

立法會
Legislative Council

LC Paper No. CB(2)1131/03-04

Ref : CB2/SS/4/03

**Subcommittee on subsidiary legislation
relating to 2004 Legislative Council elections**

**Minutes of second meeting
held on Monday, 12 January 2004 at 5:00 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon HUI Cheung-ching, JP (Chairman)
Hon SIN Chung-kai
Hon Howard YOUNG, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-him, JP
- Members absent** : Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC , JP
- Public Officers attending** : Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs
- Mr LI Wing
Chief Electoral Officer
- Miss Susanna LAI Shuk-ching
Assistant Secretary for Constitutional Affairs
- Mr Michael LAM Siu-chung
Senior Government Counsel

Ms Grace LEUNG Pui-kay
Government Counsel

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in Attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Millie WONG
Senior Council Secretary (2)4

Action

I. Name and membership of the Subcommittee

The Chairman informed members that the House Committee had at its meeting on 9 January 2004 decided that the Subcommittee on Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation should also be responsible for studying the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation and other items of subsidiary legislation relating to the 2004 Legislative Council (LegCo) elections to be tabled in the Council. The Subcommittee had been renamed as Subcommittee on subsidiary legislation relating to 2004 Legislative Council elections to reflect its new function.

2. The Chairman further said that other Members had been invited to join the Subcommittee, and Mr WONG Yung-kan had indicated that he would join the Subcommittee.

II. Meeting with the Administration

Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation

*Administration's response to issues raised at the meeting on 6 January 2004
(LC Paper Nos. CB(2)954/03-04(01) and (02))*

Action

3. The Subcommittee deliberated (index of proceedings attached at **Annex**). Members completed scrutiny of the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation.

Amendments proposed by the Administration

4. Deputy Secretary for Constitutional Affairs (DSCA) said that having considered the comments made by members at the last meeting on 6 January 2004, the Electoral Affairs Commission (EAC) agreed to introduce the following amendments to sections 2, 3, 4 and 15 of the Regulation -

- (a) the deadline for applications for registration of names, abbreviations and emblems would be revised to 1 April in 2004 and to 15 April in subsequent years. The time for processing the applications could also be shortened so that straightforward applications could be processed within 7 weeks in 2004, and within 6 weeks in subsequent years; other applications could be processed within 16 weeks in 2004, and within 13 weeks in subsequent years; and
- (b) each candidate or candidate list would be allowed to print on the ballot paper up to 3 emblems, and the names or abbreviations of 3 organizations, subject to the application provisions in the Regulation.

5. The Subcommittee supported the proposed amendments. DSCA said that a motion would be moved by the Administration to amend the Regulation.

Declaration of political affiliation by candidates

6. Mr IP Kwok-him asked whether a candidate who had no political affiliation could choose not to declare himself as "Independent Candidate" or "Non-affiliated Candidate" on the ballot paper. DSCA clarified that it would be for a candidate to decide whether he would describe himself as an "Independent Candidate" or "Non-affiliated Candidate" or not to use either of the terms on the ballot paper.

7. Mr Howard YOUNG asked whether a candidate who had political affiliation but did not declare the information on the ballot paper would commit an offence of false statement. Mr YOUNG pointed out that for a candidate who was a member of a political party, there was a difference between not indicating his political affiliation and describing himself as "Independent Candidate" or "Non-affiliated Candidate" on the ballot paper. In his view, the latter situation would constitute an offence of false statement.

Action

8. DSCA responded that as EAC adopted an arrangement of self-declaration by candidates, it would not play a vetting role in respect of the political affiliation of candidates. Hence, it was for candidates to bear the political or other consequences if any. DSCA further said that electors and the media played a monitoring role in the election process.

Admin

9. Mr SIN Chung-kai asked whether a candidate who, having declared that he was a member of a political party on the nomination form, but subsequently described himself as "Independent Candidate" or "Non-affiliated Candidate" on the request form for printing of particulars on the ballot paper would commit an offence of false statement under section 35 of the Regulation. DSCA said that the Administration would provide a response on whether the candidate would commit an offence of false statement under the Regulation or any other laws.

Admin

10. Mr SIN Chung-kai suggested that EAC should ensure consistency in information provided by candidates on the nomination form and the request form for printing of particulars on the ballot paper. Mr IP Kwok-him said that a candidate belonging to a political party could choose not to declare his political affiliation on both the nomination form and ballot paper. However, he agreed that any inconsistency in information on political affiliation on the nomination form and the ballot paper was not acceptable.

11. Senior Assistant Legal Adviser 2 (SALA2) said that under the Regulation, an independent or non-affiliated candidate could be allowed to print registered emblems of prescribed bodies, e.g. a political party on the ballot paper. However, he might or might not be a member of the political party. SALA2 considered that the description "Independent Candidate" or "Non-affiliated Candidate" could therefore be unclear.

12. DSCA responded that the Regulation aimed to provide a framework for printing of certain particulars of candidates for the information of electors. EAC would not be involved in a complex vetting procedure under the self-declaration arrangement. Moreover, it was not the purpose of the Regulation to define the term "Independent Candidate" or "Non-affiliated Candidate". It was ultimately a matter for electors to make their own judgment on the status of a candidate who claimed to be independent or non-affiliated.

