

立法會
Legislative Council

LC Paper No. CB(2)2226/05-06
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Friday, 21 April 2006 at 8:30 am
in the Chamber of the Legislative Council Building

- Members present** :
- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
 - Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
 - Hon Albert HO Chun-yan
 - Hon LEE Cheuk-yan
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon CHEUNG Man-kwong
 - Hon Bernard CHAN, JP
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon Howard YOUNG, SBS, JP
 - Dr Hon YEUNG Sum
 - Hon LAU Kong-wah, JP
 - Hon Miriam LAU Kin-ye, GBS, JP
 - Hon Timothy FOK Tsun-ting, GBS, JP
 - Hon TAM Yiu-chung, GBS, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon LEE Wing-tat
 - Hon Alan LEONG Kah-kit, SC
 - Hon LEUNG Kwok-hung
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Hon WONG Ting-kwong, BBS
 - Hon Ronny TONG Ka-wah, SC
 - Hon CHIM Pui-chung
 - Hon Patrick LAU Sau-shing, SBS, JP
 - Hon KWONG Chi-kin
 - Hon TAM Heung-man
- Member attending** :
- Hon Jeffrey LAM Kin-fung, SBS, JP

- Members absent** : Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon WONG Yung-kan, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, JP
Hon Daniel LAM Wai-keung, BBS, JP
Hon MA Lik, GBS, JP
Dr Hon KWOK Ka-ki
Hon CHEUNG Hok-ming, SBS, JP
- Public Officers attending** : Item IV

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

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

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary for Constitutional Affairs

Item V

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

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

Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional Affairs
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3

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

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1712/05-06 – Minutes of meeting on 20 February 2006)

The minutes of the meeting held on 20 February 2006 were confirmed.

II. Information papers issued since the last meeting

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

- (a) LC Paper No. CB(2)1595/05-06(01) – Administration's response concerning the Chinese People's Political Consultative Conference subsector of the Election Committee; and
- (b) LC Paper No. CB(2)1754/05-06(01) – Administration's response to an issue relating to universal suffrage raised by Hon Margaret NG at the meeting on 16 January 2006.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1745/05-06(01) – List of outstanding items for discussion)

3. Secretary for Constitutional Affairs (SCA) proposed and members agreed to discuss “Practical arrangements for the Election Committee subsector elections” at the next meeting to be held on 15 May 2006. Members also agreed that the issue on the method for forming the Legislative Council (LegCo) by universal suffrage proposed by the Democratic Party (DP) would be discussed at the next meeting.

4. Dr YEUNG Sum asked when the Committee on Governance and Political Development under the Commission on Strategic Development (CSD) would discuss a timetable for universal suffrage. SCA informed members that in the first

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half of 2006, CSD would focus its discussion on the principles and concepts relating to universal suffrage. In the second half of 2006, CSD would discuss the design of the electoral systems for the Chief Executive (CE) and LegCo when attaining universal suffrage. On the basis of the conclusions of these discussions, the Administration would draw up a roadmap for universal suffrage in early 2007. A timetable for universal suffrage would then be considered.

IV. Financial assistance scheme for candidates in District Council elections
(LC Paper No. CB(2)1571/05-06(01) – Paper provided by the Administration on "Financial Assistance Scheme for Candidates in District Council Elections")

5. SCA briefed members on the proposal to extend the existing financial assistance scheme applicable to candidates in the LegCo elections to candidates in the District Council (DC) elections, as detailed in the Administration's paper. Under the existing scheme for LegCo elections, candidates who were elected or received 5% of valid votes or more would be given a subsidy of \$10 per vote, capped at 50% of the actual election expenses of the candidate, or the difference between their actual election expenses and election donations, whichever was the lower.

Subsidy rate

6. Mr Martin LEE said that he was in support of capping the subsidy rate at 50% of the actual election expenses of a candidate when it was first implemented in the LegCo elections. However, in view of the success of the scheme and the small amount of financial assistance to be payable in the DC elections (i.e. about \$6.75 million), he considered that the subsidy rate could be increased to, say, 75% or even 100% of the actual election expenses for candidates in the DC elections. This would encourage more contestants in the elections.

