

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 17 January 2011, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC

Hon LEUNG Kwok-hung
Hon Tanya CHAN
Hon WONG Yuk-man

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Wong-fat, GBM, GBS, JP
Hon WONG Kwok-kin, BBS
Dr Hon Samson TAM Wai-ho, JP

Public Officers attending : Item III

Mr Stephen LAM
Secretary for Constitutional and Mainland Affairs

Miss Adeline WONG
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs

Ms Anne TENG
Principal Assistant Secretary
(Constitutional and Mainland Affairs)

Ms Mimi LEE
Deputy Director of Home Affairs

Item IV

Mr Joshua LAW
Permanent Secretary for Constitutional and Mainland Affairs

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs

Ms Anne TENG
Principal Assistant Secretary
(Constitutional and Mainland Affairs)

Mr Freely CHENG
Principal Assistant Secretary
(Constitutional and Mainland Affairs)

Mrs Vivian TING
Chief Electoral Officer, Registration and Electoral Office

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

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

Ms Clara TAM
Assistant Legal Adviser 9

Miss Ivy LEONG
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Information papers issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)737/10-11(01) and CB(2)798/10-11(01) to (02)]

2. Referring to a letter dated 5 January 2011 from Ms Emily LAU concerning a report published by the SynergyNet on "Review of the Governance Performance of the Hong Kong Special Administrative Region Government 2010" [LC Paper No. CB(2)737/10-11(01)], the Chairman said that Ms LAU had suggested that the Panel should invite representatives from the SynergyNet and the Administration to its discussion of that report which looked into, among others, the success rate of legislative proposals by the Government of the Hong Kong Special Administrative Region ("HKSAR"), policy bureaux's efforts to explain their policies, and problems and prospects of Hong Kong's governance system. It was also suggested that the

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Administration should provide a response on how to improve the governance performance of the HKSAR Government. Ms Emily LAU said that apart from the SynergyNet, organizations such as the One Country Two Systems Research Institute and the Bauhinia Foundation Research Centre had also published reports in relation to the governance of the HKSAR Government. She suggested that the Panel should consider inviting those relevant organizations to the discussion. Mr LEE Wing-tat pointed out that the Central Policy Unit ("CPU") headed by Professor LAU Siu-kai had conducted a wide ranging of studies, including matters relating to the governance of the HKSAR Government. Mr LEE suggested that the Panel should invite Professor LAU to the discussion of the subject on governance.

3. Mrs Sophie LEUNG and Mr IP Kwok-him considered it inappropriate to discuss a report published by an individual think tank. They pointed out that the report released by SynergyNet covered wide-ranging concerns, some of which might not fall within the purview of the Panel. Mrs LEUNG suggested that CPU could be invited to provide the Panel with information comparing the issues raised in the report with similar studies CPU had conducted to facilitate its future discussion.

4. The Chairman suggested and members agreed that the Administration should provide a paper setting out its response to issues raised in the report for members' discussion at the next regular meeting. The Panel could consider inviting relevant organizations for discussion if necessary.

5. Members also agreed to discuss the item of "Review on the subsidy rate of the financial assistance for candidates and the election expenses limit for the 2011 District Council ("DC") election" as proposed by the Secretary for Mainland and Constitutional Affairs ("SCMA") at the next meeting to be held on 21 February 2011.

III. Election petition mechanism under the Legislative Council Ordinance and related issues

[LC Paper Nos. CB(2)798/10-11(03) to (04)]

6. SCMA briefed members on the proposal of a new election petition mechanism under the Legislative Council Ordinance (Cap. 542) ("LCO"), the District Councils Ordinance (Cap. 547) ("DCO"), and the Village Representative Election Ordinance (Cap. 576) ("VREO") as set out in the Administration's paper [LC Paper No. CB(2)798/10-11(03)].

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7. Members noted the background brief prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)798/10-11(04)] on the subject under discussion.

