

立法會
Legislative Council

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LC Paper No. CB(2)391/16-17
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 21 November 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Holden CHOW Ho-ding (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen

Dr Hon Elizabeth QUAT, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon LAM Cheuk-ting
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Dr Hon YIU Chung-yim
Dr Hon LAU Siu-lai

**Members
absent** : Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon Kenneth LEUNG
Hon CHUNG Kwok-pan
Hon CHEUNG Kwok-kwan, JP
Hon Kenneth LAU Ip-keung, MH, JP
Hon Nathan LAW Kwun-chung

**Public Officers : Item IV
attending**

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

Miss Rosanna LAW Shuk-pui
Deputy Secretary for Constitutional and Mainland
Affairs

Miss Natalie LI Sau-fung
Assistant Director of Film, Newspaper & Article
Administration
Office of the Communications Authority

Item V

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

Miss Rosanna LAW Shuk-pui
Deputy Secretary for Constitutional and Mainland
Affairs

Mr Ryan CHIU Pit-ming
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr WONG See-man
Chief Electoral Officer
Registration and Electoral Office

Miss Candy MA Siu-hung
Principal Electoral Officer
Registration and Electoral Office

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

Staff in : Mr Kelvin LEE
attendance Senior Assistant Legal Adviser 3

Miss Cindy HO
Senior Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

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I. Confirmation of minutes of meeting
[LC Paper No. CB(2)131/16-17]

The minutes of the meeting held on 28 October 2016 were confirmed.

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

[LC Paper Nos. CB(2)85/16-17(01), CB(2)114/16-17(01) and CB(2)231/16-17(01) to (03)]

2. Members noted that the following papers had been issued after the last meeting:

- (a) letter dated 28 October 2016 from Miss Alice MAK;
- (b) letter dated 2 November 2016 from Mr Charles Peter MOK;
- (c) letter dated 10 November 2016 from Mr Nathan LAW and the Clerk's reply letter; and
- (d) letter dated 16 November 2016 from Ms Starry LEE.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)183/16-17(01) and (02)]

3. Members agreed to discuss the following items proposed by the Administration at the next meeting on 19 December 2016 at 2:30 pm:

- (a) review of objection mechanism in relation to voter registration system; and
- (b) regulation of the use of social media and the conduct of election polls in public elections.

4. Regarding the item referred to in paragraph 3(b), Mr LEUNG Yiu-chung requested the Administration to consider including research on the overseas practice of setting a "cooling off period" on the polling day. Under Secretary for Constitutional and Mainland Affairs ("USCMA") agreed. The Chairman also requested the Administration to consider addressing the issues raised by Ms Starry LEE in her letter dated 16 November 2016 [LC Paper No. CB(2)231/16-17(03)] under the same item.

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IV. Revision of fees under the Registration of Local Newspapers Ordinance

[LC Paper Nos. CB(2)183/16-17(03) and (04)]

5. USCMA briefed members on the proposed revision of 11 fee items under the Registration of Local Newspapers Ordinance (Cap. 268) ("RLNO") as detailed in the Administration's paper [LC Paper No. CB(2)183/16-17(03)].

Views on the fee revision proposal

6. Noting that the actual amounts of fee increases involved under the current proposal were relatively small, Mr POON Siu-ping and Mr Alvin YEUNG asked whether the Administration would consider achieving full cost recovery in one go, so as to obviate the need for regular review and legislative amendment exercises in future to achieve full cost recovery. In their view, this would also save administrative cost and efforts. They considered that the amounts of fee increases involved would be insignificant even if they were to achieve full cost recovery in one go, and this should not impose too heavy a financial burden on the industry and people's livelihood. Mr POON further asked whether the Administration had a timetable for achieving full cost recovery in respect of the 11 fee items.

7. USCMA explained that in line with the "user pays" principle, it was the Government's policy that fees charged for services provided by the Government should in general be set at levels adequate to recover the full cost of providing the services. To this end, a system had been put in place to review the relevant fees and charges from time to time. The latest cost review of the 11 fee items under RLNO showed that their cost recovery rates were between 45% and 93%. USCMA advised that the Administration had come up with the proposed fee increases with a view to achieving full cost recovery gradually to avoid a steep fee increase. The Administration did not have a timetable for achieving full cost recovery in respect of the 11 fee items. Nevertheless, he undertook that the Administration would consider members' views and comments in the next review exercise.

