

立法會 *Legislative Council*

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Report of the Bills Committee on Legislative Council (Amendment) Bill 2003

PURPOSE

This paper reports on the deliberations of the Bills Committee on Legislative Council (Amendment) Bill 2003.

THE BILL

2. The main objects of the Bill are to amend the Legislative Council Ordinance (LCO) (Cap. 542) to -
 - (a) provide for the composition of the Legislative Council (LegCo) after the expiry of its current term of office;
 - (b) introduce a scheme to provide financial assistance to candidates at an election, who meet the criteria prescribed in the Bill, at a rate specified in the Bill, in respect of election expenses incurred by them; and
 - (c) reduce the free mailing provided to candidates from two rounds to one.
3. The Bill also makes other miscellaneous amendments to LCO and amendments to other legislation, which are consequential to the amendments to LCO.

THE BILLS COMMITTEE

4. At the House Committee meeting on 28 February 2003, members agreed to form a bills committee to scrutinize the Bill. A membership list of the Bills Committee is in **Appendix I**.
5. Under the chairmanship of the Hon Andrew WONG, the Bills Committee has held six meetings with the Administration. The Bills Committee has also invited public views on the Bill and has received submissions from a total of 53 individuals and organizations, the names of which are in **Appendix II**. A total of 10 individuals and organizations have also given oral representations to the Bills Committee at the meeting on 29 May 2003.

DELIBERATIONS OF THE BILLS COMMITTEE

Geographical constituencies (GCs)

6. The existing LCO only provides for the number of GCs and Members to be returned by the respective GCs for the second term LegCo. Clause 5 seeks to provide that there shall be five GCs. Clause 6 stipulates that a total of 30 Members shall be returned from all GCs and that each GC is to return four to eight Members. According to the Administration, the composition of LegCo provided in the Bill will apply from the third term LegCo onwards. The formulation in the Bill will enable elections of future term LegCo to continue to be conducted unless and until LCO is amended pursuant to any amendment to Annex II to the Basic Law.

7. The Administration has explained that the proposal leaves sufficient room for the Electoral Affairs Commission (EAC) to decide whether the demarcation of the existing five GCs should remain intact or not. The Administration considers that minimizing changes to the existing demarcation of GC boundaries is convenient to voters, candidates, political parties and political groups alike.

8. The Administration has further explained that if the current constituency boundaries remain unchanged, the smallest GC (i.e. Kowloon West) would have a population of around one million by 2004, and the largest GC (i.e. New Territories West) would have a population of around two million. Setting the lower and upper limits for the number of seats per GC at four and eight respectively would be proportional to the spread of population. The actual number of seats for each GC will be specified in an order made under section 18 of LCO, which is subject to negative vetting by LegCo.

9. Some members have expressed concern that the last candidate to get elected in an eight-seat GC might be one who only receives limited support. The Administration has advised that the last candidate to get elected in a GC is still expected to obtain about 20 000 votes, which remains a reasonable threshold. In the view of the Administration, the proposed arrangements would better ensure representation of smaller parties, hence a fuller representation of different views of the overall electorate.

Election Committee (EC)

10. The Bills Committee notes that as prescribed under the Basic Law, EC will not return any Members to the third term LegCo. The Bill proposes to repeal a number of provisions which relate to the election of Members by EC.

Free mailing service for candidates

11. Under clause 27, the Bill proposes that the number of letters that can be sent by or on behalf of a list of candidates or a candidate, free of postage, under section 43 of LCO, is reduced from two to one.

12. The Administration has explained that the existing two rounds of free mailing service may not meet entirely the needs of candidates. To provide flexibility for candidates to conduct their election activities, the Administration has proposed to introduce the financial assistance scheme, and to reduce free mailing from two rounds to one. The Administration has also advised that free television and radio air time on Radio Television Hong Kong will be maintained to allow candidates to promote their election platforms.

13. Members have enquired about the implications of the proposal and the number of candidates who had used two rounds of free mailing service in the 2000 LegCo elections.

14. The Administration has advised that in the 2000 GC elections, there were about three million voters and 36 lists of candidates. Of the 36 candidate lists, 20 used up to one round of free mailing service. On average, each list of candidates made use of 1.3 rounds of free mailing service. In respect of FC elections, there were about 175 000 voters and 57 candidates. Of the 57 candidates, 19 used up to one round of free mailing service. On average, each candidate made use of 1.9 rounds of mailing service.

Proposed financial assistance scheme

Proposals in the Bill

15. The Administration has proposed to provide financial assistance for candidates standing in the 2004 LegCo elections. The aim of the proposal is to encourage more public-spirited candidates to participate in LegCo elections, thereby facilitating the development of political parties and political groups in Hong Kong. As a corollary to the Administration's intention to provide financial support to election candidates, the existing threshold (5%) for the return of election deposit is proposed to be lowered to 3%.

