

立法會
Legislative Council

LC Paper No. CB(2)1955/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 18 April 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
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
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 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 Miriam LAU Kin-ye, 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 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
Hon CHEUNG Hok-ming, SBS, JP
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**

: Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Daniel LAM Wai-keung, BBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS

**Public officers
attending**

: Item IV

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 LAM Man-ho
Chief Electoral Officer

Item V

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement MAK Ching-hung
Permanent Secretary for Constitutional Affairs

Mr Robin IP Man-fai
Private Secretary to Chief Executive

Ms Doris HO Pui-ling
Principal Assistant Secretary for Constitutional Affairs

Item VI

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Miss May CHAN Wing-shiu
Principal Assistant Secretary for Constitutional Affairs

Mr LAM Man-ho
Chief Electoral Officer

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

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

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(2)1166/04-05 – Minutes of special meeting on 15 January 2005

LC Paper No. CB(2)1245/04-05 – Minutes of meeting on 21 February 2005)

The minutes of the meetings held on 15 January 2005 and 21 February 2005 were confirmed.

Action

II. Information papers issued since the last meeting

2. Members noted the following papers which had been issued since the last meeting –

- (a) LC Paper No. CB(2)1143/04-05(01) – Case referred by the Complaints Division concerning voting rights of prisoners;
- (b) LC Paper No. CB(2)1225/04-05 – Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections; and
- (c) LC Paper No. CB(2)1302/04-05(01) – Press release on "Establishment of Advisory Committee on Post-Office Employment for Principal Officials under the Accountability System".

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1279/04-05(01) – List of outstanding items for discussion)

Mechanism for amending the Basic Law

3. Mr LEUNG Yiu-chung expressed concern about the lack of progress of the above item which was last deliberated by the Panel on 17 July 2001. Secretary for Constitutional Affairs (SCA) said that the Administration was not yet in a position to update members on the item. Members agreed to deal with the item when more information was available.

Eligibility of Election Committee (EC) members to vote at the Chief Executive (CE) election

4. Mr Albert HO said that he had written to the Electoral Affairs Commission (EAC) about the eligibility of former members of District Council (DC) or the Chinese People's Political Consultative Conference (CPPCC), whose names had remained in the EC Final Register, to subscribe to nomination and to vote at the CE election on 10 July 2005. Mr HO said that he was dissatisfied with the reply given by the Chairman of EAC. The Chairman of EAC had responded that the names of these persons would remain in the Final Register because there was no mechanism for their names to be struck off from the register, and that they should make their own judgment as to whether they had been disqualified to subscribe to nomination and to vote at the CE election. The Chairman of EAC had also responded that a person who had been disqualified because he had ceased to have a substantial connection with the subsector concerned, but had voted in the election, would breach the law. Mr HO questioned why EAC did not give a clear answer so that former members of DC and CPPCC would know with certainty whether they were eligible to vote at the CE election.

Action

5. SCA explained that section 4(4) of the Schedule to the Chief Executive Election Ordinance (CEEO) (Cap. 569) provided that an Electoral Registration Officer might strike out the names of an EC member from the Final Register under three conditions, i.e. when the EC member died, resigned or ceased to be registered as an elector for a geographical constituency (GC). As an EC member who ceased to be a member of DC or CPPCC did not fall under these three categories, his name would remain in the Final Register. SCA said that he noted that the Chairman of EAC had already given a written reply to Mr HO and he had nothing further to add.

6. Mr Albert HO and Mr LEE Wing-tat said that the Constitutional Affairs Bureau (CAB) should have its own view on the matter. They pointed out that uncertainty could lead to litigation. Mr CHEUNG Man-kwong pointed out that a person who had ceased to be a Member of the Legislative Council (LegCo) would cease to be an EC member. He expressed concern about the different arrangement.

