

立法會 *Legislative Council*

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Panel on Constitutional Affairs

Updated background brief prepared by the Legislative Council Secretariat for the meeting on 15 December 2014

Voter registration system

Purpose

This paper provides background information and summarizes major issues raised by relevant committees of the Legislative Council ("LegCo") in respect of the voter registration ("VR") system for the LegCo and District Council ("DC") elections since the First LegCo.

Background

Eligibility for VR

2. For a DC election, only a registered elector is eligible to vote. A registered elector is a person whose name appears on the final register ("FR") of geographical constituencies ("GC") which is in force at the time of election as compiled and published by the Electoral Registration Officer ("ERO") under the Legislative Council Ordinance (Cap. 542) ("LCO"). According to section 29(3) of the District Councils Ordinance (Cap. 547), a person may only vote in respect of the DC constituency for which the person is registered as an elector in the register.
3. For a LegCo election, only a registered elector, i.e. a person whose name appears on FR which is in force at the time of the election, is eligible to vote. The qualifications for registration as electors for GCs and functional constituencies ("FCs") (paragraph 9 refers) are provided in LCO.
4. To qualify for registration as an elector in a GC, an individual has to satisfy all the following requirements -
 - (a) in any year other than a year in which a DC ordinary election is to be held ("non DC election year"), he has to be aged 18 years or above as at 25 July next following his application for registration (or 25 September in a DC election year);

- (b) he is a permanent resident of Hong Kong;
- (c) (i) he ordinarily resides in Hong Kong and the residential address in his application for registration is his only or principal residence in Hong Kong; or
 - (ii) if he is a person serving a sentence of imprisonment and at the time of the application does not have a home in Hong Kong outside the prison, the following prescribed address is deemed to be the person's only or principal residence in Hong Kong for the purpose of VR -
 - (1) the last dwelling-place in Hong Kong at which the person resided and which constituted his sole or main home; or
 - (2) the residential address of the person last recorded by the Immigration Department under the Registration of Persons Regulations (Cap. 177A) if the person cannot provide any proof on his last dwelling place in Hong Kong.
- (d) he holds an identity document or has applied for a new identity document or a replacement identity document; and
- (e) he is not disqualified from being registered as an elector by virtue of section 31 of LCO.

The disqualification provisions which also apply to the VR for FCs in section 31 of LCO are in **Appendix I**.

5. According to section 28 of LCO, a reference to a person's only or principal residence in Hong Kong is a reference to a dwelling-place in Hong Kong at which the person resides and which constitutes the person's sole or main home.

6. The Electoral Affairs Commission (Registration of Electors) (LegCo GCs) (DC Constituencies) Regulation (Cap. 541A) stipulates a statutory timeframe for receiving applications for VR as electors for GCs, publication of the provisional register ("PR"), omission list ("OL") and FR, and determination of claims and objections in an annual registration cycle. An applicant who qualifies for registration will be allocated to the relevant GC and DC Constituency Area on the basis of his residential address. The deadline for receiving VR applications and the publication of FR are approximately two months apart in a VR cycle.

7. Section 32(4) of LCO states that in compiling PR, ERO must strike out the name and particulars of a registered elector from FR of electors if the person is no longer eligible to be an elector. At the same time when PR for GCs is published, ERO will also publish OL, containing the names and residential addresses of persons formerly registered as GC electors. These particulars are struck out from PR and proposed to be omitted from the next FR, based on the information received by ERO who is satisfied on reasonable grounds that these persons are no longer eligible to be registered or have been disqualified.

8. An individual who is already registered in FR of GCs is not entitled to be included as an elector in the next register of GCs if -

- (a) he has ceased to ordinarily reside in Hong Kong;
- (b) he no longer resides at the residential address recorded against his name in the existing register and ERO does not know his new principal residential address in Hong Kong;
- (c) he is no longer a permanent resident of Hong Kong;
- (d) he was an imprisoned person who used his last dwelling-place in Hong Kong at which he resided or the address last recorded under the Registration of Persons of Regulations as the address for registration as an elector and who had served his sentence of imprisonment and left the prison without reporting his new residential address to ERO; or
- (e) he is disqualified for being registered as an elector by virtue of section 31 of LCO.

9. FCs and their electors are provided for in sections 20A to 20ZC of and Schedules 1 to 1E to LCO. Two kinds of persons (i.e. a natural person (individual) and a body) are eligible to be registered as FC electors. If the person is an individual, he must also be either registered for a GC or eligible to be registered for a GC and has made an application to be so registered. A body is eligible to be registered as a corporate elector for the relevant FC only if it has been operating for the 12 months immediately before making an application for registration as an elector. The electorate of the new DC (second) FC is composed of persons who are registered as electors for GCs but are not registered as electors for any of the other 28 traditional FCs. Electors registered for the traditional FCs¹ may choose to be registered for their own FCs or for the DC (second) FC. Similar to the VR for GCs, ERO is responsible for publishing PRs, OL and FRs for FCs.

