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Paper for the House Committee meeting on 20 April 2012

**Report of the Bills Committee on
Electoral Legislation (Miscellaneous Amendments) Bill 2012**

Purpose

This paper reports on the deliberations of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2012 ("the Bills Committee").

Background

2. The current regulatory regime on election advertisements ("EAs") is laid down in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO") and the relevant regulations made under the Electoral Affairs Commission Ordinance (Cap. 541) ("EAC regulations"). According to section 2 of ECICO, EA, in relation to an election, means -

- (a) a publicly exhibited notice; or
- (b) a notice delivered by hand or electronic transmission; or
- (c) a public announcement made by radio or television or by video or cinematographic film; or
- (d) any other form of publication,

published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.

3. Under section 34(4) of ECICO, a person must, not later than seven days after publishing a printed EA, furnish two copies of the advertisement to the appropriate Returning Officer ("RO"). Strictly speaking, all notices, announcements or publications displayed or distributed by candidates on the

Internet would fall within the definition of EA and are, therefore, subject to the prior declaration/submission requirement. Under respective regulations on electoral procedure previously made by the Electoral Affairs Commission ("EAC") under the EAC Ordinance (Cap. 541) ("EACO"), before display, distribution or otherwise use of any EA, a candidate must submit a declaration and two copies each of the declared EAs to RO. To satisfy the statutory declaration requirement, a candidate was required to print out the electronic EA and submit two hardcopies of it to RO before displaying, distributing or otherwise using it on the Internet.

4. In May 2011, EAC made nine Amendment Regulations under EACO which sought to refine electoral procedures, voter registration and other practical arrangements to prepare for the District Council ("DC"), Election Committee ("EC") subsector, Chief Executive ("CE") and Legislative Council ("LegCo") elections scheduled for 2011 and 2012. The relevant Amendment Regulations on electoral procedures for electronic EAs have introduced the following improvement -

- (a) for electronic EAs, candidates can make the required declaration and submission to RO either electronically or in hard copy; and
- (b) where it is not practicable to submit the electronic EAs to RO before they are displayed, distributed or used (such as messages displayed or sent interactively and spontaneously through social networking platforms on the Internet like Facebook and Twitter), candidates can deposit with RO a declaration and the electronic EAs by the end of the first working day following the day on which the advertisements are sent or displayed.

5. Sections 27(1) and (2) of ECICO make it an offence if a candidate or a person publishes an EA which includes the name, logo or pictorial representation of another person or an organization in such a way as to imply, or to be likely to cause electors to believe that a certain candidate has the support from such person or organization, unless the candidate or the person concerned has obtained prior written consent of support from such person or organization. The EAC regulations also stipulate that the candidate must deposit the consent in writing with RO.

The Bill

6. The main provisions of the Bill, which consists of 8 Parts, include the following -

- (a) Part 1 provides for the commencement of the Bill;
- (b) Part 2 amends section 27 of ECICO to provide that a candidate or a person is not required to obtain prior written consent from those who provide support in EAs if the candidate or the person has neither requested or directed nor authorized any other person to request or direct the inclusion of the support in EAs;
- (c) Part 3 amends EACO to empower EAC to make regulations providing for matters relating to grant of relief by the Court of First Instance in respect of EAs, and amends various EAC regulations to specify the requirements applicable to EAs and makes technical amendments to the Electronic Transactions (Exclusion) Order (Cap. 553B) and ECICO;
- (d) Part 4 amends the LegCo Ordinance (Cap. 542) ("LCO") to reflect the change of names, and deletion of constituents of certain functional constituencies ("FCs");
- (e) Part 5 amends the Chief Executive Election Ordinance (Cap. 569) ("CEEO") to reflect the change of name of a constituent of the Higher Education Subsector;
- (f) Part 6 contains the amendments to various EAC regulations to improve the electoral procedures for various elections;
- (g) Part 7 contains the amendments to the EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D) to provide for the counting arrangements for DC (second) FC; and
- (h) Part 8 contains technical amendments to ECICO.

The Bills Committee

7. At the House Committee meeting on 10 February 2012, members formed a bills committee to study the Bill. Mr IP Kwok-him was elected as Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix I**.

8. The Bills Committee has held a total of four meetings to study the Bill. The Bills Committee has invited public views on the Bill and received two written submissions. A list of the organization and individual which/who has submitted views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Consent for support in EAs

(Clause 3)

9. Clause 3 seeks to amend section 27 of ECICO to provide that a candidate or a person is not required to obtain prior written consent from those who provide support in EAs if the candidate or the person has neither requested or directed nor authorized any other person to request or direct the inclusion of such support in EAs. If a candidate or a person publishes or continues to publish EAs with the support without any modification of the contents or description of the support, the candidate or the person is not required to obtain prior written consent from those who provide support in such EAs. If modification is made, the candidate or the person is required to follow the existing requirement to obtain prior written consent before publishing such EAs.