Notification of EAC's decision on application

13. In response to Mr SIN Chung-kai's question, DSCA explained that EAC would provide the applicant the reasons for its decision on an application made under sections 8(1) or 9(1). Mr SIN suggested that the intention should be explicitly

Action

Admin stated in section 19 of the Regulation. DSCA agreed to consider Mr SIN's suggestion taking account of the wording of similar provisions of other election-related subsidiary legislation.

Follow-up action

14. Members agreed that the wording of the proposed amendments and the Administration's response to issues raised by members at the meeting, to be provided by the Administration on or before 19 January 2004, should be circulated to the Subcommittee for consideration. A further meeting of the Subcommittee, if considered necessary, could be held before the Subcommittee submitted its written report to the House Committee on 30 January 2004.

Admin 15. Referring to sections 20 and 24 of the Regulation, Mr SIN Chung-kai suggested that the register of names and emblems of prescribed bodies/persons maintained by EAC should be accessible on the website and should contain historical data to facilitate easy reference by the public. DSCA agreed to follow up the matter with EAC.

Admin 16. Mr SIN Chung-kai also suggested that upon passing of the Regulation, EAC should send letters to invite political parties/groups which had participated in the 2003 District Councils election to apply for registration of names and emblems. Chief Electoral Officer agreed.

III. Date of next meeting

Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation

17. The next meeting was scheduled for 30 January 2004 at 10:45 am. The Subcommittee would proceed to discuss the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation.

(Post-meeting note : To avoid a clash with another committee meeting, the time of the next meeting has been rescheduled to 3:30 pm (or immediately after the House Committee meeting).

18. The Chairman said that he would move a motion at the Council meeting on 4 February 2004 to extend the scrutiny period of the Regulation to 25 February 2004.

Action

19. The meeting ended at 7:03 pm.

Council Business Division 2
Legislative Council Secretariat
29 January 2004

**Proceedings of the second meeting of the Subcommittee on
subsidiary legislation relating to 2004 Legislative Council elections
on Monday, 12 January 2004 at 5:00 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action Required
000145 - 000408	Chairman	Name and membership of Subcommittee.	
000409 - 001115	Admin	Briefing on response to issues raised at the meeting on 6 January 2004.	
001116 - 001123	Chairman	Invitation of comments from members.	
001124 - 002309	Mr SIN Chung-kai	Possibility of a third option other than "Independent Candidate" and "Non-affiliated Candidate". Possibility of a "fast track" procedure for processing late applications for registration of names/emblems.	
002310 - 004215	Mr IP Kwok-him Admin Mr Howard YOUNG Mr SIN Chung-kai Chairman	Declaration of political affiliation by candidates. Inconsistency in information relating to political affiliation provided by a candidate on the nomination form and the ballot paper.	Admin to consider whether a candidate would commit an offence of false statement under the Regulation. Admin to consider whether EAC should ensure consistency in information provided by candidates.
004216 - 005650	SALA2 Admin Chairman	Meaning of "Independent Candidate" or "Non-affiliated Candidate".	
005651 - 010147	Mr Howard YOUNG Admin Chairman	Cut-off dates for applications for registration of names/emblems.	
010148 - 014952	Chairman Admin SALA2 Mr SIN Chung-kai Mr Howard YOUNG	Detailed scrutiny of the Regulation.	

Time Marker	Speaker(s)	Subject(s)	Action Required
010255 - 010429	Chairman Admin	Section 2 - Cut off dates would be revised to 1 April 2004 and 15 April in subsequent years.	
010430 - 010948	Chairman SALA2 Admin	Sections 3 and 4 - Each candidate or candidate list would be allowed to print on the ballot paper up to three emblems, and the names or abbreviations of three organizations.	
013501 013720	Chairman Admin	Section 15 - The period for the public to object to the granting of an application would be shortened from 21 days to 14 days.	
013820 - 014030	Chairman Mr SIN Chung-kai Admin	Section 19 - Suggestion to provide the applicant with the reasons for EAC's decision on an application.	Admin to consider the suggestion taking account of the wording of similar provisions of other election-related subsidiary legislation.
014350 - 014700	Chairman Mr SIN Chung-kai Admin SALA2	Sections 20 and 24 - Suggestion for the register of names and emblems of prescribed bodies/persons maintained by EAC to be accessible on the website and to contain historical data.	Admin to follow up with EAC.
014953 - 015107	Mr SIN Chung-kai Admin	Upon passing of the Regulation, letters could be sent to political parties/groups which had participated in the 2003 District Councils election.	Admin to send letters to invite political parties/groups to apply for registration of names/emblems.
015108 - 015207	Chairman Admin	Consideration of EAC (Financial Assistance for LegCO Elections) (Application and Payment Procedure) Regulation at the next meeting. Legislative timetable. Moving of a motion to extend the scrutiny period to 25 February 2004.	

Time Marker	Speaker(s)	Subject(s)	Action Required
015208 - 015929	Mr SIN Chung-kai Admin Chairman	Next meeting to be held on 30 January 2004 at 10:45 am. Consideration of draft amendments to the Regulation by circulation.	Admin to provide draft amendments to the Regulation together with written response to issues raised by members by 19 January 2004.

Council Business Division 2
Legislative Council Secretariat
29 January 2004