

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

**Follow up on issues raised at the Bills Committee meeting
on 4 June and 9 June 2011**

This paper provides information requested by Members at the Bills Committee meetings on 4 June and 9 June 2011.

Election petitions

Whether the Court of Final Appeal (CFA) is given discretion to extend the appeal period

2. Members enquired whether the CFA should be given the discretion to extend the period within which an application for leave to appeal shall be made. Section 34(2) of the Chief Executive Election Ordinance (CEEEO) (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 Court of First Instance's (CFI) judgment on an election petition is handed down. There is no provision in the CEEEO which empowers the CFA to extend the period specified in section 34(2). Since we have drawn reference to the leap-frog appeal mechanism in the CEEEO when drawing up the leap-frog mechanism for the Legislative Council Ordinance (Cap.542) (LCO), District Councils Ordinance (Cap. 547) (DCO) and Village Representative Election Ordinance (Cap.576) (VREO), we propose to stick to the practice adopted in the CEEEO. Furthermore, we have proposed to extend the appeal period from seven working days to 14 working days. As a result, the prospective appellant would have sufficient time to consider whether to lodge an appeal or not.

What are the factors for the CFA to consider an appeal

3. Section 22(1)(c)(i) of the Hong Kong Court of Final Appeal Ordinance (Cap.484) provides that an appeal shall lie to the CFA at the discretion of the CFA from a determination of the CFI under section 37(1) of the CEEEO. Members enquired whether we should add any guidance or objective factor for the CFA to consider the exercise of its own discretion. We are of the view that it is not appropriate to set restrictions on the consideration of an appeal by the CFA because it is necessary for the CFA to consider all relevant factors in exercising the discretion provided for in the ordinance.

Announcement of written judgment

4. Members wished to clarify if the CFI gives a verbal judgment first and the written judgment follows on a later date, whether the proposed 14 working day appeal period is to be counted from the date on which a verbal judgment is given or a written judgment is given. Under the proposed section 67(3) of the LCO, at the end of trial of an election petition, the CFI must announce its determination by means of a written judgment. Thus, the judgment should be a written judgment. Similar arrangements are proposed for the District Councils and Village Representatives elections.

Drafting issues concerning the proposed section 67(3) of the LCO, section 55(3) of the DCO and section 45(3) of the VREO

5. Section 37(2) of the CEEO provides that “原訟法庭須在選舉呈請審訊完結時，藉書面判決宣告該法庭的裁定”。 Members enquired whether the similar provisions in the proposed section 67(3) of the LCO, section 55(3) of the DCO and section 45(3) of the VREO, i.e. “原訟法庭須在選舉呈請的審訊完結時，藉書面判決，公布其裁定” should be amended to align with the wording used in the CEEO. The Law Draftsman considers that the proposed amendments in the LCO, DCO and VREO have the same legal effect as the one contained in the CEEO and no further amendment is required.

Promotional letters

Letters sent by a list of candidates of the District Council (second) functional constituency (DC (second) FC) containing information on one single list of candidates for any geographical constituency (GC)

6. Members suggested that the permissible arrangement under the proposed section 43(4A) and (4B) of the LCO be further considered. Having considered Members' view on the arrangement for candidates to send out promotional letters free of postage, we propose to amend section 43(4A) and (4B) of the LCO to the effect that:

- (a) a letter sent under section 43 by or on behalf of a list of candidates which is validly nominated for a GC may contain information on any other list/lists of candidates validly nominated for that GC;
- (b) a letter sent under section 43 by or on behalf of a list of candidates which is validly nominated for a GC may contain information on any other list/lists of candidates validly nominated for that GC and one single list of candidates which is validly nominated for the DC (second) FC; and

- (c) a letter sent under section 43 by or on behalf of a list of candidates which is validly nominated for the DC (second) FC may contain information on any list/lists of candidates validly nominated for one single GC.

We will propose Committee Stage Amendments to the relevant clauses in the Bill to effect the above change.

Postage fee after disqualification of a validly nominated candidate for a GC election

7. Members would like to know in the event that a validly nominated list of candidates for a GC election has sent out the promotional letters free of postage and one of the candidates on the list is disqualified, whether the Government would ask for a refund of the postage fee incurred by the list of candidates. Section 42B of the LCO provides that, if, before the date of election, proof is given to the satisfaction of the Returning Officer that a candidate is disqualified from being nominated as a candidate, the Returning Officer must declare which candidate/candidates are validly nominated. As other remaining candidate/candidates on the list to which the disqualified candidate originally belonged would continue to participate in the election, the issue of refund should not arise.

Constitutional and Mainland Affairs Bureau
June 2011