

立法會
Legislative Council

LC Paper No. CB(2)798/10-11(05)

Ref : CB2/PL/CA

Panel on Constitutional Affairs
Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 January 2011

Review of practical electoral arrangements

PURPOSE

This paper summarizes the past discussions held by the Panel on Constitutional Affairs ("the Panel") on the practical electoral arrangements for and the guidelines issued by the Electoral Affairs Commission ("EAC") on election-related activities ("the Guidelines") in respect of the 2008 Legislative Council ("LegCo") election, the 2007 District Council ("DC") election, and the 2007 Chief Executive ("CE") election, as well as the relevant reports made by EAC in respect of these elections. This paper also gives a brief account of the concerns recently raised by members of the Panel on Security and the Establishment Subcommittee ("ESC") in respect of existing electoral arrangements in paragraphs 37 to 40.

BACKGROUND

2. 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 DC constituency boundaries, and to make regulations, guidelines and arrangements for the registration of electors and the conduct of public elections.

3. According to section 6(1)(a) of the EAC Ordinance (Cap 541), EAC may issue guidelines relating to the conduct or supervision of an election. EAC will update the guidelines before each election taking into account the operational experience and suggestions for improvements obtained from recent elections and by-elections. In accordance with section 8 of the EAC Ordinance, EAC shall make a report to the Chief Executive, 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.

PRACTICAL ARRANGEMENTS FOR THE 2008 LEGCO ELECTION

Relevant discussions of the Panel

4. The Panel discussed the practical arrangements for the 2008 LegCo election at its meetings held on 17 December 2007, 18 February 2008 and 21 April 2008. The Guidelines on Election-related Activities in respect of the LegCo Election and the EAC report on the 2008 LegCo election were discussed by the Panel on 21 April 2008 and 15 December 2008 respectively. The relevant issues raised by members at these meetings are summarized in the following paragraphs.

Vote counting arrangements

5. 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 to enhance transparency of the counting process. The Administration advised that REO had simulated a test on the counting method suggested by members and the outcome was not satisfactory. The time required would be more than double if the counting process suggested by members was to be adopted.

6. 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 functional constituency ("FC") votes. The Administration advised that the counting of geographical constituency ("GC") votes had been decentralized and past experience had proven that decentralised 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. REO would need to strike a balance between counting efficiency and preserving the secrecy of votes.

7. Some members expressed concern about the accuracy of the process of sorting and counting of ballot papers. They 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.

Training of staff

8. Some members expressed concern that polling/counting staff in the recent elections was not sufficiently familiar with the counting procedures. They pointed out that the inexperience of some Presiding Officers in determining the validity of ballot papers would lead to inconsistent practices and adequate training should be provided to these officers. The Administration advised that a majority of polling/counting officers recruited from the civil service were experienced as they had participated in past 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 1.5 day training course and were given an operational manual and a training video to help them familiarize with the procedures for managing the polling station and counting stations. The training course would be further enhanced in future.

Green measures in sending election advertisements ("EAs") and related materials

9. Some members were of the view that for environmental protection, REO should provide candidates with the choice of receiving the address labels of electors for sending EAs on an individual or household basis. The Administration advised that the right of individual electors to access EAs must be respected and preserved. As electors with the same address were not necessarily of the same household, REO had continued with the established practice of providing candidates with address labels on an individual basis to ensure that EAs were delivered to the electors concerned on an individual basis. The Administration would continue its efforts to solicit e-mail addresses from electors and encourage candidates to disseminate EAs by electronic means for the protection of the environment.

10. 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 also concerned that the elderly would have difficulty in reading the leaflet. It was suggested that the Administration should use recycled paper to save money.

11. 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. The Administration further advised that subject to technical considerations, electoral documents would be printed on recycled paper.

Force Working Group on Electioneering Activities ("Force Working Group")

12. 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 a Force Working Group was formed 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 policemen 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 election.

