

**Bills Committee on
Electoral Legislation (Miscellaneous Amendments) Bill 2012**

Follow up on the issues raised at the meeting on 2 March 2012

As requested by Members at the meeting on 2 March 2012, this paper provides information concerning the issues of consent of support in election advertisements (“EA”), the central portal maintained by the Registration and Electoral Office (“REO”), and the reasons for adopting central counting arrangement for the District Council (second) functional constituency (“DC (second) FC”).

Consent of Support in EAs

2. Under the proposed arrangement set out in clause 3 of Electoral Legislation (Miscellaneous Amendments) Bill 2012 (“the Bill”), if a candidate has neither requested or directed nor authorized any person to request or direct the inclusion of the name, logo or pictorial representation of any person or organisation in his EAs, the candidate is not required to obtain the written consent of support from such person or organisation. To satisfy this requirement, the candidate needs to ascertain that he has neither requested or directed nor authorized any person to request or direct the inclusion of the above contents in his EAs. Nevertheless, the candidate is not required to ascertain the identity of those who provide support in his EAs out of their own volition. The purpose of this arrangement is to relieve the candidate from the burden of seeking consent in circumstances in which this is not practicable. Under the proposed arrangements, if the relevant authorities receive a complaint concerning the consent of support in an EA, investigation will be conducted to ascertain the facts of the case and to collect evidence for determination if it is appropriate to take any enforcement action.

3. As regards the question about photographs published in a candidate’s EAs which mentioned and displayed past activities organised by the candidate involving participation by other persons, under section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance, a candidate is required to obtain consent of support if the name, logo or pictorial representation of any person or organisation is included in an EA in such a way as to imply, or to be likely to cause electors to believe, that the candidate has the support of the person or organisation concerned. Under this existing provision, a candidate is not required to obtain consent of support if the photographs do not imply or likely cause electors to believe that the candidate has the support of the persons or

organisations in the photographs. This principle is not affected by the Bill.

Central portal maintained by REO

4. To comply with the relevant public inspection requirement governing EA under the new regulatory regime, a candidate should post the following EA particulars, **within one working day** after the publication of an EA, onto an **open platform** either maintained by the REO (“Central Platform”) or the candidate himself or a person authorized by him (“Candidate’s Platform”) for public inspection :

- (a) an electronic copy of an EA;
- (b) a hyperlink of the open platform which publishes an EA (where it is technically impracticable to make available an electronic copy of the EA, such as messages sent through social networking or communication websites on the Internet like Twitter and Facebook, which are of an interactive and spontaneous nature);
- (c) the relevant printing/publication information pertaining to such EA;
- (d) an electronic copy each of the relevant permission for the distribution/display of such EA in private premises issued by owners or occupiers concerned, as applicable; and
- (e) an electronic copy each of the documents providing consent of support, as applicable.

Details of the relevant printing/publication information pertaining to an EA referred to in (c) above will be specified by the Electoral Affairs Commission in its guidelines on election-related activities to be issued for public consultation in late March 2012. Basically, it will include basic information on the date of production, the size of the EA, the date and manner of distribution and the number of copies distributed as applicable.

5. The Central Platform will be operated and maintained by the REO. The REO is now working on the technical specifications of the system and will make sure that it has sufficient capacity to cater for smooth operation in the Legislative Council (“LegCo”) election in September 2012. To upload the EA particulars in paragraph 4 above onto the Central Platform, a candidate would only need an ordinary

personal computer equipped with Internet connection. Tentatively, the Central Platform will be designed to handle submissions of a size as large as 50MB each. As to the speed of uploading, it will largely depend on the Internet service plan subscribed by the candidate uploading the submissions. The higher the speed provided by the service provider at the users' end, the shorter will be the uploading time. The REO plans to conduct a trial run in May 2012 and, if time permits, will invite LegCo Members to participate in the exercise and provide feedbacks.

