



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2840 1976)

22 March 2012

Ms Anne TENG/Mr Freely CHENG  
Prin AS (Constitutional & Mainland Affairs)2/  
Prin AS (Constitutional & Mainland Affairs)3  
12/F., East Wing  
Central Government Offices  
2 Tim Mei Avenue  
Tamar, Hong Kong

Dear Ms TENG/Mr CHENG,

**Re: Electoral Legislation (Miscellaneous Amendments) Bill 2012 (the Bill)**

I am scrutinizing the Bill with a view to advising Members on the legal and drafting aspects.

I should be grateful if you would let me have the Administration's response to my observations in respect of Parts 1 to 3 of the Bill as set out in the attached Schedule in bilingual form as soon as possible.

Yours sincerely,

(Wendy KAN)

Assistant Legal Adviser

Encl.

cc. DoJ (Attn: Mr Gilbert MO, Dep Law Draftsman (Bilingual Drafting & Adm/  
Miss Emma WONG, SGC (Fax No.: 2869 1302))  
Clerk to Bills Committee

## Schedule

### Clause 1

Clause 1 provides that Parts 3, 6, 7 and 8 will come into operation on 1 June 2012, with the rest to be commenced on the day on which the Bill, if passed, is published in the Gazette. Please explain the reason for such arrangement.

### Clause 3(2)

(a) Proposed new section 27(1A)

Please consider whether "The conditions are" should be replaced by "The condition is" as section 27(1), after proposed amendment, states that "the condition specified in subsection (1A)(a) or (b) is met". If so, please also consider whether "or" should be added after paragraph (a).

(b) Proposed new section 27(1B)

(i) It is noted that the matters provided in proposed new section 27(1B)(a) to (b) do not follow exactly those stated in section 27(1)(a) to (c). In proposed new section 27(1B)(a) to (b), no reference is made to "authorizes the publication of", "the name or logo associated with a person or an organization" and "a name or logo that is substantially similar to the name or logo of or associated with a person or an organization". It is also noted that under section 27(1) as modified, a candidate will engage in illegal conduct unless the condition specified in section 27(1A)(a) or (b) is met and the requirement specified in section 27(1B) is complied with. Please clarify, for example, whether a candidate will engage in illegal conduct at an election if he authorizes the publication of an election advertisement (EA) that includes the name associated with an organization in such a way as to imply that he has the support of that organization even though he has obtained, before publication, a written consent from that organization of the inclusion of that name in the EA, as the requirement specified in section 27(1B) has not been complied with.

- (ii) Please consider whether "the candidate must not modify, or authorize any person to modify, the name, logo or pictorial representation or the content" should be replaced by "the candidate must not modify, or authorize any person to modify, the name, logo, pictorial representation or content".
- (iii) In the Chinese text, should "但如在該項修改作出前，該人或組織已書面同意經修改的姓名、名稱、標識或圖像或內容，則屬例外" rather be "但如在該項修改作出前，該人或組織已書面同意經修改的姓名、名稱、標識、圖像或內容，則屬例外" for consistency with the relevant English text?

#### Clause 3(4)

(a) Proposed new section 27(2A)

Please note our observations in respect of proposed new section 27(1A).

(b) Proposed new section 27(2B)

- (i) Please note our observations in respect of proposed new section 27(1B).
- (ii) In proposed new section 27(2B)(a)(i), "an organization" is rendered as "組織" in the Chinese text. Should the Chinese rendition rather be "某組織" for consistency with the Chinese rendition of the words adopted in section 27(2)(a) and (b)?
- (iii) It is noted that "authorize any person" is rendered as "授權任何其他人" in the Chinese text. Please consider to make appropriate amendment.

#### Clause 8

(a) Proposed new Part VII

Should "Part VII" rather be "PART VII" for the sake of consistency with the current Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D)?

(b) Proposed new section 105(2)(a)

For candidates who opt to post their EA onto the Central Platform for compliance purposes, it is actually the Chief Electoral Officer (CEO), not the candidates, who maintains and has the control of the operation and management of the Central Platform. If any EA posted by the candidates onto the Central Platform is accidentally deleted not by the actions of the candidates, please clarify whether the candidates are still considered to have complied with proposed new section 105(2)(a), as the candidates may have failed to make the EA available for inspection on the Central Platform.

(c) Proposed new section 106

Please explain the reason why a person who publishes an EA without complying with proposed new section 105(1)(b) or (c) is not entitled to apply to the Court of First Instance for relief under proposed new section 106.

Clauses 11, 14, 18 and 22

The observations in respect of clause 8 also apply to clauses 11, 14, 18 and 22.

Clause 25

Please consider whether the definitions of the following term/word under section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (ECICO) should be amended for the sake of consistency:

(a) Rural Committee

Rural Committee is defined in ECICO to have the same meaning as in section 3(3) of the Heung Yee Kuk Ordinance (Cap. 1097) (HYKO); it is however noted that in clauses 8 (proposed new section 104(4)), 11 (proposed new section 105(4)), 14 (proposed new section 107(4)), 18 (proposed new section 86(4)) and 22 (proposed new section 91(4)) where the Rural Committee is referred to, reference is made to section 3(3)(a) of HYKO instead;

(b) Publish

Please note the following observations in respect of the definition of "publish" under ECICO, comparing with those under clauses 8 (proposed new section 104(1)), 11 (proposed new section 105(1)), 14 (proposed new section 107(1)), 18 (proposed new section 86(1)) and 22 (proposed new section 91(1)):

- (i) there is no express reference to "display" in the definition of "publish" under ECICO; and
- (ii) "exhibit" is rendered as "展示" in the Chinese text of ECICO but as "展覽" in the Chinese text of the above clauses; and
- (iii) "by any other means" is rendered as "以其他方法" in the Chinese text of ECICO but as "以任何其他方式" in the Chinese text of the above clauses.

Clause 30

Please clarify why the offence under section 34 of ECICO carries different penalties from those proposed to be added to the relevant subsidiary legislation pursuant to clauses 8 (proposed new section 105(9)), 11 (proposed new section 106(9)), 14 (proposed new section 108(9)), 18 (proposed new section 87(9)) and 22 (proposed new section 92(9)). All of them punish non-compliance with the requirements in relation to printed EA/EA.