

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)2248/07-08
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 17 March 2008, 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 James TIEN Pei-chun, GBS, JP
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 Bernard CHAN, GBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, 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 Emily LAU Wai-hing, 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 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 Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon KWONG Chi-kin
Hon Mrs Anson CHAN, GBM, JP

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon CHEUNG Man-kwong
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Daniel LAM Wai-keung, SBS, JP
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

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

Mrs Vivian TING TSUI Wai-ming
Chief Electoral Officer for Registration and Electoral Office

Item VI

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

Miss Wendy AU Wan-sze
Principal Assistant Secretary for Constitutional and Mainland
Affairs (Acting)

Mrs Vivian TING TSUI Wai-ming
Chief Electoral Officer for Registration and Electoral Office

Item VII

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

Item VIII

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

Ms Joyce HO Kwok-shan
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

Ms Elyssa WONG
Deputy Head (Research & Library Services)

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fonny TSANG
Legislative Assistant (2)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1334/07-08 - Minutes of meeting on 17 December 2007)

The minutes of the meeting held on 17 December 2007 were confirmed.

II. Information papers issued since the last meeting

(LC Paper No. CB(2)1126/07-08(01) - Administration's paper on "2000 Legislative Council Election : Election Expense Limits and Declared Amount of Election Expenses"

LC Paper No. CB(2)1126/07-08(02) - Administration's paper on "2004 Legislative Council Election : Election Expense Limits and Declared Amount of Election Expenses"

LC Paper No. CB(2)1236/07-08(01) - Administration's paper providing further information on exit polls for the 2007 District Council election)

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

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1336/07-08(01) - List of outstanding items for discussion)

3. Secretary for Constitutional and Mainland Affairs (SCMA) proposed and members agreed to discuss the following items at the next meeting on 21 April 2008 -

- (a) Proposed Guidelines issued by the Electoral Affairs Commission (EAC) on Election-related Activities in respect of the Legislative Council (LegCo) Election;
- (b) Practical arrangements for the 2008 LegCo election;
- (c) Subsidy rate of the financial assistance for candidates for the 2008 LegCo election; and
- (d) Method for forming the LegCo in 2012.

4. On item (c) above, Ms Emily LAU urged the Administration to increase the subsidy of \$10 per vote with a view to supporting candidates to participate in elections and political party development. She pointed out that given that the Administration had reduced free postage of election advertisements (EAs) from two rounds to one and was studying the feasibility of sending EAs on a household rather than an individual basis, the money saved could be used to increase the

Action

financial assistance to candidates. SCMA said that Mr CHEUNG Man-kwong had expressed a similar view at the last meeting. The Administration would discuss the matter with members at the next meeting.

IV. Information Note on "Regulation of exit polls in selected places"

(IN10/07-08 - Information Note on "Regulation of exit polls in selected places" prepared by the Research and Library Services Division)

5. Deputy Head of Research and Library Division (DH(RL)) said that the Research and Library Services Division (RLSD) had studied the exit poll arrangements for parliamentary elections at six places, namely Canada, United Kingdom, the United States, Australia, Singapore and New Zealand (NZ). Both Singapore and NZ prohibited the conduct of exit polls during elections, while the other places did not have much legislation or guidelines to regulate the conduct of exit polls and the use of exit poll results. Details of the findings were set out in the Appendix to the Information Note. DH(RL) added that in response to members' request, the RLSD had sought the views of local opinion pollsters on the existing arrangements for exit polls in Hong Kong. Dr Robert CHUNG Ting-yiu had responded and he held the view that any person or organisation could conduct exit polls provided that they followed the international guidelines in conducting exit polls. The views of Dr CHUNG and the relevant international guidelines on exit polls were set out in paragraphs 1.4 and 2 of the Information Note respectively.

6. The Chairman said that the next agenda item, i.e. the EAC Reports on the 2007 District Council election (2007 DC election) and the 2007 Legislative Council Hong Kong Island geographical constituency by-election (2007 LegCo by-election) made reference to exit polls. He suggested and members agreed that issues relating to exit poll be discussed under the next agenda item.

