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

PURPOSE

This paper reports on the deliberations of the Bills Committee on Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006.

BACKGROUND AND THE BILL

2. In January 2004, the Chief Executive set up the Constitutional Development Task Force (the Task Force) to address issues relating to the 2007/08 electoral arrangements. In the ensuing months, the Task Force carried out a series of public consultation exercises, and issued a number of reports, culminating in the Fifth Report which set out a package of proposals for the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council (LegCo) in 2008.

3. On 21 December 2005, two motions to, respectively, amend Annexes I and II of the Basic Law regarding the methods for selecting the Chief Executive in 2007 and LegCo in 2008 were presented by the Government to LegCo for endorsement. As the motions did not receive the two-thirds majority support of all LegCo Members stipulated in Annexes I and II of the Basic Law, the motions could not be processed further.

4. In accordance with the Interpretation made by the Standing Committee of the National People's Congress (NPCSC) on 6 April 2004, if no amendment is made to the methods for selecting the Chief Executive and for forming LegCo as stipulated in Annexes I and II of the Basic Law, the two methods in Annexes I and II of the Basic Law will still be applicable. In the circumstances, the 2007 Chief Executive election will be held on the basis of the existing arrangements, i.e. the electorate base will remain unchanged. However, according to the Administration, certain amendments still need to be made to the Chief Executive Election Ordinance (CEEEO) (Cap. 569).

5. The main proposals of the Bill seek to –

- (a) address the legal issues identified in the Fifth Report of the Task Force by providing that a new Chief Executive returned in a by-election may only serve one more term after expiry of the remainder term, that if a vacancy arises during the six months before a new term Chief Executive is to be elected, no Chief Executive by-election will be held, and that the term of office of the Election Committee will commence on 1 February in the year the Chief Executive's term of office expires;
- (b) provide for electoral arrangements even if only one Chief Executive candidate is validly nominated;
- (c) specify that only an individual who remains a member of the District Council, a Hong Kong member of the National Committee of the Chinese People's Political Consultative Conference (CPPCC), or the Chairman, a Vice-Chairman or Councillor of the Heung Yee Kuk may continue to be a member of the relevant Election Committee subsector;
- (d) reflect changes in the names of organisations which are eligible to be the electorate of the Election Committee, or the names of umbrella organizations the members of which are eligible to be the electorate of the Election Committee, and to remove the names of those organisations or umbrella organizations which have ceased to exist;
- (e) reflect changes to the licensing system under the Import and Export Ordinance (Cap. 60) and changes to the registration system under the Import and Export (General) Regulations (Cap. 60A) for the purpose of delineating the electorate of the Import and Export subsector and the Textiles and Garment subsector respectively; and
- (f) introduce other technical amendments relating to the final register of the Election Committee and the expiry of term of office of the first Election Committee.

THE BILLS COMMITTEE

6. At the House Committee meeting on 10 March 2006, Members formed a Bills Committee to study the Bill. Hon Howard YOUNG and Hon LI Kwok-ying were elected Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

7. The Bills Committee has held six meetings with the Administration. It has also met with and received views from 17 organisations and individuals, the names of which are in **Appendix II**.

DELIBERATIONS OF THE BILLS COMMITTEE

Legal issues identified in the Fifth Report of the Task Force

The number of consecutive terms that a new Chief Executive returned in a by-election may serve (clause 3)

8. Section 3 of CEEO provides that a Chief Executive who is returned in a by-election shall serve the remainder of the term of his predecessor.

9. The Bills Committee has noted that clause 3 adds a provision to provide that if a vacancy arises in the office of the Chief Executive other than due to expiry of the term of office, a term of less than five years shall be regarded as one term for the purpose of applying to the succeeding Chief Executive the requirement that no person shall hold the office of the Chief Executive for more than two consecutive terms.

10. In response to the view of the Bills Committee, the Administration will move a Committee Stage amendment (CSA) to amend the Chinese term “委任” to “任命” in the proposed section 3(2A) to achieve consistency with the wording adopted in Article 45 of the Basic Law and other relevant provisions in CEEO.

Chief Executive by-election (clause 4)

11. Under section 6 of CEEO, an election shall be held in accordance with the Basic Law and CEEO to return a candidate to fill a vacancy in the office of the Chief Executive. Section 4 of CEEO provides that the office of the Chief Executive becomes vacant –

- (a) on the expiry of the term of office of the Chief Executive;
- (b) if the Chief Executive dies; or
- (c) if the Central People’s Government (CPG) removes the Chief Executive in accordance with the Basic Law.

12. Regarding how a situation whereby a vacancy arises close to the expiry of the term of a Chief Executive should be dealt with, the Administration has proposed to adopt the following arrangement –

- (a) if an election for a new term (five-year) Chief Executive will be held within six months after a vacancy in the office of the Chief Executive has arisen, it will not be necessary to hold a by-election; and
- (b) before the new term Chief Executive takes up his office, the Acting Chief Executive will continue to assume the duties of the Chief Executive.

13. Members have noted that clause 4 adds a provision to section 6 to provide that if during the six months before an election for a new five-year term Chief Executive is to be held, a vacancy in the office of the Chief Executive has arisen, only the aforementioned election shall be held.

Commencement date of the Election Committee (clause 5)

14. Section 7 of CEEO stipulates that the Chief Executive shall be elected by the Election Committee as prescribed in Annex I to the Basic Law. Section 9 provides that the term of office of the Election Committee shall be five years commencing on the date on which it is constituted.

15. The Administration has proposed that the term of the Election Committee should tie in with the five-year term for the Chief Executive and with the electoral cycle. The Bill seeks to amend section 9 of CEEO to provide that the Election Committee shall be constituted on 1 February in the year in which the term of office of the Chief Executive is to expire. Under the new provision, the second Election Committee shall be constituted on 1 February 2007.

