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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

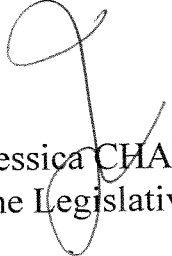
Council meeting of 6 July 2011

Electoral Legislation (Miscellaneous Amendments) Bill 2011

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 6 July 2011. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Constitutional and Mainland Affairs to move amendments to the Bill at its Committee stage.

2. As directed by the President, the amendments are attached for Members' consideration.


(Ms Jessica CHAN)
for Clerk to the Legislative Council

Encl.

Electoral Legislation (Miscellaneous Amendments) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Constitutional and
Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By adding “, 6A” after “Parts 2”.
New	By adding immediately before clause 3— “2A. Section 36 amended (By-election to be held to fill vacancy in membership of Legislative Council) (1) Section 36(1)(d), before “on the”— Add “subject to sections 70A and 72(1A),”. (2) Section 36(1)(d)— Repeal the full stop Substitute a semicolon. (3) After section 36(1)(d)— Add “(e) if an appeal against a determination referred to in paragraph (d) is lodged to the Court of Final Appeal— (i) on the Court of Final Appeal’s making a determination under section 70B that a person whose election is questioned was not duly elected and that no other person was duly elected instead; or

- (ii) on the termination of the appeal proceedings in other circumstances.”.

2B. Section 48 amended (who is entitled to vote at an election)

- (1) Section 48(7)(a)—

Repeal

“or”.

- (2) After section 48(7)(a)—

Add

“(aa) preclude the Court of Final Appeal from making a determination under section 70B; or”.”.

New By adding—

“4A. Section 60A amended (Interpretation: Part VIA)

Section 60A(1), definition of *elected as a Member*, paragraph (a), after “or (2)”—

Add

“or 70B”.”.

5(3) In the proposed section 65(2), by deleting “7” (wherever appearing) and substituting “14”.

5(3) In the proposed section 65(2), by deleting “of the judgment of the Court to be appealed from” and substituting “on which the written judgment of the Court to be appealed from is handed down”.

8 In the proposed section 71, in the Chinese text, by deleting the

heading and substituting—

“71. 某人被判非妥為當選，不令其在位作為失效”。

8 In the proposed section 71, by deleting “of the determination” and substituting “on which the written judgment of the Court or the Court of Final Appeal, as the case may be, is handed down”.

9(1) In the proposed section 72(1)(a), by adding “and section 70A” after “subsection (1A)”.

9(1) In the proposed section 72(1)(b), by deleting “of the determination” and substituting “on which the written judgment of the Court is handed down”.

9(2) In the proposed section 72(1A), by deleting “subsection (3)” and substituting “subsections (3) and (5)”.

9 By adding—

“(2A) Section 72(2), before “the first-mentioned person”—

Add

“subject to subsection (1A) and section 70A,”.

(2B) Section 72(2)—

Repeal

“of the determination”

Substitute

“on which the written judgment of the Court is handed down”.”.

9(3) In the proposed section 72(3)(b), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

9(3) In the proposed section 72(4), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

9(3) By adding—

“(5) If the Court determines that a person who was declared under section 58 as duly elected as a Member was not duly elected as a Member and the person lodges an appeal under section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) against the determination, the person—

(a) ceases, if an application to withdraw an application for leave to appeal or an application to withdraw an appeal is made under rule 11 or 17 (as the case may be) of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) in relation to the appeal and an order is made by the Court of Final Appeal granting the application, to be a Member on the date on which the order is made by the Court of Final Appeal; or

(b) ceases, if the appeal proceedings are terminated in other circumstances, to be a Member on the date on which the appeal proceedings are terminated,

and the determination of the Court against which the appeal is lodged stands from that date.”.

New By adding immediately before clause 10—

9A. Section 26 amended (When elected member's office becomes vacant)

(1) Section 26(d), before “the Court”—

Add

“subject to sections 58A and 60(1A),”.

(2) Section 26(d)—

Repeal the full stop

Substitute

“; or”.

