

立法會
Legislative Council

LC Paper No. LS114/20-21

**Paper for the House Committee Meeting
on 3 September 2021**

**Legal Service Division Report on
Legislative Council (Disciplinary Sanctions and
Remote Sitting) (Miscellaneous Amendments) Bill 2021**

I. SUMMARY

- 1. The Bill** The main purposes of the Bill are to:
- (a) amend the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to:
 - (i) impose sanctions in relation to a Member of the Legislative Council ("LegCo") who is suspended from the service of LegCo, or who is absent without valid reasons from a meeting of LegCo which is adjourned due to a lack of quorum;
 - (ii) allow meetings of LegCo or a committee to be conducted remotely in exceptional circumstances; and
 - (iii) amend the provision dealing with the admission of journals as evidence; and
 - (b) make related amendments to The Legislative Council Commission Ordinance (Cap. 443) and the Legislative Council Ordinance (Cap. 542).
- 2. Public Consultation** As the proposals are matters concerning LegCo's internal operation, no public consultation has been held.
- 3. Consultation with LegCo Panel** No LegCo Panel has been consulted on the Bill. At its meetings on 12 January and 11 May 2021, the Committee on Rules of Procedure supported the proposals to impose: (a) a sanction against grossly disorderly conduct of Members; and (b) a financial penalty on a Member who was absent without valid reasons from a Council meeting adjourned due to a lack of quorum.
- 4. Conclusion** No difficulties relating to the legal and drafting aspects of the Bill have been identified. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

II. REPORT

The date of First Reading of the Bill is 1 September 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: AW-325-005-015-010-001) issued by the Administration Wing of the Chief Secretary for Administration's Office on 25 August 2021 for further information.

Object of the Bill

2. The main purposes of the Bill are to:
 - (a) amend the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to:
 - (i) impose sanctions in relation to a Member of LegCo who is suspended from the service of LegCo, or who is absent without valid reasons from a meeting of LegCo which is adjourned due to a lack of quorum;
 - (ii) allow meetings of LegCo or a committee to be conducted remotely in exceptional circumstances; and
 - (iii) amend the provision dealing with the admission of journals as evidence; and
 - (b) make related amendments to The Legislative Council Commission Ordinance (Cap. 443) and the Legislative Council Ordinance (Cap. 542).

Provisions of the Bill

Imposing financial penalties on a Member who is suspended from the service of LegCo or whose absence from a Council meeting without valid reasons caused an adjournment of LegCo

3. At the Council meeting of 24 March 2021, amendments to the Rules of Procedure ("RoP") were passed by LegCo to, among other things, introduce a mechanism for dealing with Members' grossly disorderly conduct in Council, a committee of the whole Council, the Finance Committee or the House Committee ("HC") under which a Member who has committed grossly disorderly conduct may be named by the President of LegCo ("President") and suspended from the service of LegCo ("suspended Member") (see new RoP 45A). A financial penalty would be imposed on the suspended Member by forfeiting the Member's remuneration (including allowance and end-of-service gratuity) on a pro-rata basis during the period of suspension.

4. At the Council meeting of 14 July 2021, amendments to RoP were passed by LegCo to, among other things, empower the President to decide when and how he would deal with a point of order (including quorum calls) if he is of the opinion that the raising of such a point of order is an abuse of procedure. In the course of discussing this batch of proposed amendments to RoP, at the meeting on 25 June 2021, HC endorsed a proposal to impose a financial penalty on a Member who is absent without valid reasons from a LegCo meeting adjourned due to a lack of quorum under RoP 17(2) or 17(3), regardless of whether

the LegCo meeting so adjourned shall be deemed to be a meeting ordered to be suspended and may be resumed for continuation of any unfinished business under RoP 17(6) and 14(4).

5. Currently, LegCo does not have express statutory authority to impose financial penalties on Members. To implement the above proposals, clause 6 of the Bill seeks to add:

- (a) a new section 20A to Cap. 382 to provide that a suspended Member would not be entitled to receive any remuneration or allowance to which the Member would, apart from the proposed new section 20A, be entitled in respect of the period of suspension (but the Member would be entitled to be reimbursed the operating expenses incurred in respect of that period); and
- (b) a new section 20B to Cap. 382 to provide for the power of LegCo to impose a financial penalty (which would be deducted from the Member's remuneration) each and every time that a Member is absent from a meeting of LegCo adjourned due to a lack of quorum and the President is not satisfied that there is a valid reason for the Member's absence.¹ The actual amount of the financial penalty² would be determined by LegCo according to RoP to be made after the relevant amendment to Cap. 382 is passed by LegCo.

6. According to paragraph 6 of the LegCo Brief, through the introduction of the above amendments to Cap. 382, LegCo would be empowered under a more effective legislative regime to deal with grossly disorderly conduct of Members and deter the abuse of quorum calls for the purpose of filibustering, thereby maintaining efficiency and solemnity of LegCo and restoring rational discussion in LegCo.