7. Mr CHEUNG Man-kwong and Dr YEUNG Sum said that the proposal to increase the subsidy rate would not pose too much a financial burden on the Government. Dr YEUNG also pointed out that in considering the issue, the Administration should bear in mind that the election expenses limit for the DC elections was much lower than that for the LegCo elections.

8. Ms Audrey EU and Mr Ronny TONG supported that the subsidy rate should be capped at 75% of the actual election expenses of candidates. Ms EU pointed out that an increase of subsidy rate of 25% could make a lot of difference for some candidates.

9. SCA said that while the purpose of the scheme was to encourage more political talents to participate in elections, the Administration held the view that candidates should shoulder a portion of the election expenses incurred. While the

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threshold of 5% of valid votes applicable to LegCo election candidates would apply to the proposed financial assistance scheme for DC election candidates, it was expected that it would be easier for DC candidates to surpass the threshold to be eligible for financial support due to the relatively smaller size of DC constituencies. SCA further said that part of the expenditure of the financial assistance scheme introduced for the 2004 LegCo election was offset by savings achieved as a result of the reduction of one of the two rounds of free mailing service to candidates. However, DC election candidates were currently entitled to one round of free mailing service and their entitlement would remain unchanged after introduction of the financial assistance scheme. SCA stressed that the Administration should be prudent in the use of public money, and the subsidy rate proposed by the Administration was considered reasonable.

10. SCA explained that when the financial assistance scheme was introduced in the 2004 LegCo election, it was estimated that the amount of financial assistance payable to eligible candidates was about \$9 million. However, due to the high voter turnout rate, the actual financial assistance payable to eligible LegCo candidates was about \$14 million. Although the Administration could not assess with complete accuracy the financial implications of the proposed scheme at this stage, he expected that the actual amount of financial assistance payable to DC candidates could exceed the estimated amount of \$6.75 million, in view of the increasing voter turnout rate in recent elections.

Amount payable

11. Mr TAM Yiu-chung asked whether financial sponsorship received by a DC candidate from a political party would affect the amount of financial assistance payable to him by the Government. SCA said that when calculating the amount of financial assistance payable to a candidate in the 2004 LegCo election, any election expense incurred by the candidate had to be net of any election donation received by the candidate.

12. Mr TAM was of the view that the donations received by candidates should not affect their entitlement to financial assistance.

13. Dr YEUNG Sum said that in calculating financial assistance payable to election candidates, financial benefit given by a political party to a candidate should not be counted as an election donation. This would be conducive to political party development and participation of political talents in an election.

14. Mr Jasper TSANG said that candidates would be discouraged from making effort to obtain donations and sponsorship from different parties (political parties, individuals, financial institutions, etc.), if election expenses incurred by a candidate had to be net of any donation received in claiming financial assistance. In reality, political parties would provide financial sponsorship to candidates. In order to maximize the chance for candidates to claim financial assistance under the scheme,

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political parties had to work out a complicated loan arrangement with candidates in the last LegCo election. The arrangement had created unnecessary work to political parties and candidates alike.

15. Mrs Selina CHOW said that it was important that the procedure for declaring donations and sponsorship should be straightforward and transparent to ensure clean election. She shared members' views that donations should not be a deductible item from election expenses for the purpose of claiming financial assistance.

16. SCA said that some Members had expressed similar views on the matter when the scheme was introduced in the 2004 LegCo election. The Administration was prepared to listen to Members' views before finalising the proposed scheme for the DC elections.

17. Mr Jasper TSANG asked the Administration to provide the amount of additional financial assistance payable to candidates in the 2004 LegCo elections, if donations received by candidates were not deducted from election expenses for the purpose of claiming financial assistance. SCA undertook to provide the information after the meeting.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. 1992/05-06(01) on 12 May 2006.)

