

立法會
Legislative Council

LC Paper No. CB(2)2873/05-06
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 15 May 2006 at 2:30 pm
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 James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
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 Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon Daniel LAM Wai-keung, BBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung

Hon CHEUNG Hok-ming, SBS, JP
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 Albert HO Chun-yan
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon MA Lik, GBS, JP
Hon LEUNG Kwok-hung

Public Officers attending : Item IV

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Dr Patrick HO
Secretary for Home Affairs

Mrs Carrie LAM
Permanent Secretary for Home Affairs

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

Mrs Pamela TAN
Director of Home Affairs

Ms Anissa WONG
Director of Leisure and Cultural Services

Item V

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

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

Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional Affairs

Mr LAM Man-ho
Chief Electoral Officer
Registration & Electoral Office

Item VI

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 : Ms Elyssa WONG
Deputy Head, Research and Library Services Division

Mr Jackie WU
Research Officer 1

Mr CHAU Pak-kwan
Research Officer 5

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)1968/05-06 – Minutes of meeting on 20 March 2006)

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

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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)1802/05-06(01) – Paper on "Proposals on the method for selecting the Chief Executive" provided by the Democratic Party; and
- (b) LC Paper No. CB(2)1992/05-06(01) – Letter dated 11 May 2006 from the Administration on "Amount of Financial Assistance Payable if Donations were not Deducted".

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1989/05-06(01) – List of outstanding items for discussion

LC Paper No. CB(2)1989/05-06(02) – List of follow-up actions)

3. Secretary for Constitutional Affairs (SCA) said that following the enactment of the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006, the relevant subsidiary legislation would also need to be amended to prepare for the 2007 Chief Executive (CE) election. He proposed to discuss "Amendments to subsidiary legislation for the 2007 Chief Executive Election" at the next meeting to be held on 19 June 2006. Members agreed.

4. Ms Emily LAU said that the Panel had discussed the methods for selecting CE and forming the Legislative Council (LegCo) by universal suffrage at a number of meetings. The Panel should eventually arrive at some conclusions on the electoral models that were most suitable for Hong Kong. In order for the Panel to reach a consensus on the models, she requested the Secretariat to prepare a paper summarising the proposals received from members of the public and political parties/groups to facilitate further discussion by the Panel.

5. Dr YEUNG Sum asked whether the Administration could provide a paper setting out its preferred models for selecting CE and forming LegCo by universal suffrage for the consideration of members.

6. SCA responded that at this stage, the Administration had not taken a view on the possible models for selecting a CE and forming LegCo when the ultimate aim of universal suffrage was attained. It had, however, provided relevant information relating to universal suffrage for members' reference at the past Panel meetings. He informed members that in the second half of 2006, the Committee on Governance and Political Development under the Commission on Strategic Development (CSD) would discuss possible models for electing CE and LegCo when attaining universal

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suffrage, and would aim to conclude discussions by early 2007. Based on the conclusions of these discussions, a roadmap for universal suffrage could be drawn up. Meanwhile, the Administration would continue to listen to members' views at Panel meetings.

7. Ms Emily LAU said that CSD did not have the mandate of the people. Given that the Panel was the most appropriate forum to discuss the issue of universal suffrage, there was no point for the Panel to follow the progress of CSD. She suggested and members agreed that the issue be discussed at the next meeting, with a view to arriving at some conclusions.

IV. Review of the role, functions and composition of the District Councils
(LC Paper No. CB(2) 1863/05-06 on 27 April 2006 – Consultation Document on "Review on the Role, Functions and Composition of District Councils")

LC Paper No. CB(2) 1863/05-06 on 27 April 2006 – Leaflet on "Enhancing work in districts, Strengthening District Councils"

LC Paper No. CB(2)1863/05-06(01) – Paper on "Review on the Role, Functions and Composition of District Councils" provided by the Administration

LC Paper No. CB(2)1863/05-06(02) – Power-point presentation material on "District Council Review" provided by the Administration)

Feedback from some District Councils (DCs)

8. Permanent Secretary for Home Affairs (PSHA) informed members that since the publication of the Consultation Document on "Review of the Role, Functions and Composition of the District Councils" (the Consultation Document), representatives of the Administration had visited five DCs, namely the Tuen Mun DC, the Tai Po DC, the Kwai Tsing DC, the Wong Tai Sin DC and the Eastern DC. They were briefed on the package of proposals set out in the Consultation Document. While DC members had different views on the package of proposals, they generally supported the direction of the Review. The Administration would visit the remaining 13 DCs in the near future. PSHA summarised the discussion with the five DCs as follows –

