

立法會
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Paper for the House Committee meeting on 14 June 2019

**Report of the Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2019**

PURPOSE

This paper reports the deliberations of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2019.

BACKGROUND

2. To prepare for the 2020 Legislative Council ("LegCo") General Election to be held in the third quarter of 2020, the Administration has conducted a review of the delineation of the electorate of the functional constituencies ("FCs") in LegCo in consultation with relevant bureaux/departments ("B/Ds"). According to the Administration, the review was conducted on the basis of the existing electorate and all relevant requests received from individual bodies/persons since the last review in 2015. The electorate of FCs in LegCo is provided for under the Legislative Council Ordinance (Cap. 542) ("LCO").

3. The Administration has advised that after review, it has come up with a series of proposed technical amendments to LCO as set out at Annex B to the LegCo Brief (File Ref: CMAB C1/30/5/4), whilst maintaining the original delineation of FCs. The proposed technical amendments can be classified into the following categories:

- (a) to update the names of corporates specified under relevant sections of the existing legislation that have had their names changed since the last review in 2015;
- (b) to remove corporates which have ceased operation since the last review in 2015; and
- (c) to add new electors in the light of the prevailing situation of the FCs concerned.

4. The Administration also proposes to make consequential amendments to the Schedule to the Chief Executive Election Ordinance (Cap. 569) to reflect the corresponding changes to the electorate of the relevant Election Committee subsectors.

5. In the light of the experience gained from the last election cycle, the Administration also proposes to make a series of other technical amendments to improve electoral arrangements in the following aspects:

- (a) allowing candidates in candidate lists for a Geographical Constituency or the District Council (second) FC of the LegCo general election or by-election to submit the nomination form in a way authorized by the Chief Electoral Officer;
- (b) refining the requirement on thickness and size of each letter that may be sent free of postage by candidates; and
- (c) revising certain arrangements in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO").

Details of the above proposed technical amendments are set out in paragraphs 6 to 9 of the LegCo Brief under reference.

THE ELECTORAL LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2019

6. The Electoral Legislation (Miscellaneous Amendments) Bill 2019 ("the Bill") seeks to introduce necessary technical amendments for the 2020 LegCo General Election and other public elections, including technical amendments concerning the electorate of FCs, arrangements in ECICO, as well as various electoral procedures.

7. The Bill contains no commencement provision. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, if passed, would come into operation on the day the enacted Ordinance is published in the Gazette.

THE BILLS COMMITTEE

8. At the House Committee meeting on 22 March 2019, a Bills Committee was formed to scrutinize the Bill. The membership list of the Bills Committee is at **Appendix I**.

9. Under the chairmanship of Hon CHEUNG Kwok-kwan, the Bills Committee has held two meetings with the Administration and received public views at one of the meetings. A list of the organizations and individuals which/who have given views to the Bills Committee is at **Appendix II**.

DELIBERATIONS OF THE BILLS COMMITTEE

Technical amendments for functional constituencies

10. Hon Charles Peter MOK has pointed out that individual bodies in the information technology ("IT") sector have requested repeatedly over the years for inclusion in IT FC. However, the Administration has neither acceded to those requests nor contacted the bodies concerned to explain clearly the reasons for not including them in IT FC. Mr MOK has criticized that the existing mechanism for determining which bodies can be added as new electors to an FC ("the mechanism") lacks transparency. He has further pointed out that while the number of practitioners in the IT industry is estimated to be about 100 000 and is rapidly on the rise, the number of registered electors of IT FC in the 2018 Final Register was some 8 100 only. He has urged the Administration to take measures to broaden the electorate of IT FC.

11. Taking the Wholesale and Retail FC ("W&R FC") as an example, Hon AU Nok-hin also considers that the electorate of certain FCs is very narrow.¹ He has further pointed out that while he was accepted to be a candidate of W&R FC in the 2016 LegCo General Election in recognition that he had a substantial connection with the sector, he is regarded ineligible to be registered as an elector of that FC. He shares Mr MOK's view that the mechanism lacks transparency and there is a need to broaden the electorate of FCs to enhance representativeness.

