

# 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 19 March 2012**

### **Electoral Affairs Commission Report on the 2011 District Councils Election**

#### **Purpose**

This paper provides background information on the Electoral Affairs Commission ("EAC") Report on the 2011 District Council ("DC") election and gives a brief account of the past discussions held by the Panel on Constitutional Affairs ("the Panel") on issues relating to the 2011 DC election.

#### **Background**

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. In accordance with section 8 of the EAC Ordinance (Cap. 541), EAC shall make a report to the Chief Executive ("CE"), 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. The report will contain a review of relevant electoral arrangements and improvement measures for future elections. EAC had made reports in respect of the 1999, 2003 and 2007 DC elections respectively. The recommendations made by EAC in respect of the 2007 DC election are in **Appendix I**.

3. The 2011 DC election was held on 6 November 2011. Accordingly, EAC submitted the report on the 2011 DC election to CE on 3 February 2012. The report was published on 28 February 2012.

#### **Relevant discussions of the Panel**

4. The Panel discussed issues relating to the 2011 DC election at its meetings held on 21 February, 18 March and 20 June 2011 respectively. The main issues raised by members at these meetings are summarized in the following paragraphs.

### Conduct of electioneering activities through electronic media

5. Some members were of the view that candidates should be allowed to present their election platform through the electronic media so that electors would be able to obtain adequate information about the candidates. According to the Administration, it had been the established policy that election advertisement through electronic media was not allowed so as to ensure a level playing field for all candidates. Nevertheless, candidates were expected to continue making use of the new media on the Internet to do publicity work for the election campaign.

6. Some members considered that as there was an increasing trend for candidates in the past DC elections to use the Internet to promote their candidature but the expenses incurred in the production of election advertisements on the Internet were not counted as election expenses, the Administration should review the existing arrangement. The Administration undertook to discuss with the Registration and Electoral Office ("REO") about the expenses incurred in election publicity on the Internet, including the method in the calculation of the production cost.

### Conduct of electioneering activities in private premises

7. Some members expressed dissatisfaction that electioneering activities in private premises were not subject to regulation and EAC could only make a censure or reprimand in a public statement against the management body which did not adhere to the equal treatment principle in handling requests for conducting electioneering activities in their premises. They considered that EAC should impose more stringent regulation on prohibition of discriminatory treatment of candidates in private premises.

8. The Administration responded that there were election guidelines to be observed by owners, management and organizations for handling applications for conduct of electioneering activities in the premises within their jurisdiction. They should adhere to the fair and equal treatment principle. In the event that a complaint was lodged against a management body for unequal treatment and was found to be justified, EAC could make a censure or reprimand in a public statement against the management body concerned.

### Submission and distribution of election materials

9. Members were of the view that there should be clear guidelines setting out the relevant legislation in regulating electronic advertisements ("EAs") including those messages sent through mobile phone short message services ("SMS") or other multimedia messaging services.

10. The Administration advised that according to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), any material published for the purpose of promoting or prejudicing the election of a candidate or candidates in an election was an EA. SMS fell within the definition of an EA and candidates should make a relevant declaration to REO before distribution of the messages. Candidates were also required to declare any expenses incurred in the production of these messages. The Administration advised that consideration would be given to reviewing the guidelines with a view to providing clear guidance to candidates in compliance with the relevant electoral legislation.

11. Some members enquired whether the Administration would provide assistance to facilitate candidates to adopt more environmental friendly means to distribute their election-related materials to electors on a household basis. The Administration advised that it had been an established practice of REO to provide each candidate with a set of address labels pertaining to the electors in the constituency. Under the present arrangement, the address labels were printed on an individual basis. To facilitate candidates who wished to send their EAs on a household basis, a mark "H" was currently printed on the address labels with two or more electors sharing the same address. Candidates might just send only one mail to the addresses marked "H". In order not to affect the right of individual electors to receive EAs, REO would continue with the existing practice to provide address labels on an individual basis to candidates.

#### Polling hour

12. Some members were of the view that the polling hours which lasted for 15 hours (from 7:30 am to 10:30 pm) of past elections were too long and would discourage civil servants from working at polling stations at the polling day. They considered that the Administration should consider reducing the duration of polling hours to facilitate vote counting arrangements and to save staffing resources. It was suggested that the Administration should study the voters' turnout rate in the last few hours of the polling period to ascertain the possible effect on electors. Some members, however, considered it appropriate to maintain the existing polling hours.

13. The Administration advised that the voters' turnout rate was fairly consistent throughout the polling hours. The proposal to shorten the polling hours was not well-received in the past on the grounds that it would reduce some elector's desire for voting as they would prefer to vote after dinner. The Administration, however, would ensure that there was sufficient manpower for the conversion and counting process and would consider whether the polling hours should be revised having regard to the views of members.

### Access to polling stations

14. Some members expressed concern about the availability of special arrangements for electors with disabilities to facilitate their access to polling stations. They enquired how REO would balance between the accessibility of a venue and the provision of barrier-free access when identifying venues for use as polling stations. The Administration advised that in looking for a suitable venue for use as a polling station, REO would take into consideration the accessibility of the venue, the provision of barrier-free access, the accommodation and the availability of suitable facilities. The Administration aimed to have at least 90% of the polling stations set up at venues that were barrier-free in the 2011 DC election. Upon receipt of the poll card, an elector could apply for re-allocation to a special polling station five days before the polling day if the elector was allocated to a polling station not accessible to the disabled. The Administration could arrange rehabilitation buses for electors with disabilities to go to the polling station if necessary.

