
Electoral Legislation (Miscellaneous Amendments) Ordinance 2011

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 18 OF 2011

L.S.

Donald TSANG
Chief Executive
14 July 2011

An Ordinance to amend various pieces of legislation to introduce changes to electoral and related arrangements for returning the Chief Executive and the Village Representatives and the formation of the Legislative Council and District Councils including allowing a party to an election petition concerning a Legislative Council election, District Council election or Village Representative election to lodge an appeal to the Court of Final Appeal against the determination of the petition by the Court of First Instance; allowing letters sent free of postage by several categories of candidates in a Legislative Council election and candidates in an Election Committee subsector election to contain information on certain other candidates; increasing the financial assistance to candidates in District Council elections; reflecting the change of the name of a constituent in a subsector of the Election Committee; to make technical adjustments as regards election expenses; and to make related and incidental amendments.

[15 July 2011]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Electoral Legislation (Miscellaneous Amendments) Ordinance 2011.
 - (2) This Part and Parts 2, 7 and 8 come into operation on the day on which this Ordinance is published in the Gazette.
 - (3) Parts 4 and 6 come into operation on 1 September 2011.
 - (4) Part 3 (except Divisions 2 and 4) and Part 5 come into operation on 25 September 2011.
 - (5) Divisions 2 and 4 of Part 3 come into operation on 1 June 2012.
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Part 2

Amendments Relating to Appeal in relation to Election Petitions

Division 1

Enactments Amended

2. Enactments amended

The enactments specified in Divisions 2 to 5 are amended as set out in those Divisions.

Division 2

Amendments to Legislative Council Ordinance (Cap. 542)

3. Section 36 amended (By-election to be held to fill vacancy in membership of Legislative Council)

(1) Section 36(1)(d), before “on the”—

Add

“subject to sections 70A and 72(1A),”.

(2) Section 36(1)(d)—

Repeal the full stop

Substitute a semicolon.

(3) 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.”.

4. 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”.

5. Section 56 amended (Election to be presumed to be valid)

Section 56—

Repeal

everything after “valid”

Substitute

“until—

- (a) the Court determines, on the hearing of an election petition, that the election is invalid; or
- (b) the Court of Final Appeal determines, on hearing an appeal against the Court's determination, that the election is invalid.”.

6. Section 58A added

After section 58—

Add

“58A. Candidate declared to be returned is presumed to be duly elected

Subject to section 72(1A), a person declared under section 58 as returned at an election is presumed to be duly elected until he or she is ruled by the Court or the Court of Final Appeal, on the determination of an election petition or appeal, as not duly elected.”.

7. Section 60A amended (Interpretation: Part VIA)

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

Add

“or 70B”.

8. Section 65 amended (Period within which election petition is to be lodged)

(1) Section 65, heading—

Repeal

“is to”

Substitute

“and appeal must”.

(2) Section 65—

Renumber the section as section 65(1).

(3) After section 65(1)—

Add

“(2) Despite section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), 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 that Ordinance must be filed within 14 working days after the date on which the written judgment of the Court to be appealed from is handed down, and the applicant must give the opposite party 3 days’ notice of his or her intended application at any time during the period of 14 working days.”.

9. Section 67 amended (Court to determine election petition)

(1) Section 67(3)—

Repeal

everything after “end of the”

Substitute

“trial of an election petition, the Court must announce its determination by means of a written judgment.”.

(2) Section 67—

Repeal subsection (4).

10. Sections 70A and 70B added

After section 70—

Add

“70A. Court’s determination of election petition suspended before deadline of appeal

The effect of the determination of the Court of an election petition is suspended until the expiry of the period within which notice of a motion for the purpose of an application for leave to appeal to the Court of Final Appeal against the determination may be filed under section 65(2).

70B. Court of Final Appeal's determination

At the end of the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal must—

- (a) determine—
 - (i) if the election petition relates to an election that was not contested—
 - (A) whether the decision of the Returning Officer as to the validity of the relevant nomination was correct; and
 - (B) if the decision was not correct, whether the person declared to have been elected in that election was or was not duly elected;
 - (ii) if the election petition relates to an election that was contested—
 - (A) whether the person whose election is questioned was or was not duly elected; and
 - (B) if the person was not duly elected, whether some other person was duly elected in place of the person; and
- (b) announce its determination by means of a written judgment.”.

11. Section 71 substituted

Section 71—

Repeal the section

Substitute

“71. Acts of person not invalid if determined not duly elected

If the Court or the Court of Final Appeal determines that a person who was originally declared to have been duly elected as a Member was not duly elected as a Member, the determination does not invalidate acts purporting to have been done by the person as a Member before the date on which the written judgment of the Court or the Court of Final Appeal, as the case may be, is handed down.”.