V. Electoral Affairs Commission Reports on the 2007 District Council election and the 2007 Legislative Council Hong Kong Island geographical constituency by-election

(LC Paper No. CB(2)1332/07-08 - Electoral Affairs Commission Report on the 2007 District Council Election

LC Paper No. CB(2)1333/07-08 - Electoral Affairs Commission Report on the 2007 Legislative Council Hong Kong Island Geographical Constituency By-election

LC Paper No. CB(2)1336/07-08(02) - Administration's paper on "Electoral Affairs Commission Reports on the 2007 District Council Election and the 2007 Legislative Council Hong Kong Island Geographical Constituency By-election"

Action

LC Paper No. CB(2)1388/07-08(01) - Summary of Report on "Exit Polls Conducted on District Council Election Day 2007" provided by Mr Ronny TONG)

7. Chief Electoral Officer for Registration and Electoral Office (CEO) introduced the paper which summarised the major findings and recommendations in the EAC Reports on the 2007 DC election and the 2007 LegCo by-election (the EAC Reports).

Exit poll

8. Mr Ronny TONG said that his office had conducted an investigation on the background of the Hong Kong Investigation and Research Centre, one of the organisations conducting exit polls on the polling day of the 2007 DC election. The findings of the investigation was summarised in the report which was tabled at the meeting (issued to members vide LC Paper No. CB(2)1388/07-08(01) on 19 March 2008). In gist, it was found that the Hong Kong Investigation and Research Centre was closely related to the Hong Kong Island Federation. It was also found that many members of the latter organisation were also members of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Mr TONG raised the following points -

- (a) whether an organisation with political background should make known its identity to the interviewees when conducting the poll;
- (b) how to prevent disclosure of exit poll results to and the use of such information by relevant parties to plan their electioneering strategy before the close of poll; and
- (c) whether legislation should be enacted to regulate the conduct of exit polls and the use of exit poll results. As the guidelines on election-related activities issued by the EAC (the EAC guidelines) were a "toothless tiger", it might be necessary to criminalise the disclosure and use of exit poll results before the close of poll.

9. SCMA responded with the following points -

- (a) the list of organisations/persons approved to conduct exit polls at the polling stations concerned would be uploaded to the website of the EAC in each election. The list would also be displayed at the respective polling stations on the polling day;
- (b) under the EAC guidelines, the media and organisations concerned should refrain from announcing the results of exit polls before the close of poll in order not to affect the choice of electors; and

Action

- (c) the suggestion of Mr TONG (paragraph 8(c) above) had to be considered carefully. The RLSD's research revealed that many countries had no legislation to regulate the conduct of exit polls and the use of their results out of respect for academic freedom and freedom of expression.

10. Dr YEUNG Sum expressed disappointment that the improvement measures proposed in the EAC Reports in respect of the conduct of exit polls were merely to remind exit poll interviewers to wear identification badges, and electors of the right not to answer interviewers' questions. He pointed out that these measures could not ensure fairness in an election. It was apparent in recent elections that the exit polls conducted by a political party were getting more and more extensive. The political party had made use of the grey area in the EAC guidelines and used the exit poll results to plan its electioneering activities before the close of poll. This had created unfairness to other candidates and political parties which did not have such information. While he respected academic freedom, the Administration should consider measures to regulate the conduct of exit polls to ensure a level playing field.

11. Mr LEE Wing-tat concurred with Dr YEUNG. He expressed concern that the resources deployed by the political party to conduct exit polls were not counted as part of the election expenses. In order for the EAC to respect academic freedom on the one hand and ensure fairness in an election on the other hand, consideration could be given to restricting the persons/organisations which could conduct exit polls to academic institutions only, as it was unlikely for them to disclose exit poll results to political parties or candidates before the close of poll.

12. Ms Emily LAU said that pan-democratic Members had compiled a report on the 2007 DC election and the 2007 LegCo by-election and had given a copy to the Chairman of EAC, the Constitutional and Mainland Affairs Bureau and different political parties. They would also meet with the Chairman of the EAC the following day to discuss the problems identified in the two elections. On exit polls, she drew members' attention to the following points made by Dr Robert CHUNG in his letter dated 13 March 2008 (LC Paper No. CB(2)1363/07-08(01)) -

- (a) "as early as 5 December 1993, I have seen a political party running a large-scale exit poll at a District Board by-election. During the municipal council elections of 5 March 1995, another academic researcher has recorded that about 60% of the candidates from one particular party conducted exit polls as part of their election engineering. The data collected was sent back to their headquarters for instant analysis and manpower deployment";

Action

- (b) "in the Legislative Council elections held on 12 September 2004, a consortium of exit pollsters belonging to one political camp deployed nearly 2 000 people to conduct exit polls at more than 300 polling stations.....For the District Council elections held on 18 November 2007, the same consortium deployed about 2 200 people to conduct a partisan exit poll covering over 370 polling stations"; and
- (c) "the author never objects any political parties or other agencies conducting exit polls..... What the author opposes, is the research agencies' use of dishonest means to gauge voters' opinion for their election engineering.....the guidelines set by EAC to prohibit the release of exit poll results will become meaningless".

