

**Consultation Report on
Review of Electoral Arrangements**

Constitutional and Mainland Affairs Bureau

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* The Appendix has been uploaded to the website www.cmab.gov.hk. Members of the public may visit the website to browse the Appendix.

Chapter 1: Introduction

- 1.01 The various major public elections in the 2015-2017 election cycle were successfully conducted. In view of the recommendations made by the Electoral Affairs Commission (“EAC”) in its reports submitted to the Chief Executive after the elections, as well as the views put forward by the Legislative Council (“LegCo”) Panel on Constitutional Affairs (“CA Panel”) and the community for improving the electoral arrangements, the Government has commenced a review on electoral arrangements in preparation for the next election cycle.
- 1.02 For instance, the Registration and Electoral Office (“REO”) has revised the voter registration form such that electors will not inadvertently give up their voting rights for the District Council (“DC”) (second) functional constituency; the amendment to subsidiary legislation, which requires electors to produce the original of their Hong Kong Identity Cards in collecting the ballot papers, and provides for alternative measures in case such an original cannot be produced, has come into operation since December 2017; and the amendment to subsidiary legislation requiring electors to submit address proof when submitting applications to amend their registered address has also been implemented since February 2018.
- 1.03 In order to further review the various electoral arrangements, the Government published the Consultation Paper on Review of Electoral Arrangements (“Consultation Paper”) on 13 November 2017 and launched a public consultation that last for about seven weeks to gauge the views of the public on three issues related to electoral arrangements, namely, the regulation of election advertisements (“EAs”) published through the Internet (including social media), the regulation of election surveys, as well as the polling hours. Members of the public were also welcome to offer concrete views on other election-related issues. The consultation period ended on 29 December 2017.

1.04 This report sets out the results of the consultation exercise and elaborates on the Government's position on the relevant issues after considering the views received. A complete set of all the written submissions received during the consultation period is in the **Appendix**. Due to limited space, the main body of this report gives a brief account of the views received. Please refer to the **Appendix** for the original texts of the written submissions.

Chapter 2: The Public Consultation on Review of Electoral Arrangements

- 2.01 The Public Consultation on Review of Electoral Arrangements was conducted from 13 November to 29 December 2017. The Consultation Paper was available at the Home Affairs Enquiry Centres of District Offices and can be downloaded at the website of the Constitutional and Mainland Affairs Bureau (“CMAB”). Members of the public could submit their views to the CMAB by mail, facsimile or email.
- 2.02 The Government consulted the LegCo CA Panel to seek views of LegCo Members on the Consultation Paper on 20 November 2017, and met with deputations/individuals at a subsequent special meeting of the LegCo CA Panel to listen to their views on 20 December. The CMAB also met with the Chairmen and Vice Chairmen of the 18 DCs on 21 December 2017 to solicit their comments on the Consultation Paper.
- 2.03 During the public consultation period, we have received a total of 15 430 submissions¹ via mail, facsimile and email. These include submissions from political parties, LegCo and DC Members, organisations, academics as well as members of the public. With the exception of a small number of submissions requesting confidentiality, all submissions are reproduced in the **Appendix**.

¹ The CMAB received 577 submissions on the Consultation Paper in the 36 days after the public consultation period. Views of those submissions are also available in the **Appendix**.

Chapter 3: Regulation of Election Advertisements Published through the Internet (including Social Media)

Background

3.01 We raised the following issues in the Consultation Paper to seek views from the public in respect of the regulation of EAs published through the Internet (including social media):

- (a) Under the premises of upholding the fairness and impartiality of elections and safeguarding the freedom enjoyed by the public in their daily expression of views on the Internet (including social media), may consideration be given to provide an exemption in the legislation, such that a third party (i.e. individuals or groups that are neither the relevant candidates whose elections are promoted or prejudiced nor their election expense agents) can be exempted from the criminal liability arising from incurring election expenses as a result of expression of views on the Internet (including social media) that constitutes an EA?
- (b) Should the types of election expenses eligible for the above exemption be restricted to electricity and Internet access charges?

Views put forth by political parties/LegCo and DC Members/organisations/academics

3.02 **Regarding whether the exemption mentioned in paragraph 3.01(a) should be introduced into the legislation**, an overwhelming majority of the political parties/LegCo and DC Members/organisations/academics who mentioned this issue in their written submissions supported the introduction of the aforementioned exemption to safeguard the freedom enjoyed by the public in their expression of views and to allay public concerns on inadvertently breaching the electoral laws (*Democratic Alliance for the Betterment and Progress of Hong Kong* (“DAB”), *Democratic Party* (“DP”), *New People’s Party* (“NPP”), *Power for Democracy* (“Pfd”), *Hong Kong Professional Teachers’ Union* (“HKPTU”), *Hong Kong Association for Democracy and People’s Livelihood* (“ADPL”),

