

立法會

## *Legislative Council*

LC Paper No. CB(2)3105/02-03

(These minutes have been  
seen by the Administration)

Ref : CB2/PL/CA

### **Panel on Constitutional Affairs**

**Minutes of meeting  
held on Monday, 21 July 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, GBS  
Hon YEUNG Yiu-chung, BBS  
Hon SZETO Wah  
Hon IP Kwok-him, JP  
Hon LAU Ping-cheung
- Members absent** : Hon Howard YOUNG, SBS, JP  
Dr Hon YEUNG Sum  
Hon TAM Yiu-chung, GBS, JP
- Public officers attending** : Item II  
Mr Joseph LAI Yee-tak  
Deputy Secretary for Constitutional Affairs  
Ms Eva YAM Ya-ling  
Principal Assistant Secretary for Constitutional Affairs
- Item III  
Mr Joseph LAI Yee-tak  
Deputy Secretary for Constitutional Affairs

Mr LI Wing  
Chief Electoral Officer

Items IV & V

Mr Stephen LAM Sui-lung  
Secretary for Constitutional Affairs

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 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. Information papers issued since the last meeting**

Members noted the following papers which had been issued -

- (a) LC Paper No. CB(2)2638/02-03(01) to (09) - Nine written submissions received from various organisations/individuals on "Review of the method for selecting the Chief Executive under the Basic Law"; and
- (b) LC Paper No. CB(2)2733/02-03(01) - Letter from "陳志剛及一班小市民" referred by the President of the Legislative Council (LegCo).

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**II. Publicity programme for 2003 District Councils election**  
(LC Paper No. CB(2)2864/02-03(01))

2. Deputy Secretary for Constitutional Affairs (DS(CA)) briefed members on the paper prepared by the Administration which set out the main features of the proposed publicity programme to promote the second District Councils (DCs) election to be held on 23 November 2003. The publicity programme would run from mid August 2003 to polling day.

Issues raised by members

*Voter registration*

3. In response to Ms Emily LAU, DS(CA) advised members that the voter registration campaign for the 2003 DCs election was completed on 16 July 2003. More than 300 000 voter registration forms had been received. Of the 100 000 forms so far processed by the Registration and Electoral Office (REO), about 50% were applications for registration as electors and the remainder were notifications of change of address by registered electors. He further advised that prior to the voter registration campaign which started on 1 June 2003, about 9 000 applications for registration as electors, and 62 000 notifications for change of address of electors, had been received.

4. DS(CA) further informed members that REO received about 260 000 voter registration forms during the registration campaign for the 1999 DCs election, about 90 000 of which were applications for registration as electors and 170 000 were notifications of change of addresses.

5. Ms Emily LAU and Mr HUI Cheung-ching suggested that the Administration should analyse the new registrants by age. DS(CA) replied that as in previous years, REO would provide the database of registered electors to the Registration of Persons Section of the Immigration Department, which would compile a breakdown of the electors by age groups. The findings would be available after publication of the final voter register.

*Quiz and promotional segments on radio*

6. In response to Mr IP Kwok-him, DS(CA) advised that quiz competitions to promote the DCs election would be educational in nature. They would focus on, e.g. raising awareness of the public on the role and functions of DCs so as to encourage electors to vote in the election.

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*Election forums in selected constituencies*

7. Ms Emily LAU said that she supported in principle the organizing of election forums for participation by contesting candidates. More forums should be held as far as practicable to enable electors to know about the election platforms of the candidates, in particular the new candidates. As the Administration proposed that election forums would be arranged in selected constituencies, the Chairman and Ms Emily LAU opined that the criteria for selecting the constituencies should be fair in order to avoid criticisms of favouritism.

8. DS(CA) responded that detailed arrangements for holding election forums were being finalized with the Radio Television Hong Kong. It was intended that election forums would be held in constituencies where keen competition among candidates was expected. He undertook to update members on the criteria for selecting constituencies for holding election forums.

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*Promotion of clean elections*

9. Mr IP Kwok-him noted that a spot series would be screened on TV and other networks to educate the public on some of the major provisions in the Election (Corrupt and Illegal Conduct) Ordinance (ECICO). DS(CA) advised members that the script writing for the spot series was being prepared by the Independent Commission Against Corruption (ICAC) and the shooting of the series would commence soon. At the request of Mr IP, DS(CA) agreed to inform members on the provisions of the ECICO which would be featured in the TV series.