16. Some members have pointed out that the Election Committee constituted on 1 February 2007 is responsible for selecting the Chief Executive in 2007. While the term of office of the first Election Committee constituted on 14 July 2000 had already expired, the Bill does not provide any transitional arrangement for the constitution of a new Election Committee, if necessary, for the purpose of selecting a new Chief Executive to fill any vacancy that arises between now and the date beyond which no by-election will need to be held.

17. The Administration has advised that when CEEO was enacted in 2001, it was anticipated that a gap would arise upon the expiry of the term of office of the Election Committee. With the present proposal that the term of office of the Election Committee will commence on 1 February in the year during which the term of office of the Chief Executive expires, the term of the Chief Executive and that of the Election Committee would be synchronised in future. While the Administration remains of the view that an Election Committee will not be constituted lightly, it will come up with a solution if warranted by the circumstances.

Substantial connection with the District Council, CPPCC and Heung Yee Kuk subsectors (clause 6))

18. The Administration has explained that in view of the practical difficulties in implementing the “substantial connection” provision and for the avoidance of doubt, it is proposed that only individuals who are members of the District Councils, Hong Kong members of the National Committee of CPPCC, and the Chairman, a Vice-Chairman or a Councillor of the Heung Yee Kuk may be members of the relevant Election Committee subsectors. Individuals who cease to be members of the District Councils, or Hong Kong members of the National Committee of CPPCC,

or the Chairman, a Vice-Chairman or a Councillor of the Heung Yee Kuk will also cease to be Election Committee members. A subsector by-election will be held, following existing statutory arrangements generally applicable for subsector by-elections, to fill any such vacancy.

19. Members have noted that the Bill will amend section 3 of the Schedule to CEEO to provide that if a member of the Election Committee representing the District Council, CPPCC or the Heung Yee Kuk subsector ceases to be a member of the District Council, or a Hong Kong member of the National Committee of CPPCC, or the Chairman, a Vice-Chairman or a Councillor of the Heung Yee Kuk, he is deemed to have resigned from the Election Committee. In addition, the Bill will add a new section in the Schedule to CEEO to provide that if a person is not a member of the District Council, or a Hong Kong member of the National Committee of CPPCC, or the Chairman, a Vice-Chairman or a Councillor of the Heung Yee Kuk, he is not qualified to be nominated as a candidate at an election of the respective subsectors, or elected as a member of the Election Committee representing the respective subsectors.

20. In response to members' enquiry, the Administration has advised that according to the relevant information provided by the Central Authorities, the term of office of the National Committee of CPPCC commences on the date of the first plenary session of the current term, and expires on the date of the first plenary session of the following term. The term of office of members of the National Committee of CPPCC is the same as that of the National Committee.

Electoral arrangements in the event that only one Chief Executive candidate is validly nominated (clauses 7 to 19)

Existing provisions and proposals in the Bill

21. Paragraph 5 of Annex I to the Basic Law stipulates that the Election Committee shall elect the Chief Executive by secret ballot on a one-person-one-vote basis. The specific method shall be prescribed by the electoral law. Under section 24 of CEEO, a poll shall be conducted where there are two or more candidates in an election. Section 23 of CEEO stipulates that if at the close of nomination only one candidate is validly nominated, that candidate shall be declared elected *ipso facto* as the Chief Executive.

22. The Bill introduces amendments to CEEO and consequentially to the Hong Kong Court of Final Appeal Ordinance to provide that if only one Chief Executive candidate is validly nominated, election proceedings shall continue. The Administration has explained that the proposed electoral arrangements are as follows –

- (a) when voting, the Election Committee members may indicate in the ballot papers either to “support” or “not support” the sole candidate;

- (b) the sole candidate shall be returned at the election if the number of “support votes” he obtains constitutes more than half of the total number of valid votes cast. The Returning Officer shall publicly declare that the candidate is elected;
- (c) if the number of “support votes” obtained by the candidate falls short of more than half of the total valid votes cast, the Returning Officer shall publicly declare that the candidate is not elected at the election, and the election is terminated;
- (d) following termination of the election, there shall be a new round of nominations; and
- (e) if, at the close of the new round of nominations, there is still only one candidate, the election process shall continue by following the arrangements set out in paragraph 22(a) to (d) above. If necessary, the process will be repeated until a candidate is returned.

Finality of the electoral arrangements

23. Some members have suggested that arrangements should be made to ensure finality to the electoral arrangements, e.g. if the same candidate is the only candidate at the close of the new round of nominations, he shall be elected *ipso facto*.

24. The Administration has advised that it will not be appropriate to provide for arrangements to ensure finality to the electoral process. 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.

25. The Administration considers that a “finality” provision should, in any case, not be necessary. 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 Election Committee in the polling process on successive occasions, should be slim. The Administration proposes to allow the election to run its course and return a Chief Executive through a voting process.

Election to fill a vacancy arises under section 4(a) of CEEQ

26. Some members have expressed concern that, in the absence of a “finality” provision, whether a Chief Executive could be elected in time to fill a vacancy if the number of “support votes” obtained by a sole Chief Executive candidate falls short of more than half of the total valid votes cast on successive occasions. They have

pointed out that in the event that the office of the Chief Executive becomes vacant, apart from the requirement under Article 53(2) of the Basic Law that a new Chief Executive shall be selected within six months, CEEO also provides a formula for the fixing of the polling date.

27. Under the existing section 10 of CEEO, the polling date for an election shall fall on –

- (a) the 95th day before the office of the Chief Executive falls vacant if it is a Sunday, and if not, the Sunday immediately preceding that day if the vacancy arises under section 4(a) (i.e. upon expiry of the term of office of the Chief Executive); or
- (b) the 120th day after the office of the Chief Executive falls vacant if it is a Sunday, and if not, the Sunday immediately following that day if the vacancy arises under section 4(b) or (c) (i.e. if the Chief Executive dies or the CPG removed the Chief Executive from the office in accordance with the Basic Law).

