

Voting by Imprisoned Persons Bill

Submission of the Hong Kong Bar Association

1. The Hong Kong Bar Association (“HKBA”) has been invited to give its views on the legal aspects of the Voting by Imprisoned Persons Bill (“the Bill”).
2. The HKBA has studied the Bill. The HKBA supports the proposed removal of restrictions on registration of persons who have been sentenced to death or imprisonment, persons who are serving a sentence of imprisonment and persons who have been convicted of certain election-related or bribery-related offences as electors under the Legislative Council Ordinance (Cap 542) (“LCO”) and the Village Representative Election Ordinance (Cap 576); and of restrictions on voting at elections of the Chief Executive, members of the Legislative Council, members of District Councils, members of the Election Committee and village representatives by those persons in Clauses 2, 3, 6, 7, 8, 9 and 10 of the Bill.
3. Clauses 4 and 5 of the Bill contain proposed amendments to the LCO in respect of two statutory requirements relating to of an elector having and/or residing at a residential address. These proposed amendments appear to be necessitated by the holding in the *Chan Kin Sum* case a prisoner’s cell in a prison should not be regarded as his dwelling place in Hong Kong at which he resided and which constituted his sole or main home at the time of application for change of address; see paragraphs 194 and 204 of the said judgment, reported in [2008] 6 HKC 486.
4. Clause 4 of the Bill seeks to add a new sub-section (3) to section 24 of the LCO so that a person who is registered in an existing final register of electors of geographical constituencies will not be “deregistered” in a subsequent register by reason of his imprisonment in a prison in

Hong Kong and therefore cannot be said to be residing at the residential address recorded against him in the existing register. The HKBA supports the intent behind Clause 4. However, the HKBA would ask the Administration to clarify the need to have the new sub-section (3)(b), namely “(b) does not have a home in Hong Kong outside the prison”, bearing in mind that whether or not a prisoner has a home in Hong Kong outside the prison, he or she cannot be regarded as residing at the address of that “home” while he or she is imprisoned.

5. Clause 5 of the Bill contains two sets of amendments to section 28 of the LCO. They are formulated with the Court of First Instance’s holding as described above in mind. The first set of amendments in sub-clause (1) caters for the case of an imprisoned person wishing to apply for registration as an elector in the register of geographical constituencies and proposes to add new sub-sections (1A) and (1B) to deem two alternative addresses to be the imprisoned person’s “only or principal residence in Hong Kong” so that the requirement in sub-section (1)(a) is satisfied. Again, the HKBA supports the intent behind Clause 5(1) but would ask the Administration to clarify whether the new sub-section (1A)(b), namely “(b) at the time of the application, the person does not have a home in Hong Kong outside the prison”, is needed as a result of the said Court of First Instance’s holding and how.
6. The second set of amendments in sub-clause (2) of Clause 5 of the Bill caters for the case of an imprisoned person whose name is on the final register of geographical constituencies as an elector and is intended to save his or her name from being omitted because of imprisonment. The HKBA supports the intent behind Clause 5(2). Similarly, the HKBA would ask the Administration to clarify whether the new sub-section (2A)(b), namely “(b) the elector no longer has a home in Hong Kong outside the prison”, is needed as a result of the said Court of First Instance’s holding and how.

7. The HKBA lastly suggests that separate consideration be given to the case of persons imprisoned for life or over, for example, 10 years, since it can be said that by virtue of their prolonged imprisonment, neither of the prescribed addresses proposed in the Bill would have a meaningful connection with them.

Dated 1 June 2009.



Hong Kong Bar Association