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Paper for the House Committee meeting on 16 November 2001

Second report of the Subcommittee on subsidiary legislation relating to Chief Executive election

Purpose

This paper reports on the deliberations of the Subcommittee on the following six items of subsidiary legislation which were tabled in the Legislative Council (LegCo) on 17 October 2001 -

- (a) Election Committee (Subscribers and Election Deposit for Nomination) Regulation (L.N. 205);
- (b) Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2001 (L.N. 206);
- (c) Distribution of Number of Members Among Designated Bodies (Election Committee) Order 2001 (L.N. 207);
- (d) Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (L.N. 208);
- (e) Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) (Amendment) Regulation 2001 (L.N. 209);
and
- (f) Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (L.N. 210).

The Subcommittee

2. The Subcommittee has held one meeting to discuss the six items of subsidiary legislation referred to in paragraph 1 above.

Deliberations of the Subcommittee

Election Committee (Subscribers and Election Deposit for Nomination) Regulation (L.N. 205)

Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2001 (L.N. 206)

3. The Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (the principal Regulation) provides for the number and qualifications of subscribers, the amount of election deposit required for nomination and the conditions for forfeiture of the election deposit. However, with the removal of the relevant provisions on the constitution of the EC, including the power of making regulations relating to EC subsector elections, from the Legislative Council Ordinance (Cap. 542) to the Chief Executive Election Ordinance (Cap. 569), a new regulation is required to be made to provide for the relevant requirements in respect of subsector elections.

4. The Subcommittee notes that the requirements in the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (L.N. 205) are the same as those in the principal Regulation. The nomination paper of a candidate of a subsector election needs to be completed by a minimum of five subscribers. The amount of election deposit required for nomination is \$1,000. A candidate must receive not less than 2.5% of the valid votes in the relevant subsector election in order to get back the paid deposit; otherwise, the deposit will be forfeited.

5. The Subcommittee also notes that the Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2001 (L.N. 206) amends the principal Regulation consequential to the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (L.N. 205) so that the principal Regulation only deals with -

- (a) the amount of election deposit to be lodged for nomination;
- (b) the requirements for return or disposal of the election deposit for nomination; and
- (c) the number and qualifications of subscribers required for nomination,

of a nominee on a nomination list in respect of his nomination as a geographical constituency candidate, or a candidate nominated for an election in respect of a functional constituency or the EC.

6. The Administration will propose amendments to sections 6(1) and 8(3) of

the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (L.N. 205) so as to align the English text with the Chinese text.

Distribution of Number of Members Among Designated Bodies (Election Committee) Order 2001 (L.N. 207)

7. The Subcommittee notes that the allocation of seats among the designated bodies in the religious subsector for the current EC constituted on 14 July 2000 has been set out in the Distribution of Number of Members Among Designated Bodies (Election Committee) (Legislative Council) Order 2000. With the removal of the relevant provisions on the constitution of the EC, including the power of making order relating to the distribution of seats among designated bodies, from the Legislative Council Ordinance to the Chief Executive Election Ordinance, the existing order has ceased to be in force.

8. Under the Schedule to the Chief Executive Election Ordinance, the religious subsector is to be represented on the EC by 40 members nominated by six designated bodies representing Buddhists, Catholics, Confucians, Muslims, Christians and Taoists. Section 6(2) of that Schedule provides that the 40 EC seats are to be distributed among the designated bodies as specified by an order made by the Chief Executive in Council.

9. Section 2 and the Schedule to the Distribution of Number of Members Among Designated Bodies (Election Committee) Order 2001 (L.N. 207) specify the number of EC seats allocated to each designated body in the following manner -

- (a) Catholic Diocese of Hong Kong - 7
- (b) Chinese Muslim Cultural and Fraternal Association - 6
- (c) Hong Kong Christian Council - 7
- (d) The Hong Kong Taoist Association - 6
- (e) The Confucian Academy - 7
- (f) The Hong Kong Buddhist Association - 7

Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (L.N. 208)

Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) (Amendment) Regulation 2001 (L.N. 209)

10. The Electoral Affairs Commission (Nominations Advisory Committees

(Legislative Council)) Regulation (the principal Regulation) provides for the appointment of Nominations Advisory Committees (NACs) to advise on nominations in respect of a geographical constituency, a functional constituency and the EC for the elections of LegCo, and on nominations in respect of a subsector or a sub-subsector for the formation of the EC before the election of LegCo.

