

**Consultation Report on
Enhancement of Voter Registration System**

Constitutional and Mainland Affairs Bureau

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* The Appendix has been uploaded to the website www.cmab.gov.hk. Members of the public may visit the website to browse the Appendix.

Chapter One: Introduction

- 1.01 In light of the public concerns expressed on matters relating to voter registration (VR) in July and August 2015, the Government embarked on a review of the existing VR system and the relevant arrangements. The preliminary views of the Legislative Council (LegCo) Members on the directions of the review were sought at a special meeting of the LegCo Panel on Constitutional Affairs on 30 September 2015.
- 1.02 The Government subsequently drew up a series of proposed measures and issued the “Consultation Document on Enhancement of Voter Registration System” (Consultation Document) on 26 November 2015 to collect public views on further improvement of the VR system. The Government also sought the views of LegCo Members on the proposed measures set out in the Consultation Document at a meeting of the LegCo Panel on Constitutional Affairs on 21 December 2015. The consultation period ended on 8 January 2016.
- 1.03 This report sets out the results of the consultation exercise and the Government’s position on the proposed measures after considering the views received.
- 1.04 A complete collection of all written submissions received during the consultation period is in the **Appendix**. Due to limited space, the main body of this report gives a brief account of the views received. Please refer to the **Appendix** for the original texts of the written submissions as submitted.

Chapter Two: Consultation Document on Enhancement of Voter Registration System

Public consultation

2.01 The Consultation Document mainly put forward a series of proposed measures in respect of VR and checking arrangements, penalties on VR offences, review of the objection mechanism, time limit for processing objection cases and requirement of address proofs, and invited members of the public to express their views. Details of the proposed measures are as follows:

VR and checking arrangements

- (a) to advance the statutory deadline for change of registration particulars to a date before the publication of the provisional register (PR) and omissions list (OL), and align it with the statutory deadline for new registrations;
- (b) to change to use surface mail for all inquiries and notifications;
- (c) to further improve the checking arrangements and strengthen verification of address information with other Government departments, for example, enhancing liaison with the Buildings Department (BD) to collect the latest list of buildings that are demolished or vacated pending demolition and exploring the collection of information on buildings with acquisition and resident removal completed from the Urban Renewal Authority. The Registration and Electoral Office (REO) will also improve data entry work to enhance accuracy. In addition, we may explore the possibility of verifying at the same time whether electors' address information is correct or not when the REO conducts full-scale checking with the Housing Department (HD) and the Hong Kong Housing Society (HKHS) in the future. We will consult the Office of the Privacy Commissioner for Personal Data when we study the feasibility of this proposal;

Penalties on VR offences

- (d) 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 fine of \$10,000 and imprisonment of 2 years in order to enhance the deterrent effect;

Review of the objection mechanism

- (e) to specify in the law that the burden of proof rests on the objector and unless the evidence provided by the objector is accepted by the Revising Officer, the registration of the elector being objected to shall stand;
- (f) to specify in the law that the objector is required to appear at the hearings conducted by the Revising Officer;
- (g) to upload information on the objection cases to the REO website, including the dates and time of hearings and the names of the objectors and the electors being objected to;
- (h) to process indubitable objection cases through REO's seeking the approval of the Revising Officer in writing to correct the particulars of the electors concerned without the need of a hearing by the Revising Officer;

Time limit for processing objection cases

- (i) to study whether to extend the time limit for the Revising Officer to conduct hearings, including reserving more time for the REO and the Revising Officer to process the objection cases and to conduct hearings and reviews; and

Address proofs

- (j) 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, we 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.

- 2.02 The public consultation was conducted between 26 November 2015 and 8 January 2016. The Consultation Document was available at the Public Enquiry Service Centres of District Offices for collection and on the website of the Constitutional and Mainland Affairs Bureau (CMAB) for download.
- 2.03 Views of LegCo Members were also sought on the proposed measures in the Consultation Document at the meeting of the LegCo Panel on Constitutional Affairs on 21 December 2015. Members in general supported that the Government should introduce measures to further improve the VR system. As regards checking measures, some Members suggested that the REO should enhance the cross-matching of electors' residential addresses with other Government departments. Most Members supported raising the penalties on VR-related offences, with some of them taking the view that a higher penalty should be imposed for VR-related offences to enhance the deterrent effect, and that a heavier sentence should be imposed on repeat offenders. Regarding the proposal to review the objection mechanism, some Members supported prescribing in the law that objectors should bear the burden of proof and be required to appear at hearings so as to facilitate the Revising Officer to better understand the justifications for the objections, and agreed with uploading the information on objection cases to the REO website to enhance transparency. However, there were Members who objected to the proposals and considered it unreasonable to require objectors to produce evidence and that disclosing the names of objectors might discourage the public from raising objections. Many Members supported the proposal of requiring electors to provide address proofs, while some expressed reservation about requiring electors to provide address proofs for their VR applications, believing that this had to be carefully considered as it might dampen the desire of the public to register as electors.