6. As to the operation and maintenance of the Candidate's Platform, it will wholly be the responsibility of the candidate concerned. As long as all the afore-mentioned EA particulars are published on the open platform for public inspection, the candidate has met the proposed statutory requirement. To facilitate public inspection and for the sake of consistency, the REO will draw up a simple content layout standard after the Bill has been enacted for candidates to follow in designing and setting up their platforms.

Central Counting Arrangement for DC (second) FC

7. The option of adopting polling-cum-counting for the DC (second) FC has been examined carefully but is considered not feasible for the following reasons –

- (a) based on past experience, we estimate that at least 15% of the polling stations, which are mainly kindergartens and post offices, are too small to set up two sets of counting tables for counting both Geographical Constituency ("GC") and DC (second) FC ballot papers in parallel. Past experience shows that it would be difficult to find suitable replacements for these polling stations, which are both spacious and convenient to electors;
- (b) for polling stations with enough space to set up two sets of counting tables, the counting of two types of ballot papers concurrently will cause confusion to the counting staff and it is difficult for the Presiding Officers ("PROs") to monitor the counting of both types of votes effectively, not to mention if re-counting of votes are required. The concurrent counting arrangement will increase the work complexity of PROs and the risk in the counting process;

- (c) in view of the difficulties mentioned in (a) and (b) above, the counting of DC (second) FC votes can start only after the completion of counting GC votes under the polling-cum-counting arrangement. Given the large number of ballot papers involved in GCs and DC (second) FC, it is unlikely that two consecutive rounds of counting, including the consolidation of counting results, can be completed before 6:00 a.m. of the following day. In this regard, continued counting at reserve counting stations is unavoidable, as many counting stations are schools or venues that have to be returned to the venue management by 6:00 a.m. the next morning. The transfer of both the GC and DC (second) FC ballot papers from polling stations to reserve counting stations for completion of count or re-count will be highly undesirable as this will cause delay to the declaration of election results and pose risks in terms of operation and monitoring; and
- (d) the long working hours of polling-cum-counting staff has always been an area of concern in past elections. The adoption of polling-cum-counting for DC (second) FC votes would inevitably prolong the working hours of polling-cum-counting staff, which will further aggravate the recruitment problem. As the one-shift system under polling-cum-counting would be too harsh for polling staff when they have to work through the poll and the count, a two-shift system might have to be introduced. This would mean that about 550 teams of additional staff (estimated to be over 6 000 in total) are required. Recruitment of sufficient polling-cum-counting staff will be an insurmountable problem, not to mention the operational difficulties arising from the large number of staff involved.

8. On the other hand, central counting arrangement for DC (second) FC is a more viable option with the following comparative advantages –

- (a) Unlike the venue of many polling stations which have to be returned to the venue management by 6:00 a.m., the central counting station is available until the declaration of all election results. As such, no reserve counting stations for DC (second) FC votes are required even if the counting process is longer than expected or re-counting is required;

- (b) about 2 800 additional staff are required for central counting of DC (second) FC votes, as compared with over 6 000 additional staff under the polling-cum-counting arrangement. Since the staff at polling stations are not required to take up the counting duties for DC (second) FC, only one shift of staff is required. This will greatly alleviate the recruitment pressure faced by the REO;
- (c) compared with polling-cum-counting, central counting can ensure a higher degree of effectiveness in the monitoring and control of the counting process and enable the pooling of resources such as counting staff more effectively;
- (d) under central counting, the collection and compilation of vote count statistics could be streamlined and the risk of delay in the compilation of counting results and declaration of election results could be minimized. It is estimated that central counting will need less time than polling-cum-counting which is likely to involve the transfer of both the GC and DC (second) FC ballot papers from polling stations to reserve counting stations for completion of count or re-count; and
- (e) central counting can facilitate candidates, their agents and members of the public to observe the count at only one location. This will help candidates with relatively less resources to monitor the counting process by deploying a smaller number of agents.

9. In view of the above assessments, it is considered that central counting would be a more prudent and effective arrangement.

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