10. Members note from the Administration that to satisfy the requirement set out in clause 3, the candidate needs to ascertain that he has neither requested or directed nor authorized any person to request or direct the inclusion of the name, logo or pictorial representation of any person or organization in his EAs. The candidate is not required to ascertain the identity of those who provide support in his EAs out of their own volition. Under the proposed arrangement, if the relevant authorities receive a complaint concerning the consent of support in an EA, investigation will be conducted to ascertain the facts of the case and to collect evidence for determination if it is appropriate to take any enforcement action.

11. Members are concerned whether prior written consent of support has to be obtained from those persons appeared in photographs published in a candidate's EAs which mention and display past activities organized by the candidate involving participation by other persons, and whether prior written consent should be obtained if the photographs included in EAs published by a candidate are provided by the candidate's supporters out of their own volition.

12. According to the Administration, under section 27 of ECICO, a candidate is required to obtain consent of support if the name, logo or pictorial representation of any person or organization is included in an EA in such a way as to imply, or to be likely to cause electors to believe, that the candidate has the support of the person or organization concerned. Under this existing provision, a candidate is not required to obtain consent of support if the photographs do not imply or likely cause electors to believe that the candidate has the support of the persons or organizations in the photographs. The Administration has stressed that this principle is not affected by the Bill. The Administration has also

confirmed that if the photographs included in an EA have the effect of implying, or causing electors to believe, that the candidate has the support of the persons or organizations in the photographs, the candidate is required to obtain consent of support.

Election Advertisements

(Clauses 8, 11, 14, 18 and 22)

Proposed Central Platform maintained by the Registration and Electoral Office ("REO")

➤ *EA particulars*

13. Members note that to comply with the relevant public inspection requirement governing EAs under the proposed regulatory regime, a candidate should post the following EA particulars, within one working day after the publication of an EA, onto an open platform either maintained by REO ("Central Platform") or an open platform maintained by the candidate himself or a person authorized by him ("Candidate's Platform") for public inspection -

- (a) an electronic copy of an EA;
- (b) a hyperlink of the open platform which publishes an EA (where it is technically impracticable to make available an electronic copy of the EA, such as messages sent through social networking or communication websites on the Internet like Twitter and Facebook, which are of an interactive and spontaneous nature);
- (c) the relevant printing/publication information pertaining to such EA (including basic information on the date of production, the size of the EA, the date and manner of distribution and the number of copies distributed as applicable);
- (d) an electronic copy each of the relevant permission for the distribution/display of such EA in private premises issued by owners or occupiers concerned, as applicable; and
- (e) an electronic copy each of the documents providing consent of support, as applicable.

14. Members also note that to facilitate public inspection and for the sake of consistency, REO will draw up a simple content layout standard after the Bill has been passed for candidates to follow in designing and setting up their platforms.

Members have enquired whether creativity, flexibility and innovation in the design and development of candidates' platforms will be allowed.

15. According to the Administration, the requirements will only spell out the basic format for displaying the required EA particulars so as to facilitate public inspection. Candidates will enjoy a large degree of freedom and creativity to develop and design their platforms.

➤ *Operation and maintenance of the proposed Central Platform*

16. Members have sought information on the operation of the proposed Central Platform. The Administration has advised that a candidate/a list of candidates is required to apply to the Chief Electoral Officer ("CEO") for creation of an account to access the Central Platform before he/it can post EA particulars onto the platform for public inspection. CEO will inform the candidate/the list of candidates concerned upon creation of the account and will provide a username and a password to the candidate/the list of candidates concerned. An acknowledgement of receipt in the form of a summary report of the EA particulars successfully uploaded will be automatically generated for reference by the candidate/the list of candidates after each submission.

17. Members note from the Administration that REO is now working on the technical specifications of the system and will make sure that it has sufficient capacity to cater for smooth operation in the LegCo election in September 2012. To upload the EA particulars in paragraph 13 above onto the Central Platform, a candidate will only need an ordinary personal computer equipped with Internet connection. Tentatively, the Central Platform will be designed to handle submissions of a size as large as 50MB each. REO plans to conduct a trial run in May 2012 and will invite LegCo Members to participate in the exercise and provide feedbacks.

18. The Administration has advised that if a candidate chooses to post EAs onto his election website, the candidate is required to provide the website address to the relevant RO who will then publicize such information. The operation and maintenance of the Candidate's Platform will wholly be the responsibility of the candidate concerned. As long as all the EA particulars as mentioned in paragraph 13 above are published on the open platform for public inspection, the candidate has met the proposed statutory requirement.

