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**Paper for the House Committee meeting
on 9 October 2009**

**Report of the Subcommittee on Subsidiary Legislation
Relating to Voting by Imprisoned Persons**

PURPOSE

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation Relating to Voting by Imprisoned Persons.

BACKGROUND

2. On 8 December 2008, the Hon Mr Justice Andrew CHEUNG handed down a High Court judgment on three applications for judicial review (HCAL 79/2008, HCAL 82/2008 and HCAL 83/2008) which challenged the constitutionality of existing provisions in the Legislative Council Ordinance (Cap. 542) (LCO) disqualifying prisoners from being registered as electors and voting in election of Members of the Legislative Council (LegCo).

3. The Court considers that the blanket and automatic disqualification of prisoners draws no distinction as to the type, nature or seriousness of different offences, the length of custodial sentences and the stage of the imprisonment. It is held that section 31(1)(a) and (b) and section 53(5)(a) and (b) of LCO relating to registration as an elector and voting respectively contravene the right to vote constitutionally guaranteed under Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights. The Court also directs that arrangements should be made to enable prisoners and remanded unconvicted persons to vote on the election day of a LegCo election. Upon the Administration's application, the Court granted a 10-month temporary suspension order in relation to its declarations relating to prisoners' voting right up to 31 October 2009.

4. After the public consultation exercise on prisoners' voting right, the Administration introduced the Voting by Imprisoned Persons Bill into LegCo on 6 May 2009. The Bill was passed on 24 June 2009. The Voting by Imprisoned Persons Ordinance (VIPO) removes the relevant provisions under LCO, the Chief Executive (CE) Election Ordinance (Cap. 569), the District Councils (DC) Ordinance (Cap. 547) and the Village Representative (VR) Election Ordinance (Cap. 576) which disqualify prisoners and persons who have been convicted of certain election-related

or bribery offences from registering as electors and voting at public elections. VIPO also amends section 28 of LCO to provide for the following arrangement by which an eligible prisoner can be registered as an elector -

- (a) for prisoners who maintain a home in Hong Kong outside the prison, they can apply to be registered as electors to their home address, as in the case of non-prisoners;
- (b) for prisoners who do not maintain a home in Hong Kong, they can apply to be registered to their last dwelling place in Hong Kong, but they will be required to provide proof on such an address; and
- (c) for prisoners who do not maintain a home in Hong Kong and who cannot provide any proof on their last dwelling place in Hong Kong, they can apply to be registered to the residential address last recorded by the Immigration Department under the Registration of Persons Regulations (Cap. 177A) as a last resort.

THE SUBSIDIARY LEGISLATION

Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009 (L.N.162)

5. By the Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009 made under section 2 of VIPO, the Secretary for Constitutional and Mainland Affairs has appointed 3 July 2009 as the day on which sections 1, 2, 5, 6, 7 and 11 of the Ordinance come into operation. Sections 1 and 2 relate to the short title and commencement of the Ordinance. Sections 5 and 6 relate to the address to be used by a prisoner for registration purposes. Sections 7 and 11 repeal the provisions disqualifying prisoners and persons convicted of certain election-related or bribery offences from being registered as electors in LCO and the VR Election Ordinance respectively.

Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009 (L.N. 130)

Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009 (L.N. 131)

Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009 (L.N. 132)

Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009 (L.N. 133)

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

6. These five Amendment Regulations on electoral procedure are made by the Electoral Affairs Commission (EAC) under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) (the EAC Ordinance) to make provisions for voting at elections of CE, Members of LegCo, members of DC, members of the Election Committee (EC) and VRs by electors -

- (a) who are serving sentence of imprisonment;
 - (b) detained by the Correctional Services Department (CSD) on remand; and
 - (c) otherwise detained by any law enforcement agency (LEA) under any lawful authority
- (electors in custody).

