

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

**Subcommittee on Decision of the National People's Congress on Improving
the Electoral System of the Hong Kong Special Administrative Region**

**Minutes of the second meeting
held on Wednesday, 31 March 2021, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Martin LIAO Cheung-kong, GBS, JP (Chairman)
Hon CHEUNG Kwok-kwan, JP (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon MA Fung-kwok, GBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Wilson OR Chong-shing, MH
Dr Hon CHENG Chung-tai

Public Officers attending : Mr Erick TSANG Kwok-wai, IDSM, JP
Secretary for Constitutional and Mainland Affairs

Mr Roy TANG Yun-kwong, JP
Permanent Secretary for Constitutional and Mainland Affairs

Mr Kenneth NG King-tsun
Political Assistant to Secretary for Constitutional and Mainland
Affairs

Mr Llewellyn MUI Kei-fat
Deputy Solicitor General (Constitutional Affairs)
Department of Justice

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (4) 7

Staff in attendance : Mr Bonny LOO
Senior Assistant Legal Adviser 3

Mr Raymond SEZTO
Senior Council Secretary (4) 6

Mr Dennis HO
Senior Council Secretary (4) 7 (Acting)

Ms Louisa YU
Legislative Assistant (4) 7

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I. Meeting with the Administration

[LC Paper Nos. CB(4)703/20-21(01) and CB(4)679/20-21(01) and (02)]

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Subcommittee commenced discussion of the amended Annex I and Annex II to the Basic Law. The major views and concerns raised by members are set out in the ensuing paragraphs.

Discussion

The Candidate Eligibility Review Committee ("CERC")

3. Noting that CERC would comprise Principal Officials ("POs") as its members, Dr CHENG Chung-tai expressed concern as to whether a candidate, who was a Legislative Council ("LegCo") Member and had been critical of some POs in the past, would be subject to unfair treatment when he/she was vetted by CERC. He considered it problematic to have senior officials of the executive to be responsible for assessing and validating the eligibility of candidates in LegCo elections. Mrs Regina IP also expressed concerns that there would be potential conflicts of interest if a PO, who was a CERC member, ran for the Chief Executive election.

4. The Secretary for Constitutional and Mainland Affairs ("SCMA") responded that the purpose of CERC was to review and confirm that candidates participating in the political structure of Hong Kong were patriotic and could

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fulfil the legal requirements and conditions of upholding the Basic Law, and swearing allegiance to the Hong Kong Special Administration Region of the People's Republic of China ("HKSAR"), in order to safeguard the principle of "patriots administering Hong Kong" and maintaining the political stability of HKSAR. SCMA explained that POs, who possessed considerable administrative experience, political resolve to withstand foreign sanctions, and the trust of the Central Authorities, were appropriate choices as CERC members. SCMA pointed out that POs were impartial, fair-minded and welcomed public scrutiny. They would frankly accept the criticisms of LegCo Members, which would not affect their work in performing the functions of CERC. SCMA added that a PO would have to resign from serving as a member of CERC if he/she ran for elections. He did not see there would be any conflicts of interest.

5. Members enquired about the operation of CERC and requested the Administration to explain further the stipulation in the amended Annex I and Annex II to the Basic Law that "no legal proceedings may be instituted in respect of a decision made by CERC on the eligibility of a candidate pursuant to the opinion of the Committee for Safeguarding National Security of the HKSAR". SCMA explained that when there were doubts about whether a candidate fulfilled the legal requirements and conditions of upholding the Basic Law, and bearing allegiance to HKSAR, the National Security Department of the Hong Kong Police Force ("NSD") would be involved to conduct vetting of the candidate in these regards. The outcome would be evaluated by the Committee for Safeguarding National Security of HKSAR. The Committee for Safeguarding National Security of HKSAR would issue an opinion to CERC in respect of a candidate who failed to meet the relevant legal requirements and conditions. SCMA advised that the Returning Officers ("ROs") would be responsible for assessing whether a candidate met other eligibility criteria as laid down in the law (e.g. the age requirement, nationality and criminal records). SCMA explained that only decisions made by CERC pursuant to the opinions of the Committee for Safeguarding National Security of HKSAR would be barred from legal proceedings. For decisions made by CERC which were not based on the opinions of the Committee for Safeguarding National Security of HKSAR, legal proceedings (including election petitions) could still be instituted against such decisions.

6. The Chairman enquired whether a candidate ruled by CERC to be ineligible to run for an election could no longer run for other subsequent elections. SCMA advised that CERC would conduct assessment on a case-by-case basis having regard to the situation of the current election.

