

Consultation Document on Prisoners' Voting Right

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Chapter One: Background

Legislative Council Ordinance (Cap. 542)

1.01 The Legislative Council Ordinance (“LCO”) governs, among other things, the registration of electors and conduct of elections for the Legislative Council (“LegCo”) of the Hong Kong Special Administrative Region. This consultation document seeks views from the public on the policy options for relaxing the ban on prisoners’ voting right and the practical arrangements for prisoners and remanded unconvicted persons to exercise their voting right.

(A) Registration of Electors

1.02 As provided under section 48 of the LCO, only a registered elector is eligible to vote at a LegCo Election. A registered elector is a person whose name appears on the final register (“FR”) of electors as compiled and published by the Electoral Registration Officer under the Ordinance.

1.03 All Hong Kong permanent residents aged 18 or above who ordinarily reside in Hong Kong may apply for registration as an elector. Eligible electors may submit the application at any time of the year. However, they need to apply before the statutory deadline¹ of the year if they wish to have their names included in the FR to be published in that year. If the application is made after the deadline, their names will only be recorded in the FR to be published in the subsequent year.

(B) Disqualification from Registration as Electors

1.04 The LCO also provides for disqualification of persons from being registered as electors. Amongst other disqualification provisions, section 31(1)(a)-(c) of the Ordinance applies to persons convicted of certain types of crimes and to prisoners. A natural person is disqualified from being registered as an elector for a constituency if the person—

- (a) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—

¹ The statutory deadline is 16th July for a District Council election year, and 16th May for other years.

- (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon; or
- (b) on the date of application for registration, is serving a sentence of imprisonment; or
- (c) without limiting paragraph (a), where the election is to be held or is held within 3 years after the date of the person's conviction, is or has been convicted:
 - (i) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
 - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
 - (iii) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).

(C) Disqualification from Voting

1.05 The LCO also sets out the arrangements under which a person is disqualified from voting. Section 53(5)(a)-(c) of the LCO specifies the disqualification provisions applicable to persons convicted of certain types of crimes and to prisoners. An elector is disqualified from voting if the elector—

- (a) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon; or

- (b) on the date of the election, is serving a sentence of imprisonment; or
- (c) without limiting paragraph (a), where the election is to be held or is held within 3 years after the date of the person's conviction, is or has been convicted:
 - (i) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
 - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
 - (iii) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).

Applications for Judicial Review

- 1.06 On 8 August 2008, a prisoner (“the first applicant”) applied for leave to apply for judicial review (“JR”) to challenge the constitutionality of section 31(1)(b) and 53(5)(b) of the LCO (case no. HCAL 79/2008). The applicant also sought an order of Mandamus directing the Electoral Affairs Commission (“EAC”) to provide Hong Kong permanent residents who were then serving a custodial sentence access to polling stations for the LegCo Election to be held on 7 September 2008.
- 1.07 On 15 August 2008, another prisoner who is a registered elector (“the second applicant”) applied for leave to apply for JR, seeking relief in similar terms as sought by the first applicant as well as an order of Mandamus directing the EAC to change his address to the prison address in the electoral register (case no. HCAL 83/2008).
- 1.08 On 11 August 2008, a LegCo Member lodged another JR application on similar grounds and sought similar relief as the first applicant’s application (case no. HCAL 82/2008). He also challenged the constitutionality of section 31(1)(a)(i) and 53(5)(a)(i) of the LCO and sought an order of Mandamus directing the EAC to provide convicted persons and remanded unconvicted persons access to polling stations and/or facilities on 7 September 2008.

1.09 The Court granted leave to the JR applications on 18 August 2008 and the substantive hearing was held during 10 to 13 November 2008.

The Court's Judgment

1.10 On 8 December 2008, the Court handed down its judgment on the three JR cases². Key points of the judgment are set out in paragraphs 1.11 to 1.14 below.

(A) Prisoners' Voting Right

1.11 The Court considers that the right to vote is without doubt the most important political right. The existing general, automatic, and indiscriminate restrictions on prisoners' right to vote and the right to register as electors cannot be justified under the proportionality test (i.e. a restriction should be proportionate to the achievement of the legitimate aim that it seeks to achieve). The disqualification provisions under section 31(1)(a)-(b) and section 53(5)(a)-(b) of the LCO contravene the right to vote constitutionally guaranteed under Article 26 of the Basic Law ("BL")³ and Article 21 of the Hong Kong Bill of Rights ("HKBOR")⁴ specified under section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383) so far as they affect prisoners and those convicted persons who have been sentenced to death or imprisonment, and who have not served the sentences or received a free pardon. Arrangements should be made to enable prisoners and those convicted persons to vote on the election day.

