

立法會
Legislative Council

Ref : CB4/BC/5/20

LC Paper No. CB(4)1600/20-21
(These minutes have been seen
by the Administration)

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

**Minutes of the eleventh meeting
held on Friday, 30 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
- Member absent** : 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

Miss Emma WONG
Senior Assistant Law Draftsman
Department of Justice

Mr Wallance NG Long-ting
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

Miss Mandy LAM
Legislative Assistant (4) 2

Mr Chris CHAN
Clerical Assistant (4) 2

I. Meeting with the Administration

[File Ref.: CMAB C1/30/5/5, LC Paper Nos. CB(4)912/20-21(01), CB(4)920/20-21(01), CB(4)911/20-21(01), CB(4)901/20-21(01) to (02), CB(4)889/20-21(01), CB(4)883/20-21(01), CB(4)862/20-21(01), CB(4)871/20-21(01), CB(3)444/20-21, LS65/20-21, CB(4)827/20-21(01), CB(4)877/20-21(01), CB(4)858/20-21(01), CB(4)913/20-21(01), CB(4)884/20-21(01), CB(4)900/20-21(01), CB(4)918/20-21(01) and CB(4)814/20-21(01)]

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

(At 10:45 am, the Deputy Chairman took the chair in the absence of the Chairman. The Chairman resumed the chair at 11:17 am.)

Draft amendments to the Bill proposed by the Administration

2. The Bills Committee examined the draft amendments to the Bill proposed by the Administration.

Rationalizing the composition and duties of the Candidate Eligibility Review Committee ("CERC")

3. The Administration proposed to amend the proposed new section 9A of the Chief Executive Election Ordinance (Cap. 569) to the effect that the Chief Executive should, in addition to the chairperson and two to four official members, appoint one to three non-official members to CERC; and that only a person who was not a public officer would be eligible for appointment as a non-official member. Members enquired about the definition of "public officer" in the proposed new section 9A(5) of Cap. 569.

4. Permanent Secretary for Constitutional and Mainland Affairs ("PSCMA") and Principal Assistant Secretary (Constitutional and Mainland Affairs) 2 ("PAS(CMA)2") advised that a "public officer" was defined as "any person holding an office of emolument under the Government, whether such office be permanent or temporary" under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

Specifying that an Election Committee ("EC") member might subscribe more than one nomination form in multiple capacities

5. The Administration proposed to lift the restrictions that an EC member could not nominate different candidates in a functional constituency ("FC") or a geographical constituency ("GC") using his/her different capacities, such that the maximum number of nomination forms that an EC member could subscribe would be five. Details of the proposed arrangements for each EC member to subscribe

nomination forms using different capacities were set out in paragraph 8 of the Administration's paper [LC Paper No. CB(4)912/20-21(01)]. Law Officer (Special Duties) (Acting) explained that after consulting the Central Authorities, it was confirmed that the relevant provisions in the amended Annex II to the Basic Law did not restrict an EC member, who might also hold capacities as an FC elector and/or a GC elector, to subscribing only one nomination form in a constituency despite his/her different capacities; rather, the EC member might subscribe one nomination form in each of his/her different capacities.

Increasing the penalty for schools and non-government organizations receiving grants from the Government which fail to comply with the Chief Electoral Officer's requirement to make available the premises for use as polling station(s) and/or counting station(s)

6. Members noted the amendments proposed by the Administration to increase the financial penalty under the proposed new section 28A(5) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), which would be imposed on a person who failed to comply with a requirement made under the proposed new section 28A(1), from \$10,000 to \$50,000.

7. Mr Paul TSE enquired, as the proposed new section 7(6A)(b) in the Electoral Affairs Commission Ordinance (Cap. 541) had provided that "regulations under this section may provide for the enforcement of such financial penalties in court", whether new court procedure would be devised or existing court procedure would be adopted for collecting the financial penalty.

8. In reply, PAS(CMA)2 explained that if the occupier/owner failed to comply with the requirement, the Administration would issue a general demand note requiring the occupier/owner to pay a financial penalty of \$50,000. If the person did not pay the financial penalty, which would be recoverable as a civil debt due to the Government, the Administration could recover it through civil claims (i.e. through the Small Claims Tribunal ("SCT")). PAS(CMA)2 further said that, as the financial penalties provided in some other legislation were also recovered through relevant procedure, the Administration was of the view that the established procedure could be applied to the financial penalty now proposed.

9. Senior Assistant Legal Adviser 3 ("SALA3") pointed out that in paragraph 19 of the Administration's paper [LC Paper No. CB(4)912/20-21(01)], if any party to the proceedings was not satisfied with the order or judgement of the adjudicator, the party may apply to SCT for review or to the Court of First Instance of the High Court for leave to appeal. However, the proposed new section 28A did not provide what constituted a defence for review or appeal. For comparison, SALA3 referred to section 45C of Mandatory Provident Fund Schemes Ordinance (Cap. 485) which had provided that it was a defence to proceedings for recovery of financial penalty

Action

that it was not reasonably practicable to perform the duty, or to comply with the requirement or standard, to which the proceedings relate.

10. In response to SALA3's enquiry, Senior Assistant Law Draftsman, Department of Justice ("SALD/DoJ") replied it was the policy intent that the financial penalty would be imposed by statute once the requirement was not complied with and the review or appeal against its imposition would be based on whether the non-compliance was substantiated or not. SALD/DoJ also referred to the discussion in the Administration's paper that the Registration and Electoral Office would continue to communicate with the occupiers/owners of the target premises in the first instance with a view to obtaining consent to use the premises as a polling and/or counting station before considering the option of recovering the financial penalty.

