

立法會
Legislative Council

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

Minutes of fifth meeting
held on Tuesday, 11 January 2000 at 10:45 am
in Conference Room A of the Legislative Council Building

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

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs

Mr Lawrence PENG
Senior Assistant Law Draftsman

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

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I. Matter arising

The Chairman said that at the meeting held the day before, members expressed concern over section 7(1)(a)(i), 7(1)(b)(i), 7(3)(a)(i) and 7(3)(b)(i) which set out that 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, abbreviated 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.

2. He continued to say that members had pointed out that since the two conditions must co-exist, the EAC apparently had no power under section 7 to refuse an application of organization A if organization B did not make an application to renew its registration. The Chairman asked the Administration to respond to members' concerns.

3. Chief Electoral Officer (CEO) said that if organization B had not applied for renewal of its application, the EAC would include organization A in the Provisional Register which contained applications that the EAC intended to grant. The Provisional Register, which contained the names and addresses of the applicants together with the particulars to be registered, would be published in the newspapers in the form of a notice for public inspection. By virtue of

section 9(6), organization B could object to the application of organisation A within 14 days from the date of publication of the Provisional Register on the ground that the particulars were identical or similar to its registered particulars. Upon receipt of an objection, the EAC would conduct a public hearing and the parties concerned might be represented by solicitor and counsel. As soon as practicable after the expiry of the objection period, the EAC would make a decision as to whether or not the application should be granted.

4. The Chairman pointed out that organization B would not be able to object under section 9(6) if it had ceased to exist. CEO responded that under the circumstances, there should be no question of two organizations having identical or similar particulars. The Chairman responded that even so, the EAC's reply had not addressed the confusion that was likely to be caused to the public when the registered particulars were used by organization A. Senior Assistant Law Draftsman (SALD) added that the registered particulars had a validity period. Those in the existing Register would be superseded by those in the next Register when it was published.

5. Mr Andrew WONG pointed out that in the case quoted by the Chairman, when organization A applied for registration of particulars, the registered particulars of organization B were still in the existing Register. To resolve the problem, Mr WONG suggested that the requirement for applicants to apply for renewal of the registered particulars before the next LegCo general election should be removed. An applicant should be allowed to retain the registered particulars until such time when -

- (a) the applicant filed an application to amend the particulars; or
- (b) the EAC decided that the particulars should lapse because the applicant had not run in the next election; or
- (c) an organization had ceased to exist.

Mr Andrew WONG said that under his proposal, it was not possible for organization A's application to be granted.

6. CEO responded that since the EAC would have no idea as to when an organization had ceased to exist, Mr WONG's proposal would result in the list of names and addresses together with the registered particulars of organizations and natural persons building up in the Register. Given that the Provisional Register would be published in the newspapers for public inspection, it would be undesirable to make the Provisional Register unnecessarily lengthy. CEO said that the EAC considered it appropriate to require organizations and natural persons whose particulars were registered to renew their registration when the next register was to be published. This was to enable the EAC to ascertain

whether all the organizations and natural persons whose particulars were registered in the previous register still intended to sponsor candidates (or in the case of natural persons, to run) in the next general election. He considered that the requirement for renewing registered particulars every four years was not too inconvenient to applicants.

7. Mr Andrew WONG responded that under his proposal, an organization that did not sponsor candidates and a natural person who did not run in the next general election would no longer be in the Register. In the circumstances, the Register would not be lengthy.

8. The Chairman reiterated his views that the registration procedure was cumbersome and would limit political freedom and thinking. He suggested that the registration procedure should be replaced by a notification procedure and the EAC should confine its role to ascertaining whether a candidate was authorized to use the particulars. Although the EAC's approval per se was not required, it would be empowered to refuse to accede to the request on specified grounds.

9. CEO said that the Regulation provided a detailed and comprehensive procedure for registration in order to ensure that a good and fair system was in place and that no disputes would arise regarding the use of particulars on ballot papers. If the registration procedure was removed and the EAC was only asked to authorize the use of emblems upon commencement of the nomination period, it would not be possible for the EAC to resolve all the disputes among candidates within the nomination period. If members considered that the procedure was too cumbersome, consideration could be given to amending the Regulation after the 2000 LegCo election.

