

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)195/07-08
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 16 July 2007, at 2:30 pm
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 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 Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon CHAN Yuen-han, SBS, JP
 - Hon Bernard CHAN, GBS, JP
 - Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
 - Hon LEUNG Yiu-chung
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon Jasper TSANG Yok-sing, GBS, JP
 - Hon Howard YOUNG, SBS, JP
 - Dr Hon YEUNG Sum, JP
 - Hon LAU Kong-wah, JP
 - Hon LAU Wong-fat, GBM, GBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon CHOY So-yuk, JP
 - Hon Timothy FOK Tsun-ting, GBS, JP
 - Hon Abraham SHEK Lai-him, SBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon WONG Kwok-hing, MH
 - 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
 - Hon WONG Ting-kwong, BBS
 - Hon Ronny TONG Ka-wah, SC
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
- Member attending** : Hon TAM Heung-man

Members absent : Hon James TIEN Pei-chun, GBS, JP
Hon Martin LEE Chu-ming, SC, JP
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon MA Lik, GBS, JP
Hon CHEUNG Hok-ming, SBS, JP
Hon CHIM Pui-chung
Hon KWONG Chi-kin

Public Officers attending : Item III

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Joshua LAW Chi-kong
Permanent Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary for Constitutional and Mainland Affairs

Mr LAM Man-ho
Chief Electoral Officer

Item IV

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Joshua LAW Chi-kong
Permanent Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional and Mainland Affairs

Item V

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Joshua LAW Chi-kong
Permanent Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional and
Mainland 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 Fonny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)2468/06-07 - Minutes of meeting on 16 April 2007)

The minutes of the meeting held on 14 May 2007 were confirmed.

II. Information papers issued since the last meeting
(LC Paper No. CB(2)2253/06-07(01) - Press releases on the media briefing by the Secretary for Constitutional Affairs after the meeting of the Committee on Governance and Political Development of the Commission on Strategic Development on 21 June 2007)

LC Paper No. CB(2)2422/06-07 - Report on the 2007 Chief Executive Election submitted by the Electoral Affairs Commission to the Chief Executive)

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2. Members noted that the above papers had been issued to members since the last meeting.

Conduct of business

3. The Chairman said that he had received two letters from members (LC Paper Nos. CB(2)25-2(01) and (02)) requesting the Panel to defer discussion of the last item "System of declaration of investments and interests by Principal Officials under the Accountability System" to a future meeting so as to allow more time to discuss the Green Paper on Constitutional Development (the Green Paper) which was published on 11 July 2007. He sought views from members.

4. As members did not raise objection to the request, the Chairman concluded that the item would be discussed at a special meeting to be held in July 2007. Members would be advised of the date of the meeting in due course.

(Post-meeting note : The special meeting was held on 25 July 2007 at 8:30 am.)

Green Paper on Constitutional Development

5. The Chairman said that in one of the letters, some members had suggested that the Panel should hold a series of special meetings in the coming months to discuss the Green Paper. He sought views from members.

6. Ms Emily LAU said that given that the consultation on the Green Paper would end on 10 October 2007, some pan-democratic Members had suggested to hold eight meetings from 27 July 2007 to 5 October 2007, and two of these meetings should be designated for receiving public views.

7. Mr LEE Cheuk-yan held the view that meetings should be arranged as long as a quorum could be formed. Given the importance of the Green Paper, the Panel should provide a forum for public discussion. Mr LEE Wing-tat suggested that a circular should be issued to Panel members to ascertain their availability in attending meetings.

8. Dr Philip WONG said that the request to hold special meetings was made after the commencement of the Legislative Council (LegCo) recess. Given that some of the Panel members were not present at this meeting, he questioned whether it was fair to make a decision on the matter.

9. Mr TAM Yiu-chung said that four of the eight meeting dates proposed had clashed with overseas duty visits of Panels, i.e. 27 July, 24 August, 21 and 28 September. Given that Members participating in the overseas duty visits were in their official capacity, he suggested and most of the members present at the meeting agreed that the special Panel meetings should avoid clashing with the overseas duty visits of the Panels.

