

立法會
Legislative Council

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LC Paper No. CB(2)1871/06-07
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 26 March 2007, at 8:30 am
in the Chamber of the Legislative Council Building

Members present :

Dr Hon LUI Ming-wah, SBS, JP (Chairman)
Hon TAM Yiu-chung, 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 Martin LEE Chu-ming, SC, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon CHOY So-yuk, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Daniel LAM Wai-keung, SBS, JP
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin

- Members absent** : Hon CHAN Yuen-han, JP
Hon Bernard CHAN, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon WONG Yung-kan, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat
Hon MA Lik, GBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki
- Public Officers attending** : Item IV
The Administration
Mrs Cherry TSE LING Kit-ching
Permanent Secretary for Constitutional Affairs
Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional Affairs
Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary for Constitutional Affairs
Mr LAM Man-ho
Chief Electoral Officer
- Item V
The Administration
Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
Mrs Cherry TSE LING Kit-ching
Permanent Secretary for Constitutional Affairs
Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional Affairs
Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional Affairs
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3

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

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1367/06-07 - Minutes of meeting on 23 January 2007
LC Paper No. CB(2)1368/06-07 - Minutes of meeting on 8 February 2007)

The minutes of the meetings held on 23 January and 8 February 2007 were confirmed.

II. Information papers issued since the last meeting

(LC Paper No. CB(2)1057/06-07(01) - Administration's letter dated 7 February 2007 on "Practical arrangements for the election of the third term Chief Executive"

IN10/06-07 - Information Note prepared by the Research and Library Services Division of the LegCo Secretariat on "Criminal Immunity of Head of State/Government and Whether Impeachment Proceedings Precede Criminal Prosecution")

2. Members noted that the above papers had been issued to the Panel.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1378/06-07(01) - List of outstanding items for discussion)

3. Members agreed that the following items proposed by the Administration would be discussed at the next meeting on 16 April 2007 -

- (a) 2007 Voter Registration Campaign; and
- (b) Possible models for selecting the Chief Executive (CE) and for forming the Legislative Council (LegCo) by universal suffrage.

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IV. Subsidiary legislation relating to the 2007 District Council elections
(LC Paper No. CB(2)1378/06-07(02) - Administration's paper on
"Subsidiary legislation relating to the 2007 District Council elections")

4. Permanent Secretary for Constitutional Affairs (PSCA) and Chief Electoral Officer (CEO) introduced the paper which set out the proposed amendments to the three regulations under the Electoral Affairs Commission Ordinance (Cap. 541) relating to printing of particulars on ballot papers, financial assistance scheme and electoral procedure for the 2007 District Council (DC) election.

Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulations (Cap. 541M)

5. Members noted that the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulations (Cap. 541M), made by the Electoral Affairs Commission (EAC) in December 2003, provided the legal basis for the registration and printing of the specified particulars (which might include the names or the abbreviation of the names and the emblems of prescribed bodies, the emblems of prescribed bodies and persons, words indicating that a candidate was an independent candidate or a non-affiliated candidate, and the photographs of candidates) on ballot papers for use in the 2004 LegCo elections. The proposed amendments to Cap. 541M sought to extend the scope to cover the DC elections.

6. Mr TAM Yiu-chung sought clarification from the Administration whether the names and emblems of prescribed bodies or persons already registered with the EAC under the existing Cap. 541M in relation to the 2004 LegCo election would be deemed to have been registered in relation to both the LegCo and DC elections.

7. PSCA replied in the affirmative. She added that the names and emblems of prescribed bodies and persons that had been registered would be de-registered if they were not printed on ballot papers in two consecutive general LegCo elections, or two consecutive ordinary DC elections, or in any by-election held between such elections.

8. CEO supplemented that the register of the registered names, abbreviated names and emblems of prescribed bodies and persons was available for public inspection. Under the existing Cap. 541M, the cut-off date of an annual registration cycle was 15 April. An application made after the cut-off date would be processed by the EAC in the next annual registration cycle. To allow sufficient time for relevant parties to register their names and emblems or revise their names and emblems with the EAC for the purpose of the 2007 DC election, the registration period was proposed to be extended to 18 June 2007.

9. In response to Mr Howard YOUNG, CEO said that at present, about 40 prescribed bodies and three prescribed persons had registered specified particulars with the EAC. Mr Howard YOUNG suggested that the EAC should send a letter to

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advise these prescribed bodies and persons that the particulars registered in relation to the 2004 LegCo election would be deemed to have been registered in relation to the 2007 DC elections, as some of them might wish to vary the registered particulars and some prescribed bodies might have ceased operation. CEO agreed to consult the EAC on Mr YOUNG's suggestion.

