

**File Reference: CMAB C5**

## **LEGISLATIVE COUNCIL BRIEF**

Emergency Regulations Ordinance (Cap. 241)

### **EMERGENCY (DATE OF ELECTION) (SIXTH TERM CHIEF EXECUTIVE) REGULATION**

#### **INTRODUCTION**

At the meeting of the Executive Council (“ExCo”) on 23 February 2022, the Council **ADVISED** and the Chief Executive (“CE”) **ORDERED** that the Emergency (Date of Election) (Sixth Term Chief Executive) Regulation (at **Annex**; hereafter “Regulation”) should be made under section 2(1) of the Emergency Regulations Ordinance (Cap. 241) (“ERO”) to postpone the polling day of the Sixth Term Chief Executive Election (“CEE”) originally scheduled for 27 March 2022 to 8 May 2022.

#### **JUSTIFICATIONS**

##### **Fighting epidemic as the overriding priority of the Hong Kong Special Administrative Region**

2. The fifth wave of the Coronavirus Disease 2019 (“COVID-19”) epidemic currently faced by the Hong Kong Special Administrative Region (“HKSAR”) is the most critical and dangerous outbreak in HKSAR’s two-year efforts in fighting the epidemic. It is also the most severe public health crisis since Hong Kong’s return to the motherland. In relation to this, President Xi Jinping has, on 16 February, given important instruction on Hong Kong’s anti-epidemic efforts and conveyed his great concern about Hong Kong and sincere care for the people of the city to the CE through the Vice-Premier of the State Council, Han Zheng. President Xi Jinping emphasised that the HKSAR should assume main responsibility and expressly requested “three Alls (三個一切)” and “two safeguards (兩個確保)” in relation to fighting the epidemic that: the HKSAR should stabilise the epidemic situation early and put it as the “overriding mission at present”, “mobilise all available manpower and resources” and “adopt all necessary measures” to safeguard the lives and health of Hong Kong people and the stability of society. The relevant Central Authorities and

regional governments should provide full support and assistance to the HKSAR Government in combating the epidemic.

3. The Central Authorities have all along been providing their strongest support for the HKSAR. The HKSAR Government will, in accordance with the important instruction of President Xi Jinping, assume the main responsibility to stabilise the epidemic situation early as the overriding mission at present. The HKSAR Government has already mobilised all manpower to cope with the new wave of the epidemic. However, as the CE has pointed out publicly, the new wave of epidemic has outstripped the handling capacity of the HKSAR Government at various parts of the anti-epidemic efforts including testing, quarantine, isolation and treatment. In light of this, the CE has reported the situation to the Central Authorities with concrete requests. With the full support of the Central Authorities, the HKSAR Government has formed task forces with the relevant Central Authorities, Guangdong provincial and Shenzhen municipal governments to formulate the details of the relevant work requiring assistance.

4. Currently, the epidemic situation in the HKSAR is very severe. During the period of 1 to 16 February, the total number of confirmed cases in Hong Kong were 15 139, which is almost equal to the cumulative number of cases in the past two years. The situation is extremely critical. According to the opinions of the Centre for Health Protection of the Department of Health and local experts, this wave of epidemic has yet to peak and it is imperative to respond quickly and accurately, and mobilising all manpower to fight the epidemic.

5. The HKSAR Government is grateful to the Central Authorities for their support on all fronts and assistance to enhance HKSAR's capabilities in various anti-epidemic areas, including: equipment for health protection, especially N95 masks which offer better protection and Rapid Antigen Test ("RAT") kits; greatly increased the testing capabilities which enable Hong Kong to conduct compulsory universal testing; building community isolation facilities or assisting in the modification of existing facilities (including newly built and unoccupied public housing) for isolation purposes; experts proposing effective treatment plans, including the use of Chinese medicine. With the help of the Central Authorities, the HKSAR Government is regrouping and mobilising all available social resources (including the hotel industry, taxi industry, private medical industry, etc.) to devise an action plan to contain the fifth wave of epidemic within two to three months. One of the highlights is to carry out compulsory universal testing covering all Hong Kong citizens in March, supplemented

by RAT, to identify hidden infected patients who are still in the community early, and arrange them to enter the isolation facilities (which are increasing) as soon as possible. The coming few weeks (which cover the nomination period and polling day of the Sixth Term CEE) will be critical to Hong Kong in the battle to fight the epidemic together. We should not be distracted nor could we afford to miss.

