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**Report of the Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2014**

Purpose

This paper reports on the deliberations of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2014.

Background

2. To prepare for the coming election cycle, the Administration has reviewed the electoral laws with a view to improving the clarity of the provisions and, where required, refining the procedural requirements in the statutes in the light of the experience gained from previous elections. The review has come up with the following major proposals (a) to (h) -

- (a) extension of electoral deadlines in case of inclement weather;
- (b) inclusion of electors who have voluntarily requested voter de-registration in the omissions list ("OL");
- (c) handling of applications by existing geographical constituency ("GC") electors for registration in the District Council ("DC") (second) functional constituency;
- (d) removal of the requirement for prior notice of appointment of polling and counting agents;
- (e) requirement for an elector to cast all his or her ballot papers at one time in Legislative Council ("LegCo") elections;
- (f) rationalization of counting procedures at main counting stations;
- (g) clarification of an election agent's authority to act on behalf of candidate(s); and

- (h) improvement to the provisions about postponement or adjournment of an election, poll or count.

Details of the above proposals are set out in paragraphs 3 to 13 of the LegCo Brief (File Ref. CMAB C1/30/5/4) issued by the Constitutional and Mainland Affairs Bureau ("CMAB") on 9 April 2014.

3. Apart from the above proposals, the Administration has also proposed legislative amendments pertaining to the voter registration ("VR") statutory deadlines, and to remove the six-month time bar applicable to the relevant provisions on making false or incorrect statement knowingly or recklessly or making material omissions knowingly in relation to VR under the Electoral Affairs Commission ("EAC") (Registration of Electors) (LegCo GCs) (DC Constituencies) Regulation (Cap. 541A), the EAC (Registration) (Electors for LegCo Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) and the EAC (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541K) by making these offences indictable. Details of the proposals are set out in paragraphs 16 to 20 of the LegCo Brief (File Ref. CMAB C1/30/5/4) issued by CMAB on 9 April 2014.

The Electoral Legislation (Miscellaneous Amendments) Bill 2014 ("the Bill")

4. The Bill was introduced into LegCo on 11 April 2014. The Bill amends various pieces of electoral legislation to implement the above proposals for the elections of the LegCo, DCs and the Rural Representative. The Bill consists of 15 Parts. For details of the provisions of the Bill, please refer to the Legal Service Division Report (LS48/13-14).

The Bills Committee

5. At the House Committee meeting on 2 May 2014, a Bills Committee was formed to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon IP Kwok-him, the Bills Committee has held five meetings with the Administration and received views from the public at one of the meetings. A list of individuals and organizations which have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Extension of electoral deadlines in case of inclement weather

7. At present, a number of provisions under the electoral legislation stipulate the deadlines or periods for certain acts or proceedings¹ to be done or taken in relation to VR or electoral procedures. Save in the case of postponement or adjournment of an election, a poll or a count, the existing provisions do not provide for contingency in case of issuance of gale warning or black rainstorm warning. The Bill proposes to introduce specific provisions in the relevant electoral legislation to provide that the statutory deadlines which fall on an inclement weather warning day (i.e. a working day on which a gale warning² or a black rainstorm warning is in force at any time during the ordinary business hours of the relevant authorities) should be extended to the following working day that is not an inclement weather warning day to compensate for the time lost for completing the relevant acts or procedures. Some members including Dr Priscilla LEUNG and Mr YIU Si-wing have asked whether similar arrangements of deadline extension could also be introduced to cater for other unforeseen circumstances, such as in case of a landslip warning, thunderstorm warning, regional flooding, etc. Some members have suggested that extension of the electoral deadlines may be allowed if the relevant statutory deadlines are unable to be met for reasons of force majeure ("不可抗力").

