

立法會
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Paper for the House Committee meeting on 24 June 2011

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

Purpose

This paper reports on the deliberations of the Bills Committee Electoral Legislation (Miscellaneous Amendments) Bill 2011 ("the Bills Committee").

Background

Election petition mechanism

2. Under the Legislative Council ("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 is final. Such finality provision is also found in section 55(3) of the District Councils Ordinance (Cap. 547) ("DCO") and section 45(3) of the Village Representative ("VR") Election Ordinance (Cap. 576) ("VREO").

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. On 1 March 2011, the Court of Appeal ("CA") declared in a judgment that the finality provision contained in section 55(3) of DCO is unconstitutional and invalid following the decision of CFA.

Financial assistance scheme and election expenses limit

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. 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.

6. Under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), the Chief Executive ("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 (Cap. 554C) made under section 45 of ECICO, the current election expenses that can be incurred by or on behalf of a candidate at a DC election is \$48,000.

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 the CE Election Ordinance (Cap. 569) ("CEEEO") specify that a validly nominated candidate or a list of candidates of the LegCo, DC and Election Committee ("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 CEEEO 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 proposed that lists of candidates/candidates of different constituencies should be allowed to print their campaign materials in the same promotional letter to be sent free of postage, so as to enable political parties to enhance the campaign publicity for their lists of candidates/candidates at the same election and to economize on paper.

Objects of the Bill

10. The Bill seeks to introduce various changes to electoral and related arrangements for returning CE, LegCo Members, DC members and VRs.

The Bills Committee

11. At the House Committee meeting on 6 May 2011, Members formed a bills committee to study the Bill. Mr TAM Yiu-chung and Mr Jeffrey LAM were elected as Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

12. The Bills Committee has held six meetings to study the Bill and received views from organizations and individuals at one of these meetings. The names of organizations and individuals that/who have submitted views to the Bills Committee are in **Appendix II**.

Deliberations of the Bills Committee

Election petition mechanism

13. The Bill amends LCO, DCO and VREO to provide for an appeal mechanism under which a party to an election petition concerning a LegCo election, DC election or VR election may lodge an appeal to CFA against the determination of the petition by CFI, subject to leave being granted by the Appeal Committee of CFA. The application for leave to appeal must be made within seven working days of the handing down of the CFI's judgment.

14. The Administration has explained to the Bills Committee that in view of the judgment by CFA on 13 December 2010, which declared that the finality provision in section 67(3) of LCO was unconstitutional and invalid as being inconsistent with BL 82, and a judgment by CA on 1 March 2011 which also declared that the finality provision contained in section 55(3) of DCO was unconstitutional and invalid, the Administration has proposed to amend LCO, DCO and VREO to institute a leap-frog appeal mechanism, which allowed an appeal against the decision of CFI in relation to an election petition arising from the LegCo, DC and VR elections to be lodged to CFA direct, subject to leave being granted by the Appeal Committee of CFA. The Administration has consulted the Judiciary on the proposed leap-frog appeal mechanism and the Judiciary has no objection to the proposal.

15. At the Bills Committee's request, the Administration has provided a comparison of the procedures under the finality provision (i.e. the determination

of an election petition arising from a LegCo election, DC election or VR election by CFI is final) with the procedures under the proposed leap-frog appeal mechanism contained in the Bill (i.e. an appeal against the decision of CFI in relation to a LegCo, DC or VR election (including a by-election) can be lodged to CFA direct, subject to leave being granted by the Appeal Committee of CFA).

16. Some members including Ms Emily LAU and Mr IP Kwok-him are supportive of putting in place a mechanism for speedy resolution of election petitions in relation to elections of LegCo, DC and VRs.

17. Some other members including Dr Margaret NG and Ms Audrey EU, however, are of the view that it is not appropriate to introduce the leap-frog appeal mechanism in respect of election petitions arising from the above-mentioned elections, particularly for the VR elections, on the following grounds -

- (a) strict conditions have been set out in section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) ("CFAO") regarding granting of leave for appeal and CFA as the final appellate court should hear appeals only if a point of law of great general or public importance is involved; and
- (b) as the majority of election petitions involve disputes over facts in respect of election misconduct, it is not appropriate for CFA to examine cases involving such disputes without their being heard by CA.

