

Panel on Constitutional Affairs

List of outstanding items for discussion

(position as at 15 April 2011)

**Proposed
timing for
discussion**

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

The Panel discussed the question of "important bill" under Article 50 of the Basic Law at a number of meetings since late 1999.

To be decided
by the Panel

The Panel noted the Administration's position on the following issues -

- (a) what constitutes an "important bill";
- (b) who determines whether a bill is important;
- (c) when to determine whether a bill is important; and
- (d) procedures and parties involved in the consultations under Article 50.

Given the Administration's position, the Chairman sought the views of members on the way forward at the meeting on 18 July 2005 when the item was last discussed. Hon Audrey EU suggested and members agreed that the item should remain on the outstanding list. At the meeting on 20 November 2006, members noted the background brief on the past discussions of members and developments subsequent to the meeting on 18 July 2005 prepared by the Legislative Council ("LegCo") Secretariat (LC Paper No. CB(2)376/06-07(02)), and expressed no strong view on the timing for discussing the item.

2. Constitutional development

LegCo passed by a two-thirds majority on 24 and 25 June 2010 the motions put forth by the Hong Kong Special Administrative Region ("HKSAR") Government concerning the draft amendments to the methods for selecting the Chief Executive ("CE") and for

On-going
discussion

forming LegCo in 2012. CE gave consent to the draft amendments on 29 June 2010. The Standing Committee of the National People's Congress approved and recorded the draft amendments to Annexes I and II of the Basic Law respectively on 28 August 2010.

At the meeting on 19 July 2010, the Panel discussed the main issues to be considered under the local legislation regarding the two electoral methods in 2012. The Panel held a special meeting on 30 October 2010 to discuss the Administration's proposed arrangements regarding the two electoral methods. The Administration introduced into LegCo the CE Election (Amendment) Bill and the LegCo (Amendment) Bill on 15 December 2010. A Bills Committee was formed to study the bills at the House Committee meeting on 17 December 2010. The second reading debate of the CE Election (Amendment) Bill and the LegCo (Amendment) Bill was resumed on 2 March 2011 and 3 March 2011 respectively. The CE Election (Amendment) Bill and the LegCo (Amendment) Bill were passed by LegCo on 3 and 5 March 2011 respectively.

3. Role and development of political parties

The Panel held a discussion on the need to introduce a political party law at its meeting on 21 February 2005 and received views from deputations on the role and development of political parties at a special meeting on 26 February 2005.

To be decided
by the Panel

The Administration's position was that the introduction of a political party law would hinder the development of political parties. As one of the means to facilitate the development of political party and political talent, the Administration had increased the financial assistance subsidy rate to candidates in the 2008 LegCo election to \$11 per vote. The subsidy rate for the 2012 LegCo election has been further increased to the lower of \$12 per vote or 50% of the election expenses limit provided that the amount of financial assistance payable would not exceed the declared expenses of candidates under the newly enacted LegCo (Amendment) Ordinance. At the meeting of 21 February 2011, the Administration also proposed to increase the financial assistance subsidy rate to candidates in the 2011 District Council ("DC") election to \$12 per vote and that the election expenses limit for the DC election would be increased from \$48,000 to \$53,000.

4. Composition, functions and operation of the Electoral Affairs Commission ("EAC")

On 21 June 2004, the Research Report prepared by the Research and Library Services Division of the LegCo Secretariat ("RLSD") on "Operation of Electoral Regulatory Bodies in Selected Places" (RP04/03-04) was presented to the Panel. Members agreed to further explore the issues raised in the Research Report in future.

To be decided by the Panel

5. Usage of electoral register

In September 2007, Hon Margaret NG requested the Panel to discuss whether the Administration should review and amend the relevant subsidiary legislation to allow Members returned by election to use the relevant information in the electoral register for communication with their constituents while they were in office, and to require corporate and professional bodies of Functional Constituencies ("FCs") to provide the necessary assistance to FC Members.

