

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)406/15-16  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 19 October 2015, at 2:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Deputy Chairman)  
Hon LEE Cheuk-yan  
Hon CHAN Kam-lam, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon WONG Kwok-hing, BBS, MH  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Cyd HO Sau-lan, JP  
Hon Starry LEE Wai-king, JP  
Dr Hon LAM Tai-fai, SBS, JP  
Hon CHAN Hak-kan, 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 Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon WONG Yuk-man  
Hon Claudia MO  
Hon James TIEN Pei-chun, GBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon CHAN Chi-chuen  
Hon CHAN Han-pan, JP  
Dr Hon Kenneth CHAN Ka-lok  
Hon CHAN Yuen-han, SBS, JP

Hon Alice MAK Mei-kuen, BBS, JP  
Hon Dennis KWOK  
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, BBS

**Members absent** : Dr Hon LAU Wong-fat, GBM, GBS, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon Martin LIAO Cheung-kong, SBS, JP

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

Mr Ronald CHAN Ngok-pang  
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

Item IV

Mr Ronald CHAN Ngok-pang  
Under Secretary for Constitutional and Mainland Affairs

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

Mr Ryan CHIU Pit-ming  
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  
Senior Assistant Legal Adviser 3

Miss Cindy HO  
Senior Council Secretary (2) 3

Mrs Fanny TSANG  
Legislative Assistant (2) 3

---

Action

**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**

[Appendices II and III to LC Paper No. CB(2)6/15-16]

2. Members agreed to discuss the following items proposed by the Administration at the next meeting on 16 November 2015 at 2:30 pm -

- (a) practical arrangements for the 2016 Legislative Council ("LegCo") by-election for the New Territories East ("NTE") Geographical Constituency ("GC"); and
- (b) an outline of the topics in the third report of the Hong Kong Special Administrative Region under the International Convention on the Elimination of All Forms of Racial Discrimination.

3. In response to members' enquiries about the date of the LegCo by-election for NTE GC, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") said that the date was to be announced by the Chief Electoral Officer ("CEO") by gazette notice.

4. Members agreed to receive public views on the item in paragraph 2(b) above. The Chairman said that the next meeting would be suitably extended if a number of deputations signed up to attend the meeting to present views.

Action

**III. Review on the subsidy rate of the financial assistance for candidates and the election expenses limits ("EEL") for the 2016 LegCo Election [LC Paper Nos. CB(2)42/15-16(01) and CB(2)47/15-16(01)]**

5. USCMA briefed members on the salient points of the Administration's paper. He said that under the current proposals, starting from the 2016 LegCo general election, both the subsidy rate of the financial assistance for candidates and EELs for LegCo election were to be adjusted on the basis of the estimated cumulative inflation rate from 2013 to 2016, which meant the estimated cumulative rate of change in the Composite Consumer Price Index ("CCPI") between 2012 and 2016. According to the latest estimate, the estimated cumulative rate of increase in CCPI between 2012 and 2016 was 15.6%. Mr IP Kwok-him expressed support for the Administration's proposals.

6. Regarding the eligibility criteria for receiving financial assistance, Mr WONG Yuk-man and Mr SIN Chung-kai considered it inappropriate to impose across-the-board the same threshold (i.e., able to receive 5% or more of the valid votes cast in the constituency concerned) regardless of the variations in population size and number of seats of different GCs. Mr WONG said that according to past experience with the proportional representation list-voting system, the candidate who won the last seat of a large GC might get elected by obtaining only a small percentage of the valid votes cast in the constituency concerned. For example, in the 2012 LegCo election, an elected candidate of an NT GC received 6.16% of the valid votes cast in the constituency concerned. He envisaged that it might happen in future that a candidate would win a seat by obtaining even less than 5% (say, 4.5%) of the valid votes, whereas another candidate who lost but still obtained 4.4% of the valid votes cast in the same constituency. However, according to the existing eligibility criteria, the former would be eligible for financial assistance but not the latter, even though both had obtained less than 5% of the valid votes and the difference in the number of votes obtained was also very small. Mr WONG said that a similar anomaly also existed with regard to the existing threshold for forfeiture of the election deposit. He pointed out that in respect of a large GC, the actual number of votes received by a candidate who obtained less than 3% of the total valid votes cast in the constituency concerned could be 10 000-plus, which was not a small number. He considered that the existing threshold of 3% for the forfeiture of the election deposit should also be reviewed to allow flexibility and take into account variations in the circumstances of different GCs.

