



立法會秘書處 法律事務部  
LEGISLATIVE COUNCIL SECRETARIAT  
LEGAL SERVICE DIVISION

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6 May 2009

Secretary for Constitutional and Mainland Affairs  
(Attention: Mr Thomas Wu, AS (C&MA)2A)  
Constitutional and Mainland Affairs Bureau  
3rd Floor, Main and East Wing,  
Central Government Offices,  
11 Ice House Street,  
Central,  
Hong Kong

Dear Mr Wu,

### **Voting by Imprisoned Persons Bill**

I am scrutinizing the legal and drafting aspects of the Voting by Imprisoned Persons Bill and have the following observations on the proposed amendments to sections 24 and 28 of the Legislative Council Ordinance (Cap. 547) (LCO) -

(a) Imprisoned Persons who have a home in Hong Kong outside prison

Under section 28 of the LCO, a person who seeks to apply for registration as an elector in the register of geographical constituencies under the LCO has to satisfy the Electoral Registration Officer that the residential address notified is his only and principal residence in Hong Kong. The only and principal residence is defined to mean "a dwelling-place in Hong Kong at which the person resides and which constitutes the person's sole or main home" (Section 28(3)).

For those imprisoned persons who do not have a home in Hong Kong outside the prison, the Bill introduced amendments to provide for the determination of their residential address by adding new subsections (1A), (1B) and (2A) to section 28.

There may well be an imprisoned person who maintains a home in Hong Kong outside prison, in respect of which no new provision has been proposed. It would appear therefore that the existing provisions of section 28 would have to apply. It is doubtful whether the plain and ordinary meaning of "dwelling-place at which the person resides and which constitutes the person's sole or main home" can be extended to cover a dwelling-place where one does not actually reside due to the fact that he is serving a sentence of imprisonment (especially in the case of a long imprisonment term) although he still maintains it as his sole or main home outside the prison.

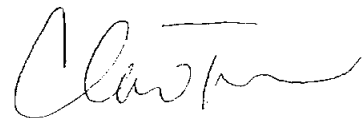
This query may also arise under section 24(2) of the LCO, which empowers a Electoral Registration Officer to remove a person's name from the register if that Officer is satisfied that the person no longer resides at the recorded address and that officer does not know the person's new principal residential address. The Bill proposes a new section 24(3) to exclude only the imprisoned person who does not have a home in Hong Kong outside the prison from the application of section 24(2). Hence, an imprisoned person with a home in Hong Kong outside the prison may still be within the ambit of section 24 and thus liable to have his name removed because he can no longer reside at his recorded residential address, even if the Electoral Registration Officer knows that he is imprisoned.

(b) Imprisoned Persons' choice of residential address

It would appear from the effect of new section 28(1A), (1B) and (2A) that an imprisoned person is precluded from using the prison in which he is incarcerated as the residential address for the registration purposes under the LCO even though he does not have a home outside the prison. Please confirm this is the effect intended by the Administration and clarify the relevant policy.

I would be grateful for your response to facilitate my reporting to the House Committee on 8 May 2009 (in both Chinese and English and with soft copy to Ms Christine LIU at ylliu@legco.gov.hk).

Yours sincerely,



(Clara TAM)  
Assistant Legal Adviser

cc. DoJ (Attn.: Mr Gilbert MO, DLD(BD&A) (By Fax: 2869 1302) &  
Miss Mandy NG, GC (By Fax: 2845 2215))