

立法會
Legislative Council

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LC Paper No. CB(2)1023/11-12
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 21 February 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
Dr Hon Philip WONG Yu-hong, GBS
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 WONG Kwok-kin, BBS
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** : Hon LAU Wong-fat, GBM, GBS, JP
Dr Hon Samson TAM Wai-ho, JP

Public Officers : Item III
attending

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)

Item IV

Mr Stephen LAM
Secretary for Constitutional and Mainland Affairs

Mr Ivanhoe CHANG
Principal Assistant Secretary
(Constitutional and Mainland Affairs)

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

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

Miss Ivy LEONG
Senior Council Secretary (2)4

Ms Wendy LO
Council Secretary (2)3

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)1046/10-11(01) and CB(2)1064/10-11(01) to (02)]

2. Members agreed to discuss at the next regular meeting to be held on 18 March 2011 the following items proposed by the Secretary for Constitutional and Mainland Affairs ("SCMA") -

- (a) 2011 Voter Registration Campaign; and
- (b) Amendments to subsidiary legislation under the Electoral Affairs Commission Ordinance on electoral procedures, voter registration and practical arrangements for the elections in 2011 and 2012.

3. The Chairman informed members that he had received an email from 15 organizations and individuals requesting to give views on the implementation and review of the Race Discrimination Ordinance (Cap. 602) at a Panel meeting [LC Paper No. CB(2)1046/10-11(01)]. Members agreed to discuss the subject at a future meeting.

III. Review on the subsidy rate of the financial assistance for candidates and the election expenses limit for the 2011 District Council election

[LC Paper Nos. CB(2)822/10-11(01), CB(2)1003/10-11(01), CB(2)1045/10-11(01) and CB(2)1064/10-11(03) to (04)]

4. SCMA introduced the Administration's paper [LC Paper No. CB(2)1064/10-11(03)] which set out the proposals to increase the subsidy rate of the financial assistance scheme for candidates in the 2011 District Council ("DC") election from \$10 per vote to \$12 per vote, and to increase the election expenses limit for DC election from \$48,000 to \$53,000.

5. Members noted the background brief prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)1064/10-11(04)] on the subject under discussion.

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Financial assistance scheme and election expenses limit for the 2011 DC election

6. Pointing out that the cumulative inflation between 2008 and 2011 had risen by 11% and that the inflation for this year could reach 4%, Mr IP Kwok-him said that if the increase of the election expenses limit for the 2011 DC election was only 10%, the actual increase in the election expenses limit would be lower than that for the 2007 DC election. He asked whether there was room to adjust the election expenses limit upward so as to better reflect the anticipated inflation.

7. Referring to paragraph 12 of the Administration's paper, SCMA said that between 2008 and 2011, the Composite Consumer Price Index was expected to have risen by 11% on a cumulative basis. The Administration had made an assessment on the spending pattern of candidates in the 2007 DC election and found that 80% of the candidates spent less than 80% of the election expenses limit. Having regard to the findings and the forecast cumulative inflation, the Administration considered that the proposed increase of the election expenses limit from \$48,000 to \$53,000 (a 10% increase) was appropriate.

8. Mr Ronny TONG considered that to encourage young professionals to participate in elections, the Administration should review the remuneration package for DC members and financial assistance for DC candidates. He said that it would be difficult to attract young professionals to participate in elections given the monthly remuneration for an elected DC member was around \$10,000 to \$20,000 as compared with a fresh graduate from the field of accounting/legal services who could earn as much as \$40,000 per month. Although the Administration proposed to increase the subsidy rate to \$12 per vote, an elected DC member would still have to meet half of their declared election expenses. He sought clarification on the basis of capping the financial assistance at 50% of the declared election expenses of the candidates since the introduction of the scheme. He suggested that the cap of financial assistance payable should be raised to 70% or above of the actual election expenses incurred by the candidates so as to encourage more professionals to participate in elections.

9. SCMA said that the Administration also agreed that it was necessary to encourage young professionals to participate in elections. A few years ago, the Administration had increased the monthly remuneration of DC members to the present level of approximately \$20,000. The Administration would continue to keep in view the participation of candidates in the LegCo and DC elections. SCMA further said that when Mr CHEUNG Man-kwong first put

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forward the idea of putting in place a financial assistance scheme for the 2004 LegCo election, the subsidy rate was proposed to be set at only \$5 per vote. When he took up the post as SCMA, he proposed to set the subsidy rate at \$10 per vote, which was finally adopted. The scheme was extended to DC election candidates from the 2007 DC election onwards. He explained that the ceiling of 50% of the declared election expenses was set on the basis that both the candidates and the Administration should shoulder part of the expenses. The Administration considered the arrangement fair and reasonable.

