

立法會
Legislative Council

LC Paper No. CB(2)519/20-21
(These minutes have been seen
by the Administration)

Ref : CB2/SS/3/20

**Subcommittee on Emergency (Date of General Election)
(Seventh Term of the Legislative Council) Regulation**

**Minutes of meeting
held on Monday, 9 November 2020, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon CHEUNG Kwok-kwan, JP (Chairman)
Hon LUK Chung-hung, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, GBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP

Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon YUNG Hoi-yan, JP
Hon CHAN Chun-ying, JP
Hon HUI Chi-fung
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Vincent CHENG Wing-shun, MH, JP

Members attending : Hon WU Chi-wai, MH
Dr Hon Junius HO Kwan-yiu, JP

Members absent : Hon Jeffrey LAM Kin-fung, GBS, JP
Dr Hon Fernando CHEUNG Chiu-hung

[According to the announcement made by the Hong Kong Special Administrative Region Government on 11 November 2020 pursuant to the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region, Kenneth LEUNG, KWOK Ka-ki, Dennis KWOK Wing-hang and Alvin YEUNG were disqualified from being a member of the Legislative Council on 30 July 2020.]

Public Officers attending : Item I

Ms Maisie CHAN Kit-ling, JP
Deputy Secretary for Constitutional and Mainland Affairs

Ms Cherie YEUNG Lok-sze
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Ivan LEUNG Man-fung
Senior Government Counsel
Department of Justice

Mr Henry CHAN Ngai-him
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Josephine SO
Chief Council Secretary (2) 2

Staff in attendance : Mr Alvin CHUI
Assistant Legal Adviser 3

Ms Wendy LO
Senior Council Secretary (2) 2

Mr Dennis HO
Council Secretary (2) 3

Miss Cally LAI
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

(L.N. 152 of 2020, File Ref: CMAB C1/37, LC Paper Nos. LS116/19-20, CB(2)100/20-21(02) and (03), CB(2)114/20-21(01) and CB(2)177/20-21(01) and (02))

The Subcommittee deliberated (index of proceedings attached at **Annex A**).

Follow-up actions required of the Administration

Admin

2 The Administration was requested to provide a written response to issues raised by members as set out at **Annex B**.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)299/20-21(02) on 16 November 2020.)

II. Any other business

Date of next meeting

3. The Chairman said that a further meeting would be held to continue the scrutiny of the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation. Members would be informed of the date of the next meeting in due course.

Action

(*Post-meeting note:* The third meeting was scheduled for Tuesday, 17 November 2020 at 2:30 pm. The relevant notice of meeting was issued vide LC Paper No. CB(2)246/20-21 on 12 November 2020.)

4. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 2
Legislative Council Secretariat
14 December 2020

**Proceedings of the meeting of the Subcommittee on Emergency
(Date of General Election) (Seventh Term of the Legislative Council) Regulation
on Monday, 9 November 2020, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action Required
000242 - 000611	Chairman	The Chairman's opening remarks	
000612 - 000929	Chairman Ms Claudia MO Admin ALA3	<p>Ms Claudia MO's expression of views on the impact of the decision made by the Standing Committee of the National People's Congress ("NPCSC") regarding the continuing operation of the sixth term of the Legislative Council ("LegCo").</p> <p>In response to Ms MO's enquiry, the Administration explained the purposes and effect of the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation (L.N. 152 of 2020) ("the Regulation"). The Legal Adviser to the Subcommittee explained the scrutiny procedure relating to the Regulation which was subject to negative vetting by LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), and advised that any amendment to the Regulation passed by LegCo would not have any impact on the constitutional and legal effect of NPCSC's decision.</p>	
000930 - 001259	Chairman Mr Andrew WAN Admin	<p>Mr Andrew WAN enquired about the criteria which the Government might consider and decide whether or not to further postpone the 2021 LegCo General Election. He considered it unfair that candidates whose nominations were determined invalid in the discontinued 2020 LegCo General Election were not eligible for receiving the Government's payment in respect of declared election expenses.</p> <p>The Administration explained the rationale for postponing the 2020 LegCo General Election and the eligibility criteria for receiving the Government's payment in respect of declared election expenses. It added that any election deposit lodged to the Returning Officers for the 2020 LegCo General Election would be returned to the candidates, regardless of whether they were validly nominated.</p>	
001300 - 001648	Chairman Dr Helena WONG Admin ALA3	Dr Helena WONG expressed dissatisfaction that relevant politically appointed officials, including the Secretary for Justice, the Secretary for Constitutional and Mainland Affairs ("SCMA") and the Under Secretary for Constitutional and Mainland Affairs	