Section 11(2) of CEEO provides that a new polling date shall be fixed on the 42nd day after termination of the election proceedings (if it is a Sunday).

28. The Administration has explained that if an election is held to fill a vacancy in the office of the Chief Executive under section 4(a) of CEEO, and if the number of “support votes” obtained by a sole candidate falls short of more than half of the total valid votes cast, a new round of election shall be held on the first Sunday 42 days after the election has been terminated. Taking the 2007 election to return a new term Chief Executive as an example (**Appendix III**), the polling will be held 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 election could be held before the expiry of the term of the incumbent Chief Executive on 30 June 2007. In the unlikely scenario that there is only one validly nominated candidate and the sole candidate is unable to receive the requisite number of “support votes” in each of the three rounds of election, the election process will continue after 1 July 2007. Taking account of the requirement under Article 53(2) of the Basic Law, four more rounds of election could be held during the six-month period between 1 July 2007 and 31 December 2007. As a total of seven rounds of election could be held before 31 December 2007, it is unlikely that a Chief Executive could not be returned through a polling process.

29. Members have also expressed concern about the transitional arrangements (including any contractual arrangements) in relation to the appointment of Acting Chief Executive, Principal Officials (POs) and Members of the Executive Council (ExCo) in the event that a new term Chief Executive is not elected before 1 July 2007. They have pointed out that POs are appointed on contract terms for a term of five years, and their term of office should not exceed that of the Chief Executive who

nominated them. As regards ExCo Members, their term of office shall not extend beyond the expiry of the term of office of the Chief Executive who appointed them.

30. The Administration has advised that in the unlikely event that a new term Chief Executive is not elected by 30 June 2007 (i.e. by the time the term of office of the incumbent Chief Executive expires), in accordance with Article 53(2) of the Basic Law, the duties of the Chief Executive shall be temporarily assumed by the Chief Secretary for Administration, the Financial Secretary or the Secretary of Justice in this order of precedence.

31. The Basic Law has not prescribed the term of office of POs. According to Article 15 of the Basic Law, the CPG shall appoint the Chief Executive and POs. Once a PO is appointed, he will remain as a PO even after the expiry of the term of office of the Chief Executive who nominated him for appointment, unless and until he is removed from office by the CPG. The acting arrangement referred to in paragraph 30 above will apply until a new term Chief Executive has been appointed by the CPG and assumes office.

32. Regarding the employment contract signed between the Government and POs, which expires on 30 June 2007, the contract period could be extended to a date when a new term Chief Executive assumes office. As for ExCo Members, the Acting Chief Executive may appoint the incumbent Members to continue to serve until a new term Chief Executive assumes office.

33. The Administration has confirmed that in the event a new Chief Executive was elected after 1 July 2007, the end date of the term of office of the Chief Executive would remain 30 June 2012.

By-election to fill a Chief Executive vacancy under section 4(b) and (c) of CEEO

34. The Administration has proposed that the five-year term of the Election Committee should tie in with the five-year term of the Chief Executive and with the electoral cycle. Under the new provision of the Bill, the second Election Committee shall be constituted on 1 February 2007.

35. Members have pointed out that if a vacancy in the office of the Chief Executive under section 4(b) or (c) of the CEEO arises more than six months before the polling date to be fixed for an election to be held in anticipation of the expiry of the term of office, the polling date of the “first” by-election shall be fixed on a date 120 days after the vacancy has arisen. Quoting the scenario illustrated in **Appendix IV**, members have pointed out that if a sole candidate fails to obtain the required support in the “first” by-election in January 2012, a new round of election could not be held 42 days after the election has been terminated because under the Administration’s proposal, the new Election Committee constituted on 1 February 2012 should not be responsible for selecting the Chief Executive of a previous term. Members have requested the Administration to advise on the electoral arrangements

to deal with the situation, particularly, in relation to the finality issue and the re-constitution of the Election Committee.

36. The Administration has explained that in the scenario illustrated by Appendix IV, only one round of election can be dealt with by the existing Election Committee. The Administration hopes that it will not be necessary to conduct more than one round of election to return an elected candidate. In the event that there is only one validly nominated candidate, and that he is unable to obtain the requisite number of “support votes” in the first round of election, the only way to return a sole candidate without any uncertainty is to allow him to be returned as the Chief Executive *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.

37. Members have sought clarification on the basis for providing 120 days for the “first” election and only 42 days for the second (and subsequent) round of election if the “first” election fails.

38. The Administration has advised that if a vacancy in the office of the Chief Executive arises under section 4(b) or (c) of 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 the election because of the following statutory considerations –

- (a) the Electoral Registration Officer (ERO) shall compile and publish a provisional register of the Election Committee members within 14 days after the Acting Chief Executive has declared, by notice published in the gazette, the vacancy of office of the Chief Executive;
- (b) a person may make claims or objections as regards a registration in the provisional register within seven days after the date of publication of the provisional register. Hearing by the Revising Officer (RO) 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 seven 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 seven days following the publication of the results of subsector by-election in the gazette. Hearing by RO is to be held within 20 days after the publication of the results of subsector by-election;
- (f) ERO shall compile and publish a final register of the Election Committee members within seven 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 an Election Committee member in the final register. Hearing by RO is to be held within 20 days after publication of the final register;
- (h) RO shall direct ERO to incorporate his ruling in the final register on a date not later than three 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; and
- (i) the nomination period for candidates for the office of the Chief Executive 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.

