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Panel on Constitutional Affairs
Background brief prepared by the Legislative Council Secretariat
for the meeting on 19 April 2010

Practical arrangements for the 2010 Legislative Council By-election

Purpose

This paper provides background information on the practical arrangements for the Legislative Council ("LegCo") by-elections since the First LegCo, and summarizes past discussions on the relevant subject matter by the Panel on Constitutional Affairs ("the Panel").

Background

2. Since the 1998 LegCo election, three LegCo by-elections have been held, namely, the 2000 LegCo Hong Kong Island geographical constituency ("GC") by-election, the 2001 LegCo Election Committee by-election and the 2007 LegCo Hong Kong Island GC by-election.

3. In accordance with section 35 of the Legislative Council Ordinance (Cap 542) ("LCO"), the Clerk to LegCo must, by notice published in the Gazette, declare the existence of a vacancy in the membership of that Council within 21 days after becoming aware of the vacancy. Section 36(1)(a) of LCO further stipulates that the Electoral Affairs Commission ("EAC") must, in accordance with regulations in force under the EAC Ordinance (Cap 541), arrange for a by-election to be held when the Clerk to LegCo makes a declaration as to the existence of a vacancy in the membership of LegCo. The Guidelines on Election-related Activities in respect of LegCo Election issued by EAC apply to all LegCo general elections and by-elections ("the EAC Guidelines").

4. According to section 8 of the EAC Ordinance, EAC shall make a report to the Chief Executive, within three months after the election, on matters relating to that election in respect of which the Commission has any function under the Ordinance or any other Ordinance. An extract on "Review and Recommendations" from the EAC Report on the 2007 LegCo Hong Kong Island GC By-election is in **Appendix I**.

5. As a result of the resignation of a LegCo Member from each of the five GCs on 25 January 2010, EAC would arrange a by-election on 16 May 2010 to fill the vacancies, with the nomination period running from 22 March to 8 April 2010.

Relevant discussions of the Panel

6. The Panel discussed the EAC Report on the 2000 LegCo Hong Kong Island GC By-election, the practical arrangements for the 2007 LegCo Hong Kong Island GC By-election and the EAC Report on the 2007 LegCo Hong Kong Island GC By-election at its meetings held on 12 June 2001, 15 October 2007 and 17 March 2008 respectively. The relevant issues raised by members at these meetings are summarized in the following paragraphs.

Election mail

7. Some members expressed concern that all promotional mail items were sent to individual electors by post under the existing arrangement. For example, five family members living in the same flat would receive five sets of election mail. They asked if the Administration could, for the sake of environmental protection and cost reduction, consider the possibility of central sorting of electors by address with a view to producing one gum label for electors residing at the same residential address. It was also suggested that electors residing at the same address should be given a choice as to whether they would like to receive election mail addressed to them individually or as a group. They further asked how the situation in which some electors received election mail addressed to previous flat owners/tenants who had not notified the Registration and Electoral Office ("REO") of their change of address could be handled.

8. The Administration advised that the Administration would stress to electors during the publicity drive that they must notify REO if they had changed address. When the Panel discussed the practical arrangements for the 2008 LegCo Election at its meeting on 21 April 2008, the Administration advised that the right of individual electors to peruse the election platform of candidates was a fundamental principle of elections which must not be compromised. Moreover, EAC would need to address the following practical problems if the proposal of provision of address labels of electors on a household basis was implemented -

- (a) it was uncertain whether electors could have timely access to the election advertisement ("EA") due to the time required for circulation among electors within a household. In case the EA was held up by one of the electors, other electors in a household might not be able to have access to it; and
- (b) some electors resided in residential establishments where a communal address was shared by individual electors (e.g. tenement flats, elderly homes, etc.). EAs should be delivered to these electors on an

individual basis. While in some cases this might be clear from their names or information kept by relevant departments, it might not be possible to ascertain this in other cases. It would not be feasible to identify all such establishments and ensure that EAs were delivered to the electors concerned on an individual basis.

On the basis of the above considerations, the Administration would not consider implementing the proposal for the 2008 LegCo election but would welcome members' views on the way forward.

Exit poll

9. Some members were concerned that there were third parties conducting exit polls on their own means and disclosing the results to certain candidates for the purpose of assisting them in canvassing votes during an election, thereby causing unfairness to the other candidates. Considering that the improvement measures proposed by EAC could not ensure fairness in an election, they suggested that only academic institutions should be allowed to conduct exit polls.

10. The Administration considered that the existing EAC Guidelines urging the organizations concerned 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. The Administration maintained the view that exit polls could be conducted by any person and organization 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.