11. Under the Chief Executive Election Ordinance, the membership of the EC will be updated before it is called upon to elect a new Chief Executive or a LegCo Member in a LegCo by-election (except in the case that a new EC is to be formed before the election of the Chief Executive). Any vacancy left by an EC member who has died, resigned, or ceased to be registered or eligible to be registered as an elector for a geographical constituency will be filled by means of supplementary nominations for the religious subsector or by-elections for the other subsectors and sub-subsectors. The principal Regulation does not provide for the NAC services in respect of nominations for EC subsector by-elections and supplementary nominations.

12. The Subcommittee notes that -

- (a) the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (L.N. 208) is made to provide for the appointment of NACs to advise on nominations for the EC subsectors. It adopts the same arrangements and procedures laid down in the principal Regulation; and
- (b) the Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) (Amendment) Regulation 2001 (L.N. 209) is made to amend the principal Regulation by repealing those provisions relating to the appointment of NACs for nominations for the EC subsectors. The principal Regulation as amended will henceforth be applicable only to nominations for LegCo general elections and by-elections.

13. The Administration will propose amendments to sections 6(13) & (16) and 8(c) of the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (L.N. 208) so as to align the meaning of the English text with the Chinese text.

Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (L.N. 210)

Purpose of the Regulation

14. The Regulation sets out the procedures for nominating members to represent the religious subsector on the EC and for conducting elections to elect

the members of the EC who, under the Schedule to the Chief Executive Election Ordinance, are required to be elected by the relevant subsectors. Most of the provisions are adopted from Schedules 1, 2 and 5 to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg.) and adjusted pursuant to the requirements set out in the Schedule to the Chief Executive Election Ordinance. The Subcommittee has deliberated some of the major changes.

Misconduct within a no canvassing or no staying zone (section 41)

Misconduct at a polling station (section 46)

15. The Subcommittee notes that the two sections contain most of the provisions in sections 37 and 42 of Schedule 1 to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation. However, a new sub-section is added to each of the two sections to clarify what constitutes misconduct within a no canvassing or no staying zone and at a polling station respectively.

Procedure for voting (section 54)

16. The Subcommittee notes that section 54(1) dispenses with the use of envelope to conceal the markings on the ballot papers. Under the new arrangement, the voter or authorised representative, after marking the ballot paper, must fold the ballot paper so that the marked side is inside and put the folded paper into the ballot box.

17. Hon SIN Chung-kai has pointed out that under the new arrangement, the way a ballot paper is folded might give hint on the identity of a voter. The Registration and Electoral office (REO) has advised that under the previous arrangement, it is also necessary for a ballot paper to be folded before it is put in an envelope. Hence, the tactic referred to by the member could also be employed. However, the REO is of the view that it is very difficult to identify a voter by means of the way a ballot paper is folded.

Request for permission to return to cast vote (section 55)

18. The Subcommittee has requested the Administration to explain the basis for section 55 which empowers the Presiding Officer (PO) to give the "originally issued" ballot paper back to a person who returns to a polling station after having left the polling station without casting his vote.

19. The REO has explained that section 55 is proposed having regard to the experience in the 2000 LegCo elections. There were incidents in which an elector, who had been issued with a ballot paper, did not cast his vote for one reason or the other and left the polling station but returned later on to claim another ballot paper. The situation gave rise to disputes between the elector and

the polling staff. Hence, the Electoral Affairs Commission (EAC) considers that the PO should be able to return a ballot paper to a voter or authorised representative, if, after having been issued with a ballot paper, the voter or authorised representative -

- (a) before leaving the polling station without casting his vote, has obtained the PO's permission to cast the vote before the close of the poll and has returned to the PO the ballot paper issued to him; or
- (b) becomes incapacitated from voting by physical illness and has left the polling station without casting his vote.

Section 55 empowers the PO to give the "originally issued" ballot paper back to the person if he returns to cast his vote later, in the presence of the police officer on duty at the polling station.

