

立法會
Legislative Council

LC Paper No. CB(2)2462/07-08

Ref. : CB2/PL/CA

**Report of the Panel on Constitutional Affairs
for submission to the Legislative Council**

PURPOSE

This report gives an account of the work of the Panel on Constitutional Affairs during the 2007-2008 Legislative Council (LegCo) session. It will be tabled at the Council meeting on 2 July 2008 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

THE PANEL

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002 and 11 July 2007 for the purpose of monitoring and examining Government policies and issues of public concern relating to constitutional affairs. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 38 members, with Dr Hon LUI Ming-wah and Hon TAM Yiu-chung elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix II**.

MAJOR WORK

Further development of the Political Appointment System

Proposal to further develop the Political Appointment System

4. The Report on Further Development of the Political Appointment System (PAS) (the Report) was published on 17 October 2007. The Report recommended that one position of Under Secretary at the rank of Deputy Director of Bureau and one position of Political Assistant to Director of Bureau (Political Assistant) should be created for each policy bureau (except the Civil Service Bureau), and one position of Political Assistant should be created for the Chief Secretary for Administration and the Financial Secretary respectively. The Administration advised that the objectives of further development of the PAS were: to provide additional support for Principal Officials (POs) to meet the demands of people-based governance, to enhance the capacity of the political team to take on political work which would be conducive to

maintaining the political neutrality of the civil service, and to provide a more comprehensive career path for political talents which would tie in with the progressive development of a more democratic political system.

5. Some members queried the basis for the Administration to seek public funds to groom like-minded political talents who shared the governing philosophy of a Chief Executive (CE) who was returned by a "small circle" election. They considered that the PAS was not conducive to political party development and democratic development, and would open the door to a "spoils system" for political parties which had close relations with the CE. The Administration should withhold the proposal until universal suffrage was implemented for the election of the CE.

6. Some members supported the proposal from the perspective that it would contribute to effective governance of Hong Kong. In their view, irrespective of whether a CE was elected by the Election Committee or by universal suffrage, he needed team members to deliver his election platform. It was also necessary to groom more political talents to take forward constitutional development.

7. The proposal to create 24 non-civil service positions (11 Deputy Directors of Bureau and 13 Political Assistants) under the PAS with effect from 1 April 2008 was approved by the Finance Committee on 14 December 2007.

Appointment of Under Secretaries and Political Assistants

8. Following the appointment of the first batch of eight Under Secretaries and nine Political Assistants on 20 and 22 May 2008, there were calls from Members and the public for greater transparency on the nationality, remuneration, and appointment procedure of the political appointees.

9. On nationality, the Administration's position was that Under Secretaries and Political Assistants had to be permanent residents of the Hong Kong Special Administrative Region (HKSAR). However, since Under Secretaries were not POs, they were not required to have no right of abode in any foreign country, as required in the case of POs. This was in compliance with the Basic Law. The Panel noted that five newly appointed Under Secretaries with foreign right of abode had renounced their rights in this regard.

10. The Administration advised that in future, it would remind appointees to the positions of Under Secretaries that the public expected them to disclose whether they had a foreign right of abode. As to whether they should renounce such a right, it was a personal decision.

11. As far as the remuneration was concerned, there were three pay points for Under Secretaries and five for Political Assistants within the ranges approved by the Finance Committee. The Panel noted that the Administration issued a press release on 31 May 2008 to provide information on the distribution of Under Secretaries and

Political Assistants at each of the specified salary points, but not the actual salaries of individual appointees, in order to strike a balance between safeguarding their personal data and the public's right to know. However, in view of sustained public interest, the Under Secretaries and Political Assistants disclosed their personal remuneration on 10 June 2008, and the Administration issued a press release on their behalf. The Panel was informed that in future, the Administration would make clear to any newly-appointed Under Secretaries and Political Assistants that their personal remuneration would be disclosed.

12. The Panel noted that the Administration had adopted the mid-point within the approved salary ranges as the anchor when considering whether to screen in a candidate. The remuneration of candidates meeting the benchmark would be set at the mid-point, and candidates who suffered pay cuts upon taking up the appointments would be offered higher salary points. Some members questioned the logic for the Administration not to offer minimum salary point to some of the newly appointed Under Secretaries and Political Assistants, and requested it to take into account the experience and existing remuneration etc of political appointees in setting their remuneration. The Administration agreed to consider members' views in making a decision on the remuneration of individual political appointees in future.

