

**Bills Committee on  
Electoral Legislation (Miscellaneous Amendments) Bill 2011**

**Follow up on issues raised at the meeting on 17 May 2011  
on election petition mechanism**

As requested by Members at the meeting on 17 May 2011, this paper provides information regarding the election petition mechanism under the Chief Executive (“CE”) election, Legislative Council (“LegCo”) election, District Councils (“DC”) election and the Village Representatives (“VR”) election.

**Past election petitions lodged since 1997**

2. Members requested information on the past election petitions lodged under the four above-mentioned elections. Based on our record, we set out at **Annex A** the past election petitions lodged in relation to the four elections.

**Existing election petition mechanism and the proposed amendments**

3. Members requested a comparison of the procedures under the finality provision (i.e. the determination of an election petition arising from a LegCo election, DC election or VR election by the Court of First Instance (“CFI”) is final) with the procedures under the proposed leap-frog appeal mechanism contained in the Electoral Legislation (Miscellaneous Amendments) Bill 2011, (i.e. an appeal against the decision of the CFI in relation to a LegCo, DC or VR election (including a by-election) can be lodged to the Court of Final Appeal (“CFA”) direct, subject to leave being granted by the Appeal Committee of the CFA). A table showing the comparison is at **Annex B**.

4. Regarding the financial implications of the existing election petition mechanism and the proposed leap-frog appeal mechanism, as the costs involved in an appeal would depend on the nature, length and complexity of the case, which in turn would determine the judicial and other resources that have to be put in, it is not feasible to generalise the costs under the two different appeal arrangements.

**Period within which an appeal against the CFI's decision on an election petition must be lodged**

5. Section 34(2) of the Chief Executive Election Ordinance (“CEEO”) (Cap. 569) provides that an application for leave to appeal to the CFA shall be filed within seven working days after the day on which the CFI’s judgment on an election petition is handed down. There is no provision in the CEEO which empowers the CFA to extend the period specified in section 34(2).

6. Under the proposed leap-frog appeal mechanism for the LegCo, DC and VR elections, an application for leave to appeal to the CFA must be lodged within seven working days after the day on which the relevant CFI judgment is handed down. At the meeting of the Bills Committee on 17 May 2011, some Members enquired whether the proposed seven-working day appeal period can be extended to 14 working days as suggested by the Heung Yee Kuk and the Shatin Rural Committee.

7. The seven-working day appeal period under the proposed leap-frog appeal mechanism follows that under the CEEO. During the hearing of an election petition at the CFI, counsels from both sides should have already made thorough assessment of the case and taken necessary actions. The proposed seven-working day appeal period can facilitate speedy resolution of disputes in relation to the constitution of the LegCo and DC as well as the office of the VR. While we note that the proposal to extend the appeal period may provide the aggrieved party with more time to make preparations for an appeal, it is also important to minimise the period of uncertainty faced by the individuals concerned who are subject to election petitions and to alleviate the constituents’ feeling of uncertainty towards their representative.

8. We will continue to listen to views of Members in the legislative process.

Constitutional and Mainland Affairs Bureau

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**Past Cases of Election Petitions since 1997**

There are statutory requirements (section 65 of the Legislative Council Ordinance, section 53 of the District Council Ordinance and section 43 of the Village Representative Election Ordinance) that an election petition arising from the a Legislative Council election, District Council election, Village Representative election must be lodged within **two months** following the date on which the election result is published in the Gazette.

2. As for the Chief Executive election, section 34(1) of the Chief Executive Election Ordinance stipulates that an election petition must be lodged within **seven working days** after the day on which the result of the election is declared.

3. Past cases of election petitions in relation to the Legislative Council election, District Council election, Village Representative election and the Chief Executive election and are set out below.

(a) 1998 Legislative Council election (no case)

(b) 1999 District Councils election (one case)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
Lin Shui Lin v. Wong Hon Ho (Returning Officer)	Polling date: 28 November 1999 Date of election results published in the Gazette: 3 December 1999
Liu Chiu Wa (2 <sup>nd</sup> Respondent)	Date of Judgment: 4 May 2000

(c) 2000 Legislative Council Election (no case)

(d) 2002 Chief Executive election (no case)

(e) 2003 District Councils Election (three cases)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
Chu Hon Wah v. Herman Cho (Returning Officer)	Polling date: 23 November 2003 Date of election results published in the Gazette: 29 November 2003 Date of Judgment: 2 December 2004
Chung Ming v. Chow Ping Tim	Polling date: 23 November 2003 Date of election results published in the Gazette: 29 November 2003 Date of Judgment: 9 July 2004
Lam Sum Shing v. Chan Kam Lam (1 <sup>st</sup> Respondent)  Albert Lam Kai Chung (Returning Officer)	Petition withdrawn

(f) 2003 Village Representative Election<sup>1</sup> (one case)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
Liu Fu Sau v. Liu Kwok Wah (1 <sup>st</sup> Respondent)  Wong Hon Ho (Returning Officer)	Polling date: 20 July 2003 Date of election results published in the Gazette: 29 July 2003 Date of Judgment: 15 March 2011

<sup>1</sup> The Village Representative Election Ordinance was enacted in 2003. Before that, Village Representative elections were not governed by laws, and there was no election petition mechanism before 2003.