### **Ensure the smooth conduct of the CEE**

6. On 11 March 2021, the National People's Congress ("NPC") passed the "Decision on Improving the Electoral System of the Hong Kong Special Administrative Region" ("the Decision") which sets out that the amendments to Annex I and Annex II to the Basic Law should follow and firmly safeguard the constitutional order of the HKSAR as enshrined under the Constitutional and the Basic Law, and ensure the guiding principle of "Hong Kong people administering Hong Kong" with patriots forming the mainstay. The Sixth Term CEE is the first CEE after the electoral system is improved to implement the principle of patriots administering Hong Kong and carries profound meaning. The HKSAR Government will make its best endeavor to ensure that the election will be conducted in a fair, just, open and safe manner. Nevertheless, to conduct an election when the epidemic situation has yet to be stabilised will inevitably entail compromises in certain areas to mitigate the risks of spreading disease. This will, to a certain extent, undermine the fairness, justice and openness of the election and may even cause negative impact on its legitimacy, including:

- (a) A candidate for the office of CE shall be nominated by not less than 188 members of the Election Committee ("EC"), with not less than 15 members from each of the five sectors. A CE candidate needs to face all Hong Kong citizens and strive for support and recognition from all walks of life. With the prohibition on group gatherings of more than two persons stipulated under the Prevention and Control of Disease (Prohibition on Gathering) Regulation (Cap. 599G) and the various social distancing measures currently in force, a CE candidate would not be able to solicit nomination from EC members effectively nor conduct meaningful electioneering activities to promote his / her election platforms and visions to Hong Kong society (including all Hong Kong citizens and members of the EC);

- (b) The overall scale of the CEE, involving only 1 462 EC members, is relatively small as compared to that of the Election Committee Subsector Ordinary Elections and Legislative Council General Election. Despite this, there will only be one polling station<sup>1</sup> for the CEE, making it a highly concentrated and compact election in terms of manpower and procedures respectively. The EC comprises important representatives from various sectors in Hong Kong. To gather them at one place when the epidemic is still severe, will not only increase their infection risks, but is also contrary to the HKSAR Government's anti-epidemic strategies and efforts (including cancelling all large-scale events and urging citizens to stay home). On the other hand, as the epidemic situation has yet to be stabilised, we are unable to guarantee that EC members would not be subject to different anti-epidemic measures (e.g. enclosure, compulsory quarantine) and thus be unable to vote in person. As the CEE has a designated threshold<sup>2</sup> for a candidate to be returned, the epidemic has greatly increased the uncertainty of conducting the election smoothly; and
- (c) The CEE of the HKSAR has all along attracted wide attention from the public and media (including international media). Generally speaking, apart from the candidates, their election agents, members of the EC and staff, the venue will also be open to a large number of media and public for interviews or inspection. If the election was to be held as scheduled, having regard to the risks of spreading the disease, it may not be possible to admit media and public in large numbers and adopt the highly transparent arrangement as in the past.

7. At the same time, even if the HKSAR Government makes the best endeavor to reduce the risk of infection at the polling venue (such as extending polling hours, maintaining social distancing, etc.), in order for the election to be conducted smoothly, it would still require the support of thousands of staff (including civil servants and contract staff). They also have to go through a lot of preparation and trainings before the polling day. Considering the high transmissibility of the mutant virus strains spreading locally, we cannot guarantee that there would be no unexpected transmission at the venue, which will bring further risks to the HKSAR Government's anti-epidemic efforts.

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<sup>1</sup> The polling station of the CEE will be set up at the Hong Kong Convention and Exhibition Centre.

<sup>2</sup> A CE candidate must obtain at least 751 votes to be elected.

## The Sixth Term CEE

### (A) Original arrangement

8. The term of office of the Fifth Term CE of the HKSAR will end on 30 June 2022 and the office of the CE will become vacant on 1 July 2022. In accordance with section 10(1)<sup>3</sup> of the Chief Executive Election Ordinance (Cap. 569) (“CEEEO”), the Secretary for Constitutional and Mainland Affairs has, on 22 October 2021, specified 27 March 2022 (“the Original Polling Day”) as the polling day of the Sixth Term CEE. Pursuant to section 3 of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J), the Chief Electoral Officer has also appointed the nomination period for the election to last from 20 February to 5 March 2022.