8. Mr WONG Yuk-man considered that amendments should be made to LCO in view of the judgment by the Court of Final Appeal ("CFA") handed down on 13 December 2010 ("the judgment") declaring that the finality provision contained in section 67(3) of LCO was unconstitutional and invalid as being inconsistent with Article 82 of the Basic Law ("BL 82"). He said that there should be an efficient election petition mechanism in place to resolve election disputes expeditiously as a Member whose election was challenged by an election petition would be under great pressure. Mr WONG enquired whether the appellate process could be completed within a short time if the proposed leap-frog appeal mechanism was adopted. He also asked about the relevant legislative timetable.

9. Dr LAM Tai-fai agreed with Mr WONG Yuk-man's view, saying that it was necessary to propose amendment to LCO to facilitate expeditious handling of election petitions. He asked whether any other ordinances, apart from the Chief Executive Election Ordinance (Cap. 569) ("CEEEO"), provided that an appeal against the decision of the Court of First Instance ("CFI") should be lodged directly to CFA, subject to leave being granted by the Appeal Committee of CFA. Dr LAM and Mr IP Kwok-him also asked about the duration of the appellate process under the proposed leap-frog appeal mechanism. Mr IP further enquired about the responsibility for the legal costs incurred in relation to election petitions.

10. SCMA responded that the Administration understood the pressure of an election petition on an elected Member whose election was challenged. In the light of the judgment, the Administration proposed that LCO be amended to allow for speedy determination of election petitions. Under the proposed election petition mechanism, any of the parties to the proceedings who intended to appeal against the CFI's decision should lodge an application for leave to appeal to CFA within seven working days after the day on which the relevant CFI judgment was handed down. Should leave be granted by Appeal Committee of CFA, the appellant could proceed to the listing of the appeal. The Court would impose a schedule in accordance with its practice and procedure for hearing the case. There were cases where the Department of Justice ("DoJ") had applied for leave to bring an appeal directly to CFA. On legal costs, SCMA said that the appellant and

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the respondent would have to bear the legal costs incurred in relation to the election petition. SCMA added that the Administration aimed at putting forward the legislative amendment proposals in the first half of 2011.

11. The Chairman enquired whether the Administration could liaise with the Judiciary to expedite the listing of appeals in respect of LegCo election petitions. SCMA replied that if DoJ was acting on behalf of the Government in an election petition case, it could apply for expediting the hearing on the ground that the case had significant constitutional implications. The Court would have the discretion to consider granting its application.

12. Dr Margaret NG, however, was of the view that there was no pressing need to amend LCO given CFA had declared that the finality provision in section 67(3) of LCO which barred any further appeal from a determination of CFI on an election petition as unconstitutional and invalid, the normal course of appeal would apply automatically to challenges to CFI's decision, i.e. any party who intended to appeal against the CFI's decision in respect of an election petition could appeal to the Court of Appeal ("CA") and to CFA (if leave was granted). She urged the Administration to exercise caution in proposing the extension of the leap-frog appeal mechanism to LegCo, DC and Village Representative ("VR") elections. Dr NG explained that under the Hong Kong Court of Final Appeal Ordinance (Cap. 484), a list of conditions must be fulfilled in order that an appeal could lie directly to CFA, including a point of law of great general or public importance was involved in the decision of the judge in the proceedings concerned. She considered that the adoption of the leap-frog appeal mechanism for the Chief Executive ("CE") election was appropriate as any question relating to the election of CE should be settled before the result of the election was submitted to the Central People's Government for the appointment of CE. However, the Administration had failed to state the rationale for introducing the leap-frog appeal mechanism for LegCo, DC and VR elections. If all the appeals from the decision of CFI in election petitions could be lodged directly to CFA, the Court might need to handle a lot of cases within a short time. It would affect the normal business of the Court and would also go against the original intention of the establishment of CFA. Dr NG further said that as legal aid did not cover election petition cases, it would be unfair to a petitioner if he could only appeal directly to CFA as the legal costs involved would be much higher than appeal to CA. She asked whether the Administration had consulted the two legal professional bodies and the Judiciary on this matter.

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13. Ms Audrey EU shared a similar view that the Administration should have stated clearly in the paper the principles for applying the leap-frog appeal mechanism to the LegCo, DC and VR elections. She suggested that the Administration should consult relevant parties, including the Heung Yee Kuk ("HYK") if the Administration proposed to amend DCO and VREO as well. Ms Emily LAU also stressed that the Administration should consult relevant parties on the proposed election petition mechanism. Ms EU sought clarification on whether the proposed leap-frog appeal mechanism would allow a petitioner to appeal to CA if his application for leave to appeal from CFI directly to CFA was not granted, and on the time limit within which an election petition should be lodged.

