

LEGISLATIVE COUNCIL BRIEF

Village Representative Election Ordinance

(No. 2 of 2003)

VILLAGE REPRESENTATIVE ELECTION (REGISTRATION OF ELECTORS) (APPEALS) REGULATION

INTRODUCTION

The Secretary for Home Affairs has made the Village Representative Election (Registration of Electors) (Appeals) Regulation (“The Regulation”) at **Annex A** to provide for the procedures for the exercise of the right to appeal to a Revising Officer, against any decision made by an Electoral Registration Officer for the purposes of 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 Village Representative Election Ordinance is at **Annex B**.

THE REGULATION

3. Under section 19(1) of the 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 Election 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.

4. The Regulation basically models on the Registration of Electors (Appeals) Regulations (Cap. 542 sub. leg. B), relating to the appeals against decisions of the ERO in Legislation Council elections and District Council 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 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. Major features of the Regulation that are peculiar to the VR elections are set out below.

Voter registration cycle

5. The appeals procedure needs to tie in with the voter registration period. With respect to the first VR elections in 2003, the registration period is as follows -

- | | | |
|----|--|-----------------------------|
| a) | Voter Registration period | 1-21 March 2003 |
| b) | Publication of the 2003 Provisional Register ("PR") | on or before 22 April 2003 |
| c) | Period during which Revising Officer may conduct hearings on claims and objections | 22 April 2003 – 15 May 2003 |
| d) | Deadline for inspection of PR and lodging of | 5 May 2003 |

objections and claims

- | | | |
|----|--|-----------------------------|
| e) | Revising Officers to notify ERO of their rulings for incorporation into the 2003 Final Register (“FR”) | on or before
26 May 2003 |
| f) | Publication of the 2003 FR | on or before
3 June 2003 |

6. For elections in subsequent years, the FR will have to be published the latest by 20 October, and the corresponding dates in respect of voter registration and the lodging of appeals will be as follows -

- | | | |
|----|--|--------------------------------|
| a) | Deadline for voter registration in the upcoming PR | 30 July |
| b) | Publication of the PR | on or before 10
September |
| c) | Period for Revising Officers to hold hearings on claims and objections | 10 September –
30 September |
| d) | Deadline for inspection of PR and lodging an appeal against the PR | 23 September |
| e) | Revising Officers to notify ERO of their rulings for incorporation into the FR | on or before
12 October |
| f) | Publication of the FR | On or before 20
October |

LEGISLATIVE TIMETABLE

7. The Appeals Regulation will be published in the Gazette on 21 February 2003 and tabled in the Legislative Council on 26 February 2003.

BASIC LAW AND HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT OF THE LEGISLATION

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

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

10. There will not be any additional financial and staffing

implications. Funds have been earmarked to meet the staff and incidental costs in connection with the processing of appeals.

ECONOMIC IMPLICATIONS

11. There are no economic implications.

ENVIRONMENTAL IMPLICATIONS

12. There are no environmental implications.

SUSTAINABILITY ASSESSMENT

13. There are no sustainability implications.

PUBLIC CONSULTATION

14. There will be no public consultation given the technical nature of the proposal.

PUBLICITY

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

ENQUIRIES

16. Any enquiry on this brief can be addressed to Ms Monica Chen, Assistant Director of Home Affairs (tel. 2835 1423), or Ms Michelle Li, District Officer/Sham Shui Po (tel. 2150 8118)

Home Affairs Department

18 February 2003

**VILLAGE REPRESENTATIVE ELECTION (REGISTRATION
OF ELECTORS) (APPEALS) REGULATION**

CONTENTS

Section		Page
1.	Interpretation	1
2.	Fixing a hearing date and notifying the appellant	2
3.	Disposal of appeal	4
4.	Revising Officers notify parties of outcome of appeal	5
5.	Electoral Registration Officer to be notified of rulings	5
6.	Determination of matters and powers of adjournment, etc.	6
7.	Review of rulings by Revising Officer	6
8.	Approval of Revising Officer in relation to Electoral Registration Officer's proposal	7
9.	Revising Officer may require Electoral Registration Officer to provide information	7
10.	Revising Officer is required to determine forms, appropriate person and mode of service when exercising his powers	7

VILLAGE REPRESENTATIVE ELECTION (REGISTRATION OF ELECTORS) (APPEALS) REGULATION

(Made under section 65 of the Village Representative Election Ordinance (2 of 2003))

1. Interpretation

In this Regulation, unless the context otherwise requires –

“appeal” (上訴) means an appeal against a decision of the Electoral Registration Officer under section 19(1) of the Ordinance;

“appellant” (上訴人) means a person who has made an appeal by lodging a notice of claim or a notice of objection under the EAC Regulation;

“authorized representative” (獲授權代表), in relation to an appellant or a person in respect of whom an objection is made, means a person authorized in writing by the appellant or that person;

“claim” (申索) means a claim made under section 24, in accordance with section 25, of the EAC Regulation;

