立法會
Legislative Council

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Report of the Panel on Constitutional Affairs
for submission to the Legislative Council

Purpose

The report gives an account of the work of the Panel on Constitutional Affairs for tabling at the meeting of the Legislative Council on 21 June 2000 in accordance with Rule 77(14) of the Rules of Procedure of the Legislative Council (LegCo).

The Panel

2. The Panel was formed by a resolution of this Council on 8 July 1998 for the purpose of monitoring and examining Government policies and issues of public concern relating to constitutional affairs. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 12 members. Hon Andrew WONG Wang-fat and Hon Emily LAU Wai-hing were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major work

Application of certain provisions of the Prevention of Bribery Ordinance (POBO) to the Chief Executive (CE) and related issues

4. In February 1999, the Panel requested the Administration to review whether certain provisions of the POBO should be applicable to CE. The Panel discussed the matter at three meetings in this session.

5. The Panel noted that currently, the offences of solicitation and acceptance of advantages under the POBO were generally premised upon the common law principal-agent relationship. Given that the relationship between the Hong Kong Special Administrative Region (HKSAR) Government and the CE did not constitute a principal-agent relationship, the Administration was of the view that it was difficult to fit the HKSAR Government and the CE into the structure of the POBO. The Panel requested the Administration to explore the possibility of deeming the CE to be a Government officer or public servant for the purpose of the POBO so that the relevant

sections of the Ordinance that were applicable to "Government officers" or "public servants" would apply to him. After careful consideration and with the benefit of legal advice, the Administration explained to the Panel that this option was not viable.

6. The Administration proposed to deal with the matter as follows. First, it was already a common law offence for a "public officer" to accept a bribe and for anyone to bribe a "public officer". The CE would fall within the meaning of "public officer" under the common law and would be liable to prosecution if he accepted a bribe. No amendment to the POBO was therefore considered necessary. Secondly, a new provision in the POBO applicable to the CE would be made. The new provision would be in line with the spirit of the existing section 10 of the POBO concerning the possession of unexplained property which was currently applicable to "Government officers" in the POBO. The Panel had reservations about the first proposal and considered that the common law offence of bribery should be codified. The Administration agreed to revert to the Panel when it had come to a view on the matter.

7. As a related issue, some members expressed concern about the absence of legislation in respect of the arrangements for and regulation of the election of the second term CE. They pointed out that "small circle" type of elections such as the return of the CE by the 800-member Selection Committee were prone to corrupt and illegal practices. They urged that the relevant legislation should be introduced as soon as possible. The Administration took note of members' view on the matter.

Mechanism for amending the Basic Law

8. The Panel held a number of meetings to discuss the subject in the 1998-99 legislative session, including two meetings in March 1999 to receive public views on the subject. In May 1999, the Administration advised that it had identified a number of issues for further study and would need to consult all relevant parties in devising an appropriate mechanism to give effect to Article 159 of the Basic Law. Its rough estimate of the time required for those steps in the consultation process not involving the Central authorities was about 15-22 months (including drafting and enactment of local legislation to give effect to the finalized proposal).

9. The Panel followed up the matter at two meetings held in January and May 2000 respectively. Members were disappointed that the Administration had no substantive progress to report.

Issue of employees of public-funded bodies taking up public offices

10. The issue of employees of public-funded bodies taking up public offices was discussed at a number of meetings. The relevant bureaux and departments having policy responsibility over subvented organizations in the welfare sector, tertiary education institutions funded by the University Grants Committee (UGC) and the Hospital Authority explained in detail the arrangements adopted by organizations under their purview in respect of staff taking up public offices.

11. The Panel expressed concern that the policies and practices of the medical, education and welfare sectors were not the same. The Hospital Authority had a set of standardized guidelines applicable to all staff taking up public offices. Adjustment in salary and benefits, if considered necessary, would depend on the proportion of normal working hours to be spent in taking up the public office. The UGC-funded institutions had general guidelines to deal with engagement in outside practice including taking up public offices by staff, although there were no standardized guidelines. In the welfare sector, the Hong Kong Council of Social Services, the main co-ordinating body of non-government organizations, issued a set of guidelines to member agencies for reference. However, the subvented welfare organizations did not normally deduct salaries and benefits of employees taking up public offices. Members considered that there should be standardized guidelines for public-funded bodies to follow to ensure transparency and fairness. Members were also concerned about the lack of coordination in the matter and considered it necessary for a bureau or a specific office within the Administration to take the lead and proactively follow up the formulation of standardized guidelines. On behalf of the Panel, the Chairman took up the matter with the Chief Secretary for Administration.

