

立法會
Legislative Council

LC Paper No. CB(2)2484/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

**Legislative Council
Panel on Constitutional Affairs**

**Minutes of meeting
held on Monday, 17 April 2000 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members Present** : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon LEE Wing-tat
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam, JP
Dr Hon YEUNG Sum
Hon SZETO Wah
- Member Absent** : Hon Margaret NG
Hon Ronald ARCULLI, JP
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, JP
- Public Officers Attending** : Item III & IV

Mr Bassanio SO
Acting Deputy Secretary for Constitutional Affairs (2)

Ms Doris HO
Principal Assistant Secretary for Constitutional Affairs (4)

Mr LI Wing
Chief Electoral Officer of the Registration and Electoral
Office

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

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Mr Paul WOO
Senior Assistant Secretary 2(3)

Item V

Ms Eva LIU
Head of Research and Library

Mr Walter KWONG
Research Officer 2

Ms Elyssa WONG
Research Officer 4

Mr CHAU Pak-kwan
Research Officer 5

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1684/99-00)

The minutes of the meeting held on 21 February 2000 were confirmed.

II. Items for discussion at future meetings
(LC Paper No. CB(2)1680/99-00(01))

2. Members agreed that the following items should be discussed at the next regular meeting on 15 May 2000 -

- (a) The question of "important bill" under Article 50 of the Basic Law;
- (b) Review of the application of certain provisions of the Prevention of Bribery Ordinance (Cap.201) to the Chief Executive and related issues; and
- (c) Mechanism for amending the Basic Law.

Timing of declaration of election results

(LC Paper No. CB(2)1680/99-00(02))

3. The Chairman informed members that the Subcommittee on subsidiary legislation relating to 2000 Legislative Council had reported its deliberation on the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2000 to the House Committee on 31 March 2000. The Subcommittee had suggested that the timing of declaration of the election results of the 2000 Legislative Council (LegCo) election should be followed up by this Panel.

4. As proposed by the Chairman, members agreed that the Administration should be requested to provide a written response to the view expressed in paragraph 17 of the Subcommittee's report that it was a reasonable expectation that all the election results should be announced by 6 am on the day following the polling day. Members would then decide whether the matter should be discussed at the regular meeting in June 2000.

III. Review of the 1999 District Councils election

(LC Paper No. CB(2)1571/99-00 - Electoral Affairs Commission's Report on the 1999 District Councils Election; and

LC Paper No. CB(2)1680/99-00(03) - Paper provided by the Administration)

5. Acting Deputy Secretary for Constitutional Affairs (2) (DS/CA)(Ag) introduced the Administration's paper which set out the major findings and recommendations in the Electoral Affairs Commission's (EAC) Report on the 1999 District Councils election (the Report) and the Administration's views on the major recommendations put forward by the EAC.

Counting of votes

6. Mr LEE Wing-tat enquired about the mechanism for handling requests for recounting votes in situations where there was a wide discrepancy in the votes received by the successful candidate and the other candidates. He said that while openness and fairness had to be ensured, a recounting in such cases might undesirably delay the time of announcing the election results. He considered that a clearer electoral guideline should be promulgated in this respect.

7. In response, DS/CA (Ag) said that the decision as to whether or not a vote recount should be conducted vested with the relevant returning officer having regard to the particular circumstances of the case. Specific procedural requirements were provided for under the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation. He advised that in practice, a returning officer might decide not to conduct a recount if he was of the opinion that the outcome of a recount was unlikely to affect the result of the election based on the original count.

8. The Chairman pointed out that a dispute might be over the validity of a whole batch of votes cast for a particular candidate. He agreed that a decision on a request for recount of votes should be made on a case-by-case basis.

9. Ms Emily LAU said that in view of the relatively small number of votes cast in District Councils (DCs) elections, consideration might be given to adopting the practice in Taiwan of verbally announcing every single vote to ensure fairness and transparency.

10. The Administration took note of members' views.

Complaints

11. Mr LEE Wing-tat enquired about complaints arising from the use of loudspeakers in electioneering activities and telephone canvassing, the latter being related to alleged abuse of use of personal data in violation of the Personal Data (Privacy) Ordinance.

