

立法會

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Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper gives an account of the discussions of the Panel on Constitutional Affairs ("the CA Panel") relating to the various proposed changes to electoral and related arrangements for returning the Chief Executive ("CE"), the Legislative Council ("LegCo") and District Council ("DC") members and Village Representatives ("VRs") including amendments to the election petition mechanism; the arrangement for sending joint promotional letters to electors; the financial assistance scheme and election expenses limit.

Background

Election petition mechanism

2. Under the LegCo Ordinance (Cap. 542) ("LCO"), an election petition in respect of a LegCo election may be lodged with the Court of First Instance ("CFI") of the High Court. Section 67(3) of LCO provides that the determination by CFI of an election petition against the result of a LegCo election is final.

3. In a judgment by the Court of Final Appeal ("CFA") on 13 December 2010, CFA declared that the finality provision in section 67(3) of LCO is unconstitutional and invalid as being inconsistent with Article 82 of the Basic Law ("BL") which provides that the power of final adjudication of the Hong Kong Special Administrative Region ("HKSAR") shall be vested in CFA. As such finality provisions are contained in the DC Ordinance (Cap. 547) ("DCO") and the VR Election Ordinance (Cap. 576) ("VREO"), the Administration has proposed to introduce a leap-frog mechanism (similar to the one contained in the CE Election Ordinance (Cap. 569) ("CEEEO")) to allow an appeal against the CFI's determination on an election petition under LCO, DCO and VREO to be

lodged to CFA direct, subject to leave being granted by the Appeal Committee of CFA.

Financial assistance scheme and election expenses limit

Financial assistance scheme for DC elections

4. Financial assistance for election candidates was first introduced in the 2004 LegCo election. The scheme was extended to DC election candidates from the 2007 DC election onwards. Under the existing arrangement, the subsidy rate for the financial assistance scheme for a candidate standing for a DC election is the lower of \$10 per vote times the number of valid votes received by candidates, or 50% of the declared election expenses.

5. As the LegCo (Amendment) Ordinance 2011 has revised the subsidy rate for the LegCo election from the lower of \$11 per vote or 50% of the declared election expenses to the lower of \$12 per vote or 50% of the election expenses limit provided that the subsidy amount does not exceed the amount of the declared election expenses of the lists of candidates or candidates, the Administration has proposed that the same revised arrangements should be adopted for the financial assistance for the 2011 DC election, i.e. the lower of \$12 per vote or 50% of the election expenses limit provided that the subsidy amount does not exceed the amount of the declared election expenses of a candidate.

Election expenses limit for DC elections

6. Under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), CE in Council is empowered to prescribe the maximum amount of election expenses which may be incurred by or on behalf of a candidate running for DC elections. As stipulated in the Maximum Amount of Election Expenses (DC Election) Regulation made under section 45 of ECICO, the current election expenses that can be incurred in respect of a candidate at a DC election is \$48,000.

Election expenses limit for the CE election

7. The current election expenses limit that can be incurred by a candidate for the CE election is \$9.5 million as stipulated in the Maximum Amount of Election Expenses (CE Election) Regulation (Cap. 554A).

Joint promotional letters to electors free of postage

8. The relevant provisions of LCO, DCO and CEEO specify that a validly

nominated candidate or a list of candidates of the LegCo, DC and EC subsector elections is entitled to send a letter free of postage to each elector/voter in the constituency or an EC subsector for which the candidate or list of candidates is nominated. LCO, DCO and CEEO provide that the letter must relate to the election concerned and must comply with all requirements and limitations prescribed by the regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).

9. During the scrutiny of the Legislative Council (Amendment) Bill 2010, some Members suggested that a list of candidates/candidate should be allowed to print in the same leaflet materials relating to the candidature of the lists of candidates or candidates from different geographical constituencies ("GCs") or functional constituencies ("FCs") and send the letter free of postage. The Administration undertook to consider the suggestion when formulating the practical electoral arrangements.

