

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

C1: The Administration to explain the differences between the Bill and the existing Corrupt and Illegal Practices Ordinance (CIPO).

A1 The major differences between the Bill and the existing CIPO are set out in the comparison table at Annex 1. We are in the process of preparing another table juxtaposing each provision of the Bill with the relevant provisions of the CIPO for members' reference. We will submit the table to the Committee as soon as possible.

C2 The Administration to advise on the procedures for elections of chairmen, deputy chairmen and members of the executive committees of the Rural Committees and elections of Village Representatives (VR).

A2 Please refer to the paper at Annex 2.

C3 The Administration to advise on the respective roles of the VRs, the Rural Committees and the role of the District Officers in relation to the election of VRs.

A3 Please refer to the paper at Annex 2.

C4 The Administration to consider extending the applicability of the Bill to the election of the Chief Executive (CE) and the election of the VRs.

A4 (a) We will carefully study and draw up the legislative proposals in respect of the arrangements for and regulation of the election for the CE and introduce the relevant Bill to the Legislative Council for scrutiny in due course. We will carefully consider arrangements for regulating the election when drafting the legislation governing the CE election. Therefore, we do not include the CE election in the current Bill at the present stage.

(b) VR elections are internal elections of the rural communities. In response to the Government's policy of encouraging fair and open elections, Heung Yee Kuk has published a set of rules governing the election procedures of VR, namely "Model Rules". At present, a majority of villages conduct their VR elections according to the principles set out in the Model Rules.

The nature of VR elections is different from other elections such as the Legislative Council election and the District Council elections. There is no mechanism to implement some of the existing requirements of the Corrupt and Illegal Practices Ordinance, including election expenses limit, appointment of election expenses agent, return of election expenses and donations and election advertisement.

If there is any contravention of any ordinance under the purview of the Independent Commission Against Corruption, for example, the "Prevention of Bribery Ordinance", the Commission will take appropriate action.

Therefore, the Administration does not consider it necessary to include the VR elections in the Bill.

C5 The Administration to make proposals to address members' concern about the need for a candidate to apply for a court order to extend the period for lodging the election return because the demand note from the Government for the removal of election advertisements displayed arrives too late for him to include the cost in the election return.

A5 We are discussing with the relevant government departments the possible ways of resolving the issue. We will report back to the Committee as soon as possible.

**Comparison Table
Elections (Corrupt and Illegal Conduct) Bill
and Corrupt and Illegal Practices Ordinance**

Provision of Elections (Corrupt and Illegal Conduct) Bill (“ECICB”) <u>(Clause Number and Heading)</u>	Provision of Corrupt and Illegal Practices Ordinance (“CIPO”) <u>(Section Number)</u>	<u>Explanatory Note</u>
1. Short title and commencement of this Ordinance	1	ECICB will come into Operation on a date to be Published in the Gazette by the Secretary for Constitutional Affairs.
2. Interpretation	2	More terms are defined.
3. Objects of this Ordinance	No equivalence	Objects of the Ordinance are specified.
4. What elections does this Ordinance apply to?	3	No substantive difference.
5. What conduct does this Ordinance apply to?	No equivalence	Modelled on section 5 of CIPO to make it clear that the Ordinance generally applies to conduct engaged both in Hong Kong and elsewhere.
6. What penalties can be imposed for corrupt conduct At elections?	4	The maximum fine for Summary conviction of corrupt conduct is increased from \$100,000 to \$200,000 to make it proportional to the imprisonment term of 3 years.
7. Corrupt conduct to bribe candidates or prospective candidates	8A(1)	No substantive difference from the “bribe” component of the CIPO provision.
8. Corrupt conduct to use or threaten to use force or duress against candidates or prospective candidates	8A(1)	No substantive difference from the “intimidation” component of the CIPO provision.

