

立法會
Legislative Council

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LC Paper No. CB(2)1158/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2011

Minutes of the fourth meeting
held on Saturday, 4 June 2011, from 9:00 am to 11:00 am
in the Chamber of the Legislative Council Building

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, GBS, JP
Hon CHAN Kin-por, JP
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
- Member attending** : Dr Hon Margaret NG
- Members absent** : 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 Timothy FOK Tsun-ting, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon LEE Wing-tat
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon WONG Yuk-man

- Public Officers :** Mr Stephen LAM Sui-lun
attending Secretary for Constitutional and Mainland Affairs
- Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs
- Ms Anne TENG Yu-yan
Principal Assistant Secretary for Constitutional and Mainland Affairs
- Attendance by :** Sham Shui Po Nam Cheong District Residents &
invitation Merchants Association
- Mr KWOK Tak-leung
Chairman
- Sha Tin Kin Ching Sports Association
- Mr TUNG Wai-ming
- Yau Ma Tei Concern for Resident Rights Association
- Mr NG Kam-fong
Vice-chairman
- Tai Hang Concern Association
- Ms LAU Kong-hung
- Tuen Mun Stay Goal
- Mr CHAN Kwok-leung
- 樂民新村居民協會
- Mr CHIK Chun-wah
- 九龍城區居民聯會
- Mr SIU Yu-ken
- Democratic Alliance for Betterment and Progress of Hong Kong
- Miss Maggie CHAN
Standing Committee Member

The Hong Kong Quarry Bay Residents'
Association Limited

Mr TAI Yeuk-kwan

The Hong Kong Eastern District Community Association

Mr CHOW Yiu-ming
Honorary Chairman

Mr CHAN Kwok-wai

Mr WONG Yun-tak

Mr CHAN Kam-bor

Mr YEUNG Ho-kei

Mr LIU Chiu-wa

Yat Tung Community Network Association

Mr KWOK Chung-man

關注太監權益總工會

Mr CHIN Wai-lok
Chairman

HK Redevelopment Concern Group

Mr NG Yin-keung
Chairman

Mr WONG Kwan-tat

Mr CHENG Kwok-kee

Miss LEUNG Yin-ping

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

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

Miss Ivy LEONG
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Meeting with deputations and the Administration

[CMAB C1/30/5/4, LC Paper Nos. CB(2)1955/10-11(01),(02) and (03)]

The Bills Committee received views from a total of 21 individuals and organizations (index of proceedings attached at **Annex**).

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2. The Administration undertook to prepare Committee Stage amendments to the Bill to the effect that the period within which an application for leave to lodge an election petition appeal to the Court of Final Appeal shall be made be extended to 14 working days, and to respond to the submissions made by the two legal professional bodies. The Administration was also requested –

- (a) to provide information relating to the offences regarding the submission of election returns in previous elections; and
- (b) to consider whether the Court of Final Appeal should be given the discretion to extend the appeal period.

II. Any other business

3. There being no other business, the meeting ended at 11:15 am.

Council Business Division 2
Legislative Council Secretariat
22 February 2012

**Proceedings of the fourth meeting of the
Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2011
on Saturday, 4 June 2011 at 9:00 am
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000228 - 000736	Chairman Yat Tung Community Network Association	Opening remarks Meeting with deputations to receive views on the Electoral Legislation (Miscellaneous Amendments) Bill 2011 ("the Bill")	
000737 - 001355	Administration Chairman	Briefing by the Administration on its paper on "Proposed arrangement for handling election returns with minor errors or omissions" [LC Paper No. CB(2)1955/10-11(03)]	
001356 - 001651	Chairman Sham Shui Po Nam Cheong District Residents & Merchants Association	Presentation of views by Sham Shui Po Nam Cheong District Residents & Merchants Association (a) the proposed leap-frog appeal mechanism was supported; and (b) the Administration's proposals for increasing the election expenses limit for the District Council ("DC") and the Chief Executive ("CE") elections, and for increasing the subsidy rate for the DC election were supported.	
001652 - 001944	Chairman Sha Tin Kin Ching Sports Association	Presentation of views by Sha Tin Kin Ching Sports Association (a) it supported the proposed leap-frog appeal mechanism; (b) it suggested extending the period for lodging an appeal application to 14 working days; and (c) it supported merits of the Bill.	
001945 - 002242	Chairman Yau Ma Tei Concern for Resident Rights Association	Presentation of views [LC Paper No. CB(2)2355/10-11(01)]	
002243 - 002533	Chairman Tai Hang Concern Association	Presentation of views [LC Paper No. CB(2)2355/10-11(02)]	

