

立法會
Legislative Council

LC Paper No. CB(2)901/99-00

Ref. : CB2/BC/17/98

**Paper for the House Committee
on 21 January 2000**

**Report of the Bills Committee on
Elections (Corrupt and Illegal Conduct) Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on the Elections (Corrupt and Illegal Conduct) Bill.

Background

2. The Corrupt and Illegal Practices Ordinance (CIPO), which prohibits various corrupt and illegal activities in relation to the elections, was first enacted in 1955. To meet the changing demands of the evolving electoral systems, it is necessary 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, the Elections (Corrupt and Illegal Conduct) Bill (the Bill) is introduced to replace the existing CIPO.

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 the CIPO have been included in the Bill.

The Bills Committee

4. At the House Committee meeting on 5 February 1999, members agreed to form a Bills Committee to scrutinize the Bill in detail. The membership list of the Bills Committee is at **Appendix I**.

5. Under the chairmanship of Hon Ronald ARCULLI, the Bills Committee has

held 24 meetings with the Administration. It has also considered the views of media groups on issues relating to election advertisement.

Deliberations of the Bills Committee

Application of the Bill

6. The Bill, like the CIPO, will apply to the elections of the Legislative Council (LegCo), the District Councils, Heung Yee Kuk, and the executive committee of a Rural Committee. Some members have suggested that the provisions of the Bill should also apply to the elections of the Chief Executive (CE) and Village Representatives (VR) in the New Territories.

7. The Administration has advised that it will carefully study and draw up the legislative proposals in respect of the arrangements for and regulation of the election for CE and introduce the relevant bill to LegCo for scrutiny in due course. It is not proposed to include the CE election in the Bill at the present stage. In addition, although the Working Group on Rural Elections set up in April 1999 has agreed that VR elections should also be subject to the CIPO or its replacement legislation, a proper election mechanism would have to be put in place before VR elections could be brought under statutory regulation.

8. In view of some members' firm view that the Bill should cover all public elections to ensure that they are clean and free from any corrupt or illegal conduct, the Administration has subsequently agreed to amend the Bill to cover the elections of CE and VR. Amendments to define various terms in the Bill in the context of these elections will also be made.

Definition of "advantage"

9. Members are concerned about the wide ambit of the definition of "advantage" under clause 2. They are particularly concerned about whether distributing publicity items to electors might be regarded as offering an advantage. They have suggested that give-away items with no resale value or below a certain value and distributed in small quantity should not be considered as an advantage having valuable consideration as defined under the clause.

10. The Administration has advised that the term "valuable consideration" is also used in other common law countries such as the United Kingdom and Australia. By defining the term "valuable consideration" to mean money or anything that is worth money, the term "advantage" under the Bill will not include things on which no money value can be put nor things which have merely a nominal value. The Administration considers that there will be technical difficulties to define "resale value" or "small quantity". Alternatively, specifying an amount below which an election gift will not

be counted as an advantage is too arbitrary and will be subject to abuse. The Administration has reiterated that an important element for constituting an offence under the Bill is that the purported advantage is given or offered as an inducement or reward to affect a person's intention to stand as a candidate or to vote at an election.

Voluntary service

11. This is a controversial subject on which members have had detailed discussions. Members note that there is no definition of "voluntary service" in the CIPO. While the Electoral Affairs Commission (EAC) has provided guidelines on "volunteer work", these are not reflected in the existing law. The Bill proposes that "any service provided free of charge to or in respect of the candidate or group by a person whose occupation involves the provision of that kind of service" is a kind of "election donation" and counted towards election expenses.

12. Members are concerned about the policy intent of the existing law and whether the Bill has introduced any policy changes. Pointing out that failure of a candidate to lodge a return on election expenses and election donations is an offence under clause 37(1), some members are particularly concerned about the difficulty in determining the types of voluntary service that should be counted as election donation. The Administration has explained that the purpose of treating certain voluntary service as election donation is to provide a level playing field for all candidates at an election. According to the EAC Guidelines for the 1998 LegCo election, volunteer work is an election donation and counted towards election expenses at a fair estimated value 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.

13. To address members' concern, the Administration has put forward a proposal for the consideration of the Bills Committee. Under the proposed arrangement, a candidate does not need to include in his election return voluntary service provided by a person personally and voluntarily, if the person's occupation is not related to the service; or if the person's occupation is related to the service but it is provided outside the person's normal working hours.

14. The Bills Committee has divided views on the matter. Some members are of the view that restrictions on voluntary service should be removed as far as possible, in view of the practical difficulties in determining the exact scope of voluntary service that should be accounted for or not accounted for in the election expenses return of a candidate. They do not feel that the Administration's proposal to add a time element to further narrow the scope of voluntary service to be counted as donation would address their concern, as some people who provide voluntary service may not have "normal" or "fixed" working hours for the purpose of earning income or profit. Noting that except USA, there is no restriction on voluntary service in major countries such as United Kingdom, Australia, Canada, Germany, Japan and Singapore, these

members query the need for adopting such a stringent requirement in Hong Kong.

15. A few members consider it of paramount importance that a balance has to be struck to ensure that there is a level playing field for all candidates. A broadbrush approach to exclude all kinds of voluntary service from the definition of election donation would open the "backdoor" for abuse, rendering the imposition of an upper limit of election expenses meaningless. They are adamant that certain services, despite provided voluntarily, should be treated as election donation, such as service provided by a team of professional people or provided by a person who receives money or money in kind (e.g. paid leave in addition to his leave entitlement) from his employer for offering that kind of service.

16. After detailed deliberation, it is the view of the majority of the members of the Bills Committee that there should not be restrictions on voluntary service which is provided by an individual personally, voluntarily and in his own time. It does not matter whether the voluntary service consists of work normally undertaken by the individual or is related to his occupation. In addition, the voluntary service should exclude all provisions of goods or materials incidental to the service.

17. The Administration has agreed to take on board members' proposal. It will amend the definitions of "advantage" and "election donation" and add a new definition of "voluntary service" under clause 2 of the Bill.

Definition of election advertisement (EA)

18. Members note that there is no specific definition of EA in the CIPO. Section 19 of the CIPO sets out the printing requirement in respect of printed material having reference to an election, which in practice could cover "neutral" publication without the intent to promote any candidate at an election. The definition proposed in clause 2 of the Bill seeks to narrow the scope of EA to electioneering material which "has the effect of promoting or prejudicing a candidate or candidates at an election". The proposed definition ties in with the definition of "election expenses" which also contains the reference to promoting or prejudicing the election of a candidate or group of candidates.

