

立法會 *Legislative Council*

LC Paper No. CB(2)394/15-16(04)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 19 December 2016

Regulation of the use of social media and the conduct of election polls in public elections

Purpose

This paper summarizes the past discussions held by the Panel on Constitutional Affairs ("the Panel") on the regulation of the use of social media and the conduct of election polls in the context of the relevant election-related activities guidelines issued by the Electoral Affairs Commission ("EAC").

Background

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. According to section 6(1)(a) of the EAC Ordinance (Cap 541), EAC may issue guidelines relating to the conduct or supervision of an election. EAC will update the guidelines before each election taking into account the operational experience and suggestions for improvements obtained from recent elections and by-elections.

3. The Guidelines on Election-related Activities in respect of the District Council ("DC") Election issued by EAC were last updated in September 2015 when EAC made preparation for the 2015 DC Election. The Guidelines on Election-related Activities in respect of the Legislative Council ("LegCo") Election were last updated in June 2016 in connection with the 2016 LegCo Election. The Election Committee Subsector ("ECSS") Elections and the Chief Executive ("CE") Election are scheduled to be held on 11 December 2016 and 26 March 2017 respectively. In preparation for the elections, EAC also updated the Guidelines on Election-related Activities in respect of the ECSS Elections and those in respect of the CE Election in September and October 2016 respectively. Each set of the aforementioned Guidelines includes a chapter on election advertisements ("EAs") and a chapter on exit poll.

Discussions of the Panel on the regulation of the use of social media and the conduct of election polls

4. The Panel discussed the aforementioned Guidelines at its various meetings. During the discussion, members expressed concerns on the regulation of the use of social media and the conduct of exit polls. The major views and concerns expressed by members are summarized in ensuing paragraphs.

Use of social media for publishing EAs

5. A number of members expressed concern about the regulation of election-related materials published or distributed on social networking and communication websites. Some members asked whether a person would be considered to have published an EA if the person changed the profile picture of his/her Facebook account into a picture of supporting a certain candidate of an election. They requested the Administration to explain whether any text, email and message expressing support for a certain candidate and sent through social networking or communication websites on the Internet (such as Facebook) would be considered as an EA.

6. The Administration advised that what constituted an EA was explained in the relevant chapter on EAs in each set of the aforementioned Guidelines issued by EAC. The definition of EA was provided in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), according to which messages published by web surfers through social media for the purpose of promoting the election of a candidate/list of candidates or prejudicing the election of other candidates/lists of candidates would be regarded as EAs.

7. Some members expressed concern 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. They pointed out that it was also not uncommon that people might indicate support to a candidate by inserting a "Like" sign or posting supportive comments on a candidate's webpage, and might transmit such EAs to people through social networking websites without the knowledge and consent of the candidates concerned. These members expressed concern that in doing so, the supporter/third person concerned might have incurred expenses to publish materials caught by the definition of EA without the prior consent of the candidate concerned and this might have breached section 23 of ECICO¹.

¹Section 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."

8. The Administration explained that the regulatory regime of EAs under ECICO was set out in the relevant chapter on EAs of the aforementioned Guidelines. Generally speaking, if web surfers merely shared or forwarded different candidates' election campaigns through Internet platforms for expression of views and did not intend to promote or prejudice the election of any candidates, such sharing or forwarding would not normally be construed as publishing EAs. However, if web surfers were instructed by the candidate or candidates on the list or his/her/their election helpers to share or forward the election campaigns through Internet platforms with the intention to promote or prejudice the election of a candidate or candidates at the election, such an act would be regarded as publication of the candidate's or candidates' EAs and any costs incurred would have to be included in the election expenses of the candidate/list of candidates. To address members' concerns, the Administration provided a supplementary information paper (LC Paper No. CB(2)2127/14-15(01)) on publishing EAs through social networking or communication websites on the Internet (**Appendix I**). To facilitate members' deliberations on the subject, the Panel has requested the Research Office of the LegCo Secretariat to provide information on relevant practices in overseas jurisdictions. An Information Note entitled "Regulation of the use of social media in election in selected places" was prepared by the Research Office [IN01/15-16] for members' reference.

