

INFORMATION NOTE

Regulatory Arrangements for Major Election-related Activities at Parliamentary General Elections in Selected Places

1. Background

1.1 This information note aims at providing supplementary information about the regulation of election-related activities at parliamentary general elections in the Hong Kong Special Administrative Region (HKSAR), the United Kingdom (UK), Australia, New Zealand and the State of New Jersey (New Jersey) of the United States of America,¹ which was touched upon in the research paper entitled "Operation of Electoral Regulatory Bodies in Selected Places".

Table 1 - Election Expenses

	HKSAR	UK	Australia	New Zealand	New Jersey
Supervisory authority	The Electoral Affairs Commission - on candidates.	The Electoral Commission - on both candidates and parties.	The Australian Electoral Commission - on both candidates and parties.	The Chief Electoral Office under the Ministry of Justice - on candidates. The Electoral Commission - on parties.	The Election Law Enforcement Commission - on both candidates and parties.

¹ The information about HKSAR is from the *Proposed Guidelines on Election-related Activities in respect of the Legislative Council* issued by the Electoral Affairs Commission on 22 March 2004, while the information about other selected places is from their electoral guidelines and laws that are in force.

Table 1 - Election Expenses (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Definition of election expenses	Election expenses mean expenses incurred or to be incurred before, during or after an election, by a candidate or his or her election expense agents on his or her behalf for the purpose of promoting his or her election, or prejudicing the election of another candidate or other candidates, and include the value of election donations consisting of goods and services used for that purpose.	Election expenses are any expenses that are incurred on items that are used for the purpose of a candidate's election.	Election expenses refer to six specified categories: (1) Broadcasting election advertisements (including production costs); (2) Publishing election advertisements (including production costs); (3) Displaying election advertisements (including production costs); (4) Cost of campaign materials; (5) Direct mailing relating to election; and; (6) Opinion polling or other researches/ surveys relating to the election.	Election expenses are the costs of advertising or publicity undertaken by a candidate or his or her party to encourage voters to vote for the candidate, or to discourage voters from voting for another candidate or party. Election expenses do not include the cost of travel, surveys or opinion polls, volunteer labour, or replacing materials destroyed through no fault of the candidate.	Election expenses include every transfer of money or other thing of value, any pledge, commitment or the assumption of liability to transfer money or other things of value. Payments or commitments made solely for the purpose of determining whether or not an individual should become a candidate (commonly known as "testing the waters") are counted as election expenses.

Table 1 - Election Expenses (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Period under regulation	<p>The proposed guidelines only state that the regulated period is "<i>before, during or after an election</i>".</p> <p>According to the proposed guidelines, the regulated period starts once an individual has publicly declared an intention to stand for election in respect of a constituency at any time before the close of nominations for the election, regardless of whether he or she has submitted his or her nomination form.</p>	<p>Starting from the date on which an individual becomes a candidate when his or her nomination paper is accepted by the returning officer concerned during a specified period in the election campaign, and ending with close of polling. The period for a general election campaign usually lasts for about three weeks.</p> <p>If an expenditure item promotes a party rather than a candidate and the expenditure incurred is treated as the party's expenses, the regulated period is 365 days leading up to the election.</p>	<p>During the election period from the issue of writ for an election until the close of polling, irrespective of when payment is made. For example, both the production costs and broadcast costs of an election advertisement must be included even when advertisement has been produced prior to the election period.</p>	<p>The three months immediately before the polling day.</p>	<p>No regulated period is specified. The date on which an individual's expenditure is counted as election expense depends upon when his or her financial activity relating to election commences. Normally, the regulated period starts when an individual becomes a "candidate", the definition of which includes an individual who "<i>has received money or other benefits or has made payments solely for the purpose of determining whether or not the individual should become a candidate</i>". Moreover, if elected, "<i>the officeholder remains a candidate throughout the period of time the office is held</i>".</p>

Table 1 - Election Expenses (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Election expenses - distinction between candidates and parties	No distinction between election expenses incurred by candidates and parties.	<p>Election expenses of a candidate are treated as totally distinct from a party's election expenses.</p> <p>Parties are advised to consider whether certain items of expenditure should be treated as candidates' expenses or as campaign expenditure by the party. If an item promotes a candidate rather than a party, it is likely that the expenditure is treated as the candidate's expenses. If a party is fielding a single candidate, it is more likely that the expenditure incurred is treated as the candidate's election expenses.</p>	No distinction between the two types of election expenses.	Election expenses of a constituency candidate are treated as totally distinct from a party's election expenses.	No distinction between the two types of election expenses.

