

LEGISLATIVE COUNCIL BRIEF

Elections (Corrupt and Illegal Conduct) Bill

INTRODUCTION

At the meeting of the Executive Council on 26 January 1999, the Council ADVISED and the Chief Executive ORDERED that the Elections (Corrupt and Illegal Conduct) Bill should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. Hong Kong has a track record of clean and honest elections. We must ensure that our future elections will continue to be free of any corrupt or illegal conducts. The Corrupt and Illegal Practices Ordinance (CIPO), which prohibits various corrupt or illegal activities in relation to the elections, was first enacted in 1955. To meet the changing demands of our evolving electoral systems, it is necessary to update the various provisions of the legislation. Moreover, we need to modernize the legal language used in the Ordinance to make it more user-friendly to the people concerned. In view of the substantial amendments required, we propose to introduce new legislation to replace the existing Ordinance.

THE BILL

3. The object of the Bill is to ensure clean and honest elections by prohibiting corrupt or illegal conducts. Most of the existing offence provisions in CIPO have been included in the Bill (see paragraph 32 for exception), but they are drafted in modern language which is easier to understand.

Application

4. Like CIPO, the new legislation will apply to the elections of the LegCo, the proposed District Councils, Heung Yee Kuk, and the executive committee of a Rural Committee.

Classification of offences and penalty

5. Like CIPO, the conducts prohibited under the Bill are broadly classified as either corrupt (Part 2 of the Bill) or illegal (Parts 3 of the Bill). We propose to distinguish the two categories as follows -

- (a) Corrupt conduct - conducts which involve intentional acts, and which if allowed would produce a direct effect on the election; and
- (b) Illegal conduct - conducts which are generally one step away from the actual electoral procedures and process of nominating and voting for candidates.

6. The maximum penalty that can be imposed on a person convicted of having engaged in corrupt conduct is a fine of \$200,000 and imprisonment for three years if the person is dealt with summarily before a magistrate and a fine of \$500,000 and imprisonment for seven years if the person is tried on indictment before a higher court (**Clause 6**). The maximum penalty for an illegal conduct is a fine of \$50,000 and imprisonment for one year on summary conviction or a fine of \$200,000 and imprisonment for three years on indictment (**Clause 22**).

7. In CIPO, the maximum fine for both a corrupt conduct on summary conviction and an illegal conduct on indictment is \$100,000. We propose to increase the fine to \$200,000 to tie in with the current penal policy.

Corrupt Conduct

(a) Offences relating to candidature

8. Any act to affect a person's candidature by bribery, violence or deception is prohibited. Candidature includes standing as a candidate, not standing as a candidate or withdrawal of nomination. It will be an offence under **Clause 7** if a person -

- (i) offers an advantage to another person as an inducement to affect the candidature of that person or a third person; or
- (ii) offers an advantage to another person as a reward for having done something or refrained from doing something in relation to the candidature of that person or a third person; or
- (iii) solicits or accepts an advantage from another person in relation to the candidature of himself or a third person.

9. Similarly, a person commits an offence if he uses force or duress against another person, either as a threat to affect the candidature of that person or a third person, or as a retaliation in response to actions taken by that person or a third person on his candidature (**Clause 8**). Likewise, the use of deception to induce another person to affect the candidature of that person or a third person is prohibited (**Clause 9**).

10. We propose to re-classify the CIPO offence relating to a nomination paper from an illegal conduct to a corrupt conduct because of the involvement of intentional acts which would have a direct effect on elections. Under **Clause 10**, it will be an offence if a person defaces or destroys a nomination paper with intent to prevent or obstruct another person from standing for election.

(b) Offences relating to electors

11. Any act to affect a person's voting preference by offering or soliciting an advantage is prohibited under **Clause 11**. Voting preference covers voting for a particular candidate or candidates, not voting at an election, or not voting for a particular candidate or candidates. This revised meaning of voting preference will exclude any act to promote an election in general (e.g. granting commercial discount for having voted at an election). It is also made clear in this clause that entering into a voting arrangement is not an offence, unless it is done corruptly.

12. **Clause 12** prohibits the provision of refreshments or entertainment for affecting a person's voting preference. In view of the difficulty in defining "meals" in the corresponding CIPO provision, we have changed it to "food". It is explicitly provided that the serving of non-alcoholic drinks at an election meeting will not constitute a corrupt conduct. A definition of "election meeting" is also included.

13. **Clause 13** prohibits the use of force or duress against a person which would affect the voting preference of that person or a third person. We have made it clear in subsection (4) that it does not cover the situation where a corporate elector gives voting instructions to his authorised representative. **Clause 14** prohibits deceptive behaviour to affect the voting preference of another person or a third person.