Relevant discussions by the CA Panel

10. The Administration consulted the CA Panel on its proposal to amend the appeal mechanism in relation to an election petition arising from the LegCo, DC and VR elections at its meeting on 17 January 2011. On 21 February 2011, the Administration briefed the CA Panel on its proposal for increasing the subsidy rate and the election expenses limit for the DC election. The CA Panel was briefed at its meeting on 18 April 2011 on the Administration's proposal for allowing lists of candidates of different constituencies and candidates of FC or EC subsectors with multiple seats to send their promotional letters to the same elector/voter free of postage. The Administration also briefed the CA Panel on its proposals for increasing the election expenses limit for the CE election and for further increasing the election expenses limit for the DC election on 18 April 2011. The relevant views expressed by members at these meetings are summarized in the following paragraphs.

Election petition mechanism

11. Some members supported the Administration's proposal to introduce a leap-frog mechanism to allow an appeal against the CFI's determination on an election petition under LCO, DCO and VREO to be lodged to CFA direct (subject to leave being granted). They were of the view that there should be an efficient election petition mechanism in place to resolve election disputes expeditiously. These members considered that the proposed leap-frog appeal mechanism was consistent with BL 82 which provided that the power of final adjudication of HKSAR should be vested in CFA.

12. Some other members expressed reservations about the proposal. They were of the view that there was no pressing need to amend LCO given CFA had declared that the finality provision in section 67(3) of LCO which barred any further appeal from an election petition from CFI was unconstitutional and invalid, and the normal course of appeal would apply automatically to challenges to CFI's determination. These members queried the appropriateness of the proposed extension of the leap-frog appeal mechanism to DC and VR elections. They expressed concern that if all the appeals from the decision of CFI in election petitions could be lodged directly to CFA, the Court might need to handle a lot of cases within a short time. Some members also considered it inappropriate to propose a leap-frog appeal mechanism as it would deprive petitioners of the right to a normal appeal process. Furthermore, since legal aid did not cover election petition cases, it would be unfair to a petitioner if he or she could only appeal directly to CFA as the legal costs involved would be much higher than appeal to the Court of Appeal ("CA").

13. The Administration explained at that time that there was a pressing need to amend the respective provisions in LCO, DCO and VREO in relation to the election petition mechanism in the light of the CFA's judgment. Since CFA had declared that the finality provision contained in section 67(3) of LCO was invalid as being inconsistent with BL 82 which provided that the power of final adjudication of HKSAR should be vested in CFA, it would be prudent to propose suitable amendments to section 67(3) of LCO to stipulate unequivocally the election petition mechanism. A finality provision in identical terms was contained in DCO and VREO, and there were petition cases in progress in respect of the DC election. For the avoidance of doubt, it would be appropriate to propose amendments to these two ordinances.

14. The Administration further advised at that time that it was aware that the DC and VR elections were not constitutional elections. However, as a result of the amendments to the electoral methods for the CE and LegCo elections in 2012, the constitutional importance of DC members would grow considerably. According to the LegCo (Amendment) Bill 2010, only elected DC members were eligible to nominate candidates and be nominated as candidates for the five new DC FC seats and the original DC FC seat of LegCo. According to the CE (Amendment) Bill 2010, elected DC members would return 117 out of the 1 200 members of EC which was responsible for electing CE. As regards VRs, they might be eligible to run for the LegCo Heung Yee Kuk ("HYK") FC seats and the EC HYK subsector seats. The Administration considered it necessary to ensure that the election petition mechanism under DCO and VREO could allow a speedy determination of appeals from such election petitions. A leap-frog appeal mechanism should, therefore, also be put in place for DC and VR elections. The Administration assured members that it would seriously

consider members' views about providing for a petitioner's right to decide on whether to apply for a leap-frog appeal to CFA.

15. Members may wish to note that CA declared in a judgment on 1 March 2011 that the finality provision contained in section 55(3) of DCO is unconstitutional and invalid following the decision of CFA on 13 December 2010.

Financial assistance scheme and election expenses limit

Financial assistance scheme and election expenses limit for DC elections

16. When the Administration briefed the CA Panel on 21 February 2011 of its proposal for increasing the election expenses limit for the DC election to be held in November 2011 from \$48,000 to \$53,000, members were advised that it had taken into account the forecast inflation rate of 11% from 2008 to 2011. On 18 April 2011, the Administration advised that in the 2011-2012 Budget announced on 23 February 2011, the forecast inflation rate for 2011 was 4.5%, which was higher than its previous assumption of a trend inflation rate of 3%. As the cumulative inflation rate from 2008 to 2011 had been revised to 12% (instead of 11%), the Administration proposed to increase the election expenses limit accordingly by 12% to \$53,800 (rounded up to the nearest hundred).