(g) 2004 Legislative Council Election (one case)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
Tse Wai Chun v. Howard Young	Petition withdrawn

(h) 2004 Village Representative By-election (one case)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
Pang Cheung Yin v. Wong Hon Ho (Returning Officer)	Petition withdrawn

(i) 2005 Chief Executive election (no case)

(j) 2007 Chief Executive election (no case)

(k) 2007 District Councils Election (four cases)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
Leung Wing Hung v. Yuen Kwai Choi	Polling date: 18 November 2007 Date of election results published in the Gazette: 24 November 2007 Date of Judgment: 18 December 2008
Ms. Tam Heung Man v. Choi Luk Sing  Ms. Teresa Wong (Returning Officer)	Petition withdrawn

<b>Petitioner v. Respondent</b>	<b>Duration</b>
Lau Ting Pong v. Lo Chiu Kit (1 <sup>st</sup> Respondent)  Ms. Agnes Wong Tin Yu (Returning Officer)	Petition withdrawn
Ms. Chan Yin Chu v. Ricky Or Yiu Lam (1 <sup>st</sup> Respondent)  Peter Chan Ping Fai (Returning Officer)	Polling date: 18 November 2007  Date of election results published in the Gazette: 24 November 2007  Date of Judgment:  Court of First Instance 27 November 2009  Court of Appeal 1 March 2011

## (1) 2007 Village Representative Election (one case)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
Tang Kum Sui v. Chung Koon-lung (1 <sup>st</sup> Respondent)  Chung Fong Yan (2 <sup>nd</sup> Respondent)  Johann Wong (Returning Officer)  Director of Home Affairs (4 <sup>th</sup> Respondent)	Polling date: 21 January 2007  Date of election results published in the Gazette: 26 January 2007  Date of Judgment: 5 November 2007

## (m) 2008 Legislative Council Election (one case)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
<p>Mok Charles Peter v. Tam Wai Ho (1<sup>st</sup> Respondent)</p> <p>Vincent Fung Hao Yin (Returning Officer)</p>	<p>Polling date: 7 September 2008</p> <p>Date of election results published in the Gazette: 12 September 2008</p> <p>Date of Judgment:</p> <p>Court of First Instance 9 April 2009</p> <p>Court of Appeal 11 December 2009</p> <p>On 13 December 2010, the Court of Final Appeal remitted the petition to the Court of Appeal for determination. The remitted hearing took place on 31 March 2011 with judgment pending.</p>

## (n) 2011 Village Representative Election (three cases)

<b>Petitioner v. Respondent</b>	<b>Duration</b>
<p>Teng Hung Ping v. Lam Yu Tung, Tony (1<sup>st</sup> Respondent)</p> <p>Yeung Tak-keung (Returning Officer)</p>	<p>Polling date: 23 January 2011</p> <p>Date of election results published in the Gazette: 28 January 2011</p> <p>Date of Judgment: Petition ongoing</p>
<p>Lee Tin Sang v. Lee Koon Sin (1<sup>st</sup> Respondent)</p> <p>Chen Yee, Donald (Returning Officer)</p>	<p>Polling date: 9 January 2011</p> <p>Date of election results published in the Gazette: 14 January 2011</p> <p>Date of Judgment: Petition ongoing</p>

<b>Petitioner v. Respondent</b>	<b>Duration</b>	
Chan Chi Shing v. Chan Koon Wah	Polling date:	23 January 2011
	Date of election results published in the Gazette:	28 January 2011
	Date of Judgment:	27 April 2011



**Original, Existing and Proposed Election Petition Mechanism in respect of  
Legislative Council (“LC”), District Councils (“DC”), Village Representative (“VR”) elections**

	Original election petition mechanism (with finality clause)			Current election petition appeal mechanism			Proposed election petition leap-frog appeal mechanism		
	LC	DC	VR	LC (without finality clause) <sup>2</sup>	DC (without finality clause) <sup>2</sup>	VR (with finality clause)	LC	DC	VR
1. Lodge election petition to the Court of First Instance	Within 2 months after the publication of the election result in the Gazette			Within 2 months after the publication of the election result in the Gazette			Within 2 months after the publication of the election result in the Gazette		
2. Appeal to the Court of Appeal against the judgment of the Court of First Instance	NA			Within 28 days from the date of the judgment of the Court of First Instance		NA	NA		
3. Apply for leave to appeal to the Court of Final Appeal	NA			Within 28 days from the date of the judgment of the Court of Appeal		NA	Within 7 working days after the date of the judgment of the Court of First Instance		

<sup>2</sup> On 13 December 2010, the Court of Final Appeal in the *Mok Charles Peter* case determined that the finality provision contained in section 67(3) of the Legislative Council Ordinance was unconstitutional and invalid. On 1 March 2011, the Court of Appeal in *Chan Yin Chu* case also determined that the finality provision contained in section 55(3) of the District Councils Ordinance was unconstitutional and invalid.