

立法會  
*Legislative Council*

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**Report of the Panel on Constitutional Affairs  
for submission to the Legislative Council**

**Purpose**

The report gives an account of the work of the Panel on Constitutional Affairs during the 2005-2006 Legislative Council (LegCo) session. It will be tabled at the Council meeting on 5 July 2006 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

**The Panel**

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to constitutional affairs. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 44 members, with Dr Hon LUI Ming-wah and Hon Jasper TSANG Yok-sing elected as Chairman and Deputy Chairman of the Panel respectively. The membership of the Panel is in **Appendix II**.

**Major work**

Constitutional development

*Fifth Report of the Constitutional Development Task Force*

4. Since the establishment of the Constitutional Development Task Force (the Task Force) by the Chief Executive (CE) in January 2004 to address issues relating to the 2007/08 electoral arrangements, the Panel had closely monitored the progress of the work of the Task Force and discussed the reports published by the Task Force. The Fifth Report published by the Task Force on 19 October 2005 set out a package of proposals for the methods for selecting CE in 2007 and for forming LegCo in 2008 (the “two methods”). The amendments to Annexes I and II of the Basic Law regarding the “two methods” were proposed to be effected by way of two motions. A subcommittee set up under the House Committee studied the proposed package, the two draft motions and related issues, and reported its deliberations to the House Committee on 9 December 2005.

5. The issue of District Council (DC) appointed membership was a main concern raised by some members of the subcommittee. The Administration had subsequently proposed some adjustments to the proposed package in the hope of achieving consensus. On 19 December 2005, the Panel was briefed on the following adjustments which would be made to the proposed package on the condition that the two motions would be endorsed by LegCo on 21 December 2005 –

- (a) the maximum number of appointed DC seats be reduced from the existing 102 to 68 when the new term of DC commenced in January 2008; and
- (b) the Government would decide before the end of 2011 whether the maximum number of appointed DC seats should be further reduced to zero in January 2012, or to 34 in January 2012 and then to zero in January 2016.

6. Some members considered the proposed adjustments retrogressive and unacceptable. They requested the Administration to put forth a revised proposal to include the abolition of all appointed DC seats and a timetable for universal suffrage. They also requested CE to make a report on the revised proposal to the Standing Committee of the National People's Congress (NPCSC) for its consideration. Meanwhile, the Administration should defer the presentation of the two motions to LegCo at a later date. They cautioned that if the Administration imposed a legislative timetable arbitrarily, pan-democratic Members had no choice but to vote against the two motions.

7. Some members supported the proposal to abolish appointed DC seats by phases, with a view to facilitating LegCo to reach a consensus on the two motions. They pointed out that if Members did not seize the opportunity to support the motions, the people of Hong Kong had to wait for another five years before constitutional development could take a further step.

8. The Administration explained that the package of proposals in the Fifth Report contained the highest possible degree of democratic elements within the framework laid down by the Basic Law and NPCSC Decision made in April 2004. The proposal to phase out the number of appointed DC seats in an orderly manner was to address the concerns of some Members and the public. Members' support for the two motions would bring Hong Kong nearer to the ultimate aim of universal suffrage and would be conducive to achieving a consensus on future constitutional reform. As the people of Hong Kong supported the package of proposals, the Administration had no intention to defer the submission of the two motions to LegCo.

9. The Administration considered that a timetable for universal suffrage was not and should not be a prerequisite for LegCo to endorse the two motions. The two issues should be dealt with separately. The Administration had already tasked the Committee on Governance and Political Development (CGPD) under the Committee on Strategic Development (CSD) to study ways to implement universal suffrage in

accordance with the provisions and principles of the Basic Law, with a view to concluding discussions by early 2007.

10. On 21 December 2005, two motions to, respectively, amend Annexes I and II of the Basic Law regarding the “two methods” were presented by the Administration to LegCo for endorsement. As the motions did not receive the two-thirds majority support of all LegCo Members stipulated in Annexes I and II of the Basic Law, the motions could not be processed further.

*Models for implementing universal suffrage for CE and LegCo*

11. Despite the fact that the two motions were negatived, some members considered that the Administration should take forward constitutional development by providing a timetable for universal suffrage. The Administration had reiterated that different sectors of the community should work together to formulate a roadmap for attaining universal suffrage. CGPD had been commissioned to study ways to implement universal suffrage in accordance with the provisions and principles of the Basic Law.

