

立法會  
*Legislative Council*

LC Paper No. CB(2)1799/99-00  
(These minutes have been  
seen by the Administration)

Ref : CB2/PL/CA

**Legislative Council  
Panel on Constitutional Affairs**

**Minutes of meeting  
held on Monday, 20 March 2000 at 2:30 pm  
in Conference Room A 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 Margaret NG  
Hon CHEUNG Man-kwong  
Hon Gary CHENG Kai-nam  
Hon Jasper TSANG Yok-sing, JP  
Hon Howard YOUNG, JP  
Dr Hon YEUNG Sum  
Hon Ambrose LAU Hon-chuen, JP  
Hon SZETO Wah

**Member Attending** : Hon NG Leung-sing

**Member Absent** : Hon Ronald ARCULLI, JP

**Public Officers Attending** : *Item IV*

Mr Michael M Y Suen  
Secretary for Constitutional Affairs

Mr Robin IP  
Deputy Secretary for Constitutional Affairs (2)

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

*Item V*

Miss Elizabeth TSE  
Deputy Secretary for the Treasury

Miss Vega WONG  
Principal Assistant Secretary for the Treasury

**By Invitation** : Hong Kong Human Rights Monitor

Mr Paul HARRIS  
Founder Chairman

Mr LAW Yuk-kai  
Director

Christian Joint Committee on Concern for Election

Mr CHENG Yuk-tin

Miss LAM Kit-hung

Miss CHIK Sui-king

Mr Gordon Y S WU  
Chairman,  
Hopewell Holdings Ltd.

**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

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Action  
Column

**I. Confirmation of minutes of meetings on 21 December 1999 and 18 January 2000**

(LC Paper Nos. CB(2)1418/99-00 and 1419/99-00)

The above minutes of meetings were confirmed.

**II. Information papers issued since the last meeting**

(LC Paper Nos. CB(2)1285/99-00(01) and (02) - A reply from the Chief Secretary for Administration on "Issue of employees of public-funded bodies taking up public offices" and a copy of the Chairman's letter to the Chief Secretary for Administration)

2. Members noted that the above papers had been issued.

**III. Items for discussion at the next meeting on 17 April 2000**

(LC Paper No. CB(2)1397/99-00(01))

3. Members agreed that the following items should be discussed at the next regular meeting on 17 April 2000 -

- (a) Review of the 1999 District Councils election;
- (b) Voter registration campaign and publicity programme for 2000 LegCo election; and
- (c) Research report on "Systems of government in some foreign countries".

#### **IV. Development of the Hong Kong Special Administrative Region's political system**

4. The Chairman welcomed the deputations to the meeting and invited them to present their views.

5. The gist of the deputations' views was summarized in the following paragraphs.

##### Hong Kong Human Rights Monitor (HKHRM) (LC Paper No. CB(2)1432/99-00(01))

- (a) In Hong Kong, the present situation of principal government officials assuming a dual role of implementing and defending government policies gave rise to difficulties to the civil servants. The civil servants might not personally support a particular policy and their training did not necessarily provide them with the advocacy and skills required to explain policy issues. Although HKHRM did not intend to express a particular opinion on what should be a better system, it was of the view that serious thoughts should be given to the possibility to break away from this undesirable situation. A wide debate on the form of government to be adopted by Hong Kong was required;
- (b) There should be no further delay in election of Legislative Council (LegCo) Members by universal suffrage;
- (c) There were strong arguments that a Chief Executive (CE) who was indirectly elected through leading the majority party in LegCo would be able to form a more stable and effective Government than one who was directly elected;
- (d) Hong Kong should hold a constitutional convention to work out future constitutional arrangements along the lines of the South African Constitutional Convention or the convention on the future of the monarchy held by Australia in 1998.