19. Some members are of the view that the definition of EA is so wide that it might cover newspaper commentaries and other third-party publications. These members have pointed out that it is an illegal conduct for a person to incur election expenses at an election without being authorized by a candidate under clause 23(1) of the Bill. In the case of a newspaper commentary or a publication falling within the scope of EA, it is unlikely for the author or publisher to obtain the authorization or consent of the candidate for its publication. In addition, it would be difficult to determine the costs incurred.

20. In response to members' request, the Administration has advised that there is no

restriction on media commentaries relating to candidates in the United Kingdom, Australia, Canada, Germany, Japan and Singapore. In the United States, any cost incurred in media commentaries is not a contribution unless the facility is owned or controlled by any political party, political committee or candidate. Some members are in favour of the liberal approach adopted by these overseas countries.

21. To address members' concerns, the Administration has proposed to amend the definition of EA in the Bill by replacing the "effect test" with the "purpose test". Under the proposal, media carrying out their normal and ongoing activities of reporting and commenting on public affairs in a fair and objective manner would not be caught by the definition. A publication will only fall within the scope of an EA if it is published for the purpose of promoting or prejudicing the election of a candidate or candidates. The inclusion of a purpose test can strike a balance between fair elections and freedom of speech.

22. Noting that the United Kingdom has no specific statutory provision directed at election expenses incurred by a political party in general election campaigning, a few members are also concerned about whether an advertisement published for the purpose of promoting a party without naming specific candidates would be caught by the provision. The Administration has advised that if an advertisement is published for the purpose of promoting or prejudicing the election of a candidate or candidates, it will be counted as an EA. In deciding whether an advertisement is an EA, and thus the expenses thereon will be counted as election expenses, the court will look at all the relevant circumstances.

23. After consideration, the Bills Committee agrees to support the Administration's proposal as the scope of EA under a "purpose" test is more restrictive than that under an "effect" test. The Administration will move a CSA to clause 2 accordingly.

Corrupt offences under Part 2 of the Bill

Corrupt motive

24. Part 2 of the Bill contains provisions prohibiting specified corrupt conduct at elections. For example, clause 7 criminalizes among other things, the offering, soliciting or acceptance of an advantage as an inducement or reward for standing as a candidate. Under section 8A of the CIPO, a comparable provision of clause 7, bribery is expressed to be the doing of any of the activities referred to in section 5 of the CIPO. Members note that the offence provisions for corrupt conduct under Part 2 of the Bill as drafted, would have the effect of creating absolute offences without having to prove a corrupt motive. The Administration has been requested to clarify whether this is the policy intent, and if not, to consider whether it is desirable to specify a corrupt intent by adding the word "corruptly". In addition, the activities described in section 5 of the CIPO, in order to constitute bribery, have to be done "without reasonable excuse" or "without legal authority". The Administration has

also been requested to consider adding such qualifiers in clause 7 and other clauses of the Bill.

25. The Administration has explained that like other clauses in Part 2 of the Bill, clause 7 seeks to define what corrupt conduct is at an election. The structure of the provisions follows that adopted in the UK Representation of the People Act 1983. It provides that where a person does a specified act for a specified purpose he engages in a corrupt conduct. The motive to bribe is built-in in the way the clause is drafted. Adding the word "corruptly" that literally denotes the motive to influence by using bribery is not only unnecessary and tautological, it might cast doubt on whether in any particular case the offering of an advantage to a person in relation to his candidature is a corrupt conduct. The Administration has considered at drafting stage but decided that it is unnecessary to add the qualifiers proposed because if the mental element to influence a decision on candidacy is present, there could never be a lawful authority or a reasonable excuse for deliberate bribery. In the Administration's view, there is no difference in the scope of offence between clause 7 and section 8A of the CIPO as the qualifying term is redundant.

26. Members are not convinced by the Administration's explanation and have drawn its attention to the fact that the relevant provisions of the UK Representation of the People Act 1983 (i.e. sections 107 and 114) include the word "corruptly". After reconsideration, the Administration has agreed to add "corruptly" after "A person engages in corrupt conduct at an election if the person" in clause 7(1). However, the Administration considers it unnecessary to make similar amendment to other clauses under Part 2 of the Bill.

New corrupt offence for not using best endeavours at election

27. Under clause 7, a person engages in corrupt conduct if he accepts an advantage to stand or not to stand as a candidate at an election, or to withdraw his candidature. Members are concerned that instead of withdrawing his candidature, a corrupted candidate can resort to not making best endeavours in his election campaign in exchange for an advantage. This will not be caught by clause 7. The Bills Committee has requested the Administration to consider introducing a new offence.

28. In the view of the Administration, it would be most difficult to define what is "best endeavours" and there may be various circumstances under which a candidate, acting in good faith, cannot or does not want to make his best endeavours in his election campaign. Despite the Administration's explanation, members maintain the view that such conduct should be prohibited. After reconsideration, the Administration has agreed 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.

29. On members' further suggestion that a similar offence element be introduced in

clause 8 which prohibits the use of force or duress to affect a person's candidature, the Administration considers it undesirable to do so. It has explained that the term "duress" is defined as including causing financial loss. There may be grey areas of duress of a financial nature which will in practice be rather difficult to prove. By adding the element of "not using one's best endeavours", which is already difficult to prove, will result in an offence which will be virtually impossible to prove.

Corrupt conduct

30. Corrupt conduct refers to conduct which involves intentional acts, and which if allowed would produce a direct effect on an election. Members have sought detailed clarifications from the Administration on whether certain conduct could be caught by the Bill. Specific examples have been quoted for illustration purpose.

Corrupt conduct to bribe candidates (clause 7)

31. Members have requested the Administration to explain the rationale for treating an act to induce a person to stand as a candidate at an election as corrupt conduct under clause 7(1). They note that there is no similar provision in the UK Representation of the People Act 1983. According to the Administration, section 8A(1A) of the CIPO was added in 1984 as suggested by an interdepartmental working Group after reviewing the arrangements for the 1982 District Board elections and 1983 Urban Council elections. The Working Group considered that as there were provisions aimed at preventing any person from bribing or intimidating any elector to vote or not to vote for a particular candidate, additional provisions should be made to prevent any person from bribing or intimidating any other person to stand as a candidate or to withdraw his candidate as well. The object of clause 7(1) is to prevent any persons or organizations from offering an advantage to candidates at an election so that, once elected, they will protect or promote the interests of these persons or organizations. The Administration considers that the clause is necessary to maintain clean and honest elections in Hong Kong.

