

**Legislative Council Panel on Constitutional Affairs**

**Regulation of the Use of Social Media, the Imposition of a Cooling-off Period and the Conduct of Election Polls in Public Elections**

**Purpose**

This paper briefs Members and seeks their views on the relevant practices in Hong Kong and overseas on matters related to the regulation of the use of social media, the imposition of a cooling-off period and the conduct of election polls in public elections.

**(A) The Use of Social Media in Public Elections**

***Background***

2. During the public consultation exercises conducted by the Electoral Affairs Commission (“EAC”) and the discussion of this Panel earlier on the guidelines on election-related activities of several public elections, views have been expressed that the definition of election advertisement (“EA”) is too wide. There were worries that commenting on candidates, changing profile pictures or suggesting voting for a particular candidate on the social media could be regarded as publishing EAs, hence restricting freedom of speech and subjecting web surfers to inadvertent breach of electoral laws. There were also concerns over whether the relevant expenses would be regarded as election expenses. In this connection, some Members suggested that the Government should conduct a study on the regulatory practices in overseas countries.

***Existing Requirements of Hong Kong***

3. In order to ensure that elections are conducted in an open, fair and honest manner, EAs are strictly regulated by the law as well as the guidelines on election-related activities. At present, EAs are subjected to the provisions of the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) (Cap. 554) and the relevant regulations on electoral procedures under the Electoral Affairs Commission Ordinance (Cap. 541) (“EAC Regulations”). Besides, the guidelines on election-related activities issued by the EAC under the Electoral Affairs Commission Ordinance also provide guidance on compliance with the

relevant electoral legislation.

4. Under the ECICO, EA refers to any form of publication published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election. Hence, EAs published through the Internet (including social media) or by means of traditional publicity media are equally subject to the regulation of the existing legislation. On the other hand, after taking into account the views of the Legislative Council (“LegCo”) in scrutinising the Elections (Corrupt and Illegal Conduct) Bill (“the Bill”), the “purpose test” has been adopted in the existing legislation in defining what constitutes an EA.<sup>1</sup> In other words, whether an advertisement should be treated as an EA depends on whether the purpose of publishing the advertisement was to promote or prejudice the election of a candidate or candidates.

5. According to the EAC Regulations and the guidelines on election-related activities, a candidate should, within one working day after publication of an EA, post a copy of the EA with the relevant information, permission or consent onto the Central Platform maintained by the Chief Electoral Officer or the Candidate’s Platform maintained by the candidate himself/herself, or deposit hard copies or CD-ROM with the Returning Officer, for public inspection. If the EA is publicised on the Internet through an open platform, and it is technically impracticable to post a copy of the EA onto the Central Platform or the Candidate’s Platform<sup>2</sup>, the candidate concerned may post a hyperlink of the open platform onto the Central Platform or the Candidate’s Platform for public inspection.

6. As regards election expenses, according to the ECICO, election expenses refer to the expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate. The candidate must lodge within a statutory

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<sup>1</sup> When the Bill was scrutinised by the LegCo in 1999-2000, some members of the Bills Committee considered the definition of EA (i.e., “having the effect of promoting or prejudicing the election of a candidate or candidates at the election”) in the original Bill too board. To dispel doubts and worries, the Government proposed to amend the definition of “EA” in the Bill by adopting a “purpose test” in place of an “effect test”. In other words, a publication would only be caught in the definition of an EA if and only if it were for the purpose of promoting or prejudicing the election of a candidate or candidates. The amended definition was later endorsed by the LegCo.

<sup>2</sup> For example, messages which are sent through social networking or communication websites like Twitter, Facebook, blogs, etc. on the Internet, and the exchanges are of an interactive and spontaneous nature.

specified period an election return setting out his/her election expenses and all election donations received in the election for public inspection. The ECICO also provides that a candidate engages in illegal conduct at an election if the aggregate amount of election expenses incurred at the election by or on behalf of the candidate exceeds the prescribed maximum amount of election expenses. Moreover, it is also an illegal conduct for a person, other than a candidate or a candidate's election expense agent, to incur election expenses at or in connection with the election. All the above requirements are applicable to the election expenses incurred for the purposes of producing or publishing an EA.

7. In view of the concerns expressed by the public and Panel Members, the EAC has since 2015 further elaborated on the regulation of EAs published through social networking or communication websites on the Internet in the guidelines on election-related activities. 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 will not normally be construed as publishing EAs. However, if the web surfers are instructed by the candidate or his/her election helpers to share or forward the election campaigns through the Internet platform with the intention to promote or prejudice the election of a candidate or candidates at the election, such act will be regarded as publication of the candidate's EAs and any costs incurred will have to be included in the candidate's election expenses. The candidate concerned should also observe fully the requirements relating to publication of EAs as set out in paragraph 5 above.