9. Some members considered that the cost declaration requirement in respect of EAs displayed through electronic means or social networking platforms on the Internet was unnecessary as the cost involved was only minimal or incurred no costs at all. They considered that requiring the Independent Commission Against Corruption ("ICAC") to follow up complaints or referrals related to failure to declare the relevant costs of publishing EAs by such means was frivolous and meaningless, and would unnecessarily add to ICAC's workload. The Administration explained that even though the amount of expenses involved was small, the Administration considered that EAs disseminated through Internet platforms and related expenses should be regulated in an election campaign to ensure a level-playing field for all candidates.

10. The Administration stressed that there were stringent procedures to be followed in handling relevant complaints or referrals, and that the "intention to promote or prejudice the election of any candidates" had to be proven before prosecution could be instituted against a person for breaches of the provisions concerning EAs under ECICO. The Administration acknowledged that the definition of EAs was very wide and encompassed anything published publicly by any means, including a message published through Internet platforms for promoting the election of a candidate or prejudicing the election of other

candidates. Some members considered that the provisions relating to EAs under ECICO should be reviewed in the light of the relevant practices adopted in overseas jurisdictions. They suggested that EAC should provide more detailed guidelines to explain what it meant by "intention to promote or prejudice the elections of any candidates". The Administration undertook to conduct a study on the relevant regulatory regimes in overseas jurisdictions.

Exit poll

11. Some members expressed concern about 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.

12. 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.

Relevant questions raised at Council meetings

13. At the Council meeting of 1 June 2016, Hon Charles Peter MOK raised a written question on "Guidelines on EAs for the LegCo Election". At the Council meeting of 29 June 2016, Hon Cyd HO raised an oral question on "Exit polls conducted on polling day of the LegCo Election". At the Council meeting of 2 November 2016, Dr Hon Elizabeth QUAT also raised a written

question on the "ThunderGo" campaign. These Members' questions and the Administration's replies are in **Appendices II, III and IV respectively.**

Latest development

14. The Panel will discuss the regulation of the use of social media and the conduct of election polls in public elections at the next meeting on 19 December 2016.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
15 December 2016

**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 IK

Press Releases

LCQ20: Guidelines on election advertisements for Legislative Council election

Following is a question by the Hon Charles Mok and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, in the Legislative Council today (June 1):

Question:

Before each Legislative Council (LegCo) general election, the Electoral Affairs Commission (EAC) updates and publishes the Guidelines on Election-related Activities in respect of the Legislative Council Election (the Guidelines). After revising the Guidelines, EAC put forward in March this year the Proposed Guidelines on Election-related Activities in respect of the Legislative Council Election (the Proposed Guidelines), and launched a 30-day public consultation. The major changes set out in the Proposed Guidelines in respect of election advertisements (EAs) include: (i) reminding any person/organisation publishing materials to appeal directly or indirectly to electors to vote or not to vote for certain candidates or candidates of certain organisations that such materials may be regarded as EAs, and (ii) reminding candidates and web surfers that messages published through Internet platforms with the intention to promote or prejudice the election of any candidates would be regarded as EAs, but 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 regarded as publishing EAs. There are comments that as members of the public expressing personal views on Internet social networking platforms (such as Facebook) is very common nowadays, but the aforesaid guidelines on EAs are too vague, members of the public may easily contravene section 23 (Illegal conduct for persons other than candidates and election expense agents to incur election expenses) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). In this connection, will the Government inform this Council:

(1) of the respective numbers of (i) complaints received by EAC in each of the past two LegCo general elections relating to publication of EAs through disseminating messages by certain individuals on Internet social networking platforms, (ii) candidates involved in such complaints, and (iii) those complaints which were found substantiated after investigation by the relevant authorities, as well as the details of such substantiated cases;

