

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)640/17-18
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 20 November 2017, 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 WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, 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 Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
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 CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon Wilson OR Chong-shing, MH
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai

Members attending : Hon WU Chi-wai, MH
Dr Hon KWOK Ka-ki

Members absent : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon MA Fung-kwok, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon LAM Cheuk-ting
Hon LAU Kwok-fan, MH

Public Officers attending : Item III

Mr Patrick NIP Tak-kuen
Secretary for Constitutional and Mainland Affairs

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

Miss Helen CHUNG Chi-ching
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

Item IV

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

Ms Bertha LEE Wai-fong
Deputy Chief 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

Mr Dennis HO
Senior Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

Action

I. Information paper(s) 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
[LC Paper Nos. CB(2)311/17-18(01) and (02)]

2. Members agreed to discuss the following items proposed by the Administration at the next meeting on 18 December 2017 at 2:30 pm:

- (a) practical arrangements for the 2018 Legislative Council By-election; and
- (b) an outline of the topics in the fourth report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights.

III. Consultation Paper on Review of Electoral Arrangements
[LC Paper Nos. CB(2)305/17-18, CB(2)311/17-18(03) and (04)]

3. The Secretary for Constitutional and Mainland Affairs ("SCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)311/17-18(03)].

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(Due to other urgent commitments, the Chairman left the meeting at this juncture. The Deputy Chairman took the chair.)

Discussion

Regulation of election advertisements published through the Internet (including social media)

4. Some members including Dr Helena WONG, Mr Charles MOK and Mr CHUENG Kwok-kwan expressed support in principle for the proposal that a targeted exemption of the criminal liability should be provided under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in respect of a third party (including individuals and groups, except for the candidates whose election was being promoted or prejudiced and their election expense agents) who only incurred electricity and Internet access charges in publishing election advertisements ("EAs") on the Internet (including social media). Ms Claudia MO questioned whether the exemption covered publishing online a large volume of posts expressing a clear stance in support of a particular candidate. Mr CHEUNG Kwok-kwan also requested the Administration to clarify whether a person who was a member of an electioneering team and published EAs on the Internet would also be regarded as "a third party" under the proposal.

5. SCMA and the Deputy Secretary for Constitutional and Mainland Affairs explained that, under the existing regulatory framework, if a web surfer published any form of publication on the Internet for the purpose of promoting or prejudicing the election of a candidate or candidates, such publication would be regarded as EAs. The expenses incurred, however trivial, would still be regarded as election expenses and hence could subject the web surfer to criminal liability of illegally incurring election expenses. The proposed relaxation aimed to address cases of inadvertent breach resulting from a mere expression of views by third party web surfers (as mentioned in paragraph 2 above) who incurred merely electricity and Internet charges, without exempting web surfers who had incurred election expenses such as the cost of setting up and designing online platforms for promoting the election of a candidate. It would not affect the obligation of candidates or their election expense agents under the existing electoral legislation. It should be noted that the definitions of EAs and election expenses under the existing legislation would remain intact. In response to Dr Helena WONG's views, SCMA said that the costs of paid-for publicity on social media (e.g. sponsored posts on Facebook) would not be exempted under the proposal.

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6. Dr KWOK Ka-ki suggested that the Administration should require a third party publishing EAs on the Internet to disclose to the Electoral Affairs Commission ("EAC") his/her identity (e.g. name) in order to prevent anonymous vilification against individual candidates during elections. He requested the Administration to make reference to the relevant legislation in Australia, Canada, New Zealand and Singapore in this regard. Dr Fernando CHEUNG expressed support for the suggestion. SCMA agreed to consider the suggestion.

7. Mr Charles MOK considered that in light of overseas experience, the mass dissemination of false news on the Internet could significantly undermine the fairness of public elections. He noted that social media companies might disclose information on EAs posted on their social media platforms (such as the users' identities and the expenses involved) upon inquiry by the authority concerned. He suggested that the Administration should make reference to relevant overseas experience. SCMA said that at present, any election-related complaints received would be referred to law enforcement agencies for investigation and follow-up action. Mr Paul TSE also agreed that the legislation to regulate EAs published through the Internet should be relaxed. He, however, took the view that given the advanced development of information technology ("IT"), piecemeal proposals would not achieve much effect in tackling the issue of publication of EAs through the Internet.

