

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)1368/06-07
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Thursday, 8 February 2007, at 4:30 pm
in the Chamber of the Legislative Council Building

Members present :

- Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Hon Albert HO Chun-yan
- Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., 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, GBS, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Hon LEUNG Yiu-chung
- Hon WONG Yung-kan, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- Dr Hon YEUNG Sum
- Hon LAU Kong-wah, JP
- Hon Emily LAU Wai-hing, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon WONG Kwok-hing, MH
- Hon LEE Wing-tat
- Hon Daniel LAM Wai-keung, SBS, JP
- Hon MA Lik, GBS, JP
- Hon LEUNG Kwok-hung
- Dr Hon KWOK Ka-ki
- Hon CHEUNG Hok-ming, SBS, JP
- Hon WONG Ting-kwong, BBS
- Hon Ronny TONG Ka-wah, SC
- Hon CHIM Pui-chung
- Hon KWONG Chi-kin

Members absent : Dr Hon LUI Ming-wah, SBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon CHOY So-yuk, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Alan LEONG Kah-kit, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP

Public Officers attending : Item IV

The Administration

Mrs Cherry TSE LING Kit-ching
Permanent Secretary for Constitutional Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional Affairs

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary for Constitutional Affairs

Item V

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mrs Cherry TSE LING Kit-ching
Permanent Secretary for Constitutional Affairs

Mr Arthur HO Kin-wah
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

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1022/06-07 - Minutes of meeting on 18 December 2006)

The minutes of the meeting held on 18 December 2006 were confirmed.

II. Information papers issued since the last meeting

(LC Paper No. CB(2)1011/06-07(01) - Letter dated 31 January 2007 from the Administration on "Application of certain provisions of the Prevention of Bribery Ordinance to the Chief Executive"

LC Paper No. CB(2)1015/06-07(01) - Press release issued on 31 January 2007 on "2007 Chief Executive election - polling hours")

2. Members noted that the above papers had been issued to the Panel.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1024/06-07(01) - List of outstanding items for discussion)

3. As the Chairman was out of town, the Deputy Chairman took over the chair.

4. The Deputy Chairman said that the next meeting originally scheduled for 19 March 2007 had been postponed to 26 March 2007 from 8:30 am to 10:45 am, as it clashed with the special meeting of the Finance Committee. Members agreed that the following items would be discussed at the next meeting -

(a) Subsidiary legislation relating to the 2007 District Council election

The item was proposed by the Secretary for Constitutional Affairs (SCA); and

Action

(b) Promoting constitutional development : the next step

Ms Emily LAU said that as the Chief Executive (CE) had announced in his election platform that the constitutional development green paper to conclude the roadmap and timetable towards universal suffrage suggested by the Commission for Strategic Development would be published, the Panel should discuss the issue at the next meeting. SCA said that according to Mr TSANG's election platform, the green paper would be published in mid-2007. As the Administration would decide on the matter after the CE election on 25 March 2007, it would not be in a position to provide information to the Panel at the meeting on 26 March 2007. Ms Emily LAU suggested that members could give views on the content of the green paper, the criteria for determining the issues to be included in the green paper, and the details of the public consultation exercise at the next meeting. Members agreed.

IV. Election expenses limit for 2007 District Council elections

(LC Paper No. CB(2)1024/06-07(02) - Paper provided by the Administration on "2007 District Council elections : election expense limit")

5. Permanent Secretary for Constitutional Affairs (PSCA) introduced the paper which set out the two options regarding the election expense limit for the next District Council (DC) elections to be held in November 2007. In gist, the Administration had proposed either to maintain the election expense limit at the existing level of \$45,000, or adjust the limit upwards to \$48,000 taking into account the inflation since 1994 when the limit was last revised.

6. Mr CHEUNG Hok-ming held the view that the proposal to increase the election expense limit upwards taking account of the inflation was reasonable. However, he asked whether the geographical coverage of DC constituencies had been taken into account in determining the election expense limit. He said that while the average population quota was about 17 000 per DC constituency, some DC constituencies in the New Territories had a larger geographical coverage as compared with those in the urban area. Hence, candidates of these DC constituencies would need to spend more on election expenses, e.g. the duration of election meetings held might exceed eight hours as assumed in the Annex to the Administration's paper.