13. The Administration advised that the Force Working Group would issue guidelines to ensure that consistent and practical practices would be adopted within the Police. Many officers who worked on the polling day had previous experience in dealing with disputes relating to election, and briefing sessions would be provided to officers involved in policing on the polling day. The Force Working Group would ensure that there would be sufficient manpower on duty on the polling day.

Exit poll

14. 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.

15. The Administration advised that EAC had appealed to the organizations concerned in the Guidelines 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.

PRACTICAL ARRANGEMENTS FOR THE 2007 DC ELECTION

Relevant discussions of the Panel

16. The Panel discussed the practical arrangements for the 2007 DC election, the Guidelines on Election-related Activities in respect of the DC Election, and the EAC Report on the 2007 DC election at its meetings held on 21 June 2007

and 17 March 2008 respectively. The relevant issues raised by members at these meetings are summarized in the following paragraphs.

Design of ballot papers and ballot boxes

17. As candidates would be allowed to have certain specified particulars relating to them printed on the ballot papers, the size of the new ballot papers would be about 70% larger than that of the 2003 DC election. Some members expressed concern about the size of the ballot boxes and asked whether a large and transparent ballot box would be used. The Administration advised that the ballot box used in the 2003 DC election would be used in the 2007 DC election. In order to protect the secrecy of votes, the Administration had no intention to use a transparent ballot box. In view of the size of the ballot papers, REO would put the ballot boxes to test and make sure that there would be an adequate supply of ballot boxes in each polling station.

Vote counting arrangements

18. Some members enquired about the time needed to convert a polling station into a counting station. The Administration advised that the time taken to convert a polling station into a counting station depended on the physical condition of polling stations. The conversion would take about one hour for a large station where preparatory work could be made in advance. For small stations, the conversion would take a longer time due to physical constraints.

19. To enhance transparency of the counting process, some members were of the view that candidates' agents should be allowed to stay in the polling station while it was closed for the preparation of the counting of votes. The Administration advised that apart from the candidates and their election agents, the law had been amended to allow the polling agents to stay in the polling station while it was closed for the preparation of the counting of votes. The candidates and their election and counting agents were also allowed to monitor the counting of votes.

Staff recruitment and training

20. Since the polling was conducted from 7:30 am to 10:30 pm, some members expressed concern about the sufficiency of staff recruitment and training. The Administration advised that a total of some 14 000 civil servants would be hired to work in around 540 polling stations. Briefing sessions would be arranged for staff to familiarize them with the polling and counting procedures, and Polling Management Training and experience sharing workshop would be organized for staff at supervisory level.

21. As revealed in the petitions and complaints received by EAC, some members expressed concern that some Presiding Officers, Deputy Presiding Officers and polling staff were not very familiar with the electoral legislation, guidelines and the directives laid down in the operational manual. They suggested the Administration to enhance staff training and not recruit non-civil servants as electoral staff.

22. The Administration advised that a majority of the electoral officers were civil servants and were experienced. To enhance training for electoral staff, an experience-sharing session would be added and training manuals would be beefed up to give more detailed guidance to electoral staff.

Access to polling stations

23. Some members expressed concern about the availability of special arrangements for handicapped and elderly persons to facilitate their access to polling stations. The Administration advised that the best effort had been made to identify polling stations which were easily accessible to persons with disability including those who had difficulty in walking. Whether the polling station allocated to an elector was accessible to persons with mobility difficulty would be specified clearly in the location map attached to the poll card to be sent to each elector, together with a note indicating that an elector could apply to the Chief Election Officer for re-allocation to a special polling station if the elector had any difficulty in mobility but was allocated to a polling station not accessible to the disabled.

Advance polling

24. Some members considered that advance polling should be arranged to facilitate electors who were not in Hong Kong on the polling day to vote. The Administration advised that the polling was deliberately scheduled for a Sunday to facilitate electors to participate in the poll. The problem of advance polling was that the premature release of exit poll results conducted on the advance polling day might influence electors' choice on the general polling day.

