

# **LEGISLATIVE COUNCIL BRIEF**

## **Electoral Affairs Commission Ordinance**

**(Cap. 541)**

### **ELECTORAL AFFAIRS COMMISSION**

**(REGISTRATION OF ELECTORS)**

**(VILLAGE REPRESENTATIVE ELECTION) REGULATION**

#### **INTRODUCTION**

The Electoral Affairs Commission (“EAC”) has made the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (“The Regulation”) at **Annex A** to provide the procedures for registering electors for elections held under the Village Representative Election Ordinance (2 of 2003).

#### **BACKGROUND AND ARGUMENT**

2. The Village Representative Election Ordinance (“the Election Ordinance”) was gazetted and came into operation on 14

February 2003. It provides a general legal framework for the conduct of the 2003 Village Representative (VR) elections as well as elections in subsequent years. Background information on the VR elections is at **Annex B**.

## **THE REGULATION**

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

4. The Regulation basically models on the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg. A) (“GCRR”), relating to the registration of electors and compilation of provisional and final electoral registers in Legislative Council elections and District Council 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. A timetable showing the key dates and events related to the registration of electors in 2003 and subsequent years is at **Annex C**. We have made reference to the registration cycles for District Council elections set out in the GCRR, with necessary adaptations to meet the different nature of VR elections, including the tight schedule of the 2003 VR elections. Major features of the Regulation that are peculiar to the VR elections are set out below.

### ***Electoral Register***

5. There will be two registers, viz. the Existing Villages register (“EV register”) and the Indigenous Villages and Composite Indigenous Villages register (“IV & CIV register”). The EV register contains a separate division for each Existing Village. The IV & 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 & CIV register, the principal residential address of a person will not be entered in the IV & CIV register if this is not provided. Save for some exceptional cases, entries in both registers are to be compiled in Chinese or English in accordance with the language in which the address appears on the application form, with Chinese names appearing before the English ones.

### *Notice of Claim and Notice of Objection*

6. In line with the provisions in the GCRR, the Regulation provides for the lodging of objections and claims against the Electoral Registration Officer's ("ERO") decisions. The ERO is required to deliver such claims and objections to the Revising Officer, whose decisions must be reflected in the relevant final register.

7. In the Legislative Council elections and the District Council elections, claimants must submit notice of claim in person. However, in the VR elections, there may be a significant number of indigenous inhabitants residing overseas who would apply to register to vote in the

Indigenous Inhabitant Representative elections. Taking into account the needs for these potential claimants, they may, in addition to submission in person, deliver the notice of claim to the ERO's office as an electronic record authenticated by a digital signature, by post, facsimile transmission, or via a person authorized by them in writing.

8. On the other hand, to discourage frivolous and malicious objections, objectors (whether residing in Hong Kong or overseas) must submit notice of objection in person to the ERO's office.

### ***ERO's Responsibility Regarding Communications***

9. S. 34 of the Regulation provides that a communication sent by registered post is deemed to be delivered by the ERO to the addressee, except when it is returned undelivered. It also provides that communications related to the compilation of a register must be sent to the principal residential address furnished to the ERO. In relation to the compilation of the IV & CIV register, the ERO is not required to perform, in respect of a person, functions that involve sending a communication to a person, if the person has not furnished, to the ERO, his or her principal residential address, a postal address in Hong Kong, a facsimile number or

an electronic mail address.

## **LEGISLATIVE TIMETABLE**

10. The Regulation will be gazetted on 15 February 2003 and tabled in the Legislative Council on 19 February 2003.

## **BASIC LAW AND HUMAN RIGHTS IMPLICATIONS**

11. The Regulation is in conformity with the Basic Law, including the provisions concerning human rights.

## **BINDING EFFECT OF THE LEGISLATION**

12. The Regulation will not affect the binding effect of the principal Ordinance.

## **FINANCIAL AND CIVIL SERVICE IMPLICATIONS**

13. The financial implications in connection with the registration of electors have been included in the total budget of \$23 million for the 2003 Village Representative elections. The financial and staffing implications of VR elections in subsequent years will be absorbed within the Operating Expenditure Envelopes of Secretary for Home Affairs and Secretary for Constitutional Affairs.

#### **ECONOMIC IMPLICATIONS**

14. There are no economic implications.

#### **ENVIRONMENTAL IMPLICATIONS**

15. There are no environmental implications.

#### **SUSTAINABILITY ASSESSMENT**

16. There are no sustainability implications.

## **PUBLIC CONSULTATION**

17. The Regulation is drawn up along the practices in other public elections and in accordance with the provisions in the Election Ordinance. There will be no public consultation, given the technical nature of the proposal.

## **PUBLICITY**

18. A press release will be issued. A spokesman will be made available to answer media and public enquiries.

## **ENQUIRIES**

19. Any enquiry on this brief can be addressed to Ms. Monica Chen, Assistant Director of Home Affairs (tel no. 2835 1423), or Mr Edwin Lau, Assistant District Officer/Kwai Tsing (tel no. 2426 7667).

Home Affairs Department

12 February 2003

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION OF  
ELECTORS) (VILLAGE REPRESENTATIVE ELECTION)  
REGULATION**

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**ELECTORAL AFFAIRS COMMISSION (REGISTRATION OF  
ELECTORS) (VILLAGE REPRESENTATIVE ELECTION)  
REGULATION**

(Made by the Electoral Affairs Commission under section 7 of the  
Electoral Affairs Commission Ordinance (Cap. 541))

**PART 1**

**PRELIMINARY**

**1. Interpretation**

(1) In this Regulation, unless the context otherwise requires –

“application” (申請) means an application for registration in a provisional register made under section 8 or 9;

“claim” (申索) means a claim made under section 24 in accordance with section 25;

“Composite Indigenous Village” (共有代表鄉村) has the same meaning as in section 2(1) of the Election Ordinance;

“current year” (現年份) means, in relation to the compilation of –

- (a) a provisional register, the year for which the provisional register is being compiled; and
- (b) a final register, the year for which the final register is being compiled;

“division” (分冊) means, in relation to –

- (a) an Existing Villages register, a division of that register set apart under section 2(1) for a particular Existing Village; and
- (b) an Indigenous Villages and Composite Indigenous Villages register, a division of that register –
  - (i) set apart under section 3(2) for a particular Indigenous Village; or

(ii) set apart under section 3(3) for a particular Composite Indigenous Village;

“election” (選舉) has the same meaning as in section 2(1) of the Election Ordinance;

“Election Ordinance” (選舉條例) means the Village Representative Election Ordinance ( of 2003);

“ERO” (主任) means the Electoral Registration Officer within the meaning of section 2(1) of the Election Ordinance;

“Existing Village” (現有鄉村) has the same meaning as in section 2(1) of the Election Ordinance;

“Existing Villages provisional register” (現有鄉村臨時選民登記冊) means a provisional register of electors for Existing Villages required to be compiled under section 17(1)(a) of the Election Ordinance;

“Existing Villages register” (現有鄉村選民登記冊) means an Existing Villages provisional register or a final register for Existing Villages;

“final register” (正式選民登記冊) means a final register for Existing Villages and an Indigenous Villages and Composite Indigenous Villages final register;

“final register for Existing Villages” (現有鄉村正式選民登記冊) means a final register of electors for Existing Villages required to be compiled under section 17(1)(b) of the Election Ordinance;

“first final register” (首份正式選民登記冊) means the first final register for Existing Villages and the first Indigenous Villages and Composite Indigenous Villages final register compiled after the commencement of section 17(1)(b) of the Election Ordinance;

“first provisional register” (首份臨時選民登記冊) means the first Existing Villages provisional register and the first Indigenous Villages and Composite Indigenous Villages provisional register compiled after the commencement of section 17(1)(a) of the Election Ordinance;