12. Section 72 amended (What is to happen if Member is determined not to have been duly elected)

(1) Section 72(1)—

Repeal

everything after “a person”

Substitute

“who was declared under section 58 as duly elected as a Member was not duly elected as a Member—

- (a) subject to subsection (1A) and section 70A, that person ceases to be a Member; and
- (b) subject to subsection (2), that person’s office as a Member becomes vacant from the date on which the written judgment of the Court is handed down.”.

(2) After section 72(1)—

Add

“(1A) If—

- (a) 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

(b) 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 continues, subject to subsections (3) and (5), to be a Member.”.

(3) Section 72(2), before “the first-mentioned person”—

Add

“subject to subsection (1A) and section 70A,”.

(4) Section 72(2)—

Repeal

“of the determination”

Substitute

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

(5) After section 72(2)—

Add

“(3) If, on the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal determines that a person who was declared under section 58 as duly elected as a Member was not duly elected as a Member—

(a) that person ceases to be a Member; and

(b) subject to subsection (4), that person’s office as a Member becomes vacant from the date on which the written judgment of the Court of Final Appeal is handed down.

(4) If, on the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal determines that a person was duly elected as a Member in place of a person that the

Court of Final Appeal has determined not to have been duly elected as a Member, the first-mentioned person becomes a Member from the date on which the written judgment of the Court of Final Appeal is handed down.

- (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 an application to withdraw an application for leave to appeal or an application to withdraw an appeal is made under rule 11 or 17 (as the case may be) of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) in relation to the appeal and an order is made by the Court of Final Appeal granting the application, to be a Member on the date on which the order is made by the Court of Final Appeal; 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.”.

Division 3

Amendments to District Councils Ordinance (Cap. 547)

- 13. Section 26 amended (When elected member’s office becomes vacant)**
- (1) Section 26(d), before “the Court”—

Add

“subject to sections 58A and 60(1A),”.

- (2) Section 26(d)—

Repeal the full stop

Substitute

“; or”.

- (3) 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.”.

14. 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”.

15. Section 44 amended (Election to be presumed to be valid)

Section 44—

Repeal

everything after “valid”

Substitute

“until—

- (a) the Court determines, on the hearing of an election petition, that the election is invalid; or
- (b) the Court of Final Appeal determines, on hearing an appeal against the Court’s determination, that the election is invalid.”.

16. Section 46A added

After section 46—

Add

“46A. Candidate declared to be returned is presumed to be duly elected

Subject to section 60(1A), a person declared under section 46 as returned at an election is presumed to be duly elected until he or she is ruled by the Court or the Court of Final Appeal, on the determination of an election petition or appeal, as not duly elected.”.

17. Section 53 amended (Period within which election petition is to be lodged)

- (1) Section 53, heading—

Repeal

“is to”

Substitute

“and appeal must”.

- (2) Section 53—

Renumber the section as section 53(1).

- (3) After section 53(1)—

Add

“(2) Despite section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), 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 that Ordinance must be filed within 14 working days after the date on which the written judgment of the Court to be appealed from is handed down, and the applicant must give the opposite party 3 days’ notice of his or her intended application at any time during the period of 14 working days.”.

18. Section 55 amended (Court to determine election petition)

- (1) Section 55(3)—

Repeal

everything after “end of the”

Substitute

“trial of an election petition, the Court must announce its determination by means of a written judgment.”.

- (2) Section 55—

Repeal subsection (4).

19. Sections 58A and 58B added

After section 58—

Add

“58A. Court’s determination of election petition suspended before deadline of appeal

The effect of the determination of the Court of an election petition is suspended until the expiry of the period within which notice of a motion for the purpose of an application for leave to appeal to the Court of Final Appeal against the determination may be filed under section 53(2).

58B. Court of Final Appeal’s determination

At the end of the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal must—

- (a) determine—
 - (i) if the election petition relates to an election that was not contested—
 - (A) whether the decision of the Returning Officer as to the validity of the relevant nomination was correct; and
 - (B) if the decision was not correct, whether the person declared to have been elected in that election was or was not duly elected;
 - (ii) if the election petition relates to an election that was contested—
 - (A) whether the person whose election is questioned was or was not duly elected; and
 - (B) if the person was not duly elected, whether some other person was duly elected in place of the person; and
- (b) announce its determination by means of a written judgment.”.