7. The Amendment Regulations on electoral procedure respectively amend the corresponding principal Regulations for -

- (a) designating dedicated polling stations (DPSs) in prisons or other suitable places such as police stations and making provisions for the supervision and regulation of the ballot at such DPSs;
- (b) designating ballot paper sorting stations (BPSSs) for sorting ballot papers cast at DPSs;
- (c) prohibiting canvassing activities by visitors during visits made in their business or official capacities (for example, as Justice of the Peace, social worker or solicitor) to electors in custody;
- (d) empowering the relevant personnel including the Presiding Officer of a DPS and officers of CSD and other LEAs such as the Customs and Excise Department, the Hong Kong Police Force and the Immigration Department, to maintain order at DPSs;
- (e) providing special arrangements for observing the poll at DPSs so that -
 - (i) for DPSs situated inside maximum security prisons, only candidates may enter; and
 - (ii) for other DPSs situated in penal institutions, either a candidate, an election agent or a polling agent may enter while application to the Commissioner of Correctional Services (the Commissioner) is required for an election agent or a polling agent;
- (f) protecting the privacy of electors in custody and the secrecy of their votes cast at DPSs by -

- (i) making disclosure of the identity of electors in custody by any person an offence;
 - (ii) using an envelope to enclose a DC or VR ballot paper whenever the ballot paper is required to be sorted in a BPSS; and
 - (iii) mixing of the ballot papers cast by electors in custody with those cast by other electors before the votes are counted; and
- (g) making provisions for other related matters.

8. The Amendment Regulations on electoral procedure will come into operation on a day to be appointed by the Chairman of EAC by notice published in the Gazette.

Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) (Amendment) Regulation 2009 (L.N. 156)

Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2009 (L.N. 157)

Electoral Affairs Commission (Registration of Electors) (Village Representative Election) (Amendment) Regulation 2009 (L.N. 158)

9. These three Amendment Regulations on registration of electors, which are made by EAC under section 7 of the EAC Ordinance, consist of amendments for the purposes of -

- (a) including into the definition of "principal residential address" a prescribed address used by prisoners who do not maintain a home in Hong Kong outside the prison for electoral registration purposes under the new section 28(1B) of LCO;
- (b) empowering the Electoral Registration Officer (ERO) to enter the name and principal residential address of an elector on the geographical constituencies (GCs) omissions list if ERO is satisfied on reasonable grounds that the elector has used a prescribed address for electoral registration and left the prison without reporting his new residential address to ERO;
- (c) enabling ERO to make available for inspection, a copy of a specific part of the functional constituencies (FCs) omissions list, the subsector omissions list or the EC omissions list, at an additional place, as ERO considers it appropriate to do so; and

- (d) allowing prisoners or remanded unconvicted persons to deliver to the office of ERO a notice of objection to the registration of another person or a notice of claim for his own registration by post instead of in person so that they will not be deprived of the opportunity to lodge an objection or claim.

10. The three Amendment Regulations on registration of electors will come into operation on a day to be appointed by the Chairman of EAC by notice published in the Gazette.

THE SUBCOMMITTEE

11. At the House Committee meeting on 26 June 2009, Members agreed that a subcommittee should be formed to study the five Amendment Regulations on electoral procedure and the three Amendment Regulations on registration of electors. At the House Committee meeting on 10 July 2009, Members further agreed that the Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009 should also be studied by the same Subcommittee. The membership list of the Subcommittee is in **Appendix I**.

12. Under the chairmanship of Hon IP Kwok-him, the Subcommittee has held two meetings with the Administration. At the invitation of the Subcommittee, the Law Society of Hong Kong and the Committee on Community Support for Rehabilitated Offenders have submitted written views on the relevant Amendment Regulations.

DELIBERATIONS OF THE SUBCOMMITTEE

Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009 (L.N.162)

13. The Subcommittee notes that sections 1, 2, 5, 6, 7 and 11 of VIPO which came into operation on 3 July 2009 are related to registration of electors. According to the Administration, as it is not necessary to tie in the commencement of these provisions with the Amendment Regulations on registration of electors, commencing the sections concerned early can enable the arrangement for the registration of prisoners who have no home outside prisons as electors to be implemented as soon as practicable. The remaining provisions of the Ordinance which are related to electoral procedure will come into force on the same date as the Amendment Regulations on electoral procedure. The Amendment Regulations on electoral procedure are aimed at facilitating electors in custody to cast their votes in public elections. The Amendment Regulations on registration of electors are aimed at tying in the Regulations concerned with the provisions in VIPO and providing for the related practical arrangements.