(3) After section 26(d)—

Add

“(e) (if an appeal against a determination referred to in paragraph (d) is lodged to the Court of Final Appeal)—

(i) the Court of Final Appeal determines under section 58B that the member was not duly elected and that no other person was duly elected instead; or

(ii) the appeal proceedings are terminated in other circumstances.”.

9B. Section 29 amended (Who is entitled to vote at an election)

(1) Section 29(7)(a)—

Repeal

“or”.

(2) After section 29(7)(a)—

Add

“(aa) preclude the Court of Final Appeal from making a determination under section 58B; or”.

12(3) In the proposed section 53(2), by deleting “7” (wherever

appearing) and substituting “14”.

12(3) In the proposed section 53(2), by deleting “of the judgment of the Court to be appealed from” and substituting “on which the written judgment of the Court to be appealed from is handed down”.

15 In the proposed section 59, in the Chinese text, by deleting the heading and substituting—

“59. 某人被判非妥為當選，不令其在位作為失效”.

15 In the proposed section 59, by deleting “of the determination” and substituting “on which the written judgment of the Court or the Court of Final Appeal, as the case may be, is handed down”.

16(1) In the proposed section 60(1)(a), by adding “and section 58A” after “subsection (1A)”.

16(1) In the proposed section 60(1)(b), by deleting “of the determination” and substituting “on which the written judgment of the Court is handed down”.

16(2) In the proposed section 60(1A), by deleting “subsection (3)” and substituting “subsections (3) and (5)”.

16 By adding—

“(2A) Section 60(2), before “the first-mentioned person”—

Add

“subject to subsection (1A) and section 58A,”.

(2B) Section 60(2)—

Repeal

“of the determination”

Substitute

“on which the written judgment of the Court is handed down”.”.

16(3) In the proposed section 60(3)(b), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

16(3) In the proposed section 60(4), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

16(3) By adding—

“(5) If the Court determines that a person who was declared under section 46 as duly elected as an elected member was not duly elected as an elected member and the person lodges an appeal under section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) against the determination, the person—

(a) ceases, if an application to withdraw an application for leave to appeal or an application to withdraw an appeal is made under rule 11 or 17 (as the case may be) of the

Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) in relation to the appeal and an order is made by the Court of Final Appeal granting the application, to be an elected member on the date on which the order is made by the Court of Final Appeal; or

- (b) ceases, if the appeal proceedings are terminated in other circumstances, to be an elected member on the date on which the appeal proceedings are terminated,

and the determination of the Court against which the appeal is lodged stands from that date.”.

New By adding immediately after clause 16—

“16A. Section 60A amended (Interpretation: Part VA)

Section 60A(1), definition of *elected as an elected member*, paragraph (a), after “or (2)”—

Add

“or 58B”.

New By adding immediately before clause 17—

“16B. Section 13 amended (Who is entitled to vote at an election)

- (1) Section 13(3)(a)—

Repeal

“or”.

- (2) After section 13(3)(a)—

Add

“(aa) preclude the Court of Final Appeal from making a determination under section 45B; or”.

19(3) In the proposed section 43(2), by deleting “7” (wherever appearing) and substituting “14”.

- 19(3) In the proposed section 43(2), by deleting “of the judgment of the Court to be appealed from” and substituting “on which the written judgment of the Court to be appealed from is handed down”.
- 22 In the proposed section 49, in the Chinese text, by deleting the heading and substituting—
“49. 某人被判非妥為當選，不令其在位作為失效”.
- 22 In the proposed section 49, by deleting “of the determination” and substituting “on which the written judgment of the Court or the Court of Final Appeal, as the case may be, is handed down”.
- 23(1) In the proposed section 50(1)(a), by adding “and section 45A” after “subsection (1A)”.
- 23(1) In the proposed section 50(1)(b), by deleting “of the determination” and substituting “on which the written judgment of the Court is handed down”.
- 23(2) In the proposed section 50(1A), by deleting “subsection (3)” and substituting “subsections (3) and (5)”.

23 By adding—

“(2A) Section 50(2), before “the first-mentioned person”—

Add

“subject to subsection (1A) and section 45A,”.

(2B) Section 50(2)—

Repeal

“of the determination”

Substitute

“on which the written judgment of the Court is handed down”.

