

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1626/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/CA

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 21 March 2005 at 2:30 pm**  
**in the Chamber of the Legislative Council Building**

**Members present** : Dr Hon LUI Ming-wah, JP (Chairman)  
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon Martin LEE Chu-ming, SC, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Hon Fred LI Wah-ming, JP  
Hon Margaret NG  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon James TO Kun-sun  
Hon CHEUNG Man-kwong  
Hon CHAN Yuen-han, JP  
Hon Bernard CHAN, JP  
Hon CHAN Kam-lam, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon LEUNG Yiu-chung  
Hon SIN Chung-kai, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, JP  
Hon Howard YOUNG, SBS, JP  
Dr Hon YEUNG Sum  
Hon LAU Kong-wah, JP  
Hon LAU Wong-fat, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk  
Hon Andrew CHENG Kar-foo  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Tommy CHEUNG Yu-yan, JP

Hon Albert CHAN Wai-yip  
Hon Frederick FUNG Kin-kee, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, JP  
Hon WONG Kwok-hing, MH  
Hon LEE Wing-tat  
Hon LI Kwok-ying, MH  
Dr Hon Joseph LEE Kok-long  
Hon Daniel LAM Wai-keung, BBS, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon MA Lik, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Dr Hon KWOK Ka-ki  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon CHEUNG Hok-ming, SBS, JP  
Hon WONG Ting-kwong, BBS  
Hon TONG Ka-wah, SC  
Hon CHIM Pui-chung  
Hon Patrick LAU Sau-shing, SBS, JP  
Hon Albert Jinghan CHENG  
Hon KWONG Chi-kin  
Hon TAM Heung-man

**Members absent** : Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP  
Hon LAU Chin-shek, JP  
Hon Miriam LAU Kin-yea, GBS, JP

**Public officers attending** : Item II  
  
Mr Stephen LAM Sui-lung  
Secretary for Constitutional Affairs  
  
Mr Clement MAK Ching-hung  
Permanent Secretary for Constitutional Affairs  
  
Mr Joseph LAI Yee-tak  
Deputy Secretary for Constitutional Affairs  
  
Miss May CHAN Wing-shiu  
Principal Assistant Secretary for Constitutional Affairs  
  
Mr Raymond TAM Chi-yuen  
Principal Assistant Secretary for Constitutional Affairs

Mr LAM Man-ho  
Chief Electoral Officer

Mr Robert ALLCOCK, BBS, JP  
Solicitor General

Mr James O'NEIL  
Deputy Solicitor General

**Clerk in attendance** : Mrs Percy MA  
Chief Council Secretary (2)3

**Staff in attendance** : Mr Arthur CHEUNG  
Senior Assistant Legal Adviser 2

Mr KAU Kin-wah  
Assistant Legal Adviser 6

Mrs Eleanor CHOW  
Senior Council Secretary (2)4

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**I. Items for discussion at the next meeting**

(LC Paper No. CB(2)1092/04-05(01) – List of outstanding items for discussion)

Members agreed to discuss the following items at the next meeting to be held on 18 April 2005 –

- (a) Matters relating to the election of the Chief Executive (CE) - Proposed guidelines on election-related activities in respect of CE election;
- (b) Remuneration and post-office arrangements for CE;
- (c) Matters relating to election-related publicity materials (paragraph 65 below refers); and
- (d) Application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to CE (paragraph 65 below refers).

2. Mr LEE Wing-tat asked the Secretary for Constitutional Affairs (SCA) to clarify whether the Administration would seek an interpretation on Article 53 of the Basic Law (BL 53) concerning the term of office of the new CE from the

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Standing Committee of the National People's Congress (NPCSC). He said that the Administration should consult the Panel at a meeting before seeking an interpretation from the NPCSC.

3. SCA said that the Government of the Hong Kong Special Administrative Region (HKSARG) had not made a decision on the matter. It had been the practice of the Administration to report to the Panel on issues of great public concern.

4. Mr LEE was dissatisfied with SCA's answer and said that he would move a motion urging the Government to consult the Panel before it requested NPCSC to give an interpretation on the term of office of the new CE.

