

**Legislative Council
Panel on Constitutional Affairs**

Proposed Technical Amendments to Electoral Legislation

Introduction

This paper seeks Members' views on the Government's proposed technical amendments to a few pieces of electoral legislation, including the Legislative Council Ordinance (Cap. 542) ("LCO"), Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), Chief Executive Election Ordinance (Cap. 569) ("CEEO"), and the subsidiary legislation made under the Electoral Affairs Commission Ordinance (Cap. 541) and the CEEO. The proposals are related to the Legislative Council ("LegCo") election, the Election Committee Subsector ("ECSS") elections, the Chief Executive ("CE") election, the District Council election, the Rural Representative elections, and elections to elect members of the Heung Yee Kuk and the Chairman or Vice-Chairman or members of the Executive Committee of Rural Committees. The proposals include –

- (a) revising the deadline for submitting election returns ("ER") for uncontested cases;
- (b) aligning the electoral arrangements of the ECSS elections and the CE election with those of other public elections; and
- (c) updating the electorate of the ECSSs.

Proposed amendments

(A) Revising the deadline for submitting ERs for uncontested cases

2. At present, in accordance with the existing provisions in relevant legislation, candidates returned from uncontested constituencies ("uncontested candidates") in public elections such as the LegCo election are required to submit their ERs earlier than candidates from contested constituencies

("contested candidates") of the same election¹. At the meeting of 20 April 2015, this Panel discussed the proposal to extend the period allowed for ER submission for uncontested candidates in LegCo elections so that it ends on the same date as that for contested candidates of the election. Noting that uncontested candidates who have conducted joint promotion with contested candidates may face difficulties in verifying and apportioning the relevant election expenses with the candidates who are still busily contesting in the election, Members in general expressed support for the proposal.

3. The Government sees merit in aligning the period for submitting ERs for both contested and uncontested cases such that all candidates returned in the same LegCo election will be subject to the same later ER submission deadline. As mentioned at the meeting of this Panel on 20 April 2015, the above proposal involves amending the relevant provisions of the ECICO to extend the ER submission deadline (and thereby the period allowed for submission of claim for financial assistance) and to ensure that the period allowed for public inspection of the relevant ERs would not be shortened due to implementation of this proposal.

4. In the same vein, we propose that the above proposal should also apply to LegCo by-elections involving vacancies in more than one constituency. As uncontested candidates in elections to elect members of the District Councils, the Election Committee ("EC"), the Heung Yee Kuk, the Rural Representatives, and the Chairman or Vice-Chairman or members of the Executive Committee of Rural Committees may also encounter similar situations in preparing their ERs, we propose that the above proposal should also apply to uncontested candidates in these elections.

(B) Aligning the electoral arrangements of the ECSS Elections and the CE Election with other public elections

5. On 18 November 2013, this Panel discussed some technical amendments for improving the clarity of the relevant provisions and refining the procedural requirements in the electoral laws for the LegCo, District Council, and Rural Representative elections, in the light of the experience gained from

¹ For example, according to section 37(2) of the ECICO, in the case of the LegCo election, the candidate must ensure that his/her ER is submitted not later than 60 days after the date of publication of the result of the election. As the election results of uncontested constituencies must be published in the Gazette within 14 days of the expiry of the nomination period in accordance with the law, that date of publication will be a few weeks earlier than the date when the election results of contested constituencies are published.

previous elections. The amendments were subsequently introduced in the Electoral Legislation (Miscellaneous Amendments) Bill 2014, which was passed by the LegCo on 10 July 2014. In preparation for the 2016 ECSS elections and the 2017 CE election, we propose to introduce similar amendments to align the electoral arrangements of the ECSS elections and the CE election with other public elections.

6. The proposed amendments would be made to the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B), the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I), the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J), the Electronic Transactions (Exclusion) Order (Cap. 553B), the CEEO and its subsidiary legislation, namely the Election Committee (Appeals) Regulation (Cap. 569A) and the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) (Regulation) (Cap. 569B). To recapitulate, the concerned amendments are as follows—

Proposed amendments	Details
(a) Extension of electoral deadlines in case of inclement weather	To introduce specific provisions to clarify that a statutory deadline for voter registration and electoral procedural matter which falls on a working day should be extended to the following working day (which is not an inclement weather warning day) when a gale warning or black rainstorm warning is in force during ordinary business hours on the day of the deadline. This would compensate for the time lost for completing the relevant acts or proceedings.
(b) Clarification of an election agent’s authority to act on behalf of a candidate	To clarify that an election agent can only perform the acts which the candidate is required to do under Cap. 541I and 541J, hence excluding the signing of election returns which is stipulated in Cap. 554.
(c) Clarification of delivery methods of certain electoral documents	To clarify the means of delivery of notice of appointment and notice of revocation of appointment of election/election expense/polling/counting agent and

	application for allocation to a special polling station, and to add electronic email as means of delivery of the above notices and some notices.
(d) Improvement to the provisions about postponement or adjournment of an election, poll or count	To align the fallback period for holding an election, poll or count to 14 days in case it is necessary to postpone an election or adjourn a poll or count due to riot, open violence or other occurrence of public danger; a typhoon or other climatic condition of a serious nature; or an occurrence which appears to be a material irregularity. To include an express provision to cover postponement of an election or adjournment of poll or count owing to occurrence of public health danger.
(e) Other technical amendments	
(i) Ordinary business hours	To amend the definition of “ordinary business hours” so that Saturday mornings (other than general holidays) during the period from the date of gazettal of an election notice or a by-election notice to the date of gazettal of election result are regarded as “ordinary business hours”. Outside that period, the term does not cover Saturday mornings.
(ii) Gazetting of polling and counting stations	To specify the deadline (at least 10 days before polling day) for publishing a list of polling stations and counting stations in the Gazette and indicating on the list the special polling stations; to refine the wording about designation of special polling stations; and to advance the deadline for the Returning Officer to give notice to candidates about place(s) of counting of votes from at least one working day before polling day to at least 10 days before polling day.
(iii) Others	To remove reference to repealed provisions and rectify minor textual errors.

