

**Bills Committee on the Chief Executive Election (Amendment) Bill 2010
and Legislative Council (Amendment) Bill 2010**

Follow up to Meeting on 18 January 2011

Voting System of the Chief Executive Election

Pursuant to the discussion at the meeting on 18 January 2011 concerning the voting system of the Chief Executive (“CE”) election, this paper provides the consideration and proposal of the Administration on this issue.

Current Voting System

2. Section 27 of the Chief Executive Election Ordinance (“CEEEO”) stipulates that if a CE election candidate obtains more than half of the total number of valid votes cast in any round of voting, such candidate shall be returned at the election. Under a contested CE election, if no candidate can be returned in the first round of voting, repeated rounds of voting will be conducted until a candidate obtains more than half of the total number of valid votes cast. There is no provision for termination of the election.

3. If there is only one candidate validly nominated in a CE election, section 26A of the CEEEO stipulates that if the number of support votes obtained by the sole candidate exceeds half of the total number of valid votes cast, the candidate shall be returned. If the candidate cannot be returned after the first round of voting, the election will be terminated according to section 22 of the CEEEO and a new round of nomination and election will commence. A new polling date will be fixed in accordance with section 11(2) of the CEEEO¹.

4. Relevant provisions of the CEEEO relating to the voting system of the CE election are at the **Annex**.

¹ A new polling date will be fixed on the 42nd day after termination of the election proceedings (if it is a Sunday). If that day is not a Sunday, the new polling date shall be fixed on the Sunday immediately following that day.

Possible Problem

5. Under the existing system, if a majority of the Election Committee (“EC”) members decide to stay away from the voting process, a minority of the EC members who actually take part in the voting will determine the outcome of the election. For example, hypothetically if 1 000 out of the 1 200 EC members decide, for whatever reason, not to take part in the election, then the remaining 200 members will determine the outcome of the election. The candidate who obtains over 100 votes will be returned. The result may be challenged as being unreasonable.

Proposed Amendments

6. To enhance the representativeness of the CE-elect, we propose to consider the following amendments to the voting system of the CE election:

- (a) a candidate shall only be elected as the CE if he or she obtains more than half of the votes of all the EC members, regardless of the number of candidates standing in the election;
- (b) under a contested CE election, after the first round of voting, if no candidate is elected, the candidates with the highest and second highest number of votes will proceed to the next round of voting while the other candidates will be eliminated;
- (c) after the second round of voting, if no candidate can obtain more than half of the votes of all EC members, the election will be terminated and a new round of nomination and election will commence. The existing arrangement in respect of the termination of the election and the start of a new round of nomination and election under the uncontested CE election will apply; and
- (d) if necessary, this process will be repeated until a candidate can be returned.

Justifications

7. Under our present proposal, the voting system of the CE election will be amended to the effect that a candidate shall only be elected if he or she obtains more than half of the votes of all EC members. This will enhance the representativeness and credibility of the CE-elect. In theory, if no candidate was successful in obtaining the support of half of all the EC members, it is possible that no CE-elect would be returned. However, this scenario should be remote, as it is expected that the candidates would endeavour to solicit support from the EC members in subsequent rounds of election. We expect that there is time for conducting two additional rounds of election, if required, before the commencement of the new term of the CE on 1 July of a new term of Administration. Furthermore, as the CE is the head of the Hong Kong Special Administrative Region, the CE-elect should obtain the widest possible support from among different sectors of the community. We should also enable the EC members to exercise their judgment collectively to choose the CE-elect by majority vote.

Advice Sought

8. Members are invited to comment on the proposal set out in paragraph 6 of this paper.

Constitutional and Mainland Affairs Bureau
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| Chapter: | 569 | Title: | CHIEF EXECUTIVE | Gazette Number: | L.N. 103 of |
| |  | | ELECTION ORDINANCE | | 2006 |
| Section: | 11 | Heading: | Fixing new polling date under certain circumstances | Version Date: | 13/05/2006 |

(1) Where-

(a) a polling date is fixed in accordance with this section or section 10; and

(b) no candidate is validly nominated under section 17 at the close of nominations,

the new polling date shall, where the 42nd day after the close of nominations-

(c) is a Sunday, be that Sunday; or

(d) is not a Sunday, be the Sunday immediately following that day.

(2) Where-

(a) a polling date is fixed in accordance with this section or section 10; and

(b) the proceedings for the election are terminated under section 22(1AA), (1AB) or (1), (Amended 10 of 2006 s. 8)

the new polling date shall, where the 42nd day after the termination of the proceedings for the election-

(c) is a Sunday, be that Sunday; or

(d) is not a Sunday, be the Sunday immediately following that day.