“EAC Regulation” (《選管會規例》) means the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (L.N. of 2003);

“final register” (正式選民登記冊) has the same meaning as in section 1 of the EAC Regulation;

“first provisional register” (首份臨時選民登記冊) has the same meaning as in section 1 of the EAC Regulation;

“hearing date” (聆訊日期), in relation to a notice of claim or a notice of objection, means the date fixed under section 2(1)(a) to hear the claim or objection to which the notice relates;

“notice of claim” (申索通知書) means a notice of claim within the meaning of section 25(1) of the EAC Regulation;

“notice of hearing” (聆訊通知書) means a notice the Revising Officer is required to send under section 2(1)(b);

“notice of objection” (反對通知書) means a notice of objection within the meaning of section 23(1) of the EAC Regulation;

“objection” (反對) means an objection made under section 23 of the EAC Regulation;

“party” (方、一方) means an appellant or a person in respect of whom an objection is made;

“provisional register” (臨時選民登記冊) has the same meaning as in section 1 of the EAC Regulation;

“subsequent provisional register” (繼後的臨時選民登記冊) means a provisional register compiled after the first provisional register.

2. Fixing a hearing date and notifying the appellant

(1) When the Revising Officer receives a copy of a notice of claim or a notice of objection from the Electoral Registration Officer, he shall, as soon as practicable –

- (a) subject to subsections (4) and (5), fix a date, time and place for holding a hearing in respect of the claim or the objection to which the notice relates; and
- (b) send by post, a notice of hearing –
 - (i) to the appellant; and
 - (ii) if the hearing is in respect of a notice of objection, also to the person in respect of whom the objection is made.

(2) A notice of hearing sent to a party shall –

- (a) state that a hearing is to be held in respect of the claim or the objection;

- (b) specify the date, time and place fixed for the hearing; and
 - (c) state that the party –
 - (i) may appear in person at the hearing and make representations to the Revising Officer regarding the claim or objection;
 - (ii) may be represented at the hearing by a legal practitioner or an authorized representative who may make representations on his behalf; or
 - (iii) whether or not he appears or is represented, may make representations in writing regarding the claim or objection and submit them, by post or by hand, at an address (which shall be specified in the notice) to reach the Revising Officer not later than 1 day before the date fixed for the hearing.
- (3) A notice of hearing sent to an appellant shall also state that if –
- (a) the Electoral Registration Officer does not make representations to the Revising Officer at the hearing; and
 - (b) the appellant –
 - (i) does not appear at the hearing;
 - (ii) is not represented at the hearing by a legal practitioner or an authorized representative; and
 - (iii) does not make representations in writing regarding the claim or objection to be received by the Revising Officer not later than 1 day before the hearing date,

the decision of the Electoral Registration Officer to which the notice of claim or the notice of objection relates shall stand.

- (4) If a copy of a notice of claim or notice of objection is lodged with the Revising Officer in respect of the first provisional register on or before 5 May 2003, the hearing date in respect of that notice –

- (a) shall be after 22 April 2003 but not later than 15 May 2003; and
- (b) shall not be earlier than the third day after the date on which the notice is received.

(5) If a copy of a notice of claim or notice of objection is lodged with the Revising Officer in respect of a subsequent provisional register on or before 23 September of the year for which the relevant register is being compiled, the hearing date in respect of that notice –

- (a) shall be after 10 September but not later than 30 September in that year; and
- (b) shall not be earlier than the third day after the day on which the notice is received.

3. Disposal of appeal

- (1) If, in respect of a claim or objection fixed for hearing –
 - (a) the Electoral Registration Officer does not make representations to the Revising Officer at the hearing; and
 - (b) the appellant –
 - (i) does not appear at the hearing;
 - (ii) is not represented at the hearing by a legal practitioner or an authorized representative; and
 - (iii) does not make representations in writing regarding the claim or objection to be received by the Revising Officer not later than 1 day before the hearing date,

the decision of the Electoral Registration Officer to which the notice of claim or the notice of objection relates shall stand.

(2) In a case other than that referred to in subsection (1), the Revising Officer shall make a ruling allowing or dismissing the claim or the objection.

4. Revising Officers notify parties of outcome of appeal

(1) If the Electoral Registration Officer's decision stands pursuant to section 3(1), the Revising Officer shall notify the appellant and, if applicable, the person in respect of whom the objection is made.

(2) If the Revising Officer makes a ruling under section 3(2), the Revising Officer shall notify the appellant and, if applicable, the person in respect of whom the decision is made, of the ruling.

(3) A notification under subsection (1) or (2) shall be sent by post or facsimile transmission to –

- (a) the appellant;
- (b) the person in respect of whom the objection is made, if applicable;
- (c) the legal practitioner who represented the party at the hearing; or
- (d) the authorized representative of the party concerned.

(4) The appellant or the person in respect of whom the objection is made, as the case may be, may apply for a review of the ruling made by the Revising Officer under section 3 (2) not later than 2 days after the date on which the notification under subsection (3) is sent.