### Polling staff

15. To ensure that elections were conducted in a fair and just manner, some members suggested that civil servants should not be arranged to carry out duties in the polling stations of the same district where they worked and any person who provided assistance to an elector in voting in a polling station should be in the presence of a witness.

16. The Administration explained that there might be practical difficulty in making such an arrangement due to the large number of staff (about 15,600 civil servants) required to work at 560 polling stations in the 2011 DC election. To address the issue of possible conflict of interest, REO would request polling staff to declare whether he or she had any close connection with the candidates in the constituency concerned. Under the existing law, the Presiding Officer could mark a ballot paper for an elector who was unable to read or was incapacitated from voting due to blindness or other physical cause in the presence of a polling officer. There was no provision which allowed accompanying persons to enter a polling station. Only an elector or authorized representative was allowed to vote at a polling station.

17. Some members pointed out that there had been complaints about the inconsistent practices adopted by some Presiding Officers in determining the validity of ballot papers in the past elections. They enquired whether Presiding Officers were from senior ranks in the civil service and whether they had adequate experience in managing the polling/counting stations. The Administration advised that civil servants at Master Pay Scale 45 were eligible for applying as Presiding Officers. Past experience had shown that civil

servants at that rank were capable of taking up the position of Presiding Officers. REO would enhance training for Presiding Officers to ensure that consistent practices in resolving election-related conflicts would be adopted among polling stations.

#### Electoral arrangements for electors in custody

18. Noting that the 2011 DC election was the first DC ordinary election in which dedicated polling stations ("DPSs") would be set up for registered electors imprisoned, remanded or detained by law enforcement agencies to vote, some members enquired about the electoral arrangements for electors in custody and enquired how electors in custody could obtain information about the candidates. The Administration advised that arrangements had been made for registered electors imprisoned, remanded or detained by law enforcement agencies to cast votes at DPSs in the 2010 LegCo by-election. REO would review the procedures in the light of the operational experience to ensure that the poll at DPSs in penal institutions or police stations would be conducted smoothly in the 2011 DC election. The operation of DPSs at the penal institutions would be more or less the same as ordinary polling stations except that the polling hours would be shorter. The polling staff on duty at DPSs would be civil servants deployed by REO and would observe the provisions governing the secrecy of voting. An introductory leaflet on the candidates would also be sent to electors in custody before the polling day.

#### Vote counting arrangements

19. Some members considered that the time taken to convert a polling station into a counting station was too long and urged the Administration to streamline the work procedures so that the election results could be announced earlier. The Administration advised that REO had endeavored to compress the time required for the conversion and training had been provided to polling staff with a view to expediting the conversion. The actual time taken for individual polling station to convert into a counting station would depend on the circumstances and its physical constraints.

#### Exit poll

20. Some members expressed dissatisfaction that EAC had failed to respond to the long-standing call of Members for regulating the conduct of exit polls. They enquired whether EAC would revise the election guidelines to the effect that organizations were not allowed to use the exit poll results to plan the electioneering activities of candidates before the close of poll. The Administration responded that any organization intending to conduct exit polls would need to sign an undertaking to abide by its terms and guidelines

governing the conduct of exit polls including not releasing the exit poll results before the close of poll. The media and academic institutions had followed the relevant guidelines in the past elections. REO considered the existing arrangement appropriate and would review the arrangement in the future with a view to identifying any room for improvement.

### **Related development**

21. A large number of poll cards mailed by REO for the 2011 DC election were undelivered which aroused public concern over suspected vote-rigging. Hon Albert HO raised a written question and an oral question on voter registration at the Council meetings of 30 November and 14 December 2011 respectively. Mr HO asked, among others, about the numbers of poll cards undelivered for previous DC elections, complaints on suspected vote-rigging received since the 2011 DC elections and the investigations made by the Police and the Independent Commission Against Corruption. The questions raised by Mr HO and the replies of the Secretary for Constitutional and Mainland Affairs are in **Appendices II** and **III** respectively.

22. The Panel discussed issues relating to voter registration and updating of voters' records at its meeting on 19 December 2011. The Administration issued a Consultation Paper on Improvement Measures of the Voter Registration System in January 2012 for public consultation. The Administration is scheduled to report to the Panel on the consultation results at a future meeting.

