

立法會
Legislative Council

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by the Administration)

Panel on Constitutional Affairs

**Minutes of policy briefing-cum-meeting
held on Monday, 18 October 2021, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Holden CHOW Ho-ding (Chairman)
Hon Kenneth LAU Ip-keung, BBS, MH, JP (Deputy Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
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 Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS, JP
Hon MA Fung-kwok, GBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Hon CHUNG Kwok-pan
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung, JP

Members absent : Hon WONG Kwok-kin, GBS, JP
Hon Alice MAK Mei-kuen, BBS, JP

Public Officers attending : Item II

The Administration

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

Ms Maisie CHAN Kit-ling, JP
Deputy Secretary for Constitutional and Mainland Affairs

Ms Katharine CHOI Man-yee
Deputy Secretary for Constitutional and Mainland Affairs

Office of the Privacy Commissioner for Personal Data

Ms Ada CHUNG Lai-ling
Privacy Commissioner for Personal Data

Equal Opportunities Commission

Mr Ricky CHU Man-kin, I.D.S.
Chairperson

Item III

Ms Maisie CHAN Kit-ling, JP
Deputy Secretary for Constitutional and Mainland Affairs

Ms Carmen KONG Ka-man
Principal Assistant Secretary (Constitutional and Mainland
Affairs) 3

Mr Alan YUNG Ying-fai
Chief Electoral Officer
Registration and Electoral Office

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

**Staff in
attendance** : Miss Rachel DAI
Senior Assistant Legal Adviser 3 (Acting)

Ms Clara WONG
Assistant Legal Adviser 4

Mr Dennis HO
Senior Council Secretary (4) 7

Ms Louisa YU
Legislative Assistant (4) 7

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I. Information paper(s) issued since the last meeting
[LC Paper No. CB(4)1651/20-21]

Members noted that the Guidelines on Election-related Activities in respect of the Chief Executive (“CE”) Election (“the Guidelines”) (advance copy) [LC Paper No. CB(4)1651/20-21] had been issued after the last meeting.

II. Briefing by the Secretary for Constitutional and Mainland Affairs on the Chief Executive’s 2021 Policy Address
[LC Paper No. CB(4)1631/20-21(01)]

2. At the invitation of the Chairman, Secretary for Constitutional and Mainland Affairs (“SCMA”) briefed members on the salient points of the Administration’s paper [LC Paper No. CB(4)1631/20-21(01)]. Members noted that a written submission was provided by Hong Kong Unison Limited, which was tabled at the meeting.

(Post-meeting note: The speaking note of SCMA and the above written submission were issued vide LC Paper Nos. CB(4)1664/20-21(01) and (02) respectively on 18 October 2021.)

Discussion

Electoral matters

3. Members in general took the view that the Administration should enhance the electoral arrangements for the upcoming 2021 Legislative Council (“LegCo”) General Election (“LCGE”) and the 2022 CE Election in the light of the experience gained from the 2021 Election Committee (“EC”) Subsector Ordinary Elections (“ECSSOEs”). SCMA said that the Election Affairs Commission (“EAC”) would submit a review report on the 2021 ECSSOEs to CE shortly. Meanwhile, the Constitutional and Mainland Affairs Bureau (“CMAB”) had set up a dedicated team to earnestly follow up with EAC and the Registration and Electoral Office (“REO”) to make improvements and ensure that the upcoming two elections would be

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conducted smoothly, on the one hand enhancing efficiency, accuracy and security of the elections while at the same time providing the greatest facilitation to electors.

(Post-meeting note: EAC released the investigation report on polling and counting arrangements of 2021 ECSSOEs on 22 October 2021.)

4. Members asked about the progress of setting up polling facilities at suitable boundary control points for registered electors in the Mainland to cast votes. Members considered that as there were only two months left between now and the 2021 LCGE, the Administration should confirm as soon as possible whether the proposal could be implemented in time for the election. Mr LUK Chung-hung urged the Administration to implement the proposal as he noted that many registered electors in the Mainland wished to exercise their voting rights at the 2021 LCGE.

