

Administration's Response to Concerns raised on 29 March 1999
by Members of the Bills Committee
on Elections (Corrupt and Illegal Conduct) Bill

- C1 : On the Administration's reply to item 1 raised on 22 March 1999, members question whether section 72 of the District Councils Ordinance is wide enough to deal with the situation where the status of the 27 Rural Committee Chairmen, who are ex officio members of the District Councils, is challenged in Court as a result of certain village representative elections and request the Administration to elaborate on its reply.**
- A1 : Section 72 is sufficient to safeguard the proceedings of a District Council or a committee of a District Council in respect of any vacancies arising. A similar provision already exists in the Legislative Councils Ordinance which has proven to be a workable arrangement.
- C2 : Under clause 2 of the Bill, "advantage" does not include an election donation which has been included in an election return. The Administration is requested to respond to members' comment that the "election return" under clause 2 should only refer to an election return to be lodged "within 30 days after the publication of the result of the election" specified in clause 36 of the Bill, but not "an advance return on donations" specified in the Guidelines of the EAC because the latter is not a statutory requirement. If this is the case, whether an election donation included in an advance return would still be considered as an "advantage"?**
- A2 : It should be stressed that whether any money, goods or service constitutes an election donation is determined at the time when it is given to a candidate, but not at the time when a candidate lodges an election return with the appropriate authority. The Bill has already provided a clear definition of election donation and effective mechanism for regulation. It will be a corrupt conduct under clause 18 if a candidate uses an election donation for a purpose other than that of meeting his election expenses. Also, it will be an illegal conduct under clause 36(1)(b) if a candidate fails to declare any election donation in his election

return. In addition, clause 19(1) requires a candidate to issue a receipt to a donor on receiving an election donation of \$500 or more. Clause 36(2)(b)(ii) further requires a candidate to include a copy of such receipt in the election return.

C3 : According to the Administration, “an advance return on donations” comes under section 29(2A) of the CIPO which stipulates that “a return of donations in such form and containing such information as may be specified from time to time by the Electoral Affairs Commission”. Noting that a similar provision is not included in the Bill, and having regard to the query raised in (2) above, the Administration is requested to consider whether this requirement should be expressly provided in the Bill.

A3 : The existing wording in clause 36(2)(a) - “within 30 days” may give rise to an unnecessary rigid interpretation that there is no legal basis for the filing of “advance return”. It is not our intention to limit the period of filing an election return within the 30 days after publication of the election result. To further clarify the policy intention, we propose to amend the deadline for submitting an election return from “within 30 days after the date of publication of the result of the election” to “not later than 30 days after.....”. The Electoral Affairs Commission can then specify different forms for “advance return” and “post-election return” under subsection 2(b)(v).

C4 : The Administration is requested to provide figures on the “advance returns on donations” submitted by candidates to the EAC in the 1998 LegCo election.

A4 : No “advance return on donations” was submitted by any candidate in the Legislative Council elections in 1998 and 1995, the elections of the municipal councils in 1995 or the elections of the District Boards in 1994.

- C5 : In order to plug loopholes as mentioned by members at the meeting, the Administration is requested to consider members' proposal that there should be mandatory reporting on election donations received by candidates "within a reasonable time after they have been received", instead of "within 30 days after the publication of the result of the elections", and that such information should be published by the Government.**
- A5 : As mentioned in our response to C2, the Bill has already provided a clear definition of election donation and effective mechanism for regulation. To require a candidate to declare any election donation received within a certain period after receipt would create additional workload for the candidates. This might not be desirable during the election period when the candidates are already fully engaged in their electioneering activities.
- C6 : The Administration is requested to address members' concern about including volunteer service provided by a person whose occupation involves the provision of that kind of service as "election donation"; to advise whether some volunteer services provided to political parties would be caught by this provision, e.g. advice provided to members of a political party by a member of the party who is, for example, a lawyer or a PR consultant by profession; and to consider whether the arrangement should be reviewed in the light of the evolving electoral systems.**
- A6 : According to the EAC Guidelines for the 1998 LegCo election, volunteer work will be counted as donation if it is the work, "normally undertaken by the individual and **during such time** for the purpose of earning income or profit". This definition was generally accepted by parties concerned in the 1998 LegCo election. Subject to Members' views, we will consider incorporating this time element in the definition of "election donation".

C7 : The Administration is requested to consider a member's proposal that legislation on political parties should be enacted as this might help address the concern raised in (6) above.

A7 : To our understanding, a law on political parties is to deal mainly with their registration and legal rights and obligations in order to enhance the transparency of the operation of these parties. Hence, a law on political parties is not a solution for the issue. Nevertheless, the suggestion of a law on political parties is worth considering and we will examine the pros and cons of this suggestion after the second term LegCo election in 2000.

Constitutional Affairs Bureau

12 April 1999