

立法會

## *Legislative Council*

LC Paper No. CB(2)1178/02-03

(These minutes have been  
seen by the Administration)

Ref : CB2/PL/CA

### **Panel on Constitutional Affairs**

#### **Minutes of meeting**

**held on Monday, 20 January 2003 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 Margaret NG  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Dr Hon Philip WONG Yu-hong  
Hon Howard YOUNG, JP  
Dr Hon YEUNG Sum  
Hon YEUNG Yiu-chung, BBS  
Hon SZETO Wah  
Hon TAM Yiu-chung, GBS, JP  
Hon IP Kwok-him, JP  
Hon LAU Ping-cheung
- Member attending** : Hon CHAN Yuen-han, JP
- Public officers attending** : Item V  
Mr Stephen LAM Sui-lung  
Secretary for Constitutional Affairs  
  
Mr Clement MAK Ching-hung  
Permanent Secretary for Constitutional Affairs  
  
Mr Bassanio SO Chek-leung  
Acting Deputy Secretary for Constitutional Affairs

Mr LI Wing  
Chief Electoral Officer

Item VI

Mr Stephen LAM Sui-lung  
Secretary for Constitutional Affairs

Mr Clement MAK Ching-hung  
Permanent Secretary for Constitutional Affairs

Mr Bassanio SO Chek-leung  
Acting Deputy Secretary for Constitutional Affairs

Item VII

Mr Stephen LAM Sui-lung  
Secretary for Constitutional Affairs

Mr Andrew WONG Ho-yuen  
Director of Administration  
(Item VII (a) only)

Mr Clement MAK Ching-hung  
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 Watson CHAN  
Head of Research and Library Services Division

Mr CHAU Pak-kwan  
Research Officer 5

Miss Kitty LAM  
Research Officer 8

Mr Paul WOO  
Senior Assistant Secretary (2)3

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**I. Confirmation of minutes of meetings**

(LC Paper Nos. CB(2)773/02-03, 927/02-03 and 928/02-03)

The minutes of the meetings held on 18 November, 10 and 16 December 2002 respectively were confirmed.

**II. Information papers issued since the last meeting**

(LC Paper Nos. CB(2)726/02-03(01) and 803/02-03)

2. Members noted that the above papers had been issued for the Panel's information.

3. Regarding the "2003 District Council Election Provisional Constituency Areas Boundary Descriptions and Proposed Electoral Boundary Maps in respect of 2003 District Councils Election for Public Consultation" issued to Members vide LC Paper No. CB(2)803/02-03, the Chairman reminded members that the deadline for public consultation was 4 February 2003. Two open forums on 23 and 24 January 2003 would be held by the Electoral Affairs Commission to receive oral representations.

**III. Matters arising from the last meeting on 16 December 2002**

(a) Proposed research outline prepared by Research and Library Services Division (RLSD) on "The Regulatory Framework of Political Parties in Germany, New Zealand and Singapore"  
(LC Paper No. CB(2)661/02-03(04)

(b) Proposed research study on "Measures in support of development of political parties"  
(LC Paper No. CB(2)661/02-03(05)

(c) Proposed research study on "Role of members of Government in the Legislative Council"  
(LC Paper Nos. CB(2)661/02-03(02) and 931/02-03(01))

4. On item (a), Head of RLSD (H/RL) briefed members on the proposed outline of a research study on the regulatory framework of political parties in Germany, New Zealand and Singapore. The proposed outline was prepared by RLSD in response to a request made by the Panel at its meeting on 18 November 2002 to conduct a research on political party law in overseas places.

5. The Chairman sought the Panel's endorsement of the proposed research outline in item (a) and decision on the proposed research studies in items (b)

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and (c). He said that item (b) proposed by Ms Emily LAU could be incorporated in item (a). On item (c), the Chairman said that it arose from the controversy over whether the Committee on Rules of Procedure (CROP) should be chaired by a Legislative Council (LegCo) Member who was also an Executive Council (ExCo) Member. The issue was discussed by the House Committee and CROP. He said that he had proposed at the House Committee meeting on 22 November 2002 that the issue should be examined in the wider context of the system of chairmanship of the committees of LegCo, making reference to the experience and practice of other legislatures. CROP had agreed that a study should more appropriately be taken up by this Panel.

