

立法會

Legislative Council

LC Paper No. CB(2)773/02-03

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting

**held on Monday, 18 November 2002 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, GBS, JP
Hon NG Leung-sing, JP
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon SZETO Wah
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
- Members absent** : Hon Margaret NG
Dr Hon Philip WONG Yu-hong
Hon TAM Yiu-chung, GBS, JP
- Public officers attending** : Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
- Mr Clement C H MAK
Acting Permanent Secretary for Constitutional Affairs
- Mrs Philomena LEUNG HO Ye-man
Principal Assistant Secretary for Constitutional Affairs

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

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Watson CHAN
Head of Research and Library Services Division

Mr CHAU Pak-kwan
Research Officer 5

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)379/02-03)

The minutes of the meeting held on 7 October 2002 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that the following information papers had been issued to the Panel since the last meeting -

- (a) LC Paper Nos. CB(2)248/02-03(01) and (02) - An extract of the proceedings of the Council meeting on 9 October 2002 relating to the question raised by Dr Hon YEUNG Sum on "Reduction in Government's operating expenditure" and reply from the Secretary for Constitutional Affairs; and
- (b) LC Paper No. CB(2)272/02-03 - Updated Registers of Interests of Members of the Executive Council (ExCo) completed by ExCo Members including the 14 principal officials.

III. Items for discussion at future meeting

Meeting on 16 December 2002

3. Members agreed that the following items would be discussed at the next meeting of the Panel on 16 December 2002 -

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- (a) Meeting with deputations on the Research Report on "The Relationship between the Government and the Opposition or Minority Parties in Selected Places" (paragraphs 38 to 40 below refer);
- (b) Proposals on electoral arrangements for the 2003 District Council elections;
- (c) Accountability system for principal officials and related issues -
 - (i) Arrangements during principal officials' temporary absence; and
 - (ii) Attendance of principal officials at meetings of the Legislative Council.

4. The Chairman informed the Secretary for Constitutional Affairs (SCA) that items (c)(i) and (ii) above arose from two recent incidents respectively, i.e. the deferring of discussion of two agenda items of the Panel on Education as a result of the temporary absence of the Secretary for Education and Manpower, and the non-attendance of the Directors of Bureaux concerned at the meeting of the Public Works Subcommittee on 16 October 2002. The Panel on Constitutional Affairs decided that the issues should be considered in the context of the accountability system for principal officials at its next meeting. SCA said that he would convey the Panel's decision to the Director of Administration.

5. The Chairman informed members that he would be away from Hong Kong for a few days starting 10 December 2002 and might be unable to come back in time for the meeting on 16 December 2002. Members agreed that Hon Emily LAU, Deputy Chairman, would chair the meeting in the absence of the Chairman.

Review of the list of outstanding items for discussion
(LC Paper No. CB(2)378/02-03(01))

6. The Chairman invited SCA to update the Panel on when the Administration could report progress on the outstanding items.

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

7. SCA undertook to convey the Panel's concern to the Director of Administration about the lack of progress of implementing the regulatory framework for application to CE, and the Panel's stance that the Administration

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Admin should expedite the matter and revert to the Panel without further delay.

Mechanism for amending the Basic Law

8. SCA said that he would advise the Panel in December 2002 on the updated position. He expected that the item could be discussed in early 2003.

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Development of the political system of the Hong Kong Special Administrative Region (HKSAR)

9. SCA advised the Panel that the Administration had yet to decide on the time-frame for a comprehensive review of the constitutional development of the HKSAR. He assured the Panel that the implementation of any changes to the political system after 2007 would be in accordance with the Basic Law, and there would be adequate time for the Administration to conduct public consultation as well as for the relevant mechanism in the Basic Law to be triggered and for local legislation to be enacted.

Appointment of the Chairman of the Electoral Affairs Commission (EAC)

10. The Chairman said that as the appointment of the existing Chairman of EAC would expire on 28 September 2003, the Panel should discuss the item about six months prior to the date so that the Administration could have sufficient time to consider and respond to the views of the Panel.

Review of the role and function of the District Councils (DCs)

11. SCA said that the role and functions of DCs would form part of the review of DCs to be conducted after the 2003 DC elections.

