

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 16 January 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, GBS, JP
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
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Philip WONG Yu-hong, GBS

Hon Miriam LAU Kin-yee, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon WONG Kwok-hing, MH
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon LEUNG Kwok-hung

**Public Officers : Item III
attending**

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

Professor Gabriel LEUNG
Director of the Chief Executive's Office

Miss Helen TANG
Deputy Director of Administration

Item IV

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

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

Mr LI Pak-hong
Chief Electoral Officer
Registration and Electoral Office

Mr Anthony CHAN Shiu-lun
Principal Electoral Officer
Registration and Electoral Office

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

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

Miss Cindy HO
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Information papers issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

[LC Papers No. CB(2)811/11-12(01) and (02)]

2. Members agreed to discuss at the next meeting on 20 February 2012 the following items proposed by the Secretary for Constitutional and Mainland Affairs ("SCMA") –

(a) Consultation Paper on the District Council ("DC") Appointment System; and

(b) Consultation Paper on Stalking.

3. In respect of the discussion item in paragraph 2(b) above, members agreed at the meeting on 19 December 2011 that public views be sought on the Consultation Paper on Stalking and a notice would be placed in the website of the Legislative Council ("LegCo") to invite public views on the consultation paper. Members also agreed that the next meeting would be extended to three hours.

Clerk

III. Establishment of the Office of the Chief Executive-elect

[LC Papers No. CB(2)785/11-12(01) and (02)]

Briefing by the Administration

4. At the invitation of the Chairman, SCMA introduced the paper on the establishment of the Office of the Chief Executive-elect ("CE-elect") [LC Paper No. CB(2)785/11-12(01)].

5. Members also noted the information note entitled "Establishment of the Office of the CE-elect" [LC Paper No. CB(2)785/11-12(02)] prepared by the Legislative Council ("LegCo") Secretariat.

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Issues raised by members

Need for the proposed office and its staffing provision

6. Mr IP Kwok-him, Mr CHEUNG Man-kwong and Ir Dr Raymond HO had expressed support for the setting up of the proposed CE-elect's Office to undertake preparatory work for the transition. Mr IP said that there was a genuine need to provide support the CE-elect prior to the commencement of his term of office. Noting that the Head of the CE-elect's Office and the Special Assistant would be special appointments on non-civil service terms, Mr IP enquired whether the other positions would be filled in line with the established mechanism of the civil service by way of acting appointment or posting. He also enquired about how the staff of the CE-elect's Office would work with the staff of the incumbent Chief Executive's ("CE") Office, and the working relationship between these two offices.

7. Director of CE's Office ("D/CEO") said that the 24 civil service posts of the CE-elect's Office would be filled by deployment within the Government according to the existing mechanism of the Civil Service Bureau, while the two non-civil service posts would be recruited from outside the Government. A provision of \$8.3 million for the CE-elect's Office in the 2012-2013 financial year would be included in the draft Estimates of Expenditure for 2012-2013 of the Administration Wing.

8. As regards the working relationship was concerned, SCMA said that continuity of Government policies was of paramount importance, which would be achieved through the work of the CE-elect's Office to make arrangements for a smooth transition. If the CE-elect considered it appropriate, the post-holders of Secretary-general of the CE-elect's Office and Private Secretary to the CE-elect would continue their service in the CE's Office as from 1 July 2012 to maintain consistency given their roles in co-ordinating transitional affairs and preparatory work in formulating the policy plan of the new term of government. The CE's Office would be the counterpart of the CE-elect's Office serving as the liaison point between the CE-elect's Office and the current Government.

9. Ms Emily LAU expressed concern about the relationship between staff of the CE-elect's Office and their counterparts in the civil service. SCMA and D/CEO said that the CE's Office was the counterpart of the CE-elect's Office and would serve as the liaison point between the CE-elect's Office and the rest of the Government, coordinating any requests for information and handover meetings.

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10. Noting from paragraph 6 of the Administration paper that the Administration would make arrangement to increase the manpower of the CE-elect's Office if the CE-elect considered necessary, Ms Emily LAU asked whether the number of posts would be increased and if so, the funding for these additional posts. Mr WONG Yuk-man asked why the proposed establishment of the CE-elect's Office was scaled down when compared with the CE's Office of the first-term Government after the handover.

