

**For discussion on
19 April 2017**

Legislative Council Panel on Constitutional Affairs

**Review of Penalties and Introduction of Address
Proof Requirement in relation to Voter Registration System**

Introduction

To follow up on the Consultation Report on Enhancement of Voter Registration System (“Consultation Report”) released in early 2016, this paper introduces and seeks Members’ views on the specific proposals on increasing the penalties and introducing the address proof requirement in relation to the voter registration (VR) system.

Public Consultation on Enhancement of VR System

2. In view of the concerns expressed by members of the public on matters relating to VR in the 2015 VR cycle, the Government embarked on a review of the existing VR system and the relevant arrangements, and conducted a public consultation on enhancement of the VR system between 26 November 2015 and 8 January 2016. The Government also sought the views of Legislative Council (“LegCo”) Members at the meeting of the LegCo Panel on Constitutional Affairs (“CA Panel”) on 21 December 2015. Members’ views were in general supportive of taking necessary measures to enhance the VR system. The Government published the Consultation Report on 21 January 2016. The following recommendations have already been implemented in the 2016 VR cycle –

- (a) advancing the statutory deadline for change of registration particulars and aligning it with the statutory deadline for new registrations;
- (b) changing to use surface mail for all inquiries and notifications;

- (c) further strengthening verification of address information with other Government departments;
- (d) increasing the use of other means to communicate with electors and enhance public education and publicity on VR; and
- (e) uploading information on the objection and claim cases to the Registration and Electoral Office's ("REO") website.

3. As regards the other proposed measures that may involve amendments to various pieces of electoral legislation, including review of the VR objection mechanism, raising the penalties on offences relating to VR and introducing requirement of submitting address proofs by electors, they would be taken forward in the longer term. Further to the meeting of CA Panel on 23 February 2017 at which Members' views on the proposed measures to improve the objection mechanism were sought, this paper focuses on the specific proposals on increasing the penalties and introducing the address proof requirement in relation to the VR system.

(A) Increasing penalties in relation to the VR system

Existing penalties

4. At present, there are two sets of offences related to VR. One is under the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) and the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B). The other is under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

5. Under section 22 of Cap. 541A and section 42 of Cap. 541B, it is an offence for a person to make any statement which the person knows to be false in a material particular or recklessly make any statement which is incorrect in a material particular or knowingly omit any material particular from such an application in VR. It is also an offence for a person to cause another person to make such a false statement or to provide information

which the first-mentioned person knows to be wrong in a material particular in VR. These provisions are enforced by the Hong Kong Police Force. According to section 7(5) of the Electoral Affairs Commission Ordinance (Cap. 541), the maximum penalty is a fine at level 2 (\$5,000) and imprisonment for 6 months.

6. Besides, under section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), a person engages in corrupt conduct at an election if the person votes at the election knowing that the person is not entitled to do so, or 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. A person engages in corrupt conduct at an election if the person invites or induces another person to vote at the election knowing that the other person is not entitled to do so, or has given to an electoral officer information that was materially false or misleading, or omitted to give material information to an electoral officer. These provisions are enforced by the Independent Commission Against Corruption. According to section 6(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the maximum penalty is \$500,000 and imprisonment for 7 years.

7. The Government introduced amendments to the Electoral Affairs Commission Ordinance (Cap. 541) and its subsidiary legislation in 2014 to change the offences of providing false information on VR to indictable offences so as to remove the six-month time bar for prosecution in order to enhance effectiveness in law enforcement and deterrent effect. The relevant legislative proposal has already been implemented through the Electoral Legislation (Miscellaneous Amendments) Ordinance 2014, which was enacted by the LegCo in July 2014.

Considerations for increasing the penalties

8. Taking into account the severity of the offence of making false statements in VR and public concerns over the accuracy of registration particulars, the Government proposed in the public consultation on enhancement of VR system launched in end-2015 to raise the penalties for making false statements in VR as set out in the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541) from the current

maximum penalties of a fine of \$5,000 and imprisonment for 6 months to a maximum fine of \$10,000 and imprisonment for 2 years in order to enhance deterrent effect.

9. The majority of views received during the public consultation were in support of increasing the penalties for the offence of making false statements in VR. Some of the views considered the proposed increase in the level of penalties was not high enough for achieving sufficient deterrent effect and a higher level of increase should be considered, while individual views considered that the Government might consider imposing heavier penalties on repeat offenders.

Proposals

10. As the community is generally of the view that the offence of making false statements in VR would severely affect the fairness and impartiality of the election system and that the penalties should have a sufficient deterrent effect, we **propose** to increase the maximum penalties to a fine of \$10,000 and imprisonment for 2 years.