These members have stressed that there is insufficient justification for the Administration's proposal. They have pointed out that when hearing and determining appeals, CFA is constituted by five judges, namely, the Chief Justice, three permanent judges, and one non-permanent Hong Kong judge or one non-permanent common law judge. They are concerned that as election petitions have to be disposed of expeditiously, the proposal would increase the caseload of CFA and affect adversely its handling of other cases.

18. In response to Ms Emily LAU's enquiry on how important was the need for the proposed leap-frog appeal mechanism, the Administration has reiterated that appeals against the determination of election petitions by CFI should be lodged to CFA direct with a view to achieving speedy resolution of disputes in relation to the constitution of LegCo and DC as well as the office of VR. This leap-frog appeal mechanism would help minimize the period of uncertainty faced by individual LegCo Members, DC members and VRs who are subject to election

petitions, and would also help alleviate the constituents' feeling of uncertainty towards their representatives.

19. The Administration has also explained that the leap-frog appeal mechanism is proposed for election petitions arising from a VR election because VRs play an important role in elections of constitutional significance. It is necessary for petitions questioning the VR elections to be resolved as quickly as possible for the benefit of not just the rural community, but also for VRs to participate in returning the relevant LegCo and EC subsector seats.

20. Ms Audrey EU has requested the Administration to elaborate on how CFA would exercise its discretion in determining whether to allow an appeal in relation to an election petition. Dr Margaret NG has also asked whether the Administration would provide any guidance or objective criteria which CFA must take into account in the exercise of its discretion.

21. According to the Administration, section 22(1)(c)(i) of CFAO provides that an appeal shall lie to CFA at the discretion of CFA from a CFI's determination under section 37(1) of the CEEO. The Administration takes the view that it is not appropriate to set restrictions on the exercise of discretion by CFA because it is necessary for CFA to consider all relevant factors.

22. Members note that the effect of CFI's determination is suspended until the expiry of the filing period for an appeal under the proposed section 70A. It is further provided that the person whose LegCo membership is questioned by the petition continues to be a Member even if CFI determines that he/she was not duly elected provided that an appeal has been lodged. Ms Audrey EU has requested the Administration to clarify the point in time in determining the status of that Member if he/she after having lodged the appeal subsequently withdraws the appeal.

23. The Administration has explained that when an incumbent Member who was determined by CFI as not duly elected and lodged an appeal to CFA, he could still act as a Member pursuant to the proposed sections 70A and 72(1A). The purpose of the proposed sections is to maintain the status quo until CFA makes a final determination as to whether the Member is duly elected. However, if the Member concerned withdraws the appeal, the CFI's determination in respect of the case shall stand and take effect and thus that Member would cease to be a Member when the appeal is withdrawn.

24. Some members have pointed out that since legal aid does not cover election petitions, 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 appealing to CA. They are concerned whether the Administration has assessed the financial implications of the proposed leap-frog appeal mechanism.

25. The Administration has advised that as the costs involved in an appeal would depend on the nature, length and complexity of the case, which in turn would determine the judicial and other resources that have to be put in, it is not feasible to generalize the costs under an appeal mechanism where there is leap-frogging and one where there is no leap-frogging.

26. Under the proposed leap-frog appeal mechanism for election petitions arising from the LegCo, DC and VR elections, an application for leave to appeal to CFA must be lodged within seven working days after the day on which the relevant CFI judgment is handed down. Noting that the Heung Yee Kuk and the Shatin Rural Committee have requested the Administration to consider extending the seven-working day appeal period to 14 working days, some members consider the request reasonable. They have also suggested that CFA should be given the discretion to extend the period for lodging an appeal application.

