

立法會

Legislative Council

LC Paper No. CB(2)2845/03-04

(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting

**held on Monday, 19 April 2004 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
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Wong-fat, GBS, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi

Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Members : Dr Hon LAW Chi-kwong, JP
Absent : Hon HUI Cheung-ching, JP

Public officers : Item IV
attending

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement C H MAK
Permanent Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Mr Raymond TAM Chi-yuen
Principal Assistant Secretary for Constitutional Affairs

Ms Julina CHAN Woon-yee
Principal Assistant Secretary for Constitutional Affairs

Items V - VI

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Miss May CHAN Wing-shiu
Principal Assistant Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer

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

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

: Miss Millie WONG
Senior Council Secretary (2)4

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)2027/03-04)

The minutes of the meeting held on 16 February 2004 were confirmed.

II. Information papers issued since the last meeting

(LC Paper Nos. CB(2)1732/03-04(01), 1758/03-04(01) - (03), 1804/03-04(01), 1841/03-04(02), 1866/03-04(01) - (03), 1961/03-04(01), 1963/03-04(01) - (04) and 1973/03-04(01))

2. Members noted that the following papers had been issued since the last meeting -

- (a) LC Paper No. CB(2)1732/03-04(01) - Administration's response to Hon Emily LAU's request for provision of more free airtime for candidates participating in electioneering programmes on TV and radio;
- (b) LC Paper Nos. CB(2)1758/03-04 (01) - (03) - Three submissions received from members of the public expressing views on issues relating to constitutional development of HKSAR;
- (c) LC Paper No. CB(2)1804/03-04(01) - Press release on "Free legal advice for prospective candidates of LegCo election" issued by the Electoral Affairs Commission on 19 March 2004;
- (d) LC Paper No. CB(2)1841/03-04(02) - Written submissions received by the Constitutional Development Task Force;
- (e) LC Paper No. CB(2)1866/03-04(01) - A list of issues raised by members relating to "Publicity for 2004 voter registration campaign" at the meeting on 15 March 2004;
- (f) LC Paper No. CB(2)1866/03-04(02) - Administration's response to the issues raised by members relating to "Publicity for 2004 voter registration campaign" at the meeting on 15 March 2004;
- (g) LC Paper No. CB(2)1866/03-04(03) - Press release on voter registration issued by the Administration on 24 March 2004;

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- (h) LC Paper No. CB(2)1961/03-04(01) - Administration's response relating to the adoption of special polling arrangements in Hong Kong;
- (i) LC Paper No. CB(2)1963/03-04(01) - Interpretation adopted by the Standing Committee of the National People's Congress (NPCSC) on Article 7 of Annex I and Article III of Annex II to the Basic Law and a Xinhua translation of the Interpretation;
- (j) LC Paper No. CB(2)1963/03-04(02) - Statement and transcript of the Chief Executive at the press conference on 6 April 2004;
- (k) LC Paper No. CB(2)1963/03-04(03) - Statement of the Chief Secretary for Administration at the press conference on 6 April 2004;
- (l) LC Paper No. CB(2)1963/03-04(04) - Transcript of the Question and Answer Session given by the Chief Secretary for Administration at the press conference on 6 April 2004; and
- (m) LC Paper No. CB(2)1973/03-04(01) - Gazette copy of the Interpretation adopted by NPCSC on Article 7 of Annex I and Article III of Annex II to the Basic Law on 6 April 2004.

III. Items for discussion at the next meeting
(LC Paper No. CB(2)2041/03-04(01))

3. Members agreed that the following items should be discussed at the next meeting on 17 May 2004 -

- (a) Review on constitutional development after 2007;
- (b) Research report on "Operation of electoral regulatory bodies in selected places"; and
- (c) Research Report on "The regulatory framework of political parties in Germany, the United Kingdom, New Zealand and Singapore".

IV. Review on constitutional development after 2007

(LC Paper No. CB(2)2064/03-04(01), Report by the Chief Executive of the Hong Kong Special Administrative Region to the Standing Committee of the National People's Congress on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008, The Second Report

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of the Constitutional Development Task Force: Issues of Principle in the Basic Law Relating to Constitutional Development.)

