



## II. REPORT

The date of First Reading of the Bill is 13 November 2013. Members may refer to the LegCo Brief (File Ref.: HAD HQ CR/11/15/8(C)) issued by the Home Affairs Department on 6 November 2013 for further details.

### Object of the Bill

2. The Bill seeks to broaden the scope of the Village Representative Election Ordinance (Cap. 576), the Electoral Affairs Commission Ordinance (Cap. 541), the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) and their respective subsidiary legislation so that they would also regulate the elections of Kaifong Representatives (KFRs) for Cheung Chau and Peng Chau to be held in or after 2015.

### Background

3. Cap. 576 was enacted in 2003 to provide for the elections of Resident Representatives (RRs) for Existing Villages and Indigenous Inhabitant Representatives (IIRs) for Indigenous Villages or Composite Indigenous Villages. RRs and IIRs are members of their respective Rural Committees. Under section 5(3) of Cap. 576, a RR's function is to reflect views on the affairs of the Existing Village on behalf of its residents but not to deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants.

4. On Cheung Chau and Peng Chau, KFRs serve functions similar to those of RRs for Existing Villages, i.e. to reflect the views of Cheung Chau and Peng Chau residents on local affairs. Currently, KFR elections are conducted administratively with logistical support from the Islands District Office (IDO) but are not supervised by the Electoral Affairs Commission (EAC). According to the Administration, there are approximately 8,600 and 3,100 KFR electors on Cheung Chau and Peng Chau at present, returning 39 and 17 KFRs respectively<sup>1</sup>.

5. According to paragraph 5 of the LegCo Brief, since KFR election is not statute-based, the IDO faces a number of operational difficulties. For example, all election complaints and petitions are handled by the Islands District Officer whose decision is not subject to review by an independent authority. The IDO also cannot arrange for persons in custody to register as electors or for registered electors in custody to cast their votes in the election. Nor does the IDO have any statutory power to request other departments (e.g. the Housing Department) to furnish electors' information for the purpose of verifying their eligibility and registration particulars.

---

<sup>1</sup> See footnote 2 of the LegCo Brief.

## **Provisions of the Bill**

6. The Bill seeks to bring KFR elections under statutory control and the EAC's supervision. The proposed regulatory framework, which is modelled on that for RR elections for Existing Villages under Cap. 576, is outlined below.

### Proposed amendments to Cap. 576

7. Clause 6 seeks to add a new section 6A to establish the office of KFR for a Market Town (i.e. Cheung Chau or Peng Chau) the area of which would be delineated by a map to be kept at the office of the Director of Home Affairs for public inspection during ordinary business hours. The function of a KFR would be to reflect views on the affairs of the Market Town on behalf of its residents but not to deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants. Under clause 12, a KFR for a Market Town would be a member of the relevant Rural Committee. Clause 16 proposes that there be 39 and 17 KFRs for Cheung Chau and Peng Chau respectively.

8. Clause 7 seeks to amend section 9 to disqualify a person elected as a KFR for a Market Town from holding office if, at any time after the election, he ceases to be a resident<sup>2</sup> of the Market Town. Similarly, clause 10 proposes amending section 23 to disqualify a person from being elected as a KFR for a Market Town if, at any time after the close of nominations, he ceases to be a resident of the Market Town.

9. Clauses 8 and 9 propose amending sections 15 and 22 to provide for the eligibility criteria for registration as an elector for a Market Town and for nomination as a candidate at a KFR election respectively. The proposed criteria<sup>3</sup> are similar to those applicable to a RR election for an Existing Village.

10. The Bill further seeks to add new definitions (e.g. Kaifong Representative, Market Town, Rural Area<sup>4</sup> and Rural Representative<sup>5</sup>), repeal spent provisions, provide for transitional arrangements for the 2015 KFR elections and make consequential amendments to Cap. 576 which would also be renamed as the Rural Representative Election Ordinance.

---

<sup>2</sup> Under clause 4 of the Bill, a "resident", in relation to a Market Town, is proposed to be defined as a person whose principal residential address (i.e. the address of the person's sole or main home) is in the Market Town.