11. SCMA advised that the 26 posts were proposed with regard to the past experience to deal with the major work to be undertaken by the CE-elect as elaborated in paragraph 2 of the Administration's paper and reference was made to the establishment of the CE's Office of the first-term Government. The proposed CE-elect's Office had been significantly reduced in size taking account of its present scope of work, and the fact that work of the first-term CE in respect of presiding at Executive Council meetings and drawing up legislative proposals related to the reunification for submission to the Provisional Legislative Council at that time was no longer required. Ms Emily LAU requested the Administration to revert to the Panel in case of any increase of staffing provision to the CE-elect's Office.

12. Ms Audrey EU enquired about the appointment authority for the Head of the CE-elect's Office and whether the appointment required the consent of the Central People's Government ("CPG"). SCMA replied that the Head of CE-elect's Office was not a Principal Official ("PO") laid down in the Basic Law and the consent of CPG was not required for the appointment.

13. Ms Emily LAU expressed concern that a newly appointed PO would have to deal with legislative proposals that fell within his policy portfolio if the scrutiny work of LegCo straddled beyond 1 July 2012. She asked when the appointment of the new governing team would be announced and the related transitional arrangement. SCMA replied that the CE-elect's Office would be responsible for the formation of the political team. Meanwhile, the current term Government would strive to implement its policies already pledged according to its time-table within the remainder of its term. He assured members that the relevant scrutiny work of legislative proposals would not be affected by the change of responsible officials. D/CEO advised that POs were underpinned by civil servants with extensive experience and newly appointed POs responsible for the policy portfolios would have the knowledge to explain relevant policies to LegCo when required.

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14. Mr Alan LEONG considered that the Administration should make reference to overseas practices concerning the staffing establishment of an office for its chief-designate during a change of government. D/CEO said that an allocation of US\$8.5 million was set aside in the aftermath of the United States ("US") presidential election held in 2008, while the current provision sought for the CE-elect's Office was about 60% of that of the US allocation relative to the population size of Hong Kong. However, the figures were indicative only and there was no direct comparison. SCMA advised that the Administration would keep in view if there was any additional requirement and would make suitable arrangements accordingly. While a great variation to the number of post was not envisaged at this stage, the provision sought to allow flexibility to cater for a slight adjustment in case some senior positions might be recruited from outside the Government.

15. Mr WONG Ting-kwong asked whether the provision of \$8.3 million would include salary or allowance for the CE-elect and whether the CE-elect would receive any remuneration. Deputy Director of Administration ("DD of Adm") advised that CE-elect would not be remunerated before the commencement of his term of office and hence the provision did not include any remuneration for him. However, expenses incidental to official duties, if any, would be met by the item of "Other general departmental expenses" under the provision as set out in paragraph 10 of the Administration's paper.

16. Ir Dr Raymond HO expressed concern that as the CE-elect had to formulate proposals for the delivery of his policy address in October 2012 in order to implement policy initiatives pledged during the CE Election, the Administration might need to seek additional funding if the workload involved was underestimated. SCMA reiterated that the manpower requirement had been projected on the basis of the scope of work of the CE-elect's Office as set out in paragraph 2 of the Administration's paper and his past experience as the former D/CEO. In the light of members' concerns, SCMA undertook to keep the Panel informed if there was any increase in the establishment.

SCMA

Office accommodation

17. Ms Emily LAU queried why the computer equipment of the former office at the 12th floor of the West Wing, Central Government Offices ("CGO") at Lower Albert Road was disconnected in the first place if it was planned to accommodate the CE-elect's Office there. DD of Adm explained that the proposed accommodation for the CE-elect's Office was

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vacated by the former Office of the Chief Secretary for Administration and all furnitures and computer equipment were relocated to the new office at Tamar for use by its existing staff. There was also a concern on office security which necessitated the removal of equipment when all users eventually had moved out of the premises. There was therefore a need to arrange for re-connection of computers equipment and supply of furniture to the proposed accommodation of the CE-elect's Office.

18. Mr WONG Yuk-man suggested that CGO should be earmarked as the permanent accommodation for the CE-elect's Office or future change of government in order to obviate the need for renting private premises on an ad hoc basis. SCMA said that while a standing practice for the provision of office accommodation should be established, the location had to be re-considered as CGO was earmarked for other development.

Code of conduct of the staff

19. Mr WONG Yuk-man expressed concern about the mechanism and regulation over the conduct of those non-civil service appointees of the CE-elect's Office under special appointments. Ms Emily LAU considered that the non-civil service appointees should abide by the Civil Service Code which set out the core values and standards of conduct of civil servants.

20. D/CEO said that the work of the CE-elect's Office would touch upon sensitive and confidential information such as nomination of appointment, and non-civil service appointees under special appointments had to abide by statutory and common law rules of confidentiality and the code of conduct governing their civil service counterparts.

