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來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/26/20-21
電話 TELEPHONE : 3919 3503
圖文傳真 FACSIMILE :
電郵 EMAIL : bloo@legco.gov.hk

By Email (cherieyeung@cmab.gov.hk)

16 April 2021

Ms Cherie YEUNG
Principal Assistant Secretary
(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,

Improving Electoral System (Consolidated Amendments) Bill 2021

To assist Members' scrutiny of the legal and drafting aspects of the above Bill, we would appreciate your clarifications on the matters set out **at Annex**. We should be grateful for your reply in both languages as soon as possible.

Our scrutiny of the Bill continues. Our further observations (if any) on the legal and drafting aspects of the Bill would follow shortly.

Yours sincerely,

(Bonny LOO)
Senior Assistant Legal Adviser

c.c. Department of Justice
(Attn: Mr Wallance NG, Government Counsel)
(By email: wallanceng@doj.gov.hk)
(Attn: Mr Peter SZE, Senior Assistant Law Draftsman)
(By email: petersze@doj.gov.hk)
Legal Adviser
Assistant Legal Adviser 4
Clerk to Bills Committee

Annex

1. According to paragraph 86 of the Legislative Council ("LegCo") Brief (File Ref: CMAB C1/30/5/5) on the Bill issued by the Constitutional and Mainland Affairs Bureau on 13 April 2021, the legislative proposal under the Bill is in conformity with the Basic Law ("BL"), including the provisions concerning human rights. Please clarify whether the relevant provisions include BL 26 and BL 27 with regard to a resident's right to stand for election and freedom of expression. If so, please provide further details of the Administration's consideration as to the conformity of the proposals under clause 356 (additional nomination requirements for candidates in a LegCo election) and clause 366 (proposed new offence prohibiting, among others, certain conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, etc. during the election period) to BL 26 and BL 27.
2. Under the amended Annexes I and II to BL adopted by the Standing Committee of the National People's Congress on 30 March 2021, no legal proceedings shall be instituted in respect of any decision made by the Candidate Eligibility Review Committee ("CERC") on the eligibility of a candidate pursuant to the opinion of the Committee for Safeguarding National Security of HKSAR.
 - (a) Does the reference to "legal proceedings" in Annexes I and II include election petitions, judicial reviews and other forms of legal challenge? If so, please consider whether it is necessary for the Bill to define clearly the ambit of "legal proceedings" for the purpose of implementing the amended Annexes I and II to BL.
 - (b) Under clauses 327 and 391 of the Bill, for the purpose of questioning a Chief Executive or LegCo election *by election petition* on specified grounds, "election" (including a decision of CERC) in section 61 of the Legislative Council Ordinance (Cap. 542) and section 32 of the Chief Executive Election Ordinance (Cap. 569) would be construed subject to Annexes I and II to BL. It is noted that section 39 of Cap. 569 also contemplates other types of legal challenges such as judicial review, but that section is not proposed to be amended by Part 7 of the Bill. If paragraph 8 of Annex I is intended to apply to judicial reviews as well as election petitions, please consider whether it is necessary also to amend section 39 of Cap. 569 to the effect that it is to be construed subject to Annex I to BL.

3. Under BL 67, permanent residents of HKSAR who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of LegCo, provided that the proportion of such members does not exceed 20% of the total membership of the Council. Section 37(3) of Cap. 542 specifies the 12 functional constituencies where a non-Chinese citizen or HKSAR permanent resident with the right of abode in a foreign country may be nominated as a candidate. The Secretary for Constitutional and Mainland Affairs advised the Subcommittee on Decision of the National People's Congress on Improving the Electoral System of the Hong Kong Special Administrative Region at its meeting held on 31 March 2021 that the Administration had no plans to change the 12-seat arrangement.
 - (a) Have relevant stakeholders been consulted as to whether or not the existing 12-seat arrangement should be maintained?
 - (b) If so, what was their response?
4. With reference to part (L) of the LegCo Brief (enhancing the inspection and compilation of the registers of electors), it is noted that the Bill seeks to make a distinction between the personal particulars to be disclosed of electors who are natural persons, and those of authorized representatives of corporate/body electors: for the former, only the first word/character of their names may be disclosed, while for the latter the full name would have to be disclosed: see, for example, clause 64(10) - the proposed new section 29(4A) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B). It would appear that authorized representatives of corporate electors would enjoy less personal data privacy protection than individual voters/electors who are natural persons. Does this reflect the Administration's policy intent? What is the reason for proposing different treatments for authorized representatives of corporate electors and individual voters/electors?