

立法會

Legislative Council

LC Paper No. CB(2)1969/00-01

Ref. : CB2/PL/CA

Report of Panel on Constitutional Affairs for submission to the Legislative Council

Purpose

The report gives an account of the work of the Panel on Constitutional Affairs for tabling at the meeting of the Legislative Council (LegCo) on 4 July 2001 in accordance with Rule 77(14) of the Rules of Procedure of the Legislative Council.

The Panel

2. The Panel was formed by a resolution of this Council on 8 July 1998 as amended on 20 December 2000 for the purpose of monitoring and examining Government policies and issues of public concern relating to constitutional affairs. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 12 members. Hon Andrew WONG Wang-fat and Hon Emily LAU Wai-hing were elected Chairman and Deputy Chairman of the Panel respectively. A membership list of the Panel is in **Appendix II**.

Major work

"Negative vetting procedure" of subsidiary legislation

4. Under the negative vetting procedure as provided in section 34 of Cap. 1, the LegCo may amend legislation not subject to the positive vetting procedure by a resolution passed at a meeting held not later than 28 days after the meeting at which the subsidiary legislation was laid. The section also provides that LegCo may by resolution extend the amendment period to the next meeting.

5. The Panel examined whether the existing "extended by one-LegCo meeting" provision should be modified for scrutiny of subsidiary legislation which was complicated and/or lengthy or had significant impact on the affected parties. In examining the matter, the Panel considered that a number of factors should be taken into account. These included the possibility that the 28-day scrutiny period

could be "eroded" by holiday breaks, the requirement for giving notice to amend subsidiary legislation, and the need for subcommittees to be formed to study subsidiary legislation for report to the House Committee before expiry of the deadline for giving notice of motion to amend the subsidiary legislation.

6. Having considered a number of options proposed separately by the Administration and the Legal Adviser of LegCo, the Panel recommended that the "extension period" should be modified from the existing "one LegCo meeting" to "21 days and, if there is no meeting on the day of the expiry of the 21-day period, the vetting period is deemed to be extended to the Council meeting next following the 21-day period". The Administration agreed to make amendments to the relevant provisions of section 34 of Cap. 1 to give effect to the revised extension period.

Arrangements for the election of the Chief Executive (CE)

7. In response to the request of the Panel, the Administration briefed members on the arrangements for the election of the second term CE in 2002 at the meeting on 31 October 2000. Members had two main concerns. Firstly, members were of the opinion that the bill should be introduced into LegCo as soon as possible to allow sufficient time for scrutiny by Members. Secondly, members requested the Administration to clarify, without further delay, the question of whether the Election Committee (EC) established in July 2000 for returning six Members for the second term of LegCo would also be responsible for electing the second term CE.

8. Apart from stating that its target was to introduce the bill into LegCo in mid-2001, and that it would specify clearly the EC responsible for electing the second term CE in the bill, the Administration did not divulge further information at the meeting. At the Panel's recommendation, the Chairman of the House Committee conveyed the Panel's concerns to the Chief Secretary for Administration.

9. At two subsequent meetings held by the Panel, the Administration briefed members on the preliminary legislative proposals for the CE Election Bill. On the issue of the EC, the Administration advised that the EC for electing the second term CE was the same as the EC which had been formed in July 2000 to elect six Members to the second term LegCo. Some members criticized the Administration for failing to clarify the matter earlier despite members' repeated requests in the past. The Administration reiterated that from the literal meaning of Annexes I and II of the Basic Law, the two ECs were the same. However, on the procedural side, the Administration had to deal with enactment of local legislation for the LegCo election and the CE election in two stages. The Administration apologized for the unsatisfactory handling of the matter and said that lessons could be learnt from the incident.

10. Having regard to members' view on the legislative timetable, the Administration agreed to introduce the CE Election Bill into LegCo in March 2001,

instead of mid 2001 as earlier proposed. The Bill was introduced into LegCo on 14 March 2001.

Hong Kong Special Administrative Region (HKSAR) Precedence Table

11. At the request of the House Committee, the Panel considered the issue of the order of LegCo Members on the HKSAR Precedence Table. The Panel noted that the major difference in the order of precedence accorded to LegCo Members prior to and after 1 July 1997 was as follows -

Pre-1997 - LegCo Members ranked 10th, before Justices of Appeal/Judges of the High Court and other Secretaries and Heads of Group I Departments who ranked 13th and 18th respectively.

