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Panel on Constitutional Affairs
Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 16 November 2015

Practical arrangements for the 2016 Legislative Council By-election for the
New Territories East Geographical Constituency

Purpose

This paper provides background information on the practical arrangements for the Legislative Council ("LegCo") by-elections since the First LegCo, and summarizes past discussions on the relevant subject matter by the Panel on Constitutional Affairs ("the Panel").

Background

2. Since the 1998 LegCo election, four LegCo by-elections have been held, namely, the 2000 LegCo Hong Kong Island geographical constituency ("GC") by-election, the 2001 LegCo Election Committee by-election, the 2007 LegCo Hong Kong Island GC by-election and the 2010 LegCo by-election.

3. In accordance with section 35 of the Legislative Council Ordinance (Cap 542) ("LCO"), the Clerk to LegCo must, by notice published in the Gazette, declare the existence of a vacancy in the membership of that Council within 21 days after becoming aware of the vacancy. Section 36(1)(a) of LCO further stipulates that the Electoral Affairs Commission ("EAC") must, in accordance with regulations in force under the EAC Ordinance (Cap 541), arrange for a by-election to be held when the Clerk to LegCo makes a declaration as to the existence of a vacancy in the membership of LegCo. The Guidelines on Election-related Activities in respect of LegCo Election issued by EAC ("the EAC Guidelines") apply to all LegCo general elections and by-elections.

4. According to 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. An extract on "Review and Recommendations" from the EAC Report on the 2010 LegCo by-election is in **Appendix I**.

5. As a result of the resignation of a LegCo Member with effect from 1 October 2015, EAC would arrange a by-election on 28 February 2016 for the LegCo New Territories ("NT") East to fill the vacancy, with the nomination period running from 5 to 18 January 2016.

Relevant discussions of the Panel

6. The Panel discussed the EAC Report on the 2000 LegCo Hong Kong Island GC by-election, the practical arrangements for the 2007 LegCo Hong Kong Island GC by-election, the EAC Report on the 2007 LegCo Hong Kong Island GC by-election and the practical arrangements for the 2010 LegCo by-election at its meetings held on 12 June 2001, 15 October 2007, 17 March 2008 and 19 April 2010 respectively. The relevant issues raised by members at these meetings are summarized in the following paragraphs.

Access to polling stations

7. For the 2010 LegCo by-election, some members expressed concern that only 85% of the polling stations were accessible to persons with disabilities ("PWDs"). They requested the Administration to undertake to provide polling stations with 100% barrier-free access facilities to PWDs in future elections, and to set up an enquiry hotline to answer PWDs' enquiries.

8. The Administration advised that the Registration and Electoral Office ("REO") would make the best endeavour to identify polling stations which could be easily accessible to PWDs. In identifying venues for use as polling stations, REO would arrange for venues accessible to PWDs as far as practicable. However, this would depend on constraints such as availability of venues suitable for use as polling stations, and consent of the venue management. If there was no other suitable choice and a venue which was not readily accessible to PWDs had to be used, REO would try to provide, where circumstances permitted, temporary ramps to increase the accessibility of the polling stations to PWDs. A poll card would be sent to each elector, which provided a hotline number and attached a map which indicated whether the polling station allocated to the elector was suitable for use by PWDs. If a PWD was allocated to a polling station unsuitable for his use, he could make a request, not later than five days before the polling day, to REO for re-allocation

to a polling station accessible to PWDs in his constituency. Where feasible, REO would also arrange for Rehabus service for electors with disabilities to commute to the relevant polling stations.

Election mail

9. On the sending of election advertisements ("EAs") and related materials, some members expressed support for encouraging candidates to disseminate EAs by electronic means for the protection of the environment. They considered that REO should provide candidates with the choice of receiving the address labels of electors for sending EAs on an individual or household basis, in order to reduce the consumption of address labels.

