



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

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By Fax (2834 5605)  
2 December 2013

Ms Leona LAW  
Assistant Director of Home Affairs (1)  
Home Affairs Department  
Headquarters, Division 1  
30/F, Southorn Centre,  
130 Hennessy Road, Wanchai,  
Hong Kong

Dear Ms LAW,

### **Rural Representative Election Legislation (Amendment) Bill 2013**

To assist our scrutiny of the Bill, please clarify the following issues in both languages as soon as possible:

#### Proposed amendments to the Village Representative Election Ordinance (Cap. 576)

- (a) Under the new section 6A of Cap. 576 (as added by clause 6), the function of a Kaifong Representative (KFR), like that of a Resident Representative for an Existing Village, would be to reflect views on the affairs of the Market Town (i.e. Cheung Chau (CC) or Peng Chau (PC)) on behalf of its residents but not to deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants. It is further noted that the new section 25(6A) as added by clause 11 contemplates situations where a person could be an elector for both a Market Town and an Indigenous Village (IV) or a Composite Indigenous Village (CIV). In this regard:
  - (i) Do the proposed Market Towns of CC and PC cover any areas that are within the boundaries of any IV or CIV?

- (ii) Are there any indigenous inhabitants on CC or PC? If so, what are their "lawful traditional rights and interests"?
  - (iii) If a KFR would not deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants on CC or PC, who (if anyone) would represent such rights and interests?
- (b) Clauses 8 and 9 set out the eligibility criteria for registration as an elector and nomination as a candidate for a Market Town election. It is noted that under the proposed sections 16(2)(c) and 17(1)(h) of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541 sub. leg. K), the Electoral Registration Officer (ERO) may require a public authority to furnish information, and make inquiries, for the purpose of ascertaining an elector's principal residential address. Please advise what steps would be taken to ascertain whether a person meets the requirements under the proposed section 22(2A) of Cap. 576 (to be added by clause 9) to be eligible for nomination as a candidate at a Market Town election.

Proposed amendments to the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L)

- (c) Under clause 48, is there any reason for repealing the existing section 47(1A) of Cap. 541L which provides for the voting procedure for electors in custody? How would electors in custody cast their votes as a result of the repeal? Would any special voting arrangements be made for electors in custody, and if so, do such arrangements need to be set out in Cap. 541L?
- (d) It is noted that the existing Form 2(b) in Schedule 1 in respect of IV elections (with more than one vacancy) provides for up to six candidates only. What is the significance of providing for up to 30 candidates in the proposed Form 4(a) to be added by clause 58? As it is possible that there would be more than 30 candidates given that there could be up to 39 and 17 KFR vacancies on CC and PC respectively, what ballot paper would be used in such circumstances?
- (e) The new section 61(1)(c) (to be added by clause 52(4)) seeks to introduce the counting of votes with the use of a computer. Please

explain how sections 61(2) and 62 would apply in the case of computer counting of ballot papers. Would the computer be able to detect any ballot paper which is improperly marked, unmarked, substantially mutilated or void for uncertainty, or bears the words "TENDERED", "UNUSED" or "SPOILT", or contains votes for more candidates than are to be returned at the election concerned?

Proposed amendments to the Maximum Amount of Election Expenses (Village Representative Election) Regulation (Cap. 554 sub. leg. B)

- (f) Under the proposed section 2 of Cap. 554B (as amended by clause 62), the maximum amount of election expenses would be:
  - (i) \$18,000 where there are not more than 1,000 electors;
  - (ii) \$28,000 where there are over 1,000 electors; or
  - (iii) \$38,000 where there are over 5,000 electors.

To avoid doubt, please consider further amending section 2(b) to specify that the \$28,000 limit applies where there are over 1,000 electors but not more than 5,000 electors for the Rural Area.

Drafting matters

- (g) It is noted that the proposed sections 15(3A) and 22(2A)(f) of Cap. 576 (to be added by clauses 8(1) and 9 respectively) use the phrase "because of" in lieu of "by virtue of" which appears in the existing sections 15(3) and 22(1)(f) and (2)(e). However, clause 12 (which seeks to add a new section 61(4)) follows the existing section 61(1), (2) and (3) by using the phrase "by virtue of". Please explain the use of different phrases in clauses 8(1), 9 and 12.
- (h) Clause 37(3) seeks to add, among others, a new definition of "computer" to section 2(1) of Cap. 541L. It appears from the Chinese text that the phrase "designed and programmed to count the votes cast at an election" is intended to qualify both the "device" and the "computer software" referred to in the proposed definition. If that is the case, should "that is" be amended to "that are"?
- (i) Under clauses 45(1) and 55(3), the proposed sections 41(3A) and 67(3)(d) of Cap. 541L use the expression "is to be" in lieu of "shall be" which continues to be used in the existing sections 41(1) to (3)

and 67(3)(a) to (c). Similarly, under clause 52(4), the proposed section 61(1)(c) and (d) uses "are to be" in lieu of "shall be" which continues to be used in the existing section 61(1)(a) and (b) and 61(2). For the sake of tidiness, please consider taking the opportunity also to amend the existing sections 41(1) to (3), 61(1)(a) and (b), 61(2) and 67(3)(a) to (c) to replace "shall be" by "is to be" or "are to be" (as appropriate), as those provisions would be in the proximity of the proposed sections 41(3A), 61(1)(c) and (d) and 67(3)(d): see the 4th bullet point in paragraph 9.2.18 on page 99 of *A Guide to Styles & Practices* (January 2012) published by the Law Drafting Division of the Department of Justice (the Guide).