32. As the definition of "advantage" includes "any office, employment or contract", members have sought clarification on whether an offer of employment by a political party to a person to enable the person to stand as a candidate at an election would be considered as offering an advantage under clause 7. The Administration has advised that clause 7 does not prevent the hiring of those who want to participate in politics. Nor does it prohibit offering of a job to such a person in the knowledge that he has a general desire to seek elected office.

Corrupt conduct to use force or duress against candidates (clause 8)

33. It is an offence under clause 8 for a person to use duress or threaten to use duress to induce a person not to stand as a candidate. Members are concerned about situations where an employer might use duress to induce an employee not to stand as a

candidate at an election. The Administration has advised that the clause would not prevent an employer from deducting salary from an employee in respect of a period of absence from work or even from sacking an employee for failing to carry out his duties. Neither would it catch an employer who explains to an employee who is a prospective candidate the consequences of being absent from work, of failing to carry out duties or of failing to meet targets. However, the clause would catch an employer who sacks or threatens to sack an employee, or who imposes or threatens to impose financial penalty in the form of reduction in remuneration or other benefits on an employee, simply because the employee is standing for election and electioneering in his private time.

Corrupt conduct to bribe electors and others at election (clause 11)

34. Any act to affect a person's voting preference by offering or soliciting an advantage is prohibited under clause 11 which includes the "without reasonable excuse" proviso. It is also made clear in this clause that a candidate or other person does not engage in corrupt conduct by entering into a voting arrangement. In response to members' request, the Administration has given advice on a number of scenarios.

35. Members note that a "reasonable excuse" could include, for example, a pledge made by a candidate to fulfil his election platform. In addition, a candidate who hires a person in good faith to assist in electioneering activities will not be caught by this clause. On whether services provided by incumbent members of LegCo or the District Councils would be considered as "any other service" under the definition of "advantage", members have been told that if the service is one which has been regularly provided, it would be a reasonable indication that the service is part of the normal public duty of the incumbent candidate who is not doing it for the purpose of promoting his election. On whether giving souvenirs such as balloons to children by a candidate will be regarded as trying to induce the children's parents to vote for the candidate, members note that given the nominal value of a balloon, it is most unlikely that it would be considered by a court to be an inducement under the circumstance. However, a balloon bearing a name or picture of a candidate or having reference to a candidate is a form of election advertisement. In addition, balloons which do not bear any reference to a candidate would still be counted as election expenses if they are distributed for the purpose of promoting the election of a candidate.

Corrupt conduct to provide refreshments and entertainment at election (clause 12)

36. Clause 12 prohibits the provision of refreshments or entertainment for affecting a person's voting preference. The Administration has explained that a function organized for election campaigning purpose at which refreshments are served would be deemed to be an election meeting, and the expenses so incurred would be counted as election expenses. For an offence in clause 12 to occur, it has to be shown that the refreshments and entertainment being served constitute an inducement for someone to

vote, or not to vote, for a candidate at an election.

37. Clause 12(5) expressly provides that the serving of non-alcoholic drinks at an election meeting will not constitute a corrupt conduct. Noting the policy intent of the clause is to allow a candidate to serve inexpensive drinks at an election meeting, members have queried whether non-alcoholic drinks are necessarily inexpensive. Members have accepted the Administration's explanation that given the various types of drinks that are available, it will be impracticable to stipulate an exhaustive list of drinks which are allowed or not allowed at election meetings.

Corrupt conduct to impersonate another at election (clause 15)

38. In the course of examining the clause and in response to members, the Administration has briefed members on the various measures put in place by the EAC in previous elections to prevent human errors in the issuing of ballot papers. In the event that a voter turns up and a ballot paper has already been issued under his name, the existing arrangement is for the polling staff to issue a ballot paper stamped with the word "tendered" to the voter concerned after explaining that it will not be counted. This is to avoid interruption to the polling.

39. On members' concern about the implication for not counting "tendered" ballot papers, the Administration has advised that if the election results are affected materially by the issue of "tendered" ballot papers, a candidate can lodge an election petition.

40. Some members have doubts about whether the existing arrangement could prevent impersonation and protect the voting right of a bona-fide voter. They have proposed various suggestions to improve the existing arrangement to prevent impersonation for the purpose of applying for a ballot paper. The Administration has advised that the EAC will consider the feasibility of the suggestions in future elections.

Corrupt conduct to destroy or deface ballot paper (clause 17)

41. Under clause 17(d), a person engages in corrupt conduct if the person without lawful authority, destroys, defaces, takes, opens or otherwise interferes with a ballot box or with ballot papers then in use at the election. To address members' concern on the purpose and drafting of the clause, the Administration will introduce CSAs to the clause to clarify that for ballot papers, they are to be protected before, during and after the election until they are properly disposed of. For ballot boxes, they only need to be protected when they are used at the election.

Corrupt conduct to withdraw election petition/appeal for a bribe (clause 21)

42. Members have sought clarification on whether it is the policy intent for this clause to cover legitimate agreement between the petitioner and the respondent to withdraw an election petition subject to the leave of the court.

43. The Administration has advised that unlike a commercial dispute which relates to private rights and interests, an election petition is a matter of public concern. For this reason, the electoral laws provide that the petitioner must obtain the leave of the court to withdraw an election petition. The laws also allow another person to stand in as petitioner to enable the election petition to continue. The Administration considers it inappropriate to allow any advantage (be it an offer for out-of-court settlement or a blatant bribe) be offered to induce a petitioner to withdraw his election petition. This would not prevent a court from making an appropriate order for costs at termination of proceedings.

Illegal conduct to publish election advertisement (EA) (clause 27)

44. Illegal conduct refers to conduct which is generally one step away from the actual electoral procedures and process of nominating and voting for candidates. Clause 27 makes it an offence if a person quotes support of another person or an organization in an EA without written consent of that other person or organization.

45. On members' view that the element of written consent should be included in subclauses (1) and (2) instead of treating it as a defence under subclause (3), the Administration has agreed to introduce suitable amendments.

Election donation

Definition

46. Members have sought clarification on whether proceeds from selling raffle tickets or other articles to the public for the purpose of fund-raising for a party or candidate(s) is regarded as election donation as defined under clause 2.

47. The Administration has responded that a donation will be caught if it is given to a particular candidate or candidates for the purpose of promoting or prejudicing the election of the candidate or candidates. Donation to an organization will not be covered by the definition. Under the Gambling Ordinance, an organization has to apply for a licence for selling raffle tickets. The proceeds from the sale of raffle tickets will not be regarded as election donation unless the benefiting organization gives the proceeds to a candidate/candidates for a purpose which falls within the definition of election donation. Under the Summary Offences Ordinance, a person or an organization has to apply for a permit for organizing non-charitable fund-raising activities in a public place. As to whether the proceeds from the fund-raising activities will be regarded as election donation will depend on the intended use of the money collected and whether it is to benefit an organization or a candidate/candidates and other circumstances leading to the fund-raising activities.

