



Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2014

Electoral Legislation (Miscellaneous Amendments) Bill 2014

Meeting on Saturday, 31 May 2014, at 9:00 am
Conference Room 1 of the Legislative Council Complex

Written Submission by Dr Hans Mahncke
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Dear Members of the Bills Committee,

I am the author of two publications related to some of the proposed amendments:

- *The Annotated Ordinances of Hong Kong: Village Representative Election Ordinance (Cap 576)* LexisNexis, Hong Kong.
- *The Annotated Ordinances of Hong Kong: Chief Executive Election Ordinance (Cap 569)*, LexisNexis, Hong Kong.

Although my observations are likely applicable to most of the Ordinances being considered for amendment, I would limit my specific comments to the above Ordinances, namely Cap 569 and Cap 576, as I am deeply familiar with them.

I have closely studied the proposed amendments to these two Ordinances, as set out in the Electoral Legislation (Miscellaneous Amendments) Bill 2014 introduced on 11 April 2014 and would like to make the following observations.

Cap 569

With respect to Cap 569, while I have no concerns regarding the clarification of the definitions and applicability of various weather warnings, I would like to highlight an apparent problem which arises from the definition of “working day”, which is to be added, as section 1A, into the Schedule of the Ordinance. As the drafters will be aware, the term “working day” has already been defined in section 2 of the Ordinance as:

working day (工作日) means any day other than-
(a) a public holiday;

(b) any day throughout or for part of which a black rainstorm warning is in force, and **black rainstorm warning** (黑色暴雨警告) means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black; and
(c) any day throughout or for part of which a gale warning is in force, and **gale warning** (烈風警告) means a warning of the occurrence of a tropical cyclone in, or in the vicinity of, Hong Kong by the use of any of the tropical cyclone warning signals commonly referred to as No. 8NW, 8SW, 8NE, 8SE, 9 or 10.

In the proposed new section 1A of the Schedule, the proposed definition is:

working day (工作日) means any Monday, Tuesday, Wednesday, Thursday or Friday other than a general holiday.

While I appreciate that the proposed definition in section 1A of the Schedule applies solely to that section, as opposed to the entire Ordinance, the fact that “working day” in section 2 includes Saturdays, while it excludes Saturdays in the proposed section 1A, is of some concern. Perhaps it would be advisable to amend the definition in section 2. You may also consider removing subsections (b) and (c) under the definition of “working day” in section 2, as these matters now seem to be covered in section 1A of the Schedule instead.

Cap 576

The situation is slightly different with respect to Cap 576, which does not offer, in its current version, a definition of “working day”. However, the term “working day” is used twice in section 43 relating to the period within which election petition and appeal must be lodged. The interpretative approach in the absence of any specific definition would be to draw on the definition of a general holiday in the Interpretation and General Clauses Ordinance (Cap 1), supplemented by the General Holidays Ordinance (Cap 149). The conclusion would be that, in the absence of any other guidance, the term “working day”, as used in Cap 576, includes Saturdays.

However, the proposed section 2A to be added after section 2 of the Ordinance, defines “working day” as:

working day (工作日) means any Monday, Tuesday, Wednesday, Thursday or Friday other than a general holiday.

Although the proposed definition of “working day” only applies to section 2A, it could be suggested, for the sake of clarity and order, to either add a general definition of working day under section 2 of the Ordinance, or to do so in section 43, so as to avoid any doubt as to the meaning of “working day” under section 43.

Thank you very much for taking the time to read my submission and I hope it will be of some use to you in finalising the proposed amendments.

Dr Hans Mahncke
20 May 2014