To be decided by the Panel

The Panel followed up the issue at its meetings on 17 November 2007 and 18 February 2008. In response to members' request, RLSD had prepared an Information Note on "Usage of electoral register" (IN05/07-08) which was considered by the Panel on 18 February 2008. At the meeting, some members expressed the view that the information contained in the electoral register should be released for use for purposes other than a purpose related to an election, e.g. to communicate with electors after the election. The Administration undertook to relay members' views to EAC for consideration.

6. Submission of reports by the Hong Kong Special Administrative Region Government to the United Nations under international human rights treaties

The Administration advised in March 2009 that Central People's Government ("CPG") had commenced the preparation of China's combined third and fourth report under the Convention on the Rights of the Child ("CRC"), and the HKSAR Government would submit to CPG the second report of HKSAR for incorporation into China's report. The Panel discussed the outline of the second report of HKSAR on 16 April 2009 and met with deputations and the Administration on 18 May 2009.

As and when those reports are submitted by China to UN and published Constitutional and Mainland Affairs Bureau

At the Panel meeting on 18 January 2010, the Administration ("CMAB") & LWB briefed the Panel on the outline of the topics to be included in HKSAR's third report under the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). The Panel received views from the public on the outline of topics at the meeting on 10 February 2010. The HKSAR's third report which forms part of the second report of China was submitted to United Nations ("UN") in June 2010, copies of the HKSAR's third report were made available to the public on 21 October 2010. The Panel discussed the HKSAR's third report at the meeting on 20 December 2010 and members agreed to receive views from the public on the report at a future meeting upon confirmation of the date of the UN hearing.

The Administration had commenced preparation of the third report of HKSAR under the International Covenant on Civil and Political Rights ("ICCPR"). The Panel received views from the public on the outline of the topics to be included in the HKSAR's third report on 21 June 2010.

China's 10th to 13th combined report under the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), of which the report on HKSAR formed a part, was submitted to UN in June 2008. After discussion of the report on HKSAR at its meeting held on 15 December 2008, the Panel further discussed the subject and received views from the public on 15 June 2009. UN hearing was held in August 2009. The Administration briefed the Panel on its initial views on matters raised in the concluding observations on 16 November 2009 and received views from the public on the concluding observations on 11 December 2009.

UN Human Rights Council has initiated a Universal Periodic Review ("UPR") of all UN member states. The hearing on China, which covered HKSAR, was held on 9 February 2009. The Panel discussed the section on HKSAR of the report of CPG to UN on 19 January 2009 and the Administration reported outcome of the UN hearing to the Panel on 7 July 2009. The next report on UPR will be due in 2013.

The third report of HKSAR under the Convention on the Elimination of All Forms of Discrimination Against Women, the reporting responsibility of which falls under the purview of the Labour and Welfare Bureau ("LWB"), will be part of China's 7th

and 8th combined report which is due for submission in 2010. The Panel discussed and received views from the public on the outline of topics to be included in the third report on 19 July 2010.

Under the Convention on the Rights of Persons with Disabilities, HKSAR (the reporting responsibility falls under the purview of LWB) is required to submit a report as part of China's combined report to UN within two years after the entry into force of the Convention for HKSAR on 31 August 2008, i.e. August 2010. Thereafter, HKSAR is required to submit subsequent reports at least every four years. The Panel discussed and received views from the public on the outline of topics to be included in the initial report at the meeting on 19 March 2010. The HKSAR's initial report was submitted to UN in August 2010 and has been made available to the public on the website of LWB and the Public Enquiry Service Centres of District Offices since 25 November 2010.

The Administration's second report on implementation of international human rights treaties in Hong Kong in 2004 was issued vide LC Paper No. CB(2)2403/04-05(01) dated 1 August 2005.

