

立法會
Legislative Council

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LC Paper No. CB(2)2754/11-12
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 17 October 2011, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yeet, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
- Members absent** : Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP

Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon WONG Yuk-man

Public Officers : Item II
attending

Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

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

Miss Adeline WONG Ching-man
Under Secretary for Constitutional and Mainland Affairs

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

Miss Charmaine LEE Pui-sze
Deputy Secretary for Constitutional and Mainland Affairs

Item III

Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

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

Mr Freely CHENG Kei
Principal Assistant Secretary
(Constitutional and Mainland Affairs)

Registration and Electoral Office

Mr LI Pak-hong
Chief Electoral Officer

Mr Anthony CHAN Shiu-lun
Principal Electoral Officer

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

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

Ms Wendy KAN
Assistant Legal Adviser 6

Miss Ivy LEONG
Senior Council Secretary (2)3

Ms Wendy LO
Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Items for discussion at the next meeting

[Appendices II and III to LC Paper No. CB(2)11/11-12]

Members agreed to discuss at the next regular meeting to be held on 21 November 2011 the following items proposed by the Secretary for Constitutional and Mainland Affairs ("SCMA") –

- (a) Review of regulation on election advertisements; and
- (b) Third Report of the Hong Kong Special Administrative Region ("HKSAR") in the light of the International Covenant on Civil and Political Rights.

II. Briefing on the Chief Executive's Policy Address 2011-2012

[LC Paper Nos. CB(2)46/11-12(01), CB(2)95/11-12(01), The 2011-2012 Policy Address – "From Strength to Strength" and The 2011-2012 Policy Agenda booklet]

2. At the invitation of the Chairman, SCMA briefed members on the initiatives of the Constitutional and Mainland Affairs Bureau ("CMAB") set out in the 2011-2012 Policy Agenda. Details of the policy initiatives were set out in the Administration's paper and SCMA's speaking note.

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(Post-meeting note: The speaking note of SCMA was issued to members vide LC Paper No. CB(2)95/11-12(01) on 18 October 2011.)

Issues raised by members

Constitutional development

3. Ms Cyd HO said that political reform under paragraphs 201- 202 of the Policy Address had set out various significant issues which were conducive to future democratic development, including reviewing the administrative system to ensure its compatibility with future democratic development; designing a suitable political system; the role of political groups; nurturing of political talent and political ethics. She considered that the incumbent Chief Executive ("CE") should have taken action to address these issues long time ago and enquired about the implementation schedule.

4. SCMA explained that the tasks referred to by Ms HO were the future challenges envisaged by the CE. It was recognized that some problems would not be resolved within the term of the current Government and some issues would more appropriately be dealt with by the new CE to be elected. He added that the Panel would be consulted on the transitional arrangements for the change from the existing Administration led by the incumbent CE to one under the incoming CE.

5. Mr CHEUNG Man-kwong enquired about the possibility of enacting legislation in one-go for the implementation of universal suffrage and whether the Administration would conduct public consultation before its enactment. SCMA said that the Administration had consolidated the views relating to universal suffrage received during the public consultation on the methods for selecting the CE and for forming the Legislative Council ("LegCo") in 2012. Following the decision of the Standing Committee of the National People's Congress of the People's Republic of China on 29 December 2007 on issues relating to the methods for selecting the CE and for forming LegCo in the year 2012 and on issues relating to universal suffrage, it would be appropriate for the next-term Government to follow up on the relevant proposals for the implementation of universal suffrage.

Political Appointment System

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6. Mr WONG Kwok-hing expressed concern that while public resources had been spent to groom political talents who were currently holding political positions, their appointment might not continue upon the changeover in Administration. He enquired about the Administration's plan of nurturing and retaining political talents upon the changeover. In his view, the Administration should consider maintaining continuity of its policies and retaining expertise for the sake of better governance and sustainable development.