- “identity card” (身分證) has the same meaning as in section 2(1) of the Election Ordinance;
- “identity document” (身份證明文件) has the same meaning as in section 2(1) of the Election Ordinance;
- “Indigenous Village” (原居鄉村) has the same meaning as in section 2(1) of the Election Ordinance;
- “Indigenous Villages and Composite Indigenous Villages final register” (原居鄉村暨共有代表鄉村正式選民登記冊) means a final register of electors for Indigenous Villages and Composite Indigenous Villages required to be compiled under section 17(1)(b) of the Election Ordinance;
- “Indigenous Villages and Composite Indigenous Villages provisional register” (原居鄉村暨共有代表鄉村臨時選民登記冊) means a provisional register of electors for Indigenous Villages and Composite Indigenous Villages required to be compiled under section 17(1)(a) of the Election Ordinance;
- “Indigenous Villages and Composite Indigenous Villages register” (原居鄉村暨共有代表鄉村選民登記冊) means an Indigenous Villages and Composite Indigenous Villages provisional register or an Indigenous Villages and Composite Indigenous Villages final register;
- “notice of claim” (申索通知書) means a notice of claim within the meaning of section 25 (1);
- “notice of objection” (反對通知書) means a notice of objection within the meaning of section 23(1);
- “objection” (反對) means an objection made under section 23;
- “omissions list” (遭剔除者名單) means an omissions list within the meaning of section 18(1);
- “postal address” (通信地址) does not include a post office box number unless it is coupled with a residential address;
- “preceding year” (對上一年) means, in relation to the compilation of a provisional register, the year immediately preceding the year for which the

provisional register is being compiled;

“principal residential address” (主要住址) has the same meaning as in section 2(1) of the Election Ordinance;

“provisional register” (臨時選民登記冊) means an Existing Villages provisional register and an Indigenous Villages and Composite Indigenous Villages provisional register;

“register” (選民登記冊) means a provisional register or a final register;

“registration” (登記) means, in relation to –

- (a) an Existing Villages register, the entry of the name and principal residential address of a person in that register; and
- (b) an Indigenous Villages and Composite Indigenous Villages register, the entry of the name of a person in that register,

and “registered” (登記) is to be construed accordingly;

“Revising Officer” (審裁官) has the same meaning as in section 2(1) of the Election Ordinance;

“second provisional register” (第二份臨時選民登記冊) means the provisional register that next follows the first provisional register;

“Village” (鄉村) has the same meaning as in section 2(1) of the Election Ordinance.

(2) In this Regulation, a reference to an “existing final register” (現有的正式選民登記冊) is to be construed, in relation to the compilation of –

- (a) the Existing Villages provisional register for a particular year, as a reference to the final register for Existing Villages -
  - (i) published in the preceding year; and
  - (ii) which is in effect by virtue of section 18 of the Election Ordinance at the time the provisional

- register is being compiled; and
- (b) the Indigenous Villages and Composite Indigenous Villages provisional register for a particular year, as a reference to the Indigenous Villages and Composite Indigenous Villages final register –
    - (i) published in the preceding year; and
    - (ii) which is in effect by virtue of section 18 of the Election Ordinance at the time the provisional register is being compiled.

## PART 2

### FORM OF REGISTERS

#### **2. Structure of Existing Villages register**

- (1) An Existing Villages register is to be divided so that there is a separate division for each Existing Village.
- (2) In each division, the name of the relevant Existing Village must be shown.

#### **3. Structure of Indigenous Villages and Composite Indigenous Villages register**

- (1) An Indigenous Villages and Composite Indigenous Villages register is to be divided so that there is a separate part for each of the following –
  - (a) Indigenous Villages;
  - (b) Composite Indigenous Villages.
- (2) The part for Indigenous Villages is to be divided so that there is a separate division for each Indigenous Village.
- (3) The part for Composite Indigenous Villages is to be divided so that there is a separate division for each Composite Indigenous Village.
- (4) In an Indigenous Villages and Composite Indigenous Villages register –

- (a) in each division for an Indigenous Village, the name of the relevant Village must be shown; and
- (b) in each division for a Composite Indigenous Village, the name of the relevant Village must be shown.

#### **4. Entries in Existing Villages register**

(1) In an Existing Villages register, an entry relating to a person must show -

- (a) the name; and
- (b) the principal residential address,

of the person.

(2) The principal residential address is to be recorded in the language in which it appears on the application form for registration.

(3) Subject to subsection (4), the name is to be recorded –

- (a) in Chinese, if the principal residential address appears in Chinese on the application form; and
- (b) in English, if that address appears in English on that form.

(4) If on the application form, the name appears –

- (a) in English only (despite the principal residential address being in Chinese), the name is to be recorded in English; and
- (b) in Chinese only (despite that address being in English), the name is to be recorded in Chinese.

#### **5. Entries in Indigenous Villages and Composite Indigenous Villages register**

(1) In an Indigenous Villages and Composite Indigenous Villages register, an entry relating to a person must show –

- (a) the name of the person; and
- (b) the principal residential address of the person, if it has been furnished to the ERO.

- (2) The principal residential address is to be recorded in the language in which it appears on the application form for registration.
- (3) Subject to subsection (4), the name is to be recorded –
- (a) in Chinese, if the principal residential address appears in Chinese on the application form; and
  - (b) in English, if that address appears in English on that form.
- (4) If on the application form –
- (a) the name appears in English only (despite the principal residential address being in Chinese), the name is to be recorded in English;
  - (b) the name appears in Chinese only (despite that address being in English), the name is to be recorded in Chinese; and
  - (c) the principal residential address is not furnished, the name is to be recorded -
    - (i) in Chinese, if the signature of the person on that form is in Chinese;
    - (ii) in English, if the signature of the person on that form is in English; and
    - (iii) in any other case, in Chinese or English as determined by the ERO.

## **6. How entries are to be arranged in register**

In a register, the order in which names of persons are to be arranged in a division is as follows –

- (a) the names in Chinese, arranged according to the number of strokes of the first Chinese character of the respective surnames, as written in traditional Chinese characters, are to be recorded first; and
- (b) the names in English, arranged according to the alphabetical order of the respective surnames, must follow

the entries at paragraph (a).

**7. ERO to determine residual matters as to form**

Subject to this Part, the ERO may determine the form of a register.

## PART 3

### APPLICATION FOR REGISTRATION

**8. When to apply for registration in first provisional register and applications received after deadline**

(1) A person seeking registration in the first provisional register must make an application to the ERO, in accordance with section 10, to be received by the ERO within the period beginning on 1 March 2003 and ending on 21 March 2003.

(2) An application received by the ERO after 21 March 2003, but on or before 30 July 2004, must be treated by the ERO as an application for registration in the second provisional register.

**9. When to apply for registration in provisional registers compiled after first provisional register**

(1) A person seeking registration in a provisional register must make an application to the ERO, in accordance with section 10, to be received by the ERO on or before 30 July of the current year.

(2) An application received by the ERO after 30 July in any year, but on or before 30 July in the following year, must be treated by the ERO as an application received on or before 30 July of that following year for registration in the provisional register to be compiled for that following year.

(3) This section applies only to provisional registers compiled after the first provisional register.

#### **10. How to apply for registration in provisional register**

(1) The following applies to an application for registration in a provisional register –

- (a) the application must be made on the specified form;
- (b) the specified form must be completed either in Chinese or English; and
- (c) the application must be signed by the person seeking to be registered.

(2) A person seeking registration in the Indigenous Villages and Composite Indigenous Villages provisional register must, at the time of applying to be registered, furnish to the ERO, for the purpose of determining eligibility, a copy of the person's identity document if that identity document is not an identity card.

### **PART 4**

#### **COMPILATION OF PROVISIONAL REGISTER**

#### **11. ERO to determine whether or not applicant is eligible for registration**

(1) When the ERO receives an application by a person for registration –

- (a) in the Existing Villages provisional register, the ERO must, as soon as practicable, but subject to subsections (2) and (3) and sections 12 and 13, determine either –
  - (i) that the applicant is eligible to be so registered; or
  - (ii) that the applicant is not eligible to be so registered;or
- (b) in the Indigenous Villages and Composite Indigenous Villages provisional register, the ERO must, as soon as practicable, but subject to subsections (2) and (4) and

sections 12 and 14, determine either –

- (i) that the applicant is eligible to be so registered; or
- (ii) that the applicant is not eligible to be so registered.