Ms LAU pointed out that a political party had blatantly used exit poll results before the close of poll to plan its electioneering activities. She asked about the measures to be taken by the Administration to ensure a fair election.

13. Ms Margaret NG pointed out that Dr CHUNG had emphasised the importance of academic freedom and freedom of expression and his belief was predicated on the principle of fairness in an election. Some of the important remarks made by Dr CHUNG in his letter included the following -

- (a) "Any person or organisation conducting exit polls.....should (a) pledge to follow the WAPOR Guidelines for Exit Polls and Election Forecasts, adapted to suit local conditions, and (b) pledge not to use the data for election-day engineering"; and
- (b) "if a candidate or political party commissions a polling organisation to conduct exit polls and uses the results for election-day engineering, the cost of the service involved should be counted as an election expense for the candidate or political party concerned".

Ms Margaret NG requested the Administration to respond to Dr CHUNG's views and whether it intended to require a person or an organisation conducting exit poll to make a pledge described in (a) above.

14. In response to members, SCMA made the following points -

- (a) the EAC had made reference to the WAPOR Guidelines for Exit Polls and Election Forecasts and related international guidelines when making the EAC guidelines for exit polls;
- (b) the general public at large accepted the election results of the 2007 DC election and the 2007 LegCo by-election, and considered that the two elections were conducted in a transparent, open and fair manner;

Action

- (c) all the candidates and political parties were required to follow the relevant electoral law and guidelines when participating in an election. Persons or organisations intending to conduct exit polls would receive the same and equal treatment, i.e. they would need to make an application to the Registration and Electoral Office (REO) and were required to abide by the guidelines governing the conduct of exit polls;
- (d) the Administration agreed with Dr CHUNG that exit polls could be conducted by any person and organisation. Any law which sought to legislate against certain person or organisation conducting exit polls would be subject to challenge. In addition, there was no guarantee that academic institutions would not disclose exit poll results to any person or organisation before the close of poll; and
- (e) candidates were required by law to prepare a detailed account of the election expenses incurred in an election.

15. Mrs Anson CHAN said that she considered that the 2007 LegCo by-election had not been conducted in a fair manner. In respect of the applicants approved to conduct exit polls in the 2007 LegCo by-election, she asked about the background of the applicants, their purpose for conducting the exit polls, and the criteria adopted for granting approval to these applicants.

16. SCMA disagreed that there was unfairness in the 2007 LegCo by-election. He said that over 52% of the eligible electors had cast votes and Mrs Anson CHAN was elected. SCMA reiterated that exit polls could be conducted by any person or organisation. These organisations could be academic and tertiary institutions, think-tanks, or any other organisations which would decide on their own the purpose of the exit polls and how the exit poll results should be used. The EAC had set out guidelines for the conduct, publication and broadcast of exit poll results to avoid unfair interference with the election process by unduly influencing electors. According to the guidelines, the media and organisations concerned should refrain from announcing the results of exit polls or making specific remarks or predictions on the performance of individual candidates until after the close of poll. Persons and organisations conducting exit polls should comply with these guidelines.

17. Mr Albert HO asked whether the election campaign team of a candidate could conduct an exit poll. CEO replied that the REO had previously rejected an application from an election candidate on the ground of protection of secrecy of votes.

Action

18. Mr Albert HO said that CEO's answer indicated that the spirit of the EAC guidelines on exit polls was to protect secrecy of votes before the close of poll. If an election campaign team applied for the conduct of an exit poll, its application should be rejected as there was reasonable ground to believe that it might use the results of the poll to plan its electioneering activities. Moreover, it was difficult for the EAC to ascertain whether or not an applicant was associated with a candidate or his campaign team. It was therefore necessary for the Administration to consider legislating against the use of exit poll results for electioneering activities before the close of poll.

19. Mr LEUNG Kwok-hung concurred with Mr HO. He said that the Administration could deploy undercover agents to collect evidence in respect of any party conducting exit polls for the purpose of planning electioneering activities and take prosecution action, if there was legislative control.

20. Mr LEE Cheuk-yan said that since the EAC would reject an application by a candidate to conduct an exit poll, it should also ensure that an organisation conducting an exit poll was not in any way associated with the candidate, his election campaign team, or his political party. He pointed out that under the existing EAC guidelines, a candidate, his agent or his political party could have access to exit poll results before the close of poll. He suggested that a guideline should be introduced to prohibit organisations from disclosing exit poll results to anybody before the close of poll.

