

Panel on Constitutional Affairs

List of outstanding issues
(*position as at 11 November 2004*)

**Proposed
timing for
discussion**

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

The item was first discussed by the Panel at the meeting on 9 February 1999 and followed up at a number of meetings. Members considered it appropriate to codify the common law offence of bribery so that CE would be subject to the same regulatory framework applicable to government officers or public servants under POBO.

To be confirmed
by the Director
of
Administration

At the meeting on 21 January 2002, the Administration advised that it would work out the appropriate legislative amendments to set out in separate provisions a regulatory framework for application to CE, making reference to that being applied to government officers under POBO. The legislative proposal would be introduced into LegCo in the 2002-03 legislative session.

The legislative proposal was not included in the Government's Legislative Programme for 2002-03, 2003-04 and 2004-05. The Director of Administration advised in writing in July 2004 that the Administration would revert to the Panel once it was in a position to do so.

2. Mechanism for amending the Basic Law

Discussions on this item were held by the Panel since the 1998-99 legislative session.

To be confirmed
by CAB

At the meeting on 17 July 2001 when the item was last discussed, the Administration advised that it was continuing discussion with the Central Authorities regarding the issues identified, particularly those relating to the Standing Committee of the National People's Congress (NPCSC), the State Council, the local NPC deputies and the Basic Law Committee.

Constitutional Affairs Bureau (CAB) advised in writing on 15 October 2004 that it would revert to the Panel once it was in a position to do so.

3. The question of "important bill" under Article 50 of the Basic Law

At the meeting on 20 December 1999, the Panel requested the Administration to clarify the meaning of "important bill" in Article 50 of the Basic Law. The Administration advised at the meeting on 19 June 2000 that given the complex issues and factors involved in deciding whether a bill was "important", it needed more time to study the matter before forming a mature view.

To be confirmed
by CAB

The Research Report on "Parliamentary Handling of Non-ordinary Bills" prepared by the Research and Library Services Division (RLSD) was presented to the Panel on 7 May 2001 (RP10/00-01).

CAB advised in writing on 15 October 2004 that it would revert to the Panel once it was in a position to do so.

4. Review on Constitutional development after 2007

In January 2004, CE appointed a Task Force headed by the Chief Secretary for Administration (CS) with the Secretary for Justice and Secretary for Constitutional Affairs (SCA) as members, to take forward matters relating to constitutional development. The Task Force briefed the Panel on its progress of work regularly in the 2003-04 session.

On-going
discussion

On 30 March 2004, the Task Force released its First Report on issues of legislative process in the Basic Law relating to constitutional development. On 6 April 2004, NPCSC made an interpretation of Article 7 of Annex I and Article 3 of Annex II to the Basic Law. The Task Force submitted its Second Report on the issues of principle in the Basic Law relating to constitutional development to CE on 14 April 2004 and CE submitted a report to the NPCSC on 15 April 2004. NPCSC's decision on the methods for selecting CE in 2007 and for forming the Legislative Council (LegCo) in 2008 was promulgated on 26 April 2004. On 11 May 2004, the Task Force issued its Third Report to set out the areas which might be amended in respect of the methods for selecting CE in 2007 and for forming LegCo in 2008.

The consultation period for the Third Report was extended from 31 August 2004 to 15 October 2004.

SCA advised at the Panel meeting on 18 October 2004 that the Task Force would issue a Fourth Report within this year. It would continue to consult the community on changes to be made to the methods for the selection of the CE in 2007 and for forming the LegCo in 2008.

5. Review of District Councils (DCs)

CE stated in his 2004 Policy Address that the Government would review the function and composition of DCs at a suitable time.

To be confirmed
by CAB

Members requested that the review should cover issues such as the roles, functions, composition of DCs, delineation of constituency boundaries, appointed membership of DCs, and the desirability of adopting the proportional representation system for DCs elections.

CAB advised in writing on 15 October 2004 that in 2004-05, it would begin to make suitable preparations for the review, and would also take into account the operation of the second term DCs since 2004. CAB would work closely with the Home Affairs Bureau and other relevant bureaux and departments in the process.

