

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)671/07-08
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Wednesday, 25 July 2007, at 8:30 am
in Conference Room A 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
 - Hon LEE Cheuk-yan
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon Margaret NG
 - Hon CHAN Yuen-han, SBS, JP
 - 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 Audrey EU Yuet-mee, SC, JP
 - Hon WONG Kwok-hing, MH
 - Hon LEE Wing-tat
 - Hon Daniel LAM Wai-keung, SBS, JP
 - Hon LEUNG Kwok-hung
 - Hon WONG Ting-kwong, BBS
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** :
- Hon James TIEN Pei-chun, GBS, JP
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon CHEUNG Man-kwong
 - 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 WONG Yung-kan, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon MA Lik, GBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon KWONG Chi-kin

Public Officers : Item I
attending

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 Gary POON Wai-wing
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Item II

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

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

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

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

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

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

(LC Paper No. CB(2)2462/01-02(01) - Code for Principal Officials under the Accountability System published in the Gazette on 28 June 2002 (G.N. 3845)

LC Paper No. CB(2)2498/06-07(01) - Declarations of Interests of 15 Executive Council Members who are Principal Officials

LC Paper No. CB(2)2537/06-07(01) - 16 forms on Registration of Interests and Affiliation with Political Parties for Public Inspection completed by 15 Principal Officials under the Accountability System and the Director of the Chief Executive's Office

LC Paper No. CB(2)2537/06-07(02) - Guidance notes for completing the form on Registration of Interests and Affiliation with Political Parties for Public Inspection

LC Paper No. CB(2)2548/06-07(01) - Administration's paper on "System of Declaration of Investments and Interests by Principal Officials under the Accountability System")

Secretary for Constitutional and Mainland Affairs (SCMA) briefed members on the Administration's paper on "System of Declaration of Investments and Interests by Principal Officials under the Accountability System" (LC Paper No. CB(2)2548/06-07(01)).

Political affiliation

2. Mr Howard YOUNG asked whether a Principal Official (PO) was required to declare his affiliation with any political party in the past before he assumed the office of PO, or a change in his political affiliation after he assumed the office of PO.

3. SCMA explained that if a PO was no longer affiliated with any political party when he assumed the office of PO, he was not required to make a declaration. A PO, however, should declare whether he was in any way affiliated with any political party, whether he was a member of any political party and whether he held any office in any political party at the time he assumed the office of PO. A PO

Action

should also declare to the CE if there was any change in his status in relation to any political party thereafter. The term "political party" had the same meaning as that provided for under section 31(2) of the Chief Executive Election Ordinance (Cap. 569). The declaration would be made available for public inspection.

Arrangements on stepping down from office

4. Mr WONG Kwok-hing expressed concern that the sanitisation period of one year for a PO to commence any employment after stepping down from office was too short.

5. Ms Emily LAU pointed out that a PO could in fact take up employment immediately after stepping down from office after seeking the advice of a committee appointed by the CE. She asked about the criteria adopted by the committee for the purpose of advising former POs on post-office employment.

6. SCMA said that clauses 5.15 to 5.17 of the Code for Principal Officials under the Accountability System (the Code) dealt with post-office employment. POs could take up employment within one year after stepping down from office after seeking the advice of the Advisory Committee on Post-Office Employment for Principal Officials under the Accountability System (the Advisory Committee). The Advisory Committee would take into account individual circumstances, including whether the new employment would constitute a conflict of interest, and give an independent advice which would be made public. If a PO acted contrary to the advice of the Advisory Committee, he would be subject to public censure. The system had been effective in the past few years, during which a number of POs had left the Government. So far, the system had proven to work well.

7. In further response to Ms LAU, SCMA clarified that unlike civil servants, POs were not entitled to pension after stepping down from office. Nor were they entitled to contract gratuity as all their benefits had been encashed.

8. Ms Margaret NG said that she had raised a question at a Council meeting on 4 July 2007 about the policy regarding the breach of the rule of confidentiality by former POs. She was given to understand that a former PO would be liable to prosecution if he had disclosed to any unauthorised person any information falling within the purview of the Official Secrets Ordinance (Cap. 521) (OSO). She expressed concern whether former POs could leak classified information which did not fall within the purview of the OSO.