5. Mr Albert CHAN said that both the Hong Kong Bar Association and the Law Society of Hong Kong held the view that the new CE should serve a full term of five years and not the remainder of the term of office of the preceding CE. If the Administration subscribed to the view of the Central People's Government (CPG) that the new CE should serve the remainder of the term, without having regard to legal profession's opinion or consultation with the Panel, the Administration was ignoring public opinion. Given that SCA was articulate, good at saying that black was white and "pointing at a deer but saying that it is a horse (指鹿為馬)", SCA should explain the position of the Administration on the matter ("如此好口才的林局長，可以顛倒黑白，指鹿為馬的林局長，請解釋清楚究竟政府的態度及情況是如何。").

6. SCA raised a point of order as to whether Mr CHAN had used offensive language about him by saying that he was "pointing at a deer but saying that it is a horse (指鹿為馬)". The Chairman ordered that the meeting be suspended before he gave his ruling.

*(The meeting was suspended for 20 minutes and resumed at 3:10 pm.)*

7. The Chairman said that having listened to the tape recording, he ruled that the language used by Mr Albert CHAN was offensive because the idiom "pointing at a deer but saying that it is a horse (指鹿為馬)" was used to describe SCA as a person and cast doubt on SCA's conduct and integrity. The Chairman said that while Rule 41 (Content of Speeches) applied to committees, Rules 44 and 45 (Rules of Order) did not apply to committees. This being the case, he could not enforce Rules 44 and 45 although he had ruled that the language used by Mr CHAN was offensive. The Chairman urged members to exercise self-restraint in the use of language at committee meetings.

8. Mr Albert CHAN said that he did not accept the ruling. He said that SCA was "pointing at a deer but saying that it is a horse (指鹿為馬)" because he did not tell the whole truth. He disagreed that the language he used was offensive.

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9. Mr TONG Ka-wah expressed concern that the Chairman's ruling had the effect of limiting the freedom of expression of members at committee meetings of the Legislative Council (LegCo). Mr TONG Ka-wah, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr CHEUNG Man-kwong, Ms Emily LAU and Dr YEUNG Sum said that Chinese idioms were frequently used by members during discussions and debates at committee meetings. Ms Margaret NG asked about the criteria adopted by the Chairman in ruling whether certain language was offensive.

10. Mr CHAN Kam-lam held the view that the freedom of expression of members at committee meetings was not without bound. By convention, Members and public officers adopted a sensible and rational attitude when exchanging views at committee meetings. The working relationship between the two was based on mutual respect and understanding. Using offensive language against each other was not something the public wished to see at LegCo meetings.

11. Mr Martin LEE said that only unparliamentary language was forbidden at Council meetings. He asked whether there was a precedent for ruling the idiom "pointing at a deer but saying that it is a horse (指鹿爲馬)" as unparliamentary. Mr Fred LI questioned the basis of the Chairman's ruling.

12. The Chairman explained that Rule 41(4) provided that "[I]t shall be out of order to use offensive and insulting language about Members of the Council". Some members pointed out that Rule 41(4) applied to Members, and not public officers. The Deputy Chairman supplemented that by virtue of Rule 10(2), Rule 41(4) should apply to public officers attending meetings of the Council and its committees as they applied to Members.

13. A few members did not agree to the explanation given by the Deputy Chairman. The Deputy Chairman further explained that public officers attending Council meetings had sought rulings from the President on the use of offensive language by Members against them on previous occasions and the President had ruled on the basis of Rules 10(2) and 41(4). Members had accepted the President's ruling on those occasions and it was evident that these rules applied to both Members and public officers attending meetings of LegCo.

14. In response to members, Assistant Legal Adviser 6 explained that although Rule 41(4) did not expressly provide that it should apply to public officers, it should be binding on Members and public officers alike. It had been a Council culture for Members and public officers to conduct themselves under the principle of mutual respect during meetings so that meetings could proceed with smoothly. The ruling of the Chairman on a point of order was final, and members could request the Chairman to explain the basis of his ruling at an appropriate time without affecting the progress of the meeting.

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15. Mr CHEUNG Man-kwong and Dr YEUNG Sum said that the Chairman's ruling had raised more questions than answers. Dr Fernando CHEUNG said that the Chairman's ruling had set a bad precedent. They urged the Chairman to retract his ruling or else members would ask him to rule each time when an idiom was used.