12. Chief Electoral Officer (CEO/REO) advised that a total of 114 complaints regarding noise nuisance caused by use of loudspeakers within or outside permitted hours had been received and dealt with. No censure or reprimand had been issued by the EAC. On telephone canvassing, a considerable number of complaints were related to personal data privacy. However, it was difficult to take action under the Personal Data (Privacy) Ordinance because of the difficulty to find out how the persons making the telephone calls had obtained the personal particulars of the electors. He further advised that there had been cases in the past

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that certain personal data together with information contained in the electoral register was offered for sale on the Internet. Those cases had been referred to the Police for investigation but no prosecution could be instituted as there was no way to trace the source of such data.

13. CEO/REO added that the register of electors for the 1999 DCs election contained only the names and addresses of the electors.

14. Mr LEE Wing-tat said that with the advance of information technology, it was easy to obtain information through electronic means such as the websites on the Internet, some of which were data of a personal nature. The use of such information could be subject to abuse. The Chairman also pointed out that there had been complaints about impersonation in telephone canvassing. He opined that the Administration should make best efforts to put the message across to the public on the need to protect their personal data.

REO 15. CEO/REO agreed to convey members' opinion to the Privacy Commissioner for Personal Data for consideration.

16. Mr LEE Wing-tat further enquired about complaints against unfair treatment of building management organizations in electioneering activities.

17. In reply, CEO/REO said that the number of such complaints was comparable to that in the 1994 election. In contrast, allegations made by building management organizations of unfair treatment by candidates or their agents/helpers had increased, such as gaining access into private areas without consent etc. He advised that briefings and seminars had been organized to explain to building management organizations such as owners' corporations (OCs) and mutual aid committees that candidates conducting electioneering in private premises should be provided fair and equal treatment. He pointed out that complaints made against building management organizations were common in DCs election because a significant number of candidates at the election were chairpersons and office-bearers of such organizations.

18. Dr YEUNG Sum said that some public housing estates had now become partly owner-occupied, and OCs had been set up by the owner-occupiers. In such cases, instead of the Housing Department being wholly responsible for the management of the housing estates, management was shared by the Housing Department and the OCs. Very often, some of the OCs adopted different treatment towards different candidates conducting electioneering in the buildings. He said that in one reported case, while the building management organization concerned had decided not to allow electioneering activities to be conducted in the

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premises, a member of it personally escorted a candidate in making household visits for electioneering purpose.

19. The Chairman also pointed out that allegations of unfair treatment in favour of incumbent candidates had frequently been made.

Adm 20. Members urged the Administration to take the necessary improvement measures in the interest of fair play.

Registration of electors

21. Referring to Appendix I of the Report, Mr CHEUNG Man-kwong pointed out that the average number of registered electors within the age bracket of 18 to 20 was less than that within the group of 60 to 70. He estimated that only about three-eighths of the young people had registered as electors and he considered that additional measures should be introduced to enhance the registration rate. In this connection, he suggested that when young persons applied to the Registration of Persons offices for issue of adult identity cards, they should be encouraged to do the electoral registration at the same time.

22. Mr LEE Wing-tat said that many popular websites had been successful in attracting a high level of visits by the public. He suggested that the possibility of conducting voter registration through the Internet to cater for the computer-oriented population should be explored.

Adm 23. CEO/REO said that at present, voter registration forms were available from each of the Immigration Department's offices. Voter registration forms could also be downloaded from the Registration and Electoral Office's (REO) Election Homepage. DS/CA (Ag) said that the Administration would consider the above suggestions made by members.

Adm 24. The Chairman requested the Administration to provide a profile of voters in the 1999 DCs election by age.

(Post-meeting note - The Administration subsequently replied that while it had not conducted a formal survey on the profile of electors in the 1999 DCs election, it had compiled a profile of the voters by sex and age based on information noted down by polling staff when voters produced their identity cards for verification of their identity. The Administration's written response and the profile have been circulated to members vide LC Paper No. CB(2)1806/99-00(01)).