(2) whether it has assessed if, according to the Proposed Guidelines, a member of the public (i) changing the profile picture of his/her personal account with an Internet social networking platform into a picture of supporting a certain candidate, and (ii) adding a topic symbol (i.e. hashtag) relating to a certain candidate when posting messages on an Internet social networking platform, will be respectively regarded as EAs;

(3) whether it will consider providing a more detailed guideline on "intention to promote or prejudice the elections of any candidates", so as to prevent members of the public from

contravening the law inadvertently; if it will, of the details; if not, the reasons for that;

(4) whether it knows if individuals' publishing personal political opinions on the Internet not under the instruction of a candidate or his agent may be exempted from being regarded as EAs in other jurisdictions, and therefore will not be subject to the regulation by the relevant ordinances relating to election expenses; if it may be exempted, of the details; if it may not, the reasons for that;

(5) given that the Proposed Guidelines provide that if a candidate "instructed" the relevant person to publish the aforesaid materials or online messages, the candidate has to include the costs so incurred in his/her election expenses, of the specific meaning of "instructed"; whether it has assessed if EAs of a candidate forwarded by web surfers on their own accord have to be regarded as EAs; if the assessment outcome is in the affirmative, of the relevant considerations and the method for calculating such expenses on EAs; whether the authorities will consider drawing up a clear method for calculating election expenses to ensure fairness of an election; if they will, of the details, if not, the reasons for that;

(6) whether it has assessed if the costs of the following items have to be included in the expenses on EAs: (i) fees for preparation, design and release of advertisements, (ii) fees for website-hosting, (iii) costs incurred for setting up and maintaining the hardware and software of a website, and (iv) costs for placing fee-charging advertisements on Internet social networking platforms; if the assessment outcome is in the affirmative, of the justifications for that; and

(7) as the advancement of the Internet technology has enabled any person to publish his/her opinions and disseminate messages to the public easily and at a very low cost, whether it has any plan to conduct a review to see if the provisions relating to EAs under Cap. 554 still suit the present circumstances; if it does, of the details; if not, the reasons for that?

Reply:

President,

The Legislative Council (LegCo) general election will be held in September this year. The Electoral Affairs Commission (EAC) has drawn up a new set of the Proposed Guidelines on Election-related Activities in respect of the LegCo Election (the proposed guidelines) for the upcoming LegCo general election and any by-elections to be held afterwards. The proposed guidelines were published in March for public consultation, with the consultation period ending on April 1. The EAC will issue the finalised guidelines in June.

According to section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO), "election advertisements" (EAs) means any form of publication published for the purpose of promoting or prejudicing the election of any candidates at an election, and "election expenses" means expenses incurred before, after or during the election period, by or on behalf of a candidate for the purpose of promoting the election of the candidate or prejudicing the election of other candidates.

After consultation with the relevant departments, a

consolidated reply is given as follows:

As mentioned above, according to section 2 of the ECICO, "EAs" means any form of publication published for the purpose of promoting or prejudicing the election of any candidates at an election. As such, messages published by web surfers through social media for the purpose of promoting the election of a candidate/list of candidates or prejudicing the election of other candidates/lists of candidates will be regarded as EAs. However, 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 election of any candidates, such sharing or forwarding will not normally be construed as publishing EAs. However, if web surfers are instructed by the candidate or candidates on the list or his/her/their election helpers to share or forward the election campaigns through internet platforms 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 or candidates' EAs and any costs incurred will have to be included in the election expenses of the candidate/list of candidates.