11. Members may wish to refer to the background brief on "Exit polls" prepared by the LegCo Secretariat for the meeting of the Panel on 16 March 2009 [LC Paper No. CB(2)1050/08-09(04)] and the minutes of the relevant meeting [LC Paper No. CB(2)2066/08-09] for detailed discussion of the issue.

Electioneering on the election day

12. Some members advocated a cooling off period and enlargement of No Canvassing Zone on the polling day. They remarked that electors were getting more mature and would not be swayed easily by canvassing. The Administration advised that there were divided views on the issues but the Administration would take into account members' view in considering the electoral arrangements for future elections.

13. Members may wish to note that when the Panel discussed the proposed amendments to the EAC (Electoral Procedure) (LegCo) Regulation at its meeting on 21 January 2008, the Administration informed members that it 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 canvas votes.

Training of staff

14. Ms Emily LAU expressed concern that as revealed in the petitions and complaints received by EAC, some Presiding Officers, Deputy Presiding Officers and polling staff were not very familiar with the electoral legislation, guidelines and the directives laid down in the operational manual issued for the Presiding Officers and polling staff. She suggested the Administration not to recruit non-civil servants as electoral staff and enhance staff training.

15. The Administration advised that a majority of the electoral officers were civil servants and were experienced. To enhance training for electoral staff, an experience-sharing session would be added and training manuals would be beefed up to give more detailed guidance to electoral staff.

Telephone canvassing

16. Some members queried whether it was feasible for candidates and their agents to avoid using telephone canvassing as a means to promote their candidature which was recommended in the EAC Report on the 2000 LegCo Hong Kong Island GC By-election. The Administration explained that it was not the intention of EAC to prohibit telephone canvassing by candidates but such an act was not welcomed by many members of the public. EAC would clarify this point in its future Guidelines.

17. Members may wish to note that according to paragraph 9.18 of the latest EAC Guidelines which were amended in July 2008, candidates and their supporters are advised to maintain a list of electors that they know finding such electioneering telephone calls or messages or visits objectionable and avoid approaching these electors again. The Guidelines also contain a guidance note on personal data privacy in respect of electioneering activities prepared by the Office of the Privacy Commissioner for Personal Data.

Relevant papers

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

Section 7 – Review and Recommendations

7.1 After the completion of the by-election, the EAC conducted a review on various aspects of the electoral arrangements, taking into consideration suggestions from the public and issues raised in the complaints received. The EAC put forth its recommendations of improvements in areas where deficiencies and drawbacks were identified, and areas where good practices should be continued. This section details the EAC's observations and recommendations.

(A) Sending Candidates' election advertisements / information to electors

7.2 Some electors suggested that for environmental protection purpose, candidates should just send one copy of EAs to each household, instead of sending a number of copies of EAs to a number of electors who lived together in the same household, as family members could share the information among themselves.

Recommendation:

7.3 To support the cause of environmental protection, the EAC considers that in providing address labels of electors to candidates for free posting of EAs, the feasibility of printing such labels on a household, rather than individual, basis should be explored, subject to the views of candidates and electors.

(B) Appeal to use less printed election advertisements

7.4 Some electors opined that the number of printed EAs received from candidates was excessive, and considered it a nuisance.

Recommendation:

7.5 Candidates were allowed to post one round of EAs to electors by free postage in the by-election. However, candidates could print and post or distribute other EAs at their own expenses, subject to the maximum limit of election expenses not being exceeded. To save the use of papers, effort should be made to encourage candidates to reduce the amount of printed EAs, as far as possible. Besides, continuous effort should be made to solicit email addresses from electors, so that candidates can choose to send their EAs to electors by electronic means.

(C) Telephone canvassing

7.6 There were a substantial number of complaints on canvassing messages sent through telephone calls or SMS in the by-election. Complainants mostly considered such calls a nuisance, some were concerned that their personal data (including name and telephone number) was obtained and used by unknown canvassing parties without their agreement. They worried that their personal data might be abused.

7.7 As the REO would not provide telephone numbers of electors to candidates, candidates might have obtained the information from other sources. Paragraph 9.17 of the Guidelines has already requested candidates and their supporters to respect the privacy of electors and observe the guidance note on personal data privacy in respect of electioneering activities prepared by the Office of the Privacy Commissioner for Personal Data at Appendix H to the Guidelines.

Recommendation:

7.8 It is considered that in future elections, enhanced publicity should be launched to remind candidates and their supporters in the Briefing for Candidates and other publicity functions that some members of the public do not like to be contacted by telephone, and rules of the Office of the Privacy Commissioner for Personal Data concerning privacy in collecting and using electors' information should be respected. On the other hand, electors should be openly and repeatedly reminded that they could simply discontinue such calls if they do not wish to receive such canvassing messages.

