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

Practical Arrangements for the **Election of the Fourth-term Chief Executive**

Purpose

This paper gives a brief account of the past discussions held by the Panel on Constitutional Affairs ("the Panel") on the practical arrangements for the third-term Chief Executive ("CE") election and other related issues.

Background

2. The 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 make preparations for various electoral arrangements for the CE election.

3. The Election Committee ("EC") is responsible for electing CE. A candidate's nomination must be subscribed by not less than 150 members of EC. Following the EC Subsector Elections held on 11 December 2011, an interim register of the new term EC members has been compiled and published. The term of the new term EC will commence on 1 February 2012 and a final register of the EC members will be published on the same date. The nomination period will run from 14 to 29 February 2012 and the poll will be held on 25 March 2012. According to the CE Election (Amendment) Ordinance 2011, a candidate in a CE election shall only be elected as CE if the candidate obtains more than 600 valid votes under an election with one candidate only and a contested election respectively. If no candidate can obtain more than 600 valid votes after two rounds of voting, the election will be terminated and a new round of nomination and election will commence.

Past discussions of the Panel

4. The Panel discussed matters relating to the election of CE at its meetings on 18 April 2005 and 20 November 2006. The Administration briefed the

Panel on the practical arrangements for the election of the third-term CE at its meeting on 23 January 2007. When the Panel discussed the subsidiary legislation relating to the 2007 District Council elections at its meeting on 26 March 2007, issue relating to the counting of votes during the election of the third-term CE was also raised. The relevant issues raised at these meetings are summarized in the following paragraphs.

Nomination and electioneering activities

5. 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 CE should not be less than 14 days, and should terminate on a date earlier than 21 days 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.

Venue and polling hours

6. Members requested the Administration to explain its decision to conduct the election of the third-term CE at the Asia World-Expo ("AWE") near the Hong Kong International Airport at Chek Lap Kok, instead of at the Hong Kong Convention and Exhibition Centre ("HKCEC"). They considered that the venue was very far from the city centre and not easily accessible by public transport. According to REO, it had started in July 2005 to seek a suitable venue in HKCEC for a period of six to seven days surrounding 25 March 2007, but venues at HKCEC were not available during the period. Having regard to the fact that the venue for the CE election should be large enough to accommodate a polling station, a counting station which comprised a counting zone, resting and seating areas for EC members, candidates and agents, a working area for the media, and a seating area for members of the public who wished to observe the counting of votes, REO came to the view in February 2006 that AWE was the only available and suitable venue.

7. In view of the Panel's concern that some EC members might not be familiar with the location of AWE and the time for the first round of voting from 9:00 am to 10:00 am was too short, EAC agreed 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, i.e. from 9:00 am to 11:00 am.

8. In its Report on the 2007 CE Election submitted to CE, EAC has recommended that in deciding the venue of a polling and counting station, the convenience of the location should be accorded a high priority in future. Where possible, a more conveniently located venue should be used. Before the exact polling date could be firmed up, potential dates should be penciled in to secure the availability of a suitable venue. EAC has also recommended that consideration should be made to keep the duration of the polling hours of the first round of poll as two hours, particularly if a new venue would be used as the polling station in future CE elections.

Election forums

9. Some members considered that the Administration should organize election forums to provide opportunities for members of the public to pose questions directly to candidates of the CE election and to be apprised of their platforms. The Administration, however, considered it inappropriate for the Administration to host any election forum on the ground that the impartiality of such a forum might be subject to queries. Organizations such as professional or trade organizations, academic institutions, media, etc, might organize election forums for the CE election and there would be opportunities for the candidates to address the public through the media. The relevant Government departments, however, would render assistance to the organizations concerned in respect of booking of venues for forums.

Counting of votes

10. Members raised the issue about the use of an overhead projector in the process of determining the validity of questionable ballot papers at the CE election held on 25 March 2007. Some members considered that such arrangement would enhance the transparency of the counting process and educate people how to vote properly. Some other members, however, pointed out that the purpose of a secret ballot was to prevent illegal and corrupt conduct at an election. If a ballot paper was intentionally marked in such a way so that the elector could be identified by the candidate, exposing the ballot paper by way of a visualiser or an overhead projector for public inspection might render assistance to illegal and corrupt conduct.

11. The Administration explained that the use of a visualiser to facilitate candidates and their agents to inspect questionable ballot papers was adopted in past elections such as the 2004 LegCo functional constituency election, the 2005 and 2006 EC Subsectors elections and District Council by-elections. The use of a projector, however, would depend on the size of the counting station.

12. In its Report on the 2007 CE Election submitted to CE, EAC has pointed out that the candidates and their election/counting agents are already allowed to inspect the questionable ballot papers under the Electoral Procedure (CE Election) Regulation (Cap. 541J). Moreover, the Regulation also provides that a ballot paper with any writing or mark by which the Returning Officer is of the opinion that the elector may possibly be identified, such a ballot paper shall not be counted. However, EAC considers that as there were divergent views on the use of visualiser to display questionable ballot papers in the counting station, REO should review such practice before the next CE Election.