27. In response to members' view, the Administration has agreed to propose Committee Stage amendments ("CSAs") to extend the relevant period to 14 working days. According to the Administration, the consideration is to provide the aggrieved party with more time to consider whether an appeal should be lodged and to make preparations in case an appeal is to be lodged. Members have requested the Administration to clarify whether the proposed 14 working day period is to be counted from the date on which a verbal judgment is given or on which the written judgment is given, if CFI gives a verbal judgment first and the written judgment follows on a later date. The Administration has clarified that under the proposed section 67(3) of LCO, at the end of trial of an election petition, CFI must announce its determination by means of a written judgment. Thus, the judgment should be a written judgment. Similar arrangements would be applicable in respect of DC and VR elections.

28. Regarding whether CFA should be given the discretion to extend the period within which an application for leave to appeal shall be made, the Administration has advised that section 34(2) of CEEO provides that an application for leave to appeal to CFA shall be filed within seven working days after the day on which CFI's judgment on an election petition is handed down. There is no provision in CEEO empowering CFA to extend the period specified in section 34(2). Since the Administration has made reference to the leap-frog appeal mechanism in CEEO when drawing up the leap-frog mechanism for LCO, DCO and VREO, it is proposed to stick to the practice adopted in the CEEO.

Furthermore, as the Administration has already proposed to extend the appeal period from seven working days to 14 working days, the prospective appellant would have sufficient time to consider whether or not to lodge an appeal application.

29. Section 60J of LCO and section 60I of DCO stipulate that if an election petition is lodged, the Chief Electoral Officer must not make any payment of financial assistance until the determination, abandonment or termination of the election petition. Ms Emily LAU has queried whether it is fair to withhold the payment of financial assistance as the amount involved in respect of a geographical constituency ("GC") election is substantial and the time taken for an election petition to be disposed of could be very long.

30. The Administration has explained that disqualification from being a candidate in respect of an elected person is a ground to lodge election petitions under section 61 of LCO and section 49 of DCO. Such disqualification would result in ineligibility for financial assistance in both LCO and DCO. In the case of a traditional functional constituency ("FC") and DC, only the following candidates are eligible for financial assistance -

- (a) a candidate who is elected as a member; or
- (b) a candidate who is not elected as a member but who is *not a disqualified candidate*; and obtains at least 5% of the total number of valid votes cast in the constituency concerned.

As for a GC and DC (second) FC, there are similar requirements for eligibility for financial assistance, which include the requirement that at least one candidate on the list of candidates is not a disqualified candidate.

31. The Administration has further explained that in the case of a candidate for a contested LegCo or DC election, the amount of financial assistance payable will be \$12 per vote, or at 50% of the election expenses limit or the declared election expenses of a candidate, whichever is the lowest. If a petitioner lodges a petition on the ground of material irregularity in relation to the counting of votes at election, the court may recount the number of votes for all candidates of the constituency. It may affect the number of votes cast for each candidate/list of candidates and thus vary the amount of financial assistance payable. It may also affect the compliance with the requirement that the candidate or list of candidates can obtain at least 5% of the total number of valid votes cast. As financial assistance is paid out of general revenue (section 60G of LCO and section 60F of DCO), the Administration must exercise due care in administering the scheme

and not to give financial assistance until it is absolutely sure that the recipients are eligible.

32. The legal adviser to the Bills Committee has suggested to the Administration to consider simplifying the heading of the Chinese text of the proposed amended section 71 of LCO. While the Administration considers that the heading of the proposed provision accurately indicates the scope of the section and is clear, it has agreed to propose a CSA to amend the Chinese text of the heading from "被裁定並非妥為當選並不令作為失效" to "某人被判非妥為當選，不令其在位作為失效".

Candidates to send joint promotional letters to electors free of postage

33. The Bill amends section 43 of LCO to provide that a promotional letter sent by or on behalf of a list of GC candidates may contain information on a list of candidates nominated for the DC (second) FC, or vice versa; and to provide that a promotional letter sent by or on behalf of a candidate nominated for the Labour FC may contain information on another candidate nominated for that FC. Part 3 of the Bill also amends section 38(2) of the Schedule to CEEO to provide that a promotional letter sent by a candidate at an EC subsector election may contain information on any other candidate nominated for the same subsector.

