

立法會
Legislative Council

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LC Paper No. CB(4)1501/20-21
(These minutes have been seen
by the Administration)

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

**Minutes of the ninth meeting
held on Saturday, 24 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

Member attending : Dr Hon Junius HO Kwan-yiu, JP

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

Ms Francoise LAM See-man
Senior Assistant Law Draftsman
Department of Justice

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4) 6

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

Ms Clara WONG
Assistant Legal Adviser 4

Miss Janice HO
Council Secretary (4)6

Ms Louisa YU
Legislative Assistant (4) 7

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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), CB(4)870/20-21(01), CB(4)827/20-21(01), CB(4)877/20-21(01), CB(4)858/20-21(01) and CB(4)859/20-21(01) and (02)]

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

(At 11:24 am, the Deputy Chairman took the chair in the temporary absence of the Chairman. The Chairman resumed the chair at 12:18 pm.)

Discussion/Clause-by-clause examination

Clauses 307 and 308: Proposed termination of proceedings upon a candidate's death or disqualification

2. The Chairman acknowledged receipt of Ms Alice MAK's letter dated 23 April 2021 and instructed that the letter be forwarded to the Administration and issued to members. Ms MAK briefed members on the content of her letter.

(Post-meeting note: Ms MAK's letter was circulated to members vide LC Paper No. CB(4)883/20-21 on 24 April 2021.)

3. Echoing Ms Alice MAK's views, Mr CHAN Hak-kan and Mr Wilson OR also expressed concerns that a person with an ulterior motive might try to sabotage the elections by sending persons who had high risks of being disqualified from being validly nominated to run for the elections with an aim to trigger the termination of the geographical constituency ("GC") elections of the Legislative Council ("LegCo"). They suggested that the Administration should consider deleting the proposed amended section 42C of the Legislative Council Ordinance (Cap. 542), and expanding the scope of the proposed section 42B of Cap. 542 to cover not only the Election Committee ("EC") constituency but also GCs and functional constituencies ("FCs"). Mr Tommy CHEUNG and Ir Dr LO Wai-kwok requested the Administration, in responding to members' concerns above, to strive to address different possible scenarios as far as possible.

(Post-meeting note: Having regard to members' concerns, the Administration proposed in its papers [LC Paper Nos. CB(4)912/20-21(01) and CB(4)928/20-21(01)] issued to the Bills Committee on 29 April and 3 May 2021 to revise the relevant provisions to provide that in case of death or disqualification of a validly nominated candidate in a GC and FC after the close of nominations but before the date of the election, the relevant election proceedings would not be terminated, in line with the arrangements for the EC constituency. Meanwhile, considering that the amended section 46A of Cap. 542 was directly related to members' concerns over section 42C, the Administration proposed to lift the requirement under section 46A(1) and (2) of Cap. 542, and specify that in case of death or disqualification of a validly nominated candidate on the date of an election but before the close of polling for the election, the relevant election proceedings would not be terminated.)

Clauses 53 and 416: Appointment of authorized representatives ("ARs") by corporate electors/voters

4. As regards the concerns raised by Ms Alice MAK on the appointment of ARs in her letter, Mr Tommy CHEUNG and Mr Frankie YICK considered that

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flexibility should be allowed for each corporate elector/voter to select a person trusted by them to be appointed as ARs, so as to truthfully reflect the voting preference of the corporate elector/voter concerned. They said that a representative of the management level (e.g. the managing director) of a corporate elector/voter did not necessarily share the same political view as that of the corporate elector/voter concerned. Mr YICK, however, agreed with Ms Alice MAK's view that the AR appointed should be a member within the structure of the corporate elector/voter concerned.