7. SCMA said that the Government was committed to developing a pool of political talents through various channels, including through the introduction of the Political Appointment System ("PAS"), with a view to recruiting talented people from different backgrounds, including those with political affiliations, and broadening the avenues of political participation for people from different sectors. On the other hand, the Administration had also increased the number of elected seats in the Legislative Council and District Councils to open up more opportunities for people from different sectors to take part in politics. The HKSAR Government would continue to implement PAS and the next-term CE would form his new governing team to implement his policy initiatives.

8. Dr LAM Tai-fai enquired whether the current-term Government would review PAS and evaluate its effectiveness with a view to identifying improvement measures for consideration by the next-term Government. SCMA replied that the Administration would continue to listen to views of the community on the development of the political system. He said that an Independent Commission on Remuneration for Members of the Executive Council and the Legislature, and Officials under PAS of HKSAR ("the Independent Commission") was set up to review the terms and conditions under the PAS. The Administration would consider any proposed changes to the terms and conditions of appointment by the Independent Commission and consult the Panel. If the next-term CE wished to propose changes to the PAS, the current-term Government would do its best to facilitate them as necessary.

9. Ms Audrey EU said that while paragraph 12 of the Administration's paper stated that the Government would continue to implement PAS, paragraph 182 of the Policy Address stipulated that the Administration would further develop PAS. She sought clarification as to whether the Administration would seek an expansion of PAS, and if so, how. SCMA clarified that the Administration would strive to improve PAS in the light of

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operational experience and would report to the Panel on the recommendations of the Independent Commission.

10. Ms Audrey EU suggested that the Administration should extend political participation in the advisory and statutory boards and people with different views should be included in the consultative machinery so that there would be a balanced view in policy formulation. SCMA advised that people with different political affiliation from diverse backgrounds had been appointed to various advisory and statutory boards.

Arrangements for filling vacancies in LegCo

11. Ms Audrey EU enquired when the latest proposals on the arrangements for filling vacancies in LegCo would be introduced to LegCo. She stressed that as the two legal professional bodies had held a view different from the Administration with regard to the consistency of the proposals with the Basic Law, the Administration should address the concerns of the legal professional bodies before finalizing its proposals.

12. SCMA said that over 30 000 submissions had been received during the public consultation exercise on the arrangements for filling vacancies in LegCo, which ended on 24 September 2011. CMAB would examine all the views received in detail and revert to the Panel on its latest proposals with a comprehensive report.

District Council Appointment System

13. Ms Emily LAU considered that the District Council ("DC") Appointment System should be abolished immediately and queried the need for the Administration to embark on a further round of public consultation. SCMA said that the Central Policy Unit had been conducting opinion polls from time to time. While the general public would incline to support the abolition of the DC Appointment System, views were diverse as to the implementation timeframe.

14. Mr CHEUNG Man-kwong said that the ex officio and appointed members accounted for 95 seats in DCs which meant that some 20% of the DC members were not returned by election. He considered it unfair to the elected members and urged that these 95 seats should be abolished in one go. SCMA, however, advised that the ex officio members of the relevant DCs were the chairmen of Rural Committees ("RCs") and were elected from

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among members of the RCs; and village representatives were elected as members of the RCs by villagers on a "one-person-one-vote" basis.

15. Mr LEUNG Kwok-hung took the view that DC appointed seats should be abolished immediately. He considered it ridiculous that while CE would be returned by universal suffrage in 2017, DC appointed seats were still retained and appointed by CE. SCMA said that the Administration had an open mind on the issue and would soon embark on further public discussions before taking a final decision.

Practical arrangements for various elections in 2011-2012

16. Mr WONG Ting-kwong referred to the recent magistrate's ruling in the case of Ms Mandy TAM that the offering of a free seminar to electors two days before the 2008 LegCo election was not considered as an advantage which would influence the choice of electors. He considered that the ruling would have a significant bearing on the future electioneering activities.

17. SCMA said that the Department of Justice ("DoJ") was seeking an appeal against the ruling and he had no comment to offer on the case itself. That said, election-related publicity and electioneering activities were subject to regulation of the election-related guidelines issued by the Electoral Affairs Commission ("EAC") for respective elections, and candidates and their agents should strictly observe the electoral guidelines and relevant legislation. Mr WONG Ting-kwong enquired whether the relevant election-related guidelines would be suitably amended to provide clearer guidance in this respect in order to ensure that future elections would be conducted in an open, fair, honest and clean manner. SCMA advised that the relevant election-related guidelines were subject to regular reviews in the light of operational experience and EAC would take into account the latest instances in reviewing the relevant guidelines.