12. Some members had reservations about CSD being entrusted with the responsibility to discuss a timetable for universal suffrage, as its members mainly came from the business and commercial sectors and its meetings were held behind closed door. The Administration advised that members of CSD were drawn from a broad cross section of the community including professionals, academics, businessmen, politicians, and prominent labour and media personalities. The operation of committees under CSD was highly transparent; their members were free to express their views at meetings, and all the discussion papers were open for public inspection. At the request of the House Committee, discussion papers prepared for the committees under CSD were provided to LegCo Members for reference.

13. Some members considered that the Panel should, in due course, reach a consensus on the timing and the models for implementation of the ultimate aim of universal suffrage as provided in Articles 45 and 68 of the Basic Law. The Panel had made reference to an information note, prepared by the Research and Library Services Division of the LegCo Secretariat, which summarised and updated the information on the electoral systems in Singapore, New Zealand, Germany, the United Kingdom, Japan, France and the United States featured in a series of research reports issued to Members in the 1999-2000 session.

14. Some members noted with concern that a bicameral system was raised as a model for forming LegCo in the discussion papers prepared by the Administration for CGPD. These members considered that the implementation of a bicameral system would contravene the Basic Law, and queried the basis for the Administration to re-examine the proposal which was not supported by the Basic Law Drafting Committee. The Administration explained that it did not have any view on the final model for forming LegCo upon attaining the final aim of universal suffrage. The bicameral system was one of the views received during public consultation by the Task Force, and hence one of the areas to be explored by CGPD.

15. The Panel discussed the models for selecting CE and forming LegCo by universal suffrage in 2012 put forth by the Democratic Party (DP). Under the DP's proposed model for selection of CE, a candidate could be nominated by five LegCo Members (each Member could nominate only one candidate). After nominations by the nominating committee, members of the public would vote on all candidates on a "one person, one vote" basis. DP proposed a "mixed system" for forming LegCo. Under the proposed model, each registered voter was entitled to two votes, one for returning half of the LegCo Members 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.

16. The Panel held discussions on different models for selecting CE and forming LegCo by universal suffrage, on the basis of the proposals received by the Panel, the subcommittee set up to study the proposed package in the Fifth Report, and the Task Force. Members noted that there were views that CE should be elected by universal suffrage upon nomination by a broadly representative nominating committee. As regards the models for forming LegCo, members noted that there were views that all Members should be elected on the geographical constituency (GC) basis when the ultimate aim of universal suffrage was attained, and that functional constituencies (FCs) should be abolished by phases. There were also views that a "mixed system" should be adopted, i.e. election of a group of Members on GC basis and another group of Members on a regional/territory-wide basis, or election of a group of Members on GC basis and election by universal suffrage of another group of Members who were nominated by FCs. Members noted that some people had proposed that a bicameral system, i.e. a two-chamber legislature, should be considered.

17. Some members pointed out that a recent opinion poll had indicated that over 60% of the public was supportive of expeditious implementation of dual elections by universal suffrage. The Administration should take into account the views of the public in determining the timing for implementing universal suffrage. Some members considered it important that the public should have the right to vote at the elections by "universal and equal suffrage", as stipulated in paragraph (b) of Article 25 of the International Covenant on Civil and Political Rights (ICCPR). Some other members considered that favourable conditions should be created for the implementation of the ultimate aim of universal suffrage in accordance with the principle of gradual and orderly progress as stipulated in the Basic Law.

18. The Administration explained that in the process of attaining the ultimate aim of universal suffrage, any amendments to the "two methods" required the endorsement of a two-third majority of all Members. In practice, this meant that the endorsement and support of Members returned by both GCs and FCs would be required for any model for implementing universal suffrage for LegCo. As regards Article 25 of ICCPR, the Hong Kong Special Administrative Region had reserved the right not to apply paragraph (b) of the Article as far as the elections of CE and LegCo were concerned. In addition, "equal suffrage" did not require that every vote should have the same effect on the outcome of the election.

19. The Panel noted that the first stage of the work of CGPD would focus on principles and concepts relating to universal suffrage, with a view to concluding discussions by mid 2006. The second stage would focus on the design of a universal suffrage system for CE and LegCo, with a view to concluding discussions by early 2007.

### Chief Executive election

#### *Relevant election dates*

20. The Panel noted that the Election Committee subsector elections would be held on 10 December 2006, and the CE election would be held on 25 March 2007.