9. SCMA responded that the Administration had set very stringent rules to prevent any leakage of classified information. Incumbent and former POs were required to comply with these rules. The Code stipulated that POs were still required to comply with the relevant provisions in the OSO after they had left the service. If there were leaks of classified information, the Administration would follow up and investigate into the case. It would institute criminal legal

Action

proceedings if there was sufficient evidence to substantiate charges against a former PO.

Family trust and blind trust

10. Ms Emily LAU said that according to clause 5.7(d) of the Code, the CE would require a PO to place his investments or interests in a "blind trust" only after a conflict of interest between the PO's investments and his official duties had arisen. Ms LAU pointed out that according to the declarations, two POs had set up family trusts, and not blind trusts, to handle their investments. Mr Henry TANG, Chief Secretary for Administration (CS), had set up a family trust under which he had transferred all his shares in his family companies to a trust of which his father was the trustee and he himself being one of the eligible beneficiaries. Mr TANG did not have the right to give instructions to the trust or its trustee. Mr Frederick MA, Secretary for Commerce and Economic Development, had set up a family trust and HSBC International Trustee Limited was appointed as the trustee. The trust held no Hong Kong equities, and Mr MA was not involved in the administration of the trust and had no control over investment decisions. Ms LAU said that given that POs had access to sensitive and confidential information and for the purpose of preventing conflict of interest, it was preferable for them to set up blind trusts to manage their investments or interests.

11. SCMA clarified that according to clause 5.7(d) of the Code, the CE could require a PO to place the investments or interests in a "blind trust" before the PO assumed office and at any time during the term of his office, if it appeared to the CE that there was and might be a conflict of interest between a PO's investments or interests and his official duties. SCMA said that the declarations made by Messrs TANG and MA were largely the same as those made in their former capacity as Secretary for Commerce, Industry and Technology / Financial Secretary and Secretary for Financial Services and the Treasury respectively during the second term Government. Both the former CE and the incumbent CE were aware of the arrangements made by them before they took up the relevant posts and considered such arrangements appropriate.

12. Ms Emily LAU said that a proper system should be put in place to prevent conflict of interest and remained of the view that POs should be required to set up blind trusts to manage their investments or interests.

13. SCMA responded that given that Mr TANG's assets were derived from his family business, it was appropriate for him to place them in a family trust. The arrangement for the Mr MA to have his investments managed by a professional organisation was also appropriate.

Action

Declaration of interests by family members

14. Mr LEE Wing-tat expressed concern that immediate family members of a PO might hold job position that would arouse potential conflict of interest. He pointed out that Professor CHAN Ka-keung, Secretary for Financial Services and the Treasury (SFST), should have declared that his wife was the executive director of Morgan Stanley before such information was revealed by the media, in order to avoid any suspicion of conflict of interest. Mr LEE said that the Administration should amend the Code to the effect that POs, where appropriate, should declare all matters which might arouse any potential or suspicion of conflict of interest.

15. Ms Margaret NG said that the system of declaration of investments and interests sought to protect the creditability of the Government. The more stringent the system was, the more confidence people had in the operation of the Accountability System. She urged the Administration to review whether or not a PO should make declaration on his spouse's occupation, investments, interests, etc. under the declaration system.

16. SCMA said that Hong Kong was run by a clean Government. An effective legal system was in place to regulate the conduct of POs. POs, being defined as "public servants" under the relevant ordinances, were subject to the relevant provisions of the Prevention of Bribery Ordinance (Cap. 201) (POBO) and the Independent Commission Against Corruption Ordinance (Cap. 204). If their income and asset were found to be incommensurate with their position, they would be subject to the investigation of the Independent Commission Against Corruption (ICAC). In addition, Hong Kong was a transparent society; any improper conduct by a PO could easily be made public.

17. SCMA further said that the principles which POs should follow in ensuring that no actual or potential conflict of interest arose between their official duties and private interests were set out in Chapter 5 of the Code. The interests which should be declared by POs in the declaration forms were comprehensive. POs were required to declare their investments and properties, and joint investments and properties with their spouse and other persons if the PO had a beneficial interest. If a PO considered that the job position held by his/her spouse would give rise to potential conflict of interest, he should report to the CE. In the case of SFST, he had already done so. SCMA stressed that the Code was meant to apply to POs and not their spouses. The spouse of a PO had the right to choose his/her job, develop his/her career and decide on his/her investment portfolio. When the Code was drafted, consideration had been given to strike a right balance on the information to be declared by POs. SCMA said that, similar to other POs, SFST had set out the job and employer of his spouse in his internal declaration to the CE.