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*Financial implications*

10. In response to Mr IP Kwok-him on the cost of the publicity programme which was estimated to be about \$12 million, DS(CA) agreed to provide a breakdown of the expenditure for members' information, once the details of the programme were finalized.

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**III. Provisional recommendations on delineation of geographical constituencies in respect of the 2004 Legislative Council elections**  
(LC Paper Nos. CB(2)2841/02-03 and 2871/02-03(01))

11. The Chairman referred members to the set of consultation materials on the provisional recommendations of the Electoral Affairs Commission (EAC) on delineation of geographical constituencies in respect of the 2004 LegCo elections (issued to LegCo Members vide LC Paper No. CB(2)2841/02-03 on 15 July 2003). A paper prepared by the Administration which illustrated the

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method for allocating the 30 LegCo seats to be returned by the five geographical constituencies (GCs) (Hong Kong Island, Kowloon West, Kowloon East, New Territories West and New Territories East) was tabled at the meeting (issued after the meeting vide LC Paper No. CB(2)2871/02-03(01)).

12. At the invitation of the Chairman, Chief Electoral Officer (CEO) briefed members on the consultation materials. In gist, EAC recommended no change to the delineation of boundaries of the existing five GCs. The proposed number of seats for the five GCs was as follows -

Hong Kong Island	6
Kowloon West	4
Kowloon East	5
New Territories West	8
New Territories East	7

CEO added that before finalizing its recommendations, EAC would, in accordance with section 19 of the Electoral Affairs Commission Ordinance, consult the public on its provisional recommendations for a period of 30 days starting from 15 July to 13 August 2003, both dates inclusive.

Issues raised by members

*Distribution of seats among the five GCs*

13. In response to the Chairman, CEO explained that the formula for arriving at the percentage of deviation from "the resulting number" in Table 5 in the Administration's paper (LC Paper No. CB(2)2871/02-03(01)) was as follows -

$$\text{Percentage of deviation} = \frac{\text{Population in a GC - "the resulting number"}}{\text{"The resulting number" (i.e. population quota x number of seats in that GC)}} \times 100\%$$

He explained that a (-%) indicated a shortfall in the population of a GC to justify the proposed number of seats allocated to that GC, and vice versa, a (+%) indicated a population surplus. He said that for all the five GCs, the percentage of deviation fell within the acceptable level of 15% above or below "the resulting number".

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*Support for elected candidates*

14. Mr CHEUNG Man-kwong expressed concern that in a GC with eight seats, a candidate could get elected even though he could only secure a low level of support from electors. He said that the Administration should review the matter to ensure that the elected candidates would be representative of the constituents. The Chairman pointed out that the concern raised by Mr CHEUNG reflected an inherent problem characteristic of a proportional representation system.

15. DS(CA) informed members that in the case of New Territories West GC where eight candidates would be returned, and assuming that 40 to 50% of the registered electors in the GC would turn up to vote, a candidate would need to secure about 30 000 votes to win the last seat in the constituency, i.e. about 6% of the total votes cast in the GC. He emphasised that this figure was very much a theoretical calculation. The actual number of votes needed to win the last seat in any constituency would depend on many variables, including the voting pattern of voters.

*Future delineation of GC constituencies*

16. Mr HUI Cheung-ching asked whether changes to the delineation of GC constituencies would be made in respect of the 2008 LegCo elections, in view of the rapid increase in population in certain GCs, such as Kowloon West GC. DS(CA) replied that the present recommendations had been made having regard to, among other factors, the projected population in different GCs as at 30 June 2004. It would be too early at this stage to consider whether there was a need to change the delineation of constituencies for the purpose of the 2008 LegCo elections.

17. The Chairman remarked that there was an understanding in LegCo that Members would respect the role of EAC in delineation of boundaries of GCs and would not interfere with EAC's recommendations.

**IV. Research Report on "System of Chairmanship in Parliamentary Committees in Some Selected Places"**  
(RP06/02-03 issued vide LC Paper Nos. CB(2)2087/02-03 (English version) and 2104/02-03 (Chinese version))

18. Head of Research and Library Services Division gave a presentation on the Research Report, which studied the chairmanship of parliamentary committees in the United Kingdom (UK), New Zealand, the Province of Ontario in Canada, and the State of California in the United States of America. The scope of the research covered -

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- (a) types and functions of committees;
- (b) membership of committees;
- (c) role of chairmen of committees;
- (d) method of selecting committee chairmen;
- (e) allocation of chairmanship of committees;
- (f) chairmanship of committees concerning rules of procedures; and
- (g) restrictions on chairmanship of committees.

