stages. He had also reiterated on numerous occasions that the CE Election Bill to be introduced would be consistent with the Basic Law.

23. Dr YEUNG Sum said that as far as he could recall, SCA had never given any reply in the past saying that the two ECs were the same, despite members' repeated requests for clarification from the Administration. Although the Administration had now confirmed that the two ECs were the same, he was puzzled by the way the matter was handled by the Administration. The Chairman supplemented that what the Administration could do at the time was to introduce a bill to provide for the establishment of the EC. While the Bill would specify that the EC had the dual functions of returning the six Members of the second-term LegCo and electing the second-term CE, the detailed arrangements for the CE election could be prescribed at a later stage.

24. SCA apologized for the unsatisfactory handling of the matter and said that lessons could be learnt from the incident.

Application of ECICO to the CE election

25. Ms Cyd HO asked whether political bargaining such as the appointment of EC members to committees/boards by CE in return for votes would be caught under the ECICO. SCA responded that as part of the normal operation of the Government, it was necessary to appoint persons to various committees and boards. In his view, there was no problem with the existing appointment system which was transparent and subject to public monitoring. One should not assume that such appointments were made with political motive. SCA further said that the ECICO, which had come into force since 3 March 2000, applied to the CE election. Although some provisions would only be applicable to the CE election after the CE Election Ordinance was in operation, these provisions only related to the process of the CE election. SCA assured members that the ECICO had provided necessary protection against corrupt and illegal conduct in respect of the CE election before the enactment of the CE Election Ordinance.

26. Deputy Secretary for Constitutional Affairs (2) (DSCA(2)) supplemented that under the ECICO, it was a corrupt conduct for a candidate to bribe an elector by offering an advantage. The definition of the term "advantage" covered a number of things such as valuable consideration, office, employment and contract.

Legislative proposals for CE election
(LC Paper No. CB(2)513/00-01(02))

27. The Chairman referred members to the paper which set out the preliminary legislative proposals for the CE Election Bill.

Voting method of CE election

28. The Chairman said that the majority-runoff voting system proposed by the Administration was also used in the 1985 District Board election. He suggested the Administration to consider adopting an alternative voting method, the preferential elimination system, which required EC members to indicate their choice of candidates in the order of preference on ballot paper. This voting method was adopted in the 1988 District Board election and could do away with the second round of voting.

29. SCA said that the Administration had considered the voting method suggested by the Chairman. The major drawback of this voting method was its lack of transparency.

30. Ms Emily LAU agreed with the view of the Chairman. She recalled that canvassing activities by candidates during the second round of voting in the 1985 District Board election was quite chaotic. She asked the Administration to take into account all relevant factors in considering the matter.

Qualification of candidature

31. Mr CHEUNG Man-kwong pointed out that a person sentenced to imprisonment for three months or more would not be qualified for candidature of the LegCo election within five years from the date of conviction. He asked whether a person with criminal record would be disqualified from being nominated as a candidate at the CE election. He pointed out that the Administration's paper had made no reference to this criteria. In his view, the qualification for candidature for the CE election should be more stringent than that for the LegCo election.

32. SCA explained that the Administration's paper merely set out the preliminary legislative proposals for the CE Election Bill. He assured members that appropriate provisions to address Mr CHEUNG's concern would be included in the CE Election Bill.

Election petitions

33. The Chairman questioned why the election petition mechanism proposed for the CE election was different from that for the LegCo election. SCA explained that under the Basic Law, the CE should be selected by election and appointed by the CPG. A problem would arise if a candidate, who had been appointed by the CPG as the CE, was later declared by the Court as not duly elected. Under the proposed mechanism, an election petition, if lodged, could be dealt with expeditiously within a short time after the election.

34. In further response to the Chairman on the question of appeal, SCA replied that the Administration had proposed that the election petition would be heard by the Court of First Instance. Any appeal would go directly to the Court of Final Appeal (CFA) and the decision of the CFA would be final.