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		("USCMA"), did not attend this meeting to explain the policies relating to the Regulation and answer members' questions. The Administration advised that its attendance list for the meeting had been endorsed by SCMA. The Legal Adviser to the Subcommittee reiterated that neither the Rules of Procedures nor House Rules had any provision which empowered a committee of LegCo to require any specific public officers to attend its meetings.	
001649 - 001926	Chairman Mr LAM Cheuk-ting Admin	Mr LAM Cheuk-ting expressed grave concern about the possibility of abuse in candidates' making of claims for Government payments in respect of declared election expenses in the 2020 LegCo General Election. The Administration reiterated that if the Registration and Electoral Office ("REO") found any <i>prima facie</i> evidence of abuse in any election returns, such cases would be referred to the Independent Commission Against Corruption for investigation. In response to Mr LAM's further enquiry, the Administration clarified that any election donations would be counted as election expenses when spent/used.	
001927 - 002234	Chairman Mr Alvin YEUNG Admin	Mr Alvin YEUNG sought details of the criteria which the Government might consider and hence, decide whether or not to further postpone the 2021 LegCo General Election. The Administration advised that in preparing for the said election, it would strive to improve the existing electoral arrangements (e.g. to consider the feasibility of providing dedicated queues for elderly electors), closely monitor the development of the Coronavirus Disease 2019 ("COVID-19") epidemic, and formulate various plans in view of the different possibilities in a timely manner.	
002235 - 003759	Chairman Mr Steven HO Deputy Chairman Ms Elizabeth QUAT Mr Charles MOK Admin	Mr Steven HO, the Deputy Chairman and Ms Elizabeth QUAT raised concerns about the possibilities of candidates' making fraudulent and abusive claims for Government payments in respect of declared election expenses incurred at or in connection with the discontinued 2020 LegCo General Election. They enquired how REO would determine whether the election expenses declared by candidates in their election returns (including the costs of in-kind donations received as declared by the candidates) were reasonable and genuine. Mr Charles MOK pointed out that in accordance with the electoral law, all candidates had all along been required to submit election returns after the	