Protection of personal data privacy

18. Mr WONG Kwok-hing enquired if additional resources would be allocated to the Privacy Commissioner for Personal Data ("PCPD") for the additional work arising from the implementation of the Personal Data (Privacy) (Amendment) Bill 2011 ("the Bill") after its enactment. He noted that the PCPD had on various occasions expressed his concern about manpower shortage. Mr WONG opined that more resources should be

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allocated to PCPD in view of the increasing workload. SCMA assured members that CMAB would continue to maintain close liaison with PCPD and would provide sufficient resources for carrying out its work on protection of personal data privacy.

19. Mr CHAN Kin-por said that the Bill would impact on affected sectors including the banking and insurance sector. He enquired about the Administration's plan for its implementation. Mr CHAN suggested that sufficient time be allowed for the transitional arrangement and that briefing sessions should be held to enhance the public understanding of the statutory requirements to be imposed.

20. Under Secretary for Constitutional and Mainland Affairs ("USCMA") said that LegCo would be forming a bills committee to scrutinize the Bill and it was the Administration's plan that upon the passage of the Bill in the current legislative session, PCPD would issue relevant code of practice to facilitate compliance by relevant parties, which would be consulted during the process. CMAB and PCPD would also implement publicity and educational measures to enhance public understanding through provision of guidelines and organizing briefing sessions etc. Responding to Mr CHAN on the time frame for implementation, USCMA said that there were calls from the community for strengthening the protection of personal data privacy and the Administration would facilitate early passage of the Bill within the current legislative session.

21. Noting the constraints posed by the Personal Data (Privacy) Ordinance (Cap. 486) ("PD(P)O") on the use of existing banking payment system to facilitate implementation of the Scheme \$6,000, the Chairman suggested that opportunity should be taken to consider introducing amendments or exemption to PD(P)O where appropriate such that the law could be applied flexibly. USCMA advised that according to the relevant data protection principle, unless with the prescribed consent of the data subject, personal data could only be used for a purpose which was the same as or directly related to the purpose for which the data was to be used at the time of collection, and Scheme \$6,000 was not envisaged at the time of data collection by the banks. It was necessary to afford protection to data subjects to guard against any use of personal data which was not directly related to the originally stated purpose. The Chairman remarked that the Administration should take a proactive approach in the light of operational experience.

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Press freedom

22. Ms Cyd HO stressed that the current-term Government should improve its relationship with the media and strive to maintain press freedom. Ms Emily LAU shared her view, expressing dissatisfaction about recent instances of the Administration imposing restrictions on media news coverage and delaying dissemination of case information. She considered that such actions were apparently inhibiting press freedom. SCMA said that in the instances cited by Ms LAU, communication and facilitation to the reporting work of the media could be improved and meanwhile, the Security Bureau was dealing with the relevant complaints. He said that protection of press freedom as a human rights issue was under the policy remit of the CMAB. At the suggestion of Ms Emily LAU, members agreed to discuss the Administration's initiatives to safeguard press freedom at a future meeting.

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III. Proposed Guidelines on Election-related Activities in respect of the Chief Executive Election issued by the Electoral Affairs Commission

[LC Paper Nos. CB(2)33/11-12, CB(2)46/11-12(02) and (03)]

23. At the invitation of the Chairman, Chief Electoral Officer ("CEO") briefed members on the major changes to the proposed Guidelines on election-related activities issued by EAC ("the Proposed Guidelines") in respect of the 2012 CE Election [LC Paper No. CB(2)46/11-12(02)]. The major revisions were (a) to reflect the legislative amendments in respect of the CE Election; and (b) to align, where appropriate, with the updated guidelines for the DC Election published in early September 2011.

