

立法會
Legislative Council

LC Paper No. CB(2)328/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/16/98

**Legislative Council Bills Committee on
Legislative Council (Amendment) Bill 1999**

**Minutes of 19th meeting
held on Monday, 31 May 1999 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon LEE Kai-ming, JP
Hon NG Leung-sing
Prof Hon NG Ching-fai
Hon Mrs Selina CHOW, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Hon Gary CHENG Kai-nam
Hon WONG Yung-kan
Hon Howard YOUNG, JP
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, JP

Members Absent : Dr Hon Raymond HO Chung-tai, JP
Hon Margaret NG
Hon MA Fung-kwok
Hon CHEUNG Man-kwong
Hon Christine LOH
Hon Bernard CHAN
Dr Hon LEONG Che-hung, JP
Hon SIN Chung-kai

Hon Andrew WONG Wang-fat, JP
Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon LAU Wong-fat, GBS, JP
Hon Ambrose LAU Hon-chuen, JP
Dr Hon TANG Siu-tong, JP
Hon CHOY So-yuk

Member Attending : Hon Ambrose CHEUNG Wing-sum, JP

Public Officers Attending : Mr Michael M Y SUEN
Secretary for Constitutional Affairs

Miss Shirley YUNG
Principal Assistant Secretary for Constitutional Affairs (4)

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs(5)

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2) 3

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2) 7

I. Election Committees (ECs) referred to in Annexes I and II of the Basic Law
(LC Paper Nos. CB(2) 1854/98-99(03), 2028/98-99(01) and LS 198/98-99)

At the invitation of the Chairman, Secretary for Constitutional Affairs (SCA) explained to members the position of the Administration on the ECs referred to in Annexes I and II of the Basic Law. He said that the main object of the Bill was to, inter alia, establish an EC to return six Members for the second term LegCo, in accordance with Annex II of the Basic Law. Annex I of the Basic Law prescribed the method of selection of the Chief Executive (CE). The Administration would introduce a bill on the selection of the CE at an appropriate time and would ensure that the relevant provisions of the bill did not contravene the Basic Law. As regards members' concern about the relationship between Annexes I and II, it was clearly set out in the Basic Law.

2. Members generally considered that SCA's reply had not addressed their concerns. Members' main concerns were -

- (a) whether the EC subsectors for the second term LegCo were the same as those for the EC for electing the second term CE;
- (b) whether the members of the EC for the second term LegCo were the same as those of the EC for electing the second term CE; and
- (c) whether a new EC would be formed in 2002 for the election of the second term CE.

3. Mr LEE Wing-tat pointed out that some members of the second term EC would expect that they were also responsible for electing the second term CE in 2002. If the arrangement in 2002 was otherwise, it might give rise to litigation. Mr LEE also shared the Chairman's concern about the creation of "superlords" and said that members of the second term EC might have undue influence on the existing CE between 2000 and 2002 on knowing that they were also responsible for electing the second term CE. He urged the Administration to explain to members any difficulty it had on the issue, rather than adopting an evasive approach deliberately which would not be conducive to resolving problems.

4. SCA disagreed that the Administration had deliberately adopted an evasive approach. He said that the position of the Administration was very clear. The Bill had provided a clear arrangement for the formation of the second term LegCo. The Bill as drafted was compatible with the Basic Law. As he had mentioned before, the Administration would introduce a local legislation for the election of the second term CE. He assured members that the legislation to be introduced would be in full conformity with the Basic Law. As to whether the ECs referred to in Annexes I and II

were the same, he said that one was entitled to have his own interpretation in this respect. The Administration had yet to come to any conclusion and did not see the need to make such a decision at this stage.

5. Mr LEE Wing-tat responded that he felt uncomfortable about passing a Bill without knowing its implications. He urged the Administration to give a definite reply. Ms Emily LAU said that the Administration should act in accordance with the rule of law. It was improper for the Administration to interpret the Basic Law liberally to suit its purpose, and to confuse the public with arguments that put wrong into right. She pointed out that Annex II of the Basic Law stated clearly that except in the case of the first LegCo, the EC mentioned therein referred to the one provided for in Annex I of the Basic Law. If the Administration considered that the provision was outdated, it should take appropriate action to amend the Basic Law.

6. SCA reiterated the points made earlier at the meeting and stressed that the Administration was acting in full compliance with the Basic Law.

7. Referring to the last paragraph of LC Paper No. LS 198/98-99 which was tabled at the meeting, Ms Emily LAU asked the Legal Adviser (LA) whether he was suggesting that members should not pass the Bill unless the issue of whether the EC proposed to be established for the second term LegCo was the same EC for electing the CE was resolved.

8. LA responded that whether a Bill was to be passed was a matter for Members to decide. He said that from the plain and literal meaning of Annex II, the EC which returned six Members for the second term LegCo was intended to be the same as the EC for electing the CE. The composition of the ECs referred to in Annexes I and II should be the same except for special circumstances such as the change of LegCo membership. Although Annex II set out the composition of the second term LegCo, the legal basis for the composition and membership of the EC to return six Members for second term LegCo came from Annex I. If this legal point of view was valid, then the passage of this Bill would indirectly provide for the formation of the EC for electing the second term CE.

