

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2011

Minutes of the first meeting
held on Tuesday, 17 May 2011, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, SBS, JP (Deputy Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon WONG Yuk-man

Public Officers : Constitutional and Mainland Affairs Bureau
attending

Mr Joshua LAW Chi-kong
Permanent Secretary for Constitutional and Mainland
Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland
Affairs

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Thomas WU Kui-wah
Assistant Secretary for Constitutional and Mainland
Affairs

Department of Justice

Mr Gilbert MO Sik-keung
Deputy Law Draftsman
(Bilingual Drafting and Administration)

Miss Emma WONG
Senior Government Counsel

Clerk in : Miss Flora TAI
attendance : Chief Council Secretary (2)3

Staff in : Mr Arthur CHEUNG
attendance : Senior Assistant Legal Adviser 2

Miss Ivy LEONG
Senior Council Secretary (2)3

Ms Wendy LO
Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Election of Chairman and Deputy Chairman

Mr TAM Yiu-chung and Mr Jeffrey LAM were elected as the Chairman and Deputy Chairman of the Bills Committee respectively.

II. Meeting with the Administration

[CMAB C1/30/5/4, LC Paper Nos. LS54/10-11, CB(2)1759/10-11(01), CB(2)1760/10-11(01) and CB(3)701/10-11]

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

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3. The Administration was requested to provide –

- (a) a comparison of the procedures of the election petition mechanism currently applicable to different elections with the procedures under the proposed leap-frog mechanism;
- (b) past cases of election petitions lodged in relation to the Legislative Council ("LegCo"), District Council ("DC") and Village Representative elections since 1997 and the duration of those cases;
- (c) an analysis on the financial implications of the existing election petition mechanism and the proposed leap-frog appeal mechanism; and
- (d) information on the election expenses declared by candidates in the 2007 DC election.

Admin

4. The Administration undertook to consider the proposal to extend the period within which an appeal should be lodged to the Court of Final Appeal ("CFA") from seven working days to 14 working days. The Administration was also requested to confirm whether there was any provision in the Chief Executive Election Ordinance (Cap. 569) which would empower CFA to extend that appeal period.

Action

III. Any other business

Meeting schedule

5. Members agreed to the following meetings schedule for May and June 2011 -

- (a) 25 May 2011 (Wednesday) from 8:30 am to 10:00 am;
- (b) 31 May 2011 (Tuesday) from 8:30 am to 12:30 pm;
- (c) 4 June 2011 (Saturday) from 9:00 am to 1:00 pm;
- (d) 9 June 2011 (Thursday) from 8:30 am to 10:30 am; and
- (e) 13 June 2011 (Monday) from 2:30 pm to 4:30 pm.

Invitation of public views

6. Members agreed to receive public views at the meeting scheduled for 4 June 2011.

7. There being no other business, the meeting ended at 9:40 am.

Council Business Division 2
Legislative Council Secretariat
7 February 2012

**Proceedings of the first meeting of the
Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011
on Tuesday, 17 May 2011, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000110 - 000232	Dr Philip WONG Mr IP Kwok-him Mr TAM Yiu-chung	Election of Chairman	
000233 - 000328	Chairman Mr IP Kwok-him Mr CHAN Kin-por Mr Jeffrey LAM Mr Emily LAU	Election of Deputy Chairman	
000329 - 000628	Chairman	Meeting schedule for May and June 2011 Arrangements for receiving public views	
000629 - 000911	Chairman Administration	Briefing by the Administration on the Bill – Amendments relating to appeal in relation to election petitions (Part 2)	
000912 - 001116	Ms Audrey EU Administration	Ms Audrey EU enquired about the views of relevant parties on the proposed extension of the leap-frog appeal mechanism to the Village Representative ("VR") elections. She further asked whether the Administration had consulted the Chief Justice of the Court of Final Appeal ("CFA") on the proposal. The Administration responded that – (a) the Administration had consulted the Judiciary on its proposal to provide for a leap-frog appeal mechanism in relation to an election petition arising from the Legislative Council ("LegCo"), District Council ("DC") and VR elections which was similar to the one contained in the Chief Executive Election Ordinance (Cap. 569) ("CEEEO"). The Judiciary did not express objection to the proposal;	

