

立法會
Legislative Council

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LC Paper No. CB(2)986/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2011

Minutes of the third meeting
held on Tuesday, 31 May 2011, at 10:45 am
in the Conference Room A of the Legislative Council Building

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, SBS, JP (Deputy Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC
- Member attending** : Dr Hon Margaret NG
- Members absent** : Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon WONG Yuk-man

Public Officers : Constitutional and Mainland Affairs Bureau
attending

Ms Adeline WONG Ching-man
Under Secretary for Constitutional and Mainland
Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland
Affairs

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Christopher LAU Chung-hoi
Assistant Secretary for Constitutional and Mainland
Affairs

Department of Justice

Mr Gilbert MO Sik-keung
Deputy Law Draftsman
(Bilingual Drafting and Administration)

Clerk in : Miss Flora TAI
attendance Chief Council Secretary (2)3

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

Miss Ivy LEONG
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

- I. Meeting with the Administration**
[LC Paper Nos. CB(3)701/10-11, CB(2)1759/10-11(01) and
CB(2)1906/10-11(01)]

Action

The Bills Committee deliberated (index of proceedings attached at **Annex**).

- Admin 2. The Administration was requested –
- (a) to advise whether the Administration would provide any guidance or objective criteria which the Court of Final Appeal ("CFA") must take into account in the exercise of its discretion in determining whether to allow an appeal in relation to an election petition;
 - (b) to consider whether the Clerk to the Legislative Council ("LegCo") could request the Court of First Instance to provide it with a report on any specified matter arising from the trial of an election petition under the proposed amended section 67(6);
 - (c) to advise whether CFA could determine a LegCo election to be invalid;
 - (d) to consider extending the relevant appeal period to 14 working days;
 - (e) to review the appropriateness of using the words "該選舉" in the proposed amended section 56; and
 - (f) to consider the suggestion of simplifying the Chinese text of the heading of the proposed amended section 71.

II. Any other business

3. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the 3rd meeting of the
Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011
on Tuesday, 31 May 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

| Time Marker | Speaker(s) | Subject(s) | Action required |
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| 000956 - 001158 | Chairman Dr Margaret NG | Opening remarks | |
| 001159 - 002213 | Dr Margaret NG Chairman Administration | <p>Dr Margaret NG's views that –</p> <ul style="list-style-type: none"> (a) apart from the Chief Executive ("CE") election, it was not appropriate to adopt the leap-frog appeal mechanism for the Legislative Council ("LegCo"), District Council ("DC") and particularly Village Representative ("VR") elections; (b) according to the Hong Kong Court of Final Appeal Ordinance (Cap. 484), a list of conditions must be fulfilled for an appeal to be lodged directly to the Court of Final Appeal ("CFA"), including a point of law of great general or public importance involved in the decision of the judge in the proceedings concerned; (c) as the majority of election petitions involved disputes over facts in respect of election misconduct, it was not appropriate for CFA to examine cases involving such disputes without their being heard by the Court of Appeal ("CA"); (d) if all the appeals from the determination of the Court of First Instance ("CFI") in election petitions could be lodged directly to CFA, it would affect the normal business of the Court; and (e) the fact that the Judiciary did not express objection to the proposed leap-frog appeal mechanism did not necessarily mean that it supported the proposal as it normally would not express views on policy matters. <p>Dr Margaret NG requested that the Administration should reconsider the appropriateness of providing a leap-frog appeal mechanism for the LegCo, DC and VR elections.</p> | |