RLSD

18. Ms Emily LAU suggested that the Research and Library Services Division be requested to provide information on overseas practices relating to declaration of interests by spouses and close relatives of senior members of the Government. The Panel would then decide whether to follow up the matter.

Action

19. Mr Albert HO said that according to the guidance notes for POs to complete the declaration forms, POs were required to declare any gifts received by him or his spouse which in any way related to his office as PO. As it was difficult to tell whether the gifts received by a PO were related to his office as PO, he suggested that family members of a PO, including his spouse and children, should be required to make full disclosure of the gifts received, if the value of the gifts exceeded a specified amount.

20. SCMA said that clause 5.14 of the Code dealt with acceptance and retention of gifts by POs. POs were required to declare gifts received by them and their relatives during official and public functions. Under the POBO, public officers were prohibited from receiving gifts exceeding certain specified amounts. POs and their family members would be subject to the investigation of the ICAC if they accepted valuable gifts in their official capacity without making any declaration.

21. Mr Martin LEE expressed disappointment that the Administration was complacent and did not intend to consider any of the suggestions made by members to improve the existing declaration system. He asked whether the Administration was worried about the difficulty in recruiting qualified persons to take up the office of POs if a stringent declaration system was in place.

22. SCMA responded that it was a question of where to draw the line. The Administration had to strike a balance between maintaining a system to prevent conflict of interest and respecting the privacy of POs and their family members. The declaration system was drawn up in 2002 after thorough consideration. It covered a wide range of areas including declaration of investments, interests, acceptance of gifts, political affiliation and disclosure of information. While he noted the concerns raised by members about potential or suspicion of conflict of interest, there was no substantive evidence indicating that the system was at stake. In fact, the declaration system had proven to be effective in the past five years and the Administration did not see the need to change it.

23. Dr YEUNG Sum said that while the existing declaration system had its merits, it should keep pace with social development. The existing system sought to address the general situation but not a specific situation. The close connection between the duties of SFST and those of his wife did arouse suspicion of conflict of interest. It was only fair for members to request the Administration to improve the existing declaration system with a view to safeguarding the integrity of the Government.

24. SCMA responded that a PO would exercise his judgment on whether or not any potential conflict of interest existed and if potential conflict of interest existed, he should declare such an interest to the CE. Each PO was cautious about his action and there was nothing to hide from the public. The Administration would review the declaration system from time to time and if there was a need to make any changes, it would take into account the views given by members.

Action

25. Mr Albert HO questioned whether it was appropriate for SFST to remain as a director/member of a number of public organisations / advisory committees. He cited, for example, that SFST should withdraw from the chairmanship of the Insurance Advisory Committee and the membership of the Banking Advisory Committee.

Admin

26. SCMA responded that the Administration would give a written response after the meeting. To his understanding, SFST had resigned as the Chairman of the Consumer Council when he assumed the office of PO. It was his statutory duties to be a member/director of some of these organisations (e.g. Mass Transit Railway Corporation) in which the Government was the shareholder.

(Post-meeting note : The Administration's written response was issued to the Panel vide LC Paper No. CB(2)2666/06-07(01) on 4 September 2007)

II. Models, roadmap and timetable for selecting the Chief Executive and for forming the Legislative Council by universal suffrage
(Green Paper on Constitutional Development)

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)

Schedule of special meetings

27. The Chairman said that subsequent to the last meeting, he and the Deputy Chairman had proposed a schedule of special meetings for the purpose of discussing the Green Paper on Constitutional Development (the Green Paper). Taking into account some members' views that Panels normally would not hold meetings in August, a total of six meetings were proposed to be held in July, September and October, including two special meetings to receive public views. A circular was issued to ascertain members' availability and based on the reply slips received, a quorum could be formed at each of these meetings.

28. Ms Emily LAU said that some pan-democratic Members did not agree to the proposed meeting schedule as no meeting would be held in August. Their main concern was that the consultation on the Green Paper coincided with the LegCo's recess and there was limited time for discussion before the consultation ended on 10 October 2007. Given that the Chairman had decided against the issuance of a circular to ascertain members' availability for meetings in August, she moved the following motion -

Action

"本委員會於八月期間召開兩次會議，討論《政制發展綠皮書》"

"This Panel will convene two meetings in August to discuss the Green Paper on Constitutional Development."

