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Paper for the House Committee

**Report of the Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2015**

Purpose

This paper reports on the deliberations of the Bills Committee on the Electoral Legislation (Miscellaneous Amendments) Bill 2015.

Background

2. On 17 October 2013, the Chief Executive ("CE") announced the setting up of the Task Force on Constitutional Development ("Task Force") to handle the public consultation on the methods for selecting CE in 2017 and for forming the Legislative Council ("LegCo") in 2016. On 4 December 2013, the Task Force published the Consultation Document on Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016, and announced the commencement of a five-month public consultation exercise.

3. On 15 July 2014, the Administration published the Report on the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016. According to the Administration, among the views received, there are more views which consider that efforts should be focused on the proper handling of universal suffrage for the CE election in 2017; there could be no change to the method for forming LegCo in 2016; and after the implementation of universal suffrage for the CE election in 2017, the community may focus on discussing how to attain the ultimate aim of electing all Members of LegCo by universal suffrage as stipulated in Article 68 of the Basic Law ("BL"). On the same day, CE submitted to the Standing Committee of the National People's Congress ("NPCSC") his report on whether there is a need to amend the methods for selecting CE of the Hong Kong Special Administrative Region ("HKSAR") in 2017 and for forming LegCo of HKSAR in 2016 ("CE's Report"). CE recommended that "there is a need to amend the method for selecting the CE in 2017 in order to attain the aim of universal suffrage. Annex II to the Basic Law concerning the method for forming the LegCo in 2016 need not be amended."

4. After considering CE's Report, NPCSC adopted the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 ("the Decision") on 31 August 2014. According to the Decision, the existing formation method and voting procedures for LegCo as prescribed in Annex II to BL will not be amended. The formation method and procedures for voting on bills and motions of the fifth term LegCo will continue to apply to the sixth term LegCo in 2016. In other words, the sixth term LegCo in 2016 should continue to consist of 70 Members, and the number of Members returned each by the geographical constituency ("GC") and functional constituency ("FC") elections is 35 respectively.

The Electoral Legislation (Miscellaneous Amendments) Bill 2015 ("the Bill")

5. The Bill seeks to amend certain pieces of electoral legislation to introduce technical amendments concerning the lists of persons in certain FCs, the name of an FC and an Election Committee ("EC") subsector, the list of constituents of a EC subsector, the registration of voters for a EC subsector and the counting procedure for an FC; and to make other minor amendments.

The Bills Committee

6. At the House Committee meeting on 24 April 2015, a Bills Committee was formed to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Mr IP Kwok-him, the Bills Committee has held three meetings with the Administration and received views from the public at one of the meetings. A list of the organizations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Change in nomenclature of the Architectural, Surveying and Planning FC

8. The Administration has informed members that the proposal of renaming the Architectural, Surveying and Planning FC as the Architectural, Surveying, Planning and Landscape FC is only a technical amendment to better reflect the current composition of the FC (i.e., architects, surveyors, planners and landscape architects) without affecting the existing definition of the electorate of the FC.

The Administration has pointed out that the eligibility for registration as electors of the FC concerned is clearly provided for under section 20K of the Legislative Council Ordinance (Cap. 542) ("LCO"). According to the provision, persons who may register as electors in the FC concerned are those who have registered under specified ordinances (namely the Architects Registration Ordinance (Cap. 408), the Landscape Architects Registration Ordinance (Cap. 516), the Surveyors Registration Ordinance (Cap. 417) and the Planners Registration Ordinance (Cap. 418)) and those who are members of specified professional bodies entitled to vote at the general meetings of such bodies.

9. The Administration has advised that corresponding amendment (i.e., clause 15(1) of the Bill) would be made to the Schedule to the Chief Executive Election Ordinance (Cap. 569) to reflect the corresponding change to the name of the relevant EC subsector.

10. Mr CHUNG Kwok-pun has enquired whether the Textiles and Garment FC could be renamed the Textiles, Garment and Fashion FC. The Administration has explained that the Bill only seeks to make necessary technical amendments whilst maintaining the existing delineation of the FCs concerned intact.