14. SCMA responded that there was a pressing need to amend the respective provisions in LCO, DCO and VREO in relation to the election petition mechanism in the light of the judgment. Since CFA had declared that the finality provision contained in section 67(3) of LCO was invalid as being inconsistent with BL 82 which provided that the power of final adjudication of HKSAR should be vested in CFA, it would be prudent to propose suitable amendments to section 67(3) of LCO. A finality provision in identical terms was contained in DCO and VREO, and there were petition cases in progress in respect of the 2007 DC election. For the avoidance of doubt, it would be appropriate to propose corresponding amendments to these two ordinances. In proposing the leap-frog appeal mechanism for LegCo, DC and VR elections, the Administration had made reference to section 34 of CEEO. Under the proposed leap-frog appeal mechanism, any application for leave to appeal against CFI's decision should be lodged directly with CFA. The Appeal Committee of CFA might grant leave if it appeared to the Court to be expedient to do so. The Administration considered that the existing time limit of two months for an election petition to be lodged with CFI following the publication of the result of the LegCo election should be retained.

15. SCMA further advised that the Administration had consulted the Judiciary on the proposed extension of the leap-frog appeal mechanism to the LegCo, DC and VR elections, and the Judiciary had no objection to the proposal. After consultation with the Panel, the Administration would consult other relevant parties including HYK on the proposed election petition mechanism.

16. Mr Albert HO said that a petitioner should have a right of appeal and the Administration should state clearly its position on whether a "two-tier" or "three-tier" election petition mechanism was to be used. While

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appreciating that a "two-tier" election petition mechanism would have the merits of speedy determination of election petitions, Mr HO queried the appropriateness of the proposed extension of the leap-frog appeal mechanism to DC and VR elections. As he understood from the CFA judgment, the Court did not preclude any restrictions or limitations on the right of appeal provided that any such restriction or limitation could meet the proportionality test. If all appeals from the decision of CFI in election petitions could be lodged directly with CFA, he wondered whether the Court would be able to handle all those cases within a short time given the procedures in CFA were more complicated than those in CA and five judges were involved in the hearing of a case in CFA. He asked whether the Administration had considered providing for appeals from election petitions of DC and VR elections from CFI to CA, which would make the final decision on the appeals. He further enquired if such proposal would satisfy the proportionality test and be consistent with BL 82.

17. Mr IP Kwok-him echoed the view that a petitioner should have a right of appeal. He considered it appropriate to have a "two-tier" election petition mechanism so that a right of appeal would be provided. He opined that the issues arising from the judgment were mainly the right of appeal and the power of final adjudication. The proposed leap-frog appeal mechanism was consistent with BL 82 which provided that the power of final adjudication of HKSAR should be vested in CFA.

18. SCMA responded that the Administration was aware that the DC and VR elections were not constitutional elections. However, as a result of the amendments to the electoral methods for the CE and LegCo elections in 2012, the constitutional importance of DC members would grow considerably. According to the LegCo (Amendment) Bill 2010, only elected DC members were eligible to nominate candidates and be nominated as candidates for the five new DC Functional Constituency ("FC") seats and the original DC FC seat of LegCo. According to the CE Election (Amendment) Bill 2010, elected DC members would return 117 out of the 1 200 members of the Election Committee ("EC") which was responsible for electing CE. As regards VRs, they might be eligible to run for the LegCo HYK FC seats and the EC HYK subsector seats. The Administration considered it necessary to ensure that the election petition mechanism under DCO and VREO could allow speedy determination of appeals from such election petitions. A leap-frog appeal mechanism should, therefore, also be put in place for DC and VR elections. SCMA further said that the Administration had considered adopting a "two-tier" election petition

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mechanism which provided for an appeal against the decision of CFI be lodged to CA for final adjudication. However, taking into account BL 82 which provided that the power of final adjudication of the HKSAR should be vested in CFA, the Administration would propose an appeal against the decision of CFI be lodged directly with CFA instead of CA if a "two-tier" election petition mechanism was to be adopted.