7. After discussion, members agreed to discuss the following items at the next meeting on 30 May 2005 –

- (a) Review of the conduct of the 2004 LegCo election – proposed by the Administration;
- (b) Voting right of prisoners – the item was referred by the Complaints Division;
- (c) Eligibility of EC members to vote at the CE election – paragraphs 4-6 above refer; and
- (d) Application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive – paragraph 68 below refers.

IV. Matters relating to the election of the Chief Executive

(LC Paper No. CB(2)1295/04-05 – Proposed Guidelines on Election-related Activities in respect of the Chief Executive Elections

LC Paper No. CB(2)1293/04-05(01) – Paper entitled "Proposed Guidelines on Election-related Activities in respect of the Chief Executive Elections" provided by the Administration)

8. At the invitation of the Chairman, Chief Electoral Officer (CEO) briefed the Panel on the Proposed Guidelines on Election-related Activities in respect of the Chief Executive Elections (Proposed Guidelines) as set out in the paper.

Public consultation

9. Miss CHAN Yuen-han expressed concern about the short consultation period on the Proposed Guidelines. SCA explained that given that there were only

Action

four months for making preparatory arrangements for the CE election, the consultation period was two weeks, slightly shorter than the norm of about one month. Nevertheless, the Proposed Guidelines were modelled basically on those used for the 2002 CE election, with suitable amendments to reflect operational experience and suggestions for improvements obtained from recent elections. CEO added that new provisions in the guidelines for the 2003 DC elections and the 2004 Legislative election were adopted in the Proposed Guidelines where appropriate. In further response to Miss CHAN, CEO said that arrangements for public consultation included free public access to the Proposed Guidelines from the EAC website and all District Offices, invitations of public submissions by post, email and fax, and a public forum to receive oral representations on 25 April 2005.

The Election Committee

10. Ms Margaret NG asked whether the Proposed Guidelines could be amended to cap the number of subscribers for nominating a CE candidate.

11. SCA explained that it was necessary to amend the CEEO if a ceiling was introduced to limit the number of subscribers for nominating a CE candidate. He said that both DC and LegCo elections had specified the maximum number of subscribers for nominating their candidates in their respective ordinances. Any change to the ceiling for nomination would involve an amendment to the relevant ordinances. SCA further said that the Task Force on Constitutional Development (the Task Force) had received other views such as reducing the minimum number of subscribers for nominating a CE candidate. He said that the question of capping the nomination ceiling would be dealt with in the context of the ongoing review of the methods for selecting the CE in 2007 and forming the LegCo in 2008 (the “electoral methods”).

Attendance of public functions by civil servants and Principal Officials (POs)

12. Mr LEE Wing-tat referred to paragraphs 19.9 to 19.12 of the Proposed Guidelines regarding rules for POs. He expressed concern that there would be conflict of interest if POs were allowed to participate in election-related activities. He said that in the United Kingdom, the incumbent Prime Minister, if deciding to run for the next election, would resign and let the civil servants run the Government starting from a specified date in order to avoid any conflict of interest. He pointed out that if POs were allowed to assist any incumbent CE standing for election in election-related activities, this would give the CE an unfair advantage over other candidates. For instance, the POs would have more opportunities to explain the election platform of the CE to the public. This ran against the “equal time” principle which should apply to all CE candidates.

13. SCA said that aside from the UK electoral system which was cited by the member, he was aware that different countries had different practices and some countries allowed the head of government to continue to lead the government while the election was going on. In Hong Kong, the incumbent CE was not required to

Action

resign if he decided to run for the next term. On the other hand, POs who decided to run for the CE election must resign.

14. SCA further said that under the accountability system implemented since 2002, POs were political appointees who were allowed to participate in election-related activities including those of DC and LegCo elections, as set out in the relevant guidelines. Paragraph 19.9 to 19.12 of the Proposed Guidelines sought to alert a PO who intended to participate in election-related activities that great care should be taken to ensure that there was no actual or potential conflict of interest with the business of the Government or his own official duties.