- (a) two DCs had volunteered to participate in the pilot scheme;
- (b) the Administration had identified some 1 700 district facilities for the 18 DCs to be involved in their management. Each of the five DCs had no strong views on the list of district facilities presented to them;

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- (c) the five DCs welcomed the proposed annual provision of \$300 million for leisure and sports programmes and community involvement projects and another \$300 million for minor works to the 18 DCs. On the former, many DC members expressed support for collaboration with other sectors in organising such programmes and activities. Some DC members had expressed the view that the proposed provisions were insufficient;
- (d) the Administration would issue a manual providing guidelines on the use of DC funds for the minor capital works and community involvement projects; and
- (e) the five DCs generally supported the proposed remuneration package. Some DC members held the view that the revised remuneration package should take effect in the coming year instead of the commencement of the next DC term. The Administration was willing to consider advancing the implementation of the new accountable Winding-up Allowance for a ward office in the current term.

Role and functions of DCs

9. Mr CHEUNG Man-kwong queried why the executive departments would only follow the decisions of DCs on the management of district facilities as far as possible, when the four conditions set out in paragraph 6 of the Administration's paper, namely the statutory powers and obligations of the executive departments, the financial authorities of these department, relevant international professional or safety standards, and prevailing government policies on staff and resources management, were met. He considered that the executive departments had been given too much discretion. As the Review sought to devolve more power to DCs, executive departments should be obliged to follow the decisions of DCs when the four conditions were met.

10. Secretary for Home Affairs (SHA) and SCA responded that following the abolition of municipal councils, the Administration welcomed DCs to play an active part on the management of district facilities. CE had announced in his 2005-06 Policy Address that DCs would participate in the management of some district facilities, such as leisure and sports facilities. The statutory authority responsible for the delivery of these facilities was the Leisure and Cultural Services Department (LCSD). Under the proposed new partnership arrangement, LCSD would consider DCs' views on the management and the priority for the provision of these facilities, and discharge its duties within the limits of its statutory powers and obligations. An explanation would be given to the DC concerned in the event that its request could not be acceded to. If there were differences in opinion between the executive departments and DCs, the case would be referred to the Steering Committee on District Administration (SCDA). PSHA supplemented that given

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that there would be unforeseen circumstances, the Administration would have difficulties in specifying each and every of those situations that executive departments might not follow the decisions of DCs, hence the reference to doing so “as far as possible”.

11. Mr CHEUNG Hok-ming asked about the relationship between the District Management Committees (DMCs) and SCDA and whether DMC was accountable to SCDA. Ms Emily LAU asked about the demarcation of duties between district officers (DOs) and DC members.

12. SHA explained that DO, as Chairman of DMC, was the representative of Government at district level. Consisting of representatives from 12 executive departments, the DC Chairman and Vice-chairman, DMC served as a forum for inter-departmental consultation on district matters and for coordinating the provision of public services and facilities to ensure timely response to district needs. In future, issues that could not be resolved by DMCs could be referred to SCDA for early resolution. SCDA would be chaired by SHA or PSHA and attended by the relevant heads of departments. It served as a forum for top management in various departments to exchange views on issues of mutual concern and to resolve inter-departmental district management issues, as well as to formulate strategies and provide a steer to DOs and DMCs on enhancing district work.

13. Dr YEUNG Sum said that the aims of the Review was to improve the provision of district services, enhance DC members’ role in the management of district facilities and provide more opportunities for grooming political talents. These aims could only be achieved if the powers of financial management, staffing matters and policy making in district affairs were devolved to DCs. Under the package of proposals, DCs did not have financial autonomy over the use of DC funds, nor could they make decisions relating to manpower deployment or policies for district affairs. DCs were in fact not given substantive power in district administration.

14. SCA said that the package of proposals sought to enable DCs to play an active role in the management of some district facilities to meet the needs of the people in the districts. Drawing an analogy, he said that in future, the head of executive departments would assume the role of a “managing director” and their staff would visit the 18 DCs to listen to the views of “directors”, i.e. DC members, on the provision of district facilities and services. DCs were empowered to prioritise district projects and advise the executive departments accordingly. The departments concerned were required to manage district facilities within the limits of their statutory powers and resources available. Staff management, however, would remain in the hands of the executive departments. Although no major operation would be conducted on the DC structure, the relationship between the executive departments and DCs would be more interactive in future with a view to progressively enhancing the role of DCs in district administration.