(2) The ERO must not consider an application further if at any stage the ERO is satisfied on reasonable grounds that the application is manifestly an abuse of the registration procedure.

(3) If, in relation to an application for registration in the Existing Villages provisional register, the ERO is satisfied on reasonable grounds that the applicant is already registered in the existing final register for Existing Villages, for the Village named by the applicant on the application, the ERO may decide not to consider the application further.

(4) If, in relation to an application for registration in the Indigenous Villages and Composite Indigenous Villages provisional register, the ERO is satisfied on reasonable grounds that the applicant is already registered in the existing Indigenous Villages and Composite Indigenous Villages final register, for the Village named by the applicant on the application, the ERO may decide not to consider the application further.

## **12. ERO may require further particulars or proof**

(1) The ERO may, before making a determination under section 11, require, in writing, the applicant to -

- (a) furnish in writing, within the specified period, either -
  - (i) further particulars relating to the application as specified by the ERO; or
  - (ii) proof that the applicant is eligible to be registered;or
- (b) furnish in writing, within the specified period, both such particulars and proof.

(2) When making a requirement, the ERO must also inform the applicant, in writing, that –

- (a) if the applicant does not furnish the particulars or proof within the specified period; or
- (b) if the ERO is not satisfied with the furnished particulars or proof,

the ERO may decide not to consider the application further.

(3) If an applicant –

- (a) does not furnish any particulars or proof required by the ERO within the specified period; or
- (b) does not furnish particulars or proof to the satisfaction of the ERO,

the ERO may decide not to consider the application further.

(4) If, in relation to an application for registration in the Indigenous Villages and Composite Indigenous Villages provisional register -

- (a) the ERO is unable to make a requirement under this section because the applicant has not furnished –
  - (i) the principal residential address;
  - (ii) a postal address in Hong Kong for the ERO to communicate with the applicant; or
  - (iii) a facsimile number or an electronic mail address for the ERO to communicate with the applicant;and
- (b) the ERO is unable for that reason to determine whether or not the applicant is eligible to be registered,

the ERO may decide not to consider the application further.

(5) In this section, “specified period” (指明期間) means a period specified by the ERO which must, in relation to –

- (a) the first provisional register, be a period ending on or before 7 April 2003; and
- (b) a provisional register compiled after the first provisional register, be a period ending on or before 20 August

following the making of the requirement.

**13. Registration in Existing Villages register**

If, in respect of an application for registration in an Existing Villages provisional register, the ERO determines, having regard to information relevant to section 15(4) of the Election Ordinance, that the applicant is eligible to be registered for the Village named by the applicant on the application, the ERO must record that person's name and principal residential address in the division for that Village.

**14. Registration in Indigenous Villages and Composite Indigenous Villages register**

If, in respect of an application for registration in an Indigenous Villages and Composite Indigenous Villages provisional register, the ERO determines, having regard to information relevant to section 15(5) of the Election Ordinance, that the applicant is eligible to be registered for the Village named by the applicant on the application, the ERO must record that person's name in the division for that Village.

**15. ERO to inform applicants of determinations and decisions**

(1) When the ERO determines that an applicant is eligible to be registered in an Existing Villages provisional register, the ERO must, as soon as practicable, inform the applicant, in writing –

- (a) of the determination; and
- (b) the name of the Existing Village for which that person is being registered.

(2) When the ERO determines that an applicant is eligible to be registered in an Indigenous Villages and Composite Indigenous Villages provisional register, the ERO must, as soon as practicable, inform the applicant, in writing -

- (a) of the determination; and

- (b) the name of –
  - (i) the Indigenous Village; or
  - (ii) the Composite Indigenous Village,  
for which that person is being registered.

(3) If the ERO determines that an applicant is not eligible to be registered in the Existing Villages provisional register, the ERO must, as soon as practicable, inform the applicant, in writing and by registered post, of the determination.

(4) If the ERO determines that an applicant is not eligible to be registered in the Indigenous Villages and Composite Indigenous Villages provisional register, the ERO must, as soon as practicable, inform the applicant, in writing and by registered post, of the determination.

(5) If the ERO makes a decision under section 12(3) not to consider an application further, the ERO must, as soon as practicable, inform the applicant, in writing and by registered post, of the decision.

#### **16. ERO to have power to require information to prepare registers**

(1) For the purpose of preparing a register, the ERO may require a public authority to furnish such information as the ERO may specify.

(2) Without limiting subsection (1), the ERO may require a public authority to furnish -

- (a) the name, identity document number, sex and principal residential address of a person who appears to the ERO to be eligible under section 15 of the Election Ordinance to be registered as an elector for an Existing Village; or
- (b) the name, identity document number, sex and information relating to indigenous inhabitant status of a person who appears to the ERO to be eligible under that section to be registered as an elector for an Indigenous Village or a Composite Indigenous Village.

(3) When the ERO requires information from a public authority, that authority must furnish the required information to the ERO within 14 days of making the requirement.

(4) If the ERO thinks fit, the ERO may, in a particular case, extend the period referred to in subsection (3). If the period is extended, the public authority must furnish the information within the extended period.

(5) For the avoidance of doubt, it is stated that the ERO may make a requirement for information under this section only for the purpose of preparing a register.

(6) A person may use information obtained under this section only for the purpose of preparing a register or in connection with an investigation or proceedings relating to an offence under this Regulation.

(7) In this section –  
“prepare” (擬備) means compile, revise, correct or publish;  
“public authority” (公共主管當局) includes a public officer or a member of a public body.

#### **17. ERO may make inquiries about persons registered in existing final register**

(1) When compiling a provisional register, the ERO may, in accordance with this section, make inquiries as the ERO considers fit, to ascertain the following –

- (a) whether a person whose name and principal residential address are recorded in the existing final register for Existing Villages is dead;
- (b) whether a person whose name and principal residential address are recorded in the existing final register for Existing Villages is not entitled to be registered because of section 15(3) of the Election Ordinance;
- (c) whether the address recorded against a person’s name in the existing final register for Existing Villages is no longer

- the person's principal residential address;
- (d) whether a person whose name and principal residential address are recorded in the existing final register for Existing Villages is not eligible to be registered because of section 15(4) of the Election Ordinance;
  - (e) whether a person whose name and principal residential address are recorded in the existing final register for Existing Villages is disqualified from being registered because of section 16 of the Election Ordinance;
  - (f) whether a person whose name is recorded in the existing Indigenous Villages and Composite Indigenous Villages final register is dead;
  - (g) whether a person whose name is recorded in the existing Indigenous Villages and Composite Indigenous Villages final register is not eligible to be registered because of section 15(5) of the Election Ordinance;
  - (h) whether a person whose name is recorded in the existing Indigenous Villages and Composite Indigenous Villages final register is disqualified from being registered because of section 16 of the Election Ordinance.
- (2) An inquiry for the purpose of compiling –
- (a) the Existing Villages provisional register, must be made in writing and sent by registered post, addressed to the person from whom the inquiry is made; and
  - (b) the Indigenous Villages and Composite Indigenous Villages provisional register, must be made in writing and sent by registered post, addressed to the person from whom the inquiry is made.
- (3) The ERO may make an inquiry from a person whose name is recorded in a final register, only on or before 14 July of the current year.

(4) The ERO may make an inquiry from any other source that the ERO considers appropriate at any time.

(5) For the avoidance of doubt, it is stated that the ERO may make an inquiry under this section only for the purpose of preparing a register.

(6) A person may use information obtained under this section only for the purpose of preparing a register or in connection with an investigation or proceedings relating to an offence under this Regulation.

(7) In this section, “prepare” (擬備) means compile, revise, correct or publish.

### **18. ERO to prepare omissions list**

(1) In compiling a provisional register, the ERO must, for the purposes of section 17(4)(a) and (b) of the Election Ordinance, prepare an omissions list (“omissions list”).