20. Section 59 substituted

Section 59—

Repeal the section

Substitute

“59. Acts of person not invalid if determined not duly elected

If the Court or the Court of Final Appeal determines that a person who was originally declared to have been duly elected as an elected member was not duly elected as an elected member, the determination does not invalidate acts purporting to have been done by the person as an elected member before the date on which the written judgment of the Court or the Court of Final Appeal, as the case may be, is handed down.”.

21. Section 60 amended (What is to happen if an elected member is determined not to have been duly elected)

(1) Section 60(1)—

Repeal

everything after “a person”

Substitute

“who was declared under section 46 as duly elected as an elected member was not duly elected as an elected member—

(a) subject to subsection (1A) and section 58A, that person ceases to be an elected member; and

(b) subject to subsection (2), that person’s office as an elected member becomes vacant from the date on which the written judgment of the Court is handed down.”.

(2) After section 60(1)—

Add

“(1A) If—

- (a) 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 elected member; and
- (b) 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 continues, subject to subsections (3) and (5), to be an elected member.”.

(3) Section 60(2), before “the first-mentioned person”—

Add

“subject to subsection (1A) and section 58A,”.

(4) Section 60(2)—

Repeal

“of the determination”

Substitute

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

(5) After section 60(2)—

Add

“(3) If, on the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal determines that a person who was declared under section 46 as duly elected as an elected member was not duly elected as an elected member—

- (a) that person ceases to be an elected member; and

- (b) subject to subsection (4), that person's office as an elected member becomes vacant from the date on which the written judgment of the Court of Final Appeal is handed down.
- (4) If, on the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal determines that a person was duly elected as an elected member in place of a person that the Court of Final Appeal has determined not to have been duly elected as an elected member, the first-mentioned person becomes an elected member from the date on which the written judgment of the Court of Final Appeal is handed down.
- (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 elected 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 an application to withdraw an application for leave to appeal or an application to withdraw an appeal is made under rule 11 or 17 (as the case may be) of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) in relation to the appeal and an order is made by the Court of Final Appeal granting the application, to be an elected member on the date on which the order is made by the Court of Final Appeal; 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.”.

22. Section 60A amended (Interpretation: Part VA)

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

Add

“or 58B”.

Division 4

**Amendments to Village Representative Election Ordinance
(Cap. 576)**

23. Section 13 amended (Who is entitled to vote at an election)

(1) Section 13(3)(a)—

Repeal

“or”.

(2) After section 13(3)(a)—

Add

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

24. Section 34 amended (Election to be presumed valid)

Section 34—

Repeal

everything after “valid”

Substitute

“until—

(a) the Court determines, on the hearing of an election petition, that the election is invalid; or

- (b) the Court of Final Appeal determines, on hearing an appeal against the Court's determination, that the election is invalid.”.

25. Section 36A added

After section 36—

Add

“36A. Candidate declared to be returned is presumed to be duly elected

Subject to section 50(1A), a person declared under section 36 as duly elected as a Village Representative is presumed to be duly elected until he or she is ruled by the Court or the Court of Final Appeal, on the determination of an election petition or appeal, as not duly elected as a Village Representative.”.

26. Section 43 amended (Period within which election petition is to be lodged)

- (1) Section 43, heading—

Repeal

“is to”

Substitute

“and appeal must”.

- (2) Section 43—

Renumber the section as section 43(1).

- (3) After section 43(1)—

Add

“(2) Despite section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), 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 that Ordinance must be filed within 14 working days after the date on which the written judgment of the Court to be appealed from is handed down, and the applicant must give the opposite party 3 days' notice of his or her intended application at any time during the period of 14 working days.”.

27. Section 45 amended (Court to determine election petition)

(1) Section 45(3)—

Repeal

everything after “end of the”

Substitute

“trial of an election petition, the Court must announce its determination by means of a written judgment.”.

(2) Section 45—

Repeal subsection (4).

28. Sections 45A and 45B added

After section 45—

Add

“45A. Court’s determination of election petition suspended before deadline of appeal

The effect of the determination of the Court of an election petition is suspended until the expiry of the period within which notice of a motion for the purpose of an application for leave to appeal to the Court of Final Appeal against the determination may be filed under section 43(2).

45B. Court of Final Appeal's determination

At the end of the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal must—

- (a) determine—
 - (i) if the election petition relates to an election that was not contested—
 - (A) whether the decision of the Returning Officer as to the validity of the relevant nomination was correct; and
 - (B) if the decision was not correct, whether the person declared to have been elected in that election was or was not duly elected;
 - (ii) if the election petition relates to an election that was contested—
 - (A) whether the person whose election is questioned was or was not duly elected; and
 - (B) if the person was not duly elected, whether some other person was duly elected in place of the person; and
- (b) announce its determination by means of a written judgment.”.