12. The Chairman said that the Administration should ensure that the future review would be a comprehensive one. Issues such as the composition of DCs, delineation of constituency boundaries, the desirability of adopting the proportional representation system for DC elections, etc should also be considered.

System of voting and voter registration for Legislative Council (LegCo) elections

13. SCA said that the Administration would brief the Panel on the proposed arrangements relating to the 2004 LegCo election in the first quarter of 2003. Issues relating to the system of voting and voter registration would be covered in the Administration's report.

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Law on political parties

Admin 14. SCA said that the Administration would brief the Panel on this item in the context of the proposed arrangements for the 2004 LegCo election.

15. Ms Emily LAU and Mr CHEUNG Man-kwong expressed dissatisfaction at the lack of progress on a large number of items on the list and the failure of the Administration to provide a definite timetable of discussion. Mr CHEUNG pointed out that some of the items had been put on hold for more than a year, pending report on progress by the Administration.

16. SCA responded that the Constitutional Affairs Bureau (CAB) had to set priorities for its work. He said that the immediate tasks for CAB were preparations for the DC elections to be conducted at the end of 2003 and the LegCo general election in 2004, as well as the review of the accountability system for principal officials implemented since 1 July 2002. He informed members that the Administration was in the process of formulating various arrangements for the 2003 DC elections, including the preparation of the relevant subsidiary legislation. The subsidiary legislation would be introduced into LegCo in early 2003 after the passage of the Electoral Provisions (Miscellaneous Amendments) Bill 2002. CAB would brief the Panel on the proposed arrangements for the 2004 LegCo election in the first quarter of 2003. Moreover, in accordance with the Administration's undertaking made to LegCo, CAB would provide an interim progress report on its review of the operation of the accountability system for principal officials to the Panel in early 2003.

17. SCA added that some of the items on the outstanding list involved other Bureaux and Departments. He assured members that he would revert to the Panel at the earliest possible opportunity.

Chairman/
Deputy
Chairman/
Admin 18. At the suggestion of Dr YEUNG Sum, members agreed that to facilitate planning of the Panel's work, the Chairman and the Deputy Chairman should work out with SCA a time schedule for discussion of the outstanding items.

Research study on political parties legislation

19. Ms Emily LAU said that as SCA had undertaken to report to the Panel on this item in early 2003, it would assist the discussion if the Research and Library Services Division (RLSD) of the LegCo Secretariat could conduct a research study on political parties legislation in overseas jurisdictions for the Panel's consideration.

20. The Chairman said that the subject involved complicated issues. As the Administration had yet to explain its views and proposals to the Panel, it would be difficult to define the scope of the proposed research study.

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21. Mr IP Kwok-him said that he did not support a detailed research study at this stage, other than a fact finding exercise.

22. Ms Emily LAU and Dr YEUNG Sum said that the research study should be confined to political parties legislation in overseas jurisdictions relating to the operation of political parties and their activities etc.

H/RL 23. Head of RLSD (H/RL) undertook to work out a proposed research outline for members' consideration.

IV. Research Report on "The Relationship between the Government and the Opposition or Minority Parties in Selected Places"
(RP01/02-03 issued vide LC Paper Nos. CB(2)376/02-03 (English version) and 389/02-03 (Chinese version))

Briefing by H/RL

24. H/RL gave a presentation on the Research Report (RP01/02-03). The Research Report focused on the role of and privileges accorded to the opposition or minority parties in the United Kingdom (UK), New Zealand and the United States (US), and covered the following major aspects -

- (a) recognition of the opposition or minority parties;
- (b) their privileges in the legislature such as membership in parliamentary or congressional committees and the allocation of time to the business of the opposition or minority parties;
- (c) formation and operation of the Shadow Cabinet system; and
- (d) the relationship between the Government and the Shadow Cabinet.

Issues raised by members

25. Mr LAU Ping-cheung said that as he was a new member of the Panel, he was not clear about the background to the Panel's decision to conduct the research. He asked what objectives could be achieved by undertaking the research.

26. Ms Emily LAU responded that the proposal to conduct the research was raised by her in the last session. She said that with the appointment of two LegCo Members, who were the leaders of two political parties, to the Executive Council (ExCo) since July 2002, there were views that a "ruling coalition" (執政聯盟) in the legislature in support of the Government had

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started to develop. This raised concern about its implications on other Members of LegCo in their role of monitoring the Government. She opined that the relationship between the Government and the opposition and minority parties overseas could provide useful reference in discussions on political development and party politics in Hong Kong. Information available from the research study could also open up new areas for public debate and discussion.

