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## **Chapter 1: Introduction**

- 1.01 The various major public elections in the 2015-2017 election cycle, including the 2015 District Council Ordinary Election (“2015 DC Ordinary Election”), 2016 Legislative Council General Election (“2016 LegCo General Election”), 2016 Election Committee Subsector Ordinary Elections and 2017 Chief Executive Election, were successfully conducted. The Electoral Affairs Commission (“EAC”) put forth recommendations for improvements in electoral arrangements in its reports submitted to the Chief Executive after the elections. The Legislative Council (“LegCo”) Panel on Constitutional Affairs (“CA Panel”) and the community also provided views on the electoral arrangements.
- 1.02 In view of these recommendations and views, the Government has commenced a review on electoral arrangements in preparation for the next election cycle. We have consulted the LegCo CA Panel in December last year and in June and July this year in respect of a series of issues on electoral arrangements, including the three issues raised in this consultation paper, design of ballot papers, the operation of polling and counting stations of District Council (“DC”) and LegCo elections (procurement of venues for use as polling stations, use of IT in the election process), etc. The EAC also made five amendment regulations in June this year to implement its recommendation to require electors to produce the original of his/her Hong Kong Permanent Identity Card for issuing ballot papers; and to provide for alternative measures in case such an original cannot be produced. For other recommendations on operational arrangements (such as voter registration for DC (second) functional constituencies, long queues at some polling stations), the Registration and Electoral Office (“REO”) has already taken or is examining follow-up actions.
- 1.03 This consultation mainly seeks to solicit views from the public on three issues related to electoral arrangements, including the regulation of election advertisements (“EAs”) published through the Internet (including social media), the regulation of election surveys, as well as the polling hours. Concrete views on other election-related issues, if any, are also welcome.

1.04 The Government will decide the next step in light of the views received.

## **Chapter 2: Regulation of Election Advertisements Published through the Internet (Including Social Media)**

### **Background**

- 2.01 During the public consultation exercises conducted by the EAC on the guidelines on election-related activities in the last election cycle, there were concerns that commentary on candidates, changing profile pictures or suggesting voting for a particular candidate on the social media could be regarded as publishing EAs under the current legislation, and that the associated expenses would be regarded as election expenses, hence subjecting web surfers to inadvertent breach of electoral laws and restricting freedom of expression.

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

- 2.02 To ensure that elections are conducted in an open, fair and honest manner, EAs and election expenses are regulated under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) and the relevant regulations on electoral procedures under the Electoral Affairs Commission Ordinance (Cap. 541) (“EAC Regulations”). Besides, the guidelines on election-related activities issued by the EAC under the Electoral Affairs Commission Ordinance also provide guidance on compliance with the relevant electoral legislation.
- 2.03 With respect to EAs, the ECICO adopts a “purpose test” in defining an EA, i.e., any form of publication (through the Internet (including social media) or by means of traditional publicity media) published for the purpose of promoting or prejudicing the election of a candidate at the election constitutes

an EA. Public inspection requirement for EAs is imposed on a candidate<sup>1</sup>.

- 2.04 As regards election expenses, the ECICO defines them as expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate. As such, expenses incurred for the purposes of producing and/or publishing an EA are election expenses. The aggregate amount of election expenses incurred by or on behalf of the candidate is subject to a prescribed threshold. The candidate must lodge within a statutory specified period an election return setting out his/her election expenses and all election donations received in the election for public inspection.
- 2.05 It is also an illegal conduct under the ECICO for any person, other than a candidate or a candidate's election expense agent, to incur election expenses at or in connection with an election. Upon conviction, the offender is liable to a fine of \$200,000 and to imprisonment for three years.
- 2.06 The requirements imposed by the above legislation on EAs and election expenses aim to ensure that all candidates compete on an equal footing based on an identical threshold of electoral resources prescribed by law, so as to uphold the fairness of elections.
- 2.07 In view of the concerns expressed by the public and LegCo Members over the above-mentioned legislation, the EAC has since 2015 clarified in its guidelines on election-related activities that, if a web surfer merely shares or forwards different candidates' election campaigns through the Internet platform for expression of views and does not intend to promote or prejudice the elections of any candidates, such sharing or forwarding will

