

**立法會**  
***Legislative Council***

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**Panel on Constitutional Affairs**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 25 January 2017**

**Electoral Affairs Commission Report  
on the 2016 Legislative Council General Election**

**Purpose**

This paper gives a brief account of past discussions of the Panel on Constitutional Affairs ("the Panel") regarding the 2016 Legislative Council ("LegCo") General Election.

**Background**

2. The 2016 LegCo General Election was held on 4 September 2016. The Electoral Affairs Commission ("EAC") submitted its Report on the 2016 LegCo General Election ("the EAC Report") to the Chief Executive ("CE") on 2 December 2016<sup>1</sup>. The EAC Report was published on 10 January 2017. EAC's review findings and the related recommendations are set out in Chapter 14 of the EAC Report.

**Past discussions of the Panel**

3. The Panel discussed the practical arrangements relating to the 2016 LegCo General Election at its various meetings. Some of the major issues raised by the Panel are summarized below.

Election advertisements and election expenses

4. Some members expressed concern that the coverage of the definition of election advertisements ("EA") was too wide and whether changing the profile

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<sup>1</sup> Section 8 of the Electoral Affairs Commission Ordinance (Cap. 541) ("EACO") requires, inter alia, that EAC shall make a report to CE, within three months after the election, on matters relating to the election in respect of which EAC has any function under EACO or any other Ordinance.

pictures and sharing or forwarding different candidates' election campaigns through online platforms would also be regarded as EAs. There were also concerns over whether the relevant expenses would be regarded as election expenses. Some members raised that in the past, some newspapers had published articles to promote or prejudice the election of certain candidates, but such articles had not been counted as EAs.

5. The Administration advised that EAs were subjected to the provisions of the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO") (Cap. 554) and the relevant regulations on electoral procedures under EACO ("EAC Regulations"). Besides, the guidelines on election-related activities issued by EAC under EACO also provided guidance on compliance with the relevant electoral legislation. Under ECICO, EA referred 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 were equally subject to the regulation of the existing legislation.

6. The Administration explained that a person who incurred expenses to publish any materials caught by the definition of EA without the prior consent of the candidate concerned might have breached section 23 of ECICO, as under the law only a candidate or a person who had been duly authorized by the candidate as his/her election expense agent might incur election expenses. Upon receipt of any complaint that someone might have engaged in corrupt or illegal conduct in elections, REO would refer such complaint to law enforcement agencies for investigation and follow-up action. At the request of the Panel, the Administration had conducted a study on the relevant regulatory regimes in overseas jurisdictions and reported the outcome to the Panel at its meeting on 19 December 2016.

7. Some members considered that the cost declaration requirement in respect of EAs displayed through social media platforms 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 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 considered that EAs disseminated through Internet platforms and related expenses should be regulated in an election to ensure a level-playing field for all candidates.

#### Free postage facility

8. Members noted that in accordance with section 43 of the Legislative Council Ordinance (Cap. 542) ("LCO"), a validly nominated list of

candidates/candidate for a geographical constituency ("GC")/functional constituency ("FC") could send one letter free of postage to each elector of the constituency for which the list of candidates/candidate was nominated. Some members raised concern that the Post Office did not give any allowance to candidates even though there was only slight deviation from the specified size, which was caused by the folding of the publicity materials. The Administration explained that the size specifications were stipulated in the electoral legislation and set out in the guidelines on election-related activities and, in this regard, the frontline staff of the Post Office were obliged to enforce the statutory provisions strictly to ensure fairness even though the deviation from the size limits might only be marginal.

9. Concern was also raised that the address labels and mailing database CD-ROM previously provided by the Registration and Electoral Office ("REO") had contained inaccurate information. The Administration explained that in most cases, the inaccurate information was due to the fact that electors who had moved home had not updated their residential addresses with REO. To encourage candidates to send EAs to electors by more environmental-friendly means instead of by post, some members suggested that the Administration should consider rebating the candidate concerned if he/she chose not to utilize the free postage facility.