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| | | <p>The Administration responded that –</p> <p>(a) the proposed leap-frog appeal mechanism would facilitate speedy resolution of disputes in relation to the constitution of LegCo and DC as well as the office of VR, and minimize the uncertainty faced by individual LegCo members, DC members and VRs subject to election petitions in exercising their functions and duties;</p> <p>(b) under the proposed leap-frog appeal mechanism for the LegCo, DC and VR elections, the party aggrieved by the CFI's determination might lodge an application for leave to appeal to CFA. The Appeal Committee of CFA might grant leave if it considered granting of leave appropriate; and</p> <p>(c) the Judiciary had been consulted on the proposal and it had taken into consideration the possible resources implications arising from the proposal. While the Judiciary would endeavour to absorb any additional resources implications arising from the proposal within its existing resources, it might seek additional resources through the established funding mechanism where necessary.</p> <p>At the request of Dr Margaret NG, the Administration agreed to provide a written response on whether the Administration would provide any guidance or objective criteria which CFA must take into account in the exercise of its discretion in determining whether to allow an appeal in relation to an election petition.</p> | <p>Admin (para 2 of minutes)</p> |
| 002214 - 003534 | Chairman Ms Emily LAU Administration Mr IP Kwok-him | Referring to the case of Ms. Chan Yin Chu v. Ricky Or Yiu Lam as stated in Annex A to the Administration's paper on election petition mechanism [LC Paper No. CB(2)1868/10-11(02)], Ms Emily LAU pointed out that there were election petition cases in relation to the 2007 DC election which were still ongoing. Noting that if an election petition was lodged, the Chief Electoral Officer ("CEO") must not make any payment of financial assistance until the | |

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| | | <p>determination, abandonment or termination of the election petition, Ms LAU queried whether it was fair to withhold the payment of financial assistance as the amount involved in respect of a geographical constituency ("GC") election was substantial and the time taken for an election petition to be disposed of could be very long. She asked whether the Administration would consider making appropriate legislative amendments under this Bill.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) it was understood that there were a couple of reasons for the long time taken for the trial of the case of Ms. Chan Yin Chu v. Ricky Or Yiu Lam, including the fact that the petitioner was not legally represented and the petitioner's delay in submission of the required documents; (b) disqualification from being a candidate in respect of an elected person was a ground to lodge election petitions under section 61 of the LegCo Ordinance (Cap. 542) ("LCO") and section 49 of the DCs Ordinance (Cap. 547) ("DCO"). Such disqualification would result in ineligibility for financial assistance in both LCO and DCO. Hence, according to section 60J of LCO and section 60I of DCO, if an election petition was lodged, CEO must not make any payment of financial assistance until the determination, abandonment or termination of the election petition; and (c) the Administration would consider whether it was within the scope of the current legislative exercise to examine this issue. <p>In response to the Chairman and Mr IP Kwok-him, the Administration explained that in the case of a traditional functional constituency ("FC") and DC, only the following candidates were eligible for financial assistance – (a) a candidate who was elected as a member; or (b) a candidate who was not elected as a member but who was not a disqualified candidate; and obtained at least 5% of the total number of valid votes cast in the constituency concerned. As for</p> | |

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| | | <p>a GC and DC (second) FC, there were similar requirements for eligibility for financial assistance, which included the requirement that if no candidate on the list was elected as a Member, at least one candidate on the list of candidates was not a disqualified candidate and the total number of valid votes cast for the list was equal to or exceeded 5% of the total number of valid votes cast in the constituency concerned. If the Court determined that a candidate whose election was questioned was not duly elected, he or she would not be eligible for financial assistance subject to the conditions set out in the legislation.</p> | |
| 003535 - 003835 | <p>Chairman Mr IP Kwok-him Administration</p> | <p>Mr IP Kwok-him enquired –</p> <p>(a) whether there were measures in place to facilitate expeditious handling of election petitions; and</p> <p>(b) whether there were cases where parties intentionally postponed submission of the required documents in a bid to delay the trial of a case.</p> <p>The Administration responded that –</p> <p>(a) the Court could accord priority to election petitions in appropriate cases; and</p> <p>(b) there were court procedures to prevent such intentionally postponed submission of required document.</p> | |
| 003836 - 004552 | <p>Chairman Ms Audrey EU Administration SALA2 Ms Emily LAU</p> | <p>In response to Ms Audrey EU's enquiry, the legal adviser to the Bills Committee advised that section 60C(1) of LCO stipulated the circumstances in which a list of GC candidates/candidate was eligible for financial assistance, and that section 60J of LCO stipulated that if an election petition was lodged, CEO must not make any payment of financial assistance until the determination, abandonment or termination of the election petition.</p> <p>Ms Audrey EU's view that in most circumstances, GC candidates would be able to obtain the financial assistance since candidates on a list would be eligible for financial assistance so long</p> | |