Table 1 - Election Expenses (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Limit of election expenses	The maximum scale of election expenses for elections for each constituency is prescribed.	<p>The maximum amounts for each candidate are:</p> <p>(a) County constituency - £5,483 (HK\$76,600) plus 6.2p (HK\$0.87) per elector; and</p> <p>(b) Borough/burgh/district - £5,483 (HK\$76,600) plus 4.6p (HK\$0.64) per elector.</p> <p>A candidate can pay his or her own "personal expenses" up to a maximum of £600 (HK\$8,382) without providing individual receipts to his or her election agent.</p>	No limits.	The maximum amount for each constituency candidate is NZ\$20,000 (HK\$99,000).	No limits.

Table 2 - Distribution and Display of Election Advertisement

	HKSAR	UK	Australia	New Zealand	New Jersey
Supervisory authority	The Electoral Affairs Commission.	The Electoral Commission does not supervise the distribution and display of any election advertisement. <i>The Representation of the People Act 1983</i> has certain provisions on political advertising, including election advertising.	The Australian Electoral Commission does not supervise the distribution and display of any election advertisement. <i>The Commonwealth Electoral Act 1918</i> has certain provisions on the distribution and display of election advertisements.	The distribution and display of election advertisements are supervised by the Chief Electoral Office under the Ministry of Justice, not the Electoral Commission. <i>The Electoral Act 1993</i> has certain provisions on the distribution and display of election advertisements.	The distribution and display of election advertisements are not supervised by the Election Law Enforcement Commission or any other agency. The State law has provisions on election which contain certain restrictions on the distribution and display of election advertisements.

Table 2 - Distribution and Display of Election Advertisement (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Definition of election advertisement	Election advertisement means a publicly exhibited notice; a notice delivered by hand or electronic transmission; a public announcement made by radio or television or by video or cinematographic film; or any other form of publication, published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.	In the relevant regulations, the term used is "political advertising" instead of election advertisement. Political advertising is defined as advertising that is intended to influence voters.	Election advertisement refers to any advertisement, handbill, pamphlet, poster or notice that contains electoral matter. "Electoral matter" is defined as material which is intended or likely to affect voting in an election.	Election advertisement refers to any advertisement published in any newspaper, periodical, poster or handbill, or broadcast on any radio or television, which is used or appears to be used to promote or procure the election of a constituency candidate, or encourages or persuades or appears to encourage or persuade voters to vote for a party.	In the relevant regulations, the term used is "political communication" instead of election advertisement. Political communication includes a press release, pamphlet, flyer, form letter, sign, billboard or paid advertisement printed in any newspaper or other publication, or broadcast on radio or television, or delivered or accessed by electorate means, including the Internet, or any other form of advertising directed to the electorate.

Table 2 - Distribution and Display of Election Advertisement (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Is a candidate required to furnish written permission or authorization for display or distribution of election advertisement to the regulating authority before displaying or distributing it?	Yes, a copy of all permissions or authorizations for display must be deposited with the Returning Officer (RO) concerned or the Chief Electoral Officer (CEO).	No. The electoral law only requires that every bill, placard or poster, having reference to an election and every document for the purpose of promoting or procuring the election of a candidate, must bear upon its face the name and address of its printer and publisher.	No. The electoral law only requires that all printed or published election advertisements must show the name and address of the person authorizing it, and the place of business of the printer.	No. The electoral law only requires that each constituency candidate must give written authorizations before any advertisement can be published, and the advertisement must state the name and the business or residential address of the person authorizing it.	No.
Is a candidate required to furnish copies of an election advertisement to the regulating authority for approval before displaying or distributing it?	Yes, two copies of the advertisement must be deposited with the RO concerned or CEO.	No.	No.	No.	No.

