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**Subcommittee on Nine Amendment Regulations
made under the Electoral Affairs Commission Ordinance**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper gives a brief account of the discussions held by the Panel on Constitutional Affairs ("the CA Panel") on the proposed amendment to be made by the Electoral Affairs Commission ("EAC") to the subsidiary legislation under the EAC Ordinance (Cap. 541) on electoral procedures, voter registration and other practical arrangements to cater for the coming District Council ("DC"), Election Committee ("EC") subsector, Chief Executive ("CE") and Legislative Council ("LegCo") elections to be held in 2011 and 2012.

Background

Aligning or improving electoral procedures

2. According to the Administration, the Registration and Electoral Office ("REO") has reviewed the relevant subsidiary legislation which provide for the detailed electoral arrangements for the purpose of preparing for the 2011 DC Election, 2011 EC subsector Elections, 2012 CE Election and 2012 LegCo Election to be held during the period from November 2011 to September 2012. The review has identified areas where amendments to the relevant regulations would be required to align the electoral procedures of these elections and to fine-tune certain procedures in the light of the experience in previous elections.

Voting by electors in custody

3. Under the previous electoral legislation, the following three types of persons were, among others, disqualified from being registered as electors and from voting at elections of CE, LegCo Members, DC members, members of EC and village representatives ("VRs") -

- (a) persons who had been sentenced to death or imprisonment in Hong Kong or any other place and had not served the sentence or undergone any substituted punishment or received a free pardon;
- (b) persons who were serving a sentence of imprisonment; and
- (c) persons who were or had been convicted of certain election-related or bribery offences and election was to be held within three years after the conviction.

4. On 8 December 2008, the High Court delivered its judgment on three applications for judicial review (HCAL 79/2008, HCAL 82/2008 and HCAL 83/2008) which challenged the constitutionality of the provisions in the LegCo Ordinance (Cap. 542) disqualifying prisoners from being registered as electors and voting in the election of LegCo Members. The Court held that section 31(1)(a) and (b) and section 53(5)(a) and (b) of the LegCo Ordinance relating to registration as an elector and voting respectively contravene the right to vote constitutionally guaranteed under Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights.

5. The Voting by Imprisoned Persons Bill which sought to remove restrictions on (a) registration of the three types of persons (as set out in paragraph 3 above) as electors; and (b) voting by those persons at elections of CE, LegCo Members, DC members, members of EC and VRs was enacted on 24 June 2009.

6. In June 2009, five Amendment Regulations on electoral procedure were made by EAC under section 7 of the EAC Ordinance to make provisions for voting at the elections of CE, LegCo Members, DC members, members of EC and VRs by electors -

- (a) who are serving sentence of imprisonment;
- (b) detained by the Correctional Services Department ("CSD") on remand; and
- (c) otherwise detained by any law enforcement agency ("LEA") under any lawful authority

("electors in custody").

7. These Amendment Regulations on electoral procedure respectively have amended the corresponding principal Regulations for -

- (a) designating dedicated polling stations ("DPSs") in prisons or other suitable places such as police stations and making provisions for the supervision and regulation of the ballot at such DPSs;
- (b) designating ballot paper sorting stations ("BPSSs") for sorting ballot papers cast at DPSs;
- (c) prohibiting canvassing activities by visitors during visits made in their business or official capacities (for example, as Justice of the Peace, social worker or solicitor) to electors in custody;
- (d) empowering the relevant personnel including the Presiding Officer of a DPS and officers of CSD and other LEAs such as the Customs and Excise Department, the Hong Kong Police Force and the Immigration Department, to maintain order at DPSs;
- (e) providing special arrangements for observing the poll at DPSs so that -
 - (i) for DPSs situated inside maximum security prisons, only candidates may enter; and
 - (ii) for other DPSs situated in penal institutions, either a candidate, an election agent or a polling agent may enter while application to the Commissioner of Correctional Services is required for an election agent or a polling agent;
- (f) protecting the privacy of electors in custody and the secrecy of their votes cast at DPSs by -
 - (i) making disclosure of the identity of electors in custody by any person an offence;
 - (ii) using an envelope to enclose a DC or VR ballot paper whenever the ballot paper is required to be sorted in a BPSS; and
 - (iii) mixing of the ballot papers cast by electors in custody with those cast by other electors before the votes are counted.