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<sup>1</sup> According to the EAC Regulations and the guidelines on election-related activities, a candidate should, within one working day after publication of an EA, post a copy of the EA with the relevant information, permission or consent onto the Central Platform maintained by the Chief Electoral Officer or the Candidate's Platform maintained by the candidate himself/herself, or deposit hard copies or CD-ROM with the Returning Officer, for public inspection. If the EA is publicised on the Internet through an open platform, and it is technically impracticable to post a copy of the EA onto the Central Platform or the Candidate's Platform (e.g. messages which are sent through social networking or communication websites like Twitter, Facebook, blogs, etc. on the Internet, and the exchanges are of an interactive and spontaneous nature.), the candidate concerned may post a hyperlink of the open platform onto the Central Platform or the Candidate's Platform for public inspection.

not normally be construed as publishing EAs. However, if a web surfer is instructed by the candidate or his/her election helpers to share or forward the election campaigns through the Internet platform with the intention to promote or prejudice the election of a candidate or candidates at the election, such act will be regarded as publication of the candidate's EAs and any costs incurred will have to be included in the candidate's election expenses. The candidate concerned should also abide by the public inspection requirement for EAs set out in paragraph 2.03 above. The EAC has also relayed the concerns of the public and the LegCo Members to the Government for a review of the existing regulatory provisions, and it is open-minded on the relaxation of the relevant requirement.

### **Overseas Practices**

- 2.08 We have conducted a study on how the expression of views on the Internet (including social media) is regulated in Australia, Canada, New Zealand, Singapore and the United Kingdom ("UK") in so far as EAs and election expenses are concerned. The findings are summarised at **Annex I**.
- 2.09 Generally speaking, it may not be appropriate to directly compare the provisions and exemptions pertaining to EAs and/or election expenses adopted overseas with those of Hong Kong due to the differences between their respective legislation framework and regulatory direction. However, it is a common feature among Australia, Canada, New Zealand and Singapore that publication of personal or general views on the Internet that meets prescribed criteria will neither constitute a breach of electoral legislation nor entail criminal liability. This is in line with the general direction of our work on relaxing the relevant requirement under the legislation to protect members of the public from inadvertent breach of the law.

### **Consultation with the LegCo CA Panel**

- 2.10 The LegCo CA Panel was consulted in December 2016. Members generally supported the exemption of the criminal liability that might arise from the expression of personal views on the Internet (including social media), so as to safeguard the freedom enjoyed by the public in their daily expression of views on the Internet.

## **Proposed Amendments**

- 2.11 Under the current regulatory regime, if a web surfer publishes a publication on the Internet (including social media) merely for expression of views and does not intend to promote or prejudice the election of any candidates, such publication will not normally be regarded as EAs, and the expenses incurred will not be election expenses. There is no breach of electoral laws in such cases.
- 2.12 However, if a web surfer comments on individual candidates, changes profile pictures or suggests voting for a particular candidate on the Internet (including social media) with the intention of promoting or prejudicing the election of a candidate or candidates at an election, such acts might be construed as publication of EAs. As such, the related expenses (notably electricity and Internet access charges involved in such publication), however trivial, are all regarded as election expenses. If the web surfer concerned is not a candidate or a candidate's election expense agent, he/she will be regarded as illegally incurring election expenses as mentioned in paragraph 2.05.
- 2.13 It is noted that despite the clarifications made by the EAC in its guidelines on election-related activities, there are still concerns among some members of the public on possible breaches of electoral laws that might arise from the expression of views on the Internet (including social media). In this regard, the breach itself, i.e., expenses incurred in publishing the views concerned (which are electricity and Internet access charges in normal circumstances), is indeed trivial. 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 that the relevant legislative provisions may be relaxed.
- 2.14 In consideration of the circumstances stated in paragraph 2.12, we propose that a targeted exemption be included in respect of the illegal conduct mentioned in paragraph 2.05, to the effect that if a third party (i.e., individuals or groups that are neither the relevant candidates whose elections are being promoted or prejudiced nor their election expense agents) publishes any form of publication on the Internet (including social media) to promote or prejudice the elections of candidates (hence

publishing EAs) and incurs election expenses, and the election expenses thus incurred are merely electricity and/ or Internet access charges, such act will no longer be regarded as an illegal conduct. Costs of designing and setting up online platforms and costs involved in the design, paid-for publicity, paid publication of EAs, etc. will however not be exempted. The proposal will not affect the obligation of candidates or their election expense agents under the existing electoral legislation. The definitions of EAs and election expenses under the existing legislation will remain intact.