16. Under clause 39 of the Bill, a new Part VIA (new sections 60A - 60J) is introduced to LCO to provide a scheme of financial assistance in respect of election expenses incurred by candidates. Under the scheme -

- (a) candidates standing in GC and FC elections alike are eligible for the assistance, irrespective of whether the list or the candidate represents a political party operating in Hong Kong or a non-political organization, or is an independent list or candidate (new section 60B(1) and (2));
- (b) a list of candidates or a candidate is eligible for financial assistance in respect of election expenses incurred by the list of candidates or the candidate, as long as the list or candidate is able to secure at least one seat in LegCo, or has received 5% or more of valid votes cast in the constituency concerned (new section 60C);

- (c) the amount payable is obtained by multiplying the number of valid votes cast for the list of candidates or the candidate concerned by the specified rate (new section 60D(1) and 60E(1));
- (d) for candidates returned through uncontested elections, the amount payable is obtained by multiplying 50% of the number of registered electors of the constituency concerned by the specified rate (new section 60D(2) and 60E(2));
- (e) the amount, however, will be capped at 50% of the declared election expenses of the list of candidates or the candidate concerned, or the difference in amount between the declared election expenses and the declared election donations (where the former exceeds the latter), whichever is the lower; and
- (f) no financial assistance will be provided if the declared election donations equal or exceed the declared election expenses (new section 60D(1) and (4)), new section 60E(1) and (4)).

17. The Administration has advised the Bills Committee that it will move an amendment to clause 39 of the Bill to put beyond doubt that financial assistance is not payable to a candidate whose declared election donations equal declared election expenses.

18. Regarding the "specified rate" referred to in paragraph 16(c) and (d) above, the Bills Committee has noted that clause 50 adds a new Schedule 5 to set out the rate of financial assistance, which is \$10 per valid vote cast for the list or candidate concerned. Clause 43 adds a new section 83A to empower the Chief Executive in Council to amend Schedule 5 by order published in the Gazette. In addition, clause 53 amends section 7(1) of Electoral Affairs Commission Ordinance (EACO) to authorize EAC to make regulations to implement the financial assistance scheme.

"Specified rate" of \$10 and ceiling at 50% of actual election expenses under the proposed financial assistance scheme

19. In considering the proposal, the Bills Committee has noted that the Administration has previously explained to the Panel on Constitutional Affairs the rationale for setting the rate of subsidy at \$10 per valid vote, and the ceiling at 50% of the actual election expenses incurred by the candidate concerned.

20. According to the Administration, in setting the rate, it has taken into account the average election expense limits (\$2 million) of the five GCs in the 2000 LegCo elections, and the number of votes (approximately 100 000 votes) cast for the most popular candidate lists in that election. The average amount that a candidate could spend on each vote received was \$20 (i.e. dividing \$2 million by 100 000 votes). Given the Administration's proposal to cap the amount of financial assistance provided to each candidate at 50% of his actual election expenses, the Administration has arrived at the subsidy rate of \$10 for each valid vote.

21. Regarding the rationale for capping the amount of financial assistance provided to each candidate at 50% of his actual election expenses, the Administration considers that all parties, including the Government, political parties or political groups as well as candidates, play an important role in elections. The election expenses should therefore be collectively borne by the Government and the candidates or their political parties/groups. Hence, the Administration should at most meet half of the candidates' election expenses. In considering the proposal, the Administration has also taken into account overseas experience, for example, a candidate in Canada will be reimbursed only half of his election expenses.

Financial implications of the proposed financial assistance scheme

22. The Bills Committee has noted that in response to an enquiry made by the Panel on Constitutional Affairs, the Administration has explained the financial implications of the proposed financial assistance scheme.

23. The Administration has advised that it cannot assess accurately at this stage the financial implications of the proposed financial assistance scheme. The financial implications will depend on a number of factors, including the number of candidates and lists of candidates, voter turnout rate, votes obtained by each candidate and list, and the actual election expenses of each candidate and list.

24. However, the Administration has taken the 2000 LegCo elections as an illustration to indicate the possible financial implications. In the 2000 LegCo elections, the expenditure involved in providing two rounds of free mailing service to candidates amounted to \$37.97 million. Only some candidates in the 2000 LegCo elections used two rounds of free mailing service. If the proposal of reducing one round of mailing service is implemented, the Administration would still have to pay \$28.95 million. This would have generated savings of about \$9.02 million. If the proposed financial assistance scheme was implemented, the Administration would need to pay reimbursement of \$9.99 million to candidates who were elected or who had secured 5% of valid votes or more (calculated on the basis of the results of the 2000 LegCo elections). Net Government expenditure would thus be increased by \$0.97 million.

Amount payable to candidates returned through contested and uncontested elections

25. Under new sections 60D and 60E, the amount payable as financial assistance to a list of candidates for a GC, or a candidate for a FC, is whichever is the lowest of the following three amounts -

- (a) in respect of contested elections, the amount obtained by multiplying the total number of valid votes cast for the list/candidate by the specified rate. In respect of uncontested elections, the amount obtained by multiplying 50% of the number of registered electors of the constituency concerned by the specified rate;
- (b) 50% of the declared election expenses of the list of candidates or candidate concerned; and

- (c) if the declared election expenses exceed the declared election donations, the difference in amount between those expenses and donations.