13. Members sought information on the appointment procedure, and the number of nominations or referrals made by the Director of the Chief Executive's Office. The Panel was informed that the Appointment Committee (AC) was chaired by the CE and comprised the Secretaries of Department, the Secretary for Constitutional and Mainland Affairs and the Director of the Chief Executive's Office. The two interviewing panels for Under Secretaries and Political Assistants respectively would compile assessments at the end of each interview and these were presented to the AC for consideration. All key decisions on the appointment procedures were made by the AC on a collective basis. The relevant POs would be consulted and their agreement would be secured over the proposed match, before the AC ruled on the exact "posting" for each Under Secretary and Political Assistant.

14. The Administration advised that it had received over 100 nominations or referrals or self-nominations from political parties, think tanks, and government sources (Secretaries of Department, Directors of Bureau and Head of the Central Policy Unit). The Administration would not comment on the details of nominations or referrals received from different sources, but advised that the number received from the Director of the Chief Executive's Office was small.

15. Some members expressed disappointment that the CE had only apologized for not arranging the new political appointees to meet with the press immediately after the announcement of the appointments, but not for the handling of the whole matter. At the meeting on 16 June 2008, a motion condemning the chaotic arrangement of the appointment of the Under Secretaries and Political Assistants; the lack of transparency and objective criteria in the selection procedure and remuneration determination, and requesting the CE to take full responsibility and make a public apology was moved,

but negated by the Panel. However, the Panel passed a motion, by a vote of 20 to 9, expressing grave disappointment that the Government had under-estimated the expectation of the public in handling matters relating to the appointment of the Under Secretaries and Political Assistants and urging the Government to review the deficiencies of the PAS and give an account to the public.

Constitutional development of Hong Kong

Two Reports on constitutional development

16. On 12 December 2007, the CE submitted the "Report on the Public Consultation on Constitutional Development and on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2012" to the Standing Committee of the National People's Congress (NPCSC) (the CE Report) together with the "Report on Public Consultation on Green Paper on Constitutional Development". The Panel discussed the two Reports at two meetings in December 2007.

17. Some members queried the conclusion in the two Reports that "[i]mplementing universal suffrage for the CE first in 2012 is the expectation of more than half of the public, as reflected in the opinion polls; this expectation should be taken seriously and given consideration. At the same time, implementing universal suffrage for the CE first by no later than 2017 will stand a better chance of being accepted by the majority in our community."

18. The Administration explained that it had received about 182 000 written submissions and more than 150 000 signatures during consultation. The CE's conclusion was supported by the following findings -

- (a) less than half of LegCo Members supported the implementation of dual universal suffrage in 2012. Half of LegCo Members supported that universal suffrage for the CE should be implemented first by no later than 2017, in 2017 or after 2017, and that universal suffrage for the LegCo should follow thereafter;
- (b) more than two-thirds of the 18 District Councils supported the implementation of universal suffrage for the CE by no later than 2017 or in 2017, and should precede that for the LegCo;
- (c) opinion polls had indicated that about 60% of the respondents accepted the implementation of universal suffrage for the CE in 2017, if this could not be achieved in 2012; and
- (d) more than 150 000 signatures received during consultation had indicated support for implementing universal suffrage for the CE by no later than

2017, in 2017 or after 2017, and among these signatures, more than 130 000 had indicated support that universal suffrage for the CE should precede that for LegCo.

19. Some members expressed dissatisfaction and disappointment at the two Reports. They considered that the CE had failed to honour his electoral pledge that he would make the best endeavour to pursue universal suffrage during his term of office. They criticized that the two Reports had not put forth the models and roadmap for electing the CE and forming the LegCo by universal suffrage, or put up a strong case for implementing dual universal suffrage in 2012 to reflect the aspirations of the public.

Decision of the NPCSC

20. After considering the CE Report, the NPCSC made a decision on 29 December 2007 on issues relating to the methods for selecting the CE and for forming the LegCo in the year 2012 and on issues relating to universal suffrage (the NPCSC Decision). According to the Administration, 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 LegCo Members might also be elected by universal suffrage in 2020.

21. At the Panel meeting on 21 January 2008, some members pointed out that the NPCSC Decision was divided into two parts -

- (a) the first part covered the "view" of the NPCSC that the election of CE in 2017 might be implemented by universal suffrage, and the election of LegCo might be implemented by universal suffrage after the CE was elected by universal suffrage; and
- (b) the second part set out the "decision" of the NPCSC that the elections of the CE and LegCo in 2012 should not be implemented by universal suffrage, and appropriate amendments conforming to the principle of gradual and orderly progress might be made to the specific methods for selecting the CE and forming the LegCo in 2012 in accordance with the Basic Law.