6. Ms Emily LAU and Dr YEUNG Sum opined that the development of political parties was an important feature of democratic and constitutional reform. They supported a research study to cover items (a) and (b) above.

7. Mr TAM Yiu-chung did not agree that a research study on political parties was necessary. He said that only a few political groups in Hong Kong professed themselves to be political parties. As Hong Kong was not a country, the experience in other jurisdictions would not be of relevance to Hong Kong.

8. Miss Margaret NG, Mr IP Kwok-him and Mr HUI Cheung-ching were of the view that item (c) should be accorded a higher priority. However, Mr IP Kwok-him considered that the scope of the research should be confined to the system of chairmanship of committees to reflect more accurately the decision of CROP.

9. Mr NG Leung-sing said that the chairmanship of CROP was a matter for CROP to decide. The stance of the Breakfast Group was that neither item (c) nor a research study limited to the chairmanship of committees was necessary. He added that he was concerned about the strain imposed on the resources of RLSD, in view of the demands from various committees for research projects to be undertaken.

10. The Chairman said that it was within the remit of a committee to request RLSD to conduct research studies on issues of interest to the committee. The question of resources available to RLSD was a matter for the Legislative Council Secretariat or the Commission, but not individual committees, to consider.

11. In concluding, the Chairman suggested and the Panel agreed to proceed with item (c). RLSD would prepare a draft research outline for consideration of the Panel at the next meeting. The decision on a research relating to political parties in other places was deferred.

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**IV. Items for discussion at the next meeting on 17 February 2003**

12. The Panel agreed that the following items should be discussed at the next meeting on 17 February 2003 (paragraphs 11, 58 and 59 refer) -

- (a) Proposed research outline on "The System of Chairmanship in Parliamentary Committees in Some Selected Places";
- (b) Accountability system for principal officials and related issues
  - (i) Attendance of principal officials at committee meetings of the Legislative Council;
  - (ii) Report by the Administration on implementation of accountability system for principal officials; and
- (c) 2004 Legislative Council elections : technical adjustments to the electorate of functional constituencies.

*(Post-meeting note - At the suggestion of the Administration, the issues of "Proposal of including registered Chinese medicine practitioners in the Medical Functional Constituency" and "Automatic voter registration" in relation to the 2004 Legislative Council elections are added to item (c) above)*

**V. Proposals on electoral arrangements for 2003 District Council elections**

(LC Paper No. CB(2)652/02-03(01))

13. At the invitation of the Chairman, Secretary for Constitutional Affairs (SCA) briefed members on the Administration's paper (LC Paper No. CB(2)652/02-03(01)) which explained the Administration's proposals in respect of election expense limit and the vote counting arrangements for the 2003 District Council (DC) elections. In gist, the Administration proposed to adopt the election expense limit at the existing level of \$45,000 for the 2003 DC elections, and to decentralise vote counting at individual polling stations. SCA said that subject to members' views, the subsidiary legislation to provide for the new vote counting arrangements would be submitted to LegCo for scrutiny.

Issues raised by members

*Provision of financial support to DC candidates*

14. Mr CHEUNG Man-kwong said that the Administration's proposal to provide partial financial support to candidates running for the 2004 LegCo

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elections at the rate of \$10 per valid vote received but capped at 50% of the actual election expenses incurred) was intended to encourage public-spirited persons to stand for elections. It was only fair and reasonable for the Administration to also provide partial financial assistance to candidates in DC elections. Ms Emily LAU and Dr YEUNG Sum shared his views.