- (j) Under clause 47(3), the proposed section 45(4)(d) of Cap. 541L uses the gender-neutral expression "the person" in lieu of "he" which continues to be used in the existing section 45(4)(a) to (c). Please consider whether the references to "he" in section 45(4)(a) to (c) should be consequentially amended: see paragraph 9.3.4 on page 100 of the Guide.
- (k) It is noted that some items in Schedules 1 to 5 to the Bill merely identify the sections (but not the specific subsections within those sections) or the subsections (but not the specific paragraphs or subparagraphs within those subsections) where minor textual amendments are to be made. See, for example, items 19(b) and 31 of Part 1 of Schedule 1, item 35(b) of Part 2 of Schedule 1, Divisions 3 to 7 of Part 4 of Schedule 1, items 19(b) and 23(a) of Part 1 of Schedule 2, items 1 and 33 of Part 2 of Schedule 2, item 1 of Part 4 of Schedule 2, and items 2 and 3 of Schedule 5. This seems to deviate from the previous drafting practice (for example, the Schedule to the Communications Authority Bill) which would identify precisely the paragraph or subparagraph within a section or subsection where a consequential or related amendment is to be made. Please explain why such a new practice is adopted in the Bill.

Chinese text

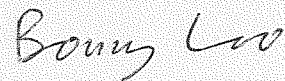
- (l) Please see our observations as set out in the Annex.

Public consultation

- (m) According to paragraph 15 of the LegCo Brief, the Electoral Affairs Commission (EAC) was consulted on the legislative proposal and its comments have been incorporated in the Bill. Please provide details of the EAC's comments on your initial proposal, and how its comments are proposed to be addressed in the Bill.

We should be grateful for your reply **by 13 December 2013**.

Yours sincerely,



(Mr Bonny LOO)  
Assistant Legal Adviser

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LA

**Rural Representative Election Legislation (Amendment) Bill 2013**  
**Legal Service Division's observations on the Chinese text**

Proposed amendments to the Village Representative Election Ordinance  
(Cap. 576)

- (a) Under clause 3(1), the expression "to provide for the establishment of the office of kaifong representative for a Market Town" sought to be added to the long title is rendered in the Chinese text as "就為每個墟鎮設立街坊代表職位訂定條文". However, the Chinese text of the existing long title renders "to provide for the establishment of the office of resident representative for an Existing Village" as "就為每條現有鄉村設立居民代表職位一事訂定條文" (emphasis supplied). Please explain why "一事" are omitted from clause 3(1). If those characters are redundant, please consider whether the existing references to them in the long title should similarly be repealed to achieve consistency within the long title.
- (b) The proposed definition of "rural ordinary election" under clause 4(3) refers to the vacation of office in accordance with section 7(2)(b) or (3)(b) of Cap. 576. In the Chinese text of the proposed definition, "the office... is vacated" is rendered as "職位...出缺", whereas section 7(2)(b) and (3)(b) refers to "離任". Would the discrepant language create any difficulty for the reader to comprehend the proposed definition?
- (c) In the proposed section 15(3A) of Cap. 576 (to be added by clause 8(1)), the expression "is not, because of..., entitled" is rendered in the Chinese text as "不得因...而令...有權". However, in the existing section 15(3), the expression "is not, by virtue of ..., entitled" is rendered as "無權憑藉...而有權". Please explain the differences between the two renditions.
- (d) Under clause 8(3), the proposed section 15(6)(c) of Cap. 576 refers to "one of those Existing Villages or one of those Market Towns", which is rendered in the Chinese text as "該等鄉郊地區中的1條現有鄉村或1個墟鎮", even though the phrase "Rural Areas" (i.e.鄉郊地區) is not used in the English text. To achieve consistency between the English and Chinese texts, please consider amending the English text to read "one Existing Village or one Market Town among those Rural Areas".

- (e) In the proposed section 22(2A) (to be added by clause 9), "only if" is reflected in the Chinese text by the expression "只有" which does not appear in the existing section 22(1) and (2) where the reference to "only if" is also used in the English text. Please consider whether "只有" should similarly be added to section 22(1) and (2) to achieve consistency.

Proposed amendments to the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541 sub. leg. K)

- (f) In the proposed sections 11(1)(c), 14A, 15(2A), 17(2) and 18(4A) of Cap. 541K (see clauses 22(3), 23, 24(1), 26(2) and 27(1) respectively), "must" is rendered in the Chinese text as simply "須" whereas the existing sections 11(1)(a) and (b), 13, 14, 15(1), (2) and (4), 16(3) and (4), and 18(1) to (5) all refer to "必須". If "須" is preferred to "必須", please consider taking the opportunity also to amend sections 11(1)(a) and (b), 13, 14, 15(1), (2) and (4), 16(3) and (4), and 18(1) to (5).
- (g) In the proposed section 18(4A)(a)(ii) to be added by clause 27(1), "despite" is rendered in the Chinese text as "即使", whereas in the existing section 18(4)(a)(ii) (which would appear immediately above the proposed section 18(4A)) the same word is rendered as "縱使". Please explain why two different Chinese expressions are used.

Proposed amendments to the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L)

- (h) Under clause 48, the word "and" is rendered in the Chinese text as "及" (the proposed section 47(2)(a)) and "並" (the proposed section 47(3)(b)) respectively. Please explain why two different Chinese renditions are used.
- (i) In the proposed sections 48(4)(a), 62(i) and 63(7)(i) (to be added by clauses 49(2), 53(8) and 54(8) respectively), the phrase "a number... exceeding" is rendered in the Chinese text as "選取人數...多於", whereas the same expression is rendered in the existing section 48(2)(a) as "人數...多於". Please explain why it is necessary to add the words 選取 in the proposed sections 48(4)(a), 62(i) and 63(7)(i).