Motion proposed by Dr YEUNG Sum

4. The Chairman said that members had agreed at the special meeting on 16 April 2004 to defer a decision on the motion proposed by Dr YEUNG Sum to this meeting. The wording of the proposed motion was as follows -

“本委員會不接納行政長官提交予全國人民代表大會常務委員會的報告，並促請行政長官立即諮詢港人，提交一份全面反映民意的補充報告，實現港人要求分別在2007年及2008年普選行政長官及立法會的期望。”

(Translation)

“That this Panel does not accept the report submitted by the Chief Executive to the Standing Committee of the National People's Congress and urges the Chief Executive to consult the people of Hong Kong immediately as well as submit a supplementary report fully reflecting public opinion, so as to fulfil Hong Kong people's aspiration for the election of the Chief Executive and Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively.”

5. At the invitation of the Chairman, Dr YEUNG Sum said that the Report of the Chief Executive submitted to the Standing Committee of the National People's Congress (the CE Report to NPCSC) was not acceptable on the following grounds -

- (a) the public and LegCo had not been consulted on the CE Report, despite the fact that the Government of the Hong Kong Special Administrative Region (HKSAR) was accountable to LegCo under the Basic Law. 21 Members had written to request CE to discuss the report with them before submission to NPCSC, but the request was rejected; and
- (b) the CE Report had listed nine factors (factors (i) - (ix)) to be considered in determining the methods for selecting CE in 2007 and for forming LegCo in 2008 (the “electoral methods”). The Chief Secretary for Administration (CS) had stated at the press conference on 15 April 2004 that when discussing specific options on the “electoral methods”, the option that was closest to the nine factors would stand a better chance to be accepted. This implied that the nine factors were the criteria for assessing specific options. However, the nine factors created barricades against introduction of universal suffrage in 2007 and 2008. The conditions that “the pace should not

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be too fast" and "any proposed amendments must enable different sectors of society ... to participate in politics through various channels" referred to in factors (v) and (vii) had implied that universal suffrage would not be introduced in 2007 and 2008 and functional constituencies (FCs) would be retained. Dr YEUNG said that barricades should not be imposed before the community had the opportunity to consider and discuss specific options relating to constitutional development.

6. Dr Philip WONG said that the Chairman should seriously consider whether it was appropriate for the proposed motion to be debated by committees of the Council. Following the interpretation made and promulgated by NPCSC on Article 7 of Annex I and Article III of Annex II to the Basic Law on 6 April 2004 (NPCSC Interpretation), it was clear that NPCSC had constitutional powers to determine and oversee the constitutional development in Hong Kong. He asked the Chairman to rule whether the motion would violate the spirit of the Basic Law.

7. The Chairman said that at the last meeting, he had ruled that the motion was related to the agenda and had decided that it should be proceeded with. The motion was a form of expression of opinion and had no binding or legal effect. He further said that he was not in a position to rule whether the motion would violate the spirit of the NPCSC Interpretation, or the Basic Law as interpreted by NPCSC. Ms Emily LAU concurred with the Chairman's view.

8. Secretary for Constitutional Affairs (SCA) reiterated the Government's position. He said that the Second Report of the Task Force submitted to the Deputy Secretary-General of the NPCSC set out the nine factors which were relevant in considering amendments to the "electoral methods". The nine factors reflected the provisions and principles in the Basic Law. SCA emphasized that the Task Force had neither the constitutional power nor the right to amend the Basic Law. After considering the views collected in the past three months, the Task Force was of the view that the closer any proposed amendment was to these nine factors, the easier it would be to achieve consensus. The nine factors had also been summarized in the CE Report, and the Second Report of the Task Force was attached as an annex to the CE Report.

9. With regard to "any proposed amendments must enable different sectors of society ... to participate in politics through various channels" in factor (vii), SCA said that this reflected the current electoral arrangements. As to whether different sectors of the society should be allowed to participate in politics through various channels and whether FCs should be abolished, this would be subject to public debate when specific options were proposed. SCA pointed out that some organizations which had met the Task Force and which were currently represented by FC Members had expressed the view that FCs should be retained. SCA hoped that Members from both FCs and geographical constituencies (GCs) could reach consensus in order to obtain the support of a two-thirds majority of all LegCo

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Members on any proposed amendments to the method for electing LegCo Members.