Hon Charles Mok, several DC Members, Act Voice, Hong Kong Bar Association (“HKBA”), etc.). No objection was raised in the written submissions received. There was the suggestion that posting by a third party merely for expression of personal views on the Internet should not be counted towards election expenses, and electricity and Internet access charges should not be regarded as election expenses (*The Professional Commons (“PC”)*). There was also the suggestion that messages sent by a third party online or through social media should not be regarded as EAs nor should the expenses so incurred be counted as election expenses. Conceptually, a distinction should be drawn between expression of views with respect to an election and EAs published by a candidate. Besides, Internet access and electricity charges were trivial, and fair enforcement of the law would be difficult (*Ma Ngok, Associate Professor at Department of Government and Public Administration of Chinese University of Hong Kong*). Some views considered that third parties entitled to the exemption should include members of the public who were not employed by candidates or their supporters (*DC Members Lui Man-kwong and Roy Tam*) or persons not related to candidates (*Act Voice*). An organisation opined that clarification should be made as to the applicability of the proposed exemption to instant message applications such as WeChat and Whatsapp (*Law Society of Hong Kong (“the Law Society”)*).

- 3.03 **Regarding whether the types of election expenses eligible for the exemption mentioned in paragraph 3.01(a) should be restricted to electricity and Internet access charges**, a majority of the political parties/LegCo and DC Members/organisations/ academics who mentioned the issue in their written submissions supported restricting the scope of the exemption to electricity and Internet access charges (*DAB, DP, Pfd, HKPTU, ADPL, Hon Charles Mok, HKBA*). No objection was raised in the written submissions received.
- 3.04 Besides, at the meeting of the LegCo CA Panel on 20 November 2017, some Members suggested making reference to overseas practices and requiring a third party publishing EAs on the Internet (including social media) to disclose his/her identity (e.g., name) in order to prevent anonymous vilification against individual candidates on the Internet (including social media) (*Dr Hon Fernando Cheung and Hon Kwok Ka-ki*). A political party proposed to study including such requirements to

enhance the transparency of the election (*NPP*). Some also deemed it advisable for the Government to monitor the implementation and avoid abuse if the exemption was to be introduced (*NPP, Hon Charles Mok*).

Written submissions by the public

- 3.05 Submissions from the public received during the public consultation period generally did not go into details. **Regarding whether the exemption mentioned in paragraph 3.01(a) should be introduced into the legislation**, a vast majority of the relevant written submissions from the public (about 96%) supported the exemption. There were views considering the exemption could safeguard the public's freedom of speech on the Internet; and some were of the view that the expression of personal views in real life was similar to that on the Internet, and therefore the latter should not be subject to criminal liability as the former does not. On the other hand, there were opposing views that the Internet was a platform on which messages from one individual could be disseminated to an infinite number of groups, hence it should not be taken simply as an interpersonal communication tool; but rather it should be deemed as the media. Given the substantial influence and reach of the Internet, extensive publication of EAs on the Internet, which was extremely difficult to prove, would have the effect of influencing the voters and affecting the fairness and impartiality of elections. Therefore, comments published through the Internet on elections and even on candidates should not be regarded as mere personal views. The relevant criminal liability for incurring election expenses in the publication of such comments should not be exempted. **Regarding whether the types of election expenses eligible for the exemption mentioned in paragraph 3.01(a) should be restricted to electricity and Internet access charges**, about 67% of the relevant written submissions from the public supported restricting the scope of the exemption to electricity and Internet access charges. Individual submission suggested that the exemption should be extended to cover design fees and website construction fees, while individual submission requested that a third party publishing EAs on the Internet must disclose his/her name and address to the public.

Recommendations

Whether the exemption mentioned in paragraph 3.01(a) should be introduced into the legislation?

- 3.06 In view of the overwhelming support for the proposed exemption received from various sectors of the community, the Government will introduce the proposed exemption by means of legislative amendments. Regarding the views of individual submission that the criminal liability arising from incurring election expenses as a result of expression of views on the Internet (including social media) should not be exempted in view of the nature of the Internet as a media with substantial influence and reach, we consider that under the prevailing legislation, whether a particular expenditure should be regarded as an election expense does not hinge upon factors such as the influence and reach of the EA. After balancing the objective of upholding the fairness of elections against the need to safeguard the freedom enjoyed by the public in their daily expression of views on the Internet, we consider the proposed exemption appropriate.
- 3.07 As regards the scope of the third party, considering that the third party entitled to the exemption should be defined against a set of objective and clear criteria in order to ensure the practicality and certainty of the exemption, as well as to avoid further complicating the existing legislation, the Government is inclined to, as proposed in the Consultation Paper, define the third party entitled to the exemption as individuals or groups that are neither the relevant candidates whose elections are promoted or prejudiced nor their election expense agents. Regarding the scope of the exemption, the Government is inclined to cover expression of views on the Internet (including social media) in general, without specifying the types of communication hardware and/or software used for such publications, in order to allow room for advancement in technologies in future.
- 3.08 As regards individual submissions suggesting that certain expenses (e.g., electricity and Internet access charges) should not be regarded as election expenses, the design of the electoral system is to uphold the fairness of elections by regulating election expenses in the legislation to ensure that all candidates could compete on an equal footing based on an identical threshold of electoral resources. Great caution should be

exercised before making any recommendation on excluding particular expenditure items from the definition of election expenses. As such, we propose providing an exemption on the criminal liabilities arising from incurring merely electricity and Internet access charges in the publication of EAs by a third party, while the statutory definition of “election expenses” will remain intact. We will review the implementation of the proposed exemption at an appropriate juncture.