12. The Administration has explained that the electorate of FCs in LegCo is provided for under LCO. Following the established practice, before each LegCo general election, the Constitutional and Mainland Affairs Bureau ("CMAB") would conduct a review of the delineation of the electorate of FCs in consultation with relevant B/Ds. The review was conducted on the basis of the existing electorate and all relevant requests received from individual bodies/persons since the last review in 2015. The Administration has further 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 B/Ds 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.

¹ W&R FC is composed of members of the 85 corporates listed in Schedule 1C to LCO.

13. The Administration has advised that if major adjustments are made to broaden the electorate of FCs significantly, it would be controversial and substantial changes would be involved. The Administration considers that this would require careful consideration. Nevertheless, the Administration has advised that, on the basis of maintaining the original delineation of the electorate of FCs, new umbrella organizations ("UOs") have in the past been added in the light of the prevailing situation of the FCs concerned.

14. With regard to IT FC, the Administration has advised that the Innovation and Technology Bureau ("ITB") is working on establishing a common benchmark on eligibility of different IT professionals in Hong Kong for recognition as electors in IT FC. ITB is planning to consult the IT sector on relevant issues in the second half of 2019.

15. Hon CHU Hoi-dick has enquired about the justifications for including Hong Kong Veterinary Association Limited ("HKVAL") but not bodies like the Kadoorie Farm, the Produce Green Foundation and the Hong Kong Organic Resource Centre in the Agriculture and Fisheries ("A&F") FC. He opines that if HKVAL, which assumes only a supportive role in the development of the A&F industries, is accepted for inclusion, the other abovementioned bodies should also be accepted as they are closely related to the sector. He considers that it is far too few to have only two bodies added to A&F FC as electors under the Bill. Moreover, he notes that HKVAL was not included in the Administration's proposal on bodies to be added to A&F FC for consultation with the Panel on Constitutional Affairs ("the CA Panel") in January 2019.

16. The Administration has explained that, as mentioned at the CA Panel in January 2019, the Administration was still processing several recent requests for inclusion in FCs, including the one submitted by HKVAL. The Administration has supplemented that the proposed inclusion has taken into account that the veterinary profession is closely related to the A&F sectors and the recent developments of the profession, including the establishment of a local veterinary college and the launch of Hong Kong Strategy and Action Plan on Antimicrobial Resistance (2017-2022).

17. Hon Steven HO has expressed support for the proposed technical amendments in relation to A&F FC under the Bill. He concurs with the Administration that the veterinary profession is closely related to the A&F industries and plays an important role in poultry farming. That said, Mr HO considers that the composition of A&F FC should be reviewed to keep up with the structural changes in the A&F industries and to cover the emergence of related bodies. He has suggested that the Administration may consider including UOs representing newly emerged industries (e.g. organic farming, inshore small craft fishing boats and fishing operations in distant waters) in A&F FC. He takes

the view that the Administration should step up liaison with stakeholders to keep abreast of the developments and changes in the sector.

18. Hon CHU Hoi-dick has also suggested that the Administration in future should take the initiative to approach stakeholders in the A&F industries to invite them to make applications for addition as electors to A&F FC. He considers that the relevant criteria for processing such applications should be clearly explained to stakeholders as well. The Administration has replied that CMAB would work closely with the Food and Health Bureau to keep in view the developments of the industries.

19. Hon MA Fung-kwok has requested the Administration to reconsider the request made by the Hong Kong Printing Association ("HKPA") for inclusion in the Sports, Performing Arts, Culture and Publication FC ("SPCP FC"). He notes that while HKPA all along does not consider that it belongs to the insurance sector, it had been registered as an elector of the Insurance FC until it ceased to be an association of underwriters approved by the Insurance Authority in 2016. HKPA is now no longer eligible to vote in any FCs despite the fact that it represents a significant number of printing firms in Hong Kong and has been active in supporting the development of the cultural and creative industries. Mr MA has urged the Administration to consider including HKPA in SPCP FC as requested repeatedly by HKPA over the past many years.