IV. Voter registration campaign and publicity programmes for 2000 LegCo elections

(LC Papers Nos. CB(2)1680/99-00(04) and (05) - papers provided by the Administration)

25. DS/CA (Ag) briefed members on the Administration's papers which set out the results of the 2000 voter registration (VR) campaign completed in March 2000 and the main features of the publicity programmes for the elections of the second term LegCo of the Hong Kong Special Administrative Region (HKSAR).

Voter registration campaign

2000 VR campaign

26. Members noted that about 466,000 forms for registration in geographical constituencies (GCs) were received by the close of the VR campaign, including 21,000 forms received during the year preceding the VR drive. Of these, about 249,000 were from new electors, with the remaining 217,000 mainly for change of address. The 2000 provisional register for GC showed that the total electorate had increased by about 223,000, from 2.832 million to 3.055 million. This figure was the result of an addition of the above 249,000 new electors and the deletion of 26,000 former electors who were no longer eligible to remain on the register.

27. Referring to the deletion of 26,000 former electors from the register for GC, Mr CHEUNG Man-kwong asked what steps had been taken by the Administration to confirm that such people were no longer eligible to remain on the register.

28. CEO/REO responded that through the territory-wide household visits, the Administration had verified the records of about 1.88 million electors in the electoral roll during the 2000 VR campaign. Out of the 26,000 deletions, about 20,500 were people found to have passed away, and 4,743 were electors believed to have moved but their new principal residential address was unknown to the REO. For the latter cases, the REO was satisfied on reasonable grounds that the persons concerned should not remain on the register, after household visits had been made and after follow-up letters addressed to the persons had been returned to the REO.

29. CEO/REO further advised that at the same time when the provisional register was published, an omission list containing the names and particulars of persons deleted from the old register was also published. Both the provisional register and the omission list were available for public inspection, and any

member of the public might lodge an objection regarding any entry therein. He added that the compilation of the register of electors was governed by the relevant electoral legislation, which stipulated that the allocation of an elector to a constituency was to be based on his/her principal residential address as recorded in the existing final register for GCs published under the Legislative Council Ordinance.

30. Mr CHEUNG Man-kwong was of the view that there were grey areas in the meaning of “principal residential address”. He pointed out that some people, such as local students studying abroad, might use their parents’ or relatives’ address as the principal residential address for the purpose of voter registration.

31. The Chairman asked whether the conduct of not reporting change of residential address would amount to vote planting. In reply, CEO/REO said that any suspected case of vote planting would be referred to the Independent Commission Against Corruption for investigation. In the past, most complaint cases concerning wrong names on election mail could be attributed to the outdated addresses on the register of electors.

Adm 32. The Chairman requested the Administration to provide legal advice on the interpretation of “principal residential address” for members’ consideration.

Automatic voter registration

33. Members opined that the long-term solution to the issue of voter registration was the implementation of an automatic registration system. The Chairman was disappointed at the delay in implementing such a system since the matter was first discussed about 10 years ago.

34. Principal Assistant Secretary for Constitutional Affairs (4) (PAS/CA) responded that the crucial problem to be solved was related to the task of building up a comprehensive and accurate database of electors' addresses. It was estimated that the total number of eligible electors presently stood at 4.5 million, whereas the revised total electorate was 3 million after completion of the recent VR campaign. Therefore, it was necessary to devise means to recruit the outstanding 1.5 million eligible electors for registration. She informed members that the Immigration Department was currently embarking on a feasibility study to enhance its computer system to cater for the future territory-wide exercise of renewing identity cards, in which the residential address of every resident of the HKSAR who was holder of an identity card would be recorded. It was thought that a comprehensive record such as this would be extremely useful at the initial stage of implementing an automatic voter registration system. PAS/CA added that other

new measures would be implemented during the interim period between now and the next territory-wide identity cards renewal campaign. For example, the Constitutional Affairs Bureau would examine the practicality and legality of cross-referencing the records maintained by the Inland Revenue Department and the Rating and Valuation Department for the purpose of updating electors' particulars. The Information Technology and Broadcasting Bureau was also aiming at launching a new system by October 2000 which would enable a user to update his personal records with the various Government departments through the Internet. Furthermore, the REO was conducting a review of its computer system with the matter of an automatic voter registration system in mind.