Regulation of election surveys

8. Some members considered the existing guidelines promulgated by EAC in relation to the conduct, publication and broadcast of exit polls conducted within the No Canvassing Zones to be appropriate. Dr Helena WONG and Dr Fernando CHEUNG took the view that it was unnecessary to regulate the conduct of election surveys before the polling day.

9. Dr CHENG Chung-tai, however, took the view that the Administration should make reference to the relevant regulation of election survey in New Zealand and consider introducing a cooling-off period on the polling day until the close of poll. He considered that such arrangements would be effective in ensuring a level playing field for all the candidates running in an election and avoid the situation in which candidates with abundant resources were able to unduly influence electors' choice by conducting large-scale publicity campaign on the polling day.

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10. Ms Alice MAK, however, questioned whether it would be practicably feasible to prohibit the conduct of canvassing activities on the Internet or by phone during the cooling-off period. Ms Starry LEE expressed similar concern and considered that a cooling-off period should not be introduced if it was in fact not enforceable. SCMA responded that the Administration did not have any preconceived position and welcomed members and the public to express their views on the regulation of election surveys for further consideration by the Administration.

11. The Deputy Chairman remarked that as the conduct of the "ThunderGo" campaign and the "abandonment of election" by certain candidates during the 2016 Legislative Council ("LegCo") General Election were closely intertwined, it would not suffice to regulate only election surveys but not acts related to the "abandonment of election". Mr CHEUNG Kwok-kwan also considered that acts concerning the "abandonment of election" would affect the fairness and impartiality of the election and suggested that such acts should be properly regulated. Mr WONG Ting-kwong criticized that some newspapers had wide coverage of the "ThunderGo" campaign during the 2016 LegCo General Election with a view to promoting the campaign. SCMA reiterated that there was no mechanism for withdrawal of candidature after the close of nomination under the existing legislation, and the Administration would examine whether and how best to address the issue of "abandonment of election". He said that concrete views on this issue were welcome and the Administration would decide the next step in light of the views received.

Polling hours

12. Ms Claudia MO, Dr KWOK Ka-ki, Dr Helena WONG and Dr Fernando CHEUNG opposed any proposal to shorten the polling hours for District Council ("DC") and LegCo elections as this might have an impact on the voter turnout and affect those electors who needed to work on the polling day. Dr KWOK Ka-ki suggested that the Administration should consider designating the polling day as a statutory holiday in order to encourage registered electors to vote. Dr Fernando CHEUNG noted from the Consultation Paper on Review of Electoral Arrangements ("the Consultation Paper") that the voter turnout rate was high in the last hour of the polling day (10% between 9:30 pm and 10:30 pm) in the 2016 LegCo Geographical Constituency elections, and opposed advancing the closing time of the poll. Dr Helena WONG added that the Democratic Party also opposed shortening the polling hours.

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13. Ms Alice MAK considered that as electors had well adapted to the present polling hours, they might find it inconvenient to vote if the polling hours were shortened. Moreover, the revised polling hours might clash with the working hours of those electors who needed to work on the polling day. She urged the Administration to consider the issue carefully before deciding the way forward. Mr Paul TSE opined that instead of shortening the polling hours, the Administration should explore the use of IT for streamlining the vote counting process.

14. Ms Starry LEE and Mrs Regina IP both considered that the present polling hours (15 hours) were rather long. Ms LEE considered that shortening the polling hours would enable REO to return the venues of the polling stations as early as possible on the day after the polling day, especially polling stations that were set up in schools. She considered that it would not be too difficult for electors to get used to the new arrangements if the polling hours were slightly shortened. Mrs IP considered that shortening the polling hours would not significantly affect the voter turnout. Given that a large number of civil servants served as polling and counting staff on the polling day, Mrs IP suggested that early polling might be arranged for these civil servants so as to safeguard their right to vote. She further suggested that the Administration should consider allowing eligible electors who were Hong Kong permanent residents working/residing in the Mainland to cast their votes at the Mainland offices.

15. SCMA agreed to consider members' views and suggestions. He said that the Administration would continue to carry out feasibility studies to assess the use of IT in different aspects of the election process, such as introducing electronic vote counting for the DC (second) functional constituency elections. SCMA added that while the Administration agreed that computerization of the electoral process should be the way forward, technical difficulties that might be encountered in actual operation and IT security issues, etc. must be properly addressed.