### **Relevant papers**

23. A list of the relevant papers available on the LegCo website is in **Appendix IV**.

Council Business Division 2  
Legislative Council Secretariat  
15 March 2012

## **Appendix I**

### **Recommendations in the Electoral Affairs Commission Report on the 2007 District Council Election**

1. The EAC received views from the electors during the election period on the delineation of their constituency boundary. The EAC would take these views into consideration in the next demarcation exercise. (paragraphs 13.2 - 13.3 of the DC Report).
2. There were enquiries and complaints regarding the accuracy of the electoral register. The REO should ensure that more focused publicity programmes be launched to remind electors to report their change of addresses and relevant particulars within the deadline specified by the REO (paragraphs 13.4 - 13.5 of the DC Report).
3. Subject to the availability of suitable venues, the REO should try as far as practicable to allocate an elector to a polling station most suitable to him/her (paragraphs 13.6 - 13.7 of the DC Report).
4. In the selection of polling stations and in advising the Returning Officers in delineating the NCZ and the No Staying Zone (“NSZ”), the REO should take account of relevant concerns to ensure that no unfair advantage would be resulted (paragraphs 13.8 - 13.9 of the DC Report).
5. The REO should consider including on the poll card a more eye-catching reminder on the polling station, as the EAC noted that some electors were not aware of the fact that they had been allocated to a polling station different from the one to which they had been allocated in the previous election even though a note had been printed to this effect on the poll card (paragraphs 13.10 - 13.11 of the DC Report).
6. Noting that electors who went to a wrong polling station may need addresses of neighbouring polling stations, the EAC is pleased to note that for future elections the polling staff will be provided with such information so that they can assist the electors when necessary (paragraphs 13.12 - 13.13 of the DC Report).

7. The EAC considers it necessary to enhance the training programme for the PROs, DPROs and polling staff for future elections. More reader-friendly and handy reference materials should also be provided (paragraphs 13.14 - 13.15 of the DC Report).
8. Publicity campaign should be further enhanced and carefully designed to enable more effective dissemination of essential information with regard to the election and to alert the electors on matters of important concern (paragraphs 13.16 - 13.17 of the DC Report).
9. The REO should remind electors of their rights of not answering the interviewer's questions and the fact that exit polls are neither conducted by the EAC nor by the Government. Exit poll interviewers should be reminded to wear their identification badges issued by 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. (paragraphs 13.18-13.19 of the DC Report).
10. The REO should advise the PROs to follow strictly the relevant legal provisions and the Guidelines to set aside those ballot papers not marked with the "✓" chop as invalid (paragraphs 13.20-13.21 of the DC Report).
11. To avoid undue delay in the announcement of election results, the REO should make further efforts to streamline the process for verifying the accuracy of the counting results (paragraphs 13.22-13.23 of the DC Report).
12. To reduce paper consumption in future elections, the REO should explore the feasibility of suggesting candidates to send election-related publicity materials to electors on a household basis. Continuous effort should also be made to solicit e-mail addresses from the electors (paragraphs 13.24-13.25 of the DC Report).

13. On the concerns and complaints over the use of e-mail addresses for electioneering purposes (e.g. complaint against the disclosure of e-mail addresses to other recipients), the EAC considers it necessary to strengthen reminders to candidates and agents on the collection and use of electors' e-mail addresses (paragraphs 13.26-13.28 of the DC Report).
14. On the enquiries on whether some particular activities were allowed or prohibited in the NCZ, the EAC considers it necessary to remind candidates and their supporters that a person commits an offence if he/she misconducts himself/herself or fails to obey a lawful order of the Returning Officer or a PRO in the NCZ or NSZ, and that the person may also be ordered to leave or be removed (paragraphs 13.29-13.30 of the DC Report).
15. On a complaint that there was a contradiction in the requirements of free postage for election mails between the Guidelines and the Summary on Free Postage for Election Mails issued by the Hongkong Post, the EAC considers it necessary to state clearly that candidates must comply with the latest requirements published by the Hongkong Post at the time of the election concerned (paragraphs 13.31-13.32 of the DC Report).
16. On the a large number of complaints from electors for being disturbed by candidates and their supporters through telephone calls and messages sent by short message service ("SMS"), the EAC considers it necessary to highlight in the Guidelines that some members of the public do not like to be contacted by telephone or receive SMS for electioneering purposes (paragraphs 13.33-13.34 of the DC Report).

~~fellowships in Hong Kong.~~

At the primary and secondary levels, we have been actively pursuing curriculum reform and seek to promote scientific thinking, investigative skills and problem solving abilities through the curriculum. We seek to nurture students with a proactive attitude and positive values, and encourage them to participate in local and international science and technology competitions, so as to promote students' interest in science and technology and broaden their horizons. We also provide advanced training for outstanding students in science or technology so as to maximize their potential.

The Government is committed to arousing interest in innovation and technology in the community, particularly among young people, and deepening their understanding in this area. Apart from the annual flagship event — InnoTech Month, the Government also supports various science competitions and promotes a vibrant innovation and technology culture in the community through our public education programme.

We note that the indicator of availability of scientists and engineers in the Report is based on an executive opinion survey conducted by the World Economic Forum rather than hard data. Hong Kong's score in this indicator is comparable to some developed economies ~~(such as Germany, Italy and Australia).~~

### Verification of Voter Registration Particulars

10. **MR ALBERT HO** (in Chinese): *President, it has been reported that in respect of the 2011 District Council (DC) Election completed not long ago, a large number of poll cards mailed by the Registration and Electoral Office (REO) were undeliverable, indicating that the registered residential addresses of the electors might be incorrect. Moreover, under section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), it is a corrupt conduct for any person to vote at an election after having given materially false or misleading information to an electoral officer. In this connection, will the Government inform this Council:*

(a) *with regard to the 2007 DC Election, the 2008 Legislative Council*

*Election and the 2011 DC Election, of the respective numbers and percentages of poll cards mailed to registered electors which were undeliverable;*