35. Mr LEE Wing-tat and Dr YEUNG Sum said that a registered elector who had changed residence without informing the REO could still vote in the constituency of his old address. They opined that top priority should therefore be given to getting as many eligible electors to register as possible in the first place.

36. The Chairman said that some of the difficulties envisaged by the Administration could in fact be overcome by legislative means, such as providing for the compulsory reporting of change of address for the purpose of updating official records.

Adm 37. PAS/CA said that the Administration was in principle in support of an automatic registration system, which would be a major issue for review after the 2000 LegCo election. The Administration undertook to report progress in due course.

Publicity programmes for 2000 LegCo election

38. Mr LEE Wing-tat said that experience of the last LegCo election had shown that television and radio airtime for activities such as election forums was inadequate to achieve an effective impact on the election. He considered that the time for such publicity programmes should be extended, particularly in view of the increasing number of candidates who would be contesting in the GCs in the 2000 election. He also suggested that the Administration should consider the possibility of launching on-line discussion forums on the Internet to encourage public participation in election.

39. PAS/CA advised that the Radio-Television Hong Kong was responsible for organizing a host of activities on the electronic media to promote public accessibility to information about candidates at election, such as debate forums and TV/radio airtime for candidates to introduce their platforms and to make appeals to voters etc. All these programmes would be uploaded to the Internet to

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further convey the message and information to the public at large. In addition, voters could gain on-line access to candidates' platforms through the Election Homepage specially set up for the 2000 LegCo elections by REO.

40. The Administration noted members' view on the need to step up publicity efforts to promote a positive election atmosphere during the election period.

V. Research report on "Systems of government in some foreign countries"

(LC Papers Nos. CB(2)1668 and 1694/99-00 - seven reports on "Systems of government in some foreign countries" and the overall comparison table)

41. At the invitation of the Chairman, Head, Research and Library Services Division (H(RL)) took members through "The overall comparison table on systems of government in some foreign countries" (Ref. RP10/99-00) which set out in eight tables different features of systems of government in the US, UK, France, Germany, Singapore, Japan and New Zealand.

Composition and characteristics of the Legislature

42. Table 1 set out the membership, normal term of office and the features of electoral and appointment system of the legislatures in the seven countries.

43. In response to a question from the Chairman on recent development of the House of Lords, Research Officer 4 (RO4) informed members that the House of Lords Act 1999 was the first part of the UK Government's approach to reform the House of Lords on a full-scale basis. After the enactment of the Act, no present or future holders of a hereditary peerage had the right to sit and vote in the House of Lords. Exception was granted to 90 hereditary peers provided for in the Standing Orders of the House. Beginning 1 March 2000, there were 670 peers who had the right to a seat in the House of Lords.

Dissolution of Parliament

44. Table 2 set out the constitutional provisions/conventions for dissolution (expiry of tenure) and premature dissolution of Parliament.

RLSD 45. Having gone through the Table, the Chairman requested H(RL) to provide additional information on when a general election would be conducted after dissolution of Parliament in the seven countries.

Role of Parliament in appointment of the Executive

46. Table 3 summarized the situation in the seven countries concerning the roles of Parliament in appointing the Head of State and the Government, the term of office of Head of State and whether members of Government must be Members of Parliament.

Ministerial responsibility to Parliament

47. Table 4 highlighted the responsibility of Government to Parliament and the legal basis for such responsibility, the procedural devices to ensure executive accountability and the circumstances under which Government must resign.

48. Members noted that the US Constitution did not provide for direct collective or individual responsibility of the President and the Cabinet to the Legislature as under a Parliamentary system of government, nor did it specify circumstances under which Government must resign. Under a system of checks and balances, the US Congress could monitor the Executive by congressional hearings and investigation, and the Executive could be removed from office by impeachment. Regarding the other countries, executive accountability was achieved mainly through questions, debates, inquiry commissions and select committees etc. A defeat of the Government in the Legislature on a vote of censure/no-confidence or on a major bill would result in resignation of the Government.

