

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

**Proposed arrangement for handling election returns
with minor errors or omissions**

In response to concerns expressed by some Members of the Legislative Council (“LegCo”), we propose to introduce a de minimis arrangement for handling election returns (“ERs”) with minor errors or omissions through appropriate legislative amendments.

Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”)

2. The ECICO, which was enacted in 2000, aims at prohibiting corrupt and illegal conducts at elections, regulating election advertisement (“EA”) and imposing reporting requirements with respect to the expenditure and receipt of donations in connection with elections.

3. Apart from stipulating the relevant offences, the ECICO provides a relief mechanism whereby the Court of First Instance (“CFI”) may make order relieving candidates from consequences of certain illegal conduct or grant relief in certain circumstances if EAs do not meet certain requirements or grant relief in relation to ERs. Specifically, section 40 provides that a candidate who does not lodge an ER as required by section 37 before the end of the permitted period can apply to the CFI for an order allowing him to lodge an ER within a further period. Moreover, a candidate can apply to the CFI for an order enabling him to correct any error or false statement in an ER or in any document accompanying the return if the error or false statement was due to misconduct of his agent or employee; inadvertence or accidental miscalculation, or any other reasonable cause but not due to the candidate’s bad faith. There is no relief order for section 20 which involves corrupt conduct when a candidate makes a statement that the candidate knows or ought to know is materially false or misleading when lodging an ER.

4. The Independent Commission Against Corruption (“ICAC”) is responsible for enforcing the ECICO. All cases alleging offences under the ECICO are referred to the ICAC for consideration and investigation. Besides, the Registration and Electoral Office, which is responsible for checking a candidate’s ER, will refer to the ICAC any possible ECICO breaches arising therefrom.

Concerns raised

5. There have been concerns that the investigation of the trivial breaches in relation to ERs under the ECICO has detracted the ICAC's resources from dealing with more important and serious offences in other areas. Moreover, candidates who are involved have to face considerable uncertainty as a result of the ICAC's investigation in such cases and some of them have to incur a fairly large sum of expenses of legal costs to seek relief order from the CFI. The current arrangement has also added extra burden to the Department of Justice as well as the Judiciary. There are calls from some Members that a special arrangement should be put in place to deal with minor errors or omissions in ERs.

Proposal

6. To address the concerns mentioned in paragraph 5 above and with an increasing number of candidates competing in elections held in Hong Kong, there is merit in implementing a special arrangement under which minor errors or omissions in relation to election expenses in ERs can be handled expeditiously. In order to ensure that elections will continue to be held in a fair, open and honest manner, the special arrangement should only involve a specified and limited cumulative amount of election expenses in relation to a candidate or a list of candidates.

7. We propose to introduce a specified de minimis limit for each candidate or list of candidates at an election as set out below-

- (a) Chief Executive election: \$5,000;
- (b) LegCo District Council (second) Functional Constituency ("DC(second)FC") election: \$5,000;
- (c) LegCo Geographical Constituencies election: \$3,000;
- (d) election for LegCo Functional Constituencies other than DC(second)FC: \$500;
- (e) Election Committee subsectors election: \$500;
- (f) DC election: \$500;
- (g) Heung Yee Kuk election: \$200;

- (h) election for the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee: \$200; and
- (i) Village Representatives election: \$200.

Based on data from past elections, the proposed de minimis arrangement would be able to cover a majority of the cases involving potential breaches relating to election expenses. A table comparing the proposed de minimis limits with the respective election expenses limits is at the Annex.

8. If the cumulative amount of errors or omissions in the declaration of election expenses and donations does not exceed the proposed de minimis limit of the respective election and the ER concerned does not violate certain conditions (which may include those set out in paragraphs 9-10 below), the relevant candidate or list of candidates will be informed of the errors or omissions identified in the ER and be given the opportunity to rectify the relevant ER within a specified period without the need to apply for a relief order from the CFI under section 40 of the ECICO. If the candidate or list of candidates does not rectify the errors or omissions within the specified period, the ER concerned will be subject to the normal investigation and arrangements and prosecution under the ECICO as appropriate.

9. In cases where the ICAC has received complaints or intelligence indicating that a candidate may have made a statement that he knows or ought to know is materially false or misleading which amounts to corrupt conduct, the ICAC will conduct investigation notwithstanding the proposed special arrangement set out in paragraphs 7-8 above. In other words, the rectification of the ERs under the proposed special arrangement will not exempt the candidate or list of candidates from being investigated or subsequently prosecuted under the ECICO in such circumstances.

10. The proposed special arrangement will not be applicable if, after including the cumulative amount of errors and omissions, the total election expenses¹ exceed the prescribed election expenses limit of that particular election, which is an illegal conduct under section 24 of the ECICO. Moreover, it will not relieve the candidate or list of candidates

¹ According to the definition provided under the ECICO, election expenses include expenses incurred or to be incurred before, during or after the election period and the value of election donations consisting of goods and services.

from other offence provisions in the ECICO if the ER concerned has contravened any such provisions.

ADVICE SOUGHT

11. Members' views are sought on the proposals set out in paragraphs 7-10 above. Taking into account Members' views, we will consider appropriate legislative amendments.

**Constitutional and Mainland Affairs Bureau
June 2011**

Election Expenses Limit and Specified De Minimis Limit for Various Elections

(I) Chief Executive Election

Proposed Election Expenses Limit ("EEL") (\$)	Specified de minimis limit ("SDL") (\$)
13,000,000 ²	5,000

(II) Legislative Council Election

(a) Geographical Constituencies ("GCs")

Constituencies	EEL (\$)	SDL (\$)
5 GCs	1,575,000 to 2,625,000	3,000

(b) Functional Constituencies ("FCs")

Constituencies	EEL (\$)	SDL (\$)
District Council (second) FC	6,000,000	5,000
28 Traditional FCs	105,000 to 504,000	500

(III) District Council Election

Proposed EEL (\$)	SDL (\$)
53,800 ³	500

² Subject to the enactment of the Electoral Legislation (Miscellaneous Amendments) Bill 2011, the EEL for the Chief Executive election will be increased from the existing level of \$9,500,000 to \$13,000,000.

³ Subject to the enactment of the Electoral Legislation (Miscellaneous Amendments) Bill 2011, the EEL for the District Council election will be increased from the existing level of \$48,000 to \$53,800.

(IV) Election Committee Subsector Election

Subsectors	EEL (\$)	SDL (\$)
All subsectors and sub-subsectors (except religious, National People's Congress and Legislative Council)	100,000 to 480,000	500

(V) Heung Yee Kuk Election

EEL (\$)	SDL (\$)
13,000	200

(VI) Election of Chairman, Vice-chairman or Executive Committee Member of a Rural Committee

EEL (\$)	SDL (\$)
30,000	200

(VII) Village Representative Election

Election	EEL (\$)	SDL (\$)
Election for a village where there are not more than 1 000 electors and for a village where there are over 1 000 electors	18,000 and 28,000	200