Requests from individual bodies for inclusion in FCs

11. Mr Charles MOK and Mr CHUNG Kwok-pun have referred to requests from individual bodies for inclusion in the Information Technology FC ("ITFC") and the Textiles and Garment FC and asked why the Administration has provided no definite reply. They have also asked about the mechanism for handling such requests and the relevant considerations.

12. The Administration has explained that for a body to be added to an FC, it should be a representative one and is active in supporting the development of the sector concerned. In line with the established practice, the advice of the relevant bureaux/departments would be sought in consideration of whether individual bodies fulfil such criteria. It is also the Administration's established policy that it would not comment on individual cases.

13. Mr Charles MOK and Mr CHUNG Kwok-pun consider that all the bodies concerned fulfill the said criteria. They have expressed dissatisfaction that the Administration has not included these bodies in the relevant FCs without giving any explanation. They have also expressed dissatisfaction that the Administration has not contacted the bodies concerned so far to seek any supplementary information in connection with their requests. Mr MOK takes the view that the mechanism for determining which bodies could be added as new electors to an FC lacks transparency and accountability.

14. The Administration has reiterated that in keeping with the established practice, the relevant bureaux and departments will be consulted before each LegCo general election to review whether the delineation of the electorate of FCs under LCO needs to be adjusted. Requests (e.g., from bodies for inclusion into or deletion from FCs, change of names of the bodies, etc.) received since the last review will also be considered. In line with past practice, the Administration will inform the relevant bodies of the outcome of their requests after completion of the relevant legislative exercise.

15. In response to Mr Charles MOK's enquiry, the Administration has confirmed that in considering the requests concerning ITFC, the Commerce and Economic Development Bureau and the Office of the Government Chief Information Officer have been consulted.

FC voter registration of an association in the printing industry

16. Mr MA Fung-kwok has pointed out that an association in the printing industry ("the Association") is restricted to be registered as an elector of the Insurance FC despite the repeated requests by the Association for inclusion in the Sports, Performing Arts, Culture and Publication FC because the Association does not consider that it belongs to the insurance sector. The Administration has explained that since the Association is an association of underwriters approved by the Insurance Authority under the Insurance Companies Ordinance (Cap. 41) to carry on insurance business, it fulfils the eligibility to be registered as an elector of the Insurance FC under LCO. In accordance with section 25(3)(d) of LCO¹, the Association can only be registered for the Insurance FC and not for another FC.

17. Mr MA Fung-kwok and Mr IP Kwok-him, however, consider that the case may warrant special consideration as the Association all along does not consider that it belongs to the insurance sector. The Administration has further explained that under LCO, if a person is eligible to be registered as an elector in one of the four special FCs, namely Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport, the person can only be registered as an elector of that special FC unless he or she is eligible for registration in the District Council ("DC") (First) FC.

¹ Section 25(3)(d) of LCO stipulates that -

"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."

Education FC

18. Regarding the definition of electors of the Education FC under section 20E(a) and (aa) of LCO, Mr IP Kin-yuen considers that based on past experience of LegCo general elections, the interpretation of "full-time academic staff engaged in teaching or research and administrative staff of equivalent rank" by the institutions under section 20E(a) and (aa) seems to vary. He has observed that at present, the eligible teaching or research staff members of the institutions concerned range from senior to junior ranks, whereas their eligible administrative staff members are limited to those in senior ranks. He considers that this is not in line with the description "of equivalent rank" in the aforementioned definition. He has requested provision of a list of all the eligible ranks of "full-time academic staff engaged in teaching or research and administrative staff of equivalent rank" in each institution under section 20E(a) and (aa) of LCO for members' reference.