Issues raised by members

19. Miss Margaret NG pointed out that in UK, there were certain committees whose chairmanship was traditionally held by members of the opposition parties, such as the Public Accounts Committee which had the function of monitoring the use of public funds and committees examining delegated legislation. She asked whether the purpose was to exercise effective checks and balances on the Government. Research Officer 5 replied that the practice was a constitutional convention which evolved over time in the UK parliamentary system. The exact reason for the practice was not known.

20. Miss Margaret NG said that the operation of Standing Committees in the House of Commons in the scrutiny of bills differed from that of the Bills Committees of LegCo. She pointed out that the Speaker of the House of Commons appointed the Chairmen of Standing Committees, with little regard to the nature of the bills. However, Standing Committees examining controversial bills were often chaired by the more experienced Members of the House. The Chairmen of Standing Committees might come from either the Government or the opposition sides of the House. A Member who was the Chairman of a Standing Committee studying a bill had to maintain impartiality and did not vote on the bill when it went through different stages in the legislative process. Miss NG further pointed out that the Standing Committees dealt with the technical aspects of bills while the Select Committees focused more on the policy aspects of legislation. She requested RLSD to provide supplementary information on the process of examination of legislative proposals by Select Committees and Standing Committees in UK for members' consideration.

RLSD

21. The Chairman also pointed out that in UK, for some complicated bills, committees might be formed at the Second Reading stage to discuss the general principles of the bills. This was similar to the operation of Bills Committees in LegCo. He requested RLSD to also provide information on

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RLSD the operation of such "Second Reading Committees" in UK and the method of deciding their chairmanship.

RLSD 22. Referring to paragraph 8.3 of the Report which stated that the Modernisation Committee in the House of Commons had been chaired by the Leader of the House (a Cabinet Minister), the Chairman asked RLSD to clarify whether the Chinese term "下議院議長" used in the Report was the correct equivalent of "Leader of the House".

**V. 12-month Report on Implementation of the Accountability System for Principal Officials**

(LC Paper Nos. CB(2)2864/02-03(02) - (03) and 2868/02-03(01) - (15))

23. At the invitation of the Chairman, Secretary for Constitutional Affairs (SCA) introduced the Report prepared by the Constitutional Affairs Bureau on the implementation of the accountability system for Principal Officials (POs) 12 months after its introduction (the Report) (LC Paper No. CB(2)2864/02-03(03)).

Issues raised by members

*The Report*

24. Mr CHEUNG Man-kwong said that the accountability system for POs had failed to achieve its intended objectives to improve governance and enhance accountability. The Report was self-deceiving and deviated from the people's wishes for the following reasons -

- (a) The Report had failed to address the issue of political responsibility of the Chief Executive (CE) in dealing with some major blunders committed by POs, including the car purchase incident involving the Financial Secretary (FS), the handling of legislative proposals for implementing Article 23 of the Basic Law (BL 23) and the outbreak of the Severe Acute Respiratory Syndrome (SARS) by the Secretary for Security (S for S) and the Secretary for Health, Welfare and Food respectively. It was the general view held by the public that CE had condoned the wrongs committed by the POs concerned and evaded taking necessary action on them in neglect of public demand;
- (b) The Report had failed to account for the reasons for the resignation of Mrs Regina IP, S for S and Mr Antony LEUNG, FS. In the views of the public, Mrs IP was forced to resign as a result of the mass procession on 1 July 2003 when 500 000 people took to the streets in protest against the Government trying to rush



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through the National Security (Legislative Provisions) Bill against the wish of the community. Mr LEUNG had no alternative but to resign in view of the car purchase incident and the impending release of the investigation report of the ICAC on the incident; and

- (c) During the march on 1 July 2003, many people protested against the poor governance of CE and called for him to step down. There were also calls for early implementation of universal suffrage for the election of CE and LegCo. It was evident that the public was in utter disappointment about the failure of the HKSAR Government in addressing their demands and aspirations. The Report had failed to give a detailed appraisal of the public sentiments about democratic development and the pitfalls of the accountability system in meeting the expectations of the community, in the light of the event on 1 July.

