

立法會
Legislative Council

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LC Paper No. CB(2)1160/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2011

Minutes of the sixth meeting
held on Monday, 13 June 2011, at 2:30 pm
in the Chamber 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 Timothy FOK Tsun-ting, GBS, JP
 - Hon Vincent FANG Kang, SBS, JP
 - Hon WONG Kwok-hing, MH
 - Hon LEE Wing-tat
 - Hon CHEUNG Hok-ming, GBS, JP
 - Hon WONG Ting-kwong, BBS, JP
 - Hon Cyd HO Sau-lan
 - 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
 - Dr Hon Samson TAM Wai-ho, JP
- Members absent** :
- Hon Abraham SHEK Lai-him, SBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon WONG Yuk-man

Public Officers : Constitutional and Mainland Affairs Bureau
attending

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Joshua LAW Chi-kong
Permanent 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

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

Mr Kerr LI Ming-yat
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

Mrs Fony TSANG
Legislative Assistant (2)3

Action

I. Meeting with the Administration

[LC Paper Nos. CB(3)701/10-11, CB(2)1759/10-11(01), CB(2)1906/10-11(01), CB(2)2036/10-11(01), CB(2)2052/10-11(01) and CB(2)2052/10-11(02)]

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

Draft Committee Stage amendments ("CSAs") to be proposed by the Administration

2. The Bills Committee considered the Administration's draft CSAs to amend the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in order to implement a de minimis arrangement for handling election returns ("ERs") with minor errors or omissions [LC Paper No. CB(2)2052/10-11(01)]. Members raised no objection to these CSAs.

Follow-up action required of the Administration

Admin 3. The Administration was requested to provide information relating to the offences regarding the submission of ERs in previous elections. The Administration undertook to discuss with the Registration and Electoral Office and the Independent Commission Against Corruption about the likelihood of issuing more than one notice to a candidate relating to the error or false statement in an ER.

Date of resumption of Second Reading debate and date of reporting to the House Committee

4. The Bills Committee noted that the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 6 July 2011. The Bills Committee agreed that the Administration's draft CSAs to the Bill regarding promotional letters to be sent by candidates free of postage would be circulated to members for consideration. The Bills Committee also agreed that the Bills Committee would report to the House Committee on 24 June 2011.

Action

II. Any other business

5. There being no other business, the meeting ended at 4:45 pm.

Council Business Division 2
Legislative Council Secretariat
22 February 2012

**Proceedings of the 6th meeting of the
Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011
on Monday, 13 June 2011, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000206 - 000310	Chairman	Opening remarks	
Clause-by-clause examination of the Electoral Legislation (Miscellaneous Amendments) Bill 2011 ("the Bill")			
000311 - 000352	Administration Chairman	Part 4 – Amendments Relating to Financial Assistance to Candidates in District Council ("DC") Election Clause 31 – District Councils Ordinance amended	
000353 - 000423	Administration	Clause 32 – Section 60D amended (Amount payable as financial assistance)	
000424 - 000434	Administration	Clause 33 – Schedule 7 amended (Financial assistance: specified rate)	
000435 - 000521	Chairman Administration	Part 5 – Amendment Relating to Election Expenses Limit for Chief Executive ("CE") Election Clause 34 – Maximum Amount of Election Expenses (CE Election) Regulation amended Clause 35 – Section 2 amended (Maximum amount of election expenses)	
000522 - 000551	Chairman Administration	Part 6 – Amendment Relating to Election Expenses Limit for DC Election Clause 36 - Maximum Amount of Election Expenses (DC Election) Regulation amended Clause 37 – Section 3 amended (Maximum amount of election expenses)	
000552 - 000638	Chairman Administration	Part 7 – Amendment Relating to Constituent in Education Subsector of Election Committee ("EC") Clause 38 – CE Election Ordinance amended Clause 39 – Schedule, section 2 amended (How EC is to be constituted)	