15. Ms Margaret NG said that the aim of the guidelines was to provide a code of conduct for conducting election-related activities based on the principle of fairness and equality. The Proposed Guidelines, however, were absurd in that POs were allowed to campaign for a candidate while government officials were forbidden from doing so as set out in paragraphs 19.9 to 19.12. She questioned whether POs were given too much freedom, and whether by taking part in election-related activities, there would be conflict of interest with POs' own official duties. She also questioned why POs were not regarded as "government officials" under paragraph 19.9.

16. SCA said that he could not accept Ms NG's comment that the Proposed Guidelines were absurd. He explained that the design of the accountability system provided two tiers of public officers, namely "civil servants" and POs. "Civil servants" were to remain politically neutral while POs, being political appointees, could have their own political inclination, participate in election-related activities and shoulder political responsibilities where necessary. According to guidelines issued by the Civil Service Bureau, certain Government officials, namely Directorate Officers, Administrative Officers, Police Officers and Information Officers and those officers acting in these grades and ranks with a view to substantive appointment thereto under the Civil Service system, might be particularly susceptible to accusations of bias. They should not participate in any form of electioneering. Other civil servants wishing to participate in electioneering should observe the rules and guidelines issued by the Civil Service Bureau. POs, on the other hand, had to comply with a "Code for Principal Officials under the Accountability System" published in 2002.

17. Dr YEUNG Sum said that while POs should not be deprived of the right to participate in political activities, a PO who showed support for a CE candidate by attending an election-related activity would provide an unfair advantage to the CE candidate over other candidates.

18. SCA said that the electoral culture of Hong Kong was evolving. There was increasing public participation in the various levels of election after the reunification. The 2004 LegCo election had recorded a noticeable increase in the number of candidates and voters. He also noticed that leaders of political parties and groups had lent support to some candidates in the DC and LegCo elections by

Action

attending public functions which were also attended by the candidates concerned. Some leaders had openly made remarks on radio programmes to support candidates from their political parties or groups. Some LegCo members had also done likewise. SCA said that Hong Kong people were accustomed to political figures expressing support for one another. In further response to Dr YEUNG, SCA said that leaders of political parties or groups, like POs, were public figures who could influence the media and also attract media attention. He did not see any problems for POs or political leaders attending election-related activities in support of a particular candidate.

19. Mr LAU Kong-wah said that paragraph 19.12 of the Proposed Guidelines required that POs should not use any public resources for any election-related activities. He asked whether a PO would breach the guidelines if he, in engaging in election-related activities, required his subordinates to assist him. SCA said that a PO who wished to show his support to a CE candidate by attending election-related activities should not involve his subordinates who were civil servants or government officials. He said that the principle laid down in paragraph 19.12 of the Proposed Guidelines was very clear.

20. Mr LAU Kong-wah pointed out that the CE – PO relationship was that between a superior and a subordinate. He expressed concern that there would be conflict of interest if a CE who wished to run for a subsequent term requested his POs to campaign for him in return for their appointment for another term if he was re-elected. SCA responded that the question was a hypothetical one. A candidate for the CE election should adhere to and respect the electoral law. It was for an elected candidate to decide how his cabinet would be constituted.

21. Ms Emily LAU said that the Proposed Guidelines had not specified when a PO, who wished to stand for election, should resign from the office. She asked about the consequences of a PO who engaged actively in election-related activities before he publicly declared his intention to stand for election.

22. SCA explained that a PO was disqualified from being nominated unless he had resigned from the office. SCA reiterated that any person who intended to stand for a CE election, irrespective of whether he was a public officer, should follow the electoral law and guidelines.

23. Mr Jeffrey LAM asked whether senior officials who were members of a candidate's campaign team had to resign from office and if not, whether a portion of their salary would be counted as election expenses. SCA said that as explained earlier, POs could participate in election-related activities. However, they should exercise great care to ensure that their support for electioneering activities of a candidate would not give rise to any conflict of interest with their official duties. SCA further said that voluntary services provided to a candidate by any person, irrespective of whether he is a PO, could be excluded from being counted as election expenses.

