

**Extract from minutes of meeting on  
Panel on Constitutional Affairs on 17 July 2001**

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**II. Restrictions on activities undertaken by a former Chief Executive  
(LC Paper No. CB(2)2042/00-01(04))**

2. Deputy Secretary for Constitutional Affairs (SD) (DSCA(SD)) briefed members on the Administration's paper (LC Paper No. CB(2)2042/00-01(04)). He said that the paper presented the findings of the preliminary research on the arrangements applicable to heads of governments after they stepped down from office in Australia, Belgium, Canada, Germany, Japan, New Zealand, United Kingdom and United States. Except in the United States where a person who had been a President for two terms was not allowed to stand for Presidential election, the other countries did not have any rules governing a former head of government's involvement in political activities. As regards involvement in commercial activities, there was no specific rule except in Belgium, Canada and United Kingdom. The scope of benefits enjoyed by a former head of government in these countries varied. DSCA(SD) added that the study on the arrangement applicable to a former Chief Executive (CE) was still in progress. The Administration welcomed members' views and would revert to the Panel when it was in a position to do so.

3. Mr SZETO Wah said that the paper did not provide any information on the situation where the service of a head of government was terminated by removal, e.g. through the impeachment process. He asked the Administration to conduct further research in this respect for the information of the Panel. DSCA(SD) agreed.

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4. Ms Emily LAU raised two points. First, she asked whether the Administration considered it necessary to establish such a mechanism before the expiry of the term of office of the first term CE. Secondly, she asked whether the Administration had come up with any specific proposals.

5. DSCA(SD) said that although the Administration had no specific time frame in mind, it would endeavour to put in place a mechanism within a reasonable period of time before the expiry of the term of office of the first term CE. As the Administration had just completed the preliminary research, it had not formed any view on the issue.

6. Miss Margaret NG asked what criteria had been adopted by the Administration in arriving at the view that CE was comparable to heads of governments in overseas countries. She asked whether it was more appropriate to compare CE with senior civil servants.

7. DSCA(SD) said that CE was not a public servant, but the head of the HKSAR. In view of CE's unique constitutional position, it might not be appropriate to apply to the CE the existing arrangements applicable to senior civil servants. In undertaking the research on overseas practice, the Administration took note of the underlying spirit and principles of the arrangements applicable to heads of governments in overseas countries. The objective of the overseas governments to impose restrictions on certain activities of a former head of government was to ensure that he would not be involved in anything that might constitute a conflict of interest with his previous office.

8. Mr LEUNG Yiu-chung said that as the five-year term of office of CE would expire soon, he could not understand why so little progress had been made on the matter. In view of the limited time available before the expiry of the term, he asked the Administration to advise on the timing and process of consultation with LegCo and the public. DSCA(SD) reiterated that the study would be completed before the expiry of the term of office of the first term CE. Mr LEUNG asked which authority would be responsible for giving final approval to the recommendations of the study. DSCA(SD) said that while the Administration would generally seek approval from the Executive Council on important policy issues, the Administration had yet to decide how to deal with the issue under discussion.

9. Mr SZETO Wah asked whether the proposed arrangement applicable to CE would be implemented in the form of legislation. If the Administration intended to introduce a bill into LegCo for such purpose, he asked whether the legislative process could be completed by March 2002 when the election of the second term CE was held.

10. DSCA(SD) replied that the study was still in progress and the Administration had not formed any view on the point raised by Mr SZETO. Even if there was no legislation, the Administration would promulgate guidelines which would be open, transparent and subject to the monitoring of LegCo and the public. Mr LEUNG Yiu-chung raised concern about enforcement of guidelines as they were not legally binding.

11. The Chairman said that the most important thing was that CE should not misuse his official position or information acquired in the course of his official duties to further his private interests after his departure from office. However, the Chairman considered that the issue was much wider in scope than that presented in the Administration's paper. In his view, the issue should be considered in the context of the study of the system of accountability for principal officials so that any restrictions and benefits applicable to CE should also apply to "political appointees" under the proposed accountability system and LegCo Members. Otherwise, the role played by LegCo Members under the constitutional system would be ignored. As the Administration's study did not provide information on arrangements applicable to "political appointees" and the legislature, it was considered too narrow in scope and only tailored-made for Mr TUNG Chee-hwa.

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12. On the question of legislation vis-à-vis guidelines, the Chairman pointed out that while there were no rules governing the involvement of a former President of the United States in commercial activities, it had been a convention for the President not to enter into any employment after leaving office because the benefits he enjoyed were substantial.

13. Ms Emily LAU pointed out that it was important that a CE should not abuse his power or position for personal interests or gain in future. She stressed that the Administration must ensure that any system proposed should restrict a former CE from engaging in any activities which might give rise to any potential conflict of interests with his previous office. Ms LAU said that irrespective of whether the proposed system would be implemented by way of administrative arrangements, convention or legislation, the Administration must obtain LegCo's support and approval. In addition, the Administration should allow a reasonable period of time for discussion and consultation with LegCo. DSCA(SD) agreed that there should be a reasonable period of time for exchange of views with LegCo.

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14. The Chairman said that the Panel had previously considered whether the Research and Library Services Division (RLSD) of the LegCo Secretariat should be requested to conduct a research on the subject. He sought members' view. After discussion, members agreed that an independent research should be conducted by RLSD. The Chairman then sought members' view on the proposed scope of research.

15. Miss Margaret NG considered that comparing CE with heads of overseas governments who were directly elected through universal suffrage was not appropriate. In her view, it would be more appropriate to make reference to the existing arrangements applicable to senior civil servants. Reference should also be made to the experience of the People's Republic of China. As regards overseas experience, apart from legal restrictions, the research should also cover other forms of restriction, e.g. social conventions or restrictions imposed by the political party to which the head of government belonged. In arriving at an agreed system, she considered that wide consultation with the LegCo, the public and academics was necessary.

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16. The Chairman requested Head/RLSD to prepare a draft outline of the research for members' consideration.

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