Receipt to donor

48. Under clause 19(1), a candidate must, on receiving an election donation of \$500 or more, issue to the donor a receipt for the donation. The receipt must specify the name and address of the donor.

49. The Administration has agreed to members' suggestion to raise the amount of an election donation for which a candidate is required to issue a receipt to more than \$1,000 and to make clear in the Bill that a candidate is only required to record the name and address of the donor as supplied by the donor. In respect of issuing a receipt for donations received collectively by a group of candidates in a public place, the Administration is of the view that the same amount should apply. To avoid any doubt, an amendment will be made in this respect.

50. As to whether "an election donation" covers the aggregate amount of payments made by the same donor on more than one occasion, the Administration has explained that it would depend on a number of factors such as the method of payment, the total amount, the frequency of payments, and the relationship between the donor and the candidate. In the event of enforcement of clause 19(3), it would be for the prosecution to prove beyond reasonable doubt that the payment was a single donation and that the candidate was aware of that fact.

Disposal of election donation

51. Under the Bill, a candidate must return any unspent donation or donation exceeding the election expenses limit to the donor or dispose of it in any manner in accordance with the donor's instructions. If it is not possible to do so, the candidate must give the unspent or excessive donation to a charitable institution or trust of a public character chosen by the candidate.

52. Members have explained to the Administration the practical difficulties for a candidate to decide how any unspent or excessive donation should be returned to the donors, for example, whether the donation should be returned to all known donors on a pro-rata basis or in the order of receipt of the donation by the candidate. To simplify the regulatory mechanism for election donation, they have proposed that any unspent or excessive donation should be given to a charitable institution or trust of a public character chosen by the candidate. The Administration has agreed to introduce CSAs in this respect.

Court to declare candidate to be duly elected in certain circumstances

53. 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 is of a trivial nature and the candidate is not aware of it or does not consent to it.

54. Some members consider that it is difficult for a candidate to satisfy the onus of proof that he has taken "all reasonable steps" to prevent an agent from engaging in corrupt or illegal conduct. The Administration will introduce CSAs to substitute "all reasonable steps" with "reasonable steps" in clause 30(1)(c), and to substitute "was of a trivial nature" with "did not materially affect the results of the election" in clause 30(1)(b) as a conduct of a trivial nature may have significant consequences. In response to members' comment on overlapping provisions, the Administration will introduce CSAs to improve the drafting of clauses 29 and 30.

Court order to grant relief to candidates

55. Under clause 31, a candidate can apply for a court order to relieve himself of criminal responsibility if he contravenes the illegal conduct provisions due to inadvertence, miscalculations or other reasonable cause and was not due to bad faith. Under clause 39, a candidate can apply for a court order to extend the period for lodging the election return or to correct any error made in an election return if it is due to illness, absence or inadvertence of himself or his agent.

56. The Administration has advised that an application for a court order can only be made before a plea is taken in court for a criminal charge of the illegal conduct concerned. The criminal proceedings will be stayed once an application is made to the Court of First Instance and an applicant will be relieved of any criminal liability if a court order is granted. Members do not find the relevant provisions of the Bill reflect the policy intent. The Administration has agreed to introduce CSAs in this respect. The Administration will also introduce CSAs to substitute the phrase "some other reasonable cause" with "any reasonable cause" in clauses 31(2)(a), 39(2) and 39(4) which set out the grounds for which a court must be satisfied before granting an order.

57. Members have noted with considerable concern that failure of a candidate to include a receipt for expenditure in an election return as required under clause 36(2)(b) is an offence and would be referred to the ICAC for investigation. There were 26 such cases in the 1998 LegCo election. They have pointed out that more often than not the failure in complying with the requirement is due to the loss of the relevant receipt. To address members' concern, the Administration has agreed to amend clause 39 to enable a candidate to apply for relief in case of loss of the various documents required under clause 36(2)(b). 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).

Requirements for publishing election advertisement (EA)

58. Under section 19(1A) of the CIPO, no person shall be prosecuted for publishing

an EA without the required printing details if he lodges a statutory declaration with the returning officer to rectify the mistake within 7 days of the publication of the EA. Members consider that a similar exemption clause should be provided in the Bill. The Administration will introduce a CSA to amend the deadline from "before the advertisement is published" to "not later than 7 days after the advertisement is published" in clause 34(3). For the same reason, the Administration will also amend the deadline for lodging two copies of EA with the returning officer in clause 34(4) from before publication to "not later than 7 days after publication".

59. In response to concerns raised by media groups which have been invited by the Bills Committee to give views, the Administration has agreed to introduce a CSA to make it clear that for an EA placed in a registered local newspaper, the responsibility for lodging two copies of EA with the returning officer rests with the person who seeks to place the advertisement in the newspaper.

60. According to the Administration, the offence to publish an EA that does not meet certain requirements under clause 34(4) will not give rise to disqualification of an elected candidate. However, members note that the offence is taken to be illegal conduct for the purpose of a person's application to the Court for relief under clause 31(3). While acknowledging the fact that it is necessary to provide a mechanism for a candidate to apply for a court order to relieve him of the liability for contravening clause 34(4), members have reservation on the existing formulation as it gives an impression that contravention of clause 34 is an illegal conduct. After consideration, the Administration has agreed to amend 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.

Election return

61. A candidate must lodge with the appropriate authority an election return on election expenses and donations in a specified form within 30 days after publication of the election result in the Gazette under clause 36, or within such extended period as may be allowed by the Court under clause 39.

62. 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 result. The Administration has advised that it is not the 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 intent, the Administration will introduce a CSA 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...".

63. Members have expressed concern about the situation where a candidate is required to apply for a court order to extend the statutory period for lodging an election return simply because the demand note from the Government for removal of

election advertisements arrives too late for him to include the expenses in the election return. After discussing with the relevant departments, the Administration has proposed that all the demand notes in respect of removing the election advertisements should be issued within 21 days after publication of the election result in the Gazette so that candidates will have enough time to include the costs in their election returns. The Administration will request the EAC to include the proposed deadline in its electoral guidelines. In addition, the Administration will 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.

64. Under clause 38, a person commits an offence and is liable on summary conviction to a daily fine if the person participates in the affairs of the body to which he is elected without having lodged an election return as required by clause 36. To address members' concern that a person might participate in the affairs of a body before the deadline for lodgement of the election return, the Administration will move a CSA to the effect that the phrase "without having lodged an election return as required by section 36" will be replaced with "without having complied with section 36". The opportunity is also taken to simplify the wordings used in this clause. The Administration will also 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.

