

立法會
Legislative Council

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Establishment Subcommittee of the Finance Committee

**Minutes of the 13th meeting
held in Conference Room 1 of Legislative Council Complex
on Wednesday, 7 February 2018, at 8:30 am**

Members present:

Hon Mrs Regina IP LAU Suk-yee, GBS, JP (Chairman)

Hon Alvin YEUNG (Deputy Chairman)

Hon James TO Kun-sun

Hon LEUNG Yiu-chung

Hon Abraham SHEK Lai-him, GBS, JP

Hon WONG Ting-kwong, GBS, JP

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Hon WONG Kwok-kin, SBS, JP

Hon Steven HO Chun-yin, BBS

Hon WU Chi-wai, MH

Hon Charles Peter MOK, JP

Hon CHAN Chi-chuen

Dr Hon KWOK Ka-ki

Hon KWOK Wai-keung, JP

Dr Hon Fernando CHEUNG Chiu-hung

Hon IP Kin-yuen

Dr Hon Elizabeth QUAT, BBS, JP

Hon Martin LIAO Cheung-kong, SBS, JP

Hon POON Siu-ping, BBS, MH

Dr Hon CHIANG Lai-wan, JP

Ir Dr Hon LO Wai-kyok, SBS, MH, JP

Hon CHUNG Kwok-pan

Hon CHU Hoi-dick

Hon HO Kai-ming

Hon Holden CHOW Ho-ding

Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon Jeremy TAM Man-ho

Members absent:

Hon KWONG Chun-yu

Public Officers attending:

Ms Carol YUEN Siu-wai, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Eddie MAK Tak-wai, JP	Deputy Secretary for the Civil Service 1
Miss Rosanna LAW, JP	Deputy Secretary for Constitutional and Mainland Affairs 1
Mr Ryan CHIU	Principal Assistant Secretary for Constitutional and Mainland Affairs 3
Mr WONG See-man	Chief Electoral Officer, Registration and Electoral Office
Ms Bertha LEE	Deputy Chief Electoral Officer (Administration), Registration and Electoral Office

Clerk in attendance:

Ms Connie SZETO	Chief Council Secretary (1)4
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Staff in attendance:

Miss Sharon LO	Senior Council Secretary (1)9
Ms Alice CHEUNG	Senior Legislative Assistant (1)1
Miss Yannes HO	Legislative Assistant (1)6
Ms Haley CHEUNG	Legislative Assistant (1)9

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The Chairman drew members' attention to the information paper ECI(2017-18)16, which set out the latest changes in the directorate establishment approved since 2002 and the changes to the directorate establishment in relation to the seven items on the agenda. She then reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP"), they should disclose the nature of any direct or indirect pecuniary interest relating to the item under discussion at the meeting before they spoke on the item. She also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

EC(2017-18)16 Proposed creation of one permanent post of Principal Executive Officer (D1) in the Registration and Electoral Office ("REO") with effect from 1 April 2018 or with immediate effect upon approval of the Finance Committee (whichever is later) for strengthening the directorate structure and permanent establishment of REO

2. The Chairman remarked that the staffing proposal was to create one permanent post of Principal Executive Officer (D1) in REO with effect from 1 April 2018 or with immediate effect upon approval of the Finance Committee ("FC") (whichever was later) for strengthening the directorate structure and permanent establishment of REO.

3. The Chairman pointed out that the Administration consulted the Panel on Constitutional Affairs on the staffing proposal on 20 November 2017. At the meeting, the Administration advised members that the Administration had reviewed the structure of REO in the light of the recommendations of the Electoral Affairs Commission ("EAC")'s Report on the 2017 Chief Executive ("CE") Election and the Task Force on the Computer Theft Incident of REO ("Task Force"), and taking into consideration that there would be at least one public election in all but one year in the coming decade, it was proposed to create the aforesaid permanent post to oversee effectively the planning and operational aspects of the elections and retain valuable experiences for sustainable review and improvement of the electoral system. The Panel agreed to the Administration's submission of the proposal to the Establishment Subcommittee for consideration.