18. Ms Audrey EU recalled that there was a District Court judgment relating to a political party recovering "loans", being financial assistance provided to its members in elections. The case had given rise to much controversy. The District Court ruled that the "loans" were illegal in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance. Although the political party had lodged an appeal against the judgment, the case was subsequently settled out of court. Ms EU said that the court judgment was wrong because it was made on the basis of an obsolete provision, and she expressed concern about the implication of the court judgment. She asked the Administration to clarify its position on the matter. Mr Ronny TONG disagreed that the Administration's clarification of its position was of any use because a judgment should be respected unless and until it was overruled. He suggested that the Administration should consider redefining the activities that would constitute bribery offences in an election. SCA undertook to respond in writing after seeking legal advice from the Department of Justice.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. 2007/05-06(01) on 15 May 2006.)

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Financial assistance for uncontested candidates

19. Mr Ronny TONG said that an uncontested candidate should not be eligible for financial assistance, as it was unlikely for him to carry out much electioneering activities.

20. Mrs Selina CHOW disagreed with Mr TONG's view. She pointed out that candidates would incur election expenses once they had decided to run in an election. In addition, they would not know in advance that they would be elected uncontested.

21. SCA explained that the financial assistance scheme proposed for the DC elections was similar to that for the LegCo elections. In an uncontested election, the amount payable to candidates was the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate, i.e. \$10 per vote, or 50% of the declared election expenses of the candidate, whichever was the lower.

Free mailing service

22. Mr Patrick LAU expressed concern that the free mailing entitlements of each candidate were reduced from two rounds to one round in the 2004 LegCo election. He noted that many candidates had sent more than one round of mail to voters.

23. SCA said that the mailing service arrangement implemented for the 2004 LegCo election had taken into account other forms of assistance provided to candidates. Candidates could plan their electioneering campaign based on the resources available. As for the future DC elections, one round of free mailing service would be maintained.

Appointed membership

24. Mr Ronny TONG asked whether the Administration would take the opportunity to abolish the appointed membership of DCs, when it introduced amendments to the District Council Ordinance to give effect to the proposed financial assistance scheme.

25. SCA said that the issue of appointed membership would be dealt with in the context of the review of DCs. Subject to Members' comments, the Administration would proceed with the legislative process to amend the District Council Ordinance to provide a legal basis for the proposed financial assistance scheme for the 2007 DC election. The Electoral Affairs Commission would also make subsidiary legislation under the Electoral Affairs Commission Ordinance to set out the detailed operational procedures of the scheme.

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V. Items relating to universal suffrage proposed by the Democratic Party
(LC Paper No. CB(2)870/05-06(03) – Democratic Party's proposal on universal suffrage)

LC Paper No. CB(2)1745/05-06(02) – Paper provided by the Administration on "Method for Selecting the Chief Executive by Universal Suffrage and Review of the Chief Executive Election Ordinance"

LC Paper No. CB(2)1802/05-06(01) – Democratic Party's proposal on the method of selecting the Chief Executive by universal suffrage)

Method for selecting CE

26. Dr YEUNG Sum said that in its paper (LC Paper No. CB(2)1802/05-06(01)), DP had proposed that the nominating committee be composed of LegCo Members, who were broadly representative, for the purpose of selecting a CE under Article 45(2) of the Basic Law. Under the proposal, a candidate could be nominated by five LegCo Members (each Member could nominate only one candidate), which meant that there would be a maximum of 12 candidates standing in an election. After nominations by the nominating committee, members of the public would vote on all candidates on a "one person, one vote" basis.

