

Legislative Council Panel on Constitutional Affairs

Amendments to subsidiary legislation for the 2007 Chief Executive Election

Introduction

This paper informs Members of the scope of amendments proposed to be made to two subsidiary legislation, namely the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) under the Electoral Affairs Commission (“EAC”) Ordinance and the Chief Executive Election (Election Petition) Rules (Cap. 569E) under the Chief Executive Election Ordinance (“CEEO”) (Cap. 569), to prepare for the Third Term Chief Executive (“CE”) election to be held in March 2007.

Background

2. The Third Term CE election will be held in March 2007. The Registration and Electoral Office (“REO”) has reviewed Cap. 541J, which is made by the EAC, and has identified that amendments under the following categories will be required :

- (a) amendments consequential to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (“the Amendment Ordinance”), which came into effect on 13 May 2006; and
- (b) amendments to align the electoral procedures for the CE election, where appropriate, with those for the Legislative Council (“LegCo”) election in 2004.

Apart from Cap. 541J, amendments consequential to the Amendment Ordinance are also required for Cap. 569E, which is made by the Chief Justice.

Scope of amendments

(a) Amendments consequential to the Amendment Ordinance

Sole candidate : electoral arrangements

3. The Amendment Ordinance has amended the CEEO to provide that, if only one CE candidate is validly nominated, election proceedings shall continue. The electoral arrangements as set out in the Amendment Ordinance are as follows :

- (a) When voting, Election Committee (“EC”) members may indicate in the ballot papers either to support or not support the sole candidate.
- (b) The sole candidate shall be returned at the election if the number of support votes he obtains constitutes more than half of the total number of valid votes cast. The Returning Officer (“RO”) shall publicly declare that the candidate is elected.
- (c) If the number of support votes obtained by the candidate falls short of more than half of the total valid votes cast, the RO shall publicly declare that:
 - (i) the candidate is not elected at the election; and
 - (ii) the election is terminated.
- (d) Following termination of the election, there shall be a new round of nominations.
- (e) If, at the close of the new round of nominations, there is still only one candidate, the election process shall continue by following the arrangements set out in (a)-(d) above. If necessary, the process will be repeated until a candidate is returned.

4. Consequential amendments to Cap. 541J will be required to provide for detailed arrangements to implement the above procedures. Such arrangements will largely be modelled on, where appropriate, those for a contested election. The main amendments to Cap. 541J in this respect are set out at **Annex A** for easy reference.

Sole candidate : election petition

5. The grounds for lodging an election petition against the result of a CE election are specified in the CEEO. Under the amendments introduced by the Amendment Ordinance, an additional ground for petition has been provided for, i.e. a sole candidate declared by the RO as not returned in an election is not returned because material irregularity has occurred in the election. Consequential amendments are required for Cap. 569E, which sets out the detailed arrangements for election petitions, to include this additional ground for election petitions and to make appropriate changes to the petition form.

(b) Amendments to align electoral procedures for CE election with those for LegCo election

6. The REO has also reviewed the electoral procedures for the CE election, as set out in Cap. 541J, and identified areas where the electoral arrangements should tally with those for other elections, in particular the LegCo election, as set out separately in the EAC (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D). These include, among others, electoral arrangements which facilitate the keeping of order within the polling station on polling day and counting of votes, and increase in the penalty for unauthorised filming, photographing, audio/video recording within a polling station. Details of the main amendments, mostly technical in nature, are set out in **Annex B**. (A similar alignment exercise has been done in respect of the electoral procedures for Election Committee subsector elections, as set out in the EAC (Electoral Procedure) (Election Committee) Regulation (Cap. 541I). The Amendment Regulation to amend Cap. 541I is now being scrutinised by the LegCo. Depending on the outcome of the scrutiny, relevant provisions of Cap. 541I will also be adopted for Cap. 541J.)

Legislative Timetable

7. The amendments to Cap. 541J will be made by the EAC whereas those to Cap. 569E will be made by the Chief Justice. The aim is to gazette the two sets of amendments regulation / rules and to table them in the Council for vetting in October 2006.

Registration and Electoral Office
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Main Amendments to the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) in relation to the electoral arrangements in the event of sole candidate

Nomination

1. Similar to a contested election, provide that a copy of the candidate's nomination form shall be made available for public inspection until publication of election result.
2. Amend the content requirement for the Gazette notice relating to submission of nomination forms, to state that a poll will be held on the polling day even if there is only one validly nominated candidate.