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		<p>(b) Heung Yee Kuk ("HYK") had been consulted on the proposed leap-frog appeal mechanism for VR elections. HYK indicated support to the proposal, though it requested the Administration to consider extending the period within which an appeal should be lodged to CFA from seven to 14 working days; and</p> <p>(c) the Administration considered it more appropriate to follow the practice of CEEQ, which provided that an application for leave to appeal to CFA must be filed within seven working days after the day on which the relevant judgment of the Court of First Instance ("CFI") was handed down, so as to facilitate the speedy determination of election petitions at CFA and minimize the uncertainty faced by individual VRs subject to election petitions in exercising their functions and duties.</p>	
001117 - 001342	Ms Audrey EU Chairman Administration	<p>At the request of Ms Audrey EU, the Administration agreed to provide a comparison of the procedures of the election petition mechanism currently applicable to different elections with the procedures under the proposed leap-frog appeal mechanism.</p> <p>In response to Ms Audrey EU, the Administration advised that in view of a judgment by CFA on 13 December 2010 which declared that the finality provision in section 67(3) of the LegCo Ordinance (Cap. 542) ("LCO") was unconstitutional and invalid as being inconsistent with Article 82 of the Basic Law, and a judgment by the Court of Appeal ("CA") on 1 March 2011 which also declared that the finality provision contained in section 55(3) of the DCs Ordinance (Cap. 547) ("DCO") was unconstitutional and invalid, the Administration proposed to amend LCO, DCO and the VR Election Ordinance (Cap. 576) ("VREO") to institute a leap-frog appeal mechanism, which allowed an appeal against the determination of CFI in relation to an election petition arising from the LegCo, DC and VR elections to be lodged to CFA direct, subject to leave being granted by the Appeal Committee of CFA.</p>	Admin (para 3 of minutes)

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001343 - 001745	Ms Emily LAU Administration	<p>Ms Emily LAU enquired about –</p> <ul style="list-style-type: none"> (a) the number of election petition cases which had yet to be concluded since the commencement of the current term of office of LegCo and DC; (b) the financial implications of the proposed leap-frog appeal mechanism for the petitioners; and (c) the views that the Administration had received from members of the Human Rights Forum regarding the proposed leap-frog mechanism and the reservations of the Hong Kong Bar Association ("Bar Association") about the proposal. <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) one election petition from the 2008 LegCo election and three election petitions from the 2011 VR election were currently under judicial proceedings. Since CA dismissed an election petition in relation to DC election on 1 March 2011, there was no election petition case in that regard. However, the petitioners might appeal to CFA; (b) the Law Society of Hong Kong ("Law Society") and the Bar Association had been consulted on the proposed leap-frog appeal mechanism. While the Law Society did not express any objection to the proposal, the Bar Association was of the view that there should be sufficient grounds for an appeal to lie directly to CFA and there was insufficient justification for the proposals; (c) the Administration had consulted the Judiciary on the proposed leap-frog appeal mechanism and the Judiciary had no objection to the proposal; and (d) the Administration would try to provide information on the financial implications of the proposed leap-frog appeal mechanism. 	<p>Admin (para 3 of minutes)</p>

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001746 - 002102	Ms Emily LAU Administration Chairman	<p>Ms Emily LAU further enquired –</p> <ul style="list-style-type: none"> (a) about the number of election petitions from the last two terms of LegCo and DC; (b) why there was a pressing need to propose a leap-frog appeal mechanism for LegCo, DC and VR elections; and (c) whether the Administration would consider extending the period within which an appeal should be lodged to CFA from seven to 14 working days. <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) since 1997, there were two election petitions in relation to the LegCo elections, eight election petitions in relation to the DC elections and six election petitions in relation to the VR elections; and (b) in order to facilitate the speedy determination of election petitions and related appeals and to minimize the uncertainty faced by individual LegCo members, DC members and VRs subject to election petitions in exercising their functions and duties, the Administration proposed to allow seven working days under LCO , DCO and VREO for applying for leave to appeal to CFA. The Administration considered the proposed arrangement which was in line with the practice of CEEO appropriate. <p>At the request of Ms Emily LAU, the Administration agreed to provide past cases of election petitions lodged in relation to the LegCo, DC and VR elections since 1997 and the duration of those cases.</p>	<p>Admin (para 3 of minutes)</p>
002103 - 002544	Ms Audrey EU Administration Chairman	<p>Ms Audrey EU expressed agreement with the Bar Association's view that there was insufficient grounds to extend the leap-frog appeal mechanism to VR elections.</p> <p>Ms EU also expressed support for the HYK's proposal to extend the period within which an</p>	