10. Mr CHEUNG Hok-ming asked whether a prescribed body which received Government subsidy could apply for the registration of its name or emblem.

11. PSCA responded that the conditions under which the EAC might refuse an application for the registration of the name and emblem of a prescribed body or person were stipulated in section 12 of Cap. 541M. For example, the EAC might refuse an application from a prescribed body or person for the registration of a name or emblem which was obscene, indecent or offensive. The fact that a prescribed body was a government-subsidised body was not a ground for refusal. CEO added that the procedure for processing of applications was open and transparent. If the EAC refused to grant an application, it would give a notice to inform an applicant of the reasons for refusing the application. The applicant was allowed to vary his application within a specified period. If the EAC decided that the application should be granted, it would publish a notice in the Gazette specifying the name of the applicant and the subject of application. Any person might, within 14 days after the publication of the notice in the Gazette, object to the granting of an application for the registration of a name and emblem of a prescribed body or person.

12. Ms Audrey EU suggested that the registered emblems and names of prescribed bodies should also be printed on -

- (a) the introductory leaflets of candidates sent by the Government to the electors before the polling day; and
- (b) the introductory materials of candidates available at the polling stations on the polling day.

13. PSCA and CEO responded that under the existing arrangement, candidates were allowed to decide on the content of their election-related publicity materials to be sent to the electors by free postage. Subject to the restriction in space available to each candidate, candidates could also decide on the content of the introductory leaflet on candidates prepared by the REO.

Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (Cap. 541N)

14. Members noted that the EAC would make amendments to the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (Cap. 541N) to set out the

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operational procedures of the financial assistance scheme for DC election candidates. Under the scheme, DC election candidates who were elected or who received 5% of valid votes or more were eligible for financial assistance. The subsidy rate was set at \$10 per vote, and the amount of financial assistance payable to each candidate was capped at 50% of the actual election expenses of the candidate.

15. Noting that a DC election candidate would not be required to submit an auditor's report on the accounts in his election return when making the claim for financial assistance, Mr TAM Yiu-chung urged the Administration to review the requirement for candidates of the 2008 LegCo election to submit an auditor's report given its cumbersome procedure.

16. PSCA explained that due to the considerable difference in the electorate size between a DC election constituency and a LegCo election constituency, the amount of financial assistance received by a DC election candidate would be much smaller than that received by a LegCo election candidate. If mandatory auditing requirement was imposed on the DC election candidates who applied for financial assistance, the auditing fee would take up a significant proportion of the financial assistance payable to each candidate. This would undermine the objective of the scheme. In the circumstances, DC election candidates would not be required to submit auditor's reports on their accounts of election expenses. Nevertheless, they were still required to submit election returns to the Registration and Electoral Office (REO) for checking. PSCA further explained that in the 2004 LegCo election, the average amount of election expenses incurred by a candidate in a Geographical Constituency election was \$520,000. Given the large amount of money involved, the Administration had to ensure that a transparent and fair system was in place to safeguard public expenditure. It was therefore considered necessary for LegCo election candidates to submit auditor's reports. Nevertheless, the REO would welcome views from members on how the procedure could be simplified.

17. Mr Ronny TONG said that the amount of financial assistance payable to each candidate was capped at 50% of the actual election expenses of the candidate. Given that the fiscal position of the Government had improved, there was room to increase the upper limit of 50%.

18. PSCA responded that while the purpose of the scheme was to encourage more political talents to participate in elections, candidates should shoulder a portion of the election expense incurred. In the last LegCo and DC elections, the average amount of election expenses was about \$20 per vote, and in respect of the DC elections, more than 80% of the candidates spent less than \$40,000. As a first step to provide financial assistance to DC election candidates, the Administration considered it reasonable to cap the amount of subsidy rate to 50% of the actual election expenses. The subsidy rate was also comparable to that of similar schemes introduced by other countries.

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Miscellaneous amendments to the Electoral Affairs Commission (Electoral Procedure) (District Councils Regulation) (Cap. 541F)

19. In response to Mr Ronny TONG, PSCA and CEO explained that the amendment to section 47(4) of Cap. 541F was technical in nature and sought to make clear that the Presiding Officer (PRO) might not exclude other public officers on duty at the polling stations from the polling stations. As the polling station would be turned into a counting station in the DC election, there was also a practical need to amend section 63(1A) of Cap. 541F to provide that in addition to the candidates and their election or counting agents, polling agents could also stay in the polling station while it was closed for the preparation of the counting of votes.