10. Mr David CHU reiterated that he did not support the Regulation.

II. Scrutiny of the Regulation

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

Sections 4 and 5

11. Referring to section 4(2)(d)(iii) which required an applicant to provide any other information reasonably required by the EAC for the purpose of the application of name or abbreviated name, the Chairman asked whether the EAC would refuse an application if an organization had yet to decide whether it would sponsor a candidate to run in an election.

12. CEO explained that under section 4(2)(c)(i), an application from an organization must contain a declaration that it intended to allow one or more

than one person to have the name, the abbreviated name or the emblem printed on a ballot paper. As regards application by a natural person, section 5(2)(c)(i) required that an application must contain a declaration made by the applicant that he was eligible under section 37 of the Legislative Council Ordinance to be nominated as a candidate at an election.

Section 7(3)

13. One of the grounds for the EAC to refuse an application for registration of emblem was that it comprised anything that was likely to induce an elector to believe that the applicant was connected in any way to the bodies named in section 7(3)(c)(ii). Assistant Legal Adviser (ALA) asked whether it was the Administration's intention to exclude applications for the registration of an emblem which was identical to or resembled the emblem used by the National People's Congress (NPC), the Chinese People's Political Consultative Conference (CPPCC) or the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region.

14. Mr Andrew WONG said that the three bodies mentioned by ALA might be considered as "any authority outside Hong Kong" under section 7(3)(c)(ii)(E). The Chairman doubted whether the three bodies could be regarded as an authority. Mrs Emily LAU asked whether a member of the CPPCC stood at an election could use the emblem of the CPPCC. Mr Andrew WONG asked whether a candidate sponsored by the NPC could apply for registration of the NPC emblem for use on a ballot paper.

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15. CEO said that he could not comment on individual cases. All he could say was that the EAC would need to examine each case and then decide whether to grant approval to the application. The Chairman was not satisfied with the reply. He asked the EAC to clarify whether its policy intention was to refuse registration of emblems identical or similar to those of the three bodies.

Section 7(4)

16. Noting that section 7(4)(a) provided that the EAC might refuse to grant an application made by a natural person if it believed that the natural person was not eligible to be nominated as a candidate at an election, the Chairman asked whether a person who was not a registered elector at the time of application was eligible to apply for registration of an emblem. CEO replied that a person who had not applied for registration as an elector before the deadline of 16 March 2000 would not be eligible to apply for registration of an emblem.

17. Mr Andrew WONG asked whether a person could apply for registration

of emblem during a specified period in anticipation that he would be eligible to be nominated as a candidate after the specified period. SALD said that judging from the drafting of section 7(4), the EAC would take into account factors other than the status of an applicant at the time of application when considering an application. Mr Andrew WONG said that when such an applicant made a declaration under section 5(2)(c), he must state his status clearly in order not to be subject to a sanction under section 21.

18. Mr Andrew WONG quoted another example. A judge or public officer was not eligible to be nominated as a candidate under the Legislative Council Ordinance. If this person had decided to stand at an election upon retirement or resignation from the office sometime after the deadline for application for registration, he asked whether the person was eligible to apply for registration of emblem. CEO responded that the application would be considered if the person was qualified to be nominated as a candidate during the nomination period. Mr Andrew WONG considered that it was inappropriate for a judge or public officer to have his emblem contained in the Register while he was still in the post. He considered that the cut-off point should be at the time of application for registration of emblem, i.e. if a person was a judge or public officer at the time of application, the EAC should refuse his application.

19. In response to the Chairman, SALD said that in accordance with section 7(4), it was a matter for the EAC to decide whether the person was not eligible to be nominated or disqualified from being so nominated. He opined that the provision provided the latitude for the EAC to grant approval for such an application, despite the fact that the applicant was not qualified as a candidate at the time of application. He reiterated that the EAC would consider individual cases.

III. The way forward

20. The Chairman said that having regard to the progress made by the Subcommittee in studying the Regulation, he doubted whether the Subcommittee could complete its work before the expiry of the scrutiny period on 19 January 2000. He advised members that the deadline for giving notice of amendments, if any, was the following day, 12 January 2000. He pointed out that under the negative vetting procedure, the Regulation would come into operation on specified dates, if not amended or repealed by LegCo.

21. ALA advised that the Subcommittee might consider the following options to which different procedures would apply -

- (a) The Subcommittee accepted the Regulation as gazetted; or

(b) The Subcommittee moved a motion to amend or repeal the Regulation.