### ***Overseas Practices***

8. We have studied whether views expressed on the Internet (including social media) are regarded as EAs in Australia, Canada, New Zealand, Singapore and the United Kingdom ("the UK")<sup>3</sup>. The relevant findings are set out in **Annex A** for Members' reference.

9. Overall speaking, the majority of countries under study (Australia, Canada, New Zealand and Singapore) have, to different extent, granted exemption under their electoral legislation regarding the expression of personal views by individuals on the Internet, such that the views so expressed will not be included in the definition of EA or subject

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<sup>3</sup> The study mentioned in this paper focuses on the regulations relating to elections of the legislature in various overseas countries.

to the regulation on EA.

10. As regards the extent of exemption granted for views expressed on the Internet, regulations in different countries are as follow:

- (a) Singapore's exemption only applies to the transmission of personal political views by an individual to another individual. New Zealand exempts publication of personal political views by individuals. In Canada, the exemption covers the views of both individuals and groups. In Australia, the relevant legislation has not specified if the exemption for general commentary is applicable to both individuals and groups; and
- (b) only paid-for EAs are subject to relevant regulation in Australia. For Canada, New Zealand and Singapore, views published on a non-commercial basis or not involving making or receiving payments are not regarded as EAs.

### ***Issues to be Considered***

11. In respect of regulating the use of social media in public elections, Members may consider the following issues:

- (i) whether consideration may be given to providing in the definition of EA an exemption for expression of personal views by individuals on the Internet (including the social media), on the premise that the expression of public opinion should be unobstructed and the fairness of the election upheld;
- (ii) whether exemption should also be provided for views expressed by groups on the Internet if expression of personal views by individuals on the Internet has been exempted from inclusion in the definition of EA;
- (iii) whether it should be stipulated that such exemption should only be provided on the condition that no payment has been made to the social media or website service provider by the parties concerned; and

- (iv) whether it should be stipulated that such exemption should only be provided on the condition that the parties concerned has not received any payment.

## **(B) Cooling-off Period for Elections**

### ***Background***

12. At the meeting last month, a Member requested the Government to examine at the same time the regulations and guidelines relating to the imposition of a cooling-off period in elections in overseas countries.

### ***Existing Requirements of Hong Kong***

13. There is at present no prohibition against the conduct of canvassing activities on or before the polling day so as to avoid affecting the atmosphere for the election and the voting desire of electors. With regard to electioneering activities, it has all along been the Government's policy to allow candidates to choose in accordance with their practical needs the various canvassing activities they wish to conduct, provided that the activities are in line with the relevant regulations and guidelines.

### ***Overseas Practices***

14. Amongst the countries under study, Australia, Canada, New Zealand and Singapore have put in place a cooling-off period in elections. The main purpose is to allow electors to reflect on how they are going to vote before the poll. The relevant information is set out in **Annex B** for Members' reference. There is no such arrangement in the UK.

15. The four countries mentioned above have different requirements with regard to cooling-off period in elections, the duration of which ranges from one day (the polling day) to three days (the polling day and two days prior to the polling day). In Australia, only the broadcast of EAs on television and radio is restricted during the cooling-off period. In Canada and Singapore, the publication of EAs (with certain exceptions) and, for Singapore, canvassing and holding of election meetings are prohibited during the cooling-off period. In New Zealand, apart from prohibiting EAs and election publicity activities, any statements (not limited to EAs) that can be said to influence electors are also banned during the cooling-off period.

### *Issues to be Considered*

16. Members may consider whether it is necessary to impose a cooling-off period in elections.

#### **(C) Regulation of Election Surveys**

##### *Background*

17. In the 2016 LegCo general election, various election surveys were conducted by different organisations on or before the polling day with announcement of the results. There were also media reports that some people intended to use the results of such surveys for the matching of votes. In this connection, some LegCo Members expressed their concerns over the regulation of election surveys, and suggested that the Government should review the relevant legislation with a view to curbing the use of election survey results to allocate or canvass votes in an unfair manner during the poll. Moreover, there were also views in the community that the various types of election surveys conducted on or before the polling day should also be subject to regulation.

##### *Existing Requirements of Hong Kong*

18. According to the EAC Regulations, a person who obtains or attempts to obtain in any manner within a polling station or a No Staying Zone, or within a No Canvassing Zone (“NCZ”) without the express permission of the Presiding Officer or the EAC, information as to the candidate for whom an elector in the polling station is about to vote or has voted, commits an offence. There is no provision under the existing legislation on details of the regulation of exit polls approved to be conducted within the NCZs.