² The full version of the Court's judgment (English version only) can be found in the following website: http://legalref.judiciary.gov.hk/doc/judg/word/vetted/other/en/2008/HCAL000079_2008.doc

³ Article 26 of the BL provides that permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.

⁴ Article 21 of the HKBOR provides that every permanent resident shall have the right and the opportunity, without any of the distinctions mentioned in article 1(1) and without unreasonable restrictions:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) to have access, on general terms of equality, to public service in Hong Kong.

1.12 That said, the judgment clearly pointed out:

“149. ...The Court is not here to perform the hypothetical task of settling a reasonable restriction. That is the task of the legislature and executive.

165. ... I [the judge] must strongly emphasise that the Court is not suggesting that some form of restrictions on voting (or even registration) cannot be imposed by the legislature against those in jail (and others)... The Court is not otherwise concerned with where the cut-off line should be drawn and how it should be drawn. That is a matter for the legislature: *Hirst* in para 83”.

(B) Arrangements for Remanded Unconvicted Persons

1.13 The Court also takes the view that the constitutional right to vote of remanded unconvicted persons is not affected by any law, and arrangements should be made to enable them to vote on the election day whilst being held in custody.

(C) Challenge against EAC’s Refusal to change the Registered Address

1.14 The Court considers that the second applicant’s challenge against the EAC’s refusal to change his registered address to his prison cell in Stanley in the register of electors is unfounded and should be dismissed.

Need for Public Consultation

1.15 As the existing across-the-board disqualification of prisoners from registration and from voting has been ruled by the Court as unconstitutional, it is necessary for the Administration to formulate policy options on the relaxation of the restrictions.

1.16 While there are views that the disqualification provisions should be removed totally, there are also views that some reasonable restrictions should be maintained. Given the diverse views of the community, the Administration sees the need to conduct a public consultation exercise.

Chapter Two: Possible Policy Options on Relaxing the Ban on Prisoners' Voting Right

Considerations

(A) Prisoners' Right to Register as Electors

2.01 Under the existing provisions of the LCO, all prisoners are disqualified from applying to be registered and from voting. In the Court's judgment on the three JR cases on prisoners' voting right, the Court considers that the disqualification from registration in section 31(1)(a)-(b) of the LCO is difficult to justify in the sense that it applies regardless of whether the prisoner is expected to be released from prison by the time of the next election. Given that the existing provisions already disqualify a prisoner from voting, the ban on registration is superfluous.

2.02 We are aware that the present disqualification provisions on voters' registration may prohibit a person from voting in an election even after the person has served the sentence if, by the time the person is released, the relevant voter registration deadline which covers that particular election has already expired and hence would not allow the person to be registered as an elector. The person would not be able to vote in the year in which the register remains valid despite his/her release from the prison.

(B) Prisoners' Right to Vote

2.03 Under section 53(5)(c) of the LCO, persons convicted of election-related or bribery offences are disqualified from voting within three years after such conviction. The disqualification helps to protect the integrity of the legislature. This provision is not covered by the JR cases.

2.04 The disqualification provisions in section 53(5)(a)-(b) have been ruled by the Court as unconstitutional. We need to consider whether all such prisoners should be allowed to vote or some reasonable restrictions should be maintained.

Overseas Practices

- 2.05 In formulating our policy options on prisoners' voting right, we have made reference to the wide range of voting arrangements for prisoners implemented in overseas countries.
- 2.06 In countries such as Austria, Sweden, Switzerland, Denmark, Ireland, Iceland, Finland, Canada, Japan, South Africa and Israel, there are no restrictions on prisoners' voting right.
- 2.07 For those countries which impose restrictions on prisoners' voting rights, the common types of restrictions are set out below:

(a) Explicit Disqualifying Order of the Sentencing Court

In some European countries such as Portugal, Luxembourg, France, Norway, Germany and Poland, some prisoners can vote while others may be denied the voting right generally only by explicit order of the sentencing court as an additional aspect of their prison sentence.

Amongst these countries, some also specify that the disqualifying order can only apply to the conviction of specified crimes. For example, in Norway, those persons convicted of crimes against the Constitution and Head of State (such as treason and electoral fraud) will be disqualified from voting. In Germany, the disqualification from voting can be handed out by the Court for political crimes such as treason, electoral fraud, and intimidation of voters. In France, the Court may disqualify from voting those persons convicted of crimes such as corruption, forgery or embezzlement.

