

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 16 March 2001**

**Legal Service Division Report on
Chief Executive Election Bill**

Object(s) of the Bill

To—

- (a) provide for the election of the Chief Executive ("CE") in accordance with the Basic Law ("BL");
- (b) make provisions on the constitution of the Election Committee ("EC");
- (c) empower the Electoral Affairs Commission ("EAC") to supervise the CE election; and
- (d) provide for miscellaneous amendments.

LegCo Brief Reference

2. CAB C5/1 issued by the Constitutional Affairs Bureau on 8 March 2001.

Date of First Reading

3. 14 March 2001.

Key Features of the Bill

Election of CE

4. Under Article 46 of BL, the term of office of CE is five years and no person shall hold the office of CE for more than two consecutive terms (clause 3).

The criteria for a person to be eligible for nomination as a candidate at the CE election are based on Article 44 of BL which stipulates that CE shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the HKSAR with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years (clause 13). In addition to BL requirements, a candidate must stand for the CE election in an individual capacity (clause 16). A person who is elected to be CE must, within seven working days after he has been so elected, publicly make a statutory declaration that he is not a member of any political party (clause 32).

5. A poll has to be held if there are two or more validly nominated candidates (clause 23). By a system of elimination, if a candidate obtains more than half of the total number of valid votes cast in any round of voting, he shall be returned at the election (clause 26).

6. The CE election may be questioned by an election petition on specified grounds (clause 33). An application for judicial review as to whether the CE-elect is duly elected may also be lodged with the Court of First Instance (clause 40).

Constitution of EC

7. The majority of the provisions for the composition and formation of EC are transplanted from the Legislative Council Ordinance (Cap. 542) ("LCO") (the Schedule). The Election Committee constituted on 14 July 2000 under LCO shall be continued and regarded as having been constituted as the first EC for the purpose of the CE election (clause 8). The term of office of EC is five years from the date of its constitution (clause 9). A candidate for the CE election requires nomination by at least 100 members of EC (clause 16).

Supervision of the CE election by EAC

8. A nomination of a candidate for the CE election is to be made in such form and manner as may be specified in the EAC Regulations (clause 16). The withdrawal of a candidate's candidature is not effective unless it complies with the EAC Regulations (clause 19). EAC may also direct the postponement of a poll or counting of votes in respect of a poll under certain specified circumstances (clause 21). EAC is empowered to appoint the Returning Officer and give directions to electoral officers (clauses 42 and 44).

Consequential amendments

9. The consequential amendments include—

- (a) the High Court Ordinance (Cap. 4) and Hong Kong Court of Final Appeal Ordinance (Cap. 484) are amended to provide for a "leap-frog" procedure such that an appeal against the decision of the Court of First

Instance in relation to the CE election will be lodged to the Court of Final Appeal direct, subject to leave granted by the Appeal Committee of the Court of Final Appeal (clauses 49, 53 and 54); and

- (b) the LCO is amended to provide that the EC constituted in July 2000 shall continue to be responsible for electing, if any, one or more LegCo Members to fill the vacancy or vacancies that may arise from the six seats returned by EC in the second term of LegCo (clauses 63 - 75).

Public Consultation

10. There is no mention in the Brief that any public consultation about the Bill has been conducted.

Consultation with the LegCo Panel

11. The Administration has consulted the Constitutional Affairs Panel at its meeting held on 19 February 2001 about the Bill. Members expressed concerns over various aspects of the legislative proposals including the voting system, criteria for eligibility of candidature and election petition.

Conclusion

12. The Bill contains important constitutional issues. Members are recommended to form a Bills Committee to study them in detail. In the meantime, the Legal Service Division is continuing with the scrutiny of the legal and drafting aspects of the Bill.

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