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| | | <p>as only one candidate on the list was not a disqualified candidate.</p> <p>The Administration responded that in comparison with candidates for a FC and DC, a list of candidates for a GC might have higher chances to be eligible for financial assistance.</p> | |
| Clause-by-clause examination of the Electoral Legislation (Miscellaneous Amendments) Bill 2011 ("the Bill") | | | |
| 004553 - 004743 | Chairman Administration | Explanation of the purpose of the Bill | |
| 004744 - 005136 | Chairman Administration | <p>Part 1 – Preliminary</p> <p>Clause 1 – Short title and commencement</p> | |
| 005137 - 005759 | Chairman Ms Emily LAU Administration | <p>In response to Ms Emily LAU's enquiry about the period of not holding a by-election to fill a vacancy occurring in the membership of DC and LegCo, the Administration advised that –</p> <p>(a) section 33(2) of DCO stipulated that a by-election to fill a vacancy occurring in the membership of a DC was not to be held within the four months preceding the end of the current term of office of the elected members. As the Third Term DCs would end on 31 December 2011, a by-election would not be held after 31 August 2011; and</p> <p>(b) section 36(2) of LCO stipulated that a by-election to fill a vacancy occurring in the membership of LegCo was not to be held within the four months preceding the end of that Council's current term of office.</p> <p>Ms Emily LAU further enquired whether the period of not holding a by-election for DCs could be extended to six months. She pointed out that the Fourth Term DCs election would be held in November 2011, however, a by-election would be held in July 2011 to fill a vacancy in the Tsuen Wan DC. As such, the term of office of the new DC member would only be a few months' time.</p> <p>The Administration responded that –</p> | |

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| | | <p>(a) the Administration considered that a period of four months was appropriate and should not be extended; and</p> <p>(b) after a vacancy arose, it took time to organize a by-election. If a by-election was not to be held within six months preceding the end of the current term, the constituents of the relevant DC constituency would be left unrepresented for an unduly long period and could not enjoy the public service rendered by the DC member.</p> | |
| 005800 - 005818 | Chairman Administration | <p>Part 2 – Amendments Relating to Appeal in relation to Election Petitions</p> <p>Division 1 – Enactments Amended</p> <p>Clause 2 – Enactments amended</p> | |
| 005819 - 005913 | Administration | <p>Division 2 – Amendments to LCO</p> <p>Clause 3 – Section 56 amended (Election to be presumed to be valid)</p> | |
| 005914 - 010932 | Chairman Ms Audrey EU Administration SALA2 | Ms Audrey EU's enquiry and the Administration's explanation on the definition of the term "the election" (該選舉) referred to in the proposed amended section 56, which provided that every election was presumed to be valid until CFI or CFA, on the hearing of an election petition or an appeal respectively, determined that the election was invalid. | |
| 010933 - 011859 | Chairman Mr IP Kwok-him Administration Mrs Sophie LEUNG | <p>Mr IP Kwok-him suggested that the Administration should consider improving the wordings in the proposed amended section 56 to avoid ambiguity as to whether the whole election would be determined as invalid should the election petition only involve a candidate.</p> <p>Mrs Sophie LEUNG's view that the determination on whether the election was invalid depended on the nature of the election petition.</p> <p>The Administration responded that –</p> <p>(a) there were provisions in LCO which provided for election petitions in relation to</p> | |