(b) Length of Sentence

In some countries, prisoners are disqualified from registering as electors or from voting if their sentences of imprisonment exceed a certain period –

- (i) in Australia, a person serving a sentence of imprisonment for a term exceeding 36 months is not entitled to register as an elector;

- (ii) in Singapore, no person shall be entitled to have his name entered or retained in any register of electors if he is serving a sentence of imprisonment for an offence punishable with imprisonment for a term exceeding 12 months;
- (iii) in Belgium, a person serving a sentence of over four months is disqualified from voting for six years, and a person serving a sentence of three to five years is disqualified for 12 years. For criminal convictions with sentences of more than five years, the disqualification may be lifelong; and
- (iv) in Greece, persons convicted to a term of over 10 years are deprived of the voting right but the Court also has the discretion to disqualify for up to five years those convicted to a term of one to 10 years if their conduct shows perversity. A person sentenced to a term of life loses the right to vote for life.

Policy Options on Prisoners' Right to Register as Electors

2.08 Having considered the Court's judgment that the disqualification from registration is not justifiable and the possible limitations in which a person who has served the sentence may not be able to vote if he has missed the voters' registration deadline (as set out in paras 2.01-2.02 above), there is a clear case for removing the disqualification of prisoners from applying to be registered. This will enable eligible prisoners to register as electors such that they can exercise their voting right once the disqualification from voting (if applicable to them) expires.

Policy Options on Prisoners' Right to Vote

2.09 Taking into account the voting arrangements for prisoners adopted overseas and the circumstances in Hong Kong, the Administration has identified three major policy options on the relaxation of the ban on prisoners' voting right.

Option One : Removal of the existing Disqualification Provisions in section 53(5)(a)-(b)

2.10 Option One is to remove the existing disqualification provisions in section 53(5)(a)-(b) of the LCO. In other words, registered

electors covered by section 53(5)(a)-(b) of the LCO will not be disqualified from voting. The disqualification of persons convicted of election-related or bribery offences from voting under section 53(5)(c) will remain.

- 2.11 There are views that the right to vote is a fundamental political right that should be enjoyed by prisoners, regardless of the crimes they have committed. While prisoners are serving their sentences, they should not be deprived of the right to choose Members of the legislature. Allowing prisoners to vote will also help return prisoners as better and more civic-minded citizens as they will be more connected to society and engaged in current affairs.
- 2.12 On the other hand, there are views which express reservations on allowing all prisoners to vote regardless of the crimes they have committed. There are also views that while prisoners who have been convicted of minor offences may be allowed to vote, those who have committed serious criminal offences have threatened the rule of law and should not be allowed to take part in electing our legislators in order to protect the integrity of the legislature. The disqualification of serious criminals from voting is considered by some as necessary. Such measure aims to prevent crime by sanctioning the conduct of such convicted prisoners, give an incentive to citizen-like conduct and enhance civic responsibility and respect for the rule of law. The following two options set out different measures in disqualifying serious criminals from voting in elections.

Option Two : Disqualification based on Length of Sentence

- 2.13 Option Two is to disqualify prisoners from voting if their sentences of imprisonment exceed a certain length. The length of sentence is used as a criterion to distinguish serious offences from less serious ones. This seeks to balance between protecting the integrity of the legislature while retaining the voting right for less serious offenders.
- 2.14 Under this option, the disqualification from voting will apply to a person serving a sentence for a sufficiently long period, for instance 10 years or over (including indeterminate sentence). Once the prisoners are released from prison, they will be entitled to vote in elections. According to the statistics from the Correctional Services Department (“CSD”), as at end of

December 2008, 779 out of 5,411 prisoners (around 14% of the total number) are serving a sentence of 10 years or over, including indeterminate sentence. The convicted offences of prisoners under this category mainly include trafficking of dangerous drugs, murder, manslaughter/attempted murder, robbery and rape. The crimes committed by those prisoners and their long sentences have reflected their serious offences.

- 2.15 However, there are comments that as serious and minor offences cannot be simply defined by the length of the imprisonment sentence, it may be arbitrary to determine the threshold of disqualification based on the length of the imprisonment sentence.

Option Three : Disqualification based on Length of Sentence while enabling Prisoners Serving their Last Years of their imprisonment to Vote

- 2.16 Option Three is a variation to Option Two above. While a person serving an imprisonment sentence of say, 10 years or above is disqualified from voting, he will be allowed to vote in the last few years (for instance the last five years) of his term of imprisonment. To enable prisoners to vote when they are approaching the end of the term of their imprisonment may enhance their civic-mindedness and facilitate their reintegration into society.

