

Administration's Response to Points raised on 24 February 1999 by

Members of the Bills Committee on

Legislative Council (Amendment) Bill 1999

C (a) : The Administration is requested to provide a timetable showing the key steps leading to the 2000 Legislative Council (LegCo) election.

A (a) : Please see the timetable at Annex I.

C (b) : On the proposed provisions relating to the replacement of the Urban Council and Regional Council Functional Constituencies (FCs) by two new FCs, the Administration is requested to respond to a member's comment that it would be illogical for LegCo to consider these provisions which are in conflict with the relevant existing laws.

A (b) : We have sought legal advice on this issue. The Department of Justice confirms that the provisions which replace the Municipal Council FCs do not conflict with existing laws, and that it is legally in order for the Bill to replace the two Municipal Council FCs by two new FCs. As such, we do not consider that there is the question of requesting LegCo to consider provisions which are in conflict with existing laws.

C (c) : Since this Bill which contains provisions for the replacement of the Urban Council and Regional Council FCs is dealt with ahead of the bill to transfer the functions of the two Councils, it might give rise to a number of possible scenarios. The Administration is requested to explain how it would deal with situations whereby the replacement provisions in the current Bill are passed by LegCo while the later bill is not, or vice versa.

A (c) : Upon completion of the review on district organisations, the government proposes not to retain the two municipal councils after the terms of office of their members expire on 31 December 1999.

The existing Legislative Council Ordinance (Cap. 542) provides that members of the two Provisional Municipal Councils are members of the Municipal Council FCs. After the terms of office of the members of the Provisional Municipal Councils expire in end 1999, there would be no such persons as members of the Provisional Municipal Councils who fit the description of electors under the Legislative Council Ordinance to be electors of the relevant FCs. Precisely to solve this problem and to provide as early as possible a legal basis to the 2000 LegCo election, we submit the current Bill to amend the existing legislation.

After this Bill is passed, the Municipal Council FCs will be replaced by the new District Council and Catering FCs. Hence, the Bill will not pose any legal problems to the later bill which deals with the transfer of functions of the two Councils.

C (d) : The Administration is requested to provide information on the scheme for the registration of electors for the Catering FC and on the number of food business licence holders which have already registered as voters in the 1998 LegCo election.

A (d) : New section 20ZA under clause 13 of the Legislative Council (Amendment) Bill 1999 provides that the proposed Catering FC is composed of holders of food business licences under the Public Health and Municipal Services Ordinance (Cap. 132) and the bodies named in Schedule 1E.

Food business licence holders and bodies referred to in that section are eligible to be registered as electors for the proposed Catering FC. Section 48 of the existing Legislative Council Ordinance provides that a person is entitled to vote at an election only if he is registered as an elector. This provision applies to the proposed Catering FC.

The Catering sector is one of the existing Election Committee subsectors. At present, there are some 1,750 registered voters in the existing Catering subsector voter register.

To prepare for the proposed establishment of the Catering FC, clause 44 of the Bill seeks to add a new Schedule of savings and transitional provisions in the Legislative Council Ordinance. This new Schedule aims to facilitate the rolling over of names from the existing Catering subsector voter register to the first provisional register of electors for the Catering FC. Under these provisions, voters already registered for the Catering subsector who are eligible to be registered as electors for the proposed Catering FC will be automatically included in the first provisional register for the Catering FC. Subject to there being no objection to their inclusion allowed, these voters will be registered in the final register for the Catering FC. Holders of food business licences or bodies named in Schedule 1E which are eligible to be registered as electors for the proposed Catering FC but have not been registered in the existing Catering subsector register have to apply for registration as electors for the Catering FC. After the passage of this Bill, we intend to conduct a large-scale voter registration drive in early 2000.

- C (e) : In response to the Bills Committee on the District Councils Bill, the Administration has given the view that Article 25 of the ICCPR which provides inter alia for elections to be held by universal and equal suffrage is applicable to legislative organs, not the District Councils which are not organs of that nature. Against this background, the Administration is requested to respond to a member's comment that paragraph 28 of the LegCo Brief which states that the Bill is consistent with the human rights provisions of the Basic Law is no longer correct and should be amended.
- A (e) : Hong Kong's electoral system is formulated in accordance with Article 68 and Annex II of the Basic Law. Article 39 of the Basic Law provides that, inter alia, the ICCPR as applied to Hong Kong shall remain in force. Regarding whether the electoral system embodied in this Bill is consistent with the ICCPR, we pointed out in the Supplementary Report

submitted to the United Nations Human Rights Committee in 1996 that Hong Kong's electoral system in respect of elections to LegCo is appropriate and justifiable in present circumstances, and gives rise to no incompatibility with any provisions of the ICCPR as applied to Hong Kong. We have reiterated this stand in the Report in respect of the ICCPR submitted to the United Nations in 1999. The government's position remains unchanged.

- C (f) : In respect of proposed amendments to the delineation of the FC electorates, the Administration is requested to provide a list of corporate bodies added to or deleted from the existing lists; to inform members of the reasons for such additions or deletions; whether the bodies to be deleted have been consulted on the arrangement and their responses, if any.
- A (f) : A set of tables showing the proposed changes to the delineation of the electorates for the FCs and the reasons for the proposed additions and deletions is at Annex II.

The majority of the bodies whose names are to be removed have either ceased operation or dissolved. We have therefore not been able to inform these bodies of our proposal to remove them from the list of electorates. In the other cases where the bodies concerned are still in existence, it comes to our knowledge that they can no longer satisfy the criteria for inclusion in the electorates for the relevant FCs (for example, their franchises have expired or will soon expire). We are therefore of the view that it is not necessary to consult them.

C (g) : The Administration is requested to respond to members' discussion on the possibility of Members moving Committee Stage amendments on matter such as reform of the FCs and the system of voting and counting of votes.