10. Referring to paragraph 13 of the Administration's paper stating that the increase in election expenses limit would allow more room for candidates to promote their candidacy in the 2011 DC election, in which competition was expected to be intensified as a result of the opportunity of becoming LegCo Members via the new DC Functional Constituency ("FC"), Mr WONG Yuk-man said that while he had no particular views on the increase of the subsidy rate of the financial assistance scheme from \$10 per vote to \$12 per vote, he considered that the proposed increase in election expenses limit would not be fair to those DC candidates who intended to serve the community at district level only. He was concerned that these candidates had no intention to run for the new DC FC seats, but they would have to incur extra expenses for running in the election.

11. SCMA responded that the main consideration of the Administration in proposing the increase of the subsidy rate and the election expenses limit was to propose an adjustment in accordance with the inflation figure. The reason as set out in paragraph 13 of the Administration's paper in relation to keen competition in the new DC FC election was only a prediction.

12. Mr LEUNG Kwok-hung said that the pan-democratic camp had all along been opposed to setting a high election expenses limit so as not to put the less well-off candidates at a disadvantage. However, there was now a change in the election culture. He expressed reservation against the proposed increase of the election expenses limit for DC election, saying that the Administration should not encourage candidates to spend a lot of money on electioneering activities. Mr LEUNG considered that unless the Administration allowed candidates to use the electronic media for electioneering, there was no need for them to incur a huge amount of election expenses.

13. Mr Paul TSE, however, took the view that setting an election expenses limit would hinder democratic development. To encourage candidates from the business sector and professional sectors to participate in the LegCo

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Geographical Constituency ("GC") election, the Administration should allow them to make full use of their financial resources for electioneering. He considered that as candidates possessed different strengths, such as high academic qualifications, good appearance, outstanding connections or ample financial resources, he could not understand why the Administration had only singled out financial resources by setting election expenses limit. Mr TSE suggested that the Administration should relax the existing restrictions on the election expenses limit to encourage candidates from the business sector and professional sectors to participate in elections.

14. SCMA responded that while he respected members' diverse views on setting the election expenses limit, he considered that there should be a set of electoral arrangements in place to prevent unfairness in an election. The elections in Hong Kong had all along been conducted in a fair, just and open manner. The election expenses limit in Hong Kong was set at a reasonable rather than a high level so that electioneering activities of resourceful political parties would not overshadow those of the smaller political parties and independent candidates. He stressed that candidates were free to spend as much or as little as they wished, depending on the support of their respective constituency.

Financial assistance scheme for the 2012 LegCo election

15. Ms Emily LAU expressed dissatisfaction with the Administration's failure to respond actively to the repeated calls made by members for the need to promote the development of political parties. She urged the Administration to make reference to the practice in Germany where its Government would provide financial assistance to candidates in proportion to the votes obtained. She considered that the proposed increase from \$10 to \$12 was not an actual increase as it was only an adjustment in accordance with inflation. Ms LAU further sought clarification from the Administration on its recent proposal to further enhance the financial assistance scheme for the 2012 LegCo election.

16. SCMA responded that the current subsidy rate for LegCo election was \$11 per vote and the amount of financial assistance payable for candidates in a LegCo election was the lower of either the amount obtained by multiplying the total number of valid votes cast for the candidates by \$11 or 50% of their declared election expenses. To provide more room for candidates to obtain financial assistance, the Administration would propose technical amendments to the financial assistance scheme for the 2012 LegCo election to the effect that the subsidy rate would be set at \$12 per vote and the amount of financial assistance payable would be capped at 50% of the election expenses limit,

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instead of 50% of the declared election expenses. However, the amount payable should not exceed the declared election expenses. For instance, the current election expenses limit for New Territories East ("NTE")/New Territories West ("NTW") GC was \$2,625,000. In order to obtain the amount of financial assistance of \$1,312,500 (i.e. 50% of the election expenses limit for NTE/NTW GC), a list of candidates/a candidate would need to obtain some 109 000 votes. If the list of candidate/candidate received less than 109 000 votes, the amount of financial assistance received would be based on the number of votes they obtained multiplied by \$12. On the impact of the amendments, SCMA explained that the increase of the subsidy rate from \$11 to \$12 per vote represented some 10% increase in the amount of financial assistance for eligible candidates. Capping the amount of financial assistance payable at 50% of the election expenses limit would further increase the subsidy by approximately 5%. However, as the number of lists of candidates/candidates, the votes obtained by each candidate, and the election expenses incurred by candidates varied in each election, the Administration could only provide a rough estimation at this stage.

