

立法會
Legislative Council

LC Paper No. CB(2)493/00-01

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

**Legislative Council
Panel on Constitutional Affairs**

**Minutes of meeting
held on Tuesday, 31 October 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

Members Attending : Hon Cyd HO Sau-lan
Hon CHAN Yuen-han
Hon LEUNG Yiu-chung
Hon Henry WU King-cheong, BBS

Public Officer Attending : Item IV

Mr Robin IP
Acting Secretary for Constitutional Affairs

Mrs Betty CHU
Assistant Judiciary Administrator

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

Item V and VI

Mr Robin IP
Acting Secretary for Constitutional Affairs

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

Item VII

Mr Robin IP
Acting Secretary for Constitutional Affairs

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

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

Action
Column

I. Confirmation of minutes of meeting
(LC Paper No. CB(2) 111/00-01)

Subject to an amendment to replace "political accountable" with "politically accountable" in paragraph 15, the minutes of the meeting on 10 October 2000 were confirmed.

II. Endorsement of proposed Terms of Reference of the Panel
(LC Paper No. CB(2) 126/00-01(01))

2. Members endorsed the proposed Terms of Reference of the Panel.

III. Items for discussion at the next meeting

List of issues to be considered

(LC Paper No. CB(2) 126/00-01(02))

Item 1 - Application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive

3. As the Administration had advised that it was prepared to revert to the Panel in November, members agreed to discuss the item at the next meeting to be held on 20 November 2000.

Item 4 - Negative vetting procedure of subsidiary legislation

4. Legal Adviser (LA) advised that in the course of considering the Securities (Margin Financing) (Amendment) Bill 1999 in the last legislative session, members of the Bills Committee had expressed concern about the little time available for the scrutiny of the subsidiary legislation relating to the Bill. The Financial Services Bureau was of the view that the current regime of negative vetting by the LegCo had been working well and saw no strong reason to change the present arrangement. It however undertook to refer the matter to the Department of Justice and the Director of Administration with a view to considering if the time limit for scrutiny of subsidiary legislation by negative vetting could be extended so as to provide more flexibility to the LegCo in handling complicated and lengthy subsidiary legislation. The Bills Committee had agreed to refer the matter to the Panel on Constitutional Affairs for follow-up with the Administration.

LA
Adm
5. To facilitate the Panel to consider the way forward at the next meeting, the Chairman suggested that LA should prepare a background information paper on the negative vetting procedure of subsidiary legislation, and the Administration should provide a paper on its preliminary views on the matter. Members agreed.

Item 5 - Relationship between the HKSAR and the Central People's Government

Adm
6. Members noted that the above subject was not discussed by the Panel in the last legislative session. Given that maintaining cordial and constructive working relationships with the Central People's Government, other Mainland authorities, and the Macao Special Administrative Region Government was one of the policy objectives of the Constitutional Affairs Bureau in the 2000 Policy Address, the Chairman suggested that the Administration be requested to provide a paper for the Panel's consideration. Members agreed.

Action
Column

List of follow-up actions required of the Administration
(LC Paper No. CB(2) 126/00-01(03))

Existing practices of employees of tertiary institutions funded by the University Grants Committee and public-funded bodies taking up public offices

Clerk 7. The Chairman instructed the Clerk to follow up with the Health and Welfare Bureau on this item.

(*Post-meeting note* : Secretary for Health and Welfare's reply was issued to members vide LC Paper No. CB(2)288/00-01(03) on 21 November 2000.)

Other issues

Enhancing the role and functions of the District Councils

Adm 8. The Chairman said that during the third reading of the Provision of Municipal Services (Reorganization) Bill at the Council meeting on 2 December 1999, the Secretary for Constitutional Affairs (SCA) undertook to consider the issue of devolution of power to the District Councils. He suggested and members agreed that the Administration be requested to provide a written progress report on the matter.

(*Post-meeting note* : The Administration's reply was issued to members vide LC Paper No. CB(2)270/00-01(03) on 17 November 2000.)

Development of the HKSAR's political system - System of accountability for principal officials

9. Ms Emily LAU said that the Panel should follow up the system of accountability for principal officials by conducting public consultation, submitting a report on its recommendations to the Council, and moving a motion for debate in the Council. The Chairman said that the item would be dealt with later at the meeting.

