

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)2002/14-15  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 20 April 2015, 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  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon LEUNG Yiu-chung  
Hon Emily LAU Wai-hing, JP  
Hon Frederick FUNG Kin-kee, SBS, JP  
Hon WONG Kwok-hing, BBS, MH  
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan, JP  
Dr Hon LAM Tai-fai, SBS, JP  
Hon CHAN Kin-por, BBS, JP  
Hon WONG Kwok-kin, SBS  
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 WONG Yuk-man  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing  
Hon Gary FAN Kwok-wai  
Hon MA Fung-kwok, SBS, JP

Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Dr Hon Kenneth CHAN Ka-lok  
Dr Hon KWOK Ka-ki  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon SIN Chung-kai, SBS, JP  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon Martin LIAO Cheung-kong, SBS, JP  
Dr Hon CHIANG Lai-wan, JP  
Hon CHUNG Kwok-pan  
Hon Tony TSE Wai-chuen, BBS

**Members  
absent**

: Dr Hon LAU Wong-fat, GBM, GBS, JP  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Starry LEE Wai-king, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon CHEUNG Kwok-che  
Hon James TIEN Pei-chun, GBS, JP  
Hon Steven HO Chun-yin  
Hon CHAN Yuen-han, SBS, JP  
Hon Alice MAK Mei-kuen, JP  
Hon Dennis KWOK

**Public Officers  
attending** : Items II and III

Mr LAU Kong-wah  
Under Secretary for Constitutional and Mainland Affairs

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

Miss Phidias TAM Kwok-ching  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Item IV

Mr LAU Kong-wah  
Under Secretary for Constitutional and Mainland Affairs

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

Miss Helen CHUNG Chi-ching  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

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

Miss Candy MA Siu-hung  
Principal 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

Mrs Fanny TSANG  
Legislative Assistant (2) 3

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**I. Information papers issued since the last meeting**  
[LC Paper Nos. CB(2)1208/14-15(01) and CB(2)1283/14-15(01)-(02)]

Members noted that the following papers had been issued since the last meeting -

- (a) referral from the Public Complaints Office regarding voting arrangements for persons with visual impairment in public elections; and
- (b) letter dated 31 March 2015 from Ms Claudia MO and the Administration's reply letter dated 16 April 2015.

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2. Ms Claudio MO took the view that the Announcement of Public Interests ("APIs") relating to constitutional reform were advertisements of a political nature. As the written response provided by the Administration had not addressed the concern raised in her letter, she proposed that the issue should be discussed at a future meeting. The Under Secretary for Constitutional and Mainland Affairs ("USCMA") explained that the APIs in question qualified for free government air time as they carried messages that were in the public interest and related to issues of wide public concern and government policies. He added that relevant issues had been discussed at the special meeting of the Finance Committee on 2 April 2015 and members might wish to make reference to relevant deliberation.

**II. Items for discussion at the next meeting**

[LC Paper Nos. CB(2)1240/14-15(01) and (02)]

3. Members agreed to discuss the following items proposed by the Administration at the next meeting on 18 May 2015 at 2:30 pm -

- (a) practical arrangements for the 2015 District Council ("DC") Election; and
- (b) proposed guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the DC Election.

*(Post-meeting note: At the meeting on 18 May 2015, members agreed to defer discussion of item 3(a) above to the regular meeting on 15 June 2015.)*

**III. Progress of the work of the Advisory Group on Eliminating Discrimination against Sexual Minorities ("Advisory Group")**

[LC Paper Nos. CB(2)1240/14-15(03) and (04)]

4. USCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1240/14-15(03)]. Members noted the background brief prepared by Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)1240/14-15(04)].

5. Referring to paragraph 8 of the Administration's paper, Mr CHAN Kam-lam and Mr IP Kwok-him asked what follow up actions would be taken by the Administration based on the outcome of the study on discrimination experienced by sexual minorities in Hong Kong (the "Study").

