

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

**Follow-up on the Meeting on 2 June 2011**

**Electronic Election Advertisements**

**Purpose**

This paper provides information on the statutory requirements and procedural arrangements for submission to the Returning Officers (“ROs”) of electronic election advertisements (“eEAs”) which are distributed, sent or used on the Internet by candidates.

**Background**

2. At the Subcommittee meeting on 2 June 2011, Members welcomed the proposed improvement in arrangements for submission of eEAs by electronic means, but some Members raised concern about the difficulties encountered by candidates in fulfilling the existing statutory requirement to submit to ROs copies of eEAs distributed, sent or used on social networking or communication websites on the Internet. Members noted that messages posted on these websites could change quite rapidly and frequently within a short period of time. Furthermore, as some websites are not hosted by candidates themselves, messages could be removed or deleted by the relevant website administrators without prior notification to candidates who post the messages. As such, there are practical difficulties for candidates to capture every eEA posted on these websites for submission to ROs.

**Existing Requirements and Arrangements for Submission of eEAs**

3. According to section 2 of Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”), “election advertisement” in relation to an election, means –

- (a) a publicly exhibited notice; or
- (b) a notice delivered by hand or electronic transmission; or

- (c) a public announcement made by radio or television or by video or cinematographic film; or
- (d) any other form of publication,

published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.

4. In this connection, strictly speaking, it will mean all notices, announcement or publication displayed or distributed by candidates on the Internet would fall within the definition of “election advertisement” under the ECICO and are, therefore, subject to the prior declaration/submission requirement.

5. Under section 34(4) of the ECICO, a person must, not later than 7 days after publishing a printed election advertisement, furnish two copies of the advertisement to the appropriate returning officer.

6. Under respective electoral procedures regulations made by the Electoral Affairs Commission (“EAC”) under the EAC Ordinance<sup>1</sup>, before display, distribution or otherwise use of any election advertisement, a candidate must submit a declaration and two copies each of the declared election advertisements to the RO.

7. At present, to satisfy the statutory requirement in paragraph 6 above, a candidate is required to print out the eEA and submit two hardcopies of it to the RO before displaying, distributing or otherwise using it on the Internet.

### **Proposed Improved Arrangements**

8. The EAC has noted the concerns raised by political parties and Legislative Council (“LegCo”) Members in complying with the existing statutory declaration requirement. Within the confine of the statutory control regime stipulated under ECICO, the EAC has proposed, by way of the Amendment Regulations under scrutiny, to relax the electoral procedures set out under the EAC Regulations to achieve the following improvement:

---

<sup>1</sup> Section 102 of 541D (for Legislative Council election), section 103 of 541F (for District Council election), section 100 of 541I (for Election Committee Subsector elections) and section 81 of 541J (for Chief Executive election).

- (a) candidates are allowed to submit eEAs and the required declaration to the RO electronically, in the manner and format as specified by the EAC. This would save candidates the trouble of having to print out the eEAs in hard copy form to satisfy the declaration requirement and to reduce paper consumption; and
- (b) where it is not practicable to submit the eEAs to the RO before they are displayed, distributed or otherwise used (such as messages displayed or sent interactively and spontaneously through social networking or communication websites on the Internet like Twitter, Facebook, blogs etc.), candidates are allowed to make ex post facto declaration. Under the proposed arrangement, candidates are only required to deposit with the RO a declaration and the declared eEAs by the end of the first working day following the day on which the advertisements are sent or displayed.

9. The above two measures would greatly facilitate candidates in making declarations on eEAs and ease their workload. Under the proposed arrangement, candidates will no longer be required to print out the eEAs and deposit two hard copies with the RO. They may use an email to forward the eEAs and the accompanying declaration to the RO. For eEAs sent or displayed through social networking and communication websites and which are of an interactive and spontaneous nature, candidates will also be allowed one whole working day for submission. Furthermore, candidates may make one single declaration for all such eEAs sent or displayed on the same day. This would save candidates a lot of time as under the existing requirement, normally each and every such eEA has to be declared individually before it is sent or displayed. The proposed arrangement will save candidates a lot of work when a series of eEAs are sent or displayed on the same day and each of them is an add-on version to the previous one.

### **Records of eEAs to be submitted**

10. Members have raised concern over the practical problems in keeping full and complete records of eEAs for submission in certain circumstances, owing to the nature of exchanges conducted on the social networking and communication websites. Members have raised the issue of practicability of treating such eEAs in the same way as physical-form EAs under the statutory declaration requirement.

11. In accordance with section 2 of the ECICO, notices, announcements or other form of publication displayed or distributed on the Internet are EAs if they meet the definition stipulated in that section. Candidates have to submit copies of such EAs to the RO under section 34(4) of the ECICO and relevant provisions in respective EAC Regulations<sup>2</sup>.

12. To address Members' concern, it is necessary to review whether eEAs should be treated in a manner different from physical-form EAs and, if so, whether amendments should be made to the relevant provisions of the ECICO and EAC Regulations. This goes beyond the scope of the existing exercise which covers only amendments to regulations under the EAC Ordinance. We, therefore, propose to study the matter separately. We will consider the matter in conjunction with the parties concerned and revert to the LegCo Panel on Constitutional Affairs later on.

Constitutional and Mainland Affairs Bureau  
Registration and Electoral Office  
June 2011

---

<sup>2</sup> Section 102 of 541D (for Legislative Council election), section 103 of 541F (for District Council election), section 100 of 541I (for Election Committee Subsector elections) and section 81 of 541J (for Chief Executive election).