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Follow-up work for the computer theft incident of the Registration and Electoral Office

4. Mr CHAN Chi-chuen noted that the Administration's proposal of converting the current supernumerary Principal Executive Officer post to a permanent post (to be designated as Principal Electoral Officer ("PEO")) was made in the light of the recommendations of EAC's Report on the 2017 CE Election and the Task Force. Noting that the Task Force had interviewed 30 REO staff, he enquired whether such staff were merely involved in frontline work, and why the Government had not provided the investigation results of the computer theft incident so far, including the cause of the incident and whether there were any officers (especially the Principal Executive Officer and/or the political appointee responsible for the 2017 CE Election) subject to disciplinary actions.

5. Mr Holden CHOW requested the Administration, at the conclusion of the investigation into the computer theft incident, to give the Legislative Council ("LegCo") and the public a detailed account of the investigation results, including details of disciplinary actions.

6. Mr Alvin YEUNG enquired whether the Task Force had put forward other recommendations in respect of the computer theft incident apart from the proposal of making permanent the current supernumerary Principal Executive Officer post.

7. Mr LEUNG Yiu-chung criticized the Administration for not having explained clearly the cause of the computer theft incident so far, especially whether negligence was involved. He queried the Administration's justifications for creating the permanent post.

8. Deputy Secretary for Constitutional and Mainland Affairs 1 ("DS1") advised that the Task Force had interviewed 30 REO staff in total, including staff from the management, relevant Elections Divisions ("E Divisions") and the Information Technology Management Unit. The Government was currently conducting an investigation. She pointed out that the Administration would handle the matter in accordance with the established mechanism if there was a need to take formal disciplinary actions after investigation. As the personal data of relevant officers were involved, the Government could not disclose the investigation details at this stage, including the number and ranks of the officers concerned. Depending on the circumstances, the Administration would consider whether and how to announce the investigation results. In addition, REO had followed up the improvement proposals raised by the Office of the Privacy Commissioner for Personal Data ("PCPD") and the Task Force,

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including announcing the technical and physical security measures which should be adopted when handling personal data as well as the administrative measures on the use of notebook computers or other portable storage devices in election-related activities.

9. DS1 supplemented that the Task Force had put forward in its report various recommendations in respect of the establishment problem of REO, and REO had also taken relevant improvement measures having regard to the recommendations made by the Task Force and PCPD. She pointed out that since the inception of REO in 1994, in election years, the increased workload arising from the planning, preparation and conduct of elections and large-scale voter registration ("VR") campaigns, as well as the related operational and administrative duties, was typically met by strengthening the establishment of REO through the creation of time-limited civil service posts and engagement of non-civil service contract ("NCSC") staff. Such posts would lapse at the end of the election cycle. As a large number of new employees would be engaged at the beginning of each election cycle, the staff with no relevant experience would normally only follow the established practice in previous elections, and they did not have sufficient time to study and suggest improvements to the election workflow after the end of the elections. In addition, given the immense growth in the complexity of electoral arrangements over the past few years, detailed electoral planning and careful execution of all sorts of arrangements for major elections within an election cycle, as well as meticulous and comprehensive reviews to update and improve the electoral arrangements in between election cycles on the part of REO would be essential. Therefore, the Task Force opined that some of the core officers of the E Divisions should be retained in non-election years to review the preparation and conduct of public elections and study the matters of concerns arising from the elections with a view to introducing specific improvement measures for the next election cycle.

10. Given that REO staff needed to handle a large amount of sensitive information involving electors, Dr Priscilla LEUNG considered that apart from strengthening the establishment, REO should conduct appointment checking before the commencement of new employees' appointment, and also review and strengthen the existing system and facilities, in particular the communication with venue operators, so as to prevent the reoccurrence of similar incidents.

11. Mr Charles Peter MOK considered that the computer theft incident not only had reflected the establishment problem of REO, but also had revealed problems concerning management and the system. For instance, REO had not strictly complied with all the information technology ("IT")

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security related guidelines promulgated by the Office of the Government Chief Information Officer in relation to the use of computer and other IT equipment. He enquired how REO would reform the existing system and management culture of merely following the established practice, as well as how to plug the loopholes in relation to the treatment of personal data and IT security.