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002534 - 002744	Chairman Tuen Mun Stay Goal	Presentation of views [LC Paper No. CB(2)2355/10-11(03)]	
002745 - 003029	Chairman 樂民新村居民協會	Presentation of views [LC Paper No. CB(2)2355/10-11(04)]	
003030 - 003158	Chairman 九龍城區居民聯會	Presentation of views [LC Paper No. CB(2)2355/10-11(05)]	
003159 - 003513	Chairman Democratic Alliance for Betterment and Progress of Hong Kong ("DAB")	Presentation of views by DAB (a) the proposed leap-frog appeal mechanism was supported; and (b) the Administration should clarify whether applicants could appeal to the Court of Appeal ("CA") under the proposed election petition mechanism and whether the proposed seven working day appeal period was to be counted from the date on which a verbal judgment was given or a written judgment was given.	
003514 - 003635	Chairman The Hong Kong Quarry Bay Residents' Association Limited	Presentation of views by The Hong Kong Quarry Bay Residents' Association Limited (a) the Administration's proposals for increasing the election expenses limit for the DC and CE elections, and for increasing the subsidy rate for the DC election were supported; and (b) the Administration should consider reviewing the estimation in the salary for support staff for the CE election.	
003636 - 003928	Chairman The Hong Kong Eastern District Community Association	Presentation of views [LC Paper No. CB(2)2355/10-11(06)]	
003929 - 004121	Chairman Mr CHAN Kwok-wai	Presentation of views by Mr CHAN Kwok-wai (a) the Administration's proposal for allowing lists of candidates of different constituencies and candidates of functional constituency or Election Committee ("EC") subsectors with multiple seats to send their promotional letters to the same elector/voter free of postage was supported; and (b) the proposals for increasing the election expenses limit and the subsidy rate for the DC election were supported.	

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004122 - 004305	Chairman Mr WONG Yun-tak	<p>Presentation of views by Mr WONG Yun-tak</p> <p>(a) the proposal for allowing lists of candidates of different constituencies and candidates of functional constituency or EC subsectors with multiple seats to send their promotional letters to the same elector/voter free of postage was supported; and</p> <p>(b) the proposals for increasing the election expenses limit for the DC and CE elections, and for increasing the subsidy rate for the DC election were supported.</p>	
004306 - 004441	Chairman Mr CHAN Kam-bor	<p>Presentation of views [LC Paper No. CB(2)2355/10-11(07)]</p>	
004442 - 004709	Chairman Mr YEUNG Ho-kei	<p>Presentation of views by Mr YEUNG Ho-kei</p> <p>(a) the proposed leap-frog appeal mechanism was supported;</p> <p>(b) the proposal for allowing candidates to send joint promotional letters to electors free of postage was supported; and</p> <p>(c) the proposals for increasing the election expenses limit for the DC and CE elections, and for increasing the subsidy rate for the DC election were supported.</p>	
004710 - 004919	Chairman Mr LIU Chiu-wa	<p>Presentation of views by Mr LIU Chiu-wa</p> <p>(a) the proposals for increasing the election expenses limit for the DC and CE elections, and for increasing the subsidy rate for the DC election were supported; and</p> <p>(b) the proposed leap-frog appeal mechanism was supported.</p>	
004920 - 005238	Chairman Yat Tung Community Network Association ("YTCNA")	<p>Presentation of views by YTCNA</p> <p>(a) expression of concern about overloading the Court of Final Appeal ("CFA") if all election petition appeals could be lodged directly to CFA; and</p> <p>(b) enquiry as to whether electors could choose to receive their poll cards by email.</p>	