22. ALA said that should members require more time to scrutinize the Regulation, the best way was to request the Administration to repeal the Regulation at the Council meeting on 19 January 2000, with a view to having it gazetted again with or without amendments, after conclusion of deliberation by the Subcommittee.

23. Ms Emily LAU said that the Subcommittee could not decide on the option to be adopted unless it had completed scrutiny of the Regulation. If the Subcommittee could not complete its work because of time constraint, she would choose to repeal the Regulation.

24. CEO replied that the Regulation was made in response to views expressed by various parties including the LegCo. The EAC had spent ample time and effort in the preparation of the Regulation. A consultation document outlining the details of the proposal was issued by the EAC on 15 June 1999 to solicit public views for a period of one month. The representations received supported the proposal in principle. It was expected that applications for registration would be invited in February 2000, in order that the Register 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. The EAC considered that the proposal put forward in the Regulation was workable. It did not intend to amend the Regulation. However, the EAC had no objection if Members decided to move a motion to amend the Regulation.

25. Mrs Selina CHOW was not satisfied with the "take it or leave it" attitude of the EAC. She said that in the past the EAC would give due consideration to Members' views. The Chairman said that he was disappointed that the EAC did not intend to consider any of the suggestions made by members. The fact that members supported the principle of allowing an organization or a candidate to have the name and emblem printed on a ballot paper did not mean that they had no views on the detailed implementation and technical aspects of the Regulation.

26. In response to Mrs Selina CHOW, Deputy Secretary for Constitutional Affairs (DSCA) said that it was not a matter of whether the Administration supported or not supported the Regulation. The EAC was an independent body which was empowered by statute to discharge functions and duties under its autonomy. Under the negative vetting procedure, LegCo members had the power to amend the Regulation. In response to members, DSCA explained that the restriction imposed by Article 74 of the Basic Law only applied to bills. Members might move amendments to subsidiary legislation and the bicameral

voting system would apply. Referring to the suggestion made earlier by ALA (paragraph 22), DSCA asked whether the same regulation could be reintroduced into LegCo within the same session if it was repealed by LegCo.

27. ALA advised that Rule 32(1) of the Rules of Procedure of the Legislative Council (RoP) set out 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". In fact, the Committee on Rules of Procedure (CRoP) had expressed concern over the actual operation of Rule 32(1). If the Regulation was repealed and reintroduced into LegCo, Rule 32(1) of the RoP might be invoked depending on the content of the regulation to be reintroduced.

28. The Chairman said that if a new regulation to be reintroduced had incorporated the views of members, it would not be amended. Rule 32 would not come into play. However, if a motion was moved to amend the new regulation, Rule 32 might be triggered off.

29. Mr Andrew WONG said that the Administration was at liberty to introduce a new regulation to replace the one that was passed in the same LegCo session. In response to Mrs Selina CHOW, Mr Andrew WONG said 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 as a question had not been put.

30. ALA said that the CRoP was studying the question of the legal effect of the original subsidiary legislation, in the event that a motion which sought to rescind the decision of a previous motion which had repealed the original subsidiary legislation was decided in the affirmative.

31. The Chairman said that the last resort was to repeal the Regulation. He pointed out that even if the Subcommittee could complete scrutiny and also propose amendments to the Regulation before the expiry of the scrutiny period, other Members still needed time to consider the proposed amendments. In addition, it was undesirable for LegCo to come up with a revised proposal without consultation with the EAC. The Chairman said that he had to make a report to the House Committee on the coming Friday, 14 January 2000. Since the Subcommittee had not reached a consensus view, he suggested that the Subcommittee should give notice to move a motion to repeal the Regulation. Pending the outcome of the deliberation of the Subcommittee, the motion could be withdrawn in accordance with Rule 35 of the RoP. Meanwhile the Subcommittee would continue scrutinizing the Regulation. If the Subcommittee decided at the end that amendments should be made to the

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Regulation, permission to waive the notice requirement would be sought from the President. Members agreed.

IV. Dates of next meetings

32. Members agreed to hold three more meetings on 13 January 2000 at 10:45 pm, 14 January 2000 at 4:00 pm, and 15 January 2000 at 9 am.

(Post-meeting note: As the Subcommittee reached a decision at the meeting on 13 January 2000, the two meetings on 14 and 15 January 2000 were cancelled.)

33. The meeting ended at 12:44 pm.

Legislative Council Secretariat
31 May 2000