19. Under existing arrangements, any person or organisation may apply to the Registration and Electoral Office (“REO”) to conduct exit polls within NCZs. The EAC has promulgated guidelines in relation to exit polls conducted within NCZs (“the Guidelines”) (see Chapter 15 of the Guidelines on Election-related Activities in respect of the Legislative Council Election as shown in **Annex C**). The chapter sets out the guidelines for the conduct, publication and broadcast of exit polls to avoid unfair interference with the election process by unduly influencing electors.

20. The Guidelines stipulates that any announcement or disclosure of results of exit polls or predictions, particularly in relation to any individual candidate, during the polling hours may affect electors' behaviour and have an impact on election results. The EAC therefore reminds the media and organisations concerned that they should not announce the results of exit polls or make specific remarks or predictions on the performance of individual candidate before the close of poll.

21. Moreover, since the 2015 District Council ordinary election, the EAC has required the applicant or the applicant organisation for conducting exit poll to make a statutory declaration undertaking to abide by the terms on conduct of exit poll and the Guidelines. With regard to the use of exit poll results, the statutory declaration requires the applicant or applicant organisation to undertake not to announce or disclose the results of the exit poll or make specific remarks or predictions in relation to the performance of any candidate/list of candidates before the close of poll.

22. If applicants or applicant organisations fail to comply with the terms of the statutory declaration or requirements of the Guidelines, the EAC can revoke the approval for the conduct of exit poll. The EAC may also make a censure or even reprimand in a public statement which states the name of the person or the organisation concerned. If applicants or applicant organisations knowingly make a false statement on a material particular in the statutory declaration, they may be subject to criminal liability.

23. There is no regulation under the existing legislation on election surveys conducted outside of the NCZs on the polling day, and on election surveys conducted through different channels (e.g. by phone, on the Internet) prior to the polling day. However, if the election survey concerned involves publication of EAs or election expenses, and the publisher is neither a candidate nor an election expense agent of the candidate, the publisher may then be engaging in an illegal conduct under the ECICO as stated in paragraph 6 above. If a candidate instructs that person or organisation to publish the EAs concerned and does not include such expenses in his/her election expenses, the candidate would also violate the regulation under the ECICO. Upon receipt of any complaint that someone may have engaged in corrupt or illegal conduct in elections, the REO will refer such complaint to law enforcement agencies for investigation and follow-up action.

## *Overseas Practices*

24. Among the countries studied (findings are set out in **Annex D**), New Zealand prohibits, by way of legislation, the conduct of any election survey as well as the publication of any statement advising or intended or likely to influence any elector as to the candidate or party for whom the elector should or should not vote on the polling day. As for Canada, Singapore and the UK, legislation has been enacted to prohibit the publication of any election survey results in relation to the voting choice of electors, or predictions of election results before the close of poll on the polling day. There is no similar requirement in Australia.

25. Regarding election surveys conducted prior to the polling day, New Zealand prohibits the conduct of election surveys on how an elector actually voted prior to the polling day<sup>4</sup>. Singapore has also enacted legislation to prohibit the publication of any election survey results about electors' voting preference from the day when the writ of election<sup>5</sup> is issued until the close of poll. As for the remaining three countries, there is no prohibition on the publication of election survey results prior to the polling day.

## *Issues to be considered*

26. In respect of regulation of election surveys, Members may consider the following issues:

- (i) whether any change should be made to the existing regulation on exit poll on the polling day;
- (ii) whether election surveys on elector's voting choice conducted outside the NCZs on the polling day should be regulated. Specifically, whether announcement or disclosure of such survey results or whether the making of specific remarks or predictions on the performance of individual candidates should be prohibited before the close of poll; and

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<sup>4</sup> In New Zealand, electors are allowed to cast their votes prior to the polling day.

<sup>5</sup> The President of Singapore, when advised by the Prime Minister, will issue the writ of election to the Returning Officers. The writ specifies the nomination day and the place of nomination. The nomination day is set not earlier than five days nor later than one month from the date of issuing the writ.



- (iii) whether and to what extent election surveys on electors' voting preference conducted prior to the polling day should be regulated. Specifically, whether announcement or disclosure of such survey results or whether the making of specific remarks or predictions on the performance of individual candidates should be prohibited on or prior to the polling day.