25. Mr CHEUNG Man-kwong said that the Administration should withdraw the Report and rewrite, in particular, the last part of the Report on "Looking ahead" to truly reflect the public concerns and to explain how the Government would act in response to public aspirations in future.

26. SCA responded to Mr CHEUNG Man-kwong's comments as follows -

- (a) The accountability system was consistent with the relevant provisions of the Basic Law under which CE led the HKSAR Government. In accordance with the Basic Law, POs were nominated by CE and appointed by the Central People's Government (CPG). They shared with CE a common goal to work in the best interests of people of Hong Kong and they were willing to come forth to shoulder political responsibility for the governance of the community. Although views had been expressed that it would be more appropriate for the accountability system to be introduced only after CE was elected through universal suffrage, the Administration considered that the system could be implemented in the prevailing circumstances of Hong Kong where there were in place effective checks and balances between the executive and legislative authorities and a free press. Indeed, as far as the working of the accountability system was concerned, the developments of a number of political events recently demonstrated the force of public scrutiny and effectiveness of the monitoring role played by LegCo and the media;
- (b) CE assumed the constitutional roles conferred upon him by the Basic Law as the head of the HKSAR and of the HKSAR Government. The politically appointed POs worked under the

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direct leadership of CE. The design of the system enabled CE to take swift and prompt action in major political incidents involving POs. When major blunders occurred, CE would consider all relevant factors under the circumstances, before deciding whether a PO should face criticism, make a public apology or leave office. The system enabled POs to bear full political responsibility consistent with their role as politically appointed officials;

- (c) Mrs Regina IP tendered her resignation as S for S on personal grounds on 25 June 2003. CE accepted her resignation on 16 July 2003. CE also affirmed the valuable contributions made by Mrs IP to the governance of Hong Kong during her period of office. As regards Mr Antony LEUNG, because of the car purchase incident, he had tendered resignation to CE in March 2003. Having regard to all relevant factors, CE then decided that Mr LEUNG should stay in office as FS and issued a formal criticism to Mr LEUNG for his gross negligence in violation of the Code for Principal Officials. Mr LEUNG had accepted the criticism and apologized publicly. On 16 July 2003, Mr LEUNG tendered his resignation as FS and the resignation was accepted by CE. Mr LEUNG had explained that it was the right time for him to leave office, as the Budget was passed by LegCo, the SARS had been contained and a number of long-term measures to revive the economy were being implemented, including the signing of the Closer Economic Partnership Arrangement (CEPA) with the Mainland;
- (d) As stated in the Report, the Administration recognized that the operation of the accountability system in the past year had not been entirely smooth. The march on 1 July had conveyed important messages indicating that what the HKSAR Government had done fell short of public expectations on a variety of issues relating to the governance of HKSAR. The Government would listen to the views expressed within and outside the Government and strive to make improvements in response to public aspirations; and
- (e) The purpose of the Report was to give an account for the implementation of the accountability system 12 months after its introduction. Constitutional reform was an issue which the Government would address separately.

27. The Chairman said that the accountability system did not appear to have worked to the satisfaction of those who originally supported it. To regain confidence in the accountability system, an objective review was necessary.

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*Accountability and resignation of POs*

28. Miss Margaret NG said that the introduction of the accountability system had not assisted the Government in responding promptly to public demands and addressing public concerns, as evidenced by the mass public protest on 1 July 2003. She drew members' attention to an opinion poll conducted by Mr Robert CHUNG Ting-yiu of the University of Hong Kong in early July 2003. The findings indicated that the popularity ratings of CE and POs had fallen sharply. The rating of CE had dropped to a record low of 35 points and 70% of the respondents had expressed dissatisfaction with the Government. According to Mr CHUNG, the survey results reflected a crisis situation.

29. Miss Margaret NG opined that the design of the accountability system was meant to allow a team of politically appointed top Government officials, who were Members of the Executive Council (ExCo) and solely responsible to CE, to form a ruling coalition with the supporting forces in LegCo. This so-called "political through-train", however, resulted in neglect of the voices of the minority groups in LegCo and public opinions and led to discontent of the community.