Possible policy changes brought by new term Government

21. Ms Audrey EU, Mr Ronny TONG and Mr CHEUNG Man-kwong expressed concern about the possible policy changes brought by the new term Government. They said that some potential candidates for the CE election had expressed their views on various policies, some of which were different from the existing Government policies which, in their view, would undermine the position of the incumbent CE, or it might give a wrong impression to the public that the incumbent Government might withhold the implementation of its policies, such as the policy on removal of unauthorized building works in the New Territories.

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22. SCMA emphasized that the incumbent Government would continue to implement its policies until 30 June 2012, and CE-elect would not have substantive power before commencement of his term of office. In anticipation of differences in their policy inclination, the question at issue was how to ensure a smooth transition which would be the task of the CE-elect's Office. The CE's Office would be liaising closely with the new CE-elect's Office in the ensuing months.

23. Mr Ronny TONG considered that the Administration should avoid giving the impression to the public that two centres of power in Hong Kong co-existed during the transitional period from end of March to 30 June 2012. Mr TONG requested the Administration to make reference to the constitutional practices in overseas countries and consider establishing a mechanism to facilitate mutual exchange of views between the incumbent CE and CE-elect. SCMA said that the Administration had looked into the practices in the United Kingdom, France and Germany but the duration of the transitional period in respect of these countries was relatively short. In US, a General Services Administration was established as an independent agency of the US Government for handling personnel matters and the transitional arrangements, the experience of which would be more relevant in view of its much longer transitional period there. D/CEO advised that presidential transition in US was regulated by the Presidential Transition Act which governed transitional matters (including appropriation of funds) for the duration after the US presidential election and before the inauguration of the new President.

24. Mr CHEUNG Man-kwong expressed concern about the possibility of wasting public money in case of an abrupt change of policy due to the polarized views held by the incumbent CE and the CE-elect. Citing the Appropriation Bill as an example, he stressed the need for establishing a mechanism to resolve differences in views between the two governments. SCMA said that the Administration would revert to LegCo for approval for any substantial increase in government expenditure to be incurred by the Government of the next term. The proposed CE-elect's Office meant to play a pivotal role in providing continuity in policy and would ensure a smooth transition arising from the changeover. D/CEO assured members that the CE's Office would actively coordinate matters and enhance communication with the CE-elect's Office upon its formation on 26 March 2012; and new policies would not be introduced by the incumbent Government unless there were exceptional justifications.

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25. Noting that there was a much shorter transitional period for the change of government in some overseas countries, Ms Emily LAU asked whether the conduct of the CE election could be deferred until May of the election year. SCMA replied that the election date was specified in the electoral legislation and the time frame had to cater for the possible need to repeat the electoral process if no candidate was returned at the election on the polling date. While the existing time frame was considered necessary and appropriate, the issue could be reviewed in future legislative exercise for the CE election.

Transfer of files and documents

26. Ms Cyd HO expressed concern about the arrangements for handing over of files and documents to the incoming CE, including hard copy, electronic copy and personal copy retained in office and personal computers of incumbent CE, both in the CE's Office and the Government House. She also enquired whether the CE-elect's Office would be subject to the prevailing rules and regulations governing records management issued by the Director of Administration.

27. D/CEO said that the CE attached great importance to proper management of public records, and he had handled documents in official and personal capacity with separate computers, and the prevailing policy and practices on records management had been strictly followed. The CE-elect's Office should also be in compliance with the relevant policies and practices when it came into operation on 26 March 2012. DD of Admin added that under the existing guidelines for government records management, all e-mail correspondence should be "printed-and-filed" for record purposes. The CE-elect's Office would need to follow these guidelines.

IV. Practical Arrangements for the Election of the Fourth-term Chief Executive

[LC Papers No. CB(2)806/11-12(01) and (02)]

Briefing by the Administration

28. Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") informed members that the election of the fourth-term CE would be held on 25 March 2012. The Electoral Affairs Commission ("EAC"), supported by

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the Registration and Electoral Office ("REO"), was making preparations for various electoral arrangements for the CE Election. Chief Electoral Officer ("CEO") then introduced the paper which set out the key electoral arrangements for the CE election [LC Paper No. CB(2)806/11-12(01)].

Issues raised by members

Election expenses

29. Ms Emily LAU enquired about the election expense limit for the CE election and the calculation of election expenses. She observed that some "potential candidates" would declare their candidacies at a much later stage so that the relevant expenses incurred in the conduct of their activities would not be counted as election expenses.