12. In reply, the Chief Secretary for Administration advised that to have a set of standardized guidelines across the board would be difficult to implement and unlikely to be feasible, given the different roles of the organizations, the nature of the employees' work and the public offices in question. The Administration remained of the view that individual organizations, as autonomous subvented bodies, and as the direct employers, must retain the flexibility to decide on the arrangements for their staff engaged in public offices that best suited their needs. This was not a matter that the Government should seek to direct from the centre.

13. The Panel was particularly concerned about the situation of the welfare sector and further pursued the matter with the Administration. The Administration agreed to draw up a set of guidelines for the reference of employees of subvented welfare organizations taking up public offices, making reference to the guidelines promulgated by the Hospital Authority and UGC-funded institutions. The Administration was also considering the feasibility of inserting clauses that would state some broad guiding principles in general on adjustment of salaries and benefits of employees if their normal duties were affected as a result of their taking up remunerated public office. The proposed guidelines would be ready in the latter half of 2000.

Designation of officials to attend LegCo meetings

14. As head of the Government of the Hong Kong Special Administrative Region (HKSAR), CE would sign instruments on the designation of officials to attend LegCo meetings under BL 62(6). In the light of Members' concern that certain persons of the Judiciary and statutory bodies included in the two instruments dated 26 June 1998 had been excluded from the instruments dated 31 December 1998, the Panel was requested by the House Committee to discuss the matter.

15. The Administration explained that the purpose of designating officials under BL 62(6) was to enable relevant officials to sit in at the meetings of LegCo and to speak on behalf of the Government. The list of designated officials was not in any way intended as limiting the scope of Government's accountability to LegCo. The designation made by CE on 31 December 1998 included only officials who were part of the Administration. The Judiciary was excluded because it was constitutionally independent of the Administration. The statutory bodies were also separate from and independent of the Administration by virtue of their separate legal personalities or independent status as indicated, either expressly or by implication, in the statute under which they were established.

16. The Panel was of the view that since the designation under BL 62(6) was to provide authority for officials to conduct formal business in LegCo, the designation did not prejudice LegCo's power to invite any persons including responsible persons of independent statutory bodies to attend committee and subcommittee meetings of LegCo if necessary. In the event that an invitation to a person could not secure the person's attendance, the committee or subcommittee, where so authorized by LegCo, may summon the person concerned in accordance with the provisions in the Legislative Council (Powers and Privileges) Ordinance which were reflected in the Rules of Procedure. The Panel made a report to the House Committee on 17 December 1999.

Articles 50 and 51 of the Basic Law (BL)

The term "budget" in BL 50 and 51

17. On the recommendation of the Committee on Rules of Procedure and with the agreement of the House Committee, the Panel was requested to discuss the scope of the term "budget" in the context of BL 50 and 51.

18. Some members considered that the Administration's arbitrary interpretation of the term to cover only the expenditure side of the budget (i.e. the Appropriation Bill) was tantamount to limiting LegCo's power in monitoring Government's financial proposal. They were of the view that the term should cover both expenditure and revenue. The Administration provided detailed justifications in support of its interpretation of the term. In gist, its interpretation took into account the context in which the term was used, the purposes of the provisions concerned, and the established practice in seeking LegCo approval of expenditure and revenue proposals. The Administration's view was shared by the Legal Adviser to LegCo. The Panel accepted the Administration's interpretation that the term "budget" in BL 50 and 51 referred to the Appropriation Bill, and made a report to the House Committee on 11 February 2000.

The term "important bill" in BL 50

19. In considering the above issue, the Panel noted that the procedures in BL 50, 51 and 52 would also apply in the case of LegCo refusing to pass any other important bill. Members considered that whether a bill was important should be determined and declared prior to its introduction into LegCo, and not after its rejection by LegCo. Given the constitutional implications of BL 50, they also considered that there should be a mechanism for defining whether a bill fell under "any other important bill" referred to in BL 50 so as to prevent disputes or abuse of power by the Chief Executive. The Panel would further discuss the matter with the Administration.

2000 LegCo election

Proposed counting arrangements

20. In January 2000, the Panel was consulted on the two proposed options to conduct the count for the 2000 LegCo election. Under the first option, there would be one counting station for each of the five geographical constituencies (GCs), and one central counting station for the functional constituencies (FCs) and the Election Committee (EC). Under the second option, GC ballot papers would be counted at each polling station, while FC and EC ballot papers would be counted at a central polling station.

21. There were divided views on the two options. Some members supported the second option taking into account factors such as no additional set-up cost, shorter counting time, a speedier and safer way of handling GC ballot boxes and higher transparency of the counting process. Some other members pointed out that the second option was a clear departure from the long established practice for ballot papers from not less than two polling stations within the same constituency to be mixed before counting. The arrangement was meant to protect the political inclination of polling areas in order to guard against intimidation and graft in an election. A few members also expressed concern that candidates might have difficulties in finding sufficient manpower to monitor the count under the second option.