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005239 - 005601	Chairman 關注太監權益總工會	Presentation of views by 關注太監權益總工會 on the proposed application of the "equal time" principle to the broadcast of election-related programmes on the Internet. The Chairman advised that this subject was not within the scope of the Bill.	
005602 - 005911	Chairman HK Redevelopment Concern Group ("HKRCG")	Presentation of views [LC Paper No. CB(2)2355/10-11(08)]	
005912 - 010104	Chairman Mr WONG Kwan-tat	Presentation of views by Mr WONG Kwan-tat The proposals for increasing the election expenses limit for the DC and CE elections were supported.	
010105 - 010305	Chairman Mr CHENG Kwok-kee	Presentation of views [LC Paper No. CB(2)2355/10-11(09)]	
010306 - 010448	Chairman Miss LEUNG Yin-ping	Presentation of views [LC Paper No. CB(2) 2355/10-11(10)]	
010449 - 010843	Chairman Administration	The Administration's response to views of deputations – (a) the Administration noted that deputations in general were supportive of the proposals for increasing the election expenses limit for the DC and CE elections, and for increasing the subsidy rate for the DC election; (b) the Administration respected the views that the scale of the proposed increase of the election expenses limit for the CE election from \$9.5 million to \$13 million was too large. The Administration would continue to listen to views of members and public on this proposal; (c) after considering the views of members and deputations on the period within which an appeal against the Court of First Instance ("CFI")'s determination on an election petition must be lodged, the Administration would propose amendments to extend the relevant appeal period from seven to 14 working days; and (d) under the proposed section 67(3) of the Legislative Council Ordinance (Cap. 542)	

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		("LCO"), at the end of trial of an election petition, CFI must announce its determination by means of a written judgment.	
010844 - 011049	Chairman Administration	The Administration's explanation on the statutory requirement for sending the poll card to each elector by post.	
011050 - 011325	Chairman Ms Audrey EU	Ms Audrey EU sought clarification on whether the proposed 14-working day appeal period was to be counted from the date on which a written judgment was given or an order was given and whether the applicant would have the right to appeal if he or she gave the opposite party less than three days' notice of his or her intended application during the appeal period. Ms EU also invited deputations' views on how to regulate the broadcast of election-related programmes on the Internet.	
011326 - 011600	Chairman Administration Ms Audrey EU	<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) under the proposed section 67(3) of LCO, at the end of trial of an election petition, CFI must announce its determination by means of a written judgment; (b) the Administration had made reference to the relevant provisions in the Chief Executive Election Ordinance (Cap. 569) ("CEEEO") in proposing a leap-frog appeal mechanism. There was equivalent provision in CEEEO which provided for an applicant to give the opposite party three days' notice of his or her intended application during the appeal period. However, as advised by the legal adviser to the Bills Committee at the last meeting, there was no provision in CEEEO to specify the effect on the appeal in the event that insufficient notice was given to the opposite party; and (c) the Electoral Affairs Commission ("EAC") was consulting the public on the proposed guidelines in respect of the DC election, members and deputations were welcome to submit their views to EAC on the proposed application of the "equal time" principle to the broadcast of election-related programmes on the Internet. 	
011601 - 011701	Chairman YTCNA	YTCNA's view that the consultation document was not clear as to the scope on which the Government was intended to regulate in respect of online broadcast.	