Review of the Chief Executive Election Ordinance (CEEEO)

27. Dr YEUNG Sum said that he had given notice to move Committee Stage amendments (CSAs) to the Chief Executive and Legislative Council Election (Miscellaneous Amendments) Bill 2006 (the Bill) regarding the political affiliation of CE and the number of subscribers for nominating candidates in a CE election. Mr James TIEN of the Liberal Party (LP) had also given notice to move CSA to repeal section 31 of CEEEO regarding the requirement for CE to relinquish his political affiliation. The President of LegCo had yet to make a ruling on these CSAs. Dr YEUNG further said that after passage of the Bill, the Administration should introduce a separate bill to amend CEEEO with a view to –

- (a) abolishing the requirement barring CE from being a member of a political party;
- (b) imposing an upper limit on the number of subscribers for nominating candidates for the office of CE; and
- (c) expanding the electorate of the Election Committee.

28. Dr YEUNG Sum said that CE had recently remarked that he had different affinities with political parties. In view of CE's close relationship with the Democratic Alliance of the Betterment and Progress of Hong Kong (DAB), the Administration should abolish the requirement that barred CE from having political

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affiliation. He pointed out that a CE required the support of political parties in order to achieve excellence in governance.

29. Mr Howard YOUNG clarified that LP held the view that CE-designate should have the discretion to maintain or relinquish his political affiliation.

30. Mr LEE Cheuk-yan said that paragraph 13 of the Administration's paper which stated that "requiring the CE to resign from political party will ensure that the CE will act in the interests of the whole community when discharging his duties and exercising his powers under the Basic Law" was not conducive to political party development. Mr LEE further said that CE should formalise his "dubious relationship" with DAB, and this could be achieved by abolishing the requirement that barred CE from having affiliation with a political party.

31. Mr Ronny TONG said the Civic Party supported the views of LP and DP on the issue. He further said that CE and DAB should have a "proper marriage" instead of a "secret affair". The late-night visit of CE to DAB headquarters made people suspect that there were "under-the-table dealings". In his view, it was natural for a CE to have a close affiliation with a political party if they shared the same political belief, not to mention that it was a political reality that CE needed the support of political parties for effective implementation of his policies. Hence, the Administration should seriously consider introducing a bill to amend CEEO, before the CE election to be held in March 2007, to allow CE to have political affiliation. He said that with the support of the 25 pan-democratic Members and Members belonging to LP, the proposed amendment would have the majority support of all LegCo Members.

32. Mr Martin LEE said that both President HU Jiatao and President George BUSH had political affiliations. He did not understand why Hong Kong should adopt a different policy. He said that if CE wished to establish close affinity with any political party, DP should be considered as its Members had received over 60% of the votes in the last LegCo election.

33. Mr TAM Yiu-chung said that it was improper for one to say that CE was having an affair or secret dealings with a political party. Such a remark would only undermine the image of the political party concerned. He said that CE was invited by DAB to attend the party leadership meeting. After the meeting, DAB had given an account of the meeting to the media. He pointed out that it was the duty of CE to meet with different parties, including political parties, to understand the need of society and the views of the public. Given that DAB was the largest political party in LegCo, there was nothing unusual about CE meeting with the party.

34. Mr Albert HO said that it was only natural for CE to affiliate with a political party and together they should be committed to work for the well being of Hong Kong. If a CE and a political party formed a coalition to govern Hong Kong, that would be conducive to political party development and would bring about effective

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governance. The position of the Administration on the issue, however, was hypocritical. On the one hand, the Administration maintained that CE should not have any political affiliation. On the other hand, the incumbent CE was not ambivalent about his close affinity with DAB. Recently, three members of DAB had been appointed as members of the Town Planning Board and another member was appointed as an assistant in the CE's Office. Mr HO said that the Administration should institutionalise the relationship between CE and political parties with a view to providing a level playing field for all the political parties.

35. Mr LAU Kong-wah said that after the motions regarding the methods for selecting CE in 2007 and forming LegCo in 2008 were negated by LegCo, there were views in the community that some political parties had opposed the proposals of the Administration for the sake of opposition. The incident had led to CE's subsequent remark that he had different affinities with political parties. Mr LAU held the view that it was a natural phenomenon that CE had a closer relationship with a political party which shared the same political belief. The public might also favour this phenomenon as this would ensure stability in policy implementation. Mr LAU further said that DAB supported the present requirement that CE should relinquish his political affiliation. As the head of the Hong Kong Special Administrative Region, CE should be above all political parties and act in the interests of the community as a whole. At the same time, he needed to gain support from political parties to ensure effective governance. The present requirement was appropriate in that regard. He believed that the public would also prefer the present arrangement, if asked to choose between a CE with political affiliation and one without.