Whether the types of election expenses eligible for the exemption mentioned in paragraph 3.01(a) should be restricted to electricity and Internet access charges?

3.09 Noting that the majority supports restricting the scope of the proposed exemption to electricity and Internet access charges, the Government will only exempt the criminal liabilities arising from incurring merely electricity and/or internet access charges. As regards individual submission suggesting that the exemption should be extended to cover design fees and website construction fees, the Government considers that such expenses have gone beyond the realm of daily expression of views by the public, and they are often not trivial and are more vulnerable to abuse.

Other views

3.10 Some suggest that reference be made to the overseas legislation and requirements be imposed on a third party publishing EAs on the Internet (including social media) to disclose his/her identity (e.g. name and even address). The Government, after taking into account such views, the existing regulatory requirements of Hong Kong and overseas practices, is of the view that the originally proposed exemption should be maintained and there is no need to introduce the abovementioned additional requirement. Otherwise, a person would first need to assess whether his/her publication on the Internet (including social media) constitutes an EA. A web surfer who only wishes to express his/her own views and is not required to disclose his/her identity as per the above requirement may still be worried that he/she could inadvertently breach the law due to misjudgment. Some may disclose his/her identity (e.g., name and address) out of prudence, regardless of whether the publication constitutes an EA. This, however, may discourage web surfers from expressing their views on the Internet. Introduction of the above requirement

falls short of addressing the concerns of the public over inadvertently breaching the existing legislation, while adding complexity and uncertainty to the regulatory requirements, hence running contrary to the intention of the proposed exemption. Moreover, the existing legislation already contains provisions to deal with deceptive behaviour in relation to electors and publication of false or misleading statements about a candidate². These provisions can address the issue of vilification on the Internet (including social media), and will remain intact despite the proposed targeted exemption.

² Section 14 of the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) on “corrupt conduct to engage in certain deceptive behaviour in relation to electors” and section 26 of the ECICO on “illegal conduct to publish false or misleading statements about a candidate”.

Chapter 4: Regulation of Election Surveys

Background

- 4.01 We raised the following issues in the Consultation Paper to seek views from the public in respect of the regulation of election surveys:
- (a) Whether election surveys (including those on electors' voting preference and choice) conducted outside the No Canvassing Zones ("NCZs") on the polling day should be regulated? Specifically, whether the announcement or disclosure of such survey results, or the making of specific remarks or predictions on the performance of individual candidates should be prohibited before the close of poll?
 - (b) Whether and to what extent election surveys on electors' voting preference conducted prior to the polling day should be regulated? Specifically, whether the announcement or disclosure of such survey results or the making of specific remarks or predictions on the performance of individual candidates should be prohibited on or prior to the polling day?
 - (c) Whether any change should be made to the existing regulation on exit polls on the polling day?

Views put forth by political parties/LegCo Members

- 4.02 **Regarding election surveys conducted outside the NCZs on the polling day**, some political parties were of the view that the Government should prohibit any organisations or persons from announcing or disclosing the results of any pre-election surveys on electors' voting preference (*Business and Professionals Alliance for Hong Kong* ("BPA"), *Liberal Party*) and/or election surveys conducted on the polling day (including those conducted outside the NCZs) before the close of poll on the polling day (*BPA, DP, Liberal Party, NPP*). They generally opined that since the announcement of results of election surveys or predictions may affect electors' voting preference, it would not be prudent for any organisations or persons to reveal the

relevant data before the close of poll. This could ensure the fairness of public elections.

