

立法會
Legislative Council

LC Paper No. CB(2)242/06-07
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Minutes of informal meeting
held on Wednesday, 26 July 2006, at 11:00 am
in the Chamber of the Legislative Council Building**

- Members present** :
- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon LEE Cheuk-yan
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon Margaret NG
 - Hon CHEUNG Man-kwong
 - Hon LAU Kong-wah, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon LEE Wing-tat
 - Hon LEUNG Kwok-hung
 - Hon WONG Ting-kwong, BBS
 - Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** :
- Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon Albert HO Chun-yan
 - Dr Hon David LI Kwok-po, GBS, JP
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - 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 Chin-shek, JP
 - Hon LAU Wong-fat, GBM, GBS, JP
 - Hon Miriam LAU Kin-ye, GBS, JP

Hon CHOY So-yuk, 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 Daniel LAM Wai-keung, SBS, JP
Hon MA Lik, GBS, 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 Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon KWONG Chi-kin
Hon TAM Heung-man

Public Officers : Item I
attending

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Arthur HO Kin-wah
Acting Permanent Secretary for Constitutional Affairs

Miss May CHAN Wing-shiu
Principal Assistant Secretary for Constitutional Affairs

Miss Denise YUE Chung-yee
Secretary for the Civil Service

Mr Andrew WONG Ho-yuen
Permanent Secretary for the Civil Service

Clerk in : Mrs Percy MA
attendance : Chief Council Secretary (2)3

Staff in : Mrs Eleanor CHOW
attendance : Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Further Development of the Political Appointment System
(Consultation Document on "Further Development of the Political Appointment System")

LC Paper No. CB(2)2858/05-06(01) -- Paper provided by the Administration on "Further Development of the Political Appointment System")

As a quorum could not be formed within 15 minutes of the time appointed for the meeting, members agreed that an informal meeting should be held for the Administration to brief members on the Consultation Document on "Further Development of the Political Appointment System" (the Consultation Document).

2. In response to members' comments about the short notice for this meeting which had resulted in the lack of a quorum, SCA explained that the Chief Secretary for the Administration and the House Committee had previously agreed that the Administration should brief the relevant Panel on major policy proposals prior to its announcement to the media. Following the approval of the Executive Council on the proposals in the Consultation Document on 25 July 2006, the Administration decided that a press conference should be held the following day, i.e. in the afternoon on 26 July 2006 to announce the publication of the Consultation Document. Under the circumstances, the Administration proposed to brief the Panel on the Consultation Document in the morning on 26 July 2006. The Chairman explained that his decision to convene the meeting was to tie in with the work of the Administration and was made in accordance with Rule 77(11).

3 Some members expressed dissatisfaction about the meeting arrangement and their views were summarised below --

- (a) it was unreasonable and disrespect of the Administration to request the Panel to convene this meeting as less than three days' notice was given for the meeting, contrary to the requirement under Rule 77(11) of the Rules of Procedure of the Legislative Council (LegCo);
- (b) although Rule 77(11) provided that the Chairman had the discretion to give shorter notice, the Chairman should exercise his discretion with good reasons only;
- (c) while members supported the principle for the Administration to brief the relevant Panels on major policy proposals prior to its announcement to the media, there was no urgency for holding the meeting on 26 July 2006 as the consultation of the Consultation Document would last for four months;

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- (d) the Administration should adjust the timing of its press conference to allow sufficient notice of the meeting be given to members in accordance with Rule 77(11);
- (e) this incident would set a bad precedent for other bureaux, and the failure of the Panel to meet the quorum requirement would tarnish LegCo's image;
- (f) given that many Members were currently out of town and would return to Hong Kong before the Council meeting on 2 August 2006, a meeting to brief the Panel on the Consultation Document should be scheduled sometime before or after that Council meeting; and
- (g) the notice requirement under Rule 77(11) should be complied with unless special considerations justified departure. Any request for holding a meeting with less than three days' notice should be made by the Administration in writing and with justifications. Such a request should be circulated to the Panel for reference. The meeting should not be held unless a quorum could be formed.

4. SCA reiterated that it was the intention of the Administration to brief the Panel on the Consultation Document before announcing its details at the press conference. The Panel could consider holding further meetings to discuss the Consultation Document, if necessary.

Briefing and discussion

5. SCA briefed members on the proposal put forth in the Consultation Document relating to the further development of the Political Appointment System. The proposal sought to strengthen support for Principal Officials (POs) in undertaking political work by creating two additional layers within the Government, namely Deputy Directors of Bureau and Assistants to Directors of Bureau. Public Consultation would end on 30 November 2006.