8. The Administration has explained that a gale warning or black rainstorm warning is issued where the weather conditions are such that the Hong Kong Observatory recommends the public to stay indoors and avoid staying in the streets. The weather conditions reflected by the gale warning and black rainstorm warning tend to impose a more direct and significant constraint on the activities of the general public across the whole of Hong Kong, when compared to those conditions reflected by other weather warnings. The Administration has advised that the Bill seeks to introduce an objective deadline extension mechanism similar to that provided under the existing laws³ into relevant electoral legislation, so that when a gale warning

¹ For example, the deadlines for VR; the deadline for a VR applicant to provide further particulars if so requested by the Electoral Registration Officer ("ERO"); the deadline for ERO to initiate inquiry proceedings and publish the provisional register ("PR"), OL and the final register ("FR") for public inspection; the deadline for the public to make claims and objections in respect of entries in PR and OL or to make updates on the registration particulars; the deadline for the Revising Officer to make a ruling for a claim or objection.

² For the purpose of the proposal, a gale warning would mean any of the tropical cyclone warning signals commonly referred to as No. 8, 9 and 10 issued by the Hong Kong Observatory.

³ Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) sets out the default arrangement for postponing certain deadlines or extending certain time periods to cater for situations when a gale warning or black rainstorm warning is in force throughout or for any part of

or black rainstorm warning is in force, the relevant parties would be compensated for the time lost for completing the relevant acts or proceedings.

9. The Administration has further explained that "force majeure" (act of God) is a concept normally used in contract law to refer to unforeseen acts out of the control of either party and which renders the performance of an act impossible, or which entails serious consequences, at no fault of either contracting party. The Administration considers that given the imprecise, broad and potentially boundless scope of "force majeure", introducing this concept into electoral legislation will give rise to considerable uncertainty and potential controversy in its application by the electoral authorities to specific cases, particularly in cases where some persons (e.g. candidates and electors) are able to meet a statutory deadline while others who fail to meet the same deadline try to argue that a "force majeure" event has occurred.

10. The Administration has pointed out that except otherwise stated in the law, the electoral authorities would, whenever possible, accept documents submitted by means other than submission in person (including by post, by fax, by email, etc). The existing electoral laws already contain specific provisions concerning the postponement or adjournment of an election, poll or count. Reserve polling stations are also arranged to cater for contingencies in case a polling station cannot be used due to unforeseen circumstances affecting certain regions or stations. As for the VR procedures, the electoral laws already provide an "appeal" mechanism whereby any aggrieved applicant whose VR application is not accepted in a particular VR cycle (such as a person failing to submit the VR application in time due to unforeseen circumstances) can lodge a claim for consideration by an independent Revising Officer. The Revising Officer will, in accordance with the law, arrange a hearing and determine each case on its merits based on the evidence and submissions by both the claimant and ERO. The successful claimants would be included in the relevant FR. Based on past experience, the Administration considers that the present arrangements have been operating smoothly and it has not received any request for assistance or complaint about encountering difficulty in meeting the statutory deadlines due to unforeseen circumstances. The Administration considers it appropriate to introduce the deadline extension mechanism based on clear and objective gale and black rainstorm warnings.

the day of the deadline or period. (According to the Administration, due to difference in legislative wording, the arrangement under section 71 may not apply to certain electoral deadlines.) Sections 3 and 4 of the Judicial Proceedings (Adjournment during Gale Warnings) Ordinance (Cap. 62) provide that all judicial proceedings which are set down for hearing or are being conducted at a time which falls within the duration of a gale warning or a black rainstorm warning shall stand and remain adjourned until resumed on the next day, which is not a public holiday, after the warning ceases to have effect.

11. Having regard to views expressed by members and suggestion by the Legal Adviser to the Bills Committee, the Administration has proposed Committee stage amendments ("CSAs") to the proposed new section 2A(4) of the EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D) to make clear that the existing provisions in postponing or adjourning an election, a poll or a count will not be affected by the proposed general inclement weather provisions. CSAs will also be moved to similar provisions of other pieces of electoral legislation in Part 2 of the Bill.

