

Legislative Council Panel on Constitutional Affairs

**Amendments to subsidiary legislation
under the Electoral Affairs Commission Ordinance on
electoral procedures, voter registration and practical arrangements
for the elections in 2011 and 2012**

Purpose

This paper briefs Members of the scope of proposed amendments 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 subsector (“ECSS”), Chief Executive (“CE”) and Legislative Council (“LegCo”) elections to be held in 2011 and 2012.

Background

2. To prepare for the 2011 DC Election, 2011 ECSS Elections, 2012 CE Election and 2012 LegCo Election to be held during the period from November 2011 to September 2012, the Registration and Electoral Office (“REO”) has reviewed the relevant subsidiary legislation which provide for the detailed electoral arrangements. The review has identified areas where amendments to these 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.

3. In June 2009, five pieces of subsidiary legislation under Cap. 541 were amended to introduce electoral procedures to facilitate electors in custody to vote in the DC, ECSS, CE, LegCo and village representative (“VR”) elections. With the experience gained in the 2010 LegCo By-election, it is proposed to refine the relevant electoral procedures.

4. The CE Election (Amendment) Bill 2010 and the LegCo (Amendment) Bill 2010 were passed by the LegCo on 3 and 5 March 2011 respectively. Consequential amendments have to be made to the relevant subsidiary legislation relating to the ECSS, CE and LegCo elections.

Scope of Proposed Amendments

Amendments to align or improve electoral procedures

5. Amendments to the following four pieces of subsidiary legislation under the EAC Ordinance are proposed with a view to fine-tuning or making the electoral procedures among elections consistent with each other:

- (a) the EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D);
- (b) the EAC (Electoral Procedure) (DCs) Regulation (Cap. 541F);
- (c) the EAC (Electoral Procedure) (EC) Regulation (Cap. 541I);
and
- (d) the Electoral Procedure (CE Election) Regulation (Cap. 541J).

6. The main proposed amendments are set out below:

- (a) achieving consistency and removing possible ambiguity in the wording of relevant provisions on the means of serving a copy of authorization of an election expense agent and the notice of revocation of such authorization, i.e, by delivery by hand, by post or by facsimile transmission;
- (b) allowing the Returning Officer (“RO”) in the ECSS elections to display, through the Presiding Officer (“PRO”), a revised notice of the no canvassing zone and/or no staying zone at or

near the polling station if the zones have been varied after the display of the notice of the zones on the polling day. This is to align with the existing provisions for the DC, CE and LegCo elections;

- (c) clarifying that in a DC election where the RO has terminated an election proceeding under section 40(1) of the District Councils Ordinance (Cap. 547) upon proof of the death or the disqualification of a candidate given to him on the date of the election and before the close of polling, in directing that the poll be abandoned, such proof would not need to be given to the RO again (the same amendment has been introduced for the LegCo elections);
- (d) empowering the EAC to specify the form for candidates in the DC, ECSS and CE elections to lodge election expense return under section 37 of the Election (Corrupt and Illegal Conduct) Ordinance (Cap. 554), so that there will be a clear legal basis for the Chief Electoral Officer (“CEO”) to collect the personal particulars of the donors of election donations and to make available such personal particulars for public inspection (such authority has been given to the EAC in respect of the LegCo elections);
- (e) clarifying that before displaying an election advertisement (“EA”) for the DC, ECSS and CE elections in the form of a bill or poster within the meaning of section 104E of the Public Health and Municipal Services Ordinance (Cap. 132), the candidate must deposit with the RO a copy of the permission or other authorization obtained for the purposes of section 104A(1) of that Ordinance, but such requirement would not apply to the distribution or otherwise use of an EA (the same amendment has been introduced for the LegCo elections);
- (f) allowing the candidates of the DC, ECSS, CE and LegCo elections to submit, in the manner and format specified by the EAC, a declaration and a copy of electronic EA to the

RO electronically; and

- (g) empowering the PROs in the DC and LegCo elections to adjourn the count of votes at their respective counting stations if the count is likely to be obstructed, disrupted, undermined or seriously affected by a specified occurrence¹ (the PROs already have the authority to adjourn the poll at their respective polling stations).