29. Section 49 substituted

Section 49—

Repeal the section

Substitute

“49. Acts of person not invalid if determined not duly elected

If the Court or the Court of Final Appeal determines that a person who was originally declared to have been duly elected as a Village Representative for a Village at an election was not duly elected as the Village Representative for the Village, the determination does not invalidate acts purporting to have been done by the person as the Village Representative for the Village before the date on which the written judgment of the Court or the Court of Final Appeal, as the case may be, is handed down.”.

30. Section 50 amended (What is to happen if a Village Representative is determined not duly elected)

(1) Section 50(1)—

Repeal

everything after “a person”

Substitute

“who was declared under section 36 as duly elected as a Village Representative was not duly elected as a Village Representative—

- (a) subject to subsection (1A) and section 45A, that person ceases to be a Village Representative; and
- (b) subject to subsection (2), that person’s office as a Village Representative becomes vacant from the date on which the written judgment of the Court is handed down.”.

(2) After section 50(1)—

Add

“(1A) If—

- (a) 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
 - (b) 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 continues, subject to subsections (3) and (5), to be a Village Representative.”.
- (3) Section 50(2), before “the first-mentioned person”—
Add
“subject to subsection (1A) and section 45A,”.
- (4) Section 50(2)—
Repeal
“of the determination”
Substitute
“on which the written judgment of the Court is handed down”.
- (5) After section 50(2)—
Add
“(3) If, on the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal 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—
 - (a) that person ceases to be a Village Representative; and

-
- (b) subject to subsection (4), that person's office as a Village Representative becomes vacant from the date on which the written judgment of the Court of Final Appeal is handed down.
- (4) If, on the hearing of an appeal against the determination of the Court of an election petition, the Court of Final Appeal determines that a person was duly elected as a Village Representative in place of a person that the Court of Final Appeal has determined not to have been duly elected as a Village Representative, the first-mentioned person becomes a Village Representative from the date on which the written judgment of the Court of Final Appeal is handed down.
- (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 an application to withdraw an application for leave to appeal or an application to withdraw an appeal is made under rule 11 or 17 (as the case may be) of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) in relation to the appeal and an order is made by the Court of Final Appeal granting the application, to be a Village Representative on the date on which the order is made by the Court of Final Appeal; 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.”.

Division 5

Amendments to Hong Kong Court of Final Appeal Ordinance (Cap. 484)

31. Part II, Division 2 heading amended

Part II, Division 2, heading—

Repeal

“Chief Executive”.

32. Section 22 amended (Civil appeals)

(1) Section 22(1)(c)(i)—

Repeal

“or”.

(2) Section 22(1)(c)(ii)—

Repeal

“Executive.”

Substitute

“Executive;”.

(3) After section 22(1)(c)(ii)—

Add

“(iii) a determination of the Court of First Instance under section 67 of the Legislative Council Ordinance (Cap. 542);

(iv) a judgment or order of the Court of First Instance in—

(A) an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); or

- (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 58 of the Legislative Council Ordinance (Cap. 542) as duly elected at an election can lawfully assume the office of a Member of the Legislative Council;
 - (v) a determination of the Court of First Instance under section 55 of the District Councils Ordinance (Cap. 547);
 - (vi) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 46 of the District Councils Ordinance (Cap. 547) as duly elected at an election can lawfully assume the office of the elected member of the District Council constituency concerned;
 - (vii) a determination of the Court of First Instance under section 45 of the Village Representative Election Ordinance (Cap. 576); or
 - (viii) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 36 of the Village Representative Election Ordinance (Cap. 576) as duly elected at an election can lawfully assume the office of the Village Representative for the village concerned.”.
-

Part 3

Amendments Relating to Promotional Letters Sent by Candidates

Division 1

Enactments Amended

33. Enactments amended

The enactments specified in Divisions 2 to 5 are amended as set out in those Divisions.