29. Some members, including Mr LEE Cheuk-yan, Mr LEE Wing-tat, Ms Audrey EU, Mr Martin LEE and Dr YEUNG Sum, expressed support for the motion. Given the importance of the Green Paper and as the Administration had declined to extend the consultation period, they considered that two more meetings should be held in August to allow adequate time for discussion.

30. Some other members, including Mr LAU Kong-wah, Mr Howard YOUNG and Mr WONG Ting-kwong, did not support the motion. They said that many Members already had other commitments in August and holding five special meetings from July to October should be adequate. They considered that the meeting schedule proposed by the Chairman acceptable.

31. Mr TAM Yiu-chung said that the Panel had agreed at the last meeting that the special meetings should avoid clashing with the overseas duty visits of Panels. The Panel had also agreed that the Chairman and the Deputy Chairman should work out a meeting schedule, taking into account members' views expressed at the meeting. Mr TAM said that having discussed the matter with the Chairman after that meeting, a meeting schedule was drawn up for circulation to members. Mr TAM pointed out that by convention, the Chairman had the prerogative to decide on the meeting dates of the Panel. In addition, it was not possible to satisfy the wishes of all members.

32. Mr LEUNG Kwok-hung and Mr Albert HO said that the crux of the problem was the short consultation period. If the Administration agreed to extend the consultation period beyond 10 October 2007, it was unnecessary to arrange special meetings in August. Mr LEUNG and Mr HO moved a motion urging the Administration to extend the consultation period to 30 November 2007. Wording of the motion was as follows -

"本人動議要求政府延長有關《政制發展綠皮書》的諮詢期至本年十一月三十日"

"I move that the Government be requested to extend the period of consultation on the Green Paper on Constitutional Development to 30 November this year."

33. Mr LAU Kong-wah pointed out that the consultation on the Green Paper would not be put to a halt because the Panel did not hold meetings in August. He did not see the need to extend the consultation period. As many members preferred not to schedule meetings in August because of other commitments, their wish should be respected. Mr LAU proposed to move a motion to consult all Panel

Action

members on the meeting arrangement. The wording of his motion was as follows -

"諮詢所有委員在八月份是否同意開會及訂出幾個日期給予委員選擇，以兩次會議為限。"

"All members should be consulted as to whether they agree to hold meetings in August and a number of meeting dates should be provided for members to choose, and the number of meetings should be limited to two."

34. In response to members, SCMA said that the Administration considered the three-month consultation period on the Green Paper adequate, as the issues on universal suffrage had been thoroughly discussed by the Committee on Governance and Political Development of the Commission on Strategic Development (CSD) and the Panel in the past 20 months. Irrespective of whether the Panel would hold meetings in August, the Administration would continue to consult the District Councils (DCs) and different sectors of the community in the coming months.

35. The Chairman said that a vote should be taken on the three motions proposed by members one by one. Senior Assistant Legal Adviser 2 informed members that the Chairman had an original vote but not a casting vote. The decisions of the Panel were to be decided by a majority of the members voting.

36. The Chairman put Mr LEUNG Kwok-hung and Mr Albert HO's motion to vote. Nine members voted for and nine members voted against the motion. The Chairman declared that the motion was not carried.

37. The Chairman then put Ms Emily LAU's motion to vote. Nine members voted for and nine members voted against the motion. The Chairman declared that the motion was not carried.

38. Mr LAU Kong-wah said that in view of the results of the two motions, he would withdraw his motion.

The Green Paper

Public consultation

39. SCMA said that 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. Apart from listening to the views of the LegCo, the Administration had also arranged meetings to consult the DCs and different sectors of the community on the Green Paper. The Administration was aware that different political parties and groups had different views on the Green Paper and envisaged that they would continue to give views after the consultation ended on 10 October 2007.

Action

40. Ms Emily LAU expressed disappointment that Government officials had not participated in the forum organised by pan-democratic Members on the past Sunday. Pan-democratic Members had identified five "traps" in the Green Paper and she had anticipated that the Administration would give its response on that occasion. Ms LAU asked how the Administration would assess the submissions received after the close of public consultation.