17. Members in general were supportive of the Administration's proposal for increasing the subsidy rate for the DC election to the lower of \$12 per vote or 50% of the election expenses limit provided that the subsidy amount did not exceed the amount of the declared election expenses of a candidate, but they had diverse views on the proposed increase in the election expenses limit for the DC election. While some members considered that the election expenses limit should be adjusted upward so as to better reflect the anticipated inflation, some other members expressed reservations about the proposed increase of the limit, saying that it would put the less well-off candidates at a disadvantage. Another member took the view that setting election expenses limit would hinder democratic development and suggested that the Administration should relax the existing restrictions on the election expenses limit to encourage candidates from the business sector and professional sectors to participate in elections.

18. The Administration advised that the proposed increase in the election expenses limit had taken into account the spending pattern of candidates in the 2007 DC election and of those in the six recent DC by-elections, and the forecast cumulative inflation. While the Administration respected members' diverse views on setting election expenses limits, it considered that there should be a set of electoral arrangements in place to prevent unfairness in an election. The Administration considered that the election expenses limits in Hong Kong

were set at a reasonable rather than a high level so that electioneering activities of resourceful political parties would not overshadow those of the smaller political parties and independent candidates. The Administration stressed that candidates were free to spend as much or as little as they wished.

Election expenses limit for the CE election

19. Some members expressed support for the Administration's proposal for increasing the election expenses limit for the CE election from \$9.5 million to \$13 million. They were of the view that the election expenses limit had not been revised in the last 10 years and the amount must be sufficient for candidates to publicize their election platform to the public at large. Some other members expressed reservations about the proposal. Given that the CE election had a small size of electorate (1 200 EC members), the election expenses incurred for the last CE-elect was \$8.36 million and the increase in CCPI from 2000 to 2012 was only 12.8%, these members considered that the scale of the proposed increase was too large.

20. The Administration advised that the proposed increase of the election expenses limit would provide sufficient resources to enable the CE candidates not only to solicit support from members of EC, but also to publicize and explain their election platform to the public at large and to conduct the necessary canvassing activities both territory-wide and at district level. Estimation of the election expenses limit included expenses for setting up an election office, employing campaign staff, hiring professional services, conducting policy research and publicity and promotion. The detailed calculations and estimates as provided by the Administration are set out in **Appendix I**. The Administration further explained that the CE Election (Amendment) Ordinance 2011 had amended the voting system for the CE election to the effect that a candidate shall only be elected if he or she obtained more than 600 valid votes, instead of the previous provision of half of the total number of valid votes cast. Hence, CE candidates would have to enhance their canvassing activities.

Joint promotional letters to electors free of postage

21. When the Administration briefed the CA Panel at its meeting on 18 April 2011 on its proposal for allowing lists of candidates of different constituencies and candidates of FC or EC subsectors with multiple seats to send their promotional letters to the same elector/voter free of postage, members in general supported the proposal. Some members enquired whether lists of candidates/candidates of different constituencies were allowed to jointly send one promotional letter free of postage to their electors.

22. The Administration advised that the proposal would only apply to a list of candidates in a GC and a list of candidates in the DC (second) FC; candidates in the Labour FC which had three seats; and candidates standing for election in the same EC subsector, which had multiple number of seats (ranging from 16 seats to 60 seats). The Administration further explained that the proposal should not cover elections at which lists of candidates/candidates of different constituencies would have different electors/voters, such as candidates of different GCs, candidates of different FCs and candidates of different EC subsectors.

Relevant documents

23. A list of the relevant papers available on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
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Detailed Estimation of the Election Expenses Limit for the Chief Executive Election