17. The Chairman and Ms Emily LAU asked whether the proposed formula for calculating the amount of financial assistance payable for candidates standing for the 2012 LegCo election would be applicable to the 2011 DC election to be held in November 2011.

18. SCMA responded that subject to the passage of the LegCo (Amendment) Bill 2010, the subsidy rate for the 2012 LegCo election would be increased to \$12 per vote and the amount of financial assistance payable would be capped at 50% of the election expenses limit. The Administration intended to introduce similar legislative amendments to enhance the financial assistance scheme for candidates standing for DCs election, together with the amendments to provide for instituting a leap-frog appeal mechanism in relation to an election petition arising from the LegCo, DCs and Village Representative elections.

19. Mrs Regina IP considered that the spending pattern of candidates in recent DC elections as portrayed on the basis of the statistics in paragraphs 9 and 10 of the Administration's paper was skewed. She said that all candidates were very cautious in their spending and would not spend beyond the prescribed limit of election expenses for fear of committing a criminal offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"). Mrs IP considered that the Administration should be more generous in providing financial assistance to candidates in order to show its support for democratic development and to encourage more people to participate in elections. She was concerned that the Administration's current

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proposal to enhance the financial assistance scheme would not bring about much benefit to independent candidates or new candidates who could not obtain a large number of votes.

20. SCMA responded that the financial assistance scheme was first introduced in the 2004 LegCo election with the aim of encouraging more independent candidates and those supported by smaller political parties to participate in the LegCo elections. The Administration considered that its recent proposal to further increase the subsidy rate to \$12 per vote and to cap the amount payable at 50% of the election expenses limit would provide more room for candidates to obtain financial assistance.

21. Ms Emily LAU enquired about the number of lists of candidates which had obtained financial assistance to cover 50% of the declared election expenses in the 2008 LegCo election. SCMA replied that in the 2008 LegCo election, a total of eight lists of candidates standing for GC election had obtained financial assistance to cover 50% of the declared election expenses.

22. Noting that only eight lists of candidates (i.e. 11 elected Members) out of the 30 GC seats had obtained financial assistance amounting to 50% of the declared election expenses, Mr Ronny TONG suggested that the Administration should shoulder 50% of the declared election expenses for each elected candidate if it was committed to enhancing democratic development in Hong Kong. Alternatively, the amount of financial assistance payable to a list of candidates/a candidate should be the higher, not the lower in the existing formula, of either the amount obtained by multiplying the total votes cast for the list of candidates/the candidate by \$12 or 50% of their declared election expenses.

23. SCMA explained that according to the new formula, the amount of financial assistance payable to a list of candidates/a candidate was calculated by multiplying the total number of valid votes cast for the list of candidates/the candidate by \$12 or 50% of the election expenses limit. The amount payable should not exceed the amount of declared election expenses of the list of candidates/the candidate concerned. In the 2008 LegCo GC election, among the 37 lists of candidates/candidates eligible for financial assistance, eight of them obtained financial assistance amounting to 50% of their declared election expenses, and 29 of them obtained financial assistance amounting to the number of votes obtained multiplied by \$11. The Administration considered such arrangements fair as it reflected the level of support a list of candidates/a candidate received from the public. SCMA said that he could not agree that all elected candidates should receive a subsidy amount equivalent to 50% of the declared election expenses

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across-the-board without regard to the level of support gained by the candidates. As the public support garnered by individual candidates was not the same, the subsidy provided by the public coffers to each candidate should also be different.

24. Ms Emily LAU and Mr LEE Wing-tat expressed concern that it was very difficult for candidates standing for GC election to obtain the amount of financial assistance equivalent to 50% of the election expenses limit. They pointed out that in the 2008 LegCo election, even though a list of candidate had obtained 102 434 votes in NTE GC, the amount of financial assistance payable was lower than 50% of the election expenses limit. Given the number of seats in the 2012 LegCo election would be increased but there would not be a substantial increase in the number of electors, the votes would be thinned out. Under the existing voting system for GC election, political parties would need to split up their list of candidates in order to win more seats. All these would make it even more difficult for candidates to obtain adequate votes to obtain financial assistance as much as 50% of the election expenses limit. They considered that it was an illusion that candidates would be able to obtain more financial assistance under the Administration's proposal. It would be more practical for the Administration to further increase the subsidy rate per vote from \$12 to \$14 or \$18 so that all eligible candidates would benefit.