According to the provisions on election expenses stipulated in the ECICO, for the EAs published by a candidate through on-line platforms, the 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. As provided in EAC's election guidelines, whether a particular item of expenditure should be regarded as an election expense is a question of fact to be answered in the circumstances of each case. Each case should be determined by reference to the purpose behind the expenses, taking account of the nature, circumstances and context of the expenditure. Candidates should consult their legal advisers if they have doubt as to whether an expenditure item should count as an election expense. To facilitate candidates to fill out the election return, since the 2015 District Council ordinary election, the Registration and Electoral Office (REO) has produced a guide and video on how to complete the return for reference by the candidates so as to provide them with more specific and detailed guidance on frequently asked questions such as how to calculate election expenses. Besides distribution to candidates, the guide and video for the 2015 District Council ordinary election were also uploaded to the relevant election website. The same arrangement will be made by REO for the 2016 LegCo general election.

The ECICO is enforced by the Independent Commission Against Corruption (ICAC). For complaint cases relating to the publication of EAs through disseminating messages on internet social networking platforms and involving violation of the ECICO, one complaint was received by ICAC in the 2008 LegCo general election and the 2012 LegCo general election respectively. After investigation, neither complaint was substantiated.

The views of LegCo members and the general public, as expressed in the public consultation on the proposed guidelines, in relation to EAs disseminated through the internet and the expenses so incurred are noted. We will carry out study on the relevant regulatory regimes in overseas jurisdictions.

Ends/Wednesday, June 1, 2016
Issued at HKT 15:02

Appendix III

Press Releases

LCQ5: Exit polls conducted on the polling day of the Legislative Council election

Following is a question by the Hon Cyd Ho and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, in the Legislative Council today (June 29):

Question:

According to the Guidelines on Election-related Activities in respect of the 2012 Legislative Council (LegCo) Election issued by the Electoral Affairs Commission, organisations approved to conduct exit polls by the Registration and Electoral Office (REO) "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", lest the election results might be affected. The various organisations which conducted exit polls for that LegCo Election had signed an undertaking, promising not to release, directly or indirectly, the results of the exit polls to candidates or organisations to which candidates belong, etc. before the close of poll. The information on REO's website shows that the organisations approved to conduct exit polls on the polling day (i.e. September 9, 2012) of that LegCo Election did not include the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). However, it has been reported that a Member of this Council who belongs to DAB disclosed on a live radio programme on the 3rd of this month that DAB had conducted exit polls on the polling day of that LegCo Election and, in the evening of that day, DAB learnt from the exit polls that some of its candidates had already garnered sufficient votes to be elected, and forthwith stopped canvassing for these candidates and switched to focus its efforts on canvassing for other candidates. In this connection, will the Government inform this Council:

(1) as some members of the public have pointed out that the use of exit poll results by political parties to canvass or allocate votes for candidates will seriously prejudice the fairness of elections and would do injustice to other law-abiding candidates, whether the authorities will investigate the aforesaid incident; if they will, how they will carry out such investigation; if not, the reasons for that; and

(2) given that the 2016 LegCo Election will be held on September 4 this year, whether the authorities will step up the monitoring of organisations conducting exit polls, in order to curb the use of exit poll results to allocate or canvass votes during the polling; if they will, of the monitoring measures being contemplated; if not, the reasons for that, and how they will handle non-compliant situations?

Reply:

President,

The ballot is secret. It is an elector's right to keep his / her vote secret. In accordance with section 60 of the Legislative Council Ordinance (Cap. 542), an elector does not have to disclose his / her choice of candidate / list of

candidates if he / she does not want to.

Under the existing arrangement, any person or organisation may apply to the Registration and Electoral Office (REO) to conduct exit poll. The Electoral Affairs Commission (EAC) has promulgated guidelines in relation to the exit poll conducted within the No Canvassing Zone with details set out in Chapter 15 of the "Guidelines on Election-related Activities in respect of the Legislative Council Election" (the Guidelines). That 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.