26. Hon Cyd HO has requested the Administration to explain the rationale for adopting the different computation formulas in respect of contested and uncontested elections. She considers that the computation formula for candidates returned uncontested is more generous than that for those returned through contested elections. Although the chance for a list of candidates returned uncontested to be paid the amount specified in paragraph 25 above is rare, the formula is illogical and to the advantage of those returned through uncontested elections. She has proposed that the provision that "the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate" in respect of uncontested election for a GC should be deleted from new section 60D(2).

27. The Administration considers that it is fair to extend the financial assistance to candidates who are returned uncontested because they, too, may have incurred election expenses. Under the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO), "election expenses" is defined as expenses incurred or to be incurred, before, during or after the election period, by or on behalf of a candidate for the purpose of promoting the election of the candidate, or prejudicing the election or another candidate. As regards the formula for uncontested elections, the Administration considers that it is not unreasonable to assume that a candidate returned uncontested is able to secure significant support amongst the registered electors in the constituency concerned.

28. The Administration has further explained that under the proposal in the Bill, the Government is only required to pay whichever is the lowest of the three caps specified in paragraph 25 above in the event of uncontested elections. Removal of any one of the three caps may, in certain circumstances, result in the Government having to pay more. In addition, for consistency, any amendment proposed in respect of GC uncontested elections (new section 60D(2)) should also apply to FC uncontested elections (new section 60E(2)). In the case of FC elections, past statistics suggest that if the cap specified in paragraph 25(a) above is removed as proposed, the Government would have to pay more.

29. Hon Andrew WONG considers that the formula in paragraph 25(a) above acceptable, although using 50% of the number of registered electors as basis for calculation may be a bit on the high side. As the Bills Committee has reached no consensus on Hon Cyd HO's proposal, members have agreed that it is for individual members to consider whether any amendment should be pursued.

Failed election

30. Members note that under new section 60F, financial assistance is not payable if the proceedings of an election are terminated. This is because, in such circumstances, it would not be possible to determine, for the purpose of calculating the amount of financial assistance payable, the number of votes each candidate receives. However, financial assistance will still be provided to eligible candidates

in the event of a declaration by the Returning Officer that an election has failed. Members have requested the Administration to explain the meaning of "failed election", and whether the financial assistance received in the event of a failed election is subject to estate duty.

31. The Administration has explained that there are two scenarios under which an election will be declared as failed, necessitating a by-election. The first scenario arises when no candidate is validly nominated for an election, or when the number of candidates validly nominated is less than the number of LegCo Members to be returned for the constituency concerned (section 46(2) of LCO). Under such circumstances, the validly nominated candidate, if any, will be declared elected (section 46(1) of LCO). A by-election will be held to fill the vacancy (section 36(1)(c) of LCO).

32. The second scenario relates to the death or the disqualification of a validly nominated candidate after the close of polling but before the declaration of the election result. Under such circumstances, the counting of votes will proceed as normal. If the deceased or disqualified candidate is found to be successful at the election and –

- (a) in the case of a GC election, if there are other candidates on the same list, one of these other candidates will be returned in place of the deceased or disqualified candidate in accordance with the order of priority on the list. Alternatively, if there is no other candidate on the list who can be returned in place of the deceased or disqualified candidate, the Returning Officer will declare, under section 46A(3), that the election has failed, and a by-election will be held to fill the vacancy (section 36(1)(cb) of LCO); or
- (b) in the case of a FC election, the Returning Officer will declare, under section 46A(3), that the election has failed, and a by-election will be held to fill the vacancy (section 36(1)(cb) of LCO).

33. Under the proposed financial assistance scheme, in the event of a failed election, financial assistance will still be provided to all eligible candidates (including a deceased candidate), because votes will have been cast and election expenses will have been incurred.

34. The Administration has further advised that under section 5 of the Estate Duty Ordinance, estate duty is levied on the principal value of all property passing on death of a person. Financial assistance received by a deceased candidate which remains unspent at the time of his death will form part of his estate and thus, subject to the value of such estate, will be chargeable with estate duty in accordance with the Ordinance. The present threshold value of an estate to attract estate duty is of an amount exceeding \$7.5 million. By virtue of section 13 of the Ordinance, in determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses, debts and incumbrances which shall be deducted from the value of the property liable.

Loans and donations

35. Members have requested the Administration to explain whether loans made to a candidate from a political party could be regarded as election donations made to the candidate, and whether political parties should be required to declare the sources of the donations they receive.

36. The Administration has advised that the receipt and disposal of election donations is regulated by ECICO. Under section 2 of ECICO, an election donation is defined as follows -

"election donation", in relation to a candidate or candidates at an election, means any of the following donations –

- (a) any money given to or in respect of the candidate or candidates for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate or candidates;
- (b) any goods given to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, and includes any goods given incidental to the provision of voluntary service; and
- (c) any service provided to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, but does not include voluntary service."