7. Review of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO")

The Government, with the support of the Privacy Commissioner for Personal Data, has conducted a comprehensive review of PDPO to examine whether its existing provisions still afford adequate protection to personal data having regard to developments, including advancement in technology, over the last decade or so. The Government published the Consultation Document on Review of the Personal Data (Privacy) Ordinance on 28 August 2009 to invite public views on the proposals to amend the PDPO. The Panel was briefed on the Consultation Document at its special meeting on 11 September 2009. At the meeting on 18 October 2010, the Administration briefed the Panel on the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance ("the consultation report"). The Panel received views from the public on the consultation report at its special meeting held on 20 November 2010.

18 April 2011

At its meeting held on 20 December 2010, the Panel further

discussed the review and related matters. The Administration advised that it would report to the Panel the latest views received from the public and its legislative proposals, before introducing an amendment bill into LegCo.

8. Amendments to the Sex Discrimination Ordinance (Cap. 480) ("SDO") and the Disability Discrimination Ordinance (Cap. 487) ("DDO") proposed by the Equal Opportunities Commission ("EOC")

The Race Discrimination Bill ("RDB") passed on 10 July 2008 has incorporated one of the amendments proposed by EOC, i.e. to extend the definition of sexual harassment in SDO to cover conduct which created a sexually hostile or intimidating environment at an educational establishment. As regards the other amendments proposed by EOC, the Administration has pointed out that some of them are technical amendments and the others might have read-across implications to other anti-discrimination ordinances. The Administration would consider the most appropriate way to take forward these proposed amendments and would further report progress to the relevant Panel in due course.

To be confirmed
CMAB & LWB

9. Proposed establishment of an Equal Opportunities Tribunal

The Bills Committee on RDB noted that EOC was looking at the possibility of establishing an Equal Opportunities Tribunal, with informal procedures and active case management functions, so as to make the adjudication process speedy and more accessible. It was agreed that the issue should be referred to this Panel for follow-up. EOC has submitted proposals to the Administration. It has initiated discussions with the stakeholders concerned, and will refine its proposals before further discussing the proposals with the Government.

To be confirmed

10. Discrimination issues relating to sexual orientation and gender identity

When the Panel discussed the subject on 18 January 2010, the Administration undertook to report progress on the relevant issues to the Panel in due course.

To be confirmed

11. Post-office employment control of politically appointed

officials

The Panel on Public Service ("the PS Panel") discussed the Report of the Committee on Review of Post-Service Outside Work for Directorate Civil Servants ("the Review Committee") at its special meeting on 13 July 2009. The Review Committee has recommended to the Chief Executive in its Report that a separate review should be carried out on the post-office employment control of politically appointed officials. The PS Panel has agreed to refer the subject to this Panel for follow-up and requested that its members be invited to join the future discussion of the subject. To be confirmed

12. Abolition of the DC appointment system

The Administration advised the Panel on 19 July 2010 that it would put forth a proposal on the abolition of the DC appointment system. To be confirmed

13. Mid-term review of remuneration for and the system for declaration of interest by Under Secretaries and Political Assistants

The Administration announced on 13 August 2010 that having reviewed the performance of Under Secretaries and Political Assistants, it took the view that their salaries should remain unchanged. In her letter to the Chairman on 18 August 2010, Hon Emily LAU suggested that the mid-term review of remuneration for Under Secretaries and Political Assistants, and the system for declaring their interests be discussed at a future Panel meeting. To be confirmed

According to the Administration, the issue was already dealt with at the meeting on 21 February 2011 when the Administration's paper entitled "Legislative programme of the HKSAR Government and the Political Appointment System" was discussed. It is suggested that this item be removed from the list.

14. Implementation and review of the Race Discrimination Ordinance (Cap. 602) ("RDO")

The Panel Chairman has received an email from 15 organizations and individuals requesting to give views on the implementation and review of RDO at a Panel meeting. At the meeting on 21 February 2011, the Panel agreed to discuss the subject at a future meeting. To be confirmed

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