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Panel on Constitutional Affairs **Background brief prepared by the Legislative Council Secretariat** **for the meeting on 16 April 2012**

Practical arrangements for the 2012 Legislative Council Election

Purpose

This paper summarizes the major discussions held by the Panel on Constitutional Affairs ("the Panel") on the practical electoral arrangements in respect of the Legislative Council ("LegCo") elections since the 2004 LegCo Election.

Background

2. Electoral Affairs Commission ("EAC") is a statutory and independent body responsible for the conduct and supervision of elections. Supported by the Registration and Electoral Office ("REO"), EAC is tasked to review and make recommendations on the delineation of LegCo and District Council ("DC") constituency boundaries, and to make regulations, guidelines and arrangements for the registration of electors and the conduct of public elections.
3. In accordance with section 6(1) of the Legislative Council Ordinance (Cap. 542), the Chief Executive ("CE") has appointed 9 September 2012 as the date for holding the general election for the Fifth LegCo. The nomination period for the 2012 LegCo Election will run from 18 to 31 July 2012.

Relevant discussions of the Panel

4. The Panel discussed the practical arrangements for the 2004 and 2008 LegCo Elections and 2010 LegCo By-election at its meetings held in February and March 2004, December 2007, January, February and April 2008 and April 2010. At its meetings held in January, March and April 2011, the Panel was also consulted on the electoral arrangements in respect of the four elections to be held in 2011 and 2012, the related amendments to subsidiary legislation under the EAC Ordinance (Cap. 541), and the free mailing arrangements for candidates. The relevant issues raised by members at these meetings are summarized in the following paragraphs.

Polling and counting arrangements

Improvement to vote counting arrangements

5. From the First LegCo and prior to 2003, counting of votes for elections was traditionally conducted in a centralized manner. Since 2003, polling-cum-counting arrangement has been adopted for the counting of votes for geographical constituency ("GC") elections. The Administration has all along adopted a central counting arrangement for the functional constituency ("FC") elections. On the polling day of the 2004 LegCo Election on 12 September 2004 and the days after, there was wide media coverage about complaints relating to the polling and counting arrangements. The complaints included shortage of ballot boxes for the GC elections, use of cardboard boxes as temporary boxes, opening of ballot boxes to rearrange the ballot papers inside the boxes, delay in announcement of the election results, and discrepancies between the number of ballot papers issued and the number of votes in the final outcome for some FCs. Some members expressed concern about the legality of the contingency measures adopted during the election, such as using cardboard boxes as ballot boxes. They were also concerned about the long working hours of polling-cum-counting staff on the polling day. The Reports on the 2004 LegCo Election submitted by EAC to CE on 8 November and 11 December 2004 respectively revealed a number of administrative and planning errors relating to the practical arrangements for the election. CE subsequently appointed a non-statutory Independent Committee of Experts ("the Experts Committee") on 15 December 2004 to review the management, planning and conduct of elections, and to make recommendations on improvement measures.

6. The Experts Committee was of the view that the problems on the polling day were the result of a number of implementation problems, and had put forth eight conclusions and 13 recommendations which were all accepted by EAC and the Administration. Some of the improvement measures implemented in the Election Committee ("EC") Subsector By-elections held on 1 May 2005 were similar to the Experts Committee's recommendations, including the drawing up of a more detailed contingency plan, provision of basic training on crisis management. In addition, a Central Command Centre on the polling day was supervised by staff at more senior level, and all units of the Centre were accommodated in the same place. The Experts Committee also recommended that the training for REO staff as well as polling and counting staff be enhanced by incorporating more practical exercises and problem-solving drills and that a longer lead time be provided for staff to familiarize themselves with the relevant procedures and requirements. Other recommendations included wider use of information technology in electoral process, etc.

7. To enhance transparency of the counting process for the 2008 LegCo Election, some members were of the view that the Administration should consider reading out the choice of candidates marked on the ballot papers as they were counted. The Administration advised that REO had simulated a test on the counting method, as suggested by members, but the outcome was not satisfactory in that the time required would be more than double if the proposed counting process was applied.

8. Some members considered that the counting procedure should be streamlined and the time for converting a polling station into a counting station should be shortened. They also expressed concern that little improvement had been made to expedite the counting process for FC votes. The Administration advised that the counting of GC votes had been decentralized and past experience had proven that decentralized counting was more efficient than centralized counting. As for FC votes, the counting procedure would be streamlined in light of the experience gained in previous elections. However, REO would need to strike a balance between counting efficiency and preserving secrecy of votes.