39. The Administration has explained that if the “first” Chief Executive 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 38(a)-(h) above. A total of 42 days will be sufficient to cater for the steps stated in paragraph 38(i) above in relation to the nomination of candidates and campaigning activities.

Election petition

40. Clauses 15 to 19 provide that if the only candidate in an election is determined to be not returned at the election, an election petition may be made or judicial review applied for to challenge the determination.

41. In the light of members’ views, the Administration will move a CSA to repeal the proposed section 37(1) under clause 17 regarding the Court’s determination of election petition and substitute it with new provisions. The revised provisions can better cater for different situations relating to election petitions –

- (a) the situation where an election petition is made to the Court questioning an election in which there is only one candidate, and the candidate is declared not returned at the election; and

- (b) the situation where an election petition is made to the Court questioning an election in which there is one or more candidates, and a candidate is declared elected at the election.

Technical legislative amendments relating to the Election Committee electorate (clauses 27 to 28 and 32 to 48)

42. The Administration has advised that the new Election Committee will elect the new term Chief Executive in March 2007. Most of the Election Committee members will be returned through election. The subsector electorates of the Election Committee is set out in CEEO which, in turn, contains cross references to the LegCo functional constituency electorates set out in the Legislative Council Ordinance (LCO) (Cap. 542).

43. Under the Bill, the Administration has proposed to make some technical amendments to CEEO and LCO to reflect changes in the names of the organisations which are eligible to be the electorate of the Election Committee, or the names of umbrella organizations the members of which are eligible to be the electorate of the Election Committee (clauses 32 to 45). Organisations and umbrella organisations which have ceased to exist will also be removed (clauses 46 to 48).

44. In addition, consequential amendments to LCO will also be made to reflect changes to the licensing system under the Import and Export Ordinance (Cap. 60) and changes to the registration system under the Import and Export (General) Regulations (Cap. 60A) for the purpose of delineating the electorate of the Import and Export subsector (clause 27) and the Textiles and Garment subsector respectively (clause 28).

45. The Bills Committee has noted that the Administration will move a CSA to delete clause 34(7) which seeks to amend the Chinese name of the Yung Shue Au Marine Fish Culture Business Association. The Association has confirmed that there is no change to its Chinese name.

Other technical amendments

Final register of members of the Election Committee (clauses 21 to 25)

46. The Administration has advised that currently, it is stipulated in the Schedule to CEEO that –

- (a) the final register (FR) of the Election Committee members shall be compiled and published within seven days after the results of the Election Committee subsector elections are published; and
- (b) the FR shall cease to have effect on the publication of the next FR.

47. It is the Administration's intention to hold the Election Committee subsector elections in December, while the term of office of the Election Committee will begin on 1 February next following the subsector elections. The combined effect of the provisions mentioned in paragraph 46 above will give rise to a situation that the FR of the existing Election Committee will cease to have effect before the expiry of its term, while the FR of the new term Election Committee will take effect before the commencement of its term.

48. To address the above problem, the Administration has proposed to adopt the following arrangement –

- (a) an interim register of the Election Committee members shall be compiled and published within seven days after the results of the Election Committee subsector ordinary elections are published. The FR of the existing Election Committee members will not cease to have effect upon publication of the interim register;
- (b) an FR of the Election Committee members shall be compiled and published on the date when the term of office of the Election Committee commences; and
- (c) an FR shall also be compiled and published within seven days after the results of a subsector by-election are published, or after a nominee is declared as an Election Committee member following supplementary nomination of the religious subsector.

49. The Administration has advised that the proposal to compile and publish an interim register will provide a legal basis for appeals to be made against the results of the Election Committee subsector ordinary elections, and facilitate aspiring Chief Executive candidates to start planning their campaigning activities. Clause 21 will amend the relevant sections in the Schedule to CEEO to provide for the compilation and publication of the interim register of the Election Committee members.

50. Members have noted that consequential amendments will also be made to the Election Committee (Appeals) Regulation to provide for appeals to be made against the registration of a person as a member of the Election Committee in the interim register or the FR, as the case may be (clauses 22 to 25).

Expiry of term of office of the first Election Committee (clauses 30 to 31)

51. The Bills Committee has noted that as the term of office of the first Election Committee constituted on 14 July 2000 had already expired, the Bill will repeal all relevant provisions making reference to the first Election Committee.

Other issues

Vacancy in membership of the Election Committee

52. Annex I to the Basic Law provides that the Election Committee for selecting the Chief Executive shall be composed of 800 members.

53. As the Administration has advised that there are four vacancies in the membership of the Election Committee, Hon CHIM Pui-chung is of the view that this would contravene the Basic Law if the number of the Election Committee members is less than 800.

54. The Administration has explained that the situation of a person who is concurrently a LegCo Member and a Hong Kong deputy to the National People's Congress (NPC) will give rise to overlapping membership of the Election Committee. As the two categories of membership are ex-officio in nature, the overlapping seats cannot be transferred to other subsectors, since to do so would run the risk of not having sufficient seats to accommodate newly elected LegCo Members and Hong Kong deputies to the NPC should the extent of overlapping membership be reduced in future. Although such a person's name might appear twice in the list of membership of the Election Committee, he is entitled to only one vote at the election, as stipulated in section 25(3) of CEEO.

Political affiliation of the Chief Executive

55. Under section 31(1) of CEEO, a person declared as elected at an election is required, within seven working days after the declaration, to make a statutory declaration to the effect that he is not a member of any political party, and lodge with the Returning Officer a written undertaking to the effect that he will not, if appointed as the Chief Executive, become a member of any political party, or do any act that has the effect of subjecting himself to the discipline of any political party during his term of office as the Chief Executive. Some members have requested the Administration to abolish the requirement.