Views collected during the consultation period

2.04 During the consultation period, we received a total of 277 written submissions¹ by mail, facsimile and electronic mail from LegCo Members, political parties, organisations and members of the public. These written submissions (except a few which requested confidentiality) are in the **Appendix**.

¹ CMAB received 27 more written submissions on the Consultation Document on the day after the end of the public consultation period. These written submissions are included in the Appendix but will not be mentioned in this report.

Chapter Three: Views on Voter Registration and Checking Arrangements

- 3.01 Regarding the proposals in the Consultation Document to advance the statutory deadline for change of registration particulars and align it with the deadline for new registrations; change to use surface mail for all inquiries and notifications; and further strengthen the verification of address information with other Government departments, majority of the submissions which had provided views on the above-mentioned proposals were in support. For details of the written submissions, please refer to the **Appendix**.
- 3.02 In addition to the proposed measures for public consultation mentioned in paragraph 3.01 above, it was also proposed in the Consultation Document that the REO should increase using other means of contacts to communicate with electors apart from mailing. Also, the Government would enhance public education and publicity to promote the following messages:
- (a) electors should fulfil their civic duty of updating registered addresses as soon as possible;
 - (b) encourage electors to use the Online Voter Information Enquiry System (OVIES) (www.voterinfo.gov.hk) or the REO hotline (2891 1001);
 - (c) members of the public should provide true and correct information; and
 - (d) electors should respond to REO's inquiries as soon as possible.

Written submissions from political parties and LegCo Members

Democratic Alliance for the Betterment and Progress of Hong Kong

- 3.03 Democratic Alliance for the Betterment and Progress of Hong Kong supported the Government in reviewing the existing VR system and the relevant arrangements so as to ensure the accuracy

and comprehensiveness of the registration particulars in the registers of electors and maintain the fairness and integrity of the electoral system. The party considered that the review should be conducted on the premise that subsequent to the enhancement measures, the VR system would fulfill the purposes of encouraging and facilitating the voluntary registration of members of the public as electors. As regards the checking arrangements, the party took the view that the REO, after consulting the Privacy Commissioner for Personal Data, should further examine the possibility of collaborating with more Government departments in cross-matching electors' address information. The party also expressed support for the proposed enhancement of checking measures by switching to use surface mail for all inquiries and notifications and adopting diversified means of communication to remind electors to respond to inquiries. The party further suggested REO to send out staff to conduct home visits so as to reach out to the electors, ensuring that they could continue to be registered as electors.

Business and Professionals Alliance for Hong Kong

3.04 Business and Professionals Alliance for Hong Kong considered that in introducing any measures, consideration must be given to the integrity of the electoral system, the feasibility of the measures to be introduced, the use and allocation of public funds, the rationale underlying the existing system, and taking into account the results of the 2012 Public Consultation on Improvement Measures of Voter Registration System. Any unnecessary major changes to a long-standing and effective system should be avoided. The party agreed to the proposed VR and checking measures set out in the Consultation Document, believing that the measures could strike a right balance between enhancing the fairness and credibility of the electoral system and facilitating members of the public to register as electors and exercise their right to vote.

Democratic Party

3.05 Democratic Party agreed in general to the implementation of the proposed VR and checking measures mentioned in paragraphs 3.01 and 3.02 above. The party took the view that if no response was received after the issue of an inquiry letter, home visits should be conducted for the purpose of checking and verifying the

authenticity of the identity of the electors concerned. Democratic Party suggested that public education should not be limited to VR, and various channels should be employed to disseminate to the public the message that providing false information was a serious offence punishable by imprisonment.

Liberal Party

3.06 Liberal Party agreed to the proposal in the Consultation Document that the REO would strengthen its liaison with the parties concerned in collecting the list of buildings that had been demolished or vacated pending demolition and the latest information on buildings with acquisition and resident removal completed, for follow-up action. Regarding the proposal for the REO to conduct checking with the HD and HKHS to confirm the accuracy of the addresses of electors, Liberal Party agreed that the Government should consult the Office of the Privacy Commissioner for Personal Data before pursuing this proposal and maintain a right balance between checking of information and personal privacy. The party also suggested that the Government should explore other channels of communication (such as mobile phone short message service (SMS) and electronic mail) with electors apart from mail, step up education and publicity, appeal to electors to provide information such as their mobile phone numbers and electronic mail addresses to facilitate the REO to communicate with electors through different channels.