- (b) whether it has looked into the reasons why the poll cards in part (a) were undeliverable; if it has, of the details and follow-up actions taken; if not, the reasons for that;*
- (c) after the elections in 2007 and 2008, whether it had further verified the particulars of the electors concerned with regard to the undeliverable poll cards; if it had, of the number of electors who were verified to have given information that was materially false or misleading; if not, the reasons for that;*
- (d) of the numbers of members of the public who were prosecuted in each year since 2007 for having given voter registration particulars which were materially false or misleading and then voted at an election; among them the respective numbers of convicted persons and the penalties imposed;*
- (e) what procedures it has currently put in place during the process starting from voter registration to the official voting for verifying that the electors' particulars are correct; of the procedures that the authorities will follow and the time required in average to omit from the final register the electors whose registered residential addresses are incorrect; whether Hong Kong permanent residents residing on the Mainland on a long-term basis and do not have any local residential address are eligible to be registered as electors; and*
- (f) whether it has conducted a review on and considered improvements to the existing voter registration system, so as to ensure that the registered particulars of members of the public are correct; if it has, of the details; if not, the reasons for that?*

Chinese): President,

- (a) For the 2007 DC Election, the 2008 Legislative Council Election and the 2011 DC Election, the number and percentage of the poll cards and notices of uncontested election mailed to registered electors, which were returned to the REO are as follows:

<i>Election</i>	<i>Number of poll cards and notices of uncontested election mailed to registered electors</i>	<i>Number of poll cards and notices of uncontested election returned to REO (as percentage of the total number mailed)</i>
2007 DC Election	around 3.29 million	around 117 000 (around 3.6%)
2008 Legislative Council Election	around 3.37 million	around 56 000 (around 1.7%)
2011 DC Election	around 3.56 million	around 74 000 (around 2.1%) (as at today)

- (b) For poll cards or notices of uncontested election which cannot be delivered to electors through their residential addresses recorded in the register of electors, the Hongkong Post will return them to the REO for follow-up. The REO will call the electors concerned to enquire whether they still reside in the residential addresses recorded in the register. If the electors concerned have moved, the REO will remind them that they have to update their residential addresses on or before the statutory deadline on updating registration particulars for the following year (29 August for a DC election year or 29 June for a non-DC election year), or else their names will be omitted from the final register of electors to be compiled in that following year. If the electors concerned do not update their residential addresses or the REO cannot contact them through telephone calls, the REO will conduct the inquiry process according to section 7 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A). The REO will send letters by registered mail to the electors concerned to ascertain whether they have moved from the residential addresses recorded in the current final register of electors. If no reply or application to update registered residential address is received by the deadline specified in the letters of inquiry, the REO will put the registration particulars of these electors into the

Omissions List for that following year for public inspection. If, before the statutory deadline on change of particulars, the electors concerned do not submit any claim or application for updating their residential address according to the law, their names will not be recorded in the final register of electors to be compiled for that following year.

- (c) For poll cards and notices of uncontested election returned after the 2007 DC Election and the 2008 Legislative Council Election, the REO has followed up according to the procedures mentioned in part (b), including calling the electors concerned to enquire whether they still reside in the residential addresses recorded in the register, reminding them to update with the REO their residential addresses and sending letters of inquiry to those electors who had not updated their residential addresses and to those electors who could not be contacted through telephone calls. For those electors who did not update their residential addresses on or before the statutory deadline on change of particulars, the REO has already omitted their names from the relevant final register of electors.
- (d) According to section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), a person engages in corrupt conduct at an election if the person votes at the election after having given to the Electoral Registration Officer (ERO) information that the person knew to be materially false or misleading. According to the information provided by the Independent Commission Against Corruption, from 2007 to the present, no members of public were prosecuted or convicted for engaging in the corrupt conduct mentioned above in respect of the DC Election, the Legislative Council Election, the Election Committee Subsector Elections or the Chief Executive Election.
- (e) The Administration recognizes the importance of maintaining the integrity of the elections to ensure that the elections are conducted fairly, openly and honestly. An eligible person has to sign on the application form to confirm that the residential address he provides is his only or principal residence in Hong Kong when he is filling in the form for Application for Voter Registration (Geographical Constituencies)/Report on Change of Residential Address. A reminder to the applicant is also printed on the first page of the form

stating that a person who knowingly or recklessly makes any false or incorrect statement or gives information which is materially false or misleading commits an offence under the law. According to section 22(1)(a) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A), he is liable to a Level 2 fine and imprisonment of six months.

When processing voter registration applications, the REO will request the applicant to submit further information in case of doubt (for example, incomplete address or an address suspected to be a commercial address). If the applicant cannot provide the information required, the ERO can decide that he will not process the application further. If the ERO suspects that the applicant may be providing a false residential address, the ERO will refer the case to relevant law-enforcement agencies for investigation. The REO will issue a Confirmation Notice to the elector after processing his application. If there is any mistake in the registration particulars, an elector should inform the REO as soon as possible for rectification.

According to existing legislation, the ERO should publish a provisional and a final register of electors for public inspection. The public may lodge claim or objection to the ERO against the entries in the register. Any person should report to the REO on cases where an elector provides false registration particulars (including the address provided not being his only or principal residence in Hong Kong). The REO will follow up the cases and, where necessary, refer the cases to the relevant law-enforcement agencies for investigation and follow-up.

