

立法會
Legislative Council

LC Paper No. CB(2)2452/04-05

(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 30 May 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
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 LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, 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
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**

: Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon WONG Yung-kan, JP
Hon LAU Chin-shek, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, JP
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP

**Public officers
attending**

: Item IV

Mrs Susan MAK
Deputy Director of Administration

Mr Sidney CHAN
Assistant Director of Administration

Items V and VI

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 VII

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

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

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

Ms Fonny Lo
Legislative Assistant (2)3

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I. Confirmation of minutes of meetings

(LC Paper No. CB(2)1626/04-05 – Minutes of meeting on 21 March 2005

LC Paper No. CB(2)1677/04-05 – Minutes of special meeting on 19 February 2005)

The minutes of the meetings held on 19 February 2005 and 21 March 2005 were confirmed.

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 Nos. CB(2)1452/04-05(01) – (05) – Past papers relating to

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restriction on activities of former holders of the office of Chief Executive;

- (b) LC Paper No. CB(2)1477/04-05(01) – Written submission from Professor Yash GHAI, Sir YK Pao Professor of Public Law, The University of Hong Kong on “Issues relating to prorogation of the Legislative Council”;
- (c) LC Paper No. CB(2)1477/04-05(02) – Written submission from The Hong Kong Bar Association on “Issues relating to prorogation of the Legislative Council”; and
- (d) LC Paper No. CB(2)1589/04-05(01) – Administration’s response to the questions raised by Hon Margaret NG concerning the requirement for candidates to submit the return and declaration of election expenses and donations.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1673/04-05(01) – List of outstanding items for discussion

LC Paper No. CB(2)1673/04-05(02) – Letter dated 6 May 2005 from Hon TONG Ka-wah)

3. Members noted that the next meeting would be held on 20 June 2005. Secretary for Constitutional Affairs (SCA) proposed to discuss the issue on remuneration and post-office arrangements for the Chief Executive (CE) at the next meeting, as the Independent Commission on Remuneration Package and Post-Office Arrangements was expected to release its report in mid-June. Members agreed.

4. Members referred to the letter dated 6 May 2005 from Hon TONG Ka-wah and agreed that the accountability of Government officials in answering Members’ questions at Council meetings in the context of Article 64 of the Basic Law (BL 64) should be discussed at the next meeting.

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

(LC Paper No. CB(2)1091/04-05(1) – Background brief prepared by LegCo Secretariat on “Application of certain provisions of Prevention of Bribery Ordinance to the Chief Executive”

LC Paper No. CB(2)1091/04-05(02) – Paper provided by the Administration)

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5. At the invitation of the Chairman, Deputy Director of Administration (DDA) briefed members on the Administration's present position in respect of the review of application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) (POBO) to CE.

6. DDA said that the Administration had carefully considered the technical and constitutional issues involved in applying certain provisions of POBO to CE and came to the following views –

- (a) Under BL 15 and BL 45, CE was appointed by the Central People's Government (CPG). The Basic Law did not confer any power on the Hong Kong Special Administrative Region Government (HKSARG) in the appointment or removal of CE to/from his office. Any proposal to extend the general standard of bribery prevention applicable to "prescribed officers" under POBO for application to CE must take into account CE's unique constitutional position in the HKSAR;
- (b) Under POBO, the offences of solicitation, acceptance and offer of advantages were generally premised upon the existence of a principal-agent relationship. According to legal advice, CE was not an agent of the HKSARG within the meaning of section 2(1) of POBO. To reconcile CE's unique constitutional status with an appropriate regulatory framework was a complicated matter requiring in-depth examination. The Administration would further consider whether any legislative provisions for exclusive application to CE should be given effect through amendment to POBO or other legislative vehicles; and
- (c) CE was already bound by the common law offence against acceptance of bribery by public officer.

7. DDA further said that notwithstanding the review on application of POBO to CE was underway, there were various measures in place to ensure that CE had to be a person of integrity and conduct. These included –

- (a) BL 47 provided that CE must be a person of integrity and dedicated to his duties. CE shall declare his assets to the Chief Justice of the Court of Final Appeal on assuming office, and this declaration shall be put on record;
- (b) the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) provided comprehensive safeguards to prevent corruption and other illegal activities in the election of CE; and
- (c) there were administrative measures to ensure the transparency and

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accountability in relation to the acceptance and disposal of gifts presented to CE. CE could not accept such gifts for personal retention unless he had paid for them at market price.