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011702 - 012051	Chairman Ms Emily LAU	<p>Ms Emily LAU's views that –</p> <ul style="list-style-type: none"> (a) it would be difficult to regulate online broadcast; (b) the subsidy rate for the DC election should be further increased to \$18 to \$20 per vote; and (c) since deputations had not received any information on the proposed arrangement for handling election returns ("ERs") with minor errors or omissions before the meeting, they were not able to give views on the proposal. <p>Ms Emily LAU requested the Administration to provide information relating to the offences regarding the submission of ERs in previous elections.</p>	Admin (para 2 of minutes)
012052 - 012142	Chairman Ms Emily LAU	The Chairman informed members that deputations had already been notified of the Administration's proposed arrangement for handling ERs with minor errors or omissions and were invited to express their views on this subject.	
012143 - 012357	Chairman Administration Ms Emily LAU	<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the Administration would propose amendments to the Bill to amend the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in order to implement a de minimis arrangement for handling ERs with minor errors or omissions; and (b) the Administration had proposed increasing the subsidy rate for the DC election by 20%, i.e. from the lower of \$10 to \$12 per vote or 50% of the election expenses limit. 	
012358 - 012459	Chairman YTCNA	YTCNA's view that the Administration should provide more details on the proposed arrangement for handling ERs with minor errors or omissions, for instance, the basis for introducing a specified de minimis limit for each candidate or list of candidates at an election as set out in paragraph 7 of the Administration's paper.	
012500 - 012713	Mr CHENG Kwok-kee	Mr CHENG Kwok-kee's view that the "equal time" principle should be applicable to the broadcast of election-related programmes on the Internet to ensure that elections were conducted in a fair manner.	

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012714 - 012829	Chairman DAB	DAB's views that it was supportive of the proposed arrangement for handling ERs with minor errors or omissions and that there should be clear guidelines on what constituted election expenses.	
012830 - 013454	Chairman Mr Paul TSE Administration	<p>In response to Mr Paul TSE, the Administration advised that –</p> <ul style="list-style-type: none"> (a) the proposed 14 working day appeal period was to be counted from the date on which a written judgment was given; (b) the Administration would not provide any financial assistance for CE election candidates; and (c) according to the spending pattern of candidates in the previous DC elections, more than 80% of the candidates had spent less than 90% of the election expenses limit. The Administration considered that the proposed increase of the election expenses limit was appropriate. <p>At the request of Mr Paul TSE, the Administration agreed to provide information on whether CFA should be given the discretion to extend the period within which an application for leave to appeal shall be made.</p>	Admin (para 2 of minutes)
013455 - 013511	Chairman HKRCG	HKRCG made a clarification on its views.	
013512 - 013705	Chairman DAB	<p>Presentation of views</p> <ul style="list-style-type: none"> (a) DAB supported the Administration's proposals to increase the subsidy rate for the DC election, and to increase the election expenses limit for candidates at the DC and CE elections; (b) the Court should be given the discretion to extend the period within which an application for leave to appeal shall be made; and (c) there should be clear provisions as to whether applicants could appeal to CA. 	
013706 - 013736	Chairman Administration	<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) under the proposed leap-frog appeal mechanism, it was clear that no appeal would lie to CA and an appeal would lie directly to CFA; and 	

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		(b) as the Administration had proposed to extend the appeal period from seven to 14 working days, the prospective appellant would have sufficient time to consider whether to lodge an appeal or not.	
013737 - 014135	Chairman Mr Alan LEONG	<p>Mr Alan LEONG's views that –</p> <p>(a) the increase in the election expenses limit for the DC election was too low (20% increase) and the scale of the increase in the election expenses limit for the CE election was too large (37% increase); and</p> <p>(b) it would be difficult to impose restrictions on online election programmes.</p> <p>The Administration responded that –</p> <p>(a) the policies of CE would affect the well being of all residents in Hong Kong. As such, candidates running for the office of CE had a legitimate need to publicize and explain their election platform to the public at large. Candidates were free to spend as much or as little as they wished; and</p> <p>(b) the Administration would relay members' views on the proposed guidelines in respect of the DC election to EAC.</p>	
014136 - 014252	Chairman Mr YEUNG Ho-kei	Mr YEUNG Ho-kei's view on the appropriate increase in the election expenses limit for the CE election	
014253 - 014427	Chairman Mr CHENG Kwok-kee	Mr CHENG Kwok-kee's view that the level of increase in the election expenses limit for the CE election was appropriate and that the election in Hong Kong was conducted in an open and fair manner.	
014428 - 014542	Chairman HKRCG	HKRCG's view that the scale of the increase in the election expenses limit for the CE election was too large.	
014543 - 014730	Chairman Mr LIU Chiu-wa	Mr LIU Chiu-wa's view on the proposed application of the "equal time" principle to the broadcast of election-related programmes on the Internet	