(2) The ERO must enter on the omissions list the name and other relevant particulars of a person registered in the existing final register for a Village (“relevant Village”) regarding whom the ERO has made an inquiry under section 17 on or before 14 July of the current year, if the result of the inquiry was as follows –

- (a) the information asked for was not received by the ERO on or before 30 July of the current year;
- (b) the person, in response to the inquiry, has informed the ERO that he or she does not wish to be registered;
- (c) the ERO is satisfied on reasonable grounds (based on information received in response to the inquiry or otherwise) that the person is dead;
- (d) the ERO is satisfied on reasonable grounds and despite any information to the contrary received by the ERO, that the person is dead;
- (e) the ERO is satisfied on reasonable grounds (based on

information received in response to the inquiry or otherwise) that the person is disqualified from being registered or not eligible to be registered; or

- (f) the ERO is satisfied on reasonable grounds and despite any information to the contrary received by the ERO, that the person is disqualified from being registered or not eligible to be registered.

(3) The ERO must enter on the omissions list the name and other relevant particulars of any person whose name is recorded in the existing final register, if the Registrar of Births and Deaths has informed the ERO, on or before 30 July of the current year, that the person is dead.

(4) In compiling an Existing Villages provisional register -

- (a) if the ERO has reason to believe -
  - (i) from information received in response to a requirement or inquiry under section 16 or 17 or otherwise; or
  - (ii) despite any information to the contrary received by the ERO,

that the address recorded against a person's name in the existing final register for Existing Villages is no longer the person's principal residential address; and
- (b) if the principal residential address of that person is not known to the ERO at the time the omissions list is prepared,

the ERO must enter on the omissions list the name and other relevant particulars of that person.

(5) The ERO must, in a manner that the ERO considers appropriate, show on the omissions list that a person whose name and other relevant particulars are entered on the omissions list is a person whose name the ERO proposes to omit from the next final register for the relevant Village.

(6) The ERO may enter on the omissions list the name and other relevant particulars of a person under subsection (2)(a) only if the inquiry was made from the person who is the subject of the inquiry and the ERO has informed the person –

- (a) in writing and by registered post; and
- (b) at the address recorded against the person’s name in the existing final register,

that the ERO proposes to omit that person’s name from the next final register if the relevant information is not received by the ERO on or before 30 July of the current year.

(7) The ERO may enter on the omissions list the name and other relevant particulars of a person under subsection (2)(b) only if the inquiry was made from the person who is the subject of the inquiry.

(8) In this section, “other relevant particulars” (其他有關詳情) means, in relation to the compilation of –

- (a) the Existing Villages provisional register, the principal residential address; and
- (b) the Indigenous Villages and Composite Indigenous Villages provisional register, the principal residential address, if it has been furnished to the ERO.

#### **19. ERO to publish notice that omissions list is available for public inspection**

(1) As soon as practicable after the omissions list is prepared, the ERO must publish a notice which complies with section 17(5) of the Election Ordinance –

- (a) in the Gazette; and
- (b) in at least one Chinese language daily newspaper and one English language daily newspaper in circulation in Hong Kong.

(2) The period for which the omissions list is to be available for public

inspection during ordinary business hours at the ERO's office, for the purposes of section 17(6) of the Election Ordinance, is the period beginning on the date the notice is published in the Gazette and ending on 23 September in the same year.

(3) The ERO may make available for public inspection, a copy of the omissions list or a specific part of that list ("additional copy"), at a place additional to a place specified in a notice published under this section, if the ERO considers it appropriate to do so. The ERO may determine the period during which and the time at which an additional copy may be inspected by the public.

(4) The ERO may require a person who wishes to inspect a copy of the omissions list under subsection (2) or an additional copy under subsection (3) to produce to the ERO that person's identity document and to complete a form supplied by the ERO.

**20. ERO to correct entries in existing final register when compiling next provisional register**

(1) A person whose personal particulars are recorded in the existing final register may make a written request of the ERO to alter the entry relating to him or her.

(2) If the ERO –

- (a) receives a request for alteration, within the relevant period specified in subsection (7); and
- (b) is satisfied that the entry is incorrect and should be corrected,

the ERO must, when compiling the next provisional register, record in the appropriate place in the register, the personal particulars of the person corrected as appropriate.

(3) If it appears to the ERO, from information obtained within the relevant period specified in subsection (7), as a result of an inquiry or otherwise,

that a personal particular in an entry in the existing final register is incorrect, the ERO may, when compiling the next provisional register, record the corrected personal particulars in the appropriate place in the register.

(4) If the ERO makes a correction under subsection (2) or (3), the ERO must inform the person concerned, in writing, of the correction.

(5) If the ERO decides not to make a requested alteration, the ERO must notify the person concerned, in writing and by registered post, of the decision.

(6) When compiling an Indigenous Villages and Composite Indigenous Villages provisional register, the ERO may at any time correct or change the principal residential address contained in an entry or add to or remove from an entry the principal residential address at the request of the person to whom the entry relates and in accordance with information furnished by that person.

(7) For the purposes of subsections (2) and (3), the relevant period is, in relation to the compilation of –

- (a) the second provisional register, after 5 May 2003, but on or before 30 July 2004; and
- (b) a subsequent provisional register, after 23 September of the preceding year, but on or before 30 July of the current year.

(8) In this section, “personal particulars” (個人詳情) means, in relation to the compilation of –

- (a) the Existing Villages provisional register, the name and principal residential address of a person; and
- (b) the Indigenous Villages and Composite Indigenous Villages provisional register, the name of a person.

## **21. What is to be contained in provisional register**

(1) The first provisional register is to consist of the personal

particulars of persons whom the ERO has determined to be eligible to be registered in that provisional register, on applications received by the ERO during the period beginning on 1 March 2003 and ending on 21 March 2003.

(2) The second provisional register and any subsequent provisional register are to consist of the following –

- (a) subject to sections 18, 20 and 29(3) and (4), the personal particulars recorded in the existing final register;
- (b) if the name or principal residential address is corrected pursuant to section 25(5)(a), the relevant particulars as corrected; and
- (c) the personal particulars of persons whom the ERO has determined to be eligible to be registered on applications received by the ERO –
  - (i) in the case of the second provisional register, during the period beginning on 22 March 2003 and ending on 30 July 2004; and
  - (ii) in the case of a subsequent provisional register, during the period beginning on 31 July of the preceding year and ending on 30 July of the current year.

(3) In this section, “personal particulars” (個人詳情) means, in relation to –

- (a) the Existing Villages provisional register, the name and principal residential address of a person; and
- (b) the Indigenous Villages and Composite Indigenous Villages provisional register, the name of the person, and also the principal residential address of the person, if it has been furnished to the ERO.

## **22. ERO to publish notice that provisional register is available for public inspection**

- (1) For the purposes of section 17(1)(a) of the Election Ordinance, the ERO must publish a notice which complies with subsections (2) and (3) –
  - (a) in the Gazette; and
  - (b) in at least one Chinese language daily newspaper and one English language daily newspaper in circulation in Hong Kong.
- (2) The notice must be published for –
  - (a) the first provisional register, not later than 22 April 2003; and
  - (b) a subsequent provisional register, every year, not later than 10 September.
- (3) The notice must specify –
  - (a) that a copy of the provisional register is available for public inspection during ordinary business hours during the period referred to in subsection (4); and
  - (b) the place or places at which a copy of the provisional register may be so inspected by the public.
- (4) The ERO must make available for public inspection, a copy of the provisional register –
  - (a) for a period of 14 days beginning on the date the relevant notice under subsection (1) is published in the Gazette;
  - (b) during ordinary business hours; and
  - (c) at the place or places specified in the notice.
- (5) The ERO may make available for public inspection, a copy of a specific part or division of the provisional register (“additional copy”), at a place additional to a place specified in a notice published under this section, if the ERO considers it appropriate to do so. The ERO may determine the period during which and the time at which an additional copy may be inspected by the public.
- (6) The ERO may require a person who wishes to inspect a copy of a

provisional register under subsection (4) or an additional copy under subsection (5) to produce to the ERO that person's identity document and to complete a form supplied by the ERO.