11. Mr Paul TSE said that as the Administration would treat the payment as a civil debt instead of a usual fine, and it was notoriously difficult to recover debts due to the Government, he was concerned that the outstanding financial penalty not being paid would just become another default case. He suggested that the relevant court procedures and courts' jurisdiction should be specified more clearly and, where appropriate, relevant subsidiary legislation should be made or amended to ensure effective collection and recovery of financial penalty and defaults by the enforcement agencies. In response, PAS(CMA)2 undertook to see whether there was room for improvement in executing the financial penalty after implementation.

12. The Chairman directed that the next meeting would be held on Monday, 3 May 2021, to discuss another batch of draft amendments to the Bill to be proposed by the Administration. Members would be informed of the meeting time in due course.

(Post-meeting note: Members were informed vide LC Paper No. CB(4)923/20-21 that the next meeting would be held on 3 May 2021 from 2:30 pm to 6:30 pm.)

II. Any other business

13. There being no other business, the meeting ended at 12:42 pm.

**Proceedings of the eleventh meeting of the
Bills Committee on Improving Electoral System
(Consolidated Amendments) Bill 2021
on Friday, 30 April 2021, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000358 - 000655	Chairman Senior Assistant Legal Adviser ("SALA")	Opening remarks	
000656 - 002545	Chairman Mr WONG Kwok-kin Mr MA Fung-kwok Ms Alice MAK Ir Dr LO Wai-kwok Dr Priscilla LEUNG Mr Tommy CHEUNG Mrs Regina IP Administration	Examination of the draft amendments to the Improving Electoral System (Consolidated Amendments) Bill 2021 proposed by the Administration <u>Proposed amendments in respect of the Legislative Council Ordinance (Cap. 542) and the Chief Executive Election Ordinance (Cap. 569)</u> - Discussion on the Administration's proposed amendments relating to the composition of the Candidate Eligibility Review Committee ("CERC")	
002546 - 004439	Chairman Mr MA Fung-kwok Dr Priscilla LEUNG Ir Dr LO Wai-kwok Administration	<u>Proposed amendments in respect of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I), Cap. 542 and Cap. 569</u> - Discussion on the proposed amendments relating to the division of labour between CERC and Returning Officer and the duties of CERC	
004440 - 005941	Chairman Dr Priscilla LEUNG Mrs Regina IP Mr WONG Kwok-kin SALA Mr Tommy CHEUNG Administration	<u>Proposed amendments in respect of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542C)</u> - Discussion on the Administration's proposed amendments relating to the arrangements for each Election Committee ("EC") member to subscribe nomination forms using different capacities	

Time Marker	Speaker(s)	Subject(s)	Action required
005942 - 011032	Chairman Mr Tommy CHEUNG Administration	<p><u>Proposed amendments in respect of Cap. 542 and the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554D)</u></p> <ul style="list-style-type: none"> - Discussion on the proposed inclusion of the Catering Functional Constituency ("FC") as one of the FCs with priority in voter registration ("VR") 	
011033 - 015526	Chairman Deputy Chairman Administration	<p><u>Proposed amendments in respect of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A), the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B), Cap. 541I, Cap. 542, the Registration of Electors (Appeals) Regulation (Cap. 542B), Cap. 569 and the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap. 569B)</u></p> <ul style="list-style-type: none"> - Discussion on the proposed revisions to the arrangements of VR 	
015527 - 020854	<i>Break</i>		
020855 - 022253	Deputy Chairman Chairman Administration	<p><u>Proposed amendments in respect of Cap. 541D</u></p> <ul style="list-style-type: none"> - Discussion on the Administration's proposal of enhancing the polling and counting arrangements in the central polling station for the LegCo EC constituency 	
022254 - 023522	Chairman Mr Paul TSE SALA Deputy Chairman Administration	<p><u>Proposed amendments in respect of the Electoral Affairs Commission Ordinance (Cap. 541), Cap. 541D, the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) and Cap. 541I</u></p> <ul style="list-style-type: none"> - Discussion on the Administration's proposal of increasing the proposed financial penalty of \$10,000 under the proposed new section 28A(5) of Cap. 541D (and similar provisions in Caps. 541F and 541I) to \$50,000 to enhance the deterrent effect of the penalty 	

Time Marker	Speaker(s)	Subject(s)	Action required
023523 - 025528	Chairman Mr Paul TSE Mr Tommy CHEUNG Administration	<u>Proposed amendments in respect of Cap. 542 and Cap. 569</u> - Discussion on the Administration's proposal of adjusting the eligibility requirements for voters of the Accountancy and Hotel EC Subsectors and electors of the Tourism FC	
025529 - 034541	Chairman Mr Paul TSE Dr Priscilla LEUNG Administration	<u>Proposed amendments in respect of Cap. 541B, Cap. 541D, Cap. 541F, Cap. 541I, the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J), Cap. 542, Cap. 542C, Cap. 569 and the Election Committee (Appeals) Regulation (Cap. 569A)</u> - Discussion on the technical and related amendments relating to the electoral procedures for various public elections	
034542 - 034627	Chairman Members	Date of next meeting and closing remarks	

Council Business Division 4
Legislative Council Secretariat
4 October 2021