(c) Voting offence

14. We propose to re-classify all voting offences as corrupt conducts. It will be an offence under **Clause 15** for a person to apply for a ballot paper by impersonating another person. Also, it will be an offence under **Clause 16**, to vote at the election knowing that he is not entitled to do so, to vote at the election after having given false information to an electoral officer, or to vote at the election more than once unlawfully. A person will also commit an offence if he invites or induces another person to do the above acts. **Clause 17** prohibits various acts to tinker with a ballot paper without lawful authority or with intent to deceive, including supplying a ballot paper to another person, putting into a ballot box a paper other than a ballot paper, destroying a ballot paper and removing a ballot paper from a polling station.

(d) Electoral donations

15. **Clause 18** stipulates that a candidate must not use electoral donations for a purpose other than meeting his election expenses. If there is any unspent donation or if the donation has exceeded the election expenses limit, the candidate must return the donation to the donor or dispose of it in any other manner in accordance with the donor's instructions. If it is not possible to do so, the candidate must give the unspent or excess donation to a charitable institution (**Clause 19**). Any anonymous donation of \$500 or more should also be given to a charitable institution. **Clause 20** makes it an offence if a candidate makes a false statement in an election return.

(e) Withdrawal of an election petition

16. Under section 68(3) of the Legislative Council Ordinance, if the court is in the opinion that an election petition is withdrawn or abandoned because of corrupt consideration, the court may confiscate the security (maximum of \$20,000) given by the petitioner, but no other penalty is provided in CIPO. We therefore propose a new provision to prohibit

corrupt withdrawal of an election petition (**Clause 21**). Like other corrupt conducts involving bribery, the clause will catch the petitioner or a third person for both offering or soliciting an advantage. This clause will also apply to an appeal questioning the election of a member to the Election Committee lodged with the Revising Officer under section 32 in Schedule 2 to the Legislative Council Ordinance.

Illegal conduct

(a) Election expenses

17. No person is allowed to incur election expenses unless he is authorised by the candidate concerned (**Clause 23**). It is made clear that a person becomes an election expense agent only if he is authorised in writing by the candidate, the maximum amount of election expenses that he is authorized to incur is specified in the authorization, and a copy of the authorisation has been served on the Returning Officer. To cover the List Voting system in the geographical constituencies of LegCo, all candidates on the same list must cross-authorise each other and an election expense agent must be authorised by all the candidates on the same list. This is because any election expense incurred by a candidate is deemed to promote all the candidates on the list. It will be an offence if an election expense agent incurs election expenses which exceed the amount specified in his authorization.

18. **Clause 24** stipulates that it will be an offence if a candidate exceeds the maximum election expenses limit. In the case of a list, all candidates on the same list will be liable if the aggregate amount of election expenses exceeds the maximum limit. However, it will be a defence for a candidate if he can prove that the expenses were incurred without his consent and he was not negligent in the event.

(b) False information

19. It is an offence under **Clause 25** for a person to publish a false statement that a candidate is no longer a candidate at an election, or that he or another person is a candidate at an election. The latter new component is to deal with the situation where a candidate on a list misleads the public that he is still one of the candidates on the list after he has withdrawn from candidature.

20. It will be an offence under **Clause 26** for a person or a candidate to publish false information about a candidate or candidates for the purpose of promoting or prejudicing the election of him or them.

21. **Clause 27** makes it an offence if a person or a candidate quotes support of another person or an organization in an election advertisement without written consent of that other person or organization. This is based on the existing CIPO provision, but it has been made clear to cover the use of the name or logo of a person or an organization, or a pictorial representation of a person. Subsection (5) explicitly provides that it will still be an offence even if the election advertisement contains a statement to the effect that the advertisement does not imply support from the person or organisation concerned. A new provision is added to make it an offence for a person to give false information to a candidate for promoting or prejudicing the election of a candidate or candidates.

22. **Clause 28** extends the existing CIPO provision to provide for an injunction order by the court to restrain the publication of all false statements or false claim of support. An application for such an injunction order may be made by a candidate in the same constituency, his election agent, an elector in the same constituency and the person or body to whom or which the false information is related.

(c) Court proceedings

23. **Clause 30** requires the court to uphold the election result if it is found in an election petition that a corrupt or illegal conduct has been engaged by the elected candidate's agent, but the conduct was of a trivial nature and the candidate was not aware of it or did not consent to it.

24. **Clause 31** provides a mechanism for a candidate to apply for a court order to relieve himself of criminal responsibility if he contravenes the illegal conduct provisions due to inadvertence, miscalculation or other reasonable cause and was not due to bad faith.

