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**Paper for the House Committee meeting
on 21 March 2003**

**First report of the Subcommittee on subsidiary legislation
relating to Village Representative elections**

Purpose

This paper reports on the deliberations of the Subcommittee on subsidiary legislation relating to Village Representative Elections on the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation and the Village Representative Election (Registration of Electors) (Appeals) Regulation.

Background

2. The Village Representative Election Ordinance (Cap. 576) was gazetted and came into operation on 14 February 2003, except for certain provisions which will come into operation on 1 October 2003. The Ordinance provides a legal framework for the conduct of the 2003 Village Representative (VR) elections as well as VR elections in subsequent years. The elections will be conducted under the supervision of the Electoral Affairs Commission (EAC).

3. To implement the VR elections, the following five sets of subsidiary legislation have been or will be introduced for negative vetting by the Legislative Council (LegCo) -

- (a) Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (gazetted on 15 February 2003);
- (b) Village Representative Election (Registration of Electors) (Appeals) Regulation (gazetted on 21 February 2003);
- (c) Electoral Procedure (Village Representative Election) Regulation (to be gazetted in March 2003 as advised by the Administration);

- (d) Village Representative (Maximum Amount of Election Expenses) Regulation (to be gazetted in March 2003 as advised by the Administration); and
- (e) Village Representative Election (Election Petition) Rules (to be gazetted in April 2003 as advised by the Administration).

The subsidiary legislation

The Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (the Registration of Electors Regulation)

4. Under section 7(1) of the Electoral Affairs Commission Ordinance (Cap. 541), the EAC is vested with the power to make regulation governing the registration of electors. With the enactment of the Village Representative Election Ordinance, the definition of “election” in the Electoral Affairs Commission Ordinance will be expanded to include VR elections. The EAC needs to make a new set of regulations to set out the procedure for registering electors for the VR elections.

5. The Registration of Electors Regulation is basically modelled on the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg.), relating to the registration of electors and compilation of provisional and final electoral registers in LegCo and District Council (DC) elections. The Regulation contains similar provisions on application for registration as electors, compilation and publication of provisional electoral register, arrangements for making claims and objections in respect of the provisional register, correction of the provisional register, compilation and publication of an omissions list and the final register as well as offences and other miscellaneous matters.

The Village Representative Election (Registration of Electors) (Appeals) Regulation (the Appeals Regulation)

6. Under section 19(1) of the Village Representative Election Ordinance, a person who is dissatisfied with a decision of the Electoral Registration Officer (ERO) made in respect of the registration of electors for the purposes of the Ordinance may appeal against the decision to a Revising Officer. Section 53 of the Ordinance provides that the Chief Justice may appoint any magistrate to be a Revising Officer. If no appointment is made, the Registrar of the High Court is taken to be the Revising Officer. Section 65(2) of the Ordinance empowers the Secretary for Home Affairs to make regulations to provide for the functions of the Revising Officers and the appeals to them.

7. The Appeals Regulation is basically modelled on the Registration of Electors (Appeals) Regulations (Cap. 542 sub. leg.), relating to the appeals against decisions of the ERO in LegCo and DC elections. The Regulation contains similar provision on the functions and duties of the Revising Officers and appeal procedures. Except for cases as stated in the Appeals Regulation when the ERO's decisions shall stand, the Revising Officer is required to make a ruling on each of the appeals received, and a hearing is to be conducted before a ruling is made. The Revising Officer is also required to notify the ERO of his rulings to enable the ERO to reflect his rulings in the final electoral register.

The Subcommittee

8. The House Committee agreed at its meeting on 21 February 2003 to form a Subcommittee to study the Registration of Electors Regulation. The House Committee further agreed at its meeting on 28 February 2003 that the Subcommittee should be responsible for studying all the subsidiary legislation relating to VR elections that had been or would be introduced.

9. The Subcommittee held its first meeting on 3 March 2003 and Hon Andrew WONG was elected Chairman. The membership of the Subcommittee is in **Appendix I**. The Subcommittee held two meetings with the Administration to discuss the Registration of Electors Regulation and the Appeals Regulation.

Deliberations of the Subcommittee

10. The Subcommittee has examined the Registration of Electors Regulation and the Appeals Regulation in detail. The main deliberations of the Subcommittee on these two Regulations are summarized in the following paragraphs.

Commencement of the Registration of Electors Regulation and the Appeals Regulation

11. Members note that the Registration of Electors Regulation and the Appeals Regulation are subject to the negative vetting procedure under which LegCo may amend an item of subsidiary legislation by a resolution passed at a meeting not later than 28 days after the meeting at which the subsidiary legislation was laid. LegCo may also by resolution extend the scrutiny period by a further 21 days or the Council meeting immediately following the 21-day period if there is no Council meeting on the 21st day.