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10. Mrs Selina CHOW and Mr Howard YOUNG said that by convention, Panels would not hold meetings in August unless under exceptional circumstances. They requested that the special meetings be arranged in July and September and did not see the need for holding meetings in August. Mr Abraham SHEK held the view that special meetings should only be held in September, given that the Administration would be consulting the public in the coming months.

11. Some members, including Mr LEE Wing-tat, Mr LEE Cheuk-yan, Ms Audrey EU, Mr Ronny TONG, Ms Emily LAU and Mr LEUNG Kwok-hung, pointed out that the Green Paper was presented to the LegCo at its last Council meeting on 11 July 2007, and many specific issues were covered in the Green Paper. In order to discuss these issues thoroughly, there was no choice but to schedule special Panel meetings in August. Unless the Administration agreed to extend the consultation period beyond 10 October 2007, it was necessary for the Panel to hold eight meetings. They suggested that the proposed meeting schedule could be revised to avoid clashing with the overseas duty visits of Panels.

12. Mr TAM Yiu-chung and Mr LAU Kong-wah considered that a total of five special meetings should be adequate, given that the issue of universal suffrage had been actively discussed by the Panel at previous meetings.

13. In response to members, Secretary for Constitutional and Mainland Affairs (SCMA) said that issues covered in the Green Paper were not new. As issues relating to constitutional development had been widely discussed by the public in the past three years, the Administration considered that a three-month consultation period adequate. SCMA stressed that the purpose of the consultation was to listen to public views. The Administration appreciated the exchange of views with members during Panel meetings, and it had no strong view on whether the Panel should hold special meetings in August. Irrespective of the number of Panel meetings held, the Administration would continue to exchange views with District Council (DC) members and different sectors of the community in the coming months. He envisaged that the subject would continue to be discussed even after the consultation ended on 10 October 2007.

14. Dr YEUNG Sum and Mrs Selina CHOW suggested that the drawing up of the proposed schedule of meetings should be left to the Chairman and Deputy Chairman who would take into account members' views expressed at the meeting. Dr YEUNG Sum stressed that the proposed schedule should include two dates for receiving public views. The Chairman concluded that a proposed schedule of meetings would be circulated after the meeting. Subject to members' availability, the dates of the special meetings would be confirmed at the next meeting.

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Work plan of the Constitutional and Mainland Affairs Bureau (CMAB)

15. SCMA briefed members on the work plan of the CMAB in the coming year, following the commencement of the new term Government. The main areas of work included -

- (a) consultation on the Green Paper;
- (b) proposal to create two additional layers within the Government, namely Deputy Directors of Bureau and Assistants to Directors of Bureau under the Further Development of the Political Appointment System;
- (c) the conduct of DC election on 18 November 2007;
- (d) practical arrangements for the conduct of LegCo election in September 2008;
- (e) human rights issues; and
- (f) work of the Mainland Affairs Liaison Office.

16. Mr LEUNG Yiu-chung asked whether the mechanism for amending the Basic Law was included in the work plan of CMAB in the coming year. SCMA responded that the Government had discussed the issue with the Central Authorities and the latter's position was that the Basic Law could not be amended lightly. That being the case, there was no plan to draw up a mechanism for amending the Basic Law at this stage.

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17. Mr LEUNG Yiu-chung requested the Administration to provide a progress report on the issue.

III. Provisional recommendations on the delineation of geographical constituencies for the 2008 Legislative Council election

(LC Paper No. CB(2)2413/06-07 - Consultation materials on "Provisional recommendations on delineation of geographical constituencies in respect of the 2008 Legislative Council Election" provided by the Electoral Affairs Commission

LC Paper No. CB(2)2470/06-07(01) - Supplementary information on "Provisional recommendations on the delineation of geographical constituencies for the 2008 Legislative Council Election" provided by the Administration)

18. Chief Electoral Officer (CEO) said that the next LegCo election would be

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held in September 2008. The Electoral Affairs Commission (EAC) had drawn up its provisional recommendations on the boundaries and names of the LegCo geographical constituencies (GCs) (the provisional recommendations). In accordance with section 19 of the EAC Ordinance (Cap. 541), the EAC was consulting the public on these provisional recommendations from 5 July to 3 August 2007 before submitting its report on the proposed recommendations to the Chief Executive (CE). In accordance with the Legislative Council Ordinance (Cap. 542), there were to be five GCs for the purpose of returning 30 LegCo Members. The number of Members to be returned for each GC was to be not less than four nor more than eight.