14. The Subcommittee raises no query on the Commencement Notice. Members in general are of the view that the new arrangements to facilitate the registration of

prisoners as electors and the voting by electors in custody should be implemented as soon as possible.

Amendment Regulations on electoral procedure

Electoral arrangements for prisoner-electors

15. The Commissioner is empowered to assign a time slot during the polling hours appointed for a DPS situated in a penal institution to each elector concerned to cast his or her vote. The Chief Electoral Officer (CEO) is empowered to designate one or more BPSSs for sorting ballot papers cast at DPSs according to each GC for LegCo general election or each constituency for DC ordinary election before the ballot papers are transferred to the respective main counting stations for counting of votes. Similarly, the Director of Home Affairs (DHA) is empowered to designate one or more BPSSs for sorting ballot papers cast at DPSs according to each village for VR election. Ballot papers from DPSs will be transported to BPSSs for sorting and then the sorted ballot papers will be delivered to the respective counting stations.

16. Mr CHEUNG Man-kwong has enquired whether the whole process of vote counting will be prolonged in view of the time taken to sort and deliver the ballot papers cast by prisoner-electors, as well as to mix these ballot papers with those cast by other electors. The Administration has informed the Subcommittee that the polling hours of DPSs situated in prisons in the DC and the LegCo elections will run from 9:00 am to 4:00 pm, rather than the conventional arrangement from 7:30 am to 10:30 pm in other polling stations, so that the ballot papers cast by prisoner-electors will be sorted at BPSS, if necessary, and delivered in good time to the respective counting stations. In response to Mr CHEUNG's concern as to whether the shortening of polling hours for prisoner-electors will be subject to legal challenge, the Administration has assured the Subcommittee that as CEO has been given the statutory power to appoint the polling hours by administrative means, the polling hours of DPSs should not be liable to legal challenge so long as reasonable arrangements have been made for prisoner-electors to vote. The Administration has further explained that the polling hours of DPSs is tied in with the daily routine of prisoners who will cease labour in penal institutions at 4:00 pm and any normal movement will be suspended afterwards. For security reason, each eligible prisoner-elector will be allocated a time slot to vote at a DPS. However, a prisoner-elector can request an alternative time slot other than the one assigned provided proper justification is given. Prisoner-electors will be informed of the allocated time slot around 10 days before the polling day. Prisoner-electors will also be given sufficient time to consider which candidate they shall vote for as election-related materials will be made available to them before the polling day.

17. Some members including Mr IP Kwok-him, Ms Cyd HO and Mr Paul TSE have expressed concern that given the unique environment in prisons, prisoner-electors may be subject to pressure to vote or undue influence over their voting preference. The Administration has explained to the Subcommittee that under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), a person who uses

force or duress to induce another person to vote at an election for a particular candidate or candidates commits a criminal offence. Similar to the arrangement for other electors in a normal polling station, a prisoner-electors will cast his vote inside a voting compartment to protect the secrecy of votes. The ballot papers cast at DPSs will be mixed with other ballot papers before counting. As such, his voting preference will unlikely be influenced as it will not be made known to others. Broadcast will also be arranged throughout the polling day notifying prisoner-electors of the voting arrangement and they can choose to go to DPSs for voting or not on a voluntary basis. Moreover, CSD has an intelligence network inside penal institutions to monitor the conduct of prisoners and detect any unusual activities. At members' request, the Administration has undertaken to step up effort to promote secrecy of votes in penal institutions.

18. According to the Administration, to ensure that the elections are conducted in a transparent manner, as in other polling stations, candidates and/or their agents may observe the poll at a DPS. However, due to security reasons, it is proposed that only candidates may enter DPSs set up inside maximum security prisons to observe the poll. For other DPSs situated in penal institutions, either a candidate, an election agent or a polling agent may enter to observe the poll. Application is required for an election agent or a polling agent no later than one week before the polling day. Mr Paul TSE has enquired about the feasibility of allowing also an election agent or a polling agent to observe the poll in DPSs set up inside maximum security prisons.