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		<p>appeal should be lodged to CFA from seven to 14 working days on the ground that given a petitioner had to seek legal advice on the judgment handed down by CFI and to consider the legal costs involved in an appeal before a decision could be made on whether an appeal should be lodged to CFA, an appeal period of 14 working days was more reasonable.</p> <p>The Administration responded as follows –</p> <p>(a) as stated in the judgment, CFA suggested that suitable changes could be made to LCO to ensure that any restrictions or limitations on the right of appeal were indeed no more than necessary, but such matter was for the Government and the Legislature to consider, taking into account relevant provisions in comparable legislation such as CEEO. The Administration considered it appropriate to follow the practice of CEEO to allow seven working days under LCO, DCO and VREO for applying for leave to appeal to CFA. The Administration did not see any strong justifications for extending the period from seven to 14 working days for VR elections only; and</p> <p>(b) the Administration had listened to views of relevant parties on the proposed leap-frog appeal mechanism and consideration would be given to extending the period within which an appeal should be lodged to CFA where appropriate.</p>	
002545 - 002823	Ms Emily LAU Chairman Administration	<p>Ms Emily LAU enquired –</p> <p>(a) whether LCO, DCO and VREO must be in line with CEEO in respect of the period within which an appeal should be lodged to CFA;</p> <p>(b) whether the relevant provision in CEEO had to be amended to tally with LCO, DCO and VREO should the period within which an appeal should be lodged to CFA in these ordinances was extended to 14 working days; and</p>	

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		<p>(c) the position of DCs on the proposed mechanism.</p> <p>Referring to comments that the legal costs involved in the proposed leap-frog appeal mechanism were higher than the normal course of appeal, Ms LAU requested the Administration to provide an analysis on the financial implications of the existing election petition mechanism and the proposed leap-frog appeal mechanism.</p> <p>The Administration responded that –</p> <p>(a) the period within which an appeal should be lodged to CFA under LCO, DCO and VREO was not necessarily the same as that under CEEQ, but the proposed appeal period would facilitate the speedy determination of election petitions at CFA;</p> <p>(b) the Chairmen and Vice-chairmen of the 18 DCs had been consulted and they had indicated support to the proposed leap-frog appeal mechanism and did not express objection to the arrangement for an appeal to be lodged to CFA within seven working days after the day on which the relevant judgment of CFI was handed down; and</p> <p>(c) the Administration would further consider HYK's proposal to extend the period within which an appeal should be lodged to CFA from seven to 14 working days.</p>	<p>Admin (para 3 of minutes)</p> <p>Admin (para 4 of minutes)</p>
002824 - 002938	Chairman Ms Emily LAU	Arrangements for receiving public views	
002939 - 003201	Administration	Briefing by the Administration on the Bill – Amendments relating to promotional letters sent by candidates (Part 3)	
003202 - 003459	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU enquired whether –</p> <p>(a) the Administration would provide assistance to facilitate candidates to adopt more environmental friendly means to distribute their election-related materials to electors on a household basis; and</p>	

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		<p>(b) electors who had provided their email addresses would receive election-related materials in electronic copy only.</p> <p>The Administration responded that –</p> <p>(a) registered electors and persons who would like to register as electors were encouraged to provide their email addresses on a voluntary basis and about 200 000 registered electors had provided to the Registration and Electoral Office ("REO") their e-mail addresses, which would be provided to candidates for sending election-related materials;</p> <p>(b) REO was considering the possibility of providing address labels to candidates for sending election-related publicity materials to electors on a household basis. There were practical difficulties which needed to be resolved, such as how to ascertain whether electors residing in the same address belonged to a family or they were resided in elderly homes sharing a communal address; and</p> <p>(c) candidates could decide on whether to send their election publicity materials on a household or an individual basis.</p>	
003500 - 003829	Ms Emily LAU Administration	<p>In response to Ms Emily LAU's further enquiry, the Administration responded that –</p> <p>(a) the rights of individual electors to access election-related materials must be respected and protected as individual electors might wish to receive an individual copy of the election publicity material even if electors were residing in the same address;</p> <p>(b) during previous discussion on the matter, some members had indicated that they would continue to send election publicity materials to electors on an individual basis;</p> <p>(c) in view of the practical difficulties identified, REO considered that a more feasible arrangement would be to provide a</p>	

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		<p>CD-ROM containing the addresses of all electors in the constituencies concerned with groupings of electors under the same addresses to each candidate. Candidates could choose to send out election-related materials on a household or an individual basis; and</p> <p>(d) the issue could be further discussed at the upcoming meeting of the Panel on Constitutional Affairs when the proposed guidelines on election-related activities and practical arrangements in respect of the DC election were discussed.</p>	
003830 - 004100	Ms Emily LAU Administration	<p>Ms Emily LAU's view that –</p> <p>(a) the Administration should respect the choice of candidates on how to distribute their election publicity materials and provide the necessary assistance to candidates; and</p> <p>(b) sending election-related publicity materials to electors on a household basis would not deprive individual electors of their rights to access election advertisements.</p> <p>On the arrangements for sending election-related publicity materials to electors, Ms Emily LAU asked whether the Administration would provide address labels to candidates on a household basis and take out those electors who had provided their email addresses from the address labels to be provided to candidates.</p> <p>The Administration advised that –</p> <p>(a) as an initial step, REO would provide each candidate with a CD-ROM containing the addresses of all electors in the constituencies concerned with groupings of electors under the same addresses to facilitate candidates who wished to send out election-related materials on a household basis;</p> <p>(b) the Administration would further discuss with REO the feasibility of providing address labels to candidates on a household</p>	