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8. With regard to the fee items "Search and inspection of news agency register"/"Search and inspection of register of local newspaper", Ms Claudia MO considered that the fees should be set at a low level so as to facilitate public access to relevant information and free flow of information. She further suggested introducing a flat rate of \$10. Mr CHU Hoi-dick

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expressed support for Ms MO's view and suggestion. He considered that the "user pays" principle should not apply in respect of such fee items concerning search and inspection services. Assistant Director of Film, Newspaper & Article Administration explained that the fee level of individual items had been set by taking into account, the staff and other administrative costs involved in the provision of the relevant services. As such, the revisions proposed varied among different fee items.

9. Dr CHIANG Lai-wan questioned why the principle of achieving full cost recovery was not applicable to some other Government services, e.g., fees for cremation/burial services. She considered it more reasonable to set the fee levels based on the cost or, the other way round, to determine the cost based on the fee levels. She also shared the view that the Administration should consider achieving full cost recovery in one go, since the actual amounts of fee increases involved were not large and should not have any significant impact on the industry. This would obviate the need for regular review and legislative amendment exercises. Mr CHU Hoi-dick, however, considered that for items such as "Registration of local newspaper", should the Administration decide to achieve full cost recovery in one go, the actual amount of fee increase involved would be about \$300, which was not a small amount to small-scale media such as community newspaper. He asked whether the Administration would consider waiving the registration fee for community newspapers. USCMA said that the industry had not made such a request or expressed concern about the fee levels of any of the items. He reiterated that the proposed revisions were aimed to achieve full cost recovery gradually and to avoid a steep fee increase. Nevertheless, the Administration would consider members' views and comments in the next review exercise.

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10. Mr LEUNG Yiu-chung opined that while the proposed amounts of fee increases were not substantial, the increase rates in the range of 8% to 17% were quite large. He expressed grave concern about whether this would trigger inflation and the impact on the fee levels of other public services, particularly those affecting people's livelihood. The Deputy Chairman considered that the proposal of achieving full cost recovery in one go as suggested by some members might need to be carefully considered. He said that while the actual amounts of fee increases involved would be insignificant even if they were to achieve full cost recovery in one go, the large increase rates might set a bad precedent and, if adopted for setting the fee levels of other Government services, the impact on the public would then be large. He suggested that if the Administration agreed to achieve full

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cost recovery in one go for the fee items under discussion, the Administration should make it clear that it would not apply the same large adjustment rates to other fee items.

11. USCMA said that the fee revision proposals were drawn up in accordance with the fee revision guidelines for Government services. He pointed out that under the current proposal, the fee levels for seven items with existing cost recovery rates of 40% to 70% would be increased by about 15%, and those for four items with existing cost recovery rates of over 70% be increased by only 10% or less. The actual amounts of increases were small and any impact on the industry and people's livelihood would be insignificant. He assured members that in putting forward any fee revision proposal, it had been the established procedure that the policy bureau concerned would fully consider the impact on the public and businesses concerned and would also consult relevant Panel on such a proposal before introducing the legislative amendment (if required) into the Legislative Council ("LegCo"). In reply to the Chairman's enquiry, USCMA said that subject to members' views, the Administration intended to introduce the relevant amendment regulations into LegCo in December 2016 for negative vetting and to implement the proposed fee revisions within the 2016-2017 financial year.

Other issues

12. Dr CHENG Chung-tai expressed concern that some media organizations operating Internet news web sites were also registered under RLNO but there had been occasions on which some of these media organizations (e.g., Passion Times) had not been allowed to conduct news coverage of Government press briefings. He considered that the news reporting activities of online media should also be protected under RLNO and the existing regulatory regime. USCMA said that the Information Services Department ("ISD") was responsible for media reporting arrangements of government activities. He added that ISD was conducting a study on relevant arrangements and the outcome would be released when available.

V. Practical arrangements of the 2017 Chief Executive Election
[LC Paper Nos. CB(2)183/16-17(05) and (06)]

13. USCMA and the Chief Electoral Officer ("CEO") of the Registration and Electoral Office briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)183/16-17(05)].