Division 2

Amendment to Legislative Council Ordinance (Cap. 542)

34. Section 43 amended (Candidates entitled to send letter to electors free of postage)

After section 43(4)—

Add

“(4A) A letter sent under this section by or on behalf of a list of candidates which is validly nominated for a geographical constituency may contain information 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.
- (4B) A letter sent under this section by or on behalf of a list of candidates which is validly nominated for the District Council (second) functional constituency may contain information on any number of list of candidates which is validly nominated for one single geographical constituency.
- (4C) A letter sent under this section by or on behalf of a candidate who is validly nominated for the Labour functional constituency may contain information on any other candidate who is also validly nominated for that constituency.
- (4D) A letter which contains information on any candidate or list of candidates under subsection (4A), (4B) or (4C) is not to be regarded, for the purposes of subsections (1) and (2), as being sent by or on behalf of that candidate or list of candidates.”.

Division 3

Amendment to Chief Executive Election Ordinance (Cap. 569)

35. Schedule, section 38 amended (Subsector candidates entitled to send letters to voters free of postage)

The Schedule, after section 38(2)—

Add

- “(2A) A letter sent under subsection (1) by a candidate who is validly nominated at a subsector election—

- (a) may contain information on any other candidate who is also validly nominated at that election; and
- (b) is, if it contains any information mentioned in paragraph (a), not to be regarded, for the purposes of subsection (1), as being sent by that other candidate.”.

Division 4

Amendment to Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D)

- 36. Section 101A amended (Letters that may be sent free of postage by candidates)**

Section 101A(1)(b), before “contain”—

Add

“subject to section 43(4A), (4B) and (4C) of the Legislative Council Ordinance (Cap. 542),”.

Division 5

Amendment to Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I)

- 37. Section 99 amended (Letters that may be sent free of postage by candidates)**

Section 99(1)(b), before “contain”—

Add

Electoral Legislation (Miscellaneous Amendments) Ordinance 2011

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Part 3—Division 5

Section 37

Ord. No. 18 of 2011

“subject to section 38(2A) of the Schedule to the Chief Executive Election Ordinance (Cap. 569),”.

Part 4

Amendments Relating to Financial Assistance to Candidates in District Council Election

38. District Councils Ordinance amended

The District Councils Ordinance (Cap. 547) is amended as set out in sections 39 and 40.

39. Section 60D amended (Amount payable as financial assistance)

(1) Section 60D(1)—

Repeal

“lower”

Substitute

“lowest”.

(2) Section 60D(1)—

Repeal paragraph (b)

Substitute

“(b) 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate under section 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554 sub. leg. C);

(c) the declared election expenses of the candidate.”.

(3) Section 60D(2)—

Repeal

“lower”

Substitute

“lowest”.

(4) Section 60D(2)—

Repeal paragraph (b)

Substitute

“(b) 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate under section 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554 sub. leg. C);

(c) the declared election expenses of the candidate.”.

40. Schedule 7 amended (Financial assistance: specified rate)

Schedule 7—

Repeal

“\$10”

Substitute

“\$12”.

Part 5

Amendment Relating to Election Expenses Limit for Chief Executive Election

41. Maximum Amount of Election Expenses (Chief Executive Election) Regulation amended

The Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554 sub. leg. A) is amended as set out in section 42.

42. Section 2 amended (Maximum amount of election expenses)

Section 2—

Repeal

“\$9,500,000”

Substitute

“\$13,000,000”.

Part 6

Amendment Relating to Election Expenses Limit for District Council Election

43. Maximum Amount of Election Expenses (District Council Election) Regulation amended

The Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554 sub. leg. C) is amended as set out in section 44.

44. Section 3 amended (Maximum amount of election expenses)

Section 3—

Repeal

“\$48,000”

Substitute

“\$53,800”.

Part 7

Amendments Relating to Minor Errors etc. in Election Return

Division 1

Enactments Amended

45. Enactments amended

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

Division 2

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

46. 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.”.

47. 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.”.

48. 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”.

49. Schedule added

After section 49—

Add**“Schedule**

[s. 37A]

**Limit Prescribed for Election Concerned for
Purposes of Section 37A**

Item	Election	Limit
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

Item	Election	Limit
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)

50. Schedule 1 amended (Provisions Excluded from application of section 5 of Ordinance)

Schedule 1, item 64, column 3—

Repeal

“Section 37(1) and (2)”

Substitute

“Sections 37(1) and (2) and 37A(4) and (6)”.

Part 8

Amendment Relating to Constituent in Education Subsector of Election Committee

51. Chief Executive Election Ordinance amended

The Chief Executive Election Ordinance (Cap. 569) is amended as set out in section 52.

52. Schedule, section 2 amended (How Election Committee is to be constituted)

The Schedule, section 2, Table 5, item 6, column 3, paragraph (4)—

Repeal subparagraph (d)

Substitute

“(d) Hong Chi Association—Hong Chi Pinehill Integrated Vocational Training Centre;”.