19. Mr LEUNG Kwok-hung was of the view that the power of final adjudication should be vested in CFA and a "three-tier" election petition mechanism should be retained. He considered it inappropriate to propose a leap-frog appeal mechanism which deprived an appellant of the right to appeal to CA and to CFA. In his view, it was important to have a case first considered by CA before being heard by CFA, especially if constitutional matters were involved. Mr LEUNG stressed that the Administration should have a reasonable ground for proposing the leap-frog appeal mechanism other than the need to have election disputes quickly disposed of. He said that the Administration could liaise with the Judiciary for expediting the hearing of an appeal case if the situation warranted.

20. Mr Paul TSE considered that allowing all petitioners to appeal from CFI's decisions including those relating to DC and VR elections directly to CFA was a major change and the Administration should have considered more seriously the implications of extending the leap-frog appeal mechanism to the three elections.

21. SCMA reiterated that there was an urgency to propose amendments to the three ordinances. He said that apart from election petitions from the LegCo election, there were election petitions in respect of the 2007 DC election. The Court would take into account the judgment of CFA and make a similar decision should any party intend to appeal against the CFI's decision in respect of the DC election. As stated in paragraph 73 of the judgment, section 67(3) of LCO had failed to satisfy the proportionality test, a finality provision in identical terms contained in DCO and VREO might also fail the test. In the circumstances, the Administration had to propose amendments to LCO, DCO and VREO to state clearly the right of appeal and the power of final adjudication in election petitions in relation to the three elections. The Administration had considered the matter from both the macro and micro perspectives before submitting the proposal to the Panel for discussion. The Administration would consider all the views expressed by members in formulating the legislative proposal.

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22. Mr LEUNG Kwok-hung maintained that the Administration should not propose a leap-frog appeal mechanism as it would deprive petitioners of the right to a normal appeal process. He said that should a case warrant a leap-frog appeal process, the petitioner would apply for leave to do so. For instance, if an elected member in the coming DC election was challenged by an election petition and the petitioner would like to appeal against the CFI's decision, it would be appropriate for the petitioner to apply for leave to directly appeal to CFA because according to the CE Election (Amendment) Bill 2010, elected DC members would participate in electing CE. A speedy determination of such election petition was necessary in order not to affect the participation of the elected DC member in the subsequent CE election.

23. SCMA responded that as stated in the judgment, CFA compared the differences between CEE0 and LCO. While noting that a right of appeal from the decision of CFI in election petition was provided under CEE0, the Court did not see the reason for not having a similar provision under LCO. Therefore, CFA suggested suitable changes could be made to LCO to ensure that any restrictions or limitations on the right of appeal were indeed no more than necessary, but such matter was for the Government and the Legislature to consider, taking into account relevant provisions in comparable legislation such as CEE0. In response to the Chairman, SCMA said that until the Court had determined on an election petition that an elected DC member had not been duly elected, elected DC members were eligible to nominate candidates and be nominated as candidates for the DC subsector of EC. SCMA assured members that the Administration would seriously consider members' views about providing for a petitioner's right to decide on whether to apply for a leap-frog appeal to CFA.

24. Ms Audrey EU was of the view that after CFA had declared that the finality provision in section 67(3) of LCO was unconstitutional and invalid, any party who intended to appeal against the CFI's decision could appeal to CA and to CFA under the normal course of appeal irrespective of whether it was in relation to a LegCo, DC or VR election. She said that the Administration should not have proposed such a hasty change to the existing normal course of appeal by introducing the leap-frog appeal mechanism. Pointing out that legal aid did not cover election petitions unless the case involved a possible breach of the Hong Kong Bill of Rights or an inconsistency with the International Covenant on Civil and Political Rights, Ms EU urged the Administration to consult relevant parties and reconsider the proposal in view of the significant financial implications on the parties concerned.

