

立法會
Legislative Council

Ref : CB2/SS/9/10

LC Paper No. CB(2)755/11-12
(These minutes have been seen
by the Administration)

**Subcommittee on Nine Amendment Regulations made
under the Electoral Affairs Commission Ordinance**

**Minutes of the first meeting
held on Thursday, 2 June 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC
Hon Tanya CHAN

Members absent : Hon WONG Yung-kan, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Yuk-man

Public Officers attending : Constitutional and Mainland Affairs Bureau

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland
Affairs

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Thomas WU Kui-wah
Assistant Secretary for Constitutional and Mainland
Affairs

Department of Justice

Miss Emma WONG
Senior Government Counsel

Registration and Electoral Office

Mr LI Pak-hong
Chief Electoral Officer

Mr Anthony CHAN Shiu-lun
Deputy Chief Electoral Officer (Elections) 3

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Catherina YU
Senior Council Secretary (2)6

Mrs Fonny TSANG
Legislative Assistant (2)3

Action

I. Election of Chairman

Mr IP Kwok-him was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[REO ES/23/52, LC Paper Nos. LS60/10-11 and CB(2)1932/10-11(01)]

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

3. The Administration was requested to address members' concern raised in respect of the statutory requirements and procedural arrangements for

Action

submission to the Returning Officers of electronic election advertisements which were distributed, sent or used on the Internet by candidates.

Invitation of public views

4. The Subcommittee agreed to post a notice on the Legislative Council website to invite written views from the public on the amendments to the nine Regulations.

Meeting schedule

5. The Subcommittee agreed to the following meeting schedule for June 2011 -

- (a) 8 June 2011 (Wednesday) from 8:30 am to 10:00 am;
- (b) 14 June 2011 (Tuesday) from 4:30 pm to 6:30 pm; and
- (c) 17 June 2011 (Friday) from 8:30 am to 10:30 am.

Extension of scrutiny period

6. The Subcommittee agreed that a motion be moved by the Chairman at the Council meeting of 15 June 2011 to extend the scrutiny period of the nine Amendment Regulations to 6 July 2011.

III. Any other business

7. There being no other business, the meeting ended at 6:10 pm.

Council Business Division 2
Legislative Council Secretariat
6 January 2012

**Proceedings of the first meeting of the
Subcommittee on Nine Amendment Regulations made
under the Electoral Affairs Commission Ordinance
on Thursday, 2 June 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000114 - 000235	Mrs Sophie LEUNG Mr WONG Ting-kwong Mr IP Kwok-him Mr TAM Yiu-chung	Election of Chairman	
000236 - 000351	Chairman Ms Emily LAU	Opening Remarks	
000352 - 001432	Administration	Briefing by the Administration on the proposed amendments to be made by the Electoral Affairs Commission ("EAC") to the nine Regulations under the EAC Ordinance (Cap. 541) on electoral procedures, voter registration and other practical arrangements.	
001433 - 001526	Chairman	The Chairman's remarks on the timeframe and the approach to examine the proposed amendments.	
001527 - 001710	Ms Emily LAU	<p>Ms Emily LAU expressed support for the proposed improvement in arrangements for submission of electronic election advertisements ("eEAs") by electronic means. She enquired about –</p> <ul style="list-style-type: none"> (a) the availability of barrier-free access in polling stations, (b) whether all types of election materials could be submitted electronically; and (c) whether the cost being incurred in the submission of election materials by electronic means would be counted as election expenses. <p>Ms LAU requested the Administration to speed up the introduction of the necessary legislative amendments including those relating to the handling of election returns involving technical and minor breaches under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO") to the Legislative Council ("LegCo") with a view to effecting the proposed amendments for the upcoming elections in 2011.</p>	

