

政制及內地事務局  
政府總部



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU  
GOVERNMENT SECRETARIAT

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來函檔號 Your Ref.: LS/B/10/08-09

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7 May 2009

Ms Clara Tam  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Tam,

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

I refer to your letter dated 6 May 2009 on the above Bill, and set out below our responses to the two questions raised :

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

Your question, in essence, is whether “dwelling place at which the person resides and which constitutes the person’s sole or main home” can be extended to cover, in the case of an imprisoned person, a dwelling place where he does not actually reside during the term of his imprisonment.

It is the Administration’s understanding of the LegCo Ordinance (Cap. 542) that, depending on the facts of a particular case, a place can remain as a person’s residence notwithstanding his temporary absence therefrom. The fact that a person is involuntarily kept away from that place during the imprisonment period does not per se affect such place as the person’s sole or main home.

As such, for an imprisoned person with a home in Hong Kong outside the prison and eligible for registration, the reference of “at which the person resides” in section 28(3) of the LegCo Ordinance does not preclude him from being registered to his home address outside the prison, nor would the reference of “no longer resides at the residential address recorded” in section 24(2) of the Ordinance obliges the removal of his name from the register under the Ordinance.

(b) Imprisoned Persons' choice of residential address

You ask whether it is the policy intention of the Administration to preclude an imprisoned person from using the prison address as his address for the purpose of voter registration. We confirm that this is the intention.

It is the Administration's understanding of the LegCo Ordinance that a place where a person is involuntarily kept cannot be qualified as the residence of the person. In Choi Chuen Sun v. the Secretary for Justice and another (HCAL 83/2008), the court rejected the challenge by Mr Choi (that the Electoral Affairs Commission ("EAC") has wrongfully refused his application to change his address to his prison cell in Stanley for the purposes of the register of electors) and stated in the judgement on 8 December 2008 that :

"the EAC was quite entitled to come to the conclusion that Mr Choi's prison cell in Stanley was not his dwelling place in Hong Kong at which he resided and which constituted his sole or main home at the time of application for change of address." (paragraph 194)

Moreover, as explained in the Consultation Document on Prisoners' Voting Right issued by the Administration in February 2009 (paragraph 3.06(b) of the document), if the address of the prison is accepted as a registered address, it may lead to an unduly high proportion of prisoners in the registered electorate of certain constituencies.

Yours sincerely,



( Gary Poon )

for Secretary for Constitutional and Mainland Affairs

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