2.15 The above recommendation aims at safeguarding the freedom enjoyed by the public in their daily expression of views on the Internet. The exemption is brought in to allay public concerns on inadvertently breaching the electoral laws through the trivial election expenses incurred by the expression of views on the Internet (including social media).

2.16 We recommend specifying electricity and/or Internet access charges as the types of expenses eligible for the exemption, as they are expenses normally incurred for expressing views on the Internet. We do not recommend exempting election expenses within a monetary threshold as this would be vulnerable to abuse. For example, it is possible to disseminate and/or promote paid messages on the Internet with only a small sum of money. The exemption of such expenses would contradict the objective of the existing electoral system to ensure that all candidates could compete on an equal footing based on an identical threshold of electoral resources prescribed by law so as to uphold the fairness of elections.

2.17 Since the types of election expenses that can be exempted are only limited to electricity and/or Internet access charges, we believe that the room for abuse will be limited. We therefore recommend equal treatment for views expressed by individuals and groups on the Internet, so as to avoid any unnecessary complexity in distinguishing the latter from the former. Moreover, as nicknames are frequently used without identity verification on Internet platforms (e.g. certain social media, online fora, and messaging applications), law enforcement agencies can also be spared of the difficulty of distinguishing whether a particular view is, in fact and in appearance, from an individual or a group.

## **Views Sought**

2.18 For the regulation of EAs published through the Internet (including social media), we would like to consult the public on the following issues:

- (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?

## **Chapter 3: Regulation of Election Surveys**

### **Background**

3.01 In the 2016 LegCo General Election, various election surveys were conducted by different organisations on or before the polling day with announcement of the results. There were also media reports that some people intended to use the results of such surveys for the matching of votes. Some LegCo Members expressed at LegCo meetings their concerns over the regulation of election surveys, and suggested that the Government should review the relevant legislation in relation to the use of election survey results to match or canvass votes during the poll. Moreover, there were concerns in the community as to the use of exit poll results for the matching of votes. In view of keen public concerns on various types of election surveys on electors' voting preferences, the EAC considered that society should address and explore how this issue should be handled in future public elections.

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

3.02 According to the EAC Regulations, a person who obtains or attempts to obtain in any manner within a polling station or a No Staying Zone, or within a No Canvassing Zone ("NCZ") without the express permission of the Presiding Officer or the EAC, information as to the candidate for whom an elector in the polling station is about to vote or has voted, commits an offence.

3.03 There is no provision under the existing legislation on details of the regulation of exit polls approved to be conducted within the NCZs. Instead, the EAC has promulgated guidelines in relation to the conduct, publication and broadcast of exit polls conducted within NCZs ("the Guidelines") to avoid unfair interference with the election process by unduly influencing electors. The Guidelines stipulates that any announcement or disclosure of results of exit polls or predictions, particularly in relation to any individual candidate, during the polling hours may affect electors' behaviour and have an impact on election results. The EAC therefore had in the past reminded the media and organisations concerned that they should not announce the results of exit polls or make specific remarks or predictions on

the performance of individual candidate before the close of poll. The EAC requires, among others, that approved exit poll interviewers should not speak to or communicate with candidates or their agents when conducting the poll, and all approved exit poll interviewers must display prominently an identification device when conducting the poll. These guidelines ensure that elections are conducted in an honest and fair manner and, at the same time, strike a good balance between the need to maintain order outside polling stations and the need to uphold the freedom of expression, freedom of the press and academic freedom.

- 3.04 Since the 2015 DC Ordinary Election, the EAC has also 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. The statutory declaration requires the applicant or applicant organisation to undertake not to announce or disclose the results of the exit poll or make specific remarks or predictions in relation to the performance of any candidate/list of candidates before the close of poll. Failure to comply with the terms of the statutory declaration or requirements of the Guidelines could result in revocation of the approval for the conduct of exit poll, censure or even reprimand by the EAC in a public statement which states the name of the person or the organisation concerned. If applicants or applicant organisations knowingly make a false statement on a material particular in the statutory declaration, they may be subject to criminal liability.
- 3.05 There is no regulation under the existing legislation on election surveys conducted outside of the NCZs on the polling day, and on election surveys conducted through different channels (e.g. by phone, on the Internet) prior to the polling day. However, if the election survey concerned involves publication of EAs and election expenses, and the publisher is neither a candidate nor an election expense agent of the candidate, the publisher may then be engaging in an illegal conduct under the ECICO. If a candidate instructs that person or organisation to publish the EAs concerned and does not include such expenses in his/her election expenses, the candidate would also violate the regulation under the ECICO. Upon receipt of any complaint that someone may have engaged in corrupt or illegal conduct in elections, the REO will refer such complaint to law enforcement agencies for investigation and follow-up action.

