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Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 19 April 2017

Review of penalties and introduction of address proof requirement in relation to voter registration system

Purpose

This paper gives an account of the past discussions held by the Panel on Constitutional Affairs ("the Panel") on the Administration's review of penalties and proposed introduction of address proof requirement in relation to the voter registration ("VR") system.

Background

Large increase in number of notices of objection in 2015 voter registration cycle

2. During the 2015 VR cycle, there was a substantial increase in the number of notices of objection received by the Registration and Electoral Office ("REO"). The number of claims/objections received during the 2011 to 2015 VR cycles and the number of electors involved are given below:

VR Cycle	Claims		Objections	
	No. of cases	No. of electors involved	No. of cases	No. of electors involved
2011	0	0	3	86
2012	8	8	1	1
2013	1	1	0	0
2014	0	0	0	0
2015	0	0	49	1 451 ¹

¹ The number of electors involved in objections received during the public inspection period of the provisional register ("PR") in the 2015 VR cycle:

3. According to the Administration, the substantial increase in the number of notices of objection aroused public concern over the following VR issues:

(a) *Need for review of the deadline for updating registration particulars of electors²*

The deadline for applying for updating the registration particulars should be advanced to a time before PR is released. By doing so, all requests for updating registration particulars will be reflected in PR for public inspection.

(b) *Submission of registration particulars of electors by suspected bogus electors*

It is suggested that newly registered electors and existing electors must submit address proofs at the same time when submitting new applications or updating residential addresses.

(c) *Inaccurate registration particulars*

It is suggested that REO should enhance cross-matching on registered addresses with other Government departments so as to ensure that the registration particulars are accurate. Besides, REO should improve and enhance the data entry work.

Grounds for objection	Number of electors involved
(a) Electors not residing in the registered address	307
(b) Information on the registered address incorrect	156
(c) Incomplete, commercial or suspected non-residential addresses	117
(d) Same residential address with multiple electors or electors with multiple surnames	649
(e) Buildings already demolished or vacant buildings pending demolition	160
(f) Others (e.g. the elector was suspected to be registered without his consent, suspected duplicated registration or elector already deceased, etc.)	62
Total number of electors	1 451

² Amendments to the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541) to advance the statutory deadline for change of registration particulars to the same statutory deadline for new registrations, and to change to use surface mail for all inquiries and notifications were gazetted on 22 January 2016 and tabled in Legislative Council ("LegCo") on 27 January 2016 for negative vetting. The relevant amendment regulations came into operation on 18 March 2016.

(d) *Cases involving elderly institutions*

REO should take measures to address complaints alleging that certain elderly persons living in elderly institutions might have been impersonated in VR without their consent.

(e) *Penalties for provision of false information for VR*

Some are of the view that the penalties for provision of false information should be raised in order to enhance deterrent effect.

(f) *More time needed for handling VR applications and cases of claims and objections*

REO has only 29 days to process new VR applications before PR is published. There are views that the above period should be extended to allow more time for REO to conduct checking work as necessary. Besides, some are of the view that the period between the objection is made and the completion of the hearing should be further extended to allow sufficient time for REO to investigate appeal cases as well as for the Revising Officer ("RO") to conduct hearings and handle reviews.

(g) *Suspected abuse of the objection mechanism*

There is concern that the objection mechanism has been abused by making an objection without sound justification. Besides, some suggested that for cases where the electors' registered addresses are confirmed to be correct after investigation by REO, they might not need to be passed to RO for hearing.

4. To tackle the above issues, the Administration indicated in September 2015 that it intended to conduct a review of the existing VR system ("the Review").

Public consultation exercise from end of 2015 to early 2016

5. On 26 November 2015, the Constitutional and Mainland Affairs Bureau ("CMAB") published the Consultation Document on Enhancement of VR System ("Consultation Document") for public consultation ending on 8 January 2016. The Administration's proposed measures in relation to penalties on VR offences and address proofs are set out in paragraphs 8 and 10 below.

6. On 21 January 2016, CMAB published the Consultation Report on Enhancement of VR System ("Consultation Report"). According to the Administration, a majority of the submissions received during the public consultation exercise were in support of the two proposals concerning penalties on VR offences and address proofs. Details are set out in **Appendix I**.