19. The Administration has explained that some prisoners detained in maximum security prisons have committed serious crimes, some of them are violent or some may have mental illness, or require maximum protection as some are informers of other LEAs. For the sake of the personal safety of both candidates and prisoners, only candidates and not their election and polling agents are allowed to observe the poll at DPSs set up inside maximum security prisons. In addition, there are practical difficulties to vet the background of all election and polling agents given the large number involved.

Electoral arrangements for electors remanded, detained or arrested by LEAs

20. In response to members' enquiries about the voting arrangements for electors who are remanded, detained or arrested by LEAs, the Administration has explained that section 30(3) of the EAC (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) stipulates that CEO must allocate to each elector and authorized representative a polling station or polling stations to cast the vote or votes he or she is entitled to cast at an election. The new section 30(4)(aa) enables CEO to allocate a GC elector who will be serving a sentence of imprisonment on the polling day a DPS to cast the vote. As regards electors who are remanded, detained or arrested by LEAs on the polling day, since it is impossible for CEO to identify them in advance, such electors would be allocated to vote at a DPS, as an alternative polling station, on the polling day in accordance with section 30(4A) of the EAC (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D). The Administration has assured the Subcommittee that arrangement will be made as far as practicable for electors who are

arrested, detained or remanded on the polling day to vote by the close of the polling hours. These electors will normally be allocated to a DPS within the GC in which they are arrested, detained or remanded.

Amendments to be made by the Administration

21. Section 5 of the EAC (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009 proposes to add, inter alia, a section 28(1)(c) to the EAC (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D). The proposed subsection stipulates that CEO must designate, by notice published in the Gazette, one or more places as a BPSS or BPSSs for sorting GC ballot papers received from DPSs in a general election.

22. Some members including Mr IP Kwok-him and Ms Cyd HO have pointed out that a BPSS might also be required in certain scenarios other than a general election, for example, when by-elections for more than one GCs are held on the same day. They consider that relevant provisions of the Amendment Regulations should be reviewed to cater for these scenarios.

23. The Administration has explained that in a LegCo general election, as GC ballot papers are cast in respect of all the five GCs, it is necessary to set up one or more BPSSs to sort the ballot papers received from DPSs before the sorted ballot papers are transported to the relevant counting stations for counting. As for by-elections, they are normally held in relation to a single constituency and hence there is no need to sort the ballot papers prior to the counting. Section 5 of the EAC Ordinance stipulates, inter alia, that EAC may do such other incidental act or thing or exercise such powers as it considers necessary or expedient for the performance of its functions under the Ordinance or any other Ordinance. Therefore, EAC is empowered to set up BPSSs in the case of by-elections for more than one GC held on the same day. However, to provide a clearer legal basis, the Administration has agreed to amend sections 5, 18 and 25 of the EAC (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009, sections 5, 18, 20, 25 and 26 of the EAC (Electoral Procedure) (District Councils) (Amendment) Regulation 2009 and sections 5 and 16 of the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 to the effect that CEO or DHA must designate, by notice published in the Gazette, one or more places as a BPSS or BPSSs for sorting ballot papers received from DPSs in a general or ordinary election or, where CEO or DHA considers appropriate, a by-election.

24. Section 25 of the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 adds a new section 79A to the principal Regulation (Cap. 541L) which prohibits a person who visits an elector in custody in a business or official capacity from canvassing for votes during the visit. According to section 28 of this Amendment Regulation, the penalties for contravening the new section 79A are stipulated under section 89(1) of the principal Regulation. The Administration has informed the Subcommittee that the Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009 (the VR Bill) has also proposed to amend the

same section of the principal Regulation¹. After consideration, the Administration proposes to stipulate the penalties for contravening new section 79A in the new provision itself, instead of in section 89(1). To effect this proposal, the Administration will amend the Amendment Regulation by deleting its section 28 (so that the penalties for contravening new section 79A will no longer be stipulated under section 89(1)) and expanding its section 25 (so that the penalties for contravening new section 79A will be stipulated in the same section). The Administration has confirmed that neither the substance of the offence nor the penalties for its contravention will be affected by this amendment.