19. Referring to the charts provided in LC Paper No. CB(2) 2470/06-07(01), CEO explained to members the calculation of population quota, the estimated population of the five GCs, the number of seats to be allocated to the GCs, the proposed allocation of GC seats and the population deviation of the five GCs under the proposed number of seats to be allocated. Having regard to the above calculations, the statutory criteria and the established working principles, the EAC recommended that the delineation of boundaries of the existing five GCs and their names remained unchanged. The recommended number of seats allocated to the 5 GCs was as follow -

- (a) Hong Kong Island (HKI) - 6 seats;
- (b) Kowloon West (KLW) - 5 seats;
- (c) Kowloon East (KLE) - 4 seats;
- (d) New Territories West (NTW) - 8 seats; and
- (e) New Territories East (NTE) - 7 seats.

20. Miss CHAN Yuen-han said that under the provisional recommendations, the number of GC seats in KLW would be increased by one whereas that of the KLE would be reduced by one. While she would not comment on the population projection for the two GCs, she noted that the difference in population between them was only about 12 000. That being the case, she considered that the number of seats in these two GCs should maintain the status quo. This could be achieved by adjusting the boundaries between the two GCs. Alternatively, consideration could be given to merging the two GCs into one so that the overall GC seats in Kowloon would be maintained at nine.

21. SCMA explained that the boundaries of the five GCs were based on the boundaries of the 18 DCs. These boundaries would not be adjusted for the purpose of the LegCo elections. Apart from the slight adjustment made to the boundaries of the Sham Shui Po DC and the Kwai Tsing DC the year before, the boundaries of the 18 DCs had remained unchanged. In addition, the differences

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in population between KLW and KLE in the last LegCo election was about 20 000, and yet members had accepted that the latter be allocated with one more seat based on the established formula. As regards the proposal to merge the two GCs, SCMA said that the five GCs had been in existence for the past three LegCo elections. The Administration had decided that the framework for the 2008 LegCo election should remain unchanged, after the package of proposals for selecting the CE in 2007 and forming of LegCo in 2008 (the 2007/08 package of proposals) was not passed by Members in December 2005.

22. Mr Albert HO considered that the criteria in allocating the number of seats to the GCs were too rigid and had ignored the principle of fairness in an election. He asked whether the Administration had given instruction to the EAC to the effect that the number of GCs must be five, and the number of seats to be returned for each GC, i.e. between four and eight, must remain unchanged. Referring to Chart 3 of LC Paper No. CB(2) 2470/06-07(01), Mr HO pointed out that the number of seats allocated to NTW was 8.732 which should be nine when rounded up. However, due to the requirement of a maximum of eight seats for each GC, NTW was allocated eight seats only. He said that consideration could be given to re-delineate the boundaries between NTW and KLNW so that there would be a fairer allocation of seats.

23. Mr LEUNG Yiu-chung said that consideration should be given to transfer the Island DC from NTW to HKI in order to narrow the deviation of HKI which stood as high as -9.11% and reduce the number of seats to be allocated to NTW to around 8. Mr LEUNG Kwok-hung also said that flexibility should be given to re-adjust the boundaries between KLNE and NTE, and between KLNW and NTW.

24. SCMA responded that the Administration had not given any instruction to the EAC. The EAC chaired by a judge was an independent body free from any interference. The criteria adopted by the EAC in allocating seats were based on the requirements in law. The Administration had made clear in December 2005 that if the 2007/08 package of proposals was rejected by the LegCo, there would be no policy change in the framework of the 2008 LegCo election. To his understanding, the EAC had considered alternatives such as re-delineating the boundary by including Kowloon City DC in KLW. As this would result in KLE having only three seats, which did not comply with the requirement of a minimum of four seats for each GC, the boundary between KLW and KLE was proposed to remain unchanged. For Island DC, many of its residents considered themselves as part of NTW and it was inappropriate to re-delineate the boundary between NTW and HKI.