5. SCMA responded that the proposal aimed at facilitating registered electors living in the Mainland to cast their votes without having to undergo compulsory quarantine upon entering Hong Kong and returning to the Mainland. He said that the Administration was still in the course of resolving the complicated legal and technical issues involved with the Mainland authorities. The Administration would further discuss with the Mainland authorities in this regard. SCMA said that the Administration would provide further details when available.

Resumption of quarantine-free travel between Hong Kong and the Mainland

6. The Chairman and Mr Jeffrey LAM took the view that the Administration should consider introducing a “health code” system in Hong Kong with a tracking function so as to meet the relevant anti-pandemic standard of the Mainland, thereby achieving the resumption of quarantine-free travel between Hong Kong and the Mainland (“quarantine-free travel”) as soon as possible. SCMA stressed that the Hong Kong Special Administrative Region (“HKSAR”) Government accorded top priority to the resumption of quarantine-free travel. He said that the first meeting on the anti-pandemic work of the Mainland and Hong Kong had been held in Shenzhen for officials and experts from both sides to exchange views and explore the feasibility of resuming quarantine-free travel in a gradual and orderly manner. SCMA further said that the HKSAR Government was studying the views and concerns expressed by the representatives of the Mainland authorities, and would strive to hold the second meeting as soon as possible. As for the introduction of a “health code” system in Hong Kong, SCMA said that details of the proposal were being worked out by the Food and Health Bureau as well as the Innovation and Technology Bureau.

7. While considering that the resumption of quarantine-free travel should be achieved as soon as possible, Ms Elizabeth QUAT suggested that, in the meantime,

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the Hong Kong Economic and Trade Office (“HKETO”) in Guangdong should step up support services for Hong Kong families living in the Mainland by, for example, accepting and processing applications for the Hong Kong Identity Card and Hong Kong permanent residency. SCMA said that HKETO in Guangdong had been providing services in relation to passport renewals and applications for official documents. SCMA further said that the Administration was looking into how these services could be enhanced to facilitate Hong Kong people residing in the Mainland. Besides, as mentioned in the 2021 Policy Address, CMAB would review the role of the Mainland Offices of the HKSAR Government and the effectiveness of their work in due course, and examine the need to retitle these offices so as to better reflect their extensive duties.

Anti-discrimination legislation

8. Members raised concern about the issue of discrimination and vilification against persons arriving in Hong Kong from the Mainland. Mrs Regina IP considered that the existing anti-discrimination legislation were far from adequate in protecting individuals from different backgrounds (especially new arrivals from the Mainland and sexual minorities) from discrimination and vilification. She urged the Administration to conduct an in-depth review of the existing legislation, with a view to eliminating discriminatory acts and hate speeches. The Chairman said that the vilification against new arrivals from the Mainland had aroused everyone’s anger. He expressed concern that while vilification was prohibited under the Race Discrimination Ordinance (Cap. 602), there had not been any prosecution. He urged the Administration and the Equal Opportunities Commission (“EOC”) to address the problem. Mr MA Fung-kwok said that Hong Kong was merging into the national development and had close exchanges between each other. He, however, felt that EOC applied Western values to deal with discrimination issues and failed to address the problem of discrimination against Mainlanders in Hong Kong. Mr LUK Chung-hung urged the Administration and EOC to also tackle the problem of discrimination on the ground of occupation, which was often encountered by the police in recent years.

9. SCMA responded that the Government was committed to promoting equal opportunities for people of different backgrounds as well as the values of inclusiveness, mutual respect and non-discrimination in the community. He said that the Administration was in close liaison with EOC to study how the existing anti-discrimination legislation might be enhanced to tackle discrimination and vilification that might be encountered by persons arriving in Hong Kong from the Mainland. He added that the Administration would strive to map out the way forward within the current term of the Government, and where appropriate, to commence the relevant legislative exercise in the next term of LegCo.