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15. PSHA supplemented that under the package of proposals, DCs would have greater autonomy on minor works items. The Consultation Document proposed to create a dedicated capital works block vote with an annual provision of \$300 million for DCs to endorse and implement works projects costing under \$15 million each. There were different ways to allocate the \$300 million among the 18 DCs. For instance, an allocation could be made on the basis of objective criteria such as the population size and district size, or a portion of the funds could be allocated to individual DCs for projects of a smaller scale and the remaining portion to be kept centrally in executive departments for projects of a larger scale. Once the fund was apportioned to respective DCs, DCs could decide on their own the priority of their works. It was no longer necessary for them to request funding through bids submitted by executive departments as practised under the existing mechanism. The proposed funding provision would enhance the involvement of DCs in the design and execution of district works projects. When DCs decided to go ahead with a works project, they could opt for the established mechanism to involve works departments such as the Architectural Services Department in the design and execution of these projects. They could also opt for direct engagement of contractors or consultants to carry out minor works projects in close collaboration with LCSD, the Home Affairs Department and the Architectural Services Department.

16. Dr YEUNG Sum questioned the need to conduct a pilot scheme, given that no major operation would be made on the DC structure. SHA explained that in implementing the proposals set out in the Consultation Document, a major change in the culture of the Government was envisaged, i.e. the executive departments were asked to follow the decisions of DC as far as possible. In addition, executive departments had to co-operate with DCs to provide better service to the people in the spirit of allowing DCs to have greater involvement in the management of district facilities. As the proposed arrangements would have a considerable impact on departmental operations, it would be prudent to start on a pilot basis. The pilot scheme would last for about 10 months, tentatively starting from January 2007.

17. Mr CHIM Pui-chung expressed concern that if DC members were given the authority to select suppliers in the provision of district services, there might be conflict of interest. He questioned whether the purpose of enhancing the role of DCs was to please the political parties and if so, this would be unfair to independent candidates running in DC elections. He also queried whether the underlying purpose of the package of proposals was to create another power centre, apart from LegCo which was provided under the Basic Law.

18. SCA responded that the increase in funding provisions for environmental improvement and community involvement projects, as well as district minor works, sought to provide more resources and room for DCs to serve the people. It also sought to encourage political talents to participate in public administration. The role of DCs would be enhanced within the framework laid down in the Basic Law. There was no question of the Administration introducing the package of proposals

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as a means to create another power centre or to please the political parties. Irrespective of whether DC candidates were independent or affiliated with political parties, they received the same treatment, e.g. the financial assistance scheme was offered to all DC candidates in an election. SCA further said that voters were aware of the performance of individual DC members and would know who to vote for in an election. As regards the concern about conflict of interest when DC members were given more power, established procurement policies and tendering procedure would ensure contracts were awarded to suppliers in a fair manner.

19. Mr Daniel LAM said that at a recent meeting convened by Mr LAU Wong-fat, the Member representing the DC functional constituency (FC), the chairmen and vice-chairmen of the 18 DCs generally expressed support for the package of proposals put forth in the Consultation Document. He personally considered it unrealistic to expect that all the powers of the former municipal councils would be devolved to DCs. While he considered that the package of proposals was a step forward, DCs should be given more power in the management of territory-based facilities. He wished to put on record that the funding provision to each DC should be based on the size of the district, rather than its population. He quoted the example of the Island DC which had a large geographical coverage, and its facilities were enjoyed by local residents as well as visitors.

20. SHA responded that the Administration would encourage cross-district cooperation. The provision of \$300 million for works projects would provide room for different DCs to work together on projects of common interests.

21. Ms LI Fung-ying asked how LCSD would handle the differences in opinion among the different DCs on the provision and management of cross-district facilities.

22. SHA clarified that the scope of this empowerment exercise covered district-based facilities only. In other words, territory-based facilities such as museums and civic centres were under LCSD's purview.

23. Mr CHAN Kam-lam expressed concern whether DC members could cope with the additional workload arising from the management of some 1 700 district facilities. He said that these duties should be transferred to DCs in a gradual manner, given the existing heavy workload. He pointed out that DCs would be faced with the dilemma of whether or not to take part in the pilot scheme. Refusal to participate would give the impression that they were not keen in accepting more responsibilities, which deviated from the mainstream view of DCs. On the other hand, if they participated, they would face an immense workload. He asked about the criteria for selecting suitable districts to join the pilot scheme and for evaluating the success of the scheme.