21. Mr Martin LEE said that members were concerned about the disclosure and use of exit poll results before the close of poll, and that expenses incurred for conducting exit polls to facilitate electioneering were not counted as election expenses. He said that the Administration should not evade these issues.

22. In response to members, SCMA made the following points -

- (a) the REO would not approve an application by a candidate or his/her agents to conduct an exit poll because of the need to protect secrecy of votes. The REO would cross check the name of an applicant with those of the candidates or his/her agents to ascertain whether they were the same;
- (b) to protect academic freedom and freedom of expression, it was inappropriate to restrict any party to conduct exit polls and the use of exit poll results. The existing guideline urging the organisations concerned to refrain from announcing the results of exit polls until after the close of poll was appropriate, and was in line with that of many overseas countries;

Action

- (c) it was a statutory requirement for the EAC to submit a report to the CE within three months after each election. The EAC Reports had contained a review of relevant electoral arrangements and in the light of experience gained, had proposed improvement measures for future elections, including those relating to exit polls; and
- (d) the EAC would issue the proposed guidelines for the 2008 LegCo election for public consultation and members were free to give views on matters relating to exit polls in the consultation.

23. Mr LAU Kong-wah said that the Information Note revealed that each country had its own practice and the international guidelines opposed regulation of the conduct and reporting of polls in principle. Dr Robert CHUNG also held the view that any person or organisation could conduct exit polls, provided that they comply with international guidelines and the EAC's guidelines. Mr LAU expressed support for the improvement measures proposed by the EAC for exit polls.

24. Mr TAM Yiu-chung made the following points -

- (a) at around 4:00 pm on the polling day of the 2007 LegCo by-election, a major newspaper issued a special edition reporting that one of the candidates was falling behind at the election. Tens of thousands of the special edition were distributed to members of the public. The purpose of the special edition was to promote the election of a candidate and to prejudice the election of her rival. Mr TAM queried whether such an electioneering activity was fair. He also pointed out that unless the newspaper had conducted an exit poll, it would not have known that the candidate was falling behind at the election;
- (b) the EAC guidelines for conducting exit poll were similar to those of overseas countries, i.e. there was not much legislation or guidelines to restrict the conduct of exit polls and the announcement of exit poll results should be made after the close of poll;
- (c) he respected the recommendations made by the EAC on exit polls, as it was an independent body chaired by a judge; and
- (d) the remarks in paragraph 3 of the summary of report provided by Mr Ronny TONG about the background of Hong Kong Investigation and Research Centre were discriminatory. The paragraph stated that "at least 10 of the interviewers appear to have come from leftist organisations and 54 from teachers and students of leftist schools". The remarks gave people an impression that leftist organisations should refrain from conducting exit polls.

Action

25. In response to Mr TAM on paragraph 24(a) above, SCMA said that the EAC had referred the case to the ICAC and he had nothing to add.

26. Mrs Selina CHOW said that the Liberal Party supported that any person or organisation should have the right to conduct exit polls, and it was inappropriate to impose too many restrictions on such polls. From the public point of view, the procedure governing the conduct of exit polls should be transparent and fair. The Administration should step up measures to deal with the situation where exit poll interviewers claimed to be commissioned by the Government or the EAC, and to make known to the public that electors had the right not to answer interviewers' questions. She pointed out that many overseas countries allowed the conduct of exit polls and did not impose too many restrictions on such polls. It would not be meaningful to introduce legislation to regulate the conduct of exit polls if there were enforcement difficulties.

Election advertisements

27. Mr LAU Kong-wah referred to paragraphs 24(a) and 25 above and asked why the case had been referred to the ICAC. He also asked when the ICAC would conclude the case and whether the EAC would allow a third party, say a newspaper, to canvass vote for a candidate by issuing a special edition on the polling day. He said that the position of the EAC on the matter would affect the strategy of election campaign for the 2008 LegCo election.

28. SCMA explained that the EAC had referred the case to the ICAC because the question of election expenses was involved. As the case had been followed up by the ICAC for a while, he expected that the investigation would not take too long. Subject to the result of the investigation, the EAC would consider whether the electoral guidelines would require updating.

Training of staff

29. Ms Emily LAU referred to paragraph 13.14 of the EAC Report on the 2007 DC election and expressed grave concern that some Presiding Officers, Deputy Presiding Officers and polling staff were not very familiar with the electoral legislation, guidelines and the directives laid down in the operational manual, as revealed in the petitions and complaints received in paragraph 12.17(a) to (c). Ms LAU said that to ensure smooth operation on the polling day, the Administration should not recruit non-civil servants as electoral staff and should enhance training.