- 4.03 Certain political parties expressed concerns that during the 2016 LegCo General Election, some organisations disseminated the results of election surveys conducted on and before the polling day, as well as their recommended lists of candidates. As this could influence electors' voting preference and cause unfairness to certain candidates, there was a need for the Government to properly address the issue (*DAB, Liberal Party, "Supervision by 230,000"*). Nevertheless, some political parties questioned the effectiveness of any change to the existing regulation on election surveys in tackling those election surveys that may influence electors' voting preference. For instance, relevant organisations or individuals could conduct the election surveys via the Internet or overseas servers and disclose the survey results (particularly voting messages that were sent from overseas), thereby making it difficult to regulate these activities (*DAB*). A political party opined that if, in an objective sense, the surveys could promote or prejudice the election of candidates, the results of the election surveys should be regarded as EAs, and the expenses of which should be declared and included as election expenses under the existing regulation (*NPP*).
- 4.04 When the Consultation Paper was being discussed at a meeting of the LegCo CA Panel, Dr Hon Priscilla Leung suggested that the Government should introduce a cooling-off period to address the aforesaid situation. Dr Hon Cheng Chung-tai considered that the Government could make reference to the practice in New Zealand and introduce a cooling-off period on the polling day until the close of poll, in order to effectively ensure that a level playing field was in place for all the candidates running in an election and avoid any undue influence on electors' choice on the polling day. Hon Alice Mak and Hon Starry Lee, however, questioned whether it would be practicably feasible to prohibit the conduct of canvassing activities on the Internet or by phone during the cooling-off period, and considered that such a period should not be introduced if it was in fact not enforceable.
- 4.05 On the other hand, some political parties/a LegCo Member opposed to the regulation of election surveys conducted outside the NCZs on the polling day. They generally considered it necessary to uphold the freedom of expression, freedom of the press and academic freedom, and expressed concerns that such

regulation would impede the circulation of information and the electors' right to know (*HKPTU, ADPL, Hon Charles Mok*). A political party opined that so long as the current arrangements that election news coverage and publication must make reference to all lists of candidates were maintained, there would be no need for the Government to make any changes to the existing mechanism (*ADPL*).

- 4.06 **As regards election surveys on electors' voting preference conducted prior to the polling day**, in addition to the views covered in paragraph 4.03 above, some political party/LegCo Members pointed out at the LegCo CA Panel meeting that such election surveys were closely intertwined with the so-called "abandonment of election" announced by certain candidates after the close of nomination period in the 2016 LegCo General Election ("*Supervision by 230,000*", *Hon Cheung Kwok-kwan, Hon Holden Chow*). A few political parties opined that the Government should consider regulating election surveys conducted a few days before the election by prohibiting the announcement or disclosure of any results of election survey, statistics or predictions in the time period concerned (*Liberal Party*), and imposing a suitable cooling-off period ("*Supervision by 230,000*").
- 4.07 On the other hand, some political parties/a LegCo Member opposed to regulating any form of election surveys on electors' voting preference conducted prior to the polling day, raising concerns over the impact of such regulations on the public's right to know, academic freedom and freedom of the press. (*DP, PC, HKPTU, ADPL, Dr Hon Fernando Cheung*) A political party pointed out that the results and predictions of election surveys could enable candidates to further optimise their election campaigns and appropriately adjust their election tactics having regard to the latest development (*ADPL*).
- 4.08 **As for whether any change should be made to the existing regulation on exit polls on the polling day**, some political parties considered that exit polls should not be allowed on the polling day (*Liberal Party, PC*), whereas one political party opposed to tightening up the existing restrictions on exit polls in order to preserve the freedom enjoyed (*ADPL*). A political party demanded that only the eight major universities in Hong Kong be allowed to conduct exit polls (*Democratic Alliance*). A political party/LegCo Member opined that the Government

should adopt effective measures to proactively strengthen the regulation of exit polls conducted on the polling day, so as to ensure that any form of disclosure of the results of exit poll by any organisations before the close of poll would be prohibited (*PfD*); and the Government should strictly monitor and combat any violations of guidelines relating to exit polls (*Hon Charles Mok*).

- 4.09 When the Consultation Paper was being discussed at a meeting of the LegCo CA Panel, some Members were of the view that the existing guidelines of the EAC on exit polls were appropriate. Hon Lam Cheuk-ting and Dr Hon Fernando Cheung considered that the Government should continue to allow credible pollsters to conduct exit polls. Meanwhile, both Hon Claudia Mo and Dr Hon Helena Wong raised concerns over the monitoring of the compliance of the relevant organisations and persons conducting the exit polls with the relevant terms of the statutory declaration and the guidelines.

Written submissions by organisations/academics

- 4.10 **Regarding election surveys conducted outside the NCZs on the polling day**, the HKBA considered that the Government should not prohibit the conduct of such election surveys. Instead, organisations or persons conducting election surveys should be prohibited from announcing or disclosing the survey results, or making specific remarks or predictions on the performance of individual candidates before the close of poll on the polling day. The HKBA also pointed out that since electors did not have sufficient time to verify the credibility of the election survey results, their voting preference might be unduly influenced. The Law Society also supported the regulation of announcement and disclosure of election survey results and the making of remarks or predictions before the election result was formally announced on the polling day. It considered that this arrangement could avoid sending confusing messages to electors, thereby influencing their voting preference and unfairly interfering with the election process.
- 4.11 On the other hand, Chung Ting-yiu, Director of the Public Opinion Programme of The University of Hong Kong, disagreed with the regulation of election surveys conducted outside the NCZs on the polling day. He took the view that even if the

announcement of election survey results was prohibited, candidates who intended to take part in the matching of votes could still give out other forms of voting instructions to their supporters. Associate Professor Ma Ngok also pointed out that as persons/organisations conducting election surveys could disclose the exit poll results in secret, it would be rather difficult for the Government to take forward the proposal.