8. As the review of applying POBO to CE was first discussed by the Panel in February 1999, members expressed dissatisfaction that little progress had been made since then. Ms Emily LAU enquired about the difficulties encountered by the Administration in conducting the review, and could not understand why a solution could not be found after a lapse of six years. Dr YEUNG Sum said that in his view, there were two ways to deal with the issue, i.e. either amending POBO to provide certain provisions for exclusive application to CE, or introducing a new legislation of bribery prevention for application to CE. Dr YEUNG asked for a timetable for introducing the legislative proposal.

9. Mr Albert HO asked whether it remained the policy of the Administration to introduce a statutory framework of bribery prevention applicable to CE. He disagreed with the Administration's view that CE could not be regarded as an agent under POBO because he was appointed by CPG, given that BL 43(1) provided that CE shall represent HKSARG.

10. Mr CHEUNG Man-kwong doubted whether the Administration had any intention to introduce a statutory framework of bribery prevention for application to CE, as this might undermine the power of CPG to remove a CE from his office. He expressed disappointment that the outcome of a six-year review on application of POBO to CE was that there was a need for further review. Ms Margaret NG asked whether the appointment of CE by CPG and the unique constitutional status of a CE were reasons for not applying POBO to CE. She also asked whether it was technically feasible to enact a new legislation of bribery prevention for application to CE and if so, whether consultation had been conducted.

11. Mr Andrew CHENG and Mr Albert CHAN said that if CE was not subject to a statutory framework of bribery prevention, this would undermine the legal system of Hong Kong. Mr Andrew CHENG pointed out that although public officers were liable to prosecution under the common law offence of bribery of public officer, POBO was enacted to regulate public officers from taking bribes. By the same token, CE should be subject to the provisions of POBO.

12. Mr TONG Ka-wah pointed out that in the absence of a statutory framework of bribery prevention applicable to CE, there would be no legal basis to prosecute a CE or to conduct an investigation into alleged cases of bribery involving CE. He also enquired about the bodies to be responsible for investigating these cases, if required.

13. Mr LAU Kong-wah said that consideration could be given to appoint an independent body as the "principal" which would be tasked to approve the receipt of advantages by CE so that a principal-agent relationship would be constituted.

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He also expressed concern that a CE would make use of his power while in post in order to attain benefits after leaving office.

14. In response to members' questions and views, DDA reiterated the Administration's views as set out in paragraphs 6 and 7 above. DDA added that despite the efforts of the Administration in the past six years, the technical and constitutional problems had remained unresolved. DDA affirmed that it remained the policy of the Administration to introduce a regulatory framework of bribery prevention for application to CE, although a timetable for implementing the legislative framework could not be provided at this stage. Nevertheless, CE was subject to the monitoring measures set out in paragraph 7 above and any alleged graft cases involving CE would be investigated, if required, by the Police or the Independent Commission Against Corruption. DDA also clarified that CPG had not been consulted on the issue, as there was no proposal in hand. Although the Administration had considered the proposal to enact a new legislation on bribery prevention applicable to CE two years ago, there were divided views on the proposal. As regards the concern about CE making use of his power while in post in order to attain benefits after leaving office, DDA said that Mr TUNG Chee-hwa, the former CE, had publicly announced that he would not participate in business activities and would only serve the country and Hong Kong in future.

15. Members expressed dissatisfaction with the answers given by the Administration. Mr Albert CHAN said that the Administration should be represented by a principal official, and not a civil servant, at the meeting, as the subject under discussion was an important policy issue. Members considered that the lack of progress of the review after a lapse of more than six years was totally unacceptable. They criticised the Administration for failing its duty to devise an appropriate statutory framework of bribery prevention for application to CE. Mr Albert HO proposed and members agreed that a subcommittee under the Panel be set up to follow up the issue.

16. Noting that the Administration had proposed to introduce a new legislation of bribery prevention applicable to CE two years ago, Ms Margaret NG requested the Administration to provide a paper to account for its work in the past two years, including the issues considered, the parties consulted, and the responses received. DDA responded that she would consider the request.