Clause 294(14)-(20): The three-year operation requirement for registration as corporate electors

5. Members noted that section 25(4) and (5) of Cap. 542 was proposed to be amended to the effect that, unless specified in the electoral law, a body would be eligible to be registered as a corporate elector for an FC only if it had been operating for not less than three years after acquiring relevant qualifications for that FC. The same requirement also applied to the eligible corporate voters for EC subsectors. Ms Alice MAK pointed out that as it usually took time for the Labour Department ("LD") to process an application for the establishment of a trade union under the Trade Unions Ordinance (Cap. 332), the Administration should clarify whether or not the three-year requirement should be counted from the moment of submission of the application to LD. Permanent Secretary for Constitutional and Mainland Affairs ("PSCMA") explained that the three-year continuous operation requirement would be counted from the moment the authorities concerned had completed the vetting exercise and issued relevant registration documents to the trade union. The trade union would be regarded as having fulfilled the requirement only if it had been operating for three years after it had completed registration with LD.

6. Members noted that "持續運作" was now proposed to substitute "維持運作" as the Chinese rendition of the expression "has been operating" in section 25(4) and (5) of Cap. 542, in order to reflect the relevant wording of the amended Annex I and Annex II to the Basic Law. Senior Assistant Law Draftsman, Department of Justice ("SALD/DoJ") confirmed that there was no policy change in the operational requirement with the above change in the Chinese wording. Mr Paul TSE, however, considered that "維持運作" could be interpreted as referring to a company that merely maintained its existence by continuing to pay the required licence fee without actually operating after obtaining a licence, whereas "持續運作" could be interpreted as referring to a company that was doing business and operating continuously. PSCMA reiterated that there was no policy change in the operational requirement with the above change in the Chinese wording. He said that following the implementation of section 25(4) and (5) of Cap. 542 at present, for corporate voters that derived their eligibilities based on

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holding a licence, the body would now have to operate for three years with the respective licence to become an eligible voter, which was consistent with the requirement as stipulated in the amended Annexes I and II to the Basic Law. He emphasized that the situation in the past where a company was able to register as a corporate voter/elector just days after obtaining the relevant licence would no longer happen again.

Clause 114(3): Proposed amended section 53(7) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D)

7. Mrs Regina IP enquired about the meaning of "authorized representative" in the proposed section 53(7)(a) of Cap. 541D. In reply, Principal Assistant Secretary (Constitutional and Mainland Affairs) 3 ("PAS(CMA)3") explained that in relation to a corporate elector in a LegCo election, "authorized representative" means the person authorized by the corporate elector to cast its vote at an election.

8. Mrs Regina IP noted that under the proposed amended section 53(7), two methods were provided for the marking of the final register ("FR") immediately before issuing the ballot paper or ballot papers. The first method (proposed section 53(7)(a)) was by placing a line across the relevant entry on the printed copy of FR, while the second method (the proposed section 53(7)(b)) was by using an electronic device to make a record in the relevant entry in an FR electronic copy. In response to Mrs IP's enquiry, PAS(CMA)3 said that the second method would be used by default in all polling stations while the first method would be deployed as a fall-back if unforeseen circumstances made the second method impracticable.

Clauses 147(3) and 148: Proposed sections 86(1)(ga) and 88 of Cap. 541D

9. Mr Paul TSE noted that section 86(1) of Cap. 541D set out the materials which should be returned to the Chief Electoral Officer ("CEO") as soon as practicable after the Returning Officer had prepared the notice of the result of the election. He asked why the printed copies of the relevant FR in the proposed new section 86(1)(ga) were not listed among the materials in the original section 86(1). In response, Principal Assistant Secretary (Constitutional and Mainland Affairs) 2 said that it had been the practice in the past elections that the printed copies of relevant FRs would be returned to CEO after polling. The proposed new section 86(1)(ga) was added in order to clarify that the printed copies of FR, if marked, would still need to be returned to CEO after the FR electronic copies had been used by default.

10. Ms Alice MAK referred to the incident in which the register of electors of a polling station was lost and pointed out that there was no measure proposed in the Bill to deal with such a situation. She enquired what would be the treatment and penalty if the printed copy of FR to be returned to CEO was lost. In reply,

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PSCMA said that the incident mentioned by Ms MAK was a subject not directly related to the Bill. In general, for cases of misconduct of civil servants where no fraud was involved, they would be dealt with under the relevant Civil Service Regulation. The Chairman agreed to Ms MAK's observation that loss of the printed copies of FR was a possible scenario which was not dealt with in the Bill.

