

立法會

Legislative Council

LC Paper No. CB(2)1478/02-03

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting

**held on Monday, 17 February 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 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
- Members attending** : Hon Eric LI Ka-cheung, JP
Hon SIN Chung-kai
Dr Hon LO Wing-lok
- Member absent** : Hon Margaret NG
- Public officers attending** : 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 Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs (Designate)

Mrs Philomena LEUNG HO Ye-man
Principal Assistant Secretary for Constitutional Affairs
(Item V only)

Ms Eva YAM Ya-ling
Principal Assistant Secretary for Constitutional Affairs
(Item VI only)

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

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

Mr Paul WOO
Senior Assistant Secretary (2)3

Item IV

Mr Watson CHAN
Head of Research and Library Services Division

Mr CHAU Pak-kwan
Research Officer 5

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1178/02-03)

The minutes of the meeting held on 20 January 2003 were confirmed.

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II. Matters arising from last meeting on 20 January 2003

Administration's response to Members' proposal to extend the financial assistance scheme to candidates for District Council elections
(LC Paper No. CB(2)1181/02-03(01))

2. Secretary for Constitutional Affairs (SCA) introduced the Administration's paper (LC Paper No. CB(2)1181/02-03(01)) which responded to some members' view that the proposed provision of financial assistance to candidates for the 2004 Legislative Council (LegCo) elections should be extended to candidates for the 2003 District Council (DC) elections. He informed members that out of 798 candidates standing in the 1999 DC elections, all but five were able to secure 5% of valid votes cast. As set out in the Administration's paper, had the same financial assistance scheme proposed for the 2004 LegCo elections been applied to the 1999 DC elections, an additional expenditure of about \$8 million would have been paid out from public money. SCA said that the Administration considered that it was not an opportune time to extend the financial assistance scheme to DC elections, particularly in view of public concern that the Government should not incur additional expenses to subsidise candidates at elections when the Government was facing a sizable budget deficit. He added that for the 2004 LegCo elections, the proposed reduction of one round of free mailing service could partially offset the proposed election expenses subsidy to candidates. However, the situation was different in the case of DC elections because at present, only one round of free mailing service was provided for DC elections.

3. Dr YEUNG Sum and Ms Emily LAU said that for the sake of fair and equal treatment, the proposed financial assistance should be extended to candidates for DC elections. This would help achieve the Government's objective of enhancing the development of political parties and political groups, and encouraging independent candidates to run in elections.

4. Mr TAM Yiu-chung, Mr NG Leung-sing and Mr YEUNG Yiu-chung supported the Administration's stance to introduce the assistance scheme initially for the 2004 LegCo elections. Mr IP Kwok-him said that being the LegCo Member returned by the District Councils Constituency, he was not aware of strong voices within the constituency urging the Government to provide financial subsidy to candidates of DC elections. Mr YEUNG Yiu-chung said that election expenses incurred for DC elections were relatively more affordable as compared with LegCo elections. He further opined that enhancing the role and functions of DCs and increasing the number of LegCo Members to be returned from the District Councils Constituency would be more effective in encouraging people to stand in DC elections. Ms Emily LAU said that she was in support of giving substantive powers to DCs but not increasing the number of LegCo Members returned from the District Council Constituency.

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5. SCA said that members' views would be considered in detail in the context of the future comprehensive review of DCs.

6. Mr HUI Cheung-ching enquired whether the Administration would withdraw its proposal to provide financial assistance to candidates for LegCo elections if the present budget deficit persisted. SCA said that the Government would implement the new scheme if the Bill was passed by LegCo.

7. Mr NG Leung-sing said that in some jurisdictions, candidates at elections were allowed to receive financial assistance from private organisations and the business sectors if the candidates could secure a certain percentage of the valid votes cast. This would promote active participation in elections. He opined that Hong Kong could adopt a similar approach provided that effective measures were introduced to guard against abuses, e.g. to put in place an open and transparent system for declaration of financial assistance received by candidates.

