

立法會 *Legislative Council*

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Paper for the House Committee meeting on 9 October 2009

Report of the Bills Committee on Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009

Purpose

This paper reports on the deliberations of the Bills Committee on Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009 (the Bill).

Background

2. The Village Representative Election Ordinance (VREO) (Cap. 576) was enacted in February 2003 to bring the conduct of village representative (VR) election under statutory control to ensure that the electoral arrangements would be consistent with the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Sex Discrimination Ordinance (Cap. 480).
3. Under the VREO, VR elections are held for indigenous villages (which include Indigenous Villages and Composite Indigenous Villages) already in existence in 1898, and existing village settlements (Existing Villages) already included in the village representation system in the New Territories in 1999, when the last round of VR election before the enactment of the VREO was held. The Existing Villages, Indigenous Villages and Composite Villages are listed in Schedules 1, 2 and 3 to the VREO respectively.
4. There are two types of VRs under the VREO, namely, Indigenous Inhabitant Representatives (IIRs) for Indigenous Villages or Composite Indigenous Villages, and Resident Representatives (RRs) for Existing Villages. The number of IIRs then (i.e. in 1999), ranging from one to five, for an Indigenous Village or a Composite Indigenous Village would be retained, while there would be one RR for each Existing Village.

5. The functions of an IIR are to reflect views on the affairs of the village on behalf of the indigenous inhabitants of the village, and to deal with all affairs relating to the lawful traditional rights and interests, and the traditional way of life, of those indigenous inhabitants. The function of an RR for an Existing Village is to reflect the views on the affairs of the village on behalf of the residents of the village. An RR shall not deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants.

6. Since the commencement of the VREO, two village ordinary elections were held in 2003 and 2007 respectively. Having reviewed the arrangements for the first two rounds of election and the proposals from the rural community relating to the VR election, the Administration has proposed to make miscellaneous amendments to the village representative election legislation to improve the arrangement for rural elections and to prepare for the next round of village ordinary election in 2011. The Administration introduced the Bill into the Legislative Council (LegCo) on 27 May 2009.

The Bill

7. The Bill seeks to amend the VREO and certain items of subsidiary legislation relating to VR elections to -

- (a) include two villages known as "Lai Pek Shan" (LPS) (犁壁山) and "Yuen Long Kau Hui" (YLBH) (元朗舊墟) in the Schedules to VREO for the purposes of VR elections;
- (b) change the names of some villages that now appear in the Schedules;
- (c) extend the time limits for lodging and handling claims, objections and reviews in relation to voter registration and revise the time frames concerning the registration of electors for VR elections and the compilation of registers of electors;
- (d) remove references relating to the VR elections held in 2003 which have become spent; and
- (e) increase the maximum penalty for offences concerning order at polling stations and secrecy of votes.

The Bills Committee

8. At the House Committee meeting on 29 May 2009, Members decided that a Bills Committee be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

9. Under the chairmanship of Hon IP Kwok-him, the Bills Committee has held three meetings with the Administration, and received views of deputations/individuals at one of the meetings. A list of deputations and individuals who have submitted views to the Bills Committee is in **Appendix II**.

Main deliberations of the Bills Committee

Inclusion of two villages in the VREO

10. Under clauses 11 and 12 of the Bill, amendments are proposed to be made to the VREO to include two villages, namely LPS in Tai Po and YLKH in Yuen Long as Existing Villages and Indigenous Villages in both Schedules 1 and 2 to the VREO so that these two villages can be included in the next round of village ordinary election in 2011.

