

**立法會**  
**Legislative Council**

Ref : CB4/BC/3/20

LC Paper No. CB(4)1080/20-21  
(These minutes have been seen  
by the Administration)

**Bills Committee on Public Offices (Candidacy and Taking Up Offices)**  
**(Miscellaneous Amendments) Bill 2021**

**Minutes of the third meeting**  
**held on Friday, 9 April 2021, at 4:30 pm**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Tommy CHEUNG Yu-yan, GBS, JP (Chairman)  
Hon Holden CHOW Ho-ding (Deputy Chairman)  
Hon WONG Kwok-kin, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon YIU Si-wing, BBS  
Hon YUNG Hoi-yan, JP  
Dr Hon Pierre CHAN  
Hon CHAN Chun-ying, JP  
Hon LAU Kwok-fan, MH  
Dr Hon CHENG Chung-tai  
Hon Vincent CHENG Wing-shun, MH, JP  
Hon Tony TSE Wai-chuen, BBS, JP

**Member absent** : Hon LEUNG Che-cheung, SBS, MH, JP

**Public Officers attending** : Item I

Mr Erick TSANG, IDSM, JP  
Secretary for Constitutional and Mainland Affairs

Mr Roy TANG, JP  
Permanent Secretary for Constitutional and Mainland Affairs

Miss Pinky WONG  
Assistant Secretary for Constitutional and Mainland Affairs

Mr Llewellyn MUI  
Deputy Solicitor General (Constitutional Affairs)  
Department of Justice

Miss Selina LAU  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Angel WONG  
Chief Council Secretary (4)4

**Staff in attendance** : Ms Clara TAM  
Senior Assistant Legal Adviser 2

Mr Mark LAM  
Assistant Legal Adviser 7

Miss Wincy LO  
Senior Council Secretary (4)4

Ms Rachel WONG  
Council Secretary (4)4

Ms Sandy HAU  
Legislative Assistant (4)4

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**I. Meeting with the Administration**

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|---------------------------------|----|---|
| (File Ref.: CMAB C4/9/1         | -- | Legislative Council Brief issued by the Constitutional and Mainland Affairs Bureau                      |
| LC Paper No. CB(3)366/20-21     | -- | The Bill  |
| LC Paper No. LS48/20-21         | -- | Legal Service Division Report   |
| LC Paper No. CB(4)704/20-21(02) | -- | Marked-up copy of the Bill prepared by the Legal Service Division ( <i>Restricted to members only</i> ) |

LC Paper No. CB(4)748/20-21(01) -- Senior Assistant Legal Adviser's letter dated 8 April 2021 to the Administration

LC Paper No. CB(4)748/20-21(02) -- Letter dated 8 April 2021 from Hon Holden CHOW Ho-ding)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