4.12 **Regarding election surveys on electors' voting preference conducted prior to the polling day**, the Law Society considered it possible to allow universities and recognised media institutions to conduct the election surveys concerned, and recommended the Government to consider the proposal of imposing a cooling-off period before the polling day. Meanwhile, the HKBA, Director Chung Ting-yiu and Associate Professor Ma Ngok were inclined not to support the regulation of election surveys conducted before the polling day. That said, Director Chung Ting-yiu pointed out that the Government could introduce international standards on election surveys which set out the professional and ethical responsibilities of organisations conducting the surveys. For instance, the organisations should be subject to professional supervision and must not use the exit polls for the purpose of election campaigns.

4.13 **On the existing regulation on exit polls**, the Law Society recommended that the Government should consider requiring applicant organisations or applicants for conducting exit polls to provide more information of their survey methodology, such as sample size, sampling method, response rate, survey questions, etc. Associate Professor Ma Ngok, however, opined that there would be no need for major changes as the existing regulations in prohibiting the publication of exit poll results on the polling day were sufficient.

Written submissions by the public

4.14 Amongst the relevant written submissions from members of the public received during the public consultation period, about 35% were in support of regulating **election surveys conducted outside the NCZs on the polling day**. The major reasons for supporting regulation included the disturbances to electors caused by election surveys on the polling day, irrelevancy between some election surveys and academic research, etc. On

the other hand, about 65% were against the Government regulating such surveys, mainly owing to the fact that election surveys could serve as useful reference for both the candidates and electors, regulating such surveys would hinder the freedom of expression, etc..

4.15 **As regards election surveys conducted prior to the polling day**, the majority of the respondents to that issue (about 86%) had reservations on suggestion of regulating the surveys, with the main reasons being such election surveys could serve as valuable reference for both academic research and candidates, such surveys could raise electors' awareness of the relevant elections, etc.. For those who were supportive to regulation (about 14%), the reasons cited were generally similar to those in support of regulating election surveys conducted outside the NCZs as mentioned in paragraph 4.14.

4.16 There were diverse views from respondents **regarding whether any change should be made to the existing regulation on exit polls on the polling day**. Among respondents who supported making changes to the existing regulation (about 53%), a majority recommended that the existing regulation be tightened up by, for instance, only allowing academic institutions to conduct exit polls, making public the staff uniform of the organisations conducting the exit polls, requiring the organisations or persons conducting the exit polls to release the survey results within a short period of time after the election, etc.. Respondents who did not support making changes to the existing regulation (about 47%) generally did not elaborate on the reasons.

Recommendations

Whether election surveys (including those on electors' voting preference and choice) conducted outside the NCZs on the polling day should be regulated?

4.17 Overall speaking, we noted that a larger proportion of political parties/LegCo Members/organisations were in support of regulating election surveys conducted outside the NCZs on the polling day, whereas a larger proportion of the members of the public tended to hold opposing views in their written submissions. After carefully assessing both the supporting and opposing views, we consider that there is yet to be a clear consensus in the community on the above issue for the time being. In fact, as pointed out by some respondents, even if amendments were introduced by the EAC to the relevant regulations on electoral procedures under the Electoral Affairs Commission Ordinance (Cap. 541) to regulate election surveys conducted outside the NCZs on the polling day, with the advancement of information technology in recent years, organisations or persons conducting the surveys could still disclose the election survey results or give voting instructions directly through different channels (such as the Internet and messaging software for smartphones), thus making it difficult for law enforcement agencies to implement the regulations concerned.

4.18 In light of the above, we propose that we will not extend the regulation on exit polls to other election surveys conducted outside the NCZs on the polling day for the time being. If the community strongly opines that such regulation should be introduced in the future, we are prepared to explore in detail the possibility of formulating a practicable regulatory proposal.

Whether and to what extent election surveys on electors' voting preference conducted prior to the polling day should be regulated?

4.19 Of the relevant written submissions received during the public consultation period, a vast majority of members of the public opposed to regulating election surveys conducted prior to the polling day, while views among political parties/LegCo Members and organisations/academics on the issue were rather diverse. Although the proposal could prevent organisations or

persons conducting the election surveys from releasing survey results to electors a few days prior to the polling day, thereby allowing electors to reflect on how they were going to vote, some respondents doubted such regulations would affect the public's right to know, academic freedom and freedom of the press. Having considered the concerns expressed by various stakeholders over the issue, and taking into account the absence of regulation for election surveys conducted outside the NCZs on the polling day, we are of the view that it would not be appropriate to extend the regulation on exit polls to election surveys conducted a few days prior to the polling day at this juncture. Having said that, as pointed out in the Consultation Paper, if the election survey concerned involves publication of EAs and election expenses, and the publisher is neither a candidate nor an election expense agent of the candidate, then the publisher might violate the regulation under the ECICO. If the 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.

