

**Bills Committee on
Electoral Legislation (Miscellaneous Amendments) Bill 2012**

Proposed Committee Stage Amendments

This paper sets out a number of issues we need to address in making preparation for the 2012 Legislative Council election. In the light of views from Members, we will propose Committee Stage Amendments (“CSAs”) to take forward these issues.

Clarification of Provision in respect of District Council (second) Functional Constituency

Background and Existing Provisions

2. The Legislative Council (Amendment) Ordinance 2011 (No. 2 of 2011) (the “2011 Amendment Ordinance”) amended the Legislative Council Ordinance (Cap. 542) (“LCO”) by adding five seats to the Legislative Council (“LegCo”) which are to be returned from a new District Council (second) functional constituency (“DC (second) FC”). Candidates for the DC (second) FC will be elected by all registered GC electors other than those who are entitled, and opted, to vote in the other functional constituencies (“FCs”).

3. Section 25(3)(ca) of the LCO (**Annex A**), which was added to the LCO by the 2011 Amendment Ordinance, stipulates that a person eligible to be registered as an elector for the DC (first) FC and who would, but for that provision, be eligible to be registered in another FC of that person’s choice may be registered only for the DC (first) FC and not for that other FC. An elected DC member can, therefore, be registered as an elector only for the DC (first) FC, but not for the DC (second) FC or other FCs.

4. Section 37(2) of the LCO (**Annex B**) sets out the eligibility requirements for a person to be nominated as a candidate at an FC election. Section 37(2)(g) expressly stipulates that a person is eligible to be nominated as a candidate at an election for the DC (first) FC or the DC (second) FC if the person is an elected DC member.

5. In other words, an elected DC member cannot be registered as an elector in the DC (second) FC whereas he is eligible to be nominated as a candidate at the DC (second) FC election.

6. However, section 37(2)(b)(i) of the LCO requires, inter alia, that a candidate at an election for an FC must be registered and eligible to be registered as an elector for the constituency. This is inconsistent with the provisions in paragraphs 3 - 5 above, under which a candidate at an election for the DC (second) FC cannot be at the same time an elector for that constituency. Therefore, section 37(2)(b)(i) has to be amended to bring it in line with other relevant provisions.

Proposal and Considerations

7. The Administration proposes to amend section 37(2)(b) to put it beyond doubt that the requirement under section 37(2)(b)(i) does not apply to a candidate to be nominated at an election for the DC (second) FC. The Administration will propose an CSA to effect the proposal.

Mixing of Ballot Papers

Background and Existing Provisions

8. Under section 75(4A) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) (**Annex C**), the Presiding Officer of a main counting station for a LegCo election must mix the ballot papers of the polling station designated as the main counting station together with the ballot papers that have been delivered to the main counting station from small polling stations, ballot paper sorting stations, or dedicated polling stations before counting the votes at the main counting station. A similar provision is also made in section 76(2) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) for DC election.

Proposal and Considerations

9. To speed up the counting process, the Administration proposes to amend the relevant sections of the above regulations to the effect that the counting of votes of the ballot papers from the main counting station can commence before the arrival of the ballot papers from small polling stations or ballot paper sorting stations or dedicated polling stations. To ensure the secrecy of votes, amendments will stipulate that at least one of the ballot boxes of the main counting station containing ballot papers will be mixed with the ballot papers from small polling stations or ballot paper sorting stations or dedicated polling stations. If there is only one ballot box containing ballot papers in the main counting station, the mixing will

have to be done before the counting of votes.

Proposed Amendment to the Voter Register Format

Background and Existing Provisions

10. The existing voter registration system is transparent for the public to monitor. Every year, the Electoral Registration Officer will make available the Provisional Register (“PR”) and the Omissions List (“OL”) for public inspection. Before the publication of the Final Register (“FR”), the public is given the opportunity to lodge claims and objections against the entries in the PR and the OL. Under section 3(3) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) (**Annex D**), the names of persons in the register are set out in the electors’ names followed by their principal residential addresses only.