Reasons for inclusion of the two villages in the Schedules to VREO

11. Members note from the Administration that the existence of a village representation system in LPS in 1999 is a fact established by the existence of a VR in the village some 50 years before and by the District Officer (Tai Po)'s approval in 1999 of the revised constitution of the Tai Po Rural Committee admitting LPS as a member so that it could hold a VR election. Members are supportive of the proposal for the inclusion of LPS in the Schedules to VREO. As for the proposal on YLKH, Mr Albert HO has queried the change of the Administration's stance in including the place in the Schedules, despite its earlier position that YLKH was just a market town and Shap Pat Heung Rural Committee's (SPHRC) objection to YLKH's application for admission as its member village. Mr LAU Wong-fat and Mr CHEUNG Hok-ming have asked whether the refusal of a Rural Committee (RC) to accept a village as its member village will have any significant effect or legal implication on the inclusion of the village in the Schedules to the VREO and for the village to have its VR election to be held in accordance with the VREO.

12. The Administration has explained that since the commencement of the VREO in 2003, residents of YLKH had made repeated requests to the Administration to include YLKH in the Schedules to VREO. However, the residents concerned had failed to prove that they had any form of village representation system in 1999. In late 2008, YLKH residents raised the request with some LegCo Members and the case was discussed at a meeting of the LegCo Panel on Home Affairs (HA Panel) in January 2009. At the meeting, some residents of YLKH produced fresh evidence to prove that they had a VR during the Japanese Occupation. Having considered the evidence and the views of the HA Panel, the Administration is of the view that YLKH has a persuasive case unique to its own circumstances and should be included in the Schedules to VREO.

13. The Administration has further advised that if the Bill was enacted, YLKH will be able to elect its VRs as proposed under the Bill. Section 61 under Part 8 of the VREO prescribes that a VR, as an individual, is automatically a member of the RC in the area in which the village is situated. As YLKH is situated in Shap Pat Heung, the VRs to be elected will by law become members of SPHRC. Regarding SPHRC's stance, the Administration stresses that both YLKH and SPHRC understand the importance of maintaining a good relationship among members of the rural community, and has undertaken to follow up by liaison and discussion with SPHRC on the membership issue pursuant to the enactment of the Bill.

14. Members in general are supportive of the proposed inclusion of YLKH in the Schedules to VREO, but emphasize that the Administration should be consistent in its stance so that other villages currently not listed in the Schedules but are able in future to prove that they had a village representation system established before 1999 (as in the case of YLKH) can be eligible for inclusion in the Schedules.

Other related issues

15. In relation to the proposal for the inclusion of the two villages in the Schedules to VREO, members have expressed concern about the principles for the listing of indigenous villages in the Schedules and sought clarification from the Administration regarding the definition of village representation system for the purpose of including a village in the Schedules.

Principles for listing of indigenous villages

16. Members note that under the VREO, an indigenous village should satisfy two principles for inclusion in the Schedules, viz. the relevant village should have been in existence in 1898 and a village representation system should have been established in the relevant village in 1999. Mr CHEUNG Hok-ming opines that the latter is unreasonable as it may have excluded those indigenous villages where a village representation system had been established before 1999 but was not in operation in 1999. Members in general take the view that, in general, any village which is proven to have existed in 1898 and established a village representation system in or prior to 1999 should be included in the Schedules.

17. The Administration has explained that while it is the policy and legislative intent of the VREO to cover those indigenous villages which had been in existence in 1898 and included in the village representation system in 1999, the Administration will not turn down requests for inclusion of villages in the Schedules solely due to the fact that the relevant village did not have a village representation system in 1999. The Administration will exercise flexibility in considering each case and make a decision upon the provision of sufficient documentary proof by residents concerned.

Definition of village representation system

18. As there was no statutory village representation system before the enactment of the VREO and VRs were then elected according to the practices which varied from village to village, some members including Mr CHEUNG Hok-ming, Mr Albert HO and Mr Paul TSE have asked the Administration to clarify, for the purpose of inclusion of an indigenous village in the Schedules to VREO, whether the "village representation system" is meant to be an officially recognized system or could be an unofficial system adopted by residents, and how far the history relating to the establishment of a VR or village representation system in a village should be traced.