25. SCMA responded that as the circumstances in each election varied, the Administration would not be able to predict at this stage the voting rate or the number of votes to be obtained by a list of candidates/a candidate in the upcoming election. He said that different political parties would decide on whether to field more than one list of candidates for the election according to the circumstances of each constituency and the support of the community. SCMA further explained that candidates would not have to obtain half of the votes casted in the respective GC in order to obtain the amount of financial assistance equivalent to 50% of the election expenses limit. For instance, the current election expenses limit for NTE/NTW GC was \$2,625,000. In order to obtain the amount of financial assistance of \$1,312,500 (i.e. 50% of election expenses limit), a list of candidates/a candidate would need to obtain some 109 000 votes. For Kowloon East/Kowloon West GC, the current election expenses limit was \$1,575,000. In order to obtain the amount of financial assistance of \$787,500, a list of candidates/a candidate would need to obtain some 65 000 votes. As regards Hong Kong Island GC, the current election expenses limit was \$2,100,000. A list of candidates/a candidate would need to obtain some 87 500 votes to obtain financial assistance amounting to \$1,050,000. SCMA stressed that the Administration had considered fully members' view about further increasing the subsidy rate per

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vote. The Administration's current proposal would indeed provide more room for candidates to obtain financial assistance.

26. Ms Audrey EU queried whether the Administration's proposal of enhancing the financial assistance scheme would bring about concrete benefit to candidates. She said that in reality, candidates would not spend the election expenses up to its prescribed limit, lest they would commit an offence, rendering them not duly elected. For instance, the election expenses limit for the Hong Kong Island GC was \$2,100,000, but candidates would normally spend a little less than that limit to allow for a safe margin. Hence, the maximum amount of financial assistance a candidate could receive was around \$1,000,000, and the remaining 50% of the actual election expenses incurred had to be met by the candidate.

27. SCMA responded that while he understood that candidates would not spend their election expenses up to the prescribed limit, the new formula would indeed provide more room for candidates to obtain financial assistance. He elaborated that the expenses limit for the Hong Kong Island GC was set at \$2,100,000, according to the current formula, if a candidate had spent \$1,900,000, the candidate would only obtain \$950,000 as financial assistance. However, under the new formula, the candidate would be able to obtain up to \$1,050,000.

Other forms of assistance to candidates

Conduct of election campaign through electronic media

28. Ms Audrey EU was of the view that candidates should be allowed to present their election platform through the electronic media so that electors would be able to obtain adequate information about the candidates. SCMA said that it had been the established policy that election advertisement through electronic media was not allowed. Nevertheless, he believed that candidates would continue to make use of the new media on the Internet to do publicity work for the election campaign.

29. Mr IP Kwok-him said that candidates in the past DC elections had been using the Internet to promote their candidature and he envisaged that the trend would become more common in the future. While at present the expenses incurred in the production of election advertisements on the Internet were not counted as election expenses, he asked whether the Administration would review the existing arrangement, taking into account the extensive use of the Internet for election publicity and the high production cost involved.

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30. SCMA responded that the Administration would discuss with the Registration and Electoral Office ("REO") about the expenses incurred in election publicity on the Internet, including the method in the calculation of the production cost, and the Administration would revert to the Panel in due course.

31. Mr Paul TSE said that while the Administration had very often used the electronic media to publicize the Government's policies, like the "Act now" campaign, he queried why the Administration had categorically decided against electioneering on television and radio. Mr TSE pointed out that there were a lot of similar means on the Internet which candidates had been using for election publicity. In his view, electors would have a better understanding of a candidate if they could see the candidate's demeanour on television or listen to the candidate's election platform on radio. He doubted whether the Administration was committed to the promotion of democratic elections if it retained its stance on prohibiting electioneering on television and radio.

32. SCMA responded that the Administration was committed to promoting democratic elections in Hong Kong. There was already a timetable for the implementation of universal suffrage for selecting the Chief Executive in 2017 and for forming LegCo in 2020. The Administration maintained the view that the election expenses limit should not be set at a high level and that electioneering on television and radio should be prohibited so as to ensure a level playing field for all candidates. He said that candidates had been devoting a lot of time and effort in their community/sector such as building up network and serving the constituencies. All those were meaningful and long-term political work. The Administration had no intention to restrict candidates in the use of new media on the Internet for election publicity. He added that apart from Radio Television Hong Kong, there were some other electronic media which would organize election forums for candidates. According to the relevant Guidelines on Election-related Activities issued by the Electoral Affairs Commission, broadcasters should ensure that the "equal time" principle and the "no unfair advantage" principle would be applied to all candidates in order to ensure fairness in an election.