Civic Party

3.07 Regarding the checking mechanism, Civic Party suggested an additional means of checking, i.e., enabling the viewing of the total number of registered electors registered under the same address. This would help an elector to check whether his/her address had been used for VR by people not living in the premises concerned, and in turn facilitate the REO to follow-up on suspected “vote-planting” cases.

New People’s Party

3.08 The views of New People’s Party regarding VR and the checking arrangements are consolidated as follows:

- (a) advancing the statutory deadline for change of registration particulars would allow the REO sufficient time to handle claim and objection cases. It was believed that this would also help improve the checking of information; however, advancing the deadline would inevitably have an adverse impact on the registration rate, with only limited effect on preventing fraudsters from maliciously updating other people's registration particulars;
- (b) agreed that switching to surface mail for all inquiries and notifications could save electors the trouble of acknowledging receipt of mail, but this could not in any way guarantee that electors would receive the relevant notifications. The party suggested that the Government should improve its communication regime by taking the initiative to contact electors through SMS and electronic mail apart from the traditional way of dispatching mails;
- (c) suggested that the Government should explore the feasibility of strengthening verification of address information with other Government departments so as to improve the accuracy of registration particulars of electors on the premise that the Personal Data (Privacy) Ordinance would not be violated. The Government should also look into the feasibility of allowing an elector to choose automatic updating of his/her particulars when using Government services;
- (d) suggested enhancing public education and publicity, including explaining to the public beforehand the scope and effects of checking, and providing support to the affected electors. The Government should also encourage electors to verify their personal particulars before the statutory deadline through the OVIES to make sure that their registered addresses were accurate; and
- (e) updating other people's registration particulars maliciously would deny the affected elector of his/her right to vote and may even affect the election results, leading to serious implications. It was important for the Government to strengthen its investigation and enforcement efforts and when necessary, amend the legislation so as to eradicate such illegal acts.

Hon Kenneth LEUNG

3.09 Hon Kenneth LEUNG was of the view that the statutory deadline for change of registration particulars should not be advanced, so that the final registers (FR) could reflect the latest particulars of electors and enable them to vote in the appropriate constituency. He suggested that the REO should enhance its identification verification procedures upon VR to forestall anyone from impersonating an elector to maliciously update his/her particulars. On the other hand, he agreed that the REO should change to surface mail for all inquiries and notifications and expand its work on information verification without violating the Personal Data (Privacy) Ordinance. He also suggested that the REO should step up publicity in election years, encouraging electors to check their VR particulars and strengthening public awareness on the VR checking regime.

Written submissions from members of the public and organisations

3.10 Regarding other members of the public and organisations who had submitted their views, majority of the views were in support of the proposed measures on VR and checking arrangements mentioned in the Consultation Document, with an organisation suggesting that suspected cases of “vote-planting” could be more accurately identified for investigation by consolidating the data from different Government departments. This would be more accurate than random checking, cost less and minimise disturbance to the public. There were also views that the Government should step up the random checking of electors on the FR and the verification of address information of electors with other Government departments.

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 Five: Views on Reviewing the Objection Mechanism

5.01 Regarding the submissions which had provided views on the proposals of reviewing the objection mechanism, more views supported the proposals to specify in the law that the burden of proof rested on the objector and the objector be required to appear at the hearings; as regards the proposals in the Consultation Document to upload information on the objection cases to the REO website and to empower the REO to handle indubitable objection cases, majority of the views were in support. For details of the written submissions, please refer to the **Appendix**.

Written submissions from political parties and LegCo Members

5.02 Among the written submissions received, for political parties and LegCo Members that have provided views on proposed measures relating to the review of the objection mechanism, their views are summarized in the following paragraphs.

Democratic Alliance for the Betterment and Progress of Hong Kong

5.03 Democratic Alliance for the Betterment and Progress of Hong Kong agreed to the proposals put forward in the Consultation Document and was of the view that the Government should formulate measures to prevent the abuse of the objection mechanism relating to the particulars in the register of electors. Under the current mechanism, an objector may raise objections without advancing sufficient justifications and he/she is not required to attend the hearing to state his/her case. This could become an inducement to abuse the objection mechanism. Therefore, the party supported obliging objectors to attend the hearings, bear certain burden of proof and provide reasonable evidence to the satisfaction of the Revising Officer. Furthermore, the party proposed that after the registered addresses of the relevant electors had been verified by the REO upon receipt of objections, consideration should be given to not requiring such cases to be heard by the Revising Officer, so as to reduce the nuisance caused to the electors by requiring them to attend the hearings.