Discussions held by the Panel

7. The Panel discussed VR issues and the directions of the Review at a special meeting held on 30 September 2015. The Panel discussed the Consultation Document at its meeting on 21 December 2015. The major views expressed by members on the proposed measures in relation to penalties on VR offences and address proofs are summarized in ensuing paragraphs.

Proposal of raising penalties for voter registration offences

8. The Administration proposed in the Consultation Document 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 six months to a fine of \$10,000 and imprisonment of two years in order to enhance the deterrent effect.

9. Members in general expressed support for raising the penalties. Some members further took the view that the magnitude of the proposed increases was too small to achieve sufficient deterrent effect. There was also a suggestion that the penalties on VR-related offences should be raised for repeated offenders. The Administration undertook to consider members' views and suggestion.

Proposal of introducing requirement of submitting address proofs by electors

10. The Administration proposed in the Consultation Document to require applicants to submit address proofs when submitting applications for new registrations or change of registration particulars to facilitate the verification of the electors' identities. As regards the design of the VR application form, the Administration would also consider requiring electors to fill in some useful information (e.g., the elector's previous registered address for application for change of address) to facilitate the verification process.

11. Some members considered that the proposed requirement for address proofs (such as water/electricity/gas bills) would effectively tackle the problem of provision of false addresses for VR. Some other members, however, opposed the proposal as they considered that many young people would have practical

difficulties in producing address proofs for VR purpose and the proposed requirement might discourage eligible persons from applying for registration. They considered that REO should conduct adequate checks targeted at new applications/applications for change of registered address, which would also be an effective measure to tackle the problem of provision of false addresses for VR. Concern was also raised that some people were unable to produce water/electricity/gas bills bearing their names as such documents might bear the names of their family members instead. Some members also expressed concern whether persons such as street sleepers would be able to register as electors under this proposal.

12. The Administration advised that REO had all along conducted random checks on new applications/applications for change of registered address. However, if a large number of applications especially those for new registration were received only within one to two weeks before the deadline, there might not be enough time to conduct the checks as it would take time for the applicants to respond to REO. The Administration considered that the proposed requirement for address proofs was worth consideration to address public concerns over VR issues. The Administration further advised that the VR arrangement for street sleepers was made through non-governmental organizations. REO would consider applications for registration by street sleepers if supporting information could be provided by a trustworthy third party like a registered social worker to ascertain their usual place of residence.

Recent development

13. The Administration will brief the Panel on its proposed way forward on review of penalties and introduction of address proof requirement in relation to the VR system at the next meeting on 19 April 2017.

Relevant papers

14. A list of the relevant papers available on the LegCo website is in the **Appendix II**.

Chapter Four: Views on Raising the Penalties for Voter Registration Offences

- 4.01 Regarding the proposal in the Consultation Document to raise the penalties for the offence of 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 fine of \$10,000 and imprisonment of 2 years, majority of the submissions which had provided views on the proposal were in support. For details of the written submissions, please refer to the Appendix.

Written submissions from political parties and LegCo Members

- 4.02 Among the written submissions received, for political parties and LegCo Members that have provided views on this proposal, their views are summarized in the following paragraphs.

Democratic Alliance for the Betterment and Progress of Hong Kong

- 4.03 Democratic Alliance for the Betterment and Progress of Hong Kong supported the proposal in the Consultation Document to raise the penalties for VR-related offences and was of the view that the relevant penalties might be further raised to ensure the legislation would have sufficient deterrent effect should there be no objection from other stakeholders.

Business and Professionals Alliance for Hong Kong

- 4.04 Business and Professionals Alliance for Hong Kong maintained an open mind in principle on raising the penalties to enhance the deterrent effect. However, the party was of the view that currently there was still much controversy and ambiguity concerning the offence of “making false statements” in VR per se. The party considered that since the current legislation did not provide the definition of “ordinarily reside in Hong Kong”, the Electoral Registration Officer could only decide on whether he was satisfied that the applicant ordinarily resided in Hong Kong based on the specific details of the case and there was a possibility of incorrect assessment. For example, many electors had to

frequently travel abroad for work or other reasons and many electors might have more than one place of residence. Once the relevant residential address was not accepted, the elector would lose his/her right to vote and it was also possible that the case might be regarded as “making false statements” and referred to the law enforcement agencies for follow-up and prosecution. Business and Professionals Alliance for Hong Kong considered that if the penalties were hastily raised before the problem was thoroughly sorted out, the legitimate interests of the electors might be compromised. Therefore, the party had reservations about the proposal.

