



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

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16 October 2018

Ms Cherie YEUNG  
Prin AS (Constitutional & Mainland Affairs)2  
Constitutional and Mainland Affairs Bureau  
12/F, East Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Ms YEUNG,

**Electoral Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill")**

We are scrutinizing the legal and drafting aspects of the Bill.

Please find attached a schedule listing our observations in relation to the English text of the Bill. We would be grateful if you could let us have your response in bilingual form as soon as possible.

Yours sincerely,

(Wendy KAN)  
Assistant Legal Adviser

Encl.

c.c. DoJ (Attn: Miss Emma WONG and Mr Gary LI) (By Fax: 3918 4613)  
Clerk to Bills Committee  
LA  
SALA3

## Schedule

### Part I: Legal Issues

#### Clause 1(2) to (4) of the Bill

1. Clause 1(2) and (3) of the Bill provides that the Bill, if passed, would come into operation on the day on which it is published in the Gazette ("the Gazettal Date"), except for the provisions specified in clause 1(4) of the Bill ("the Relevant Provisions"), which would come into operation on 1 February 2019 or on the Gazettal Date if such date is later than 1 February 2019. Please clarify the reason(s) for providing for such commencement arrangement in respect of the Relevant Provisions, which relate to rural representative elections.

#### Part 3 of the Bill

2. It is noted that the proposals under Part 3 of the Bill to allow a Revising Officer ("RO") to determine a case without a hearing on the basis of written submissions only do not apply in relation to:
  - (a) an appeal (as defined in the Registration of Electors (Appeals) Regulation (Cap. 542B) or the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap. 569B)) made under Cap. 542B or Cap. 569B;
  - (b) a claim or an objection made regarding the registration of a person as a member of the Election Committee; and
  - (c) a rural representative election.

Please explain the reasons for such exclusion.

#### Clauses 17, 24 and 29 of the Bill

3. Under the proposed section 4(2) of Cap. 542B (as amended by clause 15 of the Bill), RO is required to give the Electoral Registration Officer ("ERO") written notice of the result of a review of a ruling made under the proposed section 6(1)(a) or (b) of Cap. 542B. However, no requirement is proposed to be imposed on RO under the Bill to give such written notice to the appellant or the person in respect of whom the objection is made. Please explain the reason(s) for not imposing so.

4. Please note that Question 3 above also applies to Cap. 569B.
5. It is noted that Division 2 of Part 3 of the Bill does not propose to impose a requirement on RO to give ERO, the appellant or the person in respect of whom the objection is made written notice of the result of a review of a ruling made under the proposed section 7(1) of the Rural Representative Election (Registration of Electors) (Appeals) Regulation (Cap. 576A). Please explain the reason(s) for not imposing such a requirement on RO.

#### Clause 54 of the Bill

6. Given that pursuant to the proposed section 77(1)(g) (as amended by clause 55 of the Bill) and section 77(2) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) that a ballot paper which is not marked in accordance with section 56(1) of Cap. 541I is not to be regarded as valid and the vote recorded thereon is not to be counted, should the proposed reference to "section 56(1) or (2)" in the proposed section 74A(a)(ii) of Cap. 541I rather be "section 56(2)(b)"?

#### Clause 55 of the Bill

7. It is noted that under the proposed section 77(4)(a) of Cap. 541I, a ballot paper which is not marked in accordance with section 56(1) of Cap. 541I may not be inspected by a candidate, an election agent or a counting agent. Please explain the reason(s) for such exclusion. It is noted that under a similar provision in the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), namely, the proposed section 80(4)(a) of Cap. 541D (as amended by clause 48 of the Bill), a candidate, an election agent or a counting agent may inspect a ballot paper which is not marked in accordance with section 56(2) of Cap. 541D.

