

Panel on Constitutional Affairs

List of outstanding items for discussion
(position as at 13 April 2012)

**Proposed
timing for
discussion**

1. The question of "important bill" under Article 50 of the Basic Law

The Panel discussed the question of "important bill" under Article 50 of the Basic Law at a number of meetings since late 1999.

To be decided
by the Panel

The Panel noted the Administration's position on the following issues -

- (a) what constitutes an "important bill";
- (b) who determines whether a bill is important;
- (c) when to determine whether a bill is important; and
- (d) procedures and parties involved in the consultations under Article 50.

Given the Administration's position, the Chairman sought the views of members on the way forward at the meeting on 18 July 2005 when the item was last discussed. Hon Audrey EU suggested and members agreed that the item should remain on the outstanding list. At the meeting on 20 November 2006, members noted the background brief on the past discussions of members and developments subsequent to the meeting on 18 July 2005 prepared by the Legislative Council ("LegCo") Secretariat (LC Paper No. CB(2)376/06-07(02)), and expressed no strong view on the timing for discussing the item.

2. Constitutional development

LegCo passed by a two-thirds majority on 24 and 25 June 2010 the motions put forth by the Hong Kong Special Administrative Region ("HKSAR") Government concerning the draft amendments to the methods for selecting the Chief Executive

On-going
discussion

("CE") and for forming LegCo in 2012. CE gave consent to the draft amendments on 29 June 2010. The Standing Committee of the National People's Congress approved and recorded the draft amendments to Annexes I and II of the Basic Law respectively on 28 August 2010.

At the meeting on 19 July 2010, the Panel discussed the main issues to be considered under the local legislation regarding the two electoral methods in 2012. The Panel held a special meeting on 30 October 2010 to discuss the Administration's proposed arrangements regarding the two electoral methods. The CE Election (Amendment) Bill and the LegCo (Amendment) Bill were passed by LegCo on 3 and 5 March 2011 respectively.

The Administration put forth a proposed arrangement for filling a vacancy arising from resignation of the LegCo Members and other situations. The Panel held a discussion on 24 May 2011. The Administration introduced into LegCo the LegCo (Amendment) Bill 2011 on 8 June 2011.

In response to the views of the bills committee formed to study the LegCo (Amendment) Bill 2011 that the Administration should provide more time to consider Member's suggestions and listen further to the views of the public, the Administration published a consultation paper on 22 July 2011 for conducting a two-month public consultation. The public consultation ended on 24 September 2011.

On 20 January 2012, the Administration published its Consultation Report on Arrangements for Filling Vacancies in the LegCo under which a latest proposal has been put forth after considering the views of the public received during the public consultation period. The latest proposal, i.e. a Member who has resigned from office would be prohibited from standing in any by-elections in the same LegCo term within six months of his resignation, was discussed at the special meeting of the Panel held on 31 January 2012. The Administration wrote to the Bills Committee on 1 February 2012, advising that it would introduce a new Bill to implement the latest proposal, while the LegCo (Amendment) Bill 2011 would not be further pursued and would be withdrawn. The Administration introduced the LegCo (Amendment) Bill 2012 into LegCo on 8 February 2012. The Bills Committee has completed its work and supports the

resumption of the Second Reading debate on the Bill at the Council meeting of 2 May 2012.

3. Role and development of political parties

The Panel held a discussion on the need to introduce a political party law at its meeting on 21 February 2005 and received views from deputations on the role and development of political parties at a special meeting on 26 February 2005. To be decided by the Panel

The Administration's position was that the introduction of a political party law would hinder the development of political parties. As one of the means to facilitate the development of political party and political talent, the Administration had increased the financial assistance subsidy rate to candidates in the 2008 LegCo election to \$11 per vote. The subsidy rate for the 2012 LegCo election has been further increased to the lower of \$12 per vote or 50% of the election expenses limit provided that the amount of financial assistance payable would not exceed the declared expenses of candidates. With the passage of the Electoral Legislation (Miscellaneous Amendments) Bill 2011 on 6 July 2011, the financial assistance subsidy rate to candidates in the 2011 District Council ("DC") election has been increased to the lower of \$12 per vote or 50% of the election expenses limit provided that the amount of financial assistance payable would not exceed the declared expenses of candidates. The election expenses limit for the DC election has been increased from \$48,000 to \$53,800.

4. Composition, functions and operation of the Electoral Affairs Commission ("EAC")

On 21 June 2004, the Research Report prepared by the Research and Library Services Division of the LegCo Secretariat ("RLSD") on "Operation of Electoral Regulatory Bodies in Selected Places" (RP04/03-04) was presented to the Panel. Members agreed to further explore the issues raised in the Research Report in future. To be decided by the Panel

5. Usage of electoral register

In September 2007, Hon Margaret NG requested the Panel to discuss whether the Administration should review and amend To be decided by the Panel

the relevant subsidiary legislation to allow Members returned by election to use the relevant information in the electoral register for communication with their constituents while they were in office, and to require corporate and professional bodies of Functional Constituencies ("FCs") to provide the necessary assistance to FC Members.