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They considered that administrative measures and public education were also effective in tackling discrimination against sexual minorities. Ms Cyd HO, however, considered that the Administration should not postpone enacting legislation to prohibit such discrimination. Dr Fernando CHEUNG recalled that according to the Survey on Public Attitudes towards Homosexuals in 2005, about 71% of over 2 000 respondents believed that sexual minorities in Hong Kong encountered some form of discrimination, of whom 30% thought the discrimination problem was serious or very serious. According to the same survey, over 30% considered that the Administration should not enact legislation at that stage, while less than 30% thought otherwise and 33.7% stood neutral. He asked whether the Advisory Group planned to conduct a large-scale quantitative survey to gauge views on legislating against such discrimination and if so, the relevant timetable.

6. USCMA emphasized that the issue of enacting legislation against discrimination on the ground of sexual orientation was controversial and public views were diverse. He said that to look into the problems faced by sexual minorities in Hong Kong, a consultant was commissioned to conduct the Study in which 214 sexual minority participants had been recruited from diverse socio-economic backgrounds. He further said that a qualitative method was adopted to provide in-depth understanding of the experiences of sexual minorities. Nevertheless, limitations of the approach were acknowledged. Views from sexual minority participants were the single source of qualitative data of the study, and the experiences mentioned were cited based on self-report without a requirement to produce concrete evidence or verification with other relevant parties. USCMA informed members that the study report was expected to be completed by the second quarter of 2015, and it would be provided to the Panel for members' reference in due course. The Administration considered that the report would provide a solid basis to facilitate the Advisory Group's further discussion of recommendations on strategies and measures to eliminate discrimination against sexual minorities.

7. Mr WONG Yuk-man criticized the Administration for making little progress of work in tackling discrimination on the grounds of sexual orientation and gender identity. He queried the effectiveness of the Administration's efforts in promoting equal opportunities for these people with a view to fostering the values of inclusiveness and mutual respect. He called on the Administration to consider the proposal put forward by the Hong Kong Queer Alliance in April 2014 to outlaw such discrimination in specific contexts, i.e. employment, education, provision of goods, facilities

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or services, and in disposal or management of premises. Mr LEE Cheuk-yan expressed a strong view that the Administration should not postpone legislating against such discrimination. He considered that the problems faced by sexual minorities could not be resolved in the absence of legislation to safeguard equal opportunities for them.

8. USCMA explained that the Advisory Group comprising sexual minorities and different stakeholders had exchanged views on legislating against discrimination on the grounds of sexual orientation and gender identity. He reiterated that the issue of enacting legislation against discrimination on such grounds was controversial and public views were diverse. He said that the Advisory Group would take into account the findings of the Study, desktop research on overseas experience in tackling discrimination on grounds of sexual orientation and gender identity as well as the views of stakeholders to formulate recommendations on strategies and measures to eliminate such discrimination.

9. Dr CHIANG Lai-wan expressed concern about the problem faced by transgender people (e.g. how the sexual identity of people who had not completed sex reassignment surgeries would be determined) and called on the Administration to take appropriate measures to address the concerns. USCMA advised that to follow up on the judgment of the Court of Final Appeal in the court case of *W v Registrar of Marriages* (FACV 4/2012), a high level inter-departmental working group, chaired by the Secretary for Justice, had been formed to consider legislation and incidental administrative measures that might be required to protect the rights of transsexual persons in all legal contexts and to make such recommendations for reform as might be appropriate. The work of the working group was in progress.

10. Mr CHAN Chi-chuen considered that the establishment of the Advisory Group in 2013 was just a delaying tactic of the Administration. He criticized that there was a lack of substantive progress in the Advisory Group's work. He also expressed dissatisfaction with the reduction from the 2014-2015 revised estimated expenditure of \$3.79 million to the 2015-2016 estimated expenditure of \$2.63 million for various publicity measures to promote equal opportunities for sexual minorities.

