

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1085/15-16(04)

Ref : CB2/PL/CA

**Panel on Constitutional Affairs**  
**Background brief prepared by the Legislative Council Secretariat**  
**for the meeting on 21 March 2016**

**Electoral Affairs Commission Report on the**  
**2015 District Council Ordinary Election**

**Purpose**

1. This paper provides background information on the Electoral Affairs Commission ("EAC") Report on the 2015 District Council ("DC") Ordinary Election and gives a brief account of the past discussions held by the Panel on Constitutional Affairs ("the Panel") on issues relating to the 2015 DC Election.

**Background**

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. In accordance with section 8 of the EAC Ordinance (Cap. 541), EAC shall make a report to the Chief Executive ("CE"), 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. EAC had made reports in respect of the 1999, 2003, 2007 and 2011 DC elections respectively. The recommendations made by EAC in respect of the 2011 DC Election are in **Appendix I**.

3. The 2015 DC Election was held on 22 November 2015. Accordingly, EAC submitted the Report on the 2015 DC Ordinary Election to CE on 22 February 2016. The Report was published on 15 March 2016.

**Relevant discussions of the Panel**

4. The Panel discussed the Proposed Guidelines on Election-related Activities in respect of the DC Election ("Proposed Guidelines") and the practical arrangements for the 2015 DC Election on 18 May 2015 and 15 June 2015 respectively. The major issues raised at these meetings are summarized in the following paragraphs.

## Election advertisements ("EAs")

5. Some members expressed concern about the problem of improper display of EAs mounted at public places during an election period. They considered that the Proposed Guidelines on allocation of spots on private premises for display of EAs were also unclear. The Administration explained that the identification of designated spots on government land/property was centrally coordinated by the Registration and Electoral Office ("REO"). The Returning Officers ("ROs") would take enforcement action against EAs placed at public spots not specified in the list of "designated spots". As for display of EAs on private premises, written permission of the private owner or occupier would have to be obtained by the candidates themselves. According to the Proposed Guidelines, owners and occupiers of private premises should give fair and equal treatment to all candidates competing in the same constituency in the display of EAs. For any non-compliance, EAC might issue a public statement of reprimand or censure against the management bodies of organizations and buildings concerned.

6. Some members expressed concern about the regulation of election-related materials published or distributed on social networking and communication websites. They expressed concern whether an individual sharing an EA on social media without the prior consent of the candidate might be regarded to have breached section 23<sup>1</sup> of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), as only a candidate or a person who had been duly authorized by the candidate as his/her election expense agent might incur election expenses. As such, they were concerned that an EA (e.g. a photo or video clip taken on a candidate by a supporter containing supportive remarks about that candidate) might be uploaded on YouTube or Facebook by a supporter without the candidate's knowledge. Furthermore, such EAs might be forwarded by web surfers to others through social networking websites again without the knowledge and consent of the candidate concerned. Members were concerned whether such sharing or forwarding would fall within the definition of publication of EAs and whether the costs involved would be regarded as election expenses.

7. The Administration explained that, generally speaking, if web surfers merely shared or forwarded different candidates' election campaigns through on-line platforms and did not intend to promote or prejudice the elections of any candidates, such sharing or forwarding would not fall within the definition of

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<sup>1</sup>Section 23(1) of ECICO stipulates that –

"A person, other than a candidate or a candidate's election expense agent, engages in illegal conduct at an election if the person incurs election expenses at or in connection with the election."

publishing EAs. In response to members' concerns, the Administration further provided a paper (LC Paper No. CB(2)2127/14-15(01)) on publishing EAs through social networking or communication websites on the Internet (**Appendix II**).

8. Some members enquired whether candidates could use social networking or communication websites during the election period to respond to smearing activities against them. The Administration explained that candidates could use social networking or communication websites to publish information during election period. However, any material published for the purpose of promoting or prejudicing the election of any candidate in an election (including candidates' response to smearing activities) would be regarded as an EA and subject to the public inspection requirement. Candidates would need to post the hyperlinks to the relevant social networking or communication websites (such as Facebook or YouTube) onto the Central Platform maintained by the Chief Electoral Officer in order to satisfy the public inspection requirement in relation to EAs.

#### Exit poll

9. Some members expressed concern about the background of the persons or organizations conducting exit polls (or the pollsters), and the possible use of exit poll results by political parties to plan their electioneering activities before the close of poll. They asked about the regulation of exit polls so as to ensure fairness in the elections (e.g. interviewers should not be allowed to carry mobile telephones or other communication devices to avoid premature disclosure of relevant figures). They further suggested that EAC should restrict the number of organizations approved to conduct exit polls, and that an area outside each polling station should be designated for the exclusive use of interviewers and the electors being interviewed.

