

Legislative Council Panel on Constitutional Affairs

**Subsidiary Legislation Relating to the
2007 District Council Election:
Ballot Papers, Financial Assistance Scheme and Other Aspects**

Introduction

This paper informs Members of the subsidiary legislation proposed to be made in preparation for the 2007 District Council (“DC”) election with regard to ballot papers, financial assistance scheme and other aspects.

Proposed Amendments to Subsidiary Legislation under the Electoral Affairs Commission Ordinance

2. To prepare for the 2007 DC election, it is proposed that the Electoral Affairs Commission (“EAC”) makes amendments to the following three regulations under the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”):

- (a) the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (Cap. 541M);
- (b) the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (Cap. 541N); and
- (c) the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F).

3. The scope of the proposed legislative amendments is outlined in the following paragraphs.

(a) *Printing of Names, Emblems and Photographs on Ballot Papers for the District Council Elections*

4. At the Panel meeting held on 18 December 2006, Members were informed of the EAC’s proposal to extend to DC elections the arrangement of allowing candidates to have certain specified particulars (such as personal

photographs or the names or emblems of prescribed bodies) printed on ballot papers. The proposal was generally supported by Members.

5. The arrangement was first implemented in the 2004 Legislative Council (“LegCo”) election. The Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (Cap. 541M), made by the EAC in December 2003, provides the legal basis for the implementation of the arrangement in LegCo elections. In order to extend the arrangement to DC elections, the EAC will amend Cap. 541M to extend its scope to cover the registration and the printing of the specified particulars on ballot papers for DC elections as well.

6. Under the existing Cap. 541M, an application for the registration of specified particulars with the EAC made on or before the cut-off date (i.e. 15 April) of an annual registration cycle (which coincides with a calendar year) will be processed by the EAC within that registration cycle. An application made after the cut-off date will be processed by the EAC in the next annual registration cycle. To allow sufficient time for relevant parties to register their particulars with the EAC for the purpose of the 2007 DC election, we propose to provide for an extension of the registration period in 2007. A one-off transitional provision will be provided in the amendment regulation to be made by the EAC so that any applications for registration received after 15 April 2007 (i.e. the normal cut-off date of an annual registration cycle) and up to 18 June 2007 (i.e. one month after the commencement of operation of the amendment regulation, as explained in paragraph 7 below) will be processed by the EAC in time for the 2007 DC election. Furthermore, names, abbreviations of names and emblems already registered with the EAC under the existing Cap. 541M in relation to LegCo elections will be deemed to have been registered in relation to both LegCo and DC elections.

7. The legislative amendments to be made by the EAC to Cap. 541M will be published in the Gazette on 23 March 2007 and tabled in LegCo on 28 March 2007. The amendment regulation is expected to come into operation on 18 May 2007 upon the completion of the negative vetting procedures by LegCo. This will allow adequate time for relevant parties to make applications for registration, and for EAC to process the applications in time for the 2007 DC elections.

(b) Financial Assistance Scheme for District Council Election Candidates

8. The District Councils (Amendment) Ordinance 2007 (the “Amendment Ordinance”), which was passed by the LegCo on 17 January 2007, provides the legal basis for the introduction of a financial assistance scheme for DC election candidates. Under the Amendment Ordinance, DC election candidates who are elected or who receive 5% of valid votes or more are eligible for financial assistance. The subsidy rate is set at \$10 per vote, and the amount of financial assistance payable to each candidate is capped at 50% of the actual election expenses of the candidate.

9. The Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (Cap. 541N) was made by the EAC in December 2003. It provides for the operational procedures of the financial assistance scheme for LegCo election candidates, which was first implemented in the 2004 LegCo election. The EAC will make amendments to Cap. 541N to set out the operational procedures of the scheme for DC election candidates in the regulation.

10. The application and payment procedures of the financial assistance scheme for DC election candidates will be basically the same as that of the existing scheme for LegCo election candidates. The only difference is that a DC election candidate will not be required to submit an auditor’s report on the accounts in his election return when making the claim.¹ To safeguard public expenditure, the Registration and Electoral Office (“REO”) will endeavour to check whether the election returns submitted by the applicants comply with the relevant requirements. Where necessary, the REO will require the applicants to provide further information. For cases which require more in-depth checking, the REO will refer such cases to an outside audit firm for further checking. The Chief Electoral Officer will effect payment of financial assistance to the applicants concerned only after he is satisfied that the returns submitted by the applicants have set out accurately all the election expenses incurred by the applicants.

¹ Due to the considerable difference in the electorate size between a DC election constituency and a LegCo election constituency, the amount of financial assistance received by a DC election candidate will be much smaller than that received by a LegCo election candidate. If mandatory auditing requirement is imposed on the DC election candidates who apply for financial assistance, the auditing fee will take up a significant proportion of the financial assistance payable to each candidate. This will undermine the objective of the scheme. In view of this, DC election candidates will not be required to submit auditor’s reports on their accounts of election expenses.

11. The drafting of the relevant amendment regulation, to be made by the EAC, is in progress. The amendment regulation is expected to be published in the Gazette and tabled in LegCo for negative vetting in May 2007.

(c) Miscellaneous Amendments to the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation

12. The Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) provides for the detailed electoral procedures of DC elections. To prepare for the 2007 DC election, the REO has reviewed Cap. 541F and identified certain provisions to which amendments will be required to tally, where appropriate, with those for other elections. The identified provisions are related to, among other things, electoral arrangements which facilitate the keeping of order within the polling station on polling day and the counting of votes, and the increase in penalty for unauthorised filming, photographing and audio/video recording within a polling station. Details of the main amendments, mostly technical in nature, are set out in **Annex**. REO is preparing the draft amendment regulation, which is expected to be published in the Gazette and tabled in LegCo for negative vetting in May 2007.

Advice Sought

13. Members are invited to note the legislative proposals relating to the 2007 DC election outlined in paragraphs 2 to 12 above.

Registration and Electoral Office
March 2007

Annex

Main Amendments to the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation

Revoking appointment of staff assisting in the conduct of elections

1. Make clear that the power of the Chief Electoral Officer (“CEO”) to appoint Presiding Officers (“PrOs”), Polling Officers (“POs”) and counting officers also includes the power to revoke the appointments if he considers the appointees no longer suitable to discharge the duties.

Polling stations

2. Provide that the PrO may not exclude, apart from POs, CEO, Returning Officers (ROs) and Assistant Returning Officers (AROs), etc, other public officers on duty at the polling stations from the polling stations.
3. Provide that in addition to a number of officers comprising ROs, AROs, PrOs, Deputy PrOs and Assistant PrOs, POs may also direct a person not to communicate with electors or use any device for electronic communication within a polling station.
4. Increase the penalty for unauthorized filming, photographing, audio/video recording within a polling station, in respect of imprisonment, from three months to six months.
5. Provide that in addition to the candidates and their election or counting agents, polling agents may also stay in the polling station while it is closed for the preparation of the counting of votes.

Counting of votes

6. Provide that candidates, their election or counting agents may inspect ballot papers which are clearly invalid by their nature (i.e. tendered, spoilt,

unused, unmarked ballot papers, ballot papers not marked with the “✓” chop or contains votes for more than one candidate), but are not entitled to make representations concerning such ballot papers.

7. Provide that, in addition to candidates and their election agents, counting agents may also inspect questionable ballot papers and make representations to the PROs.

Secrecy of vote

8. Increase the penalty for violation of secrecy of vote, in respect of imprisonment, from three months to six months.