7. PSCA responded that in delineating the constituency boundaries of the DC elections, the population distribution in the districts had been taken into account. In the circumstances, the difference of the population between one constituency and another was not as pronounced as those of LegCo elections. In drawing up the quantities of expenditure items used by DC election candidates listed in the Annex to the paper, reference had been made to the expenditure items declared by

Action

candidates in recent DC by-elections. For expenditure items the quantities of which might vary with the number of electors in a constituency e.g. handbills, the quantity was worked out on the basis of the most populated constituency with about 25,000 residents. As to whether the estimated election meetings of eight hours was a conservative assumption, PSCA explained that the estimated cost of \$230.5 per hour of election meeting for eight hours (i.e. at around \$1,800) was well above the average cost of \$180 as declared in recent DC by-elections. The Administration considered that the estimate of eight hours for election meetings based on a unit cost of \$230.5 should be adequate.

8. PSCA said that the election expense limit sought to set a ceiling to allow candidates to compete on a level playing field in an election. Candidates were free to spend as much or as little as they wished, provided that their election expenses stayed within the prescribed limit. The actual amount of election expenses incurred by candidates in respect of the 2003 DC elections were as follows -

- (a) 4% of the candidates spent between \$0 and \$4,500;
- (b) quite a number of candidates spent more than 50% of the election expense limit; and
- (c) majority of the candidates spent between 50% and 70% of the election expense limit.

9. Mr LEE Wing-tat said that although candidates faced keen competition in DC elections, they were cautious in their spending. In the 2003 DC elections, the median amount of election expenses incurred by the candidates was \$26,764 only. He pointed out that the introduction of the financial assistance scheme for candidates of DC elections coupled with the increase of the election expense limit by 8.2% would mean that half of the additional expenses would be borne by tax payers. As there was no indication of any substantial increase in the costs of conducting electioneering activities since the last election, the Democratic Party supported that the election expense limit should remain unchanged.

10. Dr YEUNG Sum concurred with Mr LEE. He said that given the small constituency area of DCs, day to day contact with electors and actual work done for the district were the key factors in determining whether a candidate could win in an election.

11. Mr LEUNG Kwok-hung held the view that the existing election expense limit should be increased. He said that in the last LegCo election, a large scale advertising campaign had been launched in the name of a political party instead of its members standing for election. While the campaign was for the purpose of promoting the election of the candidates concerned, the expenses incurred were borne by the political party and not counted towards the candidates' election expenses. Mr LEUNG expressed concern about the situation as candidates who

Action

had political affiliation would have an unfair advantage over independent candidates. He said that such expenses should be counted as election expenses of the candidates concerned.

12. Ms Emily LAU said that either of the two proposals for election expense limit put forth by the Administration was acceptable to her. However, she shared the concern raised by Mr LEUNG and urged the Administration to follow up the matter. She also asked about the polling date for the DC elections.

13. PSCA responded that the Administration had proposed in the DC review to postpone the DC election from late November to early December. In view of the views received during public consultation which did not favour the proposal, the Administration decided that the existing arrangement to hold election in November should remain unchanged. The exact date of the DC elections, however, had yet to be decided. In line with the established practice, a formal announcement would be made six to seven months before the polling day. As regards the concern raised by Mr LEUNG Kwok-hung, PSCA said that it involved the broader issue of the role of political parties in constitutional development, which was outside the scope of this discussion and should be dealt with on another occasion. She assured members that DC elections were regulated by the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). Advertisements published for the purpose of promoting or prejudicing the election of any candidate in an election would be counted as election expenses.

14. Mr LEUNG Yiu-chung said that he had been advocating for a cooling off period on the polling day. In his view, the implementation of a cooling off period would have a bearing on the amount of election expenses spent by candidates. He asked whether the Administration would change its position on the issue, given that the no-canvassing zone was getting larger and larger and canvassing on polling day no longer served any meaningful purpose.

15. The Deputy Chairman said that the question raised by Mr LEUNG was outside the scope of the agenda item. He recalled that the issue was previously discussed by LegCo. As Members had reached no consensus, the Administration had decided to maintain status quo. However, it was generally agreed that canvassing on the polling day would create a better atmosphere for the election.