<sup>3</sup> To be eligible for registration as an elector for a Market Town, a person must be a Hong Kong permanent resident aged 18 or above on or before 20 October next following the person's application for registration, and have been a resident of the Market Town for the 3 years immediately before the date of application for registration. To be eligible for nomination as a candidate, a person must be a registered and eligible elector for the Market Town aged 21 or above who has been a resident of the Market Town for the 6 years immediately preceding the nomination, and must not be disqualified from voting or being nominated at the KFR election.

<sup>4</sup> "Rural Area" would include an Existing Village, an Indigenous Village, a Composite Indigenous Village or a Market Town.

<sup>5</sup> "Rural Representative" is proposed to include a Village Representative (i.e. a RR or an IIR) and a KFR.

## Proposed amendments to other legislation

11. The Bill proposes various other amendments such as:
- (a) extending sections 23 and 24 of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541K) relating to making objections and claims for entries in and correction of the provisional register to the entries in a Market Towns provisional register and to the compilation of a final register for Market Towns (clauses 30 and 31);
  - (b) making transitional arrangements for the compilation of the first Market Towns provisional register for the 2015 KFR elections under Cap. 541K (clauses 35 and 36);
  - (c) introducing computer counting of votes under the proposed section 61(1)(c) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541L) (clauses 37(3) and 52(4));
  - (d) making it an offence<sup>6</sup> for anyone to remove a ballot paper from a polling station in contravention of the proposed section 47(8) of Cap. 541L (clauses 48 and 56);
  - (e) setting out the forms of the ballot paper and the notice of result of election for a Market Town (clauses 58 and 59); and
  - (f) specifying \$38,000 as the maximum amount of election expenses that can be incurred by or on behalf of a candidate at an election for a Rural Area with over 5,000 electors under the proposed section 2(c) of the Maximum Amount of Election Expenses (Village Representative Election) Regulation (Cap. 554B) (clause 62(4)).
12. Consequential amendments would also be made to Cap. 541 and its subsidiary legislation, Cap. 554, subsidiary legislation under Cap. 576, the Heung Yee Kuk Ordinance (Cap. 1097) and various other pieces of legislation<sup>7</sup>. These amendments include the replacement of "Village Representative" (VR), "Village", "village ordinary election" and "village by-election" by "Rural Representative", "Rural Area", "rural ordinary election" and "rural by-election" respectively. These amendments would have the effect of, among others, applying the EAC's statutory functions under Cap. 541, the provisions of Cap. 554, and the election petition regime under the Village Representative (Election Petition) Rules (Cap. 576B) to the elections of KFRs for Market Towns.

---

<sup>6</sup> Under the proposed section 89(2) of Cap. 541L, any person who commits such an offence would be liable on conviction to a fine at level 2 (i.e. \$5,000) and to imprisonment for 6 months.

<sup>7</sup> E.g. the Rules of the High Court (Cap. 4A), the Sex Discrimination Ordinance (Cap. 480), the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and the Electronic Transactions (Exclusion) Order (Cap. 553B).

## **Commencement**

13. For all purposes relating to the elections of RRs, IIRs and KFRs in 2015, the Bill, if passed, would come into operation on the day it is published in the Gazette as an Ordinance. For all other purposes, the enacted Ordinance would come into operation on 1 April 2015.

## **Public Consultation**

14. According to paragraph 15 of the LegCo Brief, the legislative proposal is supported by the EAC, Heung Yee Kuk, and the Cheung Chau and Peng Chau Rural Committees. The Administration has also incorporated the EAC's comments into the Bill.

## **Consultation with LegCo Panel**

15. As advised by the Clerk to the Panel on Home Affairs, the Panel was consulted on the Administration's improvement measures for the conduct of VR elections and the legislative proposal in relation to KFR elections on 12 July 2013. Members generally supported the proposal to extend the provisions of Cap. 576 and other VR-related legislation (including Cap. 541 and Cap. 554) to cover KFR elections. While supporting the Administration's proposal to reduce the number of polling days for the 2015 VR election to three, members considered that in the long run, VR elections should be held on one polling day, similar to other public elections sanctioned by the EAC.

## **Conclusion**

16. The Legal Service Division's scrutiny of the Bill is continuing. Since the Bill seeks to introduce a statutory framework for regulating KFR elections, Members may wish to study the policy aspects of the Bill in detail.

Prepared by

LOO Chi-pong Bonny  
Assistant Legal Adviser  
Legislative Council Secretariat  
14 November 2013