

立法會
Legislative Council

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LC Paper No. CB(2)266/13-14
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 21 October 2013, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yeet, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon Alice MAK Mei-kuen, JP

Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen

**Members
absent** : Hon WONG Kwok-kin, BBS
Hon WONG Yuk-man
Hon CHAN Yuen-han, SBS, JP
Hon Martin LIAO Cheung-kong, JP

**Public Officers
attending** : Item III

Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Mr LI Pak-hong
Chief Electoral Officer
Registration and Electoral Office

Mr SHUM Nam-lung
Deputy Chief Electoral Officer
Registration and Electoral Office

Item IV

Ms Anne TENG Yu-yan
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Mr LI Pak-hong
Chief Electoral Officer
Registration and Electoral Office

Miss Jennie CHAN Cheuk-yin
Deputy Chief Electoral Officer
Registration and Electoral Office

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Cindy HO
Senior Council Secretary (2) 3

Ms Wendy LO
Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

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I. Information papers issued since the last meeting
[LC Paper No. CB(2)48/13-14(01)]

The Panel noted that after the last meeting, a paper entitled "Concluding observations issued by the United Nations Committee on the Rights of the Child on the combined third and fourth report of China (including the report of the Hong Kong Special Administrative Region ("HKSAR"))" [LC Paper No. CB(2)48/13-14(01)] had been issued to members.

II. Items for discussion at the next meeting
[LC Paper Nos. CB(2)66/13-14(01) and (02)]

2. Members agreed to discuss the following items proposed by the Administration at the next meeting on 18 November 2013 -

- (a) proposed technical amendments to electoral legislation; and
- (b) hearing of the Second Report of HKSAR under the United Nations Convention on the Rights of the Child.

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Other items proposed by members

Constitutional development

3. With the setting up of the Task Force on Constitutional Development as announced by the Chief Executive ("CE") on 17 October 2013, Ms Emily LAU proposed that a special meeting be held to receive a briefing by the Chief Secretary for Administration ("CS"), who led the Task Force, on its workplan as early as possible. Dr Helena WONG said that the Panel should also be briefed on the timetable for activating the "five-step mechanism" for amending the two electoral methods for 2016 and 2017. The Secretary for Constitutional and Mainland Affairs ("SCMA") said that he would discuss with the Chairman on the best arrangements to be made in this regard.

Use of personal data obtained from the public domain

4. Referring to his letter dated 18 October 2013 to the Chairman [LC Paper No. CB(2)122/13-14(01)], Mr Charles Peter MOK said that the investigation of the Office of the Privacy Commissioner for Personal Data ("PCPD") revealed that a smartphone application was found to have invaded privacy, and this had become a cause for concern of the public, in particular, the information technology ("IT") industry. He proposed that the Panel should discuss issues relating to the use of personal data obtained from the public domain and the regulatory control in this area under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO").

5. SCMA advised that the Administration's position was set out in the Administration's reply to the Legislative Council ("LegCo") question raised by Mr MOK at the Council meeting of 16 October 2013 on the same issue. In gist, following the public consultation exercise conducted in 2009-2010, the Administration did not see a case of providing an exemption in this area and had not included such exemption in the Personal Data (Privacy) (Amendment) Bill 2011 ("the Bill") submitted to LegCo in 2011. During the scrutiny of the Bill by LegCo, no exemption proposal had been made. The Administration had no plan to conduct a further review. SCMA added that the "Guidance on Use of Personal Data Obtained from the Public Domain" ("the Guidance") published by PCPD on 13 August 2013 was to assist data users in complying with the requirements under PDPO. He noted that after issuing the Guidance, PCPD had organized a seminar for the IT industry on 30 August 2013 to explain the relevant arrangements. Mr MOK expressed concern that in a recent survey conducted with the IT

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industry, 77% of the respondents had considered that the regulatory control as stipulated under the Guidance was too stringent and could not keep pace with the present day circumstances. The Chairman directed that PCPD should be requested to provide a written response to Mr MOK's letter to facilitate the Panel's consideration of Mr MOK's request.

(Post-meeting note: PCPD's response was circulated to members vide LC Paper No. CB(2)238/13-14 on 8 November 2013.)

III. Voter registration ("VR") statutory deadlines and offences related to VR

[LC Paper Nos. CB(2)66/13-14(03) and (04)]

6. At the invitation of the Chairman, SCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)66/13-14(03)] on proposals on VR statutory deadlines and VR-related offences as set out in paragraphs 16 and 29 of the paper respectively ("the two proposals").

7. Members noted the background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)66/13-14(04)].

Views on the two proposals

8. Mr YIU Si-wing expressed support for the two proposals. Ms Emily LAU said that while she had no strong view on the two proposals, she asked whether the Administration would consider raising the penalty level for offences relating to VR false declarations in order to enhance the deterrent effect. She urged the Administration to step up efforts to combat "vote-rigging".