12. DS1 said that in relation to the computer theft incident, PCPD and the Task Force had put forward more than 30 recommendations in total. REO had followed up the recommendations for improvement put forward by PCPD and the Task Force. As for the treatment of personal data, REO had, in accordance with the enforcement notices issued by PCPD, required that all the staff be prohibited from downloading or using geographical constituency electors' personal data (except their names and addresses) for the purposes of handling enquiries in future CE elections. As for IT and on-site physical security, despite the availability of a "locked" room at the election venue, the theft incident had revealed that the venue operators and their authorized persons could also enter the "locked" room without the presence of REO staff. To this end, REO would strengthen the relevant physical security measures. If restricted information or personal data needed to be stored in mobile devices and stored in election venues, mobile devices containing personal data should be kept in a locked steel cabinet fitted with locking bar and padlock, and other persons were not authorized to enter the room. In addition, the CCTV surveillance system was required to cover all the entrances of the locked room, and security patrol would also be stepped up. Depending on the circumstances, security measures at the room for storing ballot paper would be further enhanced. REO would provide staff, especially new recruits, with sufficient training to ensure that the security measures and arrangements as detailed in the departmental guidelines would be carried out properly. Before each large-scale election, REO would also provide briefing and training to the electoral staff. Besides, REO was now working in parallel on the formulation of a "privacy management programme" in the long run, including commissioning a suitable consultant through tender to assist in the development and implementation of the system.

Preservation of institutional memory

Actual needs and current arrangements

13. Mr WU Chi-wai and Mr Alvin YEUNG noted that preservation of institutional memory was one of the justifications for the current staffing proposal, and asked why the existing Chief Electoral Officer ("CEO") could not take up the task. Mr WU opined that the Administration should

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pass on institutional memory through documents, systems and the like, rather than relying on individual staff. He pointed out that CEO and PEO were only responsible for administrative work, while the actual electoral procedures were executed by the Returning Officers ("ROs") of various districts (such as the decision to disqualify a candidate). He queried the need of creating a permanent PEO post.

14. DS1 explained that CEO had to oversee the operation of the various divisions of REO, whereas PEO would be responsible for leading the dedicated E Division in undertaking all work relating to the planning, preparation and conduct of the elections in the election cycle. The current practice of creating a supernumerary PEO post only at the beginning of each election cycle and allowing it to lapse upon the end of the cycle had rendered the preservation of institutional memory at the senior level of REO gravely ineffective. Making the PEO post permanent would enable the effective overseeing of the planning and operational aspects of various elections, and could retain valuable experiences for continuous review and improvement of the electoral system. In addition, having a permanent "second-in-charge" post in REO would also allow the posting periods of CEO and PEO to stagger, thereby helping REO pass on experience and preserve institutional memory in between election cycles.

15. In response to Mr Alvin YEUNG's enquiry, DS1 advised that there was no reporting line between PEO and the ROs of various districts. She supplemented that PEO was the "second-in-charge" post in REO heading a dedicated E Division set up to undertake all work relating to the planning, preparation and conduct of the elections in the election cycle. The functions and responsibilities of a RO were provided in relevant legislation.

16. Ms YUNG Hoi-yan agreed that it was necessary to make the PEO post permanent. She enquired how REO would preserve institutional memory more effectively by using IT, including the role of REO's IT Management Unit in this regard.

17. Mr HO Kai-ming opined that irrespective of whether the PEO post was time-limited post or permanent, the post holder was responsible for conducting reviews and proposing improvement measures at the conclusion of elections as well as updating the relevant guidelines, thereby helping REO preserve institutional memory in between election cycles. He requested the Administration to explain how REO preserved institutional memory at present.