10. Miss Margaret NG expressed support for Dr YEUNG's motion on the ground that CE had violated the due process in submitting his report to NPCSC. Miss NG said that after the interpretation made by NPCSC, CE had set in motion the first step of the constitutional reform process by submitting his report to NPCSC, which should be governed by due process. Under the principle of due process which was fundamental to the rule of law, the Government should announce its intention to submit the CE Report to NPCSC beforehand, and should allow the public to give views on the report. In fact, 21 Members had jointly written to request CE to make public the content of the report and to allow LegCo to discuss the report before submission to NPCSC. However, CE had not followed the proper procedure. Moreover, CE had pointedly stated that he had submitted the report quickly to NPCSC as the public wanted him to expedite the matter. Miss NG remarked that such a statement was an insult to the public and to the proper procedure.

11. Mr CHEUNG Man-kwong made the following comments on the nine factors included in the CE Report -

- (a) factor (i) - on "the HKSAR ... must pay heed to the views of the Central Authorities", Mr CHEUNG pointed out that there was no mention of the views of the Hong Kong community which was equally important;
- (b) factor (ii) - on "amendments to the design and principle of the political structure prescribed in the Basic Law must not be lightly contemplated", Mr CHEUNG was of the view that any amendments to the Basic Law in accordance with the proper procedure should not be regarded as "lightly contemplated";
- (c) factor (iv) - as regards "any proposed amendments must aim at consolidating the executive-led system headed by the Chief Executive ...", Mr CHEUNG said that this should not be stated in absolute terms, as CE might make wrong decisions, e.g. he had pledged in the past that the annual housing production target should be not less than 85,000 units;
- (d) factor (v) - regarding "development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner step by step. The pace should not be too fast ", Mr CHEUNG said that the phrase "the pace should not be too fast" was not stipulated in the Basic Law;

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- (e) factor (vi) - on "when considering the actual situation, public opinions, as well as other factors, ...must be taken into account", Mr CHEUNG said that according to the Second Report of the Task Force, more than 50% of persons polled were in favour of selecting CE by universal suffrage in 2007, and around 60% of persons polled supported election of all LegCo Members by universal suffrage in 2008. In addition, there were many views that Hong Kong was ready for universal suffrage. He pointed out that despite the clear public aspirations for universal suffrage, public opinion was only one of the nine things specified in this factor;
- (f) factor (vii) - regarding "any proposed amendments should enable different sectors of society to be represented in the political structure, and to participate in politics through various channels", Mr CHEUNG said that "various channels" implied that FC elections should be retained. As SCA had earlier clarified that "various channels" merely referred to the current electoral arrangements and alternative options would be considered in future, he suggested that the words "through various channels" should be deleted from this factor; and
- (g) factor (ix) - referring to "any proposed amendments must not bring about any adverse effect to the systems of economy, monetary affairs, public finance and others" Mr CHEUNG said that it was illogical to require beforehand that a proposal must not bring about an adverse effect after its implementation, as any proposals might have both positive and negative effects in the process of implementation and further development.

12. Mr CHEUNG was of the view that the nine factors had reflected the prejudice and values of the Government. The CE Report had given further interpretations to the Basic Law, and in doing so had distorted the Basic Law, undermined public opinion, and created barricades against introducing universal suffrage. If prior public consultation had taken place before submission of the CE Report, the distortions could have been corrected and the report to NPCSC would be more reasonable and objective. Mr CHEUNG supported the motion and urged CE to submit a supplementary report reflecting the mainstream opinion of the Hong Kong community to the Central Authorities.

13. Ms Emily LAU expressed support for the motion. Ms LAU agreed that the nine factors in the CE Report reflected the views of some sectors of the community. However, these nine factors were perceived by many as negative in the sense that they would impede further democratic development in Hong Kong. Ms LAU considered that for the sake of equity, other views collected by the Task Force should also be included as factors for considering amendment proposals to the "electoral methods", e.g. Hong Kong had experience of elections and the

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conditions were ripe for implementing universal suffrage. Ms LAU said that according to SCA, the nine factors were not expressly provided in the Basic Law but were merely extrapolated from the principles in the Basic Law. She considered that the move to impose the nine factors was tantamount to amending the Basic Law and setting up barricades to hinder the implementation of universal suffrage.