A (g) : Concerning the issue of Members moving Committee Stage amendments to government bills, the government submitted last September a detailed paper to the Committee on Rules of Procedure of the Legislative Council for consideration (see Annex III). As to whether Members can move Committee Stage amendments on matters Members are concerned about, we would like to respond after knowing the actual provisions of the amendments.

Constitutional Affairs Bureau
March 1999

Ls148

**Bills Committee on the
Legislative Council (Amendment) Bill 1999**

**Timetable for action leading to
the 2000 Legislative Council (“LegCo”) Election**

<u>Items of work</u>	<u>Timing</u>
(1) Resumption of 2nd reading and 3rd reading of the Bill	By 14 July 1999 (before the last meeting of the LegCo prior to summer recess)^{Note 1}
(2) Demarcation of constituency boundaries	
(a) Electoral Affairs Commission (“EAC”) to make provisional recommendations (The provisional recommendations can be finalized in accordance with the numbers of LegCo Members to be returned from each constituency and all constituencies as provided in the Bill, and be published for public consultation only after the completion of step(1))	From passage of the Bill to August 1999
(b) Public consultation (30 days)	September 1999
(c) EAC to finalise recommendations and submit report to the Chief Executive (<i>The deadline specified in the Bill is 31 October 1999</i>)	October 1999
(d) Chief Executive in Council to make subsidiary legislation and to publish it in the Gazette	November 1999
(e) Negative vetting by the LegCo	December 1999

Items of work**Timing**

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| (3) Amendment/Making of regulations on voter registration | |
| <ul style="list-style-type: none"> (a) EAC to draft regulations
(The regulations can be finalized in accordance with the new provisions in the Bill, and be tabled for vetting by LegCo only after the completion of step(1)) (b) EAC to make regulations and publish them in the Gazette (c) Negative vetting by the LegCo | <p>September to late October 1999</p> <p>Early November 1999</p> <p>November to December 1999</p> |
| (4) Amendment/Making of regulations on appeals to Revising Officer in respect of voter registration and results of Election Committee subsector elections | |
| <ul style="list-style-type: none"> (a) Drafting of regulations (b) Chief Executive in Council to make regulations and publish them in the Gazette (c) Negative vetting by the LegCo | <p>September to late October 1999</p> <p>Early November 1999</p> <p>November to December 1999</p> |
| (5) 2000 voter registration campaign (The campaign can begin formally only after the completion of steps (1) and (2)) | January to March 2000 |

<u>Items of work</u>	<u>Timing</u>
(6) Amendment/Making of subsidiary legislation on election expenses limits, election deposit, subscriber requirements etc.	
(a) Drafting of subsidiary legislation	January to late March 2000
(b) Chief Executive in Council to make subsidiary legislation and publish it in the Gazette	Early April 2000
(c) Negative vetting by the LegCo	April to May 2000
(7) Amendment/Making of regulations on electoral procedures etc.	
(a) EAC to draft regulations	January to late March 2000
(b) EAC to make regulations and publish them in the Gazette	Early April 2000
(c) Negative vetting by the LegCo	April to May 2000
(8) Amendment/Making of rules on election petition	
(a) Drafting of rules	January to late March 2000
(b) The Chief Justice to make rules and publish them in the Gazette	Early April 2000
(c) Negative vetting by the LegCo	April to May 2000
(9) Publication of the 2000 Provisional Register <i>(The deadline specified in the Bill is 15 April 2000)</i>	April 2000

<u>Items of work</u>	<u>Timing</u>
(10) Publication of the 2000 Final Register (<i>The deadline specified in the Bill is 25 May 2000</i>)	May 2000
(11) Nomination and canvassing for the Election Committee subsector elections	June to July 2000
(12) Polling day for the Election Committee subsector elections	July 2000
(13) Nomination and canvassing for 2000 LegCo election	August to September 2000
(14) Advance polling day(s) for the 2000 LegCo election (<i>It is specified in the Bill that such day(s) must be within 15 days before the general polling day</i>)	Early September 2000
(15) General polling day for the 2000 LegCo election	Mid September 2000

Note 1: If the Bill cannot be passed by mid July, it must be deferred for scrutiny and passage until the next LegCo session in October. This means that step 2 cannot commence as scheduled, and hence the critical steps (5), (9), (10), (11), (12), (13), (14) and (15) which follow will also be affected.

Note 2: Before the Legislative Council (Amendment) Bill 1999 is passed, we will be reviewing the existing subsidiary legislation such as those related to voter registration, appeals to Revising Officers and electoral procedures. This will enable the drafting work to be completed as scheduled.

Constitutional Affairs Bureau
March 1999

LS130

Legislative Council (Amendment) Bill 1999
Changes to the Existing Delineation of the Electorates for the Functional Constituencies (FCs)

Part A: Name Changes

1. Agriculture and Fisheries FC (Section 20B and Schedule 1)

Item number	Old name	Correct/New name
s.20B(a)(iii)	The Joint Associations of Hong Kong Fishermen	The Joint Association of Hong Kong Fishermen
s.20B(a)(vii)	The Federation of Fishermen's Co-operative Societies of Sai Kung District Limited	The Federation of Fishermen's Co-operative Societies of Sai Kung District, Limited
s.20B(a)(viii)	The Federation of Fishermen's Co-operative Societies of Southern District Limited	The Federation of Fishermen's Co-operative Societies of Southern District, Limited
28, Sch. 1	南丫島蘆荻灣養殖業協會	南丫島蘆荻灣水產養殖業協會 Lamma Island Lo Dik Wan Aquaculture Association
43	N.T. Lau Fau Shan Oyster Industry Association	Lau Fau Shan Oyster Industry Association, New Territories
44	N.T. Oyster and Aquatic Products Industries United Association	N.T. Oyster and Aquatic Products United Association
70	大嶼山水陸居民聯誼會	大嶼山水陸居民聯合會
71	荃灣居民聯誼會（漁民組）	荃灣葵青居民聯會（漁民組）