23(3) In the proposed section 50(3)(b), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

23(3) In the proposed section 50(4), by deleting “of the determination of the Court of Final Appeal” and substituting “on which the written judgment of the Court of Final Appeal is handed down”.

23(3) By adding—

“(5) If the Court determines that a person who was declared under section 36 as duly elected as a Village Representative was not duly elected as a Village Representative and the person lodges an appeal under section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) against the determination, the person—

(a) ceases, if an application to withdraw an application for leave to appeal or an application to withdraw an appeal is made under rule 11 or 17 (as the case may be) of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) in relation to the appeal

and an order is made by the Court of Final Appeal granting the application, to be a Village Representative on the date on which the order is made by the Court of Final Appeal; or

- (b) ceases, if the appeal proceedings are terminated in other circumstances, to be a Village Representative on the date on which the appeal proceedings are terminated,

and the determination of the Court against which the appeal is lodged stands from that date.”.

27 In the proposed section 43(4A), by deleting everything after “information” and substituting—

“on—

- (a) any number of list of candidates which is also validly nominated for that geographical constituency;
- (b) one single list of candidates which is validly nominated for the District Council (second) functional constituency; or
- (c) one single list of candidates which is validly nominated for the District Council (second) functional constituency and any number of list of candidates which is also validly nominated for that geographical constituency.”.

27 In the proposed section 43(4B), by deleting “one single list of candidates which is validly nominated for any” and substituting “any number of list of candidates which is validly nominated for one single”.

27 In the proposed section 43(4D), in the Chinese text, by deleting “如此”.

New By adding—

“Part 6A

**Amendments Relating to Minor Errors etc. in Election
Return**

Division 1

Enactments Amended

37A. Enactments amended

The enactments specified in Divisions 2 and 3 are amended as set out in those Divisions.

Division 2

**Amendments to Elections (Corrupt and Illegal Conduct)
Ordinance (Cap. 554)**

**37B. Section 20 amended (Corrupt conduct to lodge
false or misleading election return)**

Section 20—

Repeal

everything after “section 37”

Substitute

“or a copy of an election return lodged under section 37A, makes a statement that the candidate knows or ought to know is materially false or misleading whether or not the statement is the subject of a correction effected under section 37A.”.

37C. Section 37A added

After section 37—

Add

**“37A. Relief for minor errors etc. in election
return**

(1) Subject to subsection (2), this section applies to—

(a) any error or false statement in an election return lodged by a candidate the nature of which is a failure to set out in the election return any election expense of the candidate at the election concerned or any election donation received by or on behalf of the candidate in connection with the election—

(i) that is required under section 37 to be set out in the election return; and

(ii) that does not exceed the limit prescribed in the Schedule for the election; and

(b) any error or false statement in an election return lodged by a candidate—

(i) the nature of which is incorrectness in the amount of any election expense of the candidate at the election concerned or any election donation received by or on behalf of the candidate in connection with the election; and

(ii) the correction of which requires an adjustment not exceeding the limit prescribed in the Schedule for the election in that amount.

(2) If—

(a) there are 2 or more errors or false statements in an election return; and

(b) the aggregate value of those errors or false statements exceeds the limit prescribed in the Schedule for the election concerned,

this section does not apply to the errors or false statements.

- (3) For the purposes of subsection (2), the value of an error or false statement is—
 - (a) if the nature of the error or false statement is a failure to set out an election expense or election donation, the amount of the election expense or election donation;
 - (b) if the nature of the error or false statement is incorrectness in the amount of an election expense or election donation, the extent, in monetary terms, of the adjustment required to correct the error or false statement.
- (4) Despite section 37, if this section applies to any error or false statement in an election return lodged by a candidate, the candidate may lodge, subject to subsections (5) and (6), with the appropriate authority a copy of the election return which is marked with the necessary revision to have the error or false statement corrected.
- (5) A candidate may not lodge a copy of an election return in relation to an election under subsection (4) if the aggregate amount of election expenses incurred at or in connection with the election by or on behalf of the candidate exceeds the maximum amount of election expenses prescribed for a candidate by regulations in force under section 45.
- (6) A copy of an election return lodged under subsection (4) by a candidate is of no effect unless—
 - (a) it is lodged within 30 days after the date on which the candidate receives a notice from the appropriate authority relating to the error or false statement in the election return;
 - (b) if the nature of the error or false statement is a failure to set out an election expense or election donation in the election return, it is accompanied by—