25. Mr LEE Cheuk-yan queried the purpose of the consultation, given that the criteria of five GCs and four to eight seats per GC were not to be changed. He also asked about the possibility of amending the relevant legislation with a view

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to improving fairness in an election. He cited for example that some DC constituency areas (DCCAs) in NTW could be included in KLNW so that the seat per population ratio would be more balanced and the deviation in NTW would not stand as high as +9.15% .

26. SCMA said that given that the EAC was an independent body, he was not in a position to answer on the follow-up actions to be taken by the EAC following the consultation. The consultation process was transparent, and follow-up actions to be taken by the EAC, if any, would take into account the statutory criteria and the views of the public. Unless there was justification, the delineation would have regard to the boundaries of the 18 administrative districts and the boundaries of the existing five GCs would remain unchanged. As regards the suggestion to transfer certain DCCAs from NTW to KLNW, SCMA said that it was necessary to consult potential candidates and incumbent DC members on any changes to the boundary as this would affect their work. Some potential candidates and incumbent DC members had established a relationship with electors of their constituency for the past few years. He further said that the deviation of +9.15% in NTW was within the limit of $\pm 15\%$ as stipulated in law.

27. Mr LEE Wing-tat considered it inappropriate to consult potential candidates on the change of boundaries as they had vested interest. He pointed out that as far as the LegCo election was concerned, the decision made by the Standing Committee of the National People's Congress (NPCSC) on 26 April 2004 (the Decision) required an equal split of GC and FC seats in the LegCo. The Decision did not require that there should be five GCs and the number of seats for each GC should be limited to four and eight. In the circumstances, local legislation could be amended to take account of prevailing changes such as changes in population.

28. SCMA said that at this stage, the Administration had no idea who the potential candidates would be. It envisaged that many of them would be incumbent DC members or members of political parties. In his view, members of the public, including potential candidates and members of political parties, had the right to give views on the provisional recommendations. The Administration was aware of the need to revise the number of seats for certain districts following a change in population. For instance, the number of DC seats had increased from the original 390 to 400 in 2003 and further to 405 in 2007. Had the 2007/08 package of proposals been passed by the LegCo, the number of GC and FC seats in LegCo would have increased to 35 each. There would be a basis to adjust the GC boundaries, increase the number of seats in the five GCs, and revise the lower and upper limits of seats for each GC. As the 2007/08 package of proposals could not obtain the support of a two-thirds majority of LegCo Members, the framework of the 2008 LegCo election could only remain unchanged.

29. Mr LEE Wing-tat and Mr Albert HO remained unconvinced why changes could not be made to the existing GC boundaries. SCMA said that proposals to

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re-delineate the boundaries of the five GCs could be considered by the EAC provided that they complied with the statutory criteria.

30. CEO supplemented that the EAC had considered different options before drawing up the provisional recommendations. As re-delineating the existing GC boundaries was a drastic change, the EAC recommended that the status quo should be maintained. The EAC, however, welcomed views from Members.

IV. Models, roadmap and timetable for selecting the Chief Executive and for forming the Legislative Council by universal suffrage
(issued to all Members on 11 July 2007 - Green Paper on Constitutional Development)

issued to all Members on 11 July 2007 - Statement by Chief Secretary for Administration on Green Paper on Constitutional Development at the Council meeting on 11 July 2007

LC Paper No. CB(2)2471/06-07(01) - Transcripts of remarks made by the Chief Executive, the Chief Secretary for Administration and the Secretary for Constitutional and Mainland Affairs to the press on the Green Paper on Constitutional Development on 11 July 2007)

Introduction

31. In his introduction to the Green Paper, SCMA made the following points -

- (a) the publication of the Green Paper within 11 days after the commencement of the new term Government indicated its determination to resolve the issue of universal suffrage within this term;
- (b) since the return of some Members by direct election about 22 years ago, the community had engaged in the discussion of universal suffrage. The determination of the Government to resolve the issue would address the interests of the public; and
- (c) the Basic Law prescribed the ultimate aim of implementing universal suffrage for the CE and the LegCo elections. It was the hope of the people of Hong Kong that the Government and the LegCo would work together to resolve the issue.

