

INFORMATION NOTE

Regulation of exit polls in selected places

1. Introduction

1.1 At its meeting on 21 January 2008, the Panel on Constitutional Affairs of the Legislative Council requested the Research and Library Services Division (RLSD) to provide information on exit polls at elections in overseas places in the following aspects:

- (a) whether persons or organizations planning to conduct exit polls are required to make applications or declarations to the electoral regulatory authorities;
- (b) whether persons or organizations conducting exit polls are subject to any eligibility requirement, particularly whether candidates and political parties are permitted to conduct such polls;
- (c) whether exit polls are permitted at all polling stations;
- (d) whether regulations or guidelines are imposed on the conduct of exit polls;
- (e) whether exit poll results can be provided to candidates or political parties for their use before the close of poll, and if so, whether the expense for conducting such polls is counted as an election expense of the candidates or political parties concerned;
- (f) whether persons or organizations conducting exit polls are required to submit reports on exit poll results and use of the results to the electoral regulatory authorities; and
- (g) any action will be taken against persons or organizations violating the regulations or guidelines on the conduct of exit polls and use of exit poll results.

Key findings

1.2 Focusing on the arrangements for exit polls at parliamentary elections in six selected places, namely Canada, the United Kingdom (UK), the United States (US), Australia, Singapore and New Zealand (NZ), this study has the following key findings:

- (a) while exit polls are permitted in Canada, the UK, the US and Australia, they are banned in NZ and severely restricted in Singapore;¹
- (b) none of the selected places permitting exit polls requires persons or organizations planning to conduct exit polls to make applications or declarations to the electoral regulatory authorities for the conduct of such polls, or has any eligibility requirement for such persons or organizations;
- (c) none of the selected places permitting exit polls has any legislation or guideline regulating the conduct of exit polls and use of exit poll results, or disallowing exit poll results from being provided to candidates or political parties before the close of poll;
- (d) the provision of exit poll results by exit pollsters to a candidate or political party before the close of poll could be counted as an item of election expenses in Canada;
- (e) compared to those selected places permitting exit polls, Canada has more detailed statutory restrictions on such polls, but all those restrictions are confined to the publication of exit poll results and the reporting of information relating to such polls (such as the names and addresses of sponsors of exit polls and the organizations that conducted the polls, the wording of questions, sampling size and method, and margin of error) after the close of poll; and

¹ NZ, where voting is voluntary, is the only selected place banning exit polls on polling day. In Singapore, where voting is compulsory, exit polls are not explicitly banned, but according to the Singapore Consulate General in Hong Kong, it is "not possible for such polls to be conducted at polling stations on polling day" because the Parliamentary Elections Act disallows any person to loiter in any street or public place within a radius of 200 metres of any polling station on polling day.

- (f) in the US and Australia, at the federal level, exit polls are largely free from regulation.² Nevertheless, some of their states have certain requirements for exit polls. In particular, the US New York State has a non-statutory, administrative requirement for organizations planning to conduct exit polls to obtain before polling day a letter of permission issued by the state electoral regulatory authority, and a statutory requirement for such organizations to disclose their exit poll results with certain information including the sponsors and methodologies of the polls. In Australia, the State of Victoria is the only state having regulation of exit polls.

1.3 For Members' reference, the **Appendix** presents the key findings on regulation of exit polls in Canada, the UK, the New York States of the US, the State of Victoria of Australia and Hong Kong.

Views of opinion pollsters on regulation of exit polls in Hong Kong

1.4 At its meeting on 18 February 2008, the Panel on Constitutional Affairs requested RLSD to seek the views of local opinion pollsters on the existing arrangements for exit polls in Hong Kong. RLSD sent enquiries to major opinion pollsters at local universities, and received a submission from Dr Robert Ting-Yiu Chung, Director of Public Opinion Programme at the University of Hong Kong, as of the publication of this information note. In his submission,³ Dr Chung considers that any person or organization, including candidates and political parties, may conduct exit polls, provided that the person or organization concerned "pledge[s] to follow the WAPOR Guidelines for Exit Polls and Election Forecasts [to be mentioned in **paragraph 2.2**] adapted to suit local conditions" and "not to use the data for election-day engineering". He encourages the media and organizations concerned to "voluntarily pledge themselves to follow the WAPOR's standard". In addition, he considers that the Electoral Affairs Commission (EAC)'s long-standing practice of appealing to the media and organizations concerned to refrain from announcing the results of exit polls before the close of poll and making a reprimand or censure in a public statement against any organization which has failed to comply with EAC's guidelines on exit polls "has worked well for over 16 years".