## Overseas Practices

- 3.06 We have studied the regulation of election surveys in Australia, Canada, New Zealand, Singapore and the UK. The relevant finding is set out in **Annex II**.
- 3.07 We note that different regulations are imposed by the five countries mentioned above. New Zealand prohibits, by way of legislation, the conduct of any election survey as well as the publication of any statement advising or intended or likely to influence any elector as to the candidate or party for whom the elector should or should not vote on the polling day. Canada has enacted legislation to prohibit the transmission of any election survey results (which have never been transmitted to members of the public in the relevant constituencies) to the public before the close of poll on the polling day. As for Singapore and the UK, legislation has been enacted to prohibit the publication of any election survey results in relation to the voting choice of electors, or predictions of election results before the close of poll on the polling day. There is no similar requirement in Australia.
- 3.08 Regarding election surveys conducted prior to the polling day, New Zealand prohibits the conduct of election surveys on how an elector actually voted prior to the polling day<sup>2</sup>. Singapore has also enacted legislation to prohibit the publication of any election survey results about electors' voting preference from the day when the writ of election<sup>3</sup> is issued until the close of poll. As for the remaining three countries, there is no prohibition on the publication of election survey results prior to the polling day.

## Consultation with the LegCo CA Panel

- 3.09 We consulted the LegCo CA Panel in December 2016. Some Members were of the view that measures should be introduced to regulate the publication of statistical data of election surveys on or before the polling day (say three to seven days before the polling day) in order to ensure the election is conducted in a fair

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<sup>2</sup> In New Zealand, electors are allowed to cast their votes prior to the polling day.

<sup>3</sup> The President of Singapore, when advised by the Prime Minister, will issue the writ of election to the Returning Officers. The writ specifies the nomination day and the place of nomination. The nomination day is set not earlier than five days nor later than one month from the date of issuing the writ.

manner. On the other hand, some Members did not support imposing regulations on election surveys.

## **Considerations**

- 3.10 Views are diverse in the community as to whether legislation should be enacted to regulate election surveys. On one hand, some consider that announcing or disclosing any results of election surveys or predictions before the close of poll on the polling day may affect electors' behaviour and have an impact on election results. As such, the Government should prohibit the announcement or disclosure of any form of election survey results across-the-board (including exit poll results) conducted on and prior to the polling day (if such results have not been announced or disclosed before the polling day), and the making of specific remarks or predictions on the performance of individual candidates. There are also views that the Government should introduce a cooling-off period by prohibiting the publication of statistical data of election surveys starting from a few days before the polling day. These approaches allow electors to reflect on how they are going to vote before the poll, and reduce vote matching and canvassing activities.
- 3.11 On the other hand, some pointed out that even though election survey results may be used for matching or canvassing votes, ultimately it will be up to the electors to decide which candidates to vote for, and it is therefore inappropriate for the Government to intervene such activities. Moreover, some considered that even if the Government prohibits the publication of election survey result, candidates who intend to take part in the matching of votes could still give out other forms of voting instructions to their supporters.

## Views Sought

- 3.12 In light of the diverse views received for and against the regulation of election surveys, we would like to consult the public on the following issues:
- (a) Whether election surveys (including those on electors' voting preference and choice) conducted outside the 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?

## Chapter 4: Polling Hours

### Background

- 4.01 At present, polling hours of public elections are arranged by the EAC. The polling hours for both DC and LegCo elections are from 7:30 am to 10:30 pm<sup>4</sup>. Some LegCo Members opined that the poll, running for 15 hours, was too long and proposed shortening the polling hours, including advancing the closing time of the poll.
- 4.02 Besides, the EAC had pointed out in its reports on the 2015 DC Ordinary Election and the 2016 LegCo General Election that the REO had encountered difficulties in identifying suitable venues for setting up polling stations. One of the reasons is that some management of venues are concerned that the REO might not be able to return the venues by 6:00 am on the day after the polling day (i.e., Monday), thereby causing inconvenience to the relevant organisations. Shortening the polling hours may enable the REO to return venues of polling stations as soon as possible on the day after the polling day.