Allocation of designated spots for displaying publicity signboards

33. Mr WONG Yuk-man expressed concern that as there being not enough designated spots for GC candidates to display their publicity signboards in the past elections, the problem would become more serious given that the new DC FC election would only have one single constituency covering the whole territory. Since the election expenses limit for the new DC FC was set at \$6

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million while the limit for GCs was only in the range of \$1 million to \$2 million, he anticipated that there would be a lot of problems for candidates in carrying out publicity work in the GC election.

34. SCMA responded that in the 2012 LegCo election to be held in September 2012, there would be 5 new DC FC seats to be returned by some 3.2 million registered electors. The Administration would allocate designated spots for candidates standing for GC, FC and the new DC FC elections to display their publicity signboards in a fair manner.

Implementation of environmental-friendly measures in the distribution of election-related materials

35. Ms Emily LAU and Ms Audrey EU were of the view that the Administration should introduce measures to facilitate candidates to adopt more environmental-friendly means to distribute their election-related materials. They were disappointed that the Administration had yet to come up with any proposals for implementation in the upcoming elections. Ms EU urged the Administration to consider seriously her previous suggestion that a list of candidate/a candidate should be allowed to print in the same leaflet materials relating to the candidature of the lists of candidates/candidates from different GCs/FCs and post such election advertisement free of postage. She added that as political parties would have to split up their list of candidates in order to win more seats under the current list proportional representation system, it would not be conducive to the development of political parties. Referring to Mr Paul TSE's suggestion previously made on the same separate occasion on the provision of an allowance to candidates in the form of a voucher in lieu of free postage to provide financial incentive and more flexibility to candidates in distributing their election-related materials by environmental-friendly means, Ms LAU believed that if such a creative suggestion was adopted, many candidates would choose not to send hardcopies of their election advertisements to electors in order to reduce paper consumption and would rather allocate resources to the production of a website for election publicity. She asked whether the Administration would consider Mr TSE's suggestion. Ms LAU further enquired whether candidates would be given address labels of electors who had already provided their email addresses for sending their election advertisements.

36. SCMA responded that the Administration generally agreed that candidates should be encouraged to use more environmental-friendly means to distribute their election-related materials. However, candidates should be given a choice on whether to communicate with their constituents by sending election-related materials in hardcopies or electronic copies. The

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Administration was actively considering the suggestion made by Ms Audrey EU and would report back to the Panel in due course. However, the Administration would not take on board Mr Paul TSE's suggestion in the upcoming elections. On the question of whether address labels of electors who had indicated their preference for receiving election-related materials through emails would be provided to candidates, SCMA said that REO had to further consider the practical arrangements before a final decision could be made. SCMA further said that under the list proportional representation system, different political parties irrespective of their size would be able to win a seat. Political parties having sufficient support and capabilities would be able to split up their list of candidates. Apart from splitting up their list, political parties could also stand for the five new DC FC seats. In the long run, all these arrangements could enhance the development of political parties.

37. Mr Paul TSE expressed disappointment that the Administration had decided not to take on board his suggestion in the coming elections. He considered that while Hong Kong was an innovative city, it was lagging behind in its electoral arrangements. He said that in this age of information technology, publicity for elections should not remain at the era of signboards and hardcopies. The Administration should allow more flexibility for candidates to carry out electioneering activities.

Donations

38. Ms Emily LAU enquired whether donations would be taken into account in calculating the amount of financial assistance payable to the candidate. She further asked whether unused donations could be kept by candidates for future use. SCMA replied that donations would not be netted off in calculating the amount of financial assistance payable to a list of candidates/a candidate. He said that candidates should use donations received from respective GC/FC in the areas of work as pledged. Ms LAU further asked whether candidates could keep unused donation for future use if they had promised their donors to use donations in the development of the political party, including assisting candidates to run for elections and carrying out district work. SCMA replied in the affirmative.

IV. Legislative programme of the Government of the Hong Kong Special Administrative Region and the Political Appointment System

[LC Paper Nos. CB(2)1064/10-11(05) and CB(2)1078/10-11(01)]

Briefing by the Administration

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39. SCMA briefed members on the Administration's paper [LC Paper No. CB(2)1064/10-11(05)] which set out the Administration's views on the legislative programme of the Government of the Hong Kong Special Administrative Region ("HKSAR Government"), the relationship between the executive and the legislature and the mid-term review of remuneration for Under Secretaries and Political Assistants under the political appointment system ("PAS"), having regard to the issues raised in the report on "Review of the Governance Performance of the Hong Kong Special Administrative Region Government 2010" published by the SynergyNet in December 2010. Members noted that the scope of the report, among others, covered legislative success rate of the HKSAR Government, policy bureaux's efforts to explain their policies, and problems and prospects of Hong Kong's governance system.

