

**Bills Committee on the Chief Executive Election and
Legislative Council Election (Miscellaneous Amendments) Bill 2006**

Follow up to meeting on 23 March 2006

(a) The electoral arrangements in the event that the sole candidate is not returned at an election for a new term Chief Executive

Having taken into account public views, and after detailed consideration, we propose providing for the new arrangement that where at the close of nominations only one Chief Executive (CE) candidate is validly nominated, a poll shall be conducted. Like any other elections, when a candidate is to be returned in an election through a voting process, some uncertainties will be involved. The only way to return a sole candidate without any uncertainty is to allow him to be returned as CE *ipso facto*. However, as the Administration's policy is that if only one candidate is validly nominated, election proceedings shall continue, a proposal to allow a sole candidate to be returned *ipso facto* after the first (or subsequent) round of election will not be consistent with the Administration's policy.

2. Under the proposal set out in the Bill, if the number of "support votes" obtained by a sole CE candidate falls short of more than half of the total valid votes cast, the election shall be terminated, and a new round of election shall be held 42 days after the election has been terminated. Taking the 2007 election to return a new term CE as an example, the polling date will be on 25 March 2007. Assuming that there is only one validly nominated candidate, and that he is unable to obtain the requisite number of support votes, two further rounds of elections could be held before the expiry of the term of the incumbent CE on 1 July 2007.

3. In the unlikely scenario that in each of the three rounds of election mentioned above, there is only one validly nominated candidate and the sole candidate is unable to receive the requisite number of support votes, the election process will continue after 1 July 2007. Four more rounds of election could be held during the period between 1 July 2007 and 31 December 2007. In other words, a total of seven rounds of election could be held before 31 December 2007.

4. Given Hong Kong's open and transparent electoral system, if a sole candidate fails to obtain sufficient number of support votes in the first round of polling, it would be reasonable to expect that other aspiring candidates will come forward after the nomination process is re-opened. The chance that there is still only one candidate after the first round of election, or that a sole candidate fails to obtain the required support in the EC in the polling process on successive occasions, should be slim.

(b) The electoral arrangements to deal with the situation illustrated in Appendix II of Clerk to Bills Committee's letter, particularly in relation to the finality issue and the re-constitution of the Election Committee.

5. If a vacancy in the office of the CE arises under section 4(b) or (c) of the Chief Executive Election Ordinance (CEEEO) (i.e. if CE dies or Central People's Government (CPG) removes CE from the office in accordance with the BL), an election shall be held to fill the vacancy. In accordance with section 10(2) of the CEEEO, the polling date of the "first" by-election shall be fixed on a date 120 days after the vacancy has arisen.

6. The 5-year term of the Election Committee should tie in with the 5-year term of the CE and with the electoral cycle. Hence, we have proposed in the Bill that, in future, the term of office of the Election Committee will commence on 1 February in the year during which the term of office of the CE expires, while the elections for the EC could be held in December of the preceding year. If a by-election is required because a vacancy arises during the term of the CE, this will be dealt with by the existing Election Committee. We hope that it will not be necessary to conduct more than one round of election to return an elected candidate. If we only have one validly nominated candidate, the only way to return a sole candidate without any uncertainty is to allow him to be returned as CE *ipso facto*. However, as the Administration's policy is that if only one candidate is validly nominated, election proceedings shall continue, a proposal to allow a sole candidate to be returned *ipso facto* after the first (or subsequent) round of election will not be consistent with the Administration's policy.

(c) In the event that a new term CE is not elected before 1 July 2007, the arrangements (including any contractual arrangements) in relation to the appointment of acting CE, principal officials and ExCo Members until a new term CE is elected and the legal basis for such arrangements.

7. In the unlikely event that a new term CE is not elected by 1 July (i.e. by the time the term of office of the incumbent CE expires), in accordance with Article 53 of the BL, the duties of the CE shall be temporarily assumed by the Chief Secretary for Administration, the Financial Secretary or the Secretary of Justice in this order of precedence.

8. The BL has not prescribed the term of office of the Principal Officials (POs). According to Article 15 of the BL, the CPG shall appoint the CE and the POs. Once a PO is appointed, he will remain as a PO even after the expiry of the term of office of the CE who nominated him for appointment, unless and until he is removed from office by the CPG. The acting arrangement referred to in paragraph 7 above will apply until a new term CE has been appointed by the CPG and assumes office.

9. Regarding the employment contract signed between the HKSARG with the POs, which expires on 30 June, the contract period could be extended to a date when a new term CE assumes office. As for ExCo Members, the acting CE may appoint the incumbent Members to continue to serve until a new term CE assumes office.

(e) Whether section 11(3) is adequate to provide a legal basis for fixing a new polling date in the event that the court has determined in an election petition that a candidate was not duly elected under section 37?

10. We are of the view that section 11(3) of the CEEO is sufficient to provide a legal basis for fixing a new polling date in the event that the court has determined in an election petition that the candidate is not duly elected under section 37. We have come to this view on the basis that although the candidate is ruled by the Court as not duly elected, this will

not change the fact that he has been returned at an election under section 28.

(f) In the case of a by-election to fill a vacancy in the office of CE that will arise under section 4(b) or (c), the basis for providing 120 days for the first election and only 42 days for the second election if the first election fails.

11. As stated in paragraph 5 above, if a vacancy in the office of the CE arises under section 4(b) or (c) of the CEEO, the polling date of the “first” by-election shall be fixed on a date 120 days after the vacancy has arisen. A 120-day period is allowed for to prepare for the election because of the following statutory considerations.

- (a) The Electoral Registration Officer shall compile and publish a provisional register of the Election Committee members within 14 days after the Acting CE has declared, by notice published in the Gazette, the vacancy of the office of the CE.
- (b) A person may make claims or objections as regards a registration in the provisional register within 7 days after the date of publication of the provisional register. Hearing by the Revising Officer is to be held within 20 days after the date of publication of the provisional register.
- (c) The Electoral Affairs Commission shall, as soon as practicable after publication of the provisional register, arrange for a subsector by-election (or a supplementary nomination in the case of the religious subsector) to be held to fill any vacancies in the Election Committee.
- (d) The nomination period for candidates for a subsector by-election must not be less than 7 days. After the close of nomination, a period of not less than 12 days are allowed for campaigning activities before the date of by-election.

- (e) A person claiming to be a candidate at a subsector by-election may lodge an appeal during the period of 7 days following the publication of the results of subsector by-election in the gazette. Hearing by the Revising Officer is to be held within 20 days after the publication of the results of subsector by-election.
- (f) The Electoral Registration Officer shall compile and publish a final register of the Election Committee members within 7 days after the results of subsector by-election are published in the gazette.
- (g) A person may submit a written representation to object to the registration of a declared member in the religious subsector as a member of the Election Committee in the final register. Hearing by the Revising Officer is to be held within 20 days after publication of the final register.
- (h) The Revising Officer shall direct the Electoral Registration Officer to incorporate his ruling in the final register on a date not later than 3 working days after the expiry of the 20-day period following the publication of the results of subsector by-election or the final register, as the case may be.
- (i) The nomination period for candidates for the office of the CE shall not be less than 14 days. After the close of nomination, a period of not less than 21 days are allowed for campaigning activities before the polling date.

12. If the “first” CE by-election has been terminated and the nomination and election process needs to start afresh, there will be no need to repeat the steps in paragraphs 11(a)-(h) above. A total of 42 days will be sufficient to cater for the steps stated in paragraph 11(i) above in relation to the nomination of candidates and campaigning activities.