

**Bills Committee on
Legislative Council (Amendment) Bill 2011**

Follow-up of the Meeting on 23 June 2011

This paper provides further information on a few drafting issues raised by Members at the meeting on 23 June 2011.

Proposed Section 35A

2. We have proposed a Committee Stage Amendment (“CSA”) to amend section 35A(8)(b) as follows (amendment underlined):

“(b) the process through which the person becomes a Member under this section is to be regarded as part of an election, ...”.

3. In light of Members’ comments on whether the arrangements concerning the precedence list should be regarded as part of the election, we propose to further amend section 35(A)(8)(b) as follows (further amendment underlined):

“(b) the process through which the person becomes a Member under this section is to be regarded as a part of the result of the relevant election, ...”.

4. Members may wish to note that under the proposed section 58A (now section 58B), the Returning Officer (“RO”) must, as soon as practicable after the completion of the counting of votes, compile a precedence list and publish the list by notice in the Gazette. A precedence list will only be compiled based on the votes in the general election, and as such, the arrangements concerning the list should be regarded as a part of the result of the relevant election.

Section 61

5. We have proposed a CSA so that the grounds for lodging an election petition concerning a precedence list in the proposed section 61(2B) would include a ground similar to the one currently applicable to election petition concerning election of a Member in section 61(1)(b), i.e. “a ground specified in any other enactment that enables an election to be

question”. In light of Members’ comments that this ground may be too wide for election petitions concerning the precedence list, we have decided to delete the ground in section 61(2B)(e). Since the proposed precedence list is a new electoral arrangement, there should be no other grounds in other enactment which would be relevant.

Election Petitions and Court’s Determinations under Sections 67 and 70B

6. Under the proposed section 65(2) (now section 65(3)), an election petition questioning the inclusion of the name of a person in, the exclusion of the name of a person from, or the ranking of a person on, a precedence list published under the proposed section 58A (now section 58B) may be lodged only during the period of 2 months following the date on which the list is published.

7. Separately, under the proposed section 61(1)(a)(ia), an election petition may be lodged against a person in the precedence list who becomes a Member under the new section 35A on the ground that the person is not eligible to become a Member. Such petition will be subject to the same 2-month deadline for lodging petitions under section 65.

8. Members also expressed concern on the circumstances under which a by-election will be held under the proposed sections 67(2) and 70B after the trial of an election petition by the Court of First Instance (“CFI”) and the Court of Final Appeal (“CFA”) respectively. We propose to further amend section 67(2) so that the CFI will determine if the precedence list is valid instead of whether a by-election is to be held. The proposed revised provision will be as follows:

“(2) At the end of the trial of an election petition in relation to an election that was contested, the Court must determine

(a) whether some other person (whether or not that other person is on a precedence list published under section 58B) was duly elected instead; and

(b) (if the validity of the precedence list published under section 58B for the constituency is questioned) whether the precedence list is valid.”.

9. Similarly, section 70B(a)(ii)(B) will be further amended as follows:

“(B) if the person was not duly elected, whether some other person (whether or not the person is on a precedence list published under section 58B) was duly elected instead and, if the validity of the precedence list published under section 58B for the constituency is questioned, whether the precedence list is valid;”.

10. Under the latest set of proposed amendments, the CFI and CFA can determine whether the precedence list is valid. In effect, by virtue of the new section 35A, in the absence of a valid precedence list where a vacancy arises, a by-election will be held in accordance with section 36. The proposed amendment to sections 67(2) and 70B(a)(ii)(B) will ensure that any by-election will only be arranged by the Electoral Affairs Commission in the circumstances under section 36. This should address the concerns raised by Members about the original proposed provision for the Court to determine whether a by-election is to be held.

Constitutional and Mainland Affairs Bureau
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