Polling Arrangement

3. Provide that polling will be conducted, where only one candidate is validly nominated, in accordance with the new section 26A of the CEEO. [Note : According to section 26A of the CEEO, in relation to an election with only one validly nominated candidate, electors may cast either a support vote or a not support vote. If the number of support votes obtained by the candidate exceeds half of the total number of valid votes cast in the poll, he shall be returned at the election. If the number of support votes obtained by the candidate does not exceed half of the total number of valid votes cast in the poll, he shall not be returned at the election.]
4. Similar to a contested election, provide that the polling hours for an election with only one validly nominated candidate shall be appointed by the Chief Electoral Officer ("CEO").

Ballot Papers and Voting Procedure

5. Specify the new form of the ballot paper, on which electors may cast either a support vote or a not support vote, for an election where only one candidate is validly nominated.

6. Similar to a contested election, provide that for an election with only one validly nominated candidate, an elector should affix the chop to give a single “✓” in the circle opposite either the words support or not support.

Counting of Votes

7. Extend the existing provisions for contested elections in relation to :
 - (a) the scope of questionable paper and the procedures to determine their validity, and
 - (b) the procedures to verify ballot paper account, count votes, and issue notice of election result,to cover an election with only one validly nominated candidate.
8. Similar to a contested election, provide that after the election result has been declared, the Returning Officer (“RO”) should put the ballot papers into sealed packets for the CEO to retain for six months.
9. Require the RO to terminate the election proceedings and to make the relevant declarations if the sole candidate fails to obtain adequate support votes and is not returned.
10. Similar to a contested election, provide for the procedure after termination of election proceedings if the sole candidate dies or is disqualified from being elected.

Secrecy of votes

11. Extend provisions regarding secrecy of vote to cover an election with only one validly nominated candidate (e.g. no person shall require an elector to disclose whether he has cast a support vote or a not support vote).

Main Amendments to the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) to align with similar provisions in another EAC regulation governing the conduct of the LegCo election

No Canvassing Zone (“NCZ”) / No Staying Zone (“NSZ”)

1. Advance the deadline for the Returning Officer (“RO”) to notify candidates on the determination of NCZ and NSZ from “2 days” to “7 days” before polling day. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 40(7).]*
2. Provide that, in addition to the RO, a PRO authorised by the RO may also vary the NCZ and NSZ on polling day. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 92(2).]*
3. Require that canvassing activity on polling day should be conducted in such a way that its sound cannot be heard in the NCZ. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 40(16)(aa).]*

Polling stations

4. Make clear that Police officers and persons authorised by RO to act as liaison officers may not be excluded from entering and be present at the polling stations. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 44(4)(i) & (j).]*
5. Provide that in addition to the PRO, other officers (i.e. RO, Assistant RO and PO) may also direct a person not to communicate with electors or use any device for electronic communication within a polling station. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 45(1).]*

6. Make clear that Police officers and persons authorised by RO to act as liaison officers are not refrained from communicating with an elector and using any device for electronic communication in the polling stations. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 45(6).]*
7. Increase the penalty for unauthorised filming, photographing, audio/video recording within a polling station, in respect of imprisonment, from 3 months to 6 months. *[Relevant corresponding section in Cap. 541D for LegCo elections: Sections 45(7)(a).]*

Counting of voting

8. Advance the deadline for a candidate to notify the RO of his appointment of any counting agent from “3 days preceding the polling date” to “one week before polling day” to provide sufficient time for the RO to make the necessary arrangements. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 66(5).]*
9. Make clear that the scope of questionable ballot papers to be determined by the RO includes those on which there is writing or a mark by which the elector can “possibly” be identified. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 80(1)(a).]*
10. Provide that, in addition to the candidate and the election agent, a counting agent may also inspect questionable ballot papers set aside by the RO and make representations to the RO, or raise objections to RO’s decisions to accept or reject a questionable ballot paper. *[Relevant corresponding section in Cap. 541D for LegCo elections: Sections 81(1), 81(4) and 81(5).]*
11. Increase the penalty for violation of secrecy of vote, in respect of imprisonment, from 3 months to 6 months. *[Relevant corresponding section in Cap. 541D for LegCo elections: Section 96(10).]*

Election advertisements

12. Provide that, in addition to the RO, other persons authorised by the RO may also seize and dispose of, destroy, obliterate, or cover election advertisements not complied with the legal requirements.
[Relevant corresponding section in Cap. 541D for LegCo elections: Section 102(15).]

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