

立法會  
*Legislative Council*

LC Paper No. CB(2)1314/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/CA

**Panel on Constitutional Affairs**

**Minutes of meeting  
held on Monday, 15 December 2003 at 2:30 pm  
in the Chamber 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 Cyd HO Sau-lan  
Hon Albert HO Chun-yan  
Hon Martin LEE Chu-ming, SC, JP  
Hon NG Leung-sing, JP  
Hon Margaret NG  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Hon Bernard CHAN, JP  
Hon SIN Chung-kai  
Hon WONG Yung-kan  
Hon Howard YOUNG, SBS, JP  
Dr Hon YEUNG Sum  
Hon YEUNG Yiu-chung, BBS  
Hon Andrew CHENG Kar-foo  
Hon SZETO Wah  
Dr Hon LAW Chi-kwong, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon LEUNG Fu-wah, MH, JP  
Hon IP Kwok-him, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Members  
absent**

: Dr Hon David CHU Yu-lin, JP  
Hon Fred LI Wah-ming, JP  
Dr Hon LUI Ming-wah, JP  
Hon James TO Kun-sun

Dr Hon Philip WONG Yu-hong, GBS  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon LAU Wong-fat, GBS, JP  
Hon CHOY So-yuk  
Hon Abraham SHEK Lai-him, JP  
Hon Michael MAK Kwok-fung  
Hon WONG Sing-chi  
Hon LAU Ping-cheung  
Hon MA Fung-kwok, JP

**Public officers attending** : Items IV - V

Mr Stephen LAM Sui-lung  
Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak  
Acting Permanent Secretary for Constitutional Affairs

Mr Raymond TAM  
Principal Assistant Secretary for Constitutional Affairs  
(Item IV only)

Mr LI Wing  
Chief Electoral Officer  
(Item V only)

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

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

Miss Millie WONG  
Senior Assistant Secretary (2)4

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**I. Confirmation of minutes of meeting**

(LC Paper No. CB(2)645/03-04)

The minutes of the meeting held on 17 November 2003 were confirmed.

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

(LC Paper No. CB(2)376/03-04)

2. Members noted that the minutes of the joint meeting of the Panel on Security and the Panel on Administration of Justice and Legal Services on 17 June 2003 to discuss the "Report of the Research Team on the Compendium of Submissions on Article 23 of the Basic Law" had been issued to the Panel for information.

**III. Items for discussion at the next meeting**

(LC Paper Nos. CB(2)647/03-04(01) and (02))

Timetable for public consultation and review on constitutional development

3. As the Secretary for Constitutional Affairs (SCA) had advised the Panel that the Administration would make a decision on the timetable for public consultation and review on constitutional development before the end of 2003, the Chairman invited SCA to report on the progress.

4. SCA said that it was the Administration's aim to make a decision on the question of the timetable at the end of the year and to commence public consultation in early 2004. The present indication was that the Administration could only come to a decision on the timetable by the end of 2003. In order to tie in with other arrangements, the Administration expected that it might be possible to give Members an account in early 2004.

5. In response to the Chairman on whether an announcement would be made on the matter by the Chief Executive when he delivered his 2004 Policy Address at the Council meeting on 7 January 2004, SCA said that the Administration would announce the decision as soon as possible in January 2004.

6. Mr CHEUNG Man-kwong asked whether the delay in making the announcement was due to the recent remarks made by the Central Government and the four Mainland legal experts, and whether any issues raised would require further consideration by the Government. SCA responded that the four legal experts merely reiterated the relevant procedures under the Basic Law and the respective roles of the Central Authorities and the Government of the Hong Kong Special Administrative Region relating to constitutional development.

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Detailed research into these views, which were not in an area new to the Administration, was not required. At the moment, the issues being considered by the Administration mainly concerned the programme of work in the coming three years, such as the time required for the public consultation exercise, for the mechanisms under the Basic Law to be triggered, and for local legislation to be dealt with.