Timetable

35. In response to Ms Emily LAU's questions, SCA said that the drafting of the CE Election Bill had almost been completed and he hoped that the Bill could be introduced into LegCo within three to four weeks. As regards the date of the CE election, SCA said that the Administration had proposed that the CE should appoint a date within six months before the expiry of his term as the election date. It was unlikely that the CE election could be held before January/February 2002. Ms LAU raised concern as to whether it was appropriate for CE to be the authority for determining the date of the CE election and suggested that reference should be made to overseas experience.

Adm

36. The Chairman asked SCA to take note of members' views in finalizing the Administration's legislative proposals for the Bill. He said that Members would have the opportunity to scrutinize the Bill after its introduction into LegCo.

V. Review of electoral system for LegCo election

(LC Paper Nos. CB(2)126/00-01(06), CB(2)755/00-01, CB(2)755/00-01(01) and CB(2)877/00-01(04))

37. DSCA(2) referred members to the discussion paper on the Electoral Affairs Commission (EAC) Report on the 2000 LegCo election which set out the major findings and recommendations and the Administration's preliminary views on the major recommendations put forward by the EAC (LC Paper No. CB(2)755/00-01& 755/00-01(01)). Principal Assistant Secretary for Home Affairs (4) (PAS/HA) introduced the paper (LegCo Paper No. CB(2)877/00-01(04)) which provided the main findings of an opinion survey conducted by the Administration on voting behaviour in the 2000 LegCo election.

Review of 2000 LegCo election

Polling hours

38. Ms Emily LAU was in support of shortening the polling hours. Mr CHEUNG Man-kwong disagreed and said that according to the EAC's Report, about 10% of the voters cast their votes during the last two hours. He pointed out that if the Administration decided to close the polling stations earlier, the voter turnout rate would drop quite substantially.

39. Ms Audrey EU agreed with the view of Mr CHEUNG on the ground that voters had already accustomed to the existing polling hours.

40. DSCA(2) said that the EAC Report recommended that consideration should be given to whether the polling hours should be shortened. The polling hours of Hong Kong was relatively long compared to other overseas countries. The Administration would consult the public before reaching any decision on the matter.

Counting arrangements

41. Ms Emily LAU was in support of the EAC's recommendation that counting of geographical constituency ballot papers at individual polling stations should be re-examined, as this model appeared to be most promising in terms of time efficiency and transparency of the counting process. Ms Audrey EU was of the view that the count should be conducted in a centralized counting station instead of individual polling stations, in order to protect secrecy of voters and allow the public to monitor the count.

42. DSCA(2) said that the proposal of counting at individual polling stations, if implemented, would entail a host of logistical problems. In addition, some candidates had expressed concern about the difficulty to deploy adequate manpower to monitor the count at individual polling stations. The Administration would take into account members' views in considering the issue.

Assistance to candidates

43. Ms Audrey EU suggested that the Administration should ask the TV operators to allocate more airtime for broadcasting election related activities. She also considered that there was inadequate time for candidates to introduce their platforms to voters on TV.

44. DSCA(2) said that the Government had provided various assistance to candidates including arranging publicity programmes on TV and radio. During the election period, most of the available air time of the Radio Television Hong Kong (RTHK) would be allocated for election related activities. He hoped members would appreciate that the Government could not require commercial TV operators to broadcast election related activities in current affairs and other programmes on a mandatory basis. However, the Government would continue to encourage the media to provide more coverage to election related activities and to organize more publicity programmes to enable candidates to appeal to voters in future elections.

45. Mr IP Kwok-him asked whether certain existing laws could be reviewed and relaxed so as to facilitate candidates conducting electioneering and

canvassing activities, e.g. whether the requirement that passengers should not stand up and should fasten seat-belts under the relevant legislation could be relaxed for candidates using vehicles for campaigning purposes. DSCA(2) said that while the Government and EAC would like to see candidates carrying out their campaigning activities smoothly and effectively, candidates were however advised to comply with the relevant regulations for safety reasons.