(C) Updating the electorate of the ECSSs

7. On 31 August 2014, the Standing Committee of the National People’s Congress adopted the Decision of the Standing Committee of the National People’s Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 (“Decision”). The Decision provides, *inter alia*, that “[i]f the specific method of universal suffrage for selecting the Chief Executive is not adopted in accordance with legal procedures, the method used for selecting the Chief Executive for the preceding term shall continue to apply”.

8. After conducting two rounds of extensive public consultations which lasted for a total of seven months, the Government presented to the LegCo a package of proposals for the method for selecting the CE by universal suffrage. During the two rounds of public consultation, there were different views expressed on the composition of the EC (or the Nominating Committee if universal suffrage for the CE election were implemented). Public attention and debates at the time was focused primarily on the nomination arrangements. On 18 June 2015, the motion moved by the Government on the package of proposals for the method for selecting the CE by universal suffrage was vetoed at the LegCo meeting. As a result, according to the Decision, the method for selecting the 4th term CE in 2012 will continue to be adopted to select the 5th term CE in 2017, i.e., the CE will continue to be elected by a 1 200-member EC in 2017.

9. In preparation for the 2016 ECSS elections and in keeping with the established practice, we have reviewed the delineation of the electorate of all ECSSs in consultation with relevant bureau / departments and made reference to the recent updating exercise for the delineation of the electorate of LegCo Functional Constituencies (“FCs”)². We propose making only necessary technical amendments to the legislation concerning the electorate of the ECSSs as set out at **Annex**, on the basis of applying the same electoral arrangements of the 4th term CE in 2012 and maintaining the original delineation of the subsectors concerned intact. These technical amendments are: include one new

² Relevant updates to the electorate for FCs were included in the Electoral Legislation (Miscellaneous Amendments) Bill 2015, which was passed and enacted in July 2015.

body³, change the name of two bodies, and remove seven bodies which have ceased operation since the last updating exercise⁴.

10. We propose that corresponding amendments should be made to the relevant LegCo FCs which have the same electorate under the LCO.

Advice Sought

11. Members are invited to provide their views on the Government's proposed legislative amendments outlined above.

**Constitutional and Mainland Affairs Bureau
Registration and Electoral Office
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³ "Body" in this paper refers to (a) "umbrella organisations", i.e. bodies for which their members (which may be natural persons or corporates) are electors; and/or (b) "specified bodies", i.e. corporates which are electors.

⁴ The last updating exercise was done in early 2015 alongside with other technical amendments in preparation for the 2016 LegCo election.

**Proposed Technical Amendments to the Electorate of Election Committee Subsectors
and Corresponding Functional Constituencies of the Legislative Council**

(1) Proposed inclusion of bodies

Reference in Chief Executive Election Ordinance (Cap. 569) (“CEEEO”) and Legislative Council Ordinance (Cap. 542) (“LCO”)	Name of Organisation / Company	Remarks
<u>Higher Education subsector / Education FC</u>		
Item 5 of Table 5 of Schedule to CEEEO; and Section 20E of LCO	Members of the Board of Governors of the Gratia Christian College 宏恩基督教學院校董會成員	<ul style="list-style-type: none">• Members of the Board of Governors of approved post secondary colleges registered under the Post Secondary Colleges Ordinance (Cap. 320) are eligible for registration as electors.• The Gratia Christian College is a post secondary college recently registered under the Post Secondary Colleges Ordinance (Cap. 320).

(2) Proposed update of name of bodies

Reference in LCO	Name in LCO	Proposed Name	Remarks
<u>Sports, Performing Arts, Culture and Publication</u>			
Item 61, Part 3 of Schedule 1B	Videotage 錄影太奇	Videotage <u>Limited</u> 錄影太奇有限公司	The listed body has changed its name.
<u>Transport</u>			
Item 200 of Schedule 1A	Sun Hing Taxi Radio Service General Association 新興台的士從業員聯會	<u>Sun Star Taxi Operators</u> Association <u>新星的士同業</u> 聯會	To tally the name of the listed body with its record in the Companies Registry.

(3) Proposed deletion of bodies

Reference in LCO	Name of Organisation / Company	Remarks
<u>Transport</u>		
Item 115 of Schedule 1A	Private Hire Car for Young Children Association Ltd. 學童私家小巴協會有限公司	The listed body has been dissolved and ceased operation.
Item 122 of Schedule 1A	Abbo Taxi Owners' Association Limited 環保的士車主聯會有限公司	The listed body has been dissolved and ceased operation.
Item 128 of Schedule 1A	Taxi Drivers & Operators Association Ltd. 的士司機從業員總會有限公司	The listed body has been dissolved and ceased operation.
Item 162 of Schedule 1A	Rights of Taxi Owners and Drivers Association Limited 的士權益協會有限公司	The listed body has been dissolved and ceased operation.
Item 147 of Schedule 1A	United Radio Taxi & Goods Vehicle Association Ltd. 聯合無線電的士貨車聯會有限公司	The listed body has been dissolved and ceased operation.
Item 159 of Schedule 1A	Yik Sun Radiocabs Operators Association Ltd 益新電召客車聯會有限公司	The listed body has been dissolved and ceased operation.
<u>Agriculture and Fisheries</u>		
Item 45 of Schedule 1	Sai Kung Fishermen Association Limited 西貢漁民互助會有限公司	The listed body has been dissolved and ceased operation.