19. In response to the enquiry made by the Legal Adviser to the Bills Committee, the Administration has confirmed that once a candidate posts his EAs onto the Central Platform, he has complied with the relevant proposed requirement, and should not be regarded as failing to make the EA available for

inspection on the Central Platform if the EA is accidentally deleted not by actions of the candidate.

20. Members consider it important for REO to provide timely and effective responses to candidates who may encounter problems in uploading EA particulars/submissions onto the Central Platform and ensure that there will be adequate manpower to provide technical support and advice to candidates. It is also important to put in place security and contingency measures to prevent any possible hacker attacks to or a computer system breakdown of the Central Platform.

21. The Administration has assured members that REO will deploy adequate manpower to provide technical support to candidates should they encounter any difficulties in uploading their EAs onto the Central Platform. REO will set up a service hotline to provide technical support and advice to candidates starting from 1 June 2012 to facilitate them to upload EA particulars/submissions to the Central Platform. The security measures for the Central Platform will comply with the standards adopted by the Government.

Grant of relief by the Court of First Instance ("CFI")

22. Under clauses 8 (proposed new section 105(1)), 11 (proposed new section 106(1)), 14 (proposed new section 108(1)), 18 (proposed new section 87(1)) and 22 (proposed new section 92(1)), a candidate who publishes an EA must comply with the relevant submission requirements in relation to -

- (a) the advertisement and any information related to the advertisement required by EAC;
- (b) if the publication is by means of displaying the advertisement in the form of a bill or poster within the meaning of section 104E(4) of the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO"), the permission obtained for the purposes of section 104A(1) of PHMSO; and
- (c) if the advertisement is of a kind referred to in subsection (1) or (2) of section 27 of ECICO, the consent referred to in subsection (1A), (1B), (2A) or (2B) of that section.

23. Clauses 8, 11, 14, 18 and 22 also specify that a person must not publish a printed EA that fails to show, in the English or Chinese language -

- (a) the name and address of the printer;

- (b) the date on which it was printed; and
- (c) the number of copies printed.

24. Members note that clauses 8, 11, 14, 18 and 22 provide that a person who publishes an EA without complying with the requirement as set out in paragraph 22(a) or 23 above may apply for relief to CFI.

25. In response to the Legal Adviser to the Bills Committee's enquiry as to why a person who publishes an EA without complying with the requirement as set out in paragraph 22(b) or (c) above is not entitled to apply to CFI for relief, the Administration has explained that under section 34(1) and (4) of ECICO, a person is required to show printing details on a printed EA and furnish two copies of EAs with RO not later than seven days after publishing a printed EA. Section 35 of ECICO provides that the person who publishes a printed EA without complying with the aforementioned requirements may apply to CFI for a relief. On hearing of an application, CFI will consider whether the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith. To consolidate the regulatory regime of EAs, the Bill proposes to transfer sections 34(1) and 35 from ECICO to the relevant EAC regulations so that all provisions relating to EAs can be grouped in the regulations concerned. To align the regulation of other forms of EAs with that of printed EAs, the Bill proposes that the right to apply for relief from CFI should be extended to other forms of EAs. As such, under the proposed arrangements, if a candidate fails to post his EA onto the Central Platform or his election websites for public inspection, or fails to provide copies of the advertisement with RO within one working day after the publication of the EA, he may apply to CFI for relief. This arrangement can avoid candidates from being caught inadvertently.

26. As regards the permission obtained for the purposes of PHMSO and the consent referred to in ECICO in paragraph 22(b) or (c) above, there is no arrangement for a candidate to apply for relief from CFI under the existing ordinances and regulations concerned. The Administration therefore proposes to follow the existing arrangement under which a person is not entitled to apply to CFI for relief in relation to the aforementioned permission and consent.

27. Members consider that to facilitate the conduct of electioneering activities, the existing procedural requirement for obtaining permission for the display or affixing of printed EAs in private premises/shops should be simplified.

28. The Administration has advised that display of bills or posters is regulated by PHMSO, which stipulates that no bill or poster can be displayed or affixed in public or private places except with written permission. The existing provisions under the electoral law serve only to reflect the above requirement by requiring a

candidate to provide RO with a copy of any such written permission obtained for the display or exhibition of an EA. REO has forwarded members' suggestion to simplify the existing procedural requirement for seeking permission to the Food and Environmental Hygiene Department for consideration.

Offence for non-compliance with the requirements in relation to EAs
(Clauses 26 and 30)

29. Members note that currently the provisions regulating EAs are scattered in ECICO and the relevant EAC regulations. As the main objective of ECICO is to prohibit corrupt and illegal conduct at elections, penalties for contravening the provisions under ECICO are more severe. Under the existing provisions in ECICO, if a person fails to show printing details on a printed EA or provide copies of the EA with RO not later than seven days after the publication, he commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for three years, if tried on indictment. On the other hand, any person who commits the offences in relation to all forms of EAs under the relevant EAC regulations is liable on conviction to a fine of \$5,000 and to imprisonment for six months.