Inclusion of electors who have voluntarily requested voter de-registration in OL

Chinese title of OL

12. Currently, PR will not include the particulars of (a) electors for whom ERO is satisfied on reasonable grounds that they have ceased to be eligible for registration, and (b) electors who have, (i) in the course of the statutory inquiry or (ii) voluntarily, requested ERO to remove them from the voter register. However, the current provisions only empower ERO to include electors in categories (a) and (b)(i), but not (b)(ii), in OL. To ensure consistency in the compilation of PR and OL, the Bill proposes that the entries in respect of electors requesting voluntary de-registration should also be included in OL. This also enables OL to show a complete picture of all electors who are on the existing FR but will be omitted from the next FR. While members have raised no objection to the proposal, Mr CHUNG Kwok-pan considers that the Chinese title of OL, i.e. "遭剔除者名單", does not seem to cover those who have *voluntarily requested* voter de-registration. After consideration, the Administration has agreed to change the Chinese title of OL to "取消登記名單" to better reflect the nature of OL. This will entail a change of the Chinese title of OL in all relevant electoral legislation. The Administration has agreed to move CSAs to this effect.

Handling of request for voter de-registration

13. The Bills Committee has noted that the current administrative procedures adopted by the Registration and Electoral Office ("REO") are that upon receipt of a signed written notice of de-registration from an elector, ERO will issue a notice confirming the de-registration by registered post to his or her registered address in the existing FR to inform him or her that his or her entry will not be included in the next FR. If the registered mail is undelivered, ERO will find out the reason and follow up to seek further clarification from the elector. The general principle is that ERO will include an elector's entry in OL on the basis of his or her request for de-registration if, in ERO's opinion,

the elector concerned has been informed of ERO's intention to omit the elector's entry from the next FR. Some members and the Legal Adviser to the Bills Committee have expressed the view that the relevant provisions in the Bill⁴ do not seem to reflect the aforementioned general principle adopted by REO. To address the concerns, the Administration has proposed to move CSAs to Part 3 of the Bill to make clear the above principle.

Removal of the requirement for prior notice of appointment of polling and counting agents

14. Under Cap. 541D and the EAC (Electoral Procedure) (DCs) Regulation (Cap. 541F), notices of appointment of polling and counting agents should be submitted to the Chief Electoral Officer ("CEO") or the Returning Officer ("RO"), as applicable, at least one week before the polling day. Alternatively, such notices may be delivered in person by the candidates or the election agents to the specified supervisory officer of the polling/counting stations concerned (Presiding Officers ("PROs") or ROs, as applicable) on the polling day. For revocation of appointment of polling and counting agents, the candidates or the election agents must either give notice of the revocation to CEO or ROs, as applicable, before the polling day, or serve the notice in person to PROs or ROs of the polling/counting stations concerned on the polling day⁵.

15. The Administration proposes in the Bill to only require a polling agent or a counting agent so appointed by a candidate to submit a duly completed notice of appointment direct to the specified supervisory officer onsite for inspection and retention when the agent first seeks admission to a polling station or to a counting station on the polling day. For revocation of appointment of polling/counting agents, the candidate concerned should serve a notice of revocation any time on the polling day to CEO, who will act as the central coordination point to deliver the information to PROs/ROs of the polling or counting stations concerned⁶. Similar amendments will be made to the corresponding provisions governing the elections under the Rural Representative Election Ordinance (Cap. 576).

⁴ Such as clause 31(2) of Part 3 of the Bill, which proposes to introduce a new section 9(1)(ab) to Cap. 541A.

⁵ The only exception to the general rule concerns polling agents for dedicated polling stations ("DPSs") situated in prisons, which are polling stations situated in prisons to cater for casting of votes by electors detained in prison. Notices of appointment of such kind must be given to CEO at least one week before polling day unless permitted by the Commissioner of Correctional Services, as lead time is required for obtaining security clearance to arrange for polling agents' admission to those DPSs. In addition, the notice of revocation of such appointment is only effective when it is given to CEO or RO as appropriate.