30. Miss NG said that to restore confidence of the public in the Government, POs should be accountable to the public through LegCo, and not to CE alone, for the success or failure of their policies. Moreover, POs should have the right to step down from office as they considered appropriate in major political incidents, despite the provision under the Basic Law for CE to recommend the removal of POs to the CPG.

31. The Chairman pointed out that the handling of the resignations of FS and S for S was different in that the resignation of FS took immediate effect on 16 July 2003, whereas that of S for S took effect on 25 July 2003 (after giving one month's prior notice). He said that a system under which POs could not step down from office unless with the agreement of CE would give rise to the perception that POs could not have views different from that of CE and hence not be in a position to exercise influence on policy issues. He further pointed out that it was not clear in the Basic Law whether the resignation of a PO required approval by CPG.

32. SCA responded that issues relating to resignation of POs had been discussed by the Panel at a prior meeting. He undertook to revert to the Panel if there were any new developments in the future.

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*Team effort*

33. Mr YEUNG Yiu-chung said that he supported the direction of the accountability system. However, the operation of the system in the past year did not appear to have achieved better governance. He said that to improve

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the system, enhanced team effort should be brought into play, both between individual POs and between POs and civil servants. He referred to the Government's handling of the National Security (Legislative Provisions) Bill and said that the responsibility for promoting, explaining and defending Government policies was placed only on S for S and senior civil servants. This indicated that there was a lack of team spirit within the Government in the face of major challenges. Mr HUI Cheung-ching, Mr IP Kwok-him and Mr NG Leung-sing expressed similar views.

34. SCA replied that great importance had been placed on the need to enhance teamwork and cooperation within the Government. He pointed out that within six months after the new team of POs were appointed, POs developed new policy initiatives and the Government published the Policy Agenda to set the priorities for the following 18 months to coincide with the term of the current LegCo. The Policy Agenda also set out the basis on which POs would organize their work and the direction in which the Government and the whole community would make a concerted effort. He further cited the example of the outbreak of SARS which posed an immense threat to Hong Kong, and said that all dedicated parties concerned had joined together in fighting the virus. He added that POs and civil servants had been cooperating satisfactorily, as shown in the completion of major tasks such as the preparation of the Budget, review of the working relationship between bureaux and departments, and measures to tackle the sizable budget deficit etc.

35. Mr IP Kwok-him and Ms Emily LAU opined that the policy portfolios of POs should be reviewed to facilitate them to discharge their duties effectively. Mr IP said that in his view, the scope of responsibilities of the Secretary for the Environment, Transport and Works was too wide.

*The politically neutral civil service*

36. Miss Margaret NG said that the accountability system had not achieved its proclaimed objective of maintaining a politically neutral civil service. As shown in the handling of the National Security (Legislative Provisions) Bill, senior civil servants in the Security Bureau and the Department of Justice were still required to explain and defend sensitive policy issues in LegCo and in the public. In so doing, their role had been politicized.

37. The Chairman said that the creation of politically appointed deputies to assist POs would help maintain the political neutrality of the civil service. Ms Emily LAU said that the proposal warranted consideration.

38. The Chairman added that it had been recommended by some that the civil service could be modernized by introducing a contract system for the employment of civil servants. He said that he did not support the proposal, which might lead to increased politicization of the civil service.

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39. SCA said that there was no dispute within the Government that the civil service should remain politically neutral. Under the accountability system, both tiers of POs and civil servants had their distinct roles and responsibilities. It was the role and responsibility of senior civil servants to underpin POs with the best administrative support, and it was for POs to face the political pressure and shoulder political responsibility where necessary. SCA said that he would relay members' concerns about the political neutrality of the civil service for the consideration of the Secretary for Civil Service (SCS).

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40. Miss Margaret NG said that she had reservations that the matter should be referred to SCS for consideration. She opined that an independent and comprehensive review should be conducted on the civil service system with a view to introducing measures to protect the political neutrality of civil servants and to modernize the civil service.

41. SCA said that the Administration had studied the proposal of creating politically appointed deputies to assist the Directors of Bureau last year and decided against it. The Administration considered that the addition of another layer of political appointees would cause disruptive changes to the civil service system. It was also not consistent with the objective of the accountability system that only the highest echelon of Government should be composed of political appointees. Moreover, the Administration considered that to engage senior civil servants in assisting POs in policy formulation and implementation and explaining policy issues to the public would provide a training ground for senior civil servants for future advancement. SCA said that it was not the intention of the Administration to let senior civil servants become "faceless bureaucrats". Nevertheless, he advised members that he understood members' views that the proposal might help maintain the political neutrality of the civil service. SCA said that he would consider members' views carefully.