2. Transport FC(Section 20D and Schedule 1A)

Item number	Old name	Correct/New name
3, Sch. 1A	Long Win Bus Holdings Limited	Long Win Bus Company Limited
9	China Tollways Co., Ltd.	China Tollways Ltd.
23	Kowloon Taxi Owners Association Ltd.	The Kowloon Taxi Owners Association Ltd.
26	新界的土商會	新界的土商會有限公司

34	Association of N.T. Radio Taxicabs Ltd.	The Association of N.T. Radio Taxicabs Ltd.
88	Institute of Transport Administration - HK Centre	運輸管理學會（香港） Institute of Transport Administration (China - Hong Kong Centre)
99	油麻地小輪船有限公司	油麻地小輪船有限公司
112	Sealand Orient Terminals Ltd.	Sea-Land Orient Terminals Ltd.
120	益豐客輪代理有限公司 Yick Fung Passenger-ship Agency Ltd.	廈門三聯企業（香港）有限公司 Xiamen United Enterprises (H.K.) Ltd.
140	九龍重型貨車聯合商會	九龍重型貨車聯合商會有限公司
141	Hong Kong Transportation & Wharves Assn. Ltd.	Hong Kong Transportation Warehouse Wharf Club
142	新界貨運商會 The New Territories Cargo Transportation Association Ltd.	新界貨運商會有限公司 New Territories Cargo Transport Association Ltd.

3. Legal FC (Section 20F)

Section	Old name	Correct/New name
20F(f)	立法會秘書處(包括螻友 D 法會秘書處)的法律顧問及該顧問的全職任職於立法會行政管理委員會(包括螻友落 k 會行政管理委員會)並屬《法律執業者條例》（第 159 章）所界定的大律師或律師的助理 the Legal Adviser of the Legislative Council Secretariat (including the Provisional Legislative Council Secretariat) and his assistants who are in full-time employment of The Legislative Council Commission (including The Provisional Legislative Council Commission) and are barristers or solicitors as defined in the Legal Practitioners Ordinance (Cap. 159)	立法會秘書處的法律顧問及該顧問的全職任職於立法會行政管理委員會並屬《法律執業者條例》（第 159 章）所界定的大律師或律師的助理 the Legal Adviser of the Legislative Council Secretariat and his assistants who are in full-time employment of The Legislative Council Commission and are barristers or solicitors as defined in the Legal Practitioners Ordinance (Cap. 159)

4. Health Services FC (Section 201)

section	Old name	Correct/New name
20I(g)	根據《放射技師（註冊及紀律處分筆 ㄅ規例）（第 359 章，附屬法例）註冊的放射技師，以及根據《輔助醫療業條例》（第 359 章）第 18A 條當作就放射技師專業獲註冊的螳佈臚 U 申請人 Radiographers registered under the Radiographers (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg.) and applicants for provisional registration who are deemed to be registered in respect of the radiographers' profession under section 18A of the Supplementary Medical Professions Ordinance (Cap. 359)	根據《放射技師（註冊及紀律處分筆 ㄅ規例）（第 359 章，附屬法例）註冊的放射技師 Radiographers registered under the Radiographers (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg.)
20I(j)	根據《視光師（註冊及紀律處分筆 ㄅ規例）（第 359 章，附屬法例）註冊的視光師，以及根據《輔助醫療業條例》（第 359 章）第 18A 條當作就視光師專業獲註冊的螳佈臚 U 申請人 Optometrists registered under the Optometrists (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg.) and applicants for provisional registration who are deemed to be registered in respect of the optometrists' profession under section 18A of the Supplementary Medical Professions Ordinance (Cap. 359)	根據《視光師（註冊及紀律處分筆 ㄅ規例）（第 359 章，附屬法例）註冊的視光師 Optometrists registered under the Optometrists (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg.)

5. Sports, Performing Arts, Culture and Publication FC (Section 20V and Schedule 1B)

Item number	Old name	Correct/New name
s.20V(1)(g)(i)	教育圖書零售業商會 Educational Booksellers' Association Limited	教育圖書零售業商會有限公司 Educational Booksellers' Association, Limited
s.20V(1)(g)(ii)	中英文教出版事業協會 Anglo-Chinese Textbook Publishers Organization Limited	中英文教出版事業協會有限公司 The Anglo-Chinese Textbook Publishers Organization Limited
s.20V(1)(g)(iii)	香港教育出版商會 Hong Kong Educational Publishers Association Limited	香港教育出版商會有限公司 The Hong Kong Educational Publishers Association Limited
s.20V(1)(g)(iv)	Hong Kong Publishers and Distributors Association	The Hong Kong Publishers and Distributors Association