8. SCA responded that under the existing arrangement, a candidate was allowed to receive donations to meet his election expenses. Details of the financial assistance scheme would be set out in the bill and the relevant subsidiary legislation to be introduced into LegCo in respect of the 2004 LegCo elections. He said that the Administration's stance was to allow nobody to reap profits from running in elections.

9. The Chairman said that the operation of the financial assistance scheme should be carefully considered. He pointed out that an election donation given to a candidate could be disguised as a loan which would be repaid by the candidate to his/her own party/organization. He opined that the Administration should consult the Panel on the relevant provisions to be included in the bill. SCA noted his views.

III. Items for discussion at the next meeting on 17 March 2003
(LC Paper Nos. CB(2)1181/02-03(02) - (04))

10. The Chairman sought the views of members and the Administration on the items to be discussed at the next meeting.

Financial provisions for 2003 DC elections

11. SCA informed members that the Administration would brief the Panel on the financial provisions for 2003 DC elections at the next meeting.

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Review of constitutional developments after 2007; and
Review of role and operation of the Election Committee

12. Ms Emily LAU said that she would move a motion on "Public consultation on constitutional reforms" for debate at the Council meeting on 19 February 2003. She proposed that "Review of constitutional developments after 2007", an item on the list of outstanding items for discussion, could be discussed at the next meeting. Dr YEUNG Sum supported her proposal.

13. Mr NG Leung-sing said that the Election Committee was responsible for selecting the Chief Executive in 2002, and electing six Members of the second term LegCo. He suggested that the issue of "Review of role and operation of the Election Committee" could be discussed by the Panel at the next meeting.

14. Ms Emily LAU and Dr YEUNG Sum said that both the item proposed by Mr NG Leung-sing and the item on "Review of constitutional developments after 2007" were inter-related and could be included in the agenda for the next meeting.

15. On Ms Emily LAU's proposal, Mr TAM Yiu-chung said that as SCA had previously advised that the Constitutional Affairs Bureau was heavily engaged in the preparation work for the 2003 DC elections and 2004 LegCo elections and that the Administration would not be able to provide a concrete plan on how to proceed with the review of constitutional developments in Hong Kong after 2007 at this stage, it was doubtful whether the Panel could conduct any meaningful discussion on the subject at the next meeting.

16. In response to the Chairman, SCA said that the Administration might not be able to submit any discussion papers on the two items for the next meeting. He said that as he had previously informed the Panel, in 2003, the Administration would begin to make suitable preparations for the review of constitutional developments after 2007. However, the Administration would need more time to formulate concrete proposals on the process of conducting the review and the timetable for public consultation. He added that he would decide whether he could provide papers for the two items after the motion debate on 19 February 2003, and inform the Secretariat accordingly.

17. Mr NG Leung-sing said that if no paper could be provided by the Administration, he would withdraw the item he proposed.

18. Ms Emily LAU said that the Panel's decision to discuss items at its meetings should not depend on whether or not the Administration could provide discussion papers for the items. Otherwise, this would imply that the authority to decide on agenda items for the Panel vested in the Administration. She considered that the Panel should discuss the items even though the

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Administration could not provide any discussion papers.

19. The Chairman invited members to vote separately on the following -

- (a) the item "Review of constitutional developments after 2007" should be discussed by the Panel at the meeting on 17 March 2003 regardless of whether the Administration could provide a discussion paper; and
- (b) the item "Review of role and operation of the Election Committee" should be discussed by the Panel at the meeting on 17 March 2003 regardless of whether the Administration could provide a discussion paper.

20. Regarding paragraph 19(a) above, three members voted for the proposal and four members voted against. With regard to paragraph 19(b) above, no member voted for the proposal and two members voted against.

21. The Chairman said that the above items would be put on the agenda for the next meeting if the Administration could provide discussion papers for the Panel's consideration.

(Post-meeting note : The Administration has advised after the Council meeting on 19 February 2003 that it will not provide any papers in respect of the two items.)

