

立法會

Legislative Council

LC Paper No. CB(2)585/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Legislative Council Panel on Constitutional Affairs

**Minutes of meeting
held on Tuesday, 30 October 2001 at 10:45 am
in the 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, GBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon SZETO Wah
Hon IP Kwok-him, JP

Member Absent : Dr Hon YEUNG Sum

Public Officers Attending : Items II, III and IV

Mr Michael M Y SUEN, GBS, JP
Secretary for Constitutional Affairs

Mr Clement MAK
Deputy Secretary for Constitutional Affairs

Mr Isaac CHOW
Deputy Secretary for Constitutional Affairs

Mr Bassanio SO
Acting Deputy Secretary for Constitutional Affairs

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

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)159/01-02)

The minutes of the meeting held on 11 October 2001 were confirmed.

II. Briefing by the Secretary for Constitutional Affairs on Chief Executive's Policy Address 2001
(Booklet on Policy Objective for Constitutional Affairs Bureau; LC Paper No. CB(2)158/01-02(01))

2. The Chairman said that at the last meeting on 11 October 2001, members agreed to invite the Administration to brief the Panel on the Chief Executive's (CE) Policy Address 2001 and to discuss any other items proposed by the Administration. Agenda items III and IV for this meeting were subsequently proposed by the Administration for discussion of the Panel.

3. At the invitation of the Chairman, Secretary for Constitutional Affairs (SCA) briefed the Panel on the policy objective for the Constitutional Affairs Bureau (CAB) (a copy of the speech of SCA was circulated vide LC Paper No. CB(2)158/01-02(01)).

4. SCA advised that the policy objective for the CAB was to maintain confidence in the constitutional arrangements of the Hong Kong Special Administrative Region (HKSAR). CAB would work on the following areas in the coming year -

- (a) continue to facilitate the implementation of the Basic Law (BL) and promote understanding of BL, to secure community confidence in the principle of "One Country, Two Systems" and the full and faithful implementation of BL;
- (b) continue to facilitate the maintenance of cordial and constructive working relationships with the Central People's Government

(CPG), other Mainland authorities and the Macau Special Administrative Region (MSAR) Government;

- (c) continue to facilitate the HKSAR's active participation in the international arena;
- (d) ensure continual development of the electoral systems; and
- (e) study the system of accountability.

5. The Chairman invited questions from members.

Maintenance of cordial and constructive working relationships with the CPG, other Mainland authorities and the MSAR Government

6. Mr HUI Cheung-ching enquired about the number of occasions on which the HKSAR Government had made formal contacts with the MSAR Government.

7. SCA replied that he had paid a visit to Macau last year and met with the Chief Executive of MSAR and other officials of the MSAR Government to exchange views on matters of common interest. Since then, both sides had made contacts on a number of occasions. He undertook to advise in writing the number of such contacts for the Panel's information.

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(Post-meeting note - The Administration's written response was circulated vide LC Paper No. CB(2)406/01-02(01).)

Contacts with Consuls-General in Hong Kong

8. In response to Mr Howard YOUNG, SCA said that CAB's role in ensuring the HKSAR's participation in the international arena was to advise other bureaux and departments on active participation in international organisations and conferences, hosting international conferences and conclude agreements with foreign states in accordance with the BL etc. Where the Consuls-General in Hong Kong raised specific requests for assistance from the HKSAR Government, the matter would be dealt with appropriately by the relevant bureaux and departments according to their policy portfolios.

Law on political party

9. Mr HUI Cheung-ching asked when the Administration would undertake public consultation on the introduction of a political party law.

Adm 10. SCA responded that the Administration was studying the feasibility and desirability of introducing legislation on political parties. The study was expected to be completed in a few months' time. The Administration would explain the stance of the Government to the Panel at an appropriate stage.

11. The Chairman said that there were divergent views in the community on the need for the enactment of a political party law. He considered that it would be desirable to have some preliminary discussion on the subject at an early stage. He pointed out that the Research and Library Services Division of the LegCo Secretariat had done a research on the systems of government in seven overseas countries for the Panel last year. The research contained, inter alia, information on regulation of political parties in those countries. He requested the Administration to make reference to the relevant research reports.

Promoting understanding of the Basic Law

12. Mr YEUNG Yiu-chung asked whether the Administration had identified target groups for enhancing awareness and understanding of the BL.

13. SCA replied that four major groups had been identified, i.e. the local community, teachers and students, civil servants and overseas community. A survey conducted last year to evaluate the effectiveness of efforts to promote the BL indicated that about 80% of the respondents had knowledge of BL, with civil servants being the category said to be most familiar with BL. Announcements of public interest on television were considered to be the most effective method of promoting awareness of the provisions of BL. He advised that the next survey would be conducted in 2002.