These members considered that the first part of the NPCSC Decision merely reflected its view and not its decision, and the Administration had misled the public that the NPCSC had decided to implement universal suffrage for the CE in 2017 and for LegCo in 2020. The Administration explained that Mr QIAO Xiaoyang had made clear that the first part of the NPCSC Decision was the premise for the second part. It was part and parcel of the NPCSC Decision and was legally binding.

22. Some members maintained that dual universal suffrage should be implemented in 2012. They expressed concern whether the implementation of universal suffrage for the CE and LegCo in 2017 and 2020 respectively was a sham, and whether the

"universal suffrage models" would meet the principles of "universal" and "equal" suffrage.

23. Some members held the view that the NPCSC Decision was appropriate to the actual situation in the HKSAR and the timetable provided had addressed the aspirations of the public. They urged Members to adopt a pragmatic and accommodating attitude to work together towards securing a consensus for implementing universal suffrage based on the framework of the NPCSC Decision. They cautioned that the ambition to achieve universal suffrage in one go might result in stalling the pace of constitutional development.

24. At its meeting on 21 January 2008, the Panel passed a motion, by a vote of 20 to 7, supporting the NPCSC Decision and calling for the joint efforts of all sectors of the community to reach a consensus on a more democratic electoral system in 2012, with a view to attaining universal suffrage for the CE in 2017 and for the LegCo in 2020.

Methods for electing CE and forming LegCo in 2012

25. The CE had appointed the Task Group on Constitutional Development under the Commission on Strategic Development (the Task Group) to discuss specifically the two electoral methods for 2012 within the framework set out by the NPCSC Decision. The Task Group would conclude discussions around the middle of 2008. The Administration would consolidate options for amending the two electoral methods for 2012 in the fourth quarter of 2008 and conduct another round of public consultation as early as possible. The Panel was briefed on the deliberations of the Task Group on the methods for electing the CE and forming the LegCo in 2012 on a number of occasions.

26. Some members opined that the models for implementing universal suffrage should be discussed first and after consensus had been reached, discussions could then be held on the two electoral methods for 2012. The Administration explained that it was appropriate for the third term CE to deal with the two electoral methods for 2012, a transitional stop on the road to universal suffrage for the CE in 2017 and the LegCo in 2020. The CE elected in 2012 would work with the Fifth LegCo on the arrangement for implementation of universal suffrage for the 2017 CE election; whereas the CE elected by universal suffrage would work with the Sixth LegCo on the arrangement for implementing universal suffrage for the 2020 LegCo election.

27. Some members requested the Administration to give an undertaking to the effect that the universal suffrage models for the CE election in 2017 and the LegCo election in 2020 would comply with the principles of "universal" and "equal" suffrage in Article 25 of the International Covenant on Civil and Political Rights. The Administration referred members to paragraph 2.24 of the Green Paper on Constitutional Development, which had made clear that "... the concept of universal suffrage should include the principles of "universal" and "equal" suffrage. Universal

suffrage system commonly adopted in overseas jurisdictions is a one-person-one-vote system which can take the form of direct or indirect election."

28. Some members found it difficult to accept the view that the retention of functional constituency (FC) seats in some form in the model for forming the LegCo by universal suffrage could be regarded as complying with the principles of "universal" and "equal" suffrage. They maintained that FC seats should be abolished and all LegCo seats should be returned by direct elections when universal suffrage was implemented. Some other members considered that various sectors of the community had diverse views on the method for forming the LegCo by universal suffrage and the abolition of FC seats altogether. The issue was a complicated one and would need to be further studied.

29. The Panel noted that the Task Group had discussed whether the number of LegCo seats should be increased to 70 or 80 in 2012. Some members pointed out that in accordance with the NPCSC Decision, the ratio between Members returned by FCs and geographical constituencies (GCs) should remain unchanged for 2012. An overall increase in the number of LegCo seats would inevitably lead to an increase in the number of FC seats, and would only pose further hurdles for consensus to be reached to abolish all FC seats.

30. At the meeting on 19 May 2008, the Panel passed a motion, by a vote of 13 to 6, urging the CE to state clearly that all FC seats should be abolished in the model for forming the LegCo by universal suffrage.

2007 District Council elections and 2007 LegCo By-election

31. The 2007 District Council (DC) election and the 2007 LegCo Hong Kong Island Geographical Constituency By-election were held on 18 November 2007 and 2 December 2007 respectively (the two elections).

