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(Attn : Mr Bassanio So
Principal Assistant Secretary)

Dear Mr So,

Chief Executive Election Bill

We are scrutinizing the legal and drafting aspects of the Bill and would be grateful for your comments on or clarification of the following points—

General Observation

- (i) Would it be necessary to provide for validity of acts of CE notwithstanding defect that may afterwards be discovered in his election or as to his eligibility to be CE?
- (ii) In relation to conduct of election, what is the reason for not adapting sections 54 (Consequences of non-compliance with requirements), 55 (Misnomer or inaccuracy not to affect operation of election document), 57 (Election not to be questioned only because of defect in the appointment of an electoral officer), 59 (Offences by electoral officers with respect to conduct of election) and 60 (Electors not to be required to disclose how vote was cast) of the Legislative Council Ordinance (Cap. 542) ("LCO")?
- (iii) In relation to election petition, would you consider adapting sections 69 (When an election petition is terminated) and 70 (When respondent can withdraw from election proceedings and be substituted) of LCO?

- (iv) What is the reason for not adapting section 73 (Proceedings against persons on grounds of disqualification) of LCO?
- (v) In relation to conduct of election, what is the reason for not adapting sections 79 (Offences to obstruct or hinder electoral officers), 80 (CE may give directions as to exercise or performance of electoral officers' functions and duties), 81 (Death or incapacity of electoral officer not to terminate authority) of LCO?

Clause 2(1)

- (i) In the definition of "Returning Officer", as compared to the definition of "Returning Officer" in LCO, reference to "and includes any person appointed to act in place of such an Officer when the Officer is absent or when an office of Returning Officer is vacant" is omitted. Why is it appropriate to omit such reference in the provision?
- (ii) In the definition of "Revising Officer", as compared to the definition of "Revising Officer" in LCO, reference to "and includes any person appointed to act in place of the Officer when the Officer is absent or when the office of Revising Officer is vacant" is omitted. Why is it appropriate to omit such reference in the provision?

Clause 3(1)(b)

Would it be desirable to specify in the Gazette the date on which CE assumes office?

Clause 4

- (i) Article 52 of the Basic Law ("BL") requires CE to resign under certain circumstances and hence the CE office becomes vacant. Although clause 4 also provides for the circumstances in which the CE office becomes vacant, it does not incorporate the circumstances under BL52. For easy reference, should there be a note to clause 4 by reproducing BL52? A similar approach is adopted in relation to section 15 of LCO (When Member ceases to hold office), where BL79 is reproduced as a note to the provision.
- (ii) Should there be provision to prescribe the publication of the revocation of the CE appointment in the Gazette to facilitate easy identification and proof of such revocation?
- (iii) BL52 requires CE to resign under certain circumstances, may CE resign other than those circumstances?

Clause 5(2)(b)

The provision is intended to cover the situation where the CE office has already become vacant when the Acting CE declares the vacancy in office. However, it is

possible that the revocation of the CE appointment does not take immediate effect but takes place on a specified future date. For example, announcement is made on 1 January that the appointment of CE is to be revoked on 1 February. In such case, should clause 5(2)(b) be amended to read "specify the date on which the office became or becomes vacant" in order to cover the situation where the vacancy in office arises beyond the 21 day period referred to in clause 5(2)(a)?

Clause 10(2)

Section 6 of LCO requires CE to specify a date for holding a general election to elect LegCo Members. It further requires that the date for election must be not earlier than 60 days and not later than 15 days before the new term of office of LegCo is to begin. Should there be similar requirement for CE election?

Clause 10(5)

BL53 requires that in the event that the CE office becomes vacant, a new CE shall be selected within six months. If the polling date falls on the last day of the six month period but the counting of votes cannot be completed within the same day, will the CE be considered to be selected within the six month requirement?

Clause 11(2)

- (i) For easy identification and proof of the fact that the CE-elect "cannot assume" the CE office, should there be procedure for acceptance of office by the CE-elect?
- (ii) Is nomination of candidates re-open?
- (iii) In the event that nomination of candidates is not re-open, what would happen if all the remaining candidates die or are disqualified from being elected, since clause 11(1) does not apply to subclause (2)?

Clause 14

- (i) General Observation

A person is disqualified from being nominated as a candidate and from being elected as a LegCo Member, if he has been convicted of treason: section 39(1)(c) of LCO. Why does not the same requirement also apply to a candidate who runs the CE's election?

- (ii) Paragraph (d)

What are the differences, if any, in scope intended to be covered by the provision and section 39(1)(i) of LCO?

(iii) Paragraph (f)(i)

In relation to death sentence, can you explain the reason for different treatment of a candidate who runs the CE's election and LegCo election provided for in section 39(1)(b) of LCO?

Clause 16(5)

In relation to LegCo election, section 7(2)(a)(iii) of the LegCo (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542 sub. leg.) provides that so long as a person is being a member registered in respect of the EC, he is qualified to make nomination at the EC election. After publication of the EC final register, section 32(2) of LCO (which is proposed to be repealed) provides that it can only be updated to reflect the change in the ex-officio membership. It is noted that clause 16(5) proposes to set out specific circumstances in which a member of EC (whether or not he is an ex-officio member) will be disqualified from making nomination. Could you explain the reason for adopting such change?

Clause 20(1)

Would a candidate be disqualified from being elected if he is convicted of any offence under clause 14(f) after the nomination but before the close of polling?