Provision of Elections (Corrupt and Illegal Conduct) Bill (“ECICB”) <u>(Clause Number and Heading)</u>	Provision of Corrupt and Illegal Practices Ordinance (“CIPO”) <u>(Section Number)</u>	<u>Explanatory Note</u>
9. Corrupt conduct to engage in certain deceptive behaviour in relation to candidates and prospective candidates	No equivalence	Modelled on the “fraudulent device” element in section 8(1) of CIPO.
10. Corrupt conduct to deface or destroy nomination papers	22	Classified as corrupt conduct.
11. Corrupt conduct to bribe electors and others at elections	5	It is specified that the purpose of the bribe is to influence a person in his voting for a particular candidate or candidates. This will exclude any act to promote an election in general. Also, voting arrangement will not be an offence unless it is done corruptly.
12. Corrupt conduct to provide others with refreshments and entertainment at election	7	”Food” is used to replace “meal” used in CIPO to avoid any potential ambiguity.
13. Corrupt conduct to use or threaten to use force or duress against electors	8	<p>No substantive difference from the “force, violence or restraint” components of the CIPO provision.</p> <p>Clause 13(4) makes it clear that the offence provision does not cover a corporate elector who gives voting instructions to its authorised representative.</p>
14. Corrupt conduct to engage in certain deceptive behaviour in relation to electors	8	No substantive difference from the “fraudulent device” component of the CIPO provision.

Provision of Elections (Corrupt and Illegal Conduct) Bill (“ECICB”) <u>(Clause Number and Heading)</u>	Provision of Corrupt and Illegal Practices Ordinance (“CIPO”) <u>(Section Number)</u>	<u>Explanatory Note</u>
15. Corrupt conduct to impersonate another at election	6	No substantive difference.
16. Corrupt conduct with respect to voting at elections	14	Classified as corrupt conduct.
17. Corrupt conduct to destroy or deface ballot papers	23	Classified as corrupt conduct.
18. Corrupt conduct to make improper use of election donations	8B(1)	No substantive difference.
19. How candidate must dispose of certain electoral donations	8B(2)	No substantive difference.
20. Corrupt conduct to lodge false or misleading election return	29(5)	No substantive difference.
21. Corrupt conduct to withdraw election petition or election appeal for a bribe	No equivalence	New provision to prohibit corrupt withdrawal of an election petition or election appeal.
22. What penalties can be imposed for illegal conduct at elections?	10	The maximum fine for a conviction upon indictment of illegal conduct is increased from \$100,000 to \$200,000 to make it proportional to the imprisonment term of 3 years.

Provision of Elections (Corrupt and Illegal Conduct) Bill (“ECICB”) <u>(Clause Number and Heading)</u>	Provision of Corrupt and Illegal Practices Ordinance (“CIPO”) <u>(Section Number)</u>	<u>Explanatory Note</u>
23. Illegal conduct for persons other than candidates and election expense agents to incur election expenses	12	Clearer provisions to cater for the List Voting System. It is clarified that a person becomes an election expenses agent only if he is authorised by the candidate and a copy of the authorisation has been served on the Returning Officer.
24. Illegal conduct for candidate to incur election expenses exceeding prescribed amount	13	Clearer provisions to cater for the List Voting System. All candidates on the same list will be liable if the aggregate amount of election expenses exceeds the maximum limit. A defence for a candidate is provided.
25. Illegal conduct to publish false statement that a person is or is not a candidate	15	Existing provision expanded to include false statement that a person is a candidate.
26. Illegal conduct to publish false or misleading statements about a candidate	16	Existing provision expanded to include “prejudicing the election of other candidates” in the purpose for publishing the false statement.
27. Illegal conduct to publish electoral advertisement that includes false claim of support	17	Existing provision clarified to cover logo of a person or organisation, and pictorial representation of a person. To specify that the use of a disclaimer does not preclude a contravention of this clause.