49. Mr LEE Wing-tat said that the major controversies surrounding Article 50 of the Basic Law (BL) were related to how the reference to "important bill" in the Article should be interpreted. He asked how the systems in other countries operated in this regard.

50. H(RL) drew members' attention to the position in France. Article 50 of its Constitution stated that "*When the National Assembly adopts a motion of censure, or rejects the programme or a declaration of general policy of the Government, the Prime Minister must submit the resignation of the Government to the President of the Republic*". The United Kingdom had no written Constitution. By convention, all Cabinet Ministers were individually and collectively responsible to Parliament. If the Government was defeated on the Second Reading of its Finance Bill which embodied the Budget proposals, that would be tantamount to a vote of no-confidence, and the Government would resign.

51. Mr LEE Wing-tat enquired about the extent of individual ministerial responsibility in UK.

52. In response, RO4 said that the competence rule originally held ministers accountable to Parliament for the actions of their departments, if the ministers exercised control over the departments' activities. In the event of a serious error committed by civil servants of the departments, by convention the minister was expected to resign. She added that two cases had redefined this rule to require a minister to have personal knowledge of the gross errors committed by their civil servants, i.e. Lord Carrington's resignation in 1982 and James Prior's refusal to resign in 1983. In the former case, Lord Carrington resigned as Foreign Secretary for the reason that he had underestimated the severity of the Argentinian invasion of the Falkland Islands. In the latter case, James Prior the then Secretary of State for Northern Ireland refused to resign subsequent to the breakout of Irish Republican Army prisoners of the Maze prison on the ground that first, he had not given instructions to relax prison security measures, and secondly, an inquiry into the incident concluded that the escape resulted from management errors committed by the prison governor. The prison governor was sacked instead.

53. H(RL) added that under the morality rule, ministers in UK might need to resign if they had done something morally unacceptable. The resignation was again based on convention.

54. The Chairman said that in most cases, a minister in UK only resigned as minister and not as Member of Parliament.

55. Mr LEE Wing-tat remarked that Hong Kong might learn from the experience in other countries which adopted a system of collective and individual ministerial responsibility. He requested for information on the number of UK ministers who had resigned in the past 20 years as a result of taking individual responsibility for major errors.

RLDS

56. Mr LEE Wing-tat also suggested that additional information might be collected on how the rules of procedure of legislatures in other countries operated to facilitate monitoring of the Executive by the Legislature, e.g. through question time and select committee inquiries and hearings etc.

57. On Mr LEE's suggestion, the Chairman said that the Research and Library Services Division might provide extracts from useful references on Parliamentary systems of Government in other jurisdictions for members' information.

RLSD

Initiation of legislation

58. Table 5 set out the right to initiate legislation and the conditions affecting the right to initiate legislation and special requirements to introduce bills. In general, in the countries under study, there were restrictions on introduction of private member's bills or amendments involving public expenditure.

59. Members noted that in US, the right to initiate legislation vested in members of both Houses and not in the President, and bills to raise revenue must originate in the House of Representatives. The Chairman pointed out that the US President made annual budget proposals to the Congress for approval. An agreement between the Clinton-administration and the Congress was that the latter would not veto the budget but only initiate amendments where it saw fit.

60. Dr YEUNG Sum said that as compared with the systems in other countries, BL74 which prohibited the introduction of bills relating to political structure or the operation of the Government went against the principle of executive accountability to the legislature.

61. H(RL) pointed out that in France, bills of the Government were given priority over private member's bills. The Government could also employ a procedure known as the "blocked vote" to eliminate Parliamentary input on certain details of a bill. Under this procedure, the Government stipulated what the extent of the debate should be, what sections of the bill should be open to amendments, and how much time should be allocated to specific sections of a bill. The National Assembly was asked to decide by a single vote on all or part of the bill under discussion, retaining only the amendments proposed or accepted by the Government.

62. The Legal Adviser said that a major difference between the restrictions in BL74 and the restrictive blocked vote procedure in France was that the former were expressly set out in a constitutional document, whereas the latter was invoked by the Government as a political decision which was not anticipated in advance.