- 2.17 According to Rule 69 of the Prison Rules (Cap.234A), a prisoner serving a sentence of imprisonment for an actual term of more than one month may, on the ground of his industry and good conduct, be granted remission in accordance with the provisions of this rule. The remission granted under this rule shall not exceed one-third of the total of the actual term and any period spent in custody. We propose that the remission granted to a prisoner be taken into account when counting the remaining number of years of imprisonment of the prisoner concerned during which he will be allowed to vote. This aims to facilitate the rehabilitation of prisoners and their connection with the community.

- 2.18 Option Three strikes a balance between disqualifying serious offenders from voting and facilitating the rehabilitation of prisoners. However, as the option is also devised based on the

length of sentence, similar concerns about the arbitrariness in determining the threshold of disqualification may also arise.

2.19 We have also considered the option of conferring upon the sentencing judge discretion whether to order the loss of the voting right whenever he deems the seriousness of the offence and the culpability of the offender to warrant that penalty. The sentencing judge may by an explicit order deny the voting right of individual offenders as an additional aspect of the imprisonment sentence.

2.20 While such arrangement does not impose the disqualification universally on a certain class of prisoners, it will lead to a series of concerns. As the right to vote is considered a fundamental political right, there are concerns that conferring upon the sentencing judge discretion to deprive such right may affect the political neutrality of the Court. There are also concerns that this option may lead to an increased burden to the sentencing judge at the time of sentencing. It would also be necessary to establish clear sentencing guidelines on the disqualification of prisoners from voting in order to maintain consistency in imposing among such restriction.

Chapter Three: Practical Arrangements for Prisoners and Remanded Unconvicted Persons to Exercise their Voting Right

3.01 In formulating the practical arrangements for prisoners to be registered as electors and for prisoners and remanded unconvicted persons to cast their votes, we need to ensure that the arrangements are consistent with the principle that elections are conducted honestly, fairly and openly. At the same time, we need to carefully assess the security implication of the arrangements.

Registered Address of Eligible Prisoners as Electors

3.02 Under section 28(1)(b) of the LCO, a person applying for registration must satisfy the Electoral Registration Officer, among other things, that the residential address notified in his application is the person's only or principal residence in Hong Kong. An elector may vote at an election in respect of the geographical constituency ("GC") within which his only or principal residence in Hong Kong as entered in the final register ("FR") of GCs is located. According to section 28(3) of the LCO, a person's only or principal residence in Hong Kong refers to a dwelling-place in Hong Kong at which the person resides and which constitutes the person's sole or main home.

3.03 As the penal institutions where prisoners are serving their sentence of imprisonment are not a "dwelling place" which falls under section 28(3) of the LCO, we need to determine the address to which the prisoners should be registered, which would in turn determine the GCs to which the prisoners would be allocated. Relevant provisions of the LCO would need to be amended accordingly.

3.04 The overseas practices at Annex A may provide some references on how the registered address of prisoners should be handled. They include:

- (a) In Australia, Belgium, Canada, France, Germany and South Africa, prisoners would remain registered at their original address if they have already been registered as electors before they serve their sentence of imprisonment.

- (b) For prisoners who have not yet been registered as electors before they serve their sentence of imprisonment, they are either allowed to be registered in respect of the address of their next-of-kin as in Australia and Canada, or in respect of the address of the prison as in Belgium and Germany.

3.05 We propose that in Hong Kong, the address of the prisoners could be registered on the following basis :

- (a) Prisoners who maintain a sole or main home

For prisoners who have not yet been registered as electors before they serve their sentence of imprisonment, they may apply to be registered to the address of their sole or main home if they continue to maintain a sole or main home outside the prison. Similarly, for prisoners who have already been registered as electors before they serve their sentence of imprisonment, their registered addresses would follow the address of their sole or main home.

- (b) Prisoners who do not maintain a sole or main home

For registered and non-registered prisoners who no longer maintain any sole or main home outside the prison, their last dwelling-place in Hong Kong at which they resided before serving their sentence of imprisonment would be deemed to be their only or principal residence in Hong Kong for the purpose of voter registration. In other words, such prisoners would be assigned to the GC within which their last dwelling-places are located. This gives certainty as the information on the prisoners' last dwelling-place before their imprisonment would be available from the prison's record.

3.06 There are other options but they would give rise to certain problems :

- (a) As for the option of registering a prisoner at the address of the next-of-kin, there may be uncertainty in case the prisoner has a number of next-of-kins residing in different places. It may also lead to concerns of vote planting.
- (b) As for the option of using the address of the prison as a registered address, it may lead to an unduly high proportion

of prisoners in the registered electorate of certain constituencies.