Provision of Elections (Corrupt and Illegal Conduct) Bill (“ECICB”) <u>(Clause Number and Heading)</u>	Provision of Corrupt and Illegal Practices Ordinance (“CIPO”) <u>(Section Number)</u>	<u>Explanatory Note</u>
28. Court empowered to restrain person from repeating certain illegal conduct	16(3)	Existing provision expanded to cover all false statements and false claim of support. People who can apply for a court order are also specified.
29. Interpretation: Part 4	9(1A), 24(1) and 25	To specify that a candidate is to be regarded as having personally engaged in corrupt or illegal conduct if the conduct was engaged in with his knowledge and consent. This is based on similar concept adopted in sections 9(1A) and 24(1) of CIPO. A defence for a candidate modelled on section 25 of CIPO is provided.
30. Court to declare candidate to be elected in certain circumstances despite corrupt or illegal conduct by agents	25	No substantive difference.
31. Court may make orders relieving candidates from consequences of certain illegal conduct	26	No substantive difference.
32. Witness who is party to corrupt or illegal conduct not to be regarded as accomplice	24A	No substantive difference.
33. Interpretation: Part 5 (definition of terms)	19(5)	To cover a serving member irrespective of whether he is seeking re-election to the same body or another body.

Provision of Elections (Corrupt and Illegal Conduct) Bill (“ECICB”) <u>(Clause Number and Heading)</u>	Provision of Corrupt and Illegal Practices Ordinance (“CIPO”) <u>(Section Number)</u>	<u>Explanatory Note</u>
34. Offence to publish election advertisements that do not meet certain requirements	19	<p>Election advertisements in registered local newspapers are exempted from the printing details requirement.</p> <p>To reflect the existing requirement of prior deposit of an election advertisement before publication as specified in the Electoral Affairs Commission regulation.</p> <p>The new definition of an election advertisement covers negative campaign, but excludes neutral advertisement that promotes an election in general.</p>
35. Interpretation: Part 6	No equivalence	<p>To clarify the meaning of “the date on which the result of an election is published” for different elections.</p>
36. Candidate to lodge election return with appropriate authority	29(1)	<p>The amount of election expense which requires the submission of a receipt is increased from \$50 to \$100 to keep up with current price level.</p>
37. Offence to fail to lodge election return	29(3)	<p>The maximum fine for a conviction upon indictment is increased from \$100,000 to \$200,000 to make it proportional to the imprisonment term of 3 years.</p>

Provision of Elections (Corrupt and Illegal Conduct) Bill (“ECICB”) <u>(Clause Number and Heading)</u>	Provision of Corrupt and Illegal Practices Ordinance (“CIPO”) <u>(Section Number)</u>	<u>Explanatory Note</u>
38. Offence to participate in affairs of body if no election return is lodge	29(11)	No substantive difference.
39. Court may grant relief to candidate in certain circumstances	29(7), (7A), (8), (9) and (10)	No substantive difference.
40. Appropriate authority to keep election returns	29A	<p>For elections of the Legislative Council and the proposed District Councils, the election returns will be kept by the Chief Electoral Officer instead of the respective Returning Officers under CIPO. This will facilitate public inspection of the election returns.</p> <p>The \$5 inspection charge under CIPO is removed in line with the principle of open elections.</p> <p>The \$2 per page photocopying charge is substituted by a fee to be specified by the Chief Electoral Officer with approval of the Financial Secretary based on actual cost.</p>
41. Officers liable to be found guilty of offences committed by corporation	No equivalence	To clarify liability of an officer for offences committed by a corporation.