Post-1997 - LegCo Members ranked 9th, after Principal Officials/Directors of Bureaux and Judges of the Court of Final Appeal (CFA)/Chief Judge of the High Court who ranked 7th and 8th respectively.

12. The Administration explained that the HKSAR Precedence Table was basically used as a guideline in organizing government and official functions, in particular in seating or receiving guests, and for facilitating business among governments. In drawing up the order of precedence for the HKSAR, the Administration took into consideration the changes in the political structure of Hong Kong in the years leading to July 1997, and the status of certain categories of persons recognized by the Basic Law, i.e. Principal Officials/Directors of Bureaux, and Judges of the CFA and the Chief Judge of the High Court of the HKSAR.

13. Despite the Administration's explanation, some members remained of the view that the Government had introduced a fundamental change to the order of precedence after 1 July 1997 which was unjustified. They urged the CE to reconsider the matter having regard to members' views. In response to the request of the Panel, the Administration subsequently advised that the views of members of the Panel had been duly conveyed to the CE.

14. On 25 May 2001, the Panel reported its deliberations on the matter to the House Committee. It was agreed that the Chairman of the House Committee should raise the matter with the Chief Secretary for Administration.

Development of the Political System of the HKSAR

15. In the 1999-2000 legislative session, the Panel presented the Report on the Development of the Political System of the HKSAR to the Council. A motion calling upon the Government to consider the views of Members of the Council on the Panel's Report and related issues was moved for debate and passed by the Council on 14 June 2000.

System of accountability of principal officials

16. One of the recommendations made in the Panel's Report was that the Administration should consider implementing a more flexible contract system so that principal officials should be held politically accountable for their decisions.

17. In his Policy Address delivered in October 2000, the CE announced that the Government would study how the accountability of principal officials at Secretaries and Directors of Bureaux rank for their respective policy portfolios could be enhanced. The Panel considered that CE's announcement of a new accountability system was a positive step responding to the Panel's recommendations on the development of the political system of the HKSAR. The Panel would make recommendations on the proposed accountability system for the consideration of the Administration. In this connection, the Panel sought public views on the proposed accountability system in March 2001. A delegation of the Panel comprising Hon Andrew WONG Wang-fat, Panel Chairman, Hon HUI Cheung-ching and Hon YEUNG Yiu-chung undertook a duty visit to the United Kingdom, France and Germany to study their systems of accountability during the period from 13 to 24 June 2001.

18. The Panel was concerned about the progress of the Administration's study as CE had indicated that it would be completed within one year. The Panel requested the Administration to expedite the progress of the study and prepare a document setting out its detailed proposals for public consultation. The Panel also urged the Administration to ensure that there was sufficient time for consultation with LegCo before reaching any decision.

19. At the meeting on 21 May 2001, the Administration briefed members on its recent visit to the New Zealand and Australia to study public sector reform, and considered that the experience would be useful reference for the study on the accountability system for principal officials. As regards the progress of its study on the accountability system, the Administration was unable to provide the Panel with details as the review was underway.

Constitutional development

20. Another recommendation made in the Panel's Report was that the Government should conduct an extensive public consultation exercise on the review of the development of the HKSAR's political system as soon as possible.

21. At the request of the Panel, the Administration made a report to the Panel on the work progress in respect of the review on 12 June 2001. The Administration advised that the Basic Law had laid down a road map for HKSAR's democratic development and provided a mechanism for HKSAR to change the method for the formation of LegCo after 2007. Between now and 2007, there were two

milestones in constitutional development, namely, the 2002 Chief Executive election and 2004 LegCo election. The Administration would review the experience of these two elections before deciding the way forward. In conducting the review of constitutional development, the Administration would provide ample opportunities for the community to make known their views.

System of appointment of principal officials

22. To facilitate the study of the Panel on the proposed accountability system of principal officials, the Administration was requested to brief members on the system of appointment of principal officials at the meeting on 19 March 2001.

23. The Panel was advised that the appointment and removal of principal officials was governed by Article 48(5) of the Basic Law, which stipulated that CE was to nominate principal officials to the Central People's Government (CPG) for appointment, and to recommend to CPG the removal of principal officials. As regards employment arrangements, all principal officials were at present employed and remunerated on the same package as applied to civil servants corresponding to the rank and pay point of their posts. The employment procedures of civil servants were also applicable to principal officials which included medical examination and integrity checking.