11. Ir Dr LO Wai-kwok enquired, as FR electronic copies would be used in the future elections, whether such electronic copies would be included into the list of materials to be returned to CEO in the proposed amended section 86(1) of Cap. 541D. PSCMA replied that such information would be covered by "any other document relating to the election specified by the Electoral Affairs Commission ("EAC") in the existing section 86(1)(h) of Cap. 541D.

Clause 156 - Proposed new Part 8 of Cap. 541D

Proposed criminal liability for obtaining access to an FR electronic copy without legal authority to do so

12. Mr MA Fung-kwok recalled that the Registration and Electoral Office ("REO") had lost two Notebook computers containing the personal data of over 3 million registered electors, which were still missing. He expressed concerns that, if someone had access to such electors' personal data and disseminated them on the Internet, a person who read the information on the Internet would be charged with the offence under the proposed new section 111(1) of Cap. 541D.

13. In relation to Mr MA Fung-kwok's enquiry, Mr Paul TSE noted that the offence under the proposed new section 111(1) of Cap. 541D only covered the FR electronic copy which was defined by the proposed new section 109 as the final register "created and maintained under" the proposed new section 110. He wished to confirm his understanding that the personal data in previous electors' registers, even if they were accessible on the Internet as Mr MA had indicated, would not be covered by the proposed offence. SALD/DoJ confirmed that Mr TSE's understanding was correct.

14. Mr Paul TSE enquired whether, if the FR electronic copy was leaked out and circulated on the Internet, a person would commit the offence under the proposed new section 111(1) of Cap. 541D if they browsed the information. Mr MA Fung-kwok also said that one might not know what he read was an FR electronic copy before he read it.

15. SALD/DoJ explained that the elements of the offence under the proposed new section 111(1) of Cap. 541D included "obtains access to an FR electronic copy" and "without legal authority", and the meaning of "obtain access" was

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defined in the proposed new section 109. He added that in criminal prosecution cases, the prosecution would have to prove the existence of "*mens rea*".

16. Mr Paul TSE said that he agreed that obtaining access to an FR electronic copy consciously would certainly be an offence. Nevertheless, it was less clear whether the act of reading an FR electronic copy with intent, without intent or knowledge that it was an FR electronic copy would be considered as constituting the offence under the proposed new section 111(1) of Cap. 541D, which might need to be clarified. In response, SALD/DoJ said that if a person consciously obtained access to an FR electronic copy with knowledge that it was an FR electronic copy, the act would constitute an offence.

17. The Chairman said that while the proposed new section 111(1) of Cap. 541D would regulate the activity of obtaining access to an FR electronic copy without legal authority, he was more concerned about the FR electronic copy obtained legally being abused. In response, PSCMA said that the Electoral Affairs Commission Ordinance (Cap. 541) and the relevant regulations governing the use and abuse of information contained in FR as well as the relevant offences would also apply to the FR electronic copies.

18. Mr Paul TSE said that the maximum penalty for a person convicted of the offence of "access to computer with criminal or dishonest intent" under section 161 of the Crimes Ordinance (Cap. 200) was 5 years' imprisonment. He considered that the maximum penalty under the proposed new section 111(4) of Cap. 541D, i.e. 2 years' imprisonment, was too short as compared to the above as the offence under the proposed new section 111(1) might also involve hacking into the government's system.

19. The Chairman considered that the acts of damaging any data or information contained in an FR electronic copy or otherwise tampering with an FR electronic copy to make its operation defective, as proposed by the Bill, were also serious offences. Therefore, he subscribed to Mr Paul TSE's view that the maximum penalty should be raised.

20. The Chairman requested and Secretary for Constitutional and Mainland Affairs undertook to consider members' suggestions.

