

**立法會**  
**Legislative Council**

LC Paper No. CB(2)844/07-08  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/CA

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 19 November 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
  - 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
  - Hon WONG Yung-kan, SBS, JP
  - Hon Jasper TSANG Yok-sing, GBS, JP
  - Hon Howard YOUNG, SBS, JP
  - Hon LAU Kong-wah, JP
  - Hon Emily LAU Wai-hing, JP
  - Hon Timothy FOK Tsun-ting, GBS, JP
  - Hon Abraham SHEK Lai-him, SBS, 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 Alan LEONG Kah-kit, SC
  - Hon LEUNG Kwok-hung
  - Dr Hon KWOK Ka-ki
  - Hon CHEUNG Hok-ming, SBS, JP
  - Hon WONG Ting-kwong, BBS
  - Hon CHIM Pui-chung
  - Hon KWONG Chi-kin
- Member attending** :
- Hon Vincent FANG Kang, JP
  - Dr Hon Fernando CHEUNG Chiu-hung
- Members absent** :
- Hon James TIEN Pei-chun, GBS, JP
  - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., 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  
Dr Hon YEUNG Sum, JP  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon LEE Wing-tat  
Hon Ronny TONG Ka-wah, SC  
Prof Hon Patrick LAU Sau-shing, SBS, JP

**Public Officers attending** : Items IV and V

The Administration

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

Mr Arthur HO Kin-wah  
Deputy Secretary for Constitutional and Mainland Affairs (1)

Mr Ivanhoe CHANG Chi-ho  
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 Fanny TSANG  
Legislative Assistant (2)3

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**I. Information papers issued since the last meeting**

(LC Paper No. CB(2)96/07-08 - Electoral Affairs Commission Guidelines on Election-related Activities in respect of the Legislative Council Elections

LC Paper Nos. CB(2)103/07-08(01) - (03) - Referral on "Demarcation of constituencies for the District Council election")

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

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**II. Items for discussion at the next meeting**

(LC Paper No. CB(2)338/07-08(01) - List of outstanding items for discussion)

2. Secretary for Constitutional and Mainland Affairs (SCMA) proposed and members agreed to discuss "Counting arrangements for the 2008 Legislative Council election" at the next meeting on 17 December 2007.

*(Post-meeting note: At the request of Ms Emily LAU and with the concurrence of the Chairman, the item "System of declaration of investments and interests by Principal Officials under the Accountability System" has been added to the agenda of the next meeting.)*

**III. Matters arising**

Administration's response dated 2 November 2007 on "Enquiry regarding meeting with candidates of 2007 Legislative Council by-election"

(LC Paper No. CB(2)69/07-08(01) - Chapter 19 of the Guidelines on Election-related Activities in respect of the Legislative Council Elections

LC Paper No. CB(2)69/07-08(02) - Code for Principal Officials under the Accountability System

LC Paper No. CB(2)338/07-08(02) - Extract from the draft minutes of meeting of the Panel on 15 October 2007

LC Paper No. CB(2)258/07-08(01) - Administration's response on "Enquiry regarding meeting with candidates of 2007 Legislative Council by-election")

3. SCMA briefed members on the paper which set out the Administration's response on when and the circumstances under which the Administration had made a policy decision that the Principal Officials (POs) could meet with Mrs Regina IP and other candidates standing for the 2007 Legislative Council by-election for the Hong Kong Island geographical constituency (the LegCo By-election).

4. Mr CHEUNG Man-kwong said that the Administration had explained that the request of Mrs IP to meet with the POs to discuss various policy issues had been acceded to because the Administration did not expect too many candidates would take part in the LegCo By-election. As the request of Mrs IP was made in early October 2007, well before the deadline of 21 November 2007 for nomination of candidates, he queried the basis for the Administration to assume that there would be very few candidates. As it turned out that there were as many as eight

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candidates standing for the election, he questioned whether the Administration had made a wrong decision to allow POs to meet with candidates of the LegCo By-election.