16. The Chairman maintained the view that the idiom "pointing at a deer but saying that it is a horse (指鹿為馬)" used in the context by Mr Albert CHAN was offensive. Dr YEUNG Sum said that it should be put on record that many members did not accept the Chairman's ruling. Mr CHIM Pui-chung and Mr Albert HO said that the Panel was not an appropriate forum for further discussion. They said that if necessary, the Committee on Rules of Procedure could be requested to further examine relevant procedural matters arising from this incident.

Motion proposed by Mr LEE Wing-tat

17. Mr LEE Wing-tat said that he would propose a motion urging the Government to consult the Panel before it requested NPCSC to give an interpretation on the term of office of the new CE. As the motion was straightforward, he suggested that a vote be taken without debate. The wording of his motion was as follows –

“ 政制事務委員會要求特區政府就行政長官條例要求人大常委釋法之前，先向立法會政制事務委員會諮詢意見。 ”

18. Mr Abraham SHEK proposed to replace the words " Panel on Constitutional Affairs(政制事務委員會)" where it appeared the second time with "Council meeting (例會)".

19. Ms Margaret NG, Ms Emily LAU and Mr Frederick FUNG said that they had no strong view on the original motion and the amended motion, so long as Members would be consulted before an interpretation was sought. Ms Margaret NG said that the House Committee was also an appropriate forum for the Administration to consult members.

20. Mr CHEUNG Man-kwong said that SCA had said in a standup media briefing that some Members had suggested that the Government should consider seriously the possibility of an interpretation by NPCSC, and the Government should bear their views firmly in mind as it proceeded down this path. Since SCA had said publicly that it would consider Members' views, consulting LegCo before seeking an interpretation from NPCSC should not be a problem to the Administration. Mr CHEUNG asked about the mechanism under which the Administration would seek an interpretation from NPCSC. Mr LEUNG Kwok-hung pointed out that under the procedure set out in BL 158, it was for the

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Court of Final Appeal, and not HKSARG, to request NPCSC to give an interpretation on the relevant provisions of the Basic Law.

21. Mr TAM Yiu-chung said that he supported the motion as amended by Mr Abraham SHEK. He said that the Democratic Alliance for Betterment of Hong Kong (DAB) accepted the view that a new CE elected to fill a vacancy arising prematurely should only serve for the residue of the predecessor's term. Since the issue had given rise to disputes in the community, DAB did not object to seeking an interpretation from NPCSC on the issue. He said that the Government could give an account to the Council, and not necessarily the Panel, before it requested NPCSC to give an interpretation on the term of office of the new CE.

22. Mr Howard YOUNG said that there were three ways to request NPCSC to give an interpretation –

- (a) NPCSC took the initiative to give an interpretation on an article of the Basic Law as in the case of the interpretation of Article 7 of Annex I and Article III of Annex II to the Basic Law;
- (b) the Administration requested NPCSC to give an interpretation as in the right of abode case; and
- (c) the Court of Final Appeal sought an interpretation from NPCSC under BL 158.

23. Irrespective of which way to be adopted, Mr YOUNG said that seeking an interpretation on the term of office of the new CE by NPCSC was inevitable. While he supported the merit of the motion, he proposed to replace the words “to consult the Panel on Constitutional Affairs (政制事務委員會諮詢意見)” with “give an account (交代)”.

24. Mr TONG Ka-wah said that the Government should explain to LegCo the basis for seeking an interpretation by NPCSC and the scope of the interpretation. Ms Margaret NG and Ms Audrey EU shared the same view. Ms NG said that the Basic Law had made no provision for HKSARG to seek an interpretation of the Basic Law from NPCSC. If the Administration decided to adopt this approach, it should explain to members the basis of its action.

25. Ms Audrey EU said that she did not support the amendment proposed by Mr Abraham SHEK, as members could only seek elucidation on any statement given by the Administration in Council. She considered that the Panel or House Committee was the more appropriate forum for the Administration to consult members.

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26. Dr Fernando CHEUNG asked whether SCA had discussed with Mainland officials on the possibility of requesting NPCSC to give an interpretation and if so, the names of the officials concerned.

27. Mr Martin LEE asked for the Administration's position towards the view of Mr Alan HOO, Chairman of the Basic Law Institute, that Hong Kong had no constitutional right to determine the length of term of its CE, given that BL 45 set out clearly that CPG had the power over the appointment of CE, which should include the term of office of CE.