20. In response to Mr Ronny TONG's question on counting of votes, CEO explained that in order to expedite the counting process, a revised arrangement had been adopted since the conduct of the 2003 DC election and 2004 LegCo election that ballot papers which were clearly invalid by their nature (i.e. tendered, spoilt, unused, unmarked ballot papers, ballot papers not marked with the '✓' chop provided or contained votes for more than one candidate) would be counted as invalid on the spot and would not be treated as questionable ballot papers. A candidate, an election agent or a counting agent was not entitled to inspect or make representations to the PRO concerning these ballot papers. For questionable ballot papers, candidates, their election or counting agents were allowed to inspect them and make representations. The current proposal sought to allow candidates, their election or counting agents to inspect ballot papers which were clearly invalid by their nature. This represented a more relaxed arrangement.

21. Mr LAU Kong-wah said that at the CE election held on 25 March 2007, an overhead projector was used to project questionable ballot papers one by one on a screen when the Returning Officer (RO) determined the validity of the ballot papers. He asked whether this would become a standing practice for future elections. While he appreciated that the practice would enhance transparency in the counting process, he pointed out that it would also give rise to other problems.

22. Ms Audrey EU said that the same arrangement was adopted for the Election Committee subsector elections held on 10 December 2006. She expressed support for the arrangement as it would enhance the transparency of the counting process and educate people how to vote properly.

23. Ms Margaret NG said that the purpose of a secret ballot was to prevent illegal and corrupt conduct at an election. At the CE election on 25 March 2007, one of the questionable ballot papers was that the chop with a '✓' was affixed outside the circle opposite the name of the candidate of the elector's choice. The RO had determined that the ballot paper was valid as he was satisfied that the elector's intention was clear. Ms NG further said that it was not her intention to dispute the determination made by the RO. However, she had some concerns in the

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light of members' earlier discussion about the use of an overhead projector in the process of determining questionable ballot papers. She pointed out that if it was the intention for a ballot paper to be marked in a way so that the elector could be identified by the candidate, exposing the ballot paper by way of an overhead projector for public inspection would assist in such illegal and corrupt conduct. Since electors were aware that the proper way to cast a vote was to affix the chop with a '✓' inside the circle opposite the name of the candidate of the elector's choice on the ballot paper, Ms NG questioned whether ballot papers not marked in such a way should be regarded as valid.

24. PSCA said that the use of a visualiser to facilitate candidates and their agents to inspect questionable ballot papers was adopted in past elections such as the 2004 LegCo functional constituency election, the 2005 and 2006 Election Committee subsector election and District Council by-elections. The use of a projector, however, would depend on the size of the counting station. PSCA further said that under the existing practice, a ballot paper which had any writing or mark by which the elector could possibly be identified would be decided as invalid. Given that it was not uncommon for electors to affix the chop with the '✓' outside the circle against the name of a candidate on a ballot paper, the guiding principle for ruling was that such ballot papers would be treated as valid if the intention of the elector was clear. To ensure transparency and fairness, candidates or their agents might raise objection to the admission or rejection of questionable ballot papers. PSCA added that a review would be conducted after each election to identify areas for improvement. Ms NG requested the Administration to address her concerns in the context of the review to be conducted on the CE election.

25. Dr YEUNG Sum held the view that unmarked ballot papers should not be regarded as invalid, as they reflected the voters' political stance or their protest against the electoral system.

26. PSCA responded that the arrangement for handling invalid ballot papers was prescribed in law. The subject of whether unmarked ballot papers should be regarded as valid votes would need further consideration.

Cooling off period

27. Dr YEUNG Sum advocated a cooling off period on the polling day. He pointed out that canvassing on the polling day would not be meaningful as the electorate of some DC constituencies was very small, and the no canvassing zones outside polling stations were getting larger and larger. He envisaged that a cooling off period would not impact on the voter turnout rate which had been increasing in recent elections. He also pointed out that many overseas countries had adopted such a practice in an election.

28. PSCA said that as different political parties had different views on the issue, the Administration would continue listening to members' views on this issue.

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Polling hours

29. Mr LAU Kong-wah said that the polling hours of DC election was from 7:30 am to 10:30 pm. He asked whether the Administration would consider shortening the polling hours by advancing the end time of the poll.