15. In response, SCA said that the proposals to provide financial assistance to candidates at the 2004 LegCo elections, though generally supported by the community, had attracted queries from some members of the public as to the propriety of using public funds to subsidise the candidates at a time when the Government was suffering from a huge budgetary deficit. He added that the Administration had considered Mr CHEUNG's proposal but remained of the view that it would be a prudent approach to limit the provision of financial support to candidates at the 2004 LegCo elections at this stage. The matter, however, would be further considered in the context of a comprehensive review of DC elections after the 2003 DC elections.

16. Mr CHEUNG Man-kwong said that as pointed out in the Administration's paper, 86% of the candidates at the 1999 DC elections spent between \$10,000 and \$40,000 in their election campaigns, and only 8.5% spent more than \$40,000. He requested the Administration to provide an analysis to show the level of financial assistance that would have been received by DC candidates in the 1999 DC elections based on the formula of subsidy proposed for the candidates in the 2004 LegCo elections. SCA agreed to consider whether such an analysis could be done.

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*Vote counting arrangements*

17. Ms Emily LAU and Dr YEUNG Sum supported the Administration's proposal to convert the polling stations into individual counting stations immediately after the close of poll. Ms Emily LAU enquired about the estimated time required to complete vote counting at a counting station.

18. SCA replied that based on the experience of the by-election to fill a vacancy of the Kowloon City DC held on 3 November 2002 in which vote counting was performed at the Kai Tak polling station under the proposed new arrangements as a trial exercise, the count (involving about 1 900 votes) was finished in about 50 minutes. He said that the new arrangement had resulted in significant time saving in vote counting.

19. Chief Electoral Officer (CEO) informed members that for the 2003 DC elections, the majority of the constituencies (about 300) would have one polling station only. It was expected that the count conducted in these counting stations could be completed in less than an hour. For constituencies with more than one polling station, counting would be performed at the individual polling stations but one of the stations would be responsible for

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coordinating the counting results and requests for recount as well as announcing the election result. The count was expected to be completed within one to two hours.

20. Mr IP Kwok-him pointed out that for constituencies with more than one polling station and where the polling stations were far apart, there might be difficulties for the candidates to make themselves available at the stations to observe the count. The Chairman said that he had expected that for single-seat constituencies with a few polling stations, vote counting should be performed at one of the stations. SCA said that members' views would be considered.

21. In reply to the Chairman, SCA said that amendment to the Electoral Affairs Commission (Electoral Procedures) (District Councils) Regulation would be introduced to effect the proposed new vote counting arrangements.

22. Ms Emily LAU asked whether the Administration would consider adopting the practice of "唱票" (i.e. counting each vote as the name of the candidate voted for is called out) as in the Taiwan elections to ensure accuracy and increase transparency.

23. CEO responded that in preparing for the rural elections, the Home Affairs Department had conducted trial exercises to assess the time required for vote counting using the said method. The result showed that the process for each vote required eight to 10 seconds. Hence, the count would take hours to complete for the larger constituencies. SCA said that under the proposed new arrangements, all candidates and their agents and members of the public and the media would be allowed to be present in the counting stations to observe the counting process. Upon completion of the count, candidates or their agents would be given an opportunity to request a recount as was the current practice. If there was such a request, the recount would be performed on-the-spot. The Administration was satisfied that a high degree of transparency could be achieved.

*Polling time*

24. Mr IP Kwok-him said that he had consulted his constituents on the proposed vote counting arrangements, and the majority of them supported the arrangements. However, there was feedback that the existing polling time from 7:30 am to 10:30 pm was too long and could be shortened. SCA responded that the Electoral Affairs Commission had yet to make any decision in this regard and would listen to views expressed on the matter.

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*"Cooling off" period*

25. Dr YEUNG Sum said that the Democratic Party had been advocating the introduction of a "cooling-off" period prohibiting electioneering activities on the polling day. He opined that the Administration should reconsider the proposal.

26. SCA said that the proposal had been considered by the Administration in the past. The stance of the Administration remained unchanged at present.