##### Christian Joint Committee on Concern for Election (LC Paper No. CB(2)1422/99-00(01))

- (a) CE should be elected by universal suffrage in 2002;

- (b) All LegCo Members should be elected by universal suffrage before or in 2004;
- (c) Accordingly, amendments should be made to Articles 45 and 68, Annexes I and II of the Basic Law (BL); and
- (d) The Government of the Hong Kong Special Administrative Region (HKSAR) should consult the public on the future development of the political system and announce the timetable of consultation in 2000. The matter should eventually be decided by way of a referendum.

Mr Gordon S Y WU, Chairman, Hopewell Holdings Limited

(LC Paper No. CB(2)1473/99-00(01) - speech of Mr WU circulated after the meeting)

- (a) In Hong Kong, one-third of the population paid the majority of the taxes. With implementation of a "one-person, one-vote" system, taxpayers would not have their representation in LegCo guaranteed. This situation of "taxation without representation" would jeopardize taxpayers' confidence and threaten Hong Kong's economic success achieved in the past; and
- (b) Development of democracy should take an evolutionary rather than a revolutionary process, as evidenced by experiences in other countries. Hong Kong should implement the "one-person, one-vote" system step by step in order to achieve both democracy and economic prosperity.

6. The meeting proceeded with discussion with the deputations.

7. Dr YEUNG Sum, Mr LEE Wing-tat and Ms Emily LAU thanked the deputations for their views. They particularly appreciated the attendance of Mr Gordon WU at the meeting as the Panel had rarely had the opportunity to exchange views with people of business background on the issue of political reform in Hong Kong. They hoped that more people from the business sector would come forward and speak up on the matter.

8. On the argument of "taxation without representation", Dr YEUNG Sum said that he did not agree with the view that direct election by universal suffrage with "one-person, one-vote" would lead to taxpayers' interests being ignored. He opined that democratic developments were not in conflict with economic developments, as shown by the fact that many advanced democratic countries with a party government had opposing political parties succeeding in winning power of

governance through direct elections, without having their economies suffered any setback. He added that politicians in countries elsewhere were consciously looking at the practical aspects of welfare matters to ensure that a right balance was struck between different sectoral interests. Furthermore, a new concept of work ethics had emerged under which the people had started to gain a renewed understanding of what should be their rights and obligations towards the community. Dr YEUNG said that he saw no reason why the majority interests of a community would prejudice the interests of a particular group.

9. Dr YEUNG Sum further pointed out that from past experience, many elected Members of LegCo in fact came from the business sector and other professional fields.

10. Ms Emily LAU said that she could not see why increasing the pace of democratization, if such represented the consensus of the community, would harm the economy. It was inconceivable that people would want to do something which would "rock the boat". She further expressed the view that given the history of direct election in Hong Kong which dated back to the 1980s, Hong Kong should be well-equipped to speed up the pace of democratic reform.

11. Echoing the views of Dr YEUNG Sum and Ms Emily LAU, Mr LEE Wing-tat said that there was in fact a common interest between the low income classes and the wealthy in preserving the fundamental pillars of Hong Kong's economic success. As rightly pointed out by Mr Gordon WU, such important elements included the rule of law, a low taxation system and a minimum level of government intervention etc. Mr LEE opined that differences within the community would only emerge where a particular policy had affected the interests of specific groups or sectors differently. He expressed the view that the concern of the business community about the need to protect its interests through representation in LegCo could best be addressed if the business sector could assume a more active role in politics and form its own political party to take part in elections. This could also give the people a choice in deciding who they should elect to represent their interests in LegCo or other representative bodies.

12. Mr CHEUNG Man-kwong opined that the anxiety of the business sector that its interests might be swamped by that of the lower income masses if universal suffrage were to be implemented was misplaced. He said that universal suffrage with "one-person, one-vote" should not be viewed as something vicious but a natural human right. He added that under a democratic system of government, it was necessary for a political party in power to have both political responsibility and accountability. If it failed to implement policies which could satisfy the demands of the people and sustain the long-term interests of the community, it

would face the risk of being voted out of power at the next election. With democracy and universal suffrage of “one-person, one-vote”, the good of all would ultimately prevail.

