

立法會

Legislative Council

LC Paper No. CB(2)2464/02-03

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting

held on Monday, 19 May 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
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** : Dr Hon David CHU Yu-lin, JP
Hon Frederick FUNG Kin-kee
- Member absent** : Dr Hon Philip WONG Yu-hong
- Public officers attending** : Item III
Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

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Ms Eva YAM Ya-ling
Principal Assistant Secretary for
Constitutional Affairs

Mr Stanley TO
Deputy Chief Electoral Officer (Operations)

Item IV

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement C H MAK
Permanent Secretary for Constitutional Affairs

Mrs Philomena LEUNG HO Ye-man
Principal Assistant Secretary
for Constitutional Affairs

Item V

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement C H MAK
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 Paul WOO
Senior Assistant Secretary (2)3

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I. Information papers issued since the last meeting
(LC Paper No. CB(2)1907/02-03)

1. Members noted that the Proposed Guidelines on Election-related Activities in respect of the District Councils Elections issued by the Electoral Affairs Commission had been circulated vide LC Paper No. CB(2)1907/02-03.

II. Items for discussion at the next meeting
(LC Paper No. CB(2)2088/02-03(01) and (02))

Review of the method for selecting CE under BL
(LC Paper No. CB(2)2088/02-03(02))

2. Ms Emily LAU referred to her letter dated 7 May 2003 addressed to the Panel Chairman. She said that according to the Administration, the public consultation exercise on constitutional development would likely be conducted in 2004 or 2005. The Administration was studying whether the reference to "the terms subsequent to the year 2007" in paragraph 7 of Annex I to the BL should include the third term CE. She suggested that the Panel should discuss the matter at an early opportunity and consult interested parties on the issue.

3. Secretary for Constitutional Affairs (SCA) advised members that the Administration had yet to come to a view on the legal interpretation of the relevant reference in paragraph 7 of Annex I to the BL.

4. Members agreed to invite the public, in particular, academics, the legal profession, the business sector and political parties/groups to submit and/or present views to the Panel at the next meeting.

(Post-meeting note: As agreed by the Chairman, written invitations were sent to the Universities, major business organisations, political parties and groups and the legal professional bodies. Public views were invited by issuing press releases and placing an invitation for views on the website of the Legislative Council.)

Proposed Guidelines on Election-related Activities in respect of the District Councils Elections issued by the Electoral Affairs Commission

5. Ms Emily LAU suggested that representatives of the Registration and Electoral Office (REO) should be invited to discuss the Proposed Guidelines with Members at the next Panel meeting. As the consultation period for the Proposed Guidelines would expire on 27 May 2003, the Chairman asked the Clerk to liaise with REO concerning Ms LAU's suggestion.

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(Post-meeting note: The Chief Electoral Officer (CEO) was of the view that it was undesirable for REO to receive views from Members on the Proposed Guidelines after the consultation period had expired. Members were invited to send written representations on the Proposed Guidelines to the Electoral Affairs Commission on or before 27 May 2003. The Chairman and Ms Emily LAU agreed that the matter needed not be further pursued. Members were notified of the development vide LC Paper No. CB(2)2161/02-03 issued on 22 May 2003.)

Report on the implementation of the accountability system for principal officials

6. In response to the Chairman and Ms Emily LAU, SCA said that the Administration would aim to complete the above Report on or before 30 June 2003.

7. Members agreed to discuss the following items at the next meeting on 16 June 2003 -

- (a) Research Report on "Chairmanship of Parliamentary Committees in Some Selected Places";
- (b) Review of the method for selecting the Chief Executive (CE) under the Basic Law (BL); and
- (c) Accountability system for principal officials and related issues - Review on the system of declaration of interests/investments by principal officials (proposed by the Administration).

(Post-meeting note : To allow sufficient time for discussion of item (b), with the agreement of the Chairman, items (a) and (c) above have been deferred to a future meeting.)

III. Voter registration campaign for the 2003 District Councils (DCs) election

(LC Paper No. CB(2)2088/02-03(03))

8. At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DS(CA)) briefed members on the paper prepared by the Administration which highlighted the main features of the voter registration campaign for the second term DCs election to be held on 23 November 2003. The voter registration campaign would be conducted from 1 June to 16 July 2003. Under the campaign, the Administration would organise a variety of activities aimed at encouraging eligible persons to register as electors and

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reminding registered electors who had changed addresses to update their records with REO.