56. The Administration has explained that in the first Chief Executive election in 1996, all potential candidates were nominated in their individual capacity. Members of political parties or political organisations had to resign from their political parties or political organisations before declaring their intention to run in the election. The existing requirement which allows members of political parties to run in an election was an improvement. Also, the existing requirement could ensure that a Chief Executive would act in the overall interests of Hong Kong. The Administration has further advised that in an opinion survey on the package of proposals put forth in the Fifth Report of the Task Force, over 70% of the respondents agreed that the existing requirement should be maintained. As there is no clear mainstream view among different sectors of the community to change the status quo, the Administration considers that the existing requirement should be maintained.

57. Some members consider that the requirement should be abolished as it is not stipulated in the Basic Law and it will impede the development of political parties. Given that POs under the accountability system and ExCo Members can have political affiliation, it is unreasonable that the Chief Executive cannot be a member of a political party. A Chief Executive with political affiliation will be conducive to the development of political parties and would have the support of LegCo Members of the same political party, resulting in better governance. These members also consider that in line with the gradual relaxation of the requirement in the past two Chief Executive elections, it is opportune to abolish the requirement in the 2007 Chief Executive election. They have pointed out that the abolition of the requirement will provide a level-playing field for all candidates, and Election Committee members have the discretion whether or not to support a candidate with political affiliation. Members belonging to the Liberal Party, the Democratic Party, and the Civic Party support the abolition of the requirement.

58. Hon James TIEN has given notice to move a CSA to repeal section 31 by adding a new Part 13 to the Bill. Dr Hon YEUNG Sum has also given notice to move a CSA to clause 18 of the Bill concerning political affiliation of the Chief Executive. His CSA provides that the issue of whether a candidate declared as elected can lawfully assume the office shall not be questioned under clause 18 of the Bill (concerning time limit for legal challenges) on the ground that he does not comply with section 31(1) of CEEQ.

59. Hon TAM Yiu-chung and Dr Hon LUI Ming-wah have advised the Bills Committee that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong and The Alliance do not support any amendment to the requirement.

60. The Administration has reiterated its position on the matter. It has also advised members that in order to facilitate the development of political parties and to groom political talents for Hong Kong's further constitutional development, the Administration has provided financial assistance to candidates standing in LegCo elections and has allowed the printing of the names and emblems of candidates' parties on the ballot paper. In addition, the Administration has proposed to extend the financial assistance scheme to the District Council elections and will consider further development of the political appointment system by providing a new channel for people with political aspirations to join the Government to pursue a political career. Regarding the reason why POs and ExCo Members can have political affiliation, the Administration has explained that this can allow the Chief Executive to take into account different views in determining the Government's policies.

Electorate base of the Election Committee

61. Some members consider that although the NPCSC had ruled out the implementation of universal suffrage for the 2007 Chief Executive election, the Administration should enhance democratic representation by broadening the

electorate base of the Election Committee to include all registered voters. The proposal, which could be implemented by way of local legislation, would not contravene the Basic Law as well as the Interpretation and Decision made by the NPCSC in April 2004.

62. The Administration has advised that the package of proposals put forth in the Fifth Report of the Task Force had sought to increase democratic representation in the Chief Executive election by expanding the participation of the District Council members in the Election Committee. Regrettably, the package of proposals did not have the required two-thirds majority support of all the LegCo Members. The Administration had made clear at the time that in accordance with the Interpretation made by the NPCSC on 6 April 2004, if no amendment was made to the method for selecting the Chief Executive, the provisions in Annex I of the Basic Law would still be applicable. In the circumstances, the 2007 Chief Executive election will be held on the basis of the existing arrangements, i.e. the electorate base will remain unchanged.

63. Hon James TIEN has advised the Bills Committee that Members belonging to the Liberal Party consider that giving voting rights to not more than six directors from each corporation is an acceptable option to expand the electorate of the Election Committee. Although he had wished to introduce CSAs in this respect, Mr TIEN has subsequently advised the Bills Committee that in view of the time constraints as well as the complexity and substantial amendments and consequential amendments involved, the Liberal Party has decided not to proceed with the CSAs.

Subscribers for nominating candidates in a Chief Executive election

64. Paragraph 4 of Annex I to the Basic Law stipulates that candidates for the office of the Chief Executive may be nominated jointly by not less than 100 Election Committee members. This requirement is reflected in section 16(2) of CEEO.

65. Some members consider that CEEO should be amended to introduce an upper limit on the number of subscribers required for nominating candidates for the office of the Chief Executive. They have pointed out that in both the 2002 and 2005 Chief Executive elections, the Chief Executives were elected uncontested, as the candidates concerned had the support of the leadership of the Central Authorities and secured more than 700 nominations, thereby making it impossible for other candidates to obtain the required number of subscribers to contest the election. Given the small electorate of the Election Committee and the requirement for the names of the subscribers to be made public, it is very difficult for aspiring persons to contest the election if an upper limit is not set on the number of subscribers. A contested election would allow candidates to organize or take part in election forums etc, thereby enhancing the transparency and atmosphere of the election. They have also pointed out that the threshold of requiring candidates to secure nominations from not less than 100 Election Committee members, i.e. 12.5% of the electorate size, is

already very high by world standard. Some other members do not consider that an upper limit on the number of subscribers has any direct bearing on the number of candidates standing in an election. In their view, any person who is acceptable to Election Committee members would be able to obtain the required number of subscribers to be nominated as a candidate.