**II. Any other business**

2. The Chairman reminded members that the next meeting would be held on 12 April 2021 at 8:30 am.

3. There being no other business, the meeting ended at 6:21 pm.

Council Business Division 4  
Legislative Council Secretariat  
7 June 2021

**Proceedings of the third meeting of the  
Bills Committee on Public Offices (Candidacy and Taking Up Offices)  
(Miscellaneous Amendments) Bill 2021  
held on Friday, 9 April 2021, at 4:30 pm  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s) / Discussion</b>	<b>Action required</b>
<i>Agenda item I – Meeting with the Administration</i>			
000346-000508	Chairman	Opening remarks	
000509-001113	Senior Assistant Legal Adviser 2 ("SALA2") Chairman Administration	Legal Adviser to the Bills Committee's letter dated 8 April 2021 to the Administration [LC Paper No. CB(4)748/20-21(01)]	
001114-001312	Deputy Chairman Chairman Administration	Deputy Chairman's letter dated 8 April 2021 [LC Paper No. CB(4)748/20-21(02)]	
001313-002033	Chairman	Suggestion of reconsidering the wording "作出《基本法》第 23 條規定禁止的行為" in the proposed section 3AA(3)(a)(i) and "犯《中華人民共和國香港特別行政區維護國家安全法》規定的罪行" in the proposed section 3AA(3)(a)(ii) of the Interpretation and General Clauses Ordinance (Cap. 1)  Suggestion of amending the Chinese text of section 21(3) of the Oaths and Declarations Ordinance (Cap. 11) as "某人作出 20A(2)某項的行為；而監誓者信納該人並非故意作出該等行為"	
002034-002618	Chairman Administration Mr Tony TSE Mr CHAN Chun-ying	<u>Examination of clause 12</u>  Discussion on the manner and form of the District Council Oath	
002619-002656	Chairman Administration	<u>Examination of clause 13</u>  Members raised no question	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s) / Discussion</b>	<b>Action required</b>
002657-002921	Chairman Administration SALA2	<u>Examination of clauses 14 and 15</u>  Applicability of the leap-frog appeal mechanism to the lifting of immediate suspension of functions and duties	
002922-002951	Chairman Administration	<u>Examination of clause 16</u>  Members raised no question	
002952-003945	Chairman Administration Mr Tony TSE	<u>Examination of clause 17</u>  Reasons for not including the violation of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region as a new ground of disqualification in section 15(1) of the Legislative Council Ordinance (Cap. 542)  Reasons for not including a time frame in the proposed section 15(1)(1AA) of Cap. 542 to reflect the duration of time before the date on which that paragraph comes into operation	
003946-004306	Chairman Deputy Chairman Administration	Reasons for providing two separate grounds of disqualification from holding office as Legislative Council ("LegCo")/District Council ("DC") members under section 15(1)(f) and (g) of Cap. 542	
004307-005258	Chairman Ms YUNG Hoi-yan Administration	Suggestion of setting out in the proposed new section 15(1)(f) and (g) of Cap. 542 who had the legal authority to determine a LegCo/DC member was in breach of an oath, or failed or was declared or decided in accordance with any law to have failed, to fulfill the legal requirements and conditions on upholding the Basic Law ("BL") and bearing allegiance to the Hong Kong Special Administrative Region ("HKSAR")	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s) / Discussion</b>	<b>Action required</b>
005259-005821	Chairman Mr Paul TSE Administration	The legal authority that could determine whether a LegCo/DC member was in breach of an oath or failed or was declared or decided in accordance with any law to have failed, to fulfill the legal requirements and conditions on upholding BL and bearing allegiance to HKSAR; and the future role of Returning Officers and the Candidate Eligibility Review Committee in determining the validity of nominations for elections	
005822-010236	Chairman Mr LAU Kwok-fan Administration Mr Tony TSE	<p>Disqualification of DC members whose nomination were decided to be invalid during the nomination period of the election for the LegCo; and whether a LegCo member would be disqualified if his/her nomination was decided to be invalid during the nomination period of the election for DC</p> <p>Clarification of whether a person would be regarded as failing to fulfill the legal requirements and conditions on upholding BL and bearing allegiance to HKSAR as stated in the proposed new section 15(1)(g) of Cap. 542 if the person did not act according to the positive list</p>	
010237-010804	Chairman Mr Paul TSE Administration	<p>Suggestion of narrowing the scope of definition of "any law" as stated in the proposed new section 15(1)(g) of Cap. 542 to those related to elections while not contradicting the decision of the Standing Committee of the National People's Congress on 11 November 2020</p> <p>Policy intent of the provision that an elector could institute legal proceedings against a LegCo member on the grounds of disqualification</p>	
010805-011453	Chairman SALA2 Administration	Types of declarations or decisions and the relevant laws that were envisaged under the reference	

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
		<p>"declared or decided in accordance with any law" as stated in the proposed new section 15(1)(g) of Cap. 542</p> <p>Legal authority that could determine whether a LegCo/DC member is in breach of an oath or fails to fulfill the legal requirements and conditions, and the relevant procedure</p>	
011454-011623	Chairman Mr Paul TSE Administration	Suggestion of reconsidering the drafting of the proposed new section 15(1)(f) and (g) to Cap. 542	
011624-011943	Chairman Administration	<p><u>Examination of clauses 18 to 20</u></p> <p>Member raised no question</p>	
011944-012804	Chairman Mr Tony TSE Administration	<p>Wordings in the proposed new sections 15(1)(g) and 39(1)(1A)(b)(ii) of Cap. 542</p> <p>Reasons for defining "working day" in the proposed new section 65(3) of Cap. 542</p>	
012405-012803	Chairman Administration Deputy Chairman	<p><u>Examination of clause 21</u></p> <p>Consequences of the legal proceedings brought by the Secretary for Justice ("SJ") and those by electors</p>	
012804-013218	Chairman Mr Paul TSE Administration	<p>Suggestion of removing the mechanism for an elector to institute legal proceedings against a LegCo member on the grounds of disqualification</p> <p>Difference between the aforesaid mechanism and election petition</p>	
013219-013528	Chairman SALA2 Administration	Interface between the mechanism in the proposed section 73(2A) of Cap. 542 for breach of oath and Rule 49B of the Rules of Procedure of the LegCo, which provides for the mechanism for disqualification of a member under Article 79(7) of BL	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s) / Discussion</b>	<b>Action required</b>
013529-013720	Chairman Mr Paul TSE Administration	Suggestion of removing the mechanism for an elector to institute legal proceedings against a LegCo member on the grounds of disqualification	
013721-014055	Chairman Deputy Chairman Administration	Suggestion of allowing SJ to take over the legal proceedings initiated by an elector, as in a private prosecution	
014056-014607	Chairman Administration SALA2	Suggestion of the inclusion of remuneration arrangement of a LegCo member during suspension of functions and duties to adhere more closely to section 2(1) of the "Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China"; and clarification of whether the disqualified LegCo/DC member should return the remuneration paid to him/her from the date of disqualification	
014608-015044	Chairman Administration Mr Tony TSE Mr LAU Kwok-fan	Consequences of a member who continued to act as a member or exercise function/perform duty of a member during suspension of functions and duties	
015045-015406	Chairman Administration Mr LAU Kwok-fan	Time limit for applying to the Court for lifting the suspension of functions and duties	
<i>Agenda item II – Any other business</i>			
015407-015440	Chairman	Date of next meeting	