Since the 2015 District Council election, the EAC has required the applicant or the applicant organisation to make a statutory declaration undertaking to abide by the terms on conduct of exit poll and the Guidelines. This requirement will also be applicable to the Legislative Council (LegCo) election to be held in September this year and the terms include:

- (1) the applicant organisation has no member contesting in any geographical constituencies (GCs) / functional constituencies (FCs), of which any polling stations are covered by the exit poll;
- (2) the applicant or applicant organisation has not publicly expressed support for any candidate / list of candidates contesting in any GCs / FCs, of which any polling stations are covered by the exit poll;
- (3) the applicant or applicant organisation should not assign member(s) of any organisation which has member(s) contesting in any GCs / FCs or has publicly expressed support for any candidate / list of candidates contesting in any GCs / FCs, of which any polling stations are covered by the exit poll, as the person(s) responsible for or conducting the exit poll on the polling day;
- (4) 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 / list of candidates before the close of poll;
- (5) the applicant or applicant organisation should not release, directly or indirectly, the results of the exit poll or make specific remarks or predictions on the performance in relation to any candidate / list of candidates to any candidate / list of candidates contesting in the GCs / FCs covered by the exit poll, any person who or organisation which has publicly expressed support for any candidate / list of candidates contesting in the GCs / FCs covered by the exit poll, or any organisation with member(s) contesting in the GCs / FCs covered by the exit poll, before the close of poll; and
- (6) approved exit poll interviewers should not speak to or communicate with candidates / lists of candidates or their agents when conducting the poll.

Moreover, the EAC also requires all approved exit poll interviewers to display prominently an identification device when

conducting the exit poll, and use the standard script provided by the REO to inform the electors being interviewed that the exit poll is not commissioned by the Government and their participation in the exit poll is entirely voluntary.

The REO will release the information of the persons or organisations allowed to conduct exit poll onto the election website before the polling day, and will display the information in a notice at a prominent location of the polling station(s) on the polling day for public inspection. The REO will also remind the Presiding Officers of polling stations to enhance patrolling to ensure that the approved exit poll interviewers comply with the statutory declaration and the Guidelines when conducting exit polls.

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 conduct of exit poll. The EAC 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.

According to the REO, no political organisation or its member applied to conduct exit polls on the polling day of the 2012 LegCo election. The REO is now following up on the case mentioned by the Hon Ho. If there is evidence indicating that any approved applicant or applicant organisation failed to comply with requirements of the Guidelines, the EAC will take action according to the established mechanism.

Ends/Wednesday, June 29, 2016
Issued at HKT 15:38

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Appendix IV

Press Releases

LCQ19: ThunderGo

Following is a question by the Dr Hon Elizabeth Quat and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, in the Legislative Council today (November 2):

Question:

Earlier on, an academic launched the "ThunderGo" campaign for the 2016 Legislative Council General Election to facilitate electors who had joined the campaign to participate in strategic voting by coordinating the lists of candidates fielded and disseminating to them on the polling day data gathered from opinion polls (poll data) and recommended lists of candidates, with a view to boosting the number of elected candidates from a particular camp. It was reported that, as a result of the poll data disseminated by ThunderGo, seven candidates respectively announced their "withdrawal of candidature" several days before the election day. Quite a number of members of the public consider that ThunderGo has caused electors not to vote according to their genuine preferences, and hence has done injustice to other candidates, allegedly manipulated election results, and seriously prejudiced the fairness of elections. In this connection, will the Government inform this Council:

(1) whether it has studied if ThunderGo was in breach of legislation and guidelines relating to elections, including the Electoral Affairs Commission Ordinance (Cap. 541), the Election (Corrupt and Illegal Conduct) Ordinance (Cap. 554) and Guidelines on Election-related Activities in respect of the Legislative Council Election; if it has studied and the outcome is in the negative, of the justifications; if the outcome of the study is in the affirmative, whether the authorities will conduct an investigation; if they will, how the investigation will proceed; whether the authorities will review the relevant legislation with a view to curbing the use of opinion poll results to allocate or canvass votes in an unfair manner during polling;