Proposed Amendment and Considerations

11. In light of the public concerns about suspected false registered addresses of electors, the Administration conducted public consultation on the proposed improvement measures of voter registration system from 16 January to 2 March 2012. To facilitate the public to identify irregularities in respect of residential addresses, one of the proposed measures is to amend section 3(3) of Cap. 541A to allow the register to set out also the electors in accordance with principal residential addresses so as to show the relevant electors’ names registered at the same address.

12. The consultation ended on 2 March 2012. A total of 11 submissions received commented on this specific proposal. About 60% of these submissions supported the proposal. They include, for example:

- (a) the Democratic Party was of the view that the proposal could facilitate the public to check whether there were any irregular registrations in a particular address, and the proposal should be applicable to both PR and FR; and
- (b) the Power for Democracy considered that it was difficult for electors to check whether there were any vote-riggings at their addresses under the current system. The proposal

could facilitate the public to check whether there were any irregular registrations at their addresses.

13. On the other hand, about 40% of the submissions were against or had concern about the proposal, mainly on personal privacy grounds. They include, for example:

- (a) the New People's Party considered that the proposal might infringe on personal privacy and the Administration should assess the implications of the proposal carefully;
- (b) the Civic Party considered that the proposal might be counter-effective and lead to many problems on protection of personal privacy. It suggested that the register should maintain its present format, but candidates, political parties and academic institutions should be allowed to assess the register more easily for monitoring the elections; and
- (c) the Law Society commented that the proposal was not fool proof and could be manipulated.

14. In light of the concerns raised, we have consulted the Privacy Commissioner for Personal Data ("PCPD") on the proposal. The PCPD is of the view that the proposal may be within the definition of "election-related purposes" as the proposal would only involve a new sorting sequence and would not involve disclosure of additional personal data of voters. Based on the above information, PCPD considers that the proposal is not inconsistent with Data Protection Principle 3 in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486), which is about the use (including disclosure or transfer) of personal data. Considering that the proposal will facilitate electors to inspect the register to help identify irregularities, we propose to introduce a CSA to incorporate the proposed amendment to section 3(3) of Cap. 541A.

Constituents of Functional Constituencies

Background

15. The Electoral Legislation (Miscellaneous Amendments) Bill 2012 contains amendments to update the names of certain bodies which are registered or are eligible to be registered as electors. The updating is technical but is required because these bodies are not operating under their old names. The updating does not change the composition of the

FCs concerned. The Administration has undertaken that if other name changes are identified during the legislative exercise, we will also include them in the Bill.

Proposal

16. The Administration proposes to update the name of one more organisation in the Sports, Performing Arts, Culture and Publication FC in addition to the updating of names of six organisations as set out in Clause 31 to Clause 37 of the Bill. The name of the organisation in the LCO as provided in Schedule 1B to the LCO is “New Territories Regional Sports Association (新界區體育協會)” and the new name of the organisation is “The New Territories Regional Sports Association (新界區體育總會)”.

17. Under section 2(5)(a) of the Schedule to the Chief Executive Election Ordinance (Cap. 569), the composition of the subsectors which has the same name as that of a FC is to be the same as that of the FC. Therefore, the updating of the name as mentioned in paragraph 16 above will also be applicable to the Sports, Performing Arts, Culture and Publication Subsector.

Voting arrangement for an agency or office of overseas governments

Background

18. The 2011 Amendment Ordinance also amended section 31 of the LCO by adding subsections (3) and (4) -

“(3) A consular post to which any privilege or immunity is accorded under the Consular Relations Ordinance (Cap. 557) is disqualified from being registered as a corporate elector.

(4) An organisation to which section 2 of the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) applies or an international organisation defined in section 2 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) is disqualified from being registered as a corporate elector.”

19. The above subsections disqualify consular posts which enjoy privileges and immunities under the Consular Relations Ordinance or

international organisations as defined under the International Organizations and Diplomatic Privileges Ordinance and the International Organizations (Privileges and Immunities) Ordinance from being registered as a corporate elector for FCs.

