

**Administration's Response to Concerns raised on 23 September 1999
by Members of the Bills Committee
on Elections (Corrupt and Illegal Conduct) Bill**

Clause 21

C1: Members note that the words “advantage” and “reward” are used in different contexts, i.e. the former is used under subclauses (1) and (2) and the latter under subclause (3). “Advantage” is a defined term in the Bill but “reward” is not. The Administration is requested to explain the difference in meaning between the two terms and how they operate in the contexts of the respective subclauses. As there are similar references in clauses 7 and 11, the Administration is also requested to review the drafting of these clauses to achieve consistency.

A1: We will put forward an amendment to clause 21 to remove any inconsistency. We will provide details of the amendment to the Committee as soon as practicable.

Clause 23

C2: Notwithstanding the Administration's proposal to amend the definition of election advertisement, a member reiterates her concern that commentaries made by third-party individuals or organizations on candidates might infringe clause 23(1). The Administration is requested to consider the need to introduce a defence clause of “public interest” or “with reasonable excuse” to exempt such independent third-parties from the offence provisions in clause 23(1).

A2: To ensure a level playing field for all candidates, it is essential that all expenses incurred for promoting or prejudicing the election of a candidate must be accounted for. If a defence of “public interest” or “reasonable excuse” is provided in clause 23(1), a person other than the candidate may, without the candidate's consent or authority, incur election expenses for promoting the candidate or for prejudicing another candidate. This would create a major loophole which would result in

unfairness for other candidates as the amount spent would not be counted towards the maximum election expenses that can be incurred by the candidate and would not have to be accounted for in any return of election expenses. Moreover it is already provided in clause 31 that a person can apply to the Court for an order to relieve him from penalties if he engages in an illegal conduct due to inadvertence or some other reasonable cause. Hence, it is neither appropriate nor necessary to include the proposed proviso in clause 23(1).

C3: The Administration is requested to provide information on whether prosecutions have been brought under the CIPO for an offence of unauthorized election expenses and if so, the outcome of such cases; and cases of a person or a candidate making an application to the Court for an order under section 26 of CIPO (an equivalent of clause 31) to except innocent acts in relation to unauthorized expenses.

A3: In the 1998 LegCo election, a person was charged with incurring election expenses for a candidate in the Financial Services Subsector election without authorization. He was fined \$100,000 by the court. There was no such prosecution in the 1995 LegCo election and the 1994 DB election.

Since an application for an court order under section 26 of CIPO is made by a person to the court directly, we do not have statistics on the number of these applications. As far as we know, in the 1998 LegCo election, there was one application in relation to failure to declare election expenses arising from an election advertisement placed in the newspaper. We do not have information for the 1995 LegCo election and the 1994 DB election.

Clause 25

C4: The Administration is requested to provide information on any precedent cases of complaint or prosecution brought under clause 25.

A4: According to information available, there was one complaint of false information on withdrawal of candidature in the 1994 DB election, but with no prosecution. There was no such complaint in the 1995 and 1998 LegCo elections. However, in the 1998 LegCo election, there was one complaint in which reference to a particular candidate on a list was still included in an election advertisement after that candidate had withdrawn his nomination. After investigation, it was found that the election advertisement was distributed before that candidate's withdrawal. Clause 25(1) is a new provision to cater for such a scenario.

Clause 27

C5: The Administration is requested to review the construction of clause 27(1) - (4), having regard to comments made by the Chairman.

A5: We will put forward an amendment to clause 27 to address the Chairman's concern.

C6: Some members express concern about the practical difficulties to obtain consent in writing for inclusion of a logo, name or pictorial representation in an election advertisement as required under clause 27(3). The Administration is requested to advise on previous cases of complaint or prosecution, if any, against people for committing an offence which is the subject of clause 27(1) and (2); and to provide the relevant details (including samples of pictorial representations giving rise to the complaints or prosecutions) for members' consideration.

A6: According to information available, the number of complaints relating to false claim of support in previous elections are as follow -

	<u>No. of complaints</u>	<u>No. of prosecution</u>
<i>1994 DB election</i>	41	1
<i>1995 LegCo election</i>	12	0
<i>1998 LegCo election</i>	5	0

As explained at the meeting on 23 September 1999, clause 27(5) is a new provision to deal with the use of disclaimer in an election advertisement. In the 1998 LegCo election, a candidate showed the names of his subscribers in his election advertisement without obtaining their written consent. The candidate also included a sentence “Also, their nomination does not constitute support under section 17 of the Corrupt and Illegal Practices Ordinance (Cap. 288) and should under no circumstances be regarded as such.” in small print in the election advertisement . A copy of the election advertisement is at the Annex.

C7: The Administration is requested to review the drafting of clause 27(9) as the meaning of the Chinese version is different from that of the English version.

A7: We will put forward an amendment to clause 27(9) to address Members’ concern.

Constitutional Affairs Bureau
4 October 1999

在平穩過渡及主權回歸後不久，香港受到亞洲金融風暴的沖擊而令到宏觀經濟因素急劇轉變，加上已積弱多年的邊際行業毫無起色，令到香港的整體經濟已踏入一個20多年來未遭遇過的大調整期。

此時此刻，香港需要一個主動及強勢的行政主導政府去為香港的經濟策略重新定位，以求返回高增長的軌道，而政府亦需要一個同是強勢及務實的立法會來把新的政策立法及現有政策修改以求配合。

在當前的弱勢經濟環境下，一個有計有謀、懂監察、督促政府及懂保障及香港整體利益的立法會是極具挑戰性的重任。

界的意見一向受各界高度重視。我們在立法會代表的責任及角色一向亦舉足輕重，來屆的代表必需具備肯講肯做，專業及工商經驗兼備之領導人才擔任。

我願意以我的個人質素，專業及工作經驗代表界擔當這個重任。請於5月24日投一票。

Main Theme of s Election Manifesto

While the transition and the return of sovereignty has been smooth and dignified, the Hong Kong economy is suffering the consequence of currency and economic turmoil of neighbouring countries. This economic downturn has also caused the weaker sectors of our economy to accelerate their retrenchment, resulting in cut backs, redundancies, restructuring and, in extreme cases, liquidations.

To get our economy out of this down trend we need to re-focus and reposition ourselves under the leadership of a strong and pro-active executive led government, supported by an equally strong and pro-active legislature to give it the powers and funding to do a good job. LegCo should also vigorously monitor the performance of government to ensure that transparency, efficiency and the public interest is properly served. Status quo and a laissez-faire approach is, I submit, obsolete.

I offer myself as a strong, independent, professional, trustworthy and conflicts free person to represent your interest at LegCo, to tackle the challenges confronting us. Please vote for on Sunday 24 May.

Persons who have nominated my candidacy

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| 1. | 9. |
| 2. | 10. |
| 3. | 11. |
| 4. | 12. |
| 5. | 13. |
| 6. | 14. |
| 7. | 15. |
| 8. | |

Note: 1. The above are persons of high standing in the Profession. They include 5 past presidents and 2 Council Members of , 2 past presidents of , 2 former legislative councillors and my supportive wife. They nominated my candidacy in their personal capacity and their offices, past or present, should under no circumstances be regarded as being associated with my nomination. Also, their nomination does not constitute support under section 17 of the Corrupt and Illegal Practises Ordinance (Cap. 238) and should under no circumstances be regarded as such.

2. Mr. A who wishes to be anonymous is a past president of and chairman of one of the largest in Hong Kong. Mr. A, while very happy to nominate my Candidacy, does not wish his name to be published in my election material as he does not want his personal decision to influence his colleagues' choice of candidate in whatever way.