Attempts to be treated as complete offences (clause 42)

65. According to the Administration, a person will be guilty of an attempt to commit an offence under the Bill if he does so with the relevant knowledge or intent and he will be subjected to the same disqualification and penalties for a complete offence. Members have asked the Administration to recast the clause to reflect the policy intent. The Administration will move CSAs accordingly.

Repeal of CIPO

66. The Administration has proposed to add two new clauses to the Bill by way of CSAs. As the CIPO will be repealed upon enactment of the Bill, new clause 47 will 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 the CIPO will continue to have effect. New Clause 48 will make it clear that repeal of the CIPO will not affect any penalty or disqualification as a result of conviction of any offence under the CIPO.

Committee Stage amendments (CSAs)

67. In addition to the CSAs mentioned above, the Administration will also

introduce other minor, technical and consequential amendments to the Bill and other legislation. A full set of the CSAs to be moved by the Administration is at **Appendix II**.

Recommendation

68. The Bills Committee recommends that, subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed at the Council meeting on 16 February 2000.

Advice sought

69. Members are invited to note the recommendation of the Bills Committee.

Legislative Council Secretariat
20 January 2000

Appendix I

**Bills Committee on
Elections (Corrupt and Illegal Conduct) Bill**

Membership List

Hon Ronald ARCULLI, JP (Chairman)

Hon Cyd HO Sau-lan

Hon LEE Wing-tat

Hon NG Leung-sing

Hon Mrs Selina CHOW, JP

Hon CHAN Yuen-han

Hon Gary CHENG Kai-nam

Hon Andrew WONG Wang-fat, JP

Hon Jasper TSANG Yok-sing, JP

Hon Ambrose LAU Hon-chuen, JP

Hon Emily LAU Wai-hing, JP

Dr Hon TANG Siu-tong, JP

Hon CHOY So-yuk

Total : 13 Members

Legislative Council Secretariat

1 March 1999

DRAFT

ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of "advantage" -</p> <ul style="list-style-type: none">(i) in paragraph (d), by adding "of" after "exercise";(ii) in paragraph (e), by adding "of" after "performance";(iii) in paragraph (g), by adding "voluntary service or" after "other than". <p>(b) In the definition of "appropriate authority" -</p> <ul style="list-style-type: none">(i) by adding before paragraph (a) - "(aa) in the case of an election to elect the Chief Executive, the person designated to be the appropriate authority under any

law in force providing for the election of the Chief Executive; and";

- (ii) in paragraph (a), by adding ", the Election Committee" after "Legislative Council";
 - (iii) in paragraph (b), by adding "and" at the end;
 - (iv) by adding -
 - "(c) in the case of an election to elect a village representative, the person designated to be the appropriate authority under any law in force providing for the election of village representatives;".
- (c) In the definition of "election advertisement", by deleting "that has the effect" and substituting "published for the purpose".
- (d) In the definition of "election donation" -
- (i) by deleting "group of candidates at an election, means" and substituting "candidates at an election, means any of

the following donations";

(ii) in paragraph (a) -

(A) by deleting "group" and substituting
"candidates";

(B) by deleting everything after
"towards meeting," and substituting
"the election expenses of the
candidate or candidates;";

(iii) in paragraph (b), by deleting everything
after "in respect of the candidate or" and
substituting "candidates for the purpose
of promoting the election of the
candidate or candidates or of prejudicing
the election of another candidate or
other candidates, and includes any goods
given incidental to the provision of
voluntary service;";

(iv) by deleting paragraph (c) and
substituting -

"(c) any service provided to or in
respect of the candidate or
candidates for the purpose of
promoting the election of the
candidate or candidates or of

prejudicing the election of another candidate or other candidates, but does not include voluntary service;".

(e) In the definition of "elector" -

(i) by adding before paragraph (a) -

"(aa) in relation to an election to elect the Chief Executive, means a person who is an elector under any law in force providing for the election of the Chief Executive; and";

(ii) in paragraph (e), by adding "and" at the end;

(iii) by adding -

"(f) in relation to an election to elect a village representative, means a person who is an elector under any law in force providing for the election of village representatives;".

(f) In the definition of "electoral law" -

(i) in paragraph (c), by adding "or" at the end;

(ii) by adding -

"(d) the Heung Yee Kuk Ordinance (Cap. 1097); or

(e) any law in force providing for the election of -

(i) the Chief Executive;
or

(ii) village
representatives;".

(g) In the definition of "returning officer" -

(i) by adding before paragraph (a) -

"(aa) in relation to an election to elect the Chief Executive, means the person appointed to be the Returning Officer under any law in force providing for the election of the Chief Executive; and";

(ii) by adding before paragraph (b) -

"(ab) in relation to an election for an Election Committee subsector, means a Returning Officer appointed for the subsector under section 78 of the

Legislative Council Ordinance
(Cap. 542); and";

- (iii) in paragraph (b), by deleting "73" and substituting "75";
- (iv) in paragraph (d), by adding "and" at the end;
- (v) by adding -

"(e) in relation to an election to elect a village representative, means a person appointed to be a Returning Officer under any law in force providing for the election of village representatives;".

- (h) By adding -

"Chief Executive" (行政長官) means the Chief Executive of the Hong Kong Special Administrative Region;

"village representative" (村代表) means a person elected to be a village representative under any law in force providing for the election of village representatives;

"voluntary service" (自願服務) means any service

provided free of charge to or in respect of a candidate or candidates at an election by a natural person, voluntarily and personally, in the person's own time for the purpose of -

- (a) promoting the election of the candidate or candidates; or
- (b) prejudicing the election of another candidate or other candidates."

- 3(a)
 - (a) By adding "the Chief Executive and" before "persons to membership".
 - (b) By adding "and to be village representatives" after "public bodies".

- 4
 - (a) By adding before paragraph (a) -
 - "(aa) an election to elect the Chief Executive;"
 - (b) In paragraph (g), by deleting the full stop and substituting a semicolon.
 - (c) By adding -
 - "(h) an election to elect a village representative."

6(3)(a) By deleting "election".

7(1) (a) By adding "corruptly" after "at the election if the person".

(b) In paragraph (a), by adding -

"(iii) if the other person has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person; or".

(c) In paragraph (b), by adding -

"(iii) if the other person was or has been nominated as a candidate at the election, for not having used the other person's best endeavours to promote the election of the other person; or".

(d) In paragraph (c) -

(i) by deleting "to the" and substituting "for the other";

(ii) by adding -

"(iii) if the third person has been nominated as a candidate at the election, not to use the third person's best endeavours to

promote the election of the
third person; or".