### Confirmation Form

10. While the Panel had not discussed the introduction of the Confirmation Form for the 2016 LegCo General Election, some members expressed concern about the requirement that a CE candidate would have to sign a Confirmation Form similar to that adopted in the 2016 LegCo General Election as part of the nomination procedure at the meeting on 21 November 2016 when the Panel discussed "Practical arrangements of the 2017 CE Election". They questioned the legal basis for the requirement and the purpose it could serve.

11. The Administration explained that section 16(7) of Chief Executive Election Ordinance<sup>2</sup> (Cap. 569) provided that a nomination of a candidate would have to be accompanied by a declaration to the effect that the candidate stood for the election in an individual capacity; and he/she would uphold the Basic Law ("BL") and pledge allegiance to the Hong Kong Special Administrative Region; as well as a declaration as to the candidate's nationality and whether he/she had a right of abode in any foreign country. To ensure that all candidates clearly understood the contents of BL and the legal requirements and responsibilities

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<sup>2</sup> Section 40 of LCO also stipulates that a person who runs in the LegCo election must sign a declaration in the nomination form as part of the statutory nomination procedure, stating that he/she will uphold BL and pledge allegiance to the Hong Kong Special Administrative Region, otherwise, he/she will not be validly nominated as a candidate.

involved in signing the relevant declaration in the nomination form, EAC would prepare a Confirmation Form for the use of the Returning Officer ("RO"). The Form would assist RO in the exercise of his/her statutory power to discharge his/her duties to ensure that the nomination procedure was completed in accordance with the law. The Administration considered that the Confirmation Form enabled the candidate to confirm that he/she understood the above requirements and responsibilities.

### Election forums

12. Some members expressed concern as to whether broadcasters were able to meet the requirement that the broadcaster should "give each candidate/list of candidates in the relevant part of the election forum equal time to present his/her/its election platform". The Administration advised that forum organizers were all along required to adhere to the "fair and equal treatment" principle in organizing election forums. The "fair and equal treatment" principle did not require that each candidate/list of candidates be provided with exactly the same amount of speaking time in an election forum. This was to allow the broadcaster or forum organizer greater flexibility in the design of such programmes. Having regard to past experience, it might not be practicable to rigidly require broadcasters to give equal speaking time to each candidate in every part of an election forum as some tended to speak more while some tended to speak less in different parts of the forum. Broadcasters were, however, required to give each candidate/list of candidates equal time to present his/her/its election platform. The Administration advised that if there were complaints about unfair or unequal treatment of candidates by any broadcaster or forum organizer and if such complaints were substantiated, EAC might issue a reprimand in a public statement.

### Polling and counting arrangements

#### *Polling stations and polling hours*

13. Some members suggested that, given the importance of public elections, more polling stations should be set up to facilitate electors. They also stressed the need for REO to make its best endeavours to facilitate electors with mobility difficulties to exercise their right to vote. The Administration informed members that in the 2015 District Council Election, REO aimed to have at least 90% of the polling stations set up in accessible venues. Where circumstances permitted, REO would set up temporary ramps at the polling stations to facilitate electors with mobility difficulties or wheelchair users. These electors might also apply to REO five days before the polling day for re-allocation to a special polling station set up in an accessible venue should they find it difficult to access the allocated polling station.

14. Some members were of the view that the current polling hours which lasted for 15 hours (from 7:30 am to 10:30 pm) were too long. They enquired whether the Administration would consider shortening the polling hours. The Administration explained that any change to the polling hours would need to be considered carefully. Nevertheless, the Administration agreed to consider the suggestion in future review.

#### *Vote counting and related arrangements*

15. Some members expressed concern that the existing manual counting arrangement did not keep pace with the development of modern technology. They queried the cost-effectiveness of engaging about 25 000 civil servants on the polling day for counting of one million votes or so. The Administration explained that vote counting machines were not suitable for the counting of votes for GC and FC elections because of constraints posed by the design and size of the ballot papers. These members suggested that REO might consider using smaller ballot papers so that they could be fed into and read by a vote counting machine. Some members also suggested that the Administration should enhance the application of information technology in the ballot paper issuing process with a view to shortening the time for verifying the identity of electors.

