

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 17 July 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
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yeet, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Timothy FOK Tsun-ting, GBS, 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, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki

Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon KWONG Chi-kin
Hon TAM Heung-man

**Members
absent** : Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon MA Lik, GBS, JP
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Patrick LAU Sau-shing, SBS, JP

**Public Officers
attending** : Item II

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

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

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

**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. Information papers issued since the last meeting

Members noted that the Information Note on "Compliance of the Electoral System of the Legislature with the International Covenant on Civil and Political Rights: Germany" prepared by the Research and Library Services Division (IN34/05-06) had been issued since the last meeting.

II. Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the Election Committee Subsector Elections

(Proposed Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections issued by the Electoral Affairs Commission in July 2006)

LC Paper No. CB(2)2753/05-06(01) – Paper provided by the Administration)

Briefing by the Administration

2. Secretary for Constitutional Affairs (SCA) informed members that the coming Election Committee (EC) subsector ordinary elections would be held on 10 December 2006. The Electoral Affairs Commission (EAC) had updated its existing guidelines to facilitate the conduct and supervision of that election. The Proposed Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections (the proposed guidelines) were issued by EAC on 15 July 2006 for public consultation from 15 July to 14 August 2006.

3. Chief Electoral Officer (CEO) introduced the paper and highlighted the major changes in the proposed guidelines, as compared with the guidelines issued in 2005, as set out in Annex B to the paper.

Discussion

Issues relating to the proposed guidelines

4. Dr YEUNG Sum asked whether the proposed guidelines would govern Principal Officials (POs)' participation in election-related activities in the EC subsector elections. He expressed concern whether a PO who showed support for a particular candidate would prejudice the election of other candidates at the election.

5. SCA explained that unlike civil servants, POs were political appointees and allowed to participate in election-related activities. However, POs had to

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comply with a “Code for Principal Officials under the Accountability System” and EAC's guidelines on election-related activities. Regarding the guidelines issued by EAC, SCA added that the proposed guidelines applicable to POs were the same as those for the 2003 District Council election and the 2004 Legislative Council (LegCo) election. Paragraphs 19.9 to 19.12 of the proposed guidelines stipulated that a PO should not use any public resources for any election-related activities. In addition, a PO should ensure that when taking part in such activities, great care should be taken to ensure that there was no actual or potential conflict of interest with the business of the government or his own official duties.

6. Mr CHAN Kam-lam asked whether the proposed guidelines would apply to websites which sought to promote or prejudice the election of a candidate or candidates at the election.

7. SCA said that election advertisements in the form of electronic messages and websites were covered in paragraph 8.2 of the proposed guidelines. CEO supplemented that the same set of guidelines applied irrespective of whether election advertisements were published on websites or in other forms. Before display of any election advertisement, a candidate must deposit a copy of a declaration and two copies of the election advertisement, e.g. copies of webpages, with the Returning Officer (RO).

8. Mr CHAN Kam-lam said that there were occasions when candidates might wish to target their electioneering activities at voters or authorised representatives (ARs) at their living or working place. Sometimes, although the voter or AR was prepared to meet a candidate at his living or working place, the management body of the building might disallow the conduct of electioneering activities on the premises under its management. He asked whether there should be statutory requirement to allow free access by candidates to conduct electioneering activities in a building irrespective of the decision of the management body of the building.

9. SCA explained that there were guidelines for owners and management of premises and organisations in handling applications for conducting electioneering activities on the premises within their jurisdiction. There were also guidelines for conducting electioneering activities in premises managed by the Government. Any decision should comply with the principle that fair and equal opportunity of access should be provided to all candidates competing in the same EC subsector for electioneering purposes, so as to ensure that the election was conducted fairly.

10. Mr CHIM Pui-chung asked why the working day in the nomination period included Saturdays, given that the Registration and Electoral office (REO) had already implemented five-day working week.

11. CEO explained that the ordinary business hours during the nomination period, as provided in the EAC (Electoral Procedure) (Election Committee) Regulation, included Saturdays. While a five-day week was implemented in REO,

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special arrangement would be made for ROs and staff of REO to work on Saturdays during the election period so as not to cause inconvenience to candidates and voters.

12. Mr CHIM Pui-chung said that a person was disqualified from being nominated as a candidate at a subsector election if he had ceased to have a substantial connection with the subsector concerned, and asked how to determine a person's substantial connection with the subsector concerned.

13. SCA explained that after receipt of a nomination form, a RO would decide in accordance with the electoral law whether the nomination was valid and, in so doing, he might require additional information from a candidate as he considered necessary, including information concerning his substantial connection with the subsector concerned. A candidate could appeal against the decisions of a RO with regard to the validity of his nomination.

