

**Bills Committee on  
Electoral Legislation (Miscellaneous Amendments) Bill 2011**

**Committee Stage Amendments**

**Introduction**

At the meeting of the Bills Committee on 4 June 2011, the Administration briefed Members on its proposal to introduce a de minimis arrangement for handling election returns (“ERs”) with minor errors or omissions. This paper sets out the detailed legislative proposals to be included as Committee Stage Amendments (“CSAs”) to the Electoral Legislation (Miscellaneous Amendments) Bill 2011.

**Proposal**

2. Under section 37(1) and 37(2)(b) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”), each candidate at an election must lodge with the appropriate authority an ER setting out the candidate’s election expenses at the election and all election donations received by or behalf of the candidate in connection with the election. The candidate must ensure that the return is accompanied by an invoice and a receipt, a copy of the receipt, or an explanation as the case may be specified under the provision.

3. We propose to add a new section 37A after section 37 of the ECICO in order to implement the de minimis arrangement for handling ERs with minor errors or omissions. The new section applies to any error or false statement in an ER lodged by a candidate the nature of which is -

- (a) a failure to set out any election expense or any election donation that does not exceed the limit prescribed in the Schedule<sup>1</sup> for the election; and
- (b) incorrectness in the amount of any election expense or any

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<sup>1</sup> A new Schedule will be added to the ECICO to specify the de minimis limits of different elections.

election donation and the correction of which requires an adjustment not exceeding the limit prescribed in the Schedule for the election.

The new section 37A does not apply to the situation under which the aggregate value of those errors or false statements specified in 3(a) and 3(b) above exceed the limit prescribed in the Schedule for the election concerned.

4. A candidate may lodge with the appropriate authority a copy of the ER which is marked with the necessary revision to have the error or false statement corrected subject to the following conditions-

- (a) A candidate may not lodge a copy of the revised ER if the aggregate amount of election expenses incurred exceeds the maximum amount of election expenses prescribed for a candidate for a particular election;
- (b) A copy of the revised ER lodged by the candidate is of no effect unless-
  - (i) it is lodged within 30 days after the date on which the candidate is notified of the error or false statement in the ER;
  - (ii) if the nature of the error or false statement is a failure to set out an election expense or donation, it is accompanied by an invoice and a receipt, a copy of receipt or an explanation as the case may be; and
  - (iii) it is accompanied by a declaration verifying the contents of the copy of the ER.

5. A candidate or list of candidates may only revise the ER once in respect of an election. The revised ER may not be withdrawn or amended after it has been lodged.

6. If the Independent Commission Against Corruption (“ICAC”) has received complaints or intelligence indicating that a candidate may

have made a statement that he knows or ought to know is materially false or misleading which amounts to corrupt conduct under section 20 of the ECICO, the ICAC will conduct investigation into this case despite the de minimis arrangement set out in paragraphs 3-5 above. The rectifications of the ERs under the de minimis arrangement will not exempt the candidate or list of candidates from being investigated or subsequently prosecuted under the ECICO in such circumstances. Moreover, the de minimis arrangement does not relieve the candidate or list of candidates from other offence provisions in the ECICO if the ER concerned has contravened any such provisions.

### **Advice sought**

7. The draft CSAs are set out at the **Annex**. Members' views are sought on the above proposals and the draft CSAs.

Constitutional and Mainland Affairs Bureau  
June 2011



**Division 2**

**Amendment to Elections (Corrupt and Illegal Conduct)  
Ordinance (Cap. 554)**

**37B. Section 20 amended (Corrupt conduct to lodge false or misleading election return)**

Section 20—

**Repeal**

everything after “section 37”

**Substitute**

“or a copy of an election return lodged under section 37A, makes a statement that the candidate knows or ought to know is materially false or misleading whether or not the statement is the subject of a correction effected under section 37A.”.

**37C. Section 37A added**

After section 37—

**Add**

**“37A. Relief for minor errors etc. in election return**

(1) Subject to subsection (2), this section applies to—

(a) any error or false statement in an election return lodged by a candidate the nature of which is a failure to set out in the election return any election expense of the candidate at the election concerned or any election donation received by or on behalf of the candidate in connection with the election—

(i) that is required under section 37 to be set out in the election return; and

(ii) that does not exceed the limit prescribed in the Schedule for the election; and

(b) any error or false statement in

an election return lodged by a candidate—

- (i) the nature of which is incorrectness in the amount of any election expense of the candidate at the election concerned or any election donation received by or on behalf of the candidate in connection with the election; and
- (ii) the correction of which requires an adjustment not exceeding the limit prescribed in the Schedule for the election in that amount.

(2) If—

- (a) there are 2 or more errors or false statements in an election return; and
- (b) the aggregate value of those errors or false statements exceeds the limit prescribed in the Schedule for the election concerned,

this section does not apply to the errors or false statements.

