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**Paper for the House Committee meeting
on 30 November 2001**

**Third 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 two items of subsidiary legislation relating to the Chief Executive Election which were tabled in the Legislative Council (LegCo) on 14 November 2001 -

- (a) Maximum Amount of Election Expenses (Chief Executive Election) Regulation (L.N. 232); and
- (b) Electoral Procedure (Chief Executive Election) Regulation (L.N. 233).

The Subcommittee

2. The Subcommittee has held two meetings to discuss the two items of subsidiary legislation referred to in paragraph 1 above.

Deliberations of the Subcommittee

Maximum Amount of Election Expenses (Chief Executive Election) Regulation (L.N. 232)

Purpose of the Regulation

3. This Regulation prescribes the maximum amount of election expenses at \$9.5 million for an election to elect the Chief Executive (CE).

Election expense limit

4. The Administration has explained that Article 45 and Annex I of the Basic Law (BL) provide that the CE shall be elected by a broadly representative Election Committee (EC), and be appointed by the Central People's Government. BL 43 provides that the CE shall be the head of the Hong Kong Special Administration Region (HKSAR) and shall represent the HKSAR. The functions and powers conferred on the CE by the BL cover a wide range of matters relating to the HKSAR. The policies of the CE will affect the well-being of all residents in the HKSAR. As such, the election expense limit for the CE election must be sufficient for candidates to publicise their election platform to all residents of the HKSAR. In this connection, it is pertinent to note that the total of the election expense limits for the five Geographical Constituencies of the LegCo elections is equal to \$10 million.

5. On the premise that candidates of the CE election need to carry out territory-wide campaign, the Administration has advised that the election expense limit should be derived having regard to the following five categories of expenses -

- (a) expenses for setting up an election office;
- (b) expenses for employing campaign staff;
- (c) expenses for engaging professional services;
- (d) expenses for carrying out policy researches; and
- (e) expenses for publicity and promotion.

Further details provided by the Administration regarding how the \$9.5 million is arrived at are set out in **Appendix I**.

6. Hon Emily LAU who is not a member of the Subcommittee objects to the proposed election expense limit. In her view, the purpose of setting an election expense limit is to prevent financially well-off candidates from gaining an unfair advantage over his competitors. An election expense limit should therefore be realistically set because an exceedingly high limit could deter people with insufficient means from standing for election and could also affect the chance of a candidate getting elected. Furthermore, as the CE is not elected by universal suffrage, the vast majority of residents in Hong Kong are deprived of the right to elect the CE. Hence, the premise that it is necessary for candidates running for the office of CE to publicise their election platform to the public at large is unconvincing.

7. Hon CHEUNG Man-kwong who is not a member of the Subcommittee

has queried the basis of the proposed election expense limit. He points out that no election expense limit was imposed on the first term CE election held in December 1996, and according to a press report, Mr TUNG Chee-hwa had only spent about \$2.7 million on election expenses. He is of the view that the election expense limit for the CE election should be set having regard to the election expenses incurred by the three candidates at the first CE election. He requests the Administration to provide information for the consideration of Members.

8. Hon TAM Yiu-chung does not consider it appropriate to make comparison with the first term CE election which was held at a time when Hong Kong was still governed by the British Government. He is of the view that the setting of the limit should take into account the important constitutional role of the CE as the head of the HKSAR Government and the need for candidates to carry out territory-wide election campaign. Having regard to the stringent requirement that a candidate who spends in excess of the maximum amount of election expenses might be liable to a fine of \$200,000 and imprisonment for three years, it is only reasonable and fair for a more flexible election expense limit to be adopted.

9. Hon Howard YOUNG has indicated that the stance of the Liberal Party is that it is not necessary to prescribe an election expense limit. However, there should be an effective mechanism to ensure a high degree of transparency in the reporting of election expenses by candidates. However, if a limit is set, it is reasonable to expect that the election expenses incurred by candidates in the 2002 CE election will be higher than that in the first CE election because of the need to conduct territory-wide election campaign.

10. Hon NG Leung-sing considers that an election expense limit should be set for the CE election and that it is necessary for candidates to conduct territory-wide election campaign. As EC members are elected from different sectors and represent different walks of life in the community, they could play a role in gauging and reflecting the views of the public to candidates. He has requested the Administration to consider how the publicity and promotion campaign undertaken by candidates could involve EC members.

11. The Administration has explained that the purpose of providing for an election expense limit is to allow a candidate to use as much financial resources as the candidate is entitled to use to promote his election, subject to the maximum amount prescribed. A candidate has complete discretion to decide on the amount and the type of election expenses to be spent. From past election experience, candidates who could afford to spend more in elections do not necessarily gain a definite advantage over others. Under the law, all candidates must submit to the Chief Electoral Officer (CEO) a return and declaration of election expenses and donations in a specified form not later than 30 days after the gazettal of the result of the election.

12. As regards the election expenses incurred by candidates at the first CE election, the Administration has initially advised that it is not in a position to provide any reliable information because that election was not organised by the Administration. In response to a further request by the Subcommittee, the Administration has subsequently advised that Mr TUNG Chee-hwa had in January 1997 released to the press details of the election expenses incurred at the first CE election held in 1996. The amount totalled \$2,739,288. The Administration has provided the relevant auditors' report and accounts for the reference of the Subcommittee. As regards the other two candidates at the election, the Administration has advised that Mr YANG Ti-liang has indicated that all his election expenses had been paid by his supporters, and Mr WOO Kwong-ching has indicated that he could not provide the information as requested.