32. Ms Audrey EU said that some members of the public had complained that copies of the Green Paper were not available in some District Offices.

33. SCMA said that the number of Chinese and English copies initially

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distributed to district offices were 7 500 and 2 500 respectively. An additional 8 500 Chinese copies and 5 000 English copies were distributed to district offices thereafter. Members of the public could also access the Green Paper through the website.

Concepts and principles of universal suffrage

34. Mr Alan LEONG referred to the last sentence in paragraph 2.20 in the Green Paper which stated that the ultimate aim of universal suffrage for Hong Kong's constitutional development originated from the Basic Law, and not the International Covenant on Civil and Political Rights (ICCPR), and asked whether the Administration had anticipated the possibility that the final package of proposals would contain anything in breach of the ICCPR.

35. SCMA explained that the last sentence in paragraph 2.20 sought to state the fact that the ultimate aim of universal suffrage for Hong Kong's constitutional development originated from the Basic Law. Paragraphs 2.18 to 2.28 in the Green Paper set out the background for the application of certain provisions of the ICCPR to Hong Kong. In 1976, a reservation was made not to apply Article 25(b) of the ICCPR to Hong Kong, in so far as it might require the establishment of an elected Executive Council or LegCo. This reservation continued to apply after the handover in 1997.

36. SCMA further explained that the relevant provisions in the Basic Law represented an improvement as compared with those in the Joint Declaration in 1984. The provisions in the Joint Declaration provided that the legislature should be constituted by elections and that the CE should be selected by election or through consultations. The Basic Law, on the other hand, stipulated that universal suffrage was the ultimate aim for selecting the CE and forming the LegCo. Paragraph 2.29(iii) in the Green Paper had made clear the view of the Committee on Governance and Political Development of the Commission on Strategic Development (CSD) that in discussing the options for implementing universal suffrage, the principles of universal and equal suffrage should be complied with.

37. Mr Alan LEONG disagreed with the Administration's view and said that Article 25(b) of ICCPR was applicable to Hong Kong.

Method of nomination for CE candidacy

38. Mr LEE Wing-tat said that according to the Administration, the Green Paper was prepared on the basis of the discussions of the CSD and the proposals provided by different political parties and groups, as well as individuals and organisations from the community. Paragraph 3.31 in the Green Paper had categorised three options for the number of CE candidates : 10 candidates or more; eight candidates at most; and two to four candidates at most. Mr LEE said

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that as a member of the CSD, he did not recall having discussed the number of CE candidates, although the nomination threshold had been discussed. He cautioned that the method of nomination should not include a screening process to prevent contenders with dissenting views from running for CE candidacy.

39. SCMA affirmed that at the early stage of the discussion held by the CSD, the focus was on the nomination threshold. At the latter stage, some people had asked about the number of candidates to be nominated by a nominating committee (NC). Paragraphs 3.23 to 3.37 in the Green Paper explained that the categorisation of the number of CE candidates was based on the nomination thresholds proposed. For instance, the 22 pan-democratic Members had proposed that the NC should comprise 1 200 members (800-member Election Committee and 400 DC members) with a low nomination threshold of 50 subscribers. Based on this proposal, a maximum number of 24 candidates could be nominated.

40. Dr YEUNG Sum held the view that there were traps in the Green Paper. If the majority of the public opted for two to four candidates, the next step to be taken by the Administration was to introduce a screening process in the nomination procedure so as to limit the number of candidates to two to four.

41. Dr KWOK Ka-ki said that to achieve democracy, there should not be any pre-set limit on the number of candidates in an election. He considered that the option of two to four candidates proposed in the Green Paper was misleading.

42. Mr LEUNG Kwok-hung proposed that a person who could obtain the signatures of 7% to 10% of registered voters should be eligible for nomination in a CE election.

43. Ms Margaret NG said that the Green Paper used three paragraphs (paragraphs 3.23, 3.24 and 3.27) to explain that the method of nomination had to comply with Article 45 of the Basic Law (BL 45) and concluded that one of the key issues was to consider the number of candidates available for election by the public. She pointed out that as far as LegCo elections were concerned, no limit was imposed on the number of LegCo candidates standing at an election. She did not see the need to specify a limit on the number of CE candidates. She said that this was a trap as the Green Paper should have provided options for the nomination threshold and the nomination procedure.