⁶ The notice requirements regarding polling agents for DPSs situated in prisons will remain unchanged for reasons set out in footnote [5] above.

16. According to the Administration, the proposal seeks to simplify the procedural requirements and facilitate candidates' work during the election campaign. Members in general appreciated the Administration's good intention behind the proposed amendment. Mr Alan LEONG, however, considers that the existing requirement for submitting notices of appointment of polling and counting agents at least one week before the polling day allows candidates to check in advance with REO the notices of appointment received, so that candidates can find out whether any person has falsified and submitted to REO such notices. He is concerned that candidates will not have the chance to detect in advance any such irregularities after removal of the requirement for prior notice of appointment of polling and counting agents. Mr LEONG considers that this may give rise to the risk of a person seeking admission to the polling/counting stations by impersonating an agent, and upsetting the order of the stations. Besides, he is concerned about the extra administrative burden on PRO of a polling/counting station if the proposal is implemented. Dr Priscilla LEUNG and Dr CHIANG Lai-wan have also indicated preference for retention of the existing arrangements which in their view have been operating smoothly. They were concerned that any new changes may bring about unanticipated problems to the operation at the polling/counting stations on the polling day.

17. The Administration has explained that under the proposed arrangements, the administrative burden on the part of PRO has been assessed to be manageable. Moreover, as per existing procedures, the identity of polling and counting agents will be verified by PRO by inspecting the agent's ID card against the notice of appointment, and the agents are required to strictly observe the same behavioral rules for all visitors to the polling/counting stations. The Administration therefore remains of the view that the proposed amendments will not create undue risks to the smooth operation and integrity of elections. That said, the Administration appreciates members' emphasis that prudence should be observed in electoral arrangements, and is prepared to maintain the status quo regarding the service of notices of appointment and revocation of appointment of polling and counting agents. Mr IP Kwok-him considers that the Administration's proposal has merit of allowing greater flexibility to candidates in appointing agents on the polling day. Nevertheless, he accepts the Administration's decision not to pursue the proposed amendment in the light of the concerns expressed by other members. The Administration has proposed CSAs to withdraw the relevant amendments in the Bill, whilst making certain technical amendments to the relevant provisions, e.g. clarifications on how such notices can be served. Consequential amendments will also be made to Division 5 of Part 5 and Division 4 of Part 6 of the Bill.

Postponement or adjournment of an election, poll or count

18. Under the existing electoral law governing LegCo and DC elections, an election, a poll or a count may be postponed or adjourned if it appears to the relevant authority that the election, the poll or the count is likely to be obstructed, disrupted, undermined or seriously affected by, among others, "riot, open violence or other occurrence of public danger". Under the proposed amendment in the Bill, the wording of the relevant provisions will be amended to read "riot, open violence or any danger to public health or safety". According to the Administration, the purpose of the amendment is to spell out more clearly in the law to cater for postponement of an election and adjournment of poll or count owing to an occurrence of public health danger of such severity as to obstruct, disrupt, undermine or seriously affect an election, a poll or a count. Ms Cyd HO has requested the Administration to devise detailed procedures to be followed when considering the postponement of an election and adjournment of a poll or a count on the ground of such an occurrence. The Administration has agreed to follow up on this issue in working out the practical arrangements for the coming elections and to revert to the relevant Panel.

19. Mr IP Kwok-him and Ms Cyd HO have expressed the view that an adjourned poll should be resumed at the same hour when the poll was adjourned on the original polling day. In the scenario that a poll is adjourned at 4 pm on the original polling day, the poll on the rescheduled polling day should be resumed at 4 pm. They have pointed out that some people have to work long hours on Sundays and would not be able to vote, if an adjourned poll is resumed only in the morning and closed before afternoon. The Administration has agreed to relay members' view to EAC for consideration.

20. Members have noted that apart from the powers to postpone or adjourn an election, a poll or a count, the following arrangements can be made to cater for inclement weather or emergencies -

- (a) extension of polling hours if a portion of the polling hours is lost; and
- (b) use of alternative polling/counting stations.