13. Mr Paul HARRIS and Mr LAW Yuk-kai expressed similar views. Mr HARRIS added that the worries that democratically elected politicians doing things which might damage economic growth appeared to be unjustified in the case of Hong Kong, as a large part of the directly elected Members of LegCo only assumed a role akin to that of an opposition party in the legislature. Mr LAW opined that democratic elections should not be an obstacle to economic development and that the pace of political reform should not be delayed.

14. Mr CHENG Yuk-tin made the following comments –

- (a) The arguments associated with “taxation without representation” had been used by some to justify the need for functional constituency (FC) elections and opposition to increasing the pace of democratization. However, the arguments were fraught with misconceptions and over-generalizations. Under a democratic election system with “one-person, one-vote”, taxpayers had every equal right as others to vote and be elected. Therefore, their interests would not be sacrificed. In fact, under the proportional representation electoral system, every sector or group had equal opportunity to organize itself to take part in elections to ensure that its interests were represented;
- (b) Also, the arguments assumed that taxpayers belonged to a unique class of the society having some distinct interests of its own. This did not necessarily hold true. Furthermore, it was wrong to equate taxpayers to the electorate for FC elections, as the former really out-numbered the latter; and
- (c) The concern that universal suffrage with “one-person, one-vote” would lead to increased demand for “free lunch” was unfounded, as shown by the fact that a large proportion of eligible households refusing to apply for assistance under the Comprehensive Social Security Assistance scheme. The situation of a small minority of the working population paying the large proportion of taxes was actually due to the widening of income disparity between the well-to-do and the lower income earners.

15. The Chairman invited Mr Gordon WU to respond to the above views.

16. Mr Gordon WU first clarified that he put forward his views on the issue of political development as an ordinary member of the public and not as a representative of the business sector. He said that his stance was that political reforms should take place on an evolutionary and step by step basis and that one must be cautious in bringing about changes to ensure that they would not jeopardize the economic well-being of Hong Kong. The economic achievements made by Hong Kong in the past decades were ample evidence that the system adopted in Hong Kong over the years had been working satisfactorily. Therefore, Hong Kong should preserve those elements which had contributed to its success. He stressed that he was in support of democracy and democratic developments in Hong Kong. Yet, democracy should be viewed in its overall context with due consideration of a whole range of issues such as the rule of law and order, a high degree of freedom and the right to property etc. In raising the problem of "taxation without representation", he wished to drive home the point that direct election on an universal franchise basis was not a panacea for all political ideals, and Hong Kong immediately going into elections with "one-person, one-vote" could give rise to undesirable consequences to its economy. He said that if radical changes caused taxpayers to lose their confidence in the economy, then any reform would fail.

17. Mr Gordon WU added that he made his observations on the basis of past experience of countries which had suffered serious setback in economy after embarking on a drastic course of democratic reform. He quoted a number of examples to substantiate his views.

18. Mr Gordon WU also referred to some labour laws passed by LegCo shortly before the reunification. One law aimed at offering more protection to employees aged 45 or above. Another law sought to require employers employing 20 or more employees to consult the employees on a range of issues including restructuring and changes in the ownership of the company. He opined that these statutory measures, if implemented, would seriously affect labour/management relationship and hamper economic growth.

19. Mr SZETO Wah pointed out that from the historical point of view, the most serious economic turmoil suffered by Hong Kong was caused by external rather than internal factors, such as the eventualities in the 1950s during the Korean war, the 1967 street riots, the events which took place in the 1980s in the heat of the Sino-British talks on Hong Kong's future, as well as the recent Asian financial crisis etc. He considered that there was no evidence to suggest that political and democratic developments would destabilize Hong Kong's economy.



20. Dr YEUNG Sum said that as Hong Kong had now entered into a new era of being an SAR of China with a high degree of autonomy, it was only a natural and legitimate expectation of the people that Hong Kong should have the will and the means to achieve what were guaranteed in the BL, amongst which was the progress in election of the CE and all Members of LegCo by universal suffrage. He said that a democratic structure of government was as important a factor for long-term growth as any other factor. He reiterated the view expressed earlier by Mr CHEUNG Man-kwong that no elected party or members could continue to receive popular support if they failed to measure up to the expectation of those who elected them.