## PART 5

### NOTICE OF OBJECTION, NOTICE OF CLAIM AND CORRECTION OF PROVISIONAL REGISTER

#### **23. Objection regarding registered person in provisional register**

(1) A person who considers that a registered person is not eligible to be registered –

- (a) as an elector; or
- (b) in the division of an Existing Villages register in which that person's name is recorded; or
- (c) in the part or division of an Indigenous Villages and Composite Indigenous Villages register in which that person's name is recorded,

may make an objection to the registration of that person in the final register by lodging a notice ("notice of objection").

(2) A notice of objection must be –

- (a) in the specified form;
- (b) addressed to the ERO; and
- (c) delivered by the objector in person at the ERO's office.

(3) The notice of objection must be delivered, if the objection relates to an entry –

- (a) in the first provisional register, on or before 5 May 2003; or
- (b) in a subsequent provisional register, on or before 23 September of the current year .

(4) The ERO may require a person who lodges a notice of objection to

identify himself or herself by such means as the ERO considers appropriate.

(5) In this section –

“elector” (選民) means a person who is entitled to vote at –

- (a) an election to elect an Indigenous Inhabitant Representative; or
- (b) an election to elect a Resident Representative;

“Indigenous Inhabitant Representative” (原居民代表) has the same meaning as in section 2(1) of the Election Ordinance;

“registered person” (已登記的人) means a person whose name is recorded in a provisional register;

“Resident Representative” (居民代表) has the same meaning as in section 2(1) of the Election Ordinance.

#### **24. Who may make a claim**

(1) A person –

- (a) who has been determined by the ERO under section 11(1)(a)(ii) or (b)(ii) to be not eligible to be registered;
- (b) whose application for registration was not considered further by the ERO under section 12(3) or (4); or
- (c) who –
  - (i) has made an application for registration; and
  - (ii) is not a person who is described in paragraph (a) or (b), but whose name is not recorded in the relevant provisional register,

may make a claim that he or she is entitled to be registered as an elector.

(2) A person whose name is included in an omissions list may make a claim that he or she is entitled to be registered in the relevant final register.

(3) A person (other than a person referred to in subsection (2)) whose name is recorded in a part or division of a provisional register may make a claim that he or she is entitled to be registered in a different part or division.

(4) A person whose request under section 20(1) to alter a particular in an entry relating to that person has been refused by the ERO may make a claim to have that particular altered as requested.

(5) A person whose particulars in an entry have been altered by the ERO under section 20(3) may make a claim objecting to that alteration.

## **25. How to lodge notice of claim**

(1) A claim must be –

- (a) made by a notice (“notice of claim”) in the specified form; and
- (b) addressed to the ERO.

(2) A notice of claim must be lodged in accordance with subsection (3).

(3) If the principal residential address of the person who makes the claim (“claimant”) –

- (a) is in Hong Kong, the claimant must deliver the notice of claim in person at the ERO’s office; and
- (b) is not in Hong Kong, the claimant may –
  - (i) deliver the notice of claim in person at the ERO’s office;
  - (ii) send the notice of claim to the ERO’s office by post or by facsimile transmission;
  - (iii) send the notice of claim to the ERO’s office as an electronic record within the meaning of section 2(1) of the Electronic Transactions Ordinance (Cap. 553) authenticated by a digital signature within the meaning of that section; or
  - (iv) have the notice of claim delivered at the ERO’s office by a person authorized in writing by the claimant for the purpose.

(4) The notice of claim must be lodged, if the claim relates to

registration –

- (a) in the first provisional register, on or before 5 May 2003;  
or
  - (b) in a subsequent provisional register, on or before 23 September of the current year .
- (5) If the ERO receives a claim after the relevant date referred to in subsection (4), the ERO may, having regard to the nature of the claim, treat it –
- (a) as a request for alteration of registered particulars relating to that person for the purpose of compiling the next provisional register; or
  - (b) as a claim, for the purpose of compiling the final register for the year following that in which the claim is lodged.
- (6) If the ERO treats a claim in the manner described in –
- (a) subsection (5)(a), section 20(2), (4), (5) and (6) applies to the claim; or
  - (b) subsection (5)(b), the claim must be referred to the Revising Officer.
- (7) The ERO may require –
- (a) a claimant; or
  - (b) a person authorized by a claimant,

who delivers a notice of claim to identify himself or herself by such means as the ERO considers appropriate.

(8) If a person, subsequent to making a claim after the relevant date referred to in subsection (4), makes one or more further claims or applications, the ERO is required to consider only the latest claim or application (as the case may be).

## **26. ERO to deliver copies of notices of claim and notices of objection to Revising Officer**

(1) Every year the ERO must deliver to the Revising Officer, in accordance with this section, a copy of each notice of objection or notice of

claim received by the ERO.

(2) The copies of those notices may be delivered in one or more batches as the ERO considers appropriate. But, all notices received in respect of a provisional register must be delivered within 3 working days after the last date for lodging a notice of objection or notice of claim in respect of that provisional register.

**27. ERO to correct entries in provisional register when compiling final register**

(1) A person whose name is or is to be recorded in a provisional register may make a written request of the ERO to make an alteration in relation to –

- (a) the personal particulars recorded or to be recorded for him or her; or
- (b) the part or division in which they are or are to be recorded.

(2) If the ERO –

- (a) receives a request for alteration, within the relevant period specified in subsection (10)(a); and
- (b) is satisfied that an alteration should be made,

the ERO must, when compiling the next final register, record in the appropriate place in the register, the personal particulars of the person corrected as appropriate.

(3) If it appears to the ERO, from information obtained on or before the relevant date specified in subsection (10)(b), as a result of an inquiry or otherwise, that a personal particular in an entry in a provisional register is incorrect, the ERO may, when compiling the next final register, record the corrected personal particulars in the appropriate place in the register.

(4) If the ERO makes a correction under subsection (2) or (3), the ERO must inform the person concerned, in writing, of the correction.

(5) If the ERO is satisfied that a requested alteration should not be made and decides not to alter the entry, the ERO must notify the person

concerned, in writing and by registered post, of the decision.

(6) Where a request for alteration is received by the ERO after the relevant date specified in subsection (10)(b), the ERO may consider it only for the purpose of compiling the next provisional register.

(7) Section 20(2) and (4) applies to a request considered in accordance with subsection (6) as if the request was received by the ERO on or before 30 July in the year following the year in which the request was made in relation to the existing final register for that following year.

(8) If the ERO decides not to make an alteration that is requested within the relevant period specified in subsection (10)(a), the ERO must refer the matter to the Revising Officer. The reference must be treated as a claim made by the person who requested the alteration.

(9) When compiling an Indigenous Villages and Composite Indigenous Villages final register, the ERO may at any time correct or change the principal residential address contained in an entry or add to or remove from an entry the principal residential address at the request of the person to whom the entry relates and in accordance with information furnished by that person.

(10) For the purposes of –

- (a) subsections (2) and (8), the relevant period is, in relation to the compilation of –
  - (i) the first final register, that beginning on 22 March 2003 and ending on 5 May 2003; and
  - (ii) a subsequent final register, that beginning on 31 July of the current year and ending on 23 September of the same year; and
- (b) subsections (3) and (6), the relevant date is, in relation to the compilation of –
  - (i) the first final register, 5 May 2003; and
  - (ii) a subsequent final register, 23 September of the current year.

(11) In this section, “personal particulars” (個人詳情) means, in relation to the compilation of –

- (a) the final register for Existing Villages, the name and principal residential address of a person; and
- (b) the Indigenous Villages and Composite Indigenous Villages final register, the name of a person.

**28. ERO to correct entries in provisional register with approval of Revising Officer**

(1) If the ERO is satisfied that –

- (a) an entry in a provisional register is incorrect;
- (b) an additional entry ought to be made in a final register; or
- (c) a person whose name is recorded in a provisional register is no longer eligible to be registered in that register or in the part or division in which that person is registered,

the ERO may, when compiling the final register, correct the entry, make an additional entry or remove the entry as may be appropriate.

(2) The ERO must not take any action under subsection (1) unless the ERO –

- (a) has obtained the approval of the Revising Officer for the proposed correction, addition or removal, in relation to the compilation of -
  - (i) the first final register, on or before 19 May 2003; and
  - (ii) a subsequent final register, on or before 5 October of the current year; and
- (b) has, after obtaining that approval, sent a notice by registered post to the person concerned, informing the person of the proposed correction, addition or removal.