21. Mr YIU Si-wing has suggested that to minimize possible controversy and maintain the overall fairness of the electoral system, the Administration should lay down objective criteria on when it would adopt extension of polling hours only instead of postponement or adjournment of the poll after a black rainstorm warning is issued. The Administration has agreed to consider drawing up guidelines for reference by the relevant authority.

Other refinements

22. The Administration has also proposed to introduce CSAs to make refinements to the Bill to improve clarity. Specifically, it has proposed -

- (a) to substitute "制定" for "制訂" in the Chinese version of the enacting formula preceding the clauses of the Bill;
- (b) that the proposed new section 6(2A) of the Registration of Electors (Appeal) Regulation (Cap. 542B) and the proposed new section 7(2A) of the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap. 569B) be refined to make clear that if a hearing is fixed to be held on the last day of the statutory period, or is postponed due to inclement weather to or beyond that last day, and the deadline for submission of representations in writing to the Revising Officer is postponed due to inclement weather to that hearing day, the period for a review of the ruling in respect of the appeal, claim or objection in question will be extended to the next working day, *which is not an inclement weather day*, following the postponed deadline for the making of representation in writing to the Revising Officer *in relation to that appeal, claim or objection*; and
- (c) to add cross-reference to the definitions of "working day" and "inclement weather warning day" to ensure consistency in the relevant inclement weather provisions in Cap. 542B, Cap. 569B and the Rural Representative Election (Registration of Electors) (Appeals) Regulation (Cap. 576A).

Committee stage amendments

23. Members have not raised objection to the CSAs to be proposed by the Administration as elaborated in paragraphs 11 to 17 and 22. The Bills Committee has not proposed any amendment.

Resumption of Second Reading debate

24. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 2 July 2014.

Consultation with the House Committee

25. The Bills Committee reported its deliberations to the House Committee on 13 June 2014.

Council Business Division 2
Legislative Council Secretariat
25 June 2014

**Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2014**

Membership list

Chairman	Hon IP Kwok-him, GBS, JP
Members	Hon Emily LAU Wai-hing, JP Hon TAM Yiu-chung, GBS, JP Hon Abraham SHEK Lai-him, GBS, JP Hon Cyd HO Sau-lan Dr Hon Priscilla LEUNG Mei-fun, SBS, JP Hon Paul TSE Wai-chun, JP Hon Alan LEONG Kah-kit, SC Hon WONG Yuk-man (up to 20 May 2014) Hon YIU Si-wing Hon Charles Peter MOK Dr Hon Kenneth CHAN Ka-lok Hon LEUNG Che-cheung, BBS, MH, JP Hon Alice MAK Mei-kuen, JP Hon Martin LIAO Cheung-kong, JP Dr Hon CHIANG Lai-wan, JP Hon CHUNG Kwok-pan Total : 16 Members
Clerk	Ms Joanne MAK
Legal Adviser	Mr Kelvin LEE
Date	21 May 2014

《2014年選舉法例(雜項修訂)條例草案》委員會
Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2014

曾向法案委員會表達意見的團體/個別人士名單
List of organizations/individuals which/who have
submitted views to the Bills Committee

<u>名稱</u>	<u>Name</u>
* 1. Hans Mahncke 博士	Dr Hans Mahncke
2. 民主建港協進聯盟	Democratic Alliance for the Betterment and Progress of Hong Kong
3. 自由黨青年團	Liberal Party Youth Committee
4. 東區區議會議員邵家輝先生	Mr Peter SHIU, member of Eastern District Council
* 5. 東區區議會議員楊位醒先生	Mr YEUNG Wai-sing, member of Eastern District Council
6. 活力離島	Dynamic Island
7. 郭仲文先生	Mr KWOK Chung-man
8. 選舉條例關注組	選舉條例關注組
* 只提交意見書 provided submissions only	