#### *Amendments to the Chief Executive Election Ordinance*

21. The Panel was briefed on the amendments to the Chief Executive Election Ordinance (CEEEO) which sought to –

- (a) establish a mechanism whereby, in the event that only one candidate was validly nominated at the close of nominations for a CE election, election proceeding shall continue;
- (b) specify that only an individual who remained a DC member, a Hong Kong member of the National Committee of the Chinese People's Political Consultative Conference, or the Chairman, a Vice-Chairman or Councillor of the Heung Yee Kuk may continue to be a member of the relevant Election Committee subsector;
- (c) introduce legislative amendments relating to the electorate of the Election Committee; and
- (d) address the relevant legal issues identified in the Fifth Report of the Task Force.

22. Some members suggested that if the sole candidate in a CE election was unable to obtain more than half of the valid votes cast, and if, after nominations had been re-opened, there was still only one candidate, some finality should be provided for in the electoral arrangements, e.g. the candidate should be elected *ipso facto*.

23. Some members suggested that unmarked ballot papers should not be counted as invalid votes, given the small size of the Election Committee. They pointed out that if unmarked ballot papers were regarded as invalid votes, a candidate who obtained a small number of votes could still be elected as CE, e.g. if there were 790 invalid votes cast, the candidate would only need to obtain six votes to be elected as CE. The Administration was of the view that the extreme example quoted by members was unlikely to happen in reality given that under the proposed arrangement, Election

Committee members could choose to mark the “not support” column on the ballot paper, if they did not support the sole candidate.

24. Some members considered that CEEO should be amended to impose an upper limit on the number of subscribers required for nominating candidates for the office of CE. This would allow more aspiring persons to contest the election. The Administration explained that imposing an upper limit on the number of subscribers for nominating CE candidates would deprive Election Committee members of their right to nominate a candidate of their choice. As the threshold for nominating candidates was stipulated in the Basic Law, the Administration had no intention to impose such a limit.

25. Some members considered that instead of introducing technical amendments relating to the electorate of the Election Committee, the Administration should amend CEEO to broaden the electorate base of the Election Committee to include all registered voters, and expand the electorate base of FCs by replacing corporate voting with individual voting. The Administration pointed out that the amendments proposed to CEEO were routine updating and did not involve any substantive changes to the electorate of the Election Committee. The Administration had previously made clear that in accordance with the Interpretation made by the NPCSC on 6 April 2004, if no amendment was made to the “two methods”, the provisions in Annexes I and II of the Basic Law would still be applicable. In the circumstances, the 2007 CE election would be held on the basis of the existing arrangements, i.e. the electorate base would remain unchanged.

26. The Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 was introduced into LegCo on 8 March 2006 and scrutinised by a bills committee. The Bill was passed by LegCo on 10 May 2006 and came into effect on 13 May 2006.

*Amendments to subsidiary legislation for the 2007 Chief Executive election*

27. Following the passage of the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006, the Panel was briefed on the subsidiary legislation to be tabled in the Council for vetting in October 2006. These included –

- (a) amendments to provide for the electoral arrangements in the event that only one candidate was validly nominated at the close of nominations for a CE election; and
- (b) amendments to align electoral procedures for CE election with those for LegCo election, such as arrangements which facilitated the keeping of order within the polling station on polling day and counting of votes, and increase in the penalty for unauthorized filming, photographing, audio/video recording within a polling station.

*2006 Election Committee subsector elections*

28. The Panel was briefed on the key electoral arrangements proposed by the Electoral Affairs Commission (EAC) for 2006 Election Committee subsector elections. The Panel noted that polling would be conducted in about 100 polling stations across Hong Kong. Counting would be centralized and was planned to take place in the Hong Kong Convention and Exhibition Centre. It had been the practice for the Registration and Electoral Office (REO) to use Optical Mark Recognition (OMR) system for counting of votes. The ballot paper design being considered by the EAC could accommodate up to about 90 candidates. In case the number of candidates for any subsector exceeded this number, the ballot paper would be longer than that which was “readable” by OMR machines. REO would have to resort to manual counting for such ballot papers, which would take more time.

29. The Panel was also briefed on the scope of amendments to be made to the three regulations under the Electoral Affairs Commission Ordinance in preparation for the Election Committee subsector elections. A subcommittee was formed by the House Committee to scrutinise the following three Regulations which were gazetted on 19 May 2006 –

- (a) Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2006;
- (b) Electoral Affairs Commission (Nominations Advisory Committees) (Election Committee) (Amendment) Regulation 2006; and
- (c) Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2006.

