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電話：2835 1168
圖文傳真：2572 6546

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Mr. Stephen Lam
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Mr. Lam,

Village Representative Election Bill

Thank you for your letter of 30 October 2002.

My response to the points you raised is as follows:

(a) **General observation**

There is no definition of the "lawful traditional rights and interests of indigenous inhabitants in the New Territories". However, these rights and interests are generally related to land matters. The main rights and interests are:

- (i) building of small houses by male indigenous villagers over the age of 18 under the Small House Policy;
- (ii) burial in permitted areas (usually hillsides) outside gazetted cemeteries;
- (iii) exemption from government rent; and
- (iv) exemption from government rates.

(b) Clauses 14(f) and 16(e)

In our view, "the armed forces of the People's Republic of China" is a more appropriate expression than "the armed forces of the Central People's Government". For example, this is how the armed forces are described in Articles 29 and 93 of the Constitution of the People's Republic of China. The expression is also used in sections 9(e), 18(g) and 30(1)(f) of the Schedule to the Chief Executive Election Ordinance (Cap. 569).

(c) Clause 15(5)(c) and (d)

This is modelled on section 30(1) of the Legislative Council Ordinance (Cap. 542). An applicant has to comply with the requirements set out in both (not either of) paragraphs (c) and (d). That applies to a person who is an indigenous inhabitant or an indigenous inhabitant's spouse.

(d) Clause 15(6) and (7)

The choice is the applicant's. For example, if an indigenous inhabitant of one Indigenous Village is married to another indigenous inhabitant of another Indigenous Village, the person can choose whether to register as an elector in his/her own Indigenous Village or that of his/her spouse. When a person applies to be registered as an elector, he also chooses the Village to be registered. If a person is registered as an elector for Village A, the person may subsequently apply to be registered as an elector for Village B for which the person is also eligible. In that case, the person can be taken to have chosen Village B as the Village for which he is to be registered as an elector.

(e) Clause 17(2)

Your observation is correct. It would be appropriate to add "or other personal particulars" here.

(f) Clause 22(1)

If a person is registered, and eligible to be registered, as an elector for an Existing Village (clause 22(1)(d)), the person is a Hong Kong permanent resident (clause 15(4)). On the other hand, if a person is registered, and eligible to be registered, as an elector for an Indigenous Village or a Composite Indigenous Village (clause 22(2)(c)), the person may not be a Hong Kong permanent resident.

(g) Clause 25(3)

This is modelled on section 7(1)(c) of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap. 547C) and section 7(3) of the District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap. 547A). As a candidate should deliver only one nomination form, it is not conceivable how several nomination forms could be delivered at the same time. Even if several nomination forms are delivered at the same time, it is still possible to identify the specified number of nomination forms that are first delivered.

(h) Clause 49

This clause is modelled on section 59 of the District Councils Ordinance (Cap. 547). While a determination can be delivered to the Secretary for Constitutional Affairs, the Electoral Affairs Commission and the Director of Home Affairs under section 55(4) over a period of time, the line is drawn when the certificate is received by the "Designated Officer" (i.e. the Director of Home Affairs), instead of all three parties. This may be justified on the grounds that the Director of Home Affairs is the main person who oversees the District Councils while the Secretary for Constitutional Affairs and the Electoral Affairs Commission are not. The same argument can apply here.

(i) Clause 58

Clause 58 enables the Secretary for Justice to bring proceedings in the Court against a person who is acting, or claims to be entitled to act, as a Village Representative while disqualified from acting as a Village Representative. This is to deter villagers from conducting their own village elections to elect "Village Representatives" and subsequently acting as such. There is no need for an elector to be empowered to bring proceedings in the Court against such person or persons.

(j) Clause 62(3)

At present, some of the 27 Rural Committees do not allow non-indigenous residents to be elected as Chairman of the Rural Committee. This is a departure from identical treatment and may be difficult to justify.

(k) Consequential: Section 8 of Cap. 541

The Electoral Affairs Commission is required under this section to make a report regarding an election, which will include a village ordinary election and a village by-election. Clause 3 of Schedule 4 of the Bill proposes to extend the definition of "election" in section 2(1) of Cap. 541 to cover an election electing a Village Representative for a Village. Section 2(2) declares that an election includes a by-election.

(l) Consequential: Section 16(1)(c) and (2)(c) and Section 28(5)(a)(i) of Cap. 554

Your observation is correct. The provisions should mention an election referred to in section 4(i) or (j), instead of an election referred to in section 4(i) only.

(m) Chinese version

I shall respond to your comments on the Chinese version separately.

Yours sincerely,

(Stephen Fisher)
for Secretary for Home Affairs

c.c. DHA (Attn.: Miss Monica Chen)
D of J (Attn.: Mr. Lawrence Peng)