37. Under section 37 of ECICO, a candidate must declare in his election return any election donation he has received, and (in the case of each donation of more than \$1,000) the particulars of the donor. However, there is no statutory requirement to disclose the donor's financial sources. The law does not make a distinction between a donor which is a political party or organization, a non-political organization, and an individual.

38. The Administration has advised that under ECICO, a loan will not be regarded as an election donation. However, any interest foregone in respect of an interest-free loan will be treated as a donation.

Payment of financial assistance and recovery of payment

39. The Bills Committee has noted that under new section 60H, an amount of financial assistance paid to a recipient who is not entitled to the payment can be recovered as a civil debt. If the person from whom such an amount is recoverable dies before the recovery, his estate is liable to the extent of the deceased's liability. Under new section 60I, a claim for financial assistance is to be presented to the Chief Electoral Officer within the period for lodging election returns and must be made

according to regulations made under EACO. The election returns accompanying the claims must be audited by an auditor. Under new section 60J, a payment of financial assistance cannot be made during the period for lodging an election petition or while an election petition is pending.

Views on the proposals of introducing a financial assistance scheme and abolition of one round of mailing

Views of deputations

40. The majority view of the individuals/organizations listed in Appendix II object to the introduction of the proposed financial assistance scheme and abolition of one round of free mailing service for candidates. They consider that the Government should not incur additional public expenses to provide financial assistance to political parties, political groups and independent candidates to run in elections, in view of its sizable budget deficit and the present financial climate. They also consider that the two rounds of free mailing should be retained for candidates to communicate with their electorate. The service is of considerable value to those candidates who have limited means or who have not stood as candidates in past elections.

Views of members of the Bills Committee

41. Members in general support the proposal to reduce one round of mailing service on the ground of environmental protection. Some members have suggested the Administration to consider, in future elections, allowing registered electors residing at the same registered address to be given a choice as to whether they would like to receive election mail addressed to them individually or collectively. In the case of the latter, the Administration should consider issuing one address label with the names of all such electors for the convenience of candidates in the constituency concerned.

42. Hon SIN Chung-kai points out that the proposed financial assistance scheme would not impose a very heavy financial burden on the Government. However, given the strong view of some deputations that the two rounds of mailing service should not be reduced, he has suggested that LegCo candidates should be given the flexibility to opt for two rounds of mailing service, or one round of mailing service plus the financial assistance scheme.

43. Hon Emily LAU has expressed the view that some members of the public are under the misconception that the Government would spend a huge amount of public funds to subsidize LegCo candidates under the proposed financial assistance scheme. While she supports any measures proposed by the Government to encourage broader participation in elections and promote the development of political parties, she considers the Administration's statement that the aim of the proposed scheme is to facilitate the development of political parties and political groups in Hong Kong exaggerated. She points out that the expenditure expected to be incurred by the Government for implementation of the scheme, using the 2000 LegCo elections as an example, is only about \$1 million.

44. Hon LEUNG Fu-wah supports the views of some deputations that the Government should not implement the proposed financial assistance scheme to subsidize LegCo candidates. He would oppose the provisions relating to the scheme under the Bill.

Functional constituencies (FCs)

Medical FC

45. The Bills Committee notes that the Administration has consulted the relevant professions and parties on the proposal of expanding the Medical FC to include Chinese medicine practitioners. Doctors and dentists have raised objection to the proposal. They take the view that Chinese medicine practitioners should be given a separate FC seat. As for Chinese medicine practitioners, some support the proposal of including registered Chinese medicine practitioners in the Medical FC in the 2004 LegCo elections, but many among this group urge that a separate FC should be given to them in elections after 2007. Others demand that they should be given a separate seat in the 2004 elections. There are also some who acknowledge the difficulty of adding an extra FC seat in 2004 and propose to maintain the status quo until after the review of the post-2007 constitutional arrangements.

46. Various representatives of doctors, dentists and Chinese medicine practitioners have expressed doubts as to whether one single representative of the Medical FC can take care of the interests of doctors/dentists and Chinese medicine practitioners, given their differences in background and training as well as different theoretical origins of Western and Chinese medicine.

47. Having considered the results of its consultation and all views gathered, the Administration has decided that it is inappropriate to expand the Medical FC to include Chinese medicine practitioners in the 2004 LegCo elections.

Delineation of FCs

48. According to the Administration, the policy intention is that the number and composition of the existing FCs should remain unchanged for the 2004 LegCo elections, except for minor amendments to the electorate of certain FCs. Such amendments are to ensure that the composition of the FCs reflects the latest developments in the relevant sectors. Generally speaking, the changes proposed in the Bill can be classified into the following categories -

- (a) correcting the names of some corporate electors, and updating eligibility criteria due to changes in statutory registration/licensing regime;
- (b) deleting corporate bodies which have closed down, ceased operation or are no longer holding a particular type of licence/franchise; and
- (c) adding new corporate bodies with a status comparable to that of existing corporate electors, and new licensees/franchisees, representative bodies in the relevant trade.