19. The Administration acknowledges that the village representation system in the New Territories before 1999 had evolved in the light of the different historical context of individual villages, where VRs of the relevant villages might be appointed or elected through different systems. In view of the above, the Administration has advised that it would exercise flexibility in scrutinizing claims of the existence of a VR or village representation system, but stresses that whether the relevant village meets the principles for inclusion in the Schedules to VREO would depend on the strength of evidence provided by the residents of the relevant village.

Extension of time limit for lodging/handling claims, objections and reviews

20. Under section 3(2) of the Village Representative Election (Registration of Electors) (Appeals) Regulation (Cap.576A) (the Appeals Regulation), the Revising Officers (ROs), who are magistrates, shall make rulings allowing or dismissing claims and objections in relation to voter registration for VR elections. Clause 16 of the Bill proposes to amend section 2(5) of the Appeals Regulation to revise the period within which a hearing in respect of such claims or objections must be held. The proposed amendment extends the existing period of time for the ROs to rule on the claims and objections from seven days to 14 days after the deadline for lodging claims and objections.

21. Under section 4(4) of the Appeals Regulation, the person who has made a claim or objection, or the person in respect of whom an objection is made, may apply for a review of the ruling made by the RO not later than two days after the day on which the notification of ruling is sent. Clause 17 of the Bill proposes to extend it to four days.

22. It is also proposed to extend from two days to eight days the period of time for ROs, under section 7(2)(b) of the Appeals Regulation, to process applications for review of ruling lodged on the last day of the submission period.

23. The total effect of the proposed extensions of time periods in paragraphs 20 to 22 above is that the time frames concerning the registration of electors and compilation of the provisional register of electors will have to be advanced by about two weeks. Part 4 of the Bill proposes to amend the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541K) (the Registration Regulation) to that effect.

24. Members note that the extension of the time limits would provide a more reasonable time frame for concerned parties to deal with those cases, and have no strong view on the proposal. In response to Mr Paul TSE's enquiry on whether manpower resources will be strengthened to relieve ROs' heavy workload, the Administration has advised that it has consulted the Judiciary before introducing the Bill and will continue to liaise with the Judiciary to ensure that the manpower resources of ROs will be sufficient to cope with the workload arising from the claims, objections and reviews.

Increase of maximum penalty on offences concerning order at polling stations and secrecy of votes

25. Clause 37 of the Bill proposes to amend section 89 of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541L) (the Procedure Regulation) to increase the maximum term of imprisonment penalty from three months to six months for two offences¹ concerning order at polling stations and secrecy of votes under section 38(4) and section 82(1) of the Procedure Regulation respectively. The Administration has explained that the proposal is made to align with similar provisions for the LegCo and District Council elections for a stronger deterrence effect.

26. While members have no strong view on the Administration's proposal, Mr Paul TSE considers that the Administration should be more stringent in taking enforcement action against persons providing false information in electoral registration for VR elections. Mr TSE opines that enforcement action should be initiated against such persons before rather than after they have voted in the elections to enhance the deterrent effect against those who deliberately break the law.

27. The Administration has explained that the Electoral Registration Officer is empowered to determine the eligibility of the electors according to the VREO and take action against persons who give information to an electoral officer knowing that such information is materially false or misleading. As for enforcement action against such persons, the Administration has advised that it would be difficult to prove the intention that the persons concerned have knowingly or recklessly provided false or incorrect statements.

¹ Section 38(4) of the Procedure Regulation prohibits filming, photo-taking, and audio or video recording in a polling station on a polling day without permission and section 82(1) of that Regulation prohibits the breaching of secrecy of votes by, for example, communicating to another person information obtained within a polling station as to the candidate for whom an elector is about to vote or has voted.