Issues raised by members

Activities to promote voter registration

9. In response to Mr IP Kwok-him, DS(CA) advised members of the following activities to promote voter registration and updating of voters' particulars -

- (a) A number of outdoor DJ shows and mini-concerts would be held in areas with high pedestrian flow. Mobile registration teams would be deployed to register eligible persons on-the-spot. Three mini-concerts would be held, respectively, at the Shatin Town Hall Plaza on 1 June 2003 immediately following the kick-off ceremony, the Discovery Park in Tsuen Wan on 28 June 2003 and Plaza Hollywood on 5 July 2003. Outdoor DJ shows would be held on four weekends at some large housing estates;
- (b) Roving registration counters at popular locations (e.g. the major MTR stations and shopping malls) to help people make applications for voter registration or update their addresses and personal particulars;
- (c) Household visits to newly developed residential areas would be conducted to target specifically those who had changed addresses and to register those who were not already registered. Moreover, letters would be sent to all households which had moved into new private developments completed after the last major voter registration campaign in 2000 to remind them to report changes in address and, if they were not already registered electors, to register early. Similar letters would be sent to households which had moved into new public housing estates, through cross-matching of Housing Department's records with REO's;
- (d) The above activities would be supported by other awareness raising measures such as TV and radio announcements of public interests and advertisements on MTR, bus and taxi bodies etc; and
- (e) As a token of appreciation, Octopus cardholders and bookstore discount cards would be given out to newly registered electors and registered electors who had updated their personal records with REO.

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10. The Chairman and Mr NG Leung-sing opined that the promotional activities should be diversified and innovative, capable of putting the intended message across to the public, in particular the young people. DS(CA) noted the view. He added that apart from artists and pop singers, celebrities with a positive and healthy image would be invited to appear in some of the programmes.

11. Referring to the giving out of bookstore discount cards to newly registered electors and registered electors who had updated their address records, Mr Howard YOUNG said that business operators might also be interested in offering other types of discount benefits to promote the campaign. He asked whether the Administration would also consider such offers.

12. DS(CA) said that the giving out of bookstore discount was a "soft selling" tactic to encourage voter registration. It was also in line with the Government's policy of encouraging life-long learning and nurturing of a reading habit, particularly among the young people. He further said that it was thought that giving out too many items with a commercial "value" in a voter registration campaign might not be appropriate. The Administration therefore had not considered accepting other discount benefit offers for promotion purposes.

13. Mr David CHU Yu-lin opined that the principle of equality should be adhered to in conducting promotional activities or accepting commercial sponsorships. He opined that to target potential electors of particular age groups or sectors might benefit certain political parties and groups and promote the election of certain candidates.

14. The Chairman expressed the view that the appropriate way to appeal to people to register as electors was to emphasize that voter registration was an important civic duty. Any token of appreciation given out was meant to congratulate them for having exercised their civil right by registering as electors.

Target of the voter registration campaign

15. In reply to Mr IP Kwok-him and Dr YEUNG Sum, DS(CA) said that for the 1999 DCs election, about 90 000 new eligible electors had been registered. If the same number of new electors were registered this year, the overall registration rate would increase by 3% approximately. The personal particulars of about 170 000 electors was also updated. He added that as compared with the 1999 DCs election, the budget for the 2003 voter registration campaign had been reduced by about \$1.5 million. Nevertheless, the Administration hoped to achieve a registration result comparable to that in 1999.

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16. Dr YEUNG Sum opined that the target set by the Administration was too modest. He noted that the latest final voter register published in May 2002 recorded a total of 2.9 million registered electors for the Legislative Council (LegCo) geographical constituencies and the DC constituencies, representing only 65% of the total number of eligible electors. He considered that the overall registration rate was too low and the Administration should set a target registration rate of 75 to 80%.

17. DS(CA) said that experience showed that for persons who were eligible for registration but were unwilling to register, it was difficult to get them to register. Nevertheless, he assured that the Administration would try its best to bring in as many valid applications for voter registration as possible.

