

立法會
Legislative Council

LC Paper No. CB(2)1662/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/17/98

Legislative Council
Bills Committee on Elections (Corrupt and Illegal Conduct) Bill

Minutes of the 19th meeting
held on Tuesday, 9 November 1999 at 2:30 pm
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 NG Leung-sing
Hon Mrs Selina CHOW, JP
Hon CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
- Member Absent** : Dr Hon TANG Siu-tong, JP
- Public Officers Attending** : Mr Robin IP
Deputy Secretary for Constitutional Affairs
- Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs
- Mr James O'NEIL
Deputy Solicitor General (Constitutional)
- Ms Phyllis KO
Deputy Principal Government Counsel (Elections)

Mr Michael LAM
Government Counsel

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

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Paul WOO
Senior Assistant Secretary (2)3

Action
Column

I. Meeting with the Administration

Administration's response to concerns raised at the meeting on 19 October 1999
(LC Paper No. CB(2)271/99-00(01))

Members noted that the Administration would propose relevant amendments to the Bill to address members' concerns raised at the last meeting on 19 October 1999 in relation to clauses 31, 38, 39 and 42.

Complaint cases relating to issuing of "tendered" ballot papers

2. Deputy Secretary for Constitutional Affairs (DS/CA) advised that the Electoral Affairs Commission (EAC) had put in place various measures to prevent human errors in the issuing of ballot papers. To ensure that all polling officers well understood the polling procedures, briefing was given to them before the polling day. A manual setting out the detailed procedures was given to each polling officer. He added that given the need to protect the confidentiality of the voters, it would not be easy to ascertain whether an occurrence of a ballot paper being wrongly issued to an elector was due to an inadvertent mistake made by the polling officers or other causes. He pointed out that allegations of ballot papers being wrongly issued were rare. The four complaint cases about the issuing of "tendered" ballot papers in the 1998 Legislative Council (LegCo) election represented a minimal number when compared with the number of people turning up to vote. Furthermore, the fact that the complaints were lodged in four different geographical constituencies indicated that the chance of a corrupt conduct being involved was low.

3. DS/CA stressed that the polling procedures were open and transparent and were subjected to close checks and supervision by presiding officers at polling stations, the candidates' agents as well as the candidates themselves. Where there were suspected cases of corrupt or illegal conduct, investigation by the EAC, the Independent

Commission Against Corruption and other law enforcement agencies would follow. He reiterated that to ensure fairness in an election, the electoral laws had provided a mechanism for a candidate to question the election results by an election petition. If the election results were affected materially by the issue of tendered ballot papers, a candidate could certainly lodge an election petition to the Court.

4. Deputy Solicitor General (Constitutional) (DSG(C)) supplemented that some of the offence provisions in the Bill applied to electoral staff as it applied to anybody else. For example, an electoral officer acting in collusion with others to enable a person to vote in the name of another person committed a corrupt conduct at the election and would be caught by the offence provisions in clause 16(2)(a) or clause 17(1)(a).

5. Mr Andrew WONG said that the possibility of human errors in the voting process could not be completely ruled out. He opined that the issue of tendered ballot papers should not be a matter of serious concern provided that the occurrences were few and infrequent. He suggested that in the event of issuing a tendered ballot paper to a voter, the relevant details including the particulars of the voter concerned should be recorded to facilitate investigation if necessary.

6. Ms Emily LAU supported Mr WONG's suggestion. She added that rather than acting on complaint, the EAC should initiate investigation into every case involving the issuing of tendered ballot papers.

Adm 7. The Administration undertook to convey members' concerns and suggestions for improving existing arrangements to the EAC for its consideration.

Administration's proposed Committee Stage amendments (CSAs) to the Bill
(LC Paper No. CB(2)271/99-00(02))

8. Members went through the explanatory notes on the CSAs proposed by the Administration.

Application of the Bill

9. Members noted that the general provisions in clauses 3 and 4 of the Bill would be amended so that the Bill would also apply to elections of the Chief Executive and village representatives. DS/CA said that the Administration would introduce separate bills relating to the elections of the Chief Executive and village representatives in due course.

10. Members urged the Administration to introduce the relevant bills as soon as possible to allow sufficient time for scrutiny by LegCo.

11. In response to a question from Ms Emily LAU, DSG(C) said that clause 6 of the Bill set out the revised maximum penalties for corrupt conduct at elections. The

policy intention was that the penalties should apply to all types of elections alike.