9. As stipulated in Annex 1 to the Basic Law and the CEEEO, a candidate for the office of CE shall be nominated by members of the EC, and must obtain more than 750 votes to be returned in the election. With the successive smooth completion of the 2021 Election Committee Subsector Ordinary Elections and the 2021 Legislative Council General Election, the HKSAR has formed the new term of EC which now comprises 1 462 members<sup>4</sup>.

### (B) Proposal to postpone the election

10. On the premise that fighting the epidemic is the overriding priority of the HKSAR Government, we have carefully examined whether there is room for postponing the polling day of the Sixth Term CEE having regard to the existing constitutional requirements and legal basis. This is to ensure that the election would not pose additional risks to public health while it could be conducted in a fair, just, open and safe manner. On this basis, we **propose** to make the Regulation under section 2(1) of the ERO to **postpone** the polling day of the Sixth Term CEE to **8 May 2022**, with

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<sup>3</sup> The provision stipulates that if the office of the CE becomes vacant on the expiry of the term of office of the CE, the polling day for the election to fill the vacancy should be set on the Sunday on / before the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise.

<sup>4</sup> There are 38 vacancies mainly because some of the EC members have dual memberships (e.g. they are members returned by election and ex-officio members (e.g. LegCo members) at the same time). Each member could only take up one seat in the EC.

the nomination period starting on 3 April and ending on 16 April. The main considerations are set out below.

*Enabling the election to be held when the epidemic situation has stabilised*

11. The number of confirmed cases has not peaked at present. It will take time for any reinforcement measures to take effect, while the main initiative of compulsory universal testing scheme could only be completed in March. Having considered factors including the trend of the epidemic, public health safety and social sentiment, it is more prudent to postpone the CEE by two to three months.

*Allowing enough time for CE candidates to form governing team*

12. At the same time, we must allow sufficient time for candidates for the CE office to form governing team and carry out work entailed by the change of Government. After CEE polling day, the elected candidate must be appointed by the Central People's Government ("CPG") before he / she can become the CE. Meanwhile, the CE-elect would also need to start forming the new governing team, including identifying suitable candidates and making nominations to the CPG for appointment as principal officials, such that they could be sworn on 1 July. Setting the polling day on 8 May 2022 would allow about two months, which should still be sufficient, for the CE-elect to form the governing team and prepare for the work of the new term Government.

*Ensuring the election to be conducted in a fair, just and open manner*

13. The HKSAR Government is committed to ensuring that elections are held in a fair, just and open manner. In this regard, the proposed Regulation will only provide for the election date (and the necessary consequential amendments). Meanwhile, the other requirements on the detailed operation and statutory deadlines of the election as stipulated in the CEEO will be followed as far as possible.

14. Among which, the CEEO stipulates that the nomination period must be no less than 14 days, the nomination period must end 21 days before the polling day, and the polling day must be a Sunday. Practically, the composition of the EC is enhanced and improved to widely include representatives from different sectors of society; at the same time, the

threshold for becoming a candidate has also increased that candidates must be nominated by not less than 188 members of the EC (with not less than 15 members from each of the five sectors of the EC). The CEEO stipulates a rather long nomination period (i.e. not less than 14 days) which would allow EC members to have more time to get to know the candidates before making nominations while also providing more time for the candidates to seek nominations. Meanwhile, apart from the EC members, CE candidates would also need to solicit wide support from the community. The requirement that the nomination period must end 21 days before the polling day allows candidates to promote their political platforms through different channels and let the public better understand their visions for Hong Kong, which will in turn lay a solid foundation for future governance. In this regard, we will not change any of these requirements to ensure that elections are fair to candidates, open to the public, and just.

15. To specify 8 May as the polling day of the CEE and for the 14-day nomination period to commence on 3 April would comply with the aforementioned requirements as stipulated in the primary legislation of the electoral law. Although the nomination period is only less than two months away from now, it is still an advisable proposal on balance.