41. SCMA responded that at this stage, the Administration did not have any position on the various options presented in the Green Paper. The focus of the Administration was to listen to public views. Where possible, Government officials would attend forums organised by political parties and groups and listen to public views. As regards the five "traps" mentioned by pan-democratic Members, SCMA said that they were untrue and unfounded and that the Administration had already given its response by way of a press release the day before.

42. SCMA further said that based on the views collected, the Administration would summarise the views received and assess whether a mainstream view could be formed as the basis for taking forward the work to the next phase. In forming a mainstream view on the models for universal suffrage, two objective criteria had to be met. First, the proposal should be supported by a two-thirds majority of LegCo Members. Second, the proposal should receive support from at least 60% of the public. He was aware that pan-democratic Members had distributed a questionnaire with model answers urging members of the public to sign their names in support of their recommended model. He questioned whether the approach was at odds with the principles of democracy and free choice.

43. Mr LEE Cheuk-yan doubted whether the Administration was sincere about the consultation given that the consultation period coincided with the LegCo recess. In addition, the CS had said in a press conference that in arriving at a mainstream view on the models for universal suffrage, the Administration would only "make reference" to public opinion, instead of being guided by public opinion.

44. SCMA assured members that the Administration was sincere about the consultation, or else it would not have published the Green Paper within 11 days after the commencement of the new term Government. SCMA clarified that the remark made by CS focused on the constitutional requirements that any changes to the electoral methods for electing the CE and forming the LegCo would require the support of a two-thirds majority of all the Members of LegCo, the consent of CE and the endorsement of the Standing Committee to the National People's Congress (NPCSC). CS' remark was by no means undermining the importance of public opinion. SCMA said that the CE would submit a report to the Central People's Government (CPG) to reflect faithfully any mainstream views formed during the public consultation and other views expressed.

45. Mr Howard YOUNG said that while pan-democratic Members expressed concern about public opinion being ignored, they had chosen to ignore public

Action

support for the package of proposals for the methods for selecting the CE in 2007 and for forming the LegCo in 2008 (the 2007/08 electoral package). Noting that the Green Paper had presented different options for consultation, Mr YOUNG asked whether views on other issues would be considered by the Administration. He also asked whether the Administration would consult the electorates of functional constituencies (FCs) on the future of FCs so as to facilitate its assessment on whether its proposal on FCs could receive the support of a two-thirds majority of LegCo Members.

46. SCMA said that the Administration had received over 300 submissions. In order to facilitate easy understanding by members of the public on the scope of the consultation, the Administration had categorised the proposals received by specific issues and presented three types of options on the models, roadmap and timetable for implementing universal suffrage in the Green Paper. The Administration was open-minded and welcomed all views on issues relevant to universal suffrage. The Administration was prepared to listen to views from FC sectors on the future of FCs. In fact, some FC related organisations had already given their views to the Administration.

47. Mr LAU Kong-wah asked how the Administration would interpret the outcome of some opinion polls which reflected contrasting views of the public, for example, while members of the public had indicated support for universal suffrage, many of them had also supported the retention of FCs and considered the existing pace of democracy appropriate. On the model for electing the CE by universal suffrage, Mr LAU pointed out that there were views that the nomination threshold should first be set at a high level, and then it could be lowered as the system evolved. Mr LAU asked whether the model to be put forth by the Administration could be subject to changes in line with the principle of gradual and orderly progress, or whether it was the "final" model.

48. SCMA responded that members of the public had aspirations for universal suffrage, and at the same time they recognised the contributions made by FC Members. The community, therefore, needed to further discuss how to change the electoral method for FCs when universal suffrage was implemented. As regards the nomination threshold, the Administration held the view that any model implemented would be subject to further improvement taking account of prevailing social environment.

Principles of universal and equal suffrage

49. Mr LEE Wing-tat said that pan-democratic Members construed universal suffrage as "universal" and "equal" suffrage. Equal suffrage included the right for all citizens to nominate and to vote for a candidate at an election. Mr LEE asked whether the models for universal suffrage to be put forth by the Administration would be consistent with the definition of universal suffrage.