Furthermore, the REO will conduct regular checks on addresses with seven or more registered electors. The REO will ascertain whether the electors concerned reside in the residential addresses by making telephone enquiries and conducting the inquiry process.

According to section 28 of the Legislative Council Ordinance (Cap. 542), a person is eligible to be registered as an elector in the register of geographical constituencies if, at the time of applying for registration, he ordinarily resides in Hong Kong; and that the

residential address notified in the person's application for registration is the person's only or principal residence in Hong Kong. Whether a person is eligible for registration will depend on the merits of each case. The ERO may omit from the final register of geographical constituencies the name of an elector if he is satisfied on reasonable grounds that the elector no longer ordinarily resides in Hong Kong or that the residential address last notified to the ERO is no longer the elector's only or principal residence in Hong Kong.

- (f) The Administration recognizes the importance of maintaining an honest and fair voter registration system. At the same time, the voter registration system should facilitate the public to register, and to exercise the voting right they enjoy. There are currently appropriate arrangements for registered electors to update their registration particulars. The internal measures mentioned above are also in place to inquire and check the registration particulars. The Administration will review the existing arrangements, consider improvement measures, and deal with any illegal conduct seriously.

### ~~Use of Vacant School Premises~~

11. **MR ALBERT CHAN** (in Chinese): *President, the Government indicated in its reply to my question at the Legislative Council Meeting on 13 January 2010 that from 2007 to 2010 school years, only three school premises had been approved by the Lands Department for other uses by non-profit making organizations. The authorities also indicated that given their sizes and other technical constraints, it was difficult to convert certain vacant school premises into residential care homes for the elderly (RCHEs). The authorities later indicated that they would reconsider the suggestion of converting vacant school premises for welfare service purposes. Yet, as far as I understand, there are still quite a number of non-profit making organizations which have applied to the Government for using vacant school premises but their applications were rejected, resulting in quite a number of vacant school premises not being put to good use. In this connection, will the Government inform this Council:*

- (a) *of the numbers of additional vacant primary and secondary school premises since January 2010 and their respective gross floor areas (list in table form), with a breakdown by District Council districts;*

**Vote-rigging in District Council Elections**

5. **MR ALBERT HO** (in Cantonese): *Deputy President, recently, there has been widespread media coverage that there were quite a number of suspected vote-rigging cases in the District Council (DC) Election held on 6th of last month. The Audit Commission stated in the Report No. 47 of the Director of Audit published in October 2006 that "without verifying the residential addresses of electors, there is insufficient evidence to ensure the accuracy of the GC (geographical constituencies) final registers. In extreme cases, the fairness of an election may be impaired due to possible vote planting", and recommended that the Registration and Electoral Office (REO) should implement a checking system to verify the residential addresses of registered electors recorded in the electoral register on a sampling basis. The REO responded that a checking system would have resource implications, and that assessment would be made before deciding on the appropriate way to take forward the audit recommendation. Further, the REO would match the elector records with the information kept by the Immigration Department and the Housing Department for address updating purpose, and it had approached quite a number of government departments to explore the feasibility of concerted efforts in data matching. Those government departments had expressed concerns that the transfer of personal data might contravene the privacy law and other legal provisions, but the REO would continue to study such possibilities in data matching. In this connection, will the Executive Authorities inform this Council:*

- (a) *of the number of complaints on suspected vote-rigging received since the DC Election last month; the number of written enquiries issued by the REO; the respective numbers of investigations made by the police and the Independent Commission Against Corruption, as well as the progress of such investigations;*
- (b) *whether it has implemented the recommendation made by the Audit Commission five years ago to verify the residential addresses of registered electors on a sampling basis; if it has, of the details and resources involved; if not, the reasons for that; and*
- (c) *whether it has assessed how the REO and other government departments could avoid contravening the privacy law and other legal provisions in matching the data of electors; of the progress of*

*the assessment; whether it has conducted the aforesaid data matching exercise; if not, the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President,

- (a) Since the 2011 DC Election until 9 December 2011, the Electoral Registration Officer (ERO) had received around 50 direct complaints. After preliminary investigation, the complaints involved around 1 800 electors. No further action could be taken to around 650 electors because no *prima facie* evidence was found indicating that they do not reside in the registered addresses, or because the information provided in the complaint was not sufficient for follow up. During the same period, the ERO issued a total of 885 letters of inquiry requesting the electors concerned to provide address proof, and to prove that they still reside in the registered addresses. If the letters cannot be delivered and returned, or the electors concerned do not provide valid address proof before the deadline specified in the letters, the ERO will refer the cases to law-enforcement agencies for investigation.

According to section 22(1) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation, any person who, when applying for registration as an elector, makes any statement which the person knows to be false in a material particular or recklessly makes any statement which is incorrect in a material particular or knowingly omits any material particular from such an application, response, reply, request or notice commits an offence. According to section 16(1)(b) of the Elections (Corrupt and Illegal Conduct) Ordinance, a person engages in corrupt conduct at an election if the person votes at the election after having given to an electoral officer information that the person knew to be materially false or misleading, or knowingly omitted to give material information to an electoral officer, recklessly given to an electoral officer information that was materially false or misleading.