Provision of Elections (Corrupt and Illegal Conduct) Bill (“ECICB”) <u>(Clause Number and Heading)</u>	Provision of Corrupt and Illegal Practices Ordinance (“CIPO”) <u>(Section Number)</u>	<u>Explanatory Note</u>
42. Attempts to be treated as complete offences	No equivalence	By providing a specific provision to include an attempt to do an act, it is no longer necessary to include the “attempt” element in the relevant offence provisions.
43. Rights of creditors not affected by contravention of this Ordinance	28	No substantive difference.
44. Chief Executive in Council may make regulations	13(1)	To make it clear that different election expenses limits may be prescribed for different constituencies.
45. Repeal of Corrupt and Illegal Practices Ordinance	No equivalence	To repeal CIPO.
46. and Schedule Consequential amendments to other Ordinances	No equivalence	<p>To replace the reference to CIPO with reference to ECICB in related ordinances.</p> <p>To require the court hearing an election petition to provide the Director of Public Prosecutions with a report if it appears that any person may have engaged in corrupt or illegal conduct (items 6(i) and 7(i)).</p>

**RURAL COMMITTEE AND
VILLAGE REPRESENTATIVE ELECTIONS**

At the first meeting of the Bills Committee on Elections (Corrupt and Illegal Conduct) Bill on 23 February 1999, Members requested for a paper on (A) Rural Committee elections; (B) Village Representative elections; and (C) the role of village representatives for reference.

(A) Rural Committee Elections

2. Rural Committees (RC) are non-government organisations of the rural community under the Heung Yee Kuk. They are established by their own constitutions and are exempted from registration as societies under section 6 of the Societies Ordinance (Chapter 151). Their objectives are to manage the affairs of the rural area, to strengthen the link between the Government and the villages, and to promote the understanding of traditional customs in the villages.

3. The General Assembly of each RC consists of all Village Representatives (VR), Kai Fongs and Fishermen's Representatives in the area. Special members can also be nominated to the General Assembly. Among these General Assembly members, 9 to 27 Executive Committee members are elected, depending on individual constitutions. In practice, the number of General Assembly members of all RCs exceeds the

number of their Executive Committee members. In line with the Heung Yee Kuk, the tenure of office for RC is also four years.

4. The elections of Chairman, Vice-chairmen and members of the Executive Committee of RCs are private elections which are subject to the rules provided in the constitutions but not subject to any legislative control. Traditionally, District Officers (DO) act as “returning officers” who are responsible for supervising the RC elections to ensure the proper conduct of the voting process. Furthermore, the RC elections are governed by the Corrupt and Illegal Practices Ordinance (Chapter 288).

5. In respect of elections rules, RCs’ constitutions generally provide for the following major principles:

- the number of executive committee members should not exceed the maximum number as stated.

- the members of the General Assembly should, by secret ballot, elect among themselves to be members of the executive committee;

- all members of the General Assembly have the right to vote and be elected as executive committee members;

- the terms of office of the elected Chairman, Vice-chairman and executive committee members are four years;

- the election procedures should be drawn up by RC and be approved by DOs; and

- DOs should also be invited to be Returning Officer for the elections.

In the light of the above, RC elections are usually conducted in accordance with the procedures at **Appendix 1**.

(II) Village Representative elections

6. Village Representative (VR) elections are internal elections within the rural community. There are no legislative provisions or mandatory rules governing the conduct of VR elections. In the past, these elections were conducted by villagers themselves in accordance with the established rural traditions.

7. At present, VR elections are conducted in accordance with the “Model Rules” promulgated by the Heung Yee Kuk in August 1994 (**Appendix 2**). In the light of the principles as prescribed in the “Model Rules”, ie, one-person-one-vote, equal voting rights for men and women and fixed terms of four years for the elected representatives, villagers

generally adopt the election procedures at **Appendix 3** for the VR elections.

8. Throughout the whole election process, the legal role of DOs is confined to exercise the authority of approving a person as VR only. However, to facilitate the organisation of VR elections, DOs provide administrative support to villagers by assisting with the preparation of the voter register, with posting notices advertising the election and with counting the votes cast.