² In the US, where voting is voluntary, the First Amendment to the US Constitution states that Congress "shall make no law ... abridging the freedom of speech, or of the press". This provision has been applicable to news organizations' freedom of the press in the context of elections, including the collection of exit poll data and the use of such data to forecast the outcome of elections. According to the Commission on Federal Election Reform, while it considered exit polls to be unable to reliably predict election results and strongly encouraged citizens not to participate in such polls, it did not support to do very much to constrain them. It only appealed to news organizations to exercise voluntary restraint to protect the integrity of the electoral process. Cohen (2001) and National Commission on Federal Election Reform (2001).

³ See LC Paper No. CB(2)1363/07-08(01).

2. Guidelines on exit polls issued by international opinion survey organizations

2.1 To promote good practice in the conduct and reporting of exit polls, major international opinion survey organizations have issued certain guidelines on exit polls. Such organizations include the World Association of Public Opinion Research (WAPOR), which has more than 450 individual members from academic and business professions in over 50 countries, and the World Association of Research Professionals (ESOMAR), which has 4 500 individual members in 100 countries.

2.2 The guidelines issued by WAPOR and ESOMAR do not mention whether any person or organization planning to conduct exit polls should make an application or a declaration to the electoral regulatory authority for the conduct of such polls. Nor do they mention whether such persons or organizations should be subject to certain eligibility requirements. The WAPOR Guidelines for Exit Polls and Election Forecasts state that "WAPOR and ESOMAR oppose regulation of the conduct and reporting of polls in principle. However, no statement about the outcome of an election based on exit polls should be published before all the polls in the contest have closed". The Guidelines also state that "exit polls conducted for public consumption should be impartial and non-partisan", and they are "not tools for partisan advocacy". Their methods "must be generally accepted as good survey practice and must be disclosed in advance of the conduct of the exit poll[s], as well as with any projection or analysis or subsequent public release of the dataset". In addition, it is "good practice" to disclose the following information relating to the conduct of an exit poll before polling day:

- (a) sponsor of the exit poll;
- (b) name of the polling company or principal researcher, and whether the data collector has any business or personal ties to political parties, candidates, political organizations or governmental bodies;
- (c) name of the organization responsible for analysis and projections;
- (d) number of sampling points and how they are selected, and sampling frame;
- (e) where interviews are conducted;
- (f) any legal limits on data collection that might affect polling accuracy; and
- (g) how respondent anonymity is guaranteed.

2.3 Meanwhile, the Guidelines on Practical Aspects of Conducting Pre-Election and Exit Polls issued by ESOMAR state that "[t]he people carrying out the [exit] polls should ... take steps to ensure that there are no leaks of information about the outcome before all the polls have closed", while "[o]ther information (e.g. about issues and profile of voters) may be published before all the polls have closed".

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Appendix

Regulation of exit polls in selected places and Hong Kong

	Hong Kong	Canada	United Kingdom	New York State of the United States	State of Victoria of Australia
Application for the conduct of exit polls					
Whether persons or organizations planning to conduct exit polls are required to make applications or declarations to the electoral regulatory authority	Yes, any person or organization intending to conduct exit polls must make an application to the government's Registration and Electoral Office (REO) at the latest seven days before the polling day. ⁴ REO will consider the application and issue approval to the applicant as appropriate.	No.	No.	Under the Media and Public Information Guide ⁵ issued by the State Board of Elections (BE), persons or organizations planning to conduct exit polls can obtain a certificate from BE before polling day, and, upon request, provide it to the Election Inspectors of BE on polling day. This arrangement is advisory in nature and not necessarily followed by exit pollsters.	No.
Whether exit pollsters are subject to eligibility requirements	No, the guidelines issued by the Electoral Affairs Commission (EAC) state that exit polls may be conducted by any person or organization. ⁶	No.	No.	No.	No.

⁴ The application must contain the following information: (a) the name and address of the person or organization intending to conduct exit poll on the polling day; (b) the identity document number and name of the person responsible together with his or her telephone number(s) for contact, especially for the polling hours; and (c) a list showing the number of persons who will be employed for the conduct of the exit poll at each polling station on the polling day together with the identity document number and name of each of all the persons who will be so employed. Electoral Affairs Commission (2007a) pp.205-206 and Electoral Affairs Commission (2007b) pp.169-170.

⁵ The Media and Public Information Guide aims at providing a guide to the media and members of the public on the proper administration of the election process.

⁶ Electoral Affairs Commission (2007a) p.205 and Electoral Affairs Commission (2007b) p.169.