Action

Election forums

24. Ms Emily LAU raised two questions relating to election forums. First, whether a person could organise an election forum before he was nominated as a candidate or before he had secured sufficient subscribers for nomination. Second, whether a candidate could decline attendance at an election forum and whether there were any guidelines for organisers if only one candidate was willing to attend an election forum.

25. CEO said that paragraphs 11.15 to 11.17 of the Proposed Guidelines stipulated that the principles of “equal time” and “no unfair advantage” were applicable to all candidates. Any organisations which organised election forums should observe these principles and it was a matter for individual candidates to decide whether to attend such forums. In the event of less than two candidates attending a forum, it was up to the organisers concerned to decide whether to hold the forum as scheduled. He was aware that in the 2004 LegCo election, a forum was held despite there was only one candidate attending.

26. Ms Emily LAU further asked whether the media could organise forums before nomination of candidates taking place, and whether a forum could be organised in the event that only one candidate was eligible for nomination. She noted that in the past CE election, a forum had not been organised because it was an uncontested election. She held the view that the Proposed Guidelines should reflect the merit of election forums, which should be held irrespective of the number of candidates standing for election. In addition, candidates should actively participate at such forums so as to face the public. She said that paragraphs 11.15 to 11.17 of the Proposed Guidelines regarding election forums should be improved to provide more specific guidelines for candidates and organisers to follow.

27. SCA said that in the past few weeks, he had received views on whether there was a need for conducting a poll, election forums, and electioneering activities in an uncontested election. He said that these views would be addressed in the context of the current review of the “electoral methods”. SCA said that he shared Ms LAU’s view that candidates should take part in election forums to enable the public to be apprised of their election platforms. He would relay Ms LAU’s views to EAC.

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Election expenses

28. Mr LEUNG Kwok-hung enquired whether the expenses incurred for the production of a leaflet by a third party for the purpose of prejudicing the election of a candidate so that his opponent would benefit would be counted towards the election expenses of the candidate or his opponent. SCA said that he could not give an answer on behalf of EAC. To his understanding, EAC would examine the fact of each case before deciding how it should be handled. He would reflect the view of Mr LEUNG to EAC.

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Action

29. Mr LAU Kong-wah pointed out the electorate of the CE election was the 800 EC members. He sought clarification as to whether expenses incurred for electioneering activities not targeting at EC members would be counted as election expenses. SCA said that the CE election was a major event that would attract a lot of media coverage and publicity. It was likely for a candidate to target his electioneering campaign not only at the 800 EC members but also the community at large. SCA said that whether the expenses incurred for a particular activity should be regarded as an election expense had to be determined by EAC on a case by case basis. He would relay Mr LAU's concern to EAC.

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30. Mr CHAN Kam-lam asked about the mechanism under which the election expenses of a candidate would be monitored once he declared his intention to stand for election. He also enquired the criteria adopted by EAC in determining whether an activity was election-related and should therefore be counted towards the election expenses. He pointed out that there were activities not directly related to an election but had the effect of promoting the election of a candidate. Under the circumstances, he asked how EAC could ensure that a candidate would declare such expenses. He also expressed concern that a candidate who declared his intention to stand for election well in advance of his opponents would have greater coverage in the media and an unfair advantage over other candidates. He said that there was a need to address these issues given that the guidelines were only meant for reference.

31. SCA said that a person had to keep an accurate account of all election expenses incurred and donations received once he had publicly declared his intention to stand for election. It was for individual candidates to decide when they should make known their intention to stand for election to the public. SCA noted that the media had respected and applied the "equal time" principle to candidates contesting the election. He said that over the years EAC had accumulated valuable experience to determine whether a particular item of expenditure should be regarded as an election expense. Although the guidelines were for reference, candidates who did not observe or respect the rules set out therein would be subject to public sanctions.