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014731 - 014851	Chairman DAB	DAB's views on the election expenses limit for the DC and CE elections	
014852 - 014920	Chairman HKRCG	HKRCG's view on the increase in the election expenses limit for the CE election	
014921 - 014946	Chairman Mr Paul TSE	Seating arrangement of deputations	
014947 - 015352	Chairman Ms Audrey EU Administration	<p>Ms Audrey EU enquired whether the Administration would provide a response to the submission from the Hong Kong Bar Association [LC Paper No. CB(2)1955/10-11(01)]. Ms EU's view that the majority of election petitions involved disputes over facts and it was not appropriate for CFA to examine cases involving such disputes without their being heard by CA. Besides, it was unlikely that leave would be granted for such cases to appeal directly to CFA.</p> <p>The Administration responded that –</p> <p>(a) the Administration respected the views of the two legal professional bodies on the proposed leap-frog appeal mechanism. The Administration would provide response to their submissions; and</p> <p>(b) in the light of a judgment by CFA which declared that the finality provision in section 67(3) of LCO was unconstitutional and invalid as being inconsistent with Article 82 of the Basic Law which provided that the power of final adjudication of the Hong Kong Special Administrative Region shall be vested in CFA, the Administration proposed to institute a leap-frog appeal mechanism for election petitions arising from the Legislative Council, DC and Village Representative elections. The Administration considered that CFA would exercise great prudence in handling election petition cases.</p>	<p>Admin (para 2 of minutes)</p>
015353 - 015509	Chairman DAB	DAB's views on the proposed leap-frog appeal mechanism	
015510 - 020038	Chairman Ms Emily LAU Administration	Ms Emily LAU's view that restrictions should not be imposed on discussions or broadcasting activities on the Internet and that clear guidelines should be in	

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		<p>place for calculating expenses incurred in relation to the broadcast of election-related programmes on the Internet.</p> <p>The Administration's advice that expenses incurred in the production of election-related publicity, be it on the Internet or in hardcopy, would be counted as election expenses.</p>	
020039 - 020110	YTCNA	YTCNA's view that it would be difficult to calculate the production cost of each and every election-related programmes on the Internet.	
020111 - 020632	Chairman Mr IP Kwok-him	<p>Mr IP Kwok-him's views that –</p> <p>(a) it was appropriate to propose increase in the election expenses limit for the DC election having regard to the cumulative inflation rate; and</p> <p>(b) the proposal for increasing the election expenses limit for the CE election to \$13 million was appropriate as CE candidates would not only need to seek support from members of EC, but also to publicize and explain their election platform to the public at large.</p>	
020633 - 021047	Chairman Administration Mr Alan LEONG	<p>Mr Alan LEONG's views that –</p> <p>(a) the proposed increase in the election expenses limit for the DC and CE election should be calculated on the same basis, i.e. with regard to the cumulative inflation rate; and</p> <p>(b) apart from setting a high nomination threshold for the CE election, the Administration had proposed to increase the election expenses limit for the CE election to a high level in order to put the pan-democratic candidates at a further disadvantage.</p>	
021048 - 021554	Chairman Administration	<p>The Administration's response that –</p> <p>(a) while the election expenses limit for the DC election had been adjusted upward to \$48,000 in 2007, the election expenses limit for the CE election had not been revised in the last 10 years;</p> <p>(b) the CE Election (Amendment) Ordinance 2011 had amended the voting system for the CE</p>	

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		<p>election to the effect that a candidate shall only be elected if he or she obtained more than 600 valid votes. Hence, CE candidates would have to enhance their canvassing activities; and</p> <p>(c) EAC was soliciting views on whether the "equal time" principle should be applicable to the broadcast of election-related programmes on the Internet. The public consultation would not have any effect on the principle of calculating the production cost of election publicity on the Internet should candidates make use of the Internet to promote their candidature.</p>	
021555 - 021727	Chairman YTCNA HKRCG	Closing remarks Date of next meeting	

Council Business Division 2
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22 February 2012