30. To consolidate the regulatory regime and simplify the arrangements for handling EAs, the Bill proposes to transfer the relevant provisions from ECICO to the EAC regulations so that all relevant provisions on EAs can be grouped in the EAC regulations. The relevant provisions of the Bill will relax the regulation on EAs and will align the regulatory regime for various forms of EAs. In line with this, the Bill proposes that irrespective of whether the advertisement is a printed EA or in other forms, if a candidate contravenes the proposed requirements in relation to EAs, the penalty should be aligned at the current level provided for in the relevant EAC regulations for failing to comply with the existing requirements regarding the declaration and submission of EAs, ie. a fine of \$5,000 and imprisonment for six months.

31. Members further note that clause 26 adds a new section 4(2) to ECICO to the effect that Part 5 of ECICO will only apply to an election to elect members of the Heung Yee Kuk and an election to elect a person as the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee. Accordingly, the offence to punish non-compliance with the requirements in relation to EAs under section 34 of ECICO only applies to the Heung Yee Kuk and Rural Committee elections. They have expressed concern that in respect of these elections, the penalty level for non-compliance with the requirements in relation to EAs will be much higher.

32. The Administration has explained that the Heung Yee Kuk and Rural Committee elections are presently not under the regulation of EAC and a review

on the penalty for offences in relation to EAs in respect of these elections is outside the scope of the current legislative exercise. The Home Affairs Bureau ("HAB") which is the policy bureau for matters relating to the Heung Yee Kuk and Rural Committee elections will conduct a review regarding these elections. HAB will brief the relevant LegCo Panel of the result of the review.

33. At the Bills Committee's request, the Constitutional and Mainland Affairs Bureau has undertaken to relay members' views to HAB for consideration.

Amendments relating to organizations which are constituents in several FCs or subsectors of EC

(Clauses 32 to 35 and 37)

34. The Bill proposes to make some technical amendments to reflect changes in the names of certain organizations which are registered or are eligible to be registered as electors in FCs, and to delete those organizations that have ceased operation.

35. Members note that under section 2(5)(a) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) ("CEEO"), the composition of the subsectors which has the same name as that of a FC is to be the same as that of the FC. The technical amendments for LegCo FCs as mentioned in paragraph 34 above will also be applicable to those EC subsectors with the same name as the corresponding FCs, and consequential amendments to CEEO are required.

Central counting arrangements for DC (second) FC

(Clauses 54 to 65)

36. Clauses 54 to 65 introduce amendments to the EAC (Electoral Procedure) (LegCo) Regulation to provide for the counting arrangements for DC (second) FC. It is proposed that central counting arrangement will be adopted for counting DC (second) FC ballot papers in the coming LegCo election in September 2012.

37. Under clause 61, a new section 77B is added to provide that if the polling day of a by-election held for DC (second) FC does not fall on the polling day of a by-election held for any geographical constituency ("GC"), the polling-cum-counting arrangements will be adopted for DC (second) FC. If the polling day of a by-election held for DC (second) FC falls on the polling day of a by-election held for any GC, the polling-cum-counting arrangements will be adopted in relation to all counting stations at which no polling for any GC by-election is held.

38. The Administration has explained to members the reasons for not adopting the option of polling-cum-counting for DC (second) FC. According to the Administration,

- (a) based on past experience, it is estimated that at least 15% of the polling stations are too small to set up two sets of counting tables for counting both GC and DC (second) FC ballot papers in parallel. Past experience shows that it will be difficult to find suitable replacements for these polling stations;
- (b) for polling stations with enough space to set up two sets of counting tables, the counting of two types of ballot papers concurrently will cause confusion to the counting staff and it is difficult for the Presiding Officers ("PROs") to monitor the counting of both types of votes effectively, not to mention if re-counting of votes are required. The concurrent counting arrangement will increase the work complexity of PROs and the risk in the counting process;
- (c) in view of the difficulties mentioned in items (a) and (b) above, the counting of DC (second) FC votes can start only after the completion of counting GC votes under the polling-cum-counting arrangement. Given the large number of ballot papers involved in GCs and DC (second) FC, two consecutive rounds of counting, including the consolidation of counting results, will unlikely be completed before 6:00 a.m. of the following day. In this regard, continued counting at reserve counting stations is unavoidable, as many counting stations are schools or venues that have to be returned to the venue management by 6:00 a.m. the following morning. The transfer of both GC and DC (second) FC ballot papers from counting stations to reserve counting stations for completion of count or re-count will be highly undesirable as this will cause delay to the declaration of election results and pose risks in terms of operation and monitoring; and
- (d) the long working hours of polling-cum-counting staff has always been an area of concern in past elections. The adoption of polling-cum-counting for DC (second) FC votes will inevitably prolong the working hours of polling-cum-counting staff, which will further aggravate the recruitment problem. As the one-shift system under polling-cum-counting will be too harsh for polling staff when they have to work through the poll and the count, a two-shift system may have to be introduced. This will mean that about 550 teams of additional staff (estimated to be over 6 000 in total) are required.