18. DS1 said that EAC had to submit to CE within three months of the conclusion of each election a report, which covered the preparatory work

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for elections and specific electoral arrangements, reviews on the effectiveness of various electoral arrangements, as well as the proposals made for improving future electoral arrangements. She pointed out that apart from the report and the knowledge management system, REO also had to accumulate and analyse the experiences in relation to electoral arrangements as well as actual operations and contingencies through a relevant directorate officer in order for new employees to draw reference from the relevant work experiences, post-event review, best practices, etc. Making the PEO post permanent could help REO make use of the knowledge management system more effectively in reviewing and concluding past experiences.

Relationship between preservation of institutional memory and disqualification of candidates

19. Dr Fernando CHEUNG pointed out that in the 2016 LegCo Election, EAC advised that the arrangement for the Confirmation Form was introduced under Articles 1, 12 and 159 of the Basic Law, but stated clearly that the Confirmation Form was not part of the nomination form, and that the signing of the Confirmation Form was not directly related to the validity of a candidate's eligibility. He asked about the type of experience EAC had taken into account in introducing the arrangement for the Confirmation Form, and whether CEO/PEO was duty-bound to reflect to EAC the view that the introduction of the Confirmation Form or similar arrangements would undermine the credibility of public elections. He was worried that PEO would accumulate more relevant experiences in the future to impose further restrictions on elections.

20. Mr James TO was worried that the PEO post was made permanent for the purpose of preserving institutional memory. He was of the view that having the same officer as the holder of the PEO post for a long time would make it difficult to identify and rectify some problematic practices, such as taking personal data away from REO offices. Separately, he was concerned that the experience relating to disqualification of candidates would be retained after the post was made permanent, giving rise to more restrictions which would lead to the disqualification of candidates in the future. For instance, PEO might establish a database on "Hong Kong independence" for reference by ROs of various districts.

21. Dr KWOK Ka-ki criticized ROs for disqualifying candidates based on the allegation of "Hong Kong independence". He queried that the purpose of making the PEO post permanent was to preserve the experiences in disqualifying candidates, and to collect and keep candidates' materials in relation to "Hong Kong independence". He requested the

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Administration to give an account of how PEO would preserve the institutional memory in relation to candidate disqualification. He also enquired about the respective roles of REO and EAC in candidate disqualification.

22. Mr CHU Hoi-dick opined that disqualification of candidates was a political decision not simply made by ROs and REO, but was led by higher-level or even other political forces. He was of the view that the Administration should amend relevant legislation to stipulate that the decision on whether to disqualify a candidate should be made by political appointees (such as the Secretary for Justice).

23. DS1 reiterated that the supernumerary PEO post was made permanent by the Government in the light of the Task Force's recommendations. REO would deploy a suitable officer to fill the post in accordance with the established civil service mechanism, and the officer would also be transferred to other departments in the future. The major duties and responsibilities of PEO were detailed in the discussion paper EC(2017-18)16.

24. On LegCo election, DS1 explained that in accordance with section 40(1)(b) of the Legislative Council Ordinance (Cap. 542), a person was not validly nominated as a candidate for the election unless he/she, as part of the statutory nomination procedure, made a declaration in the nomination form to the effect that he/she would uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region. In addition, according to section 103 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), a person who made a statement which he/she knew to be false in a material particular of an election document committed an offence. The Electoral Affairs Commission Ordinance (Cap. 541) also provided that the functions of EAC included making arrangements or taking steps it considered appropriate for the purpose of ensuring that such elections were conducted openly, honestly and fairly. EAC also had to assist RO in the exercise of his/her statutory power to discharge his/her duties and ensure that all candidates clearly understood the contents of the Basic Law in signing the relevant declaration in the nomination form. To ensure that the nomination procedure was completed in accordance with the law, EAC had prepared a Confirmation Form for the use of ROs. The Confirmation Form would assist ROs in the exercise of their statutory power to discharge their duties under the nomination procedure to ensure that all candidates fully understood the legal requirements and the responsibilities concerned, and were bona fide in signing the declaration in the nomination form. On the other hand, a candidate might also confirm that in signing the relevant

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declaration in the nomination form, he/she clearly understood relevant provisions of the Basic Law. ROs were required to decide whether a nomination was valid according to the circumstances of an individual candidate and the legal requirements as well as based on facts. Apart from discharging its duties as required under the law, EAC would also keep an eye on the views on electoral affairs from across the community; REO staff at the supervisory level would also report on relevant views to EAC.