s.20V(1)(g)(v)	香港書刊業商會	香港書刊業商會有限公司
s.20V(1)(g)(vi)	香港圖書文具業商會 Hong Kong Book and Stationery Industry Association Company Limited	香港圖書文具業商會有限公司 Hongkong Book and Stationery Industry Association Company Limited
s.20V(1)(h)	Hong Kong Publishing Federation Ltd.	Hong Kong Publishing Federation Limited
Part 1, Sch.1B		
8	Shum Shui Po Sports Association	Sham Shui Po Sports Association
9	Yaumatei & Tsimshatsui Recreation & Sports Association	Yaumatei and Tsimshatsui Recreation & Sports Association Ltd.
15	Island District Sports Association	Islands District Sports Association
16	Tuen Mun Sports Association	Tuen Mun Sports Association Limited
17	荃灣區體育康樂聯誼會有限公司	荃灣區體育康樂聯誼會有限公司
Part 3, Sch. 1B		
3	博物館館長協會 Association of Curators	香港博物館館長協會 Hong Kong Curators Association
5	香港中文大學文物館館友 Friends of the Art Museum, The Chinese University of Hong Kong	香港中文大學文物館館友協會 Friends of the Art Museum, The Chinese University of Hong Kong Limited
19	Hong Kong Life Saving Society	The Hong Kong Life Saving Society
21	香港影視明星體育協會 Hong Kong Movie Star Sports Association	香港影視明星體育協會有限公司 All Stars Sports Association Ltd.
22	Hong Kong Children's Choir	The Hong Kong Children's Choir
39	衛星廣播(香港)有限公司 Hutchvision (Hong Kong) Limited	Hutchvision Hong Kong Limited (no registered Chinese name)
41	Motion Pictures Production Executive (Hong Kong) Association	Motion Picture Production Executives (Hong Kong) Association
44	新聞行政人員協會 News Executive Association	香港新聞行政人員協會有限公司 Hong Kong New Executives' Association Ltd.
48	Society of Cinematographers Hong Kong Limited	Society of Cinematographers (Hong Kong) Limited
51	South Chinese Research Circle	South China Research Circle

52	The Swimming Teachers' Associated (Hong Kong)	Swimming Teacher's Association Hong Kong
55	藝術館之友 The Friends of the Hong Kong Museum of Arts	香港藝術館之友 The Friends of the Hong Kong Museum of Art
59	九倉有線電視有限公司 Wharf Cable Limited	Hong Kong Cable Television Limited (no registered Chinese name)

6. Import and Export FC (Section 20W)

Section	Old name	Correct/New name
s.20W(e)(i)	Association of Photographic Equipment Importers (Hong Kong) Ltd.	Association of Hong Kong Photographic Equipment Importers Ltd.
s.20W(e)(x)	香港鐘錶入口商會	香港鐘錶入口商會

7. Wholesale and Retail FC (Section 20Y and Schedule 1C)

Item number	Old name	Correct/New name
7, Sch. 1C	Hong Kong and Kowloon Bamboo Lashing & Hill Products Merchants Association	Hong Kong and Kowloon Bamboo Goods Merchants Association Limited
14	Hong Kong & Kowloon Glass Merchants & Mirror Manufacturer's Association	Hong Kong Glass and Mirror Merchants and Manufacturers Association Company Limited
18	港九攝影器材商會有限公司 The Hong Kong and Kowloon Photographic Merchants Association Ltd.	港九攝影業商會有限公司 The Hong Kong Photo Marketing Association Limited
20	Hong Kong & Kowloon Provision, Wine & Spirit Dealers Association	The Hong Kong & Kowloon Provisions, Wine & Spirit Dealers' Association
21	Hong Kong Provision & Grocery Commercial Chamber	Hong Kong Provision & Grocery General Commercial Chamber
22	港九永興堂藤器同業商會有限公司 Hong Kong & Kowloon Rattan Ware Merchants Association (Wing Hing Tong) Ltd.	港九永興堂藤器同業商會 Hong Kong & Kowloon Rattan Ware Merchants Association (Wing-Hing-Tong)

28	港九粉麵製造業總商會有限公司 Hong Kong & Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association Ltd.	港九粉麵製造業總商會 Hong Kong & Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association
30	Hongkong Diamond Bourse Ltd.	Hongkong Diamond Bourse Limited
31	Hong Kong Dried Seafood and Grocery Merchants Association Ltd.	Hong Kong Dried Seafood and Grocery Merchants Association Limited
35	香港麵粉商業總會有限公司 Hong Kong Flour Merchants' Association Ltd.	香港麵粉商業總會 Hong Kong Flour Merchants' Association
36	Hong Kong Flower Dealers & Workers Association	僑港鮮花行總會
37	香港鮮花零售協會	香港鮮花零售業協會
42	香港皮鞋業鞋材業商會有限公司	香港皮鞋業鞋材業商會有限公司
43	Hong Kong Live Pig Trade Merchants' Association Ltd.	Hong Kong Live Pig Trade Merchants' Association
50	香港石油、化工、醫藥同業商業會有限公司	香港石油、化工、醫藥同業商會有限公司
55	香港零售管理協會有限公司	香港零售管理協會
60	Kowloon Fresh Meat Retailers Association Ltd.	Kowloon Fresh Meat Retailers' Association Ltd.
65	香港南北行公所	南北行公所
66	香港通濟商會	通濟商會
68	Rice Merchants' Association of Hong Kong Ltd.	The Rice Merchants' Association of Hong Kong Limited
71	港九傘業同業商會 Umbrella Dealers Association of Hong Kong & Kowloon	港九遮業同業商會 Umbrella Dealers Association, Hong Kong and Kowloon

8. Information Technology FC (Section 20Z and Schedule 1D)

Item number	Old name	Correct/New name
1, Sch. 1D	Chubb (Hong Kong) Limited (no registered Chinese name)	集寶香港有限公司

Part B: Additions

1. Agriculture and Fisheries FC (Section 20B and Schedule 1)

Item number	Name of new constituents	Remarks
73, Sch. 1	鴨一c 洲漁民信用無限責任合作社 The Ap Lei Chau Fishermen's Credit Co-operative Society, Unlimited	The two bodies were registered as electors for this FC by virtue of their membership in The Federation of Fishermen's Co-operative
74	大澳沙仔面漁民信用無限責任合作社 The Tai O Sha Chai Min Fishermen's Credit Co-operative Society, Unlimited	Societies of Southern District, Limited. They have recently withdrawn from The Federation. Their names should be added so as to maintain their eligibility.
75	筲箕灣雙拖漁民信用無限責任合作社 The Shau Kei Wan Pair Trawler Fishermen's Credit Co-operative Society, Unlimited	The three bodies were registered as electors for this FC by virtue of their membership in The Federation of Fishermen's Co-operative Societies of Shau Kei Wan District, Limited. They have recently withdrawn from The Federation. Their names should be
76	筲箕灣深海捕撈漁民信用無限責任合作社 The Shau Kei Wan Deep Sea Capture Fishermen's Credit Co-operative Society, Unlimited	added so as to maintain their eligibility.
77	筲箕灣拖船漁民信用無限責任合作社 The Shau Kei Wan Trawler Fishermen's Credit Co-operative Society, Unlimited	

