



Subsidiary Legislation Relating to Voting by Imprisoned Persons

1. We note under existing election arrangements an election agent is recognized in law as the candidate's agent and thus the agent can perform acts on behalf of the candidate.
2. In the proposed subsidiary legislation we note the Administration proposes different arrangements for visits by candidates, election agents or polling agents to maximum security prisons and other penal institutions. The proposed subsidiary legislation will only allow the candidate to observe the poll in a maximum security prison whilst the other penal institutions will allow a candidate, an election agent, or a polling agent to observe the poll provided that an application is made to the Commissioner of Correctional Services "no later than one week before polling day".¹ The Administration has indicated the rationale for such distinction is based on "security reasons" and thus the number of visitors to a maximum security prison should be restricted.
3. We submit that if the Commissioner of Correction Services wishes to restrict the number of visitors to maximum security prisons then this can be achieved by permitting the candidates, or election agents, or polling agents to make an application to observe the poll inside a maximum security prison at least one week before the election. The Commissioner will have adequate time to check the bona fides of the applicant and can authorize entry to the candidate or his agent. There is no rational basis to restrict entry to only the candidate.

The Law Society of Hong Kong

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¹ Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009, ss. 3 and 18; Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009, ss. 3 and 20; Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009, s. 3; Electoral Affairs Commission (Electoral Procedure) (Chief Executive Election) (Legislative Council) (Amendment) Regulation 2009, ss. 3 and 13; Electoral Affairs Commission (Village Representative Election) (Amendment) Regulation 2009, ss. 3 and 11