16. In addition, by specifying **8 May** (First Polling Day) as the polling day, even if the EC could not elect the new CE on the First Polling Day, and that the Returning Officer, in accordance with section 22<sup>5</sup> of the CEEO, publicly declares that no candidate is returned at the election and terminates the proceedings for the election, there is still room to, pursuant to section 11(2) of the CEEO, set the Sunday which is the 42<sup>nd</sup> day after the termination of the proceedings for the election, i.e. **19 June, as the Second Polling Day**. The HKSAR could still, before the expiry of the term of the current CE, select the new CE for appointment by the CPG and swearing in on 1 July. Admittedly, under this circumstance, the process for the CE-elect to form the new governing team, nominate principal officials for CPG's appointment will be extremely tight. Since Hong Kong's return to the motherland, there has never been a Second Polling

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<sup>5</sup> Section 22 of the CEEO stipulates the requirements for various situations (including that a candidate is dead, a candidate is disqualified from being elected and no candidate is returned at the election) where a new CE could not be returned. For example, section 22(1AB) stipulates that, where at close of nominations only one candidate is validly nominated, a poll should still be conducted, and if the candidate cannot obtain over 750 votes of support, then he/she is not returned at the election. The Returning Officer shall publicly declare that no candidate is returned at the election and terminate the proceedings for the election.

Day for the CEE. Nevertheless, in view of the important constitutional status of the CE and the principles and requirements as currently stipulated in the electoral laws should be followed despite the postponement of CEE by ERO this time, the determination of the new polling day should also cater for the need for a Second Polling Day to be conducted within the term of the current CE.

### **(C) The Legislative Approach**

17. We have explored other proposals to postpone the election under the existing legislative provisions. In accordance with section 21(1) of the CEEO, the Electoral Affairs Commission (“EAC”) may direct the postponement of a poll if, before the commencement of polling, the EAC is of the opinion that the polling is likely to be obstructed, disrupted, undermined or seriously affected by riot or open violence or **any danger to public health** or safety. In accordance with section 65 of the Electoral Procedure (Chief Executive Election) Regulation, if a poll is postponed, the EAC shall appoint a date **within 14 days** (i.e. not later than **10 April**) after the date of the postponed poll as the new polling date. However, having regard to the severe epidemic situation in HKSAR at present, postponement of the polling day by 14 days cannot reasonably and effectively enable the CEE to be held under a stabilised epidemic situation. If EAC is required to exercise its power again to further postpone the polling day, this would cause uncertainties for both electors and prospective candidates. Therefore, we do not recommend this approach for postponing the election.

18. On the other hand, section 2(1) of the ERO specifies that on any occasion which the Chief Executive-in-Council (“CE-in-C”) may consider to be an occasion of emergency or public danger he / she may make any regulations whatsoever which he may consider desirable in the public interest. The CE-in-C also invoked the ERO on 28 July 2020 to postpone the Seventh Term Legislative Council Election originally scheduled for 6 September 2020 by one year having regard to the epidemic situation at that time. This year, Hong Kong is facing rapid development of the fifth wave of the epidemic. The number of confirmed cases per day rose to over a thousand and has yet to peak vis-à-vis the number of confirmed cases per day was 149 during the peak of the epidemic in July 2020. In comparison to July 2020, there is no doubt that the present emergency situation falls under the occasions of emergency as referred to in the ERO. The major objective of postponing the Sixth Term CEE is to ensure that the election



can be conducted in a fair, just, open and safe manner, while public health and public interests can be safeguarded.

19. Besides, sections 2(2)(g) and 2(4) of the ERO provide that regulations made under the ERO were conferred powers to amend any enactment or suspend the operation of any enactment including principal legislation. It is necessary to invoke the ERO because postponement of the election requires overriding or suspending the relevant provisions in the CEEO.

20. The Court of Final Appeal has made a final judgement on the ERO on 21 December 2020 which upheld the compatibility of the ERO with the Basic Law, and that the ERO has empowered the CE-in-C to make regulations which she may consider desirable in the public interest when the situations concerned are one of emergency or public danger, and that such powers are wide and flexible. In addition, in the same case, the Court of Appeal “observed by way of judicial notice that in tackling the current COVID-19 pandemic, the Government has invoked sections 7 and 8 of the Prevention and Control of Disease Ordinance [(Cap. 599)] to make emergency regulations. If that Ordinance did not exist, it would appear that the Government would need to invoke the ERO”. The above cases and Court judgements provided sufficient justifications and legal basis for invoking the ERO to postpone the election.

21. The justifications for invoking the ERO are:

- (a) Since the outbreak of COVID-19, the pandemic situation is the most serious in Hong Kong at present. The number of confirmed cases and death figures have been increasing. Election entails crowd gathering and social contact which will add further risks to public health;
- (b) Repeatedly invoking the existing provision that empowers the EAC to postpone the election by 14 days for an indefinite period would cause uncertainties. Such approach is unrealistic and not conducive to effective governance;
- (c) Postponing the Sixth Term CEE is in the public interest and can ensure that the election can be conducted in a fair, open and safe manner while minimising potential risk of infection and danger; and

- (d) Upon postponement of the Sixth Term CEE to May 2022, the new term CE could still be selected before expiry of the term of office of the Fifth Term CE. The requirement under the Basic Law that the term of office of the CE shall be five years is still met.