20. However, sections 31(3) and (4) of the LCO do not disqualify an office or agency which is a representative of a government or an administration which does not enjoy any privilege or immunity or is not accorded the status of an international organisation under the local legislation. Examples include an office representing a city of a foreign country in Hong Kong. There are views that such offices or agencies should not be eligible for registration as an elector of the FC.

Proposal and Considerations

21. We propose to amend the LCO to the effect that an office or an agency of a Government at a national or sub-national (including state, province, region, county, prefecture, city and municipality) level of a foreign country is disqualified from being registered as a corporate elector.

Advice sought

22. Members are invited to provide their views on the proposals set out in paragraphs 7, 9, 11 to 14, 16 to 17 and 21.

Constitutional and Mainland Affairs Bureau
March 2012

Chapter: 542	Title: LEGISLATIVE	Gazette 2 of 2011
	COUNCIL	Number:
	ORDINANCE	
Section: 25	Heading: Who is eligible to be registered as an elector: functional constituencies	Version Date: 11/03/2011

Expanded Cross Reference:

20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 20M, 20N, 20O, 20P, 20Q, 20R, 20S, 20T, 20U, 20V, 20W, 20X, 20Y, 20Z

Remarks:

The amendments made to this section by the Legislative Council (Amendment) Ordinance 2011 (2 of 2011) shall come into operation on 11 March 2011 for the purpose only of enabling arrangements to be made for-

- (a) the holding of the elections of members of the Election Committee under the Chief Executive Election Ordinance (Cap 569) in 2011; and
- (b) the holding of the Legislative Council general election in 2012.

(1) Subject to this Part, a person is eligible to be registered as an elector for a functional constituency only if the person-

(a) is a person specified-

- (i) for the Heung Yee Kuk functional constituency, in section 20A; or
- (ii) for the agriculture and fisheries functional constituency, in section 20B; or
- (iii) for the insurance functional constituency, in section 20C; or
- (iv) for the transport functional constituency, in section 20D; or
- (v) for the education functional constituency, in section 20E; or
- (vi) for the legal functional constituency, in section 20F; or
- (vii) for the accountancy functional constituency, in section 20G; or
- or
- (viii) for the medical functional constituency, in section 20H; or
- (ix) for the health services functional constituency, in section 20I; or
- or
- (x) for the engineering functional constituency, in section 20J; or
- (xi) for the architectural, surveying and planning functional constituency, in section 20K; or
- (xii) for the labour functional constituency, in section 20L; or
- (xiii) for the social welfare functional constituency, in section 20M; or
- (xiv) for the real estate and construction functional constituency, in section 20N; or
- (xv) for the tourism functional constituency, in section 20O; or
- (xvi) for the commercial (first) functional constituency, in section 20P; or

(xvii) for the commercial (second) functional constituency in section 20Q; or
(xviii) for the industrial (first) functional constituency, in section 20R;
or
(xix) for the industrial (second) functional constituency, in section 20S;
or
(xx) for the finance functional constituency, in section 20T; or
(xxi) for the financial services functional constituency, in section 20U;
or
(xxii) for the sports, performing arts, culture and publication functional constituency, in section 20V; or
(xxiii) for the import and export functional constituency, in section 20W;
or
(xxiv) for the textiles and garment functional constituency, in section 20X; or
(xxv) for the wholesale and retail functional constituency, in section 20Y; or
(xxvi) for the information technology functional constituency, in section 20Z; or
(xxvii) for the catering functional constituency, in section 20ZA; or
(xxviii) for the District Council (first) functional constituency, in section 20ZB; or (Replaced 48 of 1999 s. 16. Amended 2 of 2011 s. 13)
(xxix) for the District Council (second) functional constituency, in section 20ZC; and (Added 2 of 2011 s. 13)

(b) if a natural person, is either-

- (i) registered as an elector under this Part for a geographical constituency; or
- (ii) eligible to be registered as an elector under this Part for a geographical constituency and has made an application to be so registered.