32. CEO said that election expenses and donations of candidates were monitored by the mechanism provided in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (ECICO) and the guidelines promulgated for the CE election. Under section 2 of ECICO, the term "candidates" relating to election expenses and donations included a person who had publicly declared an intention to stand for election at any time before the close of the nominations for the election, regardless of whether he had submitted his nomination form or after submission of the nomination form, his nomination was ruled invalid by the Returning Officer. By virtue of section 37 of ECICO, a candidate must keep an accurate account of all election expenses incurred and donations (whether in cash or in kind) received, and submit to the CEO a return and declaration of election expenses and donations in a specified form within a period specified in law. The returns would be made

Action

available at the Registration and Electoral Office (REO) for public inspection. If the return submitted by a candidate omitted an item or a complaint was received, EAC or its Complaints Committee might, after consideration, refer the cases to the relevant authorities for investigation and prosecution.

33. CEO further said that a list of common expenditure items which could be counted towards election expenses was at Appendix K to the Proposed Guidelines. The list was only illustrative and was not exhaustive. Whether the conduct of a candidate should be regarded as an election activity and whether a particular item of expenditure should be regarded as an election expense was a question of fact to be answered in the circumstances of each case. He assured members that there was an effective mechanism to monitor the election expenses and donations of candidates.

34. Ms Margaret NG expressed concern that a person who had publicly declared an intention to stand for election, but had not submitted his nomination form, was required to submit a return and declaration of election expenses and donations. She noted that it was an offence under section 38 of ECICO if the person failed to comply with the requirement. She requested the Administration to provide a written response on the following –

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- (a) to clarify whether the legislative intent was to impose such a requirement on such a person and if so the policy purpose for imposing such a requirement;
- (b) if the legislative intent was not to impose such a requirement, to consider whether an amendment to ECICO should be introduced to rectify the situation; and
- (c) to provide the number of past prosecution cases taken against persons who had not run in the election after publicly declaring his intention to stand for election, and who had failed to submit the return and declaration of election expenses and donations in contravention of section 38 of ECICO.

LSD

35. SCA said that he would reflect Ms NG's concern to REO. Ms NG requested the Legal Service Division to give views on the Administration's written response when received.

(Post-meeting note: The Administration's reply was issued to members vide LC Paper No. CB(2)1589/04-05(01) on 18 May 2005.)

Action

V. Remuneration and post-office arrangements for the Chief Executive
(LC Paper No. CB(2)1252/04-05(01) – Paper provided by the Administration on "Establishment of the Independent Commission on Remuneration Package and Post-Office Arrangements for the Chief Executive of the HKSAR")

LC Paper No. CB(2)1252/04-05(02) – Press release on "Appointment of independent commission on remuneration and post-office arrangements for the Chief Executive")

36. At the invitation of the Chairman, SCA introduced the paper on the establishment of the Independent Commission on Remuneration Package and Post-Office Arrangements for the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) (the Independent Commission) and its terms of reference.

Services provided to the former CE

37. The Private Secretary to Chief Executive (PS/CE) said that pending the recommendations of the Independent Commission to be submitted in about two months' time, transitional arrangements had been made to provide post-office services for Mr TUNG Chee-hwa in his capacity as the former CE of HKSAR. PS/CE said that the services provided included, among others, provision of a car and security services. Provision of these services was met by redeployment of resources from within the Government, and no additional resources were required.

Adm 38. Ms Emily LAU asked about the details of the services provided to Mr TUNG. PS/CE undertook to provide a written response for members' reference.

(Post-meeting note: The Administration's reply was issued to members vide LC Paper No. CB(2)1952/04-05(01) on 15 June 2005.)

Restriction on former CE's activities

39. Mr CHEUNG Man-kwong and Dr YEUNG Sum referred to the terms of reference in paragraph 3(b) of the paper and asked whether the rules to be drawn up by the Independent Commission for application to a former CE in respect of his participation in political or commercial/professional activities after leaving office would apply to Mr TUNG. If so, whether Mr TUNG had the right to refuse to comply with the rules given that they were imposed on him retrospectively. They said that Mr TUNG had served as CE for seven years and yet, no rules had been drawn up to restrict his post-office activities. They asked whether there was negligence on the part of the Government and the public officers concerned.