## **OTHER OPTIONS**

22. Having regard to the imminence of the election and the public health considerations that have necessitated postponement of the election for a relatively long period, there was no option apart from making a regulation under the ERO.

## **THE REGULATION**

23. The Regulation specifies a new polling date for the Sixth Term CEE and brings the current electoral process to an end, including:

- (a) to revoke the notice of polling date for the Sixth Term CEE made by the Secretary for Constitutional and Mainland Affairs under section 12 of the CEEO and to specify a new polling day (i.e. 8 May 2022; “Postponed Election”) for the Sixth Term CEE. All electoral procedures are to apply on the basis of the new polling day; and
- (b) to revoke the notice<sup>6</sup> of nomination for CEE published by the Chief Electoral Officer under section 3 of the Electoral Procedure (Chief Executive Election) Regulation on the basis of the Original Polling Day and to specify a new nomination period (viz. 3 to 16 April 2022) for the Sixth Term CEE.

24. Upon the commencement date (i.e. 24 February 2022) of the Regulation, the election with the Original Polling Day is to be regarded as a “Discontinued Election”, and all electoral matters (i.e. acts done or purportedly done under the electoral law, including any nominations made, nomination forms and other election related documents that have been submitted) in relation to the Discontinued Election would cease to have effect (unless otherwise specified). At the same time, electoral officers (including the Returning Officer and Chief Electoral Officer) and the

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<sup>6</sup> The notice specified details such as nomination period and the address for submitting nomination forms.

Candidate Eligibility Review Committee are, unless otherwise specified, no longer required to perform any function provided in any electoral law in relation to the Discontinued Election.

25. On the other hand, notwithstanding that the electoral matters of the Discontinued Election would cease, the requirements on election advertisements, election expenses and election returns as set out in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) and the CEEO should be maintained so as to ensure that the election is fair, just and open. As such, the Regulation provides that:

- (a) electoral officers and candidates are to comply with the obligations in respect of making copies of election advertisements and related documents available for public inspection; and
- (b) candidates are required to lodge an election return in relation to the Discontinued Election so as to enable proper scrutiny by the relevant authorities of whether or not candidates have committed any corrupt or illegal conduct in the preceding period.

In addition, under the existing electoral law, candidates must ensure that any unused election donation is given to a charitable institution or trust of a public character chosen by them. Failure to comply with the above requirement constitutes corrupt conduct. It should be noted that pursuant to section 2(1) of the ECICO (as read together with the Regulation), a “candidate”, in relation to the Discontinued Election, means a person who stands nominated as a candidate at the election, as well as a person who, **at any time** before 24 February 2022, has publicly declared an intention to stand as a candidate at the election.

26. However, when determining whether the election expenses have exceeded the statutory maximum limit<sup>7</sup>, the election expenses incurred by (or on behalf of) the candidate will be “re-set” on 24 February 2022. Election expenses previously incurred<sup>8</sup> would not be regarded as the election expenses of the Postponed Election. Further, any person who has, before 24 February 2022, publicly declared the intention to stand as a

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<sup>7</sup> According to section 2(b) of the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A), the maximum amount of election expenses that can be incurred by or on behalf of a candidate at a CEE is \$17,600,000.

<sup>8</sup> As stated in paragraph 25(b), they still need to submit election return in relation to the Discontinued Election.

candidate in the Discontinued Election will not be regarded as a candidate of the Postponed Election because of that previous public declaration.

## **LEGISLATIVE TIMETABLE**

27. The Regulation will be introduced to the Legislative Council (“LegCo”) for negative vetting and the legislative timetable is as follows:

Regulation to be published in the Gazette	23 February 2022
Regulation to take effect	24 February 2022
Introduction of the Regulation into the LegCo	16 March 2022 <sup>9</sup>

## **IMPLICATIONS OF THE REGULATION**

28. The Regulation is in conformity with the Basic Law, including the provisions concerning human rights.

## **PUBLICITY**

29. As the nomination period for the Original Polling Day would start on 20 February 2022, to inform the public the plan on the CEE early so that prospective candidates and EC members could plan ahead, the CE held a press conference on 18 February 2022 to explain the decision in details.