- (i) (in the case of an election expense) an invoice and a receipt; or
- (ii) (in the case of an election donation) a copy of a receipt and, if applicable, an explanation,

required under section 37(2)(b) had the election expense or election donation been set out in the election return; and

- (c) it is accompanied by a declaration by the candidate in a form provided or specified by the appropriate authority verifying the contents of the copy of the election return.
- (7) For the purposes of subsection (6), an invoice and a receipt for an election expense may be included in the same document.
 - (8) On the receipt under subsection (4) by an appropriate authority of a copy of an election return which is marked with any revision described in that subsection—
 - (a) the revision is deemed, except for the purposes of section 20, to have been made in the election return before the election return was lodged; and
 - (b) an invoice, a receipt, a copy of a receipt or an explanation (if any) accompanying the copy is deemed, except for the purposes of section 20, to have accompanied the election return when the election return was lodged.
 - (9) A group of candidates or a candidate who is not one of a group of candidates may only lodge one copy of an election return under subsection (4) in respect of an election.
 - (10) A copy of an election return may not be withdrawn or amended after it has been lodged under subsection (4).

(11) The Chief Executive in Council may by order amend the Schedule.

(12) In this section, a reference to an error or false statement in an election return includes—

(a) an error or false statement in any document accompanying the election return; or

(b) a failure to send any document required by section 37(2)(b) in relation to the election return.”.

37D. Section 41 amended (Appropriate authority to keep election returns)

(1) Section 41(1)—

Repeal

everything after “of the”

Substitute

“authority—

(a) all election returns lodged with the authority under section 37; and

(b) all copies of election returns lodged with the authority under section 37A.”.

(2) Section 41(2)—

Repeal

everything after “copies of the”

Substitute

“documents kept under subsection (1) are made available for inspection by any person who, during the authority’s business hours, asks to inspect any of the documents.”.

(3) Section 41(3)—

Repeal

“an election return or part of a return kept under this section”

Substitute

“a document or part of a document kept under subsection (1)”.

- (4) Section 41(5)—

Repeal

“election returns lodged with the authority to be destroyed, but if, by the end of that period, a candidate who has lodged an election return”

Substitute

“documents kept by the authority under subsection (1) to be destroyed, but if, during that period, a candidate who has lodged any of the documents”.

- (5) Section 41(6)—

Repeal

“an election return lodged with the appropriate authority, is the period beginning with the time when the return”

Substitute

“a document lodged with the appropriate authority, is the period beginning with the time when the document”.

37E. Schedule added

After section 49—

Add

“Schedule [s. 37A]

Limit Prescribed for Election Concerned for Purposes of Section 37A

Item	Election	Limit
1.	An election to elect the Chief Executive	\$5,000
2.	An election to elect a Member or Members of the Legislative Council for the District Council (second) functional constituency within the meaning of the	\$5,000

Legislative Council Ordinance
(Cap. 542)

- | | | |
|----|---|---------|
| 3. | An election to elect a Member or Members of the Legislative Council for any geographical constituency within the meaning of the Legislative Council Ordinance (Cap. 542) | \$3,000 |
| 4. | An election to elect a Member or Members of the Legislative Council for any functional constituency within the meaning of the Legislative Council Ordinance (Cap. 542) other than the District Council (second functional constituency) | \$500 |
| 5. | An election to elect a member or members of the Election Committee | \$500 |
| 6. | An election to elect a member or members of a District Council | \$500 |
| 7. | An election to elect a member or members of the Heung Yee Kuk | \$200 |
| 8. | An election to elect the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee | \$200 |
| 9. | An election to elect a Village Representative | \$200”. |

Division 3

**Amendment to Electronic Transactions (Exclusion)
Order (Cap. 553 sub. leg. B)**

**37F. Schedule 1 amended (Provisions Excluded from
application of section 5 of Ordinance)**

Schedule 1, item 64, column 3—

Repeal

“Section 37(1) and (2)”

Substitute

“Sections 37(1) and (2) and 37A(4) and

(6)".