Electronic copy of the final register, or of part of the final register, created and maintained under the proposed new section 110 of Cap. 541D

21. Dr CHENG Chung-tai requested the Administration to provide a clearer definition of "electronic platform" and "access to which can be obtained through the Internet by using an electronic device" under the proposed new section 110

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which specified the manner in which EAC could create and maintain the FR electronic copy. Dr CHENG also expressed concern that, similar to REO's two notebook computers lost, an FR electronic copy might be stored on standalone electronic devices in the polling stations and hence suggested that examples of "electronic platform" should be provided in the proposed new section 110(1)(a), even though they might not be exhaustive.

22. In response, PSCMA said that the Administration had refrained from defining "electronic platform" too narrowly in view of the continual advancement in applicable technology. He informed members that the Electronic Poll Register ("EPR") system would be stored on the Government Cloud Infrastructure Services ("GCIS"), which had a high level of security. PSCMA also assured members that after enactment of the Bill, no FR electronic copy would be stored on any standalone electronic devices in the polling stations. The electronic devices would only serve as equipment to access the FR electronic copy on GCIS and for making record thereon for issuing the ballot papers to voters.

23. Ms Alice MAK enquired, besides the identity document numbers of the electors and authorized representatives, what information would be available in an FR electronic copy under the proposed new section 110(2) of Cap. 541D. PAS(CMA)3 replied that similar to the printed copies of FR used in previous elections, "the additional particulars or information that the CEO thinks fit to include" would include information about the constituencies or subsectors to which the electors/voters belong. Ms MAK said that while the above information was necessary, she requested that the personal data of electors provided in FR should be kept to a minimum.

24. Ir Dr LO Wai-kwok was concerned about the security measures for the protection of the FR electronic copy. He asked whether his concerns would be addressed in the proposed new Part 8 of Cap. 541D or in other parts of the Bill. PSCMA replied that, having regard to the legislative intent of the Bill, he considered it not appropriate to provide too many details on the technical design and security measures regarding the FR electronic copy in the Bill. However, such details should be available from EAC after enactment of the Bill.

25. Dr Priscilla LEUNG expressed dissatisfaction on the responses given by the Administration to LegCo Members on REO's two blunders involving the losses of a massive number of electors' personal data, especially its failure to provide a satisfactory plan on how it would improve its security measures to protect the electors' information. In response, PSCMA said that an investigation report on the loss of the marked FR had been issued and EAC had conducted a review on the overall procedure in management of documents. PSCMA said that stringent requirements and measures would continue to be imposed in the implementation of the EPR system.

Draft amendments to be proposed by members/the Administration

26. The Chairman said that amendments to the Bill proposed by the Administration should be provided to the Clerk by 3:00 pm on 29 April 2021 for circulation to members. If members wished to propose any amendments to the Bill, their draft amendments should also reach the Clerk by the same deadline.

27. The Administration advised that it would propose amendments to the Bill to:

- (a) extend the special voter registration ("VR") deadline under the special VR arrangements for 2021 from 14 June 2021 to 5 July 2021; and
- (b) correspondingly adjust the relevant deadlines for publishing the EC subsectors provisional register, omissions list and FR under the special VR arrangements for 2021, and for the public to lodge claims and objections with regard to EC subsectors.

28. Members noted that the next meeting would be held on Monday, 26 April 2021, from 9:00 am to 1:00 pm.

II. Any other business

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

**Proceedings of the ninth meeting of the
Bills Committee on Improving Electoral System
(Consolidated Amendments) Bill 2021
on Saturday, 24 April 2021, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000438 - 002045	Chairman Ms Alice MAK Mr CHAN Hak-kan Mr WONG Kwok-kin Mr Tommy CHEUNG Mr Frankie YICK Mr Wilson OR Ir Dr LO Wai-kwok	Opening remarks - Arrangement for proposing amendments to the Improving Electoral System (Consolidated Amendments) Bill 2021 ("the Bill") - Discussion on issues relating to eligibility requirements (e.g. nationality) of candidates, termination of election proceedings upon the death or disqualification of a candidate and authorized representatives of corporate voters/ electors	
002046 - 011018	Chairman Mrs Regina IP Administration	Continuation of clause-by-clause examination of the Bill <u>Examination of clauses 299 (1) and (2), 417 (1) and (4), 55(2), 56, 57(3) and (5), 63, 18, 19(2) and (3), 57, 58(2) and (3), 21, 22, 23(2), (3), (6) and (14), 27, 28, 29(2), (3) and (12), 61, 62, 64(2), (3), (6), (8) and (13), 68-71, 72(2), (3), (4) and (13) of the Bill</u> - Discussion on the meaning of "authorized representative"	
011019 - 012511	Chairman Mr Paul TSE Dr CHENG Chung-tai Administration	<u>Examination of clauses 24, 25, 26, 65, 66 and 67 of the Bill</u> - Concerns about the delivery of copies of notices of objection, notices of claim and notices of appeal from Electoral Registration Officer to Revising Officer ("RO") - Concerns about the deadline for delivery of notices of claim	