### **Views Sought**

27. Members are invited to comment on the issues raised in paragraphs 11, 16 and 26 above.

Constitutional and Mainland Affairs Bureau  
December 2016

**Treatment of views expressed on the Internet  
under electoral laws or guidelines in Hong Kong and selected places**

| Hong Kong                                                                                                                                                                                                                                                                                                                         | Australia                                                                                                                                                                                                | Canada                                                                                                                                                                                                                                                                                                                                                                                                                            | New Zealand                                                                                                                                                                                                                                                        | Singapore                                                                                                                                                                                                                                     | United Kingdom                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>If web surfers merely share or forward different candidates' election campaigns through Internet platforms for expression of views and do not intend to promote or prejudice the elections of any candidates, such sharing or forwarding will not normally be construed as publishing election advertisements.<sup>1</sup></p> | <p>Any matter published on the Internet that forms part of a general commentary on a website is not subject to the regulation on publication of electoral advertisement on the Internet.<sup>2</sup></p> | <p>Election messages communicated over the Internet are election advertising only if they have, or would normally have, a placement cost and meet the statutory criteria of promoting or opposing a registered party or candidate.<sup>3</sup></p> <p>The transmission of personal political views by an individual or a group<sup>4</sup> on a non-commercial basis on the Internet is not election advertising.<sup>5</sup></p> | <p>Any publication on the Internet, or other electronic medium, of personal political views by an individual (but not a group) who does not make or receive a payment in respect of the publication of those views are not election advertisement.<sup>6</sup></p> | <p>The definition of election advertising shall not apply to telephonic or electronic transmission by an individual to another individual of the first-mentioned individual's own political views, on a non-commercial basis.<sup>7</sup></p> | <p>There is no express provision governing personal views on the Internet but only materials which can reasonably be regarded as intended to promote, procure or prejudice the electoral success at any relevant election will be treated as election material.<sup>8</sup></p> |

<sup>1</sup> Paragraph 8.4, Guidelines on Election-related Activities in respect of the Legislative Council Election

<sup>2</sup> The Commonwealth Electoral Act 1918 does not contain a comprehensive definition of electoral advertisement, but has imposed regulation on the publication of electoral advertisement on the Internet under its section 328A, which requires a paid-for electoral advertisement on the Internet intended to affect voting in an election to bear the name and address of the person who authorised the advertisement.

<sup>3</sup> Interpretation Note: 2015-04 (July 2015) on Election advertising on the Internet

<sup>4</sup> Under Elections Canada's interpretation, opinion published by a group on the Internet may also escape from the definition on election advertising.

<sup>5</sup> Section 319, Canada Elections Act

<sup>6</sup> Section 3A(2)(e), Electoral Act 1993

<sup>7</sup> Section 61(6)(1)(d), Parliamentary Elections Act

<sup>8</sup> Section 85(3), Political Parties, Elections and Referendums Act 2000

**Cooling-off period for elections in selected places**

|                                            | <b>Australia</b>                                                                   | <b>Canada</b>                                                                                                                                                                        | <b>New Zealand</b>                                                                                                                                                                                     | <b>Singapore</b>                                                                                                                                                                                                                                                                                          |
|--------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Duration of the cooling-off period         | From two days before polling day until close of poll on polling day <sup>1</sup> . | On polling day before the close of all of the polling stations in the electoral district <sup>2</sup> .                                                                              | On polling day before the close of poll <sup>3</sup> .                                                                                                                                                 | Any time on polling day and the eve of polling day <sup>4</sup> .                                                                                                                                                                                                                                         |
| Prohibitions during the cooling-off period | All political advertising on television and radio <sup>5</sup> .                   | Election advertising transmitted to the public in an electoral district.                                                                                                             | Any activities (including advertising) promoting the election of a candidate or party are prohibited. The law effectively prohibits anything that can be said to interfere with or influence electors. | <ul style="list-style-type: none"> <li>- Publishing any election advertising or displaying any election advertising on any vehicle, thing or structure.</li> <li>- Canvassing, visiting homes and workplaces of voters in connection with the election</li> <li>- Holding of election meetings</li> </ul> |
| Exceptions to the prohibitions             | Nil.                                                                               | <ul style="list-style-type: none"> <li>- Notice regarding a meeting of the leader of a registered party<sup>6</sup>.</li> <li>- Messages transmitted through the Internet</li> </ul> | <ul style="list-style-type: none"> <li>- Wearing a party lapel badge or rosette in public.</li> <li>- Displaying streamers, rosettes,</li> </ul>                                                       | <ul style="list-style-type: none"> <li>- Party political broadcasts on television (exception not applicable to polling day).</li> </ul>                                                                                                                                                                   |