9. Some members expressed concern about the accuracy of the process of sorting and counting of ballot papers and asked whether EAC would consider allowing candidates, their election agents or counting agents to re-inspect ballot papers which had been counted. The Administration advised that ballot papers were sorted, counted and placed one by one in separate transparent boxes labeled with the chosen candidates' number on the counting tables. Candidates, their election agents and counting agents could observe the process and request the Returning Officer to re-count the votes.

10. In the light of the problems encountered in the 2004 LegCo Election associated with the size of the ballot boxes and the numbers of ballot boxes required for each polling station, REO improved the design of the ballot boxes. The newly designed ballot boxes were used in the 2006 EC Subsector Elections, 2007 LegCo By-election (Hong Kong Island GC) and for the first time in the 2008 LegCo GC Election. The ballot box was designed to receive ballot papers that were required to be folded once before they were cast. According to REO, repeated tests were conducted to ascertain the number of ballot papers that a ballot box could hold to ensure that sufficient number of ballot boxes would be made available on the polling day.

Arrangement for the new DC (second) FC

11. At the Panel meeting in March 2011, members expressed concern that with the creation of the five new DC (second) FC seats, many electors would cast two votes in the 2012 LegCo Election which would inevitably prolong the

vote counting process. Members stressed the need to expedite the relevant process including the speeding up of the conversion of polling stations into counting stations. The Administration advised that training would be provided to polling staff on the conversion of polling stations into counting stations. The staff concerned would rehearse the conversion process beforehand and would be advised to finish the process as quickly as possible.

12. Members may wish to note that the Electoral Legislation (Miscellaneous Amendments) Bill 2012 ("the Bill") provides for a central counting arrangement for the new DC (second) FC. The Bill is under scrutiny by a bills committee. The Administration has explained the reasons for adopting the central counting arrangement but not a polling-cum-counting arrangement for the DC (second) FC in its paper to the relevant bills committee (LC Paper No. CB(2) 1388/11-12(01)).

Polling hour

13. Some members were of the view that the polling hours which lasted for 15 hours (from 7:30 am to 10:30 pm) of previous elections were too long and would discourage civil servants from working at polling stations on the polling day. They considered that the Administration should reduce 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 if the polling hours were to be shortened. Some members, however, considered it appropriate to maintain the existing polling hours.

14. 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 electors' desire for voting as they would prefer to vote after dinner. However, the Administration 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 members' views.

Arrangement for imprisoned, remanded and detained electors

15. Noting that the 2011 DC election was the first DC ordinary election in which dedicated polling stations ("DPSs") were set up for registered electors imprisoned, remanded or detained by law enforcement agencies to vote, members enquired about the number of electors in custody who would cast their votes on that polling day and whether officers of the Correctional Services Department ("CSD") would be assigned as polling staff and how REO could ensure that polling was conducted fairly at DPSs.

16. According to the Administration, 22 dedicated polling stations ("DPSs") were set up in the penal institutions of CSD for registered electors imprisoned or remanded under the custody of CSD to cast votes in the 2011 DC election. Three DPSs were set up at police stations for the registered electors who were remanded or detained by the law enforcement agencies on the polling day and expressed their wish to vote. As to the number of electors in custody, the Administration advised that the number varied from time to time, ranging from a few hundreds to a thousand according to past experience. 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 also be civil servants deployed by REO and would observe the provisions governing secrecy of voting. REO would also send an introductory leaflet on the candidates to electors in custody before the polling day.

Access to polling stations

17. In reviewing the practical electoral arrangements at the Panel meetings in early 2011, members in general called on the Administration to improve the arrangements for electors with disabilities to access the polling stations. An enquiry was made as to whether the Administration would facilitate electors with disabilities in casting their votes by electronic means. The Administration advised that REO had put in a lot of efforts in securing barrier-free venues for use as polling stations but there were sometimes difficulties in borrowing venues which were suitable for electors with disabilities. Having regard to safety considerations, ramps would be installed to the venue to improve accessibility. In the 2004 LegCo Election, 59% of the polling stations were barrier-free, and the number had increased to 82% and 85% in the 2008 LegCo Election and the 2010 LegCo By-election respectively. According to REO, 94% of the total number of ordinary polling stations was accessible to electors with disabilities in the 2011 DC Election. An elector having difficulty in mobility could apply to REO for re-allocation to a barrier-free polling station if the designated polling station was not accessible to electors with disabilities. REO would conduct site inspection on all polling stations used in the past and consult the District Officers with a view to identifying barrier-free venues as polling stations. It would take the initiative to discuss with the Equal Opportunities Commission if necessary. The Administration considered it appropriate and more practicable to continue the use of ballot papers for voting and hence would not consider electronic voting at this stage.