24. SHA explained that each DC would be responsible for managing about 95 district facilities under the proposal. Over 60% of these facilities was recreational

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in nature and was closely related to livelihood of the people in the district. He envisaged that many DC members would be keen to take up these functions. As regards the criteria for selecting districts for the pilot scheme, SHA said that the Administration intended to select districts with a good different mix of facilities and characteristics. For example, district with old facilities versus that with new facilities, densely populated district versus sparsely populated district, etc. to test the effect of the package of proposals.

25. PSHA supplemented that the additional workload generated in each DC would depend on the extent of its involvement. If DCs chose to be involved in the design and execution of every minor works projects, they would have more workload than those DCs which preferred to let the executive departments carry out such work under their steer. To facilitate the pilot scheme, a manual setting out the guidelines on the use of DC funds and works projects to be undertaken by DCs would be prepared.

26. Mr CHEUNG Hok-ming asked whether the staff establishment of the DC Secretariat would be strengthened, given the added workload. PSHA said that paragraph 9.7 of the Consultation Document estimated that additional staff, including that of the DC secretariat, would be required in order to support DCs to implement the package of proposals. In fact, for DCs under the pilot scheme, the DO concerned would be requested to assess the manpower requirement, taking into account the workload and redeployment of internal resources.

27. Miss CHOY So-yuk said that given DCs' knowledge of the districts, the Administration should consider devolving substantive power to them in the following areas –

- (a) management of private streets. DCs could decide on matters relating to cleanliness and hygiene, paving of roads and illumination of private streets;
- (b) management of hygiene black spots. DCs could supervise the work of out-sourced contractors and decide whether or not to renew their contracts, having regard to their performance; and
- (c) management of greening projects. DCs could plan and decide on the areas where greening work was required, and ensure these projects were carried out in an economical and speedy manner.

28. SHA responded that the package of proposals had involved DCs in the three areas mentioned by Ms CHOY. It was, however, expected that problems would arise from the management of private streets, as matters such as the resumption of land and maintenance of streets would require the consent of the landlord concerned.

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29. Ms Margaret NG said that the Civic Party had reservations about the package of proposals put forth in the Consultation Document. Some DC members had reflected to the Civic Party that the proposals would not help improve much of the environment in the districts. The Civic Party was conducting public consultation and would make known its position in due course.

Remuneration package for DC Members

30. Mr Howard YOUNG said that the Liberal Party welcomed the package of proposals put forth in the Consultation Document. The Liberal Party was consulting the public on the Review and would draw its own conclusions later. Referring to paragraph 6.14(d) of the Consultation Document, he considered that the proposed accountable Setting-Up Allowance of \$100,000 per term to cover the cost of setting up a ward office was too high. He pointed out some DC members would not use up the allowance, as they might keep their office expenses to the minimum by renting offices in public housing estates and renting basic office equipment. In the event that there was some savings, he asked whether DC members could use the money for other purposes such as hiring an office assistant for the purpose of enhancing communication with local residents.

31. PSHA explained that the \$100,000 covered costs such as renovation of premises, purchase of furniture and equipment, IT equipment, and telephone installation. DC members who had already set up a ward office before 2008 would be eligible for 50% of the allowance only. If Members considered that the allowance was too high, there was always room for adjustment. In fact, DC members would be reimbursed for setting-up expenses based on the actual costs incurred. However, since the setting-up allowances was intended as a non-recurrent item, redeployment of part of it to cover recurrent staff expenses would not be appropriate.

32. Mr CHAN Kam-lam expressed concern whether the increase of 10% in the remuneration package could compensate for the additional workload entrusted to DC members. PSHA explained that the remuneration package had mainly been adjusted to take account of inflation or deflation in the last decade. The purpose of the adjustment was to ensure that DC members did not suffer pecuniary embarrassment for the time they spent on community service.

33. Ms Emily LAU and Dr YEUNG Sum said that in order to attract political talents to participate in district affairs, the issue of retirement benefits for DC members should be addressed.

34. SCA said that the Administration was aware of views on retirement benefits for LegCo Members. In considering any suggestions about the retirement benefits for DC members, the Administration would have regard to the arrangements for LegCo Members. PSHA added that the Consultation Document had proposed to introduce a new non-accountable Miscellaneous Expenses Allowance of \$4,000

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per month to cover items like entertainment expenses, cost of printing and consumables, fees for self-development courses and minor purchases. Since the publication of the Consultation Document, some DC members had proposed that half of the allowance could be used to cover retirement benefits or medical expenses. Since this proposed allowance was a non-accountable one, the Administration had no difficulty with the proposal.