14. In response to a further question from Mr YEUNG Yiu-chung, SCA said that the Education Department had been working closely with primary and secondary schools in assisting teachers to enhance their understanding of BL.

15. The Chairman opined that the Administration should identify important provisions of the BL that were of interest to the community (such as the mechanism for amending Annex I and Annex II), clarify the meaning of certain terms and provisions that were likely to be misinterpreted, and strengthen efforts to enhance public awareness of them. SCA noted his views.

Voter registration system

Adm 16. In response to Mr IP Kwok-him, SCA said that the Administration would be in a position to report to the Panel on the implementation plan for the automatic voter registration system by end of 2001.

Review of political development

17. Miss Margaret NG referred to paragraph 9 of SCA's speech which stated that in considering the political structure of Hong Kong after 2007, the Administration would take into account the experience of two milestones in Hong Kong's political development, i.e. the CE election in 2002 and the LegCo election in 2004. She asked whether the reference to the LegCo election in 2004 as a milestone carried the implication that any review of political development would not be carried out before 2004.

18. SCA responded that Annex I and Annex II of BL laid down the blueprint for the future political development of the HKSAR. Annex II prescribed the method for the formation of the first, second and third terms of LegCo. The third term of LegCo would run from 2004 to 2008. Annex II did not specify the method for the formation of LegCo after the third term, apart from setting out the requirements which had to be satisfied for amending the provisions of Annex II for the purpose of forming the LegCo after 2007. In other words, the HKSAR could decide on its own the method for forming LegCo after 2007, having regard to the developments up to the third term LegCo election held in 2004. He said that the reference to the LegCo election in 2004 as a milestone in his speech should be viewed in this regard.

19. Miss Margaret NG said that as the BL allowed for changes to the political structure of Hong Kong after 2007, public discussion and consultation on the direction of future political development should commence at the earliest possible stage. She asked whether the Administration had decided to proceed with a comprehensive review before 2004.

20. SCA replied that a systematic review of a whole range of important issues had already been set in train. For example, the Administration was considering implementing a better system to enhance accountability of principal officials and other measures to improve the relationship between the executive and the legislature.

21. Mr CHEUNG Man-kwong pointed out that as opposed to the election of the CE and the formation of the LegCo, there were no specific restrictions imposed by the BL in relation to District Councils (DC) elections, apart from BL 98 which stated that the method for the formation of district organisations should be prescribed by law. He said that the re-introduction of the appointment system for DC members was evidence that the Government was taking a retrogressive step in democratisation, and was contrary to the avowed objective of ensuring continual development of the electoral system. He asked whether the Administration would consider removing all appointed seats of DCs for the next DC elections to be held in 2003.

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22. SCA said that the Administration was studying the electoral system for the 2003 DC elections and would report to the Panel on the outcome of its study in a few months' time.

23. Ms Emily LAU said that the two motions previously passed by LegCo on political development in January 2000 and June 2000 reflected the consensus view of LegCo that the Administration should proceed immediately with a review of the political development of Hong Kong. She said that to delay the conduct of a comprehensive review until after 2004 was out of tune with public demand for a faster pace of democratisation. Any delay could also pose problems for timely implementation of changes. She opined that the Administration must set a suitable timeframe for completing the comprehensive review, including a detailed review of the method for electing CE and the formation of LegCo, to ensure that there could be no excuse for failure to implement any agreed changes soon after 2007 on grounds of time constraints. She questioned whether CAB still deserved to continue to operate with its existing level of manpower resources if it was not prepared to conduct a constitutional review before 2004.

24. SCA said that there was no reason to believe that a review could not be completed in good time, even if it was conducted in 2005. He added that both the Administration as well as this Panel had in fact been doing a lot of work in the past two years to prepare for a future comprehensive review, such as holding discussions and public consultations on political development in Hong Kong and sending delegations to overseas countries to study their systems of executive accountability etc. Concerning the question of manpower resources of CAB, SCA said that the Bureau was constantly reviewing the matter in the light of workload.

25. SCA further advised that as laid down in Annex I and Annex II of BL respectively, the procedures for implementing changes to the method for selecting the CE and the formation of LegCo were different. In the former, amendments endorsed by the LegCo with a two-thirds majority of Members and consented by the CE should be reported to the Standing Committee of the National People's Congress (NPCSC) for approval, while in the latter the amendments should be reported to the NPCSC for the record.

26. Ms Emily LAU asked whether the review would cover both the method for selecting the CE and the formation of LegCo. SCA said that the Administration was committed to conducting a review in relation to the formation of LegCo after 2007. However, the Administration had made no decision as to whether to proceed with a review of the method for electing the CE.