14. Mr TAM Yiu-chung said that he would like the opportunity to reiterate the position of the Democratic Alliance for Betterment of Hong Kong (DAB). DAB supported the CE Report which was submitted in accordance with the interpretation made by NPCSC. As regards the nine factors stated in the CE Report, Mr TAM said that five of these factors were principles stipulated in the Basic Law, and the others factors reflected the views collected by the Task Force. DAB considered that the nine factors were acceptable in principle. Mr TAM further said that following a determination by NPCSC on the CE Report, the constitutional reform process would be set in motion and public consultation should take place. He did not support Dr YEUNG's motion.

15. Mr Albert HO did not agree with the view of Mr TAM Yiu-chung and pointed out that public consultation conducted after NPCSC had made a determination on the CE Report was different from conducting the consultation before submission of the CE Report to NPCSC. He said that in accordance with the NPCSC Interpretation, the CE Report should only recommend whether there was a need to amend the "electoral methods". However, CE had decided to include in the Report the nine factors, and if the CE Report together with the nine factors was accepted by NPCSC, this would effectively mean that any amendment proposals should comply with the nine factors. In the circumstances, the CE Report sought to give further interpretations on the Basic Law by imposing barricades against implementation of universal suffrage. Mr HO said that the CE Report was not acceptable unless the public had been consulted on its content or the nine factors removed altogether from the report. He supported Dr YEUNG's motion.

16. Mr LEUNG Fu-wah did not support the motion. He said that the nine factors had reflected the provisions and principles of the Basic Law. He further commented that members who objected to the CE Report would only change their stance if reference was specifically made to the implementation of universal suffrage in 2007 and 2008 in the report. Mr SZETO Wah disagreed with Mr LEUNG and said that the nine factors were not written in the Basic Law.

17. SCA said that members' views had exemplified the fact that the community held divergent views on constitutional development of Hong Kong. He reiterated that on the basis of the views collected in the past three months, the CE Report and the Second Report of the Task Force had reflected the public aspirations that the "electoral methods" should be amended.

18. SCA further reiterated that the nine factors had reflected the provisions and principles in the Basic Law. He made the following points -

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- (a) factor (i) - SCA said that the Central Authorities had constitutional powers over Hong Kong under Articles 31 and 62 of the Constitution of the People's Republic of China and Articles 1, 12 (BL1 and BL12) and several other Articles of the Basic Law;
- (b) factor (ii) - regarding "amendments to the design and principle of the political structure prescribed in the Basic Law must not be lightly contemplated", SCA said that this had been the position of the Government. When the Basic Law was drafted in the 1980s in accordance with the principles of "One Country, Two Systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", a set of basic policies were formulated to preserve the systems practised in Hong Kong after 1997. While changes to the political structure should not be lightly contemplated, the Government had recommended that the "electoral methods" should be amended;
- (c) factor (iii) - SCA said that the reference "no proposed amendments shall affect the substantive power of appointment of the Chief Executive by the Central Authorities" was derived from BL45, and was relevant to BL43;
- (d) factor (iv) - on "any proposed amendments must aim at consolidating the executive-led system headed by the Chief Executive ...", SCA said that Note 6 on page 33 of the Second Report of the Task Force had elaborated how the executive-led system was realized in various provisions of the Basic Law;
- (e) factor (v) - regarding "development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner step by step. The pace should not be too fast ...", SCA said that the principle of "gradual and orderly progress" was referred to in both BL45 and BL68. After considering the views collected in the past three months, the Task Force had set out its views on how this principle should be understood;
- (f) factor (vi) - on "when considering the actual situation, public opinions, as well as other factors ...should be taken into account", SCA said that "actual situation" was referred to in both BL45 and BL68. Some political parties and groups had emphasized the importance of public opinion, and this had already been reflected in the Second Report of the Task Force. However, other factors must also be taken into account in considering "actual situation"; and

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- (g) factors (vii)-(ix) - SCA said that these factors were based on the statement given by Director JI Pengfei in submitting the Basic Law (Draft) and related documents at the NPC on 28 March 1990. The statement had reflected the legislative intent of the Basic Law.