2. Transport FC (Section 20D and Schedule 1A)

Item number	Name of new constituents	Remarks
147, Sch. 1A	新世界第一巴士服務有限公司 New World First Bus Services Limited	New operator of franchised bus services
148	快易通有限公司 Autotoll Limited	The only autotoll service provider in Hong Kong with some 115,000 subscribers. It provides autotoll facilities for 10 tolled roads and tunnels.
149	混凝土車司機協會 Mixer Truck Drivers Association	An active member in Transport Department's goods vehicle drivers associations conference. As other members of similar standing are already included, we propose to include this association as well.
150	中流控股(香港)有限公司 Mid-stream Holdings (HK) Limited	One of the three major mid-stream operators in Hong Kong. As the other two are already included, we propose to include this company as well.
151	香港黃金海岸運輸有限公司 Hong Kong Gold Coast Transportation Company Limited	New operators of licensed ferry services
152	機場渡輪服務有限公司 Airport Ferry Services Ltd.	
153	港九小輪有限公司 Hong Kong & Kowloon Ferry Ltd.	
154	永業船務運輸有限公司 Wing Yip Shipping & Transportation Co. Ltd.	
155	招商局船務企業有限公司 China Merchants Shipping & Enterprises Co. Ltd.	An operator of regular ferry services to Shekou

156	香港商船高級船員協會 Merchant Navy Officers' Guild - Hong Kong	A representative body in marine transport. It is now a registered elector for the Labour FC. As similar bodies are put under the Transport FC, this body should be transferred to the Transport FC as requested by the organisation.
157	信德輪船有限公司 Shun Tak Ferries Ltd.	New operator of licensed ferry services

3. Health Services FC (Section 20I)

Section	Name of new constituents	Remarks
20I(1)	科學主任 (醫務) scientific officers (medical)	A civil service grade with expertise in a specialised subject in the medical or health field

4. Architectural, Surveying and Planning FC (Section 20K)

Section	Name of new constituents	Remarks
20K(c)	根據《園境師註冊條例》(第 516 章)註冊的園境師 Landscape architects registered under the Landscape Architects Registration Ordinance (Cap. 516)	New statutory registration scheme commenced in 1997

5. Sports, Performing Arts, Culture and Publication FC (Section 20V and Schedule 1B)

Item number	Name of new constituents	Remarks
<i>Part 2, Sch. 1B</i>		
1	東區文藝協進會 Eastern District Arts Council	At present, district sports associations are already included. We propose to include district arts and culture
2	南區文藝協進會有限公司 Southern District Arts and Culture Association Limited	associations as well. We propose to add 16 such associations (instead of 18). “Wanchai District <u>Arts Cultural</u> Recreation & Sports Association Ltd”, representing Wanchai District, is already an eligible elector, and there is no comparable district arts and culture association established in Islands District.
3	中西區文化藝術協會 Central and Western District Association for Culture and Arts	Although “Yau Ma Tei and Tsim Sha Tsui Culture and Arts Association Limited” (to be added to the list of
4	觀塘區文娛康樂促進會有限公司 Kwun Tong District Culture & Recreation Promotion Association Limited	electorates) does not cover Mongkok District, “Mongkok District <u>Cultural Recreational</u> & Sports Association Ltd.” is already an eligible elector.
5	黃大仙區文娛協會 Wong Tai Sin District Arts Council	
6	九龍城區文娛促進會 Kowloon City District Arts and Culture Council	
7	深水-鵝曠嬉驪 Shamshuipo Arts Association	
8	油尖區文化藝術協會有限公司 Yau Ma Tei and Tsim Sha Tsui Culture and Arts Association Limited	
9	新界北區文藝協進會 North District Arts Advancement Association Limited	
10	西貢文娛康樂會 Saikung Cultural & Recreation Advancement Association	
11	沙田文藝協會有限公司 Sha Tin Arts Association Limited	
12	新界大埔區文藝協進會 Tai Po District Arts Advancement Association	

13	屯門文藝協進會 Tuen Mun Arts Promotion Association	
14	荃灣文藝康樂協進會有限公司 Tsuen Wan Culture & Recreation Co-ordinating Association Limited	
15	元朗區文藝協進會 Yuen Long District Arts Committee	
16	葵涌及青衣區文藝協進會有限公司 Kwai Chung and Tsing Yi District Culture and Arts Co-ordinating Association Limited	
<i>Part 3, Sch. 1B</i>		
61	香港電訊互動影院有限公司 Hong Kong Telecom VOD Limited	New providers of TV services
62	銀河衛星廣播有限公司 Galaxy Satellite Broadcasting Limited	

6. Wholesale and Retail FC (Section 20Y and Schedule 1C)

Item number	Name of new constituents	Remarks
89, Sch. 1C	香港註冊白米批發商會有限公司 Hong Kong Registered Rice Wholesalers Association Limited	One of the two representative bodies of major rice wholesalers. As the other body is already included, we propose to include this association as requested by this association.

7. Information Technology FC (Section 20Z and Schedule 1D)

Item number	Name of new constituents	Remarks
3, Sch. 1D	亞太通信衛星有限公司 APT Satellite Co. Ltd.	A new licensee under the Telecommunications Ordinance which operates radio-communications equipment

Part C: Deletions

1. Agriculture and Fisheries FC

Name of constituents	Remarks
油麻地罾仔漁民信用無限責任社 The Yaumati Purse Senior Fishermen's Credit Co-operative Society, Unlimited	The Registrar of Co-operative Societies has cancelled the registration of this body.
沙田漁民福利會	The correct name of this body should be “沙田亞公角漁民福利會有限公司”. Its name has been struck off by the Companies Registry. According to our information, this body has not been registered as a society or made a business registration.