7. Mr SZETO Wah pointed out that Mr XU Chongde, one of the four Mainland legal experts, had said that if Hong Kong sought to decide on the issue of constitutional development on its own, it would be tantamount to seeking independence. Mr SZETO asked whether Mr XU's view was consistent with the Basic Law. SCA said that according to his understanding, in overall terms the four Mainland legal experts had reiterated the requirements of the relevant provisions of the Basic Law. As stipulated in Annexes I and II of the Basic Law, the Standing Committee of the National People's Congress had a constitutional role if amendments were made to the methods for the selection of the Chief Executive and the formation of the Legislative Council (LegCo) after 2007. Mr SZETO pointed out that SCA's response should only apply to the views expressed by the four Mainland legal experts on the first occasion, but not on the views expressed by Mr XU Chongde on a different occasion, as quoted by him. SCA said that he did not wish to make further comments on the views made by individual legal experts.

8. On behalf of the Democratic Party, Dr YEUNG Sum expressed strong dissatisfaction with the Administration's delay in announcing the timetable. He said that this was a stalling tactic of the Administration. Ms Emily LAU said that SCA, as a principal official, should not renege so summarily on his promise made to Members that an announcement would be made in December 2003. The Chairman expressed regret about the development and asked whether the scope and mode of public consultation would be included in the announcement to be made by the Administration, given the views recently expressed by different interested parties.

9. In response to members' comments, SCA reiterated his advice made at the meeting earlier on. He added that the Administration would provide information on the scope and mode of consultation when announcing the timetable.

10. Mr SZETO Wah asked SCA whether he should be held accountable for failure to announce the decision in early January 2004. SCA said that as the principal official responsible for constitutional affairs, he would of course be accountable and he would endeavour to co-ordinate efforts within the Government with a view to expediting matters. Ms Emily LAU proposed that the Chairman should move a motion of censure against the Administration and SCA at a Council meeting if SCA failed to provide information on the timetable

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for public consultation and review on constitutional development at the Panel's next meeting on 15 January 2004. The Chairman said that a decision, if necessary, could be made at the next meeting.

Meeting on 15 January 2004

11. As the Chief Executive's Policy Address would be held on 7 January 2004, the Chairman informed members that SCA would brief the Panel on the Policy Address on 15 January 2004 from 8:30 am to 9:30 am, which was the slot for the regular meeting of the Panel in January 2004. Members agreed that whether a meeting should be held to make up for the regular meeting of the Panel in January 2004 would be decided at a later stage.

**IV. Election expense limits for the 2004 Legislative Council elections**  
(LC Paper No. CB(2)647/03-04(03))

12. SCA briefed members on the Administration's revised proposals on the election expense limits for the 2004 LegCo elections. For geographical constituency (GC) elections, there were three options –

- (a) Option 1 - This option essentially followed the formula adopted for the 2000 LegCo elections, i.e. \$1.5 per head of the population in a given GC, rounded to the nearest \$500,000. Except for New Territories West where the limit would be increased by \$500,000 to \$3,000,000, the proposed election limits of the other GCs were the same as the existing ones.
- (b) Option 2 - This option took into account the downward adjustment of 7.3% in the Composite Consumer Price Index during the period between September 2000 and October 2003. It was calculated on the basis of \$1.4 per head of the population in a given GC, rounded to the nearest \$250,000 (instead of \$500,000). Under this option, the limit for Hong Kong Island and New Territories East would be reduced by \$250,000, whilst the limit for New Territories West would be increased by \$250,000.
- (c) Option 3 - This was the status quo option, i.e. the same election expense limits used in the 2000 LegCo elections would be used.

13. SCA further said that the Administration recommended that the same four-tier election expense limits used in the 2000 functional constituency (FC) elections should continue to apply to the 2004 elections.

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Admin 14. Ms Emily LAU said that of the three options for the GC elections, she would support the option with the lowest limits. She requested the Administration to consider extending the duration of free air time for candidates to participate in electioneering programmes on TV and radio. SCA agreed to follow up the matter with RTHK.

15. Mr James TIEN said that the Liberal Party had no strong view on the Administration's proposal to maintain the same election expense limits for the 2004 FC elections. For GC elections, the Liberal Party considered that setting upper limits on election expenses would be unfair to new candidates who were not well known to electors in the constituency. Moreover, some countries such as the United States had dispensed with election expense limits. The Liberal Party considered that no cap on election expenses was necessary and would not support any of the three options.

