

立法會
Legislative Council

LC Paper No. CB(2)2316/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/SS/3/99

Legislative Council
Subcommittee on subsidiary legislation
Relating to 2000 Legislative Council election

Minutes of fourth meeting
held on Monday, 10 January 2000 at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members Present** : Hon Ronald ARCULLI, JP (Chairman)
Hon David CHU Yu-lin
Hon Howard YOUNG, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon YEUNG Yiu-chung
Hon Jasper TSANG Yok-sing, JP
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
- Members Absent** : Hon CHAN Yuen-han
Hon NG Leung-sing
Hon Emily LAU Wai-hing, JP
Hon Martin LEE Chu-ming, SC, JP
Hon CHOY So-yuk
- Member Attending** : Hon Andrew WONG Wang-fat, 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)

Mr Lawrence PENG
Senior Assistant Law Draftsman

Miss Shirley WONG
Government Counsel

Mr LI Wing
Chief Electoral Officer

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

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

Action
Column

I. Administration's responses to concerns raised by the subcommittee on 7 January 2000
(LC Paper No. CB(2) 825/99-00(01))

Members went through the Administration's reply. Members noted that although the Administration had considered members' suggestions made at the last meeting, it remained of the view that changes needed not be made to the Regulation.

2. Referring to item 3 of the paper, the Chairman said that while he could see the rationale for not allowing a list of independent candidates to have their own emblems printed on the same list, he was concerned that these candidates were prohibited from selecting for themselves a registered emblem for common use on the ballot paper. He also held the view that applications for registration should not be restricted to a specified period. The EAC should consider dispensing with the registration procedure, while retaining the right to refuse to accede to the request from an organization or a natural person for the printing of particulars on a ballot paper on specified grounds similar to those set out in section 7 of the Regulation. He invited views from members.

3. Mr LEE wing-tat said that he shared the views of the Chairman. Mr Andrew WONG considered that the registration procedure too rigid. He said that in Malaysia, candidates were allowed to use emblems of the political parties

concerned, design their own emblems or choose a standard emblem provided by the government.

4. The Chairman said that he had reservations about the Regulation. Pointing out that the deadline for extending the scrutiny period of the Regulation was 19 January 2000, he expressed concern about the limited time available for the Subcommittee to complete its work. He asked about the position of the EAC should members decide not to support the Regulation. He further asked whether the Administration would consider repealing the Regulation at the Council meeting on 19 January 2000 with a view to having it gazetted again in the near future with or without amendments.

5. Chief Electoral Officer (CEO) replied that if the Subcommittee decided not to support the Regulation, it would not cause problems to the Registration and Electoral Office. However, the proposal was drawn up in response to requests made by the public. It was the intention of the EAC to invite applications for registration in February 2000, in order that the Register containing the registered particulars would be compiled in good time before the commencement of the nomination period for the 2000 LegCo election. If the proposal was to be implemented in time for the 2000 LegCo election, the timetable could not be postponed.

6. In response to the Chairman, Deputy Solicitor General (Constitutional) (DSG) explained that the Regulation was made by the EAC and would become part of law once made and published in the gazette. As provided in section 34 of the Interpretation and General Clauses (Cap. 1), Members had the power to amend or repeal the Regulation. However, the Administration could not withdraw the Regulation.

7. Mrs Selina CHOW said that under the negative vetting procedure, the Regulation would automatically take effect unless the Subcommittee moved a motion to amend or repeal it. The Chairman advised that the deadline for giving notice of amendments, if any, was 12 January 2000. Mrs Selina CHOW asked whether the Administration could reintroduce the Regulation into LegCo in the event that it was repealed by Members.

8. Assistant Legal Adviser (ALA) drew members' attention to Rule 32(1) of the Rules of Procedure of LegCo which stated that "where the Council has taken a decision on a specific question and the question has been decided in the affirmative, no further motion shall be moved in relation to that question during the current session except a motion to rescind the decision, moved with the permission of the President".

9. Mr Andrew WONG disagreed with the view of the ALA. He pointed out that under the negative vetting procedure, if the scrutiny period had lapsed and no motion had been proposed to amend or repeal the Regulation, the Council could not be regarded as having taken a decision because the Council had not voted on the Regulation. In this regard, Rule 32(1) could not apply. After the Regulation came into operation, amendments to the Regulation might be made by way of an amendment bill.