28. In response to members, SCA said that the Administration noted Mr HOO's view but would not pursue the matter along that path. He said that after thorough study and deliberation of the legislative intent underlying the design laid down in the Basic Law in respect of the method for selecting the CE, the Administration came to the view that the term of a CE returned in a by-election was not five years but was the remainder of the term of the preceding CE. This view was supported by the Legislative Affairs Commission of the National People's Congress. In the past few days, some LegCo Members and members of political parties had relayed to the Administration the view that there should be clear provisions in local law to deal with the case of CE's office falling vacant before the term expired. The Administration would introduce an amendment to the Chief Executive Election Ordinance (CEEO) as soon as possible to clarify that the term of office of the new CE should be the remainder of the term of office of the preceding CE. At this stage, the Administration had not decided on whether an interpretation on BL 53 should be sought from NPCSC. SCA assured members that the Administration would report to members on matters of great public concern. As regards the discussions with Mainland officials on the issue, the Secretary for Justice (SJ) had already given an account to the House Committee at its special meeting on 15 March 2005.

29. Mr LEE Wing-tat said that he did not agree to the two amendments to the original motion proposed by Mr Abraham SHEK and Mr Howard YOUNG respectively. On Mr SHEK's amendment, Mr LEE pointed out that the Council was not a forum for consultation. On Mr YOUNG's amendment, Mr LEE said that giving an account to LegCo on the issue was different from consultation with Members. Mr LEE urged members to support the original motion.

30. Mr Howard YOUNG clarified that his amendment required the Government to give an account to LegCo before it requested NPCSC to give an interpretation. This would provide an opportunity for discussion with members. Mr Abraham SHEK said that he would withdraw his amendment as he supported the amendment proposed by Mr YOUNG.

31. Mr Howard YOUNG's amendment was put to vote. 26 members voted for and 20 voted against Mr YOUNG's amendment.



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32. The Chairman said that the motion moved by Mr LEE Wing-tat, as amended by Mr Howard YOUNG, was as follows –

“政制事務委員會要求特區政府就行政長官條例要求人大常委釋法之前，先向立法會交代”

33. The motion, as amended, was put to vote. 25 members voted for and 6 voted against the amended motion. The Chairman declared that the motion as amended was carried.

*(Post-meeting note: The wording of the original motion and amendments to the motion, which was tabled at the meeting, has been circulated to the Panel vide LC Paper No. CB(2)1144/04-05 on 24 March 2005)*

## **II. Election of a new Chief Executive**

(LC Paper No. CB(2)1077/04-05(01) – Paper provided by the Administration on "Election of a New Chief Executive Pursuant to Article 53 of the Basic Law : Timetable"

LC Paper No. CB(2)1121/04-05(01) – Paper provided by the Administration on "Election of a New Chief Executive Pursuant to Article 53 of the Basic Law : Amendments to the Chief Executive Election Ordinance (Cap. 569)"

34. At the invitation of the Chairman, SCA briefed members on the two papers which set out the timetable for electing a new CE and the proposed amendments to CEEO (the Bill).

### Term of office of a new CE

35. Dr YEUNG Sum said that Mr LEUNG Chun-ying, a Member of the Executive Council, had warned that seeking judicial review on the controversy surrounding the term of office of the new CE would deal a great blow to Hong Kong. Mr LEUNG had referred to the Link Reit case, where a legal challenge had caused a lengthy delay to plans to privatise government assets, and cautioned that initiation of a judicial review would prevent the election of a new CE from taking place on 10 July 2005 as scheduled. Dr YEUNG expressed concern that the remarks of Mr LEUNG had the effect of deterring people from seeking judicial review, and asked SCA to clarify whether the judicial review proceedings would affect the election of the new CE.

36. SCA said that the Government respected the right of individuals to seek judicial review in accordance with the law. The nature of the term of office of

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the new CE was different from the Reit Link case. The Administration would do everything that it could to ensure that the CE election would be held lawfully on 10 July 2005.