21. Mr NG Leung-sing said that he was appreciative of the concern expressed by some people in the business community about the possible unsettling effects of rapid democratic changes on the economy. The concern was understandable because of the disparity in number between employers and the employed. He asked Mr Gordon WU whether he saw any prospect of a political party emerging which could represent the interests of the business sector and the general taxpayers.

22. Mr Gordon WU said that he knew little about politics and political parties and hence was not in a position to respond. He reasserted that Hong Kong should learn from the experience of other countries and take a cautious approach to democratic reforms.

23. The Chairman said that Articles 45 and 68 of the BL laid down the major framework for constitutional and political reforms. The ultimate progress towards universal suffrage implied that FC elections were only an interim measure. He sought Mr Gordon WU's opinion on this point.

24. Mr Gordon WU responded that he held no particular views on whether FC elections should be retained or eventually abolished. Also, he could not offer any specific timetable for implementing universal suffrage for selection of the CE and Members of LegCo. He considered that it should be the collective responsibility of all concerned to work out the best solution with the best interests of Hong Kong in mind.

25. Ms Emily LAU pointed out that the composition of the Election Committee (EC) included the religious sector. In response to Ms LAU's invitation for comments, Mr CHENG Yuk-tin said that the stance of the Christian Joint Committee on Concern for Election was that it did not support EC elections.

26. The Chairman said that one of the most important developments in liberal democracies was the separation of powers between the executive, the legislature and the judiciary. In his opinion, the executive/legislature relationship posed the major problems in Hong Kong's political system and this should be given special attention in future discussions.

27. Referring to a view expressed earlier by Mr Paul HARRIS, Miss Margaret NG said that a major function of LegCo Members was not to oppose to Government policies but to raise questions and queries on policy issues with the Administration. This was an important role of LegCo to ensure a responsible Government with accountability and transparency. She said that the rule of law had a weak foundation without democracy. An independent judiciary was not enough for the adequate safeguard of the rule of law because the judiciary had to act according to the law and the law was made by the legislature. In the absence of a wholly and directly elected legislature, the power of the executive would be predominant.

28. The Chairman thanked the deputations again for attending the meeting. He reminded members that a special meeting would be held on 1 April 2000 to consider the other written submissions received by the Panel.

## **V. Independence of the Audit Commission**

(LC Paper Nos. CB(2)1397/99-00(02) and 1397/99-00(03))

29. At the invitation of the Chairman, Deputy Secretary for the Treasury (DS(Tsy)) summarized the points set out in the Administration's paper (LC Paper No. CB(2)1397/99-00(03)) as follows :

- (a) The Audit Commission functioned independently. Its independence was enshrined in the BL and the Audit Ordinance, which provided that -

BL 58

*"A Commission of Audit shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive."*

Section 9 of the Audit Ordinance

*"In the performance of his duties and the exercise of his powers under this Ordinance the Director shall not be subject to the direction or control of any other person or authority.";* and

- (b) BL 48(5) provided that the Director of Audit (D of A) was one of the principal officials to be nominated by the CE for appointment. Auditing work within the Audit Commission (the Commission) was performed by professional staff, i.e. officers of the Auditor and Examiner grades. These officers were authorized by statute to function independently. Currently there were 169 such officers, who constituted 78% of the establishment of the Commission. As these officers were appointed exclusively to the Commission, there was no question of any apprehension about conflict of interest or fear of reprisals which would compromise their independence in discharging their duties.

30. Ms Emily LAU asked whether the reference to "any other person or authority" in section 9 of the Audit Ordinance (the Ordinance) included the CE. DS(Tsy) replied in the affirmative.

31. Ms Emily LAU enquired how the independent operation of the Commission could be ensured in view of the requirement under BL 58 that the D of A should be accountable to the CE.