16. Mr WONG Yun-kan said that he would not object to revising the election expense limit to \$48,000. It was for individual candidates to decide how much they would spend in the election, having regard to their own financial position.

17. Mrs Selina CHOW said that the Liberal Party supported the proposal to adjust the election expense limit upwards to \$48,000.

18. PSCA thanked members for their views on the proposals for election expense limit. She said that the Administration would make a decision within two

Action

months. Should the election expense limit be revised, legislative amendments would be introduced into the LegCo in the form of subsidiary legislation. The Administration would also inform members the exact date of polling in due course.

V. Prevention of conflict of interest under the Code for Principal Officials under the Accountability System

(LC Paper No. CB(2)1024/06-07(03) - Paper provided by the Administration on "Prevention of conflict of interest under the Code for Principal Officials under the Accountability System"

LC Paper No. CB(2)1024/06-07(04) - Official Record of Proceedings of an oral question raised by Hon Albert HO on "Avoidance of conflict of interests by Principal Officials" at the Council meeting on 17 January 2007)

19. SCA highlighted the principles and requirements which principal officials (POs) should follow in the performance of their duties, including measures which aimed at preventing conflict of interest, as set out in the paper.

20. Mr Albert HO said that he had raised an oral question at the Council meeting on 17 January 2007 concerning avoidance of conflict of interest by POs, after Mr SUEN Ming-yeung, Secretary for Housing, Planning and Lands, had jointly bought a race horse with some businessmen. SCA had then replied that the activity did not involve conflict of interest with Mr SUEN's duties. He could not agree with SCA's view. Mr HO further said that his concern was not about the case per se, but the system of declaration of investments and interests by POs. According to the Code for POs under the Accountability System (the Code), POs should avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest, and should refrain from handling cases with actual or potential conflict of interest. Mr SUEN co-owned a race horse with, among others, Mr Stanley HO who was the President of the Real Estate Developers' Association. While it might appear that there was no direct conflict of interest, the joint investment was in fact a long-term one, involving the sharing of expenses in raising a horse, placing bets together on the horse, and sharing of dividends when the horse won in races. The close relationship between a PO and a real estate developer might arouse suspicion on whether the PO could maintain his impartiality and fairness in discharging his duties, especially if he was required to exercise discretionary power on certain matters. Mr HO cautioned that the reply of SCA, which represented the stance of the Administration on the incident, would set a precedent.

21. Ms Emily LAU shared the concerns of Mr Albert HO. She said that the general public expected POs would keep a distance from the sectors that had a close connection with their policy portfolios and avoid putting themselves in a position where their acts could be seen as a conflict of interest. She recalled that the former Chairman of the Securities and Futures Commission had informed LegCo

Action

Members that he seldom attended social functions organised by consortiums and tycoons because the Commission could be investigating their companies. Ms LAU said that similarly, judges should stay away from social functions organised by consortiums and tycoons to avoid conflict of interest. She hoped that POs were mindful about their conduct and would avoid hurting the feelings of the general public.

22. Mr LEE Wing-tat said that the general public had a high expectation of the conduct of POs. While the investment made by Mr SUEN might not have constituted a conflict of interest, his public image had been tarnished. The public perception was that his close relationship with real estate developers would influence his judgment in the performance of his duties. Mr LEE sought clarification on whether the purchase of a race horse was an investment which should be declared. He also asked whether the Administration would amend the Code, having regard to the case of Mr SUEN.

23. Dr KWOK Ka-ki said that the development of Cyberport, Hung Hom Peninsula and Grand Promenade had already aroused suspicion of possible transfer of benefits between government officials and the business sector. As a PO, Mr SUEN lacked political wisdom. The public felt uneasy about his joint investment with property developers. Dr KWOK asked whether Mr SUEN had sought prior approval from the CE on his joint investment.