40. SCA explained that the task of the Independent Commission was to study and recommend on the long-term policies in respect of a former CE's post-office activities. If the proposals recommended by the Independent Commission were accepted by the Administration, the Administration would consider how to

Action

implement the new arrangements. SCA added that the rules on post-office activities would apply to future CEs. It was unfair and difficult to impose the restrictions on Mr TUNG retrospectively. Nevertheless, Mr TUNG had publicly announced that he would not participate in business activities and would only serve the country and Hong Kong in future.

41. SCA further said that the review of the “electoral methods” had been given top priority over other issues under the responsibility of the bureau. Nevertheless, CAB had been collecting views on issues relating to the post-office activities of a former CE and considering how to take the matter forward. This was why CAB was able to respond quickly to this issue following the sudden departure of Mr TUNG. Amidst a lot of necessary follow-up work after Mr TUNG’s resignation, such as arrangements for the election of a new CE and introduction of an amendment bill to LegCo, CAB had managed to establish the Independent Commission in a relatively short time.

42. Miss CHAN Yuen-han said that it would be useful for the Independent Commission to make reference to overseas practices concerning restriction of activities on former leaders of the government. She asked whether members of the Independent Commission would appear before the Panel to exchange views with members on the subject. SCA said that he believed the Independent Commission would make reference to overseas practices as and when necessary. To his understanding, the Independent Commission would make arrangements to meet with LegCo Members shortly.

CE’s official residence

43. Mr Patrick LAU asked about the future of the Government House, i.e. whether it would be used as the office cum residence of the new CE. He also asked whether a policy should be formulated on the official residence for future CEs. Ms Emily LAU said that such a policy should be formulated by the Government, and not individual CEs. She pointed out that renting a flat for Mr TUNG as his official residence had incurred extra public expenditure. She held the view that Mr TUNG had been given preferential treatment, given that the three Secretaries of Departments, if they decided not to take up the designated official residence, would not receive payment in lieu. She asked who or which authority would decide on the issue of the official residence for the new CE.

44. SCA responded that the usage of the Government House was outside the terms of reference of the Independent Commission, and that the matter would be handled by the Administration internally. He said that prior to the reunification, Government House had been used as the official residence cum office for Governors. The Architectural Services Department (ASD) would meet the cost for the refurbishment of the Government House for the CE’s residence.

45. PS/CE supplemented that as there was no plan and no provision to build a new official residence for the new CE, Government House was the only available

Action

option. ASD was carrying out planning works on the security, communications, electrical and ventilation facilities of the Government House as part of the routine maintenance programme.

46. Mr TONG Ka-wah said that the new CE would serve two years only. He cautioned about prudent spending of public money given that the Government had to keep several luxurious flats at the same time, i.e. the Government House, Mr TUNG's flat, and a new flat for the new CE if he chose to. He said that in the absence of a policy on the official residence of CE, it was difficult for LegCo to monitor the Government's expenditure in this respect.

47. SCA said that he had already responded to members' questions relating to the estimates for carrying out renovating work for the Government House at the special Finance Committee meeting held the week before. He assured members that approval of LegCo would be sought as appropriate if there was any substantial new expenditure.

Remuneration package for CE

48. Ms Emily LAU queried the need for the Independent Commission to review the remuneration package for the new CE, given that he was to serve the remainder of the term of the preceding CE. She also enquired whether similar review would be conducted on POs.

49. SCA clarified that there was no intention to review the remuneration package of POs at the moment. He explained that following the implementation of the accountability system in 2002, the existing salary structure for CE and POs had become anomalous, as the CE received a lower salary than the total cash remuneration of the POs. The monthly take-home pay for Mr TUNG was \$244,000 before he resigned, which was less than the monthly salaries of the Chief Secretary for Administration and bureau secretaries which were \$297,000 and \$268,000 respectively, although in practice, the cash value of Mr TUNG's remuneration package, which included a 25% gratuity, passage allowance and more leave, exceeded that of the POs.