30. The Regulation will be published in the Gazette on 23 February 2022. A spokesperson will be made available to address media and public enquiries.

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<sup>9</sup> First LegCo meeting after the Regulation takes effect. There is no LegCo meeting on 2 and 9 March 2022.

## **BACKGROUND**

31. On 18 February 2022, the CE-in-C agreed that the ERO should be invoked to make a regulation to **postpone the polling day of the Sixth Term CEE to 8 May 2022**, and instructed that the Regulation be submitted for consideration by the ExCo as soon as possible. The Constitutional and Mainland Affairs Bureau submitted the Regulation for ExCo's consideration on 23 February 2022.

32. Article 8 of the Decision adopted by the NPC on 11 March 2021 provides that "[t]he Chief Executive of the HKSAR shall submit in a timely manner reports to the Central People's Government on relevant important situations including the institutional arrangements for elections of the HKSAR and the organization of the elections". On this basis, the CE has reported the latest developments to the CPG, which has expressed full understanding and support.

## **ENQUIRY**

33. Any enquiry on this brief can be addressed to Ms. Carmen KONG, Principal Assistant Secretary for Constitutional and Mainland Affairs (Tel: 2810 2852).

**Constitutional and Mainland Affairs Bureau**  
**23 February 2022**

## Emergency (Date of Election) (Sixth Term Chief Executive) Regulation

(Made by the Chief Executive in Council under section 2 of the Emergency Regulations Ordinance (Cap. 241))

### Part 1

#### Preliminary

##### 1. Commencement

This Regulation comes into operation on 24 February 2022.

##### 2. Interpretation

In this Regulation—

*Cap. 541J* (《第 541J 章》) means the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J);

*Cap. 554* (《第 554 章》) means the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

*Cap. 569* (《第 569 章》) means the Chief Executive Election Ordinance (Cap. 569);

*Chief Electoral Officer* (總選舉事務主任) has the meaning given by section 2(1) of the Electoral Affairs Commission Ordinance (Cap. 541);

*Chief Executive election* (行政長官選舉) means an election to return a candidate for appointment by the Central People's Government to fill the vacancy in the office of the Chief Executive arising from the expiry of the fifth term of office of the Chief Executive;

*discontinuation date* (中止日期) means 24 February 2022;

*discontinued election* (已中止的選舉) means the Chief Executive election the poll at which is scheduled to be held on the original date;

*election expenses* (選舉開支)—

- (a) in relation to the discontinued election—has the meaning given by section 2(1) of Cap. 554, as read together with section 7(2); and
- (b) in relation to the postponed election—has the meaning given by section 2(1) of Cap. 554;

*electoral law* (選舉法)—

- (a) means any law in force providing for an election to return a candidate for appointment by the Central People's Government to fill the vacancy in the office of the Chief Executive; and
- (b) includes any guidelines issued under section 6(1) of the Electoral Affairs Commission Ordinance (Cap. 541);

*electoral matter* (選舉事宜)—

- (a) means an act that is done, or purportedly done, under the electoral law; and
- (b) includes an election related document (as defined by section 84(6) of Cap. 541J);

*function* (職能) includes a power and a duty;

*original date* (原定日期) means 27 March 2022;

*postponed election* (經押後的選舉) means the Chief Executive election the poll at which is to be held on 8 May 2022, as required under section 5(1);

*Returning Officer* (選舉主任) has the meaning given by section 2(1) of Cap. 569.

## Part 2

### Change of Date of Chief Executive Election

#### 3. Notices in respect of discontinued election revoked

The following notices are revoked—

- (a) the Notice of Polling Date of Chief Executive Election which was published, under section 12 of Cap. 569, in the Gazette on 22 October 2021 as Government Notice 6475 of 2021; and
- (b) the Notice of Nomination for Chief Executive Election which was published, under section 3 of Cap. 541J, in the Gazette on 27 January 2022 as Government Notice (E.) 143 of 2022.