Business and Professionals Alliance for Hong Kong

5.04 Business and Professionals Alliance for Hong Kong agreed to the proposals put forward in the Consultation Document to review the objection mechanism and believed that the proposals could help handle contentious cases in an orderly, proper and efficient manner and ensure that the VR system would not be abused.

Democratic Party

5.05 Democratic Party's views on the proposed measures regarding the review of the objection mechanism are consolidated as follows:

- (a) Democratic Party was against the Consultation Document's proposal to specify in the law that objectors should bear the burden of proof as it was of the view that objectors had no power of law enforcement or investigation, hence making it difficult for them to produce evidence to the satisfaction of the Revising Officer. Democratic Party considered that the existing practices should be maintained. Members of the public should be allowed to raise objections as long as they had reasonable doubt while the checking work should be taken up by the REO;
- (b) in the event that objectors must appear at hearings conducted by the Revising Officer, electors being objected to should also be required to appear at hearings and produce proof of their residential addresses;
- (c) the proposal of uploading information on objection cases on website would give rise to privacy concerns, deterring people from raising objections;
- (d) Democratic Party doubted whether the REO was capable of distinguishing indubitable cases from dubitable ones; and
- (e) some electors being objected to confirmed the change of their residential addresses with the REO during the investigation conducted by the REO prior to the hearings, and they were allowed to change their addresses with the approval of the Revising Officer in accordance with the relevant electoral legislation. Democratic Party was of the view that the public had no way to tell whether the new

addresses provided were genuine, and even if the public had reasonable doubt about the addresses concerned, they had no more chance to raise any objection in the same VR cycle. Democratic Party proposed to amend the legislation by making it compulsory for the public to produce address proof in case of making any request for change of address, and only by doing so would the new address be accepted as genuine for registration.

Civic Party

5.06 Civic Party's views on the proposed measures regarding the review of the objection mechanism are consolidated as follows:

- (a) at present, it was not necessary to set a higher threshold for raising objections. In particular, it was not necessary to require objectors to bear the burden of proof. Civic Party was of the view that the particulars on the registers of electors were mainly personal data, it would be difficult for a third party to collect the required evidence (e.g., proof of genuine residential addresses of registered electors);
- (b) requiring objectors to appear at hearings conducted by the Revising Officer might exert pressure on them, which could, in fact, discourage the public from raising objections against suspected "vote-planting" cases; and
- (c) disclosure of information on objection cases was supported as it would help enhance transparency, and further improve the overall effectiveness of the objection mechanism.

New People's Party

5.07 New People's Party agreed that, to lower the chance of the mechanism being abused, objectors should appear at hearings and explain the justifications for their objections. The party was also of the view that the Government should explain the rights and duties of the complainant, to remove public concerns.

Hon Kenneth LEUNG

5.08 Hon Kenneth LEUNG was of the view that people raising objections against VR should not be required to bear the burden of

proof and it should not be a mandatory requirement for objectors to appear at hearings to make representations. Nevertheless, the Revising Officer should have the power to request the presence of objectors where circumstances warranted. He was of the view that, in handling objection cases, the REO should play an active and positive role by conducting investigations based on the information submitted by objectors and refer such information to the Revising Officer for reference. Hon LEUNG was also of the view that problems with VR particulars might involve elements of corruption in election. Therefore, the REO should consider ways to protect the privacy of objectors, as disclosure of objectors' identities might discourage the public from reporting problematic VR cases.

Written submissions from members of the public and organisations

5.09 Regarding other members of the public and organisations who had submitted their views, more views supported the proposals to specify in the law that the burden of proof rested on the objector and the objector be required to appear at the hearings. However, some organisations and individuals did not support these two proposals as they thought that it would be difficult for objectors to provide evidence, and the two proposals might discourage the public from raising objections. Separately, majority of the views received from members of the public and organisations supported the uploading of information on objection cases to the REO website. Nevertheless, there were views that the proposal would constitute an infringement of privacy. Regarding the proposal of empowering the REO to process indubitable objection cases, majority of the views received from members of the public and organisations supported the proposal.