16. Concern was also raised on whether measures were in place to ensure that no electors would leave the polling station with any ballot paper. The Administration advised that as part of the established practice, there would be dedicated ballot boxes for collecting different types of ballot papers separately. There would be four dedicated cardboards of different colours for holding different types of ballot papers. Such arrangements were aimed to facilitate polling staff to monitor the casting of votes and ensure that no elector would leave the polling station with any ballot paper.

#### Exit poll

17. 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.

18. The Administration explained that organizations or persons applying for the

conduct of exit polls<sup>3</sup> 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.

#### Guidelines for operators of elderly institutions

19. Some members asked whether sufficient measures were taken to prevent electors living in elderly institutions from being taken by persons other than their relatives to the polling stations to cast their votes. The Administration advised that in the 2016 voter registration ("VR") cycle, REO had issued guidelines to operators of elderly homes through the Social Welfare Department to remind them that under the Personal Data (Privacy) Ordinance (Cap. 486), unless with the express consent voluntarily given by the data subjects, personal data should only be used for the purposes for which they were collected or a directly related purpose; and remind the operators to take note of the guidelines on election-related activities issued by EAC. In addition, operators of elderly institutions were advised to keep a record of organizations conducting VR activities on their premises. At the request of the Panel, the Administration has provided a copy of the guidelines on election-related activities issued to elderly homes for members' reference [LC Paper No. CB(2)1513/15-16(01)].

#### **Legislative Council question**

20. At the Council meeting of 2 November 2016, Hon HUI Chi-fung raised an oral question on the practical arrangements for the 2016 LegCo General Election. The question and the Administration's reply are in **Appendix I**.

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<sup>3</sup> According to 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 without the express permission of the Presiding Officer or EAC, information as to the candidate for whom an elector in the polling station is about to vote or has voted, commits an offence.

### **Recent development**

21. The Panel will discuss the EAC Report at the next meeting on 25 January 2017.

### **Relevant papers**

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

Council Business Division 2  
Legislative Council Secretariat  
24 January 2017

## Appendix I

### Press Releases

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LCQ1: 2016 Legislative Council General Election

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Following is a question by the Hon Hui Chi-fung and a reply by the Under Secretary for Constitutional and Mainland Affairs, Mr Ronald Chan, in the Legislative Council today (November 2):

Question:

Quite a number of the arrangements for the Legislative Council (LegCo) General Election just held have attracted various criticisms. Some electors who claimed that they were eligible to vote in the District Council (Second) Functional Constituency (DC (Second) FC) election were refused to be issued with the ballot papers for that FC election; the Registration and Electoral Office arranged polling staff to take home ballot papers, copies of register of electors and electoral materials about one week before the polling day for temporary custody, and bring them to the polling stations on the morning of the polling day; at some polling stations, the numbers of ballot papers issued and collected did not tally with each other; the polling hours of several polling stations had to be extended because a large number of electors were still queuing to cast their votes there at the scheduled polling end time of 10.30pm, and some electors even had to wait until 2.30am on the following day before they could vote. In this connection, will the Government inform this Council:

(1) of the total number of polling stations which were set up at smaller premises because requests for borrowing premises had been rejected; whether it has reviewed if the arrangement for polling staff to keep custody of electoral materials for as long as one week is appropriate; if it has not reviewed, of the reasons for that; if it has reviewed and the outcome is in the negative, the improvement measures;

(2) as it is stipulated in the legislation that a person applying for registration as an elector for a geographical constituency is also regarded as having applied for registration as an elector for DC (Second) FC unless the person indicates otherwise, of the number of electors who, albeit not having indicated otherwise at the time of elector registration, were refused to be issued with the ballot papers for that FC election, and the reasons for that; and

(3) of the number of polling stations at which the numbers of ballot papers issued and collected did not tally with each other, and set out the relevant reasons by name of polling station; the number of polling stations of which the polling hours were extended, and set out the relevant reasons by name of polling station; the measures in place to prevent the recurrence of the aforesaid two situations?