<sup>1</sup> Clause 3A(2), Schedule 2, Broadcasting Services Act 1992

<sup>2</sup> Section 323(1), Canada Elections Act

<sup>3</sup> Section 197(1), Electoral Act 1993

<sup>4</sup> Section 78B(1), Parliamentary Elections Act

<sup>5</sup> Paragraph 64, Electoral Backgrounder: Electoral advertising ([http://www.aec.gov.au/about\\_aec/Publications/Backgrounders/electoral-advertising.htm](http://www.aec.gov.au/about_aec/Publications/Backgrounders/electoral-advertising.htm))

<sup>6</sup> Section 323(2), Canada Elections Act

|  | <b>Australia</b> | <b>Canada</b>                                                                                                                                                                                                                        | <b>New Zealand</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Singapore</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |                  | <p>before the cooling-off period and that was not changed during that period.</p> <ul style="list-style-type: none"> <li>- Distribution of pamphlets or the posting of messages on signs, posters or banners<sup>7</sup>.</li> </ul> | <p>ribbons or similar items in party colours on people or vehicles.</p> <ul style="list-style-type: none"> <li>- Contacting electors to offer help to get to a voting place without influencing their voting choice.</li> <li>- Continuing to display fixed signs that were up before polling day on party headquarters and MP offices which is not related to the election campaign.</li> <li>- Election material up on a website which is not updated on polling day, available to people who voluntarily access it, and the website is not advertised.<sup>8</sup></li> </ul> | <ul style="list-style-type: none"> <li>- Reports in the newspapers, on radio and television relating to election matters.</li> <li>- Approved posters and banners and lawful Internet advertising that were already up.</li> <li>- Books previously scheduled for publication.</li> <li>- The transmission of personal political views by individuals to other individuals, on a non-commercial basis, using the Internet, telephone or electronic means.</li> <li>- Any activities or circumstances prescribed by the Minister<sup>9</sup>.</li> </ul> |

<sup>7</sup> Section 324, Canada Elections Act

<sup>8</sup> Summary of the rules for candidates, parties and third parties, Election Day Rules for Candidates, Parties and Third Parties (<http://www.elections.org.nz/events/2014-general-election/2014-parties-candidates-and-third-parties/election-day-rules-candidat-0>)

<sup>9</sup> Section 78B(2), Parliamentary Elections Act

## CHAPTER 15

### EXIT POLL

#### **PART I : GENERAL**

15.1 This chapter sets out the guidelines for the conduct, publication and broadcast of exit polls to avoid unfair interference with the election process by unduly influencing electors. The aim is to ensure that elections are conducted honestly and fairly and, at the same time, to strike a good balance between the need to maintain order outside polling stations and upholding the freedom of expression, freedom of the press and academic freedom. *[Amended in June 2012]*

15.2 **The EAC appeals to the media and organisations concerned for self-regulation, goodwill and voluntary cooperation in the conduct of exit polls, and the publication and broadcast of the result of exit polls so that electors' behaviour will not be unduly affected.**

#### **PART II : SECRECY OF THE VOTE**

15.3 **The ballot is secret.** It is an elector's right to keep his/her vote secret. An elector does not have to disclose his/her choice of candidate/list of candidates if he/she does not want to. **It is a criminal offence for a person, without lawful authority, to require, or purport to require, an elector/AR to disclose the name of, or any particular relating to, the candidate/list of candidates for whom the elector/AR has voted at an election** [s 60 of the LCO and s 96(7) of the EAC (EP) (LC) Reg]. **Those who conduct exit polls must respect the electors' right and wish not to be disturbed.** The

interviewers should inform the electors being interviewed that their participation in the exit poll is voluntary prior to the conduct of exit poll. *[Amended in October 2007, July 2008 and June 2012]*

15.4 Any announcement or disclosure of results of exit polls or predictions, particularly in relation to any individual candidate/list of candidates, during the polling hours may affect electors' behaviour and have an impact on election results. **The EAC, therefore, reminds the media and organisations concerned that they should not announce the results of exit polls or make specific remarks or predictions on the performance of individual candidate/list of candidates before the close of poll. Furthermore, interviewers of approved exit poll should not speak to or communicate with candidates/lists of candidates or their agents when conducting the poll outside polling stations.** *[Amended in July 2008, June 2012 and June 2016]*

### **PART III : CONDUCT OF EXIT POLLS**

15.5 Any person or organisation may apply to the REO to conduct exit polls in respect of any GC/FC. However, to forestall public perception of unfairness, approval would normally not be granted in one or more of the following circumstances:

- (a) the applicant has publicly expressed support for any candidate(s)/list(s) of candidates contesting in the constituency, of which any polling stations are covered by the exit poll(s);
- (b) the applicant organisation has member(s) contesting in the constituency, of which any polling stations are covered by the exit poll(s);

- (c) the person(s) responsible for the exit poll(s) or interviewers nominated for the poll(s) are currently members of the organisation(s) -
  - (i) which has candidate(s) contesting in the constituency, of which any polling stations are covered by the exit poll(s),  
or
  - (ii) which have publicly expressed support for any candidate(s)/list(s) of candidates contesting in the constituency, of which any polling stations are covered by the exit poll(s).

