

立法會
Legislative Council

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LC Paper No. CB(2)1961/15-16
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 16 May 2016, 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 Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon James TIEN Pei-chun, GBS, JP
Hon Steven HO Chun-yin, BBS
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon Alice MAK Mei-kuen, BBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen, BBS
Hon Alvin YEUNG Ngok-kiu

Members absent : Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon CHAN Hak-kan, JP
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon CHAN Han-pan, JP
Hon CHAN Yuen-han, SBS, JP
Hon Dennis KWOK
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP
Hon CHUNG Kwok-pan

Public Officers attending : Items III and IV

Mr Gordon LEUNG Chung-tai, JP
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

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I. Information paper(s) issued since the last meeting

[LC Paper No. CB(2)1431/15-16(01)]

The Chairman said that a joint letter dated 29 April 2016 sent to him from 23 Members on issues relating to the system of declaration of interests by public officers had been issued to members after the last meeting [LC Paper No. CB(2)1431/15-16(01)]. The Chairman added that the letter had been forwarded to the Administration for consideration.

2. The Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") said he noted that the arrangements made for the declaration of interests by Legislative Council ("LegCo") Members and civil servants were outside the purview of this Panel. He further said that in 2012, the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests ("IRC") had reviewed the existing regulatory framework and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive ("CE"), non-official Members of the Executive Council ("ExCo"), and politically-appointed officials ("PAOs") as well as the declaration system in ExCo. IRC considered that the declaration system was generally in order. DSCMA added that the Administration considered that the declaration system was stringent and appropriate and it had no plan to conduct a further review.

3. Ms Emily LAU, however, considered that the Administration should enhance the current declaration system in the light of the recent media reports on the "Panama Papers", which revealed that public officials were able to keep personal financial information private through offshore companies. DSCMA explained that under the current declaration system, ExCo Members and PAOs were required to declare their investments and interests should there be any actual or potential conflict of interests with their official duties. At the request of the Chairman, DSCMA agreed to provide information about the existing declaration system for Members' reference. Ms Claudia MO requested the Panel to consider discussing the Administration's reply in future. The Chairman said that members might consider whether the Panel should follow up on the issue after consideration of the information to be provided by the Administration.

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(Post meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(2)1924/15-16(01) on 15 July 2016.)

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II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1458/15-16(01) and (02)]

4. Members agreed to discuss the following items proposed by the Administration at the next meeting on 20 June 2016 at 2:30 pm:

- (a) the "Proposed Guidelines on Election-related Activities in respect of the Chief Executive Election" issued by the Electoral Affairs Commission ("EAC"); and
- (b) briefing by the Chairperson of the Equal Opportunities Commission.

III. Proposed Guidelines on Election-related Activities in respect of the Election Committee Subsector ("ECSS") Elections ("the Proposed Guidelines") issued by EAC

[LC Paper Nos. CB(2)1458/15-16(03) to (04) and CB(2)1476/15-16]

5. At the invitation of the Chairman, DSCMA and the Chief Electoral Officer ("CEO") of the Registration and Electoral Office ("REO") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1458/15-16(03)].

Discussion

Election advertisements ("EAs")

6. Ms Claudia MO asked whether a person would be considered to have published an EA if the person changed the profile picture of his/her Facebook account into a picture of supporting a certain candidate of an election. Ms MO considered that the existing provisions on EAs failed to keep pace with the development of the Internet technology. Mr Alvin YEUNG requested the Administration to explain whether any text, email and message expressing support for a certain candidate and sent through social networking or communication websites on the Internet (such as Facebook) would be considered as an EA.

7. CEO said that what constituted an EA was explained in paragraphs 8.3 and 8.4 of the Proposed Guidelines. The definition was provided in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), and complaints related to relevant breaches were to be followed up by the

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Independent Commission Against Corruption ("ICAC"). CEO explained that according to ECICO, messages published by web surfers through social media for the purpose of promoting the election of a candidate/list of candidates or prejudicing the election of other candidates/lists of candidates would be regarded as EAs. However, if web surfers merely shared or forwarded different candidates' election campaigns through Internet platforms for expression of views and did not intend to promote or prejudice the election of any candidates, such sharing or forwarding would not normally be construed as publishing EAs. However, if web surfers were instructed by the candidate or candidates on the list or his/her/their election helpers to share or forward the election campaigns through Internet platforms with the intention to promote or prejudice the election of a candidate or candidates at the election, such an act would be regarded as publication of the candidate's or candidates' EAs and any costs incurred would have to be included in the election expenses of the candidate/list of candidates.