2. Transport FC

Name of constituents	Remarks
中華汽車有限公司 China Motor Bus Co., Ltd	Franchise has expired.
香港隧道有限公司 Cross Harbour Tunnel Co., Ltd	Franchise will expire after 31 August 1999
港九小型巴士互助會 Hong Kong & Kowloon Mini-bus Mutual Association	This body has notified the Commissioner for Transport of its dissolution.

3. Health Services FC

Name of constituents	Remarks
《輔助醫療業條例》（第 359 章）附表中第 3 項指明，並屬有權在香港物理治療師協會的大會上表決的該會的會員的物理治療師。 Physiotherapists specified in item 3 of the Schedule to the Supplementary Medical Professions Ordinance (Cap. 359) who are members of the Hong Kong Physiotherapy Association entitled to vote at general meetings of the Association.	The statutory registration of physiotherapists will soon be completed. Registered physiotherapists will be eligible to be registered as electors under section 20I(h).

4. Import and Export FC

Name of constituents	Remarks
香港傢俬鋼具進出口商會有限公司 Hong Kong Wooden & Steel Furniture Importers and Exporters Association Ltd.	This body has notified the Registration and Electoral Office that it had already ceased operation.

5. Wholesale and Retail FC

Name of constituents	Remarks
香港磁帶有限公司 Hong Kong Magnetic Tape Company Limited	This body has notified the Registration and Electoral Office that it had already ceased operation.
香港土產原料商會有限公司 Hong Kong Native Products and Raw Material Merchants Association Limited	None of the members of this body has been registered as electors for this FC. This body has not responded to letters from the Registration and Electoral Office. We believe that this body has already ceased operation.
藥業總商會有限公司 The Pharmaceutical Trade Federation Ltd.	None of the members of this body has been registered as electors for this FC. This body has not responded to letters from the Registration and Electoral Office. We understand that the Companies Registry has struck off its name.

6. Information Technology FC

Name of constituents	Remarks
香港國際電訊有限公司 Hong Kong Telecom International Limited	Licence surrendered on 31 March 1998

7. Catering FC (Compared with the present Catering Subsector) (Section 20ZA and Schedule 1E)

Name of constituents	Remarks
Restaurants and Licensed Premises Association	According to the Companies Registry, this body was already dissolved.

Part D: Other Changes

1. Information Technology FC (Section 20Z and Schedule 1D)

Section number	Proposed changes	Remarks
20Z(c)	Only Professionals Members (rather than ordinarily members) of the Association for Computing Machinery, Hong Kong Chapter entitled to vote at general meetings of the Association should be entitled to vote in this FC.	The Association has recently introduced a Professional Membership class which requires a recognised degree plus 2 years of recognized working experience in the field. The Association proposes that the entitlement to vote in this FC should be restricted to its Professional Members only. This is in line with the general requirements for other associations in this FC.

Constitutional Affairs Bureau
February 1999

Paper for Committee on Rules of Procedure of the Legislative Council

Application of Basic Law Provisions in the Operation of Legislative Council

PURPOSE

This paper informs Members of the Administration's views on how certain Basic Law provisions are to be applied in the operation of the Legislative Council (LegCo).

BACKGROUND

2. In his letter of 30 June to the Legal Adviser of the LegCo (a copy is at Annex), the Solicitor General pointed out that Department of Justice (D of J) had examined very carefully the Rules of Procedures of LegCo and considered some of the rules to be in contravention of the Basic Law. The Solicitor General and other representatives of the D of J met with LegCo Members on 9 and 15 July to exchange views with Members on the matter.

3. We have considered carefully the views of Members and D of J's legal advice. We are keenly aware that the Basic Law is a constitutional document governing the Special Administrative Region (SAR) and that legislation must be enacted in accordance with its provisions. Since the Rules of Procedure adopted by the SAR LegCo control the manner in which legislation is enacted, it is essential that the Rules strictly comply with the Basic Law. We fully respect the autonomy of LegCo in making its own Rules. It is nonetheless incumbent on the Administration to draw to LegCo's attention aspects of the Rules which it considers to contravene the Basic Law.

4. The Administration's views on the application of the relevant articles of the Basic Law in the operation of LegCo are set out in paragraphs 5 to 11 below.

THE ADMINISTRATION'S VIEWS

A. Committee Stage Amendments

5. Article 74 of the Basic Law expressly provides that LegCo Members may introduce bills, in accordance with the Basic Law and legal procedures, that do not relate to “public expenditure or political structure or the operation of the government” and that those relating to “government policies” may be introduced with the written consent of the Chief Executive (CE). In other words, the introduction of Members’ legislative proposals relating to “public expenditure or political structure or the operation of the government” is strictly prohibited under Article 74, and legislative proposals relating to “government policies” can only be introduced by Members with the written consent of the CE. Adopting a generous and purposive interpretation of the Article 74, legislative proposals introduced by Members by way of Committee Stage Amendments (CSAs) to government bills must be subject to the same restrictions that apply to Members’ bills. If CSAs were not subject to Article 74, this would create the anomaly that Members could achieve by way of a CSA that which they could not achieve by way of a Bill. We do not consider that this was legislative intention behind Article 74.