10. The Administration advised that less than 10% of the electors had provided their e-mail addresses to REO. The Administration would step up publicity to encourage electors to provide their email addresses. According to REO, it had been an established practice to provide each candidate upon request with a set of address labels pertaining to the electors in the constituency. Having regard to the views expressed by members, the Administration agreed to implement a new measure since the 2012 LegCo General Election to allow candidates to choose between address labels printed on a household basis (i.e. one address label for one household) and address labels printed on an individual basis (i.e. one address label for each individual elector except those who have provided REO with their email addresses for receiving EAs).

Exit poll

11. Some members were concerned that there were third parties conducting exit polls on their own means and disclosing the results to certain candidates for the purpose of assisting them in canvassing votes during an election, thereby causing unfairness to the other candidates. Considering that the improvement measures proposed by EAC could not ensure fairness in an election, they suggested that only academic institutions should be allowed to conduct exit polls.

12. The Administration considered that the existing EAC Guidelines urging the organizations concerned to refrain from announcing the results of exit polls until after the close of poll was appropriate, and was in line with that of many overseas countries. The Administration maintained the view that exit polls could be conducted by any person and organization and it would be inappropriate to mandate that only certain types of institutions, such as academic institutions, could do so. There was also no guarantee that academic institutions would not disclose exit poll results to any person or organization before the close of poll.

13. Some members enquired whether EAC would impose more stringent measures to regulate the conduct of exit poll so as to ensure fairness in LegCo by-elections. The Administration advised that the rules set out in the EAC Guidelines also applied to LegCo by-elections. In this connection, persons or organizations intending to conduct exit polls would have to make an application to REO and to abide by the guidelines governing the conduct of exit polls.

Electioneering on the election day

14. Some members advocated a cooling off period and enlargement of "No Canvassing Zone" on the polling day. They remarked that electors were getting more mature and would not be swayed easily by canvassing. The Administration advised that there were divided views on the issues but the Administration would take into account members' view in considering the electoral arrangements for future elections.

15. Members may wish to note that when the Panel discussed the proposed amendments to the EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D) at its meeting on 21 January 2008, the Administration informed members that it maintained the 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.

Training of staff

16. Ms Emily LAU expressed concern that as revealed in the petitions and complaints received by EAC, 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 issued for the Presiding Officers and polling staff. She suggested the Administration to enhance staff training, and not to recruit non-civil servants as electoral staff.

17. 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. In addition, polling management training which included crisis management, quality polling service, emotional intelligence training and experience sharing workshop would be organized for staff at the supervisory level. For those polling staff assigned to the duties of compiling statistical returns and counting results, specialized training on statistical work and hands-on practice would be provided to them.

Telephone canvassing

18. 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 in the EAC 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. EAC would clarify this point in its future Guidelines.

19. Members may wish to note that according to paragraph 9.19 of the EAC Guidelines which were amended in June 2012, 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. The Guidelines also contain a guidance note on personal data privacy in respect of electioneering activities prepared by the Office of the Privacy Commissioner for Personal Data.

Recent development

20. The Administration will brief the Panel on the practical arrangements for the 2016 LegCo By-election for the NT East GC at the next meeting on 16 November 2015.

Relevant papers

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

Section 7 – Review and Recommendations

7.1 The EAC is generally satisfied with the By-election, which was organised and conducted in an open, fair and honest manner. After the completion of the By-election, the EAC conducted an overall review of all aspects of the electoral procedures and arrangements with a view to improving the conduct of future elections. The EAC also took into consideration suggestions from the public and the issues raised in the complaints received. The areas reviewed and the related recommendations are set out in the ensuing paragraphs.

(A) Setting up of dedicated polling stations in prisons and ballot paper sorting stations

7.2 With all the provisions of the VIPO and the related amendment regulations made by the EAC coming into operation on 30 October 2009, this was the first election in which polling arrangements were provided for registered electors who were serving prison sentences. A total of 23 DPSs were set up for the first time in prisons on a territory-wide basis for registered electors imprisoned on the polling day. The poll at these

DPSs was conducted smoothly. This was also the first time that ballot papers cast at the DPSs were sorted at the BPSSs before they were delivered to the respective main counting stations for counting. The operation of the BPSSs was smooth.