#### 4. Discontinued election ends and related electoral matters cease to have effect

- (1) The discontinued election comes to an end at the beginning of the discontinuation date.
- (2) Except for the purposes of the matters provided in Part 3, all electoral matters in relation to the discontinued election that took place or came into being before the discontinuation date (including the notices referred to in section 3) cease to have effect as from the beginning of that date.
- (3) To avoid doubt, and without limiting subsections (1) and (2)—
  - (a) section 11 of Cap. 569 does not apply to the discontinued election;
  - (b) except for the purposes of the matters provided in Part 3, on and after the discontinuation date, an electoral officer (as defined by section 2(1) of Cap. 569) and the Candidate Eligibility Review Committee established under section

9A of Cap. 569 are not required to perform any function provided in any electoral law in relation to the discontinued election; and

- (c) the electoral matters referred to in subsection (2) do not have any effect in relation to the postponed election.

#### 5. Date of poll and nomination period at and application of electoral law to postponed election

- (1) Section 10(1) of Cap. 569 does not apply to the postponed election, and the poll at the Chief Executive election is to be held on 8 May 2022 instead of the original date.
- (2) Subject to subsection (1), in applying the provisions of any electoral law to the postponed election, 8 May 2022 is to be taken as the date fixed for the poll at that election under section 10(1) of Cap. 569.
- (3) Section 15(1) of Cap. 569 does not apply to the postponed election, and the nomination period at that election is the period from 3 April 2022 to 16 April 2022 (both dates inclusive).
- (4) Subject to subsection (3)—
  - (a) the Chief Electoral Officer must publish in the Gazette a notice which states the matters referred to in section 3(b), (c) and (d) of Cap. 541J; and
  - (b) in applying the provisions of any electoral law to the postponed election, the period from 3 April 2022 to 16 April 2022 (both dates inclusive) is to be taken as the nomination period fixed under section 15 of Cap. 569.

### Part 3

## Matters Related or Consequential to Change of Date of Chief Executive Election

### 6. Matters arising from change of date of Chief Executive election

- (1) On and after the discontinuation date—
  - (a) the Returning Officer or the Chief Electoral Officer, as the case may be, must continue to perform their functions under sections 14(9) and 87(7) and (8) of Cap. 541J in relation to the discontinued election;
  - (b) the Returning Officer must send any document referred to in section 57(f), (g), (h), (i) or (j) of Cap. 541J in relation to the discontinued election to the Chief Electoral Officer, who must deal with the document in accordance with section 59 of Cap. 541J (as if a reference to the 6-month period in that section were a reference to the 6-month period beginning with the discontinuation date); and
  - (c) a candidate (as defined by section 2(1) of Cap. 541J) must continue to comply with section 87(2)(b) of Cap. 541J in relation to the discontinued election.
- (2) Any election expenses incurred at or in connection with the discontinued election by or on behalf of a person are not to be regarded as election expenses incurred by or on behalf of the person at or in connection with the postponed election.
- (3) Anything done by a person before the discontinuation date is not to be regarded as a public declaration by the person of the person's intention to stand as a candidate at the postponed election.

### 7. Application of Cap. 554 to discontinued election

- (1) For the purposes of section 4(1) of Cap. 554, the discontinued election is an election to which Cap. 554 applies.
- (2) Cap. 554 applies to the discontinued election with the following modifications—
  - (a) in paragraph (b) of the definition of *candidate* in section 2(1) of Cap. 554, the reference to “any time before the close of nominations for an election” is taken to be a reference to “any time before 24 February 2022”;
  - (b) in section 2(1) of Cap. 554, the following definition is taken to be substituted for the definition of *election period*—

“*election period* (選舉期間) means the period beginning with 20 February 2022 and ending with 23 February 2022;” and
  - (c) the following provision is taken to be substituted for section 37(1A) of Cap. 554—

“(1A) For the discontinued election (as defined by section 2 of the Emergency (Date of Election) (Sixth Term Chief Executive) Regulation), the candidate must ensure that the election return is lodged before the expiry of the period of 60 days beginning with 24 February 2022.”.



COUNCIL CHAMBER

2022

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Clerk to the Executive Council

**Explanatory Note**

The purposes of this Regulation are to—

- (a) revoke certain notices in respect of the election to elect the sixth term Chief Executive the poll at which is originally scheduled to be held on 27 March 2022 (*discontinued election*);
- (b) provide that the discontinued election comes to an end at the beginning of 24 February 2022, and that acts done, or purportedly done, under the electoral law in relation to the discontinued election cease to have effect accordingly;
- (c) provide that the poll at the election to elect the sixth term Chief Executive is to be held on 8 May 2022 instead, and that the nomination period at that election is the period from 3 April 2022 to 16 April 2022; and
- (d) provide for related or consequential matters.