6. Some Members expressed concern that LegCo would become a “rubber stamp” if CSAs are subject to BL74. This is not the case. Members have the right to move CSAs which do not relate to “public expenditure or political structure or the operation of the government” and can seek the CE’s consent for CSAs relating to “government policies”. And even in those areas where Members may not directly move CSAs, it is of course open to them to suggest that the Administration should move certain amendments to a particular Bill taking account of Members’ views. Such suggestions from Members would be carefully considered by the Government since it is obviously the Government’s objective to ensure that the Bills introduced would eventually be passed by LegCo. To implement Article 74 fully, we ask Members to consider amending relevant LegCo rules (i.e. rule 57(6) and 69) to provide expressly that Members’ CSA are subject to Article 74.

B. Ambit of Article 48(10)

7. Article 48(10) of the Basic Law expressly provides that the approval of the CE is required for the introduction of motions “regarding revenues or expenditure” to LegCo. Since motions can be introduced by both the Government and Members, and Article 48(10) is not restricted to one or other category of motions, it follows that any motion which relates to “revenues or expenditure” requires the approval of the CE for its introduction to LegCo. In this connection rule 31 would need to be amended accordingly.

8. Members have queried whether motion debates should be subject to CE’s consent. Our response is that Article 48(10) encompasses all motions. Article 48 does not only deal with CE’s power relating to the Executive. For example, Article 48(6) relates to CE’s power to appoint or remove judges. The Administration considers that Article 48(10) covers CE’s authority to approve all motions moved in the Legislature. As regards motions debates, we share Members’ view that LegCo should debate all issues of public interest and the CE will have no difficulty in giving a give blanket approval for the conduct of motion debates which may relate to “revenues or expenditure”.

9. The Administration is of the view that the scope of “regarding revenues or expenditure” under Article 48(10) includes any effect on revenues or expenditure, whether increase or decrease, and any other aspects of revenues or expenditure. The notion of only restricting the introduction of motions “the object or effect of which may be to dispose of or charge any part of our revenue” (i.e. a charging effect test), as set out in the LegCo rules, does not therefore reflect the ambit of Article 48(10). Rule 31 should hence be amended accordingly.

C. Authority to rule under Article 48(10) and Article 74

10. Article 48(10) stipulates that the introduction of motions “regarding revenues or expenditure” to LegCo requires the approval of the CE. Article 74 requires Members to obtain the consent of the CE before introducing bills or CSAs relating to “government policies”. Although neither Article expressly identifies the decision-maker, it is clear by

necessary implication that the authority to rule on whether a proposal falls within the restrictions of these two Articles has to be vested with the CE. We ask Members to consider amending rules 31, 51(3) and 57(6) accordingly.

D. Vote-counting Arrangement

11. The Chinese text of Annex II of the Basic Law on voting procedures, stipulates that “政府提出的法案，如獲得出席會議的全體議員的過半數票，即為通過”。 The additional word “ $\frac{2}{4}$ ” (vote) gives rise to the Administration’s interpretation that an abstention is not a vote and should not be included in the vote counting. For Members’ proposals, the Chinese text stipulates that “立法會議員個人提出的議案、法案和對政府法案的修正案均須分別經承團體選舉產生的議員和分區直接選舉、選舉委員會選舉產生的議員兩部分出席會議議員各過半數通過”。 The Administration’s interpretation is that Members’ proposals must have the majority of “those present” before they are considered as passed. “Those present” include those who are present but who abstain. According to the LegCo rules, however, all voting decisions are to be made according to whether or not the majority of members present are in favour of the question. We ask Members to consider amending rules 46 and 47 to reflect the Administration’s interpretation, i.e. different vote-counting arrangements should apply to government proposals and Members’ proposals under Annex II of the Basic Law.

CONCLUSION

12. The Administration trusts that Members will give careful consideration to the issue. The lawfulness of legislative proceedings is of paramount importance to the community. We urge Members to initiate action as soon as possible to bring the Rules of Procedure adopted on 2 July 1998 in line with the provisions in the Basic Law.

Administration Wing
Chief Secretary for Administration’s Office
22 September 1998

律政司的信頭

Letterhead of DEPARTMENT OF JUSTICE

法律政策科法律政策專員

Legal Policy Division Solicitor General

Our Ref.: SJO 5012/3C III

Your Ref.:

Tel. No.: (852) 2867 2003

30 June, 1998

Mr Jimmy Ma
Legal Adviser
Legislative Council Secretariat
8 Jackson Road
Hong Kong

Dear Jimmy,

Draft Rules of Procedure

This Department has considered very carefully the draft Rules of Procedure of the Legislative Council (LegCo). It is our opinion that certain draft rules contravene the Basic Law. We are therefore drawing those parts of the draft to your attention so that you may take appropriate remedial action.

Article 74

Article 74 of the Basic Law prohibits certain bills from being introduced by members of the Council (viz. those relating to public expenditure or political structure or the operation of the government) and requires the written consent of the Chief Executive before other bills (viz. those relating to government policies) are introduced. You will appreciate from the authorities that, since the Basic Law is a constitutional instrument, it must be given a generous and purposive interpretation as opposed to a narrow and literal one which generates anomalies: per Lord Wilberforce in Minister of Home Affairs v. Fisher [1980] AC 319, at 328; per Chan CJHC in HKSAR v. David Ma [1997] HKLRD 761, at 772.

The clear intent underlying Article 74 is to prevent members from introducing certain types of legislative proposals and to require the written consent of the Chief Executive before legislative amendments relating to government policies are introduced. Giving the article a generous and

purposive interpretation, it must cover not only bills but also committee stage amendments (CSAs). Any other interpretation would create the anomaly that members might achieve by way of a CSA that which they could not attain by way of a bill.

We note that draft Rules 57(6) and 69 do not reflect the correct interpretation of Article 74 of the Basic Law, but refer instead to the charging effect test (elaborated below), an irrelevant consideration for present purposes. These rules are inconsistent with the Basic Law and should be amended accordingly.

