

**立法會**  
**Legislative Council**

Ref : CB2/BC/4/10

LC Paper No. CB(2)1159/11-12  
(These minutes have been seen  
by the Administration)

**Bills Committee on Electoral Legislation**  
**(Miscellaneous Amendments) Bill 2011**

**Minutes of the fifth meeting**  
**held on Thursday, 9 June 2011, at 8:30 am**  
**in the Chamber of the Legislative Council Building**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
  - Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
  - Dr Hon Philip WONG Yu-hong, GBS
  - Hon LAU Kong-wah, JP
  - Hon Miriam LAU Kin-ye, GBS, JP
  - Hon Emily LAU Wai-hing, JP
  - Hon Audrey EU Yuet-mee, SC, JP
  - Hon Vincent FANG Kang, SBS, JP
  - Hon WONG Kwok-hing, MH
  - Hon LEE Wing-tat
  - Hon CHEUNG Hok-ming, GBS, JP
  - 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
- Members absent** :
- Hon Jeffrey LAM Kin-fung, SBS, JP (Deputy Chairman)
  - Hon WONG Yung-kan, SBS, JP
  - Hon Timothy FOK Tsun-ting, GBS, JP
  - Hon Abraham SHEK Lai-him, SBS, JP
  - Dr Hon Samson TAM Wai-ho, JP
  - Hon WONG Yuk-man

**Public Officers :** Constitutional and Mainland Affairs Bureau  
**attending**

Mr Stephen LAM Sui-lung  
Secretary for Constitutional and Mainland Affairs

Mr Joshua LAW Chi-kong  
Permanent Secretary for Constitutional and Mainland  
Affairs

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

Ms Anne TENG Yu-yan  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Mr Keith Mok Man-kit  
Assistant Secretary for Constitutional and Mainland  
Affairs

Department of Justice

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

Miss Emma WONG  
Senior Government Counsel

**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)]

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

Admin

2. The Administration was requested –

- (a) to consider whether the Chinese text in the proposed section 55(3) of the District Councils Ordinance (Cap. 547) and equivalent provisions in the Legislative Council Ordinance (Cap. 542) ("LCO") and the Village Representative Election Ordinance (Cap. 576) should be amended to align with the wording used in section 37(2) of the Chief Executive Election Ordinance (Cap. 569);
- (b) to advise the date a Member would cease to be a Member if he/she withdrew an appeal which was lodged to the Court of Final Appeal ("CFA") against the Court of First Instance's determination that the Member was not duly elected;
- (c) to advise 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;
- (d) to advise whether the Government would ask for a refund of the postage fee incurred by the list of candidates if a validly nominated list of candidates for a geographical constituency election had sent out the promotional letters free of postage and one of the candidates on the list was disqualified; and
- (e) to consider whether further permissible arrangement could be allowed under the proposed section 43(4A) and (4B) of LCO.

**II. Any other business**

3. There being no other business, the meeting ended at 10:38 am.

**Proceedings of the 5th meeting of the  
Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011  
on Thursday, 9 June 2011, at 8:30 am  
in the Chamber of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000711 - 000837	Chairman Administration	Opening remarks	
<b>Clause-by-clause examination of the Electoral Legislation (Miscellaneous Amendments) Bill 2011 ("the Bill")</b>			
000838 - 001049	Chairman Administration	<b>Clause 9 – Section 72 amended (What is to happen if Member is determined not to have been duly elected)</b>	
001050 - 001236	Chairman Administration Ms Audrey EU Mr IP Kwok-him	The Administration advised that the amendments to the District Councils Ordinance (Cap. 547) ("DCO") (Clauses 10 to 16) and the Village Representative Election Ordinance (Cap. 576) ("VREO") (Clauses 17 to 23) relating to appeal in relation to election petitions were in line with those amendments to the Legislative Council Ordinance (Cap. 542) ("LCO") (Clauses 3 to 9).	
001237 - 001327	Administration	<b>Division 3 – Amendments to DCO</b>  <b>Clause 10 – Section 44 amended (Election to be presumed to be valid)</b>	
001328 - 001407	Chairman Administration	<b>Clause 11 – Section 46A added</b>	
001408 - 001722	Administration Chairman Ms Audrey EU	<b>Clause 12 – Section 53 amended (Period within which election petition is to be lodged)</b>  In response to Ms Audrey EU's enquiry, the Administration confirmed that it would propose amendments to extend the period for lodging an appeal application from seven to 14 working days.	
001723 - 003205	Chairman Administration Ms Audrey EU Mr Paul TSE	<b>Clause 13 – Section 55 amended (Court to determine election petition)</b>  Ms Audrey EU noted that in the current section 55(3) of DCO, the Court of First Instance ("CFI") must certify the determination of the Court in	