32. In response, DS(Tsy) advised that D of A was accountable to the CE in the fulfillment of his duties as prescribed under the Ordinance. For example, D of A was required to prepare and submit his audit report on public accounts to LegCo within seven months after the ending of a financial year. She said that D of A's accountability to the CE would not affect the independent performance of his statutory duties as provided for in section 9 of the Ordinance.

33. Legal Adviser (LA) pointed out that before the re-unification and at the time when the Governor of Hong Kong was also President of LegCo, the policy intent for enacting the Audit Ordinance was that the D of A was accountable to the LegCo, although there was no statutory stipulation to that effect. BL58 now clearly specified the accountability of D of A to the CE. In his opinion, the explanation set out in the Administration's paper concerning the independence and accountability of the Audit Commission was consistent with the constitutional set-up of the HKSAR.

34. Mr LEE Wing-tat said that there was expressed public concern that the CE might interfere with the work of the Commission. In his view, it was possible for

the CE to do so, implicitly or otherwise, by making comments on certain issues which were within the ambit of D of A. Mr LEE suggested that to ensure transparency, meetings of the CE with D of A should be formally recorded and such records should be made public after a prescribed period of time, say in 10 or 15 years' time after such meetings were held.

35. DS(Tsy) replied that the Administration had consulted the Chief Executive's Office on this proposal. The latter was of the view that it was necessary and appropriate for the CE to hold internal meetings with principal government officials, heads of departments, and heads of statutory and public bodies to facilitate communication and understanding of their work. In view of the internal nature of these meetings, the administration did not consider it appropriate for the contents to be disclosed at any point in time.

36. Mr LEE Wing-tat was not satisfied with the explanation. He stressed that organizations such as the Audit Commission and the Independent Commission Against Corruption were different from other bodies in that they assumed a unique and important role of monitoring the performance of government departments and officials. Therefore, the independence of their operation so that they were free from any interference must be guaranteed. However, the present mechanism did not seem to be working satisfactorily to remove public doubt.

37. Mr CHEUNG Man-kwong considered that the requirement of accountability in BL 58 was vague, which could be interpreted as applicable in the context of a superior/subordinate relationship between the CE and D of A, thereby providing a room for interference.

38. Mr CHEUNG Man-kwong further opined that given that the duty of the Commission was to audit public accounts independently, the post of D of A should not be filled by a public servant. Also, D of A should not be accountable to the CE. He considered that BL 58 should be amended so that D of A should be responsible to LegCo. Ms Emily LAU supported Mr CHEUNG's view that BL(58) should be amended.

39. DS(Tsy) reiterated that D of A had a statutory duty to make his report to LegCo. In 1993, when the Governor stepped down from the LegCo presidency, the Ordinance was amended to specify that the D of A's report should be submitted to the President of LegCo. She advised that the arrangement for the submission of D of A's report had not changed after the reunification.

40. LA pointed out that the Ordinance did not have any provision which empowered D of A to carry out value for money audits of , as it presently did, in relation to the government departments and some publicly funded organization. The Chairman said that value for money audit might be a grey area to which section 9 of the Ordinance would not apply.

41. Ms Emily LAU opined that the scope of section 9 of the Ordinance might be broadened to apply to D of A's value for money audits.

42. DS(Tsy) advised that the Administration and LegCo had agreed in 1986 on a set of guidelines which provided that in conducting value for money audits, D of A was entitled to exercise the powers given to him under section 9 of the Ordinance. The arrangement had proved to be effective. The Administration was of the view that the existing institutional arrangement enabled the Commission to function effectively and independently and it saw no justification for any legislative amendment at this point in time.

43. Mr NG Leung-sing asked whether D of A was under a duty to explain any of his recommendations to the policy bureaux and departments concerned.

44. DS(Tsy) replied that under the current practice, D of A would deal directly and independently with the relevant bureaux and departments concerning his recommendations in value for money audits.

## **VI. Date of next meeting**

45. The next regular meeting was scheduled for 17 April 2000 at 2:30 pm.

46. The meeting ended at 4:45 pm.

Legislative Council Secretariat  
19 April 2000