Table 2 - Distribution and Display of Election Advertisement (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Is a candidate required to obtain prior written consent from a person or organization before using the name, logo or photo of that person or organization in any of his or her election advertisement?	Yes, a copy of all consents of support must be deposited with the RO concerned or CEO.	No such requirement. However, the electoral law has a provision, which is applicable to election advertisement, that it is an offence to publish a false statement about a candidate's personal character or conduct.	No such requirement. However, the person or organization can take out an injunction to prohibit a candidate from using his or her names, logo or photo without his or her consent. The electoral law also has a reverse requirement, which is applicable to election advertisement, that a person or organization may not claim to be associated with a candidate, or that a person or organization may not claim to have a candidate's support, without written authorization from the candidate.	No such requirement. However, under the electoral law, it is a corrupt practice to publish false statements such as claiming to have support from a person or organization in election advertisements, or to influence the vote of any elector on the polling day or within two days before the polling day.	No such requirement. However, under the state law, a person who appears on the ballot paper as a candidate of a particular party must have the permission of the party chair to use the party name or designation.

Table 3 - Other Major Electoral Activities Supervised by the Electoral Affairs Commission in Hong Kong

	HKSAR	UK	Australia	New Zealand	New Jersey
Supervisory authority	The Electoral Affairs Commission.	The Electoral Commission does not supervise the activities listed in this table. Some activities listed in this table are allowed, while some are regulated by the <i>Representation of the People Act 1983</i> .	The Australian Electoral Commission does not supervise the activities listed in this table. Some activities listed in this table are allowed, while some are regulated by the <i>Commonwealth Electoral Act 1918</i> .	The Electoral Commission does not supervise the activities listed in this table. Some activities listed in this table are allowed, while some are regulated by the <i>Electoral Act 1993</i> .	The Electoral Law Enforcement Commission does not supervise the activities listed in this table. Some activities listed in this table are allowed, while some are regulated by the State law.
Electioneering activities on the polling day	Electioneering activities on the polling day are allowed.	Electioneering activities on the polling day are allowed.	Electioneering activities on the polling day are allowed.	Electioneering activities on the polling day are prohibited. Candidates are required to remove, before the polling day, any of their election advertisements that can be seen from a public place. Returning officers can remove or cover advertisement that is left standing on the polling day, and charge the costs to the responsible people.	Electioneering activities on the polling day are allowed.

Table 3 - Other Major Electoral Activities Supervised by the Electoral Affairs Commission in Hong Kong (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Canvassing activities outside polling stations	A "No Canvassing Zone Scheme" is employed for the purpose of prohibiting canvassing activities outside polling stations on the polling day.	No restrictive area is defined outside polling stations on the polling day.	Canvassing activities within six meters of a polling station is prohibited.	All electioneering activities are prohibited on the polling day.	Canvassing activities within 30 meters of a polling station is prohibited.
Electioneering in schools or participated by students	Candidates, school supervisors, principals and teachers are requested to take note of the Electoral Affairs Commission's guidelines when considering allowing the conduct of electioneering activities in their schools or seeking the assistance of students in electioneering activities.	No guidelines or prohibitions on electioneering in schools or participated by students. Candidates are allowed to use school facilities for election meetings.	No guidelines or prohibitions on electioneering in schools or participated by students. The possibility of campaigning in schools is regulated by the authorities responsible for various types of schools, i.e. the government, religious groups and other bodies.	No guidelines or prohibitions on electioneering in schools or participated by students. Constituency candidates are entitled to hold election meetings in public school-facilities. A three days notice must be given to the governing body of the school.	No guidelines or State law about electioneering in schools or participated by students. Some counties and municipalities may have local laws against this kind of activities.