Action

50. Ms Margaret NG asked whether it was the position of the Administration that the following options presented in the Green Paper complied with the definition of universal suffrage -

- (a) the nomination procedure to limit the number of CE candidates at the range of two to four;
- (b) retaining FC seats in LegCo but changing the electoral method; and
- (c) increasing the number of seats representing DCs in the LegCo.

51. SCMA responded that proposals which obviously breached the Basic Law, such as the abolition of a nominating committee 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. The options concerning the number of CE candidates were derived from the proposals relating to the nomination threshold received from various organisations and individuals. The reason for presenting these options was to facilitate easy understanding by members of the public on the nomination method. According to Article 45 of the Basic Law, nomination of CE candidates should be made by a broadly representative nominating committee in accordance with democratic procedures. SCMA added that whether the other two options referred to by Ms NG (paragraph 50(b) and (c) above) complied with the principles of "universal" and "equal" suffrage would depend on the electoral methods to be adopted. The thinking of the Administration was to allow room for discussion on various options with a view to narrowing differences and eventually to forging consensus.

52. Ms Margaret NG said that SCMA was evading her question. She expressed dissatisfaction that the Administration had refused to state its position on whether the options presented in the Green Paper complied with the principle of universal suffrage.

53. Mr LEUNG Kwok-hung said that the Basic Law was a legal document which sought to ensure the CPG's sovereignty over the HKSAR. The Administration had used the Basic Law to divert the public's attention from the basic principle of universal suffrage. It was unreasonable for the Administration not to define universal suffrage in its consultation document. It appeared to him that the purpose of the consultation was to force the public to accept options that did not comply with the principles of "universal" and "equal" suffrage.

54. SCMA said that Mr LEUNG's comment was not fair. He referred members to paragraph 2.29 of the Green Paper which concluded that in considering the options for implementing universal suffrage for electing the CE and for forming the LegCo, the relevant provisions and principles, including the principles of "universal" and "equal" suffrage, must be adhered to.

Action

Procedures for amending the electoral methods

55. Some members, including Ms Emily LAU, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE and Mr LEUNG Kwok-hung, expressed concern about an article written by Mr Jasper TSANG, a Member of the Executive Council, concerning the procedure for introducing any changes to the electoral methods in the HKSAR. According to Mr TSANG, it was highly unlikely for the HKSAR Government to distil the "mainstream views" collected into a specific reform package at the conclusion of the three-month consultation period. Rather, the HKSAR Government would submit a report to the CPG reflecting the views expressed. The NPCSC would respond to the report by agreeing that the electoral methods should be amended, as it had done so in 2004. The NPCSC would most probably lay down a set of conditions which the CPG would insist any reform package should comply with. Thereafter, the HKSAR Government would formulate specific proposals for constitutional reform taking into account the relevant parameters defined by the CPG. Ms LAU, Mr LEE and Mr LEUNG sought clarification from the Administration on the accuracy of the procedure described by Mr TSANG. They pointed out that if what Mr TSANG had said was correct, the procedure was tantamount to seeking an interpretation from the NPCSC and introducing hurdles to stall the implementation of universal suffrage.

56. SCMA said that he had read the article and the Administration was not in a position to comment on an article written by an individual. All he could say was that the procedure for introducing any changes to the electoral methods in the HKSAR must comply with the Basic Law. The timing for invoking the mechanism for amending the electoral methods would depend on when a consensus on the models for universal suffrage could be reached in the community.

Way forward

57. Miss CHAN Yuen-han said that the Administration's 2007/08 electoral package had received support from over 60% of the public but it was not passed by the LegCo. She asked how the Administration would deal with the matter if history repeated itself in the current exercise.

58. Mr LAU Kong-wah said that Members should learn from the past experience as the public had an impression that the opposition camp had opposed the 2007/08 electoral package for the sake of opposition. He cautioned that those who claimed to be advocates of democracy could be standing in the way of democratisation because they ignored political reality.

59. SCMA reiterated that the Administration was sincere about the consultation on the Green Paper which set out the options for the models, roadmap and timetable for electing the CE and forming the LegCo by universal suffrage. He urged Members and political parties and groups to listen to public views and to learn from the past experience. He pointed out that by voting against the 2007/08 electoral

Action

package, the opposition camp had -

- (a) acted against the wish of the general public;
- (b) eliminated the opportunities for young political talents who were DC members to become LegCo Members in 2008;
- (c) stalled the pace of democracy by another LegCo term; and
- (d) lost the opportunity to further promote the relationship with the Central Authorities, after the arrangement made by the former CE for all LegCo Members to visit the Pearl River Delta in 2005.