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		<p>writing while in the proposed amended section 55(3), CFI must announce its determination by means of a written judgment. Ms EU enquired about the change in the wordings from a certified determination to a written judgment and asked whether there were similar provisions in other relevant legislation which required a written judgment.</p> <p>The Administration responded that the wordings in the proposed amended section 55(3) were in line with those in section 37(2) of the Chief Executive Election Ordinance (Cap. 569) ("CEEO") which provided that at the end of the trial of an election petition, the Court shall announce its determination by means of a written judgment.</p> <p>Noting that the Chinese text in section 37(2) of CEEO provided that "原訟法庭須在選舉呈請審訊完結時，藉書面判決宣告該法庭的裁定", Ms Audrey EU enquired whether the provision in the proposed amended section 55(3) – "原訟法庭須在選舉呈請的審訊完結時，藉書面判決，公布其裁定" should be amended to align with the wording used in CEEO. The Administration undertook to consider the matter.</p> <p>Mr Paul TSE's view that the Chinese wording in the proposed amended section 55(3) was more concise.</p>	<p><b>Admin</b> (para 2 of minutes)</p>
003206 - 003415	Chairman Administration	<b>Clause 14 – Sections 58A and 58B added</b>	
003416 - 003519	Administration	<b>Clause 15 – Section 59 substituted</b>	
003520 - 003613	Administration	<b>Clause 16 – Section 60 amended (What is to happen if an elected member is determined not to have been duly elected)</b>	
003614 - 003702	Administration	<p><b>Division 4 – Amendments to VREO</b></p> <p><b>Clause 17 – Section 34 amended (Election to be presumed valid)</b></p>	
003703 - 003730	Chairman Administration	<b>Clause 18 – Section 36A added</b>	

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003731 - 003914	Administration	<b>Clause 19 – Section 43 amended (Period within which election petition is to be lodged)</b>	
003915 - 004014	Chairman Administration	<b>Clause 20 – Section 45 amended (Court to determine election petition)</b>	
004015 - 004215	Chairman Administration	<b>Clause 21 – Sections 45A and 45B added</b>	
004216 - 004259	Chairman Administration	<b>Clause 22 – Section 49 substituted</b>	
004300 - 004412	Chairman Administration	<b>Clause 23 – Section 50 amended (What is to happen if a Village Representative is determined not duly elected)</b>	
004413 - 004647	Chairman Ms Emily LAU Administration	In response to Ms Emily LAU's enquiry, the Administration explained that the existing procedures of the Court in handling an election petition would not be affected by the proposed leap-frog appeal mechanism.	
004648 - 005958	Chairman Ms Audrey EU Administration Hon Paul TSE SALA2	Upon Ms Audrey EU's enquiry, the Administration advised that when a Member who was determined by CFI as not duly elected lodged an appeal to the Court of Final Appeal ("CFA"), he/she could still act as a Member until CFA made a final determination as to whether the Member was duly elected.  Ms Audrey EU further enquired about the date the Member would cease to be a Member if he/she subsequently withdrew the appeal. The Administration undertook to examine the matter and provide a written response to the Bills Committee.	<b>Admin</b> (para 2 of minutes)
005959 - 010158	Chairman Administration	<b>Division 5 – Amendments to Hong Kong CFA Ordinance (Cap. 484) ("CFAO")</b>  <b>Clause 24 – Part II, Division 2 heading amended</b>  <b>Clause 25 – Section 22 amended (Civil appeals)</b>	
010159 - 010856	Chairman Ms Audrey EU Administration	Noting that section 22(1)(c)(i) of CFAO provided that an appeal shall lie to CFA at the discretion of CFA from a determination of CFI under section 37(1) of CFAO, Ms Audrey EU enquired whether	

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		<p>the Administration would consider providing guidance or objective factors for CFA to consider in the exercise of its own discretion.</p> <p>The Administration responded that it was not considered appropriate to set restrictions on the consideration of an appeal by CFA because it was necessary for CFA to consider all relevant factors in exercising the discretion provided for in the ordinance.</p> <p>At the request of Ms Audrey EU, the Administration agreed to provide a written response on this matter.</p>	<p><b>Admin</b> (para 2 of minutes)</p>
010857 - 011054	Chairman Administration	<p><b>Part 3 – Amendments Relating to Promotional Letters Sent by Candidates</b></p> <p><b>Division 1 – Enactments Amended</b></p> <p><b>Clause 26 – Enactments amended</b></p> <p><b>Division 2 – Amendment to LCO</b></p> <p><b>Clause 27 – Section 43 amended (Candidates entitled to send letter to electors free of postage)</b></p>	
011055 - 011156	Administration	<p><b>Division 3 – Amendment to CEEO</b></p> <p><b>Clause 28 – Schedule, section 38 amended (Subsector candidates entitled to send letters to voters free of postage)</b></p>	
011157 - 011239	Administration	<p><b>Division 4 – Amendment to Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D)</b></p> <p><b>Clause 29 – Section 101A amended (Letters that may be sent free of postage by candidates)</b></p> <p><b>Division 5 – Amendment to Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I)</b></p> <p><b>Clause 30 – Section 99 amended (Letters that may be sent free of postage by candidates)</b></p>	