Reply:

President,

The 2016 Legislative Council (LegCo) general election was held on September 4. The Electoral Affairs Commission (EAC) was responsible for conducting and supervising the election in



accordance with the law, and all public officers responsible for the electoral affairs had, as in the past, handled matters relating to the election in strict accordance with the relevant legal provisions, with a view to ensuring that the election was held in an open, fair and honest manner. After each election, the EAC will conduct a comprehensive review of the various electoral arrangements, propose improvement measures and submit a report to the Chief Executive within three months of the conclusion of the election as required by the law. After the report is made public, we will listen to the views of Members on the arrangements of this general election at the LegCo Panel on Constitutional Affairs.

Having consulted the Registration and Electoral Office (REO), our reply to various parts of the question is as follows:

(1) In making preparations for the 2016 LegCo general election, the REO's requests for venue were rejected by 89 schools or organisations, and thus had to look for alternate venues.

The arrangement for the Presiding Officers (PROs) / Deputy Presiding Officers / Assistant Presiding Officers (APROs) (PROs and their deputies) to collect and deliver some of the ballot papers before the polling day is indeed the same as that for the previous public elections, and has been adopted for years and has all along been effective. In view of the large number of polling stations (595 in total), the PROs and their deputies will collect some of the ballot papers, copies of registers of electors and electoral materials for their respective polling stations in batches starting from about one week before the polling day, and bring them along when reporting to the polling stations for duty in the early morning of the polling day to facilitate the opening of polling stations at 7.30am sharp for electors to cast their votes. When collecting the ballot papers, the PROs and their deputies had to undergo specified procedures, including checking the quantity and serial numbers of the ballot papers against the "Summary of ballot paper stock allocated to individual polling station" (the Summary) of the REO. Both the REO and polling staff concerned must sign on the Summary to confirm the quantity of ballot papers distributed, and each of them was given a signed copy of the Summary for record. All the ballot papers collected by the PRO and their deputies were sealed in bags and kept in locked suitcases. The PROs and their deputies were required to keep safe custody of the ballot papers and unpack them only before the poll started. Under the existing mechanism, the polling staff responsible for collecting ballot papers were at the rank of APRO or above, and were also of officer grade or above in the civil service structure. Moreover, about 15 minutes before the poll began, the PRO informed the candidate(s)/election agent(s)/polling agent(s) present of the quantity of ballot papers possessed by him/her and where the ballot papers were placed. Every ballot box must go through a sealing procedure before use. The candidates/agents present were invited to witness the procedure of locking and sealing the back door of the ballot boxes by the PRO, and two of them were invited to sign on the sealing certificate. According to the existing electoral legislation, candidates/election agents/polling agents can witness the whole polling process, including the checking of the unused ballot papers and issuance of ballot papers to electors, etc., so as to forestall the occurrence of irregularities and to enhance the transparency of the whole polling process.

(2) On the polling day of the 2016 LegCo general election, the EAC received complaints from a total of about 180 electors who

claimed that they were unable to cast their votes in the District Council (second) functional constituency (DC (second) FC). The REO, after checking the relevant records, found that all the electors concerned had chosen not to be registered as an elector for the DC (second) FC when submitting their applications for voter registration or change of registration particulars during previous voter registration cycles. The REO thus acted in accordance with their wishes and did not include them in the 2016 final register for the DC (second) FC. As a result, these electors were only eligible to vote in the geographical constituencies.

(3) For the 2016 LegCo general election, the REO found that there were obvious discrepancies between the cumulative voter turnout figure and the number of actual ballot papers counted in five polling stations, namely the Sheung Tak Community Hall in Sai Kung, the Wan Tau Tong Neighbourhood Community Centre in Tai Po, CCC Kei Wai Primary School (Ma Wan) in Tsuen Wan, Sham Tseng Catholic Primary School in Tsuen Wan, and Hong Kong Teachers' Association Lee Heng Kwei Secondary School in Tai Po. The REO is conducting an investigation into the incident as instructed by the EAC. The findings of the investigation will be included in the election report.