27. The Chairman pointed out that there were views that the overall review of political development should cover all related issues including the method for selecting the CE. Ms Emily LAU expressed regret to the reply given by SCA.

28. Miss Margaret NG pointed out that the process of policy deliberations and law enactment necessary for implementing changes would be very time consuming. She urged the Administration to conduct consultation with LegCo and the community at large as soon as possible. She stressed that there should be open and thorough discussion during the process of consultation.

29. The Chairman said that in anticipation that any changes could be implemented soon after 2007, the Administration should examine the desirability and feasibility of completing the legislative process and the procedure to report to the NPCSC before 2007. He further opined that the Administration should clarify its stance on the specific timing of making amendments stipulated in Annex I and Annex II of BL for implementing any agreed changes.

30. Miss Margaret NG requested the Administration to work out a timetable, based on its forecast of events and on the premise that any decisions arising from the review would be implemented as early as possible after 2007, for the consideration of the Panel. Ms Emily LAU supported the suggestion.

Adm 31. SCA opined that preparation of a timetable as proposed required the Administration to make certain assumptions of how things would progress, which might not be accurate at all. In further response to members, he agreed to consider the suggestion and revert to the Panel in due course.

III. Proposed election expense limit for the Chief Executive election (LC Paper No. CB(2)177/01-02(01))

32. The Chairman referred members to the paper prepared by the Administration which explained the Administration's proposal to set the election expense limit for the CE election at \$9.5 million.

33. Mr CHEUNG Man-kwong expressed the view that the proposed ceiling was disproportionately high. He pointed out that as the electorate for the CE election was the 800-member Election Committee (EC), the amount of election expense per vote would be \$12,000. However, in the case of the last LegCo election to return six Members from the same EC, the maximum limit of election expense per vote was only \$200. He said that to cap the election expenses at such a high ceiling would make the CE election "a game for the rich". He further said that if the same standard was applied to the election of

CE by universal suffrage in future, the amount of election expenses would be astronomical.

34. In response, SCA said that the functions and powers conferred on the CE by the BL covered a wide range of matters relating to the HKSAR. As the policies of the CE would affect the well-being of all residents in the HKSAR, it was necessary for the election expense limit for the CE election to be sufficient for candidates to publicise their election platform to the public at large. As Hong Kong had a population of over 6.5 million, the amount of election expense per citizen would only be about \$1.5.

35. SCA further explained that on the premise that candidates of the CE election needed to carry out territory-wide campaign, the Administration considered that the election expense limit should be derived from a composition of the following five categories of expenses -

- (a) expenses for setting up an election office;
- (b) expenses for employing campaign staff;
- (c) expenses for engaging professional services;
- (d) expenses for carrying out policy researches; and
- (e) expenses for publicity and promotion.

36. SCA drew members' attention to the Annex of the Administration's paper which set out the breakdown of the estimated amount of each of the above categories of expenses. He explained that the proposed amount only represented the upper limit for election expenses which a candidate running for the office of CE would be allowed to incur. It did not mean that a candidate had to spend all that amount. He further pointed out that from past election experience, candidates who could afford to spend more in elections did not necessarily gain a definite advantage over others. Many winning candidates in fact spent less than their competitors. The same phenomenon was also observed in other places such as the United States where there was no limit for election expenses.

37. Miss Margaret NG said that the purpose of setting an election expense limit was to prevent financially well-off candidates from gaining an unfair advantage over his competitors. An election expense limit should be realistically set because an exceedingly high limit could have the effect of deterring people with insufficient means to stand for election. Miss NG also referred to paragraph 4 of the Administration's paper which mentioned that the total of the election expense limits for the five Geographical Constituencies

(GC) of the LegCo elections was equal to \$10 million. She opined that this should not be the basis for the proposed election expense limit for the CE election because GC elections were direct elections and had a much larger size of electorate. Furthermore, as opposed to GC elections, it was unlikely that there would be many candidates competing in the CE election.

38. Ms Emily LAU said that as CE was not elected by universal suffrage, the vast majority of residents in Hong Kong were deprived of the right to elect the CE. Hence, the reason put forward by the Administration that it was necessary for candidates running for the office of CE to publicise their election platform to the public at large did not hold true. It misled the public with the false impression that they had a role to play in the election of the CE. She said that if the policies of the CE really affected the well-being of all residents in the HKSAR, CE should be directly elected by universal suffrage. Mr CHEUNG Man-kwong expressed similar views.

39. Ms Emily LAU further opined that an election expense limit would have an impact on the chance of a candidate getting elected, though it might not be the determining factor. In her view, the proposed election expense limit of \$9.5 million was too high.