30. SCMA said that a majority of the electoral officers were civil servants and were experienced as they had participated in past elections. He said that he had paid visits to the polling and counting stations in each election so as to gain first-hand information on the actual situation on the polling day. He considered that the overall operation of the 2007 DC election and the 2007 LegCo by-election

Action

was orderly. CEO supplemented that the Administration had recruited over 13 000 electoral staff for the 2007 DC election. The EAC was aware that the training for electoral staff could be enhanced. In the light of the experience gained in the 2007 DC election, an experience-sharing session had been added for the training of staff for the 2007 LegCo by-election. The same arrangement would be included in the training for the 2008 LegCo election. In addition, training manuals would be beefed up to give more detailed guidance to electoral staff.

Counting of votes

31. Referring to the 2007 DC election, Mr LAU Kong-wah expressed concern about the delay in announcing the election results of a constituency because the results of individual polling stations of the same constituency had to be combined and verified before formal announcement. He said that this problem should be addressed in the 2008 LegCo election to ensure efficient counting of votes.

32. SCMA said that as in the 2007 DC election and 2007 LegCo by-election, decentralised counting arrangements would be adopted for the counting of GC votes in the 2008 LegCo election. Decentralised counting would expedite the counting process as counting of votes could commence shortly after the close of poll. At least two hours would be saved as there was no need to transport the ballot boxes from the polling stations to a central counting station. The REO would work towards expediting the counting process including the process to combine the counting results of individual polling stations of a GC.

Venue for polling station

33. Mr LAU Kong-wah and Mr Jasper TSANG said that in the 2007 DC election, residents of a public housing estate in Island South had been relocated to a public housing estate of another constituency. While half of its electors were allocated to a new polling station, the other half was allocated to the same polling station as if there was no change in address. Mr LAU expressed concern that some of the polling stations for the 2007 LegCo by-election held on 2 December 2007 were different from those for the 2007 DC election held on 18 November 2007, and had caused confusion to electors.

34. SCMA explained that at the time, the REO and the Housing Department were reviewing the system on the updating of addresses for the residents of public housing estates. The problem regarding the public housing estate in Island South had already been rectified. The REO would work closely with the Housing Department to ensure addresses in the electoral register would be updated following each major relocation of residents of a public housing estate. SCMA further said that given the short lead time in organising the 2007 LegCo by-election, some of the venues used in the 2007 DC election were not available on 2 December 2007 and the Administration had no choice but to change the venue of these polling stations. For the 2008 LegCo election, the polling stations would be the same as those used for the 2007 DC election as far as possible.

VI. 2008 voter registration campaign

(LC Paper No. CB(2)1336/07-08(03) - Administration's paper on "2008 Voter Registration Campaign")

Voter registration

35. SCMA informed members that the 2008 LegCo election would be held on 7 September 2008. The voter registration campaign would commence in early April and end on 16 May 2008. He briefed members on the main features of the 2008 voter registration campaign as set out in the paper.

36. Mr Howard YOUNG noted that the voter registration rate of eligible electors for geographical constituencies (GCs) (71%) was higher than that for the functional constituencies (FCs) (69%). He urged the Administration to step up publicity to promote voter registration for FC electors.

37. SCMA said that for people who had registered as GC electors and who were known by the REO to be eligible for registration as FC electors, the REO would send a notification letter informing them that unless they had any objection, their names would be included in the FC electoral register. This method had proven to be effective to facilitate eligible electors in FCs to register.

38. Deputy Secretary for Constitutional and Mainland Affairs (DSCMA) and CEO supplemented that to ensure that up-to-date information on FC electors could be incorporated into the electoral register, the REO would invite umbrella organisations (which comprised members eligible for registration as electors) to provide up-to-date membership information. The REO would also invite in writing the registered corporate electors to update their records. It would also appeal to umbrella organisations to encourage their members who were eligible to register as electors in FCs.

39. Ms Emily LAU expressed concern that some electors were only aware that their names had been removed from the electoral register on the polling day. She asked how electors could know in advance that their names had been deleted. Mr Jasper TSANG and Mr TAM Yiu-chung expressed similar concern. Mr TAM Yiu-chung wondered whether the deletion of a registered elector's name from the electoral register was due to computer error.

40. SCMA said that the names of registered electors would not be removed from the final register lightly. The REO would contact the electors by various means, and only when such attempts failed would their names be removed in accordance with statutory procedures. Any such person, once removed from the final register, would need to apply again for registration. SCMA said that the deletions were not due to computer error. If there were reasons to believe that the name of a registered elector was omitted from the electoral register due to clerical error, the law would allow the REO to make rectification.