(5) An application under subsection (4) shall be made in such form as may be specified by the Electoral Registration Officer.

5. Electoral Registration Officer to be notified of rulings

(1) The Revising Officer shall notify the Electoral Registration Officer in respect of each notice of claim or notice of objection –

- (a) that the Electoral Registration Officer's decision is to stand; or
- (b) of the ruling of the Revising Officer,

as may be appropriate, in accordance with subsection (2).

- (2) If the hearing is concluded –
- (a) after 22 April 2003 but on or before 15 May 2003, the Revising Officer shall notify the Electoral Registration Officer on or before 26 May 2003; and
 - (b) in the year for which a subsequent provisional register is being compiled, after 10 September but on or before 30 September in that year, the Revising Officer shall notify the Electoral Registration Officer on or before 12 October in that year.

6. Determination of matters and powers of adjournment, etc.

(1) The Revising Officer shall determine every matter to be determined by him under this Regulation as soon as practicable.

(2) The hearing of an appeal shall, as far as is practicable having regard to the interest of justice, be continued from day to day (excluding general holidays) until its conclusion.

(3) Subject to subsection (2), the hearing and determination of any such matter may be adjourned at any time to a date not later than the last day of the relevant period referred to in section 7(2).

7. Review of rulings by Revising Officer

- (1) Subject to subsection (2), the Revising Officer may –
- (a) on his own initiative;
 - (b) for good cause shown by the Electoral Registration Officer;
or
 - (c) on application under section 4(4) by –
 - (i) an appellant; or
 - (ii) a person in respect of whom the objection is made,

review any ruling made under section 3(2), and for that purpose may rehear the matter wholly or in part and reverse or confirm his previous ruling.

- (2) A ruling under section 3(2), made –
- (a) after 22 April 2003 but on or before 15 May 2003, may only be reviewed on or before 19 May 2003; and
 - (b) after 10 September but on or before 30 September in the year for which a subsequent provisional register is being compiled, may only be reviewed on or before 5 October in that year.

(3) The Revising Officer shall determine the procedure for a review under subsection (1).

8. Approval of Revising Officer in relation to Electoral Registration Officer's proposal

When the Electoral Registration Officer seeks the Revising Officer's approval under section 28(2) of the EAC Regulation in relation to the compilation of a final register, the Revising Officer shall, as soon as practicable, make a determination and notify the Electoral Registration Officer of his determination.

9. Revising Officer may require Electoral Registration Officer to provide information

The Revising Officer may require the Electoral Registration Officer to provide any information that the Revising Officer considers necessary for him to make a determination under this Regulation.

10. Revising Officer is required to determine forms, appropriate person and mode of service when exercising his powers

When exercising the powers referred to in section 53(4) of the Ordinance, the Revising Officer may –

- (a) determine the forms to be used;
- (b) determine, having regard to the circumstances of the case, who is the appropriate person to serve a summons issued

- by the Revising Officer on the person to whom the summons is directed; and
- (c) determine, having regard to the circumstances of the case, the mode of service of a summons referred to in paragraph (b).

Secretary for Home Affairs

19 February 2003

Explanatory Note

The object of this Regulation is to provide the procedures for the exercise of the right to appeal to a Revising Officer, against any decision made by an Electoral Registration Officer for the purposes of the Village Representative Election Ordinance (2 of 2003).

2. Section 2 requires the Revising Officer to fix a date, time and place for holding a hearing in respect of any notice of claim or notice of objection lodged under the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (L.N. of 2003). The Revising Officer is required to inform the appellant and, in the case of a notice of objection, the person in respect of whom the objection is made –

- (a) the date, time and place of the hearing; and
- (b) his right to make representations, in person or in writing, or to be represented by a legal practitioner or an authorized representative.

3. Section 3 provides for the disposal of an appeal. Where the Electoral Registration Officer does not make representations at the hearing and, if the appellant –

- (a) does not appear in person;
- (b) is not represented by a legal practitioner or an authorized representative; and
- (c) does not make written representation,

the decision of the Electoral Registration Officer shall stand. In any other case, the Revising Officer shall make a ruling.

4. Section 4 requires the Revising Officer to notify the appellant and, if applicable, the person in respect of whom the objection is made, of the outcome of the hearing.

5. Section 5 requires that the Electoral Registration Officer be notified of the outcome of the hearings in respect of each notice of claim or notice of objection.

6. Section 6 requires that a hearing be continued, as far as is practicable, from day to day and also enables the adjournment of any hearing.

7. Section 7 enables the Revising Officer to review his own rulings within specified time.

8. Section 8 requires the Revising Officer to notify the Electoral Registration Officer, as soon as practicable, of his determination in relation to any approval sought from him in respect of the compilation of a final register.

9. Sections 9 and 10 respectively enable the Revising Officer to require the Electoral Registration Officer to provide information and to determine the forms, appropriate person to serve and the mode of service of a summons when exercising his powers.

**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.