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25. Mr Paul TSE observed that since the judgment would not have the effect of striking down the identical finality provisions contained in DCO and VREO, there might be an urgency to amend the provisions in DCO and VREO to remove the restriction on the right of appeal to ensure their consistency with BL 82. He suggested that it would be pragmatic to repeal the relevant provisions in DCO and VREO in the first place so that the normal appeal process could be applied to the DC and VR elections.

26. SCMA responded that the Administration had carefully considered the judgment before proposing the extension of the leap-frog mechanism as currently applicable to the CE election to the LegCo, DC and VR elections. He said that the proposal was consistent with BL 82 and the Administration had also consulted the Judiciary and it had no objection to the proposal. He reiterated that the Administration would carefully consider all the views of the Panel before finalizing the legislative amendment proposals.

IV. Review of practical electoral arrangements

[LC Paper Nos. CB(2)779/10-11(01), CB(2)798/10-11(05) and ESC17/10-11]

27. The Permanent Secretary for Constitutional and Mainland Affairs ("PSCMA") introduced the Administration's paper [LC Paper No. CB(2)779/10-11(01)] which set out the feedback the Administration had received from members on the major issues regarding the current practical electoral arrangements. He said that the Administration would take into consideration members' further views on the subject in reviewing the electoral arrangements for the DC election and EC subsector elections in 2011, and the CE and LegCo elections in 2012.

28. Members noted the background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)798/10-11(05)] on the subject under discussion.

Election advertisements ("EAs")

29. Mr CHEUNG Man-kwong said that under the existing electoral law and election guidelines, a candidate had to furnish two copies of any EA to the Returning Officer ("RO") before he displayed, distributed or otherwise used an EA. He pointed out that in this age of information technology, EAs

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were mainly disseminated through the Internet such as election/social websites and blogs. As the information on the Internet was interactive and subject to regular revision, Mr CHEUNG enquired whether electronic copies of such EAs could be submitted to RO by email instead of printing out two hard copies of the webpages with a declaration and depositing them with RO after each update.

30. PSCMA responded that a candidate could submit an EA to RO by electronic means but two hard copies of the EA would need to be deposited with RO thereafter to ensure that the EA submitted by email was the same as the original copy. Since different software applications were used in the production of the electronic EAs, the Registration and Electoral Office ("REO") might have difficulty in opening some of the files or might receive a distorted version of the file if only electronic copies of EAs were submitted. Besides, as hard copies of the EA would be made available for public inspection, REO had to make sure that the soft copy of the EA received was the same version used.

31. Mr CHEUNG Man-kwong said that it would be reasonable to require a candidate to submit hard copies of the EA if RO received a distorted version of the electronic file, otherwise sending an electronic copy by email would suffice. The Chairman, Ms Audrey EU and Ms Emily LAU were of the view that it was important for REO to advance with the times and to devise user-friendly means to facilitate candidates in the submission of EAs.

32. PSCMA responded that the existing requirement for submitting hard copies of the EA after a candidate had sent in the electronic copy would ensure the information received had not been altered by hackers. The Administration would consider the most appropriate way to facilitate candidates to submit electronic EAs, taking into account the views of members. Chief Electoral Officer ("CEO") supplemented that the information technology teams of REO and the Government had been studying ways to strike a balance between facilitating candidates in submitting electronic EAs and protecting the public interest. REO had to make sure that the EA available for public inspection was the same version as submitted by the candidates. She added that to protect the Government as well as the candidate, it was necessary to ensure the EAs received were in an orderly and accurate manner. REO noted members' concern and would expedite its work in exploring ways to solve the technical problem.

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Return of election expenses

33. Ms Emily LAU expressed strong dissatisfaction that the Administration had failed to address in its paper relevant members' concerns raised at previous meetings. For instance, the Administration had not made a response as to whether it would review the existing arrangement for handling election complaints alleging technical and minor breaches of Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"). Mr IP Kwok-him and Mr Paul TSE shared a similar view. Mr IP said that the Administration should have provided responses to the concerns raised by members at previous meetings in its paper as a basis for discussion by the Panel. He opined that the electoral law in Hong Kong was one of the most stringent among overseas jurisdictions. The Administration should on the one hand ensure that elections were conducted fairly and openly, and on the other hand put in place electoral arrangements to facilitate candidates in the elections. He urged the Administration to review the existing mechanism for handling election complaints which involved irregularities relating to insignificant amounts of election expenses.