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V. Review of the conduct of the 2004 Legislative Council election

(Report of the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections)

LC Paper No. CB(2)1498/04-05(01) – Press statement of the Acting Chief Executive regarding the Report published by the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections on 6 May 2005

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LC Paper No. CB(2)1498/04-05(02) – Statement made by Secretary for Constitutional Affairs regarding the Report published by the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections on 6 May 2005

LC Paper No. CB(2)1670/04-05(01) – Paper provided by the Administration on “Report of the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections”

LC Paper No. CB(2)1673/04-05(03) – Background brief prepared by LegCo Secretariat on “Review of the conduct of the 2004 Legislative Council election”)

Briefing by the Administration and the Electoral Affairs Commission (EAC)

17. At the invitation of the Chairman, SCA informed members that the Administration accepted the conclusions and recommendations of the Report published by the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections (the Experts Committee) and together with EAC, would consider how to take forward the recommendations with a view to improving the practical arrangements for future elections.

18. Chief Electoral Officer (CEO) briefed members on the content of the Report of the Experts Committee and the preliminary views of EAC and the Registration and Electoral Office (REO) on how to follow up on the recommendations in the Report as set out in LC Paper No. CB(2)1670/04-05(01).

Issues raised by members

19. Mr LEUNG Kwok-hung expressed concern about the lack of a mechanism to monitor the work of EAC and the unlimited terms of office served by the existing Chairman of EAC, who, in his view, should have stepped down after the blunders in the 2004 Legislative Council (LegCo) election.

20. Mr Jasper TSANG said that the Experts Committee had put forth 13 recommendations which were accepted by the Administration and EAC. Pointing out that some of these recommendations, such as wider use of information technology in the electoral process would require time for implementation, he asked about the Administration’s timetable for implementing these recommendations.

21. SCA said that the Administration and EAC would follow the direction of the recommendations of the Experts Committee. Consideration would be given to enhancing training for REO staff as well as polling and counting staff so as to ensure that there would be a team of experienced staff who were well-trained in

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discharging electoral related duties. To improve the efficiency of the polling and counting process, the Administration and EAC would explore the feasibility of further computerising the process as far as practicable. The Administration and EAC would also work together to consider ways to recruit experts in the relevant fields to strengthen the composition of EAC. SCA said that the Administration would strive to implement these improvements before the next District Council (DC) elections.

22. Ms Audrey EU said that while the Report of the Experts Committee gave an account of the blunders on the polling day, such as shortage of ballot boxes for geographical constituency (GC) elections and delay in announcement of the election results, it did not reveal the causes of these blunders. She enquired whether these problems were caused by shortage of funds, inadequate manpower and training, or other reasons.

23. SCA said that the Report of the Experts Committee affirmed that the integrity, fairness and impartiality of the 2004 LegCo election had not been compromised. The Experts Committee had not found any fundamental or major problems with the existing electoral system and procedure. The chaos on the polling day was the result of a number of implementational problems such as insufficient testing on the capacity of the ballot boxes and the information system, errors in the Operation Manual that led to the eviction or exclusion of candidates or their agents from polling stations, etc. The problems were not due to the lack of funding as a total of \$270 million had been earmarked for the 2004 LegCo election.

24. CEO supplemented that the training provided to the electoral staff was similar to those provided in previous elections. Apart from giving general briefing to enable them to have an overall idea of the electoral arrangements, there was also training on topical issues such as compilation of statistics on voter turnout, familiarisation of the relevant provisions of the electoral legislation, guidelines and so on.

25. Dr YEUNG Sum said that the purpose of the polling-cum-counting arrangement for GC votes was to speed up the counting process. Given that the announcement of the election results of the 2004 LegCo election had been delayed, he asked whether decentralised counting arrangement would still be implemented for future elections.

26. SCA said that political parties and some individual candidates favoured decentralised counting because information on voting inclination of electors at individual polling stations would be available. The Administration held the view that irrespective of whether future counting of GC votes would be centralised or decentralised (to the regional level, with one counting station in each of the five GCs, or to the district level, with one counting station in each of the 18 districts), information relating to voter turnout figures and counting results of candidates at individual polling stations should be made available if possible. CEO explained

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that the delay in the announcement of election result in the 2004 LegCo election was due to the malfunctioning of the information system which necessitated a manual checking of the figures to ensure their accuracy.

27. Mr WONG Kwok-hing said that he learnt that some experienced civil servants who had participated in the conduct of past elections did not participate in the 2004 LegCo election because of the long working hours. He said that the Experts Committee had not addressed the problems created by the one-shift system whereby polling staff were required to work through the poll and the count. He asked whether the decision of implementing the one-shift system for the 2004 LegCo election instead of the conventional two-shift system was for the purpose of saving money.