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10. SCMA disagreed that EOC had ignored the issue of discrimination against Mainlanders in Hong Kong and pointed out that EOC had been actively studying relevant policies and legislation to address the issue. The Chairperson of EOC said that EOC had kept the implementation of the four existing anti-discrimination ordinances under review and would propose legislative amendments where necessary. For instance, EOC was conducting a holistic review of the current legal protection against sexual harassment and see if there were deficiencies that would require legislative amendment. The Chairperson of EOC explained that although discrimination against Mainlanders in Hong Kong, sexual minorities and persons of certain occupations fell outside the scope of the existing anti-discrimination legislation, EOC had been seeking to address these issues through legislative and non-legislative measures.

11. Dr Priscilla LEUNG took the view that enacting legislation to prohibit discrimination on the ground of sexual orientation would be highly controversial. She said that the Administration and EOC should not rush to embark on public consultation on the matter, so as to avoid further creating social rifts and causing disruption to the stability of the society. She expressed opposition to legislating against discrimination on the ground of sexual orientation and gender identity, which, in her view, might result in “reverse discrimination”. Dr LEUNG suggested that instead of legislation, a reconciliation commission with adjudication power could be set up to settle disputes concerning discrimination against sexual minorities through mediation. She said that under her proposal, the parties involved would no longer have to contest the matter in court, which often involved a lengthy process, and the dispute could be settled by making an apology to the aggrieved persons under the Apology Ordinance (Cap. 631). She further said that the proposed reconciliation commission could also be tasked to handle cases of discrimination on other grounds and would be conducive to bringing harmony to the society. Mrs Regina IP expressed reservations about the proposal of setting up a reconciliation commission. She considered that the truth and reconciliation commissions set up in South Africa and Northern Ireland had not been effective, and the Administration should examine the proposal carefully.

12. SCMA responded that members’ views and suggestions were noted. He said that the Administration and EOC would continue to promote equal opportunities and eliminate discrimination in the community.

Protection of personal data

13. Referring to the Personal Data (Privacy) (Amendment) Ordinance 2021 (“PD(P)(A)O 2021”) which took effect on 8 October 2021, Mr LUK Chung-hung enquired whether private firms and public organizations would be required to strengthen their data security mechanisms so as to prevent unauthorized access to personal data by their staff for doxxing purpose. SCMA responded that with the

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enactment of PD(P)(A)O 2021, which sought to combat doxxing acts, the Office of the Privacy Commissioner for Personal Data (“PCPD”) would provide advice and guidance to organizations to enhance data security and the protection of personal data privacy.

14. Dr Priscilla LEUNG sought details of the Administration’s plan to take forward the proposals of further amending the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”), including establishing a mandatory data breach notification mechanism and empowering PCPD to impose administrative fines for contravention of PDPO. SCMA advised that the Administration would continue to work with PCPD to review PDPO comprehensively and study the relevant legislative amendment proposals in detail, with a view to strengthening protection of personal data privacy.

Oath-taking by public officers

15. Mr Martin LIAO said that Mr XIA Baolong, Director of the Hong Kong and Macao Affairs Office of the State Council, had remarked that effective measures should be in place to ensure that those who worked for the executive, legislature and judiciary of HKSAR, and heads of its statutory bodies were genuine patriots. He enquired about the Administration’s timetable for implementing further the oath-taking requirements for public officers to cover the heads of advisory and statutory bodies, as well as staff of subvented organizations. Dr Priscilla LEUNG considered that the oath-taking requirement should be expeditiously extended to cover the management personnel of University Grants Committee-funded universities and statutory bodies, such as the Hospital Authority and EOC.

16. SCMA advised that following the enactment of the Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Ordinance 2021 in May this year, the oath-taking requirements for Executive Council members, LegCo Members, judges at all level of courts and other members of the judiciary, and District Council members had been implemented. The Administration would also implement the oath-taking requirements for members of the new term of EC. Moreover, all civil servants and Government employees had completed taking an oath or signing a declaration to uphold the Basic Law, bear allegiance to HKSAR, be dedicated to their duties and be responsible to the HKSAR Government. Furthermore, the Administration was considering plans for implementing further the oath-taking requirements for advisory and statutory bodies, subvented organizations and universities, etc., which would be rolled out phase-by-phase once ready.