19. SCA said that the Task Force had come up with the nine factors in an objective and impartial manner, and the Task Force did not expect that they would be acceptable to everybody. He hoped that with the concerted efforts of all parties, those with different views could eventually come to a consensus on the way forward on constitutional development.

20. Dr YEUNG Sum concluded that the CE Report had not reflected the mainstream opinion for implementation of universal suffrage in 2007 and 2008, as stated in paragraph 4.05 of the Second Report of the Task Force. With the nine factors in the CE Report, the chance for implementation of universal suffrage would be very slim. Dr YEUNG urged members to vote in support of his motion.

21. The Chairman put the motion to vote. 14 members voted in favour of and 18 members voted against the motion. The Chairman declared that Dr YEUNG's motion was negated.

V. Electoral Affairs Commission Report on the 2003 District Council Election

(LC Paper Nos. CB(2)2010/03-04 and 2041/03-04(02))

22. Deputy Secretary for Constitutional Affairs (DSCA) informed members that the Electoral Affairs Commission (EAC) Report on the 2003 District Council (DC) Election was submitted to CE's on 21 February 2004 (the Report) (LC Paper No. CB(2)2010/03-04). With CE consent, the Report had also been made public. Chief Electoral Officer (CEO) briefed members on the Report. He said that the EAC considered that the DC election had been conducted smoothly, and the major findings and recommendations were contained in the Report and highlighted in the Administration's paper (LC Paper No. 2041/03-04(02)).

23. As the conduct of the LegCo election in September 2004 would be modelled on the 2003 DC election, the Chairman invited comments from members.

Decentralized counting arrangements

24. Ms Emily LAU reiterated her reservations about the decentralized counting arrangements expressed at the meetings on 16 February and 15 March 2004. Her main concerns were the practical difficulties faced by candidates with relatively less resources in deployment of sufficient manpower to monitor the counting process, and arrangements to facilitate the public to observe and monitor the counting process. Ms LAU said that EAC had not reflected her concerns in the

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Report. She also pointed out that the rationale for the public to be present during the count was to enhance the transparency of the counting process and for them to help monitoring the counting process. It would be meaningless if these could not be achieved.

25. CEO responded that when Ms LAU's concerns were first raised on 16 February 2004, the Report was nearing completion for submission to CE. However, he had conveyed Ms LAU's concerns to EAC for consideration. In addition, the proposed decentralized counting arrangements had been included in the Proposed Guidelines on Election-related Activities in respect of the Legislative Council Elections issued in March 2004 for public consultation.

26. With regard to measures to facilitate the public to observe the counting process, CEO said that arrangements would be made for the public to sit and observe the counting process at a shorter distance from the counting zone. As the size of the ballot papers would be larger this year, and the ballot papers would be placed in transparent plastic boxes for public inspection as in the past, the transparency of the counting process could be enhanced. CEO further said that the details of such arrangements were not included in the Report, but would be included in the guidelines to be prepared for polling staff. On Ms LAU's concern about manpower, CEO responded that candidates could consider appointing their polling agents as counting agents to monitor the counting process as well.

27. Mr James TIEN shared Ms LAU's concern about the need to facilitate the public to observe the counting process. He said that in the 2003 DC election, red markings were made on the floor to prohibit the public from entering the counting zone. He found the arrangement unsatisfactory as this had often led to disputes. He suggested that ropes should be used to fence off the counting zone, and a larger area should be reserved for the public to observe the counting process. CEO agreed to convey the suggestion to EAC for consideration.

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Locations of polling stations

28. Ms CHOY So-yuk said that she had recently been consulted by the DC about new venues as polling stations in the Eastern District of the Hong Kong Island Constituency. She queried the need for such changes since there had not been any complaints on the locations of polling stations as reflected in the Report on the 2003 DC election, and the DC election was only held less than a year ago. The new venues proposed were inconvenient or unfamiliar to some electors. Ms CHOY considered that changing venues for polling stations would cause confusion to electors and should be avoided as far as possible.