20. Members have sought clarification about whether a person referred to in paragraph 19(b) is required to make a request to the PO to return to the polling station later on and whether the PO has discretion to grant or not to grant permission. The REO has explained that the circumstances referred to in paragraph 19(a) and 19(b) are different. Circumstances where an elector will not be able to make a request to the PO to return to the polling station before the close of the poll, e.g. he collapses after having been issued with a ballot paper will fall under paragraph 19(b). Any other circumstances should fall under paragraph 19(a). Under section 55(3), the PO may exercise his discretion not to grant permission for cases referred to in paragraph 19(a) if he is of the view that the request is a manifest abuse of the facilities. However, section 55(3) is not applicable to cases referred to in paragraph 19(b).

Marking of ballot papers (section 56)

21. In previous EC subsector elections, the voter must mark the ballot paper by shading the oval provided next to the name of the candidates of his choice.

22. The Subcommittee notes that a new section has been added to provide flexibility for the EAC to decide on the marking method to cater for different situations. In the case of a by-election, the EAC may direct that a chop with a "✓" be used to mark the ballot paper.

Ballot papers marked "tendered" (section 58)

23. Under this section, if a person (the first-mentioned person) representing himself to be a particular voter or authorised representative applies for a ballot paper after another person (the second-mentioned person) has been issued with a ballot paper on the basis that he is the first-mentioned person, the PO must issue to the first-mentioned person a ballot paper marked "tendered".

24. As ballot papers marked "tendered" will not be counted, Hon NG Leung-sing has expressed concern about the voting right of the first-mentioned person if he is the bona-fide voter or authorised representative and how the situation could be improved. The REO has explained that the situation could arise as a result of impersonation or polling staff making a mistake inadvertently. The problem is also common in public elections in other countries and is not easy to resolve. The Administration has advised that the number of ballot papers marked "tendered" in the past elections was small. In addition, a candidate who is aggrieved about the outcome of an election because of the number of ballot papers marked "tendered" may lodge an election petition.

Misconduct at counting station (section 68)

25. The Subcommittee notes that for the avoidance of doubt, section 68(7) clarifies that misconduct includes behaviour that may cause disruption of the counting of votes or disturbance and inconvenience to any person in the counting station. Under section 68(4), a person who misconducts himself may be ordered to leave the counting station by the Chief Returning Officer or the Returning Officer.

Counting of votes (sections 73, 74 and 75)

26. The REO has advised that sections 73 and 74 provide for different modes of counting, either counting by computer or manual counting, as is appropriate for an election. In practice, computer counting will be adopted for an ordinary election, where voters have to choose a large number of candidates, and manual counting will be adopted for a by-election in which voters need only to choose one to two candidates.

27. The Subcommittee has sought clarification on the proposal to dispense with in the Regulation the requirement to mix the ballot papers from not less than two polling stations before counting of votes. The REO has explained that the rationale for the requirement in past elections was to preserve vote secrecy, especially for ballot papers from a small electorate. However, in the case of computer counting where ballot papers for all subsectors from a ballot box are fed into a computer without sorting, it is impossible to identify any particular voter. In the case of manual counting, which will be adopted for by-elections in which voters are allowed to cast their votes in any one of the polling stations linked by a computer network, it will also not be possible to relate a ballot paper to a particular voter.

Extension of scrutiny period

28. To enable the Subcommittee to report to the House Committee, Hon IP

Kwok-him, Chairman of the Subcommittee, moved a motion at the Council meeting on 14 November 2001 to extend the scrutiny period of these six items of subsidiary legislation to 21 November 2001. The motion was passed by the Council.

Proposed amendments

29. The proposed amendments to be moved by the Administration to Election Committee (Subscribers and Election Deposit for Nomination) Regulation (L.N. 205) and Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (L.N. 208) at the Council meeting on 21 November 2001 are in **Appendices I - II**. The Subcommittee supports the proposed amendments.

Recommendation

30. The Subcommittee recommends support of the six items of subsidiary legislation and the Administration's proposed amendments.

Advice sought

31. Members are invited to note the recommendation of the Subcommittee.