44. SCMA said that the worry about "traps" was unfounded, bearing in mind that any proposed nomination procedure could only be implemented with the support of a two-thirds majority of LegCo Members. At this stage, the Administration had not formed any view on the nomination procedure. The reason for presenting the number of CE candidates in the Green Paper was to facilitate easy understanding by members of the public on the nomination method. The NC, being broadly representative, played an important role to ensure that the

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CE candidates were representative of the different sectors of the community and the public at large.

45. Mr LEE Cheuk-yan said that the multiple-choice format in the Green Paper was misleading, complex and full of traps. He named a few traps as follows -

- (a) the Green Paper presented three options for the composition and size of the NC : less than 800 members; 800 members; and more than 800 members. It had not set out the basis for these numbers;
- (b) the Green Paper presented three options for the number of candidates : 10 candidates or more; eight candidates at most; and two to four candidates at most. It did not mention the basis for these numbers or provide the public with the options to choose between a high and low nomination threshold; and
- (c) in response to a question raised by a member of the public in an open forum, the Chief Secretary for Administration (CS) had explained that the candidates should obtain the support of different sectors and strata of the community. Mr LEE pointed out that that was an additional requirement as the NC was already broadly representative. He questioned whether the additional requirement was part of the screening process to limit the number of candidates.

46. SCMA disagreed that the option-based approach of the Green Paper sought to trap the public. He pointed out that the Administration had received over 300 submissions, apart from the one proposed by the 22 pan-democratic Members. The Administration categorised these proposals by specific issues and presented three types of options on the models, roadmap and timetable for implementing universal suffrage for public consultation. If out of the 300-plus submissions received, the Administration selected only three specific proposals for public consultation, it would not do justice to the remaining submissions. As regards the basis for the relevant options, SCMA said that they were explained in the footnotes corresponding to the options in the Green Paper.

47. Some members, including Mr LEE Wing-tat, Dr YEUNG Sum and Mr LEE Cheuk-yan, expressed concern that the Green Paper was silent on the democratic procedures for nominating the CE. Dr YEUNG asked whether the Administration would seek an interpretation from the NPCSC, in the event that there were disputes over the issue.

48. SCMA said that options for electing the CE by universal suffrage was set out in Chapter Three in the Green Paper. The Administration considered that as a first step, a mainstream view should be forged on the number of CE candidates. After a decision had been made, discussion would be held on how to amend

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Annex I to the Basic Law. In the course of the discussion, the democratic procedures for nominating CE candidates would be explored. Further discussion would be held when the Government proceeded to amend the relevant local legislation. He did not see the need to seek an interpretation from the NPCSC because the Administration would ensure that the proposed democratic procedures would comply with the Basic Law.

Functional constituencies (FCs)

49. Dr YEUNG Sum referred to paragraph 4.09 in the Green Paper and pointed out that the second option for the model for forming the LegCo, i.e. "retaining FC seats, but changing the electoral method" was misleading. He said that universal suffrage included the equal right for all citizens to nominate candidates. As this option conferred the right of nomination on FC sectors only, it did not comply with the principle of universal suffrage.

50. SCMA said that both Mr LEE Wing-tat and Mr LEE Cheuk-yan had expressed the same view on unequal right of nomination at CSD meetings. The future of FCs was a controversial issue. At this stage, the Green Paper provided options for open discussion. He would only like to point out that it was a constitutional and political reality that there would be hurdles to replace 30 FC seats in one go.

51. Mr LAU Kong-wah said that the Green Paper provided an opportunity for the public to choose practical options for implementing universal suffrage in Hong Kong. While some members expressed concern about the option-based approach, he held the view that a diversified community would prefer options. Mr LAU pointed out that constitutional development would be getting nowhere if the conservative camp and the opposition camp refused to set aside their differences. The public had hoped that a consensus could be reached to take forward constitutional development. While the Democratic Alliance for the Betterment and Progress of Hong Kong had proposed a practical model for selecting the CE by universal suffrage, it had yet to formulate a model for forming the LegCo. Before it would proceed to do so, he would like to seek clarification from the Administration on whether the continued existence of FCs contravened BL 68.