10. The Chairman advised members that on his instruction, the Secretariat had circulated relevant press reports to members, and had written to request the organizer of the workshop on "Thinking about 2007" held on 21 October 2000 to provide relevant papers and submissions presented to the workshop by various participants for reference of the Panel.

11. Miss Margaret NG pointed out that at the meeting on 14 October 2000, SCA had advised members that he was not in a position to provide any information on the proposed system of accountability for principal officials, including the Administration's preliminary views and timetable for implementation, because the Chief Executive (CE) was personally responsible

for the matter. However, after the meeting, in response to questions from the media, SCA had mentioned about implementing a contract system to replace the existing pensionable system for principal officials. She was dissatisfied that SCA had not disclosed such information to members during the meeting.

12. The Chairman said that he had also noted the remarks made by SCA after that meeting. He was angry that the reply SCA gave to the media on this important issue was more revealing than the one given to the Panel. He pointed out that the Administration should not lose sight of the fact that the executive should be accountable to the legislature under Article 64 of the Basic Law. While the executive was accountable to the public, it should do so through the legislature.

13. Acting Secretary for Constitutional Affairs (SCA(Ag)) said that he would reflect members' views to SCA. Mr SZETO Wah said that SCA should be asked to provide a written response on the incident. Members agreed.

(Post-meeting note : The Administration's reply was issued to members vide LC Paper No. CB(2)270/00-01(04) on 17 November 2000.)

14. Members also agreed that since there had been developments on the matter since the last meeting on 14 October 2000, as reported by the press, the Administration should be requested to provide an update to the Panel to facilitate its internal discussion at the next meeting.

(Post-meeting note : The Administration's reply was issued to members vide LC Paper No. CB(2)270/00-01(05) on 17 November 2000.)

IV. Proposal to create a supernumerary post of Justice of Appeal of the Court of Appeal of the High Court in relation to the appointment of Chairman of the Electoral Affairs Commission
(LC Paper No. CB(2) 126/00-01(04))

15. At the invitation of the Chairman, SCA(Ag) introduced the paper. He said that the Administration would seek the approval of the Establishment Subcommittee for creating one supernumerary post of Justice of Appeal of the Court of Appeal (CA) of the High Court for the period up to 28 September 2003. The proposal aimed to ensure that the work of the Judiciary as a whole would not be adversely affected by the re-appointment of the Honourable Mr Justice WOO Kwok-hing, Justice of Appeal, to chair the Electoral Affairs Commission (EAC) for another term of three years up to 28 September 2003.

16. Mr James TIEN questioned the need for the creation of a supernumerary post of Justice of Appeal on the basis of increasing workload arising from a large number of applications for leave for judicial review and appeals lodged in

connection with right of abode cases as mentioned in paragraph 7 of the paper. He pointed out that it was unlikely that appeals relating to right of abode cases would increase in the coming three years. Miss Margaret NG said that she was not aware of a large number of such appeals filed with the CA in the past year.

17. The Assistant Judiciary Administrator (AJA) explained that the CA had an establishment of nine Justices of Appeal. The caseload of the CA had remained heavy for the past years, averaging 1000 cases a year. In 2000, the number of civil appeal cases filed with the court increased sharply due to a large number of civil appeals lodged with right of abode cases. The court waiting time in July 2000 was increased to 98 days as compared to 72 days in 1999 and a target waiting time of 90 days.

18. SCA(Ag) supplemented that it was expected that the overall caseload in the CA would be maintained at a high level in the coming three years. In order to maintain the service standard and to ensure the smooth operation of the CA, it was necessary to create a replacement post in the Judiciary. In response to members' request, SCA(Ag) undertook to provide information on the total number of applications for leave for judicial review and appeals lodged to the CA and the number of applications which were related to the right of abode cases in the past year. The Chairman said that the paper should be made available to the Panel before the proposal was submitted to the Establishment Subcommittee for approval.

(Post-meeting note : The information provided by the Administration was issued to members vide LC Paper No. CB(2) 206/00-01 on 8 November 2000.)