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		<p>election to rigorously declare all the election expenses incurred by them. He raised concern that since the election expenses incurred by candidates in connection with the 2020 LegCo General Election would be reimbursed, candidates who declared their election expenses in a rigorous way might run the risk of being seen as abusing the system or making fraudulent claims. Mr MOK was also concerned that candidates who received the relevant payments might have an advantage should they run for the 2021 LegCo General Election and re-use the procured materials/services in the rallying activities.</p> <p>The Administration advised that the definition of "election expenses" was stipulated in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). The declared election expenses could not exceed the limits as specified in the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap 554D). The reporting requirements regarding election expenses and receipt of donations under Cap.554 remained unchanged and were applicable to the discontinued 2020 LegCo General Election. After REO received the election returns from candidates, it would carefully check the election returns to ascertain whether all the election expenses and donations received had been properly declared in the election returns submitted by candidates. If necessary, candidates would be required to provide proofs (e.g. invoices, receipts and the products concerned in physical form) to facilitate REO's verification. REO would also make reference to the market prices of the products concerned where appropriate.</p>	
003800 - 004005	Chairman Mr IP Kin-yuen Admin	Mr IP Kin-yuen expressed dissatisfaction that SCMA and USCMA did not attend this meeting to explain the policies relating to the Regulation and answer members' questions.	
004006 - 004309	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki enquired about the criteria which the Government might consider and hence, decide whether or not to further postpone the 2021 LegCo General Election. The Administration advised that with the latest development of the COVID-19 epidemic, the impact of the epidemic on the election also changed over time. It was therefore not practicable to formulate a set of rigid criteria for postponing the election having regard to the COVID-19 epidemic situation.</p> <p>In response to Dr KWOK's further enquiries, the</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		Administration explained that if the 2020 LegCo General Election was to proceed as planned, the community as a whole would be exposed to huge infection risks associated with the crowd gatherings, people's interactions and potential breaches of the social distancing measures in the weeks preceding the election and on the polling day. Given the exigency of the epidemic situation and sensitivity of election matters, public health experts had not been consulted on the Regulation.	
004310 - 004621	Chairman Mr WONG Ting-kwong Admin	Mr WONG Ting-kwong expressed concern over the possibility of abuse in candidates' making of claims for Government payments in respect of declared election expenses incurred for the discontinued 2020 LegCo General Election.	
004622 - 005025	Chairman Mrs Regina IP Admin	In response to Mrs Regina IP's enquiry, the Administration advised that preparatory work for a general election would take months. To ensure fairness of the election, another voter registration exercise would also be necessary before the re-scheduled election. As regards to measures for improving the existing electoral arrangements, the Administration would draw reference from the recommendations made by the Electoral Affairs Commission in its Report on the 2020 LegCo General Election.	
005026 - 005327	Chairman Mr SHIU Ka-fai	Mr SHIU Ka-fai expressed support for postponing the 2020 LegCo General Election for a year, as it would help prevent and control the spread of COVID-19.	
005328 - 005611	Chairman Dr Helena WONG Admin	Dr Helena WONG sought details of the criteria which the Government might consider and hence, decide whether or not to further postpone the 2021 LegCo General Election. The Administration reiterated that the Regulation had specified 5 September 2021 as the new election date. The Administration would, as in the past, work closely with the Electoral Affairs Commission to ensure that the election would be conducted in an open, fair and honest manner.	
005612 - 010453	Chairman Mr LAM Cheuk-ting Ms Claudia MO Mr Steven HO Admin	Mr LAM Cheuk-ting expressed views on REO's verification of claims for Government payments in respect of declared election expenses. Mr Steven HO enquired whether the rationale behind the mechanism in respect of candidates' declaration of election expenses had been changed.	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>The Administration explained that any election donations would be counted as election expenses when spent/used, and further reiterated that the reporting requirements regarding election expenses and receipt of donations under Cap. 554 remained unchanged and were applicable to the discontinued 2020 LegCo General Election. The relevant election expenses limits were also provided for under Cap. 554D. In response to Mr LAM's follow-up question, the Administration advised that it would refuse to make relevant payments to candidates whose declared election expenses were suspicious.</p> <p>In response to Ms Claudia MO's enquiry, the Administration explained the <i>de minimis</i> arrangement for handling election returns with minor errors or omissions under Section 37A of Cap. 554.</p>	
Examination of provisions of the Regulation			
010454-011636	Chairman Mrs Regina IP Ms Claudia MO Dr Helena WONG Mr IP Kin-yuen Admin	<p><u>Sections 1 to 8 of the Regulation</u></p> <p><i>Section 2 (Interpretation)</i></p> <p>In response to Ms Claudia MO's enquiry, the Administration advised that the Chief Executive ("CE") was empowered under section 44(1) of the Legislative Council Ordinance (Cap. 542) to direct the postponement of a LegCo General Election, if, before the holding of the election, she was of the opinion that the election was likely to be obstructed, disrupted, undermined or seriously affected by riot or open violence or any danger to public health or safety.</p> <p>At Mr IP Kin-yuen's request, the Chairman directed the Administration to provide a written response, setting out details of the criteria and mechanism under which the Government might consider and take a decision:</p> <p>(a) to further postpone the date for holding the 2021 LegCo General Election; and</p> <p>(b) if the Government so decided, by what means and in what form it would give effect the new election date following such further postponement; and whether subsidiary legislation would be made in accordance with the relevant provision(s) of Cap. 542 or by invoking the Emergency Regulations Ordinance (Cap. 241).</p>	<p>Admin (Annex B refers)</p>