50. Dr YEUNG Sum said that if the new CE elected on 10 July 2005 could earn more money than his predecessor, then the remainder of the term concept for the new CE would not hold ground. Mr Albert HO said that it would be illogical to have different remuneration packages for the two CEs serving the same term. He queried the need for conducting the review at this point in time. He said that if the purpose of the review was to remove any anomaly in the pay structure of CE and POs, then other areas of anomalies should also be addressed. For instance, CE should be subject to the Prevention of Bribery Ordinance (Cap. 201) as the POs. He further said that Mr TUNG had set bad precedents in many areas after he assumed the office of CE. Among them were the recruitment of personal assistant and chauffeur from his former company to the CE's office, renting of a residential flat as his official residence thereby incurring additional expenses on security.

Action

51. SCA said that the Panel was aware of the need to review the remuneration package for CE in 2002 following the implementation of the accountability system which had resulted in an anomaly in the pay structure. At that time, Mr TUNG decided not to align his remuneration package together with the POs. Members had noted that the salary of the CE should be reviewed at a later stage. It was therefore decided that the Independent Commission should be tasked to review among other issues, the need to re-design the remuneration package for CE. As to whether the new CE's remuneration package would be re-designed, it would be subject to the Independent Commission's recommendation and the acceptance of the recommendations by the Administration. SCA assured members that, as far as possible, the review would not seek to increase the burden of taxpayers. As regards the application of Prevention of Bribery Ordinance on CE, SCA said that the subject would be discussed at the next Panel meeting.

52. Mr LEUNG Yiu-chung asked about the authority and the process for deciding whether or not the Independent Commission's recommendations should be accepted.

53. SCA said that the proposals recommended by the Independent Commission would be submitted to the Executive Council for consideration. The Executive Council would take into account all relevant factors such as the public interest, resource implications, and whether the new arrangements would be effective, before deciding whether or not to accept the recommendations.

54. The Chairman asked about the appointment conditions of the former CE and whether he had entered into any employment contract with the Government. SCA said that the remuneration package for the first term CE was reviewed by an independent body chaired also by Mr WONG Po-yan. The appointment conditions of CE were modelled on that of the Governor. Given the special constitutional status of CE, no employment contract was entered into between the two parties. The appointment conditions of CE, however, had been made public.

The Independent Commission

55. Mr TONG Ka-wah said that members of the Independent Commission lacked the mandate of the people. He questioned why SCA considered it appropriate for the study on the remuneration package and post-office arrangements for CE to be entrusted to the Independent Commission and not a body which had the support of the people.

56. SCA said that the four members of the Independent Commission were highly respected representatives from the academic, professional and the business sectors. One of the members was also a former LegCo and Executive Member. Given their broad experience in public service and expertise in human resource management, they were able to give independent and unbiased advice to the Government. The Administration would report to the Panel the recommendations

Action

made by the Independent Commission. Any substantial expenditure arising from the new arrangements would also require the funding approval of LegCo.

57. Mr CHEUNG Man-kwong asked about the basis for public confidence in members of the Independent Commission not transferring benefits to the former CE and the new CE. In his view, the four members should make public their relationship with the former CE. For instance, whether any of them had received an honorary award or commendation, or any political or economic benefits from the former CE.

58. SCA said that given that members of the Independent Commission were well-known public figures and had extensive experience in public service, there was no reason to suspect that they would do favours to the former and future CEs. In addition, the recommendations of the Independent Commission had to be accepted by the Government and would be subject to LegCo and public scrutiny. SCA further said that information on honorary award or commendation from the Government after the reunification was public information. He considered it unfair for Mr CHEUNG to question the independence of the four members before the Independent Commission had completed its work and submitted recommendations.