34. Mr Ronny TONG echoed members' dissatisfaction about the existing mechanism for handling election complaints on irregularities relating to insignificant amounts of election expenses. He said that it was a waste of time and resources for requiring a candidate to make an application to CFI for an order to correct a mistake in the election return which involved only a few dollars. Mr TONG suggested that the Administration should consider providing for an exemption of a small amount of discrepancy, say within \$30, in the return.

35. While members had expressed on a number of occasions their views on the current electoral arrangements, Ms Audrey EU said that she was disappointed at the Administration's failure to propose any improvement on the arrangements for the Panel's consideration. One of the major concerns was referring minor irregularities in an election return which did not involve a corrupt conduct to the Independent Commission Against Corruption ("ICAC") for investigation. She considered that the arrangement had caused nuisance to candidates and had wasted a lot of public money. She agreed with Mr Ronny TONG's suggestion that there should be an exemption for small amount of over-expenditure but she did not see the need to amend the relevant legislation to provide for the exemption. Echoing a similar view, Mr CHEUNG Man-kwong considered that REO should only refer an election return case to ICAC if there was evidence to substantiate possible breaches of ECICO.

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36. The Chairman said that in the 2012 LegCo election, there would be five new DC FC seats returning from one constituency covering the whole territory. Given that the election expenses limit of the new DC FC election was set at \$6 million, there would be a lot of staff involved in handling the invoices and receipts of the payments, minor mistakes would be inevitable. He suggested that the Administration should review the existing mechanism and formulate practical electoral arrangements which would facilitate candidates in submitting the return of election expenses.

37. PSCMA explained that as a review on the existing electoral arrangements was being conducted, the Administration at this stage had not put forward any concrete recommendations on the issues raised by members. Noting the comments raised by members of the Establishment Subcommittee at its meeting on 8 December 2010 in respect of the existing electoral arrangements, the Administration would like to solicit further views from members on the subject before submitting the proposed electoral arrangements for the coming four elections for the discussion at the Panel. On the proposal of providing trivial amount exemption in the election returns, PSCMA said that REO had to act in accordance with relevant electoral legislation at present. Since REO was not a law enforcement agency under the relevant ordinance, should there be irregularities in relation to the return of election expenses, the matter had to be referred to ICAC for investigation. It was inappropriate for the Administration or REO to exercise judgment on whether a particular election return case involved an illegal conduct. The Administration, however, would look into the existing arrangement to see if there was room for further improvement.

38. CEO supplemented that REO had been discussing with ICAC on measures to facilitate the investigation work on cases relating to candidates' election returns under ECICO. REO would, after compiling the relevant documents, provide ICAC with an analysis of possible breaches of ECICO in the relevant election return cases, supplemented with relevant details. As a result of such arrangement, there would not be a need for ICAC to make specific requests for the relevant information and follow-up action could be taken forthwith. REO would continue to cooperate with ICAC to facilitate its investigation work.

Implementation of environment protection measures

39. Ms Emily LAU enquired about the environment protection measures adopted by the Administration in formulating electoral arrangements and

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whether the Administration had stepped up efforts in soliciting email addresses from electors in order to reduce paper consumption in sending EAs.

40. CEO responded that recycled paper or environmentally friendly ink was used in the printing of electoral documents in the last elections. In the voter registration for the upcoming elections, the Administration would step up efforts to solicit e-mail addresses from newly registered electors and existing electors. Such email addresses would be provided to candidates for dissemination of EAs by electronic means in order to reduce paper consumption.

Remuneration and working hours of polling staff

41. Ms Emily LAU and Mr LEUNG Kwok-hung said that the Administration should review the remuneration, working hours and working condition of polling and counting staff. Mr LEUNG pointed out that he had received complaints from polling staff that they were required to standby but the standby time was not counted as working hours.

42. Pointing out that the polling was conducted from 7:30 am to 10:30 pm, Mr IP Kwok-him suggested that the Administration should review whether the polling time should be as long as 15 hours. The Chairman said that the Administration should be prudent in determining an appropriate duration of time for polling as he recalled that the polling time had previously been proposed to be shortened by three hours and it had aroused public concern.