9. SCMA explained that the current proposal of making the offences on VR false declarations under section 22 of Cap. 541A and section 42 of Cap. 541B to become indictable offences instead of summary offences would lift the six-month time bar for prosecution, allowing prosecution to be initiated irrespective of the time at which the matter arose. This would enhance enforcement effectiveness and the deterrent effect. He pointed out that this new measure would be a further step to maintain the integrity of the VR system in addition to the implementation of a series of enhanced checking measures from January 2012 onwards. Besides, prior to the 2012 LegCo Election, an additional version of the voter register had been published to set out electors in accordance with their principal residential addresses so as to facilitate easy identification of multiple electors registered with the same

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residential address. This measure also sought to address the issue of so-called "vote-rigging". In fact, the Electoral Affairs Commission ("EAC") had reviewed the existing penalty level of the offences made under the EAC Regulations, and considered that the existing penalty level was broadly appropriate. Regarding the penalty for offences relating to VR false declarations under Cap. 554, the Administration considered that the existing penalty level was sufficiently heavy to reflect the gravity of the offences. The Administration considered that no change was needed but would keep in view the penalty level and whether any changes should be made if necessary.

10. Dr CHIANG Lai-wan expressed opposition to the proposal of lifting the six-month time bar as she considered that this would dampen the public's willingness to register as electors. She said that many people were uncertain about their liabilities under the law for failure to provide an updated registered address to the Registration and Electoral Office ("REO") after moving home. These people might be further deterred from registration as electors if the proposal of lifting the six-month time bar was adopted. SCMA clarified that the current proposal of lifting the six-month time bar only applied to offences relating to VR false declarations, whereas timely updating of registered particulars was not a legal requirement but a civic responsibility only.

11. Mr Michael TIEN said that the New People's Party supported the proposal to turn the VR false declaration offences from summary offence to indictable offences with a view to enhancing enforcement effectiveness and the deterrent effect. Mr TIEN, however, expressed concern that given the long lead time normally required by the Independent Commission Against Corruption ("ICAC") for conducting investigations, it might be possible that the accused would face prosecutions against him/her concurrently under Cap. 541A and Cap. 554 at the same time. He asked if it would be more appropriate that offences related to VR should all be enforced by one single law enforcement agency.

12. SCMA explained that Mr TIEN's proposal of transferring the enforcement actions to a single enforcement agency would have the effect of raising the penalty level under Cap. 541A and 541B, i.e. the maximum penalty being a fine of \$5,000 and six months of imprisonment, to a fine of \$500,000 and imprisonment for seven years as the maximum penalty under Cap. 554. He added that the Administration had reviewed the existing division of labour, and considered that it had been working well and would avoid the risk of overloading a single law enforcement agency.

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Complaints related to VR and investigation results

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13. Referring to REO's letter dated 12 April 2013 to the Panel [LC Paper No. CB(2)975/12-13(01)], Ms Emily LAU requested the Administration to provide updated investigation results. The Chief Electoral Officer ("CEO") of REO briefed members on the updated figures collected after REO had conducted a new round of enhanced checking in the 2013 VR cycle. He undertook to provide the information in writing shortly after the meeting. At the request of Ms LAU, SCMA provided a note on some preliminary figures on the updated position, which was tabled at the meeting for members' reference.

(Post-meeting note : The note tabled was subsequently issued to members vide LC Paper No. CB(2)123/13-14(01). The supplementary information on VR provided by REO was circulated to members vide LC Paper No. CB(2)289/13-14 on 14 November 2013.)

14. Ms Emily LAU expressed concern that according to REO's letter under reference, there were some 400 cases under investigation in April 2013. She requested the Administration to report the outcome. She also noted with concern that while the Police and ICAC had conducted investigation into complaint cases of 3 020 electors and 8 287 electors respectively, the number of convictions and prosecutions was on the low side involving only 52 persons convicted. Moreover, with regard to these 52 persons, the number of cases involved was not known. Mr LEE Cheuk-yan also expressed concern about the figures especially that a large majority of the complaint cases investigated were concluded "unsubstantiated after investigation". He believed that these cases were regarded by the law enforcement agencies as suspicious, or else they would not have conducted investigations into the cases. However, it might be due to failure to meet the high threshold of criminal prosecution that no prosecution eventually could be taken in these cases. Mr LEE further said that the offences under Cap. 554 handled by ICAC involved the actual casting of ballots. In other words, as many as over 8 000 complaint cases involved actual casting of ballots, which was a serious issue and it remained unclear to him how many of them involved "vote-rigging".