Appointment of the Chairman of the Electoral Affairs Commission (EAC)
(item 6 on the list of outstanding items for discussion (LC Paper No. CB(2)1181/02-03(02))

22. The Chairman referred members to the relevant extracts of minutes of meetings of the Panel on Constitutional Affairs and the Establishment Subcommittee on 31 October and 15 November 2000 respectively (LC Paper Nos. CB(2)1181/02-03(03) and (04)) concerning issues relating to the appointment of the Chairman of EAC. The Chairman said that he was personally satisfied with the existing arrangements.

23. The Chairman pointed out that as previously agreed by members, the item should be discussed by the Panel about six months before the appointment of the incumbent Chairman of EAC expired on 28 September 2003. He asked whether the Administration could provide any additional information for the Panel's consideration.

24. SCA replied that the Administration would like to have the Panel's advice on what specific issues it wanted to examine before the Administration responded in writing.

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Clerk

25. The Chairman suggested and members agreed that the Secretariat should prepare a background brief on the issues and concerns previously raised by members for the Panel to consider the way forward at the next meeting.

Agenda for the next meeting on 17 March 2003

26. The Panel agreed to discuss the following items at the next meeting on 17 March 2003 -

- (a) Financial provision for 2003 DC elections (paragraph 11 above refers); and
- (b) Automatic voter registration (paragraph 62 below refers).

IV. Proposed research outline on "The System of Chairmanship in Parliamentary Committees in Some Selected Places"
(LC Paper No. CB(2)1181/02-03(05))

27. Head of Research and Library Services Division (H/RL) briefed members on the proposed outline of the research study which would look into the various attributes of the system of chairmanship in parliamentary committees in four selected places, namely the United Kingdom (UK), New Zealand, the Province of Ontario in Canada, and the State of California in the United States of America. He informed members that the research would be completed in April 2003.

28. Ms Emily LAU suggested that in addition to studying the selection method of committee chairmen, the research should also examine the method of selecting committee members. She said that the selection method of members of committees might have a significant bearing on the chairmanship of committees.

29. The Chairman said that there were different methods of selecting the chairmen of committees in overseas legislatures. He pointed out that in the case of the standing committees (the equivalent of Bills Committees of LegCo) in UK, the chairmanship was usually determined having regard to the seniority of the committee members and also the strength of the political parties to which the members belonged.

30. In response to Ms Emily LAU's suggestion, H/RL said that in studying the types and functions of parliamentary committees in the selected places, the composition of the committees would also be examined.

H/RL

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31. Mr NG Leung-sing said that the research arose from the controversy over whether the Committee on Rules of Procedure should be chaired by a LegCo Member who was concurrently a Member of the Executive Council. He suggested that the research should also examine the issue of the playing of a "dual role" by committee chairmen and how it might impact on the operation of the committees. H/RL noted Mr NG's views.

H/RL

32. Mr TAM Yiu-chung reiterated that he had reservation about the need to undertake the research. In his view, the study would not provide useful reference for Hong Kong.

V. Accountability system for principal officials and related issues

(a) Attendance of principal officials at committee meetings of LegCo
(LC Paper Nos. CB(2)654/02-03(02) and (03))

33. SCA briefed members on the Administration's paper (LC Paper No. CB(2)654/02-03(02)) on attendance of principal officials at meetings of LegCo and its committees, subcommittees and Panels. In gist, the paper explained that principal officials would attend full Council meetings of LegCo to speak on behalf of the Government, respond to Members' questions, initiate bills and motions, and carry out other related duties. Regarding meetings of LegCo committees, subcommittees and Panels, the principal officials would normally attend the meetings if there were important and complex issues to deal with. Otherwise, Permanent Secretaries and other senior officials would attend. The guiding principle was that the Government would send the most suitable representatives to attend the meetings.

