

立法會
Legislative Council

Ref : CB4/BC/5/20

LC Paper No. CB(4)1400/20-21
(These minutes have been seen
by the Administration)

**Bills Committee on Improving Electoral System
(Consolidated Amendments) Bill 2021**

**Minutes of the fourth meeting
held on Tuesday, 20 April 2021, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Martin LIAO Cheung-kong, GBS, JP (Chairman)
Hon CHEUNG Kwok-kwan, JP (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon MA Fung-kwok, GBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Wilson OR Chong-shing, MH
Dr Hon CHENG Chung-tai

Public Officers attending : Mr Erick TSANG Kwok-wai, IDSM, JP
Secretary for Constitutional and Mainland Affairs

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

Ms Cherie YEUNG Lok-sze
Principal Assistant Secretary (Constitutional and Mainland
Affairs) 2

Ms Carmen KONG Ka-man
Principal Assistant Secretary (Constitutional and Mainland
Affairs) 3

Mr Llewellyn MUI Kei-fat
Law Officer (Special Duties) (Acting)
Department of Justice

Mr Peter SZE Chun-fai
Senior Assistant Law Draftsman
Department of Justice

Mr Wallace NG Long-ting
Government Counsel
Department of Justice

Miss Celia HO Wai-kwan
Government Counsel
Department of Justice

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (4) 7

Staff in attendance : Mr Bonny LOO
Senior Assistant Legal Adviser 3

Ms Clara WONG
Assistant Legal Adviser 4

Mr Dennis HO
Senior Council Secretary (4) 7

Mr Griffin FUNG
Legislative Assistant (4) 9

Miss Vivian YUEN
Legislative Assistant (4) 8

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I. Meeting with the Administration

[File Ref.: CMAB C1/30/5/5, LC Paper Nos. CB(3)444/20-21, LS65/20-21, CB(4)814/20-21(01) and (02), CB(4)836/20-21(01) and CB(4)827/20-21(01)]

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

Discussion/Clause-by-clause examination

Clauses 292, 383 & 438: The Candidate Eligibility Review Committee ("CERC")

2. Permanent Secretary for Constitutional and Mainland Affairs ("PSCMA") reiterated that the Administration would propose an amendment to the Improving Electoral System (Consolidated Amendments) Bill 2021 ("the Bill") to provide for the appointment of members of society to CERC as its members. The Chairman considered it preferable to appoint three members of society to CERC and requested the Administration to consider his suggestion.

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3. PSCMA said that upon the formation of CERC, the composition of CERC would be reported to the central authorities for record upon request. He further said that the Administration would propose amendments to the Bill to provide that the list of candidates confirmed to be eligible to stand for elections would be published in the Gazette in the name of CERC, instead of the Returning Officer, so as to reflect CERC's authority on such matters.

4. Mr MA Fung-kwok enquired how much time would be allowed for appeals to be lodged by persons whose registration had been determined by CERC as invalid under the proposed new section 4A of the Election Committee (Appeals) Regulation (Cap. 569A).

5. Principal Assistant Secretary (Constitutional and Mainland Affairs) 3 advised that a prospective candidate might lodge an appeal to the Revising Officer by submitting a written representation within seven days from the relevant date (e.g. the date of publication of the interim register), and the Revising Officer would make a decision in writing within 20 days thereafter. PSCMA added that such arrangements would be applicable to the 2021 voter registration cycle only.

Clause 431: Breach of oath of Election Committee ("EC") members

6. Mr MA Fung-kwok enquired how to determine whether an EC member had breached the oath taken under the law. PSCMA replied that in line with the proposals in the Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Bill 2021 which sought to implement the Interpretation of Article 104 of the Basic Law by the Standing Committee of the National People's Congress, the Bill proposed that the Secretary for Justice ("SJ") could bring proceedings anytime against an EC member on the grounds of breach of oath, or failure to fulfill the legal requirements and conditions on upholding the Basic Law and bearing allegiance to Hong Kong Special Administrative Region ("HKSAR"). Once SJ had commenced the relevant legal proceedings on the grounds of breach of oath or failure to fulfill the legal requirements and conditions on upholding the

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Basic Law and bearing allegiance to HKSAR, the functions of the EC member would be immediately suspended. The EC member's name should not be added to the EC Final Register or should be removed from the register until the decision of the Court of First Instance ("CFI") became final. The member concerned was, however, entitled to apply to CFI to lift such suspension.