(2) A person who, but for this subsection, would be eligible to be registered in 2 or more functional constituencies may be registered in only one of those constituencies of that person's choice.

(2A) Despite section 20ZC, a person who is registered in any functional constituency other than the District Council (second) functional constituency is, for the purpose of subsection (2), regarded as eligible to be registered in the District Council (second) functional constituency. (Added 2 of 2011 s. 13)

(3) Despite subsection (2)-

(a)-(b) (Repealed 48 of 1999 s. 16)

(ca) a person eligible to be registered as an elector for the District Council (first) functional constituency and who would, but for this paragraph, be eligible to be registered in another functional constituency of that person's choice may be registered only for the District Council (first) functional constituency and not for that other functional constituency; and (Added 2 of 2011 s. 13)

(c) a person eligible to be registered as an elector for the Heung Yee Kuk functional constituency and who would, but for this paragraph, be eligible to be registered in another functional constituency of that person's choice may,

subject to paragraph (ca), be registered only for the Heung Yee Kuk functional constituency and not for that other functional constituency; and (Amended 2 of 2011 s. 13)

(d) subject to paragraphs (ca) and (c), a person eligible to be registered as an elector for the agriculture and fisheries, the insurance or the transport functional constituency and who would, but for this paragraph, be eligible to be registered in another functional constituency of that person's choice may be registered only for that functional constituency and not for that other functional constituency. (Amended 2 of 2011 s. 13)

(4) A body specified in section 20C, 20L, 20T, 20U(1)(a), 20V(1)(b), (d), (e), (j) or (k), 20W(a) to (c), 20X(d) or (e), 20Z(1)(l) or 20ZA(a) is eligible to be registered as a corporate elector for the relevant functional constituency only if it has been operating for the 12 months immediately before making its application for registration as an elector. (Amended 12 of 2000 s. 23; 15 of 2000 s. 3; 5 of 2002 s. 407; 25 of 2003 s. 16; 10 of 2006 s. 29)

(5) A body that is a corporate member of a body specified in section 20B(a), 20N to 20S, 20U(1)(c), 20V(1)(a) or (g) to (i), 20W(e), 20X(a) or (b) or 20Z(1)(ia), (ja)(i) or (k) or Schedule 1C is eligible to be registered as a corporate elector for the relevant functional constituency only if it has been a corporate member of the second-mentioned body and has been operating for the 12 months immediately before making its application for registration as an elector. <* Note - Exp. X-Ref.: Sections 20N, 20O, 20P, 20Q, 20R, 20S *> (Amended 12 of 2000 s. 23; 15 of 2000 s. 3; 25 of 2003 s. 16)

(6) A natural person who is a member of a body specified in sections 20B to 20Z (other than a body specified in section 20E(b), 20F(a) or (b), 20J(b), 20K(b), (d), (f) or (h) or 20Z(1)(a) to (j) or (ja)(ii), (iii) or (iv)) is eligible to be registered as an elector for the relevant functional constituency only if the person has been a member of the body for the 12 months immediately before making an application for registration as an elector. <* Note - Exp. X-Ref.: Sections 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 20M, 20N, 20O, 20P, 20Q, 20R, 20S, 20T, 20U, 20V, 20W, 20X, 20Y, 20Z *> (Amended 25 of 2003 s. 16)

(7) It does not matter that a period of 12 months referred to in this section may have begun before the commencement of this section.

(Amended 48 of 1999 s. 16)

Annex B

Chapter:	542	Title:	LEGISLATIVE COUNCIL ORDINANCE	Gazette Number:	2 of 2011
Section:	37	Heading:	Who is eligible to be nominated as a candidate	Version Date:	11/03/2011

Remarks:

The amendments made to this section by the Legislative Council (Amendment) Ordinance 2011 (2 of 2011) shall come into operation on 11 March 2011 for the purpose only of enabling arrangements to be made for-

- (a) the holding of the elections of members of the Election Committee under the Chief Executive Election Ordinance (Cap 569) in 2011; and
- (b) the holding of the Legislative Council general election in 2012.