49. The Administration has advised the Bills Committee that since the introduction of the Bill, it has received further requests from a number of organizations for inclusion in the electorate of certain FCs. After careful consideration, the Administration has proposed to make further changes to the electorate of the following FCs -

- (a) Agriculture and Fisheries FC;
- (b) Transport FC;
- (c) Tourism FC;
- (d) Import and Export FC;
- (e) Wholesale and Retail FC; and
- (f) Information Technology FC.

Tourism FC

50. Hon Howard YOUNG has pointed out that some travel industry members of the former Hong Kong Tourist Association (HKTA) which were previously eligible electors in the Tourism FC are no longer eligible to vote in the FC following the abolition of the membership system of the HKTA. The member has suggested that their status should be reinstated. The Bills Committee has requested the Administration to review the situation.

51. The Administration has explained that the electorate of the Tourism FC is delineated in sections 200 of LCO. Under the original section 200(a), "travel industry members of HKTA entitled to vote at general meetings of the Association" were also entitled to register as electors in the Tourism FC. This provision was repealed in 2001 as a consequential amendment of the HKTA (Amendment) Ordinance 2001, which amended the name of HKTA to the Hong Kong Tourism Board and scrapped the membership system of HKTA. About 30 of 300 or so travel industry members which were entitled to vote at the HKTA's general meetings have lost their eligibility to register in the Tourism FC as a result of the legislative amendment in 2001. The other 270 or so former travel industry members of the HKTA were not affected by the 2001 legislative amendments, as they were members of the other four umbrella organizations.

52. Having reviewed the matter, the Administration has proposed to move an amendment to reinstate the status of all organizations which were travel industry members of the former HKTA entitled to vote at the general meetings of the Association immediately before the commencement of the HKTA (Amendment) Ordinance 2001. This will preserve, once and for all, their eligibility for registration as electors in the Tourism FC.

Sports, Performing Arts, Culture and Publication FC

53. The Administration has advised the Bills Committee that under section 20V(1)(e) of LCO, art bodies which received funding support from specified authorities during a relevant period are eligible to be registered as electors in the Sports, Performing Arts, Culture and Publication FC. The "relevant period" is defined in section 20V(2)(b) of the Ordinance as the period from 1 April 1994 to the date on which a body applies for registration as an elector. The rationale of this provision is to ensure that the body is a bona fide and active arts body at the time it applies for registration as an elector. In practice, this means that for the 2000 LegCo elections, a body which received funding support once from one of the specified authorities six years ago was eligible to be registered. In order to adhere to the original intention of maintaining a six-year qualifying period and ensuring that the electors are bona fide arts bodies, clause 12(3) of the Bill proposes to change the cut-off date of the relevant period to 1 April 1998.

54. However, after further consideration, the Administration considers that prescribing a specific date as the cut-off date for determining the eligibility for voter registration would require legislative amendment from time to time. A better formulation to reflect its policy intention would be to state up front that, from the 2004 LegCo elections onwards, an arts body may be registered as an elector if it has received funding support within the six-year period immediately preceding the date of the body's application for registration as an elector. To ensure that none of the electors already registered in accordance with the existing provision would be affected, their status will be grandfathered by law. The Administration will move an amendment to that effect.

55. In response to Hon Cyd HO's concern that arts organizations which had not received funding support from specified bodies might be excluded from the Performing Arts, Culture and Publication FC, the Administration has explained that the electorate of the FC is delineated in section 20V of LCO. There are a number of channels through which an arts organization can become eligible for registration as an elector in the FC. The "funding support" channel is only one of them.

Information Technology FC (IT FC)

56. The Administration has proposed to add the following seven umbrella organizations to the IT FC -

- (a) Information and Software Industry Association Limited;
- (b) Hong Kong Wireless Technology Industry Association Limited;
- (c) The Society of Hong Kong External Telecommunications Services Providers Limited;
- (d) Hong Kong & Mainland Software Industry Cooperation Association Limited;

- (e) Information Systems Audit and Control Association (HK Chapter) Limited;
- (f) Professional Information Security Association; and
- (g) Internet Professionals Association Limited.

The Administration has advised that the existing potential electorate size of the IT FC is 7 827. With the adding of the seven umbrella organizations, the electorate size would increase by 5.63% to 8 268.

57. Members note that an additional "five-year requirement" in working experience, being in the IT business, or as holders of recognized certification, as appropriate, has been imposed on the eligibility criteria for registration as electors in the IT FC for the four umbrella organizations listed in paragraph 56 (d) - (g) above. While Dr Hon Raymond HO and Hon SIN Chung-kai have no objection to this additional eligibility requirement, Dr Hon Raymond HO has expressed particular concern about the proposed addition of Hong Kong & Mainland Software Industry Cooperation Association Limited (HMSICA), a new organization established about a year ago, to the IT FC. According to the Administration, given that the organisation is relatively new, Full Corporate Members of the Association which have been in the IT business for at least five years will be eligible to be registered as electors in the IT FC. In addition, Council Members of the Association will also be eligible for registration. Dr Hon Raymond HO and Hon SIN Chung-kai have pointed out that the proposal will enable both corporate members and certain individual members (i.e. Council Members) of HMSICA to become electors of the IT FC. This is not consistent with the approach for delineating franchise in respect of other trade associations which have already been included in IT FC, where only the corporate members of the associations can become electors of the IT FC.