25. Section 5(3) of the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 proposes to amend section 28(2)(b) of the principal Regulation to the effect that DHA may designate as a polling or counting station any structure, place or premises whether or not hired under section 28(3). Section 28(3) provides that the Director may hire any structure, place or premises, for use as a polling station or a counting station. In response to the query raised by the legal adviser to the Subcommittee about the reason for the proposed amendment, the Administration has explained that it is proposed to give DHA the flexibility to designate any other structure, premises, whether permanent or temporary, mobile or otherwise, or place which the Director considers suitable as a polling station. The addition of ", whether or not" before "hired" in section 28(2)(b) extends the amended paragraph (b) to cover all structures, places and premises other than those specified in section 28(2)(a). Without the amendment, section 28 would not cover premises that are not Government buildings and not hired by the Director. An instance is the owner or occupier allowing the Home Affairs Department to use the premises as a polling station free of charge. The Administration will also amend section 28(4) accordingly.

26. At the suggestion of the legal adviser to the Subcommittee, the Administration has agreed to amend the Chinese version of the new section 42(8A)(a) of the EAC (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009, the new section 42(5A)(a) of the EAC (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009 and the new section 45(5A)(a) of the EAC (Electoral Procedure) (District Councils) (Amendment) Regulation 2009, in order to make it clear that the appointment of polling agent by a candidate or a list of candidates for a DPS situated in a prison is in respect of each DPS instead of only one DPS.

27. Section 13 of the EAC (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009 proposes to add, inter alia, subsections (ga) and (gb) (the proposed subsections) under section 45(6) of the EAC (Electoral Procedure)

¹ The proposed amendment introduced by the VR Bill is to increase the maximum imprisonment penalty, from three months to six months, for offences concerning order at polling stations and secrecy of votes under sections 38(4) and 82(1) of the principal Regulation respectively. The proposed increase will be effected by moving the references to sections 38(4) and 82(1) in section 89(1) of the principal Regulation to section 89(2) of the same Regulation.

(Legislative Council) Regulation (Cap. 541D) which seek to extend the exemption to an officer of CSD or any LEA on duty at a DPS from committing an offence by communicating with an elector or authorized representative or using a mobile telephone, paging machine or any other device for electronic communication within a polling station. At members' suggestion, the Administration has agreed to add the proposed subsections to the end of section 45(6) to improve the drafting. Relevant amendments will also be made to section 14 of the EAC (Electoral Procedure) (District Councils) (Amendment) Regulation 2009 and section 13 of the EAC (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009 accordingly.

Amendment Regulations on registration of electors

28. The Amendment Regulations on registration of electors amend section 9 of the EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A), so that if a prisoner-electoral is registered to his last dwelling-place in Hong Kong or the address last recorded under the Registration of Persons Regulations and the elector concerned has left the prison without reporting his new residential address to ERO, ERO is empowered to enter the name and address of that elector on the GCs omissions list.

29. The Amendment Regulations also amend section 25 of the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) to enable ERO to make available for inspection, a copy of a specific part of the FCs omissions list, the subsector omissions list or the EC omissions list at an additional place, if that Officer considers it appropriate to do so. ERO may determine the period during which and the times at which it may be so inspected. According to the Administration, ERO already has the power to arrange for inspection at an additional place, if he considers it appropriate to do so, in respect of the GCs omissions list, and the various provisional registers and final registers. With the proposed provision enacted, ERO can cater for requests for inspection of all types of omissions list and provisional and final registers from persons held in custody.

30. Some members have asked about the operational arrangements to ensure that the status of an eligible prisoner as an elector is maintained after his release and to confirm the eligibility of prisoner-electors to vote in professional sector FCs. The Administration has explained to the Subcommittee that the voter registration form will be amended in such a way that, for applicants who are prisoners, they will be required to indicate whether they maintain a home outside the prison. A prisoner who does not maintain a home outside the prison will be registered to a deemed address. Upon his release, REO will remind him to update REO with his new residential address in order to maintain his status as an eligible elector. The same message will be promoted to ex-prisoners through the assistance of rehabilitation organizations for offenders. If the prisoner-electoral concerned does not update his address after being discharged from prison, ERO is empowered to enter his name on the omissions list. At members' request, the Administration has provided the Subcommittee with a copy

of the amended voter registration form which caters for applicants who are imprisoned persons, and a copy of the pamphlet which will be provided to imprisoned persons upon release reminding them of the need to update REO on their new address.