9. In addition to District Offices, RCs and VRs also perform coordinating roles in the exercise. Taking the compilation of electoral rolls as an example, villagers may submit their registration forms to DOs, RCs or their VRs. On the basis of the registration forms received, including those forwarded by RCs and VRs, DOs will compile the provisional electoral roll and post it in the village area for public examination. Villagers should write to DOs in writing with substantive evidence if they have comments on the provisional electoral roll. After the examination period, DOs will refer all the comments to RCs for further investigation. In some villages, there are working groups set up by villagers themselves to deal with such kind of comments. The incumbent VRs may assist in soliciting villagers' views and verifying the status of villagers as and when necessary.

(C) The Role of VRs

10. As stipulated under section 3(3) of the Heung Yee Kuk Ordinance (Chapter 1097), the status of VRs should be approved by DOs. Other than that, VRs have no statutory duties. They are responsible for managing village affairs and are accountable to villagers only. Moreover, they provide assistance in mediating local disputes and facilitating the communication between the Government and the villagers.

11. Traditionally, VRs are supposedly familiar with the affairs of the villages. They assist villagers to make applications to the Government, in particular those relating to the rights of indigenous villagers, such as applications for building small house and hillside burial. Upon villagers' request, they make statutory declarations of the indigenous status of applicants. However, such documentary evidence serves as reference material only. DOs (or District Land Officers (DLO)) may also accept declarations made by other people who have good knowledge about the indigenous status of the villagers, such as village elders, ex-VRs and RC Chairmen. However, the final decision on granting approval should be made by DOs (or DLOs).

12. In processing the above applications, DOs (or DLOs) will notify villagers by posting notices in the village area. Villagers are then invited to provide relevant information for DOs' reference and in a way to monitor such applications.

(D) Other relevant information

13. Both building small houses and hillside burial are rights enjoyed by indigenous villagers. The small house policy is an administrative policy and confers no legal rights. As regards hillside burial, DOs approve the burial applications in exercise of the delegated authority under section 142 of the Public health and Municipal Services Ordinance (Chapter 132).

Home Affairs Department

1 March 1999

Procedures of Rural Committee (RC) elections

1. RC invite the District Officers (DO) to act as the Returning Officers for the elections.
2. RC draw up the election procedures for DOs' approval and notify villagers at least 25 days before the election.
3. The date and time for the election are fixed by DOs after consultation with the RC Chairman and are announced at least 3 weeks before the election.
4. After announcing the date and time for the election, DOs will start receiving nomination of candidates. The nomination period normally lasts for at least 14 days.
5. At least one day before the election, DOs will announce the names of persons eligible to vote and to stand for election.
6. Voting is by secret ballot in four stages: first, election of Special Members, if any; then, Executive Committee Members; then, a Chairman, and finally the Vice-chairmen from among the Executive Committee Members. The Chairman and the Vice-chairmen are elected by the full General Assembly of the RC.
7. Voters should produce their Identity Cards for collection of ballot papers and mark their choices at the designated area. After marking their choice, voters should place the ballot papers in the ballot box.
8. After the election, DOs with 2 persons as witnesses open the ballot box and count the votes cast.
9. When the counting of valid votes has been completed, DOs announce the results of the elections. In case of a tie, lots are drawn by DOs to determine the successful candidates.

Translation

Election Rules

1. All Village Representatives (VRs) should be elected on the ‘one-person-one-vote’ principle.
2. The VRs shall hold office for 4 years with elections coinciding with those for their respective Rural Committees.
3. An election for the VR must be held at least one month before the current term of the VR expires.
4. Qualifications for a voter:
 - (a) *Any indigenous villager, male or female, aged 18 or above; or*
 - (b) *Any person, male or female, aged 18 or above, who is a Hong Kong permanent resident within the meaning of the Immigration Ordinance (Cap 115) whose major place of residence is the village.*
5. Qualifications for nomination as a candidate in an ‘indigenous village’:

Any indigenous villager, male or female, aged 18 or above.

6. Qualifications for nomination as a candidate in a ‘non-indigenous village’:

Any person, male or female, aged 18 or above, who is a qualified voter under Rule 4 Above and who has ordinarily resided in Hong Kong for the 10 years immediately preceding the date of election.

