

**Legislative Council Panel on Constitutional Affairs  
Meeting on 15 January 2001**

**Chief Executive Election**

At the last panel meeting held on 18 December 2000, Members asked for –

- (a) clarification on the application of the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) Cap.554, to the Chief Executive (CE) election before the enactment of the CE Election Ordinance; and
- (b) legal advice on why the Election Committees (ECs) referred to in Annexes I and II to the Basic Law (BL) should be one and the same.

2. This paper sets out the Administration's responses to these questions.

**I. Application of the ECICO to the CE election before the enactment of the CE Election Ordinance**

3. The ECICO, which has come into force since 3 March 2000, applies to the CE election. This is stipulated clearly under Section 4 of the Ordinance.

4. Under the ECICO, corrupt and illegal conduct encompasses quite a wide range of conduct. Some are general in nature and may take place before or during the election. Examples are –

- (a) bribing candidates and prospective candidates;
- (b) bribing electors;
- (c) using or threatening to use force or duress against candidates and prospective candidates;

- (d) using or threatening to use force or duress against electors; and
- (e) providing refreshments or entertainment at elections.

5. For such conduct, the key terms (e.g. “candidate”, “election” and “elector”) in the relevant provisions of the ECICO have been drafted in broad terms and have immediate application in respect of the CE election on the coming into operation of the ECICO. These provisions already effectively applied to the CE election as appropriate even before the CE Election Ordinance has been enacted.

6. There are, however, also corrupt and illegal conduct which relate specifically to the process of the CE election. Examples are –

- (a) defacing or destroying nomination papers;
- (b) destroying or defacing ballot papers;
- (c) lodging false or misleading election return to the appropriate authority; and
- (d) failure to lodge election return to the appropriate authority within 30 days after the gazettal of election results.

7. As these provisions relate to the process of the CE election or to papers which will only become available during the election, they could not be effectively applicable until after the legislative proposals providing for the procedures and specifying the papers are in operation. For example, it is necessary to have a provision in the CE Election Ordinance to designate an “appropriate authority” for the CE election before provisions relating to 6(c) and (d) above can be effectively applied. That said, it is worth noting that commission of these type of offences would normally take place during or after the election, at which time the CE Election Ordinance has already been enacted to provide the necessary definition of key terms.

8. In the light of the above analysis, Members could rest assured that the offence provisions of the ECICO already provide the necessary protection against corrupt and illegal conduct in respect of the CE election even before the enactment of the CE Election Ordinance.

## **II. Election Committee**

9. BL Annex I deals with the CE election and sets out the composition of the EC. BL Annex II deals with the formation of the LegCo and its voting procedures and sets out its composition. Paragraph 2 of BL Annex II states that the EC responsible for returning 6 Members to the second term LegCo refers to the one provided for in Annex I. This has the clear and unambiguous meaning that the Annex II EC is one and the same as the Annex I EC. This meaning is clear from both the Chinese and English texts.

10. In the absence of convincing justifications to the contrary, the plain meaning of the BL must be preferred. The Administration sees no justification which could support forming a new EC for electing the second term CE.

11. It has been suggested that the Election Committee (EC) prescribed in Annexes I and II of the Basic Law is one and the same only after the EC for electing the CE has been formed. The argument goes that the EC formed in July 2000 was not the EC envisaged by Annexes I and II of the BL, and hence it should not be the same EC for electing the second term CE. However, we remain of the view that, given the analysis in paragraphs 9 and 10 above, the EC formed in July 2000 is one and the same as the EC referred to in BL Annex I.