

立法會
Legislative Council

LC Paper No. LS54/10-11

Paper for the House Committee Meeting on 6 May 2011

**Legal Service Division Report on
Electoral Legislation (Miscellaneous Amendments) Bill 2011**

I. SUMMARY

- 1. Objects of the Bill** To introduce various changes to electoral and related arrangements for returning the Chief Executive, LegCo and District Council members and Village Representatives.
- 2. Comments** The Bill will amend the Court of Final Appeal, Legislative Council (LCO), District Councils (DCO), Chief Executive Election and Village Representative Election (VREO) Ordinances and the Electoral Affairs Commission (Electoral Procedure)(Legislative Council), Electoral Affairs Commission (Electoral Procedure)(Election Committee), Maximum Amount of Election Expenses (Chief Executive Election) and Maximum Amount of Election Expenses (District Council Election) Regulations. The main proposals are –

 - a) to allow an appeal in relation to the determination of an election petition under LCO, DCO and VREO in the light of a judgment declaring the relevant finality provision in the election petition mechanism in LCO unconstitutional;
 - b) to allow election materials sent free of postage by certain categories of candidates to include information on certain other candidates;
 - c) to increase in line with that for LegCo elections the financial assistance to, and adjust according to the forecast cumulative increase in the Composite Consumer Price Index the election expenses limit for, District Council election candidates; and
 - d) to increase the election expenses limit for Chief Executive election candidates.
- 3. Public Consultation** The Administration has consulted interested parties on the revised election petition mechanism.
- 4. Consultation with LegCo Panel** The Panel on Constitutional Affairs was consulted on the main legislative proposals at three of its meetings in January, February and April 2011. Support for the proposals was mixed with reservations.
- 5. Conclusion** Members may wish to study the Bill in detail. Our scrutiny of its provisions is continuing.

II. REPORT

Objects of the Bill

To introduce various changes to electoral and related arrangements for returning the Chief Executive, Legislative Council and District Council members and Village Representatives.

LegCo Brief Reference

2. CMAB C1/30/5/4 issued by the Constitutional and Mainland Affairs Bureau on 27 April 2011.

Date of First Reading

3. 4 May 2011.

Comments

Election Petition Mechanism

4. Section 67(3) of the Legislative Council Ordinance (Cap. 542) (LCO) provides that the determination by the Court of First Instance (CFI) of an election petition against the result of a LegCo election is final. In December 2010, a Court of Final Appeal (CFA) judgment¹ declared that the finality provision is unconstitutional. As such finality provisions also appear in similar provisions in the District Councils Ordinance (Cap. 547) (DCO) and Village Representative Election Ordinance (Cap. 576) (VREO), the Bill proposes to introduce an appeal mechanism to allow an appeal against the CFI determination on an election petition under LCO, DCO and VREO to be lodged to CFA direct (commonly known as leap-frogging), subject to leave by the appeal committee of CFA for an application, which must be lodged within seven working days of the handing down of the CFI judgment.

5. The Administration explains in paragraph 7 of the LegCo Brief that the leap-frog appeal mechanism is to help minimize the uncertainty faced by the incumbent LegCo or DC member or the Village Representative subject to the election petition and felt by his/her constituents.

¹ Mok Charles Peter v. Tam Wai Ho and Another, SJ intervening (for and on behalf of the Secretary for the Constitutional and Mainland Affairs) (FACV 8/2010).

Joint promotional letters to electors

6. A validly nominated candidate or a list of candidates is now entitled under LCO, DCO and the Chief Executive Election Ordinance (Cap.569) (CEEEO) to send a letter free of postage to each elector in the constituency or subsector concerned. However, it is specified that the letter must contain materials relating only to the candidature of the candidate at the election concerned.

7. The Bill will amend the LCO and CEEEO and the corresponding provisions in the electoral procedure regulations under the Electoral Affairs Commission Ordinance (Cap. 541D and 541I) to implement the Administration's proposal to allow the following candidates to send jointly free of postage their promotional letter to an elector -

- (a) a list of candidates in a geographical constituency or in the District Council (second) functional constituency;
- (b) candidates in the Labour functional constituency, which has three seats; and
- (c) candidates for election in the same Election Committee subsector (which has a multiple number of seats ranging from 16 to 60 seats).

8. Paragraph 9 of the LegCo Brief explains that the proposal would enable political parties to enhance their election campaign and would also save paper.

Financial Assistance and Election Expenses Limit

9. As the Legislative Council (Amendment) Ordinance 2011 has revised the subsidy rate for the LegCo election upwards to the lower of \$12 per vote or 50% of the election expenses limit subject to the declared election expenses not being exceeded, the Bill proposes the same revision for the 2011 District Council election.

10. The current election expenses limit for a District Council election prescribed by the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C) is \$48,000. The Bill proposes to increase this by 12% to \$53,800. According to paragraph 16 of the LegCo Brief, the Administration has conducted a review on the limit, taking into account the forecast cumulative increase in the Composite Consumer Price Index (CCPI) between 2008 and 2011.

11. The maximum election expenses limit for the Chief Executive election has also been reviewed by the Administration, in which the increase in CCPI, expansion of the Election Committee, revised voting system and need for additional expense items are said to be considered. The Bill now proposes to increase the present limit prescribed in the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A) from \$9.5 million to \$13 million.

Public Consultation

12. The Administration has consulted interested parties on the revised election petition mechanism, including the Chairmen and Vice-chairmen of District Councils and Heung Yee Kuk, Human Rights Forum, Law Society and Hong Kong Bar Association (see paragraphs 6 and 25(a) of LegCo Brief for details).

Consultation with LegCo Panel

13. On 17 January 2011, the Administration briefed the Panel on Constitutional Affairs on the proposal to amend the appeal mechanism for election petitions arising from LegCo, DC and VR elections. Some members supported the speedy resolution of election petitions. Some other members expressed reservations on the legal costs, the effect of a leap-frog procedure on the caseload of CFA, the right to the normal appeal procedure and the need for leap-frogging for the less important DC and VR elections.

14. On 21 February 2011, the Panel was briefed on the proposed increase of the subsidy rate and the election expenses limit for DC elections. Members were generally supportive of increased financial assistance but held diverse views on raising the election expenses limit: that it would be off-putting to less well-off candidates, that it should be adjusted upward to better reflect anticipated inflation and there should be no limit at all.

15. On 18 April 2011, the Panel was briefed on the proposal to allow a list of candidates or candidates of the functional constituency or an Election Committee subsector with multiple seats to send jointly a free-of-postage promotional letter to the same elector. Members were generally supportive. However, there were some reservations about the proposal to increase the election expenses limit for the CE election from \$9.5 million to \$13 million, although some found the proposed increase acceptable.

Conclusion

16. Members may wish to study the Bill in detail. Our scrutiny of its provisions is continuing.

Prepared by

CHEUNG Ping-kam, Arthur
Senior Assistant Legal Adviser
Legislative Council Secretariat
3 May 2011