

立法會 *Legislative Council*

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Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 15 December 2008

Electoral Affairs Commission Report on the 2008 Legislative Council Election

Purpose

This paper gives a brief account of past discussions of the Panel on Constitutional Affairs (the Panel) regarding the 2008 Legislative Council (LegCo) Election.

Report on the 2008 Legislative Council Election

2. The 2008 LegCo election was held on 7 September 2008. Section 8 of the Electoral Affairs Commission Ordinance (Cap. 541) (EACO) requires, inter alia, that the Electoral Affairs Commission (EAC) shall make a report to the Chief Executive (CE), within three months after the election, on matters relating to the election in respect of which EAC has any function under EACO or any other Ordinance.

Relevant discussions of the Panel

3. The Panel was consulted on the provisional recommendations on the delineation of geographical constituencies (GCs) for the 2008 LegCo Election drawn up by EAC, a number of practical arrangements for the election and the major proposed changes in the Proposed Guidelines on Election-related Activities in respect of the LegCo Election issued by EAC (the EAC Guidelines). Some of the major issues raised by the Panel are summarized below.

Delineation of geographical constituencies for the 2008 LegCo Election

4. Members noted that in accordance with the Legislative Council Ordinance (Cap. 542), there were to be five GCs for the purpose of returning 30 LegCo Members and the number of Members to be returned for each GC was to be not less than four nor more than eight. Some members considered that the criteria in allocating the number of seats to GCs were too rigid and had ignored the principle of fairness in an election. They queried why changes could not be made to the existing GC boundaries so that there would be a fairer allocation of seats.

5. The Administration explained that the boundaries of the five GCs were based on the boundaries of the 18 District Councils. The criteria adopted by EAC in allocating seats were based on the requirements in law. The Administration had decided that the framework for the 2008 LegCo Election should remain unchanged, after the package of proposals for selecting CE in 2007 and forming of LegCo in 2008 was not passed by Members in December 2005. Unless there was justification, the delineation of GC boundaries would have regard to the boundaries of these 18 administrative districts and the boundaries of the existing GCs would remain unchanged. However, proposals to re-delineate the boundaries of the five GCs could be considered by EAC provided that they complied with the statutory criteria.

Electioneering at buildings

6. Some members expressed concern that some management bodies (i.e. owners' corporations (OCs), mutual aid committees, management companies, etc.) of private buildings did not comply with the principle of fair and equal treatment of all candidates/GC lists competing in the same constituency for the purposes of electioneering. For example, a particular candidate/GC list was allowed to conduct electioneering activities at a private building or post election advertisements (EAs) and banners in the common parts of a building but other candidates/GC lists in the same constituency were not allowed to do so. They were dissatisfied that the Administration had failed to address this longstanding problem.

7. The Administration advised the Panel that the EAC Guidelines required management bodies of buildings to provide equal opportunity to all candidates/GC lists competing in the same constituency for the purpose of electioneering. Since OCs had the statutory power to manage private property, any law which sought to impose parity treatment of candidates by OCs and interfere with the jurisdiction of OCs to manage private property would be subject to challenge. If EAC received a complaint of unfair or unequal treatment of candidates by a management body, and was satisfied that the complaint was justified, it could make a reprimand or censure in a public statement which might include the names of candidates/GC lists favourably or unfavourably treated.

Address labels for candidates to send election advertisements

8. In the past elections, candidates were provided with a set of address labels printed with electors' names and addresses on an individual basis for sending EAs. Some members suggested that for environmental protection purpose, candidates should be provided with address labels of electors on a household basis rather than individual basis in the 2008 LegCo election.

9. The Administration had explored the possibility of the proposal and reported its considerations to the Panel in April 2008. The Administration considered that the right of individual electors to peruse the election platform of candidates was a fundamental principle of elections and must not be compromised. If EAs were delivered on a household basis, the Administration must work out the arrangements to address issues such as the timely access to EAs by individual electors as time would be

required for circulation among electors within a household, and the delivery of EAs to individual electors who resided in residential establishments where a communal address was used (e.g. tenement flats, elderly homes). The Panel was informed that the proposal would not be implemented for the 2008 LegCo election, and members' views were welcomed on the way forward.

Force Working Group on Electioneering Activities (Force Working Group)

10. The Panel was informed that to prepare for the 2008 LegCo election, the Police had set up the Force Working Group to enhance communication between the Police and various Government departments on matters relating to election. One of its tasks was to review and improve the existing practices having regard to past experience on handling election complaints. The Force Working Group would issue guidelines to ensure that consistent and practical practices would be adopted within the Police. Briefing sessions, to be designed based on the guidelines to be devised by the Force Working Group, would be provided to officers involved in policing on the polling day.

Cooling off period

11. Some members advocated a cooling off period on the polling day. Given the increasing size of the No Canvassing Zone, they considered that canvassing on polling day no longer served any meaningful purpose. Some other members expressed support for canvassing on the polling day.

12. The Administration maintained the view that canvassing on the polling day would create a better atmosphere for the election. As Hong Kong was developing its electoral system, the present arrangement provided candidates and political parties with the opportunity to canvass votes.

Counting arrangements

13. The Panel was consulted on the vote counting arrangements for the 2008 LegCo election. Members generally agreed that polling-cum-counting arrangement should be adopted for counting the GC votes, while central counting arrangement should be adopted for the functional constituency (FC) votes.

14. Ms Emily LAU suggested that to enhance transparency and expedite the counting process, the Administration should consider reading out the choice of candidates marked on the ballot papers as they were counted. The Administration advised that the Registration and Electoral Office had simulated a test on the counting method as suggested but the outcome was not satisfactory.

