

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

**Follow up on issues raised at the meeting on 31 May 2011  
on election petition mechanism and financial assistance scheme**

This paper provides information requested by Members at the Bills Committee meeting on 31 May 2011.

**Election Petition**

Validity of Elections

2. Members enquired whether the Court of Final Appeal (CFA) could determine a Legislative Council (LegCo) election to be invalid. The proposed amended section 56 of the Legislative Council Ordinance (LCO) (Cap. 542) provides that every election is presumed to be valid until the Court of First Instance (CFI) or the CFA, on the hearing of an election petition or an appeal respectively, determines that the election is invalid. The definition of the term “election” is set out in section 3 to be “an election to elect a Member at a general election or a by-election to elect a Member”.

Leap-frog Appeal Mechanism for Village Representative (VR) election

3. Members requested information on the reason why we propose to institute a leap-frog appeal mechanism for election petitions arising from a VR election. A leap-frog appeal mechanism is proposed for election petitions arising from a VR election. It is because VRs play an important role in elections of constitutional significance. It is necessary for petitions questioning the VR elections to be resolved as quickly as possible for the benefit of not just the rural community, but also for VRs to participate in returning the relevant LegCo and Election Committee subsector seats. Details of VR participation in these elections are set out in the paper for discussion at the LegCo Panel on Constitutional Affairs (CA Panel) on 17 January 2011 LC Paper No. CB(2)798/10-11(3), which is extracted at the **Annex**.

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

4. In response to Members’ suggestion, at the Bills Committee meeting held on 4 June 2011, we have agreed to extend the relevant appeal period to 14 working days. The consideration is to provide the aggrieved party with

more time to consider whether an appeal should be lodged and to make preparations in case he or she decides to lodge an appeal.

### Requesting the CFI to provide a report

5. Section 67(6) of the LCO provides that the CFI must comply with any request made by the Secretary for Constitutional and Mainland Affairs or the Electoral Affairs Commission to provide a report on any specified matter arising from the trial of an election petition. Members enquired whether the LegCo Secretariat could also request the CFI to provide it with such a report. While there is no express provision in the LCO, if the LegCo Secretariat would like the CFI to provide such a report, it can still make such a request though the CFI is not obliged to do so.

### Drafting Issues in relation to Sections 56 and 71 of the LCO

6. Some Members noted that the words “該項選舉” are adopted in the last sentence of the existing section 56 but the words “該選舉” are used in the new proposed amended section 56. Members queried whether the word “項” must be added. We have looked at the LCO and noted that there are other instances in which the term “該選舉” is used in the Chinese text of the LCO such as section 12 and section 7 of Schedule 3. Therefore, the proposed amendment from “該項選舉” to “該選舉” does not change its legal effect.

7. Some Members suggested that the heading of the proposed amended section 71 should be simplified. While we consider that the heading of the proposed section 71 of the LCO accurately indicates the scope of the section and is clear, in response to Members' concerns, we propose to amend the Chinese text of the heading from “被裁定並非妥為當選並不令作為失效” to “某人被裁定並非妥為當選，並不令其作為失效”.

### **Financial Assistance**

8. Section 60J of the LCO and section 60I of the District Councils Ordinance (DCO) (Cap. 547) stipulate that if an election petition is lodged, the Chief Electoral Officer must not make any payment of financial assistance until the determination, abandonment or termination of the election petition. The rationale is explained in the ensuing paragraphs.

9. Disqualification from being a candidate in respect of an elected person is a ground to lodge election petitions under section 61 of the LCO and section 49 of the DCO. Such disqualification will result in ineligibility for financial assistance in both LCO and DCO. In the case of a traditional

functional constituency and District Council, only the following candidates are eligible for financial assistance-

- (a) a candidate who is elected as a member; or
- (b) a candidate who is not elected as a member but who is *not a disqualified candidate*; and obtains at least 5% of the total number of valid votes cast in the constituency concerned.

As for a geographical constituency and District Council (second) functional constituency, there are similar requirements for eligibility for financial assistance, which include the requirement that at least one candidate on the list of candidates is not a disqualified candidate.

10. Furthermore, in the case of a candidate for a contested LegCo or DC election, the amount of financial assistance payable will be \$12 per vote, or at 50% of the election expenses limit or the declared election expenses of a candidate, whichever is the lowest. If a petitioner lodges a petition on the ground of material irregularity occurred in relation to the counting of votes at election, the court may recount the number of votes for all candidates of the constituency. It may affect the number of votes cast for each candidate / list of candidates and thus vary the amount of financial assistance payable. It may also affect the compliance with the requirement that the candidate or list of candidates can obtain at least 5% of the total number of valid votes cast.

11. As financial assistance is paid out of general revenue (section 60G of LCO and section 60F of DCO), we must exercise due care in administering the scheme and not to give financial assistance until it is absolutely sure that the recipients are eligible.

### **District Council By-election**

12. Section 33(2) of the DCO stipulates that a by-election to fill a vacancy occurring in the membership of a District Council is not to be held within the four months preceding the end of the current term of office of the elected members. Members enquired whether the period of not holding a by-election can be extended to six months. We consider that a period of four months is appropriate and should not be amended. After a vacancy arises, it takes time to organise a by-election. If a by-election is not to be held within six months preceding the end of the current term, the constituents of the relevant District Council constituency will be left unrepresented for an unduly long period and could not enjoy the public service rendered by the District

Council member. The four month period is also in line with the arrangement for LegCo election (section 36 of the LCO).

Constitutional and Mainland Affairs Bureau  
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**Extract from LC Paper No. CB(2)798/10-11(03)**

**Legislative Council Panel on Constitutional Affairs  
Election Petition Mechanism under the Legislative Council Ordinance  
and related issues**

Village Representative (VR) Election

19. Under the VR Election Ordinance (Cap. 576), resident representatives and indigenous resident representatives are elected amongst villagers on a one-person-one-vote basis to take up a four-year term of office to reflect views on the affairs of a village. Indigenous resident representatives are also responsible for dealing with affairs relating to the lawful traditional rights and interests, as well as the traditional way of life of indigenous inhabitants. A VR, if elected among members of a Rural Committee (RC) to be the Chairman of that RC, is an ex-officio DC Member.

20. A VR may also be eligible to run for LegCo election and the EC subsector election. For LegCo election, a VR, if elected as the chairman or vice-chairman of a RC or elected as a Special Councillor of Heung Yee Kuk (HYK), is eligible for being nominated as a candidate for the LegCo HYK FC seat. For the EC subsector election, a VR, if elected as the chairman or vice-chairman of a RC or elected as a Special Councillor of HYK, is eligible for being nominated as a candidate for the 21 EC HYK subsector seats. Under the Chief Executive (Amendment) Bill 2010, the number will rise to 26 for election of the next-term CE.

21. As VRs play an important role in elections of constitutional significance, it is necessary for petitions questioning the VR elections to be resolved as quickly as possible for the benefit of not just the rural community, but also for VRs to participate in returning the relevant LegCo and EC subsector seats. A leap-frog appeal mechanism for the VR elections is therefore justified.