11. Ms Cyd HO considered that the Government was discriminatory towards sexual minorities in its policies. She pointed out that many laws and policies such as those on tax concessions and public housing were based on a heterosexual couple system. USCMA explained that this was owing

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to the fact that only heterosexual marriage was legally recognized in Hong Kong. He said that the Government acting in accordance with the law was not discriminating against people of different sexual orientations and gender identities.

12. Ms Emily LAU pointed out that the relevant United Nations ("UN") Committee had expressed concern in 1999 about the absence of legislation in the Hong Kong Special Administrative Region explicitly prohibiting discrimination on the basis of sexual orientation, and the UN Committee had reiterated the concern in March 2013. She asked whether the Administration was now in a position to confirm that sexual minorities were discriminated against in Hong Kong. USCMA reiterated that the Study was aimed to ascertain whether sexual minorities were discriminated against in Hong Kong and, if so, the discrimination they experienced and specifically in what aspects or domains they experienced discrimination, etc. The study report was expected to be completed by the second quarter of 2015.

13. Mr Paul TSE declared that he was a member of the Equal Opportunities Commission ("EOC") Board. He said that while EOC would strive to promote anti-discrimination and equal opportunity values and policies, he noted that according to overseas experience, relevant legislative processes would take time. He enquired about the Administration's plan on the way forward. USCMA advised that when the Advisory Group's recommendations were available, the Administration would, in close liaison with different stakeholders, consider how the recommendations should be followed up. Meanwhile, the Administration would make sustained efforts in promoting equal opportunities for sexual minorities through public education, publicity and various channels.

**IV. Operation of the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO")**

[LC Paper Nos. CB(2)1240/14-15(05) and (06)]

14. At the invitation of the Chairman, USCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1240/14-15(05)]. Members noted the background brief prepared by LegCo Secretariat [LC Paper No. CB(2)1240/14-15(06)].

15. Mr IP Kwok-him expressed support for the proposed improvement measures as detailed in paragraph 16 of the Administration's paper.

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Referring to the relief mechanism in paragraph 6 of the Administration's paper, Mr IP enquired about the grounds on which the Court of First Instance ("CFI") would consider for granting the relevant relief order. The Chief Electoral Officer ("CEO") of the Registration and Electoral Office ("REO") explained that the deadline of election return ("ER") submission was set out in footnote 3 of the Administration's paper. Under the relief mechanism provided in ECICO, candidates could apply to CFI for a relief order on those grounds as stipulated in ECICO (e.g., the applicant was ill or absent from Hong Kong during the specified period). These grounds were also set out in footnote 5 of the Administration's paper. He added that applications for extension of the submission deadline for ER had to be considered by CFI based on the merits of each case, and hence such applications could not be processed administratively.

16. Mr Martin LIAO enquired about details of the current proposal of extending the period allowed for ER submission for uncontested candidates in LegCo elections. USCMA responded that to implement the proposal, section 37 of ECICO would have to be amended. This would correspondingly extend the period allowed for submission of claim for financial assistance by uncontested candidates in accordance with section 60I(1) of the LegCo Ordinance (Cap. 542), which was pegged to the period stipulated in section 37 of ECICO.

17. Referring to paragraph 9(a) of the Administration's paper, Ms Emily LAU expressed concern that in the 2011 DC election and the 2012 LegCo election, around half of the candidates in each election had made mistakes involving failure to submit proper invoice(s) and/or receipt(s) showing clear and sufficient details and/or proper cross reference. She urged the Administration to provide more specific guidance in this regard. Mr Martin LIAO shared the concern and pointed out that candidates in general considered that the electoral legislation and relevant guidelines were complicated and difficult to understand. He suggested that the Administration should review to see whether improvements could be made.