Democratic Party

- 4.05 Democratic Party considered the proposed term of imprisonment adequate but not the level of fine, as the latter was insufficient to deter those intending to engage in vote-planting. If a person gave a false address, the amounts of fines imposed on the person who had not voted² and who had voted³ were disproportionate. The party was of the view that the Government should amend the Electoral Affairs Commission Ordinance to raise the level of fine for giving a false address.

New People's Party

- 4.06 New People's Party agreed to raising the penalties for VR-related offences to enhance the deterrent effect and was of the view that raising the penalties would not affect the general public's VR and voting in elections.

² Currently, according to the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541), the maximum penalties for the offence of making false statements in VR are a fine of \$5,000 and imprisonment for 6 months.

³ According to 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 after having given false information, or invites or induces another person to vote at the election knowing that the other person is not entitled to do so. The maximum penalties for the offence are a fine of \$500,000 and imprisonment for 7 years.

Hon Kenneth LEUNG

- 4.07 Hon Kenneth LEUNG agreed to raising the maximum penalties for the offence of making false statements in VR to a fine of \$10,000 and imprisonment of 2 years in order to enhance the deterrent effect and maintain the fairness and integrity of the electoral system.

Written submissions from members of the public and organisations

- 4.08 Regarding other members of the public and organisations who had submitted their views, majority of the views supported the proposal to raise the penalties for the offence of making false statements in VR as set out in the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541). Some were of the view that the deterrent effect of the proposed increase in penalties was still not strong enough and the Government should consider further raising the penalties. There were others who held the view that higher penalties should be set for repeat offenders.

Chapter Seven: Views on Introducing Requirement of Submitting Address Proofs by Electors

7.01 Regarding the proposal in the Consultation to require applicants to submit address proofs when submitting applications for new registrations or change of registration particulars to facilitate the verification of the electors' identities, majority of the submissions which had provided views on the proposal were in support. For details of the written submissions, please refer to the **Appendix**.

Written submissions from political parties and LegCo Members

7.02 Among the written submissions received, for political parties and LegCo Members that have provided views on this proposal, their views are summarized in the following paragraphs.

Democratic Alliance for the Betterment and Progress of Hong Kong

7.03 Democratic Alliance for the Betterment and Progress of Hong Kong considered that the Government should maintain the existing voluntary VR system instead of imposing too many requirements for new registrations so as not to dampen the desire of members of the public to register as electors, while consideration could be given to asking for address proofs when registered electors apply for change of their registered addresses to eradicate the act of amending electors' residential addresses by people with malicious intent.

Business and Professionals Alliance for Hong Kong

7.04 Business and Professionals Alliance for Hong Kong had reservation on the proposed introduction of the requirement of submitting address proofs by electors. The Alliance was concerned that if applicants moved homes shortly before the statutory deadline, or fail to provide proof of new addresses before the statutory deadline, they would have lost the chance of being registered as electors in that VR cycle, and would not be able to vote should the year be an election year. Besides, registered electors who moved homes shortly before the statutory deadline might also be unable to provide such proof before the statutory deadline; should that year be a District Council/LegCo election year, they would not be able to vote in the respective

District Council constituency areas/geographical constituencies. In addition, the Alliance considered that applicants who had just reached the age of 18 might not be able to acquire and provide documentary proof of addresses too easily. Even if the address proof of another person who resided with the applicant at the registered address together with a declaration made by the applicant was accepted by the REO as address proof, the desire of young people to register as electors would be affected and it would not be conducive to enhancing young people's participation.