30. PSCA said that it was necessary for the Administration to analyse the voter turnout rate at the last polling hour of previous elections. She was aware that the REO had kept statistics on the turnout rate at polling stations on an hourly basis.

Other issues

31. Mr LAU Kong-wah said that in order to qualify for nomination as a candidate at a DC election, a person must have ordinarily resided in Hong Kong for the three years immediately preceding the nomination. In order to comply with the requirement, a candidate had to provide a lot of information to prove that he had ordinarily resided in Hong Kong during the prescribed period. He asked whether this cumbersome procedure could be simplified.

32. PSCA and CEO responded that a definition of "ordinarily residence" was not provided in law. Legal advice was that each case would be determined on its own merit. If candidates had encountered practical difficulties in complying with the requirement, they could reflect them to the Administration for consideration.

V. Promoting constitutional development : The Next Step

(LC Paper No. CB(2)1378/06-07(03) - Administration's paper on "Promoting constitutional development : The Next Step"

Annex I to LC Paper No. CB(2)920/06-07 - Papers for the Committee on Governance and Political Development on 25 January 2007 on possible models for selecting the Chief Executive and forming the Legislative Council by universal suffrage)

33. Secretary for Constitutional Affairs (SCA) introduced the paper which set out the next step of work of the Administration in promoting constitutional development. He said that the incumbent CE had been re-elected to serve another term of office. The CE had undertaken to publish a Green Paper on constitutional development in mid-2007 during his election campaign. Since the Committee on Governance and Political Development of the Commission on Strategic Development (CSD) had commenced work in late 2005, it had received lots of views and its discussions had become more focused. For the possible models for selecting the CE by universal suffrage, CSD members were narrowing down differences. Most members agreed that a nominating committee should be formed in accordance with the Basic Law. There were, however, different views on its composition. There were views that the composition of the current Election Committee should be used as a basis to consider that of the nominating committee.

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There were also views that the membership of the nominating committee could be of several thousand. The Democratic Party (DP) had proposed that the nominating committee be constituted by the 60 LegCo Members. On the model for forming the LegCo by universal suffrage, there were still divergent views on the future of functional constituencies (FCs). There were views that the FCs should be retained in some form, abolished in phases or abolished in one go.

34. SCA further said that at the special meeting of the Finance Committee held on 20 March 2007, the Administration had been requested to provide information on the detailed breakdown of the \$1.5 million earmarked for conducting the public consultation on the Green Paper. The relevant information was tabled for members' information and would be issued to all Members together with other Administration's replies relating to the Estimates of Expenditure 2007-08 by the LegCo Secretariat.

35. Mr Ronny TONG expressed dissatisfaction that the Administration had regarded the CSD as the main forum for discussing issues relating to universal suffrage. He said that the discussion of the CSD was "a small-circle discussion" as the CSD members who could represent the public were out-numbered by those who could not. Hence, any majority views collected by the CSD could not represent the views of the public. He queried why the Administration considered that the views of the CSD were more important than that of the 21 pan-democratic Members.

36. SCA responded that the CSD provided a forum for different sectors of the community to express views on universal suffrage. Members of the CSD were drawn from a broad cross-section of the community, including members of political parties and groups, academics, businessmen, etc. In the past year, the CSD had discharged its function effectively. The Administration attached great importance to the views received both within and outside the LegCo.

37. Dr YEUNG Sum said that the DP considered that 2012 was the appropriate year for implementing dual elections by universal suffrage. The DP would not support the proposal that the implementation of universal suffrage for CE should precede that for the LegCo. On the universal suffrage model for the LegCo, the DP maintained the view that the FCs should be abolished in entirety. As for the model for selecting the CE by universal suffrage, 21 pan-democratic Members had recently proposed that the nominating committee should comprise of 1200 members by including the existing 800-member Election Committee and about 400 elected District Council (DC) members. He requested that this proposal be discussed by the CSD and included in the Green Paper to be published.

38. Ms Audrey EU sought clarification whether the Green Paper would include all models received by the CSD as remarked by SCA, or only three models as remarked by the CE. She also asked about the timetable for the publication of the Green Paper and for conducting public consultation.