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42. The Chairman said that under a system of government where the most senior officials shouldering political responsibility were underpinned by politically neutral civil servants, it was only appropriate that the civil servants should be "faceless", i.e. not being exposed to the limelight of the media and political pressure from the public, hence preserving anonymity and political neutrality. He opined that to groom civil servants for political advancement went against the fundamental principle of the accountability system. Ms Emily Lau said that it was undesirable for politically neutral civil servants to speak on policy issues on behalf of the Government.

43. SCA said that he appreciated members' concerns, particularly in view of the growing political pressure on the Government in the years following the reunification. He reiterated that the Government would protect and strengthen a permanent, professional, meritocratic, honest and politically neutral civil

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service, which would remain an important feature of the accountability system.

*Communication with LegCo and other sectors of the community*

44. In response to Mr CHEUNG Man-kwong and Ms Emily LAU, SCA said that CE and POs would meet various political parties, major sectors of the community, the media and opinion leaders regularly with a view to strengthening the links with different quarters of the community and ensuring that Government policies were more in tune with public aspirations. He added that he had met with some Members of LegCo who were members of the Democratic Party last week to exchange views on various matters. The Chief Executive's Office was also making arrangements to invite representatives from various sectors to meet with CE to discuss relevant issues.

45. Mr NG Leung-sing said that CE and POs should establish a mechanism to maintain regular dialogue with members of the Election Committee.

46. Ms Emily LAU opined that the Government had not done enough to improve communication with LegCo to secure support of the latter, which was indispensable for the successful implementation of Government policies. In reply, SCA said that the Government was firmly committed to enhancing its relationship and cooperation with LegCo. He said that the appointment to ExCo of two LegCo Members, who were the leaders of two political parties, provided an effective means to help the Government in getting a better understanding of the views of LegCo and community sentiments in formulating policies. Moreover, the Government was prepared to adjust or fine-tune certain policies in the light of public concerns and the views expressed by LegCo Members. Examples included the adjustment of the rates of proposed increases in First Registration Tax for vehicles and the legislative proposals for regulating soccer betting.

47. SCA further pointed out that as required under BL 64, the HKSAR Government would continue to be accountable to LegCo.

48. Mr James TIEN said that POs should attend more regularly meetings of LegCo Panels, which were effective channels for POs to exchange views with LegCo Members on important policy issues. It was also desirable for POs to attend the first few meetings of bills committees and subcommittees on subsidiary legislation to explain the policy intention of the relevant legislation. He further suggested that to enable LegCo to have sufficient time to consider legislative proposals, in particular the complicated or controversial ones, ExCo should make decisions on the relevant policy matters as early as possible. SCA agreed to reflect the views to the Administration.

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49. Mr YEUNG Yiu-chung said that POs should step up efforts to strengthen their ties with the general members of the public at the district level to better appreciate the aspirations of the community.

50. The Chairman opined that there was no absolute need for POs, except the Secretary for Home Affairs, to actively reach out to local districts to communicate directly with the public. He pointed out the system in Hong Kong was different from those in other democratic jurisdictions where the Ministers were elected Members of Parliament, hence necessitating them to maintain constant direct contact with their constituents.

*Relationship with Non-official Members of ExCo*

51. Ms Emily LAU considered that the statement made in the Report that POs consulted closely the Non-official Members of ExCo did not reflect the reality. She pointed out that the Policy Committee co-chaired by the Chief Secretary for Administration and FS to consider policy proposals, which comprised all politically appointed POs, did not include the Non-official ExCo Members. This would limit the effectiveness of the Committee.

52. SCA responded that the Policy Committee was set up as a forum for coordinating and harmonizing policy proposals which cut across different policy areas, before they were submitted to ExCo. Participation of the full team of POs in the Policy Committee had helped to ensure that policy proposals were cogent and coherent, and that there was a broad consensus amongst the POs as to the implications and priorities of the policy proposals concerned. The individual POs would consult the Non-official ExCo Members on policy proposals which fell within their portfolios through various channels before the issues were formally submitted to and considered by ExCo. He said the system had been working effectively.