Democratic Party

- 7.05 Democratic Party supported the proposal of requiring electors to submit address proofs when submitting applications for new registrations or change of registration particulars as it considered that the proposed measure would help verify the accuracy of the electors' addresses and compile accurate and credible registers of electors. The party further proposed that upon submission of address proofs by electors, the REO might conduct random checks to cross-check the address information with other Government departments; it also proposed that the Government should add a new section in the VR registration form, specifying that the REO was authorised to confirm with other Government departments as to whether the registered address of the elector was accurate in case the elector failed to provide address proof when submitting the application.

Liberal Party

- 7.06 As for the suspected "vote-planting" cases in past elections, the Liberal Party considered that the Government should step up efforts to enforce the law and conduct random checks to prevent recurrence of such incidents. The party opposed requiring electors to provide address proofs as such a measure was complicated and might cause inconvenience, dampening the electors' desire to vote. Besides, the party suggested the Government to consider adopting a "dual-track" mode, i.e., maintaining the existing practice of only requiring electors in suspected cases to provide address proofs, while allowing persons who wished to register as electors or change registration particulars shortly before an election upon production of address proofs so that they can vote in the upcoming election.

Civic Party

7.07 Civic Party considered that providing address proof had all along been one of the requirements for applying for many services in the community (such as opening a bank account), and so the vast majority of the public should have already got used to this requirement. Besides, considering the need to ensure the fairness and credibility of the electoral system, the requirement for applicants to provide address proofs was in line with the “principle of proportionality”. However, given that the living environment or conditions of individual members of the public might be different, they might not be able to provide certain types of address proof. As such, the party considered that as far as the address proof to be provided by members of the public was concerned, the Government should keep an open mind and accept as many types of documents as address proof as possible. That aside, the party considered that as there was an existing arrangement to facilitate those who were homeless (such as street sleepers) to register as electors, the Government should consider allowing those applicants who did not have a residential address to register as electors under the said arrangement if the REO believed that the applicants genuinely could not provide any address proof.

New People’s Party

7.08 New People’s Party considered that although the introduction of the address proof requirement would help enhance the accuracy of the registers of electors, overseas experiences had shown that mandating members of the public to provide proofs would lead to a drop in the number of electors, and might make it more difficult for the underprivileged to exercise their voting right, affecting the representativeness of the whole electoral system. Therefore, the party had reservation on this proposal.

Hon Kenneth LEUNG

7.09 Hon Kenneth LEUNG agreed that applicants should submit address proofs when submitting applications for new registrations or change of registered addresses. He also considered that in implementing the measure, additional resources should be provided to assist members of the public to obtain such proofs

(such as increasing the manpower to facilitate members of the public to make statutory declarations, or sending letters with certification numbers by the REO at the request of members of the public for verification of residential addresses).

Written submissions from members of the public and organisations

The Law Society of Hong Kong

7.10 The Law Society of Hong Kong considered that if the requirement for address proof was to become a pre-requisite for the right to vote, then this proposal could not be accepted lightly in particular when a voting right was a fundamental right safeguarded by the Basic Law, and voter registration was voluntary. The Society was concerned that it would be burdensome or even difficult for certain members of the public (such as persons who were not property owners, persons still at college or seeking employment, and those who resided with their parents) to produce address proof. Besides, the Society considered that the proposal might affect the desire of members of the public to register as electors and/or reporting changes of address.

Other individuals and organisations

7.11 Among the submissions received, majority of the views supported introduction of the requirement of producing address proofs when submitting applications for new registrations or change of registration particulars by electors. Some were of the view that currently many service providers in the community also required applicants to produce address proofs for registration purpose. The Government might also follow the practices of telecommunication companies in asking applicants who could not provide address proofs to give a reply to the Government through telephone or the Internet on receipt of the letters issued by the Government to confirm their registered addresses. There were also views which considered that the fairness of elections was of paramount importance and any act of vote-planting could not be accepted, and producing address proof for VR could reduce the possibility of vote-planting. However, those who opposed the proposal were concerned that the proposed requirement would make it more difficult for those who had just reached adulthood to become electors as they might not be able to produce address proof.

Appendix II

Relevant documents on review of penalties and introduction of address proof requirement in relation to voter registration system

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	30.9.2015 (Item I)	Agenda Minutes
	21.12.2015 (Item III)	Agenda Minutes
	--	Consultation Report on Enhancement of Voter Registration System

Council Business Division 2
Legislative Council Secretariat
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