20. The Administration has explained that the request of including HKPA in SPCP FC as an UO would involve a significant change to the electorate of SPCP FC, while the Bill only seeks to make necessary technical amendments concerning the electorate of FCs. Nevertheless, the Administration has agreed that CMAB would work closely with the Home Affairs Bureau and the Commerce and Economic Development Bureau to keep in view the developments of the SPCP sectors and follow up on HKPA's request in accordance with the established practice.

21. Some members including Dr Hon Helena WONG and Hon AU Nok-hin have expressed concern about the lack of progress in achieving the ultimate aim of electing all Members of LegCo by universal suffrage, which, in their view, is in contravention with the "principle of gradual and orderly progress" in Article 68 of the Basic Law ("BL 68"). They take the view that even without amending the existing formation method for LegCo as prescribed in Annex II to the Basic Law to reduce the number of FC seats or abolish all FC seats altogether, the democratic element of the electoral method can be enhanced if the Administration takes proactive steps to broaden the electorate of FCs (e.g. by replacing corporate electors with individual electors). Hon AU Nok-hin has requested the Administration to consider a suggestion that the electorate of SPCP FC should be broadened to include individual arts workers who have been

specified by the Chief Executive ("CE") by notice in the Gazette for the purpose of nominating respective arts interest representatives for appointment to the Hong Kong Arts Development Council.

22. The Administration has stressed that the policy intent of the Bill does not include making substantive change to the electorate of FCs. Moreover, the Administration considers that in the absence of sufficient support in the community and clear consensus within various FCs, introducing major adjustments to the electorate of FCs would only lead to more controversies. The Administration has pointed out that according to BL 68, "the actual situation in the Hong Kong Special Administrative Region" also needs to be taken into account when considering whether Annex II to the Basic Law needs to be amended.

Other technical amendments for improving various electoral arrangements

Allowing candidates in candidate lists for a Geographical Constituency or the District Council (second) FC of the Legislative Council general election or by-election to submit the nomination form in a way authorized by the Chief Electoral Officer

23. In response to members' enquiries about the rationale of the above proposal, the Administration has explained that the proposal would allow the candidates of the constituencies concerned, who are unable to submit nomination forms in person for any justifiable reasons during the nomination period (e.g. hospitalization or out of town), to submit nomination forms through their appointed representatives. In line with the established practice, the proposed new arrangement will be set out in the relevant Guidelines on Election-related Activities for candidates' reference.

Refining the requirement on thickness and size of each letter that may be sent free of postage by candidates

24. Hon AU Nok-hin has enquired why it is proposed to tighten the size of postage-free letters in future elections. He considers that Hongkong Post should exercise discretion in handling such letters and allow flexibility for slight deviations if possible. The Administration has explained that the new requirement would align with the size limit of "small letters" according to Hongkong Post's definition, and the change is only minimal. Members have requested the Administration to publicize the new requirement to candidates of upcoming elections. The Administration has agreed to follow up.

Revising certain arrangements in the Elections (Corrupt and Illegal Conduct) Ordinance

Limits prescribed for ratifying minor errors under the de minimis arrangement

25. Some members have enquired about the justifications for the Administration's proposal to raise the limits prescribed for rectifying minor errors or omissions in election returns under the de minimis arrangement provided in section 37A of ECICO.² The Administration has advised that since the de minimis arrangement was introduced in 2011, the limits prescribed for different elections have not been revised despite increases in the election expense limits ("EELs"). It is proposed to raise the limits for different elections as set out in the Schedule to ECICO so as to facilitate candidates to rectify the minor errors or omissions in their election returns under the de minimis arrangement. In considering adjustments to the limits, the Administration is mindful that the limits for different elections should not be too high or too low relative to the respective EELs. The Administration has advised that the existing limits for different elections as a percentage of the respective EELs range from 0.04% to 1.54%, whereas the proposed limits would range from 0.3% to 5%. The Administration considers that the proposed adjustments relative to EELs are appropriate.