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001711 - 002353	Chairman Administration Ms Emily LAU	<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the information concerning barrier free access in polling stations would be included in the guidelines on election-related activities; (b) many schools and community halls which were used as polling stations were old premises and thus barrier free access was usually not available. Hence, there were practical difficulties in finding polling stations with barrier free access. The Administration would provide ramps in the entrances of these polling stations where appropriate to facilitate access of the disabled. The Administration was confident that barrier free access would be available in about 90% of the polling stations for the upcoming elections; (c) the Registration and Electoral Office ("REO") would accept the submission of electronic EAs by email and most of the notices from candidates by fax or by email; and (d) in response to the request of some members for making special arrangements to deal with cases involving insignificant excess amounts of election expenses, the Administration had proposed to introduce a de minimis arrangement for handling election returns with minor errors or omissions through introducing appropriate amendments to the Electoral Legislation (Miscellaneous Amendments) Bill 2011. <p>Ms Emily LAU urged the Administration –</p> <ul style="list-style-type: none"> (a) to expedite the necessary legislative amendments pertaining to ECICO so as to minimize the nuisance caused to candidates; (b) to actively locate suitable premises where barrier free access was available as polling stations; and (c) to allow the submission of all types of election materials by electronic means. <p>The Administration responded that as the first step, candidates would be allowed to submit</p>	

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		copies of electronic EAs by email, and hence saving the trouble of having to print out the hard copies for declaration purpose. Furthermore, for EAs of large sizes such as posters and exhibits, candidates would be allowed to submit only the digital images of these EAs to REO by email. Depending on experience, the Administration would explore the feasibility of extending this electronic submission arrangement to other types of election materials in the future.	
002354 - 002755	Chairman Ms Emily LAU Mr TAM Yiu-chung Mrs Sophie LEUNG	Meeting schedule for June 2011. Arrangement for receiving views from the public and the Subcommittee's agreement of inviting written views from the public.	
002756 - 003159	Chairman Ms Cyd HO Administration	Ms Cyd HO enquired the objective of submission of EAs and the classification of EAs. The Administration explained that - (a) in addition to the monitoring of election expenses, the statutory requirement on the submission of EAs in advance to REO was to facilitate public inspection and to provide a transparent regulatory mechanism for the handling of election related complaints or disputes; (b) at present, eEAs such as video or audio files could be submitted to REO in the form of discs/tapes/diskettes; and (c) EA was defined under ECICO as any publication, notice or announcement for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.	
003200 - 003335	Chairman Ms Cyd HO	Ms Cyd HO considered that so long as the websites used by candidates were open forums, EAs posted therein could be examined by the public. It was therefore unnecessary to continue with the existing statutory requirement to submit copies of eEAs distributed.	
003336 - 003520	Chairman Administration	The Administration advised that given the interactive nature and the frequency of updating	

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		<p>messages on social networking or communication websites such as Facebook and Twitter, it would not be necessary for candidates to provide the declaration and each and every update of the EAs disseminated on these websites in advance to REO. It was proposed that candidates would only be required to deposit with the Returning Officer ("RO") a declaration and the declared eEAs by the end of the first working day following the day on which the advertisements were sent or displayed.</p>	
003521 - 003706	Ms Cyd HO	<p>Ms Cyd HO considered that the Administration's proposal was impractical and she suggested the Administration to seek expertise's advice on its feasibility, having regard to the updating frequency of the websites concerned.</p>	Admin
003707 - 003954	Chairman Administration	<p>The Chairman sought clarification on the types of messages disseminated through social networking or communication websites which should be submitted to REO.</p> <p>The Administration responded that according to the legislation, generally speaking, only messages disseminated by candidates or their agents were required to be submitted to REO.</p>	
003955 - 004051	Chairman Ms Cyd HO	<p>Ms Cyd HO remarked that a candidate might leave election related messages on websites other than his/her own and enquired about how these messages should be handled.</p>	
004052 - 004153	Chairman Administration	<p>The Administration responded that the existing legislation had already provided a basis for the filing of EAs with REO. REO would discuss with the information technology ("IT") experts in detail on the operational issues concerning the submission of eEAs disseminated through websites.</p>	
004154 - 004352	Chairman Mr Paul TSE	<p>Mr Paul TSE commented that given the advance in IT and the prevalence of social networking or communication websites, the existing statutory requirement for candidates to submit EAs disseminated through websites was a nuisance.</p> <p>Mr TSE further commented that it would be very difficult to exercise control on the transmission of</p>	