58. Having considered the views of the members and in the interest of consistency across other trade associations in the IT FC, the Administration has revised its proposal to the effect that only the following two categories of corporate members of HMSICA may become electors of the IT FC -

- (a) Full Members of the Association which are represented in the Association's Council; and
- (b) Full Members of the Association which have been in the IT business for at least five years.

The Administration has explained that under the revised proposal, individual members (i.e. Council Members) of the Association will not be eligible for registration as electors in IT FC.

59. Dr Hon Raymond HO has reservations about the revised proposal that a Full Member of the Association with less than five years' experience in the IT business could still be eligible to become an elector in the FC, as long as the Member is

represented in the Association's Council. In his view, this is not consistent with the Administration's stated criterion that electors in the FC should be representative bodies with considerable experience in the IT field.

60. The Administration has explained that despite the fact that some of the new organizations proposed to be added to the IT FC are relatively new, they are active in participating in IT or IT-related business. The Administration considers that it would be beneficial to include them in IT FC. The Administration has also pointed out that if a Full Member is represented on the Council of the Association, it should have some standing within the Association, and thus it should not be unreasonable for it to be registered in the IT FC.

61. The Administration has further advised that there are at present 18 Full Members of the Association which are represented in the Association's Council. Any application for amendment of the Association's constitution which has the effect of changing its membership, such as altering the number of its Council Members, would require the approval of the Secretary for Constitutional Affairs (SCA) under section 3(2A) of LCO (paragraph 63 below refers).

62. Hon Mrs Miriam LAU considers that the eligibility criteria for registration as electors in the same FC should be consistent. Some members consider that the eligibility criteria under the Administration's revised proposal could be further simplified, and the "five-year requirement" may be relaxed. Dr Hon Raymond HO remains opposed to the revised proposal as a matter of principle. Hon SIN Chung-kai expresses support for the Administration's revised proposal and has indicated that he would not support any proposal with the effect of imposing more stringent requirement in respect of the eligibility for registration in the IT FC. The Bills Committee has reached no consensus on the Administration's revised proposal.

63. Subsequent to the last meeting of the Bills Committee, the Administration has advised members that, after reconsideration, it will revise the criteria by -

- (a) deleting members of the council or governing bodies of these four umbrella organisations from the electorate; and
- (b) reducing the relevant period from "five years" to "four years".

The various proposed changes to the IT FC will result in additional voters of 441. As a result of the above changes, there will be some variation in the total number of additional voters, but the change is not expected to be too significant. The Administration will propose an amendment to give effect to the above changes.

Amendment to constitutions of "umbrella organizations"

64. In response to members' queries, the Administration has explained that the electorate of some FCs include corporate or individual members of "umbrella organizations" which are entitled to vote at general meetings of such organizations. Amendments to the constitutions of these organizations require the approval of the SCA in so far as the amendments relate to -

- (a) the objects of the body;
- (b) the criteria and conditions of membership of the body; or
- (c) the eligibility of members of the body to vote at a general meeting of the body,

for the purposes of LCO. The rationale of this requirement is to ensure that changes made by the umbrella organizations to their constitutions will not alter the electorate or the nature of the relevant FC without the approval of the Government. Section 3(2A) of LCO is intended to reflect this policy.

65. Hon Margaret NG has expressed concern that the present formulation of section 3(2A) gives an impression that the Administration has the authority to interfere in the internal affairs of an umbrella organization. Members have requested the Administration to review the formulation of the section with a view to removing any such misunderstanding.

66. The Administration has advised that the sole purpose of section 3(2A) is to protect the integrity of the electorate of the relevant FCs. The Administration has no intention to get involved in the internal affairs of umbrella organizations. To address members' concerns, the Administration will move an amendment to add a subsection after section 3(2A) to put beyond doubt that the power given to SCA under section 3(2A) is only exercisable for the purpose of defining the composition of FC, and not for any other purposes.

Other issues

Withdrawal by candidates after close of nominations

67. Under section 42 of LCO, a validly nominated candidate in a LegCo election is not allowed to withdraw from the election after the close of nominations. The only exceptions are if the candidate dies or if the candidate is disqualified from being so nominated.

68. Hon IP Kwok-him has pointed out that during the 2000 LegCo GC election, a candidate wanted to withdraw his candidature after the close of nominations, but was unable to do so due to the existing statutory provisions. He has requested the Administration to consider whether a candidate should be allowed to withdraw his candidature after the close of nominations, in the light of this incident.