6. Mr LAU Kong-wah said that under the proposal, there were seven layers of officials, namely, POs, Deputy Directors of Bureau, Assistants to Directors of Bureau, Permanent Secretaries, Deputy Secretaries, Principal Assistant Secretaries and Assistant Secretaries. He expressed concern whether this would better coordinate the formulation of policies. Mr LAU added that a main objective of the proposal was that the new political appointees would help in carrying out political work. It was his observation that at present, intensive lobbying would be carried out by a large number of civil servants in the Chamber at the last minute, e.g. when an important bill was considered by the Council. Mr LAU considered that the present problem was that the Administration only consulted Members on policy proposals at the very last stage, e.g. after the

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publication of this Consultation Document, instead of at an early stage, i.e. before the policy proposals were drawn up. He asked whether the situation would improve after the creation of the two new political layers. Mr LAU was sceptical whether the proposal to further develop the Political Appointment System would result in improved relationship between the Executive and the Legislature, better governance and effective use of resources.

7. SCA said that under the proposal, Permanent Secretaries and senior civil servants would be responsible for conducting researches and analyses on policy options and making policy proposals, while political appointees provided political input to POs in making policy decisions. This would facilitate the process of policy formulation. The Administration had listened to public views before formulating policies in the past few years. SCA further said that there was a practical need for the Administration to deploy civil servants to monitor the proceedings when an important bill was debated by the Council. SCA added that although the cost for implementing the proposal, i.e. some \$50 to \$60 million per annum, was not a very significant amount against the annual government budget of \$200 billion, the Administration would be cautious in the use of public funds.

8. Ms Emily LAU said that the proposal was not conducive to democratic development in Hong Kong. Democratic development was predicated on a multi-party system and the development of political parties. Political parties should aim at becoming a ruling party someday by fielding members to stand for elections of the District Councils, LegCo and the Chief Executive. Although the Consultation Document stated that people with different backgrounds could be considered for appointment to fill these positions, given CE's earlier remark about "different affinities" with political parties, she considered that the new political appointee positions were only created for pro-government political parties. She further pointed out that given CE's remark, it was difficult for the civil service to maintain political neutrality.

9. Secretary for the Civil Service (SCS) responded that traditionally, senior civil servants were involved in work with political content such as explaining and defending Government policies and decisions, and lobbying for support in this regard. After the implementation of the Political Appointment System in 2002, POs had taken up such political work, with senior civil servants playing a supporting role. However, civil servants must not engage in certain political work such as electioneering and fund raising activities for a political party. Additional political appointments were now proposed to provide further support to the political team to take on political work with the support of civil servants. SCS further said that compared with some overseas jurisdictions where civil servants were not required to explain and lobby support for Government policies and decisions, the situation in Hong Kong was unique for historical reasons. However, she did not feel that the role of civil servants in this regard was in conflict with the principle of upholding neutrality for the civil service. SCS

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added that senior civil servants had and would continue to lobby support from all Members, irrespective of whether they were independent Members or Members belonging to this or that political party.

10. SCA clarified that the remark of CE referred to by Ms Emily LAU did not originate from CE, but the media. In his Policy Address delivered in October 2005, CE had made clear that the Administration would continue to open up the political system to create more room for participation in public affairs, thereby enable public spirited individuals to come forth and serve the community. By extending the system of political appointments, people from different backgrounds would have the opportunity to pursue a broader political career. Apart from the opportunities to stand for elections in the District Councils and LegCo, members of political parties and other public spirited individuals could also join the Government to acquire practical knowledge of government operations and nurture their political skills. These political appointees should share the CE's vision on policy direction in order to deliver effective governance.

11. Ms Margaret NG asked how the proposal of furthering the Political Appointment System would promote constitutional development towards universal suffrage. She also asked whether there were any objective criteria for appointing the political appointees, apart from the requirement that they should be like-minded with CE. She further asked about the remuneration package for political appointees and the line of command between the political tier and the civil service.

12. SCA said that the possible models for selecting CE by universal suffrage would be discussed by the Commission on Strategic Development on 28 July 2006. Irrespective of whether CE was to be elected by the Election Committee or by universal suffrage in future, the proposal provided CE with the opportunity to form his own governing team with individuals who shared his vision and mission, and who were prepared to promote the policy and political agenda of the Government under his leadership. Deputy Directors of Bureau would be appointed and removed by CE on the recommendation of the Directors of Bureau, while Assistants to Directors of Bureau would be appointed and removed by Directors of Bureau with the consent of CE. Given that the term of office of CE was five years, the term of appointment of political appointees would not exceed that of CE or POs who appointed them. Although the system of government in Hong Kong was akin to the presidential system in the United States, the Administration did not intend to change thousands of appointments whenever there was a change of government. Widespread staffing changes following changes in political leadership would have an impact on the continuity of governance. SCA added that the further development of the Political Appointment System would not undermine the fundamental importance of the civil service. In order to enable the civil service to perform its constitutional role to support the serving CE and his Government, the two features of the civil service, namely permanency and political neutrality, would be maintained.