7.9 Apart from the above publicity measures, the EAC considers it necessary to highlight in the Guidelines that some members of the public do not like to be contacted by telephone. A similar paragraph on SMS should also be included.

(D) Complaints about noise nuisance

7.10 A lot of complaints on noise nuisance caused by candidates and their supporters in the conduct of canvassing activities were received in the by-election. This category of complaints accounted for a substantial portion of complaints received in the by-election. Although the use of sound amplifying devices was not made in the hours of 9 pm to 9 am as restricted by the EAC in paragraph 12.4 of the Guidelines, it was noted that some supporters only lowered the volume when there was police intervention, and then turned on a loud volume again shortly afterwards, causing much disturbance to the residents nearby.

Recommendation:

7.11 Candidates and their supporters should be reminded to give due consideration to people in the neighbourhood and observe the Noise Control Ordinance (Cap 400) in conducting electioneering activities. It is considered that publicity measures should be stepped up in future elections to appeal to candidates on the need to use a reasonable level of volume when using sound amplifying devices to conduct electioneering activities.

(E) Children accompanying electors in polling stations

7.12 Some complaints were received from electors who expressed dissatisfaction that polling staff did not allow their children to enter the

voting compartments with them. They considered that it was a good opportunity to demonstrate voting procedures to their children as part of civic education, and were unwilling to let their children stay outside the voting compartments.

7.13 Section 44 of the EAC (EP) (LC) Reg stipulates that a child who accompanies an elector to the polling station for the purpose of voting is allowed to enter the polling station, if the PRO considers that the child should not be left unattended while that elector is in the polling station and the child will not disturb or cause inconvenience to any person in the polling station. As for the voting compartments, to protect the secrecy of the votes and let electors cast their votes without being disturbed, each compartment is to accommodate only one elector, and a child who accompanies an elector may wait outside the restricted area delineated along the voting compartments. As the voting compartments and boundaries of the restricted area are usually just one or two meters apart, children can join their parents again right after their parents walk out from the restricted area of voting compartments. Alternatively, electors may seek help from polling staff to look after their children in the polling stations when they cast their votes.

Recommendation:

7.14 It is considered that the complaints may be caused by misunderstanding between electors and polling staff. Polling staff should be reminded in briefing sessions to explain the relevant

arrangements to electors with courtesy and patience.

(F) Exit polls

7.15 Members of the public had expressed concerns on the conduct of exit polls. Some electors considered it a nuisance, while some worried that premature disclosure of information collected from exit polls might influence electors' voting preference. There was also complaint that the interviewer claimed that the exit polls were commissioned by the EAC or the Government.

Recommendation:

7.16 Although the Guidelines are already in place to provide for the procedures for application and conducting of exit polls, it is considered that the REO should step up the measures on the governance of exit polls through the following:

- (a) The exit poll interviewers should be reminded that they must wear their identification badges issued by the REO, and interviewers must make it clear to the interviewee that he has full discretion to decide whether or not to answer the interviewers' questions. They should also be reminded to respect an elector's right to keep his vote secret, and not to announce the result of the exit poll before the close of poll to avoid affecting electors' voting preference as stipulated in paragraph 15.6 of the Guidelines.

- (b) The REO should make use of appropriate publicity channels to remind electors of their rights of not answering the interviewers' questions, and the fact that exit polls are neither conducted by the EAC nor by any departments of the Hong Kong Special Administrative Region Government.
- (c) The EAC Guidelines on the conduct of exit poll should be reviewed to consider the possibility of providing greater transparency on the details and particulars of the organisations which had obtained approval to conduct exit polls. The name, telephone number of the organisations will be placed on the REO's website for public information.

(G) Deployment of polling staff

7.17 As the by-election was held only two weeks after the 2007 DC Election, polling staff recruited for polling stations on the Hong Kong Island in the 2007 DC Election were deployed to undertake the same duties at the same polling stations in the by-election as far as possible. This arrangement not only facilitated the recruitment, but also contributed to the smooth operation of both the poll and the count in the by-election.

Recommendation:

7.18 In future, should a large scale by-election be scheduled soon after a major election, efforts should be made to deploy the same group of

polling staff to perform polling (and counting) duties in the same polling stations as far as possible, in order to facilitate smooth running of the by-election.

(H) Setting up of reserve counting stations

7.19 In the by-election, the counting of votes was done in the polling stations after the close of poll, and the counting results of all polling stations had to be consolidated to work out the finalized result. To cater for the situation that some counting stations could not finish the count by 6:00 am in the morning following the polling day, 17 reserve counting stations were set up as a contingency arrangement. None of the reserve counting station had to be used as the count was finished by around 3:00 am.