34. While members in general welcome the Administration's proposal, they have suggested that the permissible arrangement under the proposed section 43(4A) and (4B) of LCO be further considered in order to facilitate the conduct of electioneering activities and political party development. Having considered members' views, the Administration has agreed to introduce CSAs to section 43(4A) and (4B) of LCO to the effect that -

- (a) a letter sent under section 43 by or on behalf of a list of candidates which is validly nominated for a GC may contain information on any other list/lists of candidates validly nominated for that GC;
- (b) a letter sent under section 43 by or on behalf of a list of candidates which is validly nominated for a GC may contain information on any other list/lists of candidates validly nominated for that GC and one single list of candidates which is validly nominated for the DC (second) FC; and
- (c) a letter sent under section 43 by or on behalf of a list of candidates which is validly nominated for the DC (second) FC may contain information on any list/lists of candidates validly nominated for one

single GC.

35. The Administration has stressed that the free postage to candidates is paid out of general revenue. While the Administration has refined its proposal for the sake of facilitating the participation of various political parties/groups in elections, it must also give due regard to the interests of individual candidates.

36. In response to members' enquiry about the entitlement to free postage, the Administration has explained that section 43(1) of LCO provides that **one** letter, addressed to each elector for 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 FC for which a candidate is validly nominated may be sent free of postage by or on behalf of the candidate. As provided in the proposed sections 43 (4A), (4B) and (4C) and the CSAs which amend sections 43(4A) and 43(4B), a letter may now contain information on candidates/list of candidates specified in paragraph 34(a)-(c) above; or 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 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).

37. Mr Paul TSE has queried whether information that can be added about other candidates in a free postage letter could include information detrimental to those other candidates. The Administration has advised that according to ECICO, a person, other than a candidate or a candidate's election expense agent, engages in illegal conduct at an election if the person incurs election expenses at or in connection with the election. The Administration has further clarified that any publicity material irrespective of whether the information contained therein is published for the purpose of promoting or prejudicing the election of a candidate should be regarded as an election advertisement ("EA") and the expenses incurred should be counted towards the election expenses of the candidates concerned.

The financial assistance scheme and election expenses limit for DC election

38. The Bill amends section 60D and Schedule 7 of DCO so that the amount payable as financial assistance to a candidate is the lowest of the following:

- (a) \$12 times the candidate's number of valid votes;
- (b) 50% of the maximum amount of election expenses that may be incurred under the Maximum Amount of Election Expenses (District Council Election) Regulation; and
- (c) the candidate's declared election expenses.

The Bill also amends the Maximum Amount of Election Expenses (DC Election) Regulation to adjust the election expenses limit for candidates at the DC elections. The amendment increases the limit from \$48,000 to \$53,800.

39. Ms Emily LAU is of the view that the Administration should further increase the financial assistance for DC election candidates to encourage more candidates to participate in the election.

40. The Administration has advised that the proposed increase in the subsidy rate for the DC election is in accordance with the subsidy rate for the LegCo 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. According to the election expenses declared by candidates in the 2007 DC election, 19.2% of the candidates spent more than 70% to 80% of the election expenses limit; 13.6% of the candidates spent more than 80% to 90% of the election expenses limit; and 5.6% of the candidates spent more than 90% of the election expenses limit. In other words, most of the candidates have spent less than 90% of the election expenses limit. Having regard to the spending pattern of candidates in the 2007 DC election, the Administration considers the proposed increase of the election expenses limit appropriate.

41. Mr Paul TSE considers the proposed election expenses limit of \$53,800 too low. He is of the view that the Administration should not only single out financial resources for regulation by setting election expenses limit as it would create unfairness to those candidates who have financial resources but inadequate time to carry out electioneering work by themselves. The fact that most of the candidates had spent less than 90% of the election expenses limit in the previous DC election is to allow for a safe margin, lest they would commit a criminal offence under ECICO.