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Discussion

Election Committee

14. Referring to the decisions of the Returning Officer ("RO") that some candidates of the Higher Education subsector and the Engineering subsector were not validly nominated at the subsector elections concerned for failure to have "substantial connection" with their respective subsectors, Ms Claudia MO and Dr LAU Siu-lai requested the Administration to explain the considerations for determining what constituted "substantial connection". They said that the persons concerned were Mr Tommy CHEUNG, who was a Chinese University student and had ceased to be a senate member of the university only eight months ago, and six frontline engineering practitioners. They questioned why these persons were not regarded to have substantial connection with their respective subsectors. They further said that many members of the Agriculture and Fisheries subsector were managers and secretaries and yet they were regarded to have "substantial connection" with that subsector. Dr LAU said that in the 2005 Chief Executive ("CE") Election, two persons who had ceased to be District Council members for almost a year were not disqualified from making nominations and voting as Election Committee ("EC") members. She expressed grave concern that there seemed to be inconsistent interpretation of "substantial connection" when it was applied to different subsectors and lacked objective criteria. She queried whether political censorship was involved in making the relevant decisions.

15. Referring to paragraph 4.29 of the Guidelines on Election-related Activities in respect of the EC Subsector ("ECSS") Elections, Dr LAU Siu-lai said that RO should seek additional information from a candidate if he/she had doubt about the validity of the nomination. She questioned why RO had not done so before ruling the above nominations invalid. Dr KWOK Ka-ki, Dr Helena WONG and Mr KWONG Chun-yu shared the concern and expressed serious doubt about whether RO adopted the same yardstick in deciding whether a nomination was valid or whether a person had substantial connection with his/her subsector. They considered that the Administration's failure to explain this clearly would further undermine people's confidence in the coming ECSS Elections and the 2017 CE Election.

16. USCMA said that while he would not comment on individual cases, he dismissed that political censorship was involved in making the relevant decisions. He stressed that RO had acted in strict accordance with the law

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in making the decisions. He requested members to note that the eligibility for nomination as a candidate at a subsector election was set out in the Chief Executive Election Ordinance (Cap. 569) ("CEEEO"), and the Schedule to CEEEO had provided an interpretation on the term "substantial connection". In making the decision, RO would take into consideration the electorate and the constituents of the subsector concerned. However, each subsector varied in these respects under the law. Hence, the circumstances in which a person had substantial connection with a subsector also varied amongst different subsectors. Whether a nominee had substantial connection with his/her subsector needed to be considered on a case-by-case basis.

17. USCMA further said that if RO had doubt as to whether a particular candidate was validly nominated in respect of the subsector for which the candidate sought nomination, he/she could seek independent legal advice from the Nominations Advisory Committees ("NACs"). RO was required to have regard to the legal advice given by NAC on that candidate. If the candidate was dissatisfied with the RO's decision, he/she could appeal against the decision by judicial means.

18. Mr WU Chi-wai requested the Administration to provide the legal advice obtained by the RO concerned with regard to the above cases for members' reference. USCMA said that legal advice provided to public officers was normally not disclosed. With regard to the above cases, the reasons for the decisions that the nominations of the persons concerned were invalid were given in the nomination forms concerned, which were made available for public inspection.

19. Dr YIU Chung-yim suggested that guidelines on the criteria for determining whether a nominee had "substantial connection" with the relevant subsector should be provided for reference of persons who intended to stand as candidates. USCMA advised that a prospective candidate could seek the NAC's advice as to whether he/she was eligible to be, or was disqualified from being, nominated as a candidate at the ECSS Elections.

20. In reply to Dr CHENG Chung-tai's enquiry, CEO said that ECSS candidates were not required by the relevant law to declare whether or not they were holders of foreign passports. USCMA added that there was also no such legal requirement of oath-taking for EC members.

Election advertisement and publicity

21. Mr CHAN Chi-chuen said he hoped that a LegCo by-election would not be held on a date close to the coming CE Election. He expressed

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concern that if the two dates were close and that a LegCo candidate openly opposed a person who had declared an intention to seek election as CE (or re-election as CE for a second term), whether the act of the LegCo candidate concerned would constitute an election advertisement ("EA") and incur election expenses.

22. USCMA said that the Electoral Affairs Commission ("EAC") would not arrange for a LegCo by-election until after the Clerk to LegCo had, by notice published in the Gazette, declared the existence of a vacancy pursuant to the relevant provisions of the Legislative Council Ordinance (Cap. 542) ("LCO"). He explained that apart from the legal requirements, EAC would have to take into account practical circumstances as well, such as manpower and availability of suitable venues for setting up polling/counting stations, in deciding on the date of a by-election. In response to the Chairman's enquiry about the timeframe for holding by-elections for filling vacancies in the membership of LegCo, USCMA said that LCO only stipulated that no by-election would be held to fill a vacancy occurring in the membership of LegCo within the four months preceding the end of the current term of LegCo. As regards the issue of EA raised by Mr CHAN, USCMA said that the definition of "EA" was provided in section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), according to which any publicity materials published by any means "for the purpose of promoting or prejudicing the election of a candidate or candidates at the election" would be counted as EAs. In any particular case, the "intention to promote or prejudice the election of any candidates" had to be proven in considering whether the definition of "EA" was met.

