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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 16 March 2009**

Exit polls

Purpose

This paper summarizes past discussions held by the Panel on Constitutional Affairs (the Panel) on regulation of exit polls when the electoral arrangements for the 2007 District Council (DC) Election, the 2007 Legislative Council (LegCo) Island Geographical Constituency (GC) By-election and the 2008 LegCo Election were reviewed.

Background

2. The Electoral Affairs Commission (EAC) is tasked under the Electoral Affairs Commission Ordinance (Cap. 541) to make recommendations regarding the delineation of GCs for LegCo and DC elections and demarcation of their boundaries, regulating the printing of particulars relating to candidates on ballot papers and financial assistance for candidates. EAC is also responsible for the conduct and supervision of elections and matters incidental thereto. Under section 6(1) of the Ordinance, EAC may issue guidelines relating to the conduct or supervision of an election. The aim of these guidelines is to provide a code of conduct, based on the principle of fairness and equality, for conducting election-related activities, and to provide directions in layman's language on how to comply with the relevant electoral legislation, so that candidates and other interested parties can avoid breaching the provisions inadvertently.

3. The Guidelines on Election-related Activities in respect of LegCo Election issued by EAC (the EAC Guidelines) were last updated in July 2008 when EAC made preparation for the LegCo election held on 7 September 2008. Chapter 15 of the EAC Guidelines sets out the guidelines for the conduct, publication and broadcast of exit polls to avoid unfair interference with the election process by unduly influencing electors. Members are invited to note in particular the following guidelines –

- (a) exit polls may be conducted by any person or organization. The Registration and Electoral Office (REO) will consider the application and issue approval to the concerned person or organization as

appropriate. Before the grant of approval, the person or organization allowed to conduct exit poll will be required to sign an undertaking to abide by the relevant guidelines (paragraphs 15.6 and 15.7 of the EAC Guideline);

- (b) the media and organizations conducting exit polls should not announce the results of exit polls or make specific remarks or predictions on the performance of individual candidate or GC list before the close of poll (paragraph 15.4 of the EAC Guideline); and
- (c) any broadcaster or organization who fails to heed or comply with the relevant guidelines may be reprimanded or censured in a public statement which will include the name of the broadcaster or the organization concerned (paragraph 15.11 of the EAC Guideline).

4. Similar guidelines have been included in the Guidelines on Election-related Activities in respect of DC Election which were last revised in August 2008.

Deliberations of the Panel on Constitutional Affairs

5. Following the DC Election held on 18 November 2007 and the LegCo By-election held on 2 December 2007, some members expressed concern about the conduct of exit polls in these two elections. They pointed out that given the low limits imposed on election expenses in Hong Kong, if a third party conducted an exit poll on its own means and disclosed the results to certain candidates for the purpose of assisting them in canvassing votes during an election, it would be unfair to the other candidates.

6. The Panel was advised that under the EAC Guidelines, there was no specific regulation on the use of information collected through exit polls. Nevertheless, any announcement of the results of exit polls or predictions during the polling hours might affect elector behaviour and might have an impact on election results. As such, EAC appealed to the media and concerned organizations to refrain from announcing the results of exit polls or making specific remarks or predictions on the performance of individual candidates until after the close of poll. If any organization/person failed to comply with the Guidelines, REO might issue a warning letter or make a reprimand or censure in a public statement. In response to members' enquiry, the Administration advised that "announcement" of exit polls results meant making remarks in public such as in a press conference, or issuing a public statement or press release. Some members considered the existing sanction against contravention of the guidelines ineffective in stamping out improper use of exit poll results.

7. At the request of the Panel, the Research and Library Services Division (RLSD) of the LegCo Secretariat conducted a research on the arrangements for exit polls at parliamentary elections in overseas places. The Panel noted that while exit polls were permitted in Canada, the United Kingdom, the United States and Australia, they were banned in New Zealand and severely restricted in Singapore. None of the

selected places permitting exit polls had 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.

8. The Administration informed the Panel that EAC had proposed to include in the EAC Guidelines additional measures to step up the control on conduct of exit polls and enhance the transparency of organizations/persons with approval to conduct exit polls. These measures included requirements for any person or organization allowed to conduct exit poll to sign an undertaking to abide by the relevant guidelines and for an interviewer to make known to the electors the name of the person/organization conducting the exit poll at the start of the interview. Members advocating tighter regulation of exit polls did not accept that the proposed measures could address their concern. They suggested that a condition should be imposed on organizations/persons conducting exit polls, i.e. to prohibit them to announce exit poll results in public or disclose them in private before the close of poll. The Administration advised that there was no legal justification to impose such a condition. The Administration maintained that the existing guideline urging the organizations/persons to refrain from announcing the results of exit polls until after the close of poll was appropriate, and was in line with that of many overseas countries. Some other members shared the view that any person or organization should have the right to conduct exit polls. They pointed out that the RLSD research revealed that many countries had no legislation to regulate the conduct of exit polls and the use of exit poll results. These members were of the view that the EAC guidelines for conducting exit polls were similar to those of overseas countries. As EAC was an independent body chaired by a judge, its recommendations should be respected. They were supportive of the improvement measures proposed by EAC.