Chapter Six: Views on the Time Limit for Processing Objection Cases

- 6.01 Regarding the proposal put forward in the Consultation Document to study whether to extend the time limit for the Revising Officer to conduct hearings, including reserving more time for the REO and the Revising Officer to process the objection cases and to conduct hearings and reviews, majority of the submissions which had provided views on the proposal were supportive. For details of the written submissions, please refer to the **Appendix**.

Written submissions from political parties and LegCo Members

- 6.02 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.

Business and Professionals Alliance for Hong Kong

- 6.03 Business and Professionals Alliance for Hong Kong agreed to the proposal put forward in the Consultation Document to study whether to extend the time limit for processing objection cases, and was of the view that the proposal could help handle contentious cases in an orderly, proper and efficient manner and ensure that the VR system would not be abused.

Democratic Party

- 6.04 Democratic Party agreed to extend the time limit for processing objection cases to allow more time for the REO and the Revising Officer to process the objection cases and to conduct hearings and reviews.

Civic Party

- 6.05 Civic Party believed that the number of newly registered electors would stand at tens of thousands as the civic awareness of the public continued to heighten. More time would be required for the REO to process the relevant work. On the other hand, even if the number of suspected “vote-planting” cases decreased drastically after the VR system was reformed and the Revising

Officer might not have to process a large number of objection cases, the extension of the whole registration, objection and appeal process could still help in allowing relevant Government departments and the Judiciary a reasonable amount of time to deal with the relevant work, thereby further improving the VR system.

Hon Kenneth LEUNG

6.06 Hon Kenneth LEUNG agreed that more time and resources should be reserved for the REO and the Revising Officer to process VR objection cases, including the conduct of hearings and reviews.

Written submissions from members of the public and organisations

6.07 Regarding other members of the public and organisations who had submitted their views, majority of the views supported the proposal to study whether the time limit for the Revising Officer to conduct hearings should be extended.

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.

Chapter Eight: Other Views on Voter Registration

Step up monitoring of residential care homes for the elderly

8.01 Some submissions expressed concern as to whether an elderly residing in elderly homes might be registered as an elector without his/her knowledge. Some organisations proposed that the Government should step up checks on electors whose registered addresses were the addresses of elderly homes. Democratic Party proposed that a requirement should be introduced to allow only staff of the elderly homes or relatives of the elderly to take elderly electors to the polling stations, and to disallow people other than staff members of the REO or relatives of the elderly from assisting the residents in elderly homes to register as electors.

Definition of “ordinarily reside in Hong Kong”

8.02 Business and Professionals Alliance for Hong Kong and Democratic Party considered that the Government should give a definition for the term “ordinarily reside in Hong Kong”. Democratic Party proposed that if a person was to apply for change of his/her registration particulars or registration as an elector, he/she should be regarded as “ordinarily reside in Hong Kong” only if he/she had resided in Hong Kong for at least six months in the year preceding his/her application.

Chapter Nine: Conclusion

Proposal of advancing the statutory deadline for change of registration particulars and aligning it with the statutory deadline for new registrations

9.01 As majority of the views received are in support of advancing the statutory deadline for change of registration particulars and aligning it with the statutory deadline for new registrations, after due consideration, the Electoral Affairs Commission will promptly make amendments to the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541) in early 2016 to advance the statutory deadline for change of registration particulars to 2 May (non-District Council election year) and 2 July (District Council election year). After completion of the negative vetting procedures by the LegCo, the statutory deadline for change of registration particulars in the 2016 VR cycle will be advanced from the original date of 25 June 2016 to 2 May 2016. When the Government kicks off the 2016 VR Campaign in early March 2016, efforts will be made to publicise the new statutory deadline for change of registration particulars to remind members of the public that the statutory deadlines for new registrations and change of registration particulars for this year are both 2 May 2016.

Proposal of changing to use surface mail for all inquiries and notifications

9.02 As majority of the views received are in support of changing to use surface mail for all inquiries and notifications, after due consideration, the Electoral Affairs Commission will introduce related amendments to the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541) in early 2016. After completion of the negative vetting procedures by the LegCo, the REO will use surface mail for all inquiries and notifications for the convenience of electors.

Proposal of further strengthening verification of address information with other Government departments

9.03 Majority of the views received are in support of further strengthening verification of address information with other

Government departments by the REO to enhance the accuracy of registration particulars. In the 2016 VR cycle, the REO will implement the following arrangements and related follow-up actions:

- (a) to enhance liaison with the BD to collect the latest list of buildings that are demolished or vacated pending demolition;
- (b) to liaise with the Urban Renewal Authority to collect information on buildings with acquisition and resident removal completed;
- (c) to implement the collaborative arrangement with District Offices to identify buildings that will soon be demolished or are already vacated; and
- (d) to improve data entry work to enhance accuracy.