31. The Administration has further explained that the composition of professional sector FCs is in general based on professional membership. For an FC which requires professional body membership, a person who was a member of a professional body but has ceased to be a member will no longer be eligible to be registered as an elector under that FC and will be disqualified from voting in a FC election. REO will issue letters to invite umbrella organizations and professional bodies to provide up-to-date membership information to ensure that the electoral records are updated. Relevant bureaux and departments will also provide REO with relevant information that can facilitate the updating of electoral records.

Amendments to be proposed by the Administration

32. Apart from the amendments proposed by the Administration as elaborated in paragraphs 21 to 27 above, the Administration has proposed to make other amendments to the EAC (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009, the EAC (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009, the Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009, and the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 to rectify a few clerical errors. The Subcommittee raises no objection to these amendments to be proposed by the Administration.

33. The draft resolution to be moved by the Administration to amend the relevant Amendment Regulations on electoral procedure is in **Appendix II**.

RECOMMENDATION

34. The Subcommittee supports the Commencement Notice and the Amendment Regulations on registration of electors. Subject to the amendments to be moved by the Administration, the Subcommittee also supports the Amendment Regulations on electoral procedure.

ADVICE SOUGHT

35. Members are invited to note the Subcommittee's recommendation in the preceding paragraph.

**Subcommittee on Subsidiary Legislation
Relating to Voting by Imprisoned Persons**

Membership list

Chairman Hon IP Kwok-him, GBS, JP

Members Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Total : 14 Members

Clerk Miss Flora TAI

Legal Adviser Ms Clara TAM

Date 15 July 2009

**INTERPRETATION AND GENERAL CLAUSES
ORDINANCE**

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses
Ordinance (Cap. 1))

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (LEGISLATIVE COUNCIL)
(AMENDMENT) REGULATION 2009**

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (DISTRICT COUNCILS) (AMENDMENT)
REGULATION 2009**

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (ELECTION COMMITTEE)
(AMENDMENT) REGULATION 2009**

**ELECTORAL PROCEDURE (CHIEF EXECUTIVE
ELECTION) (AMENDMENT) REGULATION 2009**

**ELECTORAL PROCEDURE (VILLAGE
REPRESENTATIVE ELECTION) (AMENDMENT)
REGULATION 2009**

RESOLVED that –

- (a) the Electoral Affairs Commission (Electoral Procedure)
(Legislative Council) (Amendment) Regulation 2009,
published in the Gazette as Legal Notice No. 130 of 2009

and laid on the table of the Legislative Council on 24 June 2009, be amended –

- (i) in section 5(2), in the new section 28(1)(c), by repealing “election.” and substituting “election or, where the Chief Electoral Officer considers appropriate, a by-election.”;
- (ii) in section 10(1), in the Chinese text, in the new section 42(8A)(a), by repealing “一個” and substituting “每個”;
- (iii) by repealing section 13 and substituting –

“13. What constitutes an offence at a polling station

(1) Section 45(6)(h) is amended by repealing “or”.

(2) Section 45(6)(i) is amended by repealing “the polling station.” and substituting “a polling station;”.

(3) Section 45(6) is amended by adding –

“(j) an officer of the Correctional Services Department on duty at a

dedicated polling station;

or

- (k) an officer of any law enforcement agency on duty at a dedicated polling station.”.”;

- (iv) in section 18(4), in the new section 63A(4), by repealing everything after “prepared by that” and substituting –

“Officer to –

- (a) the Presiding Officer of the ballot paper sorting station or the main counting station concerned; or
- (b) the Returning Officer of the counting station,

as advised by the Chief Electoral Officer.”;

- (v) in section 24, in the Chinese text, in the new section 74AA(h), by repealing “預以” and substituting “予以”;

- (vi) in section 25, in the new section 75(4A)(b), by repealing everything after “to the main counting station” and substituting “from one or more ballot

paper sorting stations, or one or more dedicated polling stations, as may be appropriate.”;

(b) the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 131 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –

(i) in section 5(2), in the new section 31(1)(c), by repealing “election.” and substituting “election or, where the Chief Electoral Officer considers appropriate, a by-election.”;

(ii) in section 11(1), in the Chinese text, in the new section 45(5A)(a), by repealing “一個” and substituting “每個”;

(iii) by repealing section 14 and substituting –

“14. What constitutes an offence at a polling station

(1) Section 48(6)(h) is amended by repealing “or”.