(1) A person is eligible to be nominated as a candidate at an election for a geographical constituency only if the person- (Amended 25 of 2003 s. 20)

- (a) has reached 21 years of age; and
- (b) is both registered and eligible to be registered as an elector for a geographical constituency; and
- (c) is not disqualified from being elected as a Member by virtue of section 39 or any other law; and
- (d) has ordinarily resided in Hong Kong for the 3 years immediately preceding the nomination; and
- (e) is a Chinese citizen who is a permanent resident of Hong Kong with no right of abode in any country other than the People's Republic of China.

(2) A person is eligible to be nominated as a candidate at an election for a functional constituency only if the person-

- (a) has reached 21 years of age; and
- (b) either-
 - (i) is both registered and eligible to be registered as an elector for the constituency; or
 - (ii) in the case of a functional constituency other than the District Council (first) functional constituency and the District Council (second) functional constituency, satisfies the Returning Officer for the constituency that the person has a substantial connection with the constituency; and (Replaced 48 of 1999 s. 22. Amended 2 of 2011 s. 15)
- (c) is both registered and eligible to be registered as an elector for a geographical constituency; and
- (d) is not disqualified from being elected as a Member by virtue of section 39 or any other law; and
- (e) has ordinarily resided in Hong Kong for the 3 years immediately preceding the nomination; and
- (f) except in the case of the 12 functional constituencies specified in subsection

(3), is a Chinese citizen who is a permanent resident of Hong Kong with no right of abode in any country other than the People's Republic of China; and (Amended 2 of 2011 s. 15)

(g) in the case of the District Council (first) functional constituency and the District Council (second) functional constituency, is a member of any District Council established under the District Councils Ordinance (Cap 547) who is elected under Part V of that Ordinance. (Added 2 of 2011 s. 15)

(3) The following 12 functional constituencies are specified for the purposes of subsection (2)-

- (a) the legal functional constituency;
- (b) the accountancy functional constituency;
- (c) the engineering functional constituency;
- (d) the architectural, surveying and planning functional constituency;
- (e) the real estate and construction functional constituency;
- (f) the tourism functional constituency;
- (g) the commercial (first) functional constituency;
- (h) the industrial (first) functional constituency;
- (i) the finance functional constituency;
- (j) the financial services functional constituency;
- (k) the import and export functional constituency;
- (l) the insurance functional constituency.

(4) A Member is not eligible to be nominated as a candidate at a by-election.

Chapter:	541D	Title:	ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) REGULATION	Gazette Number:	L.N. 208 of 2009
Section:	75	Heading:	Counting of votes for geographical constituencies	Version Date:	30/10/2009

(1) At the counting zone for a geographical constituency, the ballot papers for that constituency, that is—

- (a) in the case of a general election, the ballot papers whose numbers are counted and recorded under section 74A(1);
- (b) in the case of a by-election, the ballot papers whose numbers are counted and recorded under section 74B(1A) and (1B)(a),

must be dealt with by the Presiding Officer as provided in this section. (L.N. 147 of 1998; L.N. 65 of 2000; L.N. 84 of 2004)

(2)-(4) (Repealed L.N. 84 of 2004)

(4A) The Presiding Officer of a main counting station must mix the ballot papers of the polling station designated as the main counting station together with— (L.N. 130 of 2009)

- (a) the ballot papers that have been delivered to the main counting station from one or more small polling stations; and
- (b) the ballot papers that have been delivered to the main counting station from one or more ballot paper sorting stations, or one or more dedicated polling stations, as may be appropriate, (L.N. 197 of 2009)

before counting the votes at the main counting station. (L.N. 84 of 2004; L.N. 130 of 2009)

(5) GC ballot papers are to be separated with reference to the list of candidates for which the vote has been recorded.