37. Mr Martin LEE said that in reply to a LegCo question at the Council meeting on 5 May 2004, SCA had replied that “the term of office of the CE, as prescribed in the Basic Law, is five years. This provision applied to any CE. There is no exception”. Less than a year, the Administration had made a U-turn on its previous position. Mr LEE asked whether HKSARG had consulted the Central Authorities before giving its reply to LegCo in May 2004 and whether NPCSC had queried the provision relating to the term of office of CE when CEEO was enacted in 2001. He also asked whether the confusion now created over the term of office of the new CE was a result of negligence on the part of the public officers concerned.

38. SCA clarified that he had consulted the Department of Justice by email before giving a reply to the LegCo question. He also confirmed that HKSARG had not consulted the Central Authorities in the process. At that time, the Administration applied the common law rules of statutory interpretation and considered that generally clear and unambiguous provisions should be interpreted according to their literal meaning. SCA further said that given that section 3 of CEEO which provided that the term of office of CE should be five years was consistent with BL 46, NPCSC had not raised any queries when the enactment of CEEO was reported to NPCSC for the record in 2001. Recently, new arguments over the term of office of the new CE had emerged. Taking into account the legal opinions of the Mainland, the earlier drafts of the Basic Law and documents which threw light on the discussions during the drafting process, the recollection of those who took part in the drafting, and the legislative intent underlying the design of the Basic Law, the Administration had adjusted its understanding on the provisions of the Basic Law on the term of the new CE.

39. SCA added that being a responsible Government and out of respect for the rule of law, HKSARG had admitted its mistake and explained its present stance on the issue to LegCo and members of the public in the first instance. He and his colleagues had, based on their best knowledge at that time, explained the Administration’s position in respect of CE’s term of office when scrutinizing the Chief Executive Election Bill in 2001, and replying to the LegCo question in May 2004. It was not until March 2005 that new information and arguments concerning the term of office of CE came to light. At present, the pressing task of the Administration was to introduce the Bill to reflect more accurately the legislative intent of BL 53. It was unfortunate that the issue did not arouse any public debate until the vacancy in the office of CE actually occurred.

40. Mr Albert CHENG said that the Administration should learn a lesson from this incident and should, in future, consult the Central Authorities on matters relating to CE election before giving a formal response to LegCo. SCA

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responded that HKSARG would continue to exercise autonomy on matters within its jurisdiction without consulting the Central Authorities. HKSARG would, however, enhance its alertness to provisions concerning affairs which were the responsibility of CPG, and which concerned the relationship between CPG and the Region. If necessary, HKSARG would seek the views of the Central Authorities on these matters.

41. Dr YEUNG Sum expressed regret that the Government had changed its position. He said that the U-turn raised serious questions about the integrity of the Government's law-making process and undermined Hong Kong's autonomy. He considered that there was no legal basis for amending CEEA and the amendment would be subject to legal challenge even if passed. Dr YEUNG said that in order to minimize damage to Hong Kong's legal system, the Government should persuade NPCSC to amend the Basic Law to expressly provide for the term of office of a CE elected to fill a vacancy before expiry of the five-year term. He urged the Administration to convey the message and the view of the legal profession to the Central Authorities for consideration.

42. SCA said that SJ had already reflected the views of local legal professionals to Mainland legal experts on recent occasions. The statements recently issued by the two legal professional bodies were also forwarded to the Central Authorities. SCA said that having understood the legislative intent underlying the design laid down in the Basic Law in respect of the CE election system, the Bill would reflect that legislative intent. The Government disagreed that there was a need to amend the Basic Law.

43. Mr TONG Ka-wah asked whether the Administration would advise candidates running for the EC subsector by-elections and the CE election of the term of office of the new CE, if the Bill had not been passed by LegCo when the nomination period began. Mr TONG further asked whether the election of the new CE would be held as scheduled if the Bill was not passed by LegCo or the outcome of the judicial review was that the Bill contravened the Basic Law.

44. SCA said that the Administration had made clear its stance that the term of office of the new CE so elected should be the remainder of the term of the preceding CE. The Bill would be introduced into LegCo on 6 April 2005. He would continue to communicate with Members with a view to gaining Members' support on the amendment bill. He also hoped that the Bill would be passed before the nomination for CE candidates took place.