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000639 - 001606	Chairman Administration	<p>Completion of the clause-by-clause examination of the Bill</p> <p>Briefing by the Administration on its paper on "Follow up on issues raised at the meeting on 31 May 2011 on election petition mechanism and financial assistance scheme" [LC Paper No. CB(2)2052/10-11(02)]</p>	
001607 - 002545	Chairman Mr IP Kwok-him Administration Ms Emily LAU Dr Priscilla LEUNG	<p>Mr IP Kwok-him and Ms Emily LAU's views that the period of not holding a by-election for DCs could be extended to six months.</p> <p>Dr Priscilla LEUNG's enquiry on whether the Administration would have the discretion to decide whether to hold a by-election or not.</p> <p>The Administration's explanation on the statutory requirement and policy intention for not holding a by-election for DCs within the four months preceding the end of the current term of office of the elected members. The Administration considered that a period of four months was appropriate and should not be amended.</p> <p>Ms Emily LAU's enquiry and the Administration's response about the arrangements for the by-elections to be held in June and July 2011 to fill vacancies in the Yuen Long DC and Tsuen Wan DC respectively.</p>	
002546 - 003346	Chairman Administration	<p>Briefing by the Administration on its paper on "Follow up on issues raised at the Bills Committee meetings on 4 June and 9 June 2011" which was tabled at the meeting [LC Paper No. CB(2)2073/10-11(01)]</p> <p>The Administration informed members that having considered members' view on the arrangement for candidates to send out promotional letters free of postage, the Administration would introduce Committee Stage amendments ("CSAs") to section 43(4A) and (4B) of the Legislative Council Ordinance (Cap. 542) ("LCO").</p>	
003347 - 003842	Chairman Dr Priscilla LEUNG Administration	<p>In response to the Chairman and Dr Priscilla LEUNG's enquiries, the Administration explained that a list of geographical constituency ("GC") candidates, a list of DC (second) functional</p>	

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		<p>constituency ("FC") candidates, and a candidate of the Labour FC could send out one round of letter free of postage.</p> <p>Dr Priscilla LEUNG's further enquiry and the Administration's explanation on the proposed amendments to section 43(4A) and (4B) of LCO.</p>	
003843 - 004359	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE's enquiry and the Administration's explanation on the three scenarios as set out in paragraphs 6(a) to (c) of the Administration's paper in relation to the arrangement for candidates to send out promotional letters free of postage.</p> <p>Mr Paul TSE queried whether a free postage letter could contain information prejudicing against other candidates.</p> <p>The Administration responded that –</p> <p>(a) according to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), a person, other than a candidate or a candidate's election expense agent, engaged in illegal conduct at an election if the person incurred election expenses at or in connection with the election; and</p> <p>(b) any publicity material irrespective of whether the information contained therein was published for the purpose of promoting or prejudicing the election of a candidate should be regarded as an election advertisement ("EA") and the expenses incurred should be counted towards the election expenses of the candidates concerned.</p>	
004400 - 004648	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO considered that to avoid abuse of the new arrangement for candidates to send out promotional letters free of postage, there should be clear guidelines on the calculation of expenses incurred in the production of the joint promotion letters by the list/lists of candidates concerned.</p> <p>The Administration assured members that clear guidelines would be drawn up in respect of the new arrangement for candidates to send out promotional letters free of postage.</p>	

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		<p>In response to Ms Cyd HO's enquiry about smear campaign, the Administration advised that before incurring expenses to carry out any smear campaign for a candidate, a person would need the authorization of that candidate to be his/her election expense agent. If the smear campaign included EAs, all the requirements of ECICO must be complied with.</p>	
004649 - 010038	<p>Chairman Ms Emily LAU Administration Mr Alan LEONG Mr IP Kwok-him Dr Priscilla LEUNG</p>	<p>In response to the enquiries of Ms Emily LAU, Mr IP Kwok-him and Dr Priscilla LEUNG, the Administration explained that under the proposed arrangement, a promotional letter sent by or on behalf of a list of candidates which was validly nominated for DC (second) FC might contain information on any list/lists of candidates validly nominated for one single GC, or vice versa.</p> <p>Mr Alan LEONG's enquiry and the Administration's explanation on the arrangement for sending out a promotional letter in the circumstances that a political party had two lists of candidates running for the DC (second) FC election.</p>	
010039 - 010620	<p>Chairman Mr Paul TSE Administration</p>	<p>Mr Paul TSE's view that the Administration should allow a letter sent by or on behalf of a list of candidates which was validly nominated for the DC (second) FC to contain information on any list/lists of candidates validly nominated for any GC.</p> <p>The Administration responded that the free postage to candidates was paid out of general revenue. While the Administration had refined its proposal for the sake of facilitating the participation of various political parties/groups in elections, it must also give due regard to the interests of independent candidates.</p>	
010621 - 010811	<p>Chairman Ms Emily LAU</p>	<p>Ms Emily LAU's view that the Administration should ensure that candidates and the public were aware of the new arrangement for sending out promotional letters free of postage. Ms LAU was also of the view that the Administration should consider other forms of assistance to candidates in distributing their election-related materials by more environmental-friendly means.</p>	