Canvassing for Votes

3.07 We would need to ensure that prisoners have reasonable access to election-related materials. In the overseas countries reviewed, prisoners could access election-related materials by post or through the mass media. Candidates are generally not allowed to canvass in person inside the penal institutions except for Canada. The canvassing arrangements in a number of overseas countries are at Annex B.

3.08 We propose that in Hong Kong, prisoners could access election-related materials by:

(a) Post

As for other electors, prisoners who have registered as electors may choose to receive electoral documents and election advertisements (e.g. poll cards and election advertisements) either through their registered addresses or correspondence addresses (e.g. the addresses of the penal institutions in the case of prisoners).

(b) The Mass Media

Prisoners have access to mass media such as newspapers, radio and television. CSD would work out arrangements to facilitate prisoners to gain access to election-related information on the mass media.

3.09 As for the option of allowing candidates to canvass in person inside prisons, it may create grave security concerns. In order to ensure that the elections are conducted honestly, fairly and openly, and the “equal time” principle⁵ and “no unfair advantage” principle⁶ are applied, candidates have to be given equal representation while canvassing in prisons. Based on the existing electoral arrangements, for a LegCo general election,

⁵ “Equal time” principle means equal time for each of the candidates / GC candidate lists contesting in the same constituency.

⁶ “No unfair advantage” principle means no unfair advantage should be offered to or obtained by any candidate / GC list over others regarding election campaigning.

there are a number of GC lists from each of the five GCs. There are also 28 functional constituencies. For a District Council general election, there are 405 constituencies. The admission and presence of a large number of candidates and election agents designated by candidates to the prisons to canvass for votes, if allowed, would create significant security concerns and disrupt the normal operation of prisons.

Practical Arrangements for Prisoners to Vote

3.10 We also need to work out the practical arrangements for prisoners to cast their votes. As far as overseas countries are concerned, there are different options of voting arrangements for prisoners. In Australia, Canada, Finland and Greece, prisoners could vote in person at the polling stations or mobile polling stations set up inside the prisons. In Australia and Canada, prisoners could also vote by post. In Germany, prisoners could only vote by post. In Belgium, the Netherlands and France, prisoners could only vote by proxy. The details of the practical voting arrangements in overseas countries are at Annex C.

3.11 We propose that the following options on voting arrangements for prisoners be considered:

- (a) arrange mobile polling stations to visit prisons with eligible electors; or
- (b) set up polling stations inside prisons. Polling stations might be set up in all prisons or centralized in selected prisons.

3.12 There are also other options but they would give rise to significant concerns :

- (a) Prisoners to cast their votes at the polling stations allocated for their registered address under the escort of the CSD staff. Such transfer of prisoners to and from different polling stations in different time slots on the polling day would pose great concerns on public safety and security and would have very significant manpower resource implications on the CSD.
- (b) Postal voting or voting by proxy. These voting arrangements would give rise to concerns about voting

confidentiality and vote buying. They are also more susceptible to undue influence and fraud than ballots cast by electors in person inside a polling station.

- 3.13 For security reasons, if prisoners are allowed to cast their votes in person, we would need to consider reasonable limitation on the following arrangements:
- (a) To provide shorter polling hours for polling stations in which prisoners cast their votes. For instance, the polling hours may need to end at 5:00 pm. Such arrangement is necessary in view of the schedule of the major evening activities (e.g. meal, bathing) which would cease by 7:00 pm in all penal institutions on security grounds. Time is also required for the transfer of ballot papers from polling stations or mobile polling stations set up inside prisons to counting stations to facilitate the counting of votes.
 - (b) To regulate the flow of prisoners in the polling stations, as different groups of inmates need to be separated for security reasons.
- 3.14 Under section 44(2)(a) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), in order to ensure that polling takes place smoothly and efficiently, the Presiding Officer may regulate the number of electors, authorized representatives, candidates, election agents and polling agents to be admitted to the polling station at any one time. If polling stations are set up inside the prisons, we consider it necessary to limit the admission of the authorized representatives, candidates, election agents and polling agents into the prisons due to security concerns. If the number of candidates/agents who wish to enter the polling stations exceeds the limit, they may need to take turns or draw lots.

Electoral Arrangements for Remanded Unconvicted Persons

- 3.15 The existing legislation does not prohibit remanded unconvicted persons from voting. Remanded unconvicted persons who are validly registered electors and present themselves at the relevant polling station can exercise their right to vote on the polling day. We are working out arrangements for remanded unconvicted persons to cast their votes. The arrangements for remanded

persons to cast their votes would be similar to those adopted for prisoners.

