

Panel on Constitutional Affairs

List of outstanding issues
(*position as at 26 May 2005*)

**Proposed
timing for
discussion**

1. Application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) (POBO) to the Chief Executive (CE)

The item was first discussed by the Panel at the meeting on 9 February 1999 and followed up at a number of meetings.

30 May 2005

At the meeting on 21 January 2002, the Administration advised that it would work out the appropriate legislative amendments to set out in separate provisions a regulatory framework for application to CE, making reference to that being applied to government officers under POBO. The legislative proposal would be introduced into LegCo in the 2002-03 legislative session.

The legislative proposal was not included in the Government's Legislative Programme for 2002-03, 2003-04 and 2004-05. The Administration advised in writing in November 2004 that it would revert to the Panel once it was in a position to do so.

At the meeting on 21 February 2005, the Panel expressed concern about the lack of progress of the matter and requested the Chief Secretary for Administration (CS) to report progress and the way forward. This item is scheduled for discussion at the meeting in May 2005.

2. Mechanism for amending the Basic Law

Discussions on this item were held by the Panel since the 1998-99 legislative session.

To be confirmed
by CAB

At the meeting on 17 July 2001 when the item was last discussed, the Administration advised that it was continuing discussion with the Central Authorities regarding the issues identified, particularly those relating to the Standing Committee of the National People's Congress (NPCSC), the State Council, the local NPC deputies and the Basic Law Committee.

Constitutional Affairs Bureau (CAB) advised in writing in November 2004 that it would revert to the Panel after it had completed discussion with the Central Authorities.

3. The question of "important bill" under Article 50 of the Basic Law

At the meeting on 20 December 1999, the Panel requested the Administration to clarify the meaning of "important bill" in Article 50 of the Basic Law. The Administration advised at the meeting on 19 June 2000 that given the complex issues and factors involved in deciding whether a bill was "important", it needed more time to study the matter before forming a mature view.

To be confirmed
by CAB

The Research Report on "Parliamentary Handling of Non-ordinary Bills" prepared by the Research and Library Services Division (RLSD) was presented to the Panel on 7 May 2001 (RP10/00-01).

CAB advised in writing in November 2004 that it would provide an update to the Panel in the first quarter of 2005.

4. Review on Constitutional development after 2007

In January 2004, CE appointed a Task Force headed by CS with the Secretary for Justice and Secretary for Constitutional Affairs (SCA) as members, to take forward matters relating to constitutional development. For the last LegCo session, the Task Force published three reports respectively in March, April and May 2004. A background brief prepared by the LegCo Secretariat summarizing, inter alia, the discussions held by the Panel was issued to members vide LC Paper No. CB(2)49/04-05(02) in October 2004. In response to the request of members, the Task Force provided its outline work plan regarding the method for selecting CE in 2007 and for forming LegCo in 2008 (the "electoral methods") in LC Paper No. CB(2)215/04-05(01).

On-going
discussion

The Fourth Report of the Task Force which was released on 15 December 2004 summarized the views received on the Third Report and set out some follow-up questions for public reference. The consultation on the Fourth Report for the purpose of drawing up a comprehensive package for the "electoral methods" would end on 31 March 2005. On 12 March 2005, Acting CE announced that the consultation period would be extended to the end of May 2005.

On 15 January, 19 and 26 February 2005, the Panel received views from deputations on issues relating to constitutional development.

5. Review of District Councils (DCs)

CE stated in his 2004 Policy Address that the Government would review the function and composition of DCs at a suitable time.

Fourth quarter of
2005

Members requested that the review should cover issues such as the roles, functions, composition of DCs, delineation of constituency boundaries, appointed membership of DCs, and the desirability of adopting the proportional representation system for DCs elections.

At the Panel meeting on 13 January 2005, the Administration advised that the review of DCs would commence before the end of 2005. CAB and the Home Affairs Bureau had set up a working group to make preparations for the review and a consultation document would be issued.

6. Remuneration and post-office arrangement for CE

The 12-month Report on Implementation of the Accountability System for Principal Officials was considered by the Panel at its meeting on 21 July 2003. The Administration advised the Panel in November 2004 that it would continue to review the remuneration for the third term CE and report to the Panel in due course.