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29. CEO agreed that for the 2004 LegCo election, some electors might be allocated to a different polling station as DC constituencies were much smaller than LegCo GC constituencies. He also pointed out that permission was required from the owners and management bodies of private premises for using their venues as polling stations. Hence, a venue which was used as a polling station in the 2003 DC election might not be available for use as a polling station in the 2004 LegCo election. The Registration and Electoral Office (REO) would try as far as practicable to allocate to an elector a polling station that was most convenient to him. CEO added that for the coming LegCo election, REO would add a note in the poll card to draw the attention of electors who had been allocated to a polling station different from the one to which they had been allocated in the previous election. CEO also agreed to look into the case mentioned by Ms CHOY if she could provide further information after the meeting.

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“UNUSED” and “SPOILT” ballot papers

30. Referring to Appendix III to the Report on "Analysis of Rejected Ballot Papers", Mr Jasper TSANG asked why the 199 “UNUSED” ballot papers were found in the ballot boxes. He said that only electors could deposit ballot papers into the ballot boxes, and polling staff should not be allowed to do so. Mr Albert HO pointed out that what had happened might indicate pitfalls in the system and could have an impact on the election results. In view of the seriousness of the matter, he considered that EAC should conduct an investigation into the matter and submit a report to the Panel.

31. CEO said that unused ballot papers should be given to the Presiding Officers for safe custody. Presiding Officers had the responsibility to ensure that the total number of valid and rejected ballot papers tallied with the total number of blank ballot papers issued. DSCA explained that there was no indication in the Report that the 199 “UNUSED” ballot papers were found in the ballot boxes. Appendix III to the Report was only an analysis on rejected ballot papers. Members requested and CEO agreed to provide a written response clarifying the matter at the next meeting.

32. Mr TSANG considered that in future reports the analysis of ballot papers rejected should be presented in two different Appendices, i.e. those in the ballot boxes and those not found in the ballot boxes and kept by electoral staff. CEO agreed to consider the suggestion.

(Post-meeting note : On paragraph 31 above, REO, by way of a press release which was issued to members vide LC Paper No. CB(2)2096/03-04 on 20 April 2004, clarified that the "UNUSED" ballot papers were not found in the ballot boxes. In view of the clarification made, the Chairman instructed that it was no longer necessary to include the item in the agenda of the next meeting.)

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33. The Chairman asked about the status of "SPOILT" ballot papers and whether they were found in the ballot boxes. CEO said that an elector who had spoiled the ballot paper issued to him could ask for a new ballot paper, and the original ballot paper would be stamped with the word "SPOILT". The Presiding Officers would keep these ballot papers and were required to keep an account of them.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(2)2181/03-04 on 27 April 2004.)

VI. Proposed Guidelines on Election-related Activities in respect of the Legislative Council Elections

(LC Paper Nos. CB(2)1817/03-04 and 2041/03-04(03))

34. DSCA informed members that the Proposed Guidelines on Election-related Activities in respect of the Legislative Council Elections (Proposed Guidelines) (LC Paper No. CB(2)1817/03-04) were modelled on the 2000 LegCo election and the 2003 DC election. The Proposed Guidelines had been issued for a 30-day public consultation which would end on 20 April 2004. He welcomed comments from members.

35. CEO briefed members on the major changes as set out in the Proposed Guidelines and summarized in the Administration's paper (LC Paper No. CB(2)2041/03-04(03)) -

- (a) Part VIII of Chapter 4 of the Proposed Guidelines had set out the relevant requirements in respect of the printing of candidates' particulars on ballot papers. CEO said that EAC received 45 applications, 36 from organizations and nine from individuals, by the cut-off date for this year's registration cycle on 1 April;
- (b) Part VI of Chapter 16 had set out the detailed arrangements of the Financial Assistance Scheme for candidates. CEO said that the Part had also addressed issues raised by the Subcommittee on subsidiary legislation relating to 2004 Legislative Council election;
- (c) the decentralized polling and counting arrangements for GC elections; and
- (d) amendments made in response to members' suggestions made at the Panel meetings on 15 December 2003 and 16 February 2004.