Appendix (cont'd)

Regulation of exit polls in selected places and Hong Kong

	Hong Kong	Canada	United Kingdom	New York State of the United States	State of Victoria of Australia
Regulation of conduct of exit polls					
Whether exit polls are allowed at all polling stations	Yes.	Yes.	Yes.	Yes.	Yes.
Whether the conduct of exit polls is subject to regulations or guidelines	Yes, the conduct of exit polls is subject to the guidelines issued by EAC. ⁷	No.	No.	No.	No.
Whether the use of exit poll results is subject to regulations or guidelines	EAC's guidelines do not cover the use of exit poll results.	No.	No.	No.	No.

⁷ They are Guidelines on Election-related Activities in respect of the Legislative Council Elections and Guidelines on Election-related Activities in respect of the District Council Election. For instance, under the Guidelines, exit poll interviewers are required to wear an identification device so that electors will not be misled into thinking that they are appointed by the Government. Such interviewers are not allowed to stay or loiter in the areas designated as the No Staying Zone or accost electors in the Zone. They must also respect the electors' right and wish not to be disturbed.

Appendix (cont'd)

Regulation of exit polls in selected places and Hong Kong

	Hong Kong	Canada	United Kingdom	New York State of the United States	State of Victoria of Australia
Publication of exit poll results					
Whether the timing of publishing exit poll results is subject to regulations or guidelines	Yes, in its guidelines, EAC 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 individual candidates or geographical constituency lists until after the close of poll.	Yes, the Canada Elections Act provides that no person "shall knowingly cause to be transmitted to the public" or "transmit to the public" the results of an exit poll that have not previously been transmitted to the public in an electoral district on polling day before the close of poll, ⁸ with the term "transmission to the public" being undefined.	Yes, the Representation of the People Act 2000 prohibits any person or organization from publishing the exit poll results before the close of poll, with "publish" being defined as "making available to the public at large, or any section of the public, in whatever form and by whatever means". ⁹	No, there is neither legislation nor guideline regulating the timing of disclosure of exit poll results.	Yes, the Electoral Act 2002 prohibits any person from "publicly disseminating" or causing, permitting or authorizing the public dissemination of the results of exit polls before the close of poll, ¹⁰ with the term "public dissemination" being undefined.

⁸ Sections 328 (1) and (2), Canada Elections Act.

⁹ Section 6, Schedule 6, Representation of the People Act 2000.

¹⁰ Section 155, Electoral Act 2002.

Appendix (cont'd)

Regulation of exit polls in selected places and Hong Kong

	Hong Kong	Canada	United Kingdom	New York State of the United States	State of Victoria of Australia
Publication of exit poll results (cont'd)					
Whether exit poll results must be published with information including the sponsor and methodology of the poll	No.	Yes, under the Canada Elections Act, the first person who transmits to the public the results of an exit poll ¹¹ and any person who transmits the exit poll results to the public within 24 hours after they are first transmitted to the public, must provide the following information with the results: ¹² (a) the name of the poll's sponsor; (b) the name of the person or organization that conducted the poll; (c) the date on which or the period during which the poll was conducted; (d) the population from which the sample of respondents was drawn; (e) the number of people contacted to participate in the poll; and (f) if applicable, the margin of error relating to the data obtained.	No.	Yes, under the Fair Campaign Code of the Election Law, a candidate or political party must, within 48 hours after disclosing or causing to be disclosed the results of a poll relating to a candidate (such as an exit poll), provide the following information about the poll to BE: ¹³ (a) the name of the person, party or organization that contracted for or who commissioned the poll and/or paid for it; (b) the name and address of the organization that conducted the poll; (c) the numerical size of the total poll sample, the geographic area covered by the poll, and any special characteristics of the population included in the poll sample; (d) the exact wording of the questions asked in the poll and the sequence of such questions; (e) the method of polling; (f) the time period during which the poll was conducted; (g) the number of persons in the poll sample, the number contacted who responded to each specific question, and the number contacted who did not so respond; and (h) the results of the poll.	No.

¹¹ Excluding surveys "not based on recognized statistical methods", section 326(1), Canada Elections Act.

¹² Section 326(1), Canada Elections Act.

¹³ Section 6201.2, State of New York 2008 Election Law.