Admin 16. SCA said that as political parties in Hong Kong were in their early development stage, and in order to ensure that the elections could be conducted in a fair, open and honest manner, the Administration considered that the retention of election expense limits would be conducive to achieving such objective. He said that neighbouring countries such as Japan and Singapore also had limits on election expenses. In response to Mr James TIEN, SCA briefly explained the formula adopted by Japan and Singapore respectively in setting limits on election expenses. Members requested the Administration to provide a comparison on the election expense limits in Hong Kong, Japan and Singapore and the formula adopted for calculating the limits for the information of the Panel.

17. Mr NG Leung-sing asked whether the limits on election expenses could be calculated on the basis of the number of registered electors, instead of the population, in a given GC. SCA responded that about 66% of the population in Hong Kong were registered electors, and it had been the practice to use the population in GCs as the basis for calculation of election expense limits. As far as he could remember, the percentages of registered electors in the 5 GCs were very close. If the numbers of registered electors in GCs were used in the formula instead, the basis of \$1.5 per head would need to be increased, and the election expense limits would not be very different.

18. Mr HUI Cheung-ching said that having taken into account the actual election expenses of candidates running in the 2000 LegCo elections, Option 3 was acceptable to Members belonging to the Hong Kong Progressive Alliance. Mr YEUNG Yiu-chung preferred the option which would allow more flexibility for candidates to conduct election activities. Mr TAM Yiu-chung said that he shared Mr YEUNG's view, and was in support of either Option 1 or Option 3.

19. Mr CHEUNG Man-kwong, representing the Democratic Party, said that a number of principles was worth consideration in setting the election expense

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limits. Under the principle of equity, the limits should not be too high in order to allow all candidates to compete on a level playing field. Under the principle of honesty, the limits should not be too low as this would restrict the election activities and might lead to some candidates committing acts to circumvent electoral guidelines or laws. Under the rule of law, it was important that the law should be enforced in the event of a candidate committing an offence relating to the use of election expenses. Mr CHEUNG said that having regard to these principles, he considered that either Option 2 or Option 3 was acceptable. However, to raise the limits too high would contravene the principle of equity.

20. The Chairman informed members that Mr Michael MAK, who was unable to attend the meeting, had requested the Administration to clarify the reasons for the significant decrease in the number of registered electors for the Health Services functional constituency (FC) from 31,661 in 2000 to 28,737 in 2003 (Annex B to the Administration's paper refers), and whether registered electors for the FC would be disqualified if they had failed to notify the Registration and Electoral Office (REO) of their change of address. The Chairman requested the Administration to provide a written response for the information of the Panel.

*(Post-meeting note : The letter from Mr MAK's office and the Administration's response were circulated to the Panel vide LC Paper Nos. CB(2)769/03-04(01) and 971/03-04(01) respectively.)*

**V. Guidelines on election-related activities issued by the Electoral Affairs Commission**  
(LC Paper No. CB(2)668/03-04(01))

21. Chief Electoral Officer (CEO) briefed members on the paper prepared by REO, which set out the rationale of the various requirements under paragraphs 7.13, 7.26, 7.41 and 17.1 of the Guidelines on Election-related Activities in respect of the District Councils Elections issued by the Electoral Affairs Commission (the DC Guidelines), and section 12 of the Election (Corrupt and Illegal Conduct) Ordinance (ECICO). He said that a new set of guidelines would be prepared for the 2004 LegCo elections. A 30-day public consultation period and a one-day public forum would be conducted before the issue of the final guidelines.

Polling hours

22. As the guidelines for the 2004 LegCo elections would be modeled on the guidelines used for the 2003 District Council (DC) election, Miss Margaret NG asked whether the Electoral Affairs Commission (EAC) would propose to shorten the polling hours for the 2004 LegCo elections. SCA said that

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according to his understanding, EAC had not considered such a proposal for the 2004 LegCo elections. CEO added that the public would be consulted if such a proposal was made by EAC.

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23. Ms Emily LAU said that she had raised two LegCo questions on polling hours. The Administration had provided information on special polling arrangements adopted by various overseas countries to facilitate electors in voting. Ms LAU requested the Administration to consider whether similar arrangements should be adopted in Hong Kong.