19. Mr YEUNG Yiu-chung asked about the status of the Chairman of EAC. SCA(Ag) explained that the EAC was a statutory body established under the EAC Ordinance (Cap. 541). The EAC Ordinance required the Chairman of the EAC to be a Judge of the High Court. When the EAC was established in September 1997, Mr Justice WOO was appointed as the Chairman, and a supernumerary post of Judge of the Court of First Instance of the High Court (as Mr Justice WOO then was) was created as a replacement post in the Judiciary. In September 2000, the CE, in consultation with the Chief Justice of the Court of Final Appeal, re-appointed Mr Justice WOO, Justice of Appeal, to be the Chairman of the EAC for another term of three years up to 28 September 2003.

20. In further response to Mr YEUNG, SCA(Ag) said that it was undesirable to have a part-time Chairman for the EAC. As explained in paragraphs 4-6 of the paper, the EAC had a very heavy schedule in the coming three years and all these activities required a very heavy commitment of the EAC Chairman.

21. Some members expressed concern about the need for a full-time EAC Chairman. The Chairman pointed out that it was unlikely that the EAC Chairman would be heavily involved in the activities mentioned in paragraphs 4-6 of the paper. He asked whether the EAC Chairman had also assisted in judicial duties when he had spare capacity.

22. AJA informed members that Mr Justice WOO had sat in court for the Judiciary for about 70 days in the current year, but not on a regular basis. SCA(Ag) supplemented that although Mr Justice WOO also took up judicial duties when time permitted, he was mainly engaged in pre-trial duties such as dealing with applications for bail and leave to appeal; and training of judicial officers, etc. Being Chairman of the EAC, his main task was to deal with electoral matters.

23. Miss Margaret NG said that she felt uncomfortable about the arrangement for the same High Court judge to be re-appointed as the EAC Chairman and to undertake judicial duties on a part-time basis. Pointing out that the objective for requiring the EAC Chairman to be a High Court judge was to ensure that the person appointed would be impartial and apolitical, she was concerned whether this objective could still be achieved after a judge had worked closely with the executive in his capacity as the EAC Chairman for a prolonged period of time. Moreover, given the complexity of the cases heard before the CA, it would be undesirable for such cases to be tried by part-time judges.

24. Mr SZETO Wah held the view that the EAC should have a full-time Chairman and the CA should have full-time judges. The present arrangement to create a replacement post to take up Mr Justice WOO's judicial duties and at the same time to allow him to undertake certain judicial duties in addition to his functions as the EAC Chairman was considered inappropriate. It was also undesirable for a High Court judge to be redeployed away from the Judiciary to take up non-judicial duties for a considerable period of time. Mr SZETO opined that the arrangement might need to be reviewed.

25. The Chairman requested the Administration to take note of members' concerns. Further discussion could be held when the proposal was presented to the Establishment Subcommittee.

26. Ms Emily LAU asked whether there would be a statutory body similar to the EAC to oversee the election of the second term CE. She said that if the EAC was to take up this function, it might need additional resources. SCA(Ag) said that he was not in a position to give an answer at this stage. A bill on the election of the CE would be introduced into the LegCo in mid-2001.

V. Legislation on election of the Chief Executive (CE)
(LC Paper No. CB(2) 126/00-01(05))

27. At the invitation of the Chairman, SCA(Ag) introduced the paper. He said that the Administration intended to introduce a bill on CE election in mid-2001. By then the Administration would specify clearly the Election Committee (EC) responsible for electing the second-term CE.

28. Mr CHEUNG Man-kwong said that the Administration's answers had not addressed members' concerns raised at the last meeting. Members had already expressed the view that the bill should be introduced into LegCo as soon as possible in order to allow sufficient time for scrutiny by Members. As regards the question of whether the Election Committee (EC) which had been established to return the six LegCo Members for the 2000 LegCo election was also responsible for electing the second-term CE in 2002, the Administration had not given any answer. The Administration must clarify the issue as it would impact on the arrangements for the CE election.

29. Mr Howard YOUNG said that the EC responsible for electing the second-term CE could either be the existing EC which had returned the six LegCo Members for the 2000 LegCo election, or a new EC. If the latter was the case, a bill on CE election should be introduced early to ensure that there was sufficient time for voter registration for the EC subsector elections. If the former was the case, the Administration would need to clarify issues such as updating of membership and by-election in the event of a vacancy arose in the existing EC.