¹ The arrangement for FC electors to choose to be registered in the DC (second) FC is not applicable to the electors in the Heung Yee Kuk, Agriculture and Fisheries, Insurance, Transport, and DC (first) FCs.

Offence

10. Under section 22 of Cap. 541A, it is an offence for a person to make a false or incorrect statement knowingly for VR purposes in respect of GCs, or to cause another person to make such false or incorrect statement. A similar provision exists under section 42 of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) in respect of VR for FCs. The offences are summary offences and the maximum penalty is a fine of \$5,000 and imprisonment for six months. The Police is the enforcement agency of the offences under Caps. 541A and 541B.

11. Under section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"),

- (a) it is an offence if a person -
 - (i) votes at the election knowing that he is not entitled to do so; or
 - (ii) votes at the election after having knowingly or recklessly given to an electoral officer information that was materially false or misleading, or knowingly omitted to give material information to an electoral officer;
- (b) it is also an offence if a person invites or induces another person –
 - (i) to vote at the election knowing that the other person is not entitled to do so; or
 - (ii) to vote at the election knowing that the other person has given to an electoral officer information that was materially false or misleading, or knowingly omitted to give material information to an electoral officer.

The maximum penalty for the above offences is a fine of \$500,000 and imprisonment for seven years. The Independent Commission Against Corruption ("ICAC") is the enforcement agency of the offences under ECICO.

Measures to improve the VR system

Review of VR system conducted after the 2011 DC Election

12. After the 2011 DC Election, there were complaints and media reports on

cases of suspected false addresses of electors. To address public concern and to maintain the integrity of the VR system, the Registration and Electoral Office ("REO") has implemented a number of measures to improve the VR system starting from 1 January 2012. The enhanced checking measures are set out in **Appendix II**.

13. The Electoral Legislation (Miscellaneous Amendments) Bill 2014 was passed by LegCo on 10 July 2014. With the passage of the Bill, the deadline for VR application for GCs, FCs and Election Committee ("EC") Subsectors has been advanced by 14 calendar days, in order to provide 10 more calendar days to the public for inspecting PR and OL and making claims and objections, and four more calendar days to the Revising Officer for arranging hearings for claims and objections. The new deadlines have already taken effect in the 2015 VR cycle. Thus, according to the relevant existing electoral laws, eligible persons who would like to register as electors but have yet to do so must submit their applications on or before 2 July 2015 so that their registration particulars can be included in the FR to be published in September 2015. As for registered electors, if there is any change in their registration particulars, such as residential address, they should report the change to REO on or before 25 August 2015.

14. After passage of the Bill, the six-month time bar applicable to the relevant provisions on making false or incorrect statement knowingly or recklessly or making material omissions knowingly in relation to VR under Cap. 541A, Cap. 541B and the Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541K) has been removed by making these offences indictable. According to the Administration, this would allow prosecution to be initiated irrespective of the time at which the matter arose. This would enhance enforcement effectiveness and the deterrent effect.

Implementation of Online Voter Information Enquiry System ("OVIES")

15. OVIES, which is an electronic platform to facilitate the public to check their VR particulars, was launched on 1 September 2014. An elector could log in the system anytime anywhere to view his own VR particulars and, if required, take timely action to update their particulars by submitting relevant application forms.

Major issues relating to VR raised by relevant committees

Accuracy of the voter register

16. There were media reports that a large number of poll cards mailed by REO for the 2011 DC election were undeliverable. REO had referred all the complaints where there was a prima facie case of suspected false registered

addresses to relevant law enforcement agencies for investigation. At the meeting of the CA Panel on 21 October 2013, members requested the Administration to provide updated investigation results. The information provided by REO is in **Appendix III**.

17. Some members expressed concern that following the 2011 DC Election, while the Police and ICAC had conducted investigation into complaint cases of 3 020 electors and 8 287 electors respectively, the numbers of convictions and prosecutions were on the low side. The Administration advised that the Police and ICAC had completed investigation of most of these cases, with 66 persons prosecuted resulting in convictions of 55 electors. For the rest of the complaints cases which had proven unsubstantiated, REO had also followed up by making inquiries to the electors concerned in accordance with the statutory provisions.

Checking measures implemented by REO

18. Regarding the 2012 LegCo Election, the CA Panel expressed concern at various meetings about the removal of some 210 000 electors' names from the FRs of electors. Some members expressed concern as to whether the enhanced checking measures adopted by REO were over-stringent. REO advised that it had strictly followed the relevant statutory procedures in the implementation of the checking measures. Each of the electors concerned had received two to three checking/inquiry/reminder letters from REO before they were removed from the FR in accordance with the relevant electoral legislation. REO had endeavored to strike a balance between upholding the accuracy and integrity of the VR system and safeguarding a person's voting right as far as possible.