9.04 As regards the full-scale checking of electors' registered addresses in public housing units with the HD and HKHS during election years, the REO, apart from confirming whether these electors are still residents of the public housing estates under the HD or HKHS, will verify at the same time whether electors' address information is correct or not. The REO will discuss the detailed arrangements and implementation timetable with the HD and HKHS.

9.05 Regarding the views which consider that the REO should also cross-check electors' addresses with other Government departments, the REO will continue to explore with other Government departments the feasibility of cross-checking the information. However, it should be noted that applicants are currently required to provide the addresses of their only and principal residence in Hong Kong when submitting applications for VR. As such, in studying the feasibility of cross-checking the electors' addresses with other Government departments, considerations should be given to whether the addresses are suitable for VR purpose, as well as the accuracy and updatedness of the information. Besides, since personal data is collected by other Government departments for their own intended purposes rather than for cross-checking with the REO for VR, we also need to consider the appropriateness and feasibility of the proposal

from the privacy perspective, and will consult the Office of the Privacy Commissioner for Personal Data as and when necessary.

Proposal of raising the penalties on offences relating to VR

- 9.06 As majority of the views received are in support of increasing the penalties for the offence of making false statements in VR as provided for in the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541), the Government will draw up specific proposals, including the necessary amendments to the principal and related subsidiary legislation of the Ordinance. When we draw up the specific proposals, we will consider whether or not increasing the maximum penalties to a fine of \$10,000 and imprisonment of 2 years as proposed will achieve sufficient deterrent effect and whether or not heavier penalties should be imposed on repeat offenders.

Proposals of specifying in the law that the burden of proof rests on the objectors and the objector be required to appear at the hearings

- 9.07 Among the views received, more views are in support of the proposals of specifying in the law that the objectors should bear the burden of proof and be required to appear at hearings. However, there are also opposing views which consider that as objectors do not have the power to enforce the law or conduct investigations, it would be difficult for them to produce evidence. Besides, there are views that the two proposals may dampen the desire of members of the public to raise objections.
- 9.08 In considering the proposals of specifying in the law that the objectors should bear the burden of proof and be required to appear at hearings, it should be noted that the design of the existing VR system comprises three main elements/components, i.e., applicants' declaration, REO's verification procedures and a highly transparent mechanism for public inspection and making claims and objections (for details, please refer to Chapter Two of the Consultation Document). Under the existing VR system, registration particulars of an elector are verified by the REO when processing the application and a number of checking measures are implemented in each VR cycle. After completing the above procedures, the REO will make available the PR and OL each year for public inspection. The public may lodge claims or objections against the entries in the PR or OL before the statutory

deadlines. The objection mechanism is not to serve purely as a channel for lodging complaint or speculations with unfounded basis. The objection mechanism is in fact a solemn procedure which involves objection against the registration of other persons (i.e., electors already listed on the PR), under which the voting rights of the electors being objected to will be directly affected at the same time. Objection cases are heard by an independent Revising Officer. Even though the existing legislation has not expressly laid down the requirement that the burden of proof rests on the objector, as a matter of general legal principle and according to the design of the objection mechanism as mentioned above, the objection process should be conducted under the standard of proof based on “balance of probabilities”. An objector should give reasons for raising reasonable doubts and provide certain facts in support of these reasons. As such, the objector has the responsibility to explain at the hearing why the person being objected to is not qualified as an elector.

- 9.09 Given the above background and reasons, as well as in light of the views received during the consultation period, we consider it justified to prescribe in the law that the objector has the responsibility to provide justifications for his/her objection in order to show that the objection is based on reasonable doubts and certain facts, and require the objector to appear at the hearing conducted by the Revising Officer to facilitate the Revising Officer to understand the justifications for the objection.
- 9.10 As to what specific justifications and facts should be provided by the objector, it depends on the objector’s grounds of objection and specific circumstances of individual objection cases. The Revising Officer will make a ruling after considering the details of the objection case, the grounds advanced by the objector and other information in relation to the case.
- 9.11 In light of the views received in the consultation exercise, we, in conjunction with the REO and the Department of Justice (DoJ), will study carefully how to specify in the law that the objector has the responsibility to advance basic grounds and facts to support the objection, and that the objector be required to appear at the hearings. The proposed amendments will be introduced in due course.

