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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat for
the meeting on 20 November 2017**

Review of electoral arrangements

Purpose

This paper provides background information on the Administration's current review of electoral arrangements, and summarizes the discussion of the Panel on Constitutional Affairs ("the Panel") on the regulation of election advertisements ("EAs") published through the Internet, the regulation of election surveys, and the polling hours of Legislative Council ("LegCo") and District Council ("DC") elections, which are to be covered in the review.

Background

Review of electoral arrangements

2. The Administration has earlier informed the Panel that in light of the experiences gained from the various elections in the 2015 to 2017 election cycle, it is conducting a review of various electoral arrangements in preparation for the next election cycle. A consultation paper on review of electoral arrangements was issued on 13 November 2017. The Administration will introduce the relevant legislative amendments according to the review outcome. The review covers issues including the regulation of EAs published through the Internet (including social media), the regulation of election surveys, as well as the polling hours for LegCo and DC elections.

Regulation of election advertisements published through the Internet

3. When the Panel discussed the Electoral Affairs Commission's ("EAC") proposed guidelines on election-related activities in the 2015-2016 legislative session, members expressed concern about the regulation of election-related materials published on social networking websites and related issues. There were concerns over the definition of EAs, and whether the relevant expenses of publishing such materials on social networking websites would be regarded as

election expenses. At the request of the Panel, the Administration conducted a study on overseas experience. At the meeting on 19 December 2016, the Administration reported the findings of the study¹ and sought members' views on the relevant practices in Hong Kong.

Regulation of election surveys

4. According to the Administration, various election surveys were conducted in the 2016 LegCo General Election by different organizations on or before the polling day with announcement of the survey results. There were media reports that some people intended to use the results of such surveys for the matching of votes. The Administration also conducted a study on overseas experience on the regulation of election surveys. At the meeting on 19 December 2016, the Administration reported the findings of the study² and sought members' views on the relevant practices in Hong Kong.

Polling hours

5. The polling hours for both DC and LegCo elections are from 7:30 am to 10:30 pm at present³, which have been in force since the First LegCo election in 1998 and the first-term DC election in 1999. The Administration noted that some LegCo Members had previously expressed the view that the poll running for 15 hours was too long, and they had proposed advancing the closing time of the poll, thereby shortening the polling hours. At the meeting on 17 July 2017, the Administration consulted the Panel on, among others, shortening the polling hours.

Relevant discussion of the Panel

Regulation of election advertisements published through the Internet

6. Members noted that what constituted an EA was explained in the relevant chapter on EAs in each set of the 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.

¹ The findings of the Administration's study on selected regulatory regimes are set out in Annex A to LC Paper No. CB(2)394/16-17(03).

² The findings of the Administration's study on selected regulatory regimes are set out in Annex D to LC Paper No. CB(2)394/16-17(03).

³ Polling hours for dedicated polling stations set up at penal institutions are an exception. Owing to security reasons, polling hours for these stations are from 9:00 am to 4:00 pm.

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 ECICO.⁴

8. The Administration explained that the regulatory regime of EAs under ECICO was set out in the relevant chapter on EAs of the guidelines on election-related activities published by EAC. 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.

9. During discussion of "Regulation of the use of social media, the imposition of a cooling-off period and the conduct of election polls in public elections" at the meeting on 19 December 2016, some members opposed regulating the use of social media in public elections, including acts such as changing profile pictures or sharing comments on candidates. They considered that the relevant law enforcement work would be very difficult. Moreover, relevant expenses associated with the social media posts (e.g. Internet service fees) were only minimal. They expressed support for providing exemption to the expression of personal views by individuals on the Internet and that only paid-for advertisements should be subject to regulatory control. Some other members stressed the importance of ensuring the integrity and fairness in elections and the need to regulate election expenses to ensure a level playing field for all candidates. Nevertheless, these members generally

⁴ Section 23(1) of ECICO stipulates that:

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

also expressed support for providing exemption for the publication of views which did not involve making or receiving payments and taking measures to ensure compliance with the relevant legal requirement in cases where payments were involved.

Regulation of election surveys

10. 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.

11. The Administration explained that organizations or persons applying to the Registration and Electoral Office ("REO") 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, 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.

12. At the meeting on 19 December 2016, some members criticized that the "ThunderGo" campaign during the 2016 LegCo General Election was aimed to influence electors' choice by disseminating to electors on the polling day the data collected from opinion polls and recommended lists of candidates, in addition to claims of "abandonment of election" by candidates, thereby causing unfairness to certain candidates. They queried whether the Administration had looked at if the "ThunderGo" campaign had published EAs and involved election expenses incurred without the authorization of the candidates concerned. They called on the Administration to review the relevant

legislation to plug the loophole. They also expressed support for introducing measures to regulate the publication of such poll data on or before the polling day so as to ensure fairness in elections. They suggested that the publication of such poll data should be disallowed within three to seven days before the polling day. Some other members considered that even if the "ThunderGo" campaign was aimed to facilitate the matching of votes, this was not in breach of the law as electors were free to choose which candidate they wanted to vote for.

13. The Administration advised that it would not comment on individual cases. However, according to the provisions on election expenses stipulated in ECICO, for EAs published by a candidate through online platforms, the production and operating costs should also 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 was a question of fact to be answered in the circumstances of each case. Upon receipt of complaints that someone might have engaged in corrupt or illegal conduct in elections, REO would refer such complaints to law enforcement agencies for investigation and follow-up action.

Polling hours

14. During discussion of "Review of operation of polling and counting stations of District Council and Legislative Council Elections" at the meeting on 17 July 2017, some members considered that the current polling hours in Hong Kong could be shortened having regard to overseas practices. Hon Alice MAK suggested that the polling hours in Hong Kong might start at 7 am and close at 6 pm, or from 9 am to 8 pm to cater for those who had to work on Sundays. Hon CHEUNG Kwok-kwan suggested slightly advancing the closing time of the poll from 10:30 pm to 10 pm, in order to strike a balance between catering for the needs of some electors and facilitating the counting work. Dr Hon KWOK Ka-ki, however, opposed shortening the existing polling hours as some electors might not be able to vote then as the revised polling hours might be inconvenient to them. The Administration undertook that it would take heed of members' views and comments in reviewing the relevant arrangements.

Latest development

15. The Administration will brief the Panel on the Consultation Paper on Review of Electoral Arrangements at the next meeting on 20 November 2017.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
17 November 2017

Relevant documents on review of electoral arrangements

Committee	Date of meeting	Paper
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)
Panel on Constitutional Affairs	19.12.2016 (Item IV)	Agenda Minutes
	17.7.2017 (Item III)	Agenda Minutes
	16.10.2017 (Item III)	Agenda

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