8. In response to Mr Alvin YEUNG's further enquiry, CEO said that a person who incurred expenses to publish any materials caught by the definition of EA without the prior consent of the candidate concerned might have breached section 23 of ECICO, as under the law only a candidate or a person who had been duly authorized by the candidate as his/her election expense agent might incur election expenses. Mr YEUNG considered that messages published through Internet platforms such as Facebook incurred only negligible costs or no costs at all. He shared Ms Claudia MO's concern that requiring ICAC to follow up complaints or referrals related to failure to declare the relevant costs of publishing EAs by such means was frivolous and meaningless, and would unnecessarily add to ICAC's workload. DSCMA explained that even though the amount of expenses involved was small, the Administration considered that EAs disseminated through Internet platforms and related expenses should be regulated in an election campaign to ensure a level-playing field for all candidates.

9. In response to members' concern about the regulation of EAs published through social networking or communication websites on the Internet, CEO further said that there were stringent procedures to be followed in handling relevant complaints or referrals, and that the "intention to promote or prejudice the election of any candidates" had to be proven before prosecution could be instituted against a person for breaches of the provisions concerning EAs under ECICO. CEO advised that, as far as he could recall, ICAC had not ever initiated any prosecution in this regard in the past decade. CEO acknowledged that the definition of EAs was very wide and encompassed anything published

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publicly by any means, including a message published through Internet platforms for promoting the election of a candidate or prejudicing the election of other candidates. CEO said that EAC welcomed suggestions from members regarding any change that should be made to the regulation of EAs and its definition and would refer the views received to the Administration for consideration.

Admin 10. Mr Paul TSE considered that the provisions relating to EAs under ECICO should be reviewed to bring them in line with the present circumstances and the relevant practices adopted in overseas jurisdictions. Mr TSE suggested that EAC might consider providing more detailed guidelines to explain what it meant by "intention to promote or prejudice the elections of any candidates", so as to avoid members of the public from breaching the law inadvertently. DSCMA advised that the Administration would conduct a study on the relevant regulatory regimes in overseas jurisdictions and would revert to the Panel on the outcome of its study when it was ready.

Election broadcasting and media reporting on the Internet

11. Ms Claudia MO expressed concern about whether the "fair and equal treatment" principle applicable to election-related programmes on television and radio also applied to election-related programmes produced by Internet media.

IV. Practical arrangements for the 2016 ECSS elections

[LC Paper Nos. CB(2)1458/15-16(05) and (06)]

12. At the invitation of the Chairman, DSCMA and CEO of REO briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1458/15-16(05)].

Discussion

EAs

13. Dr LAM Tai-fai asked whether a candidate of ECSS elections ("ECSS candidate") could state in his/her election platform and EAs that the incumbent CE should step down or not to seek re-election. He further asked whether a specimen of election mail containing such election platform would be accepted for free postage. CEO said that the general requirement was that the content of an EA had to be lawful and, at present, there were no specific requirements

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Admin under the electoral law with regard to the content of an EA. Dr LAM suggested that REO should explore the possibility of providing guidelines on the content of EAs for reference by candidates.

Admin 14. Dr Kenneth CHAN asked whether an ECSS candidate had breached the electoral law if he/she stated in his/her election platform that he/she opposed a person who had declared intention to run for the 2017 CE election to seek election as CE. CEO said that his initial view was that the ECSS candidate might have breached the law if he/she did so with the intention to promote or prejudice the election of that person and if he/she had published EAs containing such content without the prior consent of the candidate concerned. CEO said that advice would be sought from the Department of Justice ("DoJ") on this issue.

15. Mr Paul TSE enquired about the incident in which a specimen of the election mail submitted by a candidate of the 2016 LegCo New Territories East Geographical Constituency By-election was not accepted for free postage. CEO explained that REO had the responsibility to ensure that the arrangement of free postage provided by the Government would not involve any unlawful act. Besides, as required by the Legislative Council Ordinance (Cap. 542), all candidates must declare in the nomination form that he/she would uphold the Basic Law ("BL") and pledge allegiance to the Hong Kong Special Administrative Region. In the above incident, REO had sought legal advice from DoJ. According to the legal advice of DoJ, the relevant contents would most probably amount to an indication that the candidate was acting against BL and the contents of the declaration. Dr Kenneth CHAN requested REO to provide the relevant legal advice for members' reference. CEO said that legal advice provided by DoJ to government departments was for internal consumption and, therefore, would normally not be disclosed. He further said that as the candidate concerned had filed an application for judicial review in respect of the case, it was inappropriate for him to give further comments on the case. REO would follow up after the Court had made a ruling on the case.

16. Referring to paragraph 17 of the Administration's paper about the handling of the computer disc containing personal information of voters after the elections, Dr LAM Tai-fai asked what actions the Administration would take to ensure that the computer disc was destroyed by candidates after the elections. CEO advised that candidates would be required to sign an undertaking in this regard and REO would draw to their attention the legal consequences of not taking heed of REO's reminder.