40. Mr IP Kwok-him said that the Democratic Alliance for the Betterment of Hong Kong supported the setting of an election expense limit. He also agreed that the setting of the limit should take into account the important constitutional role of the CE as the head of the HKSAR Government and the need for candidates to carry out territory-wide election campaigns. As regards the Annex of the Administration's paper, he asked whether the amount of the different categories of expenses could be reshuffled.

41. The Chairman questioned whether certain amount of the expenses set out in the Annex of the Administration's paper, such as the expensive rental for an election office and the high salary for campaign staff etc, were realistic estimates.

42. SCA said that the purpose of providing for an election expense limit was to allow a candidate to use as much financial resources as the candidate was entitled to use to promote his election, subject to the maximum amount set by legislation. He said that the Annex of the paper was merely an illustration of the types of election expenses that candidates of the CE election had a legitimate right to incur, with some reasonable estimates of such expenses. However, they were not meant to dictate how candidates should actually allocate their election expenses. A candidate had complete discretion to decide on the amount and type of election expenses provided that the candidate did not spend in excess of the prescribed maximum limit.

43. Miss Margaret NG pointed out that in the case of an incumbent CE seeking re-election, there might be difficulties to tell whether certain expenses incurred by CE were for the purpose of the election or in connection with his official duties e.g. expenses on policy researches and advisory services.

44. SCA said that the estimated figures set out in the Administration's paper represented the expenses which all candidates, including a serving CE seeking re-election, could reasonably be expected to incur. The types of expenses were considered to be essential for running an election. He further advised that the Electoral Affairs Commission had promulgated detailed guidelines to regulate conduct at election, which applied to all candidates including an incumbent CE seeking re-election.

45. In reply to the Chairman, SCA said that a serving CE who had declared candidacy at the election could not direct civil servants to undertake activities, such as providing policy researches etc, which had the effect of promoting his election.

46. Mr James TIEN said that he shared the view that candidates with better means did not necessarily have an advantage over the other candidates. The stance of the Liberal Party was that it was not necessary to prescribe an election expense limit. However, there should be an effective mechanism to ensure high transparency in the reporting of election expenses by candidates. As regards the proposed limit for election expenses, he opined that the Administration might need to re-consider whether the proposed level of \$9.5 million was appropriate. He pointed out that he had heard from unconfirmed sources that the actual expenses for the election of the first term CE were around \$2 million.

47. Ms Emily LAU suggested that to enable a meaningful comparison to be made, the Administration should provide information on election expenses spent on the first term CE election and the elections to return LegCo Members by EC for the consideration of the Panel.

48. SCA said that the Administration had no such information relating to the first term CE election because candidates were not required to report election expenses to the Administration. He undertook to provide relevant information, if available, to assist members' consideration.

(Post-meeting note - The Administration's written response was circulated vide LC Paper No. CB(2)300/01-02)

49. The Chairman opined that the provision for an election expense limit could not stamp out corrupt and illegal conduct at elections. He pointed out that in the United States where there was no statutory limit for election

expenses, there was a limit for election donations from individuals and organisations.

50. Mr James TIEN said that a regulatory system for election donations could also be subject to abuse. For instance, a large corporation or organisation could overcome the imposition of a limit by splitting a huge sum of election donation under the names of individual persons.

51. As regards expenses for publicity and promotion, some members enquired whether the Administration would review the possibility of allowing candidates to appear on television to promote their election. SCA replied that at present political advertisement on television was prohibited under the Broadcasting Ordinance. He said that the Administration was of the view that the time might be ripe for a review. The Administration would revert to the Panel in due course on any new proposals.

52. In concluding the discussion, the Chairman said that a LegCo Subcommittee had been formed and was in the process of scrutinising the various items of subsidiary legislation relating to the 2002 CE election. He said that the subsidiary legislation on election expense limit for the CE election would be discussed by the Subcommittee in due course.

53. SCA said that the Administration would take into consideration the views expressed by the Panel when finalising the proposal. The subsidiary legislation relating to the election expense limit for CE election would be submitted to LegCo for negative vetting after endorsement by the Executive Council.

IV. System of accountability for principal officials

54. As the meeting had been overrun, members agreed that discussion of the item of system of accountability for principal officials should be deferred to the next meeting on 19 November 2001.

55. To facilitate discussion of the item at the next meeting, members agreed that the public should be invited to send/present their views to the Panel.

(Post-meeting note: An advertisement was placed on the South China Morning Post and Ming Pao Daily on 1 November 2001 to invite written submission/oral presentation of views to the Panel.)

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56. There being no other business, the meeting ended at 12:50 pm.

Legislative Council Secretariat
4 December 2001