VI. Matters relating to election-related publicity materials

(LC Paper No. CB(2)1092/04-05(02) – Case referred by the Complaints Division)

LC Paper No. CB(2)1092/04-05(03) – Paper provided by the Administration)

59. At the invitation of the Chairman, CEO introduced the paper which proposed three options to reduce paper consumption in distributing election-related publicity materials to electors. The differences of the three options were highlighted as follows –

Option A – electors would be given a choice of whether or not to receive the candidates' introductory leaflets produced by REO by post. Electors could also view the leaflets on the website of REO.

Option B – REO would cease producing candidates' introductory leaflets in paper form. The leaflets would be posted on REO's website only. This option should bring paper consumption to the minimum.

Option C – REO would not produce candidates' introductory leaflets even in electronic form.

Under the three options, REO would continue to send poll cards, location maps of polling stations and the guide on voting in paper form by post.

Action

60. Mr TAM Yiu-chung said that in the 2004 LegCo election, Kowloon West GC alone had 12 lists of candidates and a large amount of paper had been consumed for the production of promotional leaflets. He said that Option A would only reduce paper consumption by a small amount. He noted that REO would conduct a new round of voter registration in late April, and suggested that it should seize that opportunity to request voters to opt to receive or not leaflets by post in the application form.

61. Deputy Secretary for Constitutional Affairs (DSCA) said that EAC was in the process of gathering views on the three options and it would have difficulty to implement any of the options at the end of that month. CEO concurred with the view and said that large amount of papers could only be saved in the election years and hence there was no real urgency to implement any of the options immediately. In addition, the application form for voter registration had to be redesigned to incorporate the options offered to voters and this could be dealt with at a future voter registration exercise.

62. Mr LEE Wing-tat held the view that the candidates' introductory leaflets distributed by REO were dull and did not attract readership. In any event, candidates preferred to produce and distribute their own leaflets. He said that it was not worthwhile to pursue Option A because it would save only a small amount of paper. He said that he favoured Option B.

63. Mrs Selina CHOW said that she also supported Option B. She said that paper consumption could be further reduced by sending one set of election-related publicity materials to each household. Although the Administration had expressed difficulty in putting this proposal into practice, the Liberal Party and some candidates had attempted to implement it in the past elections. Mrs CHOW further said that with over 60% of the households in Hong Kong were equipped with computers, sending election-related publicity materials by electronic means to electors should be widely practised so as to save papers.

64. Miss CHAN Yuen-han said that candidates would distribute their own leaflets and she was inclined to support Option B. She said that the difficulty in sending election-related publicity materials on a household basis could be overcome by administrative means.

65. CEO explained that the problems relating to sending election-related publicity materials on a household basis was not just a technical one. The arrangement would in fact cause confusion and inconvenience to electors. For instance, some households would only have GC electors, while others would comprise of both GC electors and functional constituency electors. In addition, sending the election-related publicity materials on a household basis could not ensure equal access of all electors to the information.

Action

66. Ms Audrey EU said that it would be useful if REO could inform all registered electors that those who opted to receive election-related publicity materials by e-mail should come forward to register their e-mail addresses with REO six months before the election. REO could then provide candidates with a list of these electors together with their e-mail addresses so that candidates would not send election-related publicity materials to them by post. She said that the exercise would help reduce papers.

67. CEO said that the task of registering e-mail addresses of electors was immense given that there were 3.4 million registered electors. DSCA said that Ms EU's proposal was not new. Initial registration of e-mail addresses might be technically feasible although the workload would depend on the response. The biggest challenge to REO, however, was the work of updating given that e-mail users frequently changed their e-mail addresses. It was necessary to assess the amount of work and resources required in order to maintain an accurate list of electors' e-mail addresses. He said that the list provided to candidates would not serve any meaningful purpose if it was not accurate.

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

68. Members agreed to defer discussion of the item to the next meeting.

69. The meeting ended at 5:37 pm.