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		EAs on the Internet and sought information on relevant overseas experience, particularly in the United Kingdom and the United States.	
004353 - 004551	Chairman Administration	<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) it did not have the relevant regulations adopted by overseas countries readily available; (b) it was essential to regulate EAs and monitor the use of election expenses in order to ensure that elections were conducted in a fair, open and honest manner and candidates were competing on a level-playing field; (c) the proposed legislative amendments relating to the submission of EAs disseminated through the Internet was to address the concerns raised by candidates in complying with the existing statutory declaration requirement and sought to provide them with a more convenient way to submit EAs; and (d) generally speaking, candidates would not be accountable for the messages disseminated through the Internet other than those distributed by themselves or by their agents. 	
004552 - 004734	Mr Paul TSE	<p>Mr Paul TSE considered that –</p> <ul style="list-style-type: none"> (a) while he welcomed the proposed legislative amendments, the relaxation in the submission of eEAs could not address the problems; (b) whether the law could keep up with the Internet development and serve its legislative intent; and (c) it might be better removing the existing statutory requirement for the submission of EAs distributed through the Internet should the Administration not be able to regulate the dissemination of such EAs. 	
004735 - 004854	Chairman Administration	The Administration explained that according to experience at previous elections, the public considered it necessary to monitor EAs and hence the need to monitor EAs in all forms. The	

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		Administration would review the arrangements in the light of the experience gained in the upcoming District Council election.	
004855 - 005116	Mr Paul TSE Administration	Mr Paul TSE suggested allowing candidates to submit EAs by providing REO with a link of the websites concerned. The Administration undertook to consider Mr TSE's suggestion as long as it could allow the Returning Officer to maintain a complete record of the declared EAs.	
005117 - 005455	Chairman Mrs Sophie LEUNG Administration	Mrs Sophie LEUNG enquired about how to regulate eEAs the sources of which were unable to identify and how to ascertain whether the candidates were involved in the dissemination of such EAs. The Administration responded that – (a) candidates would be held legally liable for EAs disseminated by themselves or disseminated with their authorization; (b) according to the law, anyone who wished to publish information involving election expenses or information being regarded as EAs had to obtain the consent from the candidates; and (c) complaints about illegal conducts involving election expenses and EAs would be referred to the relevant law enforcing agencies.	
005456 - 005655	Chairman Administration Mrs Sophie LEUNG	The Chairman commented that the dissemination of EAs without the candidates' consent would constitute a legal offence and could be dealt with in accordance with the relevant provision. The Administration undertook to consider members' concern. Mrs Sophie LEUNG expressed concern about the dissemination of negative comments about candidates on the Internet and her view was that it would be difficult to trace the sources of such information.	