24. As more and more principal officials were appointed from outside the Civil Service, some members expressed concern as to whether it was a matter of Government policy for integrity checking of principal officials to be completed prior to the appointment by CPG. Otherwise, there could be serious implications if a principal official who had been appointed by CPG was later found to be unsuitable for appointment to the post.

25. Quoting the appointment of Mr Antony LEUNG as the Financial Secretary on 15 February 2001 as an example, members asked the Administration to advise whether Mr LEUNG's integrity checking had been completed prior to or after appointment by CPG. It was only after repeated questions from members that the Administration confirmed that the checking process on Mr LEUNG had been completed. Nevertheless, the Administration had refused to disclose the timing of the integrity checking, the details of the employment contract and the date of signing the contract etc. The Administration explained that such information was by its nature secret or concerned personal data and was a matter between the Government and the officer. Despite members' view that the information sought was related to the management of the Civil Service and the use of public money in the employment of principal officials, the Administration maintained its stance.

26. Nevertheless, the Administration advised that the question of integrity checking for principal officials would be considered in the study of the system of accountability of principal officials, and the Panel's views were welcomed.

Application of certain provisions of the Prevention of Bribery Ordinance (POBO) to CE

27. In February 1999, the Panel requested the Administration to review whether certain provisions of POBO should be applicable to CE. Following discussions at a number of meetings, the Administration agreed to introduce legislative amendments to extend the applicability of section 10 of POBO concerning the possession of unexplained wealth and property to CE as soon as practicable. The Administration considered that no other amendment to POBO was necessary. The Administration explained that it was already a common law offence for a "public officer" to accept a bribe and for anyone to bribe a "public officer". The CE would fall within the meaning of "public officer" under the common law and would be liable to prosecution if he accepted a bribe.

28. Members had reservations about not making amendments to POBO, other than section 10. They asked the Administration to consider codifying the common law offence to remove any uncertainty in the enforcement of law in connection with CE. Members also expressed concern about the inability of ICAC to exercise its special investigation powers provided under POBO in dealing with a possible offence of bribery by CE. The Administration advised in November 2000 that it would need more time to study the matter.

29. When the Administration reverted to the Panel in May 2001, it explained to the Panel that the proposal for codification of the common law offence of bribery might bring more problems than it intended to resolve. The Administration considered that it was more appropriate to, outside the common law, set out in separate legislative provisions the bribery offences for exclusive application to CE. The Administration also considered that the proposal to extend the application of section 10 of POBO on possession of unexplained property to CE should be dealt with in the same legislative package. The Administration would consult the Panel once it had worked out the details of the legislative proposal.

30. The Panel requested the Administration to introduce the legislative proposal into LegCo as early as possible so that the new legal framework could be put in place before the election of the second term CE was held in March 2002. At the recommendation of the Panel, the House Committee agreed that the matter should be raised with the Chief Secretary for Administration.

The question of "important bill" under Article 50 of the Basic Law (BL 50)

31. This item arose from discussions of the Panel in the last legislative session on the interpretation of the word "budget" under BL 50 and 51. The Panel noted that under BL 50, if LegCo refused to pass a budget or any other important bill introduced by the government, and if consensus still could not be reached after consultations, CE may dissolve LegCo. The Panel considered that whether a bill was important should be determined and declared prior to its introduction into

LegCo. Given the constitutional implications of BL 50, they also considered that there should be a mechanism for defining whether a bill fell under "any other important bill" referred to in BL 50 so as to prevent disputes or abuse of power by CE.

32. In June 2000, the Panel requested the Research and Library Services Division (RLSD) of the LegCo Secretariat to undertake a research study on overseas experience in handling important bills. The RLSD completed its study and presented the Report on Parliamentary Handling of Non-Ordinary Bills to the Panel on 7 May 2001. Although the focus of the study was on the French system, it also covered the British practice in relation to confidence motions.

33. The Administration agreed to carefully study the RLSD report and to take into account members' views in considering the matter. It would revert to the Panel when it was in a position to do so.

Restrictions on activities undertaken by a former holder of the office of CE

34. The Panel noted with concern that there was no restriction imposed on commercial or political activities to be undertaken by a former holder of the office of CE in and outside HKSAR under existing law.

35. In response to the request of the Panel, the Administration undertook to study the issue and also look into existing arrangements applicable to senior government officials and overseas practices. The Administration agreed to complete the study within a reasonable time before the expiry of the term of office of the first term CE.