(e) In paragraph (d), by adding -

"(iii) if the third person was or has been
nominated as a candidate at the election,
not to use the third person's best
endeavours to promote the election of the
third person; or".

(f) In paragraph (e) -

(i) in subparagraph (ii), by deleting "having
been" and substituting "if the person has
been";

(ii) by adding -

"(iii) if the person has been nominated
as a candidate at the election,
not to use the person's best
endeavours to promote the
election of the person; or".

(g) In paragraph (f), by adding -

"(iii) if the person was or has been nominated
as a candidate at the election, for not
having used the person's best endeavours
to promote the election of the person; or".

(h) In paragraph (g), by adding -

"(iii) if the other person has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person; or".

(i) In paragraph (h) -

(i) in subparagraph (ii), by deleting the full stop and substituting "; or";

(ii) by adding -

"(iii) if the other person was or has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person.".

12(5) By deleting "會議" and substituting "聚會".

17(1) By deleting paragraph (d) and substituting -

"(d) without lawful authority, destroys, defaces, takes or otherwise interferes with a ballot paper in use, or that has been used, at the election; or

(e) without lawful authority, destroys, removes, opens or otherwise interferes with a ballot box

in use at the election."

18 By deleting everything after "for a purpose" and substituting -

"-

(a) other than that of meeting, or contributing towards meeting, the election expenses of the candidate; or

(b) in the case of an election donation consisting of goods or a service, other than that of promoting the election of the candidate or that of prejudicing the election of another candidate or other candidates,

engages in corrupt conduct at an election."

19 (a) In subclause (1) -

(i) by adding "or candidates" after "A candidate";

(ii) by deleting "\$500 or more" where it twice occurs and substituting "more than \$1,000";

(iii) by adding "as supplied by the donor" after "address of the donor".

(b) By deleting subclauses (2) and (3) and substituting -

"(2) If an election donation of more than \$1,000 or, in the case of an election donation consisting of goods, of more than \$1,000 in value is given to or for a candidate or candidates and the candidate or candidates do not know the name and address of the donor, the candidate or candidates must ensure that the donation -

(a) is not used -

(i) for the purpose

of meeting, or contributing towards meeting, the election expenses of the candidate or any of the candidates; or
(ii) in the case of an election donation consisting of goods, for the purpose of promoting the election of the candidate or any of the candidates or of prejudicing the election of another candidate or other candidates; and

(b) is given to a charitable institution or trust of a public character chosen by the candidate or candidates.

(3) If an election donation of money or goods has been given to or for a candidate or candidates and the donation -

(a) has not been used -
(i) for the purpose of meeting, or contributing

towards
meeting, the
election
expenses of the
candidate or
candidates; or
(ii) in the case of a
election
donation
consisting of
goods, for the
purpose of
promoting the
election of the
candidate or
candidates or of
prejudicing the
election of
another
candidate
or other
candidates; or

(b) is not used in the case
referred to in subsection
(2),

the candidate or candidates must ensure
that the donation is given to a
charitable institution or trust of a
public character chosen by the
candidate or candidates."

(c) By deleting subclauses (4) and (5).

(d) By deleting subclause (6) and substituting

-

"(6) If the aggregate of all
election donations given to or for a
particular candidate or a particular
group of candidates exceeds the maximum
amount prescribed under section 44, the
candidate or the candidates belonging

to the group must ensure that the excess (not including election donations of services) is given to a charitable institution or trust of a public character chosen by the candidate or candidates."

- (e) By deleting subclause (7).
- (f) By deleting subclause (8) and substituting

-

"(8) If an election donation is received by a candidate or candidates, the candidate or each of the candidates engages in corrupt conduct at an election if -

- (a) the candidate or candidates fail to comply with subsection (1) or (2); or
- (b) the candidate or candidates fail to comply with any other requirement of this section before the time when the candidate's or each candidate's election return for the election is lodged in accordance with section 36."

- 21 (a) In subclause (3), by adding "an advantage as" before "a reward".
- (b) In subclause (4), by deleting "a reward to another person" where it twice occurs and substituting "an advantage to another person as a reward".

(c) In subclause (5), by deleting "or reward" wherever it occurs.

27

(a) In subclause (1), by adding "unless, before the publication of the election advertisement, the person or organization consented in writing to the inclusion of the name, logo or pictorial representation" before the full stop.

(b) In subclause (2), by adding "unless, before the publication of the election advertisement, the other person or organization consented in writing to the inclusion of the name, logo or pictorial representation" before the full stop.

(c) By deleting subclause (3).

(d) In subclause (4) -

(i) by deleting "subsection (3), it is sufficient for the defendant to prove that" and substituting "subsections (1) and (2), the consent of an organization is taken to have been obtained if";

(ii) in paragraph (a), by deleting "affected";

(iii) in paragraph (b), by deleting "defendant" and substituting "candidate or person who publishes, or authorizes the publication

of, the election advertisement".

(e) By deleting subclause (8).

(f) In subclause (9) -

(i) by deleting "person or an organization" and substituting "candidate";

(ii) by deleting "person or organization." and substituting "candidate.".

28 By adding -

"(5A) Despite subsection (5), an application for an injunction under this section can be made by -

(a) if the election is to elect the Chief Executive, a person specified for this purpose under any law in force providing for the election of the Chief Executive; or

(b) if the election is to elect a village representative, a person specified for this purpose under any law in force providing for the election of village representatives.".

29(2) (a) By deleting paragraphs (a) and (b) and

substituting -

"(a) the candidate was not aware of the
conduct; or

(b) the candidate, if aware of the conduct,
did not consent to or connive at it."

(b) By deleting "下述各項" and substituting "有以下情況
".

(c) By deleting "從事" and substituting "作出".

30(1) (a) In paragraph (a), by deleting everything after
"engage in the conduct" and substituting "; and".

(b) In paragraph (b), by deleting "was of a trivial
nature" and substituting "did not materially affect
the result of the election".

(c) In paragraph (c), by deleting "all".

(d) In paragraph (d), by deleting "in connection with"
and substituting "at".

31 (a) In subclause (2) -

(i) by adding a comma before "an electoral
law";

(ii) in paragraph (a)(i), by deleting "some
other" and substituting "any".

(b) By deleting subclause (3) and substituting -

"(3) If an application is made under subsection (1), no prosecution against the applicant for having done or omitted to do an act that, but for this section, would be illegal conduct at an election may be instituted or carried on until the application is disposed of by the Court.

(4) An applicant is not liable to be convicted of an offence of having engaged in illegal conduct at an election if the act or omission of the applicant that, but for this section, would be illegal conduct at the election is the subject of an order made under subsection (2).".