40. Members also noted the background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1078/10-11(01)] on the relationship between the executive and the legislature and related issues.

Discussion

Politically appointed officials under PAS

41. Noting from paragraphs 9 and 16 of the Administration's paper that the Government would take account of the views of LegCo and relevant stakeholders in dealing with different policy issues and politically appointed officials would liaise actively with different political parties of LegCo to explain government policies, Dr LAM Tai-fai enquired whether the Administration had put in place a monitoring mechanism to ensure that all politically appointed officials would maintain liaison with LegCo Members and how the Administration would handle cases in which these officials had failed to do so. Taking his experience as an example, Dr LAM said that despite repeated invitations by letter and telephone for months, his effort to meet with the Secretary for Financial Services & the Treasury had been in vain and no explanation was given. He was concerned that the incident would set a bad example for Under Secretaries and Political Assistants to follow and asked how LegCo Members could reflect their dissatisfaction in that regard.

42. Noting that requests from other LegCo Members to meet with Under Secretaries had sometimes been rejected, Ms Emily LAU echoed Dr LAM Tai-fai's concern about the liaison work of politically appointed officials with the legislature.

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43. SCMA replied that he appreciated Dr LAM's concerted effort in reflecting concerns of the industrial sector to relevant Bureau Secretary, the Chief Secretary for Administration ("CS") and the Chief Executive ("CE") on a number of occasions and assured Dr LAM that his views had been well-received by the Administration. He stressed that approval from LegCo must be obtained for any legislative and financial proposals put forth by the Administration. The power to vote for or against any such proposals, after all, rested in the hands of LegCo Members. As reflected in the recent discussion on the Work Incentive Transport Subsidy Scheme ("WITS Scheme") at the Finance Committee meeting, the Administration would consider carefully the views of Members and adjust the legislative proposals if necessary. He assured members that all Bureaux Secretaries and Under Secretaries were keenly aware of relevant requirements and the need to enhance communication with the legislature. The Administration would handle Members' requests for meetings having regard to actual situation.

44. Noting that public opinion surveys were conducted on the performance of politically appointed officials by non-government organisations from time to time, Dr LAM Tai-fai further enquired whether the Administration would establish an internal assessment mechanism to review the performance of politically appointed officials during their five-year contract term. He also asked whether the Administration would set up a complaints system through which LegCo Members could reflect their views on the performance of political appointees.

45. SCMA replied that the performance of political appointees, such as Under Secretaries and Political Assistants, were appraised by their supervising principal officials ("POs") in a mid-term review of the remuneration with appraisal reports prepared.

46. Ms Miriam LAU said that the Liberal Party was supportive of the implementation of PAS and its expansion following the issuance of the "Report on Further Development of the Political Appointment System" by the Administration in October 2007 as it was understandable that CE would need team members to deliver his election platform and carry out various political liaison works as stated in the Administration's paper. The performance of the current batch of politically appointed officials, however, was a disappointment. Ms LAU said that according to a survey conducted by the Liberal Party in mid-2010, about 70% of the respondents expressed dissatisfaction at the performance of these officials. She stressed that politically appointed officials should make the best endeavour to explain government policies to solicit LegCo support instead of merely chasing up Members to secure their votes for endorsing legislative proposals.

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47. Noting that the Administration considered that the performance of Under Secretaries and Political Assistants generally met the requirements and their remuneration would remain unchanged after the mid-term review, Ms Miriam LAU cautioned that the Administration should review seriously the performance of politically appointed officials having regard to the criticisms made by the public. She enquired what concrete measures would be taken by the Administration to address the problem.

48. SCMA responded that he noted the result of the survey mentioned by Ms Miriam LAU and would consider seriously Members' views on the performance of political appointees. He explained that the creation of the Under Secretary and Political Assistant positions since 2007-2008 was a new initiative for the Administration and it needed time to consolidate experience and identify areas for further improvement. He envisaged that before assuming office, the fourth-term CE would review the organisation of policy bureaux and the staffing structure among Bureaux Secretaries, Under Secretaries and Political Assistants. He agreed that politically appointed officials should solicit LegCo support for government proposals at an early stage and assured members that the Administration was committed to enhancing its communication with the political parties with review conducted from time to time.