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		<p>basis but there were practical difficulties which needed to be resolved, such as the size of an address label might limit the number of names of electors to be printed on it; and</p> <p>(c) electors would be reminded in the registration form that if they had provided their email addresses, they would receive election-related materials by email instead of by post in the future.</p>	
004101 - 004329	Ms Emily LAU Chairman Administration	<p>Ms Emily LAU queried the usefulness for candidates to obtain the CD-ROM if address labels were not provided to candidates on a household basis.</p> <p>The Administration responded that –</p> <p>(a) in considering the provision of address labels to candidates on a household basis, REO had to resolve some technical and operational problems, including the limitation of the size of the address labels, the limited number of printing companies which had the techniques to produce such address labels, and the tight printing schedule; and</p> <p>(b) the Administration understood members' wish to receive the CD-ROM together with address labels concerned for sending election publicity materials to their electors. The Administration would discuss the matter with REO further with a view to facilitating candidates.</p>	
004330 - 004559	Mr Paul TSE Administration	<p>Noting that section 34(2) of CEEO provided that an application for leave to appeal to CFA shall be filed within seven working days after the day on which the relevant judgment of CFI was handed down and that there was no provision in CEEO which empowered CFA to extend the period specified in section 34(2), Mr Paul TSE enquired whether CFA could have the discretion to extend the appeal period under the proposed leap-frog appeal mechanism to allow for flexibility.</p> <p>The Administration advised that under the proposed leap-frog appeal mechanism, application</p>	

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		for leave to appeal to CFA must be filed within seven working days after the day on which the relevant judgment of CFI was handed down. The Administration would look into the provisions to see whether the provisions allowed for flexibility in the period within which appeal was to be lodged to CFA.	Admin (para 4 of minutes)
004600 - 004856	Chairman Administration	Briefing by the Administration on the Bill – Amendments relating to financial assistance to candidates in DC election (Part 4), amendment relating to election expenses limit for CE election (Part 5) and amendment relating to election expenses limit for DC election (Part 6)	
004857 - 005153	Ms Emily LAU Administration	<p>Ms Emily LAU did not support the Administration's proposal for increasing the election expenses limit for the CE election from \$9.5 million to \$13 million. Ms LAU considered the scale of the proposed increase too large. In her view, the Administration should have further increased the financial assistance for DC election candidates to encourage more candidates to participate in the election rather than proposing a large increase for the election expenses limit for the CE election. She asked whether the proposed subsidy rate for the 2011 DC election of the lower of \$12 per vote or 50% of the election expenses limit could be further adjusted upward at this stage.</p> <p>The Administration responded that –</p> <p>(a) the proposed increase in the subsidy rate for the DC election was in accordance with the subsidy rate for the LegCo election, i.e. the lower of \$12 per vote or 50% of the election expenses limit provided that the subsidy amount did not exceed the amount of the declared election expenses of a candidate; and</p> <p>(b) according to the election expenses declared by candidates in the 2007 DC election, 19.2% of the candidates spent more than 70% to 80% of the election expenses limit, 13.6% of the candidates spent more than 80% to 90% of the election expenses limit, and 5.6% of the candidates spent more than</p>	

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		<p>90% of the election expenses limit. In other words, most of the candidates had spent less than 90% of the election expenses limit. Having regard to the spending pattern of candidates in the 2007 DC election, the Administration considered that the proposed increase of the election expenses limit was appropriate.</p>	
005154 - 005338	Ms Emily LAU Administration	<p>Ms Emily LAU requested the Administration to provide information on the election expenses declared by candidates in the 2007 DC election and the previous LegCo elections. Ms LAU further queried whether there was a correlation between the spending pattern of candidates in the 2007 DC election and the level of financial assistance to be provided for candidates in DC election.</p> <p>The Administration responded that –</p> <p>(a) apart from proposing an increase in the subsidy rate of the financial assistance scheme for candidates of DC election, the Administration had also provided other forms of assistance to candidates, such as free postage for a candidate to send a letter to each elector of the constituency concerned; and</p> <p>(b) the proposed increase in the subsidy rate for the DC election was in line with the forecast cumulative increase in the Composite Consumer Price Index ("CCPI") and the revised subsidy rate for the LegCo election under the LegCo (Amendment) Ordinance 2011.</p>	Admin (para 3 of minutes)
005339 - 005647	Ms Emily LAU Dr Philip WONG Chairman Administration	<p>Ms Emily LAU's request that the Administration should consider in the future the suggestion previously made by Mr Paul TSE on a separate occasion regarding the provision of an allowance to candidates in the form of a voucher in lieu of free postage to provide financial incentive and more flexibility to candidates in distributing their election-related materials by environmental-friendly means.</p> <p>Ms Emily LAU reiterated her view that the subsidy rate of \$12 per vote for the DC election</p>	