24. In response to members, SCA made the following points -

- (a) the Code outlined the guiding principles and requirements which POs should follow in the performance of their duties. Chapter 5 of the Code set out the requirements to prevent conflict of interest and requirements on declaration and handling of investments or interests. It also stipulated that POs should observe the principles of fairness and impartiality in discharging their duties, and should refrain from handling cases with actual or potential conflict of interest;
- (b) Clause 5.6 of the Code required POs to file, annually, declarations on their investments and interests, the content of which could be made available for public inspection. Clause 5.4 required POs to report to the CE any private interests that might influence, or appear to influence, their judgment in the performance of their duties;
- (c) all POs had declared their investments and interests by completing the "Registration of Interests and Affiliation with Political Parties for Public Inspection" after appointment and thereafter annually during their term of office. Interests declared included land and buildings (including self-occupied property); proprietorships, partnerships or directorships; and shareholdings of 1% or more of the issued share capital in any company (both listed and unlisted);

Action

- (d) the purchase of a race horse could be regarded as a form of investment. Nevertheless, it was not possible for the Code to embrace all scenarios and all kinds of investment. It was for a PO to decide whether he should report his investments, other than those listed in the Code, to the CE. The guiding principle was that a PO should avoid putting himself in a position where he might arouse any suspicion of dishonesty. He should report to the CE if his investments or interests might influence, or appear to influence, his judgment in the performance of his duties;
- (e) the purchase of a race horse was a personal decision of Mr SUEN. The CE was aware of the incident afterwards. The Administration had studied the case of Mr SUEN and concluded that the joint investment did not constitute a conflict of interest with his duties relating to land and housing policy. So far, there was no evidence to suggest that there was a conflict of interest between his investment and his official duties;
- (f) Hong Kong was an open and transparent society. The conduct of POs was monitored by the LegCo, the media and the public. The case of Mr SUEN had been widely discussed by the public. The Administration had taken heed of public concern and sentiment. The POs were well aware that their conduct was a matter of public concern and would endeavour to comply with the principles set out in the Code; and
- (g) the Code had proven effective over the past four and a half years and the Government had no plan to amend it.

25. Mr Albert HO held the view that SCA was evading his question. He said that the public was concerned that a joint investment with the business sector would affect a PO's judgment or seen to be affecting his judgment when discharging his official duties. The reply given by SCA mainly focused on the case of Mr SUEN, but not how the system could be improved to avoid future recurrence. Mr HO said that under the existing system, if a PO chose not to report his investment to the CE, there was no way for the CE to assess whether his investment constituted a conflict of interest. In addition, the Administration should adopt objective benchmarks to assess whether there was a conflict of interest in a particular case. To illustrate his concern over Mr SUEN's case, Mr HO asked the Administration to consider, for example, whether it was appropriate for the Commissioner of Police to have investments in nightclubs, or for the Director of Lands, who was responsible for land matters, to co-own a race horse with a real estate developer. He pointed out that the case of Mr SUEN had tarnished the image of POs and caused embarrassment to the Government.

Action

26. SCA said that the Administration would take into account the basic principles and requirements which POs should follow in the performance of their duties in considering whether there was a conflict of interest in a particular case. The Code was applicable to POs, and civil servants had to observe civil service rules and guidelines governing the conduct of civil servants. SCA further said that the Administration would not comment on hypothetical cases quoted by Mr HO. Addressing Mr HO's concern on land matters, SCA said that land grant was not determined by individual officers but conducted in accordance with a set of established and comprehensive regulatory measures with a system of built-in checks and balances to guard against abuse of power by any Government official.

27. SCA further said that he noted members' views on the case of Mr SUEN. He reiterated the fact that the joint investment of Mr SUEN had not given rise to a conflict of interest. SCA added that it was unfair to criticise the current system for declaration of investments and interests, which had been operating effectively in the past years, just on the basis of some members' perception of this incident. The Code sought to ensure that Hong Kong was run by a clean and transparent Government. POs had gone through integrity checks before appointment and were required to comply strictly with the Code and abide by anti-corruption legislation in discharging their duties. If there were allegations of misconduct between POs and the business sector, the Independent Commission Against Corruption would no doubt intervene.

28. SCA advised members that the Administration would make a decision on the way forward for the proposal to further develop the political appointment system after the CE election on 25 March 2007. The Administration had proposed that the Code, with any necessary modifications, would also be adapted to apply to the new political positions. The Administration would take the opportunity to review the Code in the context of that exercise.

29. The meeting ended at 6:00 pm.