9. LA further said that in the interest of certainty in the law, the issue of whether the EC proposed in the Bill was the same EC for electing the CE should be resolved before the Bill was enacted. He added that it was a valid concern of members that some EC members for the second term LegCo might have a legitimate expectation that they would also be responsible for electing the second term CE. Removal of such right might result in legal action against the Government.

10. In response to the Chairman, LA agreed that the Bill dealt with LegCo election and matters relating to the EC provided in Annex I was outside the scope of this Bill.

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11. SCA responded that the method for the formation of the EC for electing the second term LegCo and the second term CE was the same. As to whether a new EC would be formed in 2002 for the election of the second term CE, he reiterated that the Administration had yet to make a decision. He reassured members that the legislative proposal to be put forward for the election of the second term CE in 2002 would withstand any challenge in court. Deputy Solicitor General (DSG) supplemented that he accepted the strong argument put forward by LA that in the interest of certainty, it would be desirable that the question of whether the ECs referred to in Annexes I and II were the same should be resolved. However, he held the view that the matter need not be resolved at this stage.

Adm 12. In response to Mr LEUNG Yiu-chung, the Administration undertook to give a written response to the views expressed by LA in LC Paper No. LS198/98-99.

(Post-meeting note : The Administration response was issued to members vide LC Paper No. CB(2)2202/98-99(01).)

Term of office of EC of the second term LegCo

13. Mr Howard YOUNG asked the Administration whether the term of office of the EC to return six Members for the second term LegCo was five years. Ms Emily LAU asked why the Bill made no reference to the term of office of the EC. Mr LEE Wing-tat asked about the implication of prescribing the term of office in the Bill.

14. LA said that on the premise that the two ECs were the same, issues such as the membership and term of office of the EC proposed in the Bill would need to be addressed by the Administration. He advised that Annex I of the Basic Law had specified that the term of office of the EC for selecting the CE was five years, and Annex II specified that the EC of the second term LegCo referred to the one provided for in Annex I. Since the Basic Law was part of Hong Kong law, it was not necessary to include the term of office of the EC provided for in Annex II in the Bill. However, members' attention were invited to the fact that there was a time difference between the term of office of the EC and that of the second term LegCo. The former was five years as stipulated in the Basic Law and the latter would only last for four years.

15. LA further said that whether any domestic law was in breach of the Basic Law was a matter for the court to decide. He added that under Article 17 of the Basic Law, if the Standing Committee of the National People's Congress (NPCSC) considered that any law enacted by the LegCo was not in conformity with the provisions of the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Hong Kong Special Administrative Region (HKSAR), it might return the law in question. Any law returned by the NPCSC should be invalidated.

16. In response to members, SCA and DSG explained that the Bill sought to make suitable amendments to provide a proper legal basis for the second term LegCo election to be held in 2000. For the third and subsequent terms, no Members would be returned by the EC. The Bill had already provided that in case a vacancy arose among the six Members during the second term, the EC would elect a new Member to fill the vacancy. It was therefore not necessary to specify the term of office of the EC of the second term LegCo in the Bill.

17. Ms Emily LAU was not satisfied with the answer given by the Administration. She said that members of the EC should have a right to know their term of office. She asked DSG whether he agreed with the LA's view that the term of office of the EC provided for in Annex II was five years (paragraph 16 of LC Paper No. LS198/98-99 refers). DSG responded that the function of the EC for the purpose of the Bill lasted as long as the second term LegCo and not any longer. The period could be shorter if LegCo was dissolved early. Ms Emily LAU said that in that case, the Administration disagreed with LA's view.

18. The Chairman said that whether the term of office of the EC should be included in the Bill was academic as it was already provided for in the Basic Law. He was of the view that irrespective of whether the ECs provided for in Annexes I and II were the same, the term of office of the EC for electing six Members for the second term LegCo was five years although it would no longer have any functions after the second term LegCo was dissolved.

Ex-officio membership of EC

19. The Chairman said that the Bill proposed that LegCo Members holding office on 30 June 2000 were to become ex-officio members of the EC established for returning six Members to the second term LegCo. He raised concern about the membership of the EC which might change after the 2000 LegCo election and thereafter.

20. SCA responded that having regard to members' discussion at previous meetings, the Administration was considering the question of providing a mechanism for updating the ex-officio membership of the EC. The Administration would revert to the Bills Committee on details of the new arrangement at the meeting on 17 June 1999.

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21. Mr Howard YOUNG said that according to existing practice, LegCo Members and Hong Kong Deputies to the NPC were allowed to decline registration as ex-officio members of the EC if they wished to cast their votes in the FCs and any unused quota of the EC seats for these persons would be transferred to the Chinese People's Political Consultative Conference (CPPCC) subsector. He asked the Administration as to how the excess seats would be allocated under the new arrangement. SCA responded that the Administration would also address the question of allocation of excess ex-officio

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seats under the new arrangement.