Electioneering activities

25. Some members advocated a cooling off period on the polling day. They considered that electors were getting more mature and would not be easily swayed by canvassing activities conducted on the polling day. The Administration maintained the view that canvassing activities carried out on the polling day would create a better atmosphere during election.

26. Noting that EAC would appeal to all management bodies of

organizations or buildings to provide equal opportunity to all candidates competing in the same constituency for the purposes of electioneering, some members enquired how EAC would deal with complaints about unequal treatment of candidates in this regard and whether the Administration would consider introducing laws to prohibit discriminatory treatment of candidates.

27. The Administration said that while the management bodies of organizations or buildings would be advised to adhere to the fair and equal treatment principle in handling electioneering activities, electioneering activities in private premises were outside the purview of the Government. 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 reprimand or censure in a public statement against the management body and/or the candidate concerned. Since the Basic Law provided Hong Kong residents with the right to vote and to engage in politics, the Administration considered it inappropriate to make laws to prohibit any organizations or individuals from supporting certain candidates.

Donations

28. Some members sought clarification on whether any unspent or unused donations could be used by successful candidates to cover their future expenses in district work. The Administration advised that section 19 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) ("ECICO") required any amount of donations that exceeded the upper limit of election expenses must be given to charitable institutions.

PRACTICAL ARRANGEMENTS FOR THE 2007 CE ELECTION

Relevant discussions of the Panel

29. The Panel discussed the Guidelines on Election-related Activities in respect of the CE Election and the practical arrangements for the election of the third term CE at its meetings held on 20 November 2006 and 23 January 2007 respectively. The relevant issues raised by members at these meeting are summarized in the ensuing paragraphs.

Nomination and electioneering activities

30. Noting that the polling day for the CE election was 25 March 2007 and the nomination period would start around mid-February 2007, some members were of the view that more time should be allowed for electioneering activities. The Administration advised that according to the CE Election Ordinance (Cap 569), the nomination period for candidates for the office of the CE should not

be less than 14 days, and should terminate on a date earlier than the 21 day before the polling date. A candidate who wished to have a longer period for electioneering activities could declare his candidacy in advance of the nomination period.

31. Some members expressed concern that the incumbent CE, seeking for re-election, would have an unfair advantage in using public resources to campaign for re-election than other CE candidates. They enquired how the CE's official duties and electioneering activities as a candidate could be differentiated. It was suggested that the CE should take leave after declaring candidacy. They further asked whether expenses incurred by the CE for electioneering activities before declaring candidacy would be counted as election expenses.

32. The Administration advised that as a CE election candidate, CE had to follow the electoral guidelines which included, among others, that CE candidates could not use public resources for election campaigns, except for certain types of services which he was entitled to use for his private purposes by virtue of his post or job. In accordance with the Basic Law, the incumbent CE might seek re-election once, and there was no requirement for him to take leave. The practice was in line with that of the United Kingdom and the United States. Moreover, a CE seeking re-election had to separate the resources spent on his duties as CE from his election expenses. A candidate was required under ECICO to declare all expenses, including those incurred in connection with the preparatory work of an election, in the election return to be submitted to REO within 30 days after the election.

Venue for polling and counting station

33. Some members expressed concern that polling would take place at the Asia World Expo ("AWE") which was very far away from city centre, and they asked about the availability of transportation arrangements on the polling day. The Administration advised that in looking for a suitable venue, REO had to take into consideration the accommodation of a large number of people, including the Election Committee members, the media and the public. As AWE was accessible by various means of public transportation, shuttle buses between city centre and the AWE would not be arranged.

Polling arrangements

34. Noting that in a contested election where there was more than one validly nominated candidate, more than one round of voting might need to be held on the polling date if none of the candidates obtained an absolute majority of valid votes in the first round of voting, some members expressed concern that the

adoption of several rounds voting in the 1985 LegCo election had caused chaos on the polling day. Some members expressed concern about the short time allowed for the first round of voting which would start at 9 am and close at 10 am.