7. Any qualified voter (Rule 4) can vote in only one village.

8. Any candidate (Rules 5 and 6) can stand for election in only one village.

9. A VR candidate must be nominated by 5 eligible voters (Rule 4):
 - (a) For villages in which there is only one VR vacancy, after the close of the nomination period, if there are more than 1 eligible candidate, secret ballot voting will be conducted. The candidate winning the highest number of votes will be elected. Should there be only 1 eligible candidate for the VR vacancy, the candidate will be automatically elected for the uncontested seat.

 - (b) For villages in which there are more than one VR vacancy, after the close of the nomination period, if the number of eligible candidates exceeds the number of VR vacancies, secret ballot voting will be conducted. Those candidates winning the highest number of votes will be elected. Should the number of eligible candidates equal to the number of VR vacancies, the candidates will be automatically elected.

10. In the event of the death, resignation or disqualification of a VR while in office, a re-election will be conducted at the earliest possible date.

11. The term of office for any re-elected VR will expire on the same day as it will expire for the original VR.

12. A VR shall be disqualified for being elected or being nominated as a candidate or from holding office if:
 - (a) he has in Hong Kong or in any other territory or country been sentenced to death or an imprisonment term exceeding three months; or

 - (b) he is an undischarged bankrupt; or

- (c) he has been convicted of a corrupt practice or illegal practice within the meaning of the Corrupt and Illegal Practices Ordinance (Cap 288) other than the illegal practice consisting of a contravention of any of the provisions of section 19(2) of that Ordinance within 10 years from the date of the election; or
- (d) there is in force a decision under the Mental Health Ordinance (Cap 136) that he is of unsound mind and incapable of managing himself and his affairs.)

13. The following election timetable should, as far as possible, be followed:

60 days prior to polling day	Posing of the provisional electoral roll in the Village Office, Office of the relevant Rural Committee and the relevant District office
40 days prior to polling day	Posting of the final electoral roll in the above specified locations
40 days prior to polling day	Nominations accepted
30 days prior to polling day	Posting of the list of eligible candidates in the above specified locations
15 days prior to polling day	Announcement of polling details, such as place and time of polling (In the event that the number of candidates does not exceed the number of vacancies, the candidates will be automatically elected)

Procedures of Village Representative (VR) elections

1. VR elections are internal elections within the rural community. They are in general conducted in accordance with the “Model Rules” promulgated by the Heung Yee Kuk in 1994.
2. Upon request, DOs provide administrative support to villagers by assisting with the preparation of the voter register, with posting notice advertising the election and with counting the votes cast.
3. Villagers may submit their registration forms to DOs, RCs or their VRs. On the basis of the registration forms received, including those forwards by RCs and VRs, DOs will compile the provisional electoral roll and post it in the village area for public examination. The examination period normally lasts for at least 14 days.
4. If villagers have comments on the provisional electoral roll, they should write to DOs with substantive evidence. After the examination period, DOs will refer all the comments to RCs or the working groups set up by villagers for further investigation. After settling all the disputes, DOs will post the final electoral roll.
5. After posting the final electoral roll, DOs will start receiving nomination of candidates. The nomination period normally lasts for 7 days. After the closure of nomination period, DOs will announce the names of eligible candidates as soon as possible.
6. The date and time for the election are fixed by DOs in consultation with villagers and announced at least 15 days before the election.
7. Voting is by secret ballot.
8. In the event that the number of candidates does not exceed the number of vacancies, the candidates will be automatically elected.
9. Villagers should cast their votes in person. On the election day, villagers should produce their identify cards for collection of valid ballot papers, mark their choices at the designated area and place the ballot papers in the ballot box afterwards.
10. After the election, DOs with other persons as witnesses open the ballot box and count the votes cast. When the counting of valid votes has been completed, DOs announce the results of the elections.