30. Miss Margaret NG held the view that the EC to elect the second-term CE should be the same as the one that returned the six Members of the second-term LegCo. Mr SZETO Wah said that if that was the case, it would be unfair to the voters of the 2000 EC subsector elections as they might have voted differently had they known the role of the EC beforehand.

31. In response, SCA(Ag) reiterated that the Administration would specify clearly the EC responsible for electing the second-term CE in the bill. He could not divulge further information at this stage. He assured members that the proposal would comply with the relevant provisions of the Basic Law.

32. Miss Margaret NG said that the Administration's refusal to disclose any information about the bill was contrary to the pledge of the Administration that it would make better use of Panels to discuss policy proposals so that it could understand fully the standpoints of Members, in order to better ensure that bills submitted would have the support of the legislature. She pointed out that if the bill was to be introduced in mid-2001, the Administration should have considered the policy aspect by now. In the circumstances, the Administration had no excuse to withhold such information from the LegCo.

In order to expedite the scrutiny process, the Panel should be given the opportunity to deliberate on the policy proposals prior to the introduction of the bill. She said that if the CE election could not be held on time because LegCo was not given enough time to scrutinize the bill, CE should be held responsible. She also warned of the danger of a breach of the Basic Law if the CE election had to be postponed due to any controversy over the composition of the EC. If that happened, the executive and not the legislature should be held accountable.

33. Miss Cyd HO raised the question of a power vacuum in the Government in the event that the election result of the second-term CE was challenged in court on the basis that the composition of the EC prescribed in the bill contravened that in Annex I of the Basic Law. The Chairman responded that the office of the CE would be filled in accordance with the electoral procedure prescribed in the bill on CE election. The election result would remain valid until the court had ruled otherwise. Legal Adviser agreed with the Chairman's view.

34. Ms Emily LAU asked how the Administration could convince the EC members that they could vote to elect the second-term CE, given that President JIANG Zemin had indicated his support to the Honourable TUNG Chee-wah to serve another term. In the circumstances, the timing for introducing the bill would not really matter as any discussion on the bill would only be academic. She however would like to know the timing for holding the CE election.

35. SCA(Ag) apologized that he was not in the position to give more details. He reiterated that the Administration was working on the bill. He understood members' concerns and would reflect members' views to the Administration.

36. Members expressed strong dissatisfaction with the answers of the Administration. Ms Emily LAU said that the answers were not conducive to strengthening cooperation between the executive authorities and the legislature. Mr CHEUNG Man-kwong expressed concern that LegCo was not provided with any information on when, how and by whom the CE would be elected. Miss Margaret NG reminded the Administration that the executive was accountable to the legislature. Keeping LegCo purposely in the dark on such an important issue amounted to contempt towards Members and voters. She said that there should be means to press the Administration to respond to LegCo's request.

37. The Chairman said that subject to members' agreement, it was possible to invoke the Legislative Council (Powers and Privileges) Ordinance to summon government officials to disclose details of the bill to the Panel. Miss Margaret NG suggested that the matter should be brought to the attention of the House Committee first.

38. Members agreed that the Administration should be requested to -
- (a) introduce the bill into LegCo as soon as possible;
 - (b) provide a timetable showing the various steps involved for holding the election of CE; and
 - (c) pending introduction of the Bill, provide to the next Panel meeting to be held on 20 November information on the broad framework of the bill such as the method for selecting CE, the composition of the EC, and the timing for holding the CE election.

39. As SCA(Ag) said that he was not in a position to advise whether the Panel's request could be acceded to, members agreed that the Panel should recommend to the House Committee that the matter be pursued with the Administration at a higher level.

(Post-meeting note : The Panel made a report to the House Committee on 3 November 2000 (LC Paper No. CB(2)172/00-01 refers). The Chairman of the House Committee raised the matter with the Acting Chief Secretary for Administration on 6 November 2000.)

VI. Review on electoral system for LegCo election (LC Paper No. CB(2) 126/00-01(06))

40. Members noted the Administration's paper on the item and agreed that the matter should be discussed after the EAC had submitted its report on the 2000 LegCo election to CE.