Time marker	Speaker	Subject(s)/Discussion	Action Required
011637 - 012233	Chairman Mr HUI Chi-fung Admin ALA3	In response to Mr HUI Chi-fung's enquiry, the Legal Adviser to the Subcommittee advised that the judgment on judicial review, if any, would not affect CE's duty to specify a date for holding a general election for LegCo as stipulated under section 6(1) of Cap. 542.	
012234 - 013024	Chairman Mr HUI Chi-fung Mr Dennis KWOK Admin	<p><i>Section 5 (Discontinued election ends and related electoral matters cease to have effect)</i></p> <p>Mr HUI Chi-fung enquired, if a Returning Officer had determined a candidate's nomination invalid for the discontinued 2020 LegCo General Election, whether such determination continued to have effect for the 2021 LegCo General Election.</p> <p>Mr Dennis KWOK queried whether section 5(2) of the Regulation had a retrospective effect.</p> <p>The Administration advised that section 5 of the Regulation was intended to clarify that except for the purposes for the matters provided in Part 3 of the Regulation, all electoral matters in relation to the discontinued 2020 LegCo General Election that took place before the discontinuation date ceased to have effect as from the beginning of that date. Whether a candidate's nomination was valid or not for the 2021 LegCo General Election would be determined afresh by the Returning Officer in accordance with the electoral legislation.</p>	
013025 - 013202	Chairman Mr IP Kin-yuen Admin	<p><i>Section 6 (New date of general election and application of electoral law to 2021 election)</i></p> <p>Mr IP Kin-yuen's enquiry and the Administration's explanation on the rationale behind CE's specification of 5 September 2021 as the new date for holding the general election of the seventh term of LegCo.</p>	
013203 - 014741	Chairman Mr HUI Chi-fung Ms Claudia MO Clerk Mr IP Kin-yuen Mr LAM Cheuk-ting Admin	<p><i>Section 7 (Matters arising from change of date of general election)</i></p> <p>In response to Mr HUI Chi-fung's enquiry, the Administration confirmed that the Returning Officers had put a halt to the work of determining the validity of the nominations of the candidates for the discontinued 2020 LegCo General Election.</p> <p>In response to Ms Claudia MO's and Mr IP Kin-yuen's enquiries, the Administration explained the purpose of section 7(4) of the Regulation.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		Mr HUI's and Mr LAM Cheuk-ting's enquiries about the work progress of REO in returning the election deposits lodged by candidates for running in the 2020 LegCo General Election.	
014742 - 014815	Chairman Ms Claudia MO Mr LAM Cheuk-ting ALA3 Admin	<i>Clause 8 (Application of Cap. 554 to discontinued election)</i> Ms Claudia MO's enquiry and the Administration's explanation regarding the bilingual expression of "discontinued election"/"已中止的選舉".	
015352 - 015433	Chairman	Date of next meeting The Chairman's closing remarks	

**Subcommittee on Emergency (Date of General Election)
(Seventh Term of the Legislative Council) Regulation**

**List of follow-up actions arising from the discussion
at the meeting on 9 November 2020**

The Administration was requested to provide a written response to the following issue raised by members:

- details of the criteria and mechanism under which the Government might consider and take a decision:
 - (a) to further postpone the date for holding the general election to elect members for the seventh term of office of the Legislative Council (which is 5 September 2021, as now specified under the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation); and
 - (b) if the Government so decides, by what means and in what form it would give effect the new election date following such further postponement; and whether subsidiary legislation would be made in accordance with the relevant provision(s) of the Legislative Council Ordinance (Cap. 542) or by invoking the Emergency Regulations Ordinance (Cap. 241).

Council Business Division 2
Legislative Council Secretariat
16 November 2020