Attendance of public functions by government officials and Principal Officials

13. When the Panel discussed the proposed guidelines on election-related activities in respect of the CE election issued by EAC, members noted that according to guidelines issued by the Civil Service Bureau governing civil servants' participation in electioneering activities, certain officers at the senior level and those who might be particularly susceptible to accusations of bias, namely Directorate Officers, Administrative Officers, Police Officers and Information Officers and those officers acting in these grades and ranks with a view to substantive appointment thereto ("government officials"), should not openly support any candidate or be seen to lend support to a candidate. They should not participate in any form of electioneering including seeking election donations for any candidate. Some members expressed concern that there would be conflict of interest if Principal Officials ("POs") were allowed to participate in election-related activities. They questioned whether POs were given too much freedom, and whether by taking part in election-related activities, there would be conflict of interest with POs' own official duties.

14. The Administration explained that different countries had different practices and some countries allowed the head of government to continue to lead the government while the election was going on. In Hong Kong, the design of the Accountability System provided two tiers of public officers, namely "civil servants" and POs. "Civil servants" were to remain politically neutral while POs, being political appointees, could have their own political inclination, participate in election-related activities and shoulder political responsibilities where necessary. POs had to comply with the then "Code for Principal Officials under the Accountability System".

15. Some members asked whether a PO would breach the guidelines issued by EAC if he, in engaging in election-related activities, required his subordinates to assist him. They also asked whether senior officials who were members of a candidate's campaign team had to resign from office and if not, whether a portion of their salary would be counted as election expenses. The Administration advised that a PO who wished to show his support to a CE

candidate by attending election-related activities should not involve his subordinates who were civil servants or government officials. The principle laid down in the proposed guidelines was very clear. POs should exercise great care to ensure that their support for electioneering activities of a candidate would not give rise to any conflict of interest with their official duties. Voluntary services provided to a candidate by any person, irrespective of whether he was a PO, could be excluded from being counted as election expenses.

Election expenses

16. Members raised the issue as to whether expenses incurred for electioneering activities not targeting at members of the EC would be counted as election expenses. The Administration advised that the CE election was a major event that would attract a lot of media coverage and publicity. It was likely for a candidate to target his electioneering campaign not only at the EC members but also the community at large. Whether the expenses incurred for a particular activity should be regarded as an election expense had to be determined by EAC on a case by case basis.

17. Members asked about the mechanism under which the election expenses of a candidate would be monitored once he declared his intention to stand for election and the criteria adopted by EAC in determining whether an activity was election-related, the cost of which should therefore be counted towards the election expenses. The Administration explained that a person had to keep an accurate account of all election expenses incurred and donations received once he had publicly declared his intention to stand for election. Over the years EAC had accumulated valuable experience to determine whether a particular item of expenditure should be regarded as an election expense. Although the guidelines were for reference, candidates who did not observe or respect the rules set out therein would be subject to public sanctions. Election expenses and donations of candidates were monitored by the mechanism provided in Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO") (Cap. 554) and the guidelines promulgated for the CE election. The Administration further explained that a list of common expenditure items which could be counted towards election expenses was at an appendix to the proposed guidelines. The list was only illustrative and was not exhaustive. Whether the conduct of a candidate should be regarded as an election activity and whether a particular item of expenditure should be regarded as an election expense was a question of fact to be answered in the circumstances of each case.

18. Members noted that a person who had publicly declared an intention to stand for election, but had not submitted his nomination form, was required to submit a return and declaration of election expenses and donations. In

response to members' enquiry about the policy purpose for imposing such a requirement, the Administration advised that the requirement was to prevent the person concerned from deterring other prospective candidates from contesting the election by announcing his own intention to stand for election.

Recent development

19. The Panel was briefed on the major changes to the proposed guidelines in respect of the CE election in 2012 at its meeting on 17 October 2011. The Administration is scheduled to brief the Panel on the practical arrangements for the election of the fourth-term CE at the upcoming meeting on 16 January 2012.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
11 January 2012

**Relevant documents on Practical Arrangements for
the Election of the Fourth-term Chief Executive**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	18.4.2005 (Item IV)	Agenda Minutes
	20.11.2006 (Item III)	Agenda Minutes
	23.1.2007 (Item III)	Agenda Minutes CB(2)1057/06-07(01)
	26.3.2007 (Item IV)	Agenda Minutes
	--	Report on the 2007 Chief Executive Election submitted by the Electoral Affairs Commission to the Chief Executive
	17.1.2011	Agenda
Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010	18.1.2011 (Item I)	Agenda Minutes
CA Panel	18.7.2011 (Item IV)	Agenda
	17.10.2011 (Item III)	Agenda
	--	Guidelines on Election-related Activities in respect of the Chief Executive Election