EC subsectors and their electorates

14. In response to the request of Ms Emily LAU, CEO advised members of the number of registered voters for each EC subsectors.

[*Post-meeting note* : After the meeting, CEO provided the latest statistics on the number of registered voters for the 35 EC subsectors where EC members are returned by election (i.e. excluding the National People's Congress (NPC) subsector, the LegCo subsector and the Religious subsector) on the basis of the 2006 final register released on 25 July 2006. The information was issued to the Panel vide LC Paper No. CB(2)2836/05-06(01) on 25 July 2006.]

15. Ms Emily LAU queried the representativeness of EC members, given the small number of registered voters of some subsectors. She pointed out that some subsectors had more EC seats than the others even though they had a smaller electorate. She also expressed concern that some consortiums could control the election results of certain subsectors because many of the voters were their employees. As most EC members were returned through subsector elections by the same constituents as the corresponding functional constituencies (FCs), Ms LAU denounced the FC system.

16. Dr KWOK Ka-ki asked about the principles adopted for delineation of the electorates of some EC subsectors, e.g. the Heung Yee Kuk Subsector and the Agriculture and Fisheries Subsector. He urged the Administration to consider the proposal of some academics that corporate voting should be replaced by individual voting in order to enhance the representativeness of the EC electorate.

17. SCA responded that the FC system had been operated for some twenty years since elected membership was first introduced in LegCo. FCs enabled

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different sectors of the community, which had made significant contribution to Hong Kong, to have a voice in the legislature. Annex I to the Basic Law provided that the EC responsible for selecting the Chief Executive (CE) should be composed of 800 members from four different sectors. As provided in the Chief Executive Election Ordinance, these four sectors in turn composed of 38 subsectors. The Ordinance, which set out the composition of EC subectors, was passed and enacted by LegCo in 2001. SCA added that although some subsectors appeared to have a relatively small electorate, their constituents included associations which represented thousands of people. The Heung Yee Kuk Subsector represented the interest of thousands of indigenous villagers and village representatives.

18. SCA further said that he was aware that some academics had made proposals relating to the future of FCs, among which were the proposals to replace corporate voting with individual voting and for EC members to be returned on a one person one vote basis. The Administration had not taken a view on the long term future of FC seats in LegCo and it would continue to listen to views on this subject.

19. Mr CHAN Kam-lam said that the composition of EC was derived after lengthy discussion by the Basic Law Consultative Committee. As compared with the previous system of appointment of the Governor by Her Majesty before the handover, the selection of CE by EC was an improvement.

20. Ms Emily LAU said that it was understandable for Hong Kong people to be deprived of the right to vote for their head of government under the colonial rule. However, she could not understand why the majority of the people were still deprived of the right to vote for their CE after the handover. She said that Annex I to the Basic Law provided for EC to be composed of 800 members from four sectors, and each sector to be composed of certain subsectors. However, the constituents of the EC subsectors were not stipulated in Annex I, but drawn up by the Administration. She made the following points –

- (a) under Annex I, the First Sector should be composed of the industrial, commercial and financial sectors. While the Administration had included some subsectors which had the same constituents as the corresponding FCs, it had also added some new subsectors which had no equivalent FCs, e.g. the Employers' Federation of Hong Kong and the Hong Kong Chinese Enterprises Association under this Sector; and
- (b) under Annex I, the Third Sector should be composed of the labour, social services, religious and other sectors. However, the Administration had chosen to add agriculture and fisheries as a subsector under this Sector.

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21. Ms LAU also pointed out that paragraph 3 of Annex I stipulated that the delimitation of the various sectors to return EC members should be prescribed by domestic law in accordance with the principles of democracy and openness. In her view, the composition of EC subsectors was unreasonable and lacked representativeness.

22. SCA responded that as compared with the situation before the handover, progress had been made on the political system of Hong Kong. CE and all LegCo Members were now returned by election. The political system had taken into account the interests of different sectors of society and was developed in a gradual and orderly manner. He reiterated that the composition of the EC subsectors was endorsed by LegCo before it became part of the local law.

Hong Kong deputies to the NPC

23. Mr CHIM Pui-chung pointed out that the 800 EC members, apart from selecting CE, were also responsible for electing 36 Hong Kong deputies to the NPC. Given that the latter election was conducted in Hong Kong, he questioned why it was not covered in the proposed guidelines. Mr CHIM said that the Administration should specify clearly all the roles of the 800 EC members in the proposed guidelines on the EC subsector elections.