The CE Election (Amendment) Ordinance 2011

8. The CE Election (Amendment) Bill 2010 which sought to increase the number of seats for each EC sector to 300, allocate the additional seats among

the EC subsectors and make changes in relation to DCs and Chinese medicine subsectors and other related matters was passed by LegCo on 3 March 2011. According to the CE Election (Amendment) Ordinance 2011, when the new term of EC commences from February 2012, 10 special member seats will be created temporarily in the fourth sector of EC to make up the difference of 10 seats until the number of LegCo seats increases from 60 to 70 in October 2012. Four special member seats will be allocated to members of the Chinese People's Political Consultative Conference, two to Heung Yee Kuk ("HYK"), two to Hong Kong and Kowloon DCs and two to New Territories DCs.

9. Amendments to the EAC (Registration) (Electors for LegCo functional constituencies ("FCs"))(Voters for EC Subsectors) (Members of EC) Regulation (Cap. 541B) have therefore been made to provide for the recording of the particulars of these special members and their removal at the expiry of their membership, and to provide a new notice of results of EC subsector election.

10. The CE Election (Amendment) Ordinance 2011 has also empowered the Electoral Registration Officer ("ERO") to amend the final registers of EC subsector voters and to arrange for the automatic registration of the newly elected DC members. Amendments to the EAC (Registration) (Electors for LegCo FCs) (Voters for EC Subsectors) (Members of EC) Regulation to enable the compilation and publication of the amended EC subsector final registers, and amendments to the Electoral Procedure (CE Election) Regulation (Cap. 541J) to reflect changes in the voting arrangements for CE elections have therefore been made.

The LegCo (Amendment) Ordinance 2011

11. The LegCo (Amendment) Bill 2010 which sought to enlarge LegCo by adding five geographical constituency ("GC") seats and creating a new DC Functional Constituency ("FC") (i.e. DC (second) FC) of five seats and to make other changes related to LegCo elections was passed on 5 March 2011. Registered electors for GCs will be registered as electors for the DC (second) FC. They can however choose not to be so registered. Registered electors for any FCs (other than the HYK, agriculture and fisheries, insurance, transport and the existing DC FC FCs) will be allowed to choose whether they would like to register in the new DC FC or remain in their respective FCs. According to the Administration, REO will send letters to these persons informing them that they may switch to the new DC FC by submitting written applications by a specified date.

12. The Administration informed the relevant Bills Committee that as a one-off transitional arrangement, ERO would prepare the first register of

electors for the DC (second) FC by using the 2011 GC final register as the basis, and deleting from it the electors of the existing FCs and those who elect not to be registered in the DC (second) FC. For any person who, according to the voter registration procedures, elects to be registered in the DC (second) FC during the 2012 voter registration cycle, and any elector of the existing FCs¹ who elects to be registered in the DC (second) FC, they would be included in the first register of electors for the DC (second) FC. ERO would put in place appropriate measures to tie in with the voter registration arrangements for the DC (second) FC.

13. The five new DC (second) FC seats will be returned from the whole of Hong Kong as a single constituency in accordance with the proportional representation list system. As the proportional representation list system under the current legislative framework only applies to GCs, amendments to the EAC (Nominations Advisory Committees (LegCo)) Regulation (Cap. 541C), EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D), Particulars Relating to Candidates on Ballot Papers (LegCo and DCs) Regulation (Cap. 541M) and EAC (Financial Assistance for LegCo Elections and DC Elections) (Application and Payment Procedure) Regulation (Cap. 541N) have been made.