The Panel followed up the issue at its meetings on 17 November 2007 and 18 February 2008. In response to members' request, RLSD had prepared an Information Note on "Usage of electoral register" (IN05/07-08) which was considered by the Panel on 18 February 2008. At the meeting, some members expressed the view that the information contained in the electoral register should be released for use for purposes other than a purpose related to an election, e.g. to communicate with electors after the election. The Administration undertook to relay members' views to EAC for consideration.

6. Submission of reports by the Hong Kong Special Administrative Region Government to the United Nations under international human rights treaties

The Administration advised in March 2009 that Central People's Government ("CPG") had commenced the preparation of China's combined third and fourth report under the Convention on the Rights of the Child ("CRC"), and the HKSAR Government would submit to CPG the second report of HKSAR for incorporation into China's report. The Panel discussed the outline of the second report of HKSAR on 16 April 2009 and met with deputations and the Administration on 18 May 2009.

At the Panel meeting on 18 January 2010, the Administration briefed the Panel on the outline of the topics to be included in HKSAR's third report under the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). The Panel received views from the public on the outline of topics at the meeting on 10 February 2010. The HKSAR's third report which forms part of the second report of China was submitted to United Nations ("UN") in June 2010, copies of the HKSAR's third report were made available to the public on 21 October 2010. The Panel discussed the HKSAR's third report at the meeting on 20 December 2010 and members agreed to receive views from the public on the report at a future meeting upon

As and when those reports are submitted by China to UN and published Constitutional and Mainland Affairs Bureau ("CMAB") & LWB

confirmation of the date of the UN hearing.

The Panel received views from the public on the outline of the topics to be included in the HKSAR's third report in the light of the International Covenant on Civil and Political Rights ("ICCPR") on 21 June 2010. The HKSAR's third report has been submitted to UN and copies of the report were made available to the public on 23 September 2011. The Panel discussed the report at its meeting on 21 November 2011.

China's 10th to 13th combined report under the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), of which the report on HKSAR formed a part, was submitted to UN in June 2008. After discussion of the report on HKSAR at its meeting held on 15 December 2008, the Panel further discussed the subject and received views from the public on 15 June 2009. UN hearing was held in August 2009. The Administration briefed the Panel on its initial views on matters raised in the concluding observations on 16 November 2009 and received views from the public on the concluding observations on 11 December 2009.

UN Human Rights Council has initiated a Universal Periodic Review ("UPR") of all UN member states. The hearing on China, which covered HKSAR, was held on 9 February 2009. The Panel discussed the section on HKSAR of the report of CPG to UN on 19 January 2009 and the Administration reported outcome of the UN hearing to the Panel on 7 July 2009. The next report on UPR will be due in 2013.

The third report of HKSAR under the Convention on the Elimination of All Forms of Discrimination Against Women, the reporting responsibility of which falls under the purview of the Labour and Welfare Bureau ("LWB"), will be part of China's 7th and 8th combined report which is due for submission in 2010. The Panel discussed and received views from the public on the outline of topics to be included in the third report on 19 July 2010. The HKSAR's third report as part of the China report was submitted to UN in January 2012. In accordance with the established practice, the report will be made available to the public after UN has publicized the report.

Under the Convention on the Rights of Persons with Disabilities, HKSAR (the reporting responsibility falls under the

purview of LWB) is required to submit a report as part of China's combined report to UN within two years after the entry into force of the Convention for HKSAR on 31 August 2008, i.e. August 2010. Thereafter, HKSAR is required to submit subsequent reports at least every four years. The Panel discussed and received views from the public on the outline of topics to be included in the initial report at the meeting on 19 March 2010. The HKSAR's initial report was submitted to UN in August 2010 and has been made available to the public on the website of LWB and the Public Enquiry Service Centres of District Offices since 25 November 2010. At the Panel meeting on 19 March 2012, members agreed to receive views from the public on the report at a future meeting within the current LegCo term.

7. Amendments to the Sex Discrimination Ordinance (Cap. 480) ("SDO") and the Disability Discrimination Ordinance (Cap. 487) ("DDO") proposed by the Equal Opportunities Commission ("EOC")

The Race Discrimination Bill ("RDB") passed on 10 July 2008 has incorporated one of the amendments proposed by EOC, i.e. to extend the definition of sexual harassment in SDO to cover conduct which created a sexually hostile or intimidating environment at an educational establishment. As regards the other amendments proposed by EOC, the Administration has pointed out that some of them are technical amendments and the others might have read-across implications to other anti-discrimination ordinances. EOC has submitted to the Administration a set of revised amendment proposals in August 2011. The Administration would consider the most appropriate way to take forward these proposed amendments and would further report progress to the relevant Panel in due course.