45. Ms Emily LAU said that the Hong Kong Bar Association and the Law Society of Hong Kong had made clear their stance that the term of office of the new CE should be five years. Ms LAU urged the Government to arrange a meeting for the legal profession with the relevant parties with a view to resolving the issue. SCA said that he would relay the message to SJ.

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The Election Committee (EC)

46. Ms Audrey EU said that the current EC had a term of five years which would expire on 13 July 2006. Given that the Administration had said that a new EC would not be formed until early 2007 for the purpose of electing the third term CE, Ms EU asked whether there was any legal basis for not filling the vacuum left by the current EC after 13 July 2005. She expressed concern that in the event that the office of CE became vacant after 13 July 2005, there would be no EC in existence to perform the constitutional duty of electing a new CE.

47. SCA explained that the existing EC was formed in 2000 for the purpose of selecting six LegCo Members in accordance with Annex II to the Basic Law. Section 8 of CEEO provided that the EC constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) should be continued and regarded as having been constituted as the first EC under CEEO. Section 7 of CEEO stipulated that the second term CE should be elected by the EC as prescribed in Annex I to the Basic Law. The term of the current EC would expire on 13 July 2005, while the office of the second term CE would expire on 30 June 2007. SCA said that historical development of the formation of EC and the selection of CE had led to a gap between expiry of the terms of the existing EC and the second term CE respectively.

48. SCA further said that the Administration would not lightly establish a new EC to succeed the current EC after expiry of its term, given the possible changes to the electoral method for selecting the third term CE in 2007. The Administration was inclined to establish a new EC by early 2007 and there would be a vacuum period of about 18 months for the EC. SCA said that in the unlikely event that a new EC was required to be established after 13 July 2005 for the purpose of electing a CE to fill a vacancy before 1 July 2007, the Administration would need to address relevant issues to ensure that the method for selecting the CE in 2007 could still be revised.

49. Mr LEUNG Yiu-chung said that SCA and SJ were making contradictory remarks about EC. On the one hand, SJ had said that the current EC was responsible for handling any by-election of the second term CE in order to ensure consistency and a stable transition. On the other hand, SCA had said that a new EC was required to be established for the purpose of electing a CE to fill the office left vacant after 13 July during the second term CE.

50. SCA said that SJ had explained that the legislative intent underlying the design laid down in the Basic Law in respect of the CE election system was that the term of EC should be the same as that of the CE, so that the EC might handle any by-election that might have to be conducted. In practice, there was a gap between the terms of EC and CE respectively. SCA added that in his view, a new EC would be formed during the second term CE only if the situation warranted. In the event that the formation of a new EC became inevitable, its function would

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only cover the remainder of the second term CE when the office of CE again became vacant. He and SJ held the same view that the legislative intent of the original design should still hold.

51. Ms Margaret NG stressed that BL 53 which stipulated that a new CE should be selected within six months after the office of CE became vacant must be complied with. She urged the Administration to form a new EC to fill the vacuum left by the current EC so as to avoid legal complications in the event that a by-election of CE became necessary after 13 July 2005. Ms Emily LAU expressed similar concern and pointed out that in the event that a candidate withdrew from the election, the election for a new CE might need to be postponed.

52. Deputy Solicitor General responded that section 19 of CEEO provided that a candidate could withdraw his candidature at any time before the close of nominations.

53. SCA said that the Administration was aware of the risks involved in having a vacuum period for the term of office of EC when the Chief Executive Election Bill was scrutinized. The risks and their implications had already been conveyed to the Central Authorities and HKSARG would continue to exchange views with them. HKSARG maintained its position that a new five-year term EC should not be formed lightly, having regard to the implications it could have brought to the method for selecting the third term CE in 2007. SCA further said that the Administration would do everything possible to ensure that there would be a smooth and fair election of a new CE on 10 July 2005. In the unlikely event that a CE could not be elected on or before 13 July 2005, the Chief Secretary for Administration, Financial Secretary or SJ would temporarily assumed the duties of CE to ensure effective governance.

54. Mr LEE Wing-tat said that Annex I to the Basic Law required that candidates for the office of CE could be nominated jointly by not less than 100 members of EC. Pointing out that at the last CE election, some 700 members of EC had nominated the same candidate, Mr LEE asked whether the Administration would amend CEEO to cap the nomination ceiling for any one candidate to say 150 members of EC, so as to allow more candidates to run for an election. Mr LEE also asked whether such an amendment to CEEO would contravene the Basic Law and whether the Administration had consulted Mainland legal experts on the issue.