23. Mr Christopher CHEUNG called on the Administration to step up publicity of the CE election in a more in-depth manner. Apart from promoting clean elections, he requested the Administration to take measures to enhance public understanding of the representativeness and importance of the CE election, targeting EC members as well as the general public. CEO said that a series of publicity activities would be launched through various channels, such as radio Announcement in the Public Interest and posters, and a dedicated website would be launched where all the information relating to the election would be made available for public browsing.

Confirmation Form

24. Mr LEUNG Che-cheung requested the Administration to explain the requirement that a CE candidate would have to sign a Confirmation Form similar to that adopted in the 2016 LegCo Election as part of the procedure

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for nomination. Miss Tanya CHAN questioned the legal basis for the requirement and what meaningful purpose it could serve. USCMA explained that section 16(7) of CEEO provided that a nomination of a candidate would have to be accompanied by a declaration to the effect that the candidate stood for the election in an individual capacity; and he/she would uphold the Basic Law ("BL") and pledge allegiance to the Hong Kong Special Administrative Region; as well as a declaration as to the candidate's nationality and whether he/she had a right of abode in any foreign country. To ensure that all candidates clearly understood the contents of BL and the legal requirements and responsibilities involved in signing the relevant declaration in the nomination form, EAC would prepare a Confirmation Form for the use of RO. The Form would assist RO in the exercise of his/her statutory power to discharge his/her duties to ensure that the nomination procedure was completed in accordance with the law. The Confirmation Form enabled the candidate to confirm that he/she understood the above requirements and responsibilities.

25. Mr LAM Cheuk-ting asked whether the Administration would consider specifying in the Confirmation Form that a candidate also had to pledge allegiance to the People's Republic of China in the wake of the Interpretation of BL 104. He said that if the Administration would do so, he doubted whether it was possible that a person who had renounced his/her foreign nationality would still be disqualified from being nominated as a CE candidate in light of the precedents of disqualification where past deeds of LegCo candidates had been taken into account by RO during the nomination process. USCMA said that he would not comment on individual cases. He stressed that RO would decide on the validity of any nominations in accordance with the legal requirements. He added that if RO had queries as to whether a candidate had fully complied with the legal requirements, he/she might, according to section 4(3) of the Electoral Procedure (CE Election) Regulation (Cap. 541J), request the candidate to provide any other information RO deemed appropriate to satisfy him/her that the nomination was valid.

Electioneering activities

26. Dr Helena WONG expressed concern as to whether measures were in place to prevent an incumbent CE from having an unfair advantage by using public resources for his/her electioneering campaign in seeking re-election. USCMA advised that the Guidelines on Election-related Activities in respect of the CE Election had clearly set out the general principle that a candidate should not use any public resource for the purpose of promoting his/her

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election or prejudicing the election of another candidate or other candidates at the election. In response to Dr Helena WONG's question concerning officials under the Political Appointment System seeking election as CE, USCMA said that according to section 14 of CEEO, a prescribed public officer (the definition of which included officials under the Political Appointment System) was disqualified from being nominated as a candidate in the CE election. However, the person concerned would be eligible for nomination as a CE candidate provided that he/she had resigned from public office and that his/her resignation had taken effect.

Polling arrangements

27. Referring to paragraph 19 of the Administration's paper, Mr IP Kin-yuen enquired when the new polling date would be for holding another round of election if no candidate was returned even on the next polling day on 7 May 2017 (i.e. 42nd day after the termination of the proceedings for the CE election on 26 March 2017). CEO said that the new polling date would then be 18 June 2017 (i.e. 42nd day after the termination of the proceedings for the election on 7 May 2017). In reply to Mr IP's further enquiry, USCMA said that if no candidate was returned at an election upon expiry of the term of office of an incumbent CE, acting arrangements would be made in accordance with BL. He added that another round of nomination and polling would be conducted when there was a new round of election.

28. In response to Mr MA Fung-kwok's enquiry, USCMA advised that the CE Election (Amendment) Ordinance 2011 had amended the voting system for the CE election to the effect that a candidate shall only be elected if he/she obtained more than 600 valid votes, instead of the previous provision of half of the total number of valid votes cast.

VI. Any other business

29. There being no other business, the meeting ended at 4:37 pm.