19. Some members enquired how REO would follow up with the relevant electors whose registered addresses were situated in buildings already demolished or to be demolished. The Administration advised that REO would first try to contact the electors concerned by phone or email (if such contact details were available) before activating the statutory inquiry process. If the elector could not be contacted, an inquiry letter would be sent by registered mail according to the electoral law to the elector's registered address requesting provision of proof of residential address or other information for verification. Should the elector fail to reply by the specified date to confirm his/her only or principal residential address, he/she would be included in OL.

20. Some members pointed out that some elderly people had lost their voting rights inadvertently because they did not know that they needed to respond to the inquiry letters sent to them. They suggested that the Administration should step up publicity through the electronic media. Some members noted that some electors had complained that REO failed to accurately record their reported changes of residential addresses in the electoral registers. During discussion by

the former Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2014 ("the Bills Committee"), some members proposed introducing a mechanism to reinstate the elector status as soon as it was discovered that an elector was omitted from FR solely due to an administrative error on the part of the electoral authority (e.g., erroneous input of address such that the elector was unable to receive enquiry/statutory inquiry letter from REO) without waiting for the next VR cycle.

21. The Administration advised the Bills Committee that the existing arrangements had provided reasonable time and room for detection and rectification of such errors. The design of the VR system had carefully struck a proper balance between the need to maintain a clear annual VR cycle to achieve certainty in the electorate for various elections to maintain the integrity of the elections, and the need to provide a clear avenue for electors to make corrections, supported by proper checks and balances to ensure a due process for the exercise of the statutory power to include or omit an elector from the electoral registers. If the VR system was to be changed to allow FR to be amended at any time after publication, it would bring about much uncertainty to the entire VR system, which might compromise the integrity, certainty and transparency of the existing VR system and risk undermining public confidence in the electoral system. That said, REO would also review its operational procedures from time to time with a view to ensuring a high level of data accuracy and reducing the chances of human error as far as practicable.

22. Some members of the Bills Committee expressed concern about the measures taken by REO for verifying requests for de-registration. The Administration advised that the current administrative procedures adopted by REO were that upon receipt of a signed written notice of de-registration from an elector, ERO would 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 would not be included in the next FR. If the registered mail was undelivered, ERO would find out the reason and follow up to seek further clarification from the elector. The general principle was that ERO would include an elector's entry in OL on the basis of his or her request for de-registration if, in ERO's opinion, the elector concerned had been informed of ERO's intention to omit the elector's entry from the next FR.

Streamlining procedures for VR and publicity

23. The CA Panel has discussed the subject of the implementation of automatic VR at various meetings. While some members were of the view that implementation of an automatic VR system should be the long-term solution to the issues arising from VR, some other members held the view that it was not necessary to implement such a system, taking into account the technical problems

identified and the right of eligible persons to decide whether or not to register as an elector. At the meeting on 17 March 2014, the Administration advised that the existing VR applications were made on a voluntary basis and the registration rate was over 70%. On the other hand, compulsory voting would prompt the need for introduction of sanctions. Also, the Administration would need to consider issues such as the implications of the arrangement for preparing the electoral registers for public inspection (which would include particulars of all Hong Kong permanent residents), and the need to provide for an opt-out system, etc.

24. Some members expressed concern about the low registration rate of young people. Despite an increase from about 46% in 2009 to nearly 60% in 2013, the registration rate of the age group of 18 to 25 still fell short of the overall registration rate of 73%. The Administration advised that REO would disseminate VR information to young people through various media and look for other suitable channels to launch focused publicity campaign. For example, VR counters were set up at the venue of a large-scale civil service recruitment examination in late 2013.

Time gap between the deadline for VR and the polling day

25. Some members considered that a time gap of more than three months between the statutory deadline for application for VR and the polling day was undesirable, as many persons who had reached the age of 18 after the deadline had complained that they had been unable to vote on the polling day in the past. They suggested that reasonable measures (e.g. advance registration by juvenile who would only exercise their voting rights upon reaching the age of 18 on the polling day) should be put in place to rectify the situation.

26. The Administration explained that under the existing statutory timeframe, young people who reached 18 on or before the day of the publication of FR would be eligible to vote upon submitting VR applications. Taking the 2012 LegCo Election as an example, FR was published on 25 July 2012 and the polling day was held on 9 September 2012. The time gap was about one and a half month. A person who reached the age of 18 after the publication of FR on 25 July 2012 would be registered in the 2013 VR cycle eligible for voting in the elections/by-elections conducted subsequently.

Eligibility for VR and non-local voting

27. Some members requested the Administration to clarify as a matter of principle the eligibility of electors who had retired outside Hong Kong or still retained a close connection but did not have a residential address in Hong Kong. Members requested the Administration to clarify whether these people were still entitled to vote and if so, how they could exercise their voting right legally.