35. The Administration assured members that a lot of improvements had been made to the electoral procedures, which were comprehensive enough to deal with the different situations in an election. On extension of time for the first round of voting, EAC had decided subsequently to extend the time for the first round of voting in the case of a contested election, and the polling hours in the case of an uncontested election, from one to two hours.

Election forums

36. Some members were of the view that the Administration should host election forums for the CE election to provide opportunities for electors and the public to be apprised of his platform. The Administration considered it inappropriate for the Administration to host any election forum on the ground that the incumbent CE might run for re-election in a CE election, the impartiality of such a forum might be subject to queries. The Administration anticipated that professional organizations, academic institutions and/or media would organize election forums and that there would be opportunities for the candidates to address the public through the media.

RECENT DEVELOPMENT

37. At its meeting on 19 October 2010, the Panel on Security noted that most election-related corruption reports concerned relatively minor and technical breaches of ECICO and involved irregularities relating to insignificant amounts of election expenses. The Independent Commission Against Corruption ("ICAC") Operations Review Committee had asked the Administration to review the existing arrangement and consider whether election complaints alleging technical and minor breaches of ECICO could be dealt with by alternative means such as administrative action.

38. In response to the Panel on Security's request for a review on the issue, the Administration advised that REO had been discussing improvement measures with ICAC. To facilitate the investigation work of ICAC on cases relating to candidates' election returns under ECICO, REO would, after compiling the relevant documents, provide ICAC with an analysis of possible breaches of ECICO in the relevant election return cases, supplemented with relevant details. As a result of such arrangement, there would not be a need for ICAC to make specific requests for the relevant information and follow-up action could be taken forthwith.

39. During its consideration of the proposal to create one supernumerary post of Principal Executive Officer in REO at its meeting on 8 December 2010, ESC noted that a candidate at a LegCo election was required under the relevant electoral law to lodge an election return not later than 60 days after the date of publication of the result of the election. The election return was required to set out the candidate's election expenses at the election and all election donations received by or on behalf of the candidate in connection with the election. Some members expressed concern that for a candidate who was duly elected at an uncontested election (e.g. FC election), he would find it difficult to calculate the exact election expenses or election donations in order to lodge the election return before the 60-day deadline, if there was another candidate, belonging to the same political party as the first-mentioned candidate, who was at a contested election (e.g. a geographical constituency election). It was because there would be different dates of publication of the result of the election in respect of a candidate who was duly elected at an uncontested election and another candidate who was duly elected at a contest election, and hence the 60-day deadline ran differently for the two candidates.

40. Members of ESC expressed concerns that the existing electoral arrangements, in particular those relating to post-election requirements for candidates, were too rigid and bureaucratic. It was agreed that the Administration should provide a paper on proposed improvement measures for consideration of the Constitutional Affairs Panel.

RELEVANT PAPERS

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

Appendix

Relevant documents on Review of practical electoral arrangements

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
Legislative Council	16 June 2004	Official Record of Proceedings of the Council on a written question raised by Hon Emily LAU on "Integrity of Elections"
	20 October 2004	Official Record of Proceedings of the Council on a written question raised by Hon Fred LI on "Provision of Accessible Polling Stations"
Panel on Constitutional Affairs	20 November 2006	Administration's paper on "Proposed Guidelines issued by the Electoral Affairs Commission ("EAC") on Election-related Activities in respect of the Chief Executive ("CE") Elections" [LC Paper No. CB(2)377/06-07(01)] Minutes of meeting [LC Paper No. CB(2)813/06-07]
	23 January 2007	Administration's paper on "Practical arrangements for the election of the third term CE" [LC Paper No. CB(2)898/06-07(03)] Minutes of meeting [LC Paper No. CB(2)1367/06-07]
	21 June 2007	Administration's paper on "Practical arrangements for the 2007 District Council ("DC") election" [LC Paper No. CB(2)2157/06-07(01)] Proposed Guidelines on Election-related Activities in respect of the DC Election issued by EAC [LC Paper No. CB(2)2108/06-07] Administration's paper on "Proposed Guidelines issued by EAC on Election-related Activities in respect of the DC election"