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011240 - 011408	Chairman Ms Audrey EU Administration	Ms Audrey EU's enquiry and the Administration's explanation on the existing and proposed arrangements for sending promotional letters to electors/voters free of postage.	
011409 - 012513	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU sought clarification on the purpose of the proposed section 43(4D) of LCO.</p> <p>The Administration advised that the proposed provision would ensure that a list of geographical constituency ("GC") candidates, a list of District Council (second) functional constituency ("DC (second) FC") candidates, and a candidate of the Labour FC could send a letter free of postage without contravening sections 43(1) and 43(2) of LCO even if the information on the list of candidates/candidate concerned was already included in a letter sent free of postage by another candidate under the proposed sections 43(4A), (4B) or (4C).</p> <p>In response to Ms Emily LAU's enquiry, the Administration explained that the proposed amended section 43 of LCO provided that a promotional letter sent by or on behalf of a list of GC candidates might contain information on a list of candidates nominated for the DC (second) FC, or vice versa; and that a promotional letter sent by or on behalf of a candidate nominated for the Labour FC might contain information on another candidate nominated for that FC.</p>	
012514 - 013639	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO's views that –</p> <ul style="list-style-type: none"> <li>(a) there should be clear guidelines on the calculation of expenses incurred in sending out joint promotional letters; and</li> <li>(b) to facilitate political party development, the Administration should allow a letter sent by or on behalf of a list of candidates which was validly nominated for the DC (second) FC to contain information on more than one list of candidates validly nominated for any GC.</li> </ul> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) the arrangements for the calculation of expenses incurred in joint promotional letters had all along been smooth; and</li> </ul>	



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		<p>(b) the Administration had to give due regard to the interests of independent candidates. The arrangement under the proposed section 43(4B) of LCO had already facilitated the conduct of electioneering activities and political party development.</p>	
013640 - 014213	<p>Chairman Ms Miriam LAU Administration</p>	<p>Ms Miriam LAU enquired whether the Government would ask for a refund of the postage fee incurred by the list of candidates if a validly nominated list of candidates for a GC election had sent out the promotional letters free of postage and one of the candidates on the list was disqualified.</p> <p>The Administration responded that it would revert to the Bills Committee upon seeking legal advice on the matter.</p>	<p><b>Admin</b> (para 2 of minutes)</p>
014214 - 015027	<p>Chairman Ms Audrey EU Administration</p>	<p>Pointing out that a political party might have more than one list of candidates running for a GC election, Ms Audrey EU suggested that the permissible arrangement under the proposed section 43(4B) of LCO should be further considered. The Administration undertook to consider Ms EU's suggestion.</p> <p>In response to Ms Audrey EU, the Administration advised that the expenses incurred in printing a joint promotional letter would have to be borne by the candidates concerned as their respective election expenses.</p>	<p><b>Admin</b> (para 2 of minutes)</p>
015028 - 015230	<p>Chairman Mr WONG Kwok-hing</p>	<p>Mr WONG Kwok-hing enquired whether the Legislative Council (Amendment) Bill 2011 ("the LegCo Bill") which provided for the filling of any vacancy in the membership of LegCo arising during the term of office of LegCo in any GC or DC (second) FC by a replacement mechanism in certain circumstances could be examined by this Bills Committee.</p> <p>The Chairman advised that the Administration had introduced into LegCo the LegCo Bill on 8 June 2011 and the House Committee would decide at its meeting to be held on the following day whether a new Bills Committee should be formed to study the LegCo Bill.</p>	

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015231 - 015435	Chairman Administration	The Administration's explanation on the stance of the Government in respect of the handling of the LegCo Bill.	
015436 - 020038	Chairman Mr IP Kwok-him Mr Vincent FANG Mrs Sophie LEUNG Ms Audrey EU Administration	The Chairman invited members' views on whether the LegCo Bill should be scrutinized by this Bills Committee.  Expression of diverse views by members on whether the LegCo Bill should be scrutinized by this Bills Committee or a new bills committee.	
020039 - 020046	Chairman	Extension of the meeting	
020047 - 020824	Chairman Mr IP Kwok-him Ms Audrey EU Ms Miriam LAU Ms Emily LAU Mrs Sophie LEUNG Ms Cyd HO Mr WONG Kwok-kin	Further expression of diverse views by members on whether the LegCo Bill should be scrutinized by this Bills Committee or a new bills committee.  Ms Emily LAU expressed the Democratic Party's objection to the LegCo Bill and their request for the Administration to withdraw the LegCo Bill.	
020825 - 020940	Chairman	The Chairman's remarks that members' views about whether the LegCo Bill should be scrutinized by this Bills Committee or a new bills committee would be reported to the House Committee.  Date of next meeting	