*[Amended in June 2012 and June 2016]*

15.6 For security reasons, no exit poll may be conducted for dedicated polling stations. For the purpose of better control of the conduct of exit poll, persons or organisations intending to conduct exit polls must provide the following to the REO **at the latest 10 days before the polling day**:

- (a) the name and address of the person or organisation intending to conduct an exit poll on the polling day;
- (b) the identity document number and name of the person responsible together with his/her telephone number(s) for contact, especially during the polling hours; and
- (c) a list showing the number of persons who will be deployed for the conduct of the exit poll at each polling station on the polling day together with the identity document number and name of each of all the persons who will be so deployed.

*[Amended in July 2008, January 2010 and June 2012]*

15.7 On the receipt of the application, the REO will consider the application and issue approval to the person or organisation concerned as appropriate. Before the grant of approval, the person or organisation allowed to conduct exit poll will be required to sign a **declaration** to abide by its terms and the guidelines governing the conduct of exit poll. If a person or an organisation fails to comply with the terms of the declaration and the guidelines set out in this chapter, the approval to conduct exit poll on the polling day or during the polling hours may be revoked. The EAC may also make a reprimand or censure in a public statement which will include the name of the person or organisation who/which fails to comply with the terms of the declaration and the guidelines. A notice showing the persons or organisations allowed to conduct exit poll together with their contact telephone numbers will be released to the public prior to the polling day for the reference of the public and candidates. Such a notice will also be displayed at the respective polling stations. *[Amended in July 2008, June 2012 and June 2016]*

15.8 Interviews are not allowed inside polling stations. Interviewers should note that canvassing activity is prohibited under criminal sanction within the NCZ except door-to-door canvassing activities on the storeys above or below street level in a building other than the one in which there is a polling station provided that permission has been obtained for entry to the building for canvassing votes, and that obstruction is not posed to electors and no sound amplifying device is used. Interviewers must therefore be extremely careful in conducting exit poll so as not to give rise to any suspicion that they are canvassing electors inside the NCZ. Interviewers, like any other person, are not allowed to stay or loiter in the areas designated as the NSZ (within the NCZ but immediately outside the entrance/exit to each polling station). [S 41(1) of the EAC (EP) (LC) Reg] Interviewers are also not allowed to accost electors in the NSZ. All these measures are for the purpose of securing safe and smooth passage of electors into and out of polling stations. The PRO of a



polling station may, if circumstances require, designate an area outside the exit of the polling station so that interviewers may only conduct exit poll within that area. *[Amended in October 2007]*

#### **PART IV : IDENTIFICATION OF INTERVIEWERS**

15.9 There had been occasions where exit poll interviewers were mistaken for government officials or polling staff. Such interviewers are therefore required to display prominently an identification device showing the identity of the organisation/person conducting exit poll so that electors will not be misled into thinking that they are appointed by the Government. In addition, the interviewers are required to make known to the electors that any response is entirely voluntary. Arrangements should be made for electors to be aware of the name of the organisation/person conducting the exit poll at the start of the interview and the fact that the exit poll is not commissioned by the Government. *[Amended in July 2008 and June 2016]*

15.10 After receipt of the information referred to in para. 15.6 above, the REO will notify the organisation or person concerned to collect a number of identification devices bearing the name of the organisation/person that is required to be displayed prominently by each of the persons included in the list in para. 15.6(c) above when conducting an exit poll. Any person not displaying prominently such a device will not be allowed to conduct an exit poll outside any polling station. *[Amended in July 2008]*

#### **PART V : SANCTION**

15.11 Apart from the criminal sanction provided in the LCO, if the EAC comes to know that any broadcaster or organisation has failed to heed or comply with the guidelines in this chapter, it may make a **reprimand** or

**censure** in a public statement which will include the name of the broadcaster or the organisation concerned. *[Amended in July 2008]*