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
		[LC Paper No. CB(2)2157/06-07(02)] Minutes of meeting [LC Paper No. CB(2)161/07-08]
Legislative Council	11 July 2007	Official Record of Proceedings of the Council on a written question raised by Dr Hon Philip WONG on "Arrangements for 2008 Legislative Council ("LegCo") Election"
Panel on Constitutional Affairs	17 December 2007	Background brief on "Vote counting arrangements for elections" prepared by the LegCo Secretariat [LC Paper No. CB(2)592/07-08(05)] Administration's paper on "Arrangements for the Counting of Votes for the 2008 LegCo Election" [LC Paper No. CB(2)592/07-08(06)] Minutes of meeting [LC Paper No. CB(2)1334/07-08]
Legislative Council	16 January 2008	Official Record of Proceedings of the Council on an oral question raised by Hon Emily LAU on "Exit Polls"
	23 January 2008	Official Record of Proceedings of the Council on the motion moved by Hon Audrey EU on "Ensuring the Conduct of Fair Elections"
Panel on Constitutional Affairs	18 February 2008	Administration's paper on "Venue for Central Counting Station for the 2008 LegCo election" [LC Paper No. CB(2)1054/07-08(04)] Minutes of meeting [LC Paper No. CB(2)1908/07-08]
	17 March 2008	EAC Report on the 2007 DC Election [LC Paper No. CB(2)1332/07-08]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
		<p>Administration's paper on "EAC Reports on the 2007 DC Election and the 2007 LegCo Hong Kong Island Geographical Constituency By-election" [LC Paper No. CB(2)1336/07-08(02)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2248/07-08]</p>
Legislative Council	9 April 2008	Official Record of Proceedings of the Council on an oral question raised by Hon Ronny TONG on "Exit Polls"
Panel on Constitutional Affairs	21 April 2008	<p>Proposed Guidelines issued by EAC on Election-related Activities in respect of the LegCo Election [LC Paper No. CB(2)1435/07-08]</p> <p>Administration's paper on "Proposed Guidelines issued by EAC on Election-related Activities in respect of the LegCo Election" [LC Paper No. CB(2)1617/07-08(04)]</p> <p>Administration's paper on "Practical Arrangements for the 2008 LegCo Election" [LC Paper No. CB(2)1617/07-08(05)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2675/07-08]</p>
Legislative Council	28 May 2008	Official Record of Proceedings of the Council on an oral question raised by Dr Hon Fernando CHEUNG on "Polling Arrangements for Disabled Persons"
Panel on Constitutional Affairs	15 December 2008	<p>EAC Report on the 2008 LegCo Election [LC Paper No. CB(2)458/08-09]</p> <p>Administration's paper on "EAC Report on the 2008 LegCo Election" [LC Paper No. CB(2)437/08-09(03)]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
		Background brief on "EAC Report on the 2008 LegCo Election" prepared by the LegCo Secretariat [LC Paper No. CB(2)437/08-09(04)] Minutes of meeting [LC Paper No. CB(2)1255/08-09]
Panel on Security	19 October 2010	Minutes of meeting [LC Paper No. CB(2)416/10-11]
	2 November 2010	Minutes of meeting [LC Paper No. CB(2)677/10-11] <u>Follow-up to meeting</u> Administration's letter on cases relating to candidates' election returns under the Election (Corrupt and Illegal Conduct) Ordinance [LC Paper No. CB(2)702/10-11(01)]
Establishment Subcommittee	8 December 2010	Minutes of meeting [LC Paper No. ESC17/10-11]

Council Business Division 2
Legislative Council Secretariat
12 January 2011