Election advertisements (EAs)

36. Mr Howard YOUNG said that he had proposed at the meetings on 16 February and 15 March 2004 that the amount of expenses incurred by the

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candidates of a joint EA should be calculated in proportion to the election expense limits or the number of electors in the respective constituencies. As he would write directly to EAC to reflect his views, he asked which part of the Proposed Guidelines was relevant.

37. DSCA said that paragraphs 8.32 and 18.9 of the Proposed Guidelines were relevant. He added that Mr YOUNG's proposal had been conveyed to EAC for consideration. Members were also welcome to submit their views in writing on the Proposed Guidelines to EAC direct before the expiry of the consultation period.

38. Mr YOUNG said that apart from the justifications he had previously provided in support of his proposal, he would like to add two points. First, the existing arrangement would not be conducive to the development of political parties. The question of immaturity of political groups in Hong Kong was also raised in the Second Report of the Constitutional Development Task Force. Secondly, his proposal would also be beneficial to independent candidates who decided to publish a joint EA.

Providing electors and others with entertainment

39. Ms Emily LAU said that some flexibility should be allowed for candidates to organize election activities, e.g. inviting non-professionals to perform at election activities should not be regarded as entertainment under section 12 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (ECICO).

40. CEO responded that EAC had clarified at the press conference on 22 March 2004 that what constituted "entertainment" was not defined in ECICO. While EAC might alert candidates that certain election activities might be in breach of the relevant provisions in ECICO, EAC had no power to prohibit candidates from organizing such activities.

41. Ms LAU said that if entertainment was provided by non-professionals such as students and on a voluntary basis, it should fall under the definition of "voluntary service" in ECICO. Mr Albert HO urged EAC to further discuss the matter with the Independent Commission Against Corruption to work out clearer guidelines in this respect.

42. CEO reiterated that there was neither a definition on "entertainment" nor exempting provisions in respect of providing electors and others with entertainment in ECICO. In addition, there was no precedent case relating to "entertainment" as defined in ECICO. Unless the law was amended, it would not be appropriate for EAC to interpret the law otherwise. However, CEO agreed to convey members' views to EAC for consideration. Members agreed that to address their concerns, a review and amendment of the relevant provisions in ECICO might be necessary.

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Election forums and election broadcasting

43. Ms Emily LAU said that the Proposed Guidelines stated that the principles of "equal time" and "fair and equal treatment" should apply to all candidates/GC lists contesting in the same constituency. In the 2003 DC election, as some candidates invited to be present at an election forum did not show up, the election forum was cancelled and the other candidates were deprived of the opportunity to attend the forum. In Ms LAU's view, cancellation of the election forum as a result of the strategy of some candidates who chose not to attend the forum would be unfair to the public and those candidates who wished to attend. She asked CEO to clarify whether the broadcaster was required to cancel the forum scheduled under the circumstances, in view of the principles of "equal time" and "fair and equal treatment".

44. CEO responded that EAC had clarified at the press conference on 22 March 2004 that EAC would not prohibit the broadcaster from holding the election forum if one or more candidates were absent at the election forum. According to paragraph 11.5 of the Proposed Guidelines, EAC would request the broadcaster to include in the invitation to a candidate a notice that a similar invitation had been made to other candidates/GC lists of the same constituency. The broadcaster was also required to keep a record of the date, time and contents of the invitation and the notice until three months after the election.

45. Ms LAU expressed concern whether commercial broadcasters were aware of the fact that it was not necessary to cancel the election forum even though some of the invited candidates had declined to attend, and holding the forum under such circumstances would not contravene the "equal time" principle. She requested and CEO agreed to follow up the matter with the broadcasters.

Admin

46. In response to Ms LAU, CEO said that according to paragraph 11.3 of the Proposed Guidelines, candidates might take part freely in current affairs or other programmes on TV and radio which were not election-related. Otherwise, the "equal time" principle would apply.