(2) Section 48(6)(i) is amended by repealing “the polling station.” and substituting “a polling station;”.

(3) Section 48(6) is amended by adding –

“(j) an officer of the Correctional Services Department on duty at a dedicated polling station;
or

(k) an officer of any law enforcement agency on duty at a dedicated polling station.”;

- (iv) in section 18(3), in the new section 57(2A), by adding “or, where the Chief Electoral Officer considers appropriate, a by-election,” after “ordinary election”;
- (v) in section 20(4), in the new section 63A(4), by repealing everything after “prepared by that” and substituting “Officer to the Presiding Officer of the ballot paper sorting station or the main counting station concerned, as advised by the Chief Electoral Officer.”;
- (vi) in section 25, in the new section 75A, by repealing “In an ordinary election, the” and substituting “The”;

- (vii) in section 26, in the new section 76(2)(b), by repealing everything after “to the main counting station” and substituting “from one or more ballot paper sorting stations, or one or more dedicated polling stations, as may be appropriate.”;
- (c) the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 132 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –
 - (i) in section 10(1), in the Chinese text, in the new section 42(5A)(a), by repealing “一個” and substituting “每個” ;
 - (ii) by repealing section 13 and substituting –

“13. What constitutes offence at polling station

(1) Section 45(6)(h) is amended by repealing “or”.

(2) Section 45(6)(i) is amended by repealing “the polling station.” and substituting “a polling station;”.

(3) Section 45(6) is amended by adding –

“(j) an officer of the Correctional Services Department on duty at a dedicated polling station;
or

(k) an officer of any law enforcement agency on duty at a dedicated polling station.”.”;

(d) the Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 133 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –

(i) in section 3(3), in the English text, in the new section 12(3)(i), by repealing “be” and substituting “being”;

(ii) in section 7(1), in the Chinese text, in the new section 19(2)(aa)(ii), by repealing the full stop and substituting a semicolon;

(e) the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 134 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –

- (i) in section 2(4), in the Chinese text, by repealing “或 60A(c)” and substituting “60A(c)”;
- (ii) in section 5(2), in the new section 28(1)(c), by adding “in a village ordinary election or, where the Director of Home Affairs considers appropriate, a village by-election” after “Village”;
- (iii) in section 5, by adding –

“(3A) Section 28(4) is repealed and the following substituted –

“(4) The Director of Home Affairs shall, in the case of a polling station or a counting station which is not a Government building –

- (a) make good any damage caused; and
- (b) defray any expenses incurred by any person having control over the structure,

place or
premises,

due to its having been used as a
polling station or a counting
station.”.”;

- (iv) by repealing section 11(1) and substituting –
 - “(1) Section 37(1)(j) is amended by repealing “and (8)” and substituting “, (6A), (6B) and (8) and section 22(3)”.”;
- (v) in section 15(2), in the new section 47(1A)(a)(ii) by repealing “or more”;
- (vi) in section 15(2), in the Chinese text, in the new section 47(1A)(b), by repealing everything after “是提述” and substituting “載於一個或多於一個封套內的一張或多於一張選票(視屬何情況而定)。”;
- (vii) in section 16(2), in the new section 53(4), by repealing everything after “must be” and substituting “delivered to the Assistant Returning Officer of the ballot paper sorting station or the Returning Officer of the relevant counting station, as advised by the Director of Home Affairs.”;
- (viii) by repealing section 25 and substituting –

“25. Section 79A added

The following is added –

“79A. Certain visitors of electors in custody not to canvass for votes

- (1) If –
 - (a) a person (“visitor”) visits in a certain capacity an elector in custody for a business or official purpose; and
 - (b) another person who is not acting in that capacity is not allowed to visit the elector for that purpose,

the visitor commits an offence if he, during the visit, canvasses for votes for the purpose of an election.

- (2) A person who commits an offence under subsection (1) is liable to a

fine at level 2 and to imprisonment for 3
months.”.”;

(ix) by repealing section 28.