

**Administration's Proposed Committee Stage Amendments to the
Elections (Corrupt and Illegal Conduct) Bill**

(Draft wordings of the amendments are annexed to this paper.)

**1. Requirements for free service - definition of “advantage” and
“election donation” in Clause 2**

- Members are concerned whether free service provided to a candidate should be counted as election donation and thus form part of election expenses. To ensure a level playing field for all candidates, we consider it appropriate to require the candidates to account for certain free services obtained at an election. Having considered Members' views, we propose the following arrangements :
 - (a) A candidate does not need to include in his election return a free service if it is provided by a person personally and voluntarily, and -
 - (i) that person's occupation is not related to the free service provided to the candidate; or
 - (ii) that person's occupation is related to the free service provided to the candidate but it is provided outside the person's normal working hours.
 - (b) A candidate needs to include in his election return all free services other than those mentioned at (a) above.
- Since it is not necessary to include the free services mentioned in (a) above in an election return, they may be caught by para. (g) “any other service” in the definition of “advantage”. Therefore, we propose to amend the definition of “advantage” to make it clear that the free services mentioned at (a) above are not advantage.
- Also, we propose to amend the definition of “election donation”

to make it clear that free services other than those mentioned in (a) above have to be included in an election return.

2. Objects and application of the Bill - Clauses 3 and 4

- Some members have suggested that provisions of the Bill should also be applied to the election of the Chief Executive and Village Representatives in the New Territories. It is the Administration's policy to ensure that all our public elections are clean and free from any corrupt or illegal conduct. Therefore, we propose to amend clauses 3 and 4 to cover elections of the Chief Executive and Village Representatives.

3. Penalties for corrupt conduct - Clause 6(3)(a)

- In order to make it clear that an advantage received by any person on behalf of a candidate will be forfeited, we propose to substitute "election agents" with "agents".

4. Corrupt conduct to bribe candidates for not using best endeavours at election - Clause 7

- According to clause 7, a person will be caught if he accepts an advantage for standing as a candidate or withdrawing his candidature. Members are concerned that instead of withdrawing his candidature, a corrupt candidate can resort to not using best endeavours in his election campaign in exchange for an advantage. This will not be caught by the existing clause 7. We propose to introduce a new offence element of offering or accepting an advantage as inducement or reward for not using best endeavours in campaigning at an election in this clause.

5. Corrupt conduct to destroy or deface ballot papers - Clause 17

- Members ask if the words "then in use" in clause 17(1)(d) are necessary. We propose to break down subclause (1)(d) into two subclauses to clarify that for ballot papers, they are to be protected before, during and after the election until they are properly disposed of. For the ballot boxes, they only needed to

be protected when they are used at the election.

6. Disposal of unspent or excessive donation - Clause 19

- Responding to Members' suggestions to simplify the regulatory mechanism for election donation, we propose to move the following amendments to this clause :
 - (a) To raise the amount of donation for which a candidate is required to issue a receipt to the donor from "of \$500 or more" to "more than \$1000" in subclause (1), and to make it clear that a candidate is only required to record the name and address of the donor as supplied by the donor;
 - (b) Correspondingly, the amount of anonymous donation which must be given to a charitable institution will be increased to "more than \$1000" in subclause (2). We will also substitute "identity" with "name and address" to make it consistent with the wordings in subclause (1); and
 - (c) To simplify the disposal of any unspent or excessive donation in subclauses (3) - (8) by requiring that all such donation is to be given to a charitable institution. If asked by a donor, a candidate can explain that it is a legal requirement that any unspent donation must be given to a charitable organisation.

7. Corrupt conduct to withdraw election petition - Clause 21

- As pointed out by Members, there are inconsistencies in the use of the terms "advantage" and "reward" in this clause. We propose to amend subclauses (3) to (5) to ensure consistency.

8. False claim of support in an election advertisement - Clause 27

- Subclauses (1) and (2) make it an offence for a person to include the name or logo of another person or an organisation in an election advertisement without obtaining their written consent before publication. Members consider that the element of written consent should be included in these two subclauses

instead of treating it as a defence under subclause 3. We propose to amend the entire clause accordingly.