10. The Chairman said that even if Mr WONG's argument was right, the fact remained that the Regulation would take effect if a motion was not moved to amend or repeal the Regulation. ALA added that under the negative vetting procedure, Members were given 28 days to scrutinize the Regulation and the period had already been extended by resolution to 19 January 2000. If Members did not take any specific action, the relevant provisions should come into operation on 21 January 2000 or 1 July 2000 as proposed in section 1 of the Regulation.

II. Scrutiny of the Regulation

(LegCo Brief File Ref. : REO 14/32/1 and LC Paper No. LS 45/99-00)

Section 4

11. Mr Andrew WONG considered that the size of the ballot paper was too big. He asked whether abbreviated names of organizations were allowed to be used so as to reduce the size of the ballot paper.

12. CEO confirmed that an organization might apply for registration of the abbreviation of its name. To ensure fairness in election, the EAC had decided against having the ballot paper in the form of several pages because candidates on the front page would be in a more advantageous position than those on the remaining pages. Under the existing arrangement, the order of candidates on the ballot paper was decided by drawing lots. DSCA supplemented that the content and size of the ballot paper were regulated by another piece of subsidiary legislation.

13. In response to the Chairman, CEO said that each organization was allowed to register one emblem, one name in Chinese and English and one abbreviated name in Chinese and English in accordance with section 4(3) and (4). The Chairman pointed out that since section 4(5) provided that all applications might be made at the same time in one specified form, it would appear that an

organization might make a number of applications for the registration of a number of emblems.

14. Senior Assistant Law Draftsman (SALD) explained that the applications in section 4(5) actually referred to the five items set out in section 4(1)(a) to (e). An organization might submit separate applications for registration of each of the five items or a combination of any of the items, or one application to cover all five items. However, section 4(3) provided that an organization might make only one application in respect of each of the five items.

15. The Chairman questioned the need for an organization to apply for registration of particulars with the EAC. CEO explained that the main purpose was to prevent the situation where more than one candidate would be using the same name, etc on the ballot paper.

16. In response to Miss Cyd HO and Mr Andrew WONG, CEO said that an application seeking registration of an abbreviated name which was identical or similar to that of another organization would be refused by the EAC. The criteria for refusing applications were set out in section 7 of the Regulation. In response to members, CEO advised that only the sketch and not photograph of a candidate was allowed to be printed on a ballot paper.

Section 5

17. Mr Andrew WONG asked whether a natural person could only apply for registration of an emblem. CEO responded that a natural person could also submit a request to the Returning Officer to have the English word "Independent Candidate" or the Chinese characters "獨立候選人" printed on a ballot paper without going through the registration procedure. He confirmed that an emblem might comprise graphics as well as words.

18. Under section 5(2)(c), an application must contain a declaration by the applicant. The Chairman asked whether the word "declaration" had any legal connotation as opposed to the word "statement"; and whether an applicant was required to take oath when making the declaration. DSG replied that an applicant was not required to take oath when making the declaration. However, there was an offence provision in section 21 which set out that if a person made any statement which he knew to be false in a material particular, he would be subject to a sanction.

19. The Chairman and Mr Andrew WONG expressed concern over the requirement of section 5(2)(d)(iii) that an application made by a natural person

"must set out ...any other information reasonably required by the Commission for the purpose of the application". They asked about the types of "other information" to be required by the EAC.

20. CEO explained that the provision sought to provide flexibility to the EAC to seek further information from a natural person if necessary. SALD assured members that the provision only allowed the EAC to seek information that was reasonably required for the purpose of the application.

21. Members were not satisfied with the reply. The Chairman expressed concern that the EAC, being an independent body, might involve itself unnecessarily in sensitive and political issues in considering an application for registration.

22. Mr Andrew Wong pointed out that since the wording of the provision was that an applicant "must set out" any other information relevant to the application, such information should be clearly spelt out in law. He said that while he did not like the concept of the Regulation, he would not take any action to veto the Regulation.