- 33 (a) In the definition of "incumbent candidate" -
- (i) by deleting everything before paragraph (a) and substituting -
 - "incumbent candidate" (在任的候選人)
 - means -
 - (aa) the person holding office as, or for the time being assuming the duties of, the

Chief Executive; or";

(ii) in paragraph (b), by deleting "or a Provisional District Board";

(iii) in paragraph (d), by deleting the comma at the end and substituting "; or";

(iv) by adding -

"(e) a serving village representative,";

(v) by adding "office or" before "body" where it twice occurs.

(b) In the definition of "performance report" -

(i) by adding before paragraph (a) -

"(aa) the Chief Executive; or";

(ii) in paragraph (b), by deleting "or a Provisional District Board";

(iii) in paragraph (d), by adding "or" at the end;

(iv) by adding -

"(e) a serving village representative;".

(c) In the definition of "printer", by deleting "of" and substituting "in relation to".

(a) In subclause (3), by deleting "before" and

substituting "not later than 7 days after".

(b) By deleting subclause (4) and substituting -

"(4) A person must, not later than 7 days after publishing a printed election advertisement, furnish 2 copies of the advertisement to the appropriate returning officer.

(4A) If a printed election advertisement is published in a registered local newspaper, the duty to comply with subsection (4) is on the person who seeks to place the advertisement in the newspaper."

(c) In subclause (7), by deleting "Any" and substituting "Subject to subsection (4A), any".

(d) In subclause (8), by deleting "現任議員" and substituting "在任的".

New By adding in Part 5 -

"34A. Court may grant relief in certain circumstances if election advertisements do not meet requirements

(1) A person who publishes a printed election advertisement without complying with section 34(1) or (4) may apply to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may make an order allowing the publication which would, but for this section, constitute an offence under section 34, be excepted from the relevant requirements under that section and relieving the applicant from the penalties imposed by that section, but only if the Court -

(a) is satisfied that -

(i) the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith; and

(ii) where the Court requires notice of the application to be given in Hong Kong, the notice has been given; and

(b) believes it to be just that the applicant should not be subject to those penalties.

(3) If an application is made under subsection (1), no prosecution against the applicant for not having complied with section 34(1)

or (4) may be instituted or carried on until the application is disposed of by the Court.

(4) An applicant is not liable to be convicted of an offence under section 34 if the non-compliance by the applicant with section 34(1) or (4) is the subject of an order made under subsection (2).".

- 35
- (a) By adding before paragraph (a) -
 - "(aa) in the case of an election to elect the Chief Executive, the date specified for this purpose under any law in force providing for the election of the Chief Executive; and".
 - (b) In paragraph (a), by adding ", the Election Committee" after "Legislative Council".
 - (c) In paragraph (b), by deleting the full stop and substituting "; and".
 - (d) By adding -
 - "(c) in the case of an election to elect a village representative, the date specified for this purpose under any law in force providing for the election of village representatives.".
- 36(2)
- (a) In paragraph (a), by deleting "within 30 days" and substituting "not later than 30 days".

- (b) In paragraph (b) -
 - (i) in subparagraph (ii), by deleting "\$500 or more" where it twice occurs and substituting "more than \$1,000";
 - (ii) in subparagraph (iv) -
 - (A) by deleting "such a" and substituting "an election";
 - (B) by deleting "19" and substituting "19(3)".

37 By adding -

"(1A) If a candidate has made an application under section 39, no prosecution against the candidate for failing to have lodged an election return as required by section 36 may be instituted or carried on until the application is disposed of by the Court.".

38 (a) In the heading, by adding "**act in office or**" before "**participate**".

(b) In subclause (1), by deleting everything after "having been elected to" and substituting "an office or membership of a body at an election to which this Ordinance applies, the person acts in

the office or participates in the affairs of the body as a member without having complied with section 36."

- (c) In subclause (2), by deleting "participates as a member of the Legislative Council or body without having lodged an election return as required by" and substituting "acts in the office or participates in the affairs of the body as a member without having complied with".

- (d) By adding -

"(3) A person is not liable to be convicted of an offence under this section for acting in the office or participating in the affairs of the body as a member without having complied with section 36 if -

- (a) the non-compliance is the subject of an order made under section 39; and
- (b) the further period specified in the order has not yet expired.

(4) A person who acts in the office or participates in the affairs of the body as a member without having complied with section 36, if -

(a) the person's application for an order under section 39 is refused; or

(b) the person has not complied with section 36 within the further period specified in the order made under section 39,

may be convicted of an offence under this section and is liable on conviction to the daily fine referred to in subsection (2) counting from the day on which the person began to act in the office or participate in the affairs of the body as a member without having complied with section 36."

39 (a) In subclause (1) -

(i) by adding "is unable or" before "has failed";

(ii) by deleting "within the" and substituting "before the end of the".

(b) In subclause (2) -

(i) by adding "inability or" before "failure";

(ii) in paragraph (d), by deleting "some

other" and substituting "any".

(c) In subclause (4)(c), by deleting "some other" and substituting "any".

(d) By adding -

"(4A) A candidate who has not complied with section 36(2)(b)(i), (ii) or (iii) can also apply to the Court for an order excepting the candidate from the requirement to send an invoice or a receipt, or a copy of a receipt, as required by that section.

(4B) On the hearing of an application made under subsection (4A), the Court may make the order sought, but only if it is satisfied that the non-compliance was due to -

(a) misconduct of an agent or employee of the applicant; or

(b) inadvertence, or an accidental loss or destruction of the invoice or receipt or copy of the receipt, by the applicant or any other person; or

(c) any reasonable cause,

and was not due to the applicant's bad faith."

- 42
- (a) By renumbering the clause as clause 42(1).
 - (b) In subclause (1), by deleting "taken to have committed" and substituting "guilty of attempting to commit".
 - (c) By adding -
 - "(2) A person who is convicted of an attempt to commit an offence against this Ordinance is subject to the same penalties and disqualifications imposed by any law to which the person would have been subject on conviction of the offence attempted."

New By adding -

"47. Transitional provision

Any subsidiary legislation made under the Corrupt and Illegal Practices Ordinance (Cap. 288) before its repeal and in force at the commencement of this Ordinance is, so far as it is not inconsistent with this Ordinance, to continue in force and have the like effect for all purposes as if made under this Ordinance.

48. Saving provision

The repeal of the Corrupt and Illegal Practices

Ordinance (Cap. 288) does not affect any obligation or liability incurred, or any penalty or disqualification imposed, or any investigation or legal proceedings instituted, under that repealed Ordinance; and any such penalty or disqualification may be imposed, and any such investigation or legal proceedings may be instituted or carried on, as if this Ordinance had not been passed."