7. Noting that NSD might be involved to collect information about a candidate, Dr CHENG Chung-tai asked whether it was possible for the

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candidate to be charged with violation of the Law of the People's Republic of China on Safeguarding National Security in HKSAR ("National Security Law"). SCMA advised that if evidence was found during the vetting process that the candidate had violated the National Security Law, NSD would follow up in accordance with the law.

The reconstituted Election Committee ("EC")

8. In reply to members' enquiries, SCMA confirmed that EC members would also be subject to the oath-taking requirements and relevant arrangements. This would be covered in the Improving Electoral System (Consolidated Amendments) Bill 2021 ("the Bill").

9. Mr CHAN Hak-kan enquired about the composition of the new Representatives of Associations of Hong Kong Residents in the Mainland Subsector and whether it would be dominated by business-related organizations/associations. Ms Alice MAK considered that the creation of this new Subsector was in line with the principles of broad representativeness and balanced political participation. She, however, expressed worry that as Hong Kong residents living or working in certain parts of the Mainland were not eligible to receive COVID-19 vaccine, they would be unable to return to Hong Kong for voter registration ("VR"). In response to Ms MAK's concerns, the Permanent Secretary for Constitutional and Mainland Affairs advised that Hong Kong residents in the Mainland were allowed to send documents by mail to the Registration and Electoral Office for VR purpose.

10. SCMA said that the Administration, in collaboration with the five Hong Kong Mainland Offices, was selecting appropriate associations to be included under the new Representatives of Associations of Hong Kong Residents in the Mainland Subsector. The corporate voters for the Subsector would be decided based on three criteria – the representativeness of the association in the relevant community, the degree of connection of the association with the relevant community, and the principle of "patriots administering Hong Kong". A variety of associations, not limited to business-related ones, would be considered and those focusing on livelihood issues would also be included. At the suggestion of Mr CHAN Hak-kan, SCMA undertook that the Constitutional and Mainland Affairs Bureau would step up efforts to educate new EC members about the corruption prevention regime applicable to elections in order to safeguard the integrity of the electoral system.

11. Ms Alice MAK suggested that, for corporate voters for the Labour Subsector/Constituency where three years of continuous operation was a prerequisite for eligibility, the Administration should make it clear in the Bill how the "three years of continuous operation" would be calculated. She

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Admin expressed concerns that the calculation of such timespan could be affected by the timing of the inception of a trade union and its registration by the Registrar, which could be as long as one year apart. SCMA agreed to consider Ms MAK's suggestion. Ms MAK further enquired whether the system of convenors for EC would be reflected in the local legislation. SCMA replied in the negative, adding that the system would be activated administratively only when there were emergency issues with an election.

12. Dr Priscilla LEUNG welcomed the inclusion of Area Committees, District Fight Crime Committees and District Fire Safety Committees in the Fourth Sector of the reconstituted EC, as she noted that a large majority of the members of these committees had no political ambition and they solely focused on serving the community.

13. Mrs Regina IP considered that the new electoral system was conducive to attracting elite talents to serve as members of the reconstituted EC, as half of the seats of a few subsectors would be returned by nomination from among members of reputed Mainland institutions in different fields (e.g. the Chinese Academy of Sciences and the Chinese Academy of Engineering). Mrs IP also expressed appreciation that the composition of the reconstituted EC was enriched with the addition of representatives of grassroots associations and associations of Chinese fellow townsmen, with 60 seats in each of these two new subsectors. Dr Priscilla LEUNG expressed similar views and requested the Administration to strive to explain to the public how the enhanced composition of the reconstituted EC would achieve the purpose of broad representativeness and balanced participation, which would include representatives nominated by reputed national organizations as well as representatives of local bodies which had made contributions to Hong Kong. In reply to the Chairman's enquiry, SCMA advised that, unless otherwise specified in the law, corporates would need to meet the requirement of being in continuous operation for a minimum of three years in order to become eligible voters for subsectors, so as to ensure that these bodies had substantial connection with the subsector with a view to preventing vote-rigging.

14. Referring to Article 67 of the Basic Law ("BL 67") and the amended Annex I to the Basic Law, the Deputy Chairman asked whether an individual who was not a Chinese citizen and had the right of abode in a foreign country could become an EC member and/or be nominated as a candidate for LegCo Member returned by EC.

15. SCMA said that to ensure EC's broad representativeness and balanced participation, EC members did not have to be Chinese citizens with no right of abode in any foreign countries, but they had to be patriots. An oath-taking requirement would be imposed on EC members so as to ensure that they would

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uphold the Basic Law and bear allegiance to HKSAR. LegCo Members returned by EC would be subject to the requirement stipulated in BL 67. SCMA added that candidates for LegCo Members returned by EC did not necessarily have to be EC members.