27. Mr NG Leung-sing opined that the appointment of the two LegCo Members referred to by Ms LAU as ExCo Members had not given rise to a "ruling coalition" in LegCo. Moreover, under the newly implemented accountability system, no principal officials were members of political parties. In his view, the prospect of the emergence of a ruling party in LegCo in the constitutional development of Hong Kong in the foreseeable future was remote.

28. Mr NG Leung-sing further said that priorities should be set in utilizing the resources of RLSD. He expressed doubt as to whether there was a pressing need to undertake the research having regard to the nature of the subject in question. Mr IP Kwok-him expressed similar views.

29. Dr YEUNG Sum said that there was a host of important issues on the political development agenda of Hong Kong which required detailed discussion. These issues were interrelated and should not be considered in isolation. He further pointed out that, as prescribed in the Basic Law, Members of LegCo should be elected ultimately by universal suffrage. He considered that a study of the role of opposition or minority parties and the operation of the parliamentary political parties systems in other places would be useful to future discussion.

30. The Chairman said that the research was an objective, fact finding project focusing on the rights of and recognition given to opposition or minority parties in the places studied and how the parties played their role in the legislature. The research report had not made any comments on the merits of particular features of the overseas systems or their relevance to Hong Kong.

31. Mr CHEUNG Man-kwong said that the research had shown that in the places studied, different political parties in the legislature, regardless of whether they were the majority parties or opposition or minority parties, had a role to play in monitoring the Government. Certain rights and privileges were provided to them and such rights and privileges were safeguarded. He opined that the systems in overseas democratic jurisdictions pinpointed the need for ensuring suitable checks and balance against the power of the Government to protect the different interests of the community. That should be a major issue to be considered in any discussions on Hong Kong's political and democratic development.

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32. Mr James TIEN said that he was one of the two LegCo Members appointed as Members of ExCo. He opined that the appointment had not brought about changes to the conduct of LegCo business. For example, the operation of various LegCo committees and their memberships remained largely unchanged in the new session. He further said that at the ExCo meetings, he had often reflected the different views expressed in LegCo for the consideration of the Government.

33. SCA said that there was no ruling party or group under the political structure of Hong Kong. Hence, there was no opposition party in LegCo. However, the Government had at times relied on the support of Members of certain political parties or groups who shared the Government's views on policy issues in getting legislation passed. He added that the Government of HKSAR was accountable to LegCo under the Basic Law.

34. Referring to the system in UK, Mr CHEUNG Man-kwong pointed out that the Public Accounts Committee (PAC) was chaired by a member of the opposition party. He asked whether the practice was intended to be a means of monitoring the Government through control of the use of public money.

35. Research Officer 5 responded that the practice of the Chairman of PAC in UK being a member of the opposition party had the effect of creating a perception that PAC operated independently from the Government. He added that the chairmanship of the PAC in UK was established by convention and not by statute.

36. The Chairman said that there were no specific rules in UK governing who should be the PAC Chairman. The PAC Chairman was usually a senior but not politically active member of the Opposition. The arrangement for a member of the Opposition to serve as the PAC Chairman was established by convention and based on mutual respect amongst the parties.

37. Ms Emily LAU asked whether the "Shadow Cabinet" system functioned as a training ground for future political leadership. H/RL responded that it could be said that the system in UK and New Zealand had produced such an effect since the primary goal of a main opposition party was to form the Government in the next election. However, the case was different in the presidential system in US, where the executive and the legislature were two separate branches. The formation of a Shadow Cabinet was not important because the minority party was not supposed to present itself as being eminently fit to govern. The Chairman said that the purpose of the Shadow Cabinet system such as that in UK and New Zealand was not to train up political leaders, although the operation of the system achieved such an effect in practice.

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Public consultation on the Research Report

38. Ms Emily LAU proposed to invite academics to attend the next meeting of the Panel to give their views on the Research Report.

39. As a few members had expressed reservations about Ms LAU's proposal, the Chairman put the proposal to the vote. Three members voted for the proposal and two voted against.