Election expenses

24. Miss Margaret NG sought clarification on the point of time when expenses were incurred whereby they would be counted as election expenses. CEO responded that the specific point of time was not specified in ECICO, but expenses would be calculated from the time when a person became a candidate, i.e. when the person had submitted the nomination form or when he had publicly declared an intention to stand for election. Acting Permanent Secretary for Constitutional Affairs (PSCA(Atg)) added that ECICO had specified that election expenses referred to expenses incurred "before, during or after the election period". Senior Assistant Legal Adviser pointed out that according to ECICO, the election period was defined as "the period beginning with the nomination day for the election and ending with the polling day for the election".

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25. Miss NG requested the Administration to provide a written response to clarify when expenses incurred would be counted as election expenses.

Election advertisement (EA)

*Election expenses*

26. Mr HUI Cheung-ching said that according to paragraph 11 of REO's paper, a publicity material used for the purpose of prejudicing the election of a candidate should be regarded as an EA and the expenses incurred for producing the EA should be counted towards the election expenses of the candidate(s) concerned. Mr HUI pointed out that it would be difficult to determine whether an EA would indeed prejudice the election of a candidate and who should bear the expenses of producing the EA.

27. CEO said that if an EA was displayed for the purpose of promoting the election of candidate A and prejudicing the election of candidate B, the expenses should be borne by candidate A. In the event that an EA was displayed by a third-party organization involving two candidates contesting with each other, CEO said that the candidate whom the organization was in support of should bear the expenses, but the organization should obtain his authorization for

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incurring the expenses prior to the publication of the EA. A person who incurred election expenses without authorization committed an offence.

28. Mr Howard YOUNG said that if the pictorial representation of candidate A was included in an EA in support of candidate B, the expenses should be borne by candidate B, and not shared between the two candidates.

29. The Chairman said that sometimes an EA was not meant to promote or prejudice the election of a particular candidate. CEO said that whether the particular advertisement should be regarded as an EA and counted towards election expenses would need to take into account the content of the advertisement and the particular circumstances.

30. Mr IP Kwok-him asked whether remarks in radio programmes, such as asking people not to vote for candidates of a particular political party, would be regarded as EAs prejudicing the election of some candidates and counted towards election expenses, and if so, who should bear the election expenses. CEO said that it would depend on whether the remarks would be regarded as an EA for the purpose of promoting or prejudicing the election of a candidate.

31. Ms Emily LAU asked whether prosecution actions had been taken against any persons for publication of EAs for the purpose of prejudicing the election of candidates. CEO said that he was not aware of such cases.

32. Mr Howard YOUNG said that while the requirement for candidates of different constituencies to bear equal shares of the expenses of a joint EA was appropriate for DC elections, the requirement should be reviewed for LegCo elections. He said that for a joint EA advertising a GC candidate and an FC candidate of the same political party, it was unfair to require the FC candidate to share the expenses on an equal basis because the election expense limits of FC elections was much lower than that of GC elections. Mr YOUNG added that the same concern was also valid for an EA advertising candidates of the same political party in different GCs which had different limits on election expenses. He suggested that the amount of expenses incurred by the candidates of a joint EA should be calculated in proportion to their respective limits on election expenses or the number of registered electors in a given GC/FC. He requested EAC to consider his suggestion in promulgating the guidelines for the 2004 LegCo elections. SCA agreed to convey Mr YOUNG's suggestion to EAC for consideration.

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*Copies*

33. Under paragraph 7.41 of the DC Guidelines, a candidate was required to submit two copies of each EA to the Returning Officer (RO). Referring to the experience in the 2003 DC election, Mr IP Kwok-him pointed out that it was

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unreasonable to require candidates of a joint EA to individually submit two copies of an identical EA to RO, and asked whether the requirement could be reviewed.

34. CEO responded that having considered legal advice and the relevant subsidiary legislation after the incident referred to by Mr IP, he agreed that for identical copies of an EA to be used by candidates in the same district, RO of that district could exercise discretion to accept a joint declaration by all the candidates concerned and a joint submission of two copies of the EA. However, for identical copies of an EA to be used across districts, it was necessary for ROs of individual districts to have copies of the EA for controlling purposes. In response to the Chairman on whether EAs with the same content but bearing different names of candidates would be regarded as identical EAs, CEO replied in the negative.

*Timing for submission*

35. Mr TAM Yiu-chung sought clarification as to the time limit for submission of two copies of an EA to RO as there were discrepancies between the DC Guidelines and the electoral regulation.