7. Mr SIN Chung-kai and Mr CHAN Chi-chuen shared Mr WONG Yuk-man's concern. Mr SIN pointed out that the aim of the financial

Action

assistance scheme was to encourage more candidates to participate in LegCo elections. He considered that the Administration should also allow candidates who lost in the election and obtained less than 5% of the valid votes cast in the constituency concerned, but that the actual number of votes received by him/her was relatively not small, to be eligible for financial assistance. He further proposed that in each GC, depending on its number of seats, a certain number (to be decided by the Administration) of candidates who were not elected and obtained slightly less than 5% of the valid votes should also be eligible for financial assistance. Mr IP Kwok-him expressed reservations about the proposal and considered the present threshold appropriate. He added that the financial assistance scheme was not aimed to encourage persons who lacked popular support to participate in LegCo elections.

8. USCMA explained that the financial assistance scheme already allowed flexibility in that a candidate or a candidate list would be eligible for financial assistance provided that the candidate/candidate list was elected, or received 5% or more of the valid votes cast in the constituency concerned in a LegCo election. Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") explained that before the conduct of each election, no one could predict the number of candidates/candidate lists who would participate in the election and the number of votes they would obtain. It would not be appropriate to consider making a fundamental change to the system based on speculations of the election outcome in any selected GC.

9. With reference to paragraph 3(b) of the Administration's paper, Mr MA Fung-kwok asked how many GC candidate lists in the past LegCo elections had received an amount of financial assistance equivalent to 50% of EEL applicable to the constituency concerned. USCMA said that in the 2012 LegCo election, all GC candidate lists which were eligible for financial assistance received subsidy based on the calculation in paragraph 3(a) of the Administration's paper (i.e., multiplying the subsidy rate by the total number of valid votes cast for the candidate list). There were District Council (second) functional constituency candidate lists which received subsidy based on the calculation in paragraph 3(b) of the Administration's paper (i.e., 50% of EEL applicable).

10. Mr CHAN Chi-chuen considered that there was room for enhancing the provision of financial assistance to candidates. Speaking from his own experience, Mr CHAN said that he had incurred election expenses of \$2.43 million in the 2012 LegCo election, but only received a subsidy of some \$400,000.

Action

11. Dr Helena WONG said that with the increase in the number of seats for Kowloon West ("KW") GC from five to six in the 2016 LegCo election, she reckoned that the candidate who won the last seat in KW might obtain only about 30 000 votes. The candidate would probably receive a subsidy of about \$420,000 (i.e., 30 000 x \$14) but not 50% of EEL applicable, which would be \$910,000 (i.e., 50% of \$1,821,000 in the case of KW GC). She considered that with the proposed increase in EELs, candidates who were financially better-off would be in an advantageous position as they could afford to spend more to canvass more votes. These candidates would not care spending up to the EEL even though they knew that they would receive a subsidy of only about \$400,000 to \$500,000, whereas the less well-off candidates could only afford to spend a sum far less than \$1,821,000. She considered that alongside the proposal of increasing EELs for the five GCs, the Administration should also propose increasing the subsidy rate from \$12 to, say, \$20, per vote or alternatively, lowering EELs, in order to avoid giving rise to the above unfair situation. Mr CHAN Chi-chuen said that he did not support lowering EELs because he noted that some new candidates had a practical need to incur more election expenses to publicize themselves.

12. USCMA explained that under the financial assistance scheme, the level of financial assistance given to a candidates/candidate list depended on the actual number of votes received by the candidate/candidate list concerned (subject to not exceeding 50% of EEL applicable and not exceeding the declared election expenses of the candidate/candidate list), not the amount of election expenses incurred by that candidate/candidate list. DSCMA said that in the past, there were cases where candidates/candidate lists had incurred a substantial amount of election expenses but had lost in the LegCo election concerned. He added that there was no unfairness in the design of the scheme as all candidates/candidate lists competing in the same constituency would have to operate under the same EEL applicable to the constituency concerned.