- We also propose to amend subclause (9) to clarify the meaning of “support”.

9. Court to declare candidate to be duly elected in certain circumstance - Clauses 29 and 30

- To address Members’ concern on overlapping between these two clauses, we propose to substitute the existing wordings used in clause 29(2)(b) with wordings used in clause 30(1)(a)(i) and (ii). The existing clause 30(1)(a)(i) and (ii) will then be deleted.
- In clause 30(1)(b), we propose to substitute “the conduct was of a trivial nature” with “the conduct did not materially affect the results of the election” to reflect the policy intent that despite its triviality, a conduct that has significant effect on the election should not be excused.
- Members are concerned that it will be difficult for a candidate to prove that he has taken all reasonable steps. We propose to replace “all reasonable steps” with “reasonable steps” in clause 30(1)(c).

10. Court order to grant relief to candidates - Clauses 31 and 39

- Clauses 31(2)(a), 39(2) and 39(4) set out the grounds for which a court must be satisfied before granting an order. Members are concerned that the phrase “some other reasonable cause” used in these clauses seems to imply that this other cause must be of similar nature to the other grounds set out in the clauses. We propose to substitute this phrase with “any reasonable cause” in these clauses.
- To address Members’ concern, we propose to add two subclauses in clause 31 to make it clear that the relevant criminal proceedings will be stayed once an application for a court order is made. The applicant will be relieved of any criminal liability if a court order is granted.

- As proposed by Members, we will make it clear in clause 39(1) that an application can be made before the deadline for lodging an election return.
- Responding to Members' suggestions, we propose to add two new subclauses in clause 39 to enable a candidate to apply for a court order for loss of the documents required under clause 36(2)(b) (an invoice or receipt for an election expense, copy of a receipt issued to a donor and a receipt given by a charitable institution for any unspent or excessive donation). The grounds for granting a court order will be the same for correcting errors in an election return as set out in clause 39(4).

11. Election return - Clauses 35, 36, 37 and 38

- In clause 35(a), we propose to add “the Election Committee” to make clear that the relevant provisions are also applicable to candidates in the subsector elections of the Election Committee.
- Members point out that because of the phrase “within 30 days after the date of publication of the result of the election” used in clause 36(2)(a), a candidate will be unable to lodge an advance return on election donation before publication of the election results. We propose to substitute “within 30 days” with “not later than 30 days” to enable a candidate to do so if he so wishes.
- Members consider that in order to reduce the workload for a candidate, the amount of expenses requiring an invoice and a receipt in clause 36(2)(b)(i) should be raised. We would like to know the views of the Committee on how the amount of \$100 proposed in the bill should be adjusted.
- As a corollary of the amendment to clause 19(1) concerning the amount of donation for which a candidate is required to issue a receipt to the donor, we also propose to amend the amount of donation for which a candidate is required to include a copy of the receipt issued to a donor in the election return from “of \$500 or more” to “more than \$1000” in clause 36(2)(b)(ii).

- In view of Members' concern, we propose to add a new subclause in clause 37 to make it clear that the relevant criminal proceedings will be stayed once an application for a court order is made.
- Clause 38 provides a daily fine for a person who participates in the affairs of the body to which he is elected without lodging his election return. To address Members' concern that a meeting may be held before the deadline for lodgement of the election return, we propose to substitute "without having lodged an election return as required by section 36" with "without having complied with section 36". At the same time, we have taken the opportunity to simplify the wordings used in this clause.
- We also propose to add two new subclauses to make it clear that the person concerned will not be subjected to the daily fine once he has applied for a court order, but the penalty will have retrospective effect if the court refuses to grant an order.

12. Election advertisement ("EA") - Clauses 2 and 34

- Members are concerned that the existing definition of EA in clause 2 may be too wide. We propose to amend the definition by substituting the "effect test" with "purpose test". With this amendment, whether an advertisement falls within the scope of EA will depend on the purpose for its publication.
- Members consider that a candidate should be given more time for making a statutory declaration to rectify the mistake of publishing an EA without the required printing details in clause 34(3). We propose to amend the deadline from "before the advertisement is published" to "not later than 7 days after the advertisement is published".
- For the same reason, we propose to amend the deadline for lodging two copies of an EA with the Returning Officer in clause 34(4) from before publication to "not later than 7 days after publication". We also propose to make it clear that for an EA placed in a registered local newspaper, the responsibility for lodgement rests with the candidate.