6. Restrictions on activities of former holders of the office of the Chief Executive

At the meeting on 19 March 2001, the Administration advised the Panel that there was no restriction imposed on commercial or political activities of former holders of the office of CE in and outside HKSAR under the present legislation. At the meeting on 17 July 2001, the Administration briefed members on its preliminary research on the arrangements applicable to heads of governments after stepping down from office in a number of overseas countries.

To be confirmed
by CAB

RLSD presented its Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" to the Panel on 21 January 2002 (RP02/01-02), and provided supplementary information on the subject (LC Papers Nos. CB(2)1081/01-02(04) and CB(2)1494/01-02(01)).

CAB advised in writing on 15 October 2004 that it would revert to the Panel on this item once it was in a position to do so.

7. Accountability system for principal officials and related issues

The six-month Report on Implementation of the Accountability System for Principal Officials was considered by the Panel at its meeting on 17 February 2003. The 12-month Report was considered by the Panel at its meeting on 21 July 2003. The Administration agreed to consider carefully a number of issues raised by members. The Administration also informed the Panel that it would continue to pursue a number of issues and revert to

To be confirmed
by CAB

LegCo. These included the review of the role and functions of statutory and advisory bodies, the review of the transfer of statutory powers and functions of the Chief Secretary for Administration and Financial Secretary and the review of the remuneration for the third term CE.

The progress of the review of advisory and statutory bodies has been followed up by the Panel on Home Affairs. In the 2003-04 session, the Home Affairs Bureau had submitted 12 interim reports to the Panel on Home Affairs and undertook to keep the Panel posted of the progress and outcome of the review.

At the Panel meeting on 17 November 2003, the Administration briefed members on the general principles and guidelines governing the internal review of the transfer of statutory powers and functions currently vested in the offices of the Chief Secretary for Administration and Financial Secretary to the respective Directors of Bureaux. All the proposed transfer of powers and functions would be effected through subsidiary legislation or amendment of legislation.

CAB advised in writing on 15 October 2004 that it would continue to pursue the review of the remuneration for the third term CE. It would revert to the Panel once it was in a position to do so.

8. Political party law

CAB advised the Panel in December 2002 that it had decided that it was not opportune to introduce a political party law to regulate the operation of political parties. It believed that political parties should be allowed sufficient room to develop so as to facilitate effectively the development of political parties. Imposing statutory controls on the operation of political parties might in fact hinder the development of political parties. CAB suggested introducing additional provisions within the existing legal framework to provide partial financial support to candidates standing in LegCo elections and to allow the printing of the names and emblems of candidates' parties (or organizations) or the candidates' photographs on the ballot paper.

To be decided
by the Panel

At the meeting on 21 June 2004, the Panel considered the Research Report prepared by RLSD on "The Regulatory Framework of Political Parties in Germany, The United Kingdom, New Zealand, and Singapore" (RP05/03-04). The Administration maintained its position that it was unnecessary to introduce a political party law in Hong Kong. Members agreed to further discuss the issue in the new legislative session.

9. Composition, functions and operation of the Electoral Affairs Commission

On 21 June 2004, the Research Report prepared by RLSD on "Operation of Electoral Regulatory Bodies in Selected Places" (RP04/03-04) was presented to the Panel.

To be decided
by the Panel

Members agreed to further explore the issues raised in the Research Report in the new legislative session.

10. Constitutional issues pertaining to prorogation of the Council

On 23 April 2004, the Committee on Rules of Procedure (CRoP) informed the House Committee of its views regarding the calling of emergency meetings and the operation of the LegCo and its committees during the prorogation of the Council.

To be decided
by the Panel

On the recommendation of CRoP, the House Committee agreed to refer the following issues to this Panel for consideration -

- (a) whether the Legislative Council Ordinance should be amended to transfer to the President the power to prorogue the Council; and
- (b) whether the operation of the Council and its committees, which had been terminated during prorogation, could resume only when emergency Council meetings were called at CE's request.