13. In response to the suggestion of further increasing the subsidy rate, USCMA said that when the financial assistance scheme was introduced in 2004 to LegCo elections, the subsidy rate was set at \$10 per vote. The subsidy rate was increased to \$11 per vote starting from the 2008 LegCo general election, and was further increased to \$12 per vote starting from the 2012 LegCo general election. On each occasion, the increase was made after taking into account CCPI movement of the relevant period. The Administration considered that the existing financial assistance scheme was able to strike a proper balance between the policy objectives of encouraging more candidates to participate in

Action

election and ensuring prudent use of public funds. The Administration considered it appropriate to increase the subsidy rate as currently proposed. Nevertheless, the Administration was willing to consider other suggestions for implementation in the long run.

14. Ms Emily LAU considered that the Administration was too mean to require a candidate to receive the lowest of the three amounts under the arrangements in paragraph 3(a) to (c) of the Administration's paper. She said that according to such arrangements, the Administration would not meet its policy intent to ensure that 50% of the election expenses of candidates/candidate lists would be subsidized. Mr Alan LEONG shared Ms LAU's concern. In response, USCMA clarified that it had not been the Government's policy objective to ensure that 50% of the election expenses of the candidates/candidate lists would be subsidized. Instead, the original spirit of the financial assistance scheme was that the level of financial assistance given to a candidate/candidate list should reflect the level of support the concerned candidate/candidate list received from the public; and that both the candidates/candidate lists and the Government should shoulder part of the election expenses. Hence, when the financial assistance scheme was first introduced in 2004, financial assistance payable to candidates/candidate lists was calculated by multiplying the number of valid votes obtained by candidates/candidate lists by the subsidy rate, subject to not exceeding 50% of the declared election expenses of the candidates/candidate lists.

15. USCMA further said that in 2010, having regard to Members' views, the Administration agreed to enhance the financial assistance scheme starting from the 2012 LegCo general election, so as to provide more room for candidates/candidate lists to obtain financial assistance, and that as a result of the revision, the financial assistance obtainable might exceed 50% of the declared election expenses.

Admin

16. At the request of Ms Emily LAU, USCMA agreed to provide information on the subsidy received by GC lists of candidates as a percentage of their declared election expenses.

17. The Chairman considered that based on the arrangements in paragraph 3(a) to (c) of the Administration's paper, a candidate would benefit most if he/she managed to win a large number of votes just by incurring very little election expenses. He pointed out that according to past experience of LegCo elections, this rarely happened. Mr Paul TSE said that for large GCs with many seats, the number of votes received by the candidate lists would be thinned out since these GCs usually would have a large number of candidate

Action

lists. The amount of election expenses to be incurred by the candidate lists would inevitably be large, and the EELs applicable to these GCs were also higher than others. So, the gap between the subsidy received by a candidate list calculated according to paragraph 3(a) of the Administration's paper (i.e., multiplying the subsidy rate by the total number of valid votes cast for the candidate list) and the other amounts calculated according to paragraph 3(b) and (c) of the Administration's paper (i.e., 50% of EEL applicable/the declared election expenses of the candidate list) would be enlarged whenever an additional seat was allocated to the GC concerned. In the circumstances, the relative benefits obtained by the candidate list from the financial assistance would be reduced as a result of adding one more seat to the GC concerned. Mr CHAN Chi-chuen shared Mr TSE's view. He considered that as it had already proven that few candidates/candidate lists could really obtain a subsidy calculated according to paragraph 3(b) or (c) of the Administration's paper, the Administration should consider further increasing the subsidy rate to, say, \$20, per vote in order to enhance the provision of subsidies for candidates. Ms Emily LAU suggested that the Administration should explore adopting a policy of subsidizing, at least, 50% of the declared election expenses of the candidate.

Admin

18. Mr IP Kwok-him expressed the view that a candidate should accept that he/she would have to bear a certain amount of election expenses in taking part in the election. He considered that the crux of the issue was the share of election expenses that should be borne by candidates/candidate lists and the Government respectively. To facilitate members' deliberation, he requested the Administration to provide the percentage of GC lists of candidates who obtained financial assistance in the past LegCo elections under the respective arrangements in paragraph 3(a) to (c) of the Administration's paper. USCMA agreed to provide the information. He reiterated that the financial assistance scheme had just been enhanced starting from the 2012 LegCo general election. Moreover, on each occasion in the past, the increase in subsidy rate was made after taking into account the cumulative CCPI movement of the relevant period. For consistency, the Administration considered it appropriate to maintain increasing the subsidy rate based on the current proposal, i.e. to be adjusted on the basis of the estimated cumulative inflation rate from 2013 to 2016. Nevertheless, the financial assistance scheme could be reviewed in the light of the experience gained from the 2016 LegCo general election.