#### Part 6 of the Bill

8. It is noted that unlike the proposed addition of a new section 80(1)(ia) to Cap. 541D (as amended by clause 48 of the Bill) and the proposed addition of a new section 78(1)(ha) to the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) (as amended by clause 51 of the Bill), no similar amendments are proposed to be made to:

- (a) section 77(1) of Cap. 541I, despite the proposed amendments made to sections 37(2) and 77(3) of Cap. 541I (clauses 39 and 42 of the Bill) in relation to the crossing out in a ballot paper the name of, and other information relating to, a deceased or disqualified candidate; and
- (b) section 62 of the Electoral Procedure (Rural Representative Election) Regulation (Cap. 541L), despite the proposed amendments made to sections 33(3) and 63(9) of Cap. 541L (clauses 43 and 44 of the Bill) in relation to the crossing out in a ballot paper the name of, and other information relating to, a deceased or disqualified candidate.

Please explain the reason(s) for not making similar amendments to Cap. 541I and Cap. 541L.

#### Clauses 56 and 61 of the Bill

- 9. It appears that the statement mentioned in the proposed section 78(7) of Cap. 541I only confines to the ballot papers which are forwarded to the Returning Officer under the proposed section 74A(a) of Cap. 541I (as amended by clause 54 of the Bill) and those ballot papers do not include ballot papers that are referred to in the proposed section 78(7)(ga) of Cap. 541I. Please explain the need to add the proposed new section 78(7)(ga) to the proposed section 78(7) of Cap. 541I.
- 10. Please note that Question 9 above also applies to the proposed new section 51(7)(ga) of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J).

### **Part II: Drafting Issues**

#### Clause 10 of the Bill

- 11. Under the proposed new section 3A of Cap. 569B (as added by clause 21 of the Bill), RO must direct that a claim or an objection be determined without a hearing on the basis of written submissions provided that, among others, the claim or objection is made in respect of a subsector provisional register. Given that a claim or an objection may, pursuant to Cap. 541B, be made in relation to matters other than a subsector provisional register, please consider amending the proposed section 32 of Cap. 541B to limit the scope of the proposed section 32(6)(a) and (7)(a) of Cap. 541B.

Clauses 14, 21 and 26 of the Bill

12. Please clarify whether "the representations referred to in section 2(2)(c)" under the proposed new section 2B(2)(b) of Cap. 542B refers to the representations mentioned in the proposed section 2(2)(c)(iii) of Cap. 542B. If it is intended that only the representations referred to in the proposed section 2(2)(c)(iii) of Cap. 542B should be referred to, please consider amending the proposed new section 2B(2)(b) of Cap. 542B to clearly reflect so.
13. Please note that Question 12 above also applies to the proposed new section 3B(2)(b) of Cap. 569B and proposed new section 2A(2)(b) of Cap. 576A.

Clause 19(2) and (3) of the Bill

14. It is noted that clause 19(2) and (3) of the Bill proposes to add, among others, the references to the proposed new section 7(2AA)(b)(ii) and the proposed new section 7(2AA)(a)(ii) to column 2 of Table 1 under the proposed section 2A(4) of Cap. 569B. However, the date as prescribed in the relevant provision concerned specified in column 1 of Table 1 (for example, section 29(1)(a)(i) of Cap. 541B) is not the same date as prescribed in the proposed new section concerned specified in column 2 of Table 1 pursuant to the proposed section 2A(4)(b) of Cap. 569B. It is also noted that no similar amendments are proposed under clause 12(2) and (3) of the Bill (i.e. references to the proposed new section 6(2AA) of Cap. 542B) to be made to column 2 of Table 1 under the proposed section 1A(4) of Cap. 542B. Please consider and make appropriate amendments.

Clause 65 of the Bill

15. Please consider adding the definition of "sub-subsector" to the proposed section 2(1) of the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap. 569C) in view of the proposed new section 2(2) of Cap. 569C which makes references to a sub-subsector. It is noted that while a definition of "subsector" is provided for in the proposed section 2(1) of Cap. 569C, no definition of "sub-subsector" is proposed to be added to the section.

**Part III: Other observations**

16. Please note that certain amendments to the relevant items of electoral legislation may have to be made. For example:
  - (a) in section 31(10) of Cap. 541B, reference to section 26(5)(a) and (b) of Cap. 541B is made but section 26(5)(a) of Cap. 541B has already been repealed; and
  - (b) in the English text of the current issue of the Authorized Loose-leaf Edition of Cap. 541J, there are two subsection (1)(e) of section 50(1).