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Polling and counting arrangements

Admin 17. Mr Paul TSE said that given the size of the ECSS electorate only involved some 240 000 voters, consideration could be given to trying out new measures to streamline the relevant polling and counting arrangements. He suggested that the polling hours should be shortened so as to save manpower resources and that the number of polling stations could be reduced. CEO said that REO planned to set up about 110 polling stations for the 2016 ECSS elections (i.e. about 2 200 voters on average would be assigned to each polling station). He explained that in order to facilitate voters to vote in the elections, REO had no plan to reduce the number of polling stations. In response to Mr TSE's enquiry about the free postage arrangements, CEO said that pursuant to the law, each ECSS candidate was entitled to send, free of postage, one letter to each voter to promote or advertise himself/herself. Any change to such arrangements would require legislative amendments. REO would consider members' suggestions in this regard in future review of the free postage arrangements.

Admin 18. Mr IP Kwok-him shared Mr Paul TSE's view that the polling hours (from 7:30 am to 10:30 pm) of past elections were quite long, and suggested that the polling hours for the ECSS elections might end at 6 pm instead. CEO said he noted that the polling hours were shorter in some other places such as Japan where the poll started at 8:30 am and ended at 8 pm. CEO said that when the subject matter was discussed by the Panel in the last election cycle, Members had expressed diverse views on whether the polling hours should be shortened. He said that REO would listen to the views of Members in reviewing whether the polling hours should be revised. Mr SIN Chung-kai suggested that public consultation could be conducted first before introducing changes to any electoral arrangement such as polling hours. He further suggested that the public consultation should be conducted after the 2016 LegCo election and any new arrangement could be implemented in the next election cycle. Mr IP Kwok-him requested the Administration to conduct an opinion poll to ascertain whether the proposal of shortening polling hours had the general support of Members and political parties. DSCMA noted the different views of members, and said that there was room for review as to whether the polling hours for the ECSS elections could be shortened, and that the Administration would revert to the Panel if there was any preliminary proposal on the matter.

19. In response to Mr Paul TSE's question about the operational readiness of the Voting Validation and Counting Automation System ("VVCAS") which was still subject to further testing according to paragraph 12 of the Administration's

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paper, CEO advised that independent quality assurance services would be carried out to ensure the accuracy of VVCAS in reading the ballots and counting the votes. Noting that it was REO's plan to resort to manual counting in case of any malfunctioning of the system on the polling day or where the number of candidates exceeded the maximum length of ballot paper which could be processed by the Optical Mark Recognition ("OMR") system, Mr IP Kwok-him questioned whether it would be practicable to adopt manual counting in certain subsectors which involved a large number of votes. He asked whether preliminary results could be announced first if the discrepancies (if any) were very small and were not expected to affect the final result. He recalled that during the counting of the Election Committee ("EC") votes in September 2000, two ballot papers were found to be bearing identical barcodes which caused OMR to record the votes on only one of the two ballot papers.

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20. CEO said that at the ECSS elections in 2011, the longest ballot paper accommodated 162 candidates for the Social Welfare Subsector. The OMR system currently could process ballot papers up to the length of 26 inches, which could accommodate up to 178 candidates. He said that while legislation in other jurisdictions might provide for announcement of preliminary election results before the final results were available, the same was not provided for in Hong Kong legislation. He explained that there were procedures governing the counting and verification of results under the electoral legislation to ensure that all relevant data were correct before the election results were announced. CEO said that Mr IP's views would be taken into account when drawing up contingency plans for the election.

21. In view of the large number of candidates in certain subsectors, Dr Kenneth CHAN enquired whether arrangements could be made in the 2016 ECSS elections to allow candidates belonging to the same camp or team to be listed together in the ballot paper to facilitate voters to identify the candidates when marking the ballot papers. CEO explained that as set out in the electoral law, the candidate number to be allocated to a candidate was determined by the drawing of lots. CEO recapitulated the advice of the EAC Chairman that voters could bring along a paper listing the candidate numbers of their choices for easy reference when marking the ballot papers, provided that they would not show that paper to other persons inside the polling station and would not leave behind the paper at the polling station.

Publicity measures

22. Mr Christopher CHEUNG called on the Administration to step up publicity on the composition of EC to raise public awareness of the

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representativeness and legitimacy of EC. DSCMA advised that apart from conducting voter registration campaign, publicity would be stepped up in election years to encourage all registered voters to cast their votes in relevant elections. Publicity efforts would be made to convey the message and information to the public at large. Dr LAM Tai-fai considered that the publicity efforts should target all the constituents of the 38 subsectors of EC. CEO said that publicity would be made through the mass media to publicize the 2016 ECSS elections, and publicity leaflets would be distributed through the relevant organizations/bodies in respective subsectors to encourage voters to turn up for voting. Mr LEUNG Kwok-hung opined that the electorate size of EC should be expanded to allow greater participation of people from different sectors of the community, thereby enhancing the representativeness of EC.

V. Any other business

23. There being no other business, the meeting ended at 4:18 pm.

Council Business Division 2
Legislative Council Secretariat
8 August 2016