Date of commencement of the Bill

28. Clause 2 of the Bill provides that the Village Representative Election Legislation (Miscellaneous Amendments) Ordinance shall come into operation on 16 November 2009. The Administration has proposed to move a Committee Stage amendment (CSA) to amend the clause so that the Amendment Ordinance would come into operation on 9 November 2009 instead. The Administration has explained that the advancement of the commencement date is to tie in with the legislative timetable for the introduction of other proposed amendments to section 89 of the Procedure Regulation by another amendment regulation², to make the necessary changes to the electoral procedure for village representative election following the passage of the Voting by Imprisoned Persons Bill by LegCo on 24 June 2009. The advancement will also give the Administration more time to prepare for the next village ordinary election in 2011. Members raise no objection to the proposal.

Amendments to the Appeals Regulation

29. At the request of the Bills Committee, the Administration has proposed to move a CSA to clause 16 of the Bill to amend section 2(5) of the Appeals Regulation to specify that a notice of claim or notice of objection referred to in that section is a notice lodged under Part 5 of the Registration Regulation, in which the full procedures for lodging such notices are set out. The Administration has explained that the proposed change is to spell out the process for lodging the relevant notices more clearly to avoid misunderstanding in interpreting section 2(5) of the Appeals Regulation.

Requests for inclusion in the Schedules of VREO

30. The Bills Committee note the requests of deputations/individuals of Cheung Chau (CC), Tsing Yi Hui (TYH) and Fuk Yuen Wo Liu (FYWL) for the inclusion of these places in the Schedules to VREO so that the indigenous villagers may elect their VRs according to the VREO. In response, the Administration has advised the Bills Committee of its stance as follows -

- (a) CC has been a market town and has never had any VR or village representation system. The Block Lease of Cheung Chau Island does not contain any entry of village names, and the List of Established Villages in the New Territories, which was compiled mainly to define the established villages in the New Territories whose villagers are eligible for rent concession for their properties or lands, has indicated CC as a market town. The Gazette Notice in 1899, which is claimed by a CC resident as an evidence to prove that CC was a village and had VRs, was

² Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 (L.N. 134 of 2009).

published pursuant to the then Local Communities Ordinance aiming to divide the New Territories into districts and sub-districts to facilitate administration. That Ordinance and Gazette Notice were not related to the village representation system and the Committee members of the sub-district listed therein were not VRs. In fact, that Ordinance was repealed in 1910 because it was found to have no practical effect;

- (b) the Court of First Instance ruled in May 2005, among other things, that TYH was not an indigenous village and the decision of the Secretary for Home Affairs (SHA) not to include TYH in the Schedules to VREO was correctly made based on the fact that TYH was not an indigenous village. The Court of Appeal ruled in October 2006 that even if the matter was to be remitted to SHA for reconsideration, he would be bound by the findings of the Court of First Instance that TYH was not an indigenous village. Moreover, the role performed by the Kaifong representatives of the Tsing Yi Rural Committee (TYRC) is different from that of a VR; and
- (c) FYWL did not appear on the Demarcation District sheet (D.D. sheet) made between 1899 and 1904 and the Block Lease that came into effect in 1905. Furthermore, the geographical location of FYWL cannot be ascertained and there is insufficient evidence to prove that a village representation system was established in FYWL before 1999.

31. Members' views and suggestions in relation to the inclusion of CC, TYH and FYWL in the Schedules to VREO are summarized in the ensuing paragraphs.

Electoral system in Cheung Chau

32. Some members including Mr LEE Wing-tat and Mr Albert HO have queried whether it is appropriate for the Administration to exclude CC from the VR electoral system in the rural area and authorize members of the Cheung Chau Rural Committee (CCRC) who are mostly non-indigenous inhabitants to handle the affairs of indigenous inhabitants of CC. They have also expressed concern about the existing electoral arrangement for CCRC, under which the Kaifong representatives are elected on the basis of one single constituency (viz. the entire Cheung Chau Island). They consider that the Administration should divide CC into a number of electoral districts so that representatives (including VRs for the village communities existing in CC and Kaifong representatives for the developed areas in CC) can be elected for the respective districts.