Proposal of uploading information on the objection cases to the REO website

9.12 Majority of the views received are in support of uploading information on the objection cases to the REO website. However, there are also opposing views which consider that the proposal will give rise to privacy concerns and members of the public will be deterred from raising objections.

9.13 Information on the objection cases is currently not made available on the Government's or Judiciary's websites, but the Judiciary posts information on the relevant cases at the court on the day of hearing. The proposed measure aims at enhancing transparency of information and facilitating the parties concerned to attend hearings. Given the tight time frame for processing objection cases, uploading information on the objection cases (including the date and time of hearings and the names of the objectors and the electors being objected to) to the website will allow the objectors, the electors being objected to and members of the public to get to know the information about court hearings as soon as possible. Besides, court hearings are open and members of the public can enter the court room to observe the hearings. The identities of the objectors and the electors being objected to would in any event be known by the public at the hearings. In light of the views received, the REO will draw up the specific arrangements for this measure, including adding a reminder in the notices of objection and notices of claim, reminding the applicants that their information will be made public, and will implement the proposal in due course. The REO will consult the Office of the Privacy Commissioner for Personal Data when drawing up the arrangements.

Proposal of empowering the REO to process indubitable objection cases

9.14 Majority of the views received are in support of empowering the REO to process indubitable objection cases, i.e., seeking the approval of the Revising Officer in writing to correct the particulars of the electors concerned without the need for a hearing by the Revising Officer. This will streamline the procedures for processing such kinds of objection cases, reduce the Revising Officer's burden and lessen the impact on the electors concerned. In drawing up the specific arrangements for

this proposal and related legislative amendments, we will carefully consider how to clearly define the circumstances and the types of objection cases (such as cases involving only clerical errors in electors' particulars or the electors being objected to having already provided updated or correct particulars) for which hearings by the Revising Officer would not be needed, the criteria for classification of cases and specific operation arrangements, so as to ensure that the proposal is practicable in actual operation.

Proposal of extending the time limit for processing objection cases and conducting hearing by the Revising Officer

- 9.15 Majority of the views received are in support of studying whether to extend the time limit for the Revising Officer to conduct hearings, including reserving more time for the REO and the Revising Officer to process the objection cases and to conduct hearings and reviews. However, as this proposal may require further advancing the deadline for VR/updating of registration particulars, we need to carefully examine the implications of the proposal on the VR deadlines, especially the updatedness of the information in the registers of electors as well as the legislative amendments involved, together with other proposals on objection mechanism, such as processing indubitable objection cases through seeking the approval of the Revising Officer in writing by the REO to correct the particulars of the electors concerned, to decide whether it is appropriate to extend the time limit for processing objection cases and conducting hearing by the Revising Officer.
- 9.16 Overall speaking, in respect of the above proposed measures for reviewing the objection mechanism (paragraphs 9.07 to 9.15 above), the Government will draw up the details and specific arrangements for improving the objection mechanism and will introduce the relevant proposed amendments in due course.

Proposal of introducing requirement of submitting address proofs by electors

- 9.17 Majority of the views received are in support of introducing the requirement of producing address proofs by electors when submitting applications for new registrations or change of registration particulars. Some political parties and organisations consider that the introduction of the requirement will help verify the accuracy of the electors' address information and compile accurate and credible registers of electors. Some members of the public who have submitted their views consider that the fairness of elections is of paramount importance, and the requirement of submitting address proofs can reduce the possibility of vote-planting. However, there are also views opposing the proposal, the main reasons given are that some members of the public (such as those who are not property owners, persons still at college or seeking employment, and those who reside with their parents) will have difficulty in submitting address proof, or it will be burdensome for these persons to submit address proofs. At the same time, the proposal may affect the desire of members of the public to register as electors and/or reporting changes of address.
- 9.18 We understand the concerns raised by individual members of the public/organisations about the possible adverse effects caused by the introduction of the requirement. In fact, the design of the VR system aims to ensure the fairness and credibility of the electoral system as well as to facilitate eligible persons to register as electors and exercise their rights to vote, and strives to strike the right balance between the two aims. Any proposed measure should not deprive the permanent residents of Hong Kong of the voting right enjoyed under the Basic Law and the Hong Kong Bill of Rights Ordinance, 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.
- 9.19 After considering the views received, we will further study with the REO and DoJ the specific details of introducing the requirement of submitting address proofs by electors, including the legislative amendments involved, the impacts on the work flow and arrangements of the whole VR system (such as

submission of applications, processing of applications, verifying the addresses, conducting checking measures, etc.), and the documents that can be accepted as address proofs, etc. We will exercise care in finalising the relevant details and arrangements, including whether to implement the arrangement of requiring address proofs for applications for change of addresses first, and put forward relevant proposals in due course.