As at 6 December 2011, the police have received 38 complaints on breach of the relevant legislation, and arrested eight persons. As at 5 December 2011, the Independent Commission Against Corruption (ICAC) has received 27 complaints on breach of the relevant legislation, and arrested 23 persons.

- (b) In response to the recommendations in the Report No. 47 of the Director of Audit, the ERO examines the final register every year and identifies all the registered addresses with seven or more electors. Except for justified and verified cases such as elderly homes, the ERO will make telephone or written enquiries to the electors concerned requesting them to confirm their address records. If an elector confirms that he has already moved out of the address or the letter issued to him cannot be delivered, the ERO will include the elector in the inquiry process in the voter registration cycle. If the elector fails to provide such written confirmation or update his residential address before the deadline specified in the inquiry letter, his name will be put on the omissions list to be published in the voter registration cycle.

Since 2006-2007, the ERO has checked a total of 2 250 addresses with seven or more electors, involving around 29 000 electors. At present, the REO carries out the checking and investigation work with the existing resources and staff.

- (c) According to section 6(1) of the Regulation that I mentioned earlier, for the purpose of preparing a register, the ERO may require a public authority to furnish such information as that ERO may specify.

According to section 30(1)(a) and (b) of the Personal Data (Privacy) Ordinance, a data user shall not carry out a matching procedure unless and until each individual who is a data subject of the personal data the subject of that procedure has given his prescribed consent to the procedure being carried out, or unless and until the Commissioner has consented under section 32 to the procedure being carried out.

The ERO has explored the possibility of carrying out cross-matching of information with a number of government departments. At present, with the consent of the Privacy Commissioner for Personal Data (PCPD), the ERO conducts a cross-matching exercise with the Housing Department (HD), Housing Society (HKHS) and Home Affairs Department (HAD) every year concerning the addresses of registered electors. Also, as a standing arrangement with the Immigration Department, the ERO matches the addresses of registered electors with addresses of the applicants for the smart identity cards, with the consent of the individuals concerned.

In making these arrangements, the ERO has observed the requirement of the Personal Data (Privacy) Ordinance.

**MR ALBERT HO** (in Cantonese): *Deputy President, I will particularly focus on part (c) of the Secretary's main reply in which it is stated that the REO conducts a matching exercise with the HD, the HKHS, and so on.*

*May I ask the Secretary how the matching exercise is conducted and what the scope of such data matching is? According to what he has said, the current arrangement only targets households who have newly moved in by requiring them to register but no particular attention has been paid to tenants who have moved out.*

*In fact, my question is simple. If data matching has been conducted, and put it in other words, as long as the addresses of electors are cross checked by computer against the list of tenants provided by the HD or the HKHS, there is actually no reason — I stress, there is just no reason — for non-tenants to be able to use the addresses of these flats as their registered addresses for voter registration purposes.*

*May I ask the Secretary, if matching has been conducted, why there are so many people who seem to be non-tenants — especially in cases involving several electors of different surnames having registered under one address or those involving 17 or 18 electors being registered under one address — being able to*

*use the same flat as their registered addresses? Why have these cases happened?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I thank Mr HO for his supplementary question. Perhaps let me explain in brief here how the several departments that I have just mentioned match the data with the REO. Firstly, as I said earlier, the consent of the PCPD is required before the matching exercise can be conducted. What the HD and the HKHS will do is that if the REO finds that the address of a certain registered voter is not consistent with the information provided by the HD or the HKHS, they will check the date when the information was last updated to ascertain which data are most up to date. If the data of the HD and the HKHS are the most up to date, meaning that the elector has moved to a new address, the REO will issue a notice to the elector at the new address to inform the elector that the REO will update his or her registered address in accordance with the information of the HD or the HKHS.

In the meantime, the REO will send by registered mail the same notice to the old address of the elector. If the elector does not agree on the updated data specified in the notice, the elector can lodge objection with the REO before the specified date. The REO will further follow up the case and when necessary, launch the inquiry process.

As regards the HAD, the REO will, after obtaining the consent of the PCPD, carry out data matching with the information in the Existing Villages register of the HAD and information concerning residents' representatives, and so on. As the situation concerning the addresses of village electors is more complicated in that the information may be incomplete or there is no door-to-door mail delivery service, and so on, if there is inconsistency between the data of the REO and those kept by the HAD, the REO will issue a letter to the electors concerned, asking them to confirm their address records in reply.

Lastly, regarding the Immigration Department, if an applicant for smart identity card indicates on the application form his consent to the provision of his registered address to the REO, the Department will provide the relevant information to the REO. The REO will then update the data accordingly and issue a notice of confirmation to the elector.

Deputy President, this is how the matching of data is carried out with the several departments.

**MR ALBERT HO** (in Cantonese): *He did not answer the most important part of my supplementary question and that is, while the Government has put in so much effort to carry out data matching before, why are there still so many cases involving many electors being registered under one address — in some cases, as many as a dozen electors are registered under one address — and also cases involving several electors of different surnames being registered under one address? Many of these people are obviously not tenants of units developed by the HKHS or public rental housing units, but the Secretary has failed to explain why these cases have happened.*

**DEPUTY PRESIDENT** (in Cantonese): I see. Secretary, please.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I believe a main reason is that in the course of updating the final register every year, there will be a time lag in the process, such that we may not be able to immediately proceed with the matching procedure. This may be one of the reasons. To address this point and other concerns, we proposed some measures yesterday to require that address proof be provided for voter registration and for updating the address. We believe these new measures will address the concern raised by the Honourable Member just now.