66. In response to the request of some members, the Administration has provided information on overseas practices. According to available information, in some overseas countries, there is no specific requirement on the number of subscribers for nominating a candidate for head of state/government. For example, in the United Kingdom, under the parliamentary system of government, the leader of the majority party in the House of Commons, who is a member of Parliament, will be invited by the Monarch to be the Prime Minister. Likewise, in Japan, the Prime Minister is usually the leader of the ruling party in the Diet, and is elected by a simple majority of members in both Houses of Diet. In some other countries, such as Australia and the United States, there is a requirement on the minimum, but not the maximum, number of subscribers to nominate a candidate to stand in an election. Dr Hon YEUNG Sum has pointed out that as the Chief Executive is returned by the Election Committee with an electorate size of 800 members only, it is not meaningful to compare Hong Kong with the overseas countries quoted by the Administration.

67. Some members have requested the Administration to advise whether setting an upper limit on the number of subscribers through local legislation would contravene the Basic Law. The Administration has responded that Annex I to the Basic Law does not contain any provision on upper limit on the number of subscribers a candidate may have. The Task Force had considered the issue of setting an upper limit on the number of subscribers, and recommended in its Fifth Report that the Administration should study in detail whether setting such a limit would unduly restrain the Election Committee members from exercising their right to nominate candidates. The Administration has accepted the Task Force's recommendation and considers that such a limit should not be set. If the Administration was to consider setting an upper limit on the number of subscribers, it could examine the feasibility of introducing such a requirement through local legislation. However, the policy is not to make any such provision.

68. Dr Hon YEUNG Sum has pointed out that under the Administration's new proposal, if only one candidate is validly nominated, electoral proceedings shall continue until a Chief Executive is returned through the voting process. In order to address the absence of finality in the electoral arrangements and to allow more candidates to contest the election when there is a new round of nominations, he has given notice to move a CSA to section 16 of CEEO to provide that if a sole candidate fails to obtain a sufficient number of "support votes" in the first round of polling, after the nomination process is re-opened, the nomination of a candidate shall be made by not less than 100 members and not more than 200 members of the Election Committee.

69. Hon James TIEN, Hon TAM Yiu-chung and Dr Hon LUI Ming-wah have advised the Bills Committee that Members belonging to the Liberal Party, the Democratic Alliance for the Betterment and Progress of Hong Kong and The Alliance do not support any CSAs to impose an upper limit on the number of subscribers.

AMENDMENTS TO THE BILL

70. A set of CSAs to be moved by the Administration, as explained in paragraphs 10, 41 and 45 above, is in **Appendix V**. These CSAs have the support of the Bills Committee.

71. Hon James TIEN has given notice to move a CSA concerning the political affiliation of the Chief Executive (**Appendix VI**). Dr Hon YEUNG Sum has also given notice to move CSAs concerning the political affiliation of the Chief Executive and the number of subscribers required for nominating candidates for the office of the Chief Executive (**Appendix VII**).

72. The Bills Committee has discussed whether CSAs could be moved to the Bill, e.g. to give effect to the proposals to abolish the requirement barring the Chief Executive from being a member of a political party and to impose an upper limit on the number of subscribers required for nominating a candidate for the office of the Chief Executive. The legal adviser has advised that it is for the President of LegCo to make a ruling on any proposed CSAs based on Rule 57(4) and 57(6) of the Rules Procedure of LegCo. The main principles include whether the CSAs are relevant to the subject matter of the Bill and whether they have any charging effect. The Administration has advised that it will provide comments, if any, on any CSAs proposed by Members when the notice of such CSAs is given.

DATE OF RESUMPTION OF SECOND READING DEBATE

73. The Administration has given notice to resume the Second Reading debate on the Bill at the Council meeting on 10 May 2006.

ADVICE SOUGHT

74. Members are invited to note the deliberations of the Bills Committee.

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

Membership list

Chairman Hon Howard YOUNG, SBS, JP

Deputy Chairman Hon LI Kwok-ying, MH

Members Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LEE Wing-tat
Hon Daniel LAM Wai-keung, BBS, JP
Hon MA Lik, GBS, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP

Total: 23 Members

Clerk Mrs Percy MA

Legal Adviser Mr Arthur CHEUNG

Date 17 March 2006

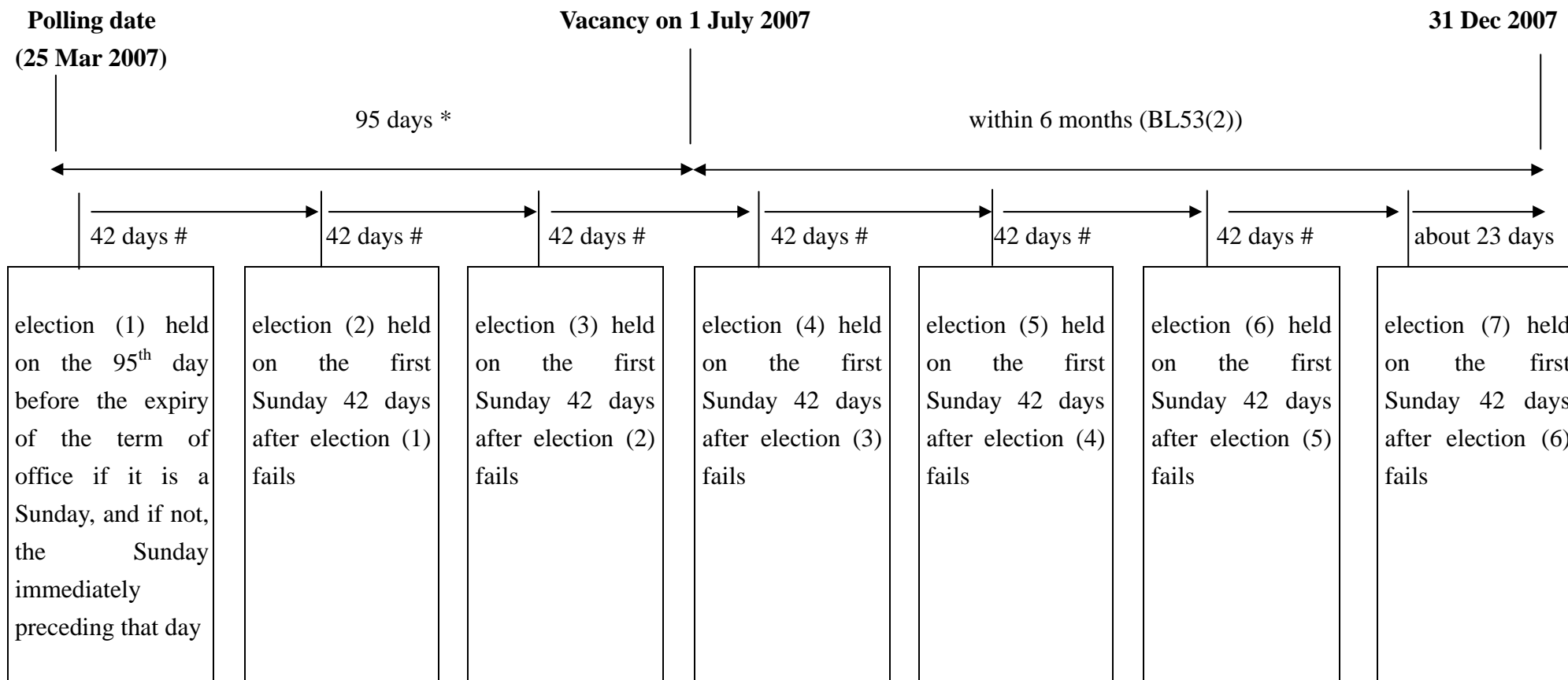
《 2006 年行政長官選舉及立法會選舉
(綜合修訂)條例草案 》委員會會議
Bills Committee on Chief Executive Election and
Legislative Council Election (Miscellaneous Amendments) Bill 2006