30. CEO replied that the election expenses limit had been increased to \$13 million for the 2012 CE Election. According to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), a person had to keep an accurate account of all election expenses incurred and submit an election return ("ER") to REO declaring his election expenses within a period specified in law. REO would take follow-up actions on ER submitted by candidates and handle related complaints. Ms Emily LAU pointed out that the Guidelines on Election-related Activities in respect of the CE Election issued by EAC ("the EAC Guidelines") had not specified the regulation over "potential candidates" in that regard.

Attendance of public functions by government officials and politically appointed officials

31. Ms Emily LAU said that to guard against any conflict of interest, government officials and politically appointed officials should be reminded of the relevant rules governing their participation in election-related activities. CEO said that a chapter of the EAC Guidelines was on attendance of public functions by government officials. The guiding principles were that their participation should not give rise to any conflict of interest with their official duties, and that it should not involve the use of public resources.

Allocation of designated display spots at districts

32. Ms Emily LAU enquired about the arrangement for removal of publicity materials ("the removal arrangement") at districts to make way for the designated display spots to be allocated to candidates for the CE election

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to display their election advertisements. She said that as the arrangement inevitably would cause disruption to the routine work of the incumbent LegCo Members and District Council ("DC") members, an announcement should be made as early as possible. Mr Jeffrey LAM and Mr IP Kwok-him said that while they had no objection to the removal arrangement, early notice for removal should be given.

33. CEO said that the Home Affairs Department was being consulted on the locations of display spots and details of the arrangement would be finalized in February 2012. Candidates would be advised of the location of display spots for posting election advertisements in early March 2012 and a suitable number of designated display spots would be provided. They would be reminded of the need of dismantling the publicity materials soon after the election.

34. Ms Emily LAU queried whether it would be necessary to remove the publicity materials in all the display spots given that only 1 200 Election Committee ("EC") members were eligible to vote in the CE election. She also enquired about the arrangement for the 2007 CE election. CEO said that some 2 000 to 3 000 display spots were made available in the 2007 CE election but it should vary depending on the number of contesting candidates in the election. Noting that the removal arrangement would cause disruption to the routine work of incumbent LegCo Members and DC members, CEO said that vacation of the designated display spots should only be required nearer the time of the election. Ms LAU remarked that existing users of the display spots should also be consulted on the relevant arrangement before they were given notification for the removal.

35. Mr IP Kwok-him agreed with the Administration that the appropriate number of designated display spots should be determined having regard to the number of contesting candidates in the CE Election. He enquired about the control arrangements for prohibiting the use of unallocated designated spots for promoting candidates in the CE Election so as to maintain fairness. CEO said that REO would review the arrangement after the meeting.

CEO

Polling arrangement

36. Referring to paragraph 9 of the Administration paper, Mr Jeffrey LAM enquired whether and how electors would be notified if a second round of voting was required. The Chairman considered that given the convenient location of the main polling station at Hong Kong Convention and Exhibition Centre, electors would move around easily and REO should make

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the arrangement carefully. CEO said that in the polling notice to be issued, REO would encourage EC members to stay to observe the counting of votes at the central counting station after casting their votes. If another round of voting was required, a public announcement would be made through the electronic media. REO would also notify those electors who had provided REO with their contact telephone numbers or e-mail addresses by Short Message Service and e-mails if another round of voting was required.

37. Mr IP Kwok-him noted that except for the first round of voting which would last two hours, the polling hour in respect of subsequent rounds of voting would last an hour. He enquired if there was sufficient time for electors to return to the polling station. Ms Cyd HO, however, remarked that the EC members were obliged to avail themselves on the day and that the counting process should be expedited given the small number of electors. CEO said that the polling hours which followed that of the 2007 CE Election was considered appropriate in the light of the experience. He added that with the increase in the number of EC members from 800 to 1 200, the number of ballot paper issuing desks would be increased from 20 to 33; and the number of voting compartments would also be increased from 40 to 60.

Handling of questionable ballot papers

38. Referring to paragraph 12 of the background brief prepared by the LegCo Secretariat, Ms Cyd HO enquired about the handling of questionable ballot papers for the upcoming election in the light of the diverse views expressed on the use of a visualiser to project and display questionable ballot papers in the 2007 CE Election. CEO replied that the use of a visualiser was to enhance transparency of the counting process but there were concerns that it might facilitate illegal and corrupt conduct. The question in issue was on whether questionable ballot papers should be displayed to all electors, in addition to candidates and their election/counting agents. He undertook to review the arrangement.

CEO

V. Any other business

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