Table 3 - Other Major Electoral Activities Supervised by the Electoral Affairs Commission in Hong Kong (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Organization of election meeting in a public place or a public procession	Any person who organizes an election meeting attended by more than 50 persons in a public place, or a public procession for election campaigning purposes where it consists of more than 30 persons, must notify the police in writing at least seven days in advance.	A candidate or his or her supporters are not required to notify the police in advance when they organize an election meeting in a public place or a public procession.	A candidate or his or her supporters are not required to notify the police in advance when they organize an election meeting in a public place or a public procession. Large public meetings and processions are rarely part of election campaigns. More usually, private meetings in large entertainment centres are held by a party to control entry.	A candidate or his or her supporters are not required to notify the police in advance when they organize an election meeting in a public place or a public procession.	State law does not require a candidate or his or her supporters to notify the police in advance when they organize an election meeting in a public place or a public procession, but some counties or municipalities may have such a requirement.
Electioneering activities at private premises	The Electoral Affairs Commission appeals to the management bodies of private premises to provide fair and equal treatment to all candidates when they are conducting electioneering in the same constituency.	No requirements for management bodies of private premises to provide "fair and equal treatment" to all candidates.	No requirements for management bodies of private premises to provide "fair and equal treatment" to all candidates.	No requirements for management bodies of private premises to provide "fair and equal treatment" to all candidates.	No requirements for management bodies of private premises to provide "fair and equal treatment" to all candidates.

Table 3 - Other Major Electoral Activities Supervised by the Electoral Affairs Commission in Hong Kong (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Broadcasting and media reporting regarding candidates' electioneering activities	Broadcasters, publishers and election forum organizers are required by the Electoral Affairs Commission to treat all candidates in the same constituency fairly and equally.	Media is advised to provide fair coverage on all candidates.	Broadcasters are required by the <i>Broadcasting Services Act 1992</i> to provide fair and equal treatment to all political parties and candidates. Printed media is advised to provide fair coverage on all candidates.	Broadcasters are required by the code issued by the Broadcasting Standards Authority to show balance and impartiality in the preparation and presentation of news, current affairs and factual programmes, including those about candidates' electioneering activities.	There is a fairness doctrine, which is not a formal requirement but is followed by broadcasting and printed media.
Conduct of exit polls	Persons or organizations intending to conduct exit polls are required to obtain approvals from the Registration and Election Office. The Electoral Affairs Commission appeals to the media and organizations concerned to refrain from announcing the results of exit polls or making specific remarks or predictions on the performance of candidates until after the close of poll.	The results and forecasts of the results of exit polls, which are or might reasonably be taken to be based on information given by voters after they have voted, are not allowed to be released before the close of polls.	No guidelines or restrictions on the conduct of exit polls.	Exit polls are prohibited	No guidelines or restrictions on the conduct of exit polls.

Table 3 - Other Major Electoral Activities Supervised by the Electoral Affairs Commission in Hong Kong (cont'd)

	HKSAR	UK	Australia	New Zealand	New Jersey
Treating	Based upon the Election (Corrupt and Illegal Conduct) Ordinance which is enforced by the Independent Commission Against Corruption, the Electoral Affairs Commission states in its proposed guidelines that treating is defined as providing or meeting at any time all or part of the cost of providing another person any food, drink or entertainment for the purpose of influencing that person's or a third person's voting preference.	In addition to bribery, the electoral law has a provision on treating. Treating is defined as a corrupt practice, which refers to the provision of food, drink or entertainment for the purpose of influencing a voter or voters. What constitutes entertainment is not defined by law.	The electoral law has a section on bribery, but does not mention the term "treating". There is a public concern about whether a function catered by a candidate can amount to bribery. No convictions are recorded against a candidate for catering, for example, an afternoon tea or a barbecue for voters as a background to speaking in support of the candidate's campaign. The legal advice of the Australian Electoral Commission is that there is no offence if a candidate provides hospitality to encourage voters to come and hear his or her electoral campaign, but it is an offence if the hospitality is proved as buying their votes.	In addition to bribery, the electoral law has a provision on treating. Treating is defined as the provision of food and drink to persons with the intention of corruptly influencing their votes, and it is prohibited. The exception is that the provision of a light super (such as a cup of tea or coffee and a light snack) after an election meeting does not constitute treating.	State law does not mention the term "treating" but has provisions outlawing activities for the purpose of influencing voters to vote by any means, including providing food or drinks.

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