5. SCMA responded that as compared with general elections such as the LegCo election and the District Council (DC) election which had hundreds of candidates, the number of candidates running for a by-election would be fewer. Considering that only one Member would be returned from one geographical constituency (GC) in the LegCo By-election, the Administration expected that the possible meeting commitments generated would not create undue workload on the POs.

6. Some members, including Mr CHEUNG Man-kwong, Ms Emily LAU, Mr LEE Cheuk-yan, Ms Audrey EU and Dr KWOK Ka-ki, expressed concern that the meetings between Mrs IP and the three POs, i.e. Secretary for Commerce and Economic Development, Secretary for Education and SCMA, within two days during the campaign period offered her an unfair advantage over other candidates. They noted that Mrs IP's photographs taken with the three POs were published in the newspapers. Mr CHEUNG Man-kwong queried the logic of the policy decision for POs to meet with candidates of a by-election, but not candidates of a general election as the latter's term of office would be much longer if elected.

7. SCMA said that the Administration was aware that Mrs IP had announced her intention to run for the LegCo By-election. The Administration considered that the meetings were not election-related and had decided that the POs could meet with Mrs IP if their schedules permitted. To ensure parity of treatment, POs who had decided to meet with Mrs IP should also accede to similar requests from other candidates. The whole matter had been handled in accordance with the principle of fairness and with election-related requirements.

8. Mr LEE Cheuk-yan and Ms Audrey EU said that the Administration's concern about parity of treatment for other candidates in the LegCo By-election had illustrated that the POs' meetings with Mrs IP were election-related. Mr LEE Cheuk-yan asked who was responsible for judging whether or not the participation of POs in certain activities was election-related. Dr KWOK Ka-ki and Mr CHEUNG Man-kwong said that if the Administration really wanted to achieve parity of treatment for all candidates, it should have made public its policy concerning contacts between POs and candidates during the campaign period at the outset, and not after the disclosure of the incident by the media. Ms Emily LAU asked whether it was the established policy that POs should not meet with candidates during the campaign period in a general election, and if so, why a LegCo By-election justified a departure.

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9. Mr Albert HO pointed out that according to the response of SCMA, it was for individual POs to decide whether to accede to requests of meeting with candidates during the campaign period. Ms Audrey EU said that the POs' meetings with Mrs IP were a calculated move. She asked about the purpose of POs meeting with candidates during the campaign period and the criteria for them to decide whether or not to meet with candidates, e.g. whether such meetings would only be confined to candidates in a by-election.

10. SCMA said that POs were allowed to participate in election-related activities provided they did not breach the Guidelines on Election-related Activities in respect of the Legislative Council Elections (the Guidelines) and the principles laid down in the Code for POs under the Accountability System (the Code). The Electoral Affairs Commission (EAC) was responsible for judging whether a person had breached the Guidelines, and the CE would monitor the conduct of POs to ensure that they complied with the Code. He was given to understand that the EAC had received a complaint about Mrs IP's case and was handling the matter.

11. SCMA said that after receiving views from Mrs IP on the Green Paper on Constitutional Development on 8 October 2007 (the Green Paper), and in response to enquires of the media, he had made clear that he was also prepared to meet the other candidates on request. At an internal discussion, the Chief Executive (CE) and the POs had made a policy decision that to ensure equal treatment, the POs who decided to meet with Mrs IP should also meet with other candidates on request. As to whether the same policy decision would apply to future elections including by-elections, SCMA said that each case would be considered on its own merit.