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		<p>was too low and the scale of the increase in the election expenses limit for the CE election was too large.</p> <p>Dr Philip WONG's views that the Administration should not cap the election expenses limit given that many overseas countries did not set such a ceiling.</p> <p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) under the existing arrangement, the subsidy rate for the DC election was the lower of \$10 per vote or 50% of the declared election expenses; and (b) between 2008 and 2011, CCPI was expected to have increased by 12% on a cumulative basis. The subsidy rate for the DC election should be increased to \$11 if adjusted in accordance with the inflation figure. As the subsidy rate for the LegCo election was revised from the lower of \$11 per vote or 50% of the declared election expenses to the lower of \$12 per vote or 50% of the election expenses limit provided that the subsidy amount did not exceed the amount of the declared election expenses of the lists of candidates or candidates, the Administration proposed that the same revised arrangements should be adopted for the financial assistance for the 2011 DC election. 	
005648 - 010355	Mr Paul TSE Administration	<p>Mr Paul TSE's views that a balance had to be struck to ensure fairness in elections and the proposed election expenses limit of \$53,800 was too low. He considered that -</p> <ul style="list-style-type: none"> (a) given financial resources were but one of the assets of candidates, the Administration should not only single out financial resources for regulation by setting election expenses limit, otherwise it would create unfairness to those candidates who had financial recourses but inadequate time to carry out electioneering work by themselves; and 	

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		<p>(b) the fact that most of the candidates had spent less than 90% of the election expenses limit in the previous DC election was to allow for a safe margin, lest they would commit a criminal offence under the Elections (Corrupt and illegal Conduct) Ordinance (Cap. 554).</p> <p>The Administration responded that –</p> <p>(a) in formulating the relevant electoral arrangements for elections, the Administration had to ensure that elections were conducted in a fair, just and open manner;</p> <p>(b) the election expenses limit in Hong Kong was set at a reasonable rather than a high level so that electioneering activities of resourceful political parties would not overshadow those of the political parties and independent candidates with less financial resources; and</p> <p>(c) according to the spending pattern of candidates in the 2007 DC election, about 60% of the candidates had spent less than 70% of the election expenses limit. Having regard to the findings and the forecast cumulative inflation, the Administration considered that the proposed increase of the election expenses limit for the 2011 DC election from \$48,000 to \$53,800 was appropriate.</p>	
010356 - 010710	Chairman Mr Paul TSE Administration	<p>In response to Mr Paul TSE's enquiry, the Administration advised that section 60C of DCO stipulated that to be eligible for financial assistance, a candidate had to be elected or if a candidate was not elected, he had to obtain at least 5% of the total number of valid votes cast in the constituency concerned.</p> <p>Mr Paul TSE's view that in order to encourage more capable candidates to participate in elections, the Administration should consider raising the threshold for eligibility for financial assistance so that candidates who obtained a higher number of valid votes could be provided</p>	

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		<p>with more assistance rather than capping the amount of financial assistance payable at 50% of the election expenses limit. Mr TSE enquired about the rationale for capping the amount payable at 50% of the election expenses limit and asked whether the cap could be raised to 80% or above of the election expenses limit.</p> <p>The Administration responded that –</p> <p>(a) the amount of financial assistance payable was capped at 50% of the election expenses limit on the consideration that both the candidates and the Administration should shoulder part of the election expenses; and</p> <p>(b) under the existing arrangement, the rate of financial assistance for DC election was the lower of \$10 per vote or 50% of the declared election expenses. To provide more room for candidates to obtain financial assistance, the Administration had proposed to revise the arrangement to the lower of \$12 per vote or 50% of the election expenses limit.</p>	
010711 - 010811	Chairman Administration	Briefing by the Administration on the Bill – Amendment relating to the change of the name of a constituent in Education subsector of the Election Committee	
010812 - 010901	Chairman	Date of next meeting	