42. The Administration has explained that in formulating the relevant electoral arrangements for elections, it has to ensure that elections would be conducted in a fair, just and open manner. The election expenses limit in Hong Kong is 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. According to the spending pattern of candidates in the 2007 DC election, about 60% of the candidates had spent less than 70% of the election expenses limit. Having regard to the findings and the forecast cumulative inflation, the Administration considers the proposed increase of the election expenses limit for the 2011 DC election from \$48,000 to \$53,800 appropriate.

43. Under section 37(1) and 37(2)(b) of ECICO, each candidate at an election must lodge with the appropriate authority an election return ("ER") setting out the candidate's election expenses at the election and all election donations received by or on behalf of the candidate in connection with the election. The candidate must ensure that the return is accompanied by the relevant invoices and receipts, and other information, as specified under the provisions.

44. The Administration has explained to the Bills Committee that some Members have expressed concern that under the existing arrangement, the Registration and Electoral Office is responsible for checking a candidate's ER and would refer any possible breach of ECICO, irrespective of how trivial it is, to the Independent Commission Against Corruption ("ICAC") for investigation. Candidates who are involved have to face considerable uncertainty as a result of the ICAC's investigation in such cases and some of them have to incur a fairly large amount of legal costs to seek an order from CFI to grant relief in certain circumstances if EAs do not meet certain requirements in the submission of ERs. These Members are also concerned that the investigation of the trivial breaches in relation to ERs under ECICO has diverted the ICAC's resources from dealing with more important and serious offences in other areas. They have strongly urged the Administration to put in place a special arrangement to deal with minor errors or omissions in ERs as soon as possible. After consideration of the strong views expressed by Members, the Administration has agreed to introduce CSAs to amend ECICO in order to implement a de minimis arrangement for handling ERs with minor errors or omissions. The Administration has explained that 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 (which will be added to ECICO to specify the de minimis limits of different

elections) for the election; and

- (b) incorrectness in the amount of any election expense or any 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 (a) and (b) above exceed the limit prescribed in the Schedule for the election concerned.

45. The Administration has further explained that 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; and
- (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.

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.

46. The Administration has stressed that if 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 ECICO, ICAC will conduct investigation into this case despite the de minimis arrangement. The rectifications of ERs under the de minimis arrangement will not exempt the candidate or list of candidates from being investigated or subsequently prosecuted under ECICO in such circumstances. Moreover, the de minimis arrangement does not relieve the candidate or list of candidates from other offence provisions in ECICO if the ER concerned has contravened any such provisions.

Election expenses limit for the CE election

47. The Bill amends the Maximum Amount of Election Expenses (Chief Executive Election) Regulation to adjust the election expenses limit at the CE election. The amendment increases the limit from \$9.5 million to \$13 million.

48. Ms Emily LAU considers the scale of the proposed increase too large and does not support the Administration's proposal. Dr Philip WONG, however, takes the view that the Administration should not cap the election expenses limit given that many overseas countries do not set any ceiling.

Name of a constituent in the education EC subsector

49. The Bill amends item 6 of Table 5 of section 2 of the Schedule to CEEO to reflect the change of name of a constituent of the education subsector.

50. Members note that as a constituent of the education subsector under EC has changed its name, it is necessary to reflect the change in the relevant provision of CEEO. The existing name of the organization in CEEO is Hong Chi Association – Hong Chi Pinehill Advanced Training Centre (匡智會 — 匡智松嶺青年訓練中心), which would be replaced by its new name, Hong Chi Association – Hong Chi Pinehill Integrated Vocational Training Centre (匡智會 — 匡智松嶺綜合職業訓練中心) in the relevant provision.

Committee Stage amendments

51. The CSAs to the Bill to be moved by the Administration are in **Appendix III**. The Bills Committee supports these CSAs.

Resumption of Second Reading debate

52. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bills at the Council meeting of 6 July 2011, subject to the moving of the CSAs by the Administration.