(3) For the avoidance of doubt, it is stated that the requirement to

obtain the approval of the Revising Officer does not apply to –

- (a) a correction by the ERO under section 17(2) of the Election Ordinance; or
- (b) the addition or correction of the principal residential address of a person when compiling the Indigenous Villages and Composite Indigenous Villages final register.

## PART 6

### FINAL REGISTER

#### **29. What is to be contained in final register**

(1) Subject to subsections (2) and (3), a final register is to consist of the following –

- (a) the personal particulars contained in the immediately preceding provisional register as corrected, where appropriate, under sections 27 and 28;
- (b) the personal particulars of a person whom the Revising Officer has ruled to be entitled to be registered on a claim made by that person (including a claim under section 25(5)(b)); and
- (c) entries, if any, made under section 28(1)(b).

(2) The ERO must not include in a final register, the personal particulars of the following persons –

- (a) a person, in respect of whom an objection has been allowed by the Revising Officer;
- (b) a person referred to in section 24(1) or (2) whose claim has not been allowed by the Revising Officer;
- (c) a person, whose name has been included in an omissions list, who –
  - (i) has not made a claim in respect of the omission;

or

- (ii) has made a claim which has not been allowed by the Revising Officer.

(3) If, on an objection or a claim made by a person, the Revising Officer has made a ruling as to the part or division of the final register in which the person is to be registered, the ERO must ensure that the person's personal particulars are recorded in that part or division.

(4) If, on an objection or a claim made by a person, the Revising Officer has made a ruling, in relation to –

- (a) the Existing Villages register, on the name or principal residential address of a person; or
- (b) the Indigenous Villages and Composite Indigenous Villages register, on the name of a person,

the ERO must ensure that those particulars are corrected and recorded in accordance with the ruling.

(5) In relation to –

- (a) the first final register, only decisions made by the Revising Officer after 22 April 2003, but on or before 19 May 2003; and
- (b) a subsequent final register, only decisions made by the Revising Officer after 10 September of the current year, but on or before 5 October of the same year,

are to be taken into account for the purposes of subsection (1)(b), (2), (3) or (4).

(6) In this section, “personal particulars” (個人詳情) means, in relation to -

- (a) the Existing Villages provisional register, the name and principal residential address of a person; and
- (b) the Indigenous Villages and Composite Indigenous Villages provisional register, the name of the person, and also the principal residential address of the person, if it has

been furnished to the ERO.

**30. ERO to publish notice of final register and to make final register available for public inspection**

(1) For the purposes of section 17(1)(b) of the Election Ordinance, the ERO must publish a notice which complies with subsections (2) and (3) –

- (a) in the Gazette; and
- (b) in at least one Chinese language daily newspaper and one English language daily newspaper in circulation in Hong Kong.

(2) The notice must be published for –

- (a) the first final register, not later than 3 June 2003; and
- (b) a subsequent final register, every year, not later than 20 October.

(3) The notice must specify –

- (a) that a copy of the final register is available for public inspection during ordinary business hours; and
- (b) the place or places at which a copy of the final register may be so inspected by the public.

(4) The ERO must make available for public inspection, a copy of the final register –

- (a) during ordinary business hours; and
- (b) at the place or places specified in the notice.

(5) The ERO may make available for public inspection, a copy of a specific part or division of the final register (“additional copy”), at a place additional to a place specified in a notice published under this section, if the ERO considers it appropriate to do so. The ERO may determine the period during which and the time at which an additional copy may be inspected by the public.

(6) The ERO may require a person who wishes to inspect a copy of the

final register under subsection (4) or an additional copy under subsection (5) to produce to the ERO that person's identity document and to complete a form supplied by the ERO.

(7) Publication of a notice in the Gazette under subsection (1) is to be treated as the publication of the final register for the purposes of sections 17(1)(b) and 18 of the Election Ordinance.

## PART 7

### MISCELLANEOUS

#### **31. ERO may make extracts of register available for purposes of election**

(1) The ERO may, at any time after the publication of a register, make available an extract from the published register, for any purpose related to an election, to any person that the ERO considers appropriate.

(2) The ERO may, before making an extract available, arrange the entries in a form that the ERO considers appropriate for the purposes of this section.

(3) When making an extract available, the ERO must specify the particular election for which it may be used.

(4) A person to whom an extract is made available, must not, in relation to that extract, do any act specified in section 32(3)(a), (c) or (d) for a purpose other than a purpose related to the election specified under subsection (3).

(5) In an extract made available under this section, the ERO may include (by way of a note or other means the ERO thinks fit) information as to whether any person whose particulars are included in that extract is entitled to vote at an election.

#### **32. Offences and penalties**

(1) A person who in any –

- (a) application;
- (b) response to a requirement for particulars or proof made under section 12;
- (c) reply to an inquiry made under section 17;
- (d) request made under section 20 or 27;
- (e) notice of objection; or
- (f) notice of claim,

makes any statement which the person knows to be false in a material particular or recklessly makes any statement which is incorrect in a material particular or knowingly omits any material particular from such an application, response, reply, request or notice commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months.

(2) A person who directly or indirectly by himself or herself or any other person on his or her behalf conspires with, incites, compels, induces, coerces, intimidates or persuades any other person –

- (a) to make a false statement on an application, response, reply, request or notice referred to in subsection (1); or
- (b) to provide information which the first-mentioned person knows to be incorrect in a material particular, on an application, response, reply, request or notice referred to in paragraph (a),

commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months.

(3) A person who –

- (a) reproduces or permits another person to reproduce in any form any particular contained in an entry in a register or in an extract from a register;
- (b) uses or permits another person to use any information relating to a person obtained for the purpose of compiling a register;

- (c) uses or permits another person to use any information relating to a person contained in an entry in a register or in an extract from a register; or
- (d) imparts to any other person any information referred to in paragraph (a), (b) or (c),

for a purpose other than a purpose related to an election, commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months.

(4) A person who fails to furnish information in response to a requirement under section 16 within the period the information is required to be furnished, commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months.

(5) Despite anything to the contrary in subsection (3), a person who contravenes section 31(4) commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months.

(6) It is a defence in any prosecution under subsection (4) for the person charged to prove that he or she did not have the required information or could not have reasonably ascertained that information or could not have otherwise reasonably provided that information.

(7) An offence under subsection (1) or (2) is to be an offence prescribed for the purposes of sections 14, 16, 23 and 24 of the Election Ordinance.

(8) An offence under subsection (3) or (5) is to be an offence prescribed for the purposes of sections 23 and 24 of the Election Ordinance.

### **33. ERO to make specified forms available**

(1) The ERO must make available the specified forms referred to in sections 10, 23 and 25 during ordinary business hours at the ERO's office.

(2) The ERO may make available those forms at any other place the ERO considers appropriate.

(3) The specified forms referred to in subsection (1) must be made available free of charge.

### **34. ERO's responsibility regarding communications**

(1) A communication that the ERO is required by this Regulation to send by registered post to a person, in compiling an Existing Villages register, must be sent by registered post to the last address furnished by the person as his or her principal residential address.

(2) Subject to subsection (4), a communication that the ERO is required by this Regulation to send by registered post to a person, in compiling an Indigenous Villages and Composite Indigenous Villages register, must be sent by registered post –

- (a) to the last address furnished by the person as his or her principal residential address; or
- (b) if the person has not furnished a principal residential address, to that person's postal address in Hong Kong.

(3) If, under this Regulation, any communication is sent to a person by the ERO by registered post, that person is deemed to have received it unless it is returned through the post undelivered to the addressee.

(4) If a person seeking registration or registered in the Indigenous Villages and Composite Indigenous Villages register does not furnish to the ERO the principal residential address or a postal address in Hong Kong, the ERO is not required to send to that person any communication which the ERO, if not for this subsection, would have been required to send to that person by registered post. But, the ERO may send that communication to that person by any other means that the person has made available to the ERO, if in the circumstances of the case, the ERO considers it appropriate to do so.