Clause 36(2)(b)(i) - Election expenses requiring an invoice and a receipt

12. Members agreed to adopt "\$100 or more" as the amount of election expenses for the purpose of an invoice and a receipt under clause 36(2)(b)(i). The amount represented an upward adjustment from the existing level of \$50 or more.

Clause 42 - Attempts to commit an offence

13. Members noted the Administration's proposal to amend clause 42 to make it clear that a person convicted of an attempt to commit any offence under the Bill would be subjected to the same penalties and disqualifications for a complete offence.

14. In response to the Chairman, DSG(C) explained that the offence of attempt at common law had been abolished according to section 159K of the Crimes Ordinance. The offence of "attempt to commit an offence" was now codified in statutory provisions under section 159G of the Crimes Ordinance. However, the offence of attempt under section 159G did not apply to the conduct of attempting to procure the commission of an offence by another person, whereas a number of corrupt or illegal conduct offences covered in the Bill were related to the conduct of procuring. Furthermore, although penalties relating to an attempt to commit an offence were imposed under the Crimes Ordinance, there was no reference in that Ordinance to the consequence of disqualifications under any electoral law arising from a conviction of the offence of attempt. Therefore, it was necessary to make suitable amendment to clause 42 of the Bill to reflect these elements.

15. The Chairman pointed out that as section 159G of the Crimes Ordinance did not create an offence of attempting to procure the commission of an offence by somebody else, it might be necessary for clause 42 of the Bill to specify an offence of attempt in order to bring in the same penalties and disqualifications as a complete offence. The Administration agreed to reconsider the proposed amendment to clause 42.

Adm

Repeal of Corrupt and Illegal Practices Ordinance (CIPO) - proposed new clauses 47 and 48

16. The Administration advised that since CIPO would be repealed upon the enactment of the Bill, a new clause 47 was proposed to be included in the Bill to make it clear that the orders on election expenses limits for various elections made by the Governor in Council and the Chief Executive in Council under section 13 of CIPO would continue to have effect. The Administration also proposed to include a new clause 48 to make it clear that repeal of CIPO would not affect any penalty or disqualification as a result of conviction of any offence under CIPO.

17. On the saving provision in proposed new clause 48, Assistant Legal Adviser drew members' attention to section 23 of the Interpretation and General Clauses Ordinance (Cap.1), which provided that -

"Where an Ordinance repeals in whole or in part any other Ordinance, the repeal shall not -

(a) ...

(b) *affect the previous operation of any Ordinance so repealed or anything duly done or suffered under any Ordinance so repealed;*

(c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any Ordinance so repealed;*

(d) ...

(e) *effect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance had not been passed."*

18. The Chairman enquired about the need for proposed new clause 48. DSG(C) explained that, despite the existence of section 23 of Cap.1, proposed new clause 48 was necessary to reflect the disqualification element which was not provided for in CIPO but in the relevant electoral laws in force.

19. In reply to a question from Ms Emily LAU, DSG(C) said that generally speaking, the time limit for prosecution ran from the date when an offence came to light, rather than the date of commission of the offence.

20. In response to Ms Cyd HO, DS/CA advised that it was the Administration's intention that upon enactment of the Bill, subsidiary legislation relating to the LegCo election in 2000 would be drafted and introduced into LegCo for scrutiny within the first half of 2000.

Draft text of the CSAs annexed to LC Paper No. CB(2)271/99-00(02)

Clause 2 - Definition of "advantage"

21. Ms Emily LAU said that she tended to support the Administration's view that a candidate should include in his election return all free services provided to him except a free service provided by a person personally and voluntarily and -

- (a) that person's occupation was not related to the free service provided to the candidate; or
- (b) that person's occupation was related to the free service provided to the candidate but it was provided outside the person's normal working hours.

22. The Chairman advised that the issue of free service should be further discussed at the next meeting.

(Post-meeting note : A set of revised CSAs to replace the one annexed to LC Paper CB(2)271/99-00(02) has been submitted by the Administration and circulated to members vide LC Paper No. CB(2)391/99-00(01) dated 15 November 1999.)

II. Date of next meeting

- 23. The next meeting was scheduled for 12 November 1999 at 10:45 am.
- 24. The meeting ended at 4:25 pm.

Legislative Council Secretariat
11 April 2000