Whether any change should be made to the existing regulation of exit polls on the polling day?

- 4.20 There were only a relatively small number of and diverse views from political parties/LegCo Members on this issue. On the other hand, some organisations/academics and members of the public suggested that the existing regulation could be tightened up. The views mainly considered that the Government should strengthen the regulation on applicant organisations or applicants for conducting exit polls, such as enhancing the transparency, stepping up the monitoring of these exit polls, etc.
- 4.21 Under the existing legislation, the EAC's express permission is required for the conduct of exit polls within NCZs. To avoid unfair interference with the election process by unduly influencing electors, the EAC has promulgated guidelines in relation to the conduct, publication and broadcast of exit polls conducted within NCZs. Since the 2015 DC Ordinary Election, it has further required applicants or the applicant organisations for conducting exit polls to make a statutory declaration to abide by the relevant terms and the guidelines on the conduct of exit poll. Having regard to the views of political parties/LegCo Members, organisations/academics and members of the public,

and after balancing various considerations, including the academic freedom of the organisations or persons conducting exit polls, the absence of similar regulation for election surveys conducted outside the NCZs on the polling day, and the need to uphold the fairness of elections, the Government considered that the status quo should be maintained for the regulation on exit polls on the polling day. As the EAC's approval is required for applications for the conduct of exit polls, we will channel to EAC the specific views received on strengthening the regulation of applications and monitoring of exit polls during the consultation, for its consideration on the need for updating the election guidelines concerning exit polls.

Chapter 5: Polling Hours

Background

5.01 Regarding the polling hours of DC and LegCo elections, we raised the following issues in the Consultation Paper to seek the views of the public:

- (a) Whether the current polling hours should be shortened?
- (b) If the polling hours are to be shortened, whether only the closing time of the poll be advanced, only the starting time of the poll be postponed, or both the starting and closing time of the poll be respectively postponed and advanced at the same time?
- (c) If the polling hours are to be shortened, for how long should it be shortened?

Views put forth by political parties/LegCo and DC Members

5.02 Some political parties/LegCo and DC Members opposed to shortening the current polling hours of DC and LegCo elections. A number of political parties/LegCo Members noted that the voter turnout rate was rather high during the last hour on the polling day of the 2016 LegCo Geographical Constituency (“GC”) Election, and expressed concerns that shortening the current polling hours (especially if the closing time of the poll were advanced) would make it difficult for electors who had to work on Sundays to cast their votes at designated polling stations. They also remarked that as the existing polling hours had been in place for a long time, electors had become accustomed to the relevant arrangements. If the closing time of the poll were advanced, it might affect electors’ incentive to vote, which may in turn have an impact on the overall turnout rate. These political parties/LegCo Members questioned that shortening the polling hours would inevitably lead to an increase in the hourly voter turnout, and electors may need to queue for a longer time when collecting the ballot papers. They criticised that if the proposal were materialised eventually, it would, to a certain extent, mean that some electors’ right to vote have been deprived

(DP, PC, Pfd, HKPTU, Democratic Alliance, ADPL, Dr Hon Fernando Cheung, Hon Kwok Ka-ki, Hon Claudia Mo, Hon Charles Mok, several DC Members). A political party/a LegCo Member recommended that the polling day should be designated a statutory holiday in order to facilitate members of the public to cast their votes *(Pfd, Hon Kwok Ka-ki)*.

- 5.03 In respect of the problem that polling staff had to work for long hours as raised in the Consultation Paper, a few political parties suggested that on the premise of ensuring a smooth conduct of the election, the Government should consider increasing the number of polling staff and arranging for the relevant staff to work on shifts in order to shorten their working hours. In response to the claim in the Consultation Paper that shortening the polling hours could facilitate the return of venues of polling stations as early as possible on the day after the polling day, a political party remarked that the REO should consider procuring more large venues such as community halls for the counting of votes in future elections instead of shortening the polling hours, or returning the venues by phases to cater for the needs of certain organisations and venues with early opening hours. There were also suggestions from LegCo Members that the Government should explore the use of information technology to improve the counting process and the related manpower arrangements so that the election results could be announced earlier *(DP, ADPL, Hon Charles Mok, Hon Paul Tse)*.
- 5.04 When the Consultation Paper was being discussed at a meeting of the LegCo CA Panel, Hon Alice Mak and Dr Hon Priscilla Leung both remarked that due consideration should be given to electors who had to work on the polling day in deciding the way forward.
- 5.05 On the other hand, several political parties/LegCo and DC Members supported slightly shortening the polling hours of DC and LegCo elections. Among others, some of these political parties noted that polling hours in Hong Kong were the longest as compared to other countries and territories. They were of the view that shortening the polling hours could improve the overall conduct of the election, and the polling and counting arrangements. For example, as most of the polling-cum-counting stations were set up at schools and these venues had to be returned to the venue management bodies in the morning after the polling day, the long polling hours may affect the willingness

of the relevant organisations to release the venues. As such, there would be a need to review, in a holistic manner, whether the polling hours should be adjusted alongside other matters (*DAB, NPP*). Another political party/a LegCo Member was concerned that the poll, running for 15 hours, would constitute immense pressure to different stakeholders, including candidates and their agents, their electioneering teams, electoral staff and media (*BPA, Dr Hon Lo Wai-kwok*).