Review of electoral system for LegCo election

36. In updating the Panel on the progress of the review on the electoral system, the Administration advised that it had yet to form any view as the next LegCo election would be held in 2004. It would consult the Panel on any proposals arising from the review before introduction of the necessary legislative amendments into LegCo.

37. The Administration advised members that as part of the review, it would consider the pros and cons of allowing candidates to withdraw from candidature after the close of nominations under certain circumstances, having regard to the implications on all public elections in Hong Kong. Members held different views as to whether such a mechanism should be introduced. A member pointed out there was wisdom behind the existing restriction on withdrawal of candidature in LegCo election in that it was effective in preventing candidates from engaging in corrupt conduct by offering advantage to other candidates as an inducement for them to withdraw. Another member considered that the mechanism, if introduced, should apply to both the CE election and the LegCo election.

38. Some members asked the Administration whether the voting system adopted for LegCo geographical constituency elections would be reviewed. They suggested the Administration to consider adopting Panachage, a variation to the list voting system which allowed an elector to cast as many votes as there were seats to be returned in his constituency, or the "single-seat, single-vote" system. The Administration responded that the list voting system, which was stipulated in the LegCo Ordinance, had been operating well in the past two LegCo elections. These members pointed out that the Administration had failed to explain why the list voting system was adopted for the LegCo election, whereas the "single seat, single-vote" system was adopted for the District Councils election.

39. Members also gave views on issues such as polling hours, counting arrangements, assistance to candidates, electioneering on the election day, and advance polling etc. The Administration agreed to take into account members' views in considering these issues.

Enhancing the role and functions of the District Councils (DCs)

40. In January 2001, the Panel held a meeting to follow up the undertaking given by the Secretary for Constitutional Affairs at the resumption of the Second Reading debate on the Provision of Municipal Services (Reorganization) Bill that the Administration would consider how to enhance the role and functions of DCs after they had commenced operation.

41. The Administration advised that since the establishment of DCs on 1 January 2000, progressive steps had been taken to enhance the role and function of DCs. In addition, an inter-departmental working group had been formed to conduct a comprehensive review on the matter. The Administration welcomed suggestions from Members, DCs and the public on what powers or functions should be devolved to DCs.

42. A major concern of Panel members was whether proposals to empower DCs to become a decision-making body with financial autonomy in district affairs could be covered in the review. The Administration advised that DCs were advisory bodies by virtue of Article 97 of the Basic Law. The scope of the review should not exceed the parameter of the Basic Law. A member pointed out that the term "district organizations" in Article 97 of the Basic Law referred to the former municipal councils and District Boards. Following the abolition of the municipal councils, their functions should be transferred to the remaining district organizations, the DCs. The member held the view that failure to do so would contravene the Basic Law. Some members were dissatisfied that the Administration had already held a position on certain issues before completing the review.

43. The Administration assured members that it would carry out the review in a

liberal and open-minded manner. While the functions of the municipal councils could be transferred to DCs in principle, the Administration would need to study what functions in respect of district affairs should be transferred, and if so, how. These issues would be addressed in the review which would be completed within the year of 2001.

Mechanism for amending the Basic Law

44. The question of an appropriate mechanism for amending the Basic Law was first discussed by the Panel with the Administration in December 1998. The Panel subsequently sought public views on the matter in March 1999. The Administration advised members that as some of the issues identified for further study were related to the Standing Committee of the National People's Congress (NPC), the State Council, the local NPC deputies and the Basic Law Committee, discussion with the Central Authorities was required.

45. In the current session, the Panel had continued to monitor the development of the matter and expressed concern about the slow progress of consultation with the Central Authorities. According to the Administration, it had raised the matter with the Hong Kong and Macau Affairs Office (HKMAO) at eight meetings since 1999. It had also conveyed to HKMAO the concerns expressed by the Panel over the limited progress made so far. The HKMAO indicated that the matter was complex and required careful consideration. HKMAO also considered it necessary to study the matter in conjunction with the NPC as many issues involved arrangements relating to the NPC .

Panel meetings

46. From October 2000 to June 2001, the Panel held a total of 12 meetings.

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters and district organizations.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council
Panel on Constitutional Affairs**

Membership list

Chairman Hon Andrew WONG Wang-fat, JP

Deputy Chairman Hon Emily LAU Wai-hing, JP

Members 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
Hon Audrey EU Yuet-mee, SC, JP

(Total : 12 Members)

Clerk Mrs Percy MA

Legal Adviser Mr Jimmy MA

Date 20 December 2000