16. With regard to the nationality requirement of LegCo Members, SCMA said that according to BL 67, permanent residents of HKSAR who were not of Chinese nationality or who had the right of abode in foreign countries might also be elected Members of LegCo, provided that the proportion of such Members did not exceed 20 percent of the total membership of the Council. SCMA further said that the maximum number of such Members was 12, the functional constituencies of which were specified in the relevant legislation, viz. section 37(3) of the Legislative Council Ordinance (Cap. 542). This threshold was based on a total number of LegCo Members at 60 in the first and second LegCo, and was not increased in the political reform in 2010 whereby the number of LegCo seats was increased from 60 to 70 with effect from 2012. SCMA said that the Administration had no plans to increase the threshold at this juncture.

Follow-up action required of the Administration

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17. SCMA was requested to provide the name lists/membership lists of the following:

- (a) Hong Kong academicians of the Chinese Academy of Sciences and the Chinese Academy of Engineering;
- (b) Hong Kong Accounting Advisers appointed by the Ministry of Finance;
- (c) Hong Kong members of the Council of the Chinese Law Society;
- (d) Hong Kong members of the Council of the World Federation of Chinese Medicine Societies; and
- (e) China Federation of Literary and Art Circles Hong Kong Member Association.

18. Members noted that the next meeting would be held on Thursday, 1 April 2021, at 2:30 pm.

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II. Any other business

19. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 4
Legislative Council Secretariat
12 July 2021

**Proceedings of the second meeting of the
Subcommittee on Decision of the National People's Congress on Improving the
Electoral System of the Hong Kong Special Administrative Region
on Wednesday, 31 March 2021, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000352 - 000602	Chairman	Opening remarks	
000603 - 000852	Chairman Administration	Briefing by the Administration	
000853 - 002529	Chairman Dr CHENG Chung-tai Mrs Regina IP Administration	Discussion on issues relating to the composition of the Candidate Eligibility Review Committee ("CERC") and the eligibility requirements for becoming candidates in the Chief Executive elections, Election Committee ("EC") Subsector ("ECSS") elections, and Legislative Council ("LegCo") elections	
002530 - 003139	Chairman Mr CHAN Hak-kan Administration	Concerns on the oath-taking requirements for EC members and the criteria for selecting the corporate voters in the new Representatives of Associations of Hong Kong Residents in the Mainland Subsector	
003140 - 003730	Chairman Mr MA Fung-kwok Administration	Concerns on the role of the Returning Officer in determining the validity of a candidate's nomination under the new electoral system	
003731 - 004441	Chairman Mr Tommy CHEUNG Administration	Discussion on the voter registration arrangements for individuals and bodies who would be affected by the changes to the composition of ECSSs and functional constituencies of LegCo	
004442 - 005057	Chairman Mr Wilson OR Administration	Enquiry about the Administration's plan to boost public support for the necessary amendments to the relevant local electoral legislation according to the Decision of the National People's Congress on Improving the Electoral System of the Hong Kong Special Administrative Region and the amended Annex I and Annex II to the Basic Law	
005058 - 005555	Chairman Ms Alice MAK	Concerns on the three-year operation requirement for relevant corporate voters and the system of convenors for EC	

Time Marker	Speaker(s)	Subject(s)	Action required
005556 - 010104	Chairman Dr Priscilla LEUNG	Expression of support for the creation of the "Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of Hong Kong Island and Kowloon" and "Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of the New Territories" subsectors in the reconstituted EC	
010105 - 010610	Chairman Deputy Chairman Administration	Concerns on the nationality requirement for EC members and for becoming LegCo EC constituency candidates	
010611 - 011346	Chairman Ir Dr LO Wai-ki Administration	Discussion on the Engineering Subsector and eligibility criteria for registration as corporate voters for that subsector	
011347 - 011859	Chairman Mr Paul TSE Administration	Discussion on issues relating to ex-officio members of EC	
011900 - 012526	Chairman Dr CHENG Chung-tai Administration	Discussion on CERC's mode of operation and the nationality requirement for LegCo Members	
012527 - 013003	Chairman Ms Alice MAK Administration	Discussion on the three-year operation requirement for relevant corporate voters and the system of convenors for EC	
013004 - 013606	Chairman Mrs Regina IP Administration	Concerns on the composition of the various ECSSs	Admin to provide information (para. 17 of minutes)
013607 - 014222	Chairman Dr Priscilla LEUNG Administration	Concerns on the oath-taking requirement for EC members and review mechanism for decisions made by CERC	
014223 - 020240	Chairman Mr Tommy CHEUNG Mr Paul TSE Administration	Concerns on matters relating to the ex-officio members of EC	

Time Marker	Speaker(s)	Subject(s)	Action required
020241 - 020316	Chairman Members	Date of next meeting and closing remarks	

Council Business Division 4
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