- 5.06 These political parties/LegCo Members generally considered there was a case to slightly shorten the polling hours, say advancing the closing time of the poll by an hour to 9:30 pm (*DAB*), or delaying the starting time of the poll and advancing the closing time of the poll by half an hour respectively (i.e., changing the polling hours to 8:00 am to 10:00 pm) (*BPA, Dr Hon Lo Wai-kwok*), thereby enabling the counting of votes to start earlier, while lessening the disturbance caused to the neighbourhood by electioneering activities at night.

Written submissions by organisations/academics

- 5.07 The HKBA opposed to shortening the polling hours of DC and LegCo elections. The association opined that any grounds for shortening the polling hours should be both reasonable and proportionate to the pursuit of its aims. However, the reasons cited in paragraph 4.09 of the Consultation Paper (i.e., “given the present long polling hours and the time needed for vote counting, it is indeed an exhausting experience for polling and counting staff, candidates and their agents, as well as members of the media, all of whom have to put in long hours”) were neither reasonable nor bona fide reasons. The HKBA further pointed out that as the voter turnout in the last hour of the poll was remarkably higher than that in other time slots in the 2015 DC Ordinary Election and the 2016 LegCo GC Election, shortening the polling hours would have affected quite a lot of electors.
- 5.08 The Law Society was also of the preliminary view that the Government should not shorten the current polling hours. The society proposed that the Government, when reviewing whether to shorten the polling hours, should take account of other relevant issues, such as the recommendations of the EAC in its Report on the 2016 LegCo General Election, which include

scheduling the polling day on a Saturday, designating the day following the polling day a school holiday, setting up one or more regional counting stations for each GC, etc. As quite a number of electors were still queuing up to collect their ballot papers at some polling stations after the close of poll on the polling day of the 2016 LegCo General Election, the society proposed that the Government might consider a slight extension of the polling hours.

- 5.09 Associate Professor Ma Ngok disagreed with adjusting the polling hours of DC and LegCo elections for administrative or resource reasons. He pointed out that, unlike other western democratic countries and territories, many electors in Hong Kong had to work on Sundays (including civil servants who were on duty on the polling day), and employers generally would not release the staff to cast their votes. Shortening the current polling hours would cause much inconvenience to many electors, and some electors may not even be able to cast their votes in time before the close of poll. This could in turn affect the overall voter turnout rate.

Written submissions by the public

- 5.10 Members of the public had expressed overwhelming response to this issue. During the almost seven-week public consultation period, the Government received more than 15 400 written submissions expressing views on the polling hours of DC and LegCo elections, of which more than 15 000 were from a template generating website. An overwhelming majority (about 99.7%) of the submissions opposed to shortening the polling hours of DC and LegCo elections. The reasons are summarised below:

- (a) Since quite a number of electors need to work on Sundays, e.g. those working in the retail, catering, health care, security services industries, etc. which have relatively long working hours in general, shortening the polling hours would deprive them of their right to vote. In comparison, maintaining the closing time of the poll at 10:30 pm would allow those who work in another district sufficient time to return from their workplaces to the designated polling stations after work to cast their votes;

- (b) According to paragraph 4.07 of the Consultation Paper, the voter turnout in the last hour of the 2015 DC Ordinary Election and 2016 LegCo GC Election was remarkably higher than that in other time slots on the polling day. The experience of the 2016 LegCo General Election showed that quite a number of electors were still queuing outside many polling stations to collect ballot papers after the close of poll, and electors of one station even had to wait until 2:30 am of the day following the polling day to cast their votes. The counting work for the GC concerned was delayed as a result. In view of this, it is not justifiable for the EAC to shorten the current polling hours;
- (c) As the present polling hours have been in force since the first-term LegCo election in 1998 and the first-term DC election in 1999, electors are already accustomed to this arrangement. If the closing time of the poll were advanced, some electors may find it inconvenient to vote;
- (d) Although the polling hours of Hong Kong are indeed longer than other countries and territories, many overseas countries or territories have arrangements for advance polling, i.e., specifying advance polling day(s) before the polling day for electors who are not available to vote on the polling day to cast their votes in person in advance at designated polling stations on application. For instance, in the United States, notwithstanding that the polling hours of different states vary, there are the options of online voting, postal voting, etc. to facilitate electors to cast their votes; and
- (e) To address the concern that counting staff need to perform and monitor counting work overnight, and that they may suffer from fatigue at the final and most intense stage of the election, the REO should, instead of shortening the polling hours, employ additional electoral staff or adopt a shift system.