Counting Arrangements

- 3.16 Depending on the actual polling arrangement to be adopted, the EAC would need to work out the counting arrangements, including the arrangements for transferring the ballot papers to the relevant counting stations, to be mixed with other ballot papers to ensure the secrecy of votes.

Chapter Four : Way Forward

JR Cases on Prisoner's Voting Right

- 4.01 While the Court in December 2008 handed down its judgment on the constitutionality of the relevant electoral provisions, another hearing is scheduled for 23 February 2009 during which the Court will hear the submissions made by the parties on the appropriate relief (i.e. form of remedies) to be granted.

Legislative Amendments to the LCO and other Relevant Electoral Legislation

- 4.02 Taking into account the declarations/orders to be made by the Court and the outcome of the public consultation, we plan to introduce into the LegCo within the 2008/09 legislative session amendments to the relevant disqualification provisions under the LCO. There are similar disqualification provisions in the Chief Executive Election Ordinance ("CEEEO") (Cap.569), the District Councils Ordinance ("DCO") (Cap.547) and the Village Representative Election Ordinance ("VREO") (Cap.576). Given the importance of maintaining consistency in the electoral arrangements of public elections held in Hong Kong and the constitutionality of prisoners' voting right, the Court's judgment on the disqualification provisions under the LCO will have bearing on similar provisions under the CEEEO, DCO and VREO. The respective legislation will also require amendment taking into account the amendments to be made to the LCO.

Formulation of Practical Arrangements for Prisoners and Remanded Unconvicted Persons to Exercise their Voting Right

- 4.03 In the light of the views received through this public consultation exercise, the EAC in conjunction with the relevant law enforcement agencies will work out the practical arrangements for prisoners and remanded unconvicted persons to exercise their voting right and prepare amendments to the relevant subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541) accordingly.

Views Sought

4.04 We welcome views from the public on –

- (a) the policy options for relaxing the ban on prisoners' voting right; and
- (b) the practical arrangements for prisoners and remanded unconvicted persons to exercise their voting right set out in this document.

Chapter Five: Summary of Proposals and Policy Options

- 5.01 The proposals relating to the policy options on the relaxation of the ban on prisoners' voting right and the practical arrangements for prisoners and remanded unconvicted persons to exercise their voting right are summarised below:

Policy Options on Prisoners' Right to be Registered as Electors

To remove the disqualification of prisoners from applying to be registered as electors. In other words, eligible persons would not be disqualified from being registered as electors due to imprisonment.

Policy Options on Prisoners' Voting Right

- (a) Option One is to remove the existing disqualification provisions in section 53(5)(a)-(b). The disqualification of persons convicted of election-related or bribery offences from voting under section 53(5)(c) will remain.
- (b) Option Two is to disqualify prisoners from voting if they are serving a sentence of imprisonment for a sufficiently long period (say, 10 years or over). The right to vote would resume upon completion of sentence and release from imprisonment.
- (c) Option Three is to disqualify prisoners from voting if they are serving a sentence of imprisonment for a sufficiently long period (say, 10 years or over) while enabling them to resume the right to vote when they are serving the last few years of imprisonment (say, last five years).

Practical Arrangements for Prisoners to Vote

Registered Address of Eligible Prisoners as Electors

- (a) For prisoners who have not yet been registered as electors before they serve their sentence of imprisonment, they may apply to be registered to the address of their home if they continue to maintain a sole or main home outside the prison.

- (b) For prisoners who have already been registered as electors before they serve their sentence of imprisonment, their registered addresses would follow the address of their sole or main home.
- (c) For registered and non-registered prisoners who no longer maintain any sole or main home outside the prison, their last dwelling-place in Hong Kong at which they resided before serving their sentence of imprisonment would be deemed to be their only or principal residence in Hong Kong for the purpose of voter registration.

Canvassing for Votes

- (d) Prisoners may receive electoral documents and election advertisements sent by post.
- (e) Prisoners may have access to the election-related information covered by the mass media such as newspapers, radio and television.

Practical Arrangements

- (f) To arrange mobile polling stations to visit prisons with eligible electors or to set up polling stations inside prisons.
- (g) To consider reasonable limitation on the polling hours for prisoners (e.g. up to 5:00 pm), and to regulate the flow of prisoners in the polling stations.

Electoral Arrangements for Remanded Unconvicted Persons

- (h) To work out arrangements for remanded unconvicted persons to cast their votes which would be similar to those for prisoners.