33. In response, the Administration has advised that CC has not been included in the VREO for reasons stated in paragraph 30(a), the VREO is thus not applicable to CC, and the handling of affairs of indigenous inhabitants by CCRC does not contravene the provisions of the VREO. Since the establishment of CCRC in the early 1960s, all its members, past and present, are Kaifong representatives. The Kaifong representatives are elected according to CCRC's constitution, which was formulated having regard to CC's background and circumstances. According to the constitution, Kaifong representatives are elected by secret ballot on a one-person-one-vote basis to the CCRC under the supervision of the District Officer (Island) as the Returning Officer. The Kaifong representative election of CCRC has been conducted in an open and fair manner. To the knowledge of the Administration, although some members of the public have suggested changes to the present electoral arrangement, the Kaifong representative election of the CCRC has been operating smoothly throughout the past few decades and the CCRC has no plan to change the status quo.

34. Mr CHEUNG Hok-ming holds the view that VRs and Kaifong representatives can co-exist and efforts should be made to work out a mutually acceptable arrangement regarding the representation of VRs and Kaifong representatives on the CCRC. He considers that where there is sufficient evidence to prove the existence of indigenous villages in CC in 1898 and a village representation system in or before 1999, those villages should be entitled to elect VRs under the VREO.

35. The Administration assures members that should residents of CC provide fresh evidence to prove the existence of indigenous village(s) and a village representation system in CC in the past, it would consider the strength and reliability of the evidence. Members have requested the Administration to give consideration to CC residents' request for VR election to be held in CC and agreed that the issue could be further pursued by the HA Panel as appropriate.

Interpretation of village and market town

36. In view of the existence of grey areas in tracing the development and defining the past activities of places with a long history, Mr CHEUNG Hok-ming opines that the Administration should keep an open mind in considering whether TYH could be regarded as an indigenous village. He further suggests that despite the Court's ruling, the Administration should review further evidence/proof provided by the Tsing Yi residents in collaboration with the TYRC and Heung Yee Kuk (HYK). In the absence of a specific definition for "village" in the VREO, Mr LEE Wing-tat considers that whether a place should be defined as a village or market town should be assessed by objective criteria, and it will be against the legislative intent of the VREO should such a definition be determined on the basis of subjective judgement of some individuals or authorities, such as the RCs which in his view has an undue influence on such a decision.

37. Mr Paul TSE considers that the Administration should be less presumptuous and keep an open mind in defining what a "village" is, so as to allow VR election to be held in those "villages" which were in existence in 1898 but with most of the inhabitants engaged in trade instead of farming activities, as in the case of CC.

38. The Administration acknowledges the difficulty in providing an absolute definition for "village" as the geographical environment, demographic composition and nature of activities of an area may have undergone changes in the course of its historical development. Nevertheless, it has explained that in determining whether a place is an indigenous village which existed in 1898, it will check against objective references, such as the relevant D.D. sheet and Block Lease which will reveal the land use of the place in 1898, as well as scrutinize historical documents provided by the residents concerned and declaration made by village elders. While reference will also be made to the advice of HYK and RCs, the Administration stresses that the strength and reliability of the documentary proof and evidence put forward will be of paramount importance for a claim to be established. The Administration has further advised that it will be very difficult to reconsider the case of TYH as the Administration is bound by the Court's ruling as mentioned in paragraph 30(b) above. According to the Legal Adviser to the Bills Committee, as the Court of Appeal's judgement as mentioned in paragraph 30(b) above remains an authoritative finding, it appears that it would be up to the Administration to decide whether there is any cause to reconsider the case of TYH for the purpose of adding it to the list of "Indigenous Villages" in Schedule 2 of the VREO, for example, where there is further or fresh evidence other than that previously adduced to the Court of First Instance in support of the inclusion of TYH into the VREO.