(5) Without prejudice to section 12(4), if a person seeking registration or registered in the Indigenous Villages and Composite Indigenous Villages register, does not furnish to the ERO –

- (a) the principal residential address;
- (b) a postal address in Hong Kong for the ERO to communicate with that person; or

- (c) a facsimile number or an electronic mail address for the purpose of receiving communications,

the ERO is not required to send to that person any communication that is required to be in writing (but not required to be sent by registered post) which the ERO, if not for this subsection, would have been required to send to that person.

(6) In this section, “communication” (通訊) includes a decision, determination, inquiry, notice or notification.

Made this                      day of                      2003.

Chairman,  
Electoral Affairs Commission

Member,  
Electoral Affairs Commission

Member,  
Electoral Affairs Commission

## **Explanatory Note**

The object of this Regulation is to provide the procedure for registering electors for elections held under the Village Representative Election Ordinance ( of 2003) (“Election Ordinance”).

2. Part 1, section 1 defines the terms used for interpreting the Regulation.
  
3. Part 2 deals with the form of the registers to be compiled for the purposes of registering electors for electing Resident Representatives and Indigenous Inhabitant Representatives under the Election Ordinance.
  - There are to be 2 registers, one for Existing Villages and one for Indigenous Villages and Composite Indigenous Villages.
  - The Existing Villages register is to contain a separate division for each Existing Village. In this register, an elector is registered by recording the name and principal residential address.
  - The Indigenous Villages and Composite Indigenous Villages register is to be divided into 2 parts, one for Indigenous Villages, the other for Composite Indigenous Villages. Each part is in turn divided so that there is a separate division for each Village. In this register, an elector is registered by recording the name.
  - The entries in both registers are to be in Chinese or English, in the case of an Existing Villages register, depending on the language in which the address, and in some cases, the name, appeared on the application form for registration. In the case of an Indigenous Villages and Composite Indigenous Villages register, in Chinese or English depending on the language in which the address, and in some cases, the name or signature appeared on the application form for registration. If those criteria do not apply, the ERO may determine whether to make the entry in Chinese or English.

4. Part 3 sets out when and how to apply for registration. The application must be made to the Electoral Registration Officer (“ERO”) on the specified form. Section 8 specifies the deadline for applying for registration in the first provisional register and section 9 specifies application deadlines for subsequent provisional registers. An applicant for registration in the Indigenous Villages and Composite Indigenous Villages provisional register must also furnish to the ERO a copy of the identity document, unless it is an identity card as defined in the Election Ordinance.

5. Part 4 sets out how the ERO is to compile the provisional register.

- Under section 11 the ERO can determine whether an applicant is eligible to be registered as an elector. It also sets out the circumstances in which the ERO may reject an application.
- The ERO is given power to require more particulars and proof, in respect of an application and to specify a time limit for supplying the particulars and proof. In the case of an applicant for registration in the Indigenous Villages and Composite Indigenous Villages provisional register, if the applicant has not furnished a means of communicating with him or her and the ERO is unable to require information necessary for determining eligibility, the ERO may decide not to proceed with the application.
- The ERO must record an applicant’s personal particulars in the relevant register if the ERO is satisfied that the person is eligible to be registered. The ERO must inform the applicant of the ERO’s determination in respect of the application.
- In preparing a provisional register, the ERO can also require information from a public authority. The information can only be used for preparing a register.
- The ERO may make inquiries regarding the persons registered in the final register in force at the time the provisional register is being compiled.

- In compiling a provisional register, the ERO must also compile an omissions list to give effect to section 17(4)(a) and (b) of the Election Ordinance. The ERO must enter on the omissions list, the particulars of persons whom the ERO proposes to omit from the next final register. The ERO must do so only after making the proper inquiries. The ERO must then publish the omissions list by giving notice in the Gazette and the newspapers that it is available for inspection and then make it available for public inspection.
- A person whose particulars are recorded in a final register in force may request the ERO (in writing) to alter the entry and give information as to how it should be altered. If the ERO is satisfied that the entry is incorrect, when compiling the next provisional register, the ERO must enter in it the corrected particulars. Even without a request having been made, if the ERO is satisfied on other information that an entry should be corrected, the ERO must, when compiling the next provisional register, enter the corrected particulars. The ERO must inform the persons concerned of the corrections.
- When the provisional register is compiled, the ERO must publish it by giving notice in the Gazette and the newspapers that it is available for inspection and then make it available for public inspection.

6. Part 5 contains provisions for making objections and claims in respect of entries in the provisional register and correcting the provisional register when compiling the final register.

- A person may lodge a notice of objection with the ERO, objecting to the registration of a person (who is registered in the provisional register) in the final register. Section 23(3) sets out the time limit for making an objection.
- A person whose application for registration has been refused or not considered or who has not been registered in the provisional register despite an application having been made, may make a claim. A person whose name is included in an omissions list may also make a claim. A person may make

a claim that his or her particulars are recorded in the wrong part or division of a provisional register. A person whose request to alter the particulars has been refused by the ERO or whose particulars are altered on the initiative of the ERO, may also make a claim. The claim must be made by lodging a notice of claim with the ERO in the manner set out in section 25(3). Section 25(4) sets out the time limit for making a claim.

- The ERO must deliver the copies of notices of objection and notices of claim to the Revising Officer within 3 working days after the closing date for lodging those notices.
- In compiling a final register, the ERO may correct entries in a provisional register, if a request is made of the ERO by the person to whom the entry relates, and the ERO is satisfied that the correction should be made. If the ERO decides not to make a requested alteration, the ERO must refer the matter to the Revising Officer in which case it will be treated as a claim. Even without a request having been made, if the ERO is satisfied on other information that an entry should be corrected, the ERO may enter the corrected particulars in the next final register.
- In compiling a final register, the ERO may, with the approval of the Revising Officer, correct entries, make additional entries or remove entries relating to persons who are no longer eligible for registration in the provisional register.

7. Part 6 sets out what should be contained in a final register and provides for the publication of the final register. The final register should contain what is carried over from the immediately preceding provisional register, as corrected or altered under Part 5, and subject to any changes made on objections and claims or with the approval of the Revising Officer. When the final register is compiled, the ERO must publish it by giving notice in the Gazette and the newspapers that it is available for inspection and then make it available for public inspection.

8. Part 7 contains miscellaneous matters.

- The ERO is given power to make extracts of a register available for purposes connected with an election.
- Section 32 makes it an offence, punishable with a fine and imprisonment, for a person to make a false or incorrect statement, knowingly or recklessly, or to conspire to do so, or to incite, compel, induce, coerce, intimidate or persuade any other person to do so, in any application, response, reply, request or notice made for the purposes of the Regulation.
- Section 33 requires the ERO to make specified forms available for the purposes of the Regulation. The form for applying for registration and the notice of objection and notice of claim are to be available free of charge.
- Section 34 provides that a communication sent by registered post is deemed to be delivered to the addressee except when it is returned undelivered. It also provides that communications relating to the compilation of a register must be sent to the principal residential address furnished to the ERO. In relation to the compilation of the Indigenous Villages and Composite Indigenous Villages register, the ERO is not required to perform, in respect of a person, functions that involve sending a communication to a person, if the person has not furnished the principal residential address or a postal address in Hong Kong, facsimile number or an electronic mail address to the ERO.

**BACKGROUND INFORMATION ON  
VILLAGE REPRESENTATIVE ELECTIONS**

**INTRODUCTION**

General Background

A system of village representation has evolved in the New Territories over the decades. The arrangements for electing Village Representatives have also developed over time. Village Representative elections have been held for some 700 villages, including both indigenous and non-indigenous villages. However, the vast majority of these villages are indigenous villages.

2. Since August 1994, Village Representative elections have been held every four years in accordance with a set of election rules known as the Model Rules for the Conduct of Village Representative Elections, or the "Model Rules". A person elected as a Village Representative has to be approved by the Secretary for Home Affairs.