**MR FREDERICK FUNG** (in Cantonese): *Deputy President, this incident has given people the impression that the problem is more serious than before, and it also involved more cases of suspected breaches of the law. In view of this incident, has the Government actually considered providing additional resources to enable the relevant department to double or increase by two times or three times the number of electors to be covered by random sampling checks, or even conduct checks on all electors across the board? Moreover, as also suggested in the community, should the provision of address proof be also required for the purpose of voter registration for the Legislative Council Election to be held in September next year?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I thank Mr Frederick FUNG for his question. With regard to resources, in order to give effect to the several measures proposed by us yesterday, the REO will indeed require additional manpower and resources. In this connection, the Government has taken the lead to set up a special team with an initial establishment of about 26 staff headed by a Deputy Chief Electoral Officer. It is hoped that these measures concerning the provision of address proof, random sampling checks and data verification can be implemented next year.

Meanwhile, it is agreed in principle within the Government that where there is a need for additional manpower and financial resources, we will not hesitate to increase such provision to the REO. Of course, if a substantial increase in quantity or number is involved, we will further seek funding from the Finance Committee of the Legislative Council when necessary. But under the present circumstances, we should be able to meet the needs by internal resource deployment for the time being.

**MR KAM NAI-WAI** (in Cantonese): *Deputy President, in the last paragraph of part (b) of his main reply the Secretary said that since 2006-2007, the REO has checked 2 250 addresses with seven or more electors, involving 29 000 electors. By doing some simple calculation, we can find out that there are actually 12.8 people living in one address, which is very similar to the case that we have heard of recently in which 13 electors of seven different surnames are registered under one address. I have this question for the Secretary this. In conducting the random sampling checks, did these 2 200-odd addresses already cover all addresses with seven or more electors? If such checks were conducted, did the REO conduct random checks on the address involved in the problem case revealed recently? If it did, why has it failed to detect the problem but taken prosecution action all of a sudden only now? The Secretary has recently said that changes would be made by requiring electors to provide address proof randomly. If only 2 000-odd addresses will need to be checked, why does it not conduct household visits to all of these addresses? As only 2 000-odd addresses will need to be checked, what exactly is the difficulty involved?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I thank Mr KAM for his question. First, the 2 250 cases mentioned in the last paragraph of part (b) of the main reply are cases involving seven or more electors registered under the same address, involving a total of about 29 000 electors. Investigation has found that in most cases, it is because these addresses are residential care homes for the elderly, and there are many elderly people living in these elderly homes. This is the background or reason in most of the cases.

Besides, Mr KAM asked whether checks will be conducted on all of these addresses. We will actually follow up all cases involving seven or more electors registered under the same address. As I said earlier on, one of the reasons is that there might be a time lag when the REO was following up the cases. Under the measures that we have now proposed, checks will be conducted comprehensively before the publication of the provisional register. Other than cases in which seven or more electors are registered under the same address, we will also conduct checks on all cases involving electors of four or more different surnames registered under the same address.

Third, on top of the two measures that I have just explained, we will further introduce a comprehensive measure of conducting random sampling checks on all 3.56 million electors in Hong Kong. Our preliminary proposal is to conduct random sampling tests on 3% to 5% of the electors, involving around 100 000 to 180 000 registered electors. We will ask these electors to provide address proof. I believe these measures can basically balance the address proof requirement by ensuring accuracy and credibility of the addresses on the final register on the one hand without causing too much nuisance to electors on the other. Certainly, these are just proposed measures and we still need to further listen to the views of Members at the meeting of the Legislative Council panel next Monday.

**MR KAM NAI-WAI** (in Cantonese): *Deputy President, in my supplementary question just now, I asked whether the authorities would conduct household visits to these 2 250 flats. In my supplementary question just now, I asked them whether they would do this or not.*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, the REO will conduct household visits when they consider these cases suspicious or when they see a need to conduct such visits. In fact, they have conducted household visits before.

**MR ALAN LEONG** (in Cantonese): *Deputy President, an elected candidate in the last DC Election has become the focus of attention in the community. The name of this gentleman is WONG Chun-ping. I believe members of the public, like me, do not question his eligibility for candidacy but what they question is how he can become eligible for candidacy. Deputy President, as you may recall — I will give the Secretary a chance to explain, if he can explain it — amendments to the Immigration Ordinance were passed in this Council in 2002 which provided that Mainland personnel stationing in Hong Kong are not considered as ordinarily residents during their stay in Hong Kong. Summing up reports in the press, Mr WONG left the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region only in 2003 and at that time, the Immigration Ordinance had already been enacted .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr LEONG, Mr Albert HO's main question is mainly about the registered addresses of electors and whether there is a problem of vote-rigging, but from what I have heard so far, I think your supplementary question has deviated from the scope of the question.