Recruitment of sufficient polling-cum-counting staff will be an insurmountable problem.

39. Members have expressed concern that if central counting arrangement is adopted for DC (second) FC, the time required for completing the counting of DC (second) FC ballot papers will be unduly long. They have pointed out that given the large number of ballot papers involved in GCs and DC (second) FC, the proposed arrangement will increase the risk of misplacement of GC ballot papers into ballot boxes for collection of DC (second) FC ballot papers (or vice versa) and will cause delay to the counting process.

40. Members consider that the Administration should improve the vote counting arrangements to minimize delay in the counting of ballot papers, for example by proceeding with the counting of GC ballot papers at the main counting stations before the arrival of the ballot papers from the small polling stations, ballot paper sorting stations, or dedicated polling stations ("DPSs") if there are more than one ballot box in the main counting stations.

41. The Administration has explained that under section 75(4A) of the EAC (Electoral Procedure) (LegCo) Regulation, PRO of a main counting station for a LegCo election must mix the ballot papers of the polling station designated as the main counting station together with the ballot papers that have been delivered to the main counting station from small polling stations, ballot paper sorting stations or DPSs before counting the votes at the main counting station. A similar provision is also stipulated in section 76 of the EAC (Electoral Procedure) (DCs) Regulation (Cap. 541F) for DC election. This may cause delay in the commencement of the counting process due to the need to await the arrival of the ballot papers from the small polling stations, ballot paper sorting stations or DPSs.

42. After considering members' views, the Administration has proposed to amend the relevant sections of the above regulations by Committee Stage amendments ("CSAs") to the effect that the ballot papers in at least one of the ballot boxes of the main counting station must be mixed with the ballot papers from the small polling stations or the ballot paper sorting stations or DPSs. As a result, the counting of votes of the ballot papers in the remaining ballot boxes of the main counting station could commence before the arrival of the ballots papers from small polling stations, ballot paper sorting stations or DPSs. However, if there is only one ballot box containing ballot papers in the main counting station, the mixing will have to be done before the counting of votes.

43. In response to members' enquiry, the Administration has advised that according to existing legislation, the in-situ counting of GC ballot papers at individual polling stations will commence without first ascertaining or verifying

the number of misplaced GC ballot papers uncovered from the ballot boxes of FC including the DC (second) FC at the central counting station. In this regard, PRO can proceed with the counting of GC ballot papers even if the number of GC ballot papers cast in the GC ballot boxes does not tally with the number of ballot papers issued for that GC. If there are any misplaced GC ballot papers found in the FC ballot boxes, they will be delivered to RO of the respective GC at the central counting station and the count of these misplaced GC ballot papers will be conducted at the central counting station under the supervision of RO. The Administration has assured members that it will continue to explore measures to simplify and streamline the sorting and counting process, so that the results of the election can be announced as early as possible.

Commencement of the Bill

(Clause 1)

44. Members note that the Administration proposes to move a CSA to clause 1(3) to provide that Parts 3, 6 (except Division 6), 7 and 8 of the Bill shall come into operation on 1 June 2012. The remaining parts will come into operation on the day on which the Bill, if passed, is published in the Gazette.

45. The Administration has explained to members the reasons for proposing such arrangements. The Administration proposes that Part 3 of the Bill shall come into operation on 1 June 2012 as REO needs time to design and set up the proposed Central Platform under Part 3. Parts 6, 7 and 8 aim to prepare for LegCo election to be held in September 2012, and to fine-tune electoral procedures and make electoral procedures of various elections consistent with each other. As the majority of these amendments are related to LegCo election, including amendments providing for the counting arrangements for DC (second) FC, it is proposed that these parts of the Bill shall come into operation on 1 June 2012 so that the proposed arrangements can be implemented for the 2012 LegCo election in September 2012. Under section 36(2)(a) of LCO, no by-election will be held within the four months preceding the end of LegCo's current term of office. As such, no by-election of the fourth term of LegCo will be held from 1 June 2012.

Other issues

Numbering system for the lists of candidates for DC (second) FC

46. Members note the Administration's proposal to move a CSA to amend EAC (Electoral Procedure) (LegCo) (Amendment) Regulation 2011 (L.N. 73 of 2011) to the effect that a 3-digit number is to be allocated to each list of candidates appearing on a FC ballot paper for DC (second) FC according to the

result of the draw, and the number is to be printed on the ballot paper against the list of candidates. As most of the GC electors are expected to be registered as electors of DC (second) FC, it may be confusing to them when they cast their votes if the lists of candidates for both GCs and DC (second) FC are referred to by the same numbering sequence starting from 1 and followed by 2, 3, 4 and so on. The purpose of the amendment is to avoid confusion to GC electors who are also registered as electors for DC (second) FC when they cast their votes.