55. SCA said that the requirement that the nomination for the candidature of CE should be not less than 100 members of EC had been specified in CEEO in order to comply with the Basic Law. The Bill to be introduced sought to clarify the term of office of a new CE only. The Administration had not discussed the issue raised by Mr LEE with any Mainland legal experts. The issue would be considered by the Constitutional Development Task Force in the context of the electoral method for the selection of CE in 2007.

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Electoral arrangements

56. Mr Martin LEE said that in order to comply with the relevant provisions of CEEO, the Administration had decided that the polling day to elect a new CE would be 10 July 2005, just three days before the expiry of the term of office of EC. Mr LEE pointed out that in case of inclement weather, such as typhoon or black rainstorm, the election would have to be called off. He asked how the Administration would deal with the election in such circumstances and whether it would influence the decision of the Hong Kong Observatory.

57. SCA said that the Hong Kong Observatory's foremost concern was the safety of Hong Kong residents. In the event of inclement weather, the election of the new CE could be postponed by one or two days. Chief Electoral Officer supplemented that the Electoral Affairs Commission (EAC) and the Registration and Electoral Office would act in accordance with the law and reschedule a suitable day for the election to be held after 10 July 2005, if necessary.

58. Solicitor General informed members that section 21 of CEEO specified that EAC could direct the postponement of a poll or the counting of votes in respect of a poll, if, before commencement of polling or counting, EAC was of the opinion that the polling or counting would be obstructed on various grounds.

59. Mr LEUNG Yiu-chung said that if a poll was postponed, the day to be rescheduled for polling should, by convention, be a Sunday and not a weekday following the original polling day.

60. SCA explained that in response to the concern expressed by some members of the Bills Committee on the Chief Executive Election Bill that the date of election should not be appointed by a CE and should be expressly specified in law, the Administration had proposed that the date of the poll at an election to return a candidate for appointment to fill the vacancy in the office of CE shall, where the 120<sup>th</sup> day after the date on which the office became vacant if it was a Sunday, and if not, held on the Sunday immediately following that day. It was also stipulated in law that if a poll was postponed, another date was to be appointed by EAC. Given the election of CE was an important event, SCA held the view that the election should be held as soon as possible if it could not be held as originally scheduled.

61. Deputy Solicitor General supplemented that section 65 of the Electoral Procedure (Chief Executive Election) Regulation provided that if a poll for CE election was postponed or the counting of the votes was adjourned, EAC should appoint a date within two prescribed periods. In most cases the polling or the counting must be held within two days of the postponement or adjournment. There was a longer period for other circumstances, i.e. 14 days.

Action

62. Mr LEUNG Kwok-hung held the view that the original or rescheduled polling day should be a Sunday, as there was a possibility that the third term CE would be elected by universal suffrage. SCA responded that NPCSC had decided in April 2004 that the election of the third term CE should not be by means of universal suffrage.

63. The Deputy Chairman said that BL 53 provided that in the event that the office of CE became vacant, a new CE should be selected within six months. Section 10 of CEEO, however, required that the election to return a candidate for appointment to fill the vacancy in the office of CE should be held on the 120<sup>th</sup> day after the date on which the office became vacant if it was a Sunday, and if not, held on the Sunday immediately following that day. He asked about the rationale for requiring the election to be held two months before the six-month limit stipulated in BL 53, and expressed concern whether there was sufficient time for dealing with any election petitions before the term of office of the current EC expired on 13 July 2005.

64. SCA said that when the Bills Committee scrutinized the Chief Executive Election Bill, there was discussion on whether the election of a new CE should be held on the 120<sup>th</sup> or the 180<sup>th</sup> day after the date on which his office became vacant. It was decided that four months would be required to make arrangements for the election and two months to deal with post-election matters such as handling election petitions if necessary. SCA further said that the expiry of the term of office of the current EC on 13 July 2005 would not affect the lodging of election petitions which would be handled in accordance with CEEO.

**III. Matters relating to election-related publicity materials**

**IV. Application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive**

65. Members agreed to defer the discussion of the above two items to the next meeting

66. The meeting ended at 5:45 pm.