**Regulation of election surveys in Hong Kong and selected places**

|                                                                  | <b>Hong Kong</b>                                                                                                                                                                | <b>Australia</b> | <b>Canada</b> | <b>New Zealand</b>                    | <b>Singapore</b>                                                              | <b>United Kingdom</b> |
|------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|---------------|---------------------------------------|-------------------------------------------------------------------------------|-----------------------|
| <b>1. Exit polls on the polling day</b>                          |                                                                                                                                                                                 |                  |               |                                       |                                                                               |                       |
| <b>Regulation of conduct of exit polls</b>                       |                                                                                                                                                                                 |                  |               |                                       |                                                                               |                       |
| Whether conduct of exit polls is allowed at all polling stations | Yes, except dedicated polling stations situated in prisons / police stations.                                                                                                   | Yes.             | Yes.          | Conduct of exit polls is not allowed. | Conduct of exit polls is not practicable under the existing law. <sup>1</sup> | Yes.                  |
| <b>Application for the conduct of exit polls</b>                 |                                                                                                                                                                                 |                  |               |                                       |                                                                               |                       |
| Whether submission of application is required                    | Yes, any person or organisation intending to conduct exit polls must make an application to the Registration and Electoral Office at the latest 10 days before the polling day. | No.              | No.           | N/A                                   | N/A                                                                           | No.                   |

<sup>1</sup> Although conduct of exit polls is not explicitly prohibited in Singapore, section 82(1) of the Parliamentary Elections Act provides that no person shall loiter in any street or public place within a radius of 200 metres of any polling station on polling day; or wait outside any polling station on polling day, except for the purpose of gaining entry to the polling station to cast his vote.

|                                                                                            | Hong Kong                                                                                                                                                                                                                                                                                                                          | Australia | Canada                                                                                                                                                                                                                                                                                                                                    | New Zealand | Singapore | United Kingdom                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <b>Publication of exit poll results</b>                                                    |                                                                                                                                                                                                                                                                                                                                    |           |                                                                                                                                                                                                                                                                                                                                           |             |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Whether the timing of publishing exit poll results is subject to regulations or guidelines | Yes. According to the Guidelines on Election-related Activities issued by the Electoral Affairs Commission, the applicant or applicant organisation should not announce or disclose the results of the exit poll or make specific remarks or predictions in relation to the performance of any candidate before the close of poll. | No.       | Yes. The Canada Elections Act provides that no person “shall knowingly cause to be transmitted to the public” or “transmit to the public” the results of an election survey that have not previously been transmitted to the public in an electoral district on polling day before the close of all of the polling stations. <sup>2</sup> | N/A         | N/A       | Yes. The Representation of the People Act 2000 provides that “No person shall publish before the poll is closed –<br><br>(a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or<br><br>(b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on information so given.”.<br><br>The Act defines “publish” as |

<sup>2</sup> Sections 328 (1) and (2), Canada Elections Act.

|                                                                                                  | Hong Kong                                                                                                                                                                                                                                                                                                                                                                                                                                            | Australia | Canada                                                                                                                                                                                                         | New Zealand | Singapore | United Kingdom                                                                                                                                                                                                                                                                 |
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|                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                      |           |                                                                                                                                                                                                                |             |           | “making available to the public at large, or any section of the public, in whatever form and by whatever means”. <sup>3</sup>                                                                                                                                                  |
| Penalty on violation of regulations or guidelines on exit polls and the use of exit poll results | Before the grant of approval, the person or organisation allowed to conduct exit polls will be required to sign a statutory declaration to abide by its terms and the Guidelines on Election-related Activities governing the conduct of exit poll. If the person or organisation fails to comply with the terms of the statutory declaration or requirements of the Guidelines on Election-related Activities, the Electoral Affairs Commission can | N/A       | The Canada Elections Act provides that any person wilfully transmits election survey results during blackout period is liable on conviction to a fine of not more than CAD\$50,000 (HK\$297,020). <sup>4</sup> | N/A         | N/A       | Under the Representation of the People Act 2000, any person or organisation publishing the exit poll results before the close of poll is liable on conviction to a fine of not more than £5,000 (HK\$47,400) or imprisonment for a term not exceeding six months. <sup>5</sup> |

<sup>3</sup> Section 6, Schedule 6, Representation of the People Act 2000.

<sup>4</sup> Sections 495(1) and (4), 500(1) and (4), Canada Elections Act.