11. The proposal to raise the penalties is targeted at criminals committing the offence of providing false statements in making VR. We do not think that the proposal will affect the eagerness to register as electors among the general public. Furthermore, the proposal would remind members of the public that they must provide true and accurate information when registering as electors or updating registration particulars so as to ensure the accuracy of the registration particulars. Regarding the individual views which considered heavier penalties should be imposed on repeat offenders, as the proposed penalties are already heavier than the current level of fine and term of imprisonment by one time and three times respectively, together with the fact that in meting out sentence, the court would take into account the past criminal record of a defendant, in particular whether he/she has committed the same offence before, we consider that the proposed penalties already have a sufficient deterrent effect and there is no need to impose heavier penalties on repeat offenders.

(B) Introducing requirement of submitting address proofs

Current arrangement

12. The existing VR system is based on the principles of honest reporting and facilitating registration. Under the existing VR system, when an applicant applies for registration as an elector or when a registered elector applies for change of registration particulars, he/she is not required to submit an address proof at the same time, but must declare in the application form that the particulars he/she has provided are true and accurate.

Considerations for introducing the new measure

(i) Minimise the risk of a third party impersonating others to submit VR application

13. Under the present arrangement, an elector only has to complete an application form to change his/her registered address and there is no need to submit any documentary proof. In the 2015 VR cycle, the REO had received complaints from electors who claimed that they had never submitted any application form for new registration/updating registration particulars to the REO and suspected that a third party had impersonated them and submitted such forms to the REO. If an elector being impersonated is not aware of the change in his/her registered address before the publication of the registers of electors and then lodge a claim, he/she will not be able to vote in his/her respective constituency. Obviously, such situation should be stamped out. We believe that after the requirement of submitting address proofs when applying for change of registration particulars is introduced, the desire of a third party to impersonate others to submit applications for change of registration particulars will be significantly reduced because such act would not be successful as the third party concerned would not be able to produce an address proof.

(ii) Impact on voting right

14. The majority of views received during the public consultation

supported introduction of the requirement of producing address proofs when submitting applications for new registration or change of registration particulars by electors as this would facilitate verification of the accuracy of electors' address information and could reduce the possibility of vote-planting. On the other hand, there were views that introduction of the address proof requirement might affect the desire of members of the public to register as electors and/or reporting change of registered addresses. In particular in new registration, if applicants failed to provide proof of new addresses before the statutory deadline, they would not be able to register as electors in that VR cycle, and as a result, they would not be able to vote in that year. There were also views that those who were homeless (such as street sleepers) or applicants who had just reached the age of 18 might not be able to acquire and provide documentary proof of addresses easily. As such, requiring applicants for new registrations to submit address proof might hinder them from exercising their voting right.

Proposals

15. We consider that any proposed measure should not deprive the permanent residents of Hong Kong of the voting right enjoyed under the Basic Law, or seriously undermine the exercising of such a right. In considering the introduction of the requirement of submitting address proofs, it should be noted that the inconvenience that may be caused to the applicants/electors needs to be minimised. In principle, the requirement for address proofs should be introduced to both applications for new registration and change of registration particulars to enhance the accuracy of the particulars contained in the registers of electors. At the same time, we have to consider the public's response to the requirement of submitting address proofs and whether it takes time for members of the public to adapt to the new measure, in particular whether the requirement of producing acceptable address proofs when submitting VR application may affect the desire of members of the public to register as electors thereby affecting the exercise of their voting right. We notice that for change of registered addresses, the existing law does not require registered electors to report change of addresses to the REO after they have moved homes. As such, electors who have not reported change of addresses to the REO and updated their residential addresses immediately after the removal will not lose their eligibility to vote, though they can only cast their votes in the

respective constituencies that they originally belong to. The REO has been reminding the electors of their civic responsibilities to notify the REO promptly after moving homes, so as to enhance the accuracy of the VR particulars, and the electors will be able to vote in the constituencies they currently reside.

16. Having considered the views collected during the public consultation period and assessed the impacts of introducing the requirement of address proofs in respect of applications for new registration and change of registered address, to ensure the smooth implementation of the new measure, allow the public to gradually adapt to the new address proof requirement when applying for VR and avoid severely affecting the desire of eligible persons to register as electors, we **propose** to adopt a progressive approach by implementing the address proof requirement on existing registered electors who apply for change of registered addresses first, and then extending the requirement to cover new registrations after the new measure has been implementing smoothly. We consider that with the arrangement of imposing the address proof requirement on applications for change of registered addresses first instead of applications for both new registration and change of registered addresses in one go, the public will accept and adapt to the measure more easily.