Appendix (cont'd)

Regulation of exit polls in selected places and Hong Kong

	Hong Kong	Canada	United Kingdom	New York State of the United States	State of Victoria of Australia
Publication of exit poll results (cont'd)					
Whether exit pollsters must submit reports on their exit poll results and use of the results to the electoral regulatory authority	No, EAC's guidelines do not require exit pollsters to submit reports to EAC on their exit poll results and use of the results.	Under the Canada Elections Act, exit pollsters are obliged to provide, on request, reports on their exit poll results. Such a report must include the following information: (a) the name and address of the sponsor of the poll; (b) the name and address of the person or organization that conducted the poll; (c) the date on which or the period during which the poll was conducted; (d) the method used to collect the data from which the poll results are derived, including the sampling method; and (e) the wording of the poll questions and, if applicable, the margins of error relating to the data obtained.	No.	No.	No.

Appendix (cont'd)

Regulation of exit polls in selected places and Hong Kong

	Hong Kong	Canada	United Kingdom	New York State of the United States	State of Victoria of Australia
Publication of exit poll results (cont'd)					
Penalty on violation of guidelines or regulation on exit polls and the use of exit poll results	EAC may make a reprimand or censure in a public statement against any broadcaster or organization which has failed to comply with EAC's guidelines on exit polls.	Any person or organization failing to comply with the public transmission requirements for exit polls under the Canada Elections Act is liable on conviction to a fine of not more than CAN\$25,000 (HK\$198,000).	Under the Representation of the People Act 2000, any person or organization publishing the exit poll results before the close of poll is liable on conviction to a fine of not more than £5,000 (HK\$76,000) or imprisonment for a term not exceeding six months.	Any person or organization failing to comply with the disclosure requirements for opinion polls (including exit polls) under the Fair Campaign Code of the Election Law is liable to a civil penalty of not more than US\$1,000 (HK\$7,800).	Under the Electoral Act 2002, any person or organization publicly disseminating the results of exit polls before the close of poll is liable on conviction to a fine of AUS\$6,607 (HK\$48,000) or six-month imprisonment.

Appendix (cont'd)

Regulation of exit polls in selected places and Hong Kong

	Hong Kong	Canada	United Kingdom	New York State of the United States	State of Victoria of Australia
Election expenses relating to exit polls					
Whether exit poll results provided by an exit pollster to a candidate/ political party before the close of poll are counted as an item of election expenses for the candidate/ political party concerned	<p>According to EAC's guidelines, whether a particular item of expenditure should be regarded as an election expense should be determined by reference to the purpose behind the expenses, taking account of the nature, circumstances and context of the expenditure. Election expenses include expenses incurred or to be incurred by a candidate for the purpose of promoting his/her election, and include the value of election donations consisting of goods and services used for that purpose.</p> <p>Every candidate is required to provide a return and declaration of election expenses and donations to REO, which checks the return and reports any irregularities detected to the relevant authorities for investigation.</p>	<p>The exit poll results provided by an exit pollster to a candidate or political party before the close of poll could be counted as an election expense¹⁴, which includes the commercial value of services, other than volunteer labour, that are donated or provided, and amounts that represent the difference between an amount paid or a liability incurred for services, other than volunteer labour, and the commercial value of the services, when they are provided at less than their commercial value.</p> <p>Every candidate must submit an audited electoral campaign return to the government's Chief Electoral Officer, who makes the summary of the return for public inspection.</p>	Information is not available from the relevant authority as of the publication of this information note.	Information is not available from the relevant authority as of the publication of this information note.	<p>The exit poll results provided by an exit pollster to a candidate or political party before the close of poll on polling day would not be counted as an "electoral expenditure", which, under the Electoral Act 2002, means expenditure incurred in relation to an election within the period of 12 months immediately before election day.</p> <p>Every candidate is required to provide an audited statement of expenditure to the statutory Victorian Electoral Commission for public funding for the candidate's electoral expenditure. The Commission checks whether the information in the statement is correct.</p>

¹⁴ Reply from the Library of Parliament of Canada.

Appendix (cont'd)

Regulation of exit polls in selected places and Hong Kong

	Hong Kong	Canada	United Kingdom	New York State of the United States	State of Victoria of Australia
Election expenses relating exit polls (cont'd)					
Election expenses limit for a candidate at parliamentary elections	HK\$2 million for a list in Hong Kong Island geographical constituency; HK\$1.5 million for a list in Kowloon East and Kowloon West geographical constituencies; and HK\$2.5 million for a list in New Territory East and New Territory West geographical constituencies.	In 2006, a candidate's election expenses limit ranged from CAN\$62,665 (HK\$495,000) to CAN\$106,290 (HK\$840,000), primarily depending on the number of voters of the candidate's constituency.	A candidate's election expenses limit for county constituency is £7,150 (HK\$110,000) plus 7p (HK\$1.08) per elector, while that for borough constituency is £7,150 (HK\$110,000) plus 5p (HK\$0.76).	No limit.	No limit.

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