Schedule (a) By deleting item 1.

(b) By adding -

"1A. Medical Practitioners (Electoral Provisions) (Procedure) Regulation (Cap. 161 sub. leg.)	Repeal section 4(2)(e) and substitute - "(e) he has been convicted of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (of 2000); or".
---	--

- 1B. Crimes Ordinance (Cap. 200)
- (c) By deleting item 4.
- (d) By adding -
- "5A. Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg.)
- In section 46(1), add "or corrupt conduct" after "corrupt practice".
- (a) In section 2(1), in the definition of "election expenses", repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".
- (b) In section 26, repeal "return and declaration of election expenses of the candidate is to be open for inspection under section 29A of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copy of the election return lodged by

the candidate is available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".

(c) In section 52 -

(i) in subsection (1), repeal "committed the offence of personation" and substitute "engaged in corrupt conduct by impersonation";

(ii) in subsection (2), repeal "committed the offence of personation" and substitute "engaged in

corrupt conduct
by
impersonation";
(iii) repeal
subsection (4)
and substitute -
" (4) In
this
section, the
reference to
corrupt
conduct by
impersona-
tion is to be
construed as
the corrupt
conduct
referred to
in section
15 of the
Elections
(Corrupt and
Illegal
Conduct)

Ordinance
(of
2000).".

- (d) In section 96(2), repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".
- (e) In section 102(11), repeal "returns and declarations of election expenses of candidates are open for inspection under section 29A of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copies of election returns lodged by candidates are available for inspection under section 40 of the Elections (Corrupt and Illegal

Conduct) Ordinance (of
2000)".

(f) In section 1(1) of Schedule
1, in the definition of
"election expenses",
repeal "Corrupt and
Illegal Practices
Ordinance (Cap. 288)" and
substitute "Elections
(Corrupt and Illegal
Conduct) Ordinance (of
2000)".

(g) In section 22 of Schedule 1,
repeal "return and
declaration of election
expenses of the subsector
candidate is to be open for
inspection under section
29A of the Corrupt and
Illegal Practices
Ordinance (Cap. 288)" and
substitute "copy of the
election return lodged by
the subsector candidate is

available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".

(h) In section 48 of Schedule 1

-

(i) in subsection (1), repeal "committed the offence of personation" and substitute "engaged in corrupt conduct by impersonation";

(ii) in subsection (2), repeal "committed the offence of personation" and substitute "engaged in

corrupt conduct
by
impersonation";
(iii) repeal
subsection (4)
and substitute -
" (4) In
this
section, the
reference to
corrupt
conduct by
impersona-
tion is to be
construed as
the corrupt
conduct
referred to
in section
15 of the
Elections
(Corrupt and
Illegal
Conduct)

Ordinance
(of
2000)." .

- (i) In section 86(2) of Schedule 1, repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".
- (j) In section 92(11) of Schedule 1, repeal "returns and declarations of election expenses of candidates are available for inspection under section 29A(1) of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copies of election returns lodged by subsector candidates are

available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".

- 5B. Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg.)
- (a) In section 2(1), in the definition of "election expenses", repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".
- (b) In section 29, repeal "return and declaration of election expenses of the candidate is to be open for inspection under section 29A of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copy of the

election return lodged by the candidate is available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".

(c) In section 55 -

(i) in subsection (1), repeal "committed the offence of personation" and substitute "engaged in corrupt conduct by impersonation";

(ii) in subsection (2), repeal "committed the offence of personation" and substitute

"engaged in
corrupt conduct
by
impersonation";

(iii) repeal
subsection (4)
and substitute -

"(4) In
this
section, the
reference to
corrupt
conduct by
impersona-
tion is to be
construed as
the corrupt
conduct
referred to
in section
15 of the
Elections
(Corrupt and
Illegal

Conduct)
Ordinance
(of
2000).".

- (d) In section 94(2), repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance (of 2000)".
- (e) In section 103(10), repeal "returns and declarations of election expenses of candidates are open for inspection under section 29A of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copies of election returns lodged by candidates are available for inspection under section 40 of the Elections

(Corrupt and Illegal
Conduct) Ordinance (of
2000)".".

(e) In item 6(i) -

- (i) by deleting "during" and substituting
"at the end of";
- (ii) by deleting "in relation to" and
substituting "at or in connection
with".

(f) By adding -

"6A. Legislative
Council
(Election
Petition)
Rules (Cap.
542 sub.
leg.)

(a) In rule 11(3) -

- (i) repeal "a
corrupt or
illegal
practice" and
substitute
"corrupt or
illegal
conduct";
- (ii) repeal
"practice." and
substitute
"conduct.".

(b) In rule 21(3) -

- (i) in paragraph
(a), repeal "a
corrupt
practice has not
been proved to
have been
committed" and
substitute
"corrupt
conduct has not
been proved to
have been
engaged in";
- (ii) in paragraph
(b), repeal
"corrupt
practices being
committed" and
substitute
"corrupt
conduct being
engaged in";
- (iii) in paragraph
(c), repeal

"practices"
where it twice
occurs and
substitute
"conduct".

(g) In item 7 -

- (i) in paragraph (c), by deleting "擬任期" and substituting "任期擬";
- (ii) in paragraph (f), by deleting "29(d)" and substituting "30(d)";
- (iii) in paragraph (g), by deleting "47(1)(a)(ii)" and substituting "49(1)(a)(ii)";
- (iv) in paragraph (h), by deleting "47(3)" and substituting "49(3)";
- (v) in paragraph (i) -
 - (A) by deleting "53" and substituting "55";
 - (B) by deleting "during" and substituting "at the end of";
 - (C) by deleting "in relation to" and substituting "at or in connection with".

(h) By adding -

- "8. District Councils (Election Petition) Rules (Cap. 547 sub. leg.)
- (a) In rule 11(3) -
- (i) repeal "a corrupt practice or an illegal practice" and substitute "corrupt or illegal conduct";
 - (ii) repeal "the corrupt practice or the illegal practice" and substitute "the corrupt or illegal conduct".
- (b) In rule 21(3) -
- (i) in paragraph (a), repeal "a corrupt practice has not been proved to have been committed" and

substitute

"corrupt conduct

has not been

proved to have

been engaged in";

(ii) in paragraph (b),

repeal "corrupt

practices being

committed" and

substitute

"corrupt conduct

being engaged

in";

(iii) in paragraph (c),

repeal

"practices"

where it twice

occurs and

substitute

"conduct".".