

民政事務總署
香港灣仔軒尼詩道一百三十號
修頓中心二十九及三十樓



HOME AFFAIRS DEPARTMENT

29th and 30th Floors,
Southorn Centre,
130 Hennessy Road,
Wan Chai, Hong Kong.

本署檔號 Our Ref. CR/11/15/8/(C)

來函檔號 Your Ref.

電話 Tel.: 2835 1530

傳真 Fax: 2834 5605

13 December 2013

Mr. Bonny LOO,
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr. Loo,

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

Thank you for your letter of 2 December 2013. Our response is as follows:

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

- (a) The areas of the two proposed Market Towns (i.e. the whole of Cheung Chau (CC) and Peng Chau (PC)) do not overlap with any Indigenous Village (IV) and Composite Indigenous Village (CIV) under the Village Representative Election Ordinance (Cap. 576). There is no “indigenous inhabitant” as defined under Cap. 576 for CC and PC.

If any indigenous inhabitant of IVs and CIVs happens to be residing on CC and PC, the Indigenous Inhabitant

Representatives of their respective Villages, not the Kaifong Representatives of CC or PC, will be responsible for dealing with the lawful traditional rights and interests of such indigenous inhabitants.

(b) To ascertain whether a person is eligible to be nominated as a candidate at a Kaifong Representative election under the proposed section 22(2A) of Cap. 576, the following measures will be adopted:

(1) The person is required to sign a declaration to declare that he/she is eligible under the proposed section 22(2A) of Cap. 576 to be nominated as a candidate at the election when completing the nomination form. Any person who knowingly or recklessly makes a statement which is false or incorrect in a material particular in an election related document (which would include the nomination form) commits an offence under section 90(1) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541L) shall be liable on conviction to a fine at level 2 and to imprisonment for 6 months. Upon receipt of the nomination form, the Returning Officer (RO) will check against the candidate's application form for voter registration to ascertain the number of years he/she has been residing on CC/PC.

(2) We will check against the final register of electors to ensure the nominated person is a registered elector.

(3) We will also check with the Police and the Official Receiver's Office to ensure that the nominated person has no criminal or bankruptcy record which leads to candidacy disqualification under Cap. 576.

(4) Upon receipt of complaints against a candidate's eligibility in the run-up to the election, RO will make detailed investigation and report to the

Electoral Affairs Commission (EAC).

The above procedures are similar to those currently adopted for checking the eligibility of candidates for Resident Representative election.

In addition, since early 2012, we have stepped up our efforts to verify the eligibility of electors in order to ensure the accuracy of the registers of electors and to prevent potential vote-rigging. We intend to adopt similar measures, as set out below, to applicants and registered electors of CC or PC for KFR elections upon enactment of the Amendment Bill:

- (1) cross check whether the addresses provided by applicants are within CC and PC;
- (2) cross check the address records of all electors regularly against the address records of other public authorities (e.g. Housing Department, Housing Society and Registration and Electoral Office);
- (3) conduct random sampling checks on registered electors and applicants by requiring the selected persons to provide documents to verify their addresses; and
- (4) investigate into cases where seven or more electors, or five or more electors with different surnames, register with the same residential address.

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

- (c) Under the existing section 47(1) of Cap. 541L, an elector must fold the ballot paper before putting it into a ballot box. The existing section 47(1A) further stipulates that an elector in custody who casts the vote at a dedicated polling station in which the poll for two

or more Villages is conducted must put the ballot paper into an envelope before putting it into the ballot box.

Upon enactment of the Amendment Bill, an elector in custody who casts the vote at a dedicated polling station in which the poll for two or more Villages/ Market Towns is conducted still has to put the ballot paper into an envelope. Whether the ballot paper has to be folded depends on whether computer counting will be adopted since ballot papers to be counted with the use of a computer should not be folded due to technical reasons. The proposed section 47(4) will empower the Director of Home Affairs to give directions to the electors in this regard. Such voting instructions for each election will be provided to each elector both before and on the polling day.

Since the amended section 47 of Cap. 541L is already flexible enough to provide for the above-mentioned arrangements under its new sections 47(4)(b) and (c), the existing section 47(1A) is repealed.

- (d) The proposed form in Schedule 1 to Cap. 541L is for illustration only. The actual number of rows available for listing the names of candidates on the ballot paper will be the same as the actual number of candidates for the election concerned.
- (e) When computer counting is adopted, after opening the ballot boxes, the ballot papers will first be sorted by electoral staff in accordance with the following three categories:
 - (i) **ballot papers not to be counted**, including ballot papers which are unmarked, not marked with the chop provided at the polling station or have the words "TENDERED", "UNUSED" or "SPOILT" endorsed on them. Such ballot papers are regarded as invalid under the law, and will not be counted;

- (ii) **questionable ballot papers**, including ballot papers on which there are any writing or mark such that the elector can possibly be identified, not marked by affixing the chop to give a single “✓” in (each of) the circle opposite the name(s) of the candidate(s) of the elector’s choice, and ballot papers which appear to be substantially mutilated or void for uncertainty. Such ballot papers will be forwarded to RO for determination of validity; and

- (iii) **ballot paper for computer counting**, including all ballot papers not sorted into (i) or (ii) above. In the course of counting, ballot papers containing votes for a number of candidates exceeding the number of seats to be returned for the election concerned will be screened out by the computer and double-checked by electoral staff. Such ballot papers will not be counted in accordance with section 61(2)(b).