Section 6

23. In response to the Chairman's question, CEO explained that the Regulation required an organization to appoint at least one and not more than three persons to be its agents who would have the authority to give consent on behalf of the organization to a candidate/list of candidates for that candidate/list of candidates to use the organization's name (or abbreviation of names) and emblem on a ballot paper; and withdraw the consent so given.

24. The Chairman asked about the procedure for appointing a recognized agent. CEO said that there was no specific requirement on the appointment procedure. An organization was required to give notice to the EAC of the appointments of recognized agents and provide the EAC with the signatures of the agents. As provided in section 22, if a document was required to be signed under the Regulation by an organization, it must be signed on behalf of the organization by among others, a person who satisfied the EAC that he was authorized to sign the document on behalf of the organization. CEO added that the names of recognized agents would be entered in the existing Register as an agent of the organization.

25. The Chairman asked that in the event that the three agents appointed by an organization had given different answers to an enquiry made by the EAC, how

would the EAC resolve the differences. CEO replied that in the circumstances, the EAC was likely to seek further clarification from the organization concerned.

26. Mrs Selina CHOW sought clarification from the EAC as to the type of "any other information" reasonably required by the EAC for the purpose of initial appointment and variation of appointment of agents under section 6(3)(b)(iii) and 6(5)(b)(iii). CEO explained that a notice of initial appointment was in a specified form in which an organization was required to provide information on the name and address of the organization and the name and signature of each of the agents appointed. Examples of "any other information" would include facsimile and telephone numbers of the organization and its agents.

27. The Chairman responded that in the circumstances, the provision should specify the requirement to be "any other information reasonably required by the Commission for the purpose of facilitating contact". Mrs Selina CHOW expressed concern that the EAC might request for more information than necessary if the section was so broadly drafted.

28. SALD said that the reason for the provision to be written in broad terms was because at the time the Regulation was drafted, the EAC was not sure about the type of information to be required in the specified form for the purpose of the initial appointment of agents. While giving the EAC flexibility in dealing with the matter, the provision only empowered the EAC to request from an organization and its agents information that was "reasonably required" for the purpose of the initial appointment. CEO supplemented that an example of the information required in the specified form was the colour code of the emblem. At the time the Regulation was drafted, the EAC had not thought of requiring such information in the specified form.

Section 7(1) and (3)

29. In response to the Chairman, SALD explained that by virtue of section 7(1)(a)(i), 7(1)(b)(i), 7(3)(a)(i) and 7(3)(b)(i), the EAC might refuse an application made by organization A for the registration of a name, an abbreviated name or an emblem if the name or emblem was identical to or resembled that of organization B on the condition that -

- (a) the name, abbreviated name or emblem of organization B was registered; and
- (b) organization B had applied for renewal of its application.

30. The Chairman pointed out that since the two conditions must co-exist, the EAC apparently had no power under section 7 to refuse the application of organization A if organization B did not make an application to renew its registration. CEO undertook to reconsider the drafting of the relevant section.
31. Referring to section 7(1)(a)(ii) and similar provisions under section 7, the Chairman asked whether the EAC would refuse the application of organization A in the event that organization B had not made an application for renewal.
32. CEO replied that in the circumstances, the EAC would include organization A in the Provisional Register which contained applications that the EAC intended to grant. Any person could object to an application within 14 days from the date of publication of the Provisional Register. The Chairman expressed concern that in the event that organization B had ceased to exist and was not in a position to raise objection, the registered particulars to be granted to and used by organization A would cause confusion to electors.
33. Mrs Selina CHOW and the Chairman considered that the registration procedure under the Regulation was very cumbersome and should be simplified. Since candidates were at present free to use any names and emblems in election publicity materials without being subject to any registration procedure, they proposed that the registration procedure should be replaced by a notification procedure. Given that the major concern of the EAC was that the particulars to be printed on a ballot paper should not give rise to unnecessary disputes among candidates and cause confusion to voters, the EAC's role should be confined to ascertaining whether a candidate was authorized to use the particulars. Although the EAC 's approval per se was not required, it could be empowered to refuse to accede to the request on specified grounds.
34. CEO responded that the EAC considered the proposed registration procedure open and fair to all the candidates. He pointed out that in the absence of a registration procedure, it would not be possible for an aggrieved party to object to the use of similar particulars by another party and for the EAC to resolve any disputes within the nomination period.
35. Mr Andrew WONG considered that the requirement for applicants to apply for renewal of the registered particulars during a specified period before the next LegCo general election should be removed. He held the view that an applicant should be allowed to retain the registered particulars until the applicant had filed an application to amend the particulars, or the EAC had decided that the particulars should cease to be registered on the grounds that the applicant had not run in the next election or the organization had ceased to exist.