28. The Administration explained that the address so provided by these people should be residential address and it should be the elector's only or principal residence in Hong Kong. Under section 2(6) of the Immigration Ordinance (Cap.115), a person did not cease to be ordinarily resident in Hong Kong if he was temporarily absent from Hong Kong and whether that person should cease to be so ordinarily resident would depend on the circumstances of that person and his absence. According to the "Guidelines on Election-related Activities in respect of the DC Election", relevant factors would include the length of the person's absence, the reason for his absence, and his continuing connections with Hong Kong, etc. and each case would have to be considered on its own merits.

29. Hon Regina IP suggested that Hong Kong permanent residents working in the Mainland and frequently travelling between the Mainland and Hong Kong should be allowed to vote in the Mainland, so that they could also exercise their voting right even if they were not in Hong Kong on the polling day. She also suggested that polling facilities might be set up in the offices of HKSAR Government in the Mainland.

30. The Administration considered that if polling facilities were set up in the Mainland to enable Hong Kong permanent residents residing in the Mainland to vote, the same arrangements should also be made overseas to facilitate electors residing abroad to vote. Overseas voting arrangements, however, would entail the need to set up polling facilities in different places of the world and give rise to substantial resources implications. The Government might also need to consider introducing advance registration arrangements and issues arising from vote counting overseas. The Administration advised that it had no plan to implement non-local polling at present.

31. At the meeting on 17 March 2014, some members expressed concern that the eligibility for registration as electors of the Education FC and voters of the Higher Education Subsector of EC remained unclear. They pointed out that in the VR exercise for the 2011 EC Subsector Elections, some teaching staff members of associate degree programs were unable to get registered in the relevant subsector.

32. The Administration advised that the eligibility of registration for the Education FC was clearly set out in Section 20E of LCO. In the run-up to the 2011 EC Subsector Elections, the Constitutional and Mainland Affairs Bureau had published a press statement explaining that the full-time academic staff engaged in teaching or research and administrative staff of equivalent rank in those continuing education institutes or community colleges should, for the purpose of VR, be regarded as the staff of the respective institutions, and were eligible for registration as voters in the Higher Education Subsector. As regards

the community colleges, the Administration advised that it would depend on whether the staff members concerned were able to fulfil the eligibility criteria as stipulated under LCO. The Administration advised that prior to the 2016 LegCo Election, an updating exercise would be conducted in the 2015 VR cycle to review the names of constituents and/or make other technical amendments as necessary.

Status of registered electors of FCs

33. The CA Panel called on REO to take more proactive measures to verify the eligibility of FC electors. The Administration advised that REO would check the electors' information in the existing register and process the VR applications based on the updated information of members/employees provided by the specified bodies/institutions to REO pursuant to LCO before a LegCo election was held. If REO received new information from a specified body/institution regarding changes in membership/employment status of a registered elector after the publication of FRs, REO would issue a letter to the relevant elector reminding him not to vote in the election if he had lost his eligibility for registration.

34. The Administration also informed the CA Panel that for FCs, in order to enhance the accuracy of the membership information supplied by the bodies specified² under LCO, ICAC had initiated a new and targeted visit-cum-advisory service programme starting from the 2013 registration cycle to further drive home the message of good corporate governance and transparent membership administration. Some members queried the effectiveness of the new programme as it was purely advisory and its recommendations were not binding. The Administration explained that under the new programme, ICAC would proactively offer advisory service to individual specified bodies to help review and enhance their membership administration, ensure procedural compliance and enhance transparency.

Election Petition

35. With reference to the court case of *Chong Wing Fai Winfield v Cheung Kwok Kwan and Another* (HCAL10/2012) where it was ruled that there was no provision to bar or disqualify an elector from voting even though he had moved to a new address without informing REO, some members asked whether the judgment would have any implications on the existing VR policy. The Administration explained that the judgment was not expected to have any implications on the existing policy or VR work. However, to address the phenomenon that registered electors often failed to update their particulars after moving their residence, the Administration would strengthen publicity efforts in the 2013 VR cycle to encourage timely updating of registered particulars.

² Section 9 and section 42 of Cap. 541B.

Key statistics relating to the 2014 FR

36. At the meeting on 20 October 2014, the Administration briefed members on the key statistics relating to the 2014 FR. Some members expressed concern about the low registration rate for some FCs, e.g. less than 3 000 (out of 13 000 eligible electors) had registered in the Textiles and Garment FC. The Administration advised that REO would send letters to encourage eligible persons to register as FC electors. REO would also appeal to specified bodies under the LegCo Ordinance (Cap. 542) to encourage eligible members to register in FCs, and advertise in the relevant websites of the sectors concerned.

37. At the request of members, the Administration provided a breakdown of the some 77 000 newly registered electors for GCs in the 2014 FR by age groups vide LC Paper No. CB(2)203/14-15(01).

Recent development

38. The Administration has proposed to brief the CA Panel on the VR campaign in 2015 at the next meeting on 15 December 2014.

Relevant Legco questions and papers

39. At the Council meeting of 5 November 2014, Hon Emily LAU raised a written question on the residential requirement for registered electors, including the definition of "ordinarily reside in Hong Kong". The question raised by Ms LAU and the Administration's reply are in **Appendix IV**. Details of relevant LegCo questions raised at Council meetings and relevant papers in the current term of LegCo are in **Appendix V**.