**VI. 2004 Legislative Council elections**

(LC Paper Nos. CB(2)661/02-03(06); 660/02-03(01); 684/02-03(01); 931/02-03(03) & (04); IN09/02-03; FS05/02-03)

Election expense limits

27. Mr CHEUNG Man-kwong noted that as stated in paragraph 12 of the Administration's paper on geographical constituencies (GCs) and election expense limits for the 2004 LegCo elections (LC Paper No. CB(2)931/02-03(03)), the Administration recommended that the election expense limits for the five GCs should be derived on the basis of \$1.5 per head of the population in a given GC, rounded to the nearest \$500,000. The same formula was used in the 2000 LegCo elections. He suggested that the Administration should review the formula taking into account the following factors -

- (a) free postage of election materials for candidates would be reduced from two rounds to one; and
- (b) with deflation, the Consumer Price Index (CPI) had dropped by about 5% in the past few years.

Mr CHEUNG opined that the election expense limits based on \$1.5 per head of population in a GC should be adjusted downwards.

28. SCA replied that for the 2000 LegCo elections, each candidate/list of candidates sent an average of 1.3 copies of election materials to electors. Therefore, the proposal to reduce free mailing from two rounds to one would not necessarily have the implication of a corresponding reduction in the number of mailing by candidates by 50%. SCA said that CPI had dropped by 4.7% since September 2000, but the impact of the fall on election expenses was partially offset by an increase of 3.3% in population in the corresponding period. He said that the Administration remained of the view that it was appropriate to maintain the existing formula for calculating the election expense limits for the 2004 LegCo elections.



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29. Mr IP Kwok-him supported maintaining the formula for calculating election expense limits so that candidates would not be forced to cut down the scale of their election activities.

30. Mr James TIEN said that election expenses were incurred for the primary objective of improving communication between a candidate and his electorate, thus enabling electors to have a good understanding of the candidate's election platforms and to exercise their best choice while casting votes. To help achieve this objective, some countries like the United States (US) had dispensed with election expense limits. He said that the Liberal Party was in support of removing the election expense limits.

31. SCA said that the important consideration for the Administration was to ensure that elections could be conducted in a fair, open and honest manner. The retention of election expense limits would be conducive to achieving such objective. He said that in the light of the experience in past elections, it was the Administration's position that it was desirable to set election expense limits for LegCo elections.

32. The Chairman pointed out that in the US, although there were no election expense limits, there were limits as to the amount of election donation an individual or organisation could make to a candidate.

33. Ms Emily LAU expressed concern that to remove the election expense limits would be disadvantageous to the less well-off candidates. She said that the issue would need to be further examined.

34. The Chairman said that a candidate might have received donations from his political party or other sources to meet his election expenses. He asked whether in such cases the candidate would be required to give the financial subsidy received from the Government to the political party, or to charity.

35. SCA responded that the issue raised would be dealt with in the bill to be introduced for LegCo's scrutiny. He said that the fundamental principle was that a candidate would not be allowed to profit from the election.

Electioneering on TV and radio

36. Ms Emily LAU pointed out that some academics previously invited by the Panel to discuss election matters had commented that the "equal time" principle which required that candidates contesting in election should be given the same duration of free air time when participating in electioneering programmes on TV and radio was wrongly applied. In their view, candidates receiving broader support from electors as shown in past elections should be given more time in the programmes. She asked whether the "equal time" principle should be reviewed.

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37. SCA said that all candidates at an election should be given the opportunity to compete on equal grounds. Therefore, it was fair to provide the same degree of assistance to all candidates alike, and the support a candidate received from electors in past elections should not be a factor for consideration.

38. Mr IP Kwok-him said that he supported the "equal time" principle. He added that to deviate from such a principle would likely attract complaints about unfair treatment of candidates.

39. Dr YEUNG Sum opined that the basis for the argument against the "equal time" principle was that Government's assistance to candidates should be in proportion to the support they received from electors in the election. He opined that the Administration's proposal to provide financial support to a candidate in accordance with the number of votes the candidate received was made on the same basis.