Proposed amendment to the voter register format

47. To facilitate the public to identify irregularities in respect of residential addresses, the Administration proposes to move a CSA to amend sections 13 and 20 of EAC (Registration of Electors) (LegCo GCs) (DC Constituencies) Regulation (Cap. 541A) to empower the Electoral Registration Officer to make available an additional copy of the voter register in a format which he considers appropriate for public inspection. With the amendment, the voter register can set out the names of the electors in accordance with their principal residential addresses apart from the original format which sets out electors in accordance with their names.

48. Most members consider that the provision of voter register with the names of the electors set out in accordance with their principal residential addresses can facilitate the electors to check any irregular registrations. However, Mrs Sophie LEUNG has expressed reservation about the Administration's proposal. She is concerned that the proposal may infringe on personal privacy as some electors may not wish to disclose to others who they live with.

49. According to the Administration, it has consulted the Privacy Commissioner for Personal Data ("PCPD") on the proposal. PCPD is of the view that the proposal may be within the definition of "election-related purposes" as the proposal will only involve a new sorting sequence and will not involve disclosure of additional personal data of voters. PCPD considers that the proposal is not inconsistent with Data Protection Principle 3 in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486), which is about the use (including disclosure or transfer) of personal data.

Voting arrangement for an agency or office of overseas governments

50. Sections 31(3) and (4) of LCO, which is added to LCO by the Legislative Council (Amendment) Ordinance 2011, disqualify consular posts which enjoy privileges and immunities under the Consular Relations Ordinance (Cap. 557) or international organizations as defined under the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) and the International Organizations

(Privileges and Immunities) Ordinance (Cap. 558) from being registered as a corporate elector for FCs.

51. The Administration has advised that sections 31(3) and (4) of LCO do not disqualify an office or agency which is a representative of a government or an administration which does not enjoy any privilege or immunity or is not accorded the status of an international organization under the local legislation. Examples include an office in Hong Kong representing a city of a foreign country.

52. In line with the policy in paragraph 51 above, the Administration proposes to move a CSA to amend LCO to the effect that a body which is a department or an agency of a government of a place outside the People's Republic of China, whether at national, regional or municipal level, is disqualified from being registered as a corporate elector, if the management of such a body is appointed by and answerable to the government concerned, the principal function of the body is to advance the interest of the place, and the body is non-profit making.

Committee Stage Amendments

53. Apart from the CSAs to be moved by the Administration as elaborated in paragraphs 42, 44, 46, 47 and 52 above, the Administration will introduce various CSAs to the Bill which are technical and textual in nature. A full set of the CSAs to the Bill to be moved by the Administration are in **Appendix III**. The Bills Committee raises no objection to these CSAs.

Date of resumption of Second Reading Debate

54. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee raises no objection to the resumption of the Second Reading debate on the Bills at the Council meeting of 9 May 2012.

Follow-up action by the Administration

55. The Administration has undertaken to refer to HAB to consider the matter relating to offence for non-compliance with the requirements in relation to EAs under ECICO regulating the Heung Yee Kuk and Rural Committee elections (paragraph 33 above refers).

Referral to the Panel on Home Affairs

56. The Bills Committee has agreed to refer the issue on the review of the Heung Yee Kuk and Rural Committee elections to the Panel on Home Affairs for follow up (paragraph 32 above refers).

Advice sought

57. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
19 April 2012

**Bills Committee on
Electoral Legislation (Miscellaneous Amendments) Bill 2012**

Membership list

Chairman	Hon IP Kwok-him, GBS, JP
Members	Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, SBS, JP Hon LAU Kong-wah, JP Hon Miriam LAU Kin-yee, GBS, JP Hon Emily LAU Wai-hing, JP Hon Timothy FOK Tsun-ting, GBS, JP Hon TAM Yiu-chung, GBS, JP Hon CHEUNG Hok-ming, GBS, JP Hon WONG Ting-kwong, BBS, JP Hon Ronny TONG Ka-wah, SC Hon Cyd HO Sau-lan Dr Hon LAM Tai-fai, BBS, JP (up to 2 March 2012) Dr Hon Priscilla LEUNG Mei-fun, JP Hon Paul TSE Wai-chun, JP Dr Hon Samson TAM Wai-ho, JP (Total : 16 Members)
Clerk	Ms Alice LEUNG
Legal adviser	Ms Wendy KAN
Date	2 March 2012

**Bills Committee on
Electoral Legislation (Miscellaneous Amendments) Bill 2012**

List of the organization/individual which/who has submitted views to the Bills Committee