Promotion of the Constitution and the Basic Law

17. Mr Martin LIAO asked whether the Administration would review the role played by Radio Television Hong Kong (“RTHK”) in promoting the Constitution of

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the People's Republic of China ("the Constitution") and the Basic Law. He and Mr MA Fung-kwok sought details of how RTHK would work with the Basic Law Promotion Steering Committee ("the Steering Committee") in conducting the relevant work.

18. SCMA advised that the Steering Committee chaired by the Chief Secretary for Administration provided the necessary steer on the overall programme and strategy for promoting the Basic Law and coordinated the promotional efforts of various parties concerned both in the Government and in the community. He said that the five working groups set up under the Steering Committee had been taking forward the publicity and education on the Constitution and the Basic Law through various approaches for the different target groups. He added that the Steering Committee would work with RTHK closely on the relevant promotional work.

III. Guidelines on Election-related Activities in respect of the Chief Executive Election to be issued by the Electoral Affairs Commission and practical arrangements of the 2022 Chief Executive Election

[LC Paper Nos. CB(4)1631/20-21(02) and (03)]

19. At the invitation of the Chairman, Chief Electoral Officer ("CEO") briefed members on the salient points of the Administration's paper [LC Paper No. CB(4)1631/20-21(02)].

Discussion

20. Referring to the prolonged vote counting process at the 2021 ECSSOEs, the Chairman and Dr Junius HO requested the Administration to learn from the experience and take measures to ensure that the 2022 CE Election would be held smoothly. Deputy Secretary for Constitutional and Mainland Affairs ("DS(CMA)") said that the Administration would proactively make improvements to various electoral arrangements for the 2022 CE Election in the light of experience gained from the 2021 ECSSOEs. Among others, REO was considering deploying its own staff to serve as the polling and counting staff in the upcoming CE Election and internal training for the staff would be enhanced.

21. Dr Junius HO expressed concern about whether an incumbent CE would have an unfair advantage by using public resources for his/her electioneering campaign in seeking re-election. DS(CMA) advised that generally speaking, a candidate should not use any public resources for his/her electioneering campaign. However, any security, transportation, secretarial services and living quarters to which the candidate was entitled for his/her private purposes by virtue of his/her post or job were not treated as public resources in this context. Under Article 46 of the Basic Law, CE

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might serve for not more than two consecutive terms. Therefore, an incumbent CE might seek re-election for a second term. In such case, the use of resources provided by the Government for his/her private use in electioneering might become unavoidable. He/she would have to separate and apportion clearly the resources spent for the different purposes of his/her duties as CE and his/her election expenses. Such resource items should be declared with relevant particulars included in his/her election return. CEO added that reports on the work of the Government issued by an incumbent CE seeking re-election would be considered as election advertisements, and the costs incurred should be treated as election expenses.

22. Dr Junius HO further asked how in practice an incumbent CE seeking re-election should separate his/her expenses incurred for election-related activities from those incurred for his/her duties as CE. DS(CMA) explained that if expenses were incurred for more than one purpose, there would be a need for apportionment of expenses between election-related purposes and any other purposes. As a general principle, time and usage of space, manpower, etc. would be relevant factors for consideration. DS(CMA) advised that for easier apportionment of expenses, an incumbent CE might set up a separate campaign office for seeking re-election, which involved a separate team of staff and separate resources. DS(CMA) added that the above mechanism had been practicable in the past when former CEs sought re-elections. In response to Dr HO's enquiry, CEO advised that Chapter 18 of the Guidelines would provide clear guidance on the requirements relating to claims of support so as to facilitate application by an incumbent CE seeking re-election.

IV. Any other business

23. There being no other business, the meeting ended at 4:26 pm.

Council Business Division 4
Legislative Council Secretariat
21 December 2021