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39. SCA explained that the Administration would reflect all the proposals received by the CSD and present three types of models for implementing universal suffrage for the CE and LegCo elections respectively in the Green Paper (the models in the Green Paper) for public consultation. The Green Paper would be published after the third term HKSAR Government had been formed on 1 July 2007, to be followed by a three-month public consultation. After the consultation exercise, the Administration would need to summarize the views of the community and decide whether there was basis to initiate the process of amending the methods for electing the CE and forming the LegCo in 2012 in accordance with Annexes I and II to the Basic Law. A report would be submitted to the Central Authorities to reflect any mainstream view formed during the public consultation and other views expressed.

40. Mr CHEUNG Man-kwong, Mr Martin LEE, Dr YEUNG Sum and Mr Albert HO said that the CE had pledged to make the best endeavour to resolve the issue of universal suffrage within his next term of office. The CE had also said that after considering the views received on the models in the Green Paper, the Administration would formulate a "final" model for the two electoral methods. Mr CHEUNG asked whether the model which received majority support during consultation would become the "final" model, or whether the "final" model could be a modified version of one or more of the models in the Green Paper. In the latter scenario, he feared that the model that had received majority support would be subsumed under the "modified" model and the public was forced to accept a model which might not reflect the mainstream view. Mr CHEUNG also asked whether the "final" model could be amended by the LegCo to ensure compliance with the international standard of universal suffrage. These members also expressed concern whether the Administration was the appropriate party to formulate a "final" model for the two electoral methods.

41. SCA said that under the Basic Law, the Administration had the constitutional duty to formulate and implement a package of proposals to achieve the ultimate aim of universal suffrage. Before a package of proposals could be formulated, it was necessary to gather public views and to this end, the Administration had established the CSD which served as a platform for representatives of various sectors and different political parties to express views. The Administration had also been discussing the issue with LegCo Members. The discussions held among the Administration, the LegCo and the public were open and interactive. The Administration had provided as much room as possible for various organisations and individuals to express their views, so that the whole community would stand a better chance of reaching consensus on the issue of universal suffrage. The public would be consulted on the models in the Green Paper. If a mainstream view emerged among the community after consultation, a report would be made to the Central Authorities to reflect the view faithfully. SCA added that in accordance with the Basic Law, any amendment to the electoral methods had to be initiated by the Administration. However, the Administration would take into account the views of Members as constitutional development could only move forward with the support of a two-thirds majority of LegCo Members.

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42. Mr LEUNG Kwok-hung held the view that the best way to gauge public opinion on any proposed electoral models was by means of a referendum. SCA responded that the Basic Law did not provide a mechanism for conducting a referendum. However, the Administration recognised the importance of public opinion. He pointed out that the outcome of the CE election held on 25 March 2007 tallied with the results of the opinion polls conducted by tertiary institutions. This demonstrated that the voting result of the Election Committee had reflected public views.

43. Dr YEUNG Sum said that the Administration should include the models proposed by pan-democratic Members as part of the models in the Green Paper, and put forth the model which obtained majority public support to the LegCo. It was inappropriate for the Administration to mix and match the different models in the Green Paper to come up with a "final" model as this could result in the democratic elements of the model that had the majority support being watered down. Mr Ronny TONG asked the Administration to give an undertaking to the effect that the models proposed by 21 pan-democratic Members would be included in the Green Paper.

44. SCA said that the 21 pan-democratic Members had to lobby support from other Members of the LegCo on their proposals. As to whether their proposals would be one of the three types of models in the Green Paper, he said that the formulation of the types of options had yet to be determined at this stage. SCA reiterated that all proposals received would be faithfully reflected in the Green Paper. The Administration would present three types of options in an objective manner in the Green Paper to facilitate public discussion. The CE had already indicated that the models on universal suffrage proposed by the Government should receive support from 60% of the public.

45. Mr Albert HO pointed out that the public might not be given a choice and would be forced to accept the "final" model, as in the case of the proposals put forth in the Fifth Report of the Constitutional Development Task Force (the 2007/08 proposal). Mr HO said that he envisaged that the models of the pan-democratic Members would be generally accepted by the public. If the Administration modified any model which had received majority public support and then claimed that the "modified" model was accepted by the public, it would be cheating the public.

46. SCA responded that the accusation made by Mr HO was unfounded and unacceptable. He pointed out that the 2007/08 proposal was widely accepted by the public; it was the pan-democratic Members who had distorted the wish of the public by voting down the proposal. SCA added that it was the established practice of the Administration to consult the public on preliminary proposals before putting forward Government's recommendations for the consideration of LegCo Members.

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47. The meeting ended at 10:40 am.

Council Business Division 2
Legislative Council Secretariat
18 May 2007