32. The Panel was briefed on the reports submitted by the Electoral Affairs Commission (EAC) to the CE on the two elections. The reports described how the EAC conducted and supervised the two elections and set out the detailed arrangements and relevant follow-up actions. The reports also contained a review of relevant electoral arrangements in the light of experience, and improvement measures for future elections. Some of the main issues discussed by the Panel are summarized below.

Contact between candidates and Principal Officials during the election period

33. Some members questioned the appropriateness for one of the candidates of the 2007 LegCo By-election to have meetings with three POs within two days during the election period. They pointed out that under the Guidelines on Election-related Activities in respect of the LegCo Election, POs should not use any public resources for any election-related activities or participate in activities which might be seen as giving favourable treatment to a particular candidate.

34. The Administration explained that a candidate requested in early October 2007, in her capacity as the Chairman of the Board of Governors of a think tank, to meet with POs to discuss various policy issues. The Administration considered that such meetings were not election-related and had decided that the POs could meet with the candidate if their schedules permitted. The CE and the POs had also made a policy decision that to ensure parity of treatment, POs who had decided to meet with the candidate should also accede to similar requests from other candidates. As to whether the same policy decision would apply to future elections including by-elections, the Administration advised the Panel that each case would be considered on its own merit.

35. The Panel was informed that the EAC had concluded a thorough investigation into the matter. In the light of the findings, the EAC considered that there was no violation of the Guidelines on Election-related Activities in respect of the LegCo Election on unfair treatment and use of public resources.

Exit polls

36. Some members expressed concern on the conduct of exit polls in the two elections. They were particularly concerned about the background of the pollsters and the use of exit poll results by political parties or organizations in making strategic decisions before the close of poll. They also questioned whether the expenses in conducting such exit polls should be counted towards the election expenses of certain candidates.

37. The Panel was advised that under the EAC Guidelines, there was no specific regulation on the use of information collected through exit polls. Nevertheless, any announcement of the results of exit polls or predictions during the polling hours might affect elector behaviour and might have an impact on election results. As such, the EAC appealed to the media and concerned organizations to 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. If any organization/person failed to comply with the Guidelines, the REO might issue a warning letter or make a reprimand or censure in a public statement. In response to members' enquiry, the Administration advised that "announcement" of exit polls results meant making remarks in public such as in a press conference, or issuing a public statement or press release.

38. At the request of the Panel, the Research and Library Services Division (RLSD) of the LegCo Secretariat conducted a research on the arrangements for exit polls at parliamentary elections in overseas places. The Panel noted that while exit polls were permitted in Canada, the United Kingdom (UK), the United States (US) and Australia, they were banned in New Zealand and severely restricted in Singapore. None of the selected places permitting exit polls had any legislation or guideline regulating the conduct of exit polls and use of exit poll results, or disallowing exit poll results from being provided to candidates or political parties before the close of poll.

39. The Panel was informed that in the light of views and complaints received, the EAC had proposed in the Proposed Guidelines on Election-related Activities in respect of the LegCo Election that additional measures be introduced to step up the control on conduct of exit polls and enhance the transparency of organizations/persons with approval to conduct exit polls. Some members did not accept that the proposed measures could address the specific concern raised, and suggested that a condition should be imposed on organizations/persons conducting exit polls, i.e. to prohibit them to announce exit poll results in public or disclose them in private before the close of poll. The Administration advised that there was no legal justification to impose such a condition. It was also inappropriate to regulate the use of exit poll results in order to protect freedom of expression and academic freedom. The Administration maintained that the existing guideline urging the organizations/persons 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.

Election advertisements

40. Some members expressed concern whether a special edition issued by a newspaper on the polling day of the 2007 LegCo By-election should be regarded as election advertisements (EAs) for the purpose of promoting or prejudicing the candidature of candidates in the election and whether the EAC should introduce measures to prevent recurrence at future elections. The Administration advised that the EAC had received a number of complaints about unfair treatment of candidates by the media and would handle them in accordance with the established procedure.

41. The Panel was informed in March 2008 that EAC had conducted detailed investigation into complaints concerning these issues. Substantiated cases were referred to relevant enforcement authority for follow-up action. Investigation regarding some cases was still ongoing. The EAC would issue warning letters, reprimand or censure according to relevant circumstances.

2008 LegCo election

42. The Administration announced that the 2008 LegCo election would be held on 7 September 2008. The Panel was consulted on a number of practical arrangements for the election and the major proposed changes in the Proposed Guidelines on Election-related Activities in respect of the LegCo Election issued by the EAC in March 2008. Some of the major issues raised by the Panel are summarized below.