Composition of DCs

35. Mr Ronny TONG noted that the Consultation Document did not cover the abolition of appointed membership of DCs and asked how the public could give their views on the issue. He also asked about the criteria for appointment as DC members by the Administration. Ms LI Fung-ying, Ms Emily LAU, Ms Margaret NG and Dr YEUNG Sum expressed similar concern.

36. SCA explained that before appointing a person to a DC, the Government took into account his ability, experience, professional qualifications and background, commitment to serve the public, integrity and public service record. The issue of appointed membership of DCs were addressed in paragraphs 7.9 to 7.18 of the Consultation Document. It was the view of the Administration that appointed members had made important contributions to the work of DCs. It was hence desirable to retain appointed seats for the next term DC in 2008 to ensure smooth delivery of district services.

37. SCA further said that the Administration had in fact proposed to adopt the phased abolition of appointed DC membership as part of the package of proposals for the 2007 CE election and the 2008 LegCo election. Regrettably, the package of proposals did not receive a two-thirds majority support of all LegCo Members, as required by Annexes I and II of the Basic Law. The proposal on phased abolition of appointed DC membership could not be pursued further. That said, the future composition of DC could be discussed by the public in the context of this review.

V. Practical arrangements for the 2006 Election Committee subsector elections

(LC Paper No. CB(2)1971/05-06(01) – Paper on "Practical arrangements for the 2006 Election Committee subsector elections" provided by the Administration)

38. Chief Electoral Officer of the Registration and Electoral Office (CEO) introduced the paper which set out the key electoral arrangements proposed by the Electoral Affairs Commission for the Election Committee (EC) subsector elections to be held in December 2006.

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Polling stations and polling day

39. Mr Howard YOUNG said that the electoral arrangements must be convenient to registered voters. With 100 polling stations and 200 000 registered voters involved in the EC subsector elections, about 2 000 voters would be assigned to each polling station on average. He asked whether the Registration and Electoral Office (REO) intended to set up more polling stations in areas which had a high voter turnout rate in 2000. He further asked whether REO would introduce advanced information technology to facilitate voters to cast vote in any polling stations of their choice instead of at a designated polling station.

40. Mr CHEUNG Man-kwong said that the EC subsectors, especially the professional ones, had a low voter turnout rate on a previous occasion because the polling day did not fall on a Sunday. He urged the Administration to consider fixing a suitable date for polling and explore the possibility of setting up polling stations in close proximity to the working place of the voters of the professional EC subsectors, e.g. polling stations near to schools for the Education Subsector.

41. SCA said that the polling for the 2006 EC subsector elections would be held on Sunday, 10 December 2006. The computer system to be used for 2006 EC subsector elections did not include any feature which would allow voters to cast votes at any polling stations.

42. CEO explained that the designation of polling stations would depend on the distribution of registered voters in the 18 districts. Based on the geographical distribution of voters, REO would consult the District Office concerned about the need to set up more polling stations in a district with a larger electorate.

43. Ms Emily LAU said that the Administration was insensitive about the feeling of the people of Hong Kong. It was ironic that the EC subsector elections, where some three million voters were deprived of voting, were to be held on the United Nations Human Rights Day. She did not understand why the people of Hong Kong could not elect CE by "one person, one vote".

44. SCA explained that choosing 10 December 2006 to be the polling day was based on pragmatic considerations. If the election was to be held on 17 December 2006, and if it had to be deferred due to unforeseen circumstances such as inclement weather, the new polling day would fall on Christmas Eve, 24 December 2006 which would not be convenient to some voters. On the question of involving three million voters in the CE election, SCA said the package of proposals put forth in the Fifth Report of the Constitutional Development Task Force sought to increase the democratic elements in the electoral system by expanding the participation of DC members in the EC subsector elections and through which some three million registered voters would be involved. Regrettably, the package of proposals was voted down by the opposition camp, although it was supported by the public at large.

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45. Dr Fernando CHEUNG noted that CE and secretaries of departments had repeatedly used the term “opposition camp” and asked about its definition. He said that he had voted against some Government’s proposals according to the wish of people and wonder whether he belonged to the “opposition camp”. He urged the Administration to stop using the term as it had a labelling effect. Ms Audrey EU said that “opposition camp”, as defined by some overseas countries, meant “Government in waiting” or “alternative Government”. Such definitions, however, did not appear to be applicable to Hong Kong. Mr Martin LEE said that Members had different stance on various issues and it was not uncommon for Members to vote in favour of one proposal and against another. He found it inappropriate to label any Member as “the opposition”. Ms Margaret NG said that the term, when used in Hong Kong, somehow had a bad connotation. She noted that in democratic countries, the views of the “opposition camp” were respected.