28. SCA said that the total funds earmarked for the 2004 LegCo election was \$270 million, which was slightly more than that for the 2000 LegCo election. He noted that the change from a two-shift to one-shift system had created work pressure on the polling staff. The Experts Committee had recommended in paragraph 4.36 of the Report that there should be separate shifts of staff for the polling and counting duties in future. SCA explained that the long working hours of polling staff was due to the unexpected malfunctioning of the information system, which necessitated a manual compilation of voter turnout figures. CEO supplemented that over half of the polling staff participating in the conduct of the 2004 LegCo election had experience in conducting elections.

29. Ms Margaret NG said that when the Administration announced at the Council meeting on 15 December 2004 that the Experts Committee would be established, Members had queried whether it would function like a select committee. The Administration had assured Members that independent investigation would be carried out. Ms NG referred to paragraph 2.17 of the Report of the Experts Committee which stated that REO “could not confirm the number of reserve polling staff who had actually participated in the delivery of spare ballot boxes” and pointed out such fact should have been verified by the Experts Committee. Ms NG said that the investigation conducted by the Experts Committee was superficial and she had reservation about the Report. In her view, the crux of the problem was inadequacies in the planning and decision-making process of officers at the management level, which the Report of the Experts Committee had failed to address. She asked whether the measures recommended by the Experts Committee were directed towards improving the inadequacies in the planning and decision-making process.

30. Mr TONG Ka-wah said that he did not understand why the Administration found the Report of the Experts Committee acceptable, given that it had not conducted any public hearings to collect information on the chaos on the polling day, or addressed the issue of accountability. In addition, some of its work duplicated those already carried out by EAC.

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31. SCA said that the Experts Committee had invited the public and relevant parties to give views and had also gathered other relevant information before drawing its conclusions. Annex C(1) and (2) to the Report of the Experts Committee set out the organisations/individuals who had made submissions to or had attended meetings with the Experts Committee. Although some of the organisations/individuals whom the Experts Committee had met were the same as those interviewed by EAC, one should note that the Experts Committee operated independently. Chapter 2 of its Report gave a detailed account of the chaos on the polling day and Chapter 3 analysed the causes of the problems. Based on the facts and information gathered, the Experts Committee concluded that the chaos on the polling day was the result of a number of implementational problems. It had also made a number of recommendations which the Administration and EAC found to be useful. In response to the recommendation of the Experts Committee, EAC would set up, on a need basis, working group(s) consisting of experts in the relevant fields in the private sector and representatives of the relevant bureaux or departments with a view to strengthening the support for EAC. SCA said that since September 2004, he and the Chairman of EAC had on different occasions apologised to the public and candidates for the inconvenience caused by the inadequacies of the electoral arrangements.

VI. Disqualification of Election Committee members from making nominations and voting in the Chief Executive election

(LC Paper No. CB(2)1670/04-05(02) – Paper provided by the Administration on “Disqualification of Election Committee Members from Making Nominations and Voting in the Chief Executive Election”)

32. SCA said that among the Election Committee (EC) members who belonged to the Chinese People’s Political Consultative Conference (CPPCC), Heung Yee Kuk (HYK) and DC subsectors, there were a number who were no longer CPPCC, HYK and DC members. Members had sought clarification at the last meeting whether these members had lost their substantial connection with their subsectors and were thus disqualified from making nominations and voting in the CE election. SCA briefed members on the relevant legal position on the matter as set out in the paper.

33. Mr Albert HO said that given that the electorate of the CE election was 800 EC members only, the voting right of each and every EC member should be safeguarded. He expressed regret that there was no clear definition on the term “substantial connection” to enable an EC member to determine his eligibility to make nomination and vote in the CE election. He said that a clear definition on “substantial connection” would reduce the risk of litigation. He also enquired about the action needed to be taken by former members of CPPCC, HYK and DC in order to maintain substantial connection with the subsectors concerned.

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34. Mr CHEUNG Man-kwong considered it unreasonable and irresponsible of the Administration not to advise the EC members of their legal position, given that it was an offence for a person to vote at an election knowing that he himself was not entitled to do so.

