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9 June 2014

Mr Kelvin Ka-yun LEE
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Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr Lee,

Electoral Legislation (Miscellaneous Amendments) Bill 2014

I refer to your letter of 28 May 2014 and our response to your questions is set out in the ensuing paragraphs.

Part 2 Division 2

Clause 3, the Chinese rendition

2. You pointed out that the clause “某日期在本規例中訂明” in the Chinese text of the proposed section 2A(2)(a) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) may give an impression that “日期” is the actor in that clause and invited us to consider whether that clause should be rewritten as “某日期在本規例中予以訂明”.

3. We consider that the passive sense in the clause “某日期在本規例中訂明” is reasonably apparent in the context, such that “日期” is to be understood as the object being prescribed, rather than the actor which prescribes something. We consider it unnecessary to add an extra expression of “予以” to bring out the passive sense. We also note that in another clause in the same paragraph (i.e. “或根據本規例而訂定”), a similar structure is being used to bring out the passive sense.

4. You also sought clarification on the reason for adding “(而非訂明或訂定該日期)” towards the end of the proposed section 2A(2) when it is already provided that the date is “須視作” (“taken” in the English rendition).

5. The intended effect of section 2A(2) is that if the specified conditions are satisfied, instead of the original date being prescribed in or fixed under the Regulation, the next working day (not being an inclement weather warning day) following the original date should be taken to be so prescribed or fixed. In the English text, the word “instead” is used to bring out this meaning. The phrase “(而非訂明或訂定該日期)” seeks to convey the same meaning.

6. You referred to the proposed section 2A(4). That section contains the phrase “(而非(a)段所述日期)” which seeks to serve the same purpose.

Part 3 Division 2

Clause 31

7. Under the proposed new section 9(1)(ab) of Cap. 541A, only a person whose name is recorded in the existing final register (“FR”) and who voluntarily requested voter de-registration is to be entered on the omissions list (“OL”). You enquired whether it is the intended legal effect not to include in the OL a person whose name has never been recorded in the existing FR (e.g. a person who seeks to be registered as an elector for the first time) even if he or she has signed a written notice indicating his or her intention not to be included in the FR.

8. Voter registration in Hong Kong is voluntary. Only those who have voluntarily applied for voter registration, and who meet the statutory requirements for registration as an elector, will be included in the relevant electoral register(s). Once registered, the person will be retained in the registers for subsequent years unless removed by the Electoral Registration Officer (“ERO”) according to the electoral laws. The purpose of the OL is to facilitate existing electors (i.e. persons already registered as an elector and appearing in the FR currently in force) to easily check if their registration will be omitted from the next FR. If a person who is not recorded in the existing FR (e.g. a person who seeks to be registered as an elector in the next FR) decides to withdraw his or her application for voter registration before the provisional register (“PR”) is published, he or she will simply not be included in the PR and the next FR. We confirm that there is no need to include him or her in the OL because he or she is not a “registered” elector in the FR in force in the first place (hence there is no question of him or her being “omitted” / “removed” from the existing FR).

9. You asked if the acknowledgement of receipt sent by registered post under the proposed section 9(4A) of Cap. 541A is returned and undelivered, or if the ERO is unable to verify the authenticity of the signed notice, whether the ERO would enter the relevant elector on the OL. You also sought clarification on whether the proposed section 9(4A) of Cap. 541A should set out clearly to which address the ERO should deliver the acknowledgement of receipt.

10. In practice, upon receipt of a signed written notice to de-register from an elector, the ERO will issue a notice confirming the de-registration by registered post to his or her registered address in the existing FR to inform him or her that his or her entry will not be included in the next FR. In case the elector has provided an alternative address in his/her written notice for de-registration, the ERO will approach the elector to clarify his or her latest address and send the notice by registered post to the alternative address as well. If the registered mail is undelivered, the ERO will find out the reason and follow up to seek further clarification from the elector. The general principle is that the ERO will include an elector’s entry in the OL on the

basis of his or her request for de-registration if in the ERO's opinion the elector concerned has been informed of the ERO's intention to omit the elector's entry from the next FR. Committee Stage Amendments will be introduced to make clear the above intention.

Part 5 Division 2

Clause 39

11. For the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541D), you enquired –

- (i) in relation to the proposed section 42(8AA)(a), whether a candidate appointing a polling agent for a dedicated polling station (“DPS”) situated in a prison is required to obtain the consent of the Commissioner of Correctional Service (“the Commissioner”) before submitting the notice of appointment to the Chief Electoral Officer (“CEO”); and
- (ii) in relation to the proposed section 42(8AA)(b)(ii) and the existing section 42(8B), whether a candidate is required to ascertain that an elector or authorized representative has been admitted or transferred to the relevant prison before submitting a notice of appointment.

12. Regarding (i), in practice, candidates use one specified form to give notice of appointment of a polling agent for a DPS situated in a prison and apply for the Commissioner's consent to the presence of the agent in a DPS situated in a prison at the same time. The completed form will be submitted to the CEO, who will then liaise with the Commissioner and seek approval for the appointment. This practice has been in place since the electoral laws were amended in 2009 to enable the voting by imprisoned persons, and has been operating smoothly so far.

13. As for (ii), the CEO will post and update on the dedicated election website the number of registered electors who are imprisoned or held in custody in individual prisons every working day starting from 3 weeks before the polling day up to the Saturday immediately before the polling day for candidates' reference. A candidate may ascertain the information from the website, such as the change in the number and distribution of electors in the prisons before considering appointing polling agents for any DPSs situated in the prison(s) as they think fit. Upon receipt of the notice, the CEO will forward the notice to the Commissioner for consideration.

14. Clause 39 concerns the notices of appointment of polling agents. As set out in the follow-up paper on issues raised at the Bills Committee meeting on 26 May 2014, the Administration appreciates Members' emphasis that prudence should be observed in electoral arrangements, and we are prepared to maintain the status quo regarding the notices of appointment and revocation of appointment of polling and counting agents. Committee Stage Amendments will be introduced accordingly.

Yours sincerely,



(Miss Helen CHUNG)

for Secretary for Constitutional and Mainland Affairs

c.c. REO (Attn: Mr PH LI
Mr NL SHUM)
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Mr Henry CHAN)
Clerk to Bills Committee