Advice sought

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

Council Business Division 2
Legislative Council Secretariat
23 June 2011

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

Membership list

Chairman	Hon TAM Yiu-chung, GBS, JP
Deputy Chairman	Hon Jeffrey LAM Kin-fung, SBS, JP
Members	Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, SBS, JP Hon LAU Kong-wah, JP Hon Miriam LAU Kin-ye, GBS, JP Hon Emily LAU Wai-hing, JP Hon Timothy FOK Tsun-ting, GBS, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon Vincent FANG Kang, SBS, JP Hon WONG Kwok-hing, MH Hon LEE Wing-tat Hon CHEUNG Hok-ming, GBS, JP Hon WONG Ting-kwong, BBS, JP Hon Cyd HO Sau-lan Dr Hon LAM Tai-fai, BBS, JP (up to 18 May 2011) Hon CHAN Kin-por, JP Dr Hon Priscilla LEUNG Mei-fun Hon WONG Kwok-kin, BBS Hon IP Kwok-him, GBS, JP Hon Paul TSE Wai-chun Dr Hon Samson TAM Wai-ho, JP Hon Alan LEONG Kah-kit, SC Hon WONG Yuk-man Total : 25 Members
Clerk	Miss Flora TAI
Legal Adviser	Mr Arthur CHEUNG
Date	18 May 2011

《 2011 年選舉法例(雜項修訂)條例草案 》委員會
Bills Committee on
Electoral Legislation (Miscellaneous Amendments) Bill 2011

曾向法案委員會表達意見的團體/個別人士名單
List of organizations/individuals which/who have
submitted views to the Bills Committee

<u>名稱</u>	<u>Name</u>
1. HK 重建關注組	HK Redevelopment Concern Group
2. 九龍城區居民聯會	九龍城區居民聯會
3. 大坑關注社	Tai Hang Concern Association
4. 屯動力	Tuen Mun Stay Goal
* 5. 市民陳小敏	CHAN Siu-man, a member of the public
6. 民主建港協進聯盟	Democratic Alliance for Betterment and Progress of Hong Kong
7. 沙田健青體育會	Sha Tin Kin Ching Sports Association
8. 油麻地居民權益關注會	Yau Ma Tei Concern for Resident Rights Association
* 9. 香港大律師公會	Hong Kong Bar Association
10. 香港東區各界協會	The Hong Kong Eastern District Community Association
11. 香港鰂魚涌居民協會有限公司	The Hong Kong Quarry Bay Residents' Association Limited
12. 梁燕萍小姐	Miss LEUNG Yin-ping
13. 深水埗南昌居民商戶聯會	Sham Shui Po Nam Cheong District Residents & Merchants Association
14. 陳國偉先生	Mr CHAN Kwok-wai
15. 陳鑑波先生	Mr CHAN Kam-bor
16. 逸東社區網絡協會	Yat Tung Community Network Association
17. 黃君達先生	Mr WONG Kwan-tat
18. 黃潤德先生	Mr WONG Yun-tak
19. 楊可琦先生	Mr YEUNG Ho-kei
* 20. 雷啟蓮女士	Ms LUI Kai-lin
21. 廖超華先生	Mr LIU Chiu-wa

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|-----|-----------|-------------------|
| 22. | 樂民新村居民協會 | 樂民新村居民協會 |
| 23. | 鄭國基先生 | Mr CHENG Kwok-kee |
| 24. | 關注太監權益總工會 | 關注太監權益總工會 |

* 只提交書面意見的團體/個別人士
Organizations/individuals which/who have submitted written views only

Draft

Electoral Legislation (Miscellaneous Amendments) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By adding “, 6A” after “Parts 2”.
New	By adding after clause 2— “2A. Section 36 amended (By-election to be held to fill vacancy in membership of Legislative Council) (1) Section 36(1)(d)— Repeal the full stop Substitute a semi-colon. (2) After section 36(1)(d)— Add “(e) if an appeal against a determination referred to in paragraph (d) is lodged to the Court of Final Appeal - (i) on the Court of Final Appeal’s making a determination under section 70B that a person whose election is questioned was not duly elected and that no other person was duly elected instead; or (ii) on the termination of the appeal proceedings in other

circumstances.”.