16. At the suggestion of Dr Helena WONG, the Deputy Chairman said that the Chairman would be requested to consider the need for holding a special meeting to receive public views on the Consultation Paper.

(Post-meeting note: On the instruction of the Chairman, a special meeting was scheduled for 20 December 2017 at 2:15 pm for receiving public views on the Consultation Paper.)

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IV. Proposed creation of one permanent post of Principal Executive Officer in the Registration and Electoral Office

[LC Paper No. CB(2)311/17-18(05)]

17. At the invitation of the Deputy Chairman, the Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)311/17-18(05)].

18. Noting that there would be at least one public election in all but one year in the coming decade, Mrs Regina IP agreed that there was a need to create the proposed permanent Principal Executive Officer ("PEO") post so that the planning and operational aspects of these elections could be overseen effectively and the institutional memory could be preserved. She expressed support for the staffing proposal.

19. Noting that the preservation of institutional memory was one of the justifications for the current proposal, Dr Helena WONG asked why the existing Chief Electoral Officer ("CEO") could not serve such a purpose. DSCMA explained that CEO had to oversee the operation of the various divisions of the Registration and Electoral Office ("REO"), whereas PEO led the dedicated Elections Division ("E Division") in undertaking all work relating to the planning, preparation and conduct of the elections in the election cycle. DSCMA further explained that 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. The proposal to make the PEO post permanent and retain a permanent election team with some core members in non-election years would enable PEO and the team, who had first-hand experience in preparing and conducting elections in the past election cycle, to evaluate workflow and operating procedures, to examine the issues identified in the elections, and to introduce pertinent improvement measures for the next election cycle. In addition, having a permanent "second-in-charge" post in REO would allow the posting periods of CEO and PEO to stagger, thereby also helping the department to pass on experience and preserve institutional memory in between election cycles if a new CEO or PEO was posted to REO.

20. Dr Helena WONG asked whether the computer theft incident of REO occurred during the term of office of the incumbent PEO and enquired about the progress of the relevant investigation. DSCMA replied that when the

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incident happened, the incumbent PEO was in post. DSCMA further said that as some of the factual narratives and observations in the Report of the Task Force on the Computer Theft Incident of REO could reflect inadequacies in compliance with government regulations and guidelines, the Task Force recommended that consideration be given as to whether relevant performance appraisal or disciplinary action procedures would be initiated in respect of the relevant officers and their supervisors. The investigation by CMAB was in progress and in case formal disciplinary actions were to be initiated, the Civil Service Bureau would also be involved in accordance with the established mechanism.

21. The Deputy Chairman expressed support for the staffing proposal. He asked whether any non-directorate staff would also be retained in non-election years to consolidate the experience in the previous election cycle. DSCMA said that while E Division had been downsized after the 2017 Chief Executive Election, to retain experience, the proposed permanent PEO post would be supported by an Elections Core Team and the Administration Division comprising a total of 46 permanent non-directorate officers, including 21 additional posts of Executive Officer Grade, Clerical Officer Grade and Supplies Officer Grade, outside the election cycle. During the election cycle from 2019 to 2022, the PEO post would be further supported by time-limited civil service posts and non-civil service contract staff. The Deputy Chairman further enquired whether training to staff would be provided. CEO said that sufficient training to staff would be provided to ensure that all the security arrangements as detailed in the departmental guidelines would be carried out properly. Before each election, briefing and training would also be given to the electoral staff.

22. Noting that a large number of civil servants were recruited to serve as polling and counting staff on the polling day for each election, Dr CHIANG Lai-wan expressed concern that the polling staff might be too busy to vote. She considered that the voting right of the civil servants concerned should also be protected. She asked whether it was possible to arrange them to work on two shifts on the polling day. DSCMA explained that to do so, REO would have to double the number of civil servants to be recruited to work on the polling day. Dr CHIANG suggested allowing civil servants who were involved in polling and related duties to vote first when they arrived at their respective polling stations. DSCMA said that the suggestion would be seriously explored. Its implementation needed to be carefully considered to avoid attracting complaints from other electors.

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23. Summing up, the Deputy Chairman said he noted that members had no objection to the submission of the staffing proposal to the Establishment Subcommittee for consideration.

V. Any other business

24. There being no other business, the meeting ended at 4:13 pm.

Council Business Division 2
Legislative Council Secretariat
5 January 2018