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010812 - 011106	Chairman Dr Priscilla LEUNG Administration	<p>Dr Priscilla LEUNG's view that political parties/groups would very likely have more than one list of candidates running for the DC (second) FC election.</p> <p>The Administration responded that it was expected that there would be keen competition in the DC (second) FC election. The proposed arrangement was intended to facilitate candidates in sending out promotional letters free of postage rather than to put restrictions on the participation of political parties/groups in elections.</p>	
011107 - 011701	Chairman Administration	Briefing by the Administration on its paper on CSAs to the Bill proposed by the Administration in relation to the implementation of a de minimis arrangement for handling election returns ("ERs") with minor errors or omissions [LC Paper No. CB(2)2052/10-11(01)]	
011702 - 012337	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU reiterated her request for the Administration to provide information relating to the offences regarding the submission of ERs in previous elections.</p> <p>Ms Emily LAU enquired whether the Administration would consider allowing a candidate or list of candidates to revise the ER more than once in respect of an election.</p> <p>The Administration responded that –</p> <p>(a) for the elections held in 2006 to 2008, the Independent Commission Against Corruption ("ICAC") had received about 900 cases relating to ERs, involving failure to set out relevant election expenses or incorrectness in the amount of any expense set out in the ERs; and</p> <p>(b) based on previous investigations undertaken by ICAC concerning minor breaches, and should the proposed de minimis arrangement apply to the aforementioned elections, the proposed arrangement would have covered around 70% of these cases. The Administration considered it appropriate to allow a candidate/list of candidates to revise the ER once only in respect of an election.</p>	Admin (para 3 of minutes)

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012338 - 012918	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE's views that –</p> <ul style="list-style-type: none"> (a) the Administration should allow a candidate or list of candidates to revise the ER more than once in respect of an election; (b) the Administration should not set a period of 30 days for a candidate to lodge the revised ER; and (c) the Administration should allow more flexibility for rectifications of ERs under the proposed arrangement and should not lay down too many exemptions as set out in paragraph 6 of the paper. <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) a candidate had the responsibility to ensure that the ER lodged with the appropriate authority should be accurate. Having regard to the views expressed by members, the Administration proposed a de minimis arrangement for candidates to correct minor errors or omissions. The Administration considered it appropriate to allow a candidate/list of candidates to revise the ER once only in respect of an election; (b) the period of 30 days was counted from the date on which the appropriate authority notified the candidate of the error or false statement in the ER; and (c) the Administration should make it clear that the rectifications of ERs under the de minimis arrangement would not exempt the candidate or list of candidates from being investigated or subsequently prosecuted under ECICO in circumstances which involved corrupt conduct. 	
012919 - 015130	Chairman Ms Cyd HO Administration Mr Alan LEONG Mr Paul TSE Ms Emily LAU Dr Priscilla LEUNG	<p>Expression of views by members on –</p> <ul style="list-style-type: none"> (a) whether a copy of the revised ER should be lodged within 30 days after the date on which the candidate was notified of the error/omission in the ER; (b) whether the appropriate authority would issue more than one notice to a candidate relating to the error/omission in the ER; and 	

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		(c) whether a candidate should be allowed to revise the ER more than once in respect of an election.	
015131 - 015528	Administration Chairman	<p>The Administration's response that –</p> <p>(a) there should be a period within which a copy of the revised ER must be lodged by the candidate. A period of 30 days was a reasonable duration of time for candidates to correct the error or false statement in the ER;</p> <p>(b) it had been discussed and agreed among the Registration and Electoral Office ("REO"), Department of Justice and ICAC that a candidate or list of candidates might only revise the ER once in respect of an election; and</p> <p>(c) the Administration would discuss with REO and ICAC about the likelihood of issuing more than one notice to a candidate relating to the error or false statement in the ER.</p>	Admin (para 3 of minutes)
015529 - 021203	Chairman Administration Mr Paul TSE Ms Emily LAU Mr Alan LEONG	Draft CSAs to the Bill proposed by the Administration to amend ECICO in order to implement a de minimis arrangement for handling ERs with minor errors or omissions [Annex to LC Paper No. CB(2)2052/10-11(01)]	
021204 - 021351	Chairman Administration	<p>The Bills Committee expressed support of the CSAs to be proposed by the Administration.</p> <p>Consideration of the proposed CSAs to the Bill regarding promotional letters to be sent by candidates free of postage by circulation</p> <p>Date of resumption of Second Reading debate on the Bill and date of reporting to the House Committee</p>	