Staff training

18. Some members expressed dissatisfaction that polling/counting staff in the 2008 LegCo Election were not sufficiently familiar with the counting procedures.

They were concerned that the inexperience of some Presiding Officers in determining the validity of ballot papers would lead to inconsistent practices. The Administration advised that a majority of polling/counting officers recruited from the civil service were experienced as they had participated in previous elections. REO had enhanced training by incorporating more practical exercises and problem-solving drills in the training programmes. Presiding Officers would be required to attend a one and a half day training course and were given an operational manual and a training video to help them familiarize with the procedures for managing the polling stations and counting stations. The Administration also advised that civil servants at Master Pay Scale Point 45 or above 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.

Electioneering on the election day

19. Some members expressed concern about possible conflicts among election agents on the polling day and urged that the Police should adopt standard practice in dealing with such situations. Noting that the Police had set up a Force Working Group for the 2008 LegCo Election to enhance communication between the Police and various Government departments on matters relating to election, some members asked whether the Force Working Group would provide guidelines and training to police officers to resolve election-related conflicts and whether sufficient manpower would be deployed to ensure that disputes were resolved as soon as practicable so as not to affect the conduct of the election.

20. The Administration advised that the Force Working Group would issue guidelines to ensure that consistent and practical practices would be adopted within the Police Force. Many police officers who worked on the polling day had previous experience in dealing with disputes relating to election, and briefing sessions would be provided to them. The Force Working Group would ensure that there would be sufficient number of officers on duty on the polling day. Besides, the Police had a dedicated group of officers who had previous experience in handling disputes relating to elections. The Police had all along been liaising with the Administration prior to the elections on the electoral arrangements to ensure that sufficient guidelines were provided to frontline police officers stationed at the polling stations. The Police would adopt consistent and impartial practices in the enforcement of the law.

21. Some members advocated a cooling off period on the polling day. They considered that given the increasing size of the No Canvassing Zone, canvassing

on polling day no longer served any meaningful purpose. Some other members, however, expressed support for allowing canvassing on the polling day. It was the Administration's view that canvassing on the polling day would create a better atmosphere for the election. As Hong Kong was developing its electoral system, the present arrangement provided candidates and political parties with the opportunity to canvass votes.

Exit poll

22. At the Panel meeting on 15 December 2008, some members belonging to the pan-democratic camp expressed strong dissatisfaction that despite their meeting with the Chairman of EAC twice to voice out their concern, EAC had not heeded their views on the need to tighten the regulation of exit polls to ensure fairness in an election. They also found it unacceptable that the EAC Report on the 2008 LegCo Election did not put forth any concrete recommendations on improvement measures in this regard.

23. The Panel also discussed issues relating to the development of exit polls including the upgrading of professional self-discipline in the conduct of exit polls. Some members maintained that more stringent measures should be introduced to regulate the conduct of exit polls. Some other members, however, considered that minimum restrictions should be imposed. The Panel noted that it was the view of the Director of Public Opinion Programme of the University of Hong Kong that exercising self-discipline would be more important and relevant stakeholders could work together to develop an exit poll system of international standard, including a code of practice for the conduct of exit polls, to safeguard freedom of expression, academic freedom, people's right to know and professional practice.

24. Some members expressed concern that some organizations had disclosed exit poll results before the close of poll to facilitate certain candidates to plan electioneering activities, thereby causing unfairness to the other candidates. They considered that the expenses incurred for conducting exit polls for electioneering purposes should be included as part of the election expenses and urged the Administration to improve its measures on regulation of exit polls.

25. The Administration advised that EAC had appealed to the organizations concerned in the relevant guidelines on election-related activities to refrain from announcing the results of exit polls until after the close of poll. A candidate who commissioned opinion or exit polls for electioneering purposes was required under existing laws to include the expenses incurred as part of the election expenses. The Administration respected academic freedom and freedom of expression and had no intention to regulate the use of exit poll results.