1. Mr YEUNG Wai-sing, Eastern District Council member
2. 香港選舉研究學會

Electoral Legislation (Miscellaneous Amendments) Bill 2012

Committee Stage

Amendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
1(3)	By adding “(except Division 6)” after “6”.
3(2)	By deleting the proposed section 27(1B)(a) and substituting— <div style="margin-left: 40px;">“(a) the election advertisement meets the condition specified in subsection (1A)(a) or (b); and”.</div>
3(4)	By deleting the proposed section 27(2B)(a) and substituting— <div style="margin-left: 40px;">“(a) the election advertisement meets the condition specified in subsection (2A)(a) or (b); and”.</div>
31	By deleting “35” and substituting “35A”.
New	By adding— <div style="margin-left: 40px;">“33A. Section 31 amended (when person is disqualified from being registered as an elector)</div> <div style="margin-left: 80px;">After section 31(4)—</div> <div style="margin-left: 80px;">Add</div> <div style="margin-left: 40px;">“(5) A body which is a department or an agency of a government of a place outside the People’s Republic of China, whether at national, regional or municipal level, is disqualified from being registered as a corporate elector.</div> <div style="margin-left: 40px;">(6) For the purposes of subsection (5), a body is not regarded as a department or an agency of a government of a place unless—</div> <div style="margin-left: 80px;">(a) the management of the body is appointed by the government and is answerable to the government;</div> <div style="margin-left: 80px;">(b) the principal function of the body is to</div>

advance the interest of the place; and
 (c) the body is non-profit-making.”.”.

35(1) By deleting “Limited” and substituting “Limited.”.

35(2) By deleting “Limited” and substituting “Limited.”.

35(3) In the English text, by deleting “Association” and substituting
 “Association.”.

New In Part 4, by adding—

**“35A. Schedule 1B amended (composition of the sports,
 performing arts, culture and publication functional
 constituency)**

Schedule 1B, Part 3, item 50—

Repeal

“New Territories Regional Sports Association”

Substitute

“The New Territories Regional Sports
 Association”.”.

38 By deleting “2 and 3” and substituting “1A to 6”.

Part 6 By adding—

**“Division 1A—Amendments to Electoral Affairs
 Commission (Registration of Electors) (Legislative
 Council Geographical Constituencies) (District Council
 Constituencies) Regulation (Cap. 541 sub. leg. A)**

**38A. Section 13 amended (Electoral Registration Officer to
 publish a notice that provisional register is available
 for public inspection)**

After section 13(4)—

Add

“(4A) For the purposes of subsections (3) and
 (4), the Electoral Registration Officer may
 further make available for public
 inspection an additional copy of the
 provisional register or an additional copy
 of a specific section or subsection of the

provisional register, in which entries are arranged in a manner that the Electoral Registration Officer considers appropriate for public inspection.”.

38B. Section 20 amended (Electoral Registration Officer to publish notice of final register and to make final register available for public inspection)

After section 20(4)—

Add

“(4A) For the purposes of subsections (3) and (4), the Electoral Registration Officer may further make available for public inspection an additional copy of the final register or an additional copy of a specific section or subsection of the final register, in which entries are arranged in a manner that the Electoral Registration Officer considers appropriate for public inspection.”.

45 In the proposed section 74AB(3), in the English text, by deleting “Assisting” and substituting “Assistant”.

New By adding—

“45A. Section 75 amended (counting of votes for geographical constituencies)

(1) Section 75(4A), after “must”—

Add

“, when counting the votes at the main counting station,”.

(2) Section 75(4A)—

Repeal

“of the polling station”

Substitute

“in at least one of the ballot boxes at the polling station”.

(3) Section 75(4A)(b), English text—

Repeal

“as may be appropriate,”

Substitute

“as may be appropriate.”.

- (4) Section 75(4A), English text—

Repeal

“before counting the votes at the main counting station.”.”.

New

By adding—

“51A. Section 76 amended (counting of votes)

- (1) Section 76(2), after “must”—

Add

“, when counting the votes at the main counting station,”.

- (2) Section 76(2)—

Repeal

“of the polling station”

Substitute

“in at least one of the ballot boxes at the polling station”.

- (3) Section 76(2)(b), English text—

Repeal

“as may be appropriate,”

Substitute

“as may be appropriate.”.

- (4) Section 76(2), English text—

Repeal

“before counting the votes at the main counting station.”.”.

Part 6

By adding—

**“Division 4—Amendments to Electoral Affairs
Commission (Registration of Electors) (Village
Representative Election) Regulation (Cap. 541 sub. leg.
K)**

**52A. Section 22 amended (ERO to publish notice that
provisional register is available for public inspection)**

- (1) After section 22(5)—

Add

“(5A) For the purposes of subsections (4) and (5),

the ERO may further make available for public inspection an additional copy of the provisional register or an additional copy of a specific part or division of the provisional register, in which entries are arranged in a manner that the ERO considers appropriate for public inspection.”.