Amendments to refine the voting arrangements for electors in custody

7. Amendments to Cap. 541D, Cap. 541F, Cap. 541I, Cap. 541J and the Electoral Procedure (VR Election) Regulation (Cap. 541L) are proposed to refine the voting arrangements for electors in custody. The main amendments are set out below:

- (a) empowering the CEO to obtain the prisoner registration number of the electors in custody of the Correctional Services Department (“CSD”) to facilitate both the CEO and CSD to make voting arrangements for those electors;
- (b) allowing the CSD to use sound amplifying system or device in the no canvassing zone of a dedicated polling station (“DPS”) in a prison, which usually covers the whole prison, so that CSD’s daily operation will not be unduly disrupted;
- (c) requiring the PRO of a DPS to display inside, rather than outside, the DPS the notice of death or disqualification of a validly nominated candidate before the date of election and a list of the names of the polling officers, so that the information can be read by the electors in custody;
- (d) allowing the notice of revoking the appointment of a polling agent of a DPS in a prison to reach the CEO (for the CE,

¹ According to relevant provisions in Cap. 541D and Cap. 541F, the occurrences refer to a typhoon or other climatic condition of a serious nature; riot, open violence or other occurrence of public danger; or an occurrence which appears to the PRO to be a material irregularity relating to the election, the poll or count.

ECSS and LegCo elections) or the RO (for the DC elections), rather than the PRO, in order to minimize the inconvenience caused to the candidates since DPSs in prisons are normally located in remote areas;

- (e) allowing the PROs of DPSs in the DC and VR elections to prepare ballot paper account only for constituencies / villages / Rural Committees in respect of which ballot papers have been issued, in order to streamline the work procedures at the close of poll; and
- (f) speeding up the sorting process in the ballot paper sorting stations for the LegCo, DC and VR elections, so that the first step is to sort the ballot papers or envelopes containing the ballot papers according to each constituency / village (rather than to count and record the number of ballot papers or envelopes containing ballot papers in each ballot box).

Amendments consequential to the CE Election (Amendment) Ordinance 2011

8. Consequential amendments to the EAC (Registration) (Electors for LegCo Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B), Cap. 541I and Cap. 541J should be made in order to tie in with the CE Election (Amendment) Bill 2010 passed by the LegCo on 3 March 2011. The main amendments are set out in the following paragraphs.

Registration arrangements for special members

9. The CE Election (Amendment) Ordinance 2011 has added a new section 2A to the Schedule to the CE Election Ordinance (Cap. 569) to create 10 special member seats temporarily from February 2012 when the new term of EC commences until the number of LegCo seats increases from 60 to 70 upon commencement of the fifth term of the LegCo. Consequential amendments to Cap. 541B are required to provide for recording the particulars of the special members in the registers of the EC and removing such particulars when their term of

office expires. Cap. 541I should also be amended to add a new notice of result of the ECSS election form to cater for the election of these special members.

Compilation of ECSS Final Registers

10. The amended section 14 of the Schedule to Cap. 569 empowers the Electoral Registration Officer (“ERO”) to amend the final registers of ECSS voters and to arrange for automatic registration of the newly elected DC members after the DC election in November 2011. Consequential amendments to Cap. 541B are required to provide for the compilation and publication of the amended ECSS final registers accordingly.

Validity of a nomination in respect of newly-elected DC members

11. The new section 18B of the Schedule to Cap. 569 provides that if a person is newly elected as a DC member (and subsequently registered in the relevant DC subsector), it would not affect the nominations that person made earlier in the non-DC subsectors. The new section 18C of the Schedule to Cap. 569 provides that a newly elected DC member may only be nominated in one subsector for election. Consequential amendments to section 13 of Cap. 541I on the determination of the validity of a nomination are required to include the references to the newly added sections.

Voting arrangement for the CE Election

12. The CE Election (Amendment) Ordinance 2011 has also amended or added the following provisions in Cap. 569:

- (a) sections 26A and 27 so that a candidate shall only be elected as the CE if the candidate obtains more than 600 valid votes under an election with one candidate only and a contested election respectively;
- (b) new section 22(3) to provide that after the required voting process, if no candidate can obtain more than 600 valid votes,

the election will be terminated; and

- (c) section 27(2) so that where there are two candidates in the election or two candidates remain after the elimination of all other candidates, a single round of voting² must be conducted for the two candidates.

Consequential amendments to Cap. 541J are required to tie in with the changes and references above.

Amendments consequential to the LegCo (Amendment) Ordinance 2011

13. Consequential amendments to the EAC (Registration of Electors)(LegCo Geographical Constituencies)(DC Constituencies) Regulation (Cap. 541A), Cap. 541B, the EAC (Nominations Advisory Committees (LegCo)) Regulation (Cap. 541C), Cap. 541D, the Particulars Relating to Candidates on Ballot Papers (LegCo and DCs) Regulation (Cap. 541M) and the EAC (Financial Assistance for LegCo Elections and DC Elections)(Application and Payment Procedure) Regulations (Cap. 541N) are proposed to tie in with the LegCo (Amendment) Bill 2010 passed by the LegCo on 5 March 2011. The main amendments are set out in the following paragraphs.