Review on the role, functions and composition of District Councils

30. CE announced in his Policy Address on 12 October 2005 that the Government would allow DCs to participate in the management of some district facilities, such as libraries, community halls, leisure grounds, sports venues and swimming pools, within the limits of the framework of the existing statutory provisions and resource allocations. Formal consultation on the review of DCs would commence in the first quarter of 2006, and a consultation document would be issued for the purpose of the review.

31. As some members considered that the role of DC members as proposed by CE was too narrow, the Panel held two meetings in February 2006 to discuss and receive public views on the scope of the review. The Panel requested the Administration to take into account the views of members and the public in determining the scope of the review and the content of the consultation document.

32. The Consultation Document on the “Review on the Role, Functions and Composition of District Councils” (the Consultation Document) was released on 27 April 2006 for public consultation until 31 July 2006. The Panel discussed the Consultation Document with the Administration at two meetings and will hold a special meeting in July to receive public views.

33. The Panel noted that one of the key proposals in the Consultation Document was to enhance the role of DCs in district management. A District Facilities Management Committee would be set up under each DC to initiate/consider and endorse proposals regarding the management of district facilities. DCs’ involvement in the management of district facilities would be supported by a proposed dedicated capital works vote for minor works and increased provision of DC funds for programmes and community involvement projects, both to the tune of \$300 million each year on a full year 18-district basis. The new arrangements would be implemented on a pilot basis, initially in several districts.

34. Some members expressed disappointment that the Administration had not honoured its previous undertaking to transfer the functions and powers of the former municipal councils to DCs. They considered that the proposal of enhancing the role of DCs in district management fell short of giving DCs substantive power in financial management, staffing matters, and policy making. Some members expressed support for the proposal and considered it impractical to expect that DCs would be vested with the same functions and powers of the former municipal councils.

35. Some members expressed concern about the basis and criteria for allocating an annual provision of \$300 million for minor works and another \$300 million for community involvement projects to the 18 DCs. The Administration advised that the provision for minor works represented an increase of 54% compared with the 2005-06 provision under the existing funding arrangements, and the provision for community involvement projects represented a net increase of some 40% over the earmarked provision for 2006-07. As regards the criteria for allocating the provision among the 18 DCs, the Administration would explore different options and listen to the views of DC members on the matter.

36. Some members considered that the Administration should consult the public on the proposal of abolishing DC appointed and ex-officio seats in the current consultation exercise, and to implement the proposal for the DC term commencing in 2008 if the mainstream view received during consultation was in support of the proposal.

### District Councils election

#### *Increase in the number of elected seats*

37. In view of the projected rates of population growth in the Tung Chung new town and Tsuen Kwan O new town, the Administration proposed to increase the number of elected seats on the Islands DC and Sai Kung DC by two and three respectively.

38. While the Panel expressed support for the proposal, it had sought clarification on the justifications for providing additional seats on the two DCs, and not the remaining 16 DCs. Some members considered that while the percentage increase in the population in the Islands and Sai Kung districts, being 31% and 10% respectively, was high, their increase in real term was similar to that of some other districts, such as Kwai Tsing and Kwun Tong. Some members considered that there was great variation in the population-to-seat ratio among the 18 DCs, e.g. the ratio in the Wan Chai DC was 13 000 and that in the Kwai Tsing DC was 19 000. New DC seats should be provided to districts with overall population growth, and not just districts with population growth in new towns.

39. The Administration had explained that section 20(1) of the Electoral Affairs Commission Ordinance required that the population sizes of DC constituency areas should be as close to the population quota as possible, and that deviation from the population quota should be within 25%. If additional seats were not provided for the Islands and Sai Kung districts, the population-to-seat ratio in Tung Chung and Tseung Kwan O which had experienced rapid population growth would exceed the population quota by over 25% in 2007. As regards the remaining 16 districts, the population growth was quite even and the average population size of their constituency areas in 2007 was expected to stay within the statutory deviation limit of 25% of the population quota.

40. The Panel noted that the motion moved by the Administration under the District Council Ordinance to provide for the additional seats for the two DCs was passed by the Council on 7 June 2006.

#### *Financial assistance scheme for candidates in District Council elections*

41. The Administration proposed to extend the financial assistance scheme introduced in the 2004 LegCo election to DC elections. Under the proposed scheme, candidates who were elected or received 5% of valid votes or more were eligible for financial assistance. The subsidy rate was set at \$10 per vote, capped at 50% of the actual election expenses of the candidates, or the difference between their actual election expenses and election donations, whichever was the lower.

