

政制及內地事務局  
政府總部



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CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU  
GOVERNMENT SECRETARIAT

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25 June 2011

Mr Arthur Cheung  
Senior Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Mr Cheung,

**Electoral Legislation (Miscellaneous Amendments) Bill 2011**

Thank you for your letter dated 17 June 2011 on the captioned.  
Our responses are set out as follows-

- (a) The proposed de minimis arrangement aims to cover minor errors or omissions in relation to election expenses and election donations in election returns (“ERs”). It does not cover the situation under which a candidate’s aggregate amount of election expenses exceeds the prescribed maximum amount of election expenses, which amounts to an illegal conduct under section 24 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”). This principle is covered in paragraph 10 of the LC Paper No. CB(2)1955/10-11(03) discussed at the Bills Committee meeting on 4 June 2011.

If the aggregate amount of election expenses set out in the ER does not exceed the prescribed limit, but after including the

cumulative amount of errors and omissions, the “actual” aggregate amount of election expenses exceeds the prescribed limit, the candidate will not be allowed to correct any errors or omissions identified in the ER

However, if a candidate has submitted an ER in which the aggregate amount of election expenses exceeds the prescribed maximum amount of election expenses but later found out that the correction of errors or omissions in the ER would render his aggregate amount of election expenses below the prescribed maximum amount of election expenses, the candidate may correct such error under the proposed section 37A(4) as his “actual” aggregate amount of election expenses does not exceed the prescribed maximum amount of election expenses.

- (b) Section 37A (6)(a) specifies that a copy of the revised ER lodged by a candidate is of no effect unless it is lodged within 30 days after the date on which the candidate receives a notice from the appropriate authority relating to the error or false statement in the ER. In case a candidate has identified errors or false statement in his ER, he may inform the appropriate authority which will consider appropriate actions, including whether a notice relating to the error or false statement should be issued to the candidate.
- (c) Section 37 (1) of the ECICO specifies that each candidate at an election must lodge with the appropriate authority setting out the candidate’s election expenses at the election and all election donations received by or on behalf of the candidate. Under the existing arrangement, in the case of an election for a Legislative Council geographical constituency (“LegCo GC election”), a list of candidates is required to lodge an ER setting out the election expenses incurred and election donations received by individual candidates on the list as well as the overall election expenses incurred and election donations received by the list of candidates.

It is our policy intent that under the proposed de minimis arrangement, for the LegCo GC election or an election for the District Councils (second) functional constituency, a list of candidates, rather than individual candidates on the list, will be allowed to lodge a copy of the revised ER. Our policy intent is reflected clearly under the proposed section 37A(9). It is not appropriate to allow every candidate on a list to lodge one copy of the revised ER as this will not be consistent with the existing arrangement that a list of candidates is required to lodge an ER.

- (d) The proposed section 37A(1) provides for the scope of the de minimis arrangement which, subject to the specified conditions, covers any error or false statement in an ER the nature of which is a failure to set out any election expense or any election donation and incorrectness of any election expense or any election donation. The proposed section 37A(12) aims to include any error or false statement relating to the accompanying documents in an ER (i.e. any error or false statement in an accompanying document or a failure to send any accompanying document).

We have considered your comments set out in the penultimate paragraph of your letter. We are of the view that the drafting of the proposed section 43(4D) is clear and we do not consider it necessary to amend the English text. We propose to introduce a textual amendment to the Chinese text of the proposed section 43(4D) by deleting “如此” so as to make the Chinese text tally with the English text.

As regards the comment in the last paragraph of your letter, we propose to introduce Committee Stage Amendments to consequentially amend the following provisions by also referring to a Court of Final Appeal determination when a Court of First Instance determination is mentioned –

- (a) Sections 36(1)(d), 48(7)(a) and 60A(1) (paragraph (a) of the definition of “*elected as a Member*”) of the Legislative Council Ordinance (Cap. 542);
- (b) Sections 26(d), 29(7)(a) and 60A(1) (paragraph (a) of the definition of “*elected as an elected Member*”) of the District Councils Ordinance (Cap. 547); and
- (c) Section 13(3)(a) of the Village Representative Election Ordinance (Cap. 576).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Wu', written in a cursive style.

(Thomas Wu )

for Secretary for Constitutional and Mainland Affairs

c.c. Clerk to Bills Committee

(Fax: 2509 9055)