*(Post-meeting note: The supplementary information provided by the Administration was circulated to members vide LC Paper No. CB(2)258/15-16(01) on 11 November 2015.)*



Action

**IV. Proposed technical amendments to electoral legislation**

[LC Paper No. CB(2)42/15-16(02)]

19. USCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)42/15-16(02)].

Discussion

*Aligning the electoral arrangements of the Election Committee Subsector ("ECSS") elections and the Chief Executive ("CE") election with other public elections*

20. With reference to paragraph 6(d) of the Administration's paper, Mr CHAN Chi-chuen enquired about the possible situations to be covered under the scenario of "riot, open violence or other occurrence of public danger", and the relevant authority to invoke the postponement/adjournment mechanism. CEO said that, generally speaking, the Electoral Affairs Commission ("EAC") was vested with the authority to decide whether an election, poll or count would be postponed/adjourned if it appeared that the election, poll or count was likely to be obstructed, disrupted, undermined or seriously affected by three types of occurrence, namely (i) a typhoon or other climatic condition of a serious nature; (ii) riot, open violence or other occurrence of public danger; or (iii) an occurrence which appeared to be a material irregularity relating to the election, poll or count. While the situations under the scenario of "riot, open violence or other occurrence of public danger" were not specified in the electoral legislation, EAC and the Registration and Electoral Office ("REO") would draw up contingency plans to deal with possible situations. As part of the overall contingency plans, a Crisis Management Committee ("the Committee") would be set up, where necessary, to provide advice to EAC on the handling of any crises relating to ECSS elections and CE election and, in particular, all matters concerning postponement/adjournment of an election, poll or count under the three aforesaid occurrences. The Committee would be chaired by the EAC Chairman and would comprise all EAC Members and representatives of relevant government bureaux/departments.

21. The Chairman suggested that the Administration should consider also devising a plan to respond to the scenario where an occurrence of a public danger incident might not be settled by the end of the 14-day fallback period. CEO said that as in the past elections, REO would draw up contingency plans and devise appropriate arrangements to deal with possible situations.

Action

22. In response to Mr CHAN Chi-chuen's enquiry, CEO advised that EEL was set out in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) and EEL would not be increased even if an election was postponed. Candidates could continue to conduct electioneering activities subject to the ceiling of the election expense. CEO added that the existing legislation already allowed for postponement or adjournment of election. Candidates should be fully aware of the arrangement while incurring election expenses.

23. Mr LEUNG Kwok-hung asked who would be appointed to the Committee to provide advice to EAC. He considered that these persons had to be held accountable to the public. CEO explained that EAC, as an independent statutory body, was vested with the authority, as set out in the relevant electoral legislation, to decide whether an election had to be postponed/adjourned. CEO further explained that before making a decision on whether the election/poll should be postponed/adjourned under the various occurrences, EAC, assisted by the Committee, would take into account the professional advice rendered by relevant government bureaux/departments (such as the Hong Kong Observatory and the Security Bureau) as appropriate to assess the situation at the time.

24. Mr NG Leung-sing considered that it was appropriate for EAC, which was an independent statutory body, to decide whether it was necessary to postpone/adjourn an election, poll or count, having regard to the professional advice of the Committee. His view was echoed by Mr IP Kwok-him.

25. In response to Mr IP Kwok-him's enquiry about the rescheduled polling day, CEO clarified that the proposed technical amendments were to align the electoral arrangements of the ECSS elections and the CE election with those of other public elections. The current proposal only required that the postponed/adjourned election, poll or count had to be held/resumed not more than 14 days after the postponement or adjournment. It did not preclude REO from holding the postponed/adjourned election on the immediately following Sunday.

*Revising the deadline for election return submission for LegCo uncontested candidates*

26. Mr IP Kwok-him expressed support for revising the deadline for ER submission for uncontested cases as set out in paragraph 3 of the Administration's paper.

Action

**V. Any other business**

27. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 2  
Legislative Council Secretariat  
4 December 2015