

(Translation)

By email

Miss Rachel DAI
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat

3 April 2025

Bills Committee on the
Electoral Legislation (Miscellaneous Amendments) Bill 2025

Dear Miss DAI,

I refer to your letter dated 1 April 2025 regarding the captioned Bill. Our Bureau's response to the matters set out in the appendix to your letter is in the **Annex**.

Yours sincerely,

(signed)
(Niki KWOK)
for Secretary for Constitutional
and Mainland Affairs

Consolidated Ballot Paper Accounts

Clause 11 of the Electoral Legislation (Miscellaneous Amendments) Bill 2025 (the Bill) aims to introduce a new section 64 of Cap 541D to replace the existing provision. This is to implement the proposal for consolidating ballot paper accounts (BPAs) in Legislative Council (LegCo) elections. Specifically, it involves changing the preparation of BPAs by the Presiding Officer from separate account for each constituency to a single BPA for each of the three types of ballot papers: geographical constituency ballot papers, functional constituency ballot papers, and Election Committee (EC) constituency ballot papers. Clause 30 of the Bill replaces section 62 of Cap 541I with a new provision so as to consolidate the BPAs for EC subsector elections, changing the preparation of account for each subsector separately to as the preparation of a single BPA for all subsector ballot papers of a polling station.

2. The consolidated BPAs require the Presiding Officer to make a written record of the total number of ballot papers issued at the polling station, the number of unused ballot papers, the number of spoilt ballot papers, and the number of tendered ballot papers. Unissued ballot papers need not be included, as the Registration and Electoral Office, after review, has considered that there is no need to record such ballot papers in the BPA. This aims to reduce the workload of Presiding Officers in preparing BPAs after the close of the poll while enabling them to deliver the ballot boxes and BPAs to the central counting station as early as possible.

Counting Functional Constituency Ballot Papers with Approved Programme

3. Clause 18 of the Bill adds a new section 77AA under Cap 541D, providing for the procedures related to counting functional constituency ballot papers using approved programme (i.e. counting machines). In drafting this provision, reference was made to the existing provisions under Cap 541D for manual counting, namely section 73B (Arrangements for sorting of and verifying number of FC ballot papers at central counting station) and section 77 (counting of votes for functional constituencies), as well as section 78A (Counting of votes for Election Committee constituency).

4. The specific provision concerning the publication of the 2021 EC subsectors register, namely section 14(1A) of the Schedule to Cap 569, was introduced

(Translation)

as a replacement provision through the Improving Electoral System (Consolidated Amendments) Bill 2021. At that time, it was considered that under the improved electoral system, the EC was reconstituted and the composition and formation methods of the Legislative Council were updated, including the setting out of the electoral arrangements for the LegCo EC constituency. Therefore, it was necessary to first conduct the EC subsectors ordinary election for returning the elected EC members, and after the formation of the EC, the EC members could nominate candidates and vote in the EC constituency election during that year's Legislative Council General Election (LCGE). In light of the special circumstances in 2021 as described above and the relevant election dates, it was necessary at that time to directly specify in the legislation the publication dates applicable for that year.

5. The proposed new section 14(1AB) under Cap 569 in the current Bill is not intended to address such special circumstances. This provision aims to empower the Electoral Registration Officer, in cases where both a LCGE and an EC subsectors by-election are required to be conducted in the same year in the future, to advance (and may only advance) the publication of the subsector register as circumstances warrant. As the actual electoral arrangements in each LCGE year to which the provision applies cannot be determined at present, we consider it inappropriate to directly specify exact dates in the legislation.

6. Under the existing electoral legislation, the Electoral Registration Officer/Chief Electoral Officer is required to publish Gazette Notices for different actions or matters in accordance with the requirements under different provisions. Like those provisions, the Government considers such notices to be administrative in nature and do not have “legislative effect” (as defined under section 3 of the Interpretation and General Clauses Ordinance (Cap 1) in respect of the definition of “subsidiary legislation”). Hence, the relevant notices mentioned in paragraphs 3(b) and 4 in your letter (i.e., the proposed new section 14(1AB) under Cap 569 and the notices related to this section 14(1AB) in the Bill) are to be similarly treated, that is, they are not subsidiary legislation.

7. It is worth noting that the power exercisable by the Electoral Registration Officer under the proposed new provisions is already clearly circumscribed, namely, it may only be exercised in the year of a general election, and the relevant date may only be advanced and is not arbitrarily determined. At the same time, as the entire process concerning the publication of the final register of subsector voters involves sequentially handling related matters in various stages, including processing registration

(Translation)

applications, updating information, compiling and publishing the provisional register and omissions list, and handling claims and objections, etc., this in practice imposes limitations on the discretion of the Electoral Registration Officer in exercising the relevant power.

Legal Drafting Issues

8. The views of the LegCo Legal Service Division on clause 29(2) of the Bill are noted. The Government will propose a corresponding Committee Stage Amendment.

9. Under clause 32(4) of the Bill, the relevant expression in the English text of the amended section 73(4) under Cap 541I is “the ballot paper accounts,” where “the” in this expression means “the relevant,” that is, all the relevant BPAs. Therefore, the relevant expression in the Chinese text is consistent with the meaning conveyed by the English text and is not ambiguous.