3. Mr. Chan Wah of Po Toi O in Sai Kung and Mr. Tse Kwan Sang of Shek Wu Tong in Yuen Long challenged the validity of the electoral arrangements for the office of village representatives of these two villages by judicial review proceedings. Both Mr. Chan and Mr. Tse were born and brought up in these two villages and have lived there all their lives. Furthermore, Mr. Chan is married to an indigenous inhabitant. Under the electoral arrangements made in 1999 for the office of village representatives of these two villages, Mr. Chan was excluded as a voter and Mr. Tse was excluded from standing as a candidate on the ground they are not indigenous inhabitants (i.e., persons who can establish patrilineal descent from an ancestor who was a resident of a village that was in existence in the New Territories in 1898).

4. The 1999 electoral arrangements used in the Shek Wu Tong were ruled by the Court of Final Appeal to be inconsistent with Article 21(a) of the Hong Kong Bill of Rights Ordinance, and the arrangements used in Po Toi O were ruled to be inconsistent with both Article 21(a) of the Hong Kong Bill of Rights Ordinance and section 35(3) of the Sex Discrimination Ordinance. The 1999 arrangements were based on the Model Rules. Many other indigenous villages used similar

arrangements.

5. The Court of Final Appeal also ruled that the Secretary for Home Affairs, in deciding whether to approve an elected Village Representative, has to consider whether the person elected to represent a village was elected in accordance with electoral arrangements which are consistent with the Bill of Rights and the Sex Discrimination Ordinance.

6. In view of the ruling of the Court of Final Appeal, there have been calls on the Government to bring Village Representative elections under a statutory framework.

### Review

7. The Government recognizes the need to reform Village Representative elections to ensure that they are conducted in an open, fair and honest manner and that they are consistent with the Bill of Rights and the Sex Discrimination Ordinance.

8. A working group was set up in April 1999 to review the procedure and arrangements for rural elections. An interim report was

made in October 1999. The report recommended that the conduct of Village Representative elections should be brought under statutory control.

9. Having consulted the Heung Yee Kuk and representatives of the Rural Committees, the Home Affairs Bureau and the Home Affairs Department have completed a further review on rural elections. The Village Representative Election Ordinance is enacted to provide for and regulate Village Representative elections.

#### The New Arrangements for Village Representative Elections

10. The main elements of the new arrangements for Village Representative elections are as follows:

##### General

- (a) Village Representative elections should be held for indigenous villages (Indigenous Villages or Composite Indigenous Villages) and existing village settlements (Existing Villages) now included in the village representation

system in the New Territories;

- (b) all Village Representatives should be elected;
- (c) the Electoral Affairs Commission should be empowered to supervise and to make regulations governing the conduct of Village Representative elections;
- (d) all Village Representatives should be members of the Rural Committee of the area in which the Village is located;
- (e) to tie in with the term of office of the Rural Committee office holders and members and that of the Heung Yee Kuk office holders, Village Representatives should hold office for 4 years from 1 April after the election, except that the Village Representatives returned at an election in 2003 will hold office for 3 years and 6 months from 1 October 2003;
- (f) an election for the Village Representative should be held at least 1 but no earlier than 3 months before the new term of the Village Representative is to begin;

- (g) a candidate for the office of village representative should be nominated by at least 5 registered electors;

#### Types of Village Representatives

- (h) there should be two types of Village Representatives:-
  - (i) an Indigenous Inhabitant Representative for an Indigenous Village or a Composite Indigenous Village;  
and
  - (ii) a Resident Representative for an Existing Village;
- (i) an Indigenous Inhabitant Representative (or Representatives) for an Indigenous Village or a Composite Indigenous Village should be elected by an electorate comprising the indigenous inhabitants of the Village;
- (j) the functions of an Indigenous Inhabitant Representative for an Indigenous Village or a Composite Indigenous Village are

to reflect views on the affairs of the Village (including the affairs of the Existing Village concerned) 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;

(k) a Resident Representative for an Existing Village should be elected by an electorate comprising the residents living in the Village;

(l) 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;

(m) a person could register as an elector for both an Indigenous Village (or a Composite Indigenous Village) and an Existing Village, if he or she is both an indigenous inhabitant of the Indigenous Village and a resident in the Existing Village;

(n) no person should be allowed to stand as a candidate in more

than one Village at the same time;

#### Number of Village Representatives

- (o) the current number of Indigenous Inhabitant Representatives (ranging from 1 to 5) for an Indigenous Village or a Composite Indigenous Village would be retained;
- (p) there would be one Resident Representative for an Existing Village;

#### Transitional Arrangements

- (q) since the terms of office of the Village Representatives returned at an election in 2003 will begin on 1 October 2003, the existing terms of office of Heung Yee Kuk office holders should be extended until 30 September 2003, and the existing terms of office of Rural Committee office holders and members and Village Representatives approved by the Secretary for Home Affairs should be extended until 30 September 2003, to ensure that there is no gap in their terms

of office; and

- (r) the next terms of office of Heung Yee Kuk office holders and Rural Committee office holders and members should be 3 years and 6 months so as to re-align their terms of office with the normal 4 years' term.

**Annex C**

**Timetable for Registration of Electors for  
the Village Representative Elections in 2003 and Subsequent Years**

Item	Key Events	Sections of Regulation	Timetable	
			First Register in 2003	Subsequent Registers
1.	Deadline for Electoral Registration Officer (ERO) to make inquiries from a person whose name is recorded in a final register	17(3)	Not applicable	14 July
2.	Deadline for persons being inquired about persons registered in existing final register to submit information to ERO	18(2)(a) & 18(6)	Not applicable	30 July
3.	Relevant period during which information on request is received by ERO and upon which ERO may consider correcting particulars in compiling the next provisional register	20(7)	Not applicable	<u>2<sup>nd</sup> register</u> After 5 May 2003 but on or before 30 July 2004  <u>Subsequent registers</u> After 23 September of the preceding year but on or before 30 July of the current year.

Item	Key Events	Sections of Regulation	Timetable	
			First Register in 2003	Subsequent Registers
4.	Voter registration period	8,9,21(1), 21(2)(c)	From 1 March 2003 to 21 March 2003	<u>2<sup>nd</sup> Register</u> From 22 March 2003 to 30 July 2004  <u>Subsequent registers</u> From 31 July of the previous year to 30 July of the current year
5.	Deadline for applicants to submit further particulars or proof to the ERO	12(5)	7 April 2003	20 August
6.	Deadline for publication of notice for inspection of provisional register	22(2)	Not later than 22 April 2003	Not later than 10 September
7.	Deadline for inspection of provisional register, omissions list and lodging of objections and claims	19(2), 22(4)(a), 23(3) & 25(4)	5 May 2003 (No omissions list for the first register in 2003)	23 September

Item	Key Events	Sections of Regulation	Timetable	
			First Register in 2003	Subsequent Registers
8.	Deadline for ERO to deliver copies of objections and claims to the Revising Officer	26(2)	Within 3 working days after the last date for lodging objections and claims (viz. 9 May 2003)	Within 3 working days after the last day for lodging objections and claims
9.	Specified period during which request or information was received by ERO and upon which ERO may correct entries in compiling the final register	27(10)(a)	From 22 March 2003 to 5 May 2003	From 31 July to 23 September of the current year
10.	Deadline for the ERO to correct an entry in a provisional register as a result of an inquiry or otherwise	27(10)(b)	5 May 2003	23 September
11.	Deadline for ERO to obtain approval from Revising Officer to correct, add or remove entries in provisional register when compiling final register	28(2)	19 May 2003	5 October

Item	Key Events	Sections of Regulation	Timetable	
			First Register in 2003	Subsequent Registers
12.	Period during which Revising Officer may make rulings on claims and objections to be reflected in compiling a final register	29(5)	After 22 April 2003 but on or before 19 May 2003	After 10 September but on or before 5 October
13.	Deadline for publication of a notice for final register	30(2)	3 June 2003	20 October
14.	Election date	N.A.	Mid-July to August 2003	As specified by the Secretary for Home Affairs by notice in Gazette. The election date shall not be earlier than three months and not later than one month before the new term of office of the Village Representative concerned is to begin (section 20 of the Election Ordinance)