Counting arrangements

43. The Panel was consulted on the vote counting arrangements for the 2008 LegCo election. Members generally agreed that polling-cum-counting arrangement should be adopted for counting the GC votes, while central counting arrangement should be adopted for the FC votes.

44. A member proposed that to enhance transparency and expedite the counting process, the Administration should consider reading out the choice of candidates marked on the ballot papers as they were counted. The Administration advised that the REO had simulated a test on the counting method suggested by the member and the outcome was not satisfactory.

Venue for Central Counting Station

45. The Panel was consulted on two possible venues for setting up the Central Counting Station (CCS) for counting the FC votes and for announcing the results of GC and FC elections. They were the Asia World-Expo (AWE) in Chek Lap Kok and the Hongkong International Trade & Exhibition Centre (HITEC) in Kowloon Bay.

46. Taking into account the Panel's view, the Administration subsequently decided that, on balance, the HITEC, being easily accessible, had a comparative advantage over the AWE in serving as the venue for the CCS for the 2008 LegCo election. Although the physical layout of the HITEC might pose some challenges in terms of operation and control, it would work out a detailed plan in advance to minimize the impact of these limitations on the operation of the CCS.

Address labels for candidates to send election advertisements

47. In the past elections, candidates were provided with a set of address labels printed with electors' names and addresses on an individual basis for sending EAs. Some members suggested that for environmental protection purpose, candidates should be provided with address labels of electors on a household basis rather than individual basis in the 2008 LegCo election.

48. The Administration had explored the possibility of the proposal and reported its considerations to the Panel in April 2008. The Administration considered that the right of individual electors to peruse the election platform of candidates was a fundamental principle of elections and must not be compromised. If EAs were delivered on a household basis, the Administration must work out the arrangements to address issues such as the timely access to EAs by individual electors due to the time required for circulation among electors within a household, and the delivery of EAs to individual electors who resided in residential establishments where a communal address was used (e.g. tenement flats, elderly homes). The Panel was informed that the proposal would not be implemented for the 2008 LegCo election, and members' views were welcomed on the way forward.

Subsidy rate of financial assistance scheme and election expense limits

49. The Panel was consulted on the following proposals -

- (a) the subsidy rate of the financial assistance scheme for candidates in LegCo elections should be increased to \$11 per vote. At present, the

subsidy rate was set at \$10 per vote, capped at 50% of the actual election expenses of the candidates; and

- (b) the election expense limits for both GCs and FCs should be increased by 5%.

50. Members had differing views on election expense limits for GCs. Some members considered that the election expense limits should be abolished or increased, whereas some members did not support an increase to the expense limits.

51. According to the Administration, the estimated amount of additional financial assistance payable to candidates was about \$1 million after implementing the two proposals. Some members considered that the Administration's proposals were not conducive to promoting political party development and grooming political talents. A member considered that the cap of the subsidy rate at 50% of the actual election expenses of candidates should be increased to 70%.

52. The Administration explained the basis for arriving at the two proposals. As regards the suggestion that the cap of the subsidy rate of 50% of the actual election expenses should be increased, the Administration was of the view that election expenses should be collectively borne by the Government and candidates or their political parties/groups.

Force Working Group on Electioneering Activities (Force Working Group)

53. The Panel was informed that to prepare for the 2008 LegCo election, the Police had set up the Force Working Group to enhance communication between the Police and various Government departments on matters relating to election. One of its tasks was to review and improve the existing practices having regard to past experience on handling election complaints. The Force Working Group would issue guidelines to ensure that consistent and practical practices would be adopted within the Police. Briefing sessions, to be designed based on the guidelines to be devised by the Force Working Group, would be provided to officers involved in policing on the polling day.

Cooling off period

54. Some members advocated a cooling off period on the polling day. Given the increasing size of the No Canvassing Zone, they considered that canvassing on polling day no longer served any meaningful purpose. Some other members expressed support for canvassing on the polling day.

55. The Administration maintained the view that canvassing on the polling day would create a better atmosphere for the election. As Hong Kong was developing its electoral system, the present arrangement provided candidates and political parties with the opportunity to canvass votes.

Usage of electoral register

56. The Panel discussed whether legislative amendment should be made to the relevant electoral law to stipulate that Members could continue to use the information contained in the electoral register to communicate with their constituents after the LegCo election, e.g. to send newsletters on their work to their constituents.

