



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/S/35/08-09 & LS/S/37/08-09
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**URGENT BY FAX &
BY POST**

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31 August 2009

Secretary for Constitutional and Mainland Affairs
(Attention: Mr. CHANG Chi Ho, Ivanhoe,
Prin AS (Constitutional & Mainland Affairs)2)
Constitutional and Mainland Affairs Bureau
3rd Floor, Main and East Wing,
Central Government Offices,
11 Ice House Street,
Central,
Hong Kong

Dear Mr Chang,

Amendment Regulations relating to Voting by Imprisoned Persons

I am scrutinizing the legal and drafting aspects of the two sets of Amendment Regulations relating to voting by imprisoned persons, gazetted on 19 June 2009 and 3 July 2009 respectively. I would be grateful for your clarification of the following -

- (a) Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009 (L.N. 130)

This Amendment Regulation amends Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D) (the principal regulation).

Section 6(2)

Section 30(4) of the principal regulation is amended by adding a new paragraph (aa) which provides that the Chief Electoral Officer may allocate a dedicated polling station (DPS) to an elector of a geographical constituency who will be serving a sentence of imprisonment on the polling day to cast his vote. Please explain the reason(s) for not including electors detained by law enforcement agencies in this new subsection.

Section 10(1)

In the Chinese text of new section 42(8A)(a) which reads "一名候選人或一份候選人名單上的候選人，只可就一個位於監獄內的專用投票站，委任一名監察投票代理人" has the meaning that a candidate or a list of candidates may appoint one polling agent for only one DPS situated in a prison. This meaning does not correspond with the English text that "only one polling agent may be appointed by a candidate or a list of candidates for a dedicated polling station situated in a prison".

Our suggestion for your consideration is as follows -

"一名候選人或一份候選人名單上的候選人，就一個位於監獄內的專用投票站，只可委任一名監察投票代理人".

- (b) Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009 (L.N. 132)

Section 10(1)

This Amendment Regulation amends the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I). In the Chinese text of new section 42(5A)(a) which reads "一名候選人只可就一個位於監獄內的專用投票站，委任一名監察投票代理人" has the meaning that a candidate may appoint one polling agent for only one DPS situated in a prison. This meaning does not correspond with the English text that "only one polling agent may be appointed by a candidate for a dedicated polling station inside a prison".

Our suggestion for your consideration is as follows -

"一名候選人就一個位於監獄內的專用投票站，只可委任一名監察投票代理人".

- (c) Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009 (L.N. 133)

Section 7(1)

This Amendment Regulation amends the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J). The full stop at the end of the Chinese text of new section 19(2)(aa)(ii) should be substituted by a semi-colon.

(d) Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 (L.N. 134)

This Amendment Regulation amends Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L) (the principal regulation).

Section 5(3)

Section 28(2)(b) of the principal regulation is amended to the effect that the Director of Home Affairs may designate as a polling or counting station any structure, place or premises whether or not hired under section 28(3). Section 28(3) provides that the Director of Home Affairs may hire any structure, place or premises, for use as a polling station or a counting station.

Would you please explain the reason(s) for this amendment and give some examples of structures, places or premises to be designated as polling stations or counting stations, which are not hired under section 28(3). Also, it seems that consequential amendment should be made to section 28(4). Otherwise the designated places which are not hired under section 28(3) will not be protected by section 28(4). As presently drafted, it only requires the Director of Home Affairs to make good any damage to the designated places hired under section 28(3) due to their being used as polling or counting stations. Please clarify the legislative intent.

Section 15(2)

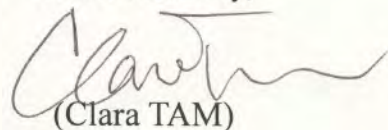
The Chinese text of section 47(1A)(b) "猶如該等提述是提述載有一張或多於一張選票的一個或多於一個封套(視屬何情況而定)" does not correspond with the English text that "as if they are references to ballot paper or ballot papers contained in the envelop or envelopes (as the case may be)".

Our suggestion for your consideration is as follows -

"猶如該等提述是提述載於封套內的一張或多張選票(視屬何情況而定)".

We would be grateful for your earliest reply in both Chinese and English with soft copy to Ms Christine LIU at yliu@legco.gov.hk.

Yours sincerely,



(Clara TAM)

Assistant Legal Adviser

cc. DoJ (Attn.: Mr Gilbert MO, DLD(BD&A) (By Fax: 2869 1302) & Miss Mandy NG, GC (By Fax: 2845 2215))