Venue for Central Counting Station

15. The Panel was consulted on two possible venues for setting up the Central Counting Station (CCS) for counting the FC votes and for announcing the results of the GC and FC elections. They were the Asia World-Expo (AWE) in Chek Lap Kok and the Hongkong International Trade & Exhibition Centre (HITEC) in Kowloon Bay.

16. Taking into account the Panel's view, the Administration subsequently decided that, on balance, HITEC, being easily accessible, had a comparative advantage over the AWE in serving as the venue for CCS for the 2008 LegCo election. Although the physical layout of HITEC might pose some challenges in terms of operation and control, it would work out a detailed plan in advance to minimize the impact of these limitations on the operation of CCS.

Subsidy rate of financial assistance scheme and election expense limits

17. The Panel was consulted on the following proposals -

- (a) the subsidy rate of the financial assistance scheme for candidates in LegCo elections should be increased to \$11 per vote. The then prevailing subsidy rate was set at \$10 per vote, capped at 50% of the actual election expenses of the candidates; and
- (b) the election expense limits for both GCs and FCs should be increased by 5%.

18. Members had differing views on the election expense limits for GCs. Some members considered that the election expense limits should be abolished or increased, whereas some members did not support an increase to the expense limits.

19. According to the Administration, the estimated amount of additional financial assistance payable to candidates was about \$1 million after implementation of the two proposals. Some members considered that the Administration's proposals were not conducive to promoting political party development and grooming political talents. A member considered that the cap of the subsidy rate at 50% of the actual election expenses of candidates should be increased to 70%.

20. The Administration explained the basis for arriving at the two proposals. As regards the suggestion for increasing the cap of the subsidy rate of 50% of the actual election expenses, the Administration was of the view that election expenses should be collectively borne by the Government and candidates or their political parties/groups.

Relevant papers

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

2008 Legislative Council Election

Relevant papers/documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
Legislative Council	11 July 2007	Official Record of Proceedings of the Council on a written question raised by Dr Hon Philip WONG on "Arrangements for 2008 Legislative Council Election"
Panel on Constitutional Affairs	16 July 2007	<p>Consultation materials on "Provisional recommendations on delineation of geographical constituencies in respect of the 2008 Legislative Council Election" provided by the Electoral Affairs Commission [LC Paper No. CB(2)2413/06-07]</p> <p>Supplementary information on "Provisional recommendations on the delineation of geographical constituencies for the 2008 Legislative Council Election" provided by the Administration [LC Paper No. CB(2)2470/06-07(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)195/07-08]</p>
		<p>19 November 2007</p> <p>Electoral Affairs Commission Guidelines on Election-related Activities in respect of the Legislative Council Elections [LC Paper No. CB(2)96/07-08]</p> <p>Administration's paper on "Electoral arrangements for 2008 Legislative Council elections : Updating of electorate of functional constituencies" [LC Paper No. CB(2)338/07-08(03)]</p> <p>Minutes of meeting [LC Paper No. CB(2)844/07-08]</p>
		<p>17 December 2007</p> <p>Background Brief prepared by the Legislative Council Secretariat on "Vote counting arrangements for elections" [LC Paper No. CB(2)592/07-08(05)]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
		<p>Administration's paper on "Arrangements for the Counting of Votes for the 2008 Legislative Council Election" [LC Paper No. CB(2)592/07-08(06)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1334/07-08]</p>
Legislative Council	23 January 2008	<p>Official Record of Proceedings of the Council on the motion moved by Hon Audrey EU on "Ensuring the Conduct of Fair Elections"</p>
Panel on Constitutional Affairs	18 February 2008	<p>Background Brief prepared by the Legislative Council Secretariat on "Election expense limits for Legislative Council elections" [LC Paper No. CB(2)1054/07-08(02)]</p> <p>Administration's paper on "Election expense limits for the 2008 Legislative Council election" [LC Paper No. CB(2)1054/07-08(03)]</p> <p>Administration's paper on "Venue for Central Counting Station for the 2008 Legislative Council election" [LC Paper No. CB(2)1054/07-08(04)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1908/07-08]</p>
	21 April 2008	<p>Electoral boundary maps of Geographical Constituencies in respect of the 2008 Legislative Council election [LC Paper No. CB(2)1437/07-08]</p> <p>Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the Legislative Council Election [LC Paper No. CB(2)1435/07-08]</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>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
		<p>Administration's paper on "Practical Arrangements for the 2008 Legislative Council Election" [LC Paper No. CB(2)1617/07-08(05)]</p> <p>A relevant question raised by Hon Emily LAU during the examination of estimates of expenditure 2008-2009 and the Commissioner of Police's reply [LC Paper No. CB(2)1646/07-08(01)]</p> <p>Hon Emily LAU's letter dated 2 April 2008 on "Force Working Group on Electioneering Activities" [LC Paper No. CB(2)1617/07-08(03)] <i>(Chinese version only)</i></p> <p>Administration's paper on "Subsidy Rate of the Financial Assistance for Candidates and the Election Expense Limits for the 2008 Legislative Council Election" [LC Paper No. CB(2)1591/07-08(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2675/07-08]</p>
Legislative Council	14 May 2008	Official Record of Proceedings of the Council on a written question raised by Hon LAU Chin-shek on "Voter Registration"
Panel on Constitutional Affairs	19 May 2008	<p>Administration's paper on "Voter Turnout Publicity Campaign for the 2008 Legislative Council Election" [LC Paper No. CB(2)1910/07-08(03)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2841/07-08]</p>
Legislative Council	28 May 2008	Official Record of Proceedings of the Council on an oral question raised by Dr Hon Fernando CHEUNG Chiu-hung on "Polling Arrangements for Disabled Persons"