Regulation of political parties

63. Table 6 set out the legal basis for regulation of political parties and other matters such as registration, finance and public funding support for political parties. Members noted that only Singapore did not provide for any kind of party finance and public funding support for political parties.

64. Dr YEUNG Sum noted that political parties in most of the countries covered in the research report received public funding support in various forms,

such as reimbursement of election expenses, tax deductions for donations, government subsidies and contributions to parties participating in elections etc. He pointed out that Taiwan also adopted similar practices. Furthermore, most countries had promulgated law on political parties. He opined that the HKSAR Government should consider the possibility of implementing similar measures to promote the development of political parties.

65. The Chairman felt that enactment of legislation to regulate activities of political parties was not a pre-requisite to help develop political parties in Hong Kong. He said that electoral legislation providing specific assistance and convenience to political parties might achieve similar effects. He opined that how government should offer support to political parties vis-à-vis other political organizations was an area worthy of consideration in the context of political development in Hong Kong.

Recent electoral reform

66. Table 7 highlighted the recent electoral reform which took place in UK, Japan, New Zealand and Singapore. No recent reform was found in France, US and Germany.

67. Mr LEE Wing-tat enquired about the position in Singapore after its electoral reform in 1988.

68. Research Officer 5 (RO5) replied that each elector in Singapore was entitled to only one vote. Under the Single-Member Constituency (SMC) system, a candidate who secured the greatest number of votes would be elected. The Group Representation Constituency (GRC) system, which was akin to a multi-seat, block-vote system, was introduced in 1988. Basically, a GRC was a cluster of three to six SMCs into a larger constituency run by a team of three to six candidates. All candidates must either belong to a single political party or be independents. Each GRC must have at least one candidate belonging to a minority race. During the election, the voters in the GRC cast their votes for a team of candidates rather than individual candidate. The team of candidates which secured the highest number of votes collectively became Members of Parliament. He drew members' attention to Table 3 in Part 4 of the report on Singapore (Ref. RP03/99-00) which showed the distribution of SMCs and GRCs in the 1997 general election.

69. RO5 supplemented that one significant development of the GRC system in Singapore was that the number of candidates in the GRCs had increased. In 1988, the number of candidates in a GRC was set at three. Just prior to the 1997 general

election, this number was increased to a maximum of six. This had worked to the disadvantage of small parties fielding candidates to run in GRCs. As shown in the results of the 1997 election, all the nine SMCs were contested, while only six GRCs were contested out of a total of 15. The People's Action Party won in all the GRCs and all but two of the SMCs.

Constitutional amendments

70. Table 8 specified the nature of Constitution of the seven countries, the amendment procedure and entrenchment applicable to constitutional amendments.

71. The meeting recorded a vote of thanks to staff of the Research and Library Services Division for their efforts in completing the research reports for the Panel's consideration.

VI. Development of the HKSAR's political system

72. As the meeting had been over-run, members agreed that continued discussion of the written submissions on the development of the HKSAR's political system should be deferred to the meeting on 8 May 2000 (paragraph 74 below refers).

VII. Any other business

Draft wording of the motion on "Development of the HKSAR's political system"

73. Members agreed to the draft wording of the motion for debate at the Council meeting on 14 June 2000, which read -

"That this Council urges the Government to consider the views expressed by Members of this Council on 'Report on the study of the Development of the Political System of the Hong Kong Special Administrative Region' tabled by the Panel on Constitutional Affairs and related matters."

VIII. Special meetings

74. Two special meetings were scheduled as follows :

- (a) 8 May 2000 at 2:30 pm to discuss -

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- (i) The role of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (this item was referred to the Panel for discussion by the House Committee as agreed at its meeting on 14 April 2000); and
 - (ii) Development of the HKSAR's political system.
- (b) 13 May 2000 at 9:00 am to discuss "Development of the HKSAR's political system".

(Post-meeting note - Item (i) for the meeting on 8 May 2000 above was subsequently removed. The meeting scheduled for 13 May 2000 was subsequently cancelled as the Panel had finished deliberating the written submissions on the subject at the meeting on 8 May 2000.)

75. There being no other business, the meeting ended at 4:50 pm.

Legislative Council Secretariat
12 June 2000