9. Following the 2008 LegCo Election, some members expressed strong dissatisfaction that despite the fact that pan-democratic Members had met with the Chairman of EAC twice to voice out their concern, EAC had not heeded their views on tightening the regulation of exit polls to ensure fairness in an election. They pointed out that the accuracy of exit poll findings had been adversely affected because of the low response rate. These members also found it unacceptable that the EAC Report on the 2008 LegCo Election contained only a few short paragraphs on exit polls and did not put forth any concrete recommendations on improvement measures. These members reiterated their view that EAC should review the EAC guidelines so that use of exit poll results by a candidate or his political party to plan electioneering strategy before the close of poll would be prohibited. For instance, EAC could consider measures for restricting the conduct of exit polls to academic institutions only.

10. The Administration explained that the EAC guidelines had set out the rules for the conduct, publication and broadcast of exit poll results to avoid undue influence over electors, resulting in unfair interference with the election process. Media and organizations concerned were required to refrain from announcing the results of exit polls or make specific remarks or predictions on the performance of individual candidates until after the close of poll. The Administration maintained its position that the right of different organizations to conduct exit polls should be respected and it would be inappropriate to mandate that only certain types of institutions, such as

academic institutions, could do so. There was also no guarantee that academic institutions would not disclose exit poll results to any person or organization before the close of poll. The Administration further advised that under the existing electoral laws, expenses incurred by a candidate in procuring services, including survey and polling services, for electioneering purposes had to be included as part of the election expenses.

11. Some members expressed dissatisfaction that academic freedom was used as the pretext for not regulating the conduct of exit polls by political parties or candidates for electioneering purposes. They considered that in allowing exit pollsters with political background to conduct exit polls for electioneering purposes, the Administration had damaged the credibility of exit polls and impinged on the academic freedom of academic institutions which conducted exit polls for research purposes. It was further suggested that organizations conducting exit polls should be required to declare to REO their political affiliation.

12. The Administration responded that prior to each general election, the public and LegCo would be consulted on the relevant election guidelines and amendments would also be made to the relevant primary and subsidiary legislation as appropriate. The Administration further said that the next general election to be held was the DC Election in 2011 and the issue of regulating exit polls and other electoral arrangements would be considered prior to the election. The Administration also advised that for the purpose of better regulating exit poll, it was stipulated in the EAC Guidelines that persons or organizations intending to conduct exit polls must provide to REO their names and addresses, the names, identity document numbers and contact telephone numbers of the responsible persons, as well as a list of persons employed for the conduct of the exit poll at each polling station together with their identity document numbers. Given that Hong Kong was a free society, it would not be difficult for the public or the media to ascertain the background of organizations conducting exit polls.

Latest development

13. At the meeting held on 16 February 2009, the Panel agreed that it should follow up on the issue and receive views from pollsters, academia and political parties at the meeting in March 2009.

Relevant papers

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

Exit polls

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Constitutional Affairs Panel	21 January 2008	LegCo question raised by Hon Emily LAU at the Council meeting on 16 January 2008 and the Administration's reply [LC Paper No. CB(2)869/07-08(01)] Minutes of meeting [LC Paper No. CB(2)1615/07-08]
	18 February 2008	A list of organisations and persons allowed to conduct exit poll for the 2007 District Council election provided by the Administration [LC Paper No. CB(2)900/07-08(01)] A letter dated 4 January 2008 from the Electoral Affairs Commission concerning exit polls conducted for the 2007 District Council election and the 2007 LegCo By-election provided by Hon Margaret NG [LC Paper No. CB(2)900/07-08(02)] <i>(Chinese version only)</i> Minutes of meeting [LC Paper No. CB(2)1908/07-08]
	17 March 2008	Electoral Affairs Commission Report on the 2007 District Council Election Electoral Affairs Commission Report on the 2007 Legislative Council Hong Kong Island Geographical Constituency By-election Administration's paper providing further information on exit polls for the 2007 District Council election [LC Paper No. CB(2)1236/07-08(01)]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
		<p>Administration's paper on "Electoral Affairs Commission Reports on the 2007 District Council Election and the 2007 Legislative Council Hong Kong Island Geographical Constituency By-election" [LC Paper No. CB(2)1336/07-08(02)]</p> <p>Information Note on "Regulation of exit polls in selected places" prepared by the Research and Library Services Division [IN10/07-08]</p> <p>Paper on summary report on exit polls conducted on District Council election day 2007 provided by Hon Ronny TONG [LC Paper No. CB(2)1388/07-08(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2248/07-08]</p>
	21 April 2008	<p>Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the Legislative Council Election</p> <p>Administration's paper on "Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the Legislative Council Election" [LC Paper No. CB(2)1617/07-08(04)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2675/07-08]</p>
	19 May 2008	<p>Minutes of meeting [LC Paper No. CB(2)2481/07-08]</p>
	23 October 2008	<p>Minutes of meeting [LC Paper No. CB(2)1060/08-09]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
	15 December 2008	<p>Electoral Affairs Commission Report on the 2008 LegCo Election</p> <p>Administration's paper on "Electoral Affairs Commission Report on the 2008 LegCo Election" [LC Paper No. CB(2)437/08-09(03)]</p> <p>Background brief on "Electoral Affairs Commission Report on the 2008 LegCo Election" prepared by the LegCo Secretariat [LC Paper No. CB(2)437/08-09(04)]</p>

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