46. SCA explained that some overseas countries had defined “opposition camp” as political parties and groups which held different views from the Government. With regard to the proposed package for the electoral methods for 2007/08, the opposition camp had clearly acted against public opinions. Despite the foregoing, it was the position of the Administration to maintain close liaison with LegCo Members of different political parties and groups, as well as independent Members, to foster co-operation and solicit their support, with a view to reaching consensus on issues and policies of importance to the community and bringing about effective governance.

Design of ballot papers

47. Mr Howard YOUNG said that at the last EC subsector elections, a number was allocated to each candidate by drawing of lots. The names of candidates appeared on a ballot paper in the order of the numbers allocated. With up to as many as 90 candidates’ names appeared on a ballot paper, he expressed concern whether a voter would have difficulty in identifying the candidates of his choice. He urged the Administration to make the voting procedure more user-friendly, e.g. listing the candidates’ names by alphabetical order on a ballot paper. He also asked about the remedial measure if the number of candidates a voter voted for exceeded the number required.

48. Mr CHEUNG Man-kwong asked whether emblems of political parties would be printed on the ballot paper for easy identification. Mr Ronny TONG said that it was inappropriate to allow political parties to have their emblems printed on the ballot paper, given that independent candidates would be deprived of such a right. He suggested adopting a joint ticket arrangement whereby several candidates would be grouped under one ticket, say 10 candidates per ticket, and a number would be allocated to each ticket by drawing of lots. A joint ticket arrangement would allow easy identification of candidates by voters.

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49. SCA said that it was a statutory requirement for the order of candidates appearing on a ballot paper and the number assigned to each candidate to be determined by drawing of lots. On Mr CHEUNG's suggestion, SCA said that the ballot paper would be too congested to accommodate any emblem of candidates or their sponsoring bodies, given the possibly large number of candidates involved. The Administration, however, would send an introductory leaflet on the candidates to voters before the polling day. Voters could bring along the leaflet to the polling station or ask the Presiding Officer for a copy to facilitate voting on polling day. If a voter made an error in marking a ballot paper, he could request the Presiding Officer to issue another ballot paper to him. On Mr TONG's proposal on a joint ticket arrangement on the ballot paper, SCA said that the Administration would be prepared to listen further to members' views.

Vote counting arrangements

50. Ms Audrey EU recalled that at a CE Question and Answer Session, CE had said to the Member representing the Agriculture and Fisheries FC that as the Agriculture and Fisheries EC subsector had supported him in the CE by-election, members of the subsector could convey any request to him for consideration. Ms EU said that there were 38 EC subsectors and each subsector could make different requests to CE. Given that the EC subsector elections were conducted in a small circle, it was necessary to prevent the elections from becoming a platform for secret political dealings. She also expressed concern about the protection of secrecy of votes if vote counting would be conducted in individual polling stations, having regard to the small number of voters involved in each station.

51. SCA said that it was not uncommon for candidates to make certain promises to canvass for votes in an election. Given that Hong Kong was a transparent, open and compact society, any so-called secret dealings between a candidate and his voters could be uncovered easily. In addition, whatever promises a CE candidate might make at an election forum, any legislative and financial proposals put forth by his Administration after he assumed the office of CE would require the approval of LegCo. The Government was also subject to the monitoring of the media, the public, and an independent judicial system. Hong Kong had an effective checks and balances system to ensure clean elections. SCA further said that in order to protect the secrecy of votes, the ballot boxes of the 100 polling stations would be delivered to a central counting station. After verification of the number of ballot papers received at individual stations, the ballot papers for a subsector would be mixed together before counting.

Voter registration

52. Dr Fernando CHEUNG said that some organisations representing female victims of family violence wished to become corporate voters, but they were not able to do so because REO required them to make public their business addresses, and there was one such case known to him. Given that these organisations were

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subjected to the attack of batterers, they could not disclose their addresses for security reason. He asked about the ways to enable these organisations to be registered as corporate voters in an EC subsector election.

53. CEO explained that it was a statutory requirement that a corporate voter should provide its business address so that relevant election materials could be sent to it. CEO said that he would check the case quoted by Mr CHEUNG and see what assistance could be offered to the organisation concerned.