Issues raised by members

34. Ms Emily LAU said that under the present arrangements, during the absence of a Director of Bureau, another Director of Bureau would attend the Council meeting and speak on behalf of the Government on policies relating to the absent Director of Bureau under his own title. She said that this had given rise to concern about who would be ultimately responsible for what was said at the meeting. She added that the same concern also arose for committee meetings at which only Permanent Secretaries or other civil servants attended.

35. SCA replied that the standing arrangement was that in the absence of a Director of Bureau, the stand-in Director of Bureau would attend the Council meeting and speak on behalf of the Government. In doing so, he would confine himself to established policy under the portfolio of the absent Director of Bureau. The latter, being politically responsible for the policy portfolio under his purview, would continue to be accountable. SCA added that

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Directors of Bureau would attend meetings of LegCo Panels where necessary. For bills committees and subcommittees on important legislation, responsible Directors of Bureau had on occasions attended the first meetings of the committees to explain the relevant policy issues to members. When the committees proceeded to examination of the technical aspects and the specific provisions of the bill or subsidiary legislation, the Permanent Secretary or other senior officials would attend the meetings to respond to members' questions and speak on Government's established policy. SCA said that the existing arrangements were consistent with the spirit and principle of the accountability system for principal officials.

36. Mr James TIEN and Mr NG Leung-sing said that the present arrangements were by and large acceptable. Mr TIEN opined that Directors of Bureau should make it a normal practice to attend the regular monthly meetings of LegCo Panels to discuss policy issues with members. Also, it was good practice for Directors of Bureau to attend the first few meetings of bills committees or subcommittees on subsidiary legislation to explain the policy behind the proposed legislation and listen to the views and concerns of members. Mr NG said that it was of the utmost importance that principal officials should be committed to enhancing communication and co-operation with LegCo Members.

37. The Chairman said that the Administration had explained clearly the arrangements regarding attendance of principal officials at meetings of LegCo and its committees. He said that whether there were shortcomings in the arrangements could be further discussed in future.

- (b) Report by the Administration on implementation of the accountability system for principal officials

(LC Paper Nos. CB(2)930/02-03(01) and (02))

Permanent Secretaries

38. Referring to paragraph 34 of the Background Brief prepared by the LegCo Secretariat on the implementation of the accountability system (LC Paper No. CB(2)930/02-03(01)), Ms Emily LAU pointed out that there were civil servants at AOSGA (D6) or even AOSGB1 (D4) level acting or doubling up as Permanent Secretaries at AOSGA1 (D8) level. She doubted whether such "leapfrogging" acting arrangements were appropriate. She also enquired about the present position of the five supernumerary D8 Permanent Secretary posts which involved substantial changes in function and responsibilities.

39. SCA advised that of the 16 Permanent Secretary posts, it had been decided that the Permanent Secretary posts of the Constitutional Affairs Bureau and the Security Bureau would be pitched at D6 level. The other 14 Permanent Secretary posts meanwhile remained at the rank of D8. He said

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that the arrangement for civil servants at D6 level to act in D8 posts was not unusual. As regards civil servants at D4 doubling up D8 posts, SCA explained that the arrangement was only a transitional measure adopted at the early stage of the implementation of the accountability system for principal officials. SCA further said that acting appointments in the civil service was an important means for assessing the ability and suitability of civil servants for advancement. He assured members that only the most suitable officers would be chosen for acting appointments.

40. As regards the retention of the five Permanent Secretary posts which involved substantial changes in function and responsibilities, SCA informed members that the Administration would come to a view by mid-2003 and revert to LegCo on its proposals. These five posts were, namely, Permanent Secretary for Education and Manpower; Permanent Secretary for Health, Welfare and Food; Permanent Secretary for the Environment, Transport and Works (Transport and Works); Permanent Secretary for the Environment, Transport and Works (Environment); and Permanent Secretary for Economic Development and Labour (Labour).

41. The Chairman said that as far as the Administrative Officers grade in the civil service was concerned, the next higher rank of AOSGA (D6) was AOSGA1 (D8). Hence, there was no "leapfrogging" in an officer at D6 level acting a D8 post.