While there were still electors queuing for ballot papers at some 200 polling stations at 10.35pm (i.e. five minutes after the end of the polling hours) on the polling day of the 2016 LegCo general election, voting procedures at most of these polling stations completed before 11pm. As at 11pm that night, there were a total of 38 polling stations with electors who had not completed the voting procedures. The names of the polling stations involved are set out in Annex. As the voter turnout was notably higher in this election, coupled with the fact that there were relatively more electors casting their votes at later hours on the polling day, the queues formed at some polling stations were longer than those in the past elections. Besides, some polling stations could not cope with all electors who came to vote within a short period of time due to their size and capacity, and resulted in longer waiting time for electors. The EAC is reviewing the arrangements of the polling stations and will propose improvement measures accordingly.

Ends/Wednesday, November 2, 2016  
Issued at HKT 16:45

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List of polling stations with electors who had not completed the voting procedures at 11pm of the polling day of the 2016 Legislative Council general election		
Code and Name of Geographical Constituency	Polling Station Code	Place designated as Polling Station
LC1 Hong Kong Island	A0901	Victoria (Belcher) Kindergarten
	A1301	San Wui Commercial Society School
	C0101	Eastern District JPC Club House
	C0201	St. Anna Anglo-Chinese Kindergarten
	C0202	Tai Koo Shing Post Office
	C0301	Sai Wan Ho Health Centre
LC2 Kowloon West	E0501	Yaumati Catholic Primary School (Hoi Wang Road)
	E0801	Hong Kong Society for the Protection of Children BOC Nursery School
	F2302	Chak On Centre, City University of Hong Kong
LC3 Kowloon East	H0602	PLK Mrs. Maria Cheung Lifelong Learning Institute for the Senior
	H1201	Price Memorial Catholic Primary School
	H1301	Ho Tak Kindergarten (Sponsored by Sik Sik Yuen)
	H2002	Hong Kong Playground Association Jockey Club King Fu Integrated Service Centre For Children & Youth
	J1301	Chan Mung Yan Lutheran Kindergarten
	J2501	Sai Tso Wan Neighbourhood Community Centre
	J2601	Lam Tin (West) Estate Community Centre
	J3501	The Hall, Cheerful Court
LC4 New Territories West	K0301	Shak Chung Shan Memorial Catholic Primary School
	K0701	Chai Wan Kok Catholic Primary School
	K1001	Sham Tseng Catholic Primary School
	K1301	CCC Kei Wai Primary School (Ma Wan)
	L1801	FDBWA Chow Chin Yau School
	S1902	CCC Yenching College
	S2302	Study Room, Mayfair Gardens
LC5 New Territories East	P0302	HKRSS Tai Po Secondary School
	P1001	Hong Kong Teachers' Association Lee Heng Kwei Secondary School
	P1801	Tai Mei Tuk Village Office
	P1802	Shuen Wan Chim Uk Village Office
	Q1101	POH 80th Anniversary Tang Ying Hei College
	Q2401	Sheung Tak Community Hall
	Q2602	Lohas Park Community Hall
	R0501	Pentecostal Lam Hon Kwong School
	R1501	GCCITKD Lau Pak Lok Secondary School
	R2101	PLK Siu Hon Sum Primary School
	R2302	Yan Oi Tong H.K. Toi Shan Association Elderly Centre
	R2901	Lee On Community Hall
	R3301	Tak Sun Secondary School
	R3701	LKWFSL Wong Yiu Nam Primary School

## Appendix II

### Relevant documents on Electoral Affairs Commission Report on the 2016 Legislative Council General Election

Committee	Date of meeting	Paper
Legislative Council	10.6.2015	<a href="#">Official Record of Proceedings Pages 147 – 151 (Written question)</a>
Panel on Constitutional Affairs ("CA Panel")	21.3.2016 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
CA Panel	18.4.2016 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	1.6.2016	<a href="#">Official Record of Proceedings Pages 126 – 130 (Written question)</a>
	29.6.2016	<a href="#">Official Record of Proceedings Pages 60 – 68 (Oral question)</a>
	2.11.2016	<a href="#">Official Record of Proceedings Pages 23 – 29 (Oral question)</a>
		<a href="#">Official Record of Proceedings Pages 90 – 92 (Written question)</a>

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