22. The EAC had subsequently decided that the first option would be adopted for the 2000 LegCo election. To respond members' request that the counting process should be speeded up, the Administration proposed a range of initiatives for adoption in the coming election. Members noted that the Administration hoped to complete the count for the EC subsector elections and the general election by about 9 a.m. and 11 a.m. respectively on the day following the polling day.

Election expenses limits

23. The Panel was briefed on the Administration's proposal that the same election expenses limits for the 1998 LegCo election would be adopted for the 2000 LegCo

election. Some members considered that the limit in respect of the GC elections should be reduced taking account of deflation and the fact that candidates of the last election spent less than the prescribed limit. Other members had no strong objection to the proposed limit, taking into consideration that the limit was set on the basis of a list of candidates and the total population of Hong Kong was estimated to have increased slightly.

Voter registration campaign and publicity programme

24. The Panel noted that according to the 2000 provisional registers, the total electorate for GCs had increased from 2.832 million to 3.055 million. For FCs and EC subsectors, the total electorate had increased from 138,000 to 176,000 and from 143,000 to 179,000 respectively.

25. With the conclusion of the voter registration drive on 16 March 2000, the Panel was also briefed on the main features of the publicity programme for the EC subsector elections, and the general election to be held on 9 July 2000 and 10 September 2000 respectively.

Automatic voter registration and computerized voting system for LegCo election

26. In the course of considering the electoral arrangements for the 2000 LegCo election, the Panel requested the Administration to consider implementing automatic voter registration and computerized voting system for future LegCo elections.

27. According to the Administration, the actual implementation of automatic voter registration would only be possible after a number of practical problems had been resolved. These included putting in place an electronic database which captured accurate and up-to-date personal records, including residential addresses, of all eligible electors and weeding out ineligible voters from an automatic register. As regards computerized voting, it could involve virtual polling and/or the use of electronic voting devices. The factors which needed to be given careful consideration in implementing computerized voting included public acceptance of electronic voting, technical requirements and cost effectiveness of computerized voting.

28. The Panel noted that the Administration would further consider the two proposals on the basis of the outcome of two studies. First, a consultancy study was being conducted by the Immigration Department to prepare for the launch of the next generation of the Registration of Persons (ROP) system. As part of the study, the feasibility of enhancing the ROP system to capture and update the residential addresses of identity card holders to facilitate the compilation of an automatic voter register would be looked into. Secondly, the Registration and Electoral Office would conduct a feasibility study on the development of a new Electoral and Registration System. Results of both studies were expected to be available in the latter half of 2000. The Panel would follow up the matter in due course.

Independence of the Audit Commission

29. The Panel held a meeting to discuss the matter in view of public concern about the independence of the Audit Commission (the Commission).

30. In response to members' views, the Administration advised that the independence of the Commission was enshrined in BL 48(5) and 58 as well as section 9 of the Audit Ordinance. Under section 9 of the Audit Ordinance, the Director of Audit (D of A), in the performance of his duties and the exercise of his powers, shall not be subject to the direction or control of any other person or authority. Hence, the requirement of D of A's accountability to CE under BL 58 would not affect the independent performance of his statutory duties. As part of D of A's accountability to CE, he was required to prepare and submit his audit report on public accounts to LegCo.

31. On the authority for D of A to carry out value for money audits which appeared to be a grey area under section 9 of the Audit Ordinance, the Panel's attention was drawn to a set of guidelines agreed between the Administration and LegCo in 1986 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. On a member's suggestion that records should be kept for meetings between CE and the D of A, and that these records be made public after a prescribed period of time, the Administration advised that CE's Office had been consulted and considered it inappropriate to do so.

Development of the HKSAR's political system

32. The Panel submitted a separate report on this subject to the Council. A motion debate on the report and related issues was held by the Council on 14 June 2000.

Panel meetings

33. Between October 1999 and June 2000, the Panel held a total of 16 meetings.

Legislative Council Secretariat
15 June 2000

Appendix I

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the HKSAR Government and the Central People's Government and other Mainland authorities, electoral matters and district organisations.

2. To provide a forum for the exchange and dissemination of views on related policy matters.

3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.

4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Appendix II

Legislative Council
Panel on Constitutional Affairs

Membership List

Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon LEE Wing-tat
Hon Margaret NG
Hon Ronald ARCULLI, JP
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam, JP
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon Ambrose LAU Hon-chuen, JP
Hon SZETO Wah

Total : 12 Members

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Date : 31 December 1999