To be confirmed
CMAB & LWB

8. Proposed establishment of an Equal Opportunities Tribunal

The Bills Committee on RDB noted that EOC was looking at the possibility of establishing an Equal Opportunities Tribunal, with informal procedures and active case management functions, so as to make the adjudication process speedy and more accessible. It was agreed that the issue should be referred to this Panel for follow-up. EOC has submitted proposals to the

To be confirmed

Administration. After discussions with the stakeholders concerned, EOC submitted to the Administration its refined proposals in August 2011. The Judiciary has conducted a Review on Adjudication of Equal Opportunities Claims by the District Court, which included whether an Equal Opportunities Tribunal should be established. In September 2011, the Judiciary commenced a consultation exercise to gauge the views of interested parties on the review and recommendations. The Administration has studied the EOC's proposals and the Judiciary's recommendations, and has provided its response to the EOC. The response was provided to the Panel for members' reference on 1 November 2011.

9. Discrimination issues relating to sexual orientation and gender identity

When the Panel discussed the subject on 18 January 2010, the Administration undertook to report progress on the relevant issues to the Panel in due course. To be confirmed

10. Post-office employment control of politically appointed officials

The Panel on Public Service ("the PS Panel") discussed the Report of the Committee on Review of Post-Service Outside Work for Directorate Civil Servants ("the Review Committee") at its special meeting on 13 July 2009. The Review Committee has recommended to the Chief Executive in its Report that a separate review should be carried out on the post-office employment control of politically appointed officials. The PS Panel has agreed to refer the subject to this Panel for follow-up and requested that its members be invited to join the future discussion of the subject. To be confirmed

11. Abolition of the DC appointment system

The Administration announced on 14 September 2011 that it considered that the DC Appointment System could be abolished in phases by going through a transitional period. The Administration also indicated its intention to reduce by one-third of the number of members to be appointed in the fourth term of the DCs in 2012, i.e. appointing only 68 members instead of 102. After the DC election in November 2011, the To be confirmed

Administration would embark on further public discussions as to how this issue should be dealt with, including the duration of the transitional period, how the relevant legal provisions should be dealt with, etc. As to the duration of the transitional period, the Administration was prepared to consider abolishing the remaining 68 appointed seats over one or two term(s). Regarding the allocation of the 68 seats in the fourth term of DCs starting from 2012, in response to a question raised at the Council Meeting of 19 October 2011, the Secretary for Constitutional and Mainland Affairs stated that the number of appointed seats in each DC basically would be reduced by one-third. If the number obtained after the reduction by one-third was not an integer, minor adjustment would be made by rounding off the number. 68 members have been appointed to the DCs starting from the fourth term of DCs which commenced operation on 1 January 2012.

The Administration briefed the Panel on its Consultation Paper on the District Council Appointment System at the Panel meeting on 20 February 2012, the public consultation period of which would end on 20 April 2012. The Panel received public views on the consultation paper at its regular meeting on 19 March 2012.

12. Implementation and review of the Race Discrimination Ordinance (Cap. 602) ("RDO")

The Panel Chairman has received an email from 15 organizations and individuals requesting to give views on the implementation and review of RDO at a Panel meeting. At the meeting on 21 February 2011, the Panel agreed to discuss the subject at a future meeting.

To be confirmed

13. Management of government records

At its meeting on 17 May 2010, the Panel discussed with the Administration and received views from deputations on "Code on access to information and management of public records". At the suggestion of Hon Emily LAU, members agreed at the meeting on 18 April 2011 that the Panel should further discuss the issue relating to management of government records at a future meeting.

To be confirmed
Admin Wing

At its meeting on 21 November 2011, members agreed that the

Panel should follow up on the relevant issues after the Public Accounts Committee ("PAC") has completed its consideration of Report No. 57 of the Director of Audit, a chapter of which was on records management work of the Government Records Service.

The PAC Report No. 57 was tabled in the Council meeting of 15 February 2012. PAC did not hold any public hearing on this subject, but sought written response to its enquiries. PAC was concerned, among other issues, about the compliance with mandatory record management requirements by government bureaux and departments, the criteria for selection of archival records and manpower of the Government Records Service etc. PAC noted that there are a number of issues to be sorted out which may be related to the Government's overall policy on records management. The relevant issues have been referred to the Panel for consideration and necessary action.

14. Press freedom

At the meeting on 17 October 2011, members agreed to discuss the Administration's initiatives to safeguard press freedom at a future meeting. The Administration undertook to co-ordinate its response in respect of the media's concerns about its reporting work. To be confirmed