49. Ms Miriam LAU further said that as indicated in the same survey, there might be a staff mismatch among political appointees. While some officials lacked the political skills to promote government policies despite relevant expertise, some were tasked to handle policy areas which were not within their professional scopes. She hoped the Administration would rectify such problems when appointing the next batch of political appointees. SCMA replied that he believed Bureaux Secretaries and Under Secretaries had already built on their work experience and professional knowledge since the implementation of PAS in 2002 in order to achieve the relevant policy objectives.

50. While appreciating the Administration's effort in grooming political talents through PAS, Mr WONG Kwok-hing considered that some Under Secretaries had not fulfilled effectively their duties in attending LegCo meetings and explaining government policies. He opined that Bureaux Secretaries, particularly Under Secretaries, should proactively conduct district work and attend meetings of grassroot associations so as to incorporate the views of the community in the process of formulating policies. He called on the Administration to review PAS with a view to enhancing its governance and reflecting social needs in introducing government policies.

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51. SCMA said that given the differences in responsible policy areas and scope of work of Bureaux Secretaries and Under Secretaries, LegCo Members understandably had different impressions of them. He assured members that Under Secretaries and Political Assistants were required to reach out to the community to carry out liaison work, such as conducting briefing sessions on the CE's Policy Address to explain new policy initiatives. He agreed that government officials should always listen to public views in order to discharge effectively their duties.

52. Having regard to the heavy workload of Bureaux Secretaries and that formation of political team was commonplace in other jurisdictions such as Singapore and Canada, Mrs Regina IP said that she did not oppose the creation of Under Secretary posts to deputize Bureaux Secretaries. While she did not object to the remuneration of Under Secretaries, which was set at around two-thirds of that of Bureaux Secretaries, she considered that the remuneration of Political Assistants at the level equivalent to a D2 civil servant was set too high. By way of illustration, she pointed out that most of the Political Assistants were merely rookies in their respective policy areas and lacked public recognition. Hence, to avoid unfairness, she opined that the Administration should adjust their remuneration to a much lower level (e.g. a few tens of thousands dollars) when appointing the next batch of Political Assistants to reflect their roles. She also called on the Administration to review the overall structure of Under Secretaries and Political Assistants in future. SCMA replied that he would relay Mrs IP's views to the policy bureaux for consideration.

53. Mrs Regina IP further expressed concern about the lack of transparency in the appointment of Under Secretaries and Political Assistants and opined that Bureaux Secretaries should be the decision-maker in selecting their Under Secretaries. She also enquired about the selection criteria of politically appointed officials and the reason for the vacancies of Under Secretaries posts in the Development Bureau and the Labour and Welfare Bureau.

54. SCMA advised that under the existing practice, Bureaux Secretaries could nominate candidates for Under Secretaries and Political Assistants for any bureau if they thought fit. The appointments of Under Secretaries and Political Assistants were made having regard to the requirements of the positions concerned. He said that candidates had to go through the necessary interview and selection procedure and their appointments had to be endorsed by CE, CS and Bureaux Secretaries concerned. Since PAS was still a new initiative, not all the 11 posts of Under Secretaries could be filled up so far.

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55. Referring to the annex to the Administration's paper, Mr Ronny TONG expressed concern about the decreasing number of bills submitted by the Government and passed by LegCo since the first LegCo term notwithstanding the creation of the posts of Under Secretaries and Political Assistants. Noting the failure of the Administration in securing Members' support for the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 and the bid for hosting the 2023 Asian Games, he opined that Under Secretaries could neither assist in soliciting Members' support on government proposals nor reflecting Members' views to Bureau Secretaries and CE for consideration. In his view, Under Secretaries and Political Assistants had failed to demonstrate effectiveness in securing Members' votes for the passage of government bills; improve the relationship between the executive and the legislature; and enhance the governance capacity of the Government. He therefore queried the basis of the Administration for arriving at the conclusion that the performance of Under Secretaries and Political Assistants generally met the requirements in the mid-term review of their remuneration.

56. SCMA said that the Administration had been consolidating relevant experiences since the handover in 1997. While affirming that the number of bills submitted to LegCo had reduced in recent years, he explained that the Administration had to exercise caution in deciding the number of bills to be introduced to LegCo in each term as some bills were complicated and involved a wide scope of issues for scrutiny. With the democratic development of the political system, political parties also required more time to scrutinize legislative proposals to reflect the views of the community. Such development was natural in a mature civil society like Hong Kong. The above factors contributed to the decrease in the number of bills submitted to and passed by LegCo.