52. SCMA said that for proposals which had obviously breached the Basic Law, such as the abolition of the NC and the establishment of a bicameral system, were not included in the main text of the Green Paper. A more liberal approach was adopted for other proposals so as to stimulate discussion. For instance, the future of FCs was a controversial issue. There were views that allowing FC sectors to nominate candidates and all voters to elect FC Members was consistent with the principles of universal and equal suffrage. There were also views that allowing FC sectors to nominate candidates was inconsistent with the principles of universal and equal suffrage. At this stage, the approach adopted by the

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Administration was to allow room for discussion on these controversial issues with a view to narrowing differences and eventually to forging consensus.

53. Mr LEE Wing-tat cautioned that it was inappropriate to allow room to discuss a proposal which was inconsistent with the Basic Law. He pointed out that Professor Albert CHEN Hung-ye and Mr Alan HOO, both from the legal profession, had given the view that while allowing FC voters to nominate candidates for election by universal suffrage might be acceptable during the transitional stage, it was not consistent with the principles of universal and equal suffrage.

54. SCMA said that he was aware of the views of Professor Albert CHEN Hung-ye and Mr Alan HOO. On the other hand, Miss Maria TAM Wai-chu, a member of the Basic Law Committee and a member of the legal community, had put forth the proposal to confer the right of FC voters to nominate or to select candidates for election by universal suffrage. He doubted whether it was fair to deprive the public the opportunity to discuss such a proposal before a decision was made on whether the existence of FCs was consistent with the Basic Law. Similarly, it would be unfair to deprive the public the opportunity to discuss the proposal put forth by the 22 pan-democratic Members just because someone had expressed the view that the single nomination threshold (without a screening process) was in breach of the principle of democratic procedures in the Basic Law. SCMA reiterated that the position of the Administration was to allow open discussion on the various options for universal suffrage with a view to narrowing differences. After a mainstream view had emerged, the Administration would ensure that legislative proposals to amend the electoral methods must comply with the Basic Law.

55. Dr KWOK Ka-ki said that he was not aware of any democratic countries allowing FC voters to nominate candidates for election by universal suffrage. He pointed out that it was the responsibility of the Administration to put forth a proposal to abolish FCs and it should not place that burden on LegCo Members.

56. SCMA responded that each place had to work out electoral methods to suit its circumstances. In the upper chamber of some democratic countries such as the United Kingdom and Canada, their parliamentary members were appointed. The Administration would make the best endeavour to identify a set of solutions, including the possibility to modify FC elections, to achieve universal suffrage. To comply with the Basic Law, any such modification would require the support of a two-thirds majority of LegCo Members.

Public consultation and proposal formulation

57. Dr KWOK Ka-ki expressed concern that the approach to split the proposals submitted by the various parties into different components would provide room for the Administration to formulate a hybrid proposal, to

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manipulate public opinion, and to stall the implementation of universal suffrage. Dr KWOK asked how the Administration would put together a package of mainstream proposals and how public opinion would be assessed. He pointed out that the majority of the public had asked for implementing universal suffrage in 2012 and that should be reflected in the mainstream proposals.

58. Mr Ronny TONG asked who would be responsible for assessing whether a mainstream view could be formed after consultation and how this would be done.

59. SCMA said that in order to form a mainstream view on the models for universal suffrage in the community, two objective criteria had to be met. First, the mainstream proposal should be supported by a two-thirds majority of LegCo Members. Second, the findings of opinion polls conducted by independent organisations such as universities should indicate that the mainstream proposal received support from at least 60% of the public.

60. SCMA further said that the result of an opinion poll on the proposal of the 22 pan-democratic Members published by the University of Hong Kong on 9 July 2007 indicated different levels of public support for the different components of the proposal, as follows -

- (a) over 50% of the respondents supported universal suffrage for the election of CE to be implemented in 2012;
- (b) less than 49% of the respondents supported the proposed composition of the NC with the 800 Election Committee members and 400 directly elected DC members; and
- (c) less than 3% of the respondents supported the nomination threshold of 50 subscribers which would allow as many as 24 candidates in a CE election.