(6) The votes recorded on the GC ballot papers, including those recorded on the GC ballot papers handed over to a Returning Officer under section 74(8)(c), are to be counted according to the system of counting described in section 49 of the Legislative Council Ordinance (Cap 542). (L.N. 84 of 2004)

(7) In the course of counting in accordance with subsection (6)—

- (a) any ballot paper—
 - (i) which appears to have any writing or mark by which the elector can possibly be identified;
 - (ii) which appears to be not marked in accordance with section 55(2);

(iii) which appears to be substantially mutilated; or
(iv) which appears to be void for uncertainty,
is questionable and must be separated and forwarded to
the Presiding Officer to decide whether the vote is to be
counted in accordance with section 81; and
(b) any ballot paper described in section 80(1)(b), (c), (d), (f), (ha)
and (i) must be separated and the vote is not to be counted
pursuant to section 80. (L.N. 84 of 2004)

Annex D

Chapter:	541A	Title:	ELECTORAL AFFAIRS COMMISSION (REGISTRATION OF ELECTORS) (LEGISLATIVE COUNCIL GEOGRAPHICAL CONSTITUENCIES) (DISTRICT COUNCIL CONSTITUENCIES) REGULATION	Gazette Number:	L.N. 254 of 2002
Section:	3	Heading:	Form of register	Version Date:	28/02/2003

(1) A register is to be divided into sections so that there is a separate section for each Legislative Council constituency. (L.N. 284 of 1999)

(1A) For the purposes of section 29 of the District Councils Ordinance (Cap 547), each section of a register is to be further divided so that there is a separate subsection for each District Council constituency within the Legislative Council constituency to which that section relates. (L.N. 284 of 1999)

(1B) In a section of a register, the subsections for the District Council constituencies within the same District must be grouped together, and the name of the District must be shown in those subsections. (L.N. 284 of 1999)

(2) An entry in a register relating to a person must show the name and principal residential address of the person. (L.N. 284 of 1999)

(3) The order in which names of persons are to be arranged in each subsection of the register is as follows-

(a) the names of the persons in Chinese, arranged according to the number of strokes of the Chinese characters of their respective surnames, are to be recorded first;

(b) the names of the persons in English, arranged according to the alphabetical order of their respective surnames, must follow the entries at paragraph (a). (L.N. 284 of 1999)

(4) In a register, the name of a person is to be recorded-

(a) in Chinese, if the person's principal residential address is in Chinese on the application; or (L.N. 254 of 2002)

(b) in English, if the person's principal residential address is in English on the application. (L.N. 254 of 2002)

(5) The Electoral Registration Officer may, on or after the publication of a register, indicate on the register or a copy of it, by way of a note or other means that Officer considers appropriate-

(a) whether or not a person whose name is recorded in the register is- (L.N. 284 of 1999)

(i) registered as an elector for a functional constituency;

(ii) registered as a voter for a subsector or a sub-subsector;

or

(iii) a member of the Election Committee;

(b) the functional constituency, subsector or sub-subsector for which a person is registered as an elector or voter.

(6) The Electoral Registration Officer may correct, delete or revise any note or other indication referred to in subsection (5).

(7) Subject to this section, the Electoral Registration Officer may determine the form of a register.

(8) In subsection (5)-

"Election Committee" (選舉委員會) has the meaning assigned to it by section 2(1) of the Chief Executive Election Ordinance (Cap 569); (L.N. 254 of 2002)

"elector" (選民) means a person who is registered in a register of electors for functional constituencies compiled under section 32 of the Legislative Council Ordinance (Cap 542);

"functional constituency" (功能界別) has the meaning assigned to it by section 3(1) of the Legislative Council Ordinance (Cap 542);

"subsector" (界別分組), subject to section 1(2) of the Schedule to the Chief Executive Election Ordinance (Cap 569), has the meaning assigned to it by section 11(1) of that Schedule; (L.N. 254 of 2002)

"sub-subsector" (小組) has the meaning assigned to it by section 1(1) of the Schedule to the Chief Executive Election Ordinance (Cap 569); (L.N. 254 of 2002)

"voter" (投票人) means a person who is registered in subsector provisional register or a subsector final register within the meaning of section 11(1) of the Schedule to the Chief Executive Election Ordinance (Cap 569). (L.N. 254 of 2002)