18. Ms Emily LAU noted that the registration rate for the 18 to 20 age group was only 19%. She asked whether the Administration had analysed the reasons for the low propensity to register of people in this age group.

19. DS(CA) responded that a large scale voter registration campaign conducted in 1999 had raised the registration rate for young people aged 18 to 20 in the following year. As there were no major voter registration campaigns conducted in 2001 and 2002 and some of the young people who were formerly in this age group had moved on to the next age group, the registration rate had therefore dropped. He said that in view of the relatively low registration rate of young people, the sub-theme of the coming campaign was to encourage young people aged 18 to 25 to register as electors.

Adm 20. The Chairman requested the Administration to provide information on the overall voter registration rate for the years from 1999 to 2001, and to analyse the pattern of changes in the registration rates.

Adm 21. Mr HUI Cheung-ching asked the Administration to provide the voter registration rate of young people aged 18 to 20 in other jurisdictions. DS(CA) replied that the requested information might not be available. However, the Administration would try to find out if other relevant information was available for comparison purpose. The Chairman considered that an average registration rate for the 18 to 20 age group, instead of a registration rate for each respective year in the age group, should be obtainable.

Automatic voter registration

22. Mr James TIEN opined that persons eligible for registration as electors should be deemed to be registered when they were issued with the new Smart Identity Card. DS(CA) responded that this proposal raised the question of whether it was desirable to introduce an automatic voter registration system. He said that the Administration had explained its stance previously that it was

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not an opportune time to implement an automatic registration system due to, among others, the concern about interference with privacy and personal choice.

23. The Chairman said that the pros and cons of an automatic voter registration were considered at a number of meetings previously. He reiterated his view expressed at the meeting on 17 March 2003 that the problems highlighted by the Administration regarding automatic voter registration were not insurmountable.

IV. Procedure for appointment and removal of principal officials (POs) under the accountability system
(LC Paper Nos. CB(2)2088/02-03(04) and (05))

24. SCA briefed members on the paper prepared by the Administration which set out the procedures for appointment and removal of POs under the accountability system (LC Paper No. CB(2)2088/02-03(05)). In gist, regarding removal of a PO -

- (a) If the resignation of a PO was accepted in principle by CE, CE would recommend to the Central People's Government (CPG) the removal of the PO in accordance with BL 48(5). After CPG had agreed to the removal, the Government of the Hong Kong Special Administrative Region (HKSARG) would accept the resignation of the PO and terminate his employment in accordance with the provisions of the employment agreement; and
- (b) If there was a need to terminate the employment of a PO immediately, CE would recommend to CPG the removal of the PO. After CPG had agreed to the removal, the HKSARG would terminate the employment of the PO in accordance with the provisions of the employment agreement, either by paying the PO an amount equal to one month's salary in lieu of notice or the employment agreement might be resolved by mutual agreement between HKSARG and the PO.

Issues raised by members

Termination and resignation

25. Mr NG Leung-sing asked whether in the case of a PO who was due to retire, the recommendation of CE to CPG for the removal of PO was still required. SCA explained that the term of office of POs who were politically appointed under the accountability system was the same as the term of office of the CE who recommended them for appointment. A formal retirement age

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did not apply to POs under the accountability system, and removal of them from office would have to follow the procedures stated in paragraph 24 above. As for a PO who was a non-political appointee such as the Commissioner of Police and the Director of Immigration, proper arrangements were in place within the civil service system to deal with termination of service, such as arrangements for the appointment of another civil servant to be the successor. SCA added that removal of POs, regardless of whether they were appointed under the accountability system, had to follow the procedure stipulated under BL 48(5).

26. Mr IP Kwok-him said that under the BL, CPG had a substantive power to appoint and remove POs. He enquired whether a PO had to bear any legal liability for leaving service before the procedures for removal of POs were completed, for instance, where CE had declined to accept his resignation but the PO concerned decided not to remain in office.