19. The Administration has explained that in accordance with section 9(1) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B), for the purpose of preparing an FCs register or a subsector register, the Electoral Registration Officer ("ERO") may require a body to furnish such information as ERO may specify. The institutions under section 20E(a) and (aa) of LCO are required to, in accordance with such requirements, compile lists of staff that are eligible for registration and provide such lists to the Registration and Electoral Office ("REO"), so as to facilitate REO to verify particulars of registered electors in the register and applicants for new registration, in order to confirm their eligibility for registration in the Education FC. The provision stipulates that information obtained may only be used for the purpose of preparing a register or in specified occasions or legal proceedings; REO is thus not in a position to disclose the requested information.

20. The Administration has further explained that given their different staffing structures, the institutions concerned should draw up their respective lists of eligible staff for registration in the Education FC in accordance with the relevant provisions in the light of their actual circumstances. Individual staff members who are dissatisfied with the relevant decisions could lodge claims with the authorities concerned, which would be dealt with through the established channel.

Change of names of specified bodies

21. Noting that the Bill seeks to amend the Chinese name of a specified body by adding " 有限公司 ", Mr Paul TSE has expressed concern that such changes

may cast doubt on the eligibility of the members of that specified body to vote in the last round of LegCo election. He has suggested that consideration should be given to adding a provision to LCO specifying that the registration eligibility of a specified body in an FC will not be affected even if it has changed name after its last registration in that FC. The Administration has agreed to give thought to the suggestion in future review.

Technical amendments relating to counting procedures

22. Regarding the proposed technical amendments² in relation to the counting procedures for the DC (Second) FC election, Mr WONG Yuk-man has expressed concern whether the proposed amendments would result in reducing the number of times of verification of the ballot paper account of a polling station. The Administration has explained that the proposed amendments only seek to remove possible procedural ambiguities and better align with the policy objectives to speed up the counting process and to protect secrecy of votes. The proposed procedures are similar to those in respect of main counting stations in a GC election, which have already been implemented with the passage of the Electoral Legislation (Miscellaneous Amendments) Ordinance 2014 in July 2014. The Administration has confirmed that under the proposed amendments, the ballot paper account of a polling station would be verified for the same number of times as before.

Resumption of Second Reading debate

23. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 8 July 2015.

Committee stage amendments

24. The Administration and the Bills Committee have not proposed any Committee stage amendment to the Bill.

² Amendments are proposed to be made to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) to make clear that –

- (i) verification of the ballot paper account of a polling station (other than a small polling station ("SPS") or a dedicated polling station ("DPS")) will be done after the counting of votes; and
- (ii) for an SPS or a DPS, counting of the number of ballot papers and verification of the ballot paper account of that station will be done first. Such ballot papers will then be mixed with the ballot papers from a polling station (other than an SPS or a DPS) before counting of the votes. After completion of counting of votes, verification of the ballot paper account of that polling station will be done.

Advice sought

25. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
25 June 2015

**Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2015**

Membership list

Chairman Hon IP Kwok-him, GBS, JP

Members Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon Steven HO Chun-yin
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, JP
Dr Hon Kenneth CHAN Ka-lok
Hon SIN Chung-kai, SBS, JP
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

Total : 21 Members

Clerk Ms Joanne MAK

Legal Adviser Mr Kelvin LEE

Date 8 May 2015

《2015年選舉法例(雜項修訂)條例草案》委員會
Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2015

曾向法案委員會表達意見的團體/個別人士名單
List of organizations/individuals which/who have
submitted views to the Bills Committee

<u>名稱</u>	<u>Name</u>
1. 工程及科技學會香港分會	The Institution of Engineering and Technology Hong Kong
2. 自由黨憲制發展小組	Liberal Party Taskforce On Constitutional Development
3. 活力離島	Dynamic Islands
* 4. 香港教育專業人員協會	Hong Kong Professional Teachers' Union
* 5. 香港零售科技商會	Hong Kong Retail Technology Industry Association Ltd
6. 香港製衣同業協進會	Hong Kong Apparel Society Ltd
7. 專業資訊保安協會	Professional Information Security Association
* 只提交意見書 provided submissions only	