12. SCMA disagreed that the meetings between the three POs and Mrs IP were election-related. He explained that the Administration welcomed suggestions from various sectors of the community for improving governance and facilitating the development of Hong Kong. It was on that basis that the three POs had met with Mrs IP. Taking his own case as an example, SCMA said that his meeting with Mrs IP, Chairman of the Board of Governors of the Savantas Policy Institute (the Savantas), to receive views on the Green Paper was appropriate. He informed members that since the CE had entrusted the Commission on Strategic Development to study possible models for electing the CE and forming the LegCo by universal suffrage in November 2005, the Savantas was among those who had given views. During the consultation period of the Green Paper between 11 July and 10 October 2007, he had met with different deputations including the Civic Party, the Frontier, representatives from the tourism and real estate sectors, etc., and photographs taken on those occasions were released to the media. SCMA further explained that the number of candidates standing for an election was an important factor, but it was not the only factor, in deciding whether POs should meet with them. The guiding principle was that any decision made must ensure fair and equal treatment for all candidates.

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**IV. Electoral arrangements for 2008 Legislative Council elections: Updating of electorate of functional constituencies**

(LC Paper No. CB(2)338/07-08(03) - Administration's paper on "Electoral arrangements for 2008 Legislative Council elections : Updating of electorate of functional constituencies")

13. SCMA introduced the paper which set out the proposed arrangements for updating the electorate of the functional constituencies (FCs) for the 2008 LegCo election.

14. Dr Fernando CHEUNG said that the electorate of the Social Welfare FC, which composed of registered social workers under the Social Workers Registration Ordinance (Cap. 505) only, was arbitrary. In his view, all stakeholders, including providers and users of social welfare services, should be eligible electors. He asked the Administration about the measure that it would take to broaden the electorate of the Social Welfare FC in the 2008 LegCo election.

15. SCMA said that the electorate of Social Welfare FC had been broadened, following the replacement of corporate votes with individual votes in the past. This reflected that the constituents of FCs would be adjusted with time. SCMA added that broadening the electorate of FCs was a wider issue concerning the future of FCs. If FCs were to be retained when universal suffrage for forming the LegCo was implemented, changes had to be made to the electoral system so as to ensure that the arrangements were consistent with the principles of universal suffrage laid down in Article 68 of the Basic Law. The issue was presently dealt with under the Green Paper.

16. SCMA further said that the Administration had put forth, in October 2005, a package of proposals to enhance the democratic elements in the methods for electing the CE and LegCo Members respectively (the 2005 proposed package). Unfortunately, the 2005 proposed package was not endorsed by a two-thirds majority of all LegCo Members. In accordance with the Interpretation made by the Standing Committee of the National People's Congress on 6 April 2004, if no amendment was made to the methods for selecting the CE and for forming the LegCo as stipulated in Annexes I and II to the Basic Law, the provisions relating to the two electoral methods in Annexes I and II to the Basic Law would still be applicable. Hence, the existing electoral arrangements continued to apply to the 2007 CE election and the 2008 LegCo election.

17. Mr Vincent FANG, Member representing the Wholesale and Retail FC, informed members of the background for the inclusion of the Tobacco Association of Hong Kong Limited in the Wholesale and Retail FC. He considered the proposed approach acceptable. He said that other trades, such as the fresh fish and flower retailers and wholesalers, as well as small-to-medium enterprises, also requested to broaden their electorates and he hoped that this could be considered after the 2008 LegCo election.

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18. SCMA responded that the existing constituents of the Wholesale and Retail FC was very broad and had covered the fresh fish and flower dealers. Given that the 2005 proposed package could not pass through LegCo, the 2008 LegCo election would be held on the basis of the existing arrangements, i.e. the electorate of FCs would remain unchanged except that minor technical updating would be made. As regards the arrangements for the 2012 LegCo election, it would depend on the overall constitutional development of Hong Kong.

19. Ms Emily LAU said that she did not support the proposed amendments to FCs which were technical in nature and did not serve any meaningful purpose. In her view, the FC system was inconsistent with the principle of equal political right and should be abolished as soon as possible in order to attain universal suffrage. The Administration should not have suggested that the retention of the FC system was one of the ways to achieve universal suffrage. Ms LAU further said that Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) provided that every citizen should have the right and opportunity to vote and be elected at genuine periodic elections, and the Article applied to Hong Kong. However, the Administration had argued that a reservation had been made reserving the right not to apply the Article of the ICCPR to Hong Kong. Ms LAU pointed out that the United Nations Human Rights Committee (UNHRC) had expressed the view that once an elected LegCo was established, its election must conform to Article 25 of the ICCPR. She challenged why the view of the Administration was more authoritative than that of the UNHRC.