Counting Arrangements

- (i) Depending on the actual polling arrangement to be adopted, the EAC would need to work out the counting arrangements, including the arrangements for transferring the ballot papers to the relevant counting stations, to be mixed with other ballot papers to ensure the secrecy of votes, etc.

Ways of Providing Views and Comments

5.02 Please send us your views and comments by mail, facsimile or email on or before **23 March 2009**:

Address : Team 2
Constitutional and Mainland Affairs Bureau
Room 356, East Wing
Central Government Offices
Lower Albert Road
Hong Kong

Fax number : 2840 1976

E-mail address : pvr_consultation@cmab.gov.hk

5.03 It is voluntary for any member of the public to supply his/her personal data upon providing views on the consultation document. Any personal data provided with a submission will only be used for the purpose of this consultation exercise.

5.04 The personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to paragraph 5.03 above. The Government bureaux and departments receiving the data are bound by such purposes in their subsequent use of such data.

5.05 The names and views of individuals and organisations which put forth submissions in response to the consultation document (“senders”) may be published for public viewing after conclusion of the public consultation. This Bureau may, either in discussion with others or in any subsequent report, whether privately or publicly, attribute comments submitted in response to the consultation paper. We will respect the wish of senders to remain anonymous and/or keep the views confidential in relation to all or part of a submission; but if no such wish is indicated, it will be assumed that the sender can be named.

5.06 Any sender providing personal data to this Bureau in the submission will have rights of access and correction with respect to such personal data. Any requests for data access and correction of personal data should be made in writing to:

AS (Constitutional and Mainland Affairs) (2A)
Central Government Offices
3/F, East Wing
Lower Albert Road
Hong Kong

(Email Address: pvr_consultation@cmab.gov.hk)

Overseas Practices on the Registered Address of Prisoners

| Countries | Registered Address of Prisoners |
|------------------|---|
| Australia | <p>Prisoners who have been registered at a certain address before they serve their sentence of imprisonment remain registered at that address. However, they have to inform the Australian Electoral Commission (AEC) in writing that they are absent from their registered address while in prison to ensure that they are not removed from the register.</p> <p>Prisoners who were eligible to be registered but have not been registered when they started their sentence of imprisonment would be registered at the address where they were last eligible to be registered (usually the last place they lived). For prisoners who were not eligible to be registered before their sentence of imprisonment, they would be registered at the first of the following places:</p> <ol style="list-style-type: none">1. where his or her next-of-kin is currently registered; or2. where he or she was born; or3. where he or she has the closest connection. |
| Belgium | <p>For prisoners who are part of a household when they started their sentence of imprisonment, they would remain registered at that household.</p> <p>For prisoners who are not part of a household when they started their sentence of imprisonment, they would be registered under the address of the prison providing that the director of the institution have indicated his agreement. Change of residence occurs for each change of institution. For each change of institution, it is necessary to ask for the agreement of the director of the new institution.</p> <p>If, during imprisonment, it appears that the prisoner is part of a new household, he will be registered under the address of that household upon his request and provided that the agreement of the reference person of the household has been given.</p> |

| Countries | Registered Address of Prisoners |
|--------------|---|
| Canada | <p>For electoral purposes, the registered address of the prisoners is the first of the following places:</p> <ol style="list-style-type: none"> 1. his or her residence before his or her sentence of imprisonment; or 2. the residence of the spouse, the common-law partner, a relative or dependant of the elector, a relative of his or her spouse or common-law partner or a person with whom the elector would live if not being sentenced; or 3. the place of his or her arrest; or 4. the last court where the elector was convicted and sentenced. |
| France | Prisoners are registered according to their last area (commune) of residence. |
| Germany | <p>Prisoners with a permanent residence in a German municipality are usually registered in the electoral list there.</p> <p>Prisoners without a permanent residence in a German municipality are registered in the electoral area of the prison.</p> |
| South Africa | For electoral purposes, the registered address of the prisoners is the last home or place where he or she normally lived when not imprisoned or detained. |