(Post-meeting note : According to the Administration, REO touched base with the organisation, and the organisation has now been registered.)

54. Mr Martin LEE said that the recent Government Announcements in the Public Interest (APIs) urging qualified persons to register as voters was misleading, as they might give an impression that all registered voters were eligible to vote in the EC subsector elections.

55. Acting Permanent Secretary for Constitutional Affairs clarified that at present, two sets of API were broadcast in the television encouraging qualified persons to register as voters. The first API was targeted at all persons eligible to be registered as voters for geographical constituency (GC) elections. The second API was targeted at persons eligible for registration as voters in the EC subsector elections. SCA added that registered voters of the EC subsectors would receive poll cards in December 2006 notifying them of the polling arrangements, and it should be clear that only these voters could vote at the EC subsector elections.

VI. Model for forming the Legislative Council by universal suffrage

(LC Paper No. CB(2)1971/05-06(02) – Paper on "Discussion regarding the formation of the Legislative Council by universal suffrage" provided by the Administration

IN24/05-06 – Information Note on "Functional Representation in Ireland and Slovenia" prepared by the Research and Library Services Division

IN25/05-06 – Information Note on "Compliance of the Electoral System of the Legislature with the International Covenant on Civil and Political Rights: New Zealand" prepared by the Research and Library Services Division

FS14/05-06 – Fact Sheet on "Nationality Requirement of Legislators in Selected Countries" prepared by the Research and Library Services Division)

Information Notes prepared by the Research and Library Services Division (RLSD)

56. Mr Jasper TSANG said that at a previous meeting, Mr Ronny TONG queried whether the “one person, two votes” system adopted by Germany and New Zealand, i.e. the second vote was to be cast on a party list, would contravene Article 25(2) of the International Covenant on Civil and Political Rights (ICCPR) on the ground that independent candidates would be prejudiced. In response to members’ request, RLSD had consulted Prof. Jack VOWLES, Professor of Political Studies of the University of Auckland. In paragraph 4.8 of the Information Note (IN25/05-06), Prof. VOWLES had explained that “Article 25 does not seem to require absolute fairness, but only the right to stand for election. So long as an independent candidate can stand freely in one part of the system, that is, for the electorate vote, this would seem to imply compliance”. Mr TSANG asked whether the point on “absolute fairness” also applied to voters, i.e. ICCPR was complied with so long as voters had the right to participate in a part of the election, e.g. either GC or FC election.

57. Mr Ronny TONG said that the last sentence of paragraph 4.7 of the Information Note had made clear that if the mixed member proportional electoral system adopted by Germany and New Zealand had violated fundamental human rights, the system would have been condemned and forced to be revised long ago. He said that in determining whether the electoral system of a country had violated human rights, one had to look at the methods for electing the head of government and members of the legislature. If the head of the government was elected by universal suffrage, there was a high element of democracy and a mixed system was acceptable. The FC system in Hong Kong, however, had been under scathing attack for non-compliance with ICCPR for many years and yet was still in force.

58. Deputy Head of RLSD responded that the explanation given by Prof. VOWLES was related to the electoral systems in Germany and New Zealand. It was necessary to seek comments from Prof. VOWLES on the point raised by Mr TSANG, if required. She said that in Germany and New Zealand, the head of government was selected on the basis that he had obtained majority support from members of the parliament who were returned by universal suffrage.

59. Ms Emily LAU said that she did not understand the point made by Mr TSANG. She found the electoral system in New Zealand acceptable, as paragraph 4.9 of the Information Note pointed out that a party list could be one person who ran for the party vote. In New Zealand, a candidate only needed 500 fee-paying members in order to be registered as a political party, which was not an unreasonable hurdle. It was inappropriate for Mr TSANG to draw comparison on the electoral systems between Hong Kong and New Zealand, given that the FC system in Hong Kong was a small circle election.

60. Mr Jasper TSANG said that Mr Ronny TONG had expressed the view that the electoral system in New Zealand was unfair because voters who wished to cast

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their second vote to an independent candidate was not allowed to do so. The point he was trying to make was whether Article 25 of ICCPR required “absolute fairness” in an electoral system. He pointed out that even in a GC election, there was no “absolute fairness” because there were variations among the constituencies in respect of the ratio between the number of seats and the size of the electorate. In his view, there was no absolute standard for universal suffrage. In order to develop an electoral system that could achieve reasonable fairness and be widely accepted by the public, it was necessary to take into account the actual situation of the place concerned.