Action

41. CEO supplemented that only if the person could not be contacted after many attempts, the REO would have reason to believe that the person was no longer residing in the address recorded in the existing register. The person's name would be put on an omissions list. As required by law, the omissions list would be published for public inspection together with the provisional register. Any person whose name was included in the omissions list but considered that he was entitled to be registered in the final register might make a claim. If such claim was accepted, the name would be reinstated in the final register. CEO said that for the upcoming voter registration, the REO would enhance publicity measures to remind electors to report to the REO their change of addresses and relevant particulars by the deadline. The REO would also invite electors to provide their e-mail addresses when they applied for voter registration. Electors who did not receive the poll card before election could contact the REO.

42. In response to Ms Emily LAU, CEO undertook to provide the Panel with the number of electors whose records had been removed from the register in the last voter registration cycle, and the number of complaints received on the polling day from electors who complained about their records being deleted.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No.CB(2)1676/07-08(01) on 21 April 2008.)

43. Mr Jasper TSANG pointed out that by the time an elector realised that he had not received a poll card, reporting to the REO would be too late because the deadline for registration had already lapsed. He recalled that a member of the DAB had wished to stand for the 2007 DC election but could not do so because his name had been removed from the electoral register. Mr TSANG suggested two user-friendly ways to enable electors to update their particulars with the REO and to check their status in the electoral register -

- (a) an elector could provide updated information to the REO, the Inland Revenue Department, the Immigration Department, etc. through the website of the Government, same as the existing procedure for a person to report change of address; and
- (b) an elector could check on-line his status in the electoral register by keying in his identity card number, e.g. whether his address had been updated and whether his name still remained in the electoral register after change of address.

44. Mrs Selina CHOW and Mr James TIEN suggested that the REO should check the registration rate of residents of private housing developments completed two to three years ago and step up publicity to target at those who had not registered.

Action

REO 45. In response to members, SCMA said that the objectives of the voter registration campaign were two-fold, i.e. to encourage eligible persons in both GC and FC to register as electors, and to remind registered electors who had changed their registration particulars to update their records with the REO. As in past elections, publicity and promotional activities would be staged, to be supported by a range of publicity materials such as announcements in public interest (API) on television and radio, placement of advertisements on newspapers and at major MTR stations, etc. SCMA added that the REO would follow up on members' suggestions on stepping up the publicity targeting residents of new private residential developments.

46. DSCMA and CEO said that -

- (a) the REO would obtain information from the Rating and Valuation Department on the new private housing developments in recent years. The REO would send appeal letters to those households which had moved into new private housing developments to remind them to report changes in address and if they were not already registered electors, to register before the statutory deadline;
- (b) the HAD would conduct visits to new residential developments. Where permitted, counters would be set up in these new estates to promote registration and facilitate registered electors to report changes in address;
- (c) as an on-going measure, the REO would update the addresses of registered electors living in the housing estates under the management of the Housing Department through matching the address record of the Housing Department with that of the REO; and
- (d) the Immigration Department would continue to provide the REO with information on change of address it received, if the person concerned had given consent for such data transfer. As the deadline for registered electors to update their particulars was 30 June 2008, the REO would ensure that the information received from the Immigration Department would be updated in the electoral register.

47. Mr TAM Yiu-chung expressed concern whether a confirmation letter would be issued to newly registered electors as soon as practicable. CEO responded that a confirmation letter would be sent to the registered electors within 14 days after registration. In the event that the registered elector had not received a poll card 10 days before the election, he should report the case to the REO enquiry hotline and the REO would follow up on a case-by-case basis.

Action

48. Mr TAM Yiu-chung asked about the details of the launching ceremony for the 2008 voter registration campaign. SCMA said that the campaign would be launched in early April, and the launching ceremony would be organised by the Radio Television Hong Kong. Invitation to attend the ceremony would be sent to Members shortly.

49. Mr TAM Yiu-chung expressed concern that many permanent residents of Hong Kong working in Hong Kong but residing in the Mainland in recent years no longer had a local address and had lost their eligibility to vote. He requested the Administration to address the issue. SCMA said that the REO would take a look at the relevant statutory provisions and give a written response after the meeting.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No.CB(2)1676/07-08(01) on 21 April 2008.)

Election advertisements

50. Ms Emily LAU asked whether electors would be asked to indicate their preference to receive EAs on a household or an individual basis during registration. Mrs Selina CHOW asked whether electors would be asked to indicate their preference to receive EAs by electronic means or in the form of hardcopy during registration.