7. The Deputy Chairman expressed concerns about whether an EC member's suspension or disqualification by CFI under the proposed new section 43A of the Schedule to the Chief Executive Election Ordinance (Cap. 569) ("CEEO") would affect the validity of the nominations made or the vote cast by him or her prior to his/her suspension or disqualification or during the time when such suspension was lifted by the Court. Law Officer (Special Duties) (Acting) ("LO(SD)(Acting)") replied that taking reference from section 71 of the Legislative Council Ordinance (Cap. 542) ("LCO"), a defect in the election of a Member, or as to the eligibility of a person to be a Member, would not invalidate acts purporting to have done by the Member before the date on which the decision of the Court was handed down. The Deputy Chairman requested the Administration to consider whether a provision similar to section 71 of LCO should be added to CEEO to preserve the validity of the relevant elections which involved the abovementioned circumstances. The Administration agreed to follow up.

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8. The Chairman noted that the proposed section 43A(7)(b) of the Schedule to CEEO stipulated that "*if, in proceedings brought under this section, it is proved that the defendant acted as a member of the Election Committee while disqualified from so acting, the Court may grant an injunction restraining the defendant from so acting*". He considered the proposed arrangements cumbersome and suggested that the Administration should consider criminalizing such acts, which would be more effective and would achieve greater deterrent effect. He also enquired about the role of the Court of Final Appeal in handling appeals by EC members. PSCMA said that the Administration would provide a written response to address the Chairman's concerns.

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Clauses 275 & 287: Composition of corporate electors in functional constituencies ("FCs")

9. In response to members' enquiries, PSCMA explained that in general, the number of eligible corporate members of umbrella organizations was clearly defined in the constitutions of these organizations, and any changes would require the approval of the Secretary for Constitutional and Mainland Affairs. For umbrella organizations that did not state the number of eligible corporate members in their constitutions, the Administration would request these organizations to provide a list of their eligible corporate members in accordance with the constitutions in force as at 14 April 2021, i.e. the date of First Reading of the Bill.

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If there were subsequent major changes to the list (such as a sudden increase in the number of eligible corporate members of the organizations concerned) without a reasonable explanation, the Administration would consider revoking the eligibility of the umbrella organizations in the corresponding FC by way of legislative amendments.

10. Mr Tommy CHEUNG enquired how an umbrella organization should deal with offices of its Boards/General Committees/Councils being vacated. PSCMA responded that it would be up to the umbrella organizations themselves to deal with such internal matters of finding replacements to these vacated offices of their Boards/General Committees/Councils.

11. In reply to the Chairman's enquiry, LO(SD)(Acting) confirmed that a "corporate" elector in LCO meant a "body" that included organizations whether incorporated or unincorporated, such as partnerships.

12. Mrs Regina IP expressed concern that in respect of the composition of the Tourism FC under the Bill, it comprises three categories of bodies. While the bodies specified under the proposed section 200(a) of LCO were those that were licence holders under the Travel Agents Ordinance (Cap. 218) and were entitled to vote at the board of directors or executive committees of the specified bodies, the bodies specified under the proposed section 200(c) of LCO were licence holders of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and were entitled to vote at the general meetings of the company concerned. Mrs IP requested the Administration to explain in writing the rationale behind the above discrepancy in the eligibility and to provide the respective numbers of eligible corporate electors under the proposed section 200(a), (b) and (c) of LCO. SCMA agreed to revert in writing.

Admin

Clause 372: Election expenses limits ("EELs") for Chief Executive ("CE") elections

13. The Chairman enquired about the rationale behind the substantial difference between EELs before and after 27 March 2022 as set out in the proposed section 2 of the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A).

14. PSCMA advised that 27 March 2022 was the prospective date of the upcoming CE election. The purpose of the proposed amendment was to adjust upward the EEL of the next CE election by around 10.28% (cumulative price adjustment calculated from 2017) to take effect on 27 March 2022.

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15. Members noted that the next meeting would be held on Wednesday, 21 April 2021, at 8:30 am.