10. The Administration explained that organizations or persons applying for the conduct of exit polls were required to sign an undertaking not to release, directly or indirectly, the results of the exit polls or make specific remarks or predictions on the performance of any candidate before the close of poll. Moreover, applicants had to declare that they were neither contesting nor had members contesting in the constituency(ies) to be covered by the exit poll and had not publicly expressed support for any candidate contesting in the constituency(ies). Furthermore, to ensure transparency, a list of approved pollsters would be uploaded to the election website before the polling day; and a notice showing the particulars of the approved pollsters with their contact numbers would also be displayed at each of the polling stations concerned. In addition, the interviewers were required to display prominently an identification device showing the identity of the organization conducting exit poll, and to read out a standard script to the interviewee before conducting the interview, making

clear that the exit poll was not commissioned by the Government and that the interviewee was entirely at liberty as to whether to respond to the pollster.

#### Congestion at polling places

11. Some members enquired how REO would ensure unobstructed passage to the polling stations. The Administration advised that an area immediately outside the polling station was designated as the No Canvassing Zone ("NCZ") and No Staying Zone ("NSZ") in order to maintain free passage for electors and to ensure that electors were not unduly harassed on their way to a polling station. On the polling day, the Presiding Officer ("PRO") would ensure that no person would carry out any activity other than those permitted in a NCZ or NSZ.

12. Some members enquired about the criteria for determining the size of a NCZ. The Administration advised that the relevant RO, assisted by REO, would determine the size of NCZ outside a polling station taking into account the characteristics and special conditions of the polling station. Taking into account past experience, REO would review the size of NCZ in consultation with ROs and the rule of thumb remained that the size of NCZ should be kept to a minimum so as not to affect the electioneering activities of candidates.

#### Facilitation measures for electors with special needs

13. Some members considered that when a polling staff member assisted an incapacitated elector (e.g. an elderly) in marking the ballot paper, he/she should do so in the presence of a third party as a witness. The Administration explained that the relevant legislation provided that incapacitated electors who were unable to mark a ballot paper might ask PRO, Deputy Presiding Officer or Assistant Presiding Officer to do so on his/her behalf. This would be done in the presence of one of the polling officers as a witness and all these cases would be properly recorded.

14. Some members enquired about the measures to facilitate ethnic minority electors to vote in the election. The Administration explained that all polling stations were equipped with a language assistance folder containing voting instructions in seven ethnic minority languages to assist those who could not communicate in Chinese and English to understand the voting procedures. REO would collaborate with the Centre for Harmony and Enhancement of Ethnic Minority Residents to provide interpretation service in seven ethnic minority languages, through REO telephone hotline service, to help electors of ethnic minorities understand the voting procedures.

### Election-related complaints

15. Some members pointed out that as reported by the media during the past elections, free transportation had been provided to take some elderly electors to the polling stations for the voting and a label showing a number (which was believed to be a candidate number) was seen affixed to the palm of the electors concerned. The Administration explained that the provision of transportation service to electors might be interpreted as "any other service" under the definition of "advantage" in section 2 of ECICO. If the transportation service was offered as an inducement to get, or try to get a third person to vote at the election for a particular candidate, the person who offered the transportation service might run the risk of contravening ECICO. Cases with prima facie evidence would be referred to the law enforcement agencies for follow-up investigation.

### **Latest development**

16. The Panel will discuss the EAC Report on the 2015 DC Ordinary Election at the next meeting on 21 March 2016.

### **Relevant papers**

17. A list of the relevant papers available on the Legislative Council website is in **Appendix III**.

### **Recommendations in the Electoral Affairs Commission Report on the 2011 District Council Election**

#### 1. Dedicated Polling Stations and Ballot Paper Sorting Stations

The Registration and Electoral Office (“REO”) put in place necessary arrangements to ensure that the smooth operation of the dedicated polling stations and ballot paper sorting stations (“BPSSs”) as well as the correct and efficient delivery of the ballot papers from the BPSSs to a large number of counting stations. The Electoral Affairs Commission (“EAC”) considers that the arrangements put in place were appropriate and should continue to be adopted in future District Council ordinary elections (paragraphs 13.2 – 13.4 of the Report).

#### 2. Measures to Facilitate Electors with Disabilities and Ethnic Minorities Electors to Vote

The REO had secured 425 (94%) ordinary polling stations, out of the total 452, which were accessible to electors with disabilities and adopted a number of accommodation measures to facilitate people with disabilities and ethnic minorities to vote in the election. The EAC recommends that the REO should continue its efforts and work closely with the Equal Opportunities Commission with a view to identifying more barrier-free venues for setting up polling stations and exploring further accommodation measures in future elections (paragraphs 13.5 – 13.10 of the Report).

#### 3. Allocation of Some Electors to Incorrect Polling Stations

Some registered electors of four constituencies (about 20 000) had been allocated to an incorrect polling station which was within the respective constituencies but not the one close to the electors’ registered addresses. After the occurrence of the incident, the REO had taken prompt and appropriate remedial actions. As a result, the poll in the polling stations concerned was conducted smoothly and no hiccups relating to the voting of the electors concerned were reported. The EAC recommends that the REO should critically review the existing mechanism for allocation of polling stations to electors with a view to ensuring accuracy and thoroughness (paragraphs 13.11 – 13.13 of the Report).