46. Ms Audrey EU said that many volunteers would assist a candidate in an election. It was very difficult for the candidate to be fully responsible for the behaviour or action of his/her campaigning team. Sometimes, electoral regulations were breached despite the best of the candidate's efforts to ensure compliance, e.g. unauthorized display of election advertisements. She asked the Administration to understand the difficulties faced by candidates and exercise some flexibility in dealing with situations which were out of the control of candidates. DSCA(2) undertook to reflect Ms EU's view to the EAC for consideration.

Opinion survey on voting behaviour in 2000 LegCo election

Electioneering on the election day

47. Pointing out that 68% of the respondents did not find the candidates' electioneering on the election day useful, Dr YEUNG Sum suggested that the proposal of setting a "cooling off period" in the election should be further looked into in order to minimize undue disturbance caused to the public. Ms Emily LAU expressed support to the proposal.

48. DSCA(2) said that the proposal was discussed by the Bills Committee formed to study the Legislative Council (Amendment) Bill 1999. As there were divided views on the matter, it was not implemented for the 2000 LegCo election.

49. Mr IP kwok-him drew members' attention to the fact that over 30% of the respondents in fact considered such activities useful in helping them to decide on their votes. He was of the view that the survey finding could hardly be considered as conclusive in support of setting a "cooling off period" or otherwise.

50. Ms Audrey EU said that many unpleasant incidents occurred as a result of canvassing activities on the polling day. She asked the Administration to take into account this factor in considering whether a "cooling off period" should be introduced. She was personally in support of this proposal.

51. DSCA(2) said that the Administration would take into account members' views in considering the issue.

Advance polling

52. Dr YEUNG Sum suggested that the Administration should consider holding advance polling as 59% of the respondents supported this proposition. By allowing those who were unavailable to vote on the election day to do so on an earlier date could protect their voting right. Miss Emily LAU and Ms Audrey EU were in support of the proposal.

53. DSCA(2) noted members' views. He said that the proposal of holding advance polling was also discussed at length by the Bills Committee formed to study the Legislative Council (Amendment) Bill 1999. While the proposal had its merits, some members had expressed concern that the release of exit poll results conducted on advance polling day might affect the voting preference of electors on the general election day. The proposal was therefore not implemented for the 2000 LegCo election.

Reasons for not registering as a geographical constituency voter

54. Mr HUI Cheung-ching said that 22% of the respondents had indicated that the reason for not registering as a geographical constituency voter was "Not interested in elections". As this percentage was about the same as that for the 1998 election which was 23%, he questioned whether the public money spent on the publicity programmes for the 2000 LegCo election was justified. DSCA(2) said that according to the survey finding, people's awareness of the LegCo election was as high as 86%. However, it was ultimately the choice of an individual as to whether or not he wished to vote in the LegCo election.

Others

55. Mr IP Kwok-him pointed out that while TV was considered to be the most effective medium in drawing public attention towards the election, 53% of the respondents opposed the proposition of allowing candidates to launch promotional activities on TV or radio channels. He requested the Administration to reconcile these two apparently contradictory survey findings.

56. PAS/HA said that the first finding was related to the source of awareness of the LegCo election, and TV was considered to be the most effective medium. The second finding was related to promotional activities of candidates. At present, candidates of LegCo elections were not allowed to promote their candidature on TV or radio channels. The respondents were asked whether they would support the proposition of allowing candidates to launch promotional activities on TV and radio channels. PAS/HA clarified that the two survey findings were not contradictory as the two questions were not related and were intended to gauge public opinion on two different issues.

VI. Role and functions of the District Councils

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

VII. Items for discussion at the next meeting on 19 March 2001

(LC Paper Nos. CB(2)877/00-01(05), CB(2)886/00-01(01) and CB(2)126/00-01(06))

58. Members agreed that the following items be discussed at the next meeting on 19 March 2001 :

- (a) Role and functions of the District Councils;
- (b) Review of electoral system for LegCo election;
- (c) Conditions of service of principal officials and related issues; and
- (d) Restriction on activities undertaken by a former CE.

59. The meeting ended at 4:40 pm.

Legislative Council Secretariat

26 March 2001