15. SCMA pointed out that as seen from the note tabled, a large majority of the complaint cases investigated were concluded unsubstantiated after investigation by the Police and ICAC. He stressed that the conclusions were drawn based on objective facts and after the serious investigations conducted by the two law enforcement agencies. He drew members'

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attention that most of the cases had revealed that there was no evidence of so-called "vote-rigging" and most of the registered addresses were in fact the old residential addresses of the electors who had moved away without updating the particulars with REO. CEO added that REO noticed that many of the complaint cases which were concluded "unsubstantiated" after investigation by the Police involved VR applications made in different years and as early as 2008 or before. Mr IP Kwok-him concurred with the Administration's view and he noted that the two enforcement agencies had deployed a lot of manpower to conduct the investigations.

Interpretation of the "only or principal residence in Hong Kong"

16. Mr Jeffrey LAM, Dr CHIANG Lai-wan and Dr Helena WONG requested the Administration to explain the definition of a person's "only or principal residence in Hong Kong" for the purpose of VR. Dr Priscilla LEUNG requested the Administration to clarify the voting eligibility of Hong Kong permanent residents who had retired outside Hong Kong or moved to the Mainland but commuted to Hong Kong to work, and these people did not have a residential address in Hong Kong. Dr Helena WONG asked whether persons on the Guangdong Scheme implemented by the Social Welfare Department were eligible to vote in Hong Kong.

17. SCMA explained the qualifications for registration as an elector and also quoted relevant provisions of the "Guidelines on Election-related Activities in respect of the District Council ("DC") Election" explaining the considerations in deciding whether a person was regarded to have ordinarily resided in Hong Kong. SCMA advised that regarding the VR requirements for Hong Kong permanent residents who resided on the Mainland or overseas, the main considerations included whether the person concerned was able to provide a genuine address as his/her principal residential address for VR purpose, and to show he had an intention to settle in Hong Kong and maintained a close connection with Hong Kong during the period of absence. REO would consider each application on a case by case basis and seek legal advice, if necessary. CEO advised that, where required, supporting proof would be sought from the electors concerned to facilitate REO's consideration.

18. Dr Priscilla LEUNG suggested that the Administration should step up publicity targeting Hong Kong people residing on the Mainland with a view to encouraging them to apply for VR or reinstatement of registration. SCMA agreed to give thought to the suggestion in the next VR publicity

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campaign. In response to Mr YIU Si-wing's enquiry, CEO advised that in addition to visiting District Offices to inspect the provisional register and omissions list, a registered elector could also check his VR status by calling the hotline of REO. Meanwhile, REO was also actively exploring the feasibility to launch an online system whereby the public could check their VR status and personal particulars via the Internet. The system was expected to be launched in July/August 2014 and REO would ensure protection of personal data when developing the system.

Enhanced checking measures

19. Noting that REO would issue inquiry letters to the electors with their registered residential addresses situated at buildings which had been demolished, Mr YIU Si-wing asked how these letters could reach the relevant electors if the buildings had already been demolished. CEO replied that REO would first try to contact the electors concerned by phone or email (if available) before activating the statutory inquiry process. If the elector could not be contacted, an inquiry letter would be sent by registered mail according to the electoral law to the elector's registered address requesting provision of proof of residential address or other information for verification. Should the elector fail to reply by the specified date to confirm his/her only or principal residential address, he/she would be included in the omissions list.

20. In response to Mr Tony TSE's enquiry, CEO said that REO had implemented a series of enhanced checking measures from January 2012 onwards and the measures were carried out on a regular basis. He advised that random sample checks would unavoidably cause disturbance to electors and for this reason, they would normally be conducted in a modest scale except in an election year. Instead, REO had adopted a risk management approach by targeting checks at multiple electors/multiple surnames of electors registered with the same residential address and electors with registered addresses at commercial /suspected non-residential buildings.

21. Mr Albert HO suggested that REO should check more vigorously with the Housing Department ("HD") and the Housing Society ("HS") for verification of electors' registered addresses which were in public housing estates. He also enquired about the number of random sample checks conducted on existing electors.

22. CEO said that with the implementation of cross-matching of data with HD and HS, some 1.4 million electors' registered addresses had been verified after the 2011 DC Election. Since then, the cross-matching

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exercise had been conducted on a regular basis and REO would follow up any suspicious cases. He advised that through such cross-matching of data with HD and HS in the 2013 VR cycle, about 21 000 electors' particulars had been updated. Besides, the random sample checks conducted in 2013 had covered 34 000 electors and some 3 000 electors who failed to reply or confirm their registration particulars were subsequently removed from the final register. Overall, a total of 144 000 electors were covered in the checking exercise carried out in the 2013 VR cycle and about 26 000 electors failing to respond in the inquiry process were finally removed.