43. CEO responded that the Administration was reviewing the remuneration for polling staff, taking into account the workload and complexity of the polling procedures. She said that all polling staff were civil servants and were recruited by REO. Their remuneration was calculated on a fixed sum basis from the start of polling at 7:30 am until 1:30 am on the next day, and overtime work would be paid on an hourly basis. While the workload of polling staff would depend on the actual activities of individual polling station, CEO believed that polling staff would not be idling around. Training and experience sharing sessions would be provided to polling staff to familiarize them with the polling and counting procedures so as to enhance the efficiency of work.

Venue for polling station

44. Ms Emily LAU urged the Administration to improve the arrangements for electors with disability to access to polling stations. CEO

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responded that REO had put in a lot of efforts in securing barrier-free venues for use as polling stations. Sometimes there were difficulties in borrowing venues which were suitable for electors with disability. Having regard to safety considerations, ramps would be installed to the venue to improve accessibility. In the 2004 LegCo election, 59% of the polling stations were barrier-free, and the number had increased to 82% and 85% in the 2008 LegCo election and the 2010 LegCo by-election respectively. An elector having difficulty in mobility could apply to REO for re-allocation to a barrier-free polling station if the designated polling station was not accessible to people with disability. REO would conduct site inspection on all polling stations used in the past and consult the District Officers with a view to identifying barrier-free venues as polling stations. It would take the initiative to discuss with the Equal Opportunities Commission if necessary.

45. Mr LEUNG Kwok-hung opined that if any persons refused to provide their venues for use as polling stations, the Administration could consider invoking BL 105 to acquire the premises. PSCMA responded that the existing arrangement of obtaining venues for election through negotiation had been working well. Since Hong Kong was an open society, the Administration did not see a need to acquire any premises to be used as polling stations. The Administration would identify room for improvement in securing suitable venues when it reviewed the electoral arrangements.

Exit poll

46. Given the conduct of exit poll in the 2008 LegCo election had given rise to much controversy, Mr Ronny TONG said that the Administration should have addressed the issue in its paper. He pointed out that many voters had provided false information to exit pollsters, resulting in inaccurate exit poll data. He had discussed the issue with the Electoral Affairs Commission and urged the Administration to consider prohibiting the disclosure of exit poll results before the close of poll. He asked whether there were any improvement measures proposed since the 2008 LegCo election in relation to the conduct of exit poll. Ms Audrey EU expressed a similar view. She said that the Administration should regulate the use of exit poll results to ensure fairness in an election.

47. PSCMA responded that REO had all along been reminding organizations to refrain from announcing the results of exit polls until after the close of poll. In reviewing the existing electoral arrangements, the

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Administration would take into account experience gained in the past elections. He added that the Administration respected academic freedom and freedom of expression and had no intention to pose any restrictions on the use of exit poll results.

Conflicts during election

48. Mr LEUNG Kwok-hung said that incidents of violence during election were getting more serious. He anticipated that there would be keen competition in the coming DC election and urged the Administration to provide special training to police officers for handling election-related conflicts.

49. PSCMA responded that the Police was the law enforcement agency and had a dedicated group of officers who had previous experience in handling disputes relating to elections. The Police had all along been liaising with the Administration prior to the elections on the electoral arrangements to ensure sufficient guidelines were provided to frontline officers stationed at the polling stations. The Police would adopt consistent and impartial practices in the enforcement of the law.

Nomination form and form of consent of support

50. Ms Audrey EU said that some ROs did not accept the subscribers in a nomination form if their names and addresses were not presented in the exact format as required. For example, the names were required to be exactly the same as the names appeared in the identity cards. Ms EU urged the Administration to seriously consider members' views and improve the existing electoral arrangements so as to save the time and resources spent in complying with such stringent requirements. Pointing out that ROs in different districts had adopted inconsistent criteria in implementing the electorate requirements, the Chairman suggested that REO should enhance training for ROs and standardize the application of criteria.