42. While the Panel supported the proposed scheme, some members considered that the level of subsidy could be increased to say 75% or even 100% of the actual election expenses for DC election candidates. They pointed out that as the election expenses limit for the DC elections was much lower than that for the LegCo elections, the amount of financial assistance payable in DC elections would not impose a heavy financial burden on the Government.

43. The Administration explained to the Panel that candidates should shoulder a portion of the election expenses incurred. While the threshold of 5% of valid votes applicable to LegCo election candidates would apply to the proposed 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. In addition, part of the expenditure of the 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 scheme. As the Administration should be prudent in the use of public money, the subsidy rate proposed was considered reasonable.

44. The Administration also explained that the estimated financial assistance payable to eligible candidates in the 2004 LegCo election was \$9 million. However, due to the high voter turnout rate, the actual financial assistance payable to eligible candidates in the election was \$14 million. Although the amount of financial assistance payable to eligible candidates in the 2007 DC election was estimated to be \$6.75 million, in view of the increasing voter turnout rate, it was expected that the actual financial assistance payable would exceed the estimate.

45. The Panel considered that in calculating the amount of financial assistance payable to election candidates, financial assistance provided by a political party to its members standing in an election should not be counted as election donations. Members pointed out that in reality, political parties would provide financial sponsorship to its members. In order to maximize the chance for candidates to claim financial assistance under the scheme, political parties had to work out a complicated loan arrangement with candidates in the 2004 LegCo election. The arrangement had created unnecessary work for political parties and candidates alike. The Administration agreed to consider Members' views before finalising the proposed scheme for the DC election.

#### Establishment of the Mainland Affairs Liaison Office

46. The Panel was briefed by the Administration on –

- (a) the establishment of the Mainland Affairs Liaison Office (MALO), the adjustment of functions of the Office of the Hong Kong Special Administrative Region Government in Beijing (BJO), and related establishment proposals; and
- (b) the plan to strengthen Hong Kong's representation in the Mainland by expansion of functions of the Hong Kong Economic and Trade Office in Guangdong (GDETO) and establishment of ETOs in Chengdu and Shanghai.

47. The Panel considered that the functions of BJO and ETOs in the Mainland should not be confined to economic and trade issues. Members were particularly concerned about the provision of assistance for Hong Kong residents in distress. The Administration explained that at present, BJO was the only office dealing with such cases and its workload was heavy. GDETO, with four immigration officers to be deployed to enhance its functions in providing assistance to Hong Kong residents in distress in areas within its coverage, would help alleviate BJO's work.

48. Members requested that the Administration should provide financial assistance to offices set up by non-government organisations (NGO) in the Mainland to render assistance to Hong Kong residents on matters relating to real estate, commercial and labour disputes. The Administration explained that there had yet to be any policy to support provision of public funding for welfare services provided outside Hong Kong. The NGO offices were advised to carry out their work in the Mainland based on their available resources.

#### Application of the Prevention of Bribery Ordinance to the Chief Executive

49. The issue of whether CE should be subject to certain provisions of the Prevention of Bribery Ordinance (POBO) (Cap. 201) had been followed up by the Panel since January 1999. Despite the Panel's repeated requests, the Administration had yet to consider whether and, if so, how the relevant POBO provisions should apply to CE and would not provide a concrete legislative timetable. The Panel considered the lack of progress of the Administration's review over a six-year period totally unacceptable, and decided at its meeting on 30 May 2005 to form a subcommittee to closely follow up the matter.

50. The Administration consulted the subcommittee on the legislative proposal to apply certain provisions of POBO to CE. According to the Administration, in pursuing the legislative amendments, it would take into account the unique constitutional status of CE, the requirement for CE to declare assets, and the mechanism to handle serious breach of law by CE under Article 73(9) of the Basic Law (BL 73(9)). The legislative proposal sought –

- (a) to apply sections 4, 5 and 10 of POBO to CE. This would impose restrictions on CE in respect of solicitation and acceptance of advantages and possession of unexplained property;
- (b) to introduce a new provision to bind any person who offers any advantage to CE in line with section 8(1) of POBO;
- (c) to amend section 10 to specify that if CE is accused of possessing unexplained property, the Court shall take account of CE's assets declared to the Chief Justice pursuant to BL 47(2) in determining whether CE has given a satisfactory explanation under section 10(1); and
- (d) to add a new section to enable the Secretary for Justice (SJ) to refer to LegCo a report of CE suspected to have committed the POBO offences for possible follow-up under BL 73(9).