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13. SCA further said that political appointees could come from political party, academic, professional, business, civil service and other backgrounds. The existing Code for Principal Officials under the Accountability System would, with necessary modifications, apply to the political appointees of the two new layers. To cater for candidates with different skills and experience, the remuneration for Deputy Directors of Bureau and Assistants to Directors of Bureau were proposed to be pitched, respectively, within a range equivalent to 65% to 75% and 35% to 50% of the remuneration package approved by the Finance Committee in 2002 for a Director of Bureau.

14. SCS supplemented that one of the objectives of the proposal was to select the most suitable persons to take up political positions. On the operational level, the political tier and the civil service should work as a team to provide quality services to the community and to enhance governance. The line of command between the political tier and the civil service would be clearly set out to avoid confusions and to avoid compromising efficient governance. After the creation of Deputy Directors and Assistants to Directors of Bureau, civil servants should continue to report direct, and enjoy direct access, to POs through their Permanent Secretaries. In other words, the Deputy Directors and Assistants to Directors of Bureau should have no direct line of command over civil servants, including Permanent Secretaries, and Permanent Secretaries would, for the purpose of organisation structure and performance appraisal, continue to report to POs.

15. Mr CHEUNG Man-kwong said that in a democratic society, a head of government returned by universal suffrage would have the mandate to appoint his political team. He would not object to such a political appointment system. However, a political appointment system introduced by a head of government who was returned in a small circle election and had "different affinities" with political parties was undemocratic and totally unacceptable.

16. SCA explained that the Administration was adopting a two-pronged approach in pursuing constitutional development. On the one hand, it was studying the various models of electing the CE and LegCo by universal suffrage and on the other hand, it was exploring more opportunities for political talents to participate in public affairs. Irrespective of whether a CE was to be elected by the Election Committee or universal suffrage, it was for him to decide on the composition of his political team. As to how the proposal would be implemented, it would be for the third term CE to decide. SCA further said that although CE was currently not elected by universal suffrage, given that Hong Kong was a free and open society, he was subject to the scrutiny of LegCo, the media and the public. POs and political appointees of the new positions would similarly be subject to such scrutiny.

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17. Mr LEE Wing-tat said that the proper way to groom political talents was through development of political parties and elections by universal suffrage. In his view, the proposal would not achieve the objective of grooming political talents and providing continuity in a political career, as the political appointees would have to step down from office when a new CE assumed office. Mr LEE further said that the cost for implementing the proposal would be enough for creating 200 more District Council elected seats which could provide much more opportunities for aspiring persons to pursue a political career. His conclusion was that the additional political appointments were meant as rewards to pro-government parties and were tailor-made for the Democratic Alliance for the Betterment and Progress of Hong Kong.

18. Mr LEE Cheuk-yan said that the proposal was "neither a donkey nor a horse" as on one hand, it sought to provide an option for young aspirants to be appointed to the new positions and on the other hand, it required the political appointees to be like-minded people with CE who did not belong to any political parties. He asked the Administration to advise which political parties in LegCo could be regarded to have the closest political belief with CE.

19. SCA responded that it was impossible to tailor-make a proposal for any political party. The proposal of furthering the Political Appointment System would provide political talents the opportunity to pursue a broader political career by participating in the work of the Government, apart from becoming members of the District Councils and LegCo by election. The new political positions would be opened to people from a variety of backgrounds. People with or without political background would be considered for appointment to the new positions. As regards the issue of providing continuity on political career raised by Mr LEE Wing-tat, SCA said that there was no guarantee of continuity in a political career, e.g. incumbent members could also lose in seeking re-election to the District Councils and LegCo.

20. As regards Mr LEE Cheuk-yan's question about which political parties shared the political belief of CE, SCA said that the level of support rendered by political parties might vary with different issues. On most occasions, the Administration secured the support of over 50% of LegCo Members on its legislative proposals. On some occasions, it received support from two-thirds of all Members, e.g. in the case of the Appropriation Bill and the Tamar development project which were supported by the Democratic Party. In any event, it was necessary for the Government to make its best efforts to gain support from independent Members and Members affiliated with political parties on various Government initiatives.

21. Mr LEE Wing-tat suggested and members agreed that a special meeting should be arranged to allow members to further discuss the Consultation Document.

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(*Post-meeting note* : With the concurrence of the Chairman, the special meeting was scheduled on 31 July 2006 at 2:30 pm.)

22. The meeting ended at 1:07 pm.

Council Business Division 2
Legislative Council Secretariat
2 November 2006