Issues raised by members

61. Dr YEUNG Sum said that it was the view of the Democratic Party (DP) that universal suffrage should be implemented in 2012 in Hong Kong. DP had proposed a “mixed system” for forming LegCo. Under the proposal, each registered voter was entitled to two votes, one for returning half of the Members of LegCo through the “single seat, single vote” system, and the other for returning the remaining Members through the proportional representation system on a territory-wide basis so as to provide opportunities for business, professionals and other small sectors of society to participate in elections. He said that DP’s proposal could be passed to CSD for information.

62. Ms Emily LAU said that DP’s proposal was acceptable. She noted that some people had suggested a bicameral system with Members returned by FC elections to form the upper chamber. She found such proposal unacceptable. In many democratic countries, the basis for universal suffrage was “one person, one vote”. In New Zealand, the “one person, two votes” system was operating on the basis that the election was fair to all political parties participated in the election. One should bear this principle in mind in designing the electoral system of Hong Kong. For example, it should allow political parties securing a certain percentage of votes to take a proportional number of seats in LegCo.

63. Mr Ronny TONG held the view that the Basic Law did not provide for a bicameral system for the legislature unless it was amended. If a bicameral system was to be discussed at all, the prerequisite should be the implementation of universal suffrage for the CE election. He asked whether the Central Authorities had given the green light for a bicameral system, and if not, it would be a waste of time to pursue the matter.

64. Mr Jasper TSANG asked about the basis for DP’s view that the proportional representation system it proposed would provide opportunities for small sectors to participate in elections. In his view, it would be difficult, say, for a candidate representing the ethnic minority to win in an election.

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65. Dr YEUNG Sum explained that the proportional representation system proposed to be operated on a territory-wide basis would provide better chance for candidates representing the small sectors to be returned in an election.

Response of the Administration

66. SCA made the following responses –

- (a) the Administration had not taken a view on the final model for forming LegCo upon attaining the ultimate aim of universal suffrage. The bicameral system was one of the views received during public consultation by the Constitutional Development Task Force and the issue had been discussed by CSD. There were views that the implementation of a bicameral system would require amendment to the Basic Law, either by amending Annex II or the main provisions. There were also views that universal suffrage for the selection of CE could be implemented ahead of that for LegCo election. Irrespective of which model was to be adopted, the ultimate aim of electing all the members of LegCo by universal suffrage, as stipulated in the Basic Law, must be attained;
- (b) it was the view of the Administration that political parties would continue to play an important role in the LegCo election. In the past three years, the Administration had strived to create an environment that was conducive to political party development and provide more room for political talents to participate in public administration. The Administration would continue to pursue in this direction when exploring the models for forming the legislature;
- (c) the Administration noted DP's view that the list voting system of the proportional representation system could be retained in the future LegCo election;
- (d) if DP's proposal was to be implemented, it had to gain a two-thirds majority support of all LegCo Members, including FC members. This was a political reality that one must face. In the view of the Administration, the issue of universal suffrage had to be widely discussed with a view to exploring a model that could be supported by the public at large; and
- (e) with the Panel's agreement, the Information Notes prepared by RLSD and DP's proposal would be forwarded to CSD for information.

67. In response to the points made in paragraph 66(d) above, Ms Emily LAU said that the Administration had demonstrated its ability to convince some

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Members of LegCo to change their stance on the package of proposals for the electoral methods for 2007/08. She, therefore, would not underestimate the ability of the Administration to persuade FC Members to accept DP's proposal, if it wished to do so.

68. SCA responded that the Administration had always made the best effort to solicit support from Members on proposals put forth by the Government. The package of proposals for the electoral methods for 2007/08 was intended to serve as a transit stop on the road to universal suffrage, and yet had faced great opposition. The problems to be encountered would be even greater if universal suffrage were to be achieved in one go. He said that as a matter of fact, the return of half of LegCo Members by a proportional representation system on a territory-wide basis would give rise to a range of technical problems which had to be addressed.

VII Any other business

69. Members agreed that a special meeting should be held to receive public views on the Consultation Document on "Review of the Role, Functions and Composition of District Councils". The Chairman said that he would work out a meeting date with the Clerk after the meeting.

(Post-meeting note : The special meeting would be held from 9:00 am to 12:00 noon on 11 July 2006.)

70. The meeting ended at 5:47 pm.

Council Business Division 2
Legislative Council Secretariat
31 July 2006