42. Ms Emily LAU said that during previous discussions of LegCo Members on the accountability system for principal officials, a major view expressed by Members was that it might not be justified to pitch the level of Permanent Secretaries at D8. She noted that after the review conducted by the Directors of Bureau, the vast majority of the Permanent Secretary posts still remained at D8 level. She said that in her view, there was scope for downgrading some of the Permanent Secretary posts to D6 level.

43. Dr YEUNG Sum shared Ms Emily LAU's views and requested the Administration to reconsider. He said that it was the consensus view of political parties and political groups represented in LegCo that the Administration should adopt a prudent approach to Government spending in the face of its sizable deficit.

44. SCA said that under the accountability system for principal officials, it was important to maintain a permanent and meritocratic civil service to work for the Government and serve the people of Hong Kong. It was necessary to have a team of senior, highly competent civil servants to assist the politically appointed principal officials in discharging their duties. He further explained that in reviewing the number and ranking of Permanent Secretaries, Directors of Bureau had taken into account -

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- (a) the scope of responsibilities and complexity of the relevant portfolios;
- (b) the span of control and size of the resources under the steer of the office; and
- (c) the demand for policy formulation work and high level administrative skills.

45. The Chairman opined that under the accountability system for principal officials, Permanent Secretaries working to the politically appointed principal officials should be of a sufficiently high rank. The integrity of the civil service must also be preserved. He said that he did not object to certain Permanent Secretary posts being pitched at the level of D8 if the nature of work justified such a ranking.

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46. SCA said that he would reflect members' views to his colleagues within the Administration.

Prevention of conflict of interest

47. Ms Emily LAU said that the Code for Principal Officials set out, among other things, the basic principles and measures to avoid conflict of interest of principal officials in the performance of their duties. She said that the Administration should review the adequacy of the Code in guarding against possible conflict of interest.

48. Ms Emily LAU further said that in the recent incident concerning the plan of the Pacific Century CyberWorks Limited (PCCW) to make a takeover offer for the Cable and Wireless plc in the United Kingdom, there were media reports on PCCW issuing two public announcements with different contents, hence giving rise to concern about whether PCCW had made full disclosure of information on the matter. It was reported that the Securities and Futures Commission (SFC) would make a report to the Secretary for Financial Services and the Treasury (SFST). Ms Emily LAU questioned whether SFST was the most suitable person to handle the report as he was a former senior employee of PCCW. She also asked whether the mechanism specified in the Code for Principal Officials was adequate to address the concern about a possible conflict of interest in such a situation.

49. In response, SCA said that the Code for Principal Officials had provided for effective measures to prevent conflict of interest of principal officials. The measures included, among others, that principal officials appointed from the private sector had to resign from their previous positions. They were subject to strict integrity checks before taking up office, and were required to report and handle their investments/interests in accordance with an

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open and transparent process. Moreover, LegCo and the media also played an important role in monitoring the conduct of principal officials. Concerning the incident referred to by Ms Emily LAU, SCA said that the Administration's stance was that it was appropriate for a principal official to handle matters within his policy portfolio and in accordance with established policies.

50. The Chairman added that the requirement of a sanitisation period during which a principal official was required to seek advice before taking up employment in the private sector after stepping down from office was an effective measure to minimise conflict of interest.

VI. 2004 Legislative Council elections

(LC Paper Nos. CB(2)1180/02-03(01) and 1181/02-03(06))

(a) Technical adjustments to the electorates of functional constituencies (FCs)

51. SCA briefed members on the proposed technical changes to the electorates of certain FCs for the purpose of the 2004 LegCo elections as detailed in the Administration's paper (LC Paper No. CB(2)1180/02-03(01)). In gist, the Administration proposed to make technical changes to 11 FCs as follows -

- (a) correcting the names of some corporate electors, and updating eligibility criteria due to changes in statutory registration/licensing regime;
- (b) deleting corporate bodies which had closed down, ceased operation or were no longer holding a particular type of licence/franchise; and
- (c) adding new corporate bodies with a status comparable to that of existing corporate electors.