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| | | <p>the validity of an election and whether a person was duly elected. The proposed amended section 56 stipulated that every election was presumed to be valid until CFI or CFA, on the hearing of an election petition or an appeal respectively, determined that the election was invalid;</p> <p>(b) the proposed new section 58A stipulated that a person declared under section 58 as returned at an election was presumed to be duly elected until he or she was ruled by CFI or CFA, on the determination of an election petition or appeal, as not duly elected; and</p> <p>(c) section 67(2) stipulated that at the end of the trial of an election petition in relation to an election that was contested, the Court must determine whether the person whose election was questioned was or was not duly elected and, if not duly elected, determine whether some other person was duly elected instead.</p> | |
| 011900 - 012232 | Ms Cyd HO Administration | <p>Ms Cyd HO enquired the reason for deleting the period within which election petition was to be lodged in the proposed amended section 56.</p> <p>The Administration responded that the period within which election petition was to be lodged was stipulated in section 65. The amendment of section 56 was a technical one, adding the reference of CFA in view of the possibility for an election petition to be heard at CFA.</p> | |
| 012233 - 012623 | Ms Audrey EU Administration | <p>Ms Audrey EU enquired whether the proposed arrangement for filling vacancies in LegCo would cover vacancies arising from the determination of the Court on an election petition in which a Member was ruled by the Court as not duly elected. Ms EU further enquired whether the vacancy would be filled if an appeal was lodged to CFA.</p> <p>The Administration responded that –</p> <p>(a) the proposed arrangement for filling vacancies in LegCo would cover vacancies</p> | |

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| | | <p>arising from resignation of Members and other situations including a Member who was ruled by CFI, on the determination of an election petition, as not duly elected;</p> <p>(b) the effect of the determination of CFI of an election petition was suspended until the expiry of the period within which notice of a motion for the purpose of an application for leave to appeal to CFA against the determination could be filed; and</p> <p>(c) if the Member concerned lodged an appeal to CFA, the Member could still act as a Member until CFA made a final determination as to whether the Member was duly elected or until the appeal was terminated in other circumstances (including withdrawal of appeal or withdrawal of notice of appeal or the leave to appeal was refused).</p> | |
| 012624 - 012759 | Chairman Mr IP Kwok-him Administration | <p>Noting that the words "該項選舉" were adopted in the existing section 56 but the words "該選舉" were used in the proposed amended section 56, Mr IP Kwok-him asked whether the word "項" should be added.</p> <p>The Administration replied that it would look at LCO and see whether there were other instances in which the words "該選舉" were used.</p> | Admin (para 2 of minutes) |
| 012800 - 012838 | Administration | Clause 4 – Section 58A added | |
| 012839 - 013314 | Chairman Ms Audrey EU Administration | <p>Ms Audrey EU queried the need for section 56 if the new section 58A was added.</p> <p>The Administration explained that –</p> <p>(a) section 56 provided for an election petition which questioned the validity of an election as a whole while section 58A provided for an election petition which questioned whether a person was duly elected; and</p> <p>(b) section 61(1) stipulated the grounds on which an election might be questioned, including that corrupt or illegal conduct was</p> | |

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| | | generally prevalent at or in connection with the election, or that material irregularity occurred in relation to the election, or to the polling or counting of votes at the election. | |
| 013315 - 014002 | Chairman Dr Margaret NG Administration | <p>Dr Margaret NG enquired –</p> <p>(a) whether Members in an election were duly elected if the Court determined, on the hearing of an election petition involving corrupt conduct of a Returning Officer, that the election was invalid; and</p> <p>(b) whether Members returned in the election would be notified of such election petition even though the election petition did not question whether the Members were duly elected.</p> <p>The Administration replied that –</p> <p>(a) if the Court determined, on the hearing of the election petition, that the election was invalid, the Members returned in that election were not duly elected; and</p> <p>(b) according to section 5(3)(a) of the LegCo (Election Petition) Rules (Cap 542F), after the lodgement of an election petition by a petitioner, the Registrar shall send a certified true copy thereof to the Secretary for Constitutional and Mainland Affairs ("SCMA"), who shall forthwith upon receipt thereof cause that copy to be displayed in a conspicuous place on or near the outer door of the LegCo Chamber and to the Clerk to LegCo.</p> | |
| 014003 - 014101 | Chairman Administration | Clause 5 – Section 65 amended (Period within which election petition is to be lodged) | |
| 014102 - 014710 | Chairman Ms Audrey EU SALA2 Administration Dr Margaret NG | Ms Audrey EU's view that the appeal period of seven working days was unreasonably short. If the applicant had to give the opposite party three days' notice of his or her intended application at any time during the period of seven working days, the actual appeal period left was only four days. Ms EU and Dr Margaret NG enquired whether CFA would have the discretion to extend the | |