27. SCA said that the employment agreement of POs under the accountability system provided for arrangements with regard to removal and resignation. In the case of a PO wishing to resign from office, CE would consider the resignation carefully, and where necessary, discuss the matter with the PO concerned. CE would take a final decision on whether he should ask the PO to stay or recommend to CPG the removal of the PO. SCA said that he did not expect that a deadlock would occur. He added that in the unlikely situation of a PO's failure to discharge his duties, the HKSARG would take necessary action in accordance with the relevant provisions of the employment agreement.

28. Mr CHEUNG Man-kwong said that the provision in the employment agreement with POs, which provided that a PO might resign from office by giving to HKSARG one month's prior written notice or by paying HKSARG one month's salary in lieu, was adopted from the practice in the business sector. In his view, it was not appropriate to apply such practice to the employment of POs, who were the most senior Government officials appointed under the accountability system. Mr SZETO Wah questioned whether practices borrowed from the private sector for application to the political arena would result in CE running the Government as a family business. SCA explained that the intention of adopting the above arrangements in relation to POs was to provide more flexibility to enable HKSARG to handle cases of resignation and removal in a speedy manner. He stressed that there was no intention to turn the operation of the Government into a business-like operation.

Impeachment

29. Ms Emily LAU pointed out that as advised by SCA at the Council meeting on 30 April 2003, formal disciplinary procedures were in place to deal with cases of misconduct by civil servants. As for the accountability system

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for POs, there was flexibility built in the system to allow CE to respond expeditiously to serious and unexpected incidents involving POs, having regard to the circumstances of the case and the demand of the society. Ms LAU opined that it was not appropriate to rely solely on the flexibility given to CE in handling serious incidents where the integrity of a PO was called into question. To improve the system of removal of POs, there should be a formal mechanism involving, among others, a thorough and independent investigation into the incident concerned, followed by a comprehensive report on the investigation which would be made public. Ms LAU said that arising from the recent car purchase incident involving the Financial Secretary (FS), there was public resentment against CE's decision to keep FS in office, despite the latter's resignation, in the absence of an independent investigation into the incident.

30. Mr CHEUNG Man-kwong said that BL 73(9) provided a stringent and dedicated system of impeachment of CE by LegCo for serious breach of law or dereliction of duty. The impeachment might eventually lead to removal of CE by CPG. However, LegCo had no similar power as regards POs under the accountability system. He said that under the present system, CE had the sole authority to decide whether or not to recommend to CPG for the removal of a PO. There was also no formal mechanism under which CE was required to give due regard to public demand for the removal of a PO, even when the PO had committed serious misconduct and lost the confidence and trust of the people of Hong Kong. Mr CHEUNG said that this was a major loophole of the accountability system which rendered the accountability system unable to live up to public expectation. He opined that to enable public opinion to play a proper role in ensuring the political accountability of POs, a formal impeachment procedure similar in operation to that specified in BL 73(9) should be introduced to deal with cases of POs committing serious misconduct.

31. SCA said that the design of the accountability system for POs, together with the promulgation of the Code for POs, enabled CE, as Head of HKSARG, to lead a truly accountable Government with a high degree of transparency. The accountability system allowed the public, the media and LegCo to effectively monitor the performance of the Government. Under the system, CE would give full regard to public opinion in monitoring the conduct of POs. Referring to the FS's case, SCA said that the incident had been fully discussed at different meetings of LegCo, and the public was fully aware of the details of the case. He added that the way in which the penny stocks and the FS's car purchase incidents had been handled demonstrated that POs were prepared to take up political responsibility in accordance with the principle and spirit of the accountability system. CE, on the other hand, had responded expeditiously to public concern and taken prompt action based on the Code for POs.

32. SCA further said that although the BL did not provide for an impeachment procedure applicable to POs, the BL required that HKSARG

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should be accountable to LegCo. The Rules of Procedure of LegCo also facilitated LegCo in effectively discharging its role of monitoring the Government.

The way forward

33. The Chairman said that the item could be further discussed by the Panel at another meeting.

V. Research Report on "Chairmanship of Parliamentary Committees in Some Selected Places"

34. As the meeting had overrun, members agreed that the above item should be deferred to the next meeting on 16 June 2003.

35. The meeting ended at 4:40 pm.

Council Business Division 2
Legislative Council Secretariat
13 June 2003