Election advertisement

25. An electoral advertisement (EA) is defined as a notice published in various forms which has the effect of promoting or prejudicing the election of a candidate or candidates at the election (**Clause 2**). This new definition will cover negative campaigning, but will exclude neutral advertisement that promotes an election in general such as newsletters of

professional bodies urging their members to participate in the election.

26. It will be an offence under **Clause 34** for a person to publish a printed EA which fails to show the required printing details. They include the name and address of the printer, the date of printing and number of copies printed. In view of the practical difficulty in complying with the requirement to provide printing details, an EA placed in a registered local newspaper will be exempted from this requirement. As defined under the Registration of Local Newspapers Ordinance, a newspaper includes a magazine. To reconcile with the regulations made by the Election Affairs Commission, this clause provides that before publication, a person must deposit two copies of the EA with the Returning Officer. If a person fails to include the printing details on the EA itself, he can rectify it by including the printing details in the declaration submitted to the Returning Officer prior to publication.

Election returns

27. **Clause 36** stipulates that a candidate has to submit an election return on his election expenses and donations within 30 days after publication of the election results. In the return, a candidate has to include a receipt for any donation of \$500 or more, or an expenditure item of \$100 or more. Under CIPO, the amount of an expenditure item requiring a receipt is \$50. This is increased to \$100 to keep up with the current price level. Failure to lodge an election return will attract the same penalty and disqualification as an illegal conduct (**Clause 37**). **Clause 38** provides for a daily fine of \$5,000 if an elected candidate serves as a member in the relevant body without lodging the election return.

28. A candidate can apply for a court order to extend the period for lodging the election return or to rectify the mistakes made in an election returns if it is due to illness, absence or inadvertence of himself or his agent. It will be an offence carrying the same penalty and disqualification as an illegal conduct if a candidate fails to lodge the election return within the period specified by the court (**Clause 39**).

29. **Clause 40** regulates the inspection of the election returns by the public. To provide better control on storage of records and consistent arrangements for public inspection, all election returns will be kept for one year by the Chief Electoral Officer, instead of the respective Returning Officers as specified in CIPO. In line with the principle of open elections, the existing inspection fee of \$5 imposed in CIPO is removed. The

existing fee of \$2 per page for providing a copy of an extract of an election return will be substituted with a fee based on the cost of providing the photocopying service. The Chief Electoral Officer is required to fix the fee subject to the approval of the Financial Secretary and specify the fee in the Gazette.

Election expenses limits

30. The Chief Executive in Council is empowered to prescribe the maximum amount of election expenses under **Clause 44**. The Clause makes it clear that different limits may be specified for different constituencies.

Consequential Amendments

31. The consequential amendments are mainly of a technical nature and seek to make references to this new legislation in related Ordinances (**Clause 46**). The only substantive consequential amendment is explained in the next paragraph.

CIPO Provisions Not Included in the Bill

32. Under sections 9, 24 and 25 of CIPO, a candidate will be disqualified from being elected as a member of the relevant body for five years if, during the trial of an election petition, it is proved that a corrupt or an illegal practice has been committed by or with the knowledge or consent of the candidate. This “automatic” disqualification criterion for candidature may not be fair to the candidate concerned because the standard of proof for an election petition is less stringent than a criminal prosecution. In practice, if such a finding is made by the court during an election petition, ICAC will investigate and will prosecute the candidate if there is sufficient evidence. The candidate concerned will then be disqualified from candidature for five years under section 39 of the Legislative Ordinance if he is convicted of a corrupt or an illegal conduct. In taking out these CIPO provisions, we have included a new provision in the Legislative Council Ordinance and the District Councils Bill. It requires the court hearing an election petition to provide the Director of Public Prosecution with a report if it appears that any person may have engaged in a corrupt or an illegal conduct (**items 6 and 7 of the Schedule**).

PUBLIC CONSULTATION

33. On 21 December 1998, we consulted the LegCo Panel on Constitutional Affairs on our proposed electoral arrangements for the 2000 LegCo election, including proposals to amend CIPO. We have met with major political parties and many independent LegCo Members to listen to their views on the proposals. We also gathered views expressed in media, commentators and the general public.

BASIC LAW IMPLICATIONS

34. The Department of Justice advises that the proposed legislation does not conflict with those provisions of the Basic Law carrying no human right implications.

HUMAN RIGHTS IMPLICATIONS

35. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

36. The new legislation will continue to be enforced by the Independent Commission Against Corruption. There will be no additional staffing and financial implications. The revenue arising from the fee proposal will be minimal.

LEGISLATIVE TIMETABLE

37. The legislative timetable is as follow -

Publication in the Gazette	29 January 1999
First Reading and commencement of Second Reading Debate	3 February 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

38. A press briefing will be held on 28 January 1999 before the Bill is gazetted. A spokesman will also be available for answering subsequent media enquiries.

28 January 1999
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