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| | | <p>period for lodging an appeal application. Ms EU further asked whether the applicant would still have the right to appeal if he or she gave the opposite party less than three days' notice of his or her intended application during the appeal period. She urged the Administration to consider extending the period for lodging an appeal application from seven to 14 working days.</p> <p>The legal adviser to the Bills Committee advised that there was no provision for an extension of the period for lodging an appeal application under the proposed leap-frog appeal mechanism, nor was there provision to specify the effect on the appeal in the event that insufficient notice was given to the opposite party of the applicant's intended application during the period.</p> <p>Members noted that the legal adviser had written to the Administration to seek clarification on issues relating to the three days' notice [LC Paper No. CB(2)1906/10-11(01)].</p> <p>The Administration's explanation on the rationale for setting the appeal period of seven working days. The Administration would provide a written response to members' concerns and the legal adviser's letter of 25 May 2011.</p> | <p>Admin (para 2 of minutes)</p> |
| 014711 - 014809 | Chairman Ms Emily LAU Administration | <p>Ms Emily LAU's view that the Administration should seriously consider extending the appeal period from seven to 14 working days.</p> <p>Members noted that as of today 29 individuals/deputations had requested to attend the meeting on 4 June 2011 to express their views on the Bill.</p> | |
| 014810 - 015126 | Chairman Administration Ms Emily LAU SALA2 | <p>Clause 6 – Section 67 amended (Court to determine election petition)</p> <p>The legal adviser to the Bills Committee pointed out that section 67(5) of LCO stipulated that CFI could, on its own initiative, provide SCMA, or the Electoral Affairs Commission ("EAC") or the Clerk to LegCo with a report on any matter arising in the course of the trial of an election petition if in its opinion the matter should be reported, and section 67(6) of LCO provided that CFI must</p> | |

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| | | <p>comply with any request made by SCMA or EAC to provide a report on any specified matter arising from the trial of an election petition. He enquired whether the Clerk to LegCo could also request CFI to provide it with such a report.</p> <p>The Administration undertook to look into the matter and provide a written response after the meeting.</p> | <p>Admin (para 2 of minutes)</p> |
| 015127 - 015641 | <p>Chairman Administration Ms Emily LAU SALA2</p> | <p>Clause 7 – Sections 70A and 70B added</p> <p>Ms Emily LAU's enquiry and the Administration's explanation on section 70B(a)(ii)(B) of LCO relating to CFA's power to determine whether some other person was duly elected in place of the person if CFA determined the person was not duly elected.</p> <p>The legal adviser to the Bills Committee enquired whether CFA could determine a LegCo election to be invalid. The Administration undertook to look into the matter and provide a written response after the meeting.</p> | <p>Admin (para 2 of minutes)</p> |
| 015642 - 015824 | <p>Chairman Administration SALA2</p> | <p>Clause 8 – Section 71 substituted</p> <p>The legal adviser to the Bills Committee suggested that the Chinese text of the heading of the proposed amended section 71 should be simplified. The Administration undertook to consider the suggestion.</p> | <p>Admin (para 2 of minutes)</p> |
| 015825 - 015955 | <p>Chairman Administration Ms Emily LAU</p> | <p>The Administration informed members that it would submit a proposal to introduce a de minimis arrangement for handling election returns with minor errors or omissions for members' consideration.</p> | |