47. To follow up on CEO's reply to Ms LAU in paragraph 46 above, Mr Jasper TSANG asked whether paragraph 11.3 was in conflict with paragraphs 11.9 – 11.12 of the Proposed Guidelines. He quoted the case of a professional singer who had declared his intention to stand for the election and was invited to perform in a fund-raising programme which was not election-related, and asked whether the singer could accept the invitation.

48. CEO responded that it would depend on how frequently a person took part in a programme. Paragraph 11.3 of the Proposed Guidelines applied to a person who did not take part in a programme on a regular basis. Paragraph 11.10 applied to a person who took part in a programme on a regular basis, e.g. a regular presenter, actor or singer. Paragraph 11.10 stated that a person who had contracted to perform

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before his declaration of intention to stand for the election or before and after the election period might continue to do so. However, such a person should try his utmost endeavour to request the persons responsible not to broadcast his appearance in any media after his declaration of intention to run for the election or during the election if he became a candidate.

Admin 49. Mr TSANG asked how "on a regular basis" should be defined. CEO said that he would reflect this to the EAC for consideration.

50. Mr TSANG further said that according to paragraph 11.8 of the Proposed Guidelines, " ... the editorial line of the broadcaster or personal opinions of the programme presenter on each of the candidates can be freely expressed, insofar as they are fair comments and based on true facts. ... However, broadcasters should ensure that in the expression of such ideas, no unfair advantage may result towards any candidate over another or any political parties or organisations to which contesting candidates belong." If a programme presenter expressed a personal opinion that the public should not vote for candidates of a named political party, Mr TSANG asked how an assessment would be made as to whether the opinion was "fair comments and based on true facts".

51. CEO said that it would be necessary to assess whether the opinion was reasonable and based on facts, and whether the opinion would be treated as an EA. Each case would be assessed in light of its own circumstances.

52. Mr TSANG said that paragraph 8.8 of the Proposed Guidelines stated that "those materials published with a purpose of prejudicing other candidates are not treated as EAs if no reference is made to a particular candidate." In the example he quoted earlier (paragraph 50 above), the programme presenter made reference to a particular group of candidates instead of a particular candidate, and his opinion was clearly for the purpose of prejudicing the election of the candidates concerned. Mr TSANG asked whether the opinion of the presenter would be treated as an EA.

Admin CEO said that he would reflect this to EAC for further consideration.

Authorisation to incur election expenses for GC candidates

53. In response to Mr TAM Yiu-chung on paragraphs 16.44 - 16.46 of the Proposed Guidelines, CEO explained that the authorization to incur election expenses for all the candidates on the GC list would need to be signed by all candidates on the list. It would be for the candidates to decide the amount of election expenses each of the election expense agents was authorised to incur for the list, taking into account that the election expenses to be incurred by all the candidates on a GC list could not exceed the applicable ceiling.

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Declaration of ordinary residence in Hong Kong in the nomination form

54. With respect to paragraph 4.18(b)(v) of the Proposed Guidelines, Mr IP Kwok-him noted that candidates were no longer required to provide the details about their periods of absence from Hong Kong in the past three years. He asked how this proposal would be put into effect.

55. CEO said that candidates would simply be required to make a declaration in the nomination form that they had ordinarily resided in Hong Kong for the three years preceding the nomination.

Polling and counting arrangements

Admin 56. The Chairman said that he would not write to EAC to give views on the Proposed Guidelines. Nevertheless, he requested CEO to take note of members' comments on the proposed polling and counting arrangements as recorded in the minutes of the Panel meeting on 16 February 2004, and in particular his comments in paragraph 8 of the minutes.

(Post-meeting note : An extract of the relevant minutes of the meeting was sent to CEO on 20 April 2004.)

Publication of the finalized Guidelines

57. Ms Emily LAU asked about the timing for publication of the finalized Guidelines, and asked if the Administration would consult the Panel again before its publication.

58. CEO said that the finalized Guidelines would be published in June/July 2004. DSCA said that traditionally, EAC would publish the Guidelines following the public consultation. Nevertheless, he would relay Ms LAU's question to EAC for consideration. He also undertook to inform members of the date of the publication of the finalized Guidelines.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(2)2181/03-04 on 27 April 2004.)

59. The meeting closed at 4:40 pm.