

For discussion on 14 November 2008

Legislative Council Panel on Home Affairs

Village Representative Election (Amendment) Bill 2009

Purpose

This paper sets out the proposed amendments to the Village Representative Election Ordinance (“VREO”) (Cap. 576) and related subsidiary legislation to further improve the arrangements for village representative (“VR”) election.

Background

2. The VREO was enacted on 14 February 2003 to bring the conduct of VR election under statutory control to ensure that the electoral arrangements would be consistent with the Hong Kong Bill of Rights Ordinance and the Sex Discrimination Ordinance. Since the commencement of the VREO, two village ordinary elections have been held, in 2003 and 2007 respectively.

3. In formulating the arrangements under the VREO, extensive consultation with the rural community, including the Heung Yee Kuk (HYK) and the Rural Committees, had been conducted. The VREO has taken into account the long history of the village representation system and the need to bring VR election in compliance with earlier court ruling. Key elements of the VREO include -

(a) VR elections should be held for indigenous villages (which include Indigenous Villages¹ and Composite Indigenous Villages²) and existing village settlements (Existing Villages³) included in the village representation system in the New Territories then (i.e. in 1999 when the last round of village election before the enactment of the VREO was held);

(b) there should be two types of VRs, namely, Indigenous Inhabitant

¹ Indigenous villages are those already in existence in 1898. They are listed in Schedule 2 to the VREO.

² Composite indigenous villages are villages that comprise more than one indigenous village whose indigenous inhabitants jointly elect their indigenous inhabitant representatives. They are listed in Schedule 3 to the VREO.

³ Existing villages are listed in Schedule 1 to the VREO.

Representatives (“IIRs”) for Indigenous Villages or Composite Indigenous Villages, and Resident Representatives (RRs) for Existing Villages;

- (c) 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; and
- (d) the functions of an Indigenous Inhabitant Representative 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 a Resident Representative for an Existing Village is to reflect views on the affairs of the village on behalf of the residents of the village. A Resident Representative shall not deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants.

The Review

4. Since the commencement of the VREO in 2003, the Government has received a number of proposals from the rural community relating to the VR election arrangements. In the 2007-08 Policy Agenda, we committed to reviewing and improving the arrangements for rural elections, in the light of the experience gained in the first two rounds of village ordinary election in 2003 and 2007, and working on the way forward for the next round of village ordinary election in 2011.

5. For this purpose, the Home Affairs Department and HYK jointly formed a Rural Elections Review Working Group (“the Working Group”) in November 2007. After thorough deliberations on the proposals put forward by the rural community, the Working Group agreed on the proposals in the ensuing paragraphs.

Proposals

Addition of a village to the VREO

6. We recommend that a village in Tai Po, Lai Pek Shan (犁壁山), should be added to Schedules 1 and 2 to the VREO so that the village can be included in the next round of village ordinary election in 2011.

7. Lai Pek Shan was already in existence in 1898 (i.e. it is an indigenous village). In late 1998, villagers of Lai Pek Shan sought the approval of District Officer (Tai Po) for them to elect a VR. The Tai Po Rural Committee agreed in January 1999 to revise its constitution to include Lai Pek Shan as its member so that Lai Pek Shan could hold VR election. In June 1999, District Officer (Tai Po) approved the revised constitution. Lai Pek Shan had initiated the voter registration process in 1999, but the election was not completed.

8. Although the Administration omitted Lai Pek Shan when compiling the Schedules to the VREO during the drafting of the legislation, as Lai Pek Shan is an indigenous village and had already been included in the village representation system before the enactment of the VREO, we now propose to add Lai Pek Shan to Schedules 1 and 2 to the VREO.

Changes to village names

9. We recommend some changes to the names of villages that now appear in the Schedules to the Ordinance, as set out in the Annex. The proposed changes are in response to the requests from the concerned villages to highlight the historical background/location of the villages, or to adopt village names that have been used in the rural community for some time.

Revised time limits for lodging/handling claims, objections and reviews

10. The Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541 sub. leg. K) (“the Registration Regulation”) stipulates that the Electoral Registration Officer⁴ (“ERO”) must determine whether an applicant for registration in a provisional register is eligible. The ERO may decide not to consider an application further if the applicant does not furnish the particulars or proof as required by the ERO within a specified period. The Registration Regulation allows persons who are determined not eligible to be registered, whose applications are not considered further by the ERO or who have made applications but whose names do not appear on the relevant provisional registers to lodge claims. On the other hand, a person who considers that a registered person is not eligible to be registered may make an objection to the registration.