Appendix I

Contents of Section

Chapter:	542 	Title:	Legislative Council Ordinance	Gazette Number:	2 of 2011; G.N. 5176 of 2012
Section:	31	Heading:	When person is disqualified from being registered as an elector	Version Date:	01/10/2012

(1) A natural person is disqualified from being registered as an elector for a constituency if the person-

(a)-(c) (Repealed 7 of 2009 s. 7)

(d) is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs; or (Replaced 25 of 2003 s. 17)

(e) is a member of the armed forces of the Central People's Government or any other country or territory.

(2) Subsection (1) applies to an authorized representative of a corporate elector in the same way as it applies to an elector who is a natural person. (Amended 2 of 2011 s. 14)

(3) A consular post to which any privilege or immunity is accorded under the Consular Relations Ordinance (Cap 557) is disqualified from being registered as a corporate elector. (Added 2 of 2011 s. 14)

(4) An organization to which section 2 of the International Organizations and Diplomatic Privileges Ordinance (Cap 190) applies or an international organization defined in section 2 of the International Organizations (Privileges and Immunities) Ordinance (Cap 558) is disqualified from being registered as a corporate elector. (Added 2 of 2011 s. 14)

(5) A body which is a department or an agency of a government of a place outside the People's Republic of China, whether at national, regional or municipal level, is disqualified from being registered as a corporate elector. (Added 11 of 2012 s. 34)

(6) For the purposes of subsection (5), a body is not regarded as a department or an agency of a government of a place unless-

(a) the management of the body is appointed by the government and is answerable to the government;

(b) the principal function of the body is to advance the interest of the place; and

(c) the body is non-profit-making. (Added 11 of 2012 s. 34)

Legislative Council Panel on Constitutional Affairs

Checking Measures to Improve the Voter Registration System

Purpose

This paper explains the various checking measures on the registered residential addresses of electors introduced by the Registration and Electoral Office (“REO”) in 2012 to enhance the accuracy of the information in the voter registers.

Checking Measures

2. According to the current legislation, any eligible Hong Kong permanent resident has to provide a true and accurate residential address if he wishes to apply to be registered as an elector. After the 2011 District Council (“DC”) Election, there were complaints and media reports on cases of suspected false addresses of electors. To address public concern and to maintain the integrity of the voter registration system, the Administration conducted a review on the current voter registration system in late 2011 and proposed a series of improvement measures. After considering the views of the Members of the Legislative Council and those from the community, the REO has implemented a series of measures since January 2012 to improve the voter registration system and to enhance the accuracy of the information in the voter registers. The checking measures implemented by the REO in this regard include:

- (a) Follow up on the undelivered poll cards of the DC Election and the Election Committee Subsector Elections in 2011: the REO has issued a letter by registered mail to the elector concerned for any undelivered poll cards received, requesting the elector to confirm whether the address on the current final register is his principal residential address and to provide an address proof. If that letter is also undelivered or if the elector fails to reply by the deadline on the inquiry letter, the registration particulars of that elector will be removed from the 2012 provisional register and be included in the omissions list;

- (b) Checks on multiple electors or multiple surnames of electors at one registered residential address: the REO will require the electors concerned to provide proof or information if the number of electors or the surnames of electors exceed a certain number to confirm their residential addresses;
- (c) Random sampling checks: the REO has conducted random sampling checks on all electors in Hong Kong and requested the selected electors to provide proof or information to confirm their residential addresses;
- (d) Follow up on the undelivered letters on the voter registration of District Council (second) functional constituency (“DC (second) FC”): the REO sent a letter relating to the voter registration arrangements for the newly established DC (second) FC to all 3.56 million registered electors in Hong Kong in late February 2012. The envelope was specially designed to facilitate the public to return wrongly addressed letters to the REO for follow up action. The REO has issued inquiry letters to all electors whose letters are undelivered and requested them to confirm whether they still reside at the registered addresses and provide address proof;
- (e) Checks on demolished units or vacant units pending demolition: the REO has received a list of recently demolished buildings or buildings vacated pending demolition from the departments concerned (such as the Buildings Department and the Rating and Valuation Department). The REO has identified electors who may not have updated their residential addresses and issued inquiry letters to them;
- (f) Full-scale data matching with the Housing Department and the Hong Kong Housing Society: after seeking the agreement of the Privacy Commissioner for Personal Data, the REO has conducted a full-scale data matching exercise with the Housing Department and the Housing Society in March and April 2012 to confirm the accuracy of registered addresses of electors residing in public housing estates contained in the voter registers;

- (g) Follow up on suspected false address cases arising from the 2011 DC Election: the REO has issued 6 470 inquiry letters to electors involving in suspected false addresses from complaints received and media reports. The REO has thus far referred cases involving 2 120 electors to the law enforcement agencies for investigation (1 537 electors were involved in cases referred to the Hong Kong Police Force, while 583 electors were involved in cases referred to the Independent Commission Against Corruption); and
- (h) Other categories: the REO by applying internal criteria has identified a number of addresses suspected to be incomplete or located in non-domestic buildings from the current final register and issued inquiry letters to the electors concerned.