Expenses	Estimated amount (\$ million as at November 2001) (as a % of the total limit)	Estimation in 2001	Latest estimation
1. Expenses for setting up an election office	1.2 (13%)	<p>Assuming that a Grade A office of 400 m² 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 the 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>	<p>Assuming that a Grade A office of 400 m² in Central / Sheung Wan / Wan Chai / Causeway Bay is rented for a period of five months. Details are as follows -</p> <p>As at December 2010, average rental for Grade A office in Central : \$776 m²</p> <p>As at December 2010, average rental for Grade A office in Sheung Wan : \$692 m²</p> <p>As at December 2010, average rental for Grade A office in Wan Chai/Causeway Bay : \$557 m²</p> <p>Recommended average rental level : $(776 + 692 + 557) / 3 = \\675 m^2</p> <p>Estimated space required : 400 m²</p> <p>Estimated rental for five months : \$1.35 million</p> <p>Overhead expenses (e.g. management fee and charges for water and electricity)(estimated to be 20% of the rental) : \$270,000</p> <p>One-off expenses for setting up and winding down the election office (e.g. decoration)(estimated to be 20% of rental) : \$270,000</p> <p>Total : \$1.89 million</p>

Expenses	Estimated amount (\$ million as at November 2001) (as a % of the total limit)	Estimation in 2001	Latest estimation
2. 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>	<p>Taking into account the expansion of the Election Committee and the need for conducting publicity at the district level, one more senior staff and four more supporting staff are needed. Details are as follows -</p> <p>Salary for the campaign manager (1) : \$70,000 / month</p> <p>Salary for each senior staff (5 in total) : \$50,000 / month</p> <p>Salary for each supporting staff (14 in total) : \$8,000 / month</p> <p>Salary expenses for five months : \$2,160,000</p> <p>Contract gratuity and fringe benefits (estimated to be 30% of salary) : \$648,000</p> <p>Cumulative rate of change in CCPI in 2012 over 2000 : + 12.8%</p> <p>Total : 3,167,424 (say \$3.17 million)</p>

Expenses	Estimated amount (\$ million as at November 2001) (as a % of the total limit)	Estimation in 2001	Latest estimation
3. Professional services	1.5 (16%)	Assuming that \$1.5 million is required for engaging PR consultancy and seeking legal opinion.	To raise the estimate by \$150,000 in addition to the original estimate of \$1.5 million required, in order to enable the CE candidates to hire PR consultancy and to seek legal opinion for the conduct of publicity in all the 18 districts. Cumulative rate of change in CCPI in 2012 over 2000 : + 12.8% Total : \$1,861,200 (say \$1.86 million)
4. Policy research	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 research : 5 Total : \$1.5 million	To raise the estimate by \$150,000 in additional to the original estimate of \$1.5 million required, in order to enable the CE candidates to conduct opinion surveys and hold focus group discussions to analyse Government policies and election platform from the perspective of districts, as well as to deploy canvassing resources on publicity at district level. Cumulative rate of change in CCPI in 2012 over 2000 : + 12.8% Total : \$1,861,200 (say \$1.86 million)

Expenses	Estimated amount (\$ million as at November 2001) (as a % of the total limit)	Estimation in 2001	Latest estimation
5. Publicity and Promotion	3 (31%)	<p>Details are as follows -</p> <p>Sending publicity materials to each household/unit under the Hong Kong Post Circular Service (including postage and printing cost) : \$2.5 million</p> <p>Posters, banners, hand bills etc (including production and printing costs) : \$250,000</p> <p>Election advertisements (e.g. through newspaper) : \$250,000</p> <p>Total : \$3 million</p>	<p>Details are as follows -</p> <p>Incorporating the cumulative rate of change in CCPI in 2012 over 2000 (12.8%) into the original \$2.5 million for sending publicity materials to each household/unit under the Hong Kong Post Circular Service (including postage and printing cost) : \$2.82 million</p> <p>Incorporating the cumulative rate of change in CCPI in 2012 over 2000 (12.8%) into the original \$250,000 for posters, banners, hand bills etc (including production and printing cost) : \$282,000 (say \$280,000)</p> <p>Incorporating the cumulative rate of change in CCPI in 2012 over 2000 (12.8%) into the original \$250,000 for election advertisements (e.g. through newspaper) : \$282,000 (say \$280,000)</p> <p>To conduct territory-wide election meetings (e.g. electioneering functions or launching ceremony of the election campaign) and to conduct district-level election meetings (e.g. bus parades, forums) : \$1 million</p> <p>Total : \$4.38 million</p>
Total		\$9.5 million	13.16 million

Appendix II

Relevant papers on Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	17.1.2011 (Item III)	Agenda
	21.2.2011 (Item III)	Agenda
Legislative Council	2.3.2011	Report of the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and the Legislative Council (Amendment) Bill 2010
CA Panel	18.4.2011 (Item III)	Agenda

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