(2) as it is stipulated in Cap. 554 that "election advertisement" (EA) includes any message published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election, whether the authorities have studied (i) if ThunderGo had published EAs, and (ii) if the candidates concerned had to declare the costs incurred by such EAs as election expenses; if they have studied and the outcome is in the affirmative, of the relevant considerations and the method for calculating such election expenses; if the outcome of the study is in the negative, the justifications for that; whether the authorities will review the definition of "EA" and draw up a clearer method for calculating election expenses to ensure that elections are conducted in a fair manner;

(3) as the aforesaid seven candidates announcing withdrawal of candidature had appealed to electors to vote for some other candidates, whether the authorities have assessed (i) if such acts were in breach of the legislation relating to elections, (ii) if such types of appeals are considered as EAs, and in case such appeals are considered as EAs, (iii) which candidates have

to declare the costs incurred by such EAs as election expenses; if they have assessed and the outcome is in the negative, of the justifications; and

(4) whether the authorities will review the relevant legislation with a view to stepping up the regulation of opinion polls conducted on electors' preferences, and the dissemination of poll results, on the polling day so that electors' voting intention and election results will not be affected?

Reply:

President,

(1) to (3) The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap. 554) and the Guidelines on Election-related Activities in respect of the Legislative Council Election (the Guidelines) provide clear definitions and guidelines on "election advertisements" and "election expenses". "Election advertisements" refer to any form of publication published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election, while "election expenses" mean expenses incurred before, after or during the election period, by or on behalf of a candidate for the purpose of promoting the election of the candidate or prejudicing the election of other candidates. Whether a particular item of expenditure should be regarded as an election expense is a question of fact to be answered in the circumstances of each case. Each case should be determined by reference to the purpose behind the expenses, taking account of the nature, circumstances and context of the expenditure.

The ECICO and the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) set out the regulations related to election advertisements and election expenses. Any person who fails to comply with the regulations commits an offence. Upon receipt of a complaint that someone may have breached the electoral legislation, the Electoral Affairs Commission (EAC) will refer it to the relevant law enforcement agencies for follow-up action. The complaint will be taken up seriously by the law enforcement agencies.

Pursuant to section 42 of the Legislative Council Ordinance (Cap. 542), a candidate may only withdraw his/her nomination before the end of the nomination period. There is no such mechanism for the so-called "withdrawal of candidature" after the end of the nomination period. Therefore, candidates who publicly declared to "withdraw their candidature" are still required to observe the provisions regarding electoral expenses, election advertisements and all the other requirements under the electoral legislation.

(4) According to section 96(7) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), any person or organisation that conducts exit poll in a non-canvassing zone without approval from the EAC commits an offence. The EAC has promulgated guidelines in relation to the exit poll with details set out in Chapter 15 of the Guidelines. Applicant or applying organisation is required to make a statutory declaration undertaking to abide by the conditions on the conduct of exit poll and the Guidelines.

There are different views in the community on the various kinds of election-related opinion survey, and some are of the

view that statutory regulation should be strengthened. We welcome views on this matter. If necessary, we may also arrange a detailed discussion of the specific issues at the Legislative Council Panel on Constitutional Affairs to further examine the arrangements under the existing legislation.

Ends/Wednesday, November 2, 2016
Issued at HKT 16:56

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**Relevant documents on regulation of the use of social media and
the conduct of election polls in public elections**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	18.5.2015 (Items III and IV)	Agenda Minutes CB(2)2127/14-15(01) IN01/15-16
	15.6.2015 (Item III)	Agenda Minutes
	21.3.2016 (Item IV)	Agenda Minutes
	16.5.2016 (Item III)	Agenda Minutes
Legislative Council	1.6.2016	Official Record of Proceedings Pages 126 – 130 (Written question)
	29.6.2016	Official Record of Proceedings Pages 60 – 68 (Oral question)
	2.11.2016	Official Record of Proceedings Pages 90 – 92 (Written question)