51. The Administration explained to the subcommittee that certain offence provisions under POBO contained the general defence of "lawful authority or reasonable excuse", whilst some specifically included the defence of "principal's consent". Section 3 of POBO, which prohibited any "prescribed officer" from

soliciting or accepting any advantage without the general or special permission of CE, could not apply to CE. Given the special constitutional position of CE and the lack of an appropriate authority to grant permission for CE to accept any advantage, CE would not be able to avail himself of the defence of “principal’s consent”. As regards the application of the proposed sections to CE, i.e. sections 4, 5 and 10, these sections did not incorporate “principal’s consent” as a defence and would therefore only impose restrictions on him in respect of acts of solicitation and acceptance of advantage and possession of unexplained property. The Administration assured the subcommittee that although section 3 could not apply directly to CE himself, administrative measures were put in place to provide effective control of the acceptance of gifts by CE.

52. While the subcommittee welcomed the Administration’s proposal to introduce legislative amendments to subject CE to the control of POBO, some members had reservation about the Administration’s view that section 3 of POBO could not apply to CE. The Administration agreed to consider whether and, if so, how section 3 could be made applicable to CE.

53. A major concern of the subcommittee was the need for and implications of the proposal to introduce a new section to enable SJ to refer to LegCo a report of CE suspected to have committed a POBO offence for possible follow-up by LegCo under BL 73(9) (“referral provision”). Some members pointed out that if SJ decided not to prosecute CE and if CE refused to resign, the impeachment procedures could be triggered by LegCo. It was unnecessary for SJ to make a referral to LegCo to facilitate its consideration of invoking the investigation and impeachment mechanism under BL 73(9). The need and timing for LegCo to invoke any impeachment proceedings should better be left to the discretion of LegCo.

54. The Administration explained that any person who disclosed the subject or details of the investigation in respect of a POBO offence, without lawful authority or reasonable excuse, committed an offence under section 30 of POBO. SJ was bound by the “non-disclosure” requirement unless it could successfully be argued that one of the exceptions in section 30 of POBO would apply or the legislation vested SJ with the power of referral to LegCo. It was desirable to put the legal position beyond doubt by the proposed “referral provision” so that LegCo might obtain the essential facts of a complaint against CE and Members might consider invoking the investigation and impeachment procedures under BL 73(9).

55. Some members disagreed that LegCo had to rely on SJ’s referral in order to obtain essential information pertaining to any bribery-related complaints against CE. Under BL 73(9), LegCo, after passing a motion for investigation, would entrust CJ to form and chair an independent investigation committee. The findings and report of the investigation committee would provide information to facilitate LegCo’s consideration of whether to proceed with the impeachment process.

56. Some other members had no strong view on the proposed “referral provision”. Given that LegCo had the constitutional role to perform the check and balance

function in case CE refused to resign on a charge of serious breach of law or dereliction of duty, they considered that the proposed “referral provision” would facilitate the work of LegCo in this respect.

57. The subcommittee requested the Administration to consider amending section 30 to allow disclosure of essential facts of a complaint against CE to LegCo under certain circumstances, instead of introducing the “referral provision”. The Administration agreed to consider how to give effect to the “referral provision” in the amendment bill i.e. whether a new section should be added in POBO as originally contemplated by the Administration, or whether section 30 of POBO should be amended to provide an exception as proposed by some members.

58. The subcommittee requested the Administration to proceed with the preparation of the necessary legislative amendments as soon as possible, taking into account members' views and concerns. The Administration advised the subcommittee that it intended to introduce the Prevention of Bribery (Amendment) Bill 2006 into LegCo by May 2006. The subcommittee reported its deliberations to the Panel on 20 February 2006.

### **Panel meetings**

59. Between the period from October 2005 and June 2006, the Panel held a total of 14 meetings, including one meeting held jointly with the Panel on Public Service.

**Panel on Constitutional Affairs**

**Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters and district organizations.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Panel on Constitutional Affairs**

**Membership list for 2005 - 2006 session**

<b>Chairman</b>	Dr Hon LUI Ming-wah, SBS, JP
<b>Deputy Chairman</b>	Hon Jasper TSANG Yok-sing, GBS, JP
<b>Members</b>	Hon James TIEN Pei-chun, GBS, JP Hon Albert HO Chun-yan 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 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 Kong-wah, JP Hon LAU Wong-fat, GBM, GBS, JP Hon Miriam LAU Kin-ye, 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, BBS, JP Hon MA Lik, GBS, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung 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

(Total : 44 members)

<b>Clerk</b>	Mrs Percy MA
<b>Legal Adviser</b>	Mr Arthur CHEUNG
<b>Date</b>	13 October 2005