Information Note on "Public Subsidies for Parliamentary Election Expenses in Canada, Germany and Australia" (IN09/02-03)

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40. H/RL briefed members on the Information Note prepared by RLSD which provided information on public subsidies for the payment of parliamentary election expenses incurred by candidates and political parties in Canada, Germany and Australia.

*Public subsidies for candidates and political parties*

41. Ms Emily LAU asked whether the practice of providing public subsidies to candidates or political parties in the three jurisdictions studied reflected a commitment of their governments to encourage and assist the development of political parties.

42. Research Officer 5 said that in the three jurisdictions concerned, candidates or political parties were eligible to election subsidies on the basis of a certain percentage of the valid votes they received in an election. In Germany, political parties were formally recognised in the Constitution. Political parties were considered as vital links between state and society, and public funding for political parties was well-acknowledged. He said that the law in the three jurisdictions did not specify the purpose of providing the subsidy for candidates and political parties, but the provision of the subsidy itself had the effect of promoting the development of political parties. The Chairman remarked that there could be different reasons for overseas jurisdictions to provide election expense subsidies for candidates or political parties.

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*Election expense limits*

43. In reply to Mr James TIEN, H/RL said that there was a cap on election expenses in Canada but not in Germany and Australia.

*Broadcasting air time for promoting election*

44. Mr James TIEN asked whether candidates or political parties in the three jurisdictions were allowed to buy TV time for electioneering purposes.

45. H/RL advised that all broadcasters in Canada must make available a specified amount of both free and paid air time to registered political parties during a general election. Political parties in Germany could not purchase radio or TV time on public broadcasters to promote their candidates and their political platforms, although they could buy air time on private broadcasters. In Australia, the Australian Broadcasting Commission, the public broadcasting authority, was not obliged by law to provide free broadcasting time to parties participating in an election.

46. Ms Emily LAU noted that under the Canadian Elections Act, the Chief Electoral Officer appointed a Broadcasting Arbitrator who allocated time slots to individual parties according to a formula set out in the legislation. H/RL undertook to provide the relevant legislative provisions for the Panel's reference.

RLSD

Fact sheet - Relevant data on the 1998 and 2000 LegCo elections (FS05/02-03)

47. The Chairman said that at the Panel's special meeting on 15 January 2003, the Administration had proposed that for the 2004 LegCo elections, there should still be five GCs with four to eight seats in each GC. At the meeting, some members had expressed concern that for a GC with a large number of seats, a candidate could get elected even though he had only secured a few thousand votes. To facilitate members' consideration of the matter, RLSD had been requested to compile relevant information in respect of the 1998 and 2000 LegCo elections for reference.

48. H/RL briefed members on the Fact Sheet which provided information on the relevant data in respect of the 1998 and 2000 LegCo elections, including the election expenses incurred and the number of votes obtained by individual candidates/lists of candidates.

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**VII. Accountability system for principal officials and related issues**

- (a) Arrangements during principal officials' temporary absence  
(LC Paper Nos. CB(2)654/02-03(01) and (03))

49. Director of Administration (D of A) briefed members on his letter dated 28 October 2002 to the Chairman of the House Committee (LC Paper No. CB(2)654/02-03(01)) which set out the arrangements for attendance at full Council meetings during the temporary absence of the relevant principal officials (POs). The arrangements were -

- (a) During the absence of the Chief Secretary for Administration (CS) or the Financial Secretary (FS), the Director of Bureau who stood in as Acting CS or Acting FS would attend the Council meeting and speak on behalf of the Government;
- (b) In the case of the Secretary for Justice (SJ) and the Secretary for the Civil Service (SCS), given their special roles and responsibilities, arrangements would be made for a designated Law Officer and the Permanent Secretary for the Civil Service to attend the Council meeting on their behalf respectively and speak on established policy; and
- (c) During the absence of the other Directors of Bureau, another Director of Bureau would speak on behalf of the Government on established policy relating to the absent Director of Bureau under his own title.