Time Marker	Speaker(s)	Subject(s)	Action required
012512 - 015017	Chairman Mr Paul TSE Administration	<u>Examination of clauses 345–349, 351, 448–452 and 454 of the Bill</u> - Concerns relating to the due process of review of rulings by RO and the deadline of delivery of documents - Enquiries about the arrangement of the appointment of RO for the upcoming voter registration procedures in 2021	
015018 - 021057	Chairman Mr Frankie YICK Ms Alice MAK Mr Tommy CHEUNG Mr Paul TSE Senior Assistant Legal Adviser ("SALA") Administration	<u>Examination of clause 294(14)-(20) of the Bill</u> - Discussions on the three-year operation requirement for registration as corporate electors and concerns about when the three-year requirement should be counted from	
021058 - 022836	<i>Break</i>		
022837 - 025504	Deputy Chairman Dr Priscilla LEUNG Administration	<u>Examination of clauses 294(14)-(20), 415(8)-(10), 293, 295-298, 417(2), 10,12,13, 31 and 32 of the Bill</u> - Discussion on the proper Chinese rendition of "subsector provisional register" - Enquiry relating to the abbreviation of various terms such as "National People's Congress" and "Chinese People's Political Consultative Conference"	
025505 - 031101	Deputy Chairman SALA Administration	<u>Examination of clauses 34, 35-38, 41, 75, 343, 344, 350, 446, 447 and 453 of the Bill</u> - Enquiry about the proposed amendment under clause 35 of the Bill	
031102 - 031649	Deputy Chairman Mrs Regina IP Administration	<u>Examination of clauses 114(3), 164, 205 and 229 of the Bill</u> - Enquiries about the issuance of ballot papers, including issuance to authorized representatives and the ways of making a record before issuing a ballot paper	

Time Marker	Speaker(s)	Subject(s)	Action required
031650 - 033210	Deputy Chairman Mr Paul TSE Chairman Mr MA Fung-kwok Ms Alice MAK Ir Dr LO Wai-kwok Administration	<u>Examination of clauses 147(2) and (3), 148, 169, 170, 213, 214, 235 and 236 of the Bill</u> - Enquiries relating to the requirement for Returning Officer or Presiding Officer to send marked copies of relevant final register ("FR") or registers to Chief Electoral Officer, including the treatment and penalty if the copies were lost - Enquiry about the correct amendment to Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) under clause 169 of the Bill - Concern about whether "documents" would cover "electronic documents" as a general principle	
033211 - 040154	Chairman Mr MA Fung-kwok Mr Paul TSE Dr CHENG Chung-tai Ms Alice MAK Ir Dr LO Wai-kwok Dr Priscilla LEUNG Administration	<u>Examination of clause 156 of the Bill</u> - Discussions on the elements, applicability and penalty of the proposed offence of obtaining access to an FR electronic copy without legal authority to do so - Enquiry about the definitions and scope of "electronic platform" and "access to which can be obtained through the Internet by using an electronic device" - Concerns relating to the incidents of data leakage and security measures for the protection of the FR electronic copy - Concern about improper use of FR electronic copies obtained legally	Admin. to reconsider the penalty for the proposed offence (para. 20 of the minutes)
040155 - 040231	Chairman Members	Date of next meeting and closing remarks	