

本署檔號 Our Ref.: CAB C5/1
來函檔號 Your Ref.: LS/B/30/00-01

電話 Tel: 2810 2852
圖文傳真 Fax: 2840 1976

8 June 2001

Mr Stephen Lam
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Stephen,

Chief Executive Election Bill

I refer to your letter of 23 April 2001.

On the questions raised in your letter, I set out our responses in the following paragraphs.

Clause 20(1)

Q : Could the candidate, who has been declared to be disqualified from being elected, still be voted for at the election ? If he could, would the existing arrangement cause unnecessary embarrassment if the disqualified candidate has received the highest number of valid votes cast amongst the candidates ?

A : If a candidate is disqualified before polling commences, his name will not appear on the ballot paper. The scenario will not arise.

In the unlikely event that a candidate is disqualified during the course of polling, votes cast for him before or after the declaration will become invalid votes. Therefore, the disqualified candidate will not get the highest number of valid vote. However, this scenario is most unlikely to arise.

Clause 31

Q : For the avoidance of doubt, should the word “written” be added before “notice of resignation” to mirror the requirement in section 14 of the LegCo Ordinance (Cap. 542) that a member is required to give a written notice of resignation to the Clerk to LegCo ?

A : There is no room for doubt. As we refer to section 14 of Cap 542, the notice referred to in this clause must be a written notice. In any case the point is academic because the clause is a deeming provision and no one will actually sign or receive the notice.

Clause 34(1)(b)(iii)

Q : Would it be more precise to substitute “a person who was validly nominated” by “a person who was determined under section 17 to be validly nominated” ? Without the proposed amendment, the meaning of the provision would be that a person who was validly nominated but was disqualified because he was not validly nominated (all the grounds of disqualification under clause 20(1) relate to validity of nomination).

A : There is no mechanism for invalidation of nomination. Once a person is determined to be validly nominated, he is validly nominated. If the determination is found to be wrong, the remedy is disqualification under clause 20.

However, to avoid unnecessary disputes, we propose to move a technical CSA to delete “was validly nominated but” from clause 34(1)(b)(iii). The amendment will not affect the meaning of the provision.

Section 30 of the Schedule

Q : 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 lines of clause 14(g) ?

A : We will move a technical CSA to amend section 30 of the Schedule along the line of clause 14(g) of the Bill proper.

As for your queries over the Chinese draft, you are aware that our colleague in the Department of Justice has already replied to you direct.

(Bassanio So)
for Secretary for Constitutional Affairs

c.c.	D of J (Attn : Mr James O'Neil	2869 0720
	Mr Gilbert Mo	2869 1302
	Ms Phyllis Ko	2845 2215
	Mr Lawrence Peng)	2845 2215
	CBC (Attn : Ms Percy Ma)	2509 9055

Internal

SCA
DS(CA)2
PAS(CA)4
AS(CA)4
AS(CA)5
SPO(CA)

P5b601