- (f) On a reasonable construction of the provision, the policy intent that the limit of \$28,000 does not apply where there are more than 5000 voters is already clear enough in the proposed provision. We will also make it clear in our Guidelines on Election-related Activities in respective of Rural Representative Elections.

Drafting matters

- (g) The Law Drafting Division of the Department of Justice (LDD) is moving away from using “by virtue of” if “because of” also serves the purpose. However, since section 61(4) of Cap. 576 relates to membership of Rural Committees which is a relatively more important matter, it would be prudent to adopt “by virtue of” for the sake of consistency with other provisions in section 61 to avoid any doubt.

- (h) In the particular context, “device” and “computer software” are so closely related that they can be

regarded as one single compound unit. We consider it grammatically correct to use “that is” (as in the case of “bread and butter”).

- (i) In LDD’s view, the expressions “shall” mentioned in your letter are not proximate to the new provisions enough to justify replacement in this exercise.
- (j) In LDD’s view, the expressions “he” mentioned in your letter are not proximate to the new provisions enough to justify replacement in this exercise.
- (k) In deciding whether to make very specific reference to the provisions in column 1, LDD will consider whether amendments are made to an expression wherever it appears. If that is the case, more general references will be made in column 1 to cut down the number of items of amendments without prejudicing clarity.

Chinese text

- (l) Our comments to your observations concerning the Chinese text are as follows:

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

- (a) “一事” is not included to achieve conciseness. The difference gives rise to no interpretation problem and does not justify amending other parts of the Long Title.
- (b) “職位...出缺(vacancy occurs in the office)” is used for the office, whereas “離任(vacates office)” is used for the member. The two expressions are used in different contexts.
- (c) “無權...而有權” is not ideal from language perspective. Improved wording is adopted for the proposed section 15(3A) of Cap. 576. However, amendment to the existing section 15(3) is not

necessary since the difference gives rise to no interpretation problem.

- (d) With the addition of the definition of “鄉郊地區” (clause 4(3)), “該等鄉郊地區” covers the Existing Villages and Market Towns. If “該等現有鄉村或墟鎮” is used in the proposed section 15(6)(c) of Cap. 576, the Chinese provision will be longer and more difficult to comprehend. Besides, readers will also have to think about whether the expression “現有” qualifies “墟鎮” as well (but such problem does not exist in the English text) and so the term “該等鄉郊地區” is used. Amendment to the English text is not necessary since the said consideration does not apply equally to the English text and there is no discrepancy in meaning between the two texts.
- (e) The addition of “只有” in the proposed section 22(2A) of Cap. 576 brings out the policy better. The difference between the new provision and the existing provision gives rise to no interpretation problem and thus we consider it not necessary to amend the existing sections 22(1) and (2) of Cap. 576.

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

- (f) LDD has ceased using “shall” in the mandatory sense. “須” is adopted as the standard Chinese equivalent of “must”. “必須” was adopted as the equivalent of “must”. The difference gives rise to no interpretation problem and does not justify the replacement of the existing references.
- (g) The difference gives rise to no interpretation problem and does not justify the amendments to the existing section 18(4)(a)(ii) of Cap. 541K.

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

- (h) The obligation under section 47(2)(a) of Cap. 541L is not that of the elector, whereas the three paragraphs in section 47(3) of Cap. 541L set out a series of obligations of the elector. In the particular context, “並” is more appropriate for the three obligations that have to be fulfilled in a sequence.
- (i) In the proposed new provisions, “選取” establishes a clearer relation between “人數” and “投票給若干候選人”. The difference between the new provisions and the existing provisions gives rise to no interpretation problem and does not justify amendment to existing section 48(2)(a).

Public consultation

- (m) At the meetings on 31 January 2013 and 29 August 2013, EAC made the following comments which have all been incorporated into the Amendment Bill:

Proposed amendments to section 2 of Maximum Amount of Election Expenses (Village Representative Election Regulation) (Cap. 554B)

- EAC suggested that the third tier of maximum amount of election expenses should cover elections with over 5 000 electors, instead of 4 000 electors as we had originally proposed.

Proposed amendments to Section 33(1) of Cap. 541L

- To align with the wording used in section 37(1) of Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) and section 40(1) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation

(Cap. 541F) concerning the provision of sufficient compartments for electors, EAC suggested that “to mark and fold ballot papers issued to them” should be replaced by “to vote” for simplicity.

Proposed Section 61(1)(d)(i) of Cap. 541L

- EAC considered it unnecessary to “specify” the form for recording the choice marked on each ballot paper, as the form was for internal use only. Therefore, the word “specified”, originally appearing before “form” in our draft Amendment Bill was deleted.

Proposed Section 47(4) of Cap. 541L

- EAC suggested rearranging the order of the four directions to be made by the Director of Home Affairs in respect of voting procedure, such that the directions more commonly made would go first.

Yours sincerely,



(Miss Victoria TSE)
for Director of Home Affairs