35. SCA explained that to facilitate the CE election to be held on 10 July 2005 and in accordance with law, the provisional register was published on 16 March 2005 for public inspection until 23 March 2005. During the public inspection period, notices of claim or objection as regards the provisional register and omissions list could be lodged with the Revising Officer. For the purpose of the EC subsector by-elections on 1 May 2005, the names of 33 members who were deceased, had resigned from EC, or had ceased to be registered as an elector for a GC had been published in an omissions list. As the loss of DC, CPPCC and HYK membership was not a ground for inclusion in the omissions list, the group of EC members in question had remained on the final register of EC members. An EC member whose name appeared on the final register would only be disqualified from making nominations and voting at the CE election if he had, among other things, ceased to have a substantial connection with the subsector concerned. SCA said that he noted members' concern but before changes were made to the Chief Executive Election Ordinance (CEEEO), one had to act in accordance with the legal provisions relating to disqualification from making nominations and voting.

36. Mr Albert HO said that there should be guidelines which set out the principles for a Revising Officer to determine whether a person had substantial connection with the subsector concerned. He asked the Administration to make public the guidelines for reference by EC members.

37. SCA explained that the concept of "substantial connection" originated from the functional constituency (FC) system which was introduced in 1985. At present, there was no detailed criteria for determining whether or not a person had substantial connection with the subsector concerned, given that each subsector had its own characteristics and there were 38 subsectors involved in the CE election. According to section 1(3) of the Schedule to CEEEO, the circumstances in which a person had a substantial connection with a subsector included, but were not limited to, being a member, partner, officer or employee of a body included in the subsector. It was clear from this provision that whether a person had a substantial connection with a subsector should not be determined solely by whether he was a member of a body included in the subsector. It was possible that a person might maintain connection in one form or another with his subsector. In this connection, whether the EC member concerned had lost his substantial connection needed to be considered on the facts of each case.

38. SCA said that there were only a few cases in past elections which required a ruling on substantial connection. He recalled that in the 2004 LegCo election, a candidate running for the Tourism FC was not the licence holder of a travel agency but had acted in the capacity of a legal adviser and director of a travel agency. He

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had been ruled to have substantial connection with the FC concerned and was eligible to run in the election. In addition, after the dissolution of the Urban Council and the Regional Council in 2001, the LegCo Members representing these two FCs continued to serve in LegCo for sometime.

39. Mr LAU Kong-wah said that some EC members whose names had remained in the final register might need to ascertain their eligibility for making nominations and voting in the CE election. Mr LAU said that the present arrangement was unfair to the EC members concerned as they might face the risk of being prosecuted if they had made a wrong decision. He asked the Administration to consider measures to address the situation in future elections. He also asked whether a former HYK member who remained as a village representative would be regarded as having substantial connection with the HYK subsector.

40. On the first question, SCA said that the Administration was prepared to listen to members' views and consider whether the existing arrangement should be reviewed in future. On the second question, SCA said that the Revising Officer would consider the facts of each case in determining the person's qualification to nominate and vote in a CE election.

41. Mr LAU Kong-wah enquired when and how a nomination form would be determined valid and whether sufficient time would be given to a candidate to solicit support from other EC members, in the event that the number of subscribers of his nomination fell below the threshold of 100 because some of the forms had been ruled invalid by the Returning Officer. Mr LAU also asked whether REO, if supplied with a list of subscribers, could request the Returning Officer to verify the eligibility of the subscribers.

42. CEO said that to his understanding, the Returning Officer had no statutory authority to advise on the position of individual EC members. He explained that under section 17 of CEEO, the Returning Officer shall, as soon as practicable after receiving a nomination form, determine whether or not the person nominated by virtue of the nomination form was validly nominated in accordance with CEEO as a candidate at the election. CEEO also empowered the Returning Officer to seek further information from the candidate if necessary. CEO informed members that the nomination form would include a note to remind candidates and subscribers to consider the legal provisions relating to disqualification from making nominations. In addition, REO would issue a letter reminding all EC members of the relevant legal provisions on disqualification to vote and make nominations.

43. Ms Audrey EU said that certain provisions in the Schedule to CEEO, such as section 5(1) of the Schedule, required the Electoral Registration Officer (ERO) to ascertain the number of members representing each subsector and to arrange for a supplementary nomination or subsector by-election to be held to fill the vacancies of that subsector if such vacancies arose. In light of these provisions, she asked whether ERO also had the responsibility to ascertain the eligibility of EC members

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to make nominations and to vote in an election when including their names in the final register.