Proportional representation list system for DC(second)FC candidates

14. The LegCo (Amendment) Ordinance 2011 has provided for the establishment of the DC(second) FC under which 5 seats will be returned from the whole Hong Kong Special Administrative Region as a single constituency in accordance with the proportional representation list system.

15. At present, in Cap. 541C, Cap. 541D, Cap. 541M and Cap. 541N, the proportional representation list system is only applicable to geographical constituency (“GC”) election, and nomination as candidates for FC election is entirely done on an individual basis. With the

² In the past, as many rounds of voting as may be necessary shall be conducted for the two candidates until one of them is returned.

amendment made to Cap. 542 outlined above, the interpretation of an FC candidate, nomination form, LegCo candidate, list of LegCo candidates, etc. in Cap. 541C, Cap. 541D, Cap. 541M and Cap. 541N have to be amended to cater for the adoption of proportional representation list system for the DC(second) FC.

16. Consequential amendments are also required for Cap. 541D to provide that the candidates for the DC(second) FC are to be nominated under a list system and the related electoral arrangements (e.g. how the candidates appoint agents, how they receive copy of final register and notices from the CEO and the RO respectively, what is the form of the ballot paper, how is the order of appearance of lists of candidates arranged, how to mark the ballot paper and put it into the ballot box, what is the form of the notice of election result, etc.). The arrangements will, as appropriate, mirror the electoral arrangements for GC election which also adopts the proportional representation list system.

Voter registration for DC(Second) FC – transitional arrangement

17. The LegCo (Amendment) Ordinance 2011 has also made the following amendments in Cap. 542:

- (a) added a transitional arrangement for the voter registration for the DC(second) FC under which the first register of electors for the DC(second) FC is compiled by using the 2011 GCs final register as the basis and deleting from it the names of all persons whose names are in the current FC register and the name of any person who elects not to be registered for the DC(second) FC. For any person who elects to be registered for the DC(second) FC during the 2012 voter registration cycle and any elector of the existing FC³ who elects to be registered in the DC(second) FC, they will be included in the first register of electors for the DC(second) FC.; and

³ Except for the four Special FCs (namely the Heung Yee Kuk FC, the agriculture and fisheries FC, the insurance FC and the transport FC) and the District Council (first) FC.

- (b) amended section 25 of Cap. 542 to provide that a person who is eligible to be registered as an elector for the DC(first) FC and another FC may be registered only for the DC(first) FC and not for that other FC.

18. Upon the amendments to Cap. 542 outlined in the preceding paragraph, consequential amendments to Cap. 541A and Cap. 541B are required to provide for the detailed arrangements for voter registration and compilation of the first register of electors for the DC(second) FC and to make arrangements for issuing notifications for registration of electors in DC(first) FC and not for other FC (including the Heung Yee Kuk, agriculture and fisheries, insurance and transport FCs⁴). The ERO will inform the relevant electors of the above registration arrangement and the choice that they could exercise.

Maximum number of Members returned for a GC

19. Section 19(2) of Cap. 542 has been amended so that the maximum number of Members to be returned from a GC is increased from 8 to 9. Consequential amendment to the ballot paper form of a GC provided in Cap. 541D is required to reflect this change.

Legislative Timetable

20. The relevant amendment regulations will, subject to approval by the EAC, be published in the Gazette and tabled at the LegCo for negative vetting in May 2011, so as to allow sufficient lead time for the EAC and the REO to make preparatory work for the coming elections, including a public consultation for the revised electoral guidelines.

⁴ Currently, according to the original section 25(3) of Cap. 542, a person eligible to be registered as an elector for the Heung Yee Kuk FC, the agriculture and fisheries FC, the insurance FC or the transport FC and would be eligible to be registered in another FC may be registered only for one of the four Special FCs and not for that other FC. According to the amended section 25(3) of Cap. 542, a person eligible to be registered as an elector for the DC(first) FC and would be eligible to be registered in another FC may be registered only for the DC(first) FC and not for that other FC (including the four Special FCs).

Advice Sought

21. Members are invited to note the scope of proposed amendments to the relevant subsidiary legislation under Cap. 541 as outlined above.

Registration and Electoral Office
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