24. SCA explained that Hong Kong was operating under the principle of “one country, two systems”. The election of Hong Kong deputies to the NPC and the EC subsector elections were two different matters. Although the former was held in Hong Kong, it was organised by the NPC according to Mainland law. The latter, on the other hand, was a matter for the Government of the Hong Kong Special Administrative Region (HKSAR) under the Basic Law and domestic law.

25. Mr CHIM Pui-chung asked about the arrangement for getting an extract of the FCs register, subsector register or EC register. CEO explained that the Electoral Registration Officer (ERO) could make available an extract from such published register to any person that ERO considered appropriate. However, any information relating to a person contained in any such register could only be used for election-related purposes, in order to protect the privacy of the persons whose names were included in the register. Any abuse or misuse of such information was an offence under the electoral law.

Universal suffrage

26. Ms Emily LAU expressed dissatisfaction that the EC subsector elections would be held on 10 December 2006, which was the United Nations Human Rights Day. She pointed out that CE had recently remarked that consideration could be given to implementing universal suffrage for the CE election in 2012, and asked what measures were being taken by the Administration to achieve a tripartite consensus on universal suffrage from the relevant parties i.e. LegCo, CE

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and the Central Authorities as required under the Basic Law. She questioned whether the work of Commission on Strategic Development (CSD) would be productive as LegCo, one of the three relevant parties, had a limited role in CSD. She also asked whether the Administration had reflected public's aspirations for a timetable on universal suffrage to the Central Authorities.

27. Dr KWOK Ka-ki said that by entrusting the Committee on Governance and Political Development under CSD with the study of ways to implement universal suffrage, the Administration failed to pay regard to the views of the general public and LegCo Members. He questioned what CSD had done so far to pave way for the implementation of universal suffrage. He also asked whether the Administration would consider the views of ex-Government officials, such as Mrs Anson CHAN (former Chief Secretary for Administration) and Mrs Regina IP (former Secretary for Security), who had indicated that they supported universal suffrage.

28. Mr LEUNG Kwok-hung considered it a waste of time to discuss the proposed guidelines as the CE election, a small circle election, was not a fair election. He asked how the Administration would weigh the views of LegCo Members with that of members of CSD.

29. Mr CHAN Kam-lam said that while universal suffrage was the ultimate aim, favourable conditions should be created for its implementation in accordance with the principle of gradual and orderly progress as stipulated in the Basic Law. He pointed out that improvement proposals such as the one put forth by the Constitutional Development Task Force for the CE and LegCo elections in 2007/08 had not obtained the support of LegCo, and he did not believe that universal suffrage could be achieved in one go. He urged members to be open-minded in discussing models for universal suffrage in order to achieve consensus.

30. SCA responded with the following points –

- (a) the issue of universal suffrage had been discussed by the Panel in the past six months. Members' views and the relevant papers of the Panel had been forwarded to CSD for consideration. At present, CSD had concluded the discussion on the principles and concepts relating to universal suffrage. Starting from 28 July 2006, CSD would discuss possible models for selecting the CE and forming LegCo when attaining universal suffrage and aimed to conclude discussions by early 2007. The report of CSD would be submitted to the Central Authorities and released to the public;
- (b) members of CSD were drawn from a broad cross section of the community including LegCo Members, professionals, academics, businessmen, representatives of political parties and groups, and

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prominent labour and media personalities. The discussions held by CSD could stimulate further discussion on universal suffrage by the community. When the issue had been widely discussed by the public, there was a better chance for the community to reach a consensus on the model for introducing universal suffrage. Once there was a roadmap, a timetable for introducing universal suffrage could then be derived;

- (c) the Administration had on different occasions reflected to the Central Authorities the results of opinion polls and public aspirations for universal suffrage. Last year, the Administration had proposed to open up the electoral methods for selecting CE and forming LegCo in 2007/08 with an enhanced element of democracy, with a view to paving way for attaining universal suffrage. Regrettably, the proposal was not endorsed by LegCo with a two-thirds majority; and
- (d) the Administration welcomed views from any members of the public, including ex-Government officials, on possible models for attaining universal suffrage. These proposals, however, must comply with the provisions and principles of the Basic Law. At this stage, the Administration had not taken a view on the final models for selecting CE and forming LegCo upon attaining the ultimate aim of universal suffrage. As stipulated in the Basic Law, any proposal to change the electoral methods for selecting CE and forming LegCo required a two-thirds majority support of LegCo Members.

31. In response to the questions of Mr LEUNG Kwok-hung about the recent meeting between CE and Mrs Anson CHAN, SCA responded that CE had already replied at the recent CE Question and Answer Session that his conversation with Mrs CHAN did not touch on politics and religion, and that he was not required to report his meeting with Mrs CHAN to the Central Authorities.

32. The meeting ended at 3:58 pm.