17. To tie in with the introduction of the requirement for producing address proofs, when submitting application for change of registered addresses, we **propose** to implement the following measures –

- (a) the requirement for producing address proofs will only be applicable to electors who apply for change of registered addresses. If the electors' application for change of particulars only involve particulars other than residential addresses (such as telephone numbers or email addresses), they are not required to produce address proofs at the same time;
- (b) with reference to the practice adopted by the REO in election years during which the department collaborates with the Housing Department (“HD”) and Hong Kong Housing Society (“HKHS”) to conduct full-scale data matching in respect of electors who have registered a public housing unit as residential address, in case

where an elector who applies for change of registered address is a registered tenant of a public housing estate under the HD or HKHS, when the REO processes the application for change of registered address, the REO may in parallel check with the HD or HKHS whether the elector concerned is a registered tenant of the relevant housing unit and verify whether the address information submitted by the elector is accurate (this measure will not cover electors who are not registered tenants). As such, we **propose** to exempt this type of electors from the requirement of producing address proofs. According to the information provided by the REO, among the 678 000 and 432 000 VR applications (including applications for new registration and change of registered addresses) received in the 2015 and 2016 VR cycles respectively, 237 000 (35%) and 128 000 (30%) applications are from registered tenants of public housing estates under the HD and HKHS. This being the case, the above administrative arrangement of checking the accuracy of address information provided by the electors with the HD and HKHS and the exemption to be provided to the relevant electors from the requirement of producing address proofs will not only greatly reduce the impact of the new measure on existing electors, but will also enhance the effectiveness of checking the address information of electors; and

- (c) with the existing collaborative arrangement between the REO and the Immigration Department¹, electors who apply for update of particulars at the Registration of Persons Offices may, at the same time, request to have the relevant information forwarded to the REO for updating their VR particulars. Besides, the REO has also been collaborating with other departments to cross-match the registered addresses of electors (such as collaborating with the Home Affairs Department to cross-match the particulars of electors

¹ At present, Hong Kong Identity Card holders who wish to change particulars previously provided to the Registration of Persons Offices may notify the Offices. Option boxes are made available in the application form to allow registered electors to choose to request the Offices to forward the updated information to the REO for amending the registers of electors. Besides, an option box is also made available in the form for applying for an identity card or a replacement identity card by a person of the age of 18 years or over to allow registered electors to choose to request the Offices to forward the updated information to the REO for amending the registers of electors.

of rural representatives elections). In recent years, through these collaborative arrangements with other Government departments, the REO has updated about 30 000 residential addresses of electors each year. As the other Government departments have also adopted the relevant residential addresses for application and correspondence purposes, we consider we may satisfy that the address information can be relied on and used for cross-matching the registered addresses of electors. We **propose** that if the registered addresses of electors are updated through the collaborative arrangements between the REO and other Government departments, the electors concerned can be exempted from the requirement of submitting address proofs.

18. In accordance with the existing statutory deadlines for VR, after the deadline for submitting applications for new registration/change of registered addresses (the existing deadline in a non-District Council election year is 2 May), the REO has to publish and make available the provisional registers of electors and omissions lists for public inspection on or before 1 June. At present, the REO has to complete the processing of all applications, prepare and publish the provisional registers of electors and omission lists within 30 days after the close of application. The timeframe is very tight. After the address proof requirement is put in place, if a person fails to submit an address proof or has not provided an acceptable address proof when submitting VR application, the REO will notify the person concerned to provide supplementary information before the statutory deadline (the existing deadline in a non-District Council election year is 11 May) to enable the department to further process the application, or else the application will not be processed further. In this connection, we **propose** advancing the statutory deadline for change of registration particulars by 30 days to allow time for reminding electors who have applied for change of registered addresses to submit address proofs before the specified deadline if he has yet to do so, such that the applications can be further processed. Before the address proof requirement is extended to new registrations, the statutory deadline for applications for new registration will remain unchanged (with the existing deadline in a non-District Council election year being 2 May). The REO will also review and prepare the list of documents that are acceptable as address proofs for electors' reference.

Advice Sought

19. Members' views are sought regarding the issues set out in paragraphs 10 and 15 to 18 above. Subject to Members' views, we will discuss the specific proposals with the Electoral Affairs Commission, and then prepare for the necessary legislative proposals.

Constitutional and Mainland Affairs Bureau
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