

政制及內地事務局
政府總部



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT
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來函檔號 Your Ref.: LS/B/13/10-11

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8 June 2011

Mr Arthur Cheung
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Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Cheung,

Electoral Legislation (Miscellaneous Amendments) Bill 2011

Thank you for your letter dated 25 May 2011 on the captioned.
Our responses are set out as follows-

- (a) The proposed section 65(2) of the Legislative Council Ordinance (LCO) (Cap. 542) stipulates that notice of a motion for the purpose of an application for leave to appeal to the Court of Final Appeal under section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) must be filed within seven working days after the date of the judgment of the Court of First Instance to be appealed from, and the applicant must give the opposite party three days' notice of his or her intended application at any time during the period of seven working days.

At the Bills Committee meeting held on 4 June 2011, we have proposed to extend the relevant appeal period from seven working days to 14 working days. This provides a sufficient timeframe for an applicant to give the opposite party three days' notice of his or her intended application during the period.

- (b) When an incumbent Member who was determined by the Court of First Instance as not duly elected and lodged an appeal to the Court of Final Appeal, he could still act as a Member pursuant to the proposed sections 70A and 72(1A).

The consideration for the proposed sections is that we have to wait until the Court of Final Appeal makes a final determination as to whether the Member is duly elected. However, if the Member concerned withdraws the appeal, the Court of First Instance's determination in respect of his or her case shall stand and thus he will cease to be a Member on the date when he withdraws the appeal.

Section 70 of the LCO provides that when a respondent other than a Returning Officer withdraws from election proceedings, the respondent could be substituted. If the respondent intends not to oppose an election petition, any person who could have lodged an election petition may apply to the Court of First Instance to be substituted as a respondent to oppose the election petition.


We note that under the Chief Executive Election Ordinance (CEEO), there is no equivalent provision as section 70 of the LCO and it does not provide for a mechanism to withdraw from election petition proceedings and a substitution mechanism. When formulating the proposed leap-frog appeal mechanism for election petitions arising from the Legislative Council election, District Council election and Village Representative election, we have drawn reference to this point in the leap-frog appeal mechanism in the CEEO.

Given the absence of similar provision in the leap-frog appeal mechanism of the CEEO, we consider it inappropriate to provide for a substitution mechanism during the appeal stage.

- (c) Section 43(1) of the LCO provides that one letter, addressed to each elector for the Geographical Constituency (GC) for which a list of candidates is validly nominated, may be sent free of postage by or on behalf of the list of candidates. Section 43(2) provides that one letter, addressed to each person who is an elector for the Functional Constituency (FC) for which a candidate is validly nominated may be sent free of postage by or on behalf of the candidates. As provided in the proposed sections 43 (4A), (4B) and (4C), a letter may now contain information on (a) a list of GC candidates and a list of District Council (second) Functional Constituency (DC (second) FC) candidates; or (b) a candidate of the Labour FC and any other candidate of the Labour FC.

The proposed section 43(4D) specifies that when a letter contains information of any candidate or lists of candidates under subsections (4A), (4B) or (4C), it is not to be regarded for the purpose of sections 43(1) and 43(2) as being sent by or on behalf of that candidate or list of candidates. For instance, a letter sent by a list of GC candidates containing information of a list of DC (second) FC candidates should only be regarded as a letter sent by the list of GC candidates. This is to ensure that a list of GC candidates, a list of DC (second) FC candidates, and a candidate of the Labour FC can send a letter free of postage without contravening sections 43(1) and 43(2) of the LCO even if the information on the list of candidates/candidate concerned is already included in a letter sent free of postage by another candidate under the proposed sections 43(4A), (4B) or (4C).

Yours sincerely,



(Ms Anne Teng)

for Secretary for Constitutional and Mainland Affairs

c.c. Clerk to Bills Committee

(Fax: 2509 9055)