Other Views on Voter Registration

Step up monitoring of residential care homes for the elderly

- 9.20 Regarding the suggestion of conducting visits to or additional random checks on elderly homes, we are of the view that all eligible persons, including the elderly, have the right to register as electors and exercise their right to vote; in addition, any VR checking measures should base on objective criteria. In the absence of any justifications based on facts, it is not appropriate, and may be challengeable legally, to conduct additional checks on, or even introduce additional registration requirements for certain types of people (such as the elderly).
- 9.21 The REO has since 2012 conducted annual checks on multiple electors or multiple surnames of electors registered with the same residential address (including all kinds of residential care homes) in the FR, to ascertain whether the registered addresses are their only or principal residence. In light of the public concern on whether an elderly residing in elderly homes may be registered as an elector without his/her knowledge, the REO will, in the 2016 VR cycle, issue letters to operators of elderly homes to remind them that under the Personal Data (Privacy) Ordinance, unless with the express consent of the data subjects given voluntarily, personal data should only be used for the purposes for which they were collected or a directly related purpose; and at the same time, remind the operators to take note of the guidelines on election-related activities issued by the Electoral Affairs Commission, and draw their attention to the fact that it is an offence for a person to provide false information for VR. Upon receipt of any complaint, the REO will take follow-up actions and refer the complaint to law enforcement agencies for investigation.

9.22 Under the law, any person who affects another person (including the elderly) to or not to vote at an election, or not to vote for a particular candidate or candidates, by pressurising or offering advantages to that another person engages in corrupt conduct. The Electoral Affairs Commission and the Independent Commission Against Corruption have issued guidelines on election-related activities and information on clean election respectively and proposed taking appropriate measures to avoid breaching the law. The REO will continue to liaise with the Social Welfare Department to remind operators of elderly homes to observe the relevant legislation and requirements. We will consider collaborating with the relevant Government departments to issue operation guidelines to operators of elderly homes to ensure that VR and electioneering activities are conducted in a fair manner.

Definition of “ordinarily reside in Hong Kong”

9.23 Questions relating to the term “ordinarily reside in Hong Kong” are outside the scope of the Consultation Document. Currently, any person who applies for VR has to satisfy the Electoral Registration Officer that he/she ordinarily resides in Hong Kong and provides the address of his/her only or principal residence in Hong Kong. The applicant has to sign the declaration of his/her application to confirm that he/she is eligible to be registered as an elector, including that he/she ordinarily resides in Hong Kong and the address provided is his/her only or principal residence in Hong Kong. Whether a person “ordinarily resides in Hong Kong” cannot be discussed in a generalized manner as one needs to take into account the specific situation of an individual case and the previous court judgments in making an assessment. As a matter of fact, past court judgments on electoral law have affirmed that whether a person “ordinarily resided in Hong Kong” is a question of fact and degree and has to be determined based on all the circumstances of the case.

9.24 In view of the abovementioned considerations, we consider it not appropriate to prescribe a definition for the term “ordinarily reside in Hong Kong” in the electoral law. The Government also has no intention to impose any additional condition regarding the requirement of “ordinarily reside in Hong Kong”. That said, to facilitate members of the public and candidates of public elections to understand the requirement of “ordinarily reside in Hong

Kong” under electoral laws, the guidelines on election-related activities issued by the Electoral Affairs Commission⁴ has already provided reference information on this matter.

Conclusion

- 9.25 In light of the consultation findings which in general support the proposed measures put forward in the Consultation Document, we will study the specific arrangements and necessary legislative amendments for implementing the measures with the REO, DoJ and relevant Government departments, and work closely with the Electoral Affairs Commission to put in place measures to further improve the VR system.

Constitutional and Mainland Affairs Bureau
January 2016

⁴ Paragraph 3.3 in chapter 3 of the “Guidelines on Election-related Activities in respect of the District Council Election” issued by the Electoral Affairs Commission in September 2015 is extracted below –

“A person is considered to ordinarily reside in Hong Kong when he/she habitually and normally lives there lawfully for a settled purpose, apart from temporary and occasional absences such as holidays and absence abroad for studying purposes. Each case has to be examined upon its own facts. Matters like the length of the person’s absence, the reason for his/her absence, the location of the home of him/her, his/her spouse, children and parents and his/her maintenance of connections with Hong Kong are all relevant factors. In case of doubt, a prospective candidate should seek advice from the NAC and/or consult his/her own legal adviser.”