40. Mr YEUNG Yiu-chung suggested that other interested parties should also be invited to attend the Panel meeting to give their views. Members agreed that a notice should be posted on the LegCo website to invite public views.

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V. Responsibilities of principal officials under the accountability system

(LC Paper Nos. CB(2)110/02-03(02) and (03); 114/02-03(02))

41. The Chairman referred members to the Background Brief prepared by the LegCo Secretariat which set out the referral from the Panel on Financial Affairs (FA Panel) regarding assessment of the responsibilities of principal officials under the accountability system (LC Paper No. CB(2)110/02-03(02)).

42. The Chairman said that the Panel of Inquiry on the Penny Stocks Incident mentioned in its Report that it had adopted four broad categories of responsibilities for assessing the responsibilities of the concerned individuals and officials in the incident, i.e. policy responsibility, executive responsibility, systemic responsibility and personnel responsibility. Members of the FA Panel questioned the propriety of adopting the four categories of responsibilities as it appeared that the Administration had not put forward and explained such categorizations during the Council's deliberations on the accountability system. At its meeting on 8 October 2002, the FA Panel considered that the issue of how to define the responsibilities of principal officials under the accountability system should be followed up by the Panel on Constitutional Affairs.

43. At the invitation of the Chairman, SCA introduced the Administration's paper which set out the Administration's views on the responsibilities of principal officials under the accountability system (LC Paper No. CB(2)114/02-03(02)). He said that the four categories of responsibilities mentioned in the Report of Panel on Inquiry on Penny Stocks Incident reflected the views of the Panel on Inquiry on the scope of responsibilities of the concerned individuals and officials in the particular circumstances of the penny stocks incident. The Administration accepted the Report of the Panel on Inquiry insofar as the Panel's views on the incident were concerned. As regards the responsibilities

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of principals officials under the accountability system, the Administration would continue to apply the principles which had been adopted and explained to LegCo Members since April 2002 when matters relating to the implementation of the accountability system were discussed. SCA invited members to refer to paragraphs 5 and 6 of the Administration's paper for a summary of its position.

44. Mr CHEUNG Man-kwong considered that the Basic Law and the Code for Principal Officials under the Accountability System were important documents governing the conduct and responsibilities of principal officials. He pointed out that there had been detailed discussion between LegCo Members and the Administration on the Code prior to its promulgation.

45. SCA informed members that compliance with the Code was a requirement under the employment contract of principal officials. Violation of the Code could be regarded as violation of the contract. He further said that the Administration's view was that principal officials under the accountability system were responsible for all aspects of their portfolios, including overseeing the executive departments under their purview. Principal officials were accountable to the Chief Executive for the success or failure of their policies and, in extreme cases, might have to step down for serious policy failures relating to their portfolios.

46. Ms Emily LAU said that she accepted the Administration's clarification that the four categories of responsibilities specified in the Report of the Panel on Inquiry would not be used for defining the scope of responsibilities of principal officials under the accountability system.

47. The Chairman pointed out that in paragraph 12 of the "Legislative Council Paper on Accountability System for Principal Officials" presented by CAB to the Council on 17 April 2002, it was stated that principal officials would be accountable to CE for the success or failure of matters falling within their respective portfolios, including serious failures in policy outcome and mishaps in the implementation of the relevant policies. He said that this indicated that principal officials would have to assume full political responsibility, including responsibility for mistakes committed by their subordinates. As regards the responsibilities of the individuals and officials concerned in the penny stocks incident, the Chairman opined that it appeared that the Panel on Inquiry had focused more on the aspect of executive/administrative responsibility, placing the responsibilities mainly on those persons who actually made or carried out the decisions.

48. Ms Emily LAU said that she was aware that certain Directors of Bureaux were concerned that they had to account for all matters relating to policy implementation, including, inter alia, monitoring of the delivery of services by executive agencies at lower levels.

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49. SCA said that the general principle was that principal officials should assume total responsibility for policy implementation and policy outcome. How this could be reflected in practice would depend on individual cases. Members of the public could see for themselves how far principal officials should be responsible for individual incidents and pass their own judgement. The Chairman added that political responsibility did not mean that there were no alternative ways for a principal official to account for a policy failure other than to step down from office.

50. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
30 December 2002