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Ms Joanna MAK
Clerk to Panel on Constitutional Affairs,
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong.

13 November 2013

Dear Ms MAK,

**Legislative Council Panel on Constitutional Affairs
Supplementary information on Voter Registration**

At the meeting of the Panel on Constitutional Affairs held on 21 October 2013, Members discussed the offences related to voter registration (VR) and checking measures. Some Members enquired about the latest investigation results and prosecution statistics regarding complaints about suspected false registered addresses of electors received after the 2011 District Council (DC) Election and statistics related to the checking measures implemented by the Registration and Electoral Office (REO) in the 2013 VR cycle. The following supplementary information is provided for Members' reference.

Investigation results and prosecution statistics related to electors' suspected false registered addresses

According to the latest information provided by the two law enforcement agencies, the Hong Kong Police Force and the Independent Commission Against Corruption have so far investigated 3 021 and 8 290 electors respectively after the 2011 DC Election¹. Following investigation by the two law enforcement agencies under section 22 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) and section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), as at 21 October 2013, 66

¹ The figures include cases involving 1 580 electors referred to the Hong Kong Police Force and cases involving 583 electors referred to the Independent Commission Against Corruption by the REO.

electors have been prosecuted and of whom 55 were convicted. Please refer to Annex I for the concerned figures and the sentences handed down by the court.

Follow-up actions on unsubstantiated cases

According to the investigation by the two law enforcement agencies, cases involving about 11 000 electors were found unsubstantiated. According to the investigation result, the electors concerned were actually residing in the registered addresses or the registered addresses were in fact the previous residential addresses of the concerned electors who did not update their particulars in a timely manner with the REO after moving home. The REO has been following up these cases with the information in relation to the respective electors obtained from the two law enforcement agencies. Where required, the REO will approach by phone or in writing the electors who did not update their registered addresses with the REO in a timely manner after moving home, to assist them to update their address information.

Statistics related to checking measures in the 2013 VR cycle

About 140 000 electors were covered in the enhanced checking measures in the 2013 VR cycle. The REO issued inquiry letters to about 35 000 of them by registered post between February and April 2013 in accordance with the statutory provisions requesting them to update or confirm their registered addresses. The registration status of about 26 000 electors were cancelled and they were removed from the Final Register (FR) published in late July 2013 as the REO had not received their reply in response to the inquiry letters. The different checking measures and the number of electors removed from the FR are shown at Annex II. The REO will continue to implement the checking measures and make inquiries in the 2014 VR cycle, to enhance the accuracy of the registers and maintain the integrity of the VR system. The REO will also continue to launch publicity to remind electors to fulfil their civic responsibility to update their particulars in the voter registers.

Members are invited to note the above.

Yours sincerely,



(SHUM Nam-lung)
for Chief Electoral Officer

c.c. Constitutional and Mainland Affairs Bureau (Attn: Mr Freely Cheng)

**Statistics of investigation and prosecution by the
law enforcement agencies and sentences handed down in respect of
complaints relating to voter registration
following the 2011 District Council Election
(as at 21 October 2013)**

Investigation and prosecution

Investigation by the Hong Kong Police Force	Number of persons involved
● Unsubstantiated after investigation	2 856
● Conviction after investigation, prosecution and trial	7
● Not convicted after investigation, prosecution and trial	3
● Under investigation	1
● Referral to Independent Commission Against Corruption	154
Total	3 021
Investigation by the Independent Commission Against Corruption	Number of persons involved
● Unsubstantiated after investigation	8 232
● Conviction after investigation, prosecution and trial	48
● Not convicted after investigation, prosecution and trial	4
● Prosecution after investigation but charges dropped after Department of Justice offered no evidence	4
● Under investigation	2
Total	8 290 ¹

¹ The figure has included the 154 persons referred by the Hong Kong Police Force to the Independent Commission Against Corruption for follow-up action.

