

**Bills Committee on Chief Executive Election (Amendment) Bill 2010
and Legislative Council (Amendment) Bill 2010**

Follow up on the issues raised at the meeting on 21 January 2011

**Commencement dates of the Legislative Council (Amendment) Bill
2010 (“the Bill”) as stipulated in Clause 1 of the Bill**

As requested by Members at the Bills Committee meeting on 23 January 2011, this paper provides information concerning the commencement dates of the Legislative Council (Amendment) Bill 2010 as stipulated in clause 1 of the Bill. We will also propose a Committee Stage Amendment (“CSA”) to amend clause 1(4) of the Bill.

Commencement dates of the Ordinance

2. Clauses 1(2)-(4) of the Bill provide for the commencement dates so as to enable the sections under the Bill to come into operation in two phases in accordance with the actual situation. Details are at Annex.

Proposed CSA

3. Clause 1(2) provides that all sections of the Ordinance (except sections 24 and 37(2)) (see details at Annex) come into operation on the day on which the Legislative Council (Amendment) Ordinance 2010 is published in the Gazette for the purpose only of enabling arrangements to be made for the holding of the Election Committee subsectors election in 2011 and the holding of the Legislative Council (“LegCo”) general election in 2012. According to clause 1(4) of the Bill, in so far as those provisions have not come into operation under clause 1(2), they come into operation on 1 October 2012.

4. At the Bills Committee meeting, the Senior Assistant Legal Adviser of the LegCo Secretariat (“the Legal Adviser”) considered that according to section 4(3) of the Legislative Council Ordinance (Cap. 542) (“LCO”), each term of office of the LegCo is to begin on a date to be specified by the Chief Executive in Council. The Legal Adviser proposed to amend the commencement date specified in clause 1(4) of the Bill from 1 October 2012 to the date on which the next term of the LegCo commences.

5. When formulating clause 1(4) of the Bill, we have made reference to the arrangement that 1 October was specified as the date on which the term of office started for the past LegCo terms. In view of the arrangement on the specification of the commencement of the term of office of the LegCo under section 4(3) of the LCO, we propose to adopt the proposal put forward by the Legal Adviser and to specify the commencement date in clause 1(4) of the Bill as the date on which the term of office of the fifth term of the LegCo commences in 2012 instead of the original formulation of 1 October 2012.

Advice sought

6. Members are invited to comment on the proposed amendment set out in paragraph 5 above.

Constitutional and Mainland Affairs Bureau
January 2011

The Legislative Council (Amendment) Bill 2010

Commencement Dates for various provisions

Provision(s) of the Bill	Commencement Date	Remarks
24, 37(2)	The day on which the Legislative Council (Amendment) Ordinance (“the Ordinance”) is published in the Gazette.	<ul style="list-style-type: none">• Clause 1(3) specifies that sections 24 and 37(2) come into operation on the day on which the Ordinance is published in the Gazette. <u>Clause 24</u><ul style="list-style-type: none">- Clause 24 specifies that only electors whose names are included in the final register (“FR”) of functional constituencies (“FCs”) published for 2011 are entitled to vote at a by-election held between the date of the publication and 31 May 2012¹. The purpose is to state clearly that the by-election(s) held during the period will be conducted according to the FR of FCs published for 2011.<u>Clause 37(2)</u><ul style="list-style-type: none">- Clause 8 of the Chief Executive Election (Amendment) Bill 2010 specifies that elected District Council (“DC”) members in the 2011 DC election, including those who have been registered as voters in other subsectors, shall be automatically registered as voters

¹ Section 36(2)(a) of the Legislative Council Ordinance (Cap. 542) provides that a by-election to fill a vacancy occurring in the membership of the Legislative Council is not to be held within the 4 months preceding the end of that Council's current term of office. 31 May 2012 is the last day on which any by-election of the fourth term of the Legislative Council is to be held.

Provision(s) of the Bill	Commencement Date	Remarks
		<p>in the DCs subsectors. Clause 37(2) provides that despite the above arrangement, if an elector for any FC is elected as an elected DC member in the 2011 DC election, the name and relevant particulars of the elector must remain in the FR of that constituency published for 2011 until the publication of the 2012 provisional register of electors for the DC (first) FC. This arrangement is to enable elected DC members in the 2011 DC election who have also been registered in other FCs to participate in any by-election during the period.</p>
<p>Remaining Provisions</p>	<p>The day on which the Ordinance is published in the Gazette for the purpose only of enabling arrangements to be made for the holding of the Election Committee subsectors election in 2011 and the holding of the Legislative Council general election in 2012.</p>	<ul style="list-style-type: none"> • Clause 1(2) states that remaining provisions of the Ordinance come into operation on the day on which the Ordinance is published in the Gazette for the purpose only of enabling arrangements to be made for the holding of the Election Committee subsectors election in 2011 and the holding of the Legislative Council general election in 2012. • Clause 1(4) provides that these remaining provisions of the Ordinance, in so far as they have not come into operation under clause 1(2), come into operation on 1 October 2012. • The purposes of these remaining provisions include the increase of seats for the five geographical constituencies (“GCs”), establishment of a new FC (i.e. DC (second) FC), renaming of the existing DC FC, etc. These provisions

Provision(s) of the Bill	Commencement Date	Remarks
	<p>In so far as they have not come into operation on the above date, they come into operation on which the fifth term of the Legislative Council commences.</p>	<p>should come into operation on the commencement of the term of office of the next term of the Legislative Council. However, to facilitate the preparation for the holding of the Election Committee subsectors election in 2011 and the holding of the Legislative Council general election in 2012 (such as the delineation of the GCs and the specification of the number of members to be returned), the provisions have to come into operation on the date the Ordinance is gazetted for the purpose of enabling arrangements to be made for those elections. These provisions, in so far as they have not come into operation as mentioned above (e.g. the increase in the number of seats of Legislative Council), will come into operation on the commencement of the next term of the Legislative Council.</p>