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Panel on Constitutional Affairs
Background brief prepared by the Legislative Council Secretariat
for the meeting on 21 November 2011

Review of regulation on election advertisements

Purpose

This paper gives a brief account of the discussions held by the Subcommittee on Nine Amendment Regulations made under the Electoral Affairs Commission ("EAC") Ordinance (Cap. 541) ("the Subcommittee") on the submission of election advertisements ("EAs").

Background

2. According to section 2 of Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), EA 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.

Under section 34(4) of ECICO, a person must, not later than seven days after publishing a printed EA, furnish two copies of the advertisement to the appropriate Returning Officer ("RO"). Strictly speaking, all notices, announcements or publications displayed or distributed by candidates on the Internet would fall within the definition of EA and are, therefore, subject to the prior declaration/submission requirement. Under respective regulations on electoral procedure previously made by EAC under the EAC Ordinance, before

display, distribution or otherwise use of any EA, a candidate must submit a declaration and two copies each of the declared EAs to RO. To satisfy the statutory declaration requirement, a candidate was required to print out the eEA and submit two hardcopies of it to RO before displaying, distributing or otherwise using it on the Internet.

3. In May 2011, EAC made nine Amendment Regulations under the EAC Ordinance which sought to refine electoral procedures, voter registration and other practical arrangements to prepare for the coming District Council ("DC"), Election Committee ("EC") subsector, Chief Executive ("CE") and Legislative Council ("LegCo") elections to be held in 2011 and 2012.

4. The relevant Amendment Regulations on electoral procedure proposed to introduce the following improvement -

- (a) candidates would be allowed to submit eEAs and the required declaration to ROs electronically, in the manner and format as specified by EAC; and
- (b) where it would not be practicable to submit the eEAs to RO before they were 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 would be allowed to make ex post facto declaration. Under the proposed arrangement, candidates would only be 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 were sent or displayed.

Relevant discussions of the Subcommittee

5. Subcommittee members supported the proposed improvements. However, they expressed disappointment that the Administration had proposed to allow the candidates of DC, EC subsector, CE and LegCo elections to submit, in the manner and format specified by EAC, a declaration and a copy of only eEAs, but not printed EAs, to ROs by electronic means. They considered it very inconvenient and time-consuming for candidates to submit hard copies of printed EAs, authorization letters, election returns, etc. to ROs. Subcommittee members were of the view that the Administration should facilitate candidates by accepting printed election materials transmitted electronically. They called on the Administration to develop an information technology ("IT") system to cater for the electronic transmission of all types of election materials as soon as possible.

6. The Administration explained that it was the long-term objective to allow submission of all EAs by electronic means and the Registration and Electoral Office ("REO") had pursued actively the use of electronic means for the submission of election materials. However, it was considered that a cautious approach must be adopted in order to ensure that all elections would be conducted in an open, fair and transparent manner. As the number of candidates for the coming DC, EC Subsector and LegCo elections would increase substantially, it was advisable to allow candidates, as a first step, to submit eEAs by electronic means. For EAs of large sizes such as posters and exhibits, candidates could also send the photos of these EAs to ROs by email. REO would capitalize on the experience in the 2011 DC and EC subsector elections and explore the feasibility of accepting more types of election materials by electronic means.

7. While Subcommittee members welcomed the proposed improvement in arrangements for submission of eEAs by electronic means, they expressed concern about the difficulties encountered by candidates in fulfilling the statutory declaration requirement to submit to ROs copies of eEAs distributed, sent or used on social networking or communication websites on the Internet. Subcommittee members pointed out that messages posted on these websites could change quite rapidly and frequently within a short period of time. Furthermore, as some websites were not hosted by candidates themselves, messages could be removed or deleted by the relevant website administrators without prior notification to candidates who posted the messages. As such, there were practical difficulties for candidates to capture every eEA posted on these websites for submission to ROs.

8. The Administration reiterated that the proposed improvement measures would facilitate greatly candidates in making declarations on eEAs and ease their workload. Under the proposed arrangement, candidates would no longer be required to print out the eEAs and deposit two hard copies with ROs. They could use an email to forward the eEAs and the accompanying declaration to ROs. For eEAs sent or displayed through social networking and communication websites and which were of an interactive and spontaneous nature, candidates would also be allowed one whole working day for submission. Furthermore, candidates could 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 statutory declaration requirement at that time, normally each and every such eEA had to be declared individually before it was sent or displayed. The proposed arrangement would save candidates a lot of work when a series of eEAs were sent or displayed on the same day and each of them was an add-on version to the previous one.

9. Some Subcommittee members were of the view that it was necessary to regulate the dissemination of EAs on Internet. Some other Subcommittee members, however, expressed 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. They raised the issue of practicability of treating such eEAs in the same way as physical-form EAs under the current statutory declaration requirement. In view of the advance in IT and the prevalence of these websites, these members queried the feasibility of applying the statutory control regime under ECICO to eEAs transmitted through these means.

10. The Administration explained that in accordance with section 2 of the ECICO, notices, announcements or other form of publication displayed or distributed on the Internet were EAs if they met the definition stipulated in that section. Candidates had to submit copies of such EAs to ROs under section 34(4) of ECICO and relevant provisions in the EAC Regulations. In addition to the monitoring of election expenses, the submission of EAs in advance was to facilitate public inspection and a transparent regulatory mechanism for the handling of election-related complaints or disputes. Subcommittee members noted that 6 187 complaints were received for the 2007 DC Election, of which about 31% were related to EAs. Among the 3 480 complaints for the 2008 LegCo Election, about 24% were related to EAs.

11. The Administration advised that to address the concern about the practical difficulties to comply with the statutory declaration requirement for the submission of EAs posted on the Internet, it was 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 ECICO and EAC Regulations. This went beyond the scope of the legislative exercise at that time. The Administration undertook to study the issue separately and revert to the Panel on Constitutional Affairs ("CA Panel") in due course.

12. Subcommittee members urged the Administration to consult IT experts and make reference to relevant overseas experience in the future review. They also stressed that before the 2011 DC Election, clear guidelines should be drawn up for candidates and appropriate publicity work on the relevant statutory requirements should be carried out.

Recent development

13. The new arrangements for submitting by electronic means the declaration and copy of an EA to be displayed, distributed or otherwise used by electronic

means have been incorporated into the Guidelines on Election-related Activities in respect of the DC Election and the EC subsector election, as well as the relevant Proposed Guidelines in respect of the CE Election.

14. The Administration is scheduled to brief the CA Panel on its proposals to further relax the regulation over the submission of EAs at its meeting on 21 November 2011.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant documents on review of regulation on election advertisements

Committee	Date of meeting	Paper
Subcommittee on Nine Amendment Regulations made under the Electoral Affairs Commission Ordinance	2.6.2011	CB(2)1993/10-11(01)
	24.6.2011	Report to House Committee
Panel on Constitutional Affairs ("CA Panel")	--	Guidelines on Election-related Activities in respect of the District Council Election
	--	Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections
	--	Public Consultation : Proposed Guidelines on Election-related Activities in respect of the Chief Executive Election