Sentences handed down

Cases investigated by the Hong Kong Police Force		
<i>Election</i>	<i>Number of persons prosecuted</i>	<i>Sentences handed down</i>
2011 DC Election Ping Shan South Constituency	7	<ul style="list-style-type: none"> • 1 person jailed for 4 months, suspended for 2 years • 6 persons jailed for 2 months, suspended for 1 year
2012 Legislative Council Geographical Constituencies Kowloon West Constituency	3	All acquitted
Total	10	7 convicted, 3 acquitted

Cases investigated by the Independent Commission Against Corruption		
<i>Election</i>	<i>Number of persons prosecuted</i>	<i>Sentences handed down</i>
2011 DC Election King's Park Constituency	51	<ul style="list-style-type: none"> • 45 persons convicted: <ul style="list-style-type: none"> - 1 person jailed for 12 months (reduced to 81 days on appeal) - 1 person jailed for 8 months (reduced to 10 weeks on appeal) - 2 persons jailed for 4 months - 7 persons jailed for 3 months - 29 persons jailed for 2 months - 1 person jailed for 6 weeks - 3 persons jailed for 2 months but given suspended sentence - 1 person given 160 hours of community service order • 3 persons acquitted

		<ul style="list-style-type: none">• 3 persons were offered no evidence, thus acquitted
2011 DC Election To Kwa Wan South Constituency	3	<ul style="list-style-type: none">• 2 persons convicted and jailed for 2 months• 1 person was offered no evidence, thus acquitted
2011 DC Election Lok Hong Constituency	1	Acquitted
2011 DC Election Lung Sing Constituency	1	Convicted and jailed for 2 months
Total	56	48 convicted, 4 acquitted, 4 offered no evidence thus acquitted

Checking measures in 2013 VR cycle

<i>Enhanced checking measures</i>	<i>Electors covered</i>	<i>Inquiry letters sent</i>	<i>Electors removed from Final Register</i>
Follow-up inquiries on undelivered poll cards arising from the 2012 Legislative Council Election	29 830	22 860 Note (1)	19 361
Checks on multiple electors or multiple surnames of electors registered with the same residential address	15 090	2 557 Note (1)	1 250
Random sample checks on existing electors	34 879	6 212 Note (1)	3 158
Checks on addresses with incomplete information, commercial addresses or suspected non-residential addresses	24 970	3 300 Note (1)	2 201
Checks on addresses in buildings already demolished or to be demolished	658	406 Note (1)	321
Cross-matching of data with Housing Department, Housing Society and Home Affairs Department for verification of electors' registered addresses	39 062	Not applicable Note (2)	-
Checks on new VR applications with multiple applicants using the same address for registration	139	Not applicable Note (3)	-
Total	144 628	35 335	26 291

Note (1): In these cases, the REO could not contact the electors concerned, or issued enquiry letters to them and they failed to reply to confirm or update their registered addresses. The REO has reasonable grounds to believe that the address might no longer be concerned electors' principal residence. The REO therefore made inquiries to such electors in accordance with the statutory provisions.

Note (2): The REO conducted data matching with Housing Department/Housing Society regarding the particulars of their occupants; and with Home Affairs Department's current final registers for villages. According to the matching result, 17 620 electors have either provided the REO with their latest addresses or their addresses tallied with the records of the relevant departments. Regarding the remaining 21 442 electors who had not yet updated their addresses, the REO issued written notices according to the statutory provisions to assist them to update their registered addresses having regard to the latest information from the relevant departments.

Note (3): The REO conducted checking on new VR applications where multiple applicants use the same address for registration, by issuing enquiry letters requesting the applicants to provide written confirmation of the residential address stated in the application form. 115 applicants replied and provided the required information; the application for VR was thus completed. The remaining 24 applicants had not responded to the enquiry letters and the REO therefore decided not to process their VR applications further.

Appendix IV

Press Releases

LCQ22: Residential requirement for registered electors

Following is a question by the Hon Emily Lau and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, in the Legislative Council today (November 5):

Under section 28(1) of the Legislative Council Ordinance (Cap. 542), one of the eligibility criteria for registration as an elector in the register of geographical constituencies is that the person must ordinarily reside in Hong Kong. The authorities conducted a public consultation from January to March 2012 on the improvement measures of the voter registration (VR) system. In April of the same year, the authorities indicated in the consultation report that during the consultation, they had received public views on the definitions of "ordinarily reside in Hong Kong" and "principal residential address" in relation to VR, but such definitions were outside the scope of the consultation exercise and were complicated issues that had to be handled carefully by the fourth-term Government. Meanwhile, it was reported in May this year that a member of the public had complained to the Registration and Electoral Office (REO) that there were a number of suspected vote rigging cases in his constituency during a District Council (DC) by-election. Upon investigation, REO found that in those cases, some electors were currently not residing in their registered addresses due to various reasons, and REO indicated that it was taking follow-up actions. In this connection, will the Government inform this Council:

(1) whether the fourth-term Government has handled the aforesaid issue regarding the definition of "ordinarily reside in Hong Kong"; if it has, of the details; if not, the reasons for that; and

(2) if it has assessed whether electors no longer residing or working in their registered constituencies but continuing to vote in that constituency will render it impossible for elected members (especially DC members) to effectively take care of the interests of electors; if the assessment outcome is in the affirmative, whether the Government has put in place any improvement measure; if the assessment outcome is in the negative, of the reasons for that?

Reply:

Mr President,

(1) According to section 28(1) of the Legislative Council Ordinance (Cap. 542), a person is not eligible to be registered as an elector in the register of geographical constituencies unless, at the time of applying for registration, the person satisfies the Electoral Registration Officer (ERO) that he/she ordinarily resides in Hong Kong and that the residential address provided is the person's only or principal residence in Hong Kong.