24. Members also noted the background brief entitled "Proposed Guidelines on Election-related Activities in respect of the CE Election" [LC Paper No. CB(2)46/11-12(03)] prepared by the LegCo Secretariat.

Issues raised by members

Calculation of election expenses

25. Ms Emily LAU noted that according to Chapter 11 of the Proposed Guidelines, the term "candidate" included a person who had publicly declared an intention to stand for election at any time before the close of nominations for the election, whether or not he had submitted a nomination

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form. She was concerned that some prospective candidates had been inviting people to lunch/dinner gathering. As they had not declared their intention to stand for election, the expenditure incurred would not be counted as election expenses which would otherwise be subject to regulation of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) ("ECICO"). She asked when the election expenses of a candidate would be monitored since that person had yet to declare his intention to stand for election.

26. CEO advised that section 2(1) of ECICO had stipulated that "election expenses" meant expenses incurred or to be incurred, before, during or after an election, by a candidate. The term "candidate" in relation to election expenses was also clearly defined in law. Any expenditure incurred for such election purpose should be regarded as election expenses. Ms Audrey EU expressed dissatisfaction that the Registration and Electoral Office ("REO") was unable to tell unequivocally whether the persons intending to run the CE election as reported by the media as "potential candidates" should be regarded as having officially declared their candidacies or not, and whether the expenses incurred in the conduct of relevant activities should be counted towards election expenses and subject to declaration and lodgment of election return. CEO advised that such an interpretation was tantamount to providing legal advice and was inappropriate as it conflicted with EAC's role as an independent statutory body. Candidates were advised to seek their own legal advice in case of doubt. SCMA advised that candidates who intended to run for the CE Election (including those who had publicly declared their intention to stand for the election, whether or not they had submitted a nomination form) should abide by the relevant electoral legislation as any breach of the requirements might involve legal responsibilities.

27. Dr LAM Tai-fai further enquired about the circumstances under which a person would be regarded as "publicly declared an intention to stand for election". He also queried why a person once having publicly declared his intention to run was required to submit election return even though he had not stood as a candidate eventually. CEO advised that the requirement was to prevent the person concerned from deterring other prospective candidates from contesting the election by announcing his own intention to stand for the election.

28. Mr IP Kwok-him suggested that for the avoidance of doubt, REO might wish to provide clearer guidelines on the definition of candidates and

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the counting of election expenses to be included in the election return. SCMA replied that whether certain expenses would be counted as election expenses had to be based on the facts of the case and in accordance with relevant provision under ECICO governing the lodgement of election return. Mr CHEUNG Man-kwong considered that the confusion arising from the status of prospective candidates and the uncertainty as to whether they were subject to regulatory measure was an obvious loophole.

29. Dr LAM Tai-fai asked whether the publication of the Proposed Guidelines could be expedited so that candidates and other interested parties could avoid breaching the provisions inadvertently. SCMA said that there was room to expedite the timing of the issuance of the finalized guidelines.

Electioneering activities and visits to public bodies

30. Ms Emily LAU expressed concerns that some "potential candidates" were conducting high profile visits to public bodies. However, given that these potential candidates were no longer holders of public offices, there were doubts as to whether it was appropriate for these public bodies, which involved the use of public funds, to entertain such visits. Mr IP Kwok-him expressed a similar concern, saying that such activities by some candidates might be seen as an unfair advantage over other candidates.

31. CEO responded that there were election guidelines to be observed by owners, management and organizations for handling applications for conduct of electioneering activities in the premises within their jurisdiction. They should adhere to the fair and equal treatment principle in respect of all candidates for the purposes of electioneering. SCMA added that such visits should not undermine the operation and the provision of service of the public organization to members of the public.

Dress code

32. Mr LEUNG Kwok-hung enquired about the dress code for candidates and electors in the polling stations. CEO replied that on the polling day no person might canvass or display any election propaganda material relating to any candidate or the election within a polling station; candidates and their agents should not bring electioneering literature into the polling station and should remove any promotional badges, emblems, clothing or head-dress before entering.

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IV. Any other business

33. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
6 September 2012