44. CEO explained that while section 41 of the Schedule to CEEO empowered ERO to amend the final register of members of EC from time to time to give effect to any change in the ex-officio membership of EC, section 4(4) of the Schedule to CEEO provided that ERO could strike out the names of an EC member from the final register under three conditions only i.e. when the EC member, died, resigned or ceased to be registered as an elector for a GC. ERO was not empowered to strike out the names of EC members under other circumstances.

45. In response to members, Senior Assistant Legal Adviser 2 confirmed that while CEEO provided that a person might cease to be an EC member under a number of scenarios, ERO could strike out the name of an EC member from the final register under the three conditions referred to by CEO.

46. Mr LEUNG Kwok-hung said that the explanation given by the Administration was unreasonable. In his view, members of CPPCC, DC and HYK were returned by election and should be entitled to vote in a CE election. SCA said that the explanation given by the Administration was based on the relevant legal provisions. As far as the eligibility of an EC member was concerned, the Revising Officer, who was appointed by the Chief Justice, had to determine whether the EC member had lost substantial connection with his subsector.

VII. Voting right of prisoners

(LC Paper No. CB(2)1143/04-05(01) – Case referred by the Complaints Division concerning voting rights of prisoners

LC Paper No. CB(2)1670/04-05(03) – Paper provided by the Administration on “Voting Right of Prisoners”)

47. At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DSCA) briefed members on the paper which set out the existing provisions on the issue of prisoners’ right to vote and the relevant background.

48. Ms Margaret NG said that voting was a basic civil right and prisoners should not be deprived of it. She noted from the Administration’s paper that different places had different policies on prisoners’ right to vote. In some places the prisoners’ right to vote was determined by the years of sentence. In China, prisoners were deprived of political right. She asked about the underlying principle for existing legislation to disqualify prisoners from voting in public elections. She also asked the Administration to provide information on the number of prisoners who were serving sentences of five years or more.

49. DSCA said that he would provide a written response to the last question after the meeting. He said that the restriction for prisoners to vote started since the

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LegCo election in 1985. Since then, LegCo had considered the issue on a number of occasions and Members had maintained the view that the restriction should continue. In response to members' request, DSCA undertook to provide information on past discussions between the Administration and LegCo on the issue.

(Post meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1960/04-05 on 16 June 2005.)

50. Mr LEUNG Kwok-hung said that prisoners should also have the right to stand in an election apart from voting. DSCA said that Mr LEUNG's proposal was new and had the effect of widening the right of prisoners. The community had not discussed this subject before, but if members had views on it the Administration would listen.

51. Ms Emily LAU said that international human rights conventions did not restrict prisoners' right to vote and it was time to launch a review on the issue. She suggested that the issue be discussed at the human rights forums organised by the Home Affairs Department so that the public could participate in the discussions.

52. Dr YEUNG Sum said that the Democratic Party supported that prisoners be given the right to vote in an election. The society was changing and there was a need to open the issue for public discussion. He said that consideration could be given to introducing different restrictions on prisoners' right to vote, based on the length of sentence. Mr LEUNG Yiu-chung and Dr Fernando CHEUNG supported his view and said that the Administration should initiate discussion on the issue and conduct wide public consultation.

53. Ms Audrey EU pointed out that some prisoners who served a short sentence would be deprived of the right to vote if the election day fell on his imprisonment period. She urged the Administration to reconsider the issue and also consider making arrangement for hospitalised patients with chronic disease to vote in an election.

54. Mr TAM Yiu-chung said that in his view, there was no need for a change of policy on this issue. The international human rights conventions permitted reasonable restrictions on the right to vote and to be elected in elections. Should a person treasure his right to vote in an election, he would not breach the law and be imprisoned. Mr TAM pointed out that under the existing practice, released prisoners were also subject to certain restrictions on voting.

55. In response to members, DSCA said that different places had adopted different policies on prisoner's right to vote, having regard to their own circumstances. In the past, the people of Hong Kong had supported that prisoners should be disqualified from voting. Although such a view might have changed with time, the community had not called for a review of the issue. In fact, the issue

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was hardly discussed in the community. At this stage, the Administration did not intend to launch a review on the issue. It was, however, prepared to consider the subject again if there was clear indication from the community that there should be a review. DSCA further said that if the proposal of allowing prisoners to vote were to be explored, consideration would be given to a range of issues including inter alia security arrangements, casting of vote by post, electioneering arrangements, etc.

56. The meeting ended at 5:37 pm.

Council Business Division 2
Legislative Council Secretariat
18 August 2005