52. SCA added that the proposed changes would have a limited impact on the electorate size of the relevant FCs, with the exception of the Transport FC. There would be an increase of 19.3% in the electorate of this constituency.

Issues raised by members

53. Referring to the Annex of the Administration's paper, Mr LAU Ping-cheung suggested that in addition to the existing potential electorate, the number of registered electors should also be provided for reference. SCA agreed to provide the information.

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(*Post-meeting note* - The Administration advised that the information requested had been included in Annex B of the LegCo Brief on "Legislative Council (Amendment) Bill 2003" issued on 20 February 2003 (Ref : CAB C1/30/5))

54. Mr SIN Chung-kai said that a number of companies/organisations had applied for registration as corporate electors of the Information Technology FC but their requests had been turned down. He said that to his knowledge, the organisations concerned were professional bodies providing specialised services in the information technology and telecommunications industries. He suggested that the Administration should review their cases in the light of the eligibility criteria for registration and their status vis-à-vis the existing corporate electors of the FC.

55. In response, SCA undertook to consult the relevant Bureaux and departments on the matter. He said that he would also approach the organisations concerned with a view to getting a better understanding of their cases.

Admin

(b) Proposal of including registered Chinese medicine practitioners in the Medical FC

56. SCA briefed members on the Administration's paper (LC Paper No. CB(2)1181/02-03(06)) which provided an up to date account on reactions of the relevant professions and interested parties to the proposal of including registered Chinese medicine practitioners in the Medical FC for the third term LegCo elections.

57. SCA informed members that doctors and dentists maintained their opposition to the proposal. They considered that Chinese medicine practitioners should be given a separate FC seat. Chinese medicine practitioners had divergent views on the issue. Some supported the proposal but many among this group also urged that a separate FC should be given to them in elections after 2007. Others demanded that they should be given a separate FC seat in the 2004 LegCo elections. Some proposed to maintain the status quo until after the review of the post-2007 constitutional arrangements. On the whole, representatives of doctors, dentists and Chinese medicine practitioners had all expressed doubt as to whether one single representative of the Medical FC could take care of the interests of doctors/dentists and Chinese medicine practitioners, given their differences in background and training as well as the different theoretical origins of Western and Chinese medicine.

58. SCA said that the Administration would like to seek members' views on the matter.

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59. Mr LAU Ping-cheung, Mr NG Leung-sing, Mr Eric LI and Mr Howard YOUNG considered that given the divergent views expressed by the relevant medical professions and interested parties on the proposal, it would be prudent to maintain the status quo, pending the review of constitutional developments after 2007. Mr IP Kwok-him said the Democratic Alliance for Betterment of Hong Kong (DAB) was in support of including Chinese medicine practitioners in the Medical FC. However, in view of the lack of consensus among the medical professions, DAB accepted maintaining the status quo in relation to the Medical FC for the 2004 LegCo elections. Mr Howard YOUNG said that the decision to maintain the status quo of the medical FC for the 2004 elections should not affect the result of the future review in any way.

60. Ms Emily LAU reiterated her stance that she was personally against "small-circle elections" which included FC elections. She said that existing FC electors were bound to have vested interests and would oppose to the proposal because inclusion of additional electors would inevitably reduce their representation in the FC. She opined that if FC elections were to stay, the electorate size of FCs should be enlarged as far as possible so as to enhance the degree of representation. Dr YEUNG Sum said that the best solution lay in the election of LegCo Members by universal suffrage at the earliest possible opportunity.

61. SCA said that the Administration would consider all views in detail before making a final recommendation on the matter.

(c) Automatic voter registration

62. As time had overrun, the Chairman proposed and members agreed that the above item be deferred to the next meeting on 17 March 2003.

63. The meeting ended at 4:40 pm.

Council Business Division 2
Legislative Council Secretariat
14 March 2003