25. Dr KWOK Ka-ki queried the remarks that disqualification of candidates was an isolated case and that REO did not have any role therein. He enquired whether the justifications for as well as records and documents on disqualifying candidates had been preserved to form part of REO's institutional memory.

26. DS1 reiterated that a RO would determine whether a candidate's nomination was valid in accordance with the legal requirements and relevant information. If the RO decided that a candidate's nomination was invalid, he/she had to endorse on the nomination form his/her decision and the reason(s) for it, which would be made available for public inspection in accordance with the law.

Work and functions of the Principal Electoral Officer

27. Mr Holden CHOW and Ir Dr LO Wai-kwok supported the staffing proposal. They took note of the fact that there would be at least one public election in all but one year in the coming decade, so the making permanent of the PEO post would enable effective overseeing of the planning and operational aspects of these elections. Given the large number of additional time-limited posts created by REO during election cycles, Mr CHOW enquired about the details of PEO's work in respect of staff training. Ir Dr LO opined that the creation of a permanent PEO post should not be linked with the candidate disqualification incident. He pointed out that the new post could more effectively pass on the experiences, enhance REO's work on knowledge management, and continue to improve the electoral arrangements. Ir Dr LO asked how REO would continue to improve the electoral mechanism.

28. DS1 replied that REO had, according to the Task Force's recommendations, taken improvement measures in respect of the treatment of personal data, IT security as well as security at election venues and fallback venues, and updated the relevant election guidelines. The making permanent of the PEO post could allow its holder to conduct a careful and comprehensive review on the experiences gained from a previous election cycle so as to update and improve the electoral arrangements between two

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election cycles. Apart from that, REO would also strengthen staff training, in particular for new employees (including the time-limited civil service posts created and the NCSC staff engaged during an election year), with a view to familiarizing them with the relevant procedures relating to elections and remind them of the potential risks (such as the storage of personal data in mobile devices), thereby ensuring the proper execution of the security measures and arrangements as detailed in departmental guidelines.

29. Mr WU Chi-wai requested the Administration to provide detailed information on PEO's specific work in addition to the daily administrative work in relation to electoral affairs, including new tasks and performance targets (such as promotion of electronic ballots).

30. DS1 advised that apart from daily administrative work, PEO would conclude the experiences gained from a previous election cycle in between two election cycles and work out improvement measures with a view to optimizing the electoral system. As an illustration, she pointed out the improvement measures proposed by REO and submitted to the Panel on Constitutional Affairs in the past which included improvements to the design of the ballot paper, electronic counting, enhancement of the VR system, etc.

31. Mr CHU Hoi-dick enquired whether the Administration would include the work in respect of the Rural Representative elections into REO's scope of work after the PEO post was made permanent.

32. DS1 advised that the Government would not consider any major change to the policy as mentioned by Mr CHU for the time being. CEO supplemented that the Home Affairs Department ("HAD") was responsible for the preparation and arrangement of the Rural Representative elections at present. Both REO and HAD would refer to each other's legal requirements and electoral arrangements with a view to making the electoral system more consistent.

Staffing arrangements of the proposed post

33. Mr CHAN Chi-chuen enquired whether the proposed permanent PEO post would be filled by the holder of the supernumerary PEO post created by REO for the 2015-17 election cycle (i.e. the holder of the Principal Executive Officer post when the computer theft incident took place).

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34. Mr HO Kai-ming enquired how the Civil Service Bureau ("CSB") would identify a suitable officer to fill the proposed post.

35. DS1 replied that CSB would identify the most suitable candidate to fill the post in accordance with the established mechanism on civil service deployment and REO's requirements (e.g. having experience in preparing and conducting elections or large-scale campaigns).

36. The Chairman remarked that as some members were still waiting for their turn to ask questions, the Subcommittee would continue the discussion on this item at the next meeting.

37. The meeting ended at 10:29 am.

Council Business Division 1
Legislative Council Secretariat
2 May 2018