Issues raised by members

50. Mr Howard YOUNG asked whether the Administration had reviewed the pros and cons of having the relevant Permanent Secretary (PS) vis-à-vis another Director of Bureau, to stand in and speak on behalf of the Government during the temporary absence of the responsible Director of Bureau.

51. D of A replied that the Administration had advised the Subcommittee to study the Proposed Accountability System for Principal Officials and Related Issues that as POs under the accountability system would be held politically accountable for policies within his portfolio, it would not be appropriate for a PS, who was a civil servant, to stand in to speak on behalf of the Government on policy matters, except in the special case of SJ and SCS.

52. In response to the Chairman, SCA said that in the exceptional case where the office of a PO became vacant, such as upon resignation of the PO concerned, special arrangements would be made to cater for the situation.

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53. Referring to the arrangement for the stand-in PO to speak on behalf of the Government on established policy relating to the absent PO under his own title, the Chairman noted that there had been inconsistencies in the arrangements adopted by the Administration previously. For example, at a few Council meetings in July 2002, the stand-in PO attended the meeting to reply to questions in the acting capacity of the PO who had yet to assume office. SCA explained that transitional arrangements were adopted in July 2002 when the accountability system was initially launched. However, the Administration had come up with the long term arrangements after the summer recess of LegCo and had advised the Chairman of the House Committee in writing.

54. In reply to Ms Emily LAU's question, SCA said that a PO on temporary absence would still be responsible for matters under his policy portfolio. That said, the stand-in PO should be conversant with the established policies relating to the absent PO's portfolio.

55. Mr NG Leung-sing enquired whether a PS accompanying a stand-in PO at a Council meeting could answer questions on policy issues. Referring to the series of LegCo Panel meetings held last week at which the Directors of Bureau briefed the respective Panels on the Chief Executive's Policy Address in the context of their respective policy portfolios, Mr James TIEN said that he had observed that some of the Directors and their PSs communicated well during the meetings. Some PSs had answered some of the questions on behalf of the Directors. He asked whether such practice would be adopted for full Council meetings.

56. D of A said that under the accountability system, it was considered appropriate that POs should attend full Council meetings to speak on behalf of the Government, respond to Members' questions, initiate bills and motions etc. He added that except for Secretaries of Departments, Directors of Bureau, the Permanent Secretary for the Civil Service and the designated Law Officer, other Government officials were not designated to speak on behalf of the Government at full Council meetings. As regards meetings of other LegCo committees, POs would attend the meetings personally, or designate their PSs and other senior officials to attend.

57. Miss Magaret NG said that an essential feature of the accountability system was that POs and PSs were two separate entities within the Government. POs were political appointees assuming sole responsibility for their policies and PSs were politically neutral civil servants assisting POs in the implementation of policies. She agreed that where a committee meeting involved discussion on policy issues, the relevant PO should attend the meeting to answer questions. On the other hand, questions relating to established policy and implementation matters could be answered by the relevant PSs or other senior civil servants. She added that PSs should

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distance themselves from any political role. SCA agreed with Miss NG's view and said that this represented the general direction for the accountability system.

**VII(b) Attendance of principal officials at committee meetings of LegCo**

**VIII. Implementation of the accountability system for principal officials**

58. As discussion on the previous agenda items had overrun, the Chairman proposed and members agreed that items VII(b) and VIII above should be deferred to the next meeting on 17 February 2003.

**IX. Any other business**

59. SCA informed the meeting that the Administration would be able to submit the technical adjustments to the electorate of functional constituencies in relation to the 2004 LegCo elections for the Panel's consideration. Members agreed that the issue should be discussed at the next meeting on 17 February 2003.

60. The meeting ended at 4:45 pm.

Council Business Division 2  
Legislative Council Secretariat  
14 February 2003