11. Under section 3(2) of the Village Representative Election (Registration of Electors) (Appeals) Regulation (Cap. 576 sub. leg. A) (“the

⁴ Under the VREO, the Secretary for Home Affairs shall appoint an ERO and the Director of Home Affairs was duly appointed in February 2003.

Appeals Regulation”), the Revising Officers (“ROs”), who are magistrates, shall make rulings allowing or dismissing the claims and objections. The Appeals Regulation also provides that the person who has lodged a claim or objection, or the person in respect of whom the objection is made, may apply for a review of the ruling made by the RO.

12. Currently, the ROs have only seven days after the deadline for lodging claims and objections to rule on the claims and objections received. The existing timeframe is too tight for the workload involved. As an illustration, in the second village ordinary election in 2007, there were 895 objections and 213 claims, over 50% of which were lodged on the last two days before the deadline. We therefore propose that the ROs should be given 14 days, instead of the current seven days, after the deadline for lodging claims and objections to rule on the claims and objections received.

13. Under section 4(4) of the Appeals Regulation, the person who has lodged a claim or objection, or the person in respect of whom the 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. This two-day requirement is found to be too demanding and we propose that it be relaxed to four days.

14. Under section 7(2)(b) of the Appeals Regulation, the RO only has two days to process applications for review of ruling lodged on the last day of the submission period. In the second village ordinary election in 2007, there were 132 review cases, many of which were lodged towards the end of the submission period. This created tremendous pressure on the ROs and supporting staff. We therefore propose to extend the period for ROs to handle the review cases after the submission deadline from two days to eight days.

15. The total effect of the proposed extensions of time periods in paragraphs 12 to 14 above is that the compilation and publication of the provisional voter register will have to be advanced by about two weeks. This will not have adverse effect on the preparatory work required for arranging VR elections.

Increase of penalty on offences concerning order at polling station and secrecy

16. Regulation 38(4) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L) provides that “no

person shall film; take a photograph; or make any audio or video recording in a polling station on the polling day...”. Regulation 82(1) stipulates various prohibitions relating to secrecy of vote, including prohibition from 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. The current maximum penalty for breaching regulation 38(4) or 82(1), as prescribed in regulation 89, is a fine at level two and imprisonment for three months.

17. There are similar provisions in the Regulations governing the Legislative Council elections (regulations 45(2) and 96 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D)) and District Council elections (regulations 48(2) and 94 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F)). These provisions have, however, been amended in recent years to increase the maximum penalty from imprisonment for three months to six months for a stronger deterrence effect. We propose that the penalty level for these offences for the VR elections should be aligned with that for the Legislative Council and District Council elections, i.e. the maximum penalty should be increased from imprisonment for three months to six months. The maximum fine will remain at level 2, same as that for the Legislative Council and District Council elections.

The Way Forward

18. We plan to introduce a Village Representative Election (Amendment) Bill into the Legislative Council in the second half of the 2008-09 legislative session. The legislation would need to be in place by November 2009 at the latest to allow time for completion of demarcation of village boundaries, voter registration, and handling of claims, objections and reviews, etc. before the next village ordinary election in the first quarter of 2011.

Advice Sought

19. Members are invited to comment on the above proposals.

Home Affairs Department
November 2008

Proposed Changes to Village Names

	Districts	Current Village Names	Proposed New Village Names	Types of Villages		
				Existing Villages (Schedule 1 to VREO)	Indigenous Villages (Schedule 2 to VREO)	Composite Indigenous Villages (Schedule 3 to VREO)
1.	North	Fanling	Fanling Wai	✓	✓	
2.		Kai Kuk Shue Ha and Ham Hang Mei	Kai Kuk Shue Ha and Nam Hang Mei	✓		✓
3.	Tai Po	Tai Mon Che	Tai Yeung Che	✓	✓	
4.	Yuen Long	Kam Tin San Tsuen	Kam Tin Shing Mun San Tsuen	✓	✓	
5.		Chung Sam Wai	Wang Chau Chung Sam Wai	✓	✓	
6.		Fuk Hing Tsuen	Wang Chau Fuk Hing Tsuen	✓	✓	
7.		Lam Uk Tsuen	Wang Chau Lam Uk Tsuen	✓	✓	
8.		Sai Tau Wai	Wang Chau Sai Tau Wai	✓	✓	
9.		Tung Tau Wai	Wang Chau Tung Tau Wai	✓	✓	
10.		Yeung Uk Tsuen	Wang Chau Yeung Uk Tsuen	✓	✓	