51. The Chairman said that in filling out the form of consent of support, the full Hong Kong Identity Card Number of a supporter was required. He suggested that the Administration should consider allowing the supporter to provide the first four digits of his identity card number for the protection of personal data privacy. He further said that consent from the shop owner was required before EAs could be posted outside a shop. While the owner was normally not present at the shop, the Chairman suggested that a staff

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member should also be allowed to sign or stamp the company's chop to indicate their consent for putting up the poster outside the shop.

The new DC FC election

52. Ms Cyd HO was of the view that most of the candidates running for the five new DC FC seats would have political affiliation. She suggested that the Administration should allow those candidates to conduct a joint publicity campaign along with the geographical constituency ("GC") candidates of the same political party. She further suggested that the Administration should allow candidates of the same political party from different GCs to carry out joint election campaign. She said that such arrangements would be conducive to political party development and constitutional development.

53. Mr Paul TSE opined that the Administration should revamp the existing electoral arrangements in order to take forward constitutional development and political party development. While appreciating that a cap on the election expenses limit would facilitate participation of candidates from different backgrounds in an election, Mr TSE considered that the Administration should not set a cap on the election expenses limit for the new DC FC election so that candidates from the business sector and professional sectors would be encouraged to participate in the LegCo election. He pointed out that democratic countries overseas had less restriction on the election expenses limit. He further said that the Administration should introduce measures to facilitate candidates to adopt more environmental-friendly means to disseminate their election platform. As there were approximately 3.2 million registered electors in the new DC FC election, election publicity should not rely on the distribution of leaflets. He considered that the Administration should relax the existing restriction on EA in the media. He suggested that the Administration should make reference to overseas practices in electronic election broadcasting and improve the relevant electoral arrangements.

54. Mr CHEUNG Man-kwong said that since the election for the five new DC FC seats was a new arrangement, there would be adequate room for the Administration to devise new measures to avoid creating confusion and unfairness in the upcoming election. Given that the Administration had maintained its view to retain five GCs to return the 35 GC members in the 2012 LegCo election, he said that electors in a constituency with eight to nine seats would receive dozens of election materials, let alone those EAs

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for the five new DC FC seats. To protect the environment and to facilitate electors in distinguishing candidates from the new DC FC and GCs, Mr CHEUNG suggested that the Administration should produce one leaflet listing out all the candidates standing for the five new DC FC seats. He further suggested that the Administration should consider purchasing television time to promote the new DC FC election so that candidates could present their election platform directly to electors in the whole territory.

Other issues

55. Mr Ronny TONG pointed out that some political parties had recently distributed barbecued pork rice to promote their image. While political parties would not run for elections, he said that individual members of such parties would do so. Candidates belonging to that political party would be benefited from the distribution of goodies by their political party. In that case, the political party to which a candidate belonged could even hand out barbecued pork rice during election period. He expressed concern about such a loophole in the electoral law and enquired whether the Administration would devise any measures to plug the loophole. Mr LEUNG Kwok-hung echoed Mr TONG's view. He said that there was an obvious loophole in the existing legislation as the political parties or the candidates would not breach the law if they did not ask the electors to vote for a particular candidate when they distributed any food or drink.

56. PSCMA disagreed that there was a loophole in the electoral law. He said that political parties had been reaching out to their constituents in different ways outside the election period. However, during an election period, expenses incurred by a political party or a candidate for the purpose of promoting the election of the candidate or group; or prejudicing the election of another candidate or group should be counted as election expenses under section 2 of ECICO.

57. Ms Emily LAU said that the Democratic Party would submit its views on the electoral arrangements to the Administration at a later stage. She enquired about the deadline for the submission of their views. Mr IP Kwok-him said that the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") had submitted recommendations on the electoral arrangements to the Administration. He asked whether the Administration would consider these recommendations in its review.

58. PSCMA responded that the Administration had received the recommendations from DAB. The Democratic Party or members from

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other political parties were welcomed to submit their views to the Administration within a month. The Administration would seriously consider all the views received and complete the review on the existing electoral arrangements as soon as practicable. The Administration planned to put forward the proposed electoral arrangements for the Panel's discussion in the second quarter of 2011 after passage of the two bills to implement the two electoral methods in 2012.

59. There being no other business, the meeting ended at 5:20 pm.

Council Business Division 2
Legislative Council Secretariat
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