18. CEO said that REO had held discussions with the Department of Justice ("DoJ") and the Independent Commission Against Corruption ("ICAC") in providing more specific guidance to candidates, their agents and electioneering staff to facilitate their completion of ERs. The proposed measures were set out in paragraph 16 of the Administration's paper. Such measures included providing explanation of the particulars required in an invoice and a receipt, and for election expense items that were prone to errors, samples of invoice and receipt would be provided for reference by

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candidates, so that they could submit invoices and receipts with sufficient particulars. Also, REO would enhance the training for its staff, thereby avoiding potential misunderstandings in giving reference information. USCMA said that briefing sessions would also be conducted to explain the major provisions of ECICO to candidates, their agents and electioneering staff. They could also make enquiries through REO's hotline service. Mr Tony TSE said that speaking from his experience, REO staff did not respond promptly to such enquiries. CEO said that REO staff would endeavour to provide the necessary reference information as quickly as possible. However, REO staff were not in a position to answer enquiries where the legal interpretation of ECICO was sought.

19. Mr Tony TSE noted that according to ECICO, an election expense item of "less than \$100" did not need to be supported by invoice(s) and receipt(s). He proposed raising the amount to \$200 or less, and capping the total amount of such non-accountable expenses. USCMA emphasized that it was a candidate's responsibility to submit his/her ER before the relevant deadline and ensure that the ER was accurate and supported by invoices and receipts. The Administration did not see sufficient justifications for raising the amount as proposed.

20. Mr YIU Si-wing asked that in case telephone canvassing calls or canvassing messages through electronic media (such as Facebook, Whatsapp and email) were sent by a candidate's supporters without the candidate's knowing it, whether such calls/messages would be regarded as election advertisements ("EAs") and whether the expenses so incurred would be counted towards election expenses. CEO explained that EA was defined under ECICO as any publication, notice or announcement for the purpose of promoting or prejudicing the election of a candidate or candidates at the election. He advised that in the aforementioned scenario, the candidate would not bear legal responsibility as he did not know about the supporter's act or authorize the supporter to do so.

21. Mr YIU Si-wing and Ms Cyd HO further asked how the cost of telephone canvassing calls or canvassing messages through electronic media should be calculated when they were to be counted towards election expenses. They requested that guidelines in this regard should be provided for reference by candidates. CEO agreed to discuss with ICAC and DoJ on providing guidance on the reporting in ERs of such costs incurred for electioneering purpose.

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22. Mr WU Chi-wai said that the existing limits under the de minimis arrangement ("DM limit") were not high relative to the election expenses limits, as it was only \$3,000 for geographical constituency ("GC"); \$5,000 for the DC (second) functional constituency ("FC"); and \$500 for other FCs. He suggested that candidates should be allowed to rectify errors merely due to miscalculation by administrative measures even though the DM limit was exceeded. CEO advised that the de minimis arrangement would not be applicable if, after taking into account the errors and false statements, the total election expenses of the candidate or list of candidates would exceed the prescribed election expenses limit of that particular election, which was an illegal conduct under section 24 of ECICO. CEO advised that there were not many cases involving errors in ERs merely due to miscalculation. As a matter of fact, the more common problems found in ERs submitted by candidates lied with the apportionment of election expenses with other candidates (such as office rent and production costs of EAs), and more specific guidance would be provided on such issues where practicable.

23. Mr Paul TSE said that certain ERs with only minor breaches were still being referred to ICAC for follow up, which might have added to ICAC's burden of work. He considered that REO should handle cases involving only minor breaches while ICAC should focus its resources on handling cases with more serious breaches. He also proposed raising the DM limit substantially from \$3,000 to \$30,000 for GC elections or pegging it to 5% of the election expenses limits of relevant elections. Dr KWOK Ka-ki also considered it a waste of resources to refer cases with only minor breaches to ICAC for follow up and asked whether the DM limit would be raised. USCMA explained that substantially raising the limit for errors and omissions across the board would go against the original intent of the de minimis arrangement. He added that as the de minimis arrangement was only introduced in 2011, the DM limit should not be revised at the present stage.

**V. Any other business**

24. There being no other business, the meeting ended at 4:30 pm.