#### 4. Reduction of Paper Consumption on Election-related Materials

The REO should continue to explore further possible measures to reduce paper consumption in future elections. The EAC recommends that in order to reduce the number of hard copy election advertisements (“EAs”) sent to electors, candidates should be provided with a choice between “individual” and “household” address labels when using free postage to mail EAs to electors. Continuous efforts should also be made to solicit email addresses from the electors which will facilitate the sending of EAs by electronic means to more electors (paragraphs 13.14 – 13.15 of the Report).

#### 5. Use of Electors’ Email Addresses by Candidates

On the complaints about the inadvertent disclosure of electors’ email addresses to other recipients by candidates when sending EAs to electors by email, the EAC considers it necessary to remind candidates and their agents in the candidates’ briefing sessions on the proper use of electors’ email addresses including the need to put the electors’ email addresses in the b.c.c. field when sending out their EAs by email. Furthermore, a more eye-catching reminder should be included in the “User Guide of Candidate Mailing Label System” (paragraphs 13.16 – 13.18 of the Report).

#### 6. Canvassing by Telephone and Short Message Service

In view of the complaints received about the nuisance caused by canvassing telephone calls/short message service and possible abuse of personal data of electors for electioneering purpose, the EAC considers it necessary to give candidates and their supporters a stronger reminder in the Guidelines and in the candidates’ briefing sessions for future elections on the need to strictly follow the guidance notes on personal data privacy in respect of electioneering activities issued by the Office of the Privacy Commissioner for Personal Data (paragraphs 13.19 – 13.23 of the Report).

**Legislative Council Panel on Constitutional Affairs  
Follow up on issues raised at the meetings on  
20 April 2015 and 18 May 2015**

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**Publishing election advertisements through social networking or communication websites on the Internet**

11. According to section 2 of the ECICO, "election advertisement" means any form of publication published for the purpose of promoting or prejudicing the election of any candidates at an election and "election expenses" mean expenses incurred or to be incurred before, during or after an election, by or on behalf of a candidate for the purpose of promoting the election of the candidate, or prejudicing the election of another candidate or other candidates. As such, the election campaign published by a candidate through on-line platforms such as websites, social networking or communication websites etc. is regarded as an election advertisement and the relevant production and operating costs including internet service fees, on-line advertisement design fees, etc. should be counted towards the candidate's election expenses and be clearly declared in his/her election return.

12. If the content of the election advertisement published by the candidate through an internet platform shows the support of a person or an organisation, the candidate must obtain the prior written consent of the person or organisation concerned in order to comply with section 27(1) of the ECICO. If, however, web surfers show support to the candidate out of their own volition by giving responses or indicating "like" in the election advertisement published by the candidate through the said platform, the candidate will then not be required to seek their prior written consent.

13. However, the candidate must not modify the name, logo or pictorial representation of, or any content given by the above web surfers,



unless prior written consent on the modification has been obtained from them. Otherwise, the candidate will violate the law.

14. If web surfers merely share or forward different candidates' election campaigns through the internet platform for expression of views and do not intend to promote or prejudice the elections of any candidates, such sharing or forwarding does not satisfy the definition of publication of election advertisements and the costs involved will not be regarded as election expenses. However, if a web surfer is instructed by the candidate or his/her election helpers to share or forward the election campaigns through the on-line platform with the intention to promote the candidate's election or prejudice the election of other candidates, such act will be regarded as publication of the candidate's election advertisements and any costs incurred will have to be included in the candidate's election expenses.

15. In addition, electioneering messages published through on-line platforms meet the definition of election advertisement. The candidate should comply with all the requirements governing election advertisements and election expenses under the relevant legislations and the guidelines on publication of election advertisements issued by the Electoral Affairs Commission ("EAC"), including that a candidate must provide the election advertisement and relevant information according to the means specified by the EAC to the relevant Returning Officer, or post the election advertisement or a hyperlink of the on-line platform publishing the election advertisement and upload the relevant information onto the "Central Platform" or the "Candidate's Platform" within 1 working day (i.e. any day other than a general holiday or Saturday) after publication of the election advertisement in order to comply with the public inspection requirement as stipulated in the legislation. For details, please refer to Chapter 7 of the Guidelines on Election-related Activities in respect of the District Council Election.

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## Appendix III

### Relevant documents on Electoral Affairs Commission Report on the 2015 District Council Ordinary Election

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	18.5.2015 (Items III and IV)	<a href="#">Agenda</a> <a href="#">Minutes</a> <a href="#">CB(2)2127/14-15(01)</a> <a href="#">IN01/15-16</a>
	15.6.2015 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>

Council Business Division 2  
Legislative Council Secretariat  
17 March 2016