26. Pointing out that the electorate sizes of different FCs vary significantly, Hon Charles Peter MOK has enquired why a uniform limit of \$5,000 is proposed for all FC elections (except for the District Council (second) FC). The Administration has advised that the existing limit (\$500) is also adopted across the board and such arrangement has worked well according to past experience.

Threshold for the submission of invoices and receipts

27. In relation to the Administration's proposal to revise the threshold under section 37(2)(b) of the ECICO for the submission of invoices and receipts from \$100 to \$500, the Administration has advised that the arrangement is to help alleviate the workload of candidates when preparing their election returns.

Deadline for submitting election return for the Chief Executive election

28. With regard to the Administration's proposal of extending the deadline for submitting election returns for CE elections from 30 days to 60 days to align with that for LegCo elections, Hon KWOK Wai-keung has questioned whether

² The proposed changes to the limits prescribed for different elections for the de minimis arrangement under section 37A of ECICO are set out at Annex C to the LegCo Brief under reference.

the additional time would be sufficient as he notes that the EEL for CE elections is much higher than those for LegCo elections.

29. The Administration has advised that according to the records of the Registration and Electoral Office, in relation to the 2017 CE Election, the number of invoices and receipts submitted by each validly nominated candidate ranged from 430 to 1 714. Based on past experience, the Administration considers that candidates should have sufficient time to handle the necessary work after extending the deadline for submitting election returns from 30 days to 60 days.

Drafting issue

30. The Legal Adviser to the Bills Committee has recommended the Administration to make a textual amendment to the long title of the Bill by deleting "s" in the word "legislations" in the English text, so as to align with the usage of the word "legislation" in the long title of other ordinances concerning miscellaneous amendments to various electoral legislation. The Administration has adopted the suggestion and has proposed an amendment accordingly. Members have no comments on the proposed amendment.

PROPOSED AMENDMENT TO THE BILL

31. Members in general have not raised objection to the Administration's proposed amendment as elaborated in paragraph 30. The amendment to be moved by the Administration is at **Appendix III**. The Bills Committee will not propose any amendment to the Bill.

RESUMPTION OF SECOND READING DEBATE

32. Subject to the moving of the proposed amendment by the Administration, the Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 26 June 2019.

ADVICE SOUGHT

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

**Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2019**

Membership list

Chairman Hon CHEUNG Kwok-kwan, JP

Deputy Chairman Hon LUK Chung-hung, JP

Members Hon WONG Ting-kwong, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, BBS, JP
Hon Kenneth LEUNG
Hon KWOK Wai-keung, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon POON Siu-ping, BBS, MH
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying, JP
Hon LAU Kwok-fan, MH

Total : 22 Members

Clerk Ms Joanne MAK

Legal Adviser Ms Clara TAM

Date 12 April 2019

《2019年選舉法例(雜項修訂)條例草案》委員會
Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2019

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. 方國珊小姐	Miss Christine FONG Kwok-shan
2. 何希賢先生	Mr Harry HO
3. 李傲然先生	Mr Owan LI
4. 活力離島	The Dynamic Island
5. 香港文化監察	Hong Kong Culture Monitor
6. 香港印刷業商會	The Hong Kong Printers Association
7. 香港農業聯合會	Federation Of Hong Kong Agricultural Associations
* 8. 香港電子科技商會	Hong Kong Electronics & Technologies Association
9. 香港漁民團體聯會	Hong Kong Fishermen Consortium
* 10. 陳嘉朗	Leslie CHAN
11. 黃如榮先生	Mr WONG Yu -wing

* 只提交意見書
provided submissions only

Electoral Legislation (Miscellaneous Amendments) Bill 2019

Committee Stage

Amendment to be moved by the Secretary for Constitutional and Mainland Affairs

Clause

Amendment Proposed

Long title	In the English text, by deleting “legislations” and substituting “legislation”.
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