Recommendation:

7.20 Although no reserve counting station was used in the by-election, it is prudent to have a reasonable number of reserve counting stations for future LegCo GC elections or by-elections if the poll-cum-count arrangement is to be adopted, in view of the large number of polling stations involved, and the fact that polling stations are mostly schools or community centres which may have scheduled activities in the morning following the polling day.

(I) Decentralization in the reporting of statistics by polling stations

7.21 To speed up the process of hourly reporting of voter turnouts, complaint statistics and counting results to the SIC by individual polling stations in the by-election, a designated subject officer (with designated telephone number) was assigned to oversee 4 to 5 polling stations in this regard. This practice was different from that in the 2007 DC Election, during which all polling stations reported statistics through the Interactive Voice Recording System. The arrangement in the by-election was considered efficient and could facilitate communication between the SIC and individual polling stations.

Recommendation:

7.22 In view of the importance of good and fast communication between individual polling stations and the SIC, it is considered that similar arrangement should again be adopted in future elections, subject to the availability of resources.

(J) Announcement of interim counting results by phases

7.23 The by-election was a major event which drew attention of people from different walks of life in the territory. It was thus anticipated that the media would be keen to report news about the by-election, including the counting result, to the public as soon as possible.

7.24 During the by-election, counting result was released in phases. The arrangement was generally well-received.

Recommendation:

7.25 To maintain the openness of the election, it is important that the general public could be informed about the progress of the count at suitable intervals where possible. The successful experience of the by-election could serve as reference for similar elections in future.

Appendix II

Practical arrangements for the 2010 Legislative Council By-election

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Panel on Constitutional Affairs	12 June 2001	Administration's paper on "Electoral Affairs Commission ("EAC") Report on the 2000 Legislative Council ("LegCo") by-election" [LC Paper No. CB(2)1763/00-01(03)] http://www.legco.gov.hk/yr00-01/english/panels/ca/papers/b1763e03.pdf Minutes of meeting [LC Paper No. CB(2)2209/00-01] http://www.legco.gov.hk/yr00-01/english/panels/ca/minutes/ca120601.pdf
	15 October 2007	Administration's paper on "Practical arrangements for the 2007 LegCo Hong Kong Island geographical constituency ("GC") by-election" [LC Paper No. CB(2)46/07-08(04)] http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca1015cb2-46-4-e.pdf Minutes of meeting [LC Paper No. CB(2)589/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ca/minutes/ca071015.pdf
Legislative Council	17 October 2007	Official Record of Proceedings of an oral question raised by Hon Albert HO on "Holding District Council ("DC") Elections and LegCo by-election on different days" http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm1017-translate-e.pdf
	7 November 2007	Official Record of Proceedings of an oral question raised by Hon James TO on "Opinion surveys relating to LegCo by-election" http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm1107-translate-e.pdf
Panel on Constitutional Affairs	19 November 2007	Administration's response on "Enquiry regarding meeting with candidates of 2007 LegCo by-election" [LC Paper No. CB(2)258/07-08(01)]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
		<p>http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca1119cb2-258-1-e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(2)844/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ca/minutes/ca071119.pdf</p>
	21 January 2008	<p>Minutes of meeting [LC Paper No. CB(2)1615/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ca/minutes/ca080121.pdf</p>
	17 March 2008	<p>EAC Report on the 2007 LegCo Hong Kong Island GC by-election http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca0317cb2-1333-e.pdf</p> <p>Administration's paper on "EAC Reports on the 2007 DC Election and the 2007 LegCo Hong Kong Island GC by-election" [LC Paper No. CB(2)1336/07-08(02)] http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca0317cb2-1336-2-e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(2)2248/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ca/minutes/ca080317.pdf</p>
	15 December 2008	<p>Background brief on "EAC Report on the 2008 LegCo Election" prepared by the LegCo Secretariat [LC Paper No. CB(2)437/08-09(04)] http://www.legco.gov.hk/yr08-09/english/panels/ca/papers/ca1215cb2-437-4-e.pdf</p>
	16 March 2009	<p>Background brief on "Exit polls" prepared by the LegCo Secretariat [LC Paper No. CB(2)1050/08-09(04)] http://www.legco.gov.hk/yr08-09/english/panels/ca/papers/ca0316cb2-1050-4-e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(2)2066/08-09]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
		http://www.legco.gov.hk/yr08-09/english/panels/ca/minutes/ca20090316.pdf
Legislative Council	24 February 2010	Official Record of Proceedings of a written question raised by Hon Starry LEE on "LegCo by-elections" http://www.legco.gov.hk/yr09-10/english/counmtg/hansard/cm0224-translate-e.pdf

Council Business Division 2
Legislative Council Secretariat
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