36. The Chairman alerted members that section 7(1)(c) imposed restriction on the number of English words (10 words) but not on the total number of alphabets of a name or its abbreviation of an organization. Mrs Selina CHOW questioned why such a restriction was required. CEO explained that the restriction was for the benefit of organizations and voters. If a name was too long, voters would find it difficult to remember. Mr Andrew WONG opined that the EAC should only limit the size of ballot paper and allow organizations to decide what was best for them. He held the view that the application procedure should be simplified.

37. ALA drew members' attention to section 7(1)(d) which provided that the EAC might refuse an application for registration if an organization's name or its abbreviation was "obscene" and "offensive". However, these two words were not defined in the Regulation. SALD explained that the two words were not defined because their natural meaning would apply to the Regulation. He pointed out that the word "obscene" was also not defined in the Companies Ordinance. On the other hand, the word "obscene" in the Control of Obscene and Indecent Articles Ordinance was defined because its meaning expanded beyond that of the dictionary meaning. As to whether an organization's name or abbreviated name was obscene or offensive, it was a matter for the EAC to decide. In response to Mr Andrew WONG, SALD advised that a decision of the EAC in this regard was not appealable.

38. The Chairman questioned the drafting of section 7(1)(e) which set out that the EAC might refuse an application for the registration of an organization's name or abbreviated name on the ground that "the publication of which is likely to amount to the commission of an offence". DSG explained that there were some offences by which the uttering of the words would create the offence. For instance, the name of an organization itself was an incitement to commit an offence. The Chairman responded that in the circumstances, the section should be redrafted as "the utterance and the publication of which amount to the commission of an offence". He expressed concern about the use of the words "is likely to amount to" in the section. He held the view that the EAC should not be required to make a judgement on whether the publication of an organization's name or abbreviated name was likely to amount to an offence. Mr Andrew WONG echoed the view that the EAC was not sitting as a court.

39. DSG responded that he did not think that the EAC could adjudicate on whether or not an offence was being committed by the use of the name or abbreviated name of an organization. All the EAC could do was to decide whether the publication of the name itself was likely to amount to an offence.

Given that the EAC was responsible for the content of the ballot paper, it wished to exclude such words.

40. The Chairman said that it appeared that on the one hand, the EAC did not want to make a judgement on what was and was not an offence. On the other hand, the threshold was lowered from that of "publication of which is an offence" to "publication of which is likely to amount to...an offence". DSG considered that the threshold stated in the section was reasonable. He said that in order for the offence to be there, one had to satisfy the standard which applied to court. The Chairman expressed concern that the registration procedure had imposed too many restrictions and would compromise political freedom and thinking. He said that the more he went into the Regulation, the more he felt that it should be repealed.

41. Miss Cyd HO asked whether an organization using its political stance such as "Anti-totalitarian" as its name would be allowed under the Regulation. CEO explained that for the purpose of the Regulation, an organization referred to a society registered under the Societies Ordinance (Cap. 151). Mr Andrew WONG said that the Regulation should provide flexibility to allow independent candidates who wished to form an alliance to run in the same list, to be registered under the Societies Ordinance, so as to facilitate their application to the EAC for registration of an emblem.

42. Members present at the meeting unanimously considered that the Regulation was too lengthy and the application procedure should be simplified. The Chairman said that the Regulation should only provide basic principles governing the printing of emblem on the ballot paper. Mr Andrew WONG suggested that the EAC should make reference to overseas practices in respect of registration of emblem on the ballot paper with a view to simplifying the application procedure.

III. Date of next meeting

43. Members agreed that the next meeting should be held on the following day on 11 January 2000 at 10:45 am to continue examination of the Regulation.

44. The meeting ended at 4:35 pm.