Territory-wide campaign

13. In response to Members, the Administration has explained that the estimated amount of \$3 million for publicity and promotion covers publicity materials sent to each household/unit under the Hong Kong Post Circular Service (\$2.5 million) and other forms of election advertisements (\$0.5 million). Election advertisements include posters, banners, hand bills and election advertisements through newspaper etc. Candidates may display election advertisements on designated spots on government land/property which are allocated by agreement of candidates or by drawing of lots after the close of nominations. Consideration is being given to identifying designated spots in the 18 districts for display of election advertisements. However, candidates who wish to display election advertisements on land/property other than the designated spots must obtain the prior written permission or authorisation of the owner or occupier.

Electoral Procedure (Chief Executive Election) Regulation (L.N. 233)

Purpose of the Regulation

14. The term of the office of the incumbent CE will expire on 30 June 2002. An election will be held on 24 March 2002 to return a candidate for appointment by the Central People's Government to fill the vacancy for the office of the CE that will arise on 1 July 2002. The Regulation provides for the electoral procedure of the CE election. The procedures and arrangements of the CE election are modelled on those of the LegCo elections, subject to necessary modifications to cater for the differences in nature between the CE election and the LegCo elections.

Nomination

15. The Subcommittee notes that the CEO will publish a notice in the Gazette, stating inter alia, the nomination period and the address of the Returning Officer at which nomination forms must be delivered. A candidate is not required to lodge any election deposit in view of the requirement for a candidate to obtain not less than 100 EC members as his subscribers. A Nominations Advisory Committee is also not required because of the appointment of a judge of the High Court or above as the Returning Officer.

Polling arrangements

16. Members note that if no candidate obtains an absolute majority of votes, there will be a new round of voting after the counting of votes. Members have asked for more details about the polling arrangements.

17. The Administration has advised that to allow electors sufficient time to cast their votes, the Regulation provides that not more than three rounds of voting shall be conducted on each day. The CEO will appoint the polling hours for the first three rounds of the voting on the polling day, ie. 9 - 10 am, 2 -3 pm and 7 - 8 pm. He will also designate a place as the polling station and another as the counting station. Electors will be informed of the polling hours for the first three rounds of voting, the voting instructions, the location of the polling and counting stations and the polling and counting procedures by a polling notice. Where no candidate is elected after the first three rounds of voting, the fourth and subsequent rounds of voting, if any, will be held on the day immediately following the polling date (i.e. 25 March 2002 in the case of the coming election). The CEO shall appoint the polling hours for the fourth and subsequent rounds. For these rounds of voting, the CEO may dispense with the polling notice and announce the polling hours through radio or television broadcast.

Designation of polling station

18. Members have asked why there is no provision in the Regulation for special polling stations to be used for voting by persons with a disability, similar to that adopted for LegCo elections.

19. The Administration has explained that in view of the large number of polling stations for LegCo elections, it is necessary to designate special polling stations for disabled persons. For the 2002 CE election, both the poll and the count will be conducted at the Hong Kong Convention and Exhibition Centre which is equipped with facilities for the disabled. The Administration will, through administrative means, make necessary arrangements to facilitate disabled EC members to vote at the CE election.

Proposed amendments

20. In response to the Subcommittee and the Legal Service Division, the Administration has agreed to move a number of technical amendments to the Electoral Procedure (Chief Executive Election) Regulation (L.N. 233) at the Council meeting on 12 December 2001. The Subcommittee supports the proposed amendments as set out in **Appendix II**.

Recommendation

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

Advice sought

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

Council Business Division 2
Legislative Council Secretariat
29 November 2001

Election Expense Limit for the CE Election

Expenses	Estimated amount (\$ million)	Remarks
Expenses for setting up an election office	1.2 (13%)	<p>Assuming that a Grade A office of 400 square metres in Central is rented for a period of five months. Details are as follows –</p> <p>Average rental for Grade A office in central in 2000 : \$415/ m²</p> <p>Estimated space required : 400 m²</p> <p>Estimated rental for five months : \$830,000</p> <p>Overhead expenses (e.g. management fee and charges for water and electricity) (estimated to be 20% of rental) : \$166,000</p> <p>One-off expenses for setting up and winding down the election office (e.g. decoration)(estimated to be 20% of rental) : \$166,000</p> <p>Total : \$1,162,000 (say \$1.2 million)</p>
Campaign staff	2.3 (24%)	<p>Assuming that a total of 15 staff are required. Details are as follows –</p> <p>Salary for the campaign manager (1) : \$70,000/month</p> <p>Salary for each senior staff (4 in total) : \$50,000/month</p> <p>Salary for each supporting staff (10 in total) : \$8,000/month</p> <p>Salary expenses for five months : \$1,750,000</p> <p>Contract gratuity and fringe benefits (estimated to be 30% of salary) : \$525,000</p> <p>Total : \$2,275,000 (say, \$2.3 million)</p>

Professional services	1.5 (16%)	Assuming that \$1.5 million is required for engaging PR consultancy and seeking legal opinion.
Policy researches	1.5 (16%)	Including conducting opinion surveys and holding focus group discussions. Details are as follows – Estimated expenses for a single-subject research : \$0.3 million Estimated number of researches : 5 Total : \$1.5 million
Publicity and promotion	3 (31%)	Details are as follows – Sending publicity materials to each household/unit under the Hong Kong Post Circular Service <i>(including postage and printing cost)</i> : \$2.5 million Posters, banners, hand bills and etc <i>(including production and printing costs)</i> : \$0.25 million Election advertisements <i>(e.g. through newspapers)</i> : \$0.25 million Total : \$ 3 million
Grand total	9.5	