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005656 - 005851	Chairman Mr WONG Ting-kwong	Mr WONG Ting-kwong remarked that as it would be impossible to trace the sources of the mischief-making on the Internet, the relevant provision could only impose control on the well-behaved which was not the legislative intent. As such, the relevant provision was unnecessary.	
005852 - 010039	Chairman Administration	The Administration responded that information for the purpose of promoting as well as prejudicing the election of a candidate was regarded as EAs by law. The law had indeed imposed a requirement to regulate all EAs and sanctions were in place to deal with non-compliance. The proposed amendments sought only to facilitate the submission of EAs electronically rather than to change the regulatory regime.	
010040 - 010726	Chairman Miss Tanya CHAN Administration	Miss Tanya CHAN's enquired and the Administration explained how EAs disseminated through the Internet should be submitted.	
010727 - 011047	Chairman Administration	<p>The Chairman remarked that the Democratic Alliance for the Betterment and Progress of Hong Kong considered it necessary to regulate EAs on the Internet. He sought confirmation as to whether the declaration requirement would only apply to EAs disseminated by candidates but not the information comprised positive comments about the candidates which was posted by others on the candidates' websites.</p> <p>The Administration responded that this was generally the requirement. The Administration undertook to keep in view the Internet development and make the corresponding legislative amendments if necessary.</p>	
011048 - 011510	Chairman Ms Cyd HO	<p>Ms Cyd HO commented that –</p> <p>(a) it would not be possible to capture all messages on social networking or communication websites on the Internet during the day for submission as the messages would be automatically deleted by the server once the data reached a certain volume; and</p> <p>(b) it seemed that the Administration had mixed up the concepts of “intention (意圖)” and “effect (效果)” in seeking to regulate EAs.</p>	

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011511 - 011750	Chairman Administration Ms Cyd HO	<p>The Administration responded that there were laws governing EAs and their submission. The Administration acknowledged that there might be difficulties for candidates to maintain and submit a complete record of EAs disseminated through the Internet and the Administration would explore whether there were practical means within the existing statutory framework to facilitate candidates.</p> <p>Ms Cyd HO requested the Administration to explore other alternatives to handle EAs disseminated through the Internet.</p>	Admin
011751 - 012253	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU considered that it would be impossible to regulate the activities on the Internet and the Administration should seek IT expert's advice in this regard.</p> <p>The Chairman and Ms Emily LAU considered that the relevant election guidelines to be issued by the EAC must be updated to incorporate the proposed changes relating to the nine Amendment Regulations.</p> <p>The Administration responded that –</p> <p>(a) the proposed legislative amendments would be incorporated into the election guidelines; and</p> <p>(b) there were staff conversant with IT in REO who would give advice on Internet issues.</p>	
012254 - 012807	Chairman Ms Tanya CHAN Administration	<p>Ms Tanya CHAN enquired on whether there was a need to seek written consent from those who indicated their support to a candidate on a social networking website as the entire website was in effect a platform for EAs.</p> <p>The Administration responded that the conduct to publish EAs including the false claim of support was governed by section 27 of ECICO.</p>	
012808 - 013229	Ms Cyd HO Chairman Administration	Ms Cyd HO requested REO to consider exempting the submission of EAs disseminated on social networking or communication websites and REO should take up the role of printing EAs for public inspection.	Admin

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		<p>Ms Cyd HO commented that the dissemination of information on the Internet was beyond control and she enquired whether written consent would be required from those who indicated their support to a candidate in a message posted on a social networking website if that candidate subsequently disseminated that message on the website.</p> <p>The Administration responded that the issue should be examined and legal advice would be required on a case by case basis.</p> <p>Ms Cyd HO called on the Administration to examine the matters relating to eEAs.</p>	Admin
013230 - 013648	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO sought information on the past experience relating to the voting arrangements for electors in custody.</p> <p>The Administration responded that past arrangements for electors in custody to vote had been smooth.</p> <p>Ms Cyd HO enquired and the Administration responded on the voting arrangements for electors in custody for different duration.</p>	
013649 - 013731	Chairman	The Chairman invited members' views on the amendments consequential to the CE Election (Amendment) Ordinance 2011.	
013732 - 013816	Chairman	The Chairman invited members' views on the amendments consequential to the LegCo (Amendment) Ordinance 2011.	
013817 - 014043	Chairman	<p>The Chairman summarized on the follow-up actions to be taken by the Administration.</p> <p>The Subcommittee agreed that a motion be moved by the Chairman at the Council meeting of 15 June 2011 to extend the scrutiny period to 6 July 2011.</p>	
014044 - 014057	Chairman	Date of next meeting	