2B. Section 48 amended (who is entitled to vote at an election)

(1) Section 48(7)(a)—

Repeal

“or”.

(2) After Section 48(7)(a)—

Add

“(aa) preclude the Court of Final Appeal from making a determination under section 70B; or”.”.

New By adding after clause 4—

“4A. Section 60A amended (Interpretation: Part VIA)

Section 60A(1), definition of *elected as a Member*, after “or (2)”—

Add

“or 70B”.”.

5(3) In the proposed section 65(2), by deleting “7” where it twice appears and substituting “14”.

5(3) In the proposed section 65(2), by deleting “of the judgment of the Court to be appealed from” and substituting “on which the written judgment of the Court to be appealed from is handed down”.

8 In the proposed section 71, in the Chinese text, by deleting the section heading and substituting—

“71. 某人被判非妥為當選，不令其在位作為失效”。

8 In the proposed section 71, by deleting “of the determination” and substituting “on which the written judgment of the Court or the Court of Final Appeal, as the case may be, is handed down”.

9(1) In the proposed section 72(1)(b), by deleting “of the determination” and substituting “on which the written judgment of the Court is handed down”.

9(2) In the proposed section 72(1A), by deleting “subsection (3)” and substituting “subsections (3) and (5)”.

9 By adding after subclause (2)—

“(2A) Section 72(2)—

Repeal

“of the determination”

Substitute

“on which the written judgment of the Court is handed down”.”.

9(3) In the proposed section 72(3)(b), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

9(3) In the proposed section 72(4), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

9(3) By adding after the proposed section 72(4)—

“(5) If the Court determines that a person who was declared under section 58 as duly elected as a Member was not duly elected as a Member and the person lodges an appeal under section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) against the determination, the person—

(a) ceases, if a Notice of Withdrawal of Appeal under Rule 11 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) is filed in relation to the appeal, to be a Member on the date on which the Notice is filed; or

(b) ceases, if the appeal proceedings are terminated in other circumstances, to be a Member on the date on which the appeal proceedings are terminated,

and the determination of the Court against which the appeal is lodged stands from that date.

New By adding before clause 10—

“9A. Section 26 amended (When elected member’s office becomes vacant)

(1) Section 26(d)—

Repeal the full stop

Substitute

“; or”.

(2) After section 26(d)—

Add

“(e) if an appeal against a determination referred to in paragraph (d) is lodged to the Court of final Appeal –

(i) the Court of Final Appeal determines under section 58B that the member was not duly elected and that no other person was duly elected instead; or

(ii) the appeal proceedings are terminated in other circumstances.”.

9B. Section 29 amended (Who is entitled to vote at an election)

(1) Section 29(7)(a)—

Repeal

“or”.

(2) After section 29(7)(a)—

Add

“(aa) preclude the Court of Final Appeal from making a determination under section 58B; or”.”.

12(3) In the proposed section 53(2), by deleting “7” where it twice

appears and substituting “14”.

12(3) In the proposed section 53(2), by deleting “of the judgment of the Court to be appealed from” and substituting “on which the written judgment of the Court to be appealed from is handed down.”.

15 In the proposed section 59, in the Chinese text, by deleting the section heading and substituting—

“59. 某人被判非妥為當選，不令其在位作為失效”。

15 In the proposed section 59, by deleting “of the determination” and substituting “on which the written judgment of the Court or the Court of Final appeal, as the case may be, is handed down”.

16(1) In the proposed section 60(1)(b), by deleting “of the determination” and substituting “on which the written judgment of the Court is handed down”.

16(2) In the proposed section 60(1A), by deleting “subsection (3)” and substituting “subsections (3) and (5)”.

16 By adding after subclause (2)—
“(2A) Section 60(2)—

Repeal

“of the determination”

Substitute

“on which the written judgment of the Court is handed down”.