57. On Mr Ronny TONG's enquiry on the efficiency of Under Secretaries and Political Assistants in securing passage of bills, for example, in the third LegCo term (i.e. 2004-2008), SCMA clarified that Under Secretaries and Political Assistants had not yet assumed duty until mid-2008. He assured members that politically appointed officials and senior civil servants would continue to consolidate experience and strengthen communication with political parties to solicit support during the discussion and legislative process. The efficiency and performance of the Administration would be reflected in the number of bills passed by LegCo and the work in enhancing democratic development of Hong Kong.

Governance performance of the Administration and other issues

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58. Ms Emily LAU expressed dissatisfaction that the Administration did not make any response in its paper to the recommendations raised in the SynergyNet's report which, among others, suggested the Administration to set up legislative strategy groups in various policy bureaux, and to review PAS, the communication channels between the executive and the legislature and the structure of advisory committees. She also considered that the Administration should have arranged the Head of Central Policy Unit to attend the meeting for the discussion.

59. Referring to paragraph 6 of the Administration's paper, SCMA explained that since the establishment of HKSAR, over 90% of the bills submitted by the Administration in respective LegCo terms (i.e. 1998-2000, 2000-2004 and 2004-2008) were passed by LegCo during the respective terms. In the last LegCo term (i.e.2004-2008), all bills submitted by the Government were passed by LegCo during its term. He pointed out that as stated in table 1.1 on page 11 of the SynergyNet's report, the legislative success rate of the Administration was calculated on the basis of the preliminary legislative programme submitted by the Administration to the House Committee at the beginning of each legislative session. However, since the legislative programme only reflected the Administration's intention on introduction of bills and some bills were discussed in more than one legislative session, the Administration considered that the legislative success rate should be calculated on the basis of the total number of bills submitted by the Government during that term.

60. Regarding the recommendations of SynergyNet on PAS, SCMA reiterated that it was envisaged that the fourth-term CE would review the structure of policy Bureaux and PAS before resuming office. Endorsement would be sought from LegCo should there be changes to the system. On the formation of political coalition mentioned in the SynergyNet's report, SCMA said that CE could exercise his power under the framework of the Basic Law ("BL") to appoint representatives of political parties to serve on the Executive Council ("ExCo") and solicit support from LegCo through ExCo Members. Such appointments had all along been made. With the implementation of universal suffrage for selecting CE in 2017, he believed that there would be more room for establishment of political alliances in future.

61. Ms Emily LAU opined that as reflected by the failure of the Administration in securing Members' support for its proposed WITS Scheme and the lack of consultation on review of income levels for MPF Contributions which was recently discussed by the Panel on Financial Affairs, the Administration tended to disregard the views of LegCo in rolling forward legislative proposals, particularly those of controversial nature. The

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incidents indicated that the Administration lacked the vision and long-term plans in policy implementation. Ms LAU also observed that the business sectors had expressed dissatisfaction in the Business Facilitation Advisory Committee that the Administration had ignored their requests for improvement of the local business environment. She strongly urged the Administration to take on board the views of the relevant stakeholders so that concerns of the community could be reflected in the policies introduced by the Government. She also expressed concern that the Administration tended to appoint the same batch of people whom the Administration trusted to serve on advisory and statutory bodies.

62. SCMA explained that the Administration had to exercise caution in balancing the views of various sectors of the community. The Administration would continue to maintain the local economic growth, improve social policies and enhance the constitutional development of Hong Kong.

63. Mr WONG Yuk-man, however, expressed a strong view that as the executive-led system was headed by CE who had no public mandate, PAS was bound to be a systemic flaw. With the continued existence of FCs, small-circle election and an executive-led system without public mandate, the existing structure of the political system had been distorted and easily manipulated by the executive authorities.

64. SCMA explained that all POs were held accountable to LegCo under BL and had to explain government policies in order to solicit LegCo support. Relevant PO had also stepped down from the office to shoulder political responsibility for the SARS incident since the implementation of PAS in 2002. He added that to provide more room for the CE-elect in 2017 who would be returned by universal suffrage to deliver election platform after resuming office, there was a need to make preparation in advance to facilitate CE to form his governing team to implement policies. Between the second and the third terms of the HKSAR government, a review had also been conducted to require Bureau Secretaries to report to the Financial Secretary and the CS respectively in order to improve the structure of PAS.

65. There being no other business, the meeting ended at 5:05pm.