Overseas Practices on Canvassing for Votes for Prisoners

| Countries | Canvassing for votes |
|------------------|---|
| Australia | Candidates or their agents are not allowed to canvass in person inside the penal institutions. The Commonwealth Electoral Act 1918 provides that only the polling officials may enter the prison or remand centre while mobile polling is taking place. |
| Belgium | Candidates may send election advertisements to prisoners but no electoral display is allowed in prisons. |
| Canada | <p>Candidates are permitted to canvass for votes in the prison prior to the polling day. They must coordinate with correctional authorities and obtain the appropriate security clearances.</p> <p>Electors may obtain information with respect to the candidates running in their electoral district by contacting the candidate or the political party.</p> <p>A liaison officer shall, on receiving the list of candidates, post the list of candidates on one or more conspicuous places in the correctional institution.</p> |
| France | <p>Candidates or their agents are not allowed to canvass in person inside penal institutions.</p> <p>Inmates are allowed to receive mail. They are also allowed to subscribe to newspapers.</p> <p>Posters informing inmates of their rights must be displayed inside the prison.</p> |
| Germany | <p>Candidates or their agents are not allowed to canvass in person inside penal institutions.</p> <p>The prisoners could obtain election-related information by television, newspapers and the radio. In some federal states election-related information is made available by the prison personnel.</p> |

Overseas Practices on Practical Arrangements for Prisoners to Vote

| Countries | Form of Vote | Practical Arrangements for Prisoners to Vote | Counting of votes |
|------------------|---|--|---|
| Australia | <p>Eligible prisoners can vote by post or in person.</p> <p>To vote by post, a person can apply at any time to become a General Postal Voter (GPV), or can apply for a postal vote at each election.</p> <p>During the election, some prisons are visited by mobile polling teams where the Australia Electoral Commission staff set up polling booths to collect the votes of prisoners.</p> | <p>Candidate or their agents cannot enter the prisons used for polling stations or be present at the mobile polling station to monitor the election. The Commonwealth Electoral Act 1918 provides that only the polling officials may enter the prison or remand centre while mobile polling is taking place.</p> <p>The Commonwealth Electoral Act 1918 allows the Australian Electoral Commission (AEC) to make arrangements with the Controller-General of prisons for a State or Territory for persons confined in prisons or remand centres to cast their votes. It is current AEC policy to arrange for mobile polling to occur at all prisons or remand centres where there is a minimum of 10 electors. Mobile polling can take place at any time after ballot papers become available (which is usually three weeks prior to polling day). Days and voting times are arranged with the Governor of the prison. Only inmates are eligible to vote with mobile polling teams.</p> | <p>Votes are transferred and counted at the AEC counting centers (usually the divisional office).</p> |

| Countries | Form of Vote | Practical Arrangements for Prisoners to Vote | Counting of votes |
|-----------|--|---|---|
| Canada | <p>Eligible prisoners can vote by post or in person.</p> <p>Prisoners vote in their institutions on the 10th day before polling day at polling stations within their institution. They may mail the ballots to Elections Canada in Ottawa themselves or leave them with the deputy returning officer to forward by special arrangement.</p> <p>A liaison officer shall, when required, establish a mobile polling station within a correctional institution for prisoners who are confined to their cells or in an infirmary to cast their votes. A returning officer may, in cooperation with liaison officers, create a mobile polling station for correctional institutions of fewer than 50 electors that are within the returning officer's electoral district and that are within reasonable travelling distance of each other.</p> | <p>With the prior authorization of correctional authorities, a Canadian citizen may represent a registered party during the polling hours at a correctional institution, if he or she provides the deputy returning officer with an authorization, in the prescribed form, signed by a candidate for that party.</p> <p>A staff member in each correctional institution is appointed liaison officer to facilitate the process of registering and voting.</p> <p>A polling station in correctional institution is set up at 9:00 am and remains open until all those who wish to vote have done so, but no later than 8:00 pm. The polling hours of polling stations for other electors starts from 7:00 am to 9:30 am depending on the time zone, and ends 12 hours later.</p> | <p>Votes are transferred and counted in the electoral district of his or her place or ordinary residence.</p> |

| Countries | Form of Vote | Practical Arrangements for Prisoners to Vote | Counting of votes |
|------------------|--|--|--|
| France | <p>Eligible prisoners can vote by proxy.</p> <p>The person who will cast the vote on behalf of the inmate must be registered on the electoral roll in the same local area as the inmate.</p> | <p>Inmates who wish to vote must inform the prison reinsertion and probation service (SPIP). The SPIP will in turn inform the prison registry. Officers of the judicial police will come to the prison at the request of the prison authorities to take care of the formalities of proxy voting.</p> | NA |
| Germany | <p>Eligible prisoners can vote by post.</p> <p>The necessary documents will be sent to them a couple of weeks in advance. The deadline for having them sent back is the same as for all postal voters.</p> | <p>Due to the postal vote prisoners send their voting papers by mail. There are no polling stations.</p> | <p>Votes are counted at the central counting stations.</p> |