Conducting remote meetings of LegCo or a committee in exceptional circumstances

7. According to paragraph 9 of the LegCo Brief, while the Basic Law does not prohibit remote LegCo meetings, it is noted that the existing provisions in Cap. 382 in essence envisage the holding of meetings of LegCo or a committee physically in the Chamber or the precincts of the Chamber. To cater for the situation where LegCo or a committee is precluded from conducting a physical meeting within the LegCo Complex by exceptional circumstances, Cap. 382 would need to be amended to allow meetings of LegCo or a committee to be conducted remotely in such circumstances.

8. Clause 8 of the Bill seeks to add a new section 27 to Cap. 382 to provide that:

- (a) LegCo may, by a resolution passed at a physical meeting of LegCo, authorize that during a period specified in the resolution, meetings of LegCo or a

¹ According to paragraph 5 of the LegCo Brief, the President would have the discretion to decide whether the absence of a Member is due to valid reasons taking into consideration the relevant facts of individual cases, past practices, prevailing circumstances, experience of overseas legislatures, etc.

² According to footnote 6 of the LegCo Brief, the actual amount of the financial penalty is proposed to be set at an amount equivalent to one day's remuneration currently payable to a Member who does not serve on the Executive Council.

committee may be conducted remotely ("remote meetings") in exceptional circumstances (including an occasion of emergency or public danger) in accordance with RoP by the virtual, digital or electronic means determined by LegCo;

- (b) the President may designate a place or places for a remote meeting pursuant to such LegCo's authorization; and
- (c) Cap. 382 (including the provisions on privileges and immunities, other than section 8(4)³) would apply to a remote meeting of LegCo or a committee as if it were a physical meeting.

9. Clause 4 of the Bill seeks to amend the definitions of *Chamber* and *precincts of the Chamber* in Cap. 382 to include the place or places designated by the President for the remote meeting.

10. Members may wish to note that detailed procedures and other relevant matters for the conduct of remote meetings (such as quorum and voting procedure, and other technical matters) would be provided for in RoP to be made by LegCo after the relevant amendments to Cap. 382 are passed by LegCo.

Providing flexibility in admission of copies of Hansard as evidence to cater for production of electronic copies of Hansard in future

11. Under the existing section 21 of Cap. 382, any copy of the journals of the Council printed or purporting to be printed by the Director of Government Logistics ("DGL") shall be admitted as evidence of such journals in courts. That section does not provide for admission of copies of the journals produced by other means. To cater for the LegCo Secretariat's plan that only electronic copies of the journals will be produced in the future (i.e. the journals will no longer be printed by DGL), clause 7 of the Bill seeks to amend section 21 of Cap. 382 to the effect that a copy of the journals printed or purporting to be printed by or under the authority of LegCo, or a copy of the journals authenticated by the signature of the Clerk (i.e. the Secretary General of the LegCo Secretariat), would also be admitted as evidence of such journals without further proof.

Related amendments

12. Related amendments are proposed to be made to Cap. 443 and Cap. 542. These amendments are summarized below:

- (a) specifying in Cap. 443 to the effect that if a suspended Member is a member of The Legislative Council Commission ("Commission"), he or she would also be

³ Section 8(4) of Cap. 382 relates to the requirement that copies of administrative instructions issued by the President under subsection (3) shall be duly authenticated by the Clerk and exhibited in a conspicuous position in the precincts of the Chamber.

suspended from performing the functions and duties as a member of the Commission during the period of suspension from the service of LegCo, and that the Commission could continue to act notwithstanding the above-mentioned suspension; and

- (b) providing in Cap. 542 that the suspension of a Member from the service of LegCo under RoP would not affect the power of LegCo to transact business or the validity of its proceedings.

Commencement

13. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public Consultation

14. According to paragraph 23 of the LegCo Brief, as the proposals are matters concerning LegCo's internal operation, no public consultation has been held.

Consultation with LegCo Panel

15. No LegCo Panel has been consulted on the Bill. As advised by the Clerk to the Committee on Rules of Procedure ("CRoP"), on 12 January 2021, CRoP supported the introduction of a sanction mechanism under which a Member who has committed grossly disorderly conduct could be suspended from LegCo service for a period of time. At its meeting on 11 May 2021, CRoP supported the proposal of imposing a financial penalty on a Member absent without valid reasons from a Council meeting adjourned due to a lack of quorum under RoP 17(2) or (3). Members were of the view that an across-the-board penalty equivalent to one day's remuneration of a Member not serving on the Executive Council should be adopted. It was also noted that express statutory authority would be sought through amending relevant legislation to provide for LegCo's power to impose the financial penalties on Members, and necessary consequential amendments to RoP and the House Rules would be made after the relevant legislation was passed by LegCo. HC endorsed the above proposals at its meetings on 26 February and 25 June 2021 respectively.

Conclusion

16. No difficulties relating to the legal and drafting aspects of the Bill have been identified. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Prepared by
Timothy TSO
Principal Assistant Legal Adviser
Legislative Council Secretariat
2 September 2021
LS/B/45/20-21