(2) Section 22(6), after “(5)”—

Add

“or (5A)”.

52B. Section 30 amended (ERO to publish notice of final register and to make final register available for public inspection)

(1) After section 30(5)—

Add

“(5A) For the purposes of subsections (4) and (5), the ERO may further make available for public inspection an additional copy of the final register or an additional copy of a specific part or division of the final register, in which entries are arranged in a manner that the ERO considers appropriate for public inspection.”.

(2) Section 30(6), after “(5)”—

Add

“or (5A)”.

Division 5—Amendment to Legislative Council Ordinance (Cap. 542)

52C. Section 37 amended (who is eligible to be nominated as a candidate)

Section 37(2)(b)(i), before “is”—

Add

“in the case of a functional constituency other than the District Council (second) functional constituency,”.

Division 6—Amendments to Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2011 (L.N. 73 of 2011)

52D. Section 24 amended (section 21 amended (Returning Officer to publish a notice of particulars of validly nominated candidates))

- (1) Section 24(1), new section 21(4A)(b)—

Repeal

“state the letter of the alphabet assigned to that functional constituency”

Substitute

“the code assigned to that functional constituency under section 49(8)”.

- (2) After section 24(2)—

Add

- “(3) Section 21(5)(b)—

Repeal

“the letter of the alphabet assigned to that functional constituency followed by the number allocated to each candidate under section 49(8);”

Substitute

“the code assigned to that functional constituency under section 49(8) followed by the number allocated to each candidate under section 49(8A);”.

52E. Section 33 amended (section 49 amended (form of ballot papers and order of appearance of lists or names of candidates on ballot papers))

- (1) Section 33(3), new section 49(6A)—

Repeal

“number which is preceded by a letter of the alphabet assigned by the Chief Electoral Officer to the District Council (second) functional constituency”

Substitute

“3-digit number”.

- (2) Section 33(3), new section 49(6A)—

Repeal

“letter and number are”

Substitute

“number is”.

- (3) Section 33—

Repeal subsections (5) and (6)

Substitute

- “(5) Section 49—

Repeal subsection (8)

Substitute

- “(8) Each ordinary functional constituency is to be assigned one or more letters of the alphabet by the Chief Electoral Officer as the code of the functional constituency.
- (8A) Each candidate for an ordinary functional constituency (other than the District Council (second) functional constituency) is to be allocated a number preceded by the code assigned under subsection (8), according to the result of the draw. The code and the number are to be printed on the ballot paper against the name of the candidate.”.

52F. Section 42 amended (Schedule 3 amended (forms of ballot papers for a general election/by-election))

Section 42—







Repeal subsection (2)**Substitute**

“(2) Schedule 3, after Form 2—

Add

“FORM 2A

BALLOT PAPER FOR THE DISTRICT COUNCIL (SECOND)
FUNCTIONAL CONSTITUENCY

存根 COUNTERFOIL		(編號) (Serial Number)
(選舉管理委員會(選舉程序)(立法會)規例) ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE)(LEGISLATIVE COUNCIL)REGULATION 立法會第二功能選區/補選 區議會(第二)功能界別 LEGISLATIVE COUNCIL *GENERAL ELECTION/BY-ELECTION DISTRICT COUNCIL (SECOND) FUNCTIONAL CONSTITUENCY * (選舉日期) * (date of election)		選票 BALLOT PAPER # (代號) # (code)
只可投票選一名單 VOTE FOR ONE LIST ONLY 請用投票站提供的印章在所選名單內的圓圈蓋上“✓”號 Use the chop provided at the polling station to stamp “✓” in the circle of the list of your choice.		
* 訂明團體的登記名稱及登記標誌及 訂明人士的登記標誌 * Registered bodies and registered emblems of prescribed bodies and registered emblems of prescribed persons * 獨立候選人 * Independent Candidates * 無黨派候選人 * Non-affiliated Candidates	候選人照片 Photographs of Candidates	
@ XXX ▲ ▲ (候選人提名公告上顯示的候選人姓名 ——按候選人名單上的排名次序) ▲ ▲ (Names of candidates as shown in Notice of Nominations in order of priority)		@ XXX 
@ XXX 		
@ XXX 		

- # A code will be assigned to the District Council (second) functional constituency. Only the appropriate code will be printed.
- * Only the appropriate information will be printed.
- @ A 3-digit number will be allocated to each list of candidates.
- + Address of the candidate to be included if required under section 49(13)(b).
- ^ Each candidate on the list will be allocated a letter of the alphabet starting from ‘a’ and up to ‘e’, depending on the number of candidates. ‘.’ ‘.’ ‘.’.