(3) If the candidate returned at an election for appointment to fill the vacancy in the office of the Chief Executive-

(a) that will arise under section 4(a) cannot assume the office of the Chief Executive on the day on which the vacancy arises, the new polling date shall, where the 120th day after the expiry of the term of office of the serving Chief Executive-

(i) is a Sunday, be that Sunday; or

(ii) is not a Sunday, be the Sunday immediately following that day;

(b) that has arisen under section 4(b) or (c) cannot assume the office of the Chief Executive before the expiry of 6 months commencing on the date on which the vacancy arose, the new polling date shall, where the 120th day after the expiry of those 6 months-

(i) is a Sunday, be that Sunday; or

(ii) is not a Sunday, be the Sunday immediately following that day.

(4) Where a new polling date is fixed in accordance with this section, the Chief Electoral Officer shall fix the nomination period accordingly.

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| Chapter: | 569 | Title: | CHIEF EXECUTIVE ELECTION ORDINANCE | Gazette Number: L.N. 103 of 2006 |
| Section: | 22 | Heading: | Termination of election proceedings | Version Date: 13/05/2006 |

(1AA) Where-

- (a) at the close of nominations only one candidate is validly nominated; and
- (b) proof is given to the satisfaction of the Returning Officer that the candidate dies or is disqualified under section 20(1) from being elected at any time after the close of nominations but before the declaration of the result of the election,

the Returning Officer shall, by a public declaration, terminate the proceedings for the election. (Added 10 of 2006 s. 9)

(1AB) Where-

- (a) at the close of nominations only one candidate is validly nominated; and
- (b) a poll is conducted under section 23 and the candidate is, under section 26A(4), not returned at the election,

the Returning Officer shall-


- (c) publicly declare that no candidate is returned at the election;
- (d) publish the declaration and the result of the poll in the Gazette; and
- (e) by a public declaration, terminate the proceedings for the election. (Added 10 of 2006 s. 9)

(1) Where-

- (a) at the close of nominations 2 or more candidates are validly nominated; and
- (b) proof is given to the satisfaction of the Returning Officer that any candidate dies or is disqualified under section 20(1) from being elected at any time after the close of nominations but before the declaration of the result of the election,

the Returning Officer shall, by a public declaration, terminate the proceedings for the election.

(2) If a candidate is eliminated at any round of voting under section 27(3)(c) or (4)(c), he shall cease to be regarded as a candidate for the purposes of subsection (1)(b).

Chapter: 569 Title: CHIEF EXECUTIVE Gazette Number: L.N. 103 of
ELECTION ORDINANCE 2006
Section: 26A  Heading: **System of voting: only one candidate** Version Date: 13/05/2006

- (1) This section applies to an election in which at the close of nominations only one candidate is validly nominated.
- (2) In the poll conducted in the election, the ballot papers shall be so designed as to allow members of the Election Committee to cast either a support vote or a not support vote.
- (3) 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.
- (4) 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 and section 22(1AB) applies.

System of voting: contested election

(Amended 10 of 2006 s. 13)

(1) If a candidate obtains more than half of the total number of valid votes cast in any round of voting, he shall be returned at the election.

(2) Where-

- (a) there are 2 candidates in the election; or
- (b) 2 candidates remain after the elimination of all other candidates under subsection (3)(c) or (4)(c),

as many rounds of voting as may be necessary shall be conducted for the 2 candidates until one of them is returned under subsection (1).

(3) Where-

- (a) there are 3 or more candidates in the election; and
- (b) after the first round of voting-
 - (i) only 2 candidates obtain the highest and the same number of valid votes cast; or
 - (ii) (A) only one candidate obtains the highest number of valid votes cast but he does not obtain more than half of the total number of valid votes cast; and
 - (B) only one candidate obtains the next highest number of valid votes cast,

then-

- (c) all candidates other than the 2 candidates referred to in paragraph (b)(i) or (ii) shall be eliminated; and
- (d) subsection (2) applies in relation to those 2 candidates.

(4) Where-

- (a) there are 3 or more candidates in the election; and
- (b) after the first round of voting-
 - (i) 3 or more candidates obtain the highest and the same number of valid votes cast; or
 - (ii) (A) only one candidate obtains the highest number of valid votes cast but he does not obtain more than half of the total number of valid votes cast; and
 - (B) 2 or more candidates obtain the next highest and the same number of valid votes cast,

then-

- (c) all candidates (if any) other than the candidates referred to in paragraph (b)(i) or (ii) shall be eliminated;
- (d) as many rounds of voting as may be necessary shall be conducted for the candidates referred to in paragraph (b)(i) or (ii) until-
 - (i) one of them is returned under subsection (1); or
 - (ii) subsection (2) applies in relation to any 2 of them; and
- (e) the foregoing provisions of this subsection apply in relation to any such round of voting as they apply in relation to the first round of voting.