By-election arrangements

22. In response to Mr Howard YOUNG, SCA responded that if a by-election in the second term EC was required to fill a vacancy in the membership of LegCo, the ex-officio membership of the EC would be updated. Members noted that there was at present no legal mechanism for by-election of members of the EC.

23. Mr Howard YOUNG further asked that in the event that the ECs referred to in Annexes I and II were different and a by-election by the EC was required, say for example, in 2003, which EC would be responsible for conducting the by-election. SCA responded that there was a range of views on whether the ECs referred to in Annexes I and II of the Basic Law were the same. The Administration had yet to come to a position on the matter.

By-election to fill vacancy of the office of the CE

24. Mr Ambrose CHEUNG enquired about the arrangements for selecting the CE if his office became vacant in 2001 and 2003.

25. DSG responded that the Bill did not deal with the election or by-election of the CE. Nevertheless, it would be necessary for a bill to be introduced to deal with the election and by-election of the CE. Where the office of CE became vacant, Article 53 of the Basic Law provided for a period of six months for a new CE to be selected.

26. LA advised that there was no express provision in the Basic Law to provide for the need for and the conduct of a by-election to fill a vacancy which might arise during the term of office of the first CE in 2001. Irrespective of the fact an EC would have been formed in 2001, it would be arguable that it would be for the Selection Committee established in accordance with the Decision of the NPC on the Method for the Formation of the First Government and the First LegCo of the HKSAR to be responsible for the selection of the succeeding CE through a by-election to be held in accordance with the relevant electoral laws. Should the office of the CE become vacant in 2003, the EC formed to elect the CE in 2002 would be responsible for the by-election.

27. At the request of Mr Ambrose CHEUNG, LA and the Administration undertook to respond to his question in writing.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(2) 2202/98-99(01). The LA's advice which superseded the one given in paragraph 26 above was circulated to members vide LC Paper No. LS 202/98-99)

II. Administration's responses to points raised by the Bills Committee on 21, 24 and 25 May 1999
(LC Paper No. CB(2) 2135/98-99(01))

Item 1 - Disqualification of Members

28. Members noted the reply.

Items 2 and 3 - Advance polling day

29. In response to Ms Emily LAU, Principal Secretary for Constitutional Affairs (4) (PAS for CA(4)) said that the Administration's initial view was to provide one polling station at a central location for advance polling. Having considered members' views at a previous meeting, the Administration was reconsidering the matter.

30. Ms Emily LAU said that according to the information provided by the Administration, Canada, Japan and Australia did not require electors to make prior applications for advance polling. She suggested that the same arrangement be adopted in Hong Kong for the convenience of electors. Mrs Selina Chow supported Ms LAU's view given that the Administration had previously advised that it was in no position to verify the reasons given in the application. The Chairman commented that the Administration's policy on the issue was unclear. On one hand, it stressed that convenience should be provided to electors who opted for advance polling. On the other hand, it required prior applications to be made for advance polling which were not subject to proper verification.

31. PAS for CA(4) responded that it was necessary to strike a right balance, given that too loose a procedure for advance polling was tantamount to providing one more election day while too strict a procedure would deter electors from applying. The Administration would have administrative and practical difficulties to deal with a large number of electors on the advance polling day. In addition, prior application would facilitate the compilation of registers of electors and providing suitable arrangement for advance polling. She stressed that advance polling was meant to be a pilot scheme in the 2000 LegCo election and would be subject to review.

32. Pointing out that advance polling was new to the electoral arrangements in Hong Kong, Mr TAM Yiu-chung said that he did not support the proposal to do away with the application procedure. He also expressed concern about resource implications if electors were allowed to vote on the advance day without prior application. Mr CHAN Kam-lam supported his view.

33. In response to Ms Emily LAU, Mr TAM said that the Democratic Alliance for the Betterment of Hong Kong did not support the proposal to prohibit canvassing

activities on both the advance and general polling days. Mr CHAN Wing-chan said that the Hong Kong Federation of Trade Unions was also against the proposal.

34. Mr Howard YOUNG opined that designation of one polling station for advance polling was inadequate. The Chairman suggested that the Administration should consider members' suggestion to allow electors to vote on the advance polling day without prior applications. Addressing the Administration's concern about compilation of the voter registers for advance polling, the Chairman suggested the Administration to consider providing five polling stations for advance polling, one in each of the five geographical constituencies (GCs). Electors who wished to vote on the advance polling day would go to the polling station of their respective GCs to cast their votes. In the circumstances, it would not be necessary to compile a separate register for advance polling. PAS for CA(4) undertook to reconsider the arrangements for advance polling, having regard to members' views expressed at the meeting.

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(Post-meeting note - The Administration's response to concerns raised by the Bills Committee at this meeting was circulated to members vide LC Paper No. CB(2) 2202/98-99(01).)

III. Date of next meeting

35. The next meeting would be held on 3 June 1999 at 4:30 pm.
36. The meeting ended at 10:40 am.

Legislative Council Secretariat
9 November 1999