SCMA said that he was aware that the support for implementing universal suffrage in 2012 had recently increased to 58%, but the support for the proposed nomination threshold was low. In addition, pan-democratic Members had to bear in mind that their proposal also required the support of another 18 Members.

61. SCMA said that the work of the Administration and the views of the public were interactive. He envisaged that tertiary institutions, political parties and interested parties would conduct opinion surveys during and after the consultation. The Administration attached importance to these survey results and the views of Members. It would take account of these views when formulating a package of mainstream proposals.

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62. Ms Audrey EU asked how the Administration would assess the submissions received after the close of public consultation, e.g. whether different weighting would be given to standard submissions vis-à-vis individual submissions, and how the views on options not specified in the Green Paper, such as the nomination threshold, would be treated.

63. SCMA said that the Administration was open-minded and welcomed all views on issues relevant to universal suffrage. He was aware that the 22 pan-democratic Members would distribute a questionnaire with standard answers to the public in order to gain public support on their recommended models. He pointed out that the level of public support on the questionnaire prepared by the pan-democratic Members could not substitute the two objective criteria mentioned in paragraph 59 above in the assessment of whether a mainstream view had been formed.

64. Mr LEUNG Kwok-hung said that the Administration was playing games in conducting the public consultation. In his view, the Administration already had a package of proposals in mind. By prolonging the debate on the roadmap on universal suffrage, the timetable for universal suffrage would be sidelined. Mr LEUNG proposed that the Administration should present three specific models for universal suffrage and let the public select their choice by way of a referendum.

65. SCMA said that Mr LEUNG's remark was not only unfair to Members affiliated with political parties, but also to the 22 pan-democratic Members who had put forward proposals for implementing universal suffrage. SCMA further said that the Basic Law did not provide a mechanism for referendum.

66. Mr Albert HO asked about the timetable for the various activities leading to amendments to the two electoral methods in 2012. SCMA explained that there were roughly three stages involved. They were -

- (a) stage 1 - public consultation on the Green Paper. The purpose of this stage was to collect public views and narrow differences on the specific issues raised in the Green Paper. The views received would be summarised and the Administration would assess whether a mainstream view could be formed as the basis for formulating a package of proposals. The CE would submit a report to the Central Authorities to reflect faithfully any mainstream views formed during the public consultation and other views expressed;
- (b) stage 2 - the Administration would propose amendments to Annex I and Annex II to the Basic Law, if a package of mainstream proposals could be formulated; and

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- (c) stage 3 - the Administration would propose amendments to relevant local legislation to effect the changes.

SCMA said that he could not determine at this stage the timeframe of the various stages, given that the activities involved at each stage were interactive. For instance, if the views collected during the public consultation were diverse, it would take a longer time to formulate a package of proposals. The Government would make use of the next five years to forge consensus on the future constitutional development of Hong Kong. Incumbent Members could also make use of the next 15 months to take forward constitutional development.

67. Mr Albert HO said that the multiple-choice format of the Green Paper would lead to different conclusions. He asked whether the Administration would formulate two to three models out of these conclusions and conduct another round of consultation. SCMA responded that he could not rule out any possibility at this stage, as it would depend on the extent of differences in views collected during consultation.

68. Dr YEUNG Sum said that he would like to put on record that the Democratic Party objected to a proposal which introduced a screening process to prevent persons with dissenting views to run for CE candidacy, or a proposal which allowed certain sectors to have a special right to nominate candidates in the LegCo election, both of which were in breach of the principles of universal and equal suffrage. He asked whether the Administration would meet with different political parties and groups prior to putting together a package of mainstream proposals.

69. SCMA responded that the Administration was prepared to listen to views from different political parties and groups during and after consultation. The Administration and the LegCo should strive to forge consensus on the future constitutional development of Hong Kong.

V. System of declaration of investments and interests by Principal Officials under the Accountability System

70. Members had earlier agreed to defer discussion of the item to the special meeting to be held in July 2007.

71. The meeting ended at 5:44 pm.