(3) For the purposes of subsection (2), the value of an error or false statement is—

- (a) if the nature of the error or false statement is a failure to set out an election expense or election donation, the amount of the election expense or election donation;
- (b) if the nature of the error or false statement is incorrectness in the amount of an election expense or election donation, the extent, in monetary terms, of the adjustment required to correct the error or false statement.

- (4) Despite section 37, if this section applies to any error or false statement in an election return lodged by a candidate, the candidate may lodge, subject to subsections (5) and (6), with the appropriate authority a copy of the election return which is marked with the necessary revision to have the error or false statement corrected.
- (5) A candidate may not lodge a copy of an election return in relation to an election under subsection (4) if the aggregate amount of election expenses incurred at or in connection with the election by or on behalf of the candidate exceeds the maximum amount of election expenses prescribed for a candidate by regulations in force under section 45.
- (6) A copy of an election return lodged under subsection (4) by a candidate is of no effect unless—
  - (a) it is lodged within 30 days after the date on which the candidate receives a notice from the appropriate authority relating to the error or false statement in the election return;
  - (b) if the nature of the error or false statement is a failure to set out an election expense or election donation in the election return, it is accompanied by—
    - (i) (in the case of an election expense) an invoice and a receipt; or
    - (ii) (in the case of an election donation) a copy of a receipt and, if applicable, an explanation,  
required under section 37(2)(b) had the election expense or election donation been set out in the election return; and
  - (c) it is accompanied by a

declaration by the candidate in a form provided or specified by the appropriate authority verifying the contents of the copy of the election return.

- (7) For the purposes of subsection (6), an invoice and a receipt for an election expense may be included in the same document.
- (8) On the receipt under subsection (4) by an appropriate authority of a copy of an election return which is marked with any revision described in that subsection—
  - (a) the revision is deemed, except for the purposes of section 20, to have been made in the election return before the election return was lodged; and
  - (b) an invoice, a receipt, a copy of a receipt or an explanation (if any) accompanying the copy is deemed, except for the purposes of section 20, to have accompanied the election return when the election return was lodged.
- (9) A group of candidates or a candidate who is not one of a group of candidates may only lodge one copy of an election return under subsection (4) in respect of an election.
- (10) A copy of an election return may not be withdrawn or amended after it has been lodged under subsection (4).
- (11) The Chief Executive in Council may by order amend the Schedule.
- (12) In this section, a reference to an error or false statement in an election return includes—
  - (a) an error or false statement in any document accompanying the election return; or
  - (b) a failure to send any document required by section 37(2)(b) in relation to the election return.”.

**37D. Section 41 amended (Appropriate authority to keep election returns)**

(1) Section 41(1)—

**Repeal**

everything after “of the”

**Substitute**

“authority—

(a) all election returns lodged with the authority under section 37; and

(b) all copies of election returns lodged with the authority under section 37A.”.

(2) Section 41(2)—

**Repeal**

Everything after “copies of the”

**Substitute**

“documents kept under subsection (1) are made available for inspection by any person who, during the authority’s business hours, asks to inspect any of the documents.”.

(3) Section 41(3)—

**Repeal**

“an election return or part of a return kept under this section”

**Substitute**

“a document or part of a document kept under subsection (1)”.

(4) Section 41(5)—

**Repeal**

“election returns lodged with the authority to be destroyed, but if, by the end of that period, a candidate who has lodged an election return”

**Substitute**

“documents kept by the authority under subsection (1) to be destroyed, but if, during

that period, a candidate who has lodged any of the documents”.

(5) Section 41(6)—

**Repeal**

“an election return lodged with the appropriate authority, is the period beginning with the time when the return”

**Substitute**

“a document lodged with the appropriate authority, is the period beginning with the time when the document”.

**37E. Schedule added**

After section 49—

	“Schedule	[section 37A]
<u>Item</u>	<u>Election</u>	<u>Limit</u>
1.	An election to elect the Chief Executive	\$5,000
2.	An election to elect a member or members of the Legislative Council for the District Council (second) functional constituency within the meaning of the Legislative Council Ordinance (Cap. 542)	\$5,000
3.	An election to elect a member or members of the Legislative Council for any geographical constituency within the meaning of the Legislative Council Ordinance (Cap. 542)	\$3,000
4.	An election to elect a member or members of the Legislative Council for any functional constituency within the meaning of the Legislative Council Ordinance (Cap. 542) other than the District Council (second) functional constituency	\$500
5.	An election to elect a member or members of the Election Committee	\$500
6.	An election to elect a member or members of a District Council	\$500
7.	An election to elect a member or members of the Heung Yee Kuk	\$200

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|----|--|---------|
| 8. | An election to elect the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee | \$200   |
| 9. | An election to elect a Village Representative  | \$200”. |

**Division 3**

**Amendment to Electronic Transactions (Exclusion) Order  
(Cap. 553 sub. leg. B)**

**37F. Schedule 1 amended (Provisions Excluded from application of section 5 of Ordinance)**

Schedule 1, item 64, in the 3rd column—

**Repeal**

“Section 37(1) and (2)”

**Substitute**

“Sections 37(1) and (2) and 37A(2) and (3)”.