51. CEO said that in previous elections, candidates were provided with a set of address labels printed with electors' names and addresses on an individual basis for sending EAs. Having considered recent public views on paper consumption relating to elections, the REO was exploring the possibility of providing candidates with address labels on a household basis. The issue would be further discussed at the next meeting when the Administration briefed the Panel on the practical arrangements for the 2008 LegCo election.

52. CEO further said that an applicant was invited to provide his e-mail address on a voluntary basis in the application form for voter registration, and was informed that the e-mail address would be provided to candidates for the purpose of sending EAs.

VII. Method for electing the Chief Executive in 2012 - Size and composition of the Election Committee and nominating arrangements

(LC Paper No. CB(2)1177/07-08 - Papers of the Task Group on Constitutional Development of the Commission on Strategic Development for its meeting on 28 February 2008 on "Issues to be Discussed at Future Meetings" and "Method for Electing the Chief Executive in 2012 - Size and Composition of the Election Committee and Nominating Arrangements")

Action

53. SCMA said that the Decision made by the Standing Committee of the National People's Congress (NPCSC) on 29 December 2007 (the NPCSC Decision) made it clear that the CE might be elected by universal suffrage in 2017, and that after the CE was elected by universal suffrage, all Members of the LegCo might also be elected by universal suffrage in 2020. The Government of the Hong Kong Special Administrative Region (HKSAR) hoped to implement the Decision of the NPCSC in phases in an orderly manner. In this regard, the CE had appointed the Task Group on Constitutional Development under the Commission on Strategic Development (CSD) (the Task Group) to discuss specifically the two electoral methods for 2012 within the framework set out in the NPCSC Decision. The Task Group held its first meeting on 28 February 2008. The Administration hoped that in coming years, discussions on constitutional development would help narrow differences in opinion with a view to further democratising the two electoral methods. The Task Group hoped to conclude discussions around the middle of this year, so that the Administration could consolidate options for amending the two electoral methods for 2012 in the fourth quarter of this year, and conduct another round of public consultation as early as possible.

54. Mrs Anson CHAN asked whether the consultation paper to be issued in early 2009 would be presented in the form of a green paper. SCMA said that the format and timing for issuing the consultation paper would be decided in the fourth quarter of 2008.

55. Mr LEE Cheuk-yan asked why the Task Group had to conclude its discussion as early as mid-2008, when the two electoral methods would only be implemented in 2012. He pointed out that it would not be meaningful to discuss the transitional electoral arrangements for 2012 when one did not know the final arrangement for implementing universal suffrage for the CE and LegCo.

56. SCMA explained that the Administration wished to make the best use of time in coming years to narrow differences in opinion before formulating final models for the two electoral methods for 2012. Since 2004, numerous discussions had been held on constitutional development by the Panel and Task Force on Constitutional Development and according to experience, several rounds of consultation might be necessary before a mainstream view could emerge. SCMA further said that the imminent task was to study how the electoral methods for 2012 could be further democratised. From now to mid-2008, the Task Group would hold at least four meetings to discuss the electoral methods for 2012. After consolidation of views, the Administration would conduct public consultation and the number of consultations to be conducted would depend on the extent of differences in opinion. The Administration had to put forth legislative proposals around 2010 for amending Annexes I and II to the Basic Law to effect changes to the two electoral methods for 2012. The two electoral methods for 2012 should form the basis to further develop the electoral methods for the CE election in 2017 and the LegCo election in 2016. For instance, the composition of the Election Committee in 2012 had to be considered carefully to provide for its smooth transition into a nominating committee, in order to implement universal suffrage for the CE election in 2017.

Action

57. Ms Emily LAU said that she would not give up her goal of dual universal suffrage in 2012 as she still had four years to fight for her cause. She maintained that the LegCo, rather than the CSD, should be the forum for discussing constitutional development. While the CE had made an electoral promise to deal with the issue of universal suffrage within his term of office, he was only able to provide a direction for implementing universal suffrage but not a final model for universal suffrage. Ms LAU said that unless the Government of the HKSAR could give an undertaking that universal suffrage to be attained for the CE election in 2017 and the LegCo election in 2020 would meet the international standards, she could not support the transitional electoral arrangement for 2012. She also asked how the Administration would seek the co-operation from Members of the fourth term LegCo.