69. Hon Audrey EU considers that candidates should be allowed to withdraw from candidature after the close of nominations in exceptional circumstances. This would obviate the need for a by-election in the event that the candidate wins the election and still decides not to take up office. Considerable public resources could be saved and voters would not be unduly inconvenienced.

70. The Administration has advised that in the light of the experience of the 2000 LegCo GC election, the Administration proposed, in the Chief Executive (CE) Election Bill which was introduced into LegCo in March 2001, a provision that would allow candidates standing in a CE election to withdraw after the close of nominations. However, the then Bills Committee expressed grave concern on the proposal, fearing that it might provide opportunities for corruption and manipulation. In the end, the Administration dropped the proposal.

71. In the view of the Administration, allowing a validly nominated candidate to withdraw from election after the close of nominations would give rise to a number of problems -

- (a) such an arrangement could be susceptible to abuse and manipulation, and could provide opportunity for corrupt activities. This would undermine the credibility of our election system. Further, it is not practicable to set up a mechanism to differentiate withdrawals with bona fide reasons from other withdrawals;
- (b) the arrangement would mean that there would be no certainty as to who are standing for election right up to the polling day. This could cause confusion to the voters; and
- (c) as a corollary to (b) above, it would be difficult to finalize practical electoral arrangements such as printing of ballot papers.

72. Compared to other local elections and overseas practices, the Administration has advised that the same arrangements apply to the CE, District Council and Village Representative elections. Withdrawal of candidature after the close of nominations is also not allowed in elections in many countries including Australia, Canada, France and the Netherlands.

73. Nevertheless, the Administration has considered other measures to address the question of a candidate deciding after the close of nominations not to take up office even if elected because of legitimate reasons (e.g. health considerations). One option considered is automatic succession of the "next-in-line" candidate. Apart from other considerations, the Administration has pointed out that the limitations with this option are that it is not applicable to FC elections which use the "first-past-the-post" voting system, and it cannot be used in the cases where there is no next-in-line candidate on the list, for example, an independent candidate running on his own.

74. In all, the Administration is of the view that candidates should not be allowed to withdraw their candidature after the close of nominations, in order to protect the integrity of the electoral process. A majority of the members of the Bills Committee do not support any withdrawal after the close of nominations as it might provide opportunities for corruption and manipulation. Hon Andrew WONG is of the view that the last day for withdrawal should be advanced to one day before close of nominations to further enhance the integrity of the electoral process. On the idea of "next-in-line" automatic succession, some members have also pointed out that a political party or group could use a popular and experienced candidate to "lead" the

list, and after winning the election to arrange for his retirement and resignation, thereby enabling the candidate who is next-in-line to fill the seat.

Allocation of seats under the List Voting System

75. Under the existing voting system for GC elections which has been adopted since 1998, each voter may only vote for a particular list of candidates in his own constituency, but not individual candidates within a list. Seats will be distributed among the lists in proportion to their vote shares. Seats won by a list will be allocated to candidates on the list according to the ranking shown on the ballot paper. This ranking is predetermined by political parties or the candidates concerned.

76. Hon Cyd HO considers that the question of a candidate wishing to give up his candidature after the close of nominations could be addressed by modification of the existing voting system to allow voters to vote for individual candidates within a list, instead of a particular list of candidates.

77. The Administration considers that the present voting system is easy to understand and to operate, and broadly accepted by the community. The decision which voters have to make on the ballot paper is a simple one. The vote counting and seat allocation procedures are also straightforward. This voting system is also used for allocating seats in the Proportional Representative Lists in countries such as Germany, Italy, Portugal, Spain and Israel.

78. In response to the request of the Bills Committee, the Administration has provided information on how seats could be allocated under different list voting systems. While these voting systems are designed to give voters more specific choices on which candidates (as distinct from which lists) they want to elect, the operation of the systems is much more complicated. The Administration does not see a case for Hong Kong to adopt any of these systems, bearing in mind in particular that the current system is operating smoothly.

CONSULTATION WITH THE HOUSE COMMITTEE

79. The Bills Committee consulted the House Committee on 20 June 2003 and sought the latter's support that the Second Reading debate on the Bill be resumed on 2 July 2003.

**Bills Committee on
Legislative Council (Amendment) Bill 2003**

Membership list

Chairman	Hon Andrew WONG Wang-fat, JP
Members	Dr Hon David CHU Yu-lin, JP Hon Cyd HO Sau-lan Ir Dr Hon Raymond HO Chung-tai, JP Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP Hon CHEUNG Man-kwong Hon HUI Cheung-ching, JP Hon SIN Chung-kai Dr Hon Philip WONG Yu-hong Hon WONG Yung-kan Hon Howard YOUNG, JP Hon Miriam LAU Kin-yee, JP Hon Emily LAU Wai-hing, JP Hon SZETO WAH Hon Henry WU King-cheong, BBS, JP Hon LEUNG Fu-wah, MH, JP Dr Hon LO Wing-lok Hon IP Kwok-him, JP Hon Audrey EU Yuet-mee, SC, JP (Total : 20 Members)
Clerk	Mrs Percy MA
Legal Adviser	Mr Arthur CHEUNG
Date	5 May 2003