VII. Mechanism for amending the Basic Law (LC Paper No. CB(2) 126/00-01(07))

41. SCA(Ag) said that the Administration recognized the need to put in place a proper mechanism for amending the Basic Law and had been actively working in that direction. Given the importance and complexity of the matter, it had to be thoroughly discussed and handled with prudence. In the past two years, the Administration had discussed the matter with this Panel, and had listened to the views of the legal profession, the academics and other relevant parties. The Administration had provided a preliminary analysis on the major issues identified during these discussions. Since many issues involving the three parties (i.e. the CE, the LegCo and the local National People's Congress (NPC) deputies) were inter-related, it was necessary to consult all relevant parties (including the CE, LegCo and the local deputies to the NPC in Hong

Kong, and the Central People's Government (CPG)) so that their views could be taken into account in working out an appropriate mechanism for the purpose of BL 159. As such, since 1999, the Constitutional Affairs Bureau had held six meetings with the Hong Kong and Macao Affairs Office (HKMAO) to discuss the matter. HKMAO had indicated that it needed more time to examine the issues. SCA(Ag) assured the Panel that the Administration would report to the Panel when there was further progress on the matter.

42. Mr CHEUNG Man-kwong said that he had participated in the discussion on the matter at seven Panel meetings and a motion debate held by the Council in the past two years. He was disappointed that the matter just dragged on without making any progress. He wondered whether the Administration had relayed the public and members' views to the Mainland authorities faithfully, given that it had never reported to the Panel their responses. He opined that the Panel could no longer rely on the Administration on this matter. It might be better for the LegCo to take the matter in its own hands and establish a direct dialogue with the Standing Committee of the NPC.

43. SCA(Ag) responded that any proposal to amend the Basic Law would have to involve all the relevant parties. The Administration maintained the view that the best way to take the matter forward would be for the Administration to discuss with LegCo and the CPG after studying the issues and conducting extensive consultation. Only then should a proposal be put forward for consideration. SCA(Ag) added that it would not be practicable for the Administration to report to the Panel the details of the discussions with the HKMAO until further progress had been made.

44. In response to the request of Miss Margaret NG, SCA(Ag) said that the discussion papers prepared by the Administration for the HKMAO were meant for internal use, and considered it inappropriate to make them public. However, the Administration would report to the Panel the essence of the discussion when there was progress made. He said that the Administration had no progress to report at this stage.

45. Mr LEUNG Yiu-chung considered that the discussions with the Administration at Panel meetings were one-sided. Members were not fully informed of the Administration's views and the kind of information provided to the Mainland authorities. SCA(Ag) disagreed and pointed out that the Administration had previously presented to the Panel papers on the issues identified for study and its preliminary views on those issues. The Department of Justice had also briefed the Panel on the preliminary findings of its study of the experience of other countries on constitutional amendments.

46. Principal Assistant Secretary for Constitutional Affairs supplemented that the Administration had conveyed to the Mainland authorities the views of the public and members on the matter and the issues identified for study. In

Action
Column

response to the Chairman on the progress made so far, she advised that the matter was at step 1 as shown in the tentative timetable for devising the mechanism as provided by the Administration to the Panel in June 1999. In response to Dr YEUNG Sum, SCA(Ag) said that it was not possible at this stage for the Administration to provide any concrete timetable for coming up with a preliminary proposal. In view of the complexity of the issues, the Mainland authorities would need some time to study the issues. He assured members that the Administration would report to the Panel when there was further progress on the matter.

47. In response to Ms Emily LAU's enquiry, SCA(Ag) said that the Administration fully recognised that it was necessary to put in place a mechanism so as to implement BL 159 and was actively pursuing the issue.

48. Members were disappointed at the present static situation. Mr SZETO Wah requested the Administration to give a report to the Panel after each and every meeting held with the Central authorities, irrespective of whether any progress had been made at the meetings.

Adm

49. Some members held the view that the Panel should do something to expedite the matter. The Chairman said that the views gathered during the public consultation conducted by the Panel could be forwarded to the NPC for consideration. Mr CHEUNG Man-kwong suggested that the Panel should write to seek the NPC's views on the matter. The Chairman said that he would give further thought to the matter.

VIII. Development of the HKSAR's political system - System of accountability

(LC Paper Nos. CB(2) 126/00-01(08) and 133/00-01)

50. As the meeting was over-run, members agreed that the item be deferred to the next meeting.

51. The meeting ended at 4:38 pm.

Legislative Council Secretary

13 December 2000