The Government has repeatedly pointed out in the relevant discussions at the Panel on Constitutional Affairs of the Legislative Council that the definition of "ordinarily resides in

Hong Kong" is a complicated issue: the definition of "ordinarily resides in Hong Kong" is not set out in the existing legislation; whether a person "ordinarily resides in Hong Kong" depends on the facts of each case and is a matter involving judgment on the specific circumstances of an individual case and the relevant previous court judgments.

In processing applications for voter registration (VR), the ERO will decide whether the applicant ordinarily resides in Hong Kong by taking into account the specific situation of an individual case and referring to the previous court judgments. If the Registration and Electoral Office (REO) receives a concerned enquiry or complaint, it will carefully examine the details of the case and, where necessary, seek legal advice on the specific situation and/or refer the case to the law enforcement agencies for follow-up investigation. Besides, the REO publishes the provisional registers of electors, the omissions lists and the final registers of electors each year for public inspection to ensure that a highly transparent VR system is maintained. During the period when the provisional registers of electors and the omissions lists are published, the public may make objections or claims to the ERO against the entries on the registers and the lists. Such cases will then be referred to the Revising Officer and a determination will be made after representations from both parties are heard at an open hearing. Hence, a mechanism is already in place in the VR system to handle applications under various situations and to allow for public monitoring.

(2) The Government attaches great importance to maintaining the fairness, openness and integrity of the electoral system, and adopts various measures to ensure a high degree of transparency, the integrity and accuracy of the VR system. On the one hand, the Administration actively encourages the public to register as electors; on the other hand, we have repeatedly reminded applicants that they have to provide true and accurate information. Any person who makes a false statement in an application for VR or change of his residential address violates the electoral law. The Government has also reminded electors through various publicity channels to fulfill their civic responsibility to notify the REO to update their registered addresses after moving home.

Besides, to maintain the credibility of the VR system and to enhance the accuracy of the information in the registers of electors, the REO has launched a series of improvement measures from 2012, including verification checks on electors' registered residential addresses through cross-matching of data with the Housing Department and the Home Affairs Department; checks on multiple electors or multiple surnames of electors registered with the same residential address; random sample checks on the existing electors; checks on addresses with incomplete information, commercial addresses or suspected non-residential addresses; as well as checks on addresses in buildings that have already been demolished or that have already been vacated pending demolition, etc. If the REO receives a complaint against a suspected false registered address of an elector, it will check against the relevant registration record and whenever necessary, request the elector concerned to confirm the relevant registered address and/or refer the case to the law enforcement agencies for follow-up investigation. In addition, the REO will continue to strengthen education and publicity to remind electors to fulfill their civic responsibility to ensure that the registration particulars are accurate. Electors should, upon moving home, notify the REO to update their residential addresses as soon as

possible before the statutory deadlines so that they can vote in the constituency they are currently residing.

The VR arrangements mentioned above aims to ensure that, on the one hand, the system is convenient to the public to register as electors and, on the other, a high degree of transparency, integrity and accuracy of the VR system, and striking a right balance between the two.

Regarding the complaint in May 2014 concerning a suspected case of individual electors providing false residential addresses, the REO, upon receiving the complaint, wrote to the electors concerned immediately and requested them to confirm in writing the relevant information about their registered residential addresses. It was confirmed that some of the electors had passed away and some of them had moved while some of the electors had not replied. As a result, the REO updated the relevant registration particulars in accordance with the relevant legislation when compiling the 2014 final register and deleted the electors who could not confirm their registered residential addresses.

Ends/Wednesday, November 5, 2014
Issued at HKT 16:02

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**Relevant documents on voter registration system
in the current term of the Legislative Council**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	16 October 2012 (Item III)	Agenda Minutes
Legislative Council	17 October 2012	Official Record of Proceedings Pages 110 - 115 (Written question raised by Hon Albert CHAN)
	31 October 2012	Official Record of Proceedings Pages 116 - 119 (Written question raised by Hon Albert CHAN)
CA Panel	19 November 2012 (Item IV)	Agenda Minutes
	17 December 2012 (Item IV)	Agenda Minutes
	21 January 2013 (Item III)	Agenda Minutes
	18 March 2013 (Item IV)	Agenda Minutes
	15 July 2013 (Item II)	Agenda Minutes
	21 October 2013 (Item III)	Agenda Minutes
	18 November 2013 (Item IV)	Agenda Minutes
	20 January 2014 (Item IV)	Agenda Minutes
	17 March 2014 (Item III)	Agenda Minutes

Committee	Date of meeting	Paper
House Committee	13 June 2014	<u>Report of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2014</u>
CA Panel	20 October 2014 (Item V)	<u>Agenda</u> <u>Minutes</u>

Council Business Division 2
Legislative Council Secretariat
9 December 2014