36. Mr Ronny TONG clarified that the comments he made earlier on was not targeted at anybody. He agreed with Mr TAM Yiu-chung that it was the duty of CE to exchange views with different political parties. It was, however, unwise and improper for a CE to declare his close relationship with a particular political party, as the Administration's policy discouraged a CE to have any political affiliation. Mr TONG reiterated that the requirement that CE should relinquish his political affiliation was unfair. He shared the view of Mr Albert HO that the relationship between CE and political parties should be institutionalised.

37. Mr LEUNG Kwok-hung was of the view that the issue was constitutional and could only be decided by the Central Authorities. Nevertheless, he considered that a political leader without political affiliation was against common sense.

38. Ms Audrey EU said that any person with common sense would not support the present arrangement that CE should relinquish his political affiliation on the one hand, and establish different affinities with political parties in order to secure sufficient support in LegCo on the other hand. She asked whether there was any place in the world which required a political leader to relinquish his political affiliation once he was elected.

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39. Senior Assistant Legal Adviser 2 informed members that apart from section 31(1) of CEEO, section 16(7) provided that a nomination of a candidate should be accompanied by a declaration to the effect that he stood for the election in an individual capacity. That might prevent a candidate from running in an election in the capacity of a member of a political party.

Response of the Administration

40. SCA made the following responses –

- (a) the Annex to the Administration’s paper provided a summary of public views on the composition of the nominating committee received by the Constitutional Development Task Force during public consultation. Article 45 of the Basic Law required that the nominating committee shall be “broadly representative”. The Administration had not taken a view on the composition of the nominating committee. The Administration envisaged that the issue would be widely discussed within and outside LegCo in future;
- (b) all political leaders in the world needed to gain the support of different parties in the respective parliaments in order to implement their policies effectively. There was no exception for the leader of Hong Kong. A CE candidate should relinquish his political affiliation after he had been elected, so that he could solicit support from LegCo Members of different political parties and from different sectors of the community;
- (c) the present system provided opportunities for members of political parties to join the Government. Mr Henry TANG, a member of a political party, was appointed as a principal official (PO) under the accountability system, and some Members of the Executive Council were also members of political parties;
- (d) it was the duty of CE and POs to communicate with political parties. To describe such an activity as “an affair” was disrespectful. Effective communication between the Administration and Members would be conducive to reaching a consensus on proposals put forth by the Government. The passage of the Appropriation Bill which was supported by more than 50 Members was one such example. The community also welcomed a cordial relationship between the Administration and LegCo;
- (e) it was inappropriate to draw comparison between the CE of Hong Kong and the President of United States/China. The history of political development in the Mainland and the US was different from that of Hong Kong. In countries such as Canada and the United

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Kingdom, political parties had membership as large as a few thousands in a province. In Hong Kong, LegCo elections and CE elections had only been taking place for some 20 years and less than 10 years respectively. Given that the political system and political parties of Hong Kong were at a developmental stage, the Administration considered that the present requirement for CE to relinquish his political affiliation was appropriate. The Administration was committed to promoting the development of political parties. For example, there were plans to further develop the political appointment system to provide more opportunities for people with political aspiration to join the Government. Also, the Administration had proposed to extend the financial assistance scheme to candidates in District Council elections; and

- (f) the Bill would resume its Second Reading debate at the Council meeting on 10 May 2006. The Administration considered that the policy set out in CEEO and the Bill was appropriate and had no intention to introduce another bill to further amend CEEO in the near future. The Administration envisaged that the community would have another opportunity to discuss directions for future constitutional development between 2007 and 2012.

41. The meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
2 June 2006