曾向委員會表達意見的團體/個別人士名單
List of organizations/individuals who have
submitted views to the Subcommittee

<u>團體/個別人士名稱</u>	<u>Names of organizations and individuals</u>
* 1. 九龍東區各界聯會	Kowloon City, Kwun Tong and Wong Tai Sin Residents' Association Company Limited
* 2. 工程界社促會	Association of Engineering Professionals in Society
* 3. 中西區區議員鍾蔭祥先生	Mr CHUNG Yam-cheung, Member of Central & Western District Council
4. 民主建港協進聯盟	Democratic Alliance for the Betterment and Progress of Hong Kong
* 5. 民主黨	The Democratic Party
6. 民間人權陣線	Civil Human Rights Front
* 7. 前綫	The Frontier
* 8. 香港人權監察	Hong Kong Human Rights Monitor
* 9. 香港工會聯合會中西區灣仔地區服務處	The Hong Kong Federation of Trade Unions, Central & Western District, Wan Chai District Service Office
* 10. 香港工會聯合會元朗地區服務處	The Hong Kong Federation of Trade Unions, Yuen Long District Service Office
11. 香港天主教正義和平委員會	Justice & Peace Commission of the Hong Kong Catholic Diocese
12. 香港基督徒學會	Hong Kong Christian Institute
* 13. 香港漁民團體聯席會議	Joint Committee of Hong Kong Fishermen's Organizations
* 14. 陳家洛教授	Dr CHAN Ka-lok, Kenneth

- * 15. 馮煒光先生 Mr FUNG Wai-kwong
 - 16. 葉明先生 Mr YIP Ming, Edward
 - * 17. 離島區議會議員梁兆棠先生 Mr LEUNG Siu-tong, Member of Islands District Council
-
- * 曾向小組委員會口頭申述意見的團體代表
Deputations who have made oral representations to the Subcommittee

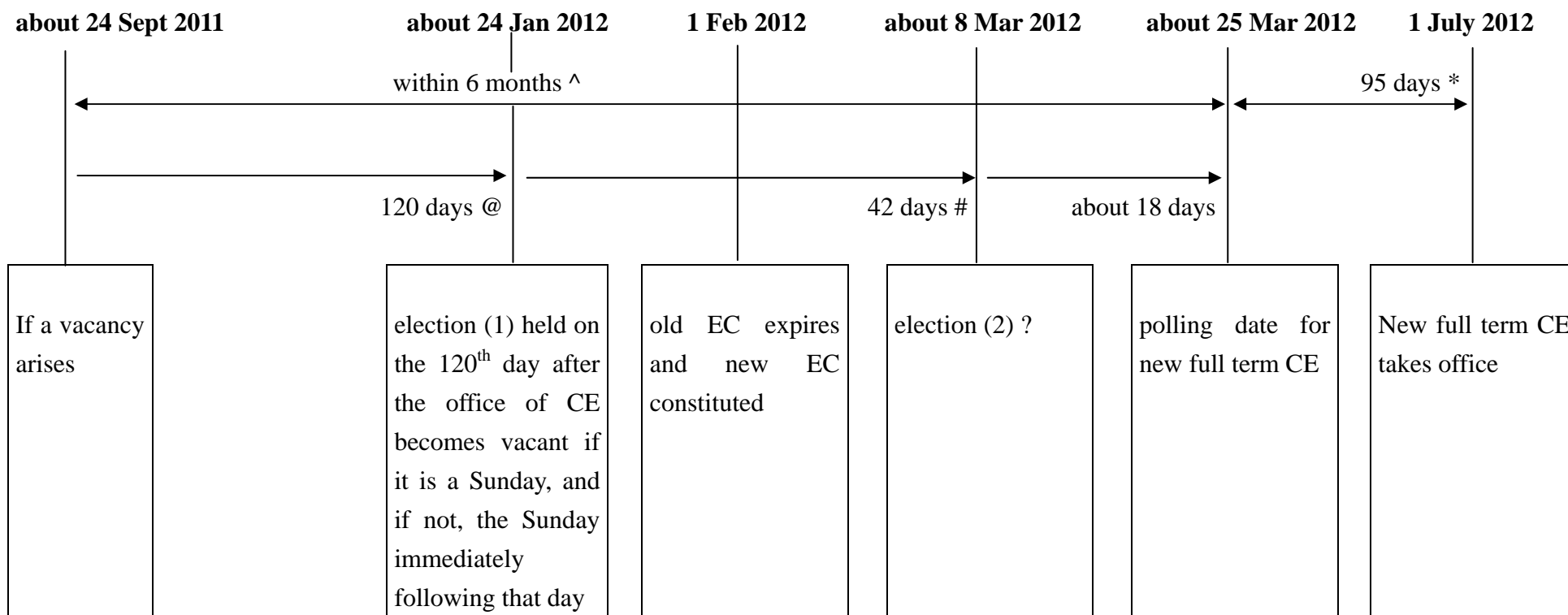
Election to fill a CE vacancy under section 4(a) of CEE0 i.e. expiry of the term of office of CE