Relevant discussions by the CA Panel

14. At the meeting of the CA Panel held on 18 March 2011, the Administration briefed members on the scope of the proposed amendments to be made by EAC to the subsidiary legislation under the EAC Ordinance on electoral procedures, voter registration and other practical arrangements to cater for the DC, EC Subsector, CE and LegCo elections to be held in 2011 and 2012. Relevant issues raised by members are summarized in the following paragraphs.

Submission of election materials

15. Some members considered it very inconvenient for candidates to submit hard copies of election advertisements ("EAs"), authorization letters, election returns, etc. and requested the Administration to facilitate candidates by accepting election materials transmitted electronically. They called on the Administration to develop an information technology system to cater for the electronic transmission of all types of election materials.

16. The Administration advised that the use of electronic means for the submission of election materials was being actively pursued. It was however

¹ Not applicable to HYK FC, agriculture and fisheries FC, insurance FC, transport FC and DC (first) FC.

necessary to resolve firstly the problems of printing EAs disseminated via social websites such as Facebook, blogs, etc. for public inspection.

Vote counting process

17. Members were of the view that the time taken in counting votes in previous elections was too long. They expressed concern that with the creation of the five new DC (second) FC seats, many electors would cast two votes in the coming LegCo election which would inevitably prolong the vote counting process. Members stressed the need to expedite the relevant process including the speeding up of the conversion of polling stations into counting stations.

18. The Administration advised that training would be provided to polling staff on the conversion of polling stations into counting stations. The staff concerned would rehearse the conversion process beforehand and would be advised to finish the process as quickly as possible.

Election expense return

19. Members expressed dissatisfaction with the existing mechanism for handling election complaints alleging technical and minor breaches of Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), particularly those cases involved insignificant excess amounts of election expenses incurred by candidates. Members were of the view that if the amount in dispute was minimal, it was obvious that no illegal conduct or corruption was involved and hence referral of these cases to Independent Commission Against Corruption ("ICAC") for investigation was unnecessary. Some members suggested that such minor irregularities should be exempted and a dedicated unit could be set up to handle election related complaints. Members strongly urged the Administration to introduce the necessary legislative amendments within the current legislative session with a view to effecting the proposed amendments for the upcoming elections in 2011.

20. The Administration explained that the return of election expense was governed by ECICO and ICAC was the enforcement agent of this Ordinance. The Administration would explore the feasibility of making special arrangements or providing exemptions for minor irregularities in relation to election expense return with ICAC and REO.

Polling hours

21. Some members were of the view that the polling hours which lasted for

15 hours (from 7:30 a.m. to 10:30 p.m.) of past elections were too long, as compared with many nearby countries or regions. While the proposal to shorten the polling hours was not well-received in the past on the grounds that some electors would prefer to vote after dinnertime, the public might be receptive to a moderate change in the polling hours. They called on the Administration to actively review the feasibility of shortening the polling hours.

22. The Administration advised that as there would be a substantial increase in the number of votes cast for the 2012 LegCo Election, the Administration would discuss with REO the time required for vote counting and review the duration of polling having regard to past experience. The Administration would also make reference to the experience in other places when conducting the review.

Relevant documents

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

Appendix

Relevant papers on Subcommittee on Nine Amendment Regulations made under the Electoral Affairs Commission Ordinance

Committee	Date of meeting	Paper
House Committee	19.6.09	Report of the Bills Committee on Voting by Imprisoned Persons Bill
	9.10.09	Report of the Subcommittee on Subsidiary Legislation Relating to Voting by Imprisoned Persons
	18.2.11	Report of the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010
Panel on Constitutional Affairs	18.3.2011 (Item IV)	Agenda
--	5.2011	Legislative Council Brief (REO ES/23/52)
--	19.5.2011	Legal Service Division Report (LC Paper No. LS60/10-11)