<sup>5</sup> Section 6, Schedule 6, Representation of the People Act 2000.

|                                                                                               | Hong Kong                                                                                                                                                                                                                                                                                                                                                                                                  | Australia                    | Canada                       | New Zealand                                                                                 | Singapore                    | United Kingdom               |
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|                                                                                               | <p>revoke the approval for conduct of exit poll. The Electoral Affairs Commission may also make a censure or even reprimand in a public statement which will include the name of the person or the organisation concerned. If applicants or applicant organisations knowingly make a statement false in a material particular in the statutory declaration, they may be subject to criminal liability.</p> |                              |                              |                                                                                             |                              |                              |
| <b>2. Other forms of election surveys on the polling day (e.g. by phone, on the Internet)</b> |                                                                                                                                                                                                                                                                                                                                                                                                            |                              |                              |                                                                                             |                              |                              |
| Application for the conduct of election surveys                                               | Application is not required.                                                                                                                                                                                                                                                                                                                                                                               | Application is not required. | Application is not required. | Conduct of election surveys is not allowed on the polling day before the close of the poll. | Application is not required. | Application is not required. |

|                                                                                    | Hong Kong      | Australia      | Canada                                                                                                                                                                                                                                                                                                                                    | New Zealand | Singapore                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | United Kingdom                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------|----------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Whether the timing of publishing election survey results is subject to regulations | No regulation. | No regulation. | Yes. The Canada Elections Act provides that no person “shall knowingly cause to be transmitted to the public” or “transmit to the public” the results of an election survey that have not previously been transmitted to the public in an electoral district on polling day before the close of all of the polling stations. <sup>6</sup> | N/A         | Yes. The Parliamentary Elections Act provides that “No person shall publish or permit or cause to be published on polling day before the close of all polling stations on polling day —<br><br>(a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted; or<br><br>(b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on | Yes. The Representation of the People Act 2000 provides that “No person shall publish before the poll is closed (a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or (b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on information so given.”, with “publish” being defined as “making available to the public at large, or any section of the |

<sup>6</sup> Sections 328 (1) and (2), Canada Elections Act.

|                                                                                                                              | Hong Kong                    | Australia                    | Canada                                                                                                                                                                                                                                                                                                                                                                            | New Zealand                                                                                                                                                                                                                                                                                                                                                                      | Singapore                                                                                                                                                                                                                                                                                                                                     | United Kingdom                                                |
|------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
|                                                                                                                              |                              |                              |                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                  | information so given.” <sup>7</sup>                                                                                                                                                                                                                                                                                                           | public, in whatever form and by whatever means”. <sup>8</sup> |
| <b>3. Election surveys ascertaining electors’ voting preferences before the polling day (e.g. by phone, on the Internet)</b> |                              |                              |                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                               |                                                               |
| Application for the conduct of election surveys                                                                              | Application is not required. | Application is not required. | Application is not required.                                                                                                                                                                                                                                                                                                                                                      | Application is not required.                                                                                                                                                                                                                                                                                                                                                     | Application is not required.                                                                                                                                                                                                                                                                                                                  | Application is not required.                                  |
| Whether the timing of publishing election survey results is subject to regulations                                           | No regulation.               | No regulation.               | Yes. The Canada Elections Act provides that no person “shall knowingly cause to be transmitted to the public” or “transmit to the public” the results of an election survey that have not previously been transmitted to the public in an electoral district on polling day before the close of all of the polling stations. <sup>9</sup><br><br>No restriction on publishing the | In New Zealand, electors are allowed to cast their votes prior to the polling day. The law prohibits conduct of election surveys on how an elector actually voted prior to the polling day. However, there is no legal restriction on conduct of election surveys ascertaining electors’ voting preferences.<br><br>Besides, there is no legal restriction on the publication of | Yes. The Parliamentary Elections Act provides that “no person shall publish or permit or cause to be published the results of any election survey during the period beginning with the day the writ of election is issued for an election and ending with the close of all polling stations on polling day at the election.”, where “election | No regulation.                                                |

<sup>7</sup> Section 78D(1) of the Parliamentary Elections Act.

<sup>8</sup> Section 6, Schedule 6, Representation of the People Act 2000.

<sup>9</sup> Sections 328 (1) and (2), Canada Elections Act.



|  | Hong Kong | Australia | Canada                                           | New Zealand                                                                                                                                                                                                                                                                                                           | Singapore                                                                                                                                                                                                                                                                                                    | United Kingdom |
|--|-----------|-----------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
|  |           |           | election survey result prior to the polling day. | election survey results prior to the polling day. However, the Electoral Act 1993 prohibits publication of “any statement advising or intended or likely to influence any elector as to the candidate or party for whom the elector should or should not vote” before close of poll on the polling day. <sup>10</sup> | survey” is defined as “an opinion survey of how electors will vote at an election or of the preferences of electors respecting any candidate or group of candidates or any political party or issue with which an identifiable candidate or group of candidates is associated at an election”. <sup>11</sup> |                |

<sup>10</sup> Section 197(1)(g)(i), Electoral Act 1993.

<sup>11</sup> Section 78C of the Parliamentary Elections Act.