20. SCMA clarified that retaining the FC system was not a suggestion of the Administration, but one of the proposals received during the public consultation on the Green Paper. As set out in the Green Paper, the model for forming the LegCo by universal suffrage could be broadly categorized into the following three options -

- (a) replacing FC seats with district-based seats returned through direct election;
- (b) retaining FC seats, but changing the electoral method; and
- (c) increasing the number of seats representing DCs in the LegCo.

He said that Members should realize the political reality that 30 out of the 60 LegCo seats were returned by FCs. As any amendment to the electoral method for the LegCo required the endorsement of a two-thirds majority of all LegCo Members, in practice, this meant that the endorsement and support of Members returned by FCs as well as those returned by GCs through direct elections would be required.

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21. SCMA further said that upon ratification of the ICCPR in 1976, a reservation had been made reserving the right not to apply Article 25(b) of the ICCPR to Hong Kong. After the establishment of the Hong Kong Special Administrative Region (HKSAR), in accordance with the Central People's Government notification to the United Nations Secretary-General in June 1996 and Article 39 of the Basic Law, that reservation continued to apply to Hong Kong. While the UNHRC could give its views on the issue, it was not an international court.

22. Ms Audrey EU requested to put on record that it was the views of the UNHRC and the Hong Kong Bar Association that the reservation should cease to apply to Hong Kong, following the return of LegCo Members by election in 1985. She further said that the aspiration of the public to abolish the FC system was very clear. If FCs could not be abolished in 2008, the Administration should at least strive to propose amendments to broaden the electorate of FCs as an interim measure. She was not interested in discussing with the Administration on the technical amendments to FCs as proposed in the paper. In her view, the existence of FCs infringed the principle of fairness in an election.

23. SCMA said that before 1997, the then Supreme Court had delivered a judgment on the legality of FCs. The Letters Patent also allowed FCs to exist in the electoral system of Hong Kong. In late 2005, the Administration had hoped that the 2005 proposed package would make a substantive step towards the goal of universal suffrage. Although the 2005 proposed package had received the support of the majority of the public, the opposition camp had vetoed the proposal. While no fundamental change could be made to the two electoral methods, the Administration still had to make technical amendments to the electoral laws to reflect the latest development relating to the electorate of FCs. He reiterated that the suggestion to retain FCs as a permanent arrangement did not come from the Administration. The Administration would have a common belief with Ms EU if she considered that FCs could be retained in the constitutional system during the interim period before the goal of universal suffrage could be achieved.

24. Dr KWOK Ka-ki supported the views of Ms Audrey EU. He pointed out that the 2005 proposed package which sought to increase the number of DC FC seats was an expansion of the FC system and therefore could not be supported by pan-democratic Members. He said that SCMA was distorting the principle of universal suffrage if it was to be achieved by retaining the FCs.

25. SCMA responded that the 2005 proposed package had enhanced the democratic elements in the two electoral methods, as additional LegCo seats would be returned through GC elections and election among DC members. He explained that the universal suffrage system commonly adopted was a one-person-one-vote system which could take the form of direct or indirect election.



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26. Mr TAM Yiu-chung said that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) had given its views on the future of FCs in the past. The issue was complicated, given that FCs had existed for quite some time and some members of the public considered that FCs had served their functions well in the legislature. There were views in the community that FCs should not be abolished lightly. There were also views that FCs should be retained, but changes could be made to the electoral system so that it would be consistent with the principles of universal and equal suffrage. The DAB considered that the issue should be further explored.