- Although clause 34 is not an illegal conduct, it is necessary to provide a mechanism for a candidate to apply for a court order to relieve him of the liability for contravening this clause. This is reflected in clause 31(3). However, Members consider the wordings inappropriate as they give an impression that contravention of clause 34 is an illegal conduct. We propose to delete clause 31(3) and add a new subclause in clause 34 to provide for the said mechanism without equating this clause with an illegal conduct.

13. Attempts to commit an offence - Clause 42

- Members point out that the purpose of clause 42 is unclear. We propose to amend this clause to make it clear that a person convicted of an attempt to commit any offence under this Bill will be subjected to the same disqualifications and penalties for a complete offence.

14. Repeal of the Corrupt and Illegal Practices Ordinance (“CIPO”)

- Since CIPO will be repealed upon enactment of this bill, we propose to add a new clause 47 to make it clear that the orders on election expenses limits for various elections made by the Governor in Council and the CE in Council under section 13 of CIPO will continue to have effect.
- Also, we propose to include a new clause 48 to make it clear that repeal of CIPO will not affect any penalty or disqualification as a result of conviction of any offence under CIPO.

15. Consequential amendments to the Legislative Council Ordinance and the District Councils Ordinance - items 6(i) and items 7(i) of Schedule

- Responding to Members’ suggestion, we propose to amend these two items to make it clear that if it appears to the Court that a person may have engaged in corrupt or illegal conduct, the

Court is required to provide a report to the Director of Public Prosecutions at the end of the trial of an election petition.

16. Consequential amendments to other legislation

- Since CIPO will be repealed, we propose to replace the reference to CIPO in other legislation with the corresponding reference in the Bill. These include the Crimes Ordinances, the Medical Practitioners (Electoral Provisions) (Procedure) Regulations, regulations made by the EAC and the Election Petition Rules for the Legislative Council and the District Councils.

17. Technical amendments

- We propose the following technical amendments :
 - (a) In the definition of “advantage” in clause 2, add “of” after “exercise” in paragraph (d) and “performance” in paragraph (e).
 - (b) In the definition of “appropriate authority” in clause 2, add “Election Committee” to clarify the authority for the subsector elections.
 - (c) In the Chinese text of the definition of “有關主管當局”, substitute “就為選出鄉議局議員或鄉事委員會執行委員會主席、副主席或委員而舉行的選舉而言” with “就為選出鄉議局議員或鄉事委員會主席、副主席或執行委員會委員而舉行的選舉而言” to reflect accurately the meaning of the English text. Same amendment will be made to the definition of “選民” (elector) and “選舉主任” (returning officer) and also clauses 4(g) and 33.
 - (d) In the definition of “returning officer” in clause 2, amend reference to the District Councils Ordinance from “section 73” to “section 75” to reflect the corresponding reference. Also, we propose to add a new paragraph to include returning officers appointed for subsector elections.

- (e) In clause 7(1), substitute “inducement to” with “inducement for” in paragraph (c), and substitute “having been” with “if the person has been” in paragraph (e)(ii).
- (f) In the Chinese text of clause 12(5), substitute “會議” with “聚會” for consistency.
- (g) In the Chinese text of clause 18, substitute “從事” with “作出” for consistency.
- (h) In clause 30(1)(d), substitute “in connection with” with “at”.
- (i) In clause 31(2), add a comma before “under an electoral law”.
- (j) In the definition of “printer” in clause 33, substitute “of” with “in relation to”.
- (k) In item 7 of the schedule, reflect the updated numbers of the corresponding sections of the District Councils Ordinance in paragraphs (f) - (i). In the Chinese text of paragraph (c), substitute “擬任期” with “任期擬”.

Constitutional Affairs Bureau
November 1999

CWP1175