《2003 年立法會(修訂)條例草案》委員會
Bills Committee on Legislative Council (Amendment) Bill 2003

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

團體名稱	Name of organization
1. 九龍社團聯會	Kowloon Federation of Associations
2. 九龍城青年協進會	The Kowloon City Youths Association
* 3. 九龍城區居民聯會	Kowloon City District Residents Association
4. 土瓜灣區大廈聯會	Federation of Organizations for Building in Tokwawan District
5. 工聯會九龍中地區服務處	FTU Kowloon Central District Service Office
6. 工聯會九龍西地區服務處	FTU Kowloon Western District Service Office
7. 工聯會九龍東地區服務處	FTU Kowloon East District Service Office
8. 工聯會港島南地區服務處	FTU Hong Kong Island South District Service Office
9. 工聯會新界北地區服務處	FTU New Territory North District Service Office
10. 工聯會新界東(沙田)地區服務處	FTU New Territory East (Shatin) District Service Office
11. 工聯會新界東(將軍澳)地區服務處	FTU New Territory East (Cheung Kwun O) District Service Office
12. 文職及專業人員協會	Clerical and Professional Employees Association
* 13. 北區居民聯會	North District Residents Association
14. 民主動力	

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| 15. 汽車交通運輸業總工會 | Motor Transport Workers General Union |
| 16. 服務業工會聯合會 | Federation of Employees Union In Service |
| * 17. 東九龍居民委員會 | East Kowloon District Residents' Committee |
| 18. 油尖旺社團聯合會 | Yau Tsim Mong Federation of Association |
| 19. 姿雅集 | Gathering of Charming Elegance |
| 20. 政府人員協會 | Government Employees Association |
| 21. 活力耆康會 | Energetic Elders' Association |
| * 22. 香港人權監察 | Hong Kong Human Rights Monitor |
| 23. 香港民用航空事業職工總會 | The Staffs & Workers Union of Hong Kong Civil Airlines |
| 24. 香港建造業總工會 | Hong Kong Construction Industry Employees General Union |
| 25. 香港洋務工會 | Hong Kong Union of Chinese Workers in Western Style Employment |
| * 26. 香港島各界聯合會 | The Hong Kong Island Federation |
| 27. 香港基督徒學會 | Hong Kong Christian Institute |
| 28. 香港婦女發展聯合會 | Hong Kong Women Development Association |
| 29. 香港造船機械鋼鐵業總工會 | Hong Kong Shipbuilding, Machinery Manufacturing and Steel Industries Employees General Union |
| * 30. 香港漁民團體聯席會議 | Joint Committee of Hong Kong Fishermen's Organizations |
| 31. 香港製造業總工會 | Hong Kong Manufacturing Industry Employees General Union |
| 32. 香港護衛及物業管理從業員總會 | The Hong Kong General Union of Security & Property Management Industry Employees |
| 33. 家維邨居民協聯會 | Ka Wai Chuen Resident Association |

34. 海港運輸業總工會	Harbour Transportation Workers General Union
35. 深水埗居民聯會	Sham Shui Po Residents Association
36. 港九紡織染業職工總會	Hong Kong & Kowloon Spinning Weaving and Dyeing Trade Workers General Union
37. 港九穀米副食業職工會	Hong Kong and Kowloon Cereals Rice and Subsidiary Foodstuffs Trade Workers Union
38. 飲食業潮粵籍職工會	Catering Trade Chiuchow and Cantonese Workers Union
39. 飲食業職工總會	Eating Establishment Employees General Union
40. 黃埔居民協會	Whampoa Resident Association
41. 愛心青年社	Youth Heart Association
42. 愛民邨居民聯會	Oi Man Estate Resident Association
43. 新界工商業總會	New Territories Commercial & Industrial General Association Ltd.
* 44. 新界社團聯會	New Territories Association of Societies
* 45. 新界青年聯會	Federation of New Territories Youth
46. 資訊保安及鑑證公會	Information Security and Forensics Society
47. 雞鴨業職工會	Poultry Trade Workers Union
48. 觀塘民聯會	Kwun Tong Resident Association

個別人士姓名

Name of individual

49. 李洪森先生 屯門區議會議員	Mr LEE Hung-sham Member, Tuen Mun District Council
50. 徐帆先生 屯門區議會議員	Mr TSUI Fan Member, Tuen Mun District Council

- * 51. 馬嶽博士
香港科技大學
Dr MA Ngok
The Hong Kong University of Science and
Technology
- 52. 陳有海先生
屯門區議會議員
Mr CHAN Yau-hoi
Member, Tuen Mun District Council
- * 53. 黃偉國先生
香港大學
Mr WONG Wai-kwok
University of Hong Kong

- * 曾向法案委員會口頭申述意見的團體/個別人士
Organizations/individuals who have made oral representations to the Bills
Committee