**V. Communication between Members returned by Legislative Council functional constituencies and their constituents**

(LC Paper No. CB(2)46/07-08(02) - Letter dated 27 September 2007 from Hon Margaret NG

LC Paper No. CB(2)338/07-08(04) - Draft Official Record of Proceedings of the Council on 17 October 2007 on Dr Hon Fernando CHEUNG Chiu-hung's question on "Issue of communication between Legislative Council functional constituency Members and their constituents"

LC Paper No. CB(2)338/07-08(05) - Administration's paper on "Communication between Members returned by Legislative Council functional constituencies and their constituents")

27. SCMA briefed members on the views of the Administration on issues relating to communication between FC Members and their constituents as set out in the paper.

28. Dr Fernando CHEUNG said that it was important for FC Members to communicate with their constituents effectively. Under the existing law, FC Members were forbidden to use the information relating to a person contained in a voter register other than a purpose related to the specified election. In other words, FC Members could not make use of such information for sending newsletters on their work to their constituents, but could only rely on the professional bodies concerned to do so on their behalf.

29 Dr CHEUNG pointed out that for FCs which had a small number of constituents, the FC Members concerned could communicate with all of them without the need to make use of the information provided in the voter register. Hence, the question of infringement of personal data and privacy of electors would not arise. However, for FCs which had thousands of constituents, the FC Members concerned would have difficulty to reach out to their constituents without making use of information provided in the voter register after the election. In addition, the professional bodies were not obliged to assist FC Members to communicate with their constituents. Dr CHEUNG considered the situation

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unfair as whether a FC Member could effectively communicate with his constituents would depend on firstly, the size of the electorate of the FC concerned, and secondly, his relationship with the professional bodies concerned. Dr CHEUNG said that he had sought clarification from the EAC as to whether a LegCo Member would breach the electoral law if after the election, he sent a letter to his constituents on the basis of information contained in the voter register, for the purpose of thanking them for their support and seeking their agreement for him to continue to communicate with them thereafter. But the EAC had not responded.

30. SCMA appreciated that from the stand-point of LegCo Members, irrespective of whether they were returned by FCs or GCs, it was important for them to communicate with their constituents in order to keep them informed of Members' work in the legislature. On the last point raised by Dr CHEUNG, SCMA said that the Administration was not in a position to answer the question, and suggested that the Member concerned should seek legal advice on the matter.

31. Ms Audrey EU said that during DC elections, candidates were given a compact disc with information relating to registered electors to facilitate them to conduct electioneering activities. Under the existing law, candidates were forbidden to use that information after the election. Ms EU pointed out that the practice had forbidden successful candidates to send periodic newsletters to inform their constituents of their work. For a responsible LegCo Member or a DC member, the situation was far from ideal. She requested the Administration to consider amending the electoral law so that members returned by elections could make use of voter information to keep their constituents informed of their work by electronic newsletters. Registered electors had the discretion not to receive the electronic newsletters.

32. SCMA responded that Members of the LegCo could enhance communication with their constituents by expanding their network. The Administration had no plan to introduce any legislative amendment to the relevant electoral law because –

- (a) under section 41 of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541, sub. Leg. B), an extract from any published register of electors should only be used "for any purpose related to an election". The provision sought to facilitate the planning and conduct of election-related activities on the one hand, and the need to protect personal data and the privacy of electors on the other; and

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- (b) if legislative amendments were introduced to allow FC Members to use the information contained in an electoral register for purposes other than a purpose related to an election, individuals interested in running for future elections might be concerned that this would give undue advantage to incumbent LegCo Members.

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33. Ms Audrey EU was unconvinced of SCMA's reply. Ms Emily LAU pointed out that the protection of privacy of electors should not be a concern of Hong Kong only. To facilitate members' further consideration, it would be useful if the Administration and the Research and Library Services Division of the Secretariat could provide information on whether the relevant information contained in an electoral register could be used by elected members to communicate with their constituents in overseas jurisdictions. SCMA undertook to relay her request to the EAC for consideration.

34. The meeting ended at 4:10 pm.

Council Business Division 2  
Legislative Council Secretariat  
15 January 2008