*Disciplinary mechanism*

53. Ms Emily LAU said that the Government should consider devising a formal disciplinary mechanism for POs, for example, an independent investigation into cases of misconduct followed by release of an investigation report, and introduction of other levels of sanction in addition to criticism by CE, public apology and termination of office.

54. SCA explained that the existing mechanism to deal with misconduct of POs was similar to the practices in other overseas jurisdictions which adopted a parliamentary system of government. Unlike the disciplinary system for civil servants, the mechanism for POs allowed flexibility for CE and the POs to act decisively to respond to public concerns as required by the circumstances and in accordance with the requirements of the Code for Principal Officials and the employment contracts. The mechanism enabled

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POs to be held ultimately accountable for the success and failure of their policies and thereby defuse political pressure as necessary. SCA said that while the Government would review the issue where necessary, it was not expected that radical changes would be introduced to the existing system.

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*Prevention of conflict of interest*

55. Referring to the declaration of interests made by POs (LC Paper No. CB(2)2868/02-03(01) - (15)), Ms Emily LAU pointed out that both the Secretary for Commerce, Industry and Technology (SCIT) and the Secretary for Financial Services and the Treasury (SFST) had set up a family trust to which their company shareholdings had been transferred. In the case of SCIT, all of his shares in his family companies had been transferred to the trust, of which his father was the trustee. SCIT was one of the beneficiaries. In the case of SFST, HSBC International Trustee Limited was the trustee, which had full discretionary powers in investment of the trust assets, and the trust held no Hong Kong equities. Ms Emily LAU said that she was concerned about the family trust set up by SCIT because the nature of business of his family companies was closely related to his policy portfolios. Ms LAU opined that to avoid perception of possible conflict of interest, a trust in the nature of that set up by SFST was preferred.

56. SCA said that according to the declaration made by SCIT, SCIT did not have the right to give instructions to the trust or its trustee. SCA added that as he had informed the Panel at a previous meeting, SCIT had explained that as his family companies were managed by his family members, it was not desirable to appoint a third party to act as the trustee. SCA further said that the Administration was satisfied that the arrangement as regards SCIT's family trust would not give rise to any conflict of interest.

57. Mr CHEUNG Man-kwong pointed out that under the accountability system, POs were required to obtain the advice of a committee appointed by CE before taking up any employment or going into any business within one year after stepping down from office. However, the advice of the committee given to CE was not binding on the POs concerned. He said that as POs had access to sensitive information during their term of office, the use or divulgence of such information by the POs in post-office employment, which had the effect of benefiting certain parties, would give rise to conflict of interest. He considered that the Administration should introduce more effective monitoring measures, e.g. to make the advice of the committee legally binding on POs.

58. SCA responded that under the existing practice, the advice of the committee on post-office employment of POs, though not legally binding, would be made public. This would enable the public to judge whether there was conflict of interest involved in certain post-office employment, having



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regard to the circumstances of the case. The Administration was of the view that public scrutiny was an effective monitoring mechanism. SCA further advised that under the employment contracts of POs, POs were prohibited from disclosing sensitive information obtained during their term of public office.

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59. The Chairman suggested that the Administration should consider putting in place a more effective and formal mechanism, for example, converting part of the salaries of POs into a gratuity payment, which would be forfeited in the event of a PO taking up post-office employment against the advice of CE's advisory committee.

*Use of flight awards earned from Government passages*

60. Ms Emily LAU said that the Code for Principal Officials provided that there was no obligation on POs who travelled on duty to claim flight awards from airlines. This might result in waste of public money, taking into account any flight awards claimed could be used for subsequent duty travel. She considered that the provision in the Code should be reviewed.

Admin

61. SCA agreed to convey the matter to the Administration for consideration.

*CEPA*

62. Mr LAU Ping-cheung said that the Administration had not explained to the construction and construction-related sectors the details of CEPA, how CEPA would impact on Hong Kong's economy, and the process of negotiation between the Government and the Mainland concerning the Arrangement. Therefore, the sectors did not have full opportunities to discuss with the relevant bureaux on how CEPA could best serve their interests before the Arrangement was concluded.

Admin

63. SCA explained that FS and SCIT were responsible for coordinating matters relating to CEPA. Other Directors of Bureau, however, were also involved as and when necessary. He undertook to relay the concern raised by Mr LAU Ping-cheung to the relevant POs for their consideration.

64. The meeting ended at 5:25 pm.