June/July 2005

At the meeting on 19 March 2001, the Administration advised the Panel that there was no restriction imposed on commercial or political activities of former holders of the office of CE in and outside HKSAR under the present legislation. At the meeting on 17 July 2001, the Administration briefed members on its preliminary research on the arrangements applicable to heads of governments after stepping down from office in a number of overseas countries.

RLSD presented its Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" to the Panel on 21 January 2002 (RP02/01-02), and provided supplementary information on the subject (LC Papers Nos. CB(2)1081/01-02(04) and CB(2)1494/01-02(01)).

At the meeting on 18 April 2005, SCA briefed the Panel on the establishment of the Independent Commission on Remuneration Package and Post-Office Arrangements for the Chief Executive of the HKSAR on 7 April 2005. The Commission will submit its recommendations to the Administration in about two months' time. Subject to the acceptance of the recommendations by the Administration, the Panel will be briefed on the proposals.

7. Political party law

CAB advised the Panel in December 2002 that it had decided that it was not opportune to introduce a political party law to regulate the

To be decided by the Panel

operation of political parties. It believed that political parties should be allowed sufficient room to develop so as to facilitate effectively the development of political parties. Imposing statutory controls on the operation of political parties might in fact hinder the development of political parties. CAB suggested introducing additional provisions within the existing legal framework to provide partial financial support to candidates standing in LegCo elections and to allow the printing of the names and emblems of candidates' parties (or organizations) or the candidates' photographs on the ballot paper.

At the meeting on 21 June 2004, the Panel considered the Research Report prepared by RLSD on "The Regulatory Framework of Political Parties in Germany, The United Kingdom, New Zealand, and Singapore" (RP05/03-04). RLSD had prepared an information note on "Views on Political Party Law in Hong Kong" (IN17/04-05), which was considered by the Panel at the meeting on 21 February 2005. At the same meeting, members requested RLSD to provide supplementary information on some of the relevant issues. The Administration advised the Panel that its position on the matter had remained unchanged.

The Panel received views from deputations on the "Role and development of political parties" at the meeting on 26 February 2005.

8. Composition, functions and operation of the Electoral Affairs Commission

On 21 June 2004, the Research Report prepared by RLSD on "Operation of Electoral Regulatory Bodies in Selected Places" (RP04/03-04) was presented to the Panel.

To be decided
by the Panel

Members agreed to further explore the issues raised in the Research Report in the new legislative session. The Administration advised in writing in November 2004 that it was prepared to listen to members' views at future meetings.

9. Constitutional issues relating to prorogation of the Council

On 23 April 2004, the Committee on Rules of Procedure (CRoP) informed the House Committee of its views regarding the calling of emergency meetings and the operation of the LegCo and its committees during the prorogation of the Council.

To be decided
by the Panel

On the recommendation of CRoP, the House Committee agreed to refer the following issues to this Panel for consideration -

- (a) whether the power to prorogue the Council should be transferred from CE to the President of LegCo; and
- (b) whether the power to determine the commencement and ending dates of a LegCo session should be transferred from CE to the President of LegCo; and
- (c) whether the operation of the Council and its committees, which had been terminated during prorogation, could resume only when emergency Council meetings were called at CE's request.

At the meeting on 21 February 2005, the Administration advised the Panel that the existing arrangements were appropriate and should remain unchanged. Some members did not agree to this view. The Panel decided to invite views from the academia and legal profession on the issues, and requested the Administration to provide supplementary information to substantiate its position.

The written submissions received from Professor Yash GHAI of The University of Hong Kong and The Hong Kong Bar Association were issued to members vide LC Paper Nos. CB(2)1477/04-05(01) and (02) on 6 May 2005 respectively.

10. Legislative Council election

The Panel was briefed on the Interim Report and Final Report on the 2004 Legislative Council election which were released on 10 November and 15 December 2004 respectively. On 15 December 2004, the Independent Committee of Experts (Experts Committee) was appointed by CE to review the management, planning and conduct of elections and to make recommendations on improvement measures. The Experts Committee published its Report on 6 May 2005. The item is scheduled for discussion at the meeting in May 2005.

30 May 2005