58. SCMA responded that both the CSD and the Panel were forums for collecting views on constitutional development. The Administration encouraged discussion of the matter within and outside LegCo. Under the Basic Law, the Administration had the duty to propose electoral methods for 2012 and Members had the duty to examine the final proposals for the two electoral methods. The Administration had already made clear in paragraph 2.24 of the Green Paper that any universal suffrage model should comply with the principles of "universal" and "equal" suffrage. An opinion poll conducted recently indicated that over 70% of the respondents supported the NPCSC Decision. The public would expect that Members and the Government would work together to make progress on constitutional development. To this end, the Administration and Members of the next term LegCo should co-operate to meet the expectation of the people. SCMA said that the target of the HKSAR Government was to settle the two electoral methods for 2012 within the tenure of the current term Government in order to lay a solid foundation for attaining universal suffrage for the CE in 2017, and for the LegCo in 2020.

VIII. Mechanism for amending the Basic Law

(LC Paper No. CB(2)1336/07-08(04) - Background Brief prepared by the Legislative Council Secretariat on "Mechanism for amending the Basic Law"

LC Paper No. CB(2)1595/07-08(01) - "Speaking points on Mechanism for amending the Basic Law" made by the Secretary for Constitutional and Mainland Affairs at the meeting on 17 March 2008)

59. SCMA stated the position of the Administration on the mechanism for amending the Basic Law (a copy of his speaking note was issued to members after the meeting). In gist, the Administration had discussed the issue with the Central Authorities and the latter considered that the Basic Law had been implemented smoothly since its enactment. There was no need to amend the Basic Law at this stage and hence, there was no need to specify the relevant amendment mechanism.

Action

60. Ms Emily LAU expressed disappointment that after a lapse of 10 years, the Administration had no intention to put in place a mechanism for amending the Basic Law. She said that the HKSAR Government should have a mechanism in place to deal with the need to amend the Basic Law when it arose. She enquired whether the Administration's position represented that of the Central People's Government (CPG).

61. SCMA responded that in the past few years, the Administration had been studying and discussing the relevant issues with the relevant departments of the Central Authorities. The Administration had also reflected the views of LegCo to the Central Authorities. It was the consistent position of the Central Authorities and the HKSAR Government that the Basic Law should not be amended lightly. Article 159 of the Basic Law (BL 159) had prescribed the major requirements for amending the Basic Law. The provision stipulated that before a bill for amendments to the Basic Law proposed by the HKSAR was submitted to the National People's Congress (NPC) for consideration, the consent of two-thirds of the NPC Deputies of the Region, two-thirds of all the LegCo Members and the CE should be obtained.

62. Mr TAM Yiu-chung, a member of the Drafting Committee for the Basic Law, informed members of the major considerations in drafting the Basic Law at that time. The public sentiment then was that the Basic Law should not be amended lightly, in order to safeguard the rights and interests conferred to the people of Hong Kong by the CPG. To this end, some of the provisions in the Basic Law governing the policies of Hong Kong could not be amended. BL 159 also provided that the power of amendment of the Basic Law should be vested in the NPC. Mr TAM said that the current position of the HKSAR Government was consistent with the public sentiment. He agreed that there was no urgency to specify the relevant amendment mechanism.

63. Mr Howard YOUNG concurred with Mr TAM. He said that while some people disliked some of the provisions in the Basic Law, the Basic Law did contain provisions favourable to the people of Hong Kong, such as no foreign exchange control policies should be applied in Hong Kong, and the CPG should not levy taxes in the HKSAR, etc. He considered that the implementation of the Basic Law in the past 10 years had been successful.

64. SCMA said that BL 159 stipulated that no amendment to the Basic Law should contravene the established basic policies of the CPG regarding Hong Kong. In accordance with the preamble and general principles set out in the Basic Law, the established policies of the Central Authorities regarding Hong Kong included the following: "one country, two systems" should be implemented in the HKSAR; the socialist system and policies should not be practised in Hong Kong; the HKSAR enjoyed a high degree of autonomy; and the previous capitalist system and way of life should remain unchanged. Any amendments to the Basic Law that were in contravention with the above established basic policies could not be

Action

made. The drafting of the Basic Law had reflected the principle of not amending the Basic Law lightly and the wish of the people of Hong Kong. In concluding the experience gained from the past ten years, the people of Hong Kong generally valued the legal safeguard provided by the Basic Law for implementing the basic policies of "one country, two systems" and for maintaining the long term prosperity and stability of Hong Kong.

65. In further response to Ms Emily LAU on whether the Administration would no longer deal with the issue, SCMA said that the conclusion drawn by the Administration was very clear.

66. The meeting ended at 5:28 pm.

Council Business Division 2
Legislative Council Secretariat
13 June 2008