Clause 27(1)

The provision provides that if, on the polling date but before the close of any round of voting of the poll, proof is given to the satisfaction of the Returning Officer that a candidate has died or is disqualified from being elected, the Returning Officer shall terminate that round of voting immediately. Section 46A(1) of LCO, which is similar in nature to the provision, adopts the formula that "it comes to the knowledge of the Returning Officer". Would you explain the reason for adopting a different formula in the provision?

Clause 27(2)

In relation to the polling, does clause 11(1) apply when all the candidates die or are disqualified from being elected ?

Clause 28(1)(b) & (2)(b)

(i) After close of polling but before declaration of result, where proof of death or disqualification of a candidate is given to the satisfaction of the Returning Officer, the Returning Officer is required to take specified actions. Section 46A(2) of LCO, which is similar in nature to the provision, adopts the formula that "it comes to the knowledge of the Returning Officer". Would you explain the reason for adopting a different formula in the provision?

- (ii) In relation to the polling, does clause 11(1) apply when all the candidates die or are disqualified from being elected ?

Clause 32(2)

In relation to the meaning of the term "political party", it is noted that the term "political body" is used in section 2(1) of the Societies Ordinance (Cap. 151) and section 2(1) of the Electoral Affairs Commission (Cap. 541) to describe an organization of similar nature. Would it be desirable to synchronize the use of the terms?

Clause 34

- (i) Subclause (1)

The grounds of petition as provided for in clause 33 are against the person elected. However, clause 34(1)(b) provides that an election petition may be lodged by a person aggrieved by certain conditions which are unrelated to the person elected. How do you connect clause 33(1) with clause 34(1)(b)?

What is the reason for excluding the EC members from lodging an election petition? (c.f. section 62(2) of LCO)

Is it intended that an EC member could subscribe to more than one election petition?

- (ii) Subclause (4)

What is the reason for allowing an EC member who is disqualified from voting under clause 25 to subscribe to an election petition but not an EC member who is disqualified from making nomination?

Clause 38

- (i) In subclause (1)(a)(ii), does "determination" refer to a determination made under clauses 17 and 29? If that is the case, should express provision be made to that effect?
- (ii) In subclause (1)(b)(ii), should the Court be given the power to declare, after a person is declared to be not duly elected, whether some other person was duly elected?
- (iii) What is the reason for not adapting section 67(5)-(7) of LCO?

Clause 42

Would it be appropriate to provide that the Returning Officer be provided with such staff as that Officer requires in order to exercise and perform that Officer's functions?

Clause 56(c)(i)

What is the reason for repealing the restriction on a person from being appointed as a member of the Electoral Affairs Commission, if, within the four years immediately before the date of appointment, he has been nominated as a candidate in the election of CE?

Clause 62

(i) paragraph (a)(i)

What is the reason for repealing the restriction on a member of the Electoral Affairs Commission, during his term of office" from being nominated as a candidate for election as CE.

(ii) In paragraph (c)

What is the reason for repealing the restriction on a person who has ceased to hold office as a member of the Electoral Affairs Commission during the period of four years beginning on the date he ceases to hold office, from being nominated as a candidate for election as CE?

Clause 76(b)

It appears that there is no clause 35(3) in the Bill.

Section 1(3)(b)(ii) of the Schedule

Why is it necessary to differ from the formula adopted in section 3(2)(c) of LCO, which refers to "a corporate member of such a body"?

Section 3 of the Schedule

Can you explain the reason for allowing an EC member (other than an ex-officio member) to resign?

Section 4(4) of the Schedule

In considering whether to strike out the name of an EC member from the existing final register when compiling a provisional register, why does not the Electoral Registration Officer consider the factors set out under clause 25 of the Bill which provides for conditions as to when an EC Member is disqualified from voting?

Sections 5, 9, 17(3) and 25 of the Schedule

Can you explain the reason for introducing by-election to fill vacancy in membership of EC?

Sections 9(c)(i) and (e) and 18(e)(i) of the Schedule

Would it be appropriate to add "conduct" after corrupt? (c.f. clause 14(f)(ii))

Section 13 of the Schedule

Why would it be appropriate not to adapt section 9(8) of Schedule 2 to LCO?

Section 18(f) of the Schedule

In the light of the recent amendment to section 10(2) of the Mental Health Ordinance (Cap. 136), should the provision be redrafted along the line of clause 14(g)?

Section 26(1) of the Schedule

- (i) Why would it be appropriate to continue with the election proceedings in the case that, on the date of a subsector election but before declaring the result of the subsector election, a candidate dies or is disqualified from being elected? (c.f. section 46A(1) of LCO).
- (ii) The formula used in the provision is "...it comes to the knowledge of the Returning Officer...". However, clause 28(1)(b) and (2)(b), which are similar in nature to section 26(1) of the Schedule, adopt a different formula, namely "...proof is given to the satisfaction of the Returning Officer...". Could you explain the reason for using two different formulas in provisions of similar nature?

Section 39(2) of the Schedule

Why would it be appropriate to change the time limit from 14 days to 7 days to lodge an appeal? (c.f. section 32(2) of Schedule 2 to LCO).

It is appreciated that your reply in both languages could reach us at your earliest convenience. Separate comments on the Chinese text of the Bill are forthcoming.

Yours sincerely,

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Assistant Legal Adviser

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