60. SCMA said that had the 2007/08 electoral package been supported by the LegCo, constitutional reform would have moved forward. He urged Members to seize the present opportunity to take forward constitutional development, and to work for the well-being of Hong Kong. Meanwhile, the Administration would continue to exchange views with Members with a view to narrowing differences and forging consensus on the models for universal suffrage.

61. Mr LEE Wing-tat asked whether the CE would lobby support from political parties and Members for a model for universal suffrage which had received support from not less than 60% of the public. Mr Martin LEE added that this was a practical and expedient way to address the public's call for universal suffrage. He envisaged that it was easier for the CE to lobby support from pro-Government Members on a democratic model, than for the CE to lobby support from pan-democratic Members on a model with parameters defined by the CPG. Mr Martin LEE further pointed out that while over 60% of the public expressed support for the 2007/08 electoral package, the public had also asked for a timetable and roadmap for implementing universal suffrage. As the Administration had declined to provide the latter, pan-democratic Members had no choice but to vote against the proposed package.

62. SCMA said that the reason for making reference to the 2007/08 electoral package was not to re-open the wounds but to caution against recurrence. The consultation on the Green Paper had just commenced; the Administration hoped that a consensus would be reached. He pointed out that the implementation of universal suffrage required concerted efforts from all parties. The 22 pan-democratic Members needed to lobby support from at least 18 other Members and the community on their proposed models. Likewise, the Administration would need to lobby support from LegCo Members and the community on any mainstream view formed. The Administration would make use of the next five years to forge consensus on the future constitutional development of Hong Kong.

63. In response to some of the remarks made by SCMA at the meeting, Ms Audrey EU made the following points -

Action

- (a) pan-democratic Members had not stalled the pace of democratisation. They did not support the 2007/08 electoral package because it did not provide a timetable and roadmap for achieving universal suffrage. In addition, the retention of appointed membership in the DCs was unacceptable to pan-democratic Members. Unlike the 2007/08 electoral package, the Green Paper had provided options on the models, timetable and roadmap for implementing universal suffrage and therefore room for further discussion;
- (b) pan-democratic Members had organised a number of activities, including discussion forums and distribution of questionnaires, to gauge public opinions and lobby public support. Other parties, including the Government, could do the same; and
- (c) it was not easy to narrow differences on the future of FCs as their abolition was tantamount to political suicide of FC Members. Given that the retention of FCs contravened the principle of universal suffrage, the Administration should not have provided the option for the retention of FC seats in the Green Paper. The option provided grounds for FC Members to object the abolition of FC seats and was not conducive to narrowing differences.

64. In response, SCMA made the following points -

- (a) the Administration had made clear at the time that giving support to the 2007/08 electoral package would not prevent the opposition camp from pursuing the timetable and roadmap for universal suffrage. Given that the opposition camp had vetoed the 2007/08 electoral methods, the democratisation process had been stalled;
- (b) the Administration was not in a position to give a timetable and roadmap for implementing universal suffrage when the 2007/08 electoral package was introduced. CSD had commenced discussion on the issue of universal suffrage in November 2005 - one month before the voting at LegCo took place. After 20 months of discussions in the CSD and the Panel, the Administration had published the Green Paper which set out the options for the models, timetable and roadmap for universal suffrage;
- (c) the Administration had made concession that if the LegCo supported the 2007/08 electoral package, appointed DC seats would be abolished in two to three phases. The adjustments to the proposed package, however, was not supported by the opposition camp;
- (d) the issue of FCs was controversial. While there was a view that its existence contravened the principles of universal and equal suffrage,

Action

there was also a view that a proposal which allowed FC voters to nominate or to select candidates for election by three million voters would comply with the principles of universal and equal suffrage. It was unfair 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 of 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. The position of the Administration was to allow open discussion on various options for universal suffrage with a view to narrowing differences; and

- (e) it was the responsibility of the Administration, political parties and Members to take forward constitutional development. Any proposals put forth must satisfy the objective criteria mentioned in paragraph 42 above.

65. The meeting ended at 11:25 am.

Council Business Division 2
Legislative Council Secretariat
20 December 2007