12. In order to allow adequate time for the Subcommittee to scrutinize the Registration of Electors Regulation and the Appeals Regulation, Hon Andrew WONG, the Subcommittee Chairman, had moved a motion at the Council meeting on 19 March 2003 to extend the scrutiny period of the two Regulations to 9 April and 30 April 2003 respectively. The motion was passed by the Council.

13. Dr Hon TANG Siu-tong and Hon Albert CHAN have expressed dissatisfaction that the Registration of Electors Regulation and the Appeals Regulation have already taken effect upon gazettal, and that the registration of electors for VR elections has already commenced in accordance with the procedures set out in the Registration of Electors Regulation. They query why the Administration has arranged for the commencement of the two Regulations on a date before the expiry of the scrutiny period by LegCo. These members consider such an arrangement not satisfactory as amendments may be made to the Regulations during the scrutiny period and the registration work of electors may then be affected. They have also pointed out that the Administration has departed from the general rule for making subsidiary legislation and is disrespectful of LegCo in so doing.

14. The Administration has responded that while it is legally in order for the two Regulations under the negative vetting procedure to take effect upon its gazettal, it is the established practice that the Administration will not normally arrange for the commencement of a piece of subsidiary legislation on a date before the expiry of the scrutiny period. However, enactment of the Electors of Registration Regulation and the Appeals Regulation is made under exceptional circumstances. The Administration explains that as the Village Representative Election Ordinance was only enacted on 14 February 2003, subsidiary legislation which provides for the procedures for the registration of electors has to come into operation immediately afterwards so that registration of electors can commence at the same time to ensure that the VR elections can be held in July 2003 to comply with the requirements of the Ordinance. The Administration stresses that any delay in the 2003 VR elections will inevitably affect other rural elections, such as those for Rural Committees and Heung Yee Kuk, the terms of which are also stipulated in the Ordinance.

15. The Administration reiterates that it respects the role of LegCo in scrutinizing subsidiary legislation and the present arrangement for enacting the two Regulations is only an exceptional case. The Administration has further informed the Subcommittee that the best endeavours will be made to ensure that enactment of the three remaining sets of subsidiary legislation for the implementation of VR elections will follow the established practice and will not come into operation before the expiry of the scrutiny period by LegCo.

16. Hon Andrew WONG has pointed out that the practice of not arranging for the commencement of an item of subsidiary legislation until after the expiry

of its extended scrutiny period was established in recent years. Prior to that, the Administration would put into effect subsidiary legislation immediately upon gazettal. Hon Andrew WONG, however, considers that in hindsight the Administration should have submitted the draft version of the two Regulations to the Bills Committee on Village Representative Election Bill for consideration in advance, given the tight schedule of the legislative exercise.

17. The Administration explains that as amendments have been made to the Village Representative Election Bill which affect the drafting of the subsidiary legislation and relevant timetables, the Administration can only finalise the drafting of the two Regulations after enactment of the Bill. It is therefore not feasible to submit these two Regulations to the Bills Committee on Village Representative Election Bill for consideration.

The Registration of Electors Regulation

Entries in the electoral registers

18. The Administration has informed the Subcommittee that it has largely followed the provisions in the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation, but has adapted the Registration of Electors Regulation to provide for features specific to the VR elections, for instance, separate division in the register for Existing Village, Indigenous Village and Composite Indigenous Village. Where there are arrangements in the VR elections that may be applicable to future LegCo and DC elections, the arrangements would be considered in the context of the review of the latter.

19. According to the Administration, there will be two electoral registers, viz. the Existing Villages register (EV register) and the Indigenous Villages and Composite Indigenous Villages register (IV and CIV register). The EV register contains a separate division for each Existing Village. The IV and CIV register is divided into two parts, one for the Indigenous Villages and the other for Composite Indigenous Villages, with a separate division for each Village. An entry in respect of each registered person will show the name and the principal residential address of the person. However, since the provision of an address is not part of the eligibility criteria for registration in the IV and CIV register, the principal residential address of a person will not be entered in the IV and CIV register if this is not provided.

20. The Administration has also explained that as some Indigenous Inhabitants are born overseas, they may not have a Chinese name or know how to write their name in Chinese. An applicant is only required to fill in the application form for elector registration for Indigenous Inhabitant Representative elections in Chinese or English, and provision of his name in Chinese is not mandatory.