16(3) In the proposed section 60(3)(b), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

16(3) In the proposed section 60(4), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

16(3) By adding after the proposed section 60(4)—

“(5) If the Court determines that a person who was declared under section 46 as duly elected as an elected member was not duly elected as an election member and the person lodges an appeal under section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) against the determination, the person—

(a) ceases, if a Notice of Withdrawal of Appeal under Rule 11 of the Hong Kong

Court of Final Appeal Rules (Cap. 484 sub. leg. A) is filed in relation to the appeal, to be an elected member on the date on which the Notice is filed; or

- (b) ceases, if the appeal proceedings are terminated in other circumstances, to be an elected member on the date on which the appeal proceedings are terminated,

and the determination of the Court against which the appeal is lodged stands from that date.

New By adding after clause 16—

“16A. Section 60A amended (Interpretation: Part VA)

Section 60A(1), definition of *elected as an elected member*, after “or (2)”—

Add

“or 58B”.”.

New By adding before clause 17—

“17A. Section 13 amended (Who is entitled to vote at an election)

- (1) Section 13(3)(a)—

Repeal the full stop

Substitute

“; or”.

- (2) After section 13(3)(a)—

Add

“(aa) preclude the Court of final Appeal from making a determination under section 45B; or”.”.

19(3) In the proposed section 43(2), by deleting “7” where it twice appears and substituting “14”.

19(3) In the proposed section 43(2), by deleting “of the judgment of the Court to be appealed from” and substituting “on which the written judgment of the Court to be appealed from is handed down.”.

22 In the proposed section 49, in the Chinese text, by deleting the section heading and substituting—

“**49.** 某人被判非妥為當選，不令其在位作為失效”。

22 In the proposed section 49, by deleting “of the determination” and substituting “on which the written judgment of the Court or the Court of Final appeal, as the case may be, is handed down”.

23(1) In the proposed section 50(1)(b), by deleting “of the determination” and substituting “on which the written judgment of the Court is handed down”.

23(2) In the proposed section 50(1A), by deleting “subsection (3)” and

substituting “subsections (3) and (5)”.

23 By adding after subclause (2)—

“(2A) Section 50(2)—

Repeal

“of the determination”

Substitute

“on which the written judgment of the Court is handed down”.”.

23(3) In the proposed section 50(3)(b), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

23(3) In the proposed section 50(4), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

23(3) By adding after the proposed section 50(4)—

“(5) If the Court determines that a person who was declared under section 36 as duly elected as a Village Representative was not duly elected as a Village Representative and the person lodges an appeal under section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) against the

determination, the person—

- (a) ceases, if a Notice of Withdrawal of Appeal under Rule 11 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) is filed in relation to the appeal, to be a Village Representative on the date on which the Notice is filed; or
- (b) ceases, if the appeal proceedings are terminated in other circumstances, to be a Village Representative on the date on which the appeal proceedings are terminated,

and the determination of the Court against which the appeal is lodged stands from that date.

27

- (a) In the proposed section 43(4A), by deleting everything after “information” and substituting—
 - “on—
 - (a) any number of list of candidates which is also validly nominated for that geographical constituency;
 - (b) one single list of candidates which is validly nominated for the District Council (second) functional constituency; or
 - (c) one single list of candidates which is validly nominated for the District Council (second) functional constituency and any number of list of candidates which is also validly nominated for that geographical constituency.”.
- (b) In the proposed section 43(4B), by deleting “one single list

of candidates which is validly nominated for any” and substituting “any number of list of candidates which is validly nominated for one single”.

- (c) In the proposed section 43(4D), in the Chinese text, by deleting “如此”.

New By adding after Part 6—

“Part 6A

Amendments Relating to Minor Errors etc. in Election Return

Division 1

Enactments Amended

37A. Enactments Amended

The enactments specified in Divisions 2 and 3 are amended as set out in those divisions.

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 of 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	\$3,000

any geographical constituency within the meaning of the Legislative Council Ordinance (Cap. 542)

- | | | |
|----|---|---------|
| 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 |
| 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)”.