36. CEO said that in the 1999 DC election, the requirements in the Electoral Affairs Commission (Electoral Procedure) (District Council) Regulation (EAC Regulation) and Corrupt and Illegal Practices Ordinance (CIPO) (the predecessor of ECICO) were the same, i.e. copies were required to be submitted not later than seven days after publishing an EA. In light of the experience of the 1999 DC election, the EAC Regulation for the 2000 LegCo elections was amended to the effect that copies should be submitted by a candidate to RO before he displayed an EA. CEO added that a candidate who had complied with the requirement in the EAC Regulation would also have met the requirement in ECICO.

37. In response to the Chairman's request, CEO agreed to consider whether arrangements could be made for candidates to submit copies of EAs to ROs on weekends for the convenience of candidates.

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*Written consent*

38. Mr TAM Yiu-chung asked about the circumstances under which a candidate should obtain the written consent of a person whose pictorial representation was included in an EA published by the candidate. CEO responded that any indication of support from a person or organization in EAs must be covered by a prior written consent from the person or organization concerned.

39. Mr TAM commented that it was difficult for a candidate to decide whether the written consent of person(s) whose pictorial representation was included in an

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EA should be obtained, and to obtain the written consent if necessary. Mr TAM said that there were a lot of grey areas in the electoral guidelines which posed tremendous difficulties to candidates in conducting election activities. He requested that more specific guidelines should be published to assist candidates. CEO agreed to reflect Mr TAM's concerns to EAC for consideration.

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40. Mr SIN Chung-kai said that a candidate might wish to use photographs illustrating the community services he had provided to residents in his GC in an EA. It would be difficult for the candidate to get the written consent of the persons in the photographs who might just happen to be present when the photographs were taken. To address members' concern, he requested EAC to consider drawing up a list of scenarios for which consent of support was not required for display or publication of EAs for reference of candidates. SCA agreed to reflect his views to EAC for consideration.

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Providing electors and others with food, drink or entertainment (section 12 of the ECICO)

41. Referring to a recent incident involving DC candidates, Ms Emily LAU commented that the definition of "entertainment" was too rigid, and candidates should be given more flexibility in conducting election activities. She said that entertainment provided by non-professionals such as students should not be regarded as entertainment under section 12 of ECICO.

42. CEO clarified that what constituted entertainment was not defined in ECICO. In the particular incident referred to by Ms LAU, what REO did was to remind candidates of the relevant provisions of ECICO when being approached for advice. REO had no power to prohibit candidates from conducting any electioneering activities.

Other issues

43. Mr IP Kwok-him informed the Panel that the Democratic Alliance for the Betterment of Hong Kong (DAB) had prepared a written submission on "Review of elections". The Chairman requested the Administration to provide a written response.

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*(Post-meeting note : The submission from DAB was circulated to the Panel vide LC Paper No. CB(2)769/03-04 on 19 December 2003.)*

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44. Mr IP Kwok-him requested the Administration to review the requirement for candidates to declare details of dates of absence from Hong Kong in the nomination form, which had posed problems to the candidates in the 2003 DC election. CEO said that the purpose of the declaration was to assess the eligibility of a person to be nominated as a candidate at a DC election, i.e. whether he had ordinarily resided in Hong Kong for the three years immediately

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preceding the date of his nomination. The Chairman opined that a person should only be required to declare whether he had met the residency requirement for nomination as a candidate in the nomination form, but not the dates of absence from Hong Kong.

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45. Mr IP further said that some registered electors had been disqualified from voting in the 2003 DC election for unknown reasons. SCA said that REO would be requested to review the process of striking off registered electors from the electoral register.

Follow up action

Admin

46. Members requested the Administration and EAC to consider their views and suggestions and provide a response to the Panel in February or March 2004. SCA agreed.

**VI. Any other business**

Research study on “The Regulatory Framework of Political Parties in Germany, New Zealand, and Singapore”

47. The Chairman informed members that the Research and Library Services Division would include the United Kingdom in the research study, and the date for completion of the research study would be deferred by one month to February 2004.

48. The meeting ended at 4:42 pm.

Council Business Division 2  
Legislative Council Secretariat  
13 February 2004