21. Members express concern that the entries in the IV and CIV register may not be adequate for identification purposes, thereby causing unnecessary confusion and disputes. They note that the English name of a person will be entered into the register if his name appears in English only on the application form, and that only the name of the person will be shown on the register if that person has not provided his principal residential address. Members have pointed out that it will be very difficult for inhabitants of an Indigenous Village or a Composite Village to know who that person is if only his name in English is shown on the register. They have also pointed out that even if the Chinese name of a person is shown on the register, there may be two or three persons in the same Village having the same name. It will be equally difficult for inhabitants in that Village to know who that person is if his residential address is not shown on the register. Members have suggested that even if provision of a principal residential address is not required by law in an application for elector registration for Indigenous Inhabitant Representative elections, the applicant would have provided a postal address in his application form which can be included in the register and made available for public inspection.

22. In light of members' concerns, the Administration has undertaken to make administrative arrangements to follow up with an applicant for elector registration for the Indigenous Inhabitant Representative elections, in case the applicant has only provided his name in English. Subject to the provision of a Chinese name by the applicant, the Chinese name will be shown on the register for reference. In case the applicant has not furnished the ERO with his principal residential address, the Administration will follow up the application to request the applicant to provide a principal residential address or a postal address to be included as reference in the register. The Administration has reviewed the 30 000 application forms processed so far, and there is only one application that requires such follow-up action. The Administration further explains that the ERO is empowered under section 7 of the Registration of Electors Regulation to determine the form of a register, and the information will be included in the register for reference by way of a supplementary note or remark. The Administration also points out that according to section 12 of the Registration of Electors Regulation, the ERO may decide not to consider the application for elector registration further, if an applicant does not furnish any particulars or proof required by the ERO within a specified period. The Administration therefore considers that the ERO should be able to obtain necessary information from an applicant and include in the register for identification purposes.

Amendments to be made

23. The legal adviser to the Subcommittee has queried why a reference to section 24 of the Village Representative Election Ordinance is made in section 32(7) and (8) in respect of offences and penalties of the Registration of Electors

Regulation, as there is no prescribed offence under section 24 of that Ordinance.

24. The Administration has confirmed that the reference is included by mistake and agreed that any reference to section 24 of the Village Representative Election Ordinance in section 32(7) and (8) of the Regulation should be deleted. The Administration proposes that as the amendments are of a technical nature, they can be made in the next legislative exercise to be conducted by the Department of Justice for the purpose of making miscellaneous amendments to the Laws of Hong Kong. While members consider that it will be tidier if the amendments can be made in the current legislative exercise, they have no strong view on the Administration's proposal.

Work of elector registration

25. Members stress that it is important to ensure that VR elections are conducted in an open, fair and honest manner, and staff of the District Offices in the New Territories involved in the elector registration exercise must maintain neutrality in the process. The Administration has informed the Subcommittee that a departmental circular will be issued to all staff in the Home Affairs Department to draw their attention to the need to maintain neutrality and conscientiousness in the whole process of VR elections.

The Appeals Regulation

26. The Administration has informed the Subcommittee that similar to the registration of electors for LegCo and DC elections, section 4(4) of the Appeals Regulation provides for a review arrangement on the ruling of the Revising Officer under which relevant parties may apply for a review of the ruling made by the Revising Officer not later than two days after the date the notification by the Revising Officer is sent. The Administration explains that the two-day period is set specifically for VR elections because the elector registration cycle is under a very tight schedule and the ERO needs to publish the final electoral register as early as possible.

Follow-up actions by the Administration

27. The Administration has undertaken to -

- (a) follow up with applicants for elector registration for Indigenous Inhabitant Representative election for provision of a principal residential addresses or postal address, and Chinese name if available (paragraph 22 above); and

- (b) delete the reference to section 24 of the Village Representative Election Ordinance in section 32(7) and (8) of the Elector of Registration Regulation in the next legislative exercise to be conducted by the Department of Justice for making miscellaneous amendments to the Laws of Hong Kong (paragraph 24 above).

Recommendation

28. The Subcommittee recommends that the Registration of Electors Regulation and the Appeals Regulation be supported.

Advice sought

29. Members are invited to note the recommendation of the Subcommittee in paragraph 28 above.

Council Business Division 2
Legislative Council Secretariat
20 March 2003

**Subcommittee on subsidiary legislation relating to
Village Representative elections**

Membership List

Chairman Hon Andrew WONG Wang-fat, JP

Members Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP

(Total : 9 Members)

Clerk Miss Flora TAI Yin-ping

Legal Adviser Mr Stephen LAM Ping-man

Date 3 March 2003