**MR ALAN LEONG** (in Cantonese): *Deputy President, I think the reason why Mr HO asked this main question is that the public are concerned about whether the DCs .....*

**DEPUTY PRESIDENT** (in Cantonese): I understand your concern but insofar as this supplementary question of yours is concerned, perhaps it can be dealt with only through another main question involving a different scope of discussion. What we are discussing now is whether the addresses used by the general public for voter registration are accurate and whether there is any element of vote-rigging. Please ask a supplementary question within the scope of the question.

**MR ALAN LEONG** (in Cantonese): *Does it mean that I can only ask a supplementary question relating to addresses?*

**DEPUTY PRESIDENT** (in Cantonese): Yes.

**MR ALAN LEONG** (in Cantonese): *In that case, I withdraw my supplementary question.*

**DEPUTY PRESIDENT** (in Cantonese): Alright. Ms Emily LAU is the next to ask a supplementary question.

**MS EMILY LAU** (in Cantonese): *Deputy President, the Secretary pointed out that as at 6 December, the police have received 36 complaints and arrested eight persons, while the ICAC has received 27 complaints and arrested 23 persons. The Democratic Party has lodged a few hundreds of complaints with the authorities but they are merely treated as one complaint. I really must ask how this could be the case. Because the relevant people in the Democratic Party who lodged the complaints are dumbfounded by this. They all have misgivings about this because in any case, the ICAC could not have just received 27 complaints.*

*Besides, are the authorities going to straighten out everything before the Legislative Council Election in September next year? We have now become the focus of international attention. The Wall Street Journal has discussed this incident in its editorial today. In order to process these complaints, how much time and resource will be required to accomplish the task? The Democratic Party alone has already lodged a few hundreds of complaints, and some other political parties may even lodge thousands of complaints. The number is huge. What should be done? And the Secretary even said that the REO will process the complaints with its existing resources, Deputy President, and do you have the confidence? Will the Secretary please tell us how much time and resource is needed? For the purpose of the election to be held in September next year, the provisional register will have to be published in April or May. How much time does the Government have to deal with this problem? Will the Government*

*undertake to settle all the problems properly before proceeding with the Legislative Council Election?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I thank Ms Emily LAU for her question. The Legislative Council Election will certainly be held next year as scheduled. Our work objective is certainly to implement the improvement measures before the election. As I said when I presented the papers yesterday and also on other public occasions, some follow-up measures will commence on 1 January next year the earliest, and in implementing these measures, we will certainly work at full speed.

What I have said in the main reply is just the number of cases, stating the number of complaints received by the two law-enforcement agencies respectively. Of course, these cases aside, the REO has also referred cases about which it has reasonable doubts to these two law-enforcement agencies for follow-up, especially complaints received recently via two channels — media reports and the REO, and also complaints referred to us by Members of various political parties. We have followed up each of these cases and will make written enquiries, asking the persons concerned to give us a reply within one week. If we do not receive their replies or if their replies are unsatisfactory or may even arouse reasonable doubts, we will refer these cases to the police and the ICAC. In fact, many of the cases handled by us have been referred to law-enforcement agencies for follow-up. I believe the law-enforcement agencies will further take arrest actions when necessary and as corroborated by their evidence collection.

**MS EMILY LAU** (in Cantonese): *Deputy President, my supplementary question is about resources. Do the authorities have sufficient resources to process these hundreds of complaints and is it necessary to expeditiously provide additional resources to them?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, on the question of resources, as I said in my reply earlier, colleagues in the senior echelons of the Government attach great importance to this issue and also to the resources and manpower required to

provide the necessary support. We also have the consent of the Secretary for the Civil Service and the Secretary for Financial Services and the Treasury to provide full support to us. If we need additional resources and manpower, they will make the utmost effort to ensure that we are provided with adequate resources to process these cases expeditiously.

~~DEPUTY PRESIDENT (in Cantonese): We have spent more than 25 minutes on this question. Last oral question.~~

### Measures to Assist SMEs Amidst Global Financial Turmoil

6. **DR LAM TAI-FAI** (in Cantonese): *Deputy President, under the impact of the debt crises in Europe and the economic downturn in the United States, the external trade of Hong Kong bears the brunt and its performance deteriorated substantially. The Financial Secretary has also predicted that Hong Kong's export in the fourth quarter will continue to decrease and further hamper economic growth; there is little sign of optimism from exports to overall economic performance of Hong Kong early next year, and considerable uncertainties still cloud over economic performance in the latter half of the year. Indeed, many operators of small and medium enterprises (SMEs) have relayed to me that they are facing a series of problems in operations such as drastic decreases in orders, difficulties in financing, arrears from clients in payments for goods, high risks, high costs and high inflation, and so on, and that the crisis at present is even more acute than that during the financial tsunami. In this connection, will the Government inform this Council:*

- (a) *given that the Special Loan Guarantee Scheme (the Scheme) launched during the financial tsunami had effectively mitigated the financing difficulties of SMEs, and the sector has strongly requested the Government to relaunch the Scheme, but the Government has so far not agreed to respond to their request, of the situation of Hong Kong's overall economic performance which the Government expects to prevail before it is prepared to relaunch the Scheme;*
- (b) *whether it will consider allowing more SMEs to defer prepayment of profits tax and offering concessionary tax rates to SMEs with*

**Relevant documents on Electoral Affairs Commission Report  
on the 2011 District Councils Election**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	21.2.2011 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	18.3.2011 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20.6.2011 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>

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