23. Referring to the judgment handed down in the court case of *Chong Wing Fai Winfield v Cheung Kwok Kwan and Another* (HCAL10/2012) where it was ruled that there was no provision to bar or disqualify an elector from voting even though he/she had moved to a new address without informing REO, Mr Albert HO asked whether the Administration would consider review of the relevant legislation in the light of the judgment. SCMA said that the Administration was open to the suggestion. He, however, pointed out that the numbers of electors who had reported changes in registered residential addresses to REO in 2011 and 2012 were 300 120 and 310 000 respectively. As seen from the figures, many people in Hong Kong moved home each year. It was therefore necessary for the Administration to consider very carefully whether electors' voting rights should be taken away simply because of their failure to report changes in the registered residential addresses to REO.

24. Mr Frederick FUNG suggested that the VR procedure should be dispensed with for persons who were permanent residents of Hong Kong in respect of elections which did not require identification of the geographical constituencies of electors (e.g. the DC (Second) Functional Constituency Election and the 2017 CE Election). SCMA said that Mr FUNG's suggestion should be further considered by making reference to overseas experience and practice.

IV. Proposed creation of one supernumerary post of Principal Executive Officer in the Registration and Electoral Office
[LC Paper No. CB(2)66/13-14(05)]

25. Principal Assistant Secretary for Constitutional and Mainland Affairs ("PAS(CMA)") said that in the coming election cycle, the Administration had to hold four major territory-wide elections (i.e. DC, LegCo, Nominating Committee ("NC") and CE elections) within a short span of 17 months from

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November 2015 to March 2017. CEO highlighted that REO would be facing an extremely hectic timetable for holding the LegCo, NC and CE elections in a span of seven months from September 2016 to March 2017. In view of the voluminous preparation work, REO sought to create a supernumerary post of Principal Executive Officer ("PEO") from 1 April 2014 to 31 December 2017 to oversee the overall planning and execution work of the entire electoral process for the four general elections from 2015 to 2017. Details of the duties and responsibilities of the post were set out in Annex B to the Administration's paper.

(To allow sufficient time for discussion, the Chairman directed that the meeting be extended by 15 minutes.)

Discussion

26. Mr CHAN Chi-chuen agreed that REO should be provided with sufficient manpower to undertake electoral planning and implementation work for the 2015-2017 election cycle. Noting that the current proposal was drawn up on the assumption that NC would be formed by an election, Mr CHAN asked what other assumptions were being considered regarding the formation of NC, which he believed would have bearing on the complexity of the operational arrangements involved and hence the workload of REO. Mr CHAN also asked whether the proposed PEO post would still be needed in case no consensus on constitutional development could be reached and hence no amendment would be made to the method for selecting CE in 2017.

27. PAS(CMA) said that issues relating to the formation of NC could be discussed during the public consultation on constitutional development in relation to the method for forming LegCo in 2016 and the selection of CE by universal suffrage in 2017. The Administration had put up the current proposal after conducting a thorough review of the manpower requirement of REO and in the light of the anticipated electoral tasks as detailed in the Administration's paper.

28. Ms Emily LAU agreed that REO would have to cope with heavier workload given the complexity of the operational arrangements for the upcoming elections. She urged that REO should undertake early planning and implementation work for the 2015-2017 election cycle. She was particularly concerned about the location of polling stations and in her view, electors should not be assigned to different polling stations in each election, and barrier-free access should be ensured at these venues. She also

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expressed concern that there were views that in the 2012 LegCo Election, the set up of the Central Counting Station in the Asia World Expo ("AWE") was a very inconvenient location.

29. CEO said that REO would make sustained efforts in identifying suitable venues for setting up polling stations in future elections. He pointed out that in the 2012 LegCo Election, about 93% of the polling stations were accessible to electors with mobility difficulty. For polling stations set up in old buildings with staircases at the entrances, ramps would be installed as far as practicable to improve the accessibility of these stations. As regards the Central Counting Station at AWE, he noted that it was found generally acceptable by the relevant parties as long as suitable arrangements for public transport were made with adequate publicity.

30. Ms Emily LAU requested REO to follow up election-related complaints received on or before the polling day more promptly with parties concerned. She suggested that complainants should be duly advised on the progress of the follow-up actions taken. CEO explained that most of the complaints were handled by the relevant law enforcement agencies (e.g. Police or ICAC) rather than REO. He agreed that there was a need for the complainants to be informed of the outcome of investigation as early as practicable and the relevant procedures would be reviewed with the law enforcement agencies responsible for handling the complaints.

31. Mr IP Kwok-him said that members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong supported the current proposal having regard to the next election cycle.

32. Members noted that the Administration planned to submit the current staffing proposal to the Establishment Subcommittee for consideration by end of 2013. No members expressed objection.

V. Any other business

33. There being no other business, the meeting ended at 4:45 pm.