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23 April 2021

Mr Bonny LOO
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Dear Mr Loo,

Improving Electoral System (Consolidated Amendments) Bill 2021

In response to the issues raised in your letter dated 16 April 2021, our reply is set out below.

The Bill is in conformity with the provisions concerning human rights in the Basic Law (“BL”)

2. Item 1 of the Decision on Improving the Electoral System of the Hong Kong Special Administrative Region (“the Decision”) made by the National People’s Congress (“NPC”) on 11 March 2021 clearly set out the fundamental principles for improving the electoral system of the Hong Kong Special Administrative Region (“HKSAR”), including “upholding HKSAR permanent residents’ right to vote and the right to stand for election in accordance with law”. Therefore, the Standing Committee of

the NPC (“NPCSC”) had made careful consideration and balance of these rights in amending Annexes I and II to BL, in order to establish a political structure that upholds the “one country, two systems” principle, reflects the actual situation of Hong Kong and ensures “patriots administering Hong Kong”.

3. The right to vote as safeguarded by BL 26 should be construed with other relevant provisions in BL in their entirety, in particular BL 45, BL 68 as well as Annexes I and II. BL 45 and BL 68 provide that the methods for selecting the Chief Executive (“CE”) and forming the Legislative Council (“LegCo”) shall be specified in the light of the “actual situation in the HKSAR” and in accordance with the “principle of gradual and orderly progress”. The design of electoral system and the right to vote should be implemented in the light of the actual situation in the HKSAR. The nomination procedures set out in Annexes I and II are to ensure that the CE, members of the Election Committee (“EC”) and LegCo members so elected are patriots who are broadly representative and would act in the interests of the society as a whole.

4. In Annexes I and II to BL as amended by the NPCSC, the HKSAR is required to act in accordance with the law to prevent any acts that are amounting to manipulating or obstructing elections. The Government attaches great importance to, and will continue to fulfil, its constitutional duty to safeguard and protect human rights and freedoms. Like any other jurisdictions, however, most of the freedoms are not absolute. As far as freedom of speech is concerned, the International Covenant on Civil and Political Rights and the Hong Kong Bill of Rights (Cap. 383) stipulate that the freedoms concerned may be subject to restrictions as prescribed by law if it is necessary in the interests of national security, public safety, public order or the rights and freedoms of others, etc.

5. Voting is not only a right, but also a civic duty. Although Hong Kong does not have a compulsory voting system as in some jurisdictions, the HKSAR Government has a responsibility to take measures to encourage eligible voters to exercise their right to vote and to combat improper conduct that may affect the exercise of the right to vote by voters. If someone openly incites voters not to vote, to cast blank or invalid votes during an election period, it may create undue pressure on voters and affect their freedom to choose whether to exercise their right to vote. Such a conduct is one of the acts that can sabotage an election, and the HKSAR Government is therefore obliged to regulate it in accordance with the Decision and the amended Annexes I and II to BL.

Legal proceedings in respect of elections (including the Candidate Eligibility Review Committee)

6. The reference of “legal proceedings” in the amended Annexes I and II to BL includes election petitions, judicial reviews and any forms of legal challenge. As the relevant provisions in Annexes I and II are abundantly clear, we do not see the need to provide a separate definition for the term “legal proceedings” in local legislation. Besides, section 39 of the Chief Executive Election Ordinance (Cap. 569) (“CEEEO”), which governs the time limit for legal challenges, is different from section 32 of CEEEO (concerning election petition) in that it does not provide any specified grounds for legal challenges in respect of CE election. Therefore, we consider it not necessary to make any amendments to section 39 of Cap. 569.

Proportion of Hong Kong permanent residents who are not of Chinese nationality/ who have the right of abode in foreign countries and may be elected as members of LegCo

7. BL 67 provides that the LegCo shall be composed of Chinese citizens who are permanent residents of the HKSAR with no right of abode in any foreign country. However, permanent residents of the HKSAR who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the LegCo of the HKSAR, provided that the proportion of such members does not exceed 20% of the total membership of the Council. Currently, section 37(3) of the Legislative Council Ordinance (Cap. 542) sets out that the candidature of 12 functional constituencies (“FCs”)¹ is open to Hong Kong permanent residents who are not Chinese nationals or who have the right of abode in a foreign country. The existing arrangement may allow the LegCo to attract different talents, reflect Hong Kong’s inclusive and pluralistic culture, allow people who are not of Chinese nationality to continue to contribute to Hong Kong, and to help maintain the image of Hong Kong as an international metropolis.

8. While the number of LegCo seats would increase from 70 to 90 under the amended Annex II to BL, we do not recommend to increase the number of seats allowed for members who are not of Chinese

¹ The 12 FCs are legal; accountancy; engineering; architectural, surveying, planning and landscape; real estate and construction; tourism; commercial (first); industrial (first); finance; financial services; import and export; and insurance.

nationality or who have the right of abode in foreign countries to 18 (i.e. 20% of the 90 seats). In fact, we did not increase the number of seats for members who are not of Chinese nationality or who have the right of abode in foreign countries when the number of LegCo members increased from 60 to 70 in the political reform carried out by the HKSAR Government in 2010 on the method for forming the LegCo in 2012. We propose that the current amendment should make reference to the approach adopted in 2010 and maintain the upper limit of seats for members who are not of Chinese nationality or who have the right of abode in foreign countries at 12. For the EC constituency (“ECC”), if persons who are not of Chinese nationality or who have the right of abode in foreign countries are allowed to be nominated as candidates of the ECC, it may be possible that all of the 40 elected members in the ECC would have the right of abode in foreign countries, which is in contravention of BL 67. Therefore, candidates in the ECSS must not have the right of abode in foreign countries.

Arrangements for enhancing the inspection and compilation of the registers of electors

9. On the arrangements for enhancing the inspection of the registers of electors, we do not see any inconsistency between the handling of the personal particulars of authorised representatives of body electors and that of other individual electors.

10. In the judgment of the judicial review case lodged by the Junior Police Officers’ Association, the Court of Appeal of the High Court held that an unrestricted public access to the full names and principal residential addresses of registered electors (“the Linked Information”) on the registers of electors constituted a disproportionate interference with the electors’ rights to privacy, family and home (Article 14 of the Hong Kong Bill of Rights (Cap. 383)) and their right to vote (BL 26). In this context, the Linked Information refers to showing both the full names of individual electors and their principal residential addresses together. Under section 3(3) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) (the clause is not amended by the Bill), an entry relating to a body elector must show (i) the name of the body; (ii) the business address of the body; and (iii) the name of the authorised representative for the body. The residential address of the authorised representative is not included and the relevant entry is not deemed as the Linked Information of the authorised representative. As a matter of fact, by not showing the residential address

of the authorised representative in the relevant entry, we can already ensure that the registered particulars of the authorised representative would not be misused for malicious purpose via inspection of the registers of electors.

11. It should be noted that only the first character/word of an authorised representative's name (whether in Chinese or English) and his registered residential address in full are shown on the registers of electors of geographical constituencies to be provided for inspection by specified persons. The arrangement is with the same as that for any other individual electors on the registers of electors, ensuring that the personal privacy of individual electors and authorised representatives alike are fully protected.

Yours sincerely,



(Ms Cherie YEUNG)
for Secretary for Constitutional and
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c.c.

Legislative Council Secretariat

Clerk to Bills Committee on
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(Consolidated Amendments)
Bill 2021

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