Canvassing by telephone and short message service ("SMS")

26. 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 by EAC in its 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.

27. According to paragraphs 9.18 and 9.19 of the Proposed Guidelines on Election-related Activities in respect of the LegCo Election issued by EAC in March 2012, all candidates are reminded to respect the privacy of the electors and observe the guidance notes on personal data privacy in respect of electioneering activities prepared by the Office of the Privacy Commissioner for Personal Data. 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.

Implementation of environment protection measures

28. Noting that the space allocated for each candidate in the introductory leaflet would be reduced by 50% for the 2008 LegCo Election (i.e. from half of an A4 page to a quarter of an A4 page for a FC candidate, and from two A4 pages to one page for a GC candidate list), some members expressed concern about the limited space available for candidates to introduce themselves. They were concerned that the elderly would have difficulty in reading the leaflet. It was also suggested that the Administration could use recycled paper to save money.

29. The Administration advised that while the space allocated for each candidate in the introductory leaflet was reduced, the font size of characters remained unchanged. Candidates were encouraged to provide concise messages in the leaflet and include their website information to allow electors to access more detailed information by electronic means.

30. According to the Administration, recycled paper or environmentally friendly ink was used in the printing of electoral documents in the previous elections. In the voter registration for the upcoming elections, the Administration would step up efforts to solicit e-mail addresses from newly registered electors and existing electors. Such email addresses would be provided to candidates for dissemination of election advertisements by electronic means in order to reduce paper consumption.

31. Members were of the view that most of the candidates running for the five new DC (second) FC seats would have political affiliation and suggested that the

Administration should allow those candidates to conduct a joint publicity campaign along with the GC candidates of the same political party; and that the Administration should also allow candidates of the same political party from different GCs to carry out joint election campaigns.

32. In reviewing the free mailing arrangements for candidates at the Panel meeting on 18 April 2011, members welcomed the Administration's proposal for allowing candidates to post joint promotional letters to voters free of postage to the same elector, and enquired whether such arrangement would be applicable to the making of banners, posters and signboards for elections. The Administration advised that to facilitate candidates to participate in elections, it had proposed to allow lists of candidates of different constituencies and candidates of FC or EC subsectors with multiple seats to send their promotional letters to the same elector/voter, provided that the expenses incurred in joint promotion would have to be borne by the candidates concerned as their respective election expenses. The Administration further explained that the proposal should not cover elections at which lists of candidates/candidates of different constituencies would have different electors/voters, such as candidates of different GCs, candidates of different FCs and candidates of different EC subsectors. REO would review the arrangements in relation to the production of banners, posters and signboards when drawing up electoral guidelines in future.

Recent development

33. The Administration is scheduled to brief the Panel on the proposed electoral arrangements for the 2012 LegCo Election at the upcoming meeting on 16 April 2012.

Relevant papers

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

**Relevant documents on practical arrangements
for the 2012 Legislative Council Election**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs "CA Panel")	16.2.2004 (Item IV)	Agenda Minutes
	15.3.2004 (Item VI)	Agenda Minutes
Legislative Council	16.6.2004	Official Record of Proceedings [Pages 76 – 79] (Written question)
	20.10.2004	Official Record of Proceedings [Pages 93 - 95] (Written question)
	11.7.2007	Official Record of Proceedings [Pages 105 – 106] (Written question)
CA Panel	17.12.2007 (Item IV)	Agenda Minutes
Legislative Council	16.1.2008	Official Record of Proceedings [Pages 26 – 35] (Oral question)
	23.1.2008	Official Record of Proceedings [Pages 108 - 195] (Motion)
CA Panel	18.2.2008 (Items V & VI)	Agenda Minutes
	17.3.2008 (Item V)	Agenda Minutes
Legislative Council	9.4.2008	Official Record of Proceedings [Pages 29 - 39] (Oral question)
CA Panel	21.4.2008 (Item V)	Agenda Minutes

Committee	Date of meeting	Paper
Legislative Council	28.5.2008	<u>Official Record of Proceedings</u> [Pages 52 - 60] (Oral question)
CA Panel	15.12.2008 (Item III)	Agenda Minutes
Establishment Subcommittee	8.12.2010	Minutes
CA Panel	17.1.2011 (Item IV)	Agenda Minutes
	18.3.2011 (Item IV)	Agenda Minutes
	18.4.2011 (Item III)	Agenda Minutes

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