57. The Administration explained that under the existing legislation, 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 to protect personal data and the privacy of electors on the other.

58. At the request of the Panel, the RLSD provided information on the usage of electoral register in Australia, Canada, the UK and Ireland. The Panel noted that all the places studied allowed the use of the electoral register for purposes other than a purpose related to an election.

59. Some members expressed support for relaxing the usage of the electoral register to enable Members to communicate with their constituents after election. They also made suggestions to address the Administration's concerns about undue advantage of incumbent Members over other candidates, and the need to protect the personal data of constituents. They urged the Administration to adopt an open mind in considering the matter.

60. The Administration responded that the existing policy and legislation governing election was made after thorough and in-depth discussions with Members and should not be amended without justification. Nevertheless, the Administration would relay members' views to the EAC for consideration.

System of declaration of investments and interests by POs under the Accountability System

61. Arising from the case of the Secretary for Financial Services and the Treasury, the Panel discussed in the past LegCo session whether a PO should make declaration on his spouse's occupation and investments and related issues. As the Administration did not see the need to change the declaration system which had proven to be effective in the past five years, the Panel requested the RLSD to provide information on overseas practices relating to declaration of interests by spouses of POs.

62. The RLSD presented the findings of its study on registration and disclosure of the occupation of the spouses of principal officials in the US, Australia, the UK, New Zealand and Canada to the Panel in the current session. Members noted that in the US, the occupation of Secretaries' spouse was disclosed to the public. However, in Canada, the interests of Ministers' spouse (such as occupation) needed not be disclosed to the public. The UK adopted a middle-of-the-road approach by requiring

ministers to disclose the occupation of their spouse to the public, if it was thought that his/her occupation might give rise to a conflict of interest.

63. The Administration reiterated that POs under the accountability system were required to declare investments and interests that were held in the name of their spouse, children or any other persons or companies but were actually acquired on their account or in which they had a beneficial interest. 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. POs were required to report to the CE any private interests that might influence, or appear to influence, their judgment in the performance of their duties. POs were also required to declare the occupation and employer of their spouse in their internal declaration to the CE.

64. In the light of the research findings, a member suggested that the Administration should consider adopting the UK approach as on one hand, it protected the right of POs' spouse to develop their career and on the other hand, it allowed public monitoring when warranted. Another member pointed out that since POs were already required to declare the occupation and employer of their spouse in their internal declaration to the CE under the existing arrangement, they should disclose the information to the public as well. The Administration agreed to consider members' views.

Mechanism for amending the Basic Law

65. Article 159 of the Basic Law stipulates that the power to propose bills for amendments to the Basic Law shall be vested in the NPCSC, the State Council and the HKSAR. Amendment bills from the HKSAR shall be submitted to the NPC by the delegation of the Region to the NPC after obtaining the consent of two-thirds of the deputies of the Region to the NPC, two-thirds of LegCo Members and the CE. However, Article 159 of the Basic Law does not provide for the mechanism and procedure for proposing bills for amending the Basic Law. In March 2008, the Panel received a report from the Administration on its position on the mechanism for amending the Basic Law, an issue which had been followed up by the Panel since 1998.

66. The Panel was advised that the Administration had discussed the relevant issues with the Central Authorities in the past few years and the latter considered that firstly, the Basic Law was the legal safeguard for ensuring the implementation of the basic policies of "one country, two systems" and for maintaining the long term prosperity and stability of Hong Kong. Its provisions should be maintained and should not be amended lightly. Secondly, 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.

67. Some members agreed that the Basic Law should not be amended lightly, and there was no urgency to specify a mechanism for amending the Basic Law. Some

other members considered that the Government should have a mechanism in place to deal with the need to amend the Basic Law when it arose. They expressed disappointment that the Administration had no intention to do so after a lapse of 10 years.

PANEL MEETINGS

68. From October 2007 to June 2008, the Panel held a total of 12 meetings.

Council Business Division 2
Legislative Council Secretariat
27 June 2008

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters and district organizations.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Constitutional Affairs

Membership list for 2007-2008 session

Chairman Dr Hon LUI Ming-wah, SBS, JP

Deputy Chairman Hon TAM Yiu-chung, GBS, JP

Members

Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
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 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 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 LEE Wing-tat
Hon Daniel LAM Wai-keung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
Hon Mrs Anson CHAN, GBM, JP (since 14 December 2007)

(Total : 38 members)

Clerk Mrs Percy MA

Legal Adviser Mr Arthur CHEUNG

Date 14 December 2007