5.11 Some members of the public who opposed to shortening the polling hours opined that the current arrangement has all along been effective, and suggested maintaining the present polling hours, i.e., from 7:30 am to 10:30 pm. Besides, some written submissions also proposed extending the present polling hours, such as extending the polling hours for half an hour to 11:00 pm

or an hour to 11:30 pm, to facilitate electors to cast their votes. A very small number of members of the public even suggested the polling hours be extended from 15 hours to 24 hours, so as to encourage Hong Kong people working in the Mainland to return to vote.

- 5.12 Meanwhile, a small number of members of the public in support of shortening the polling hours considered that the proposal could lessen the disturbance caused to the neighbourhood of the counting stations due to the counting of votes at night, and enable the REO to return the venues of the polling stations as early as possible on the day after the polling day to save costs, including venue rentals and remuneration for electoral staff.

Recommendations

- 5.13 Overall speaking, we observe from the written submissions received during the public consultation period that most of the organisations/academics and members of the public disagreed with shortening the polling hours, while political parties/LegCo Members held diverse views on this issue. Many members of the public particularly pointed out that if the closing time of the poll were to be advanced, electors might not be able to vote as the revised polling hours may conflict with their working hours. After carefully considered all the views and proposals received during the public consultation, we agree that there is a need to take into account other related issues holistically in reviewing the polling hours.
- 5.14 Specifically, notwithstanding that advancing the closing time of the poll could allow the counting work to start earlier and the election results to be announced earlier, as well as enable the REO to return the venues of the polling stations to the venue management bodies at the earliest convenience, there is currently no alternative arrangement for electors who are unable to go to the designated polling stations in person on the polling day to vote. As such, any change may result in some electors not being able to cast their votes.
- 5.15 As mentioned in paragraph 4.09 of the Consultation Paper, we will, on the premise that the community reaches a consensus of slightly shortening the polling hours, relay the proposal on

polling hours to the EAC for careful deliberation. Given that the overwhelming majority of the views received during the public consultation were that it was not the right timing to shorten the polling hours of DC and LegCo elections, we propose that the present polling hours for these elections should be maintained for the time being before the Government reviews other issues related to polling hours (e.g., alternative arrangement for electors who are unable to go to the designated polling stations in person on the polling day to vote), and before a consensus is reached by the community.

- 5.16 As to the public views on the venues of polling stations, we will continue to closely liaise with relevant bureaux/departments, including the Education Bureau, Leisure and Cultural Services Department and Home Affairs Department, in the hope that the relevant venue management bodies will give an active and positive response to REO's request and make their venues available for setting up polling stations in future elections. In case the REO continues to encounter difficulties in securing suitable venues for use as polling stations in the future, we will join hands with the relevant bureaux/departments and venue management bodies to look for alternative solutions.

Chapter 6: Other Views

6.01 In addition to the three issues mentioned in Chapters 3 to 5, we also invited members of the public to provide concrete views on other election-related issues in the Consultation Paper. The proposals from political parties and LegCo Members are set out below –

- (a) In view of the difficulties for civil servants who serve as polling staff and who are on shift on the polling day to vote, it is suggested that the Government should arrange advance polling for these civil servants in order to enable them to exercise their right to vote;
- (b) It is suggested that the Government should consider allowing eligible electors who are Hong Kong permanent residents working/residing in the Mainland to cast their votes at the offices of the Government in the Mainland;
- (c) Clarification should be made with regard to certain specific operational details for the return of EAs by candidates;
- (d) The ways and procedures for candidates to submit return on the information released online should be relaxed;
- (e) It is suggested that the Government should strive to ensure that the operators, social workers and care givers of elderly homes would strictly comply with the regulations under the ECICO and that no resident is forced or directed to vote for certain candidates; and
- (f) Information platforms should be developed for processing election-related data and disseminating data on the polling day in digital format.

6.02 Members of the public also put forward their recommendations on various issues. These include, for instance, designating the day following the polling day a school holiday, setting up dedicated polling stations for electors with justifiable reasons to cast their vote before the polling day; adopting electronic voting; introducing a mechanism for Hong Kong permanent residents to cast their votes outside Hong Kong, etc. Besides, there were

requests by members of the public to ban the provision of transportation to ferry voters to vote, the offering of advantages, and activities related to vote-rigging and the making of false statements, in the hope of upholding the fairness, transparency and integrity of the election.

- 6.03 We will consider these other views collected during the public consultation, and examine the follow up actions as appropriate. If there is the need to introduce changes to the existing electoral arrangements, we will consult the views of the LegCo.