* section 10(1) of CEE0

section 11(1) of CEE0

**By-election to fill a CE vacancy under section 4(b) and (c) of CEE0
i.e. if CE dies or CPG removes CE from the office in accordance with the Basic Law**



* section 10(1) of CEE0

@ section 10(2) of CEE0

section 11(1) of CEE0

^ proposed new section 6(2) of CEE0 and BL53(2)

CHIEF EXECUTIVE ELECTION AND LEGISLATIVE COUNCIL
ELECTION (MISCELLANEOUS AMENDMENTS) BILL 2006

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Constitutional Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
3	In the proposed section 3(2A), in the Chinese text, by deleting “委任” and substituting “任命”.
17	By deleting the clause and substituting - “17. Determination of election petition Section 37(1) is repealed and the following substituted - “(1) The Court shall determine - (a) an election petition questioning an election to which section 26A applies in which the Returning Officer declared under section 22(1AB) that no candidate was returned at the election by ruling that - (i) the only candidate in

the election is duly
elected; or

(ii) no candidate is
returned at the
election;

(b) an election petition
questioning an election in
which a candidate was declared
as elected by ruling that -

(i) the candidate is duly
elected; or

(ii) the candidate is not
duly elected."."

34 By deleting subclause (7).

附件

《2006 年行政長官選舉及立法會選舉(綜合
修訂)條例草案》

委員會審議階段

由政制事務局局長動議的修正案

條次

建議修正案

- 3 在建議的第 3(2A)條中，在中文文本中，刪去“委任”而代以“任命”。
- 17 刪去該條而代以 —

“17. 選舉呈請的裁定

第 37(1)條現予廢除，代以 —

“(1) 凡有 —

- (a) 選舉呈請質疑某項第 26A 條適用的選舉，而在該選舉中選舉主任根據第 22(1AB)條宣布在該選舉中沒有選出候選人，則原訟法庭須就該選舉呈請作出裁定，判定 —
- (i) 該選舉中的唯一候選人妥為當選；或

(ii) 在該選舉中沒有選出候選人；

(b) 選舉呈請質疑某項選舉，而在該選舉中，有候選人被宣布為當選，則原訟法庭須就該選舉呈請作出裁定，判定 —

(i) 該候選人妥為當選；或

(ii) 該候選人並非妥為當選。” 。” 。

CHIEF EXECUTIVE ELECTION AND LEGISLATIVE COUNCIL ELECTION
(MISCELLANEOUS AMENDMENTS) BILL 2006

COMMITTEE STAGE

Amendments to be moved by the Honourable James TIEN Pei-chun, GBS, JP

Clause

Amendment Proposed

New

By adding immediately after Part 12 –

“PART 13

AMENDMENT CONCERNING SECTION 31 OF CHIEF

EXECUTIVE ELECTION ORDINANCE

49. Winning candidate to declare he is not a
member of political party

Section 31 of the Chief Executive Election
Ordinance (Cap.569) is repealed.”.

《2006年行政長官選舉及立法會選舉（綜合修訂）條例草案》

委員會審議階段

由田北俊議員動議的修正案

條次

建議修正案

新增

在第 12 部之後加入 —

“第 13 部

關於行政長官選舉條例第 31 條的修訂

49. 勝出的候選人須聲明他不是政黨的成員

廢除行政長官選舉條例第 31 條。”。

CHIEF EXECUTIVE ELECTION AND LEGISLATIVE COUNCIL ELECTION

(MISCELLANEOUS AMENDMENTS) BILL 2006

COMMITTEE STAGE

<u>Clause</u>	<u>Amendment Proposed</u>
New	<p>By adding—</p> <p>“8A. Manner of nomination</p> <p>(1) Section 16 (2)(a) is amended by repealing “subject to subsections (4) and (5)” and substituting “subject to subsections (4), (5) and (5A)”.</p> <p>(2) Section 16 is amended by adding—</p> <p style="padding-left: 40px;">“(5A) Where a new polling date is fixed in accordance with section 11 after the proceedings for the election are terminated under section 22(1AA) or 22(1AB), the nomination of a candidate shall be made by not less than 100 members and not more than 200 members of the Election Committee.”.”.</p>

CHIEF EXECUTIVE ELECTION AND LEGISLATIVE COUNCIL ELECTION

(MISCELLANEOUS AMENDMENTS) BILL 2006

COMMITTEE STAGE

<u>Clause</u>	<u>Amendment Proposed</u>
18	By adding “ (excluding the issue of whether the candidate who does not comply with section 31(1) can lawfully assume the office, which issue shall not be questioned in any such proceedings)”after “the Chief Executive”.