Follow up on requests

39. Mr Albert CHAN considers that the existing Schedules to VREO may not be exhaustive. He suggests that the Administration should work with HYK and RCs to review the relevant records so as to ascertain whether any indigenous villages have not been included in the Schedules to VREO. In view of the difficulty for villagers to prove the existence of a village representation system which was established many decades ago, Mr CHAN considers that the Administration should exercise flexibility to allow indigenous inhabitants of villages not included in the VREO to elect VRs.

40. Mr CHEUNG Hok-ming has remarked that pursuant to the enactment of the Bill, HYK will continue to communicate with the relevant RCs and the Administration to follow up on the cases of CC, TYH and FYWL as well as requests from other villages for inclusion in the Schedules to VREO in the light of the spirit of the two principles as mentioned in paragraph 34.

41. The Administration reassures members that it will keep an open mind on the issue, based on the strength and reliability of the evidence provided by the residents concerned, and endeavour to exercise flexibility to amend the Schedules to the VREO to include those indigenous villages which are proven to have existed in 1898 and established a village representation system in 1999 or before on a case-by-case basis.

Committee Stage amendments

42. The CSAs to be moved by the Administration (as elaborated in paragraphs 28 and 29 above) are in **Appendix III**. The Bills Committee raises no objection to these CSAs.

Date of resumption of Second Reading debate

43. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 21 October 2009.

Advice sought

44. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
7 October 2009

**Bills Committee on Village Representative Election Legislation
(Miscellaneous Amendments) Bill 2009**

Membership list

Chairman	Hon IP Kwok-him, GBS, JP
Members	Hon Albert HO Chun-yan Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Hon WONG Yung-kan, SBS, JP Hon LAU Wong-fat, GBM, GBS, JP Hon LEE Wing-tat Hon CHEUNG Hok-ming, SBS, JP Dr Hon LAM Tai-fai, BBS, JP (up to 15 June 2009) Hon Tanya CHAN Hon WONG Sing-chi Hon Paul TSE Wai-chun (Total : 10 Members)
Clerk	Ms Betty FONG
Legal Adviser	Miss Winnie LO
Date	15 June 2009

Appendix II

Bills Committee on Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009

List of the organisations and individuals which/who have given views to the Bills Committee

1. A group of residents from Yuen Long Kau Hui
 2. A resident of Peng Chau
 3. Cheung Chau Rural Committee
 - * 4. Mr CHAN Kam-fat, resident of Fuk Yuen Wo Liu in Yuen Long
 - * 5. Mr CHING Chan-ming, Yuen Long District Councillor
 - * 6. Mr CHU Kin, resident of Cheung Chau
 - * 7. Mr KWAN Cheong-ying, resident of Yuen Long Kau Hui
 - * 8. Mr KWOK Cheuk-kin, resident of Cheung Chau
 - * 9. Mr LAI Tak-shing, resident of Tsing Yi Hui
 - * 10. Mr LAU Wai-cheung, Sai Kung District Councillor
 11. Mr TAM Tai-ming, resident of Yuen Long Kau Hui
 12. Residents of Fuk Yuen Wo Liu in Yuen Long
 13. Shap Pat Heung District Resident Association
 - * 14. Shap Pat Heung Rural Committee
 - * 15. Tsing Yi Rural Committee
- * Deputations/individuals which/who have made representations to the Bills Committee at its meeting on 25 June 2009.

VILLAGE REPRESENTATIVE ELECTION LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2009

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting "16 November 2009" and substituting "9 November 2009".
16	(a) By deleting subclause (3) and substituting - "(3) Section 2(5) is amended by repealing everything before paragraph (a) and substituting - "(5) If a notice of claim or a notice of objection is lodged under Part 5 of the EAC Regulation in respect of a provisional register on or before 9 September of the year for which the relevant register is being compiled, the hearing date in respect of that notice -". (b) By adding -

"(5) Section 2(5)(b) is amended, in the English text, by repealing "the notice is received" and substituting "a copy of the notice is received by the Revising Officer".".