Application of Articles 48(10) and 74

Articles 48(10) and 74 of the Basic Law contemplate decisions being taken as to whether certain proposals are subject to those articles. Whilst neither article expressly identifies the decision-maker, it is clear by necessary implication that such decisions must be made by the Chief Executive. We understand the purpose of the articles is to restrict the powers of LegCo members in certain specified areas falling within the purview of the Executive. It would defeat this very purpose were the LegCo President given the power to decide whether the Articles applied, particularly where, in doing so, he or she might differ from the Chief Executive.

It is clear that the Chief Executive is best placed to decide these questions. For example, the final sentence of Article 74 provides that the written consent of the Chief Executive shall be required before bills relating to government policies are introduced. The question whether a bill relates to government policies can only be decided by the very government which formulates those policies. This being so, it follows that it must be the Chief Executive who decides the question.

As we shall indicate below, draft Rule 31 does not reflect Article 48(10) of the Basic Law. When it is amended to do so, it must avoid providing for the President or Chairman to decide whether a motion falls within the rule. Similarly, when draft Rules 51(3) and 57(6) are amended to reflect Article 74 of the Basic Law, they should likewise avoid providing for the President to decide whether proposals fall within that article.

Article 48(10)

Article 48(10) of the Basic Law stipulates that the Chief Executive shall “approve the introduction of motions regarding revenues or expenditure

to the Legislative Council”. Thus, members may only introduce such motions with the Chief Executive’s consent.

We notice that a requirement of the Chief Executive’s consent appears in Rule 31 of the draft Rules of Procedures. However, that rule is confined to motions or amendments “the object or effect of which may, in the opinion of the President or the Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong” (emphasis supplied). This formulation, which is generally referred to as the “charging effect” test, is identical to that adopted by the Provisional Legislative Council and in LegCo prior to 1 July 1997. Its genesis lies in Clause XXIV of the Royal Instructions which stipulates that “every ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising shall be proposed by the Governor, unless the proposal of the same shall have been expressly allowed or directed by him.”. Such a formulation is clearly much narrower and more specific than “regarding revenues or expenditure” specified in Article 48(10) of the Basic Law.

“Charging effect” covers only those motions or amendments which would have the effect of reducing revenue or increasing expenditure. In other words, motions which have the effect of increasing revenue or reducing expenditure will not be subject to it. However, “regarding revenues or expenditure” clearly has a wider ambit. It covers motions which have any effect on revenue or expenditure (that is, increases or decreases in revenue as well as increases or decreases in (expenditure) as well as motions which are related to any other aspects of revenue or expenditure. Rule 31, as currently drafted, is accordingly inconsistent with the Basic Law.

Voting procedures

We note that draft Rule 47 provides for decisions to be made according to whether or not the majority of members present are in favour of the question. We agree that the passage of private members’ bills and members’ CSAs require the support of a majority of members present in the council. However, we are of the considered opinion that the passage of government bills requires the majority vote of members present, and that abstentions cannot be counted in determining the voting outcome. The reason for the difference arises from Annex II of the Basic Law which stipulates that:-

"The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council

present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present : members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee."

"政府提出的法案，如獲得出席會議的全體議員的過半數票，即為通過。

立法會議員個人提出的議案、法案和對政府法案的修正案均須分別經丞團體選舉產生的議員和分區直接選舉、選舉委員會選舉產生的議員兩部分出席會議議員各過半數通過。"

For members' proposals, although the English text of the voting arrangement refers to a simple majority vote of each of the two groups of members present, the crucial word "票" (votes) does not appear in the Chinese text. The Chinese words "過半數" (more than half or majority) therefore qualify "出席會議議員" (members present at a meeting). This does not refer to the majority vote but rather the majority of those present. According to established authorities, "those present" include those who are present but who abstain. Given the discrepancy between the English and Chinese texts, the Chinese original, being the language of authorship, must prevail.

For government proposals, the Chinese words "過半數" (more than half or majority) appear immediately before the word "票" (votes). They therefore qualify "票", effectively making "1過半數" (majority votes) a technical expression standing by itself. The "majority vote" referred to in the provision is to be given its normal meaning of the greater number of votes. An abstention is not a vote. The fact that the provision refers to "members present" does not displace that normal meaning. It merely indicates that one does not count the votes (e.g. proxy votes) of those who are not present.

Position of the President

We understand that you consider that the President of LegCo should be politically neutral and should therefore abstain from voting. As the draft rules stand, however, the President will presumably be regarded as 'present'

for the purpose of deciding whether a majority of those present are in favour of a proposal. If so, this would mean that, by not voting, the President would be counted as one of those present who is not in favour of the proposal. Such a result would render nugatory the proposed neutrality of the President.

One way to avoid such an anomalous outcome would be for the Rules of Procedure to provide that, if the President does not vote, he or she is not to be regarded as present for the purposes of deciding whether a majority of those present support the proposal. Such a provision would be consistent with the Basic Law. The President would not be denied the right to vote, and the provision would reflect the special position occupied by the President under Article 72 of the Basic Law. Since the President is required to 'preside over meetings', he or she does not have the option of being absent during the voting process. It would clearly be absurd to regard his or her presence as tantamount to a permanent, immutable, in-built opposition to every single proposal requiring the support of the majority of members present.

We request, therefore, that consideration be given to the inclusion of such a provision in the rules. The relevant provisions of the draft Rules of Procedure should be amended to reflect this Basic Law requirement.

The way forward

We feel sure that LegCo members will wish to ensure that their Rules of Procedure are consistent with the Basic Law. You will no doubt agree that seeking a broad constitutional consensus as between the Executive and the Legislature is the best way forward. Before you give further advice to members, therefore, we trust you will give careful consideration to the points made above. We hope also that you will revert to us on the outcome. We shall be glad to discuss these issues further if necessary.

(Daniel R. Fung, QC, SC, JP)

| Solicitor-Gen |