II. Any other business

16. There being no other business, the meeting ended at 12:58 pm.

Council Business Division 4
Legislative Council Secretariat
20 August 2021

**Proceedings of the fourth meeting of the
Bills Committee on Improving Electoral System
(Consolidated Amendments) Bill 2021
on Tuesday, 20 April 2021, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000456 - 000607	Chairman	Opening remarks	
000608 - 002124	Chairman Mr MA Fung-kwok Administration	Continuation of clause-by-clause examination of the Improving Electoral System (Consolidated Amendments) Bill 2021 ("the Bill") <u>Examination of clauses 1(6)(c), 398-400, 428, 429, 433, and 435- 445 of the Bill</u> - Discussion on the (i) appeal mechanisms against the election results of Election Committee ("EC") subsector elections or the registration of a nominee, (ii) registration of ex-officio members and (iii) voter registration arrangements	
002125 - 004942	Chairman Mr MA Fung-kwok Senior Assistant Legal Adviser ("SALA") Deputy Chairman Mr Paul TSE Administration	<u>Examination of clauses 1(6)(a), (d) and (f), 182(9), 191, 208, 209, 213, 384, 388, 401, 408, 410, 419, 430, 431, 434, 460, 461 and 462 of the Bill</u> - Discussion on the oath-taking requirement for EC members and related matters	Admin. to provide written response (paras.7 and 8 of minutes)
004943 - 010208	Chairman Deputy Chairman Mr Paul TSE Administration	<u>Examination of clauses 222-227, 380, 381, 383, 384(1) and 385-387 of the Bill</u> - Discussion on the composition of the Candidate Eligibility Review Committee	Admin. to follow up (para. 2 of minutes)
010209 - 011041	Chairman Mr Paul TSE SALA Administration	<u>Examination of clauses 1(4)(c), 1(6)(b), 231-235, 372, 389, 390 and 395 of the Bill</u> - Concerns about the proposed increase in the election expenses limit for the next Chief Executive Election	

Time Marker	Speaker(s)	Subject(s)	Action required
011042 - 015526	Chairman Dr Priscilla LEUNG Administration	<p><u>Examination of clauses 1(5), 76(1), (3) and (4), 77-79, 80(1)-(6), (8)-(10), (13), (16) and (19), 83, 87, 88(7) and (9), 92(3) and (4), 93, 100, 101, 104, 105(3), 108(2), 120, 132, 137, 139, 158(2), (3) and (5), 159(1) and (2), 253(3) and (4), 256(1), 262(1), (3) and (5), 264, 269(3)-(7), 278, 286, 288-291, 294(3)-(10), 305, 311, 315, 316, 317, 328, 340, 352(2)(a) and (3), 355(2), 358(1), 361(2) and (9), and 373(1)-(5) of the Bill</u></p> <p>- Discussion on the proposed new composition and formation of the Legislative Council ("LegCo")</p>	
015527 - 020942	<i>Break</i>		
020943 - 025552	Chairman Dr Priscilla LEUNG Administration	<p><u>Examination of clauses 7(1), 76(1) and (3), 84(1)-(3), (5) and (7), 85(1) and (2), 90(2), 94(1), 95(1) and (12), 96(1) and (4), 97(3), 98(2), 99, 105(2), 108, 109(3), (4) and (13), 111(2), (6), (8) and (10), 116(2) and (3), 117(1) and (2), 119(1) and (2), 136, 140, 142(1), (3), (4), (7) and (8), 143(5) and (6), 146(1), 149(2), 253(3), 256(1), 262(2), 269(1) and (2), 272-274, 277, 279, 281-285, 287, 294(1) and (2), 301(1)-(4), 302-304, 309(1)-(4) and (6), 319(1)-(3) and (7), 320, 321, 323, 357, 361(1) and (8), 371 (1) and (2), 375 of the Bill</u></p> <p>- Discussion on the changes to the composition and electorate of LegCo functional constituencies ("FCs")</p>	
025553 - 030246	Chairman Mr WONG Kwok-kin Mr Paul TSE Mrs Regina IP Administration	<p><u>Examination of clauses 270, 275, 282, 283 and 284 of the Bill</u></p> <p>- Concerns about the composition of the Tourism FC under the Bill and the eligibility criteria of corporate electors under the proposed new section 200(a), (b) and (c) of the Legislative Council Ordinance (Cap. 542)</p>	Admin. to provide information (para. 12 of minutes)
030247 - 033141	Chairman Mr Paul TSE Mr Tommy CHEUNG Mrs Regina IP Administration	<p><u>Examination of clauses 262(6), 263, 285, 287, 335, 337(3)-(12), 338, 339, 341 and 464 of the Bill</u></p> <p>- Enquiries on the eligibility of corporate members of umbrella organizations to register as a corporate voter/elector and how these organizations should deal with the vacated offices of their Boards/General Committees/Councils</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
033142 - 035149	Chairman Ms Alice MAK Mr Tommy CHEUNG Administration	<u>Examination of clauses 80(15), 85(3), (5) and (6), 92(5), 111(2), (3), (9) and (11), 118, 119(3), 135, 142(2), (4) and (5), 158(2)-(6), 268, 271, 276, 280, 313, 314, 336, 337(1) and (2), and 367(2) of the Bill</u> - Discussion on the system of voting and counting of votes for LegCo FCs	
035150 - 040135	Chairman Ms Alice MAK Deputy Chairman Dr CHENG Chung-tai Mr Paul TSE Administration	<u>Examination of clauses 266(1), 267 and 312 of the Bill</u> - Discussion on the system of voting and counting of votes for LegCo geographical constituencies	
040136 - 040157	Chairman Members	Date of next meeting and closing remarks	

Council Business Division 4
Legislative Council Secretariat
20 August 2021