Recommendation:

7.3 The EAC appreciates the efforts made by the REO for putting in place arrangements in accordance with the relevant electoral legislation to enable imprisoned electors to cast their votes for the first time in a public election in Hong Kong and to set up five BPSSs for the sorting of ballot papers cast at the DPSs. The voting arrangements for imprisoned electors are considered appropriate and should continue to be adopted. Given the suitability of the venues used for setting up as BPSSs in the By-election, they should continue to be used as far as practicable.

(B) Providing Address Labels of Electors to Candidates

7.4 For environmental protection, the REO had continued with the established practice of providing address labels of electors to candidates for free postage of EAs upon their request. Address labels were not

supplied on those electors who had provided their email address. Candidates were allowed to request for a whole set of or only part of the address labels of electors in their respective GCs, depending on the number of EAs they intended to send to their electors through free postage. The number of a full set of address labels corresponds to the number of electors of the respective GC excluding those electors who have provided their email address.

7.5 The EAC noted that one candidate made a request for the whole set of address labels of electors in his GC, but eventually did not collect the printed address labels. In addition, a number of candidates used only a small number or even none of the address labels received from the REO for free postage. Although candidates were required to sign an undertaking that the address labels should be used solely for the purpose related to the By-election, the REO had taken prompt action after the By-election to request the candidates concerned to properly dispose of the unused address labels as soon as possible or to return them to the REO for proper disposal so as to prevent any leakage of personal data of the registered electors.

Recommendation:

7.6 In future elections, candidates should be reminded to plan ahead carefully whether they would use free postage for sending out EAs before requesting for the printed address labels and to make full use of them.

(C) Free postage for EAs

7.7 The identical version of the EA specimen submitted by five candidates in five different GCs for free postage was not approved by the Hong Kong Post on the ground that the EA specimen contains clear message in promoting more than one candidature, thus contravening the requirement under section 101A of the EAC(EP)(LC)Reg. Having considered the contents of the EA specimen and the arguments put forward by the legal representatives of the aforesaid candidates, the EAC shared the view that the EA specimen should not be approved for free postage. The reasons are as follows:

- (a) Section 43(4) of the LCO stipulates that the letter (i.e. the EA) must relate to the election concerned and must comply

with all requirements and limitations (if any) prescribed by the regulations and by regulations in force under the EACO;

- (b) Section 101A of the EAC(EP)(LC)Reg also prescribes, inter alia, that the letter must contain materials relating only to the candidature of the candidate at the election concerned; and
- (c) The EA specimen contains clearly message in promoting more than one candidature.

7.8 The EAC was given to understand that before the Hong Kong Post advised the five candidates of its decision, they had already arranged for mass production of their EAs. In the end, the five candidates chose not to revise the contents of their EA specimen. As they did not comply with the specified statutory requirements, they were unable to use the free postage service.

Recommendation:

7.9 All candidates of the By-election were advised to apply to the Hong Kong Post for approval of their EA specimens for free postage

upon their submission of the nomination forms. At the briefing session for candidates on 13 April 2010, they were further reminded to do so and observe the requirements of free postage for EAs as set out in the relevant electoral legislation and guidelines. The EAC is of the view that candidates should carefully study the aforesaid requirements governing free postage for EAs before deciding on the contents of their EAs and seek advice from the Hong Kong Post and the REO as appropriate if in doubt. In any case, candidates should make every effort to submit their EA specimens to the Hong Kong Post for approval as early as possible before mass production of their EAs so as to allow sufficient time for revising the contents of their EA specimens, if necessary.

Appendix II

Relevant papers on practical arrangements for the 2016 Legislative Council By-election for the New Territories East Geographical Constituency

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	12.6.2001 (Item IV)	Agenda Minutes
	15.10.2007 (Item III)	Agenda Minutes
	17.3.2008 (Item V)	Agenda Minutes
	19.4.2010 (Item IV)	Agenda Minutes

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