### Overseas Practices

- 4.03 We have studied the polling hours in Australia, Canada, New Zealand, Singapore and the UK. While the UK adopts a 15-hour polling day as that of Hong Kong, polling hours of the remaining four countries range from only 10 to 12 hours<sup>5</sup>.

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<sup>4</sup> 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.

<sup>5</sup> The polling hours of the five countries concerned are as follows: Australia – 8:00 am to 6:00 pm (10 hours); Canada – 7:00 am to 7:00 pm (12 hours); New Zealand – 9:00 am to 7:00 pm (10 hours); Singapore – 8:00 am to 8:00 pm (12 hours); UK – 7:00 am to 10:00 pm (15 hours).

## **Consultation with the LegCo CA Panel**

- 4.04 During our consultation with the LegCo CA Panel in July 2017, a Member recommended that the closing time of the poll be advanced to 10:00 pm. Another suggested that the polling hours be shortened to the period from 7:00 am to 6:00 pm, or from 9:00 am to 8:00 pm. A Member opposed shortening the polling hours.

## **Considerations**

- 4.05 As the vote count can only start after 10:30 pm, the election results will usually not be available for announcement until the morning or, for LegCo elections, even the afternoon on the day after the polling day. Counting staff, candidates and their agents often need to perform and monitor the counting work overnight. If the present closing time of the poll is advanced, the counting work may correspondingly start earlier, such that the election results may be announced earlier. This can alleviate the fatigue suffered by candidates, their agents, media and electoral staff at the final and hectic stage of the election, and enable election results to be announced to the public and the electors at an earlier stage. Shortening the polling hours may also 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 that of renting the venues and remunerating electoral staff, as well as to attract more civil servants to apply for serving as electoral staff.
- 4.06 However, 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 have well adapted to this arrangement. If the closing time of the poll is advanced, some electors may not be able or find it inconvenient to vote because the revised polling hours may conflict with their working hours. In this regard, REO analysed the voter turnout in different time slots during the 2015 DC Ordinary Election and the 2016 LegCo Geographical Constituency (“GC”) Elections. Results are as follows:

Time Slots	2015 DC Ordinary Election		2016 LegCo GC Elections	
	Voter Turnout	As a Percentage of Voter Turnout for Whole Day	Voter Turnout	As a Percentage of Voter Turnout for Whole Day
07:30-08:30	39 903	3%	49 420	2%
08:30-09:30	80 410	5%	91 506	4%
09:30-10:30	91 665	6%	128 120	6%
10:30-11:30	128 070	9%	148 435	7%
11:30-12:30	112 029	8%	149 159	7%
12:30-13:30	99 106	7%	146 812	7%
13:30-14:30	103 474	7%	152 024	7%
14:30-15:30	100 048	7%	152 408	7%
15:30-16:30	99 732	7%	159 605	7%
16:30-17:30	100 377	7%	156 553	7%
17:30-18:30	105 276	7%	160 487	7%
18:30-19:30	98 462	7%	153 314	7%
19:30-20:30	97 828	6%	159 537	7%
20:30-21:30	105 069	7%	179 164	8%
21:30-22:30	105 780	7%	215 739	10%
<b>Total</b>	1 467 229	100%	2 202 283	100%

4.07 The above figures show that the voter turnout is quite evenly distributed throughout different time slots on the polling day, except that it is relatively low for the first hour and relatively high for the last hour. Therefore, significantly shortening the polling hours by advancing the closing time of the poll may affect the voter turnout rate and inevitably lead to an increase in the hourly voter turnout, making it more likely that electors have to queue up at polling stations to cast votes. The REO may therefore need to set up more polling stations and recruit additional polling staff to reduce the number of electors per

polling station and forestall the queues. This may offset some of the savings in resources resulting from the shortening of polling hours mentioned in paragraph 4.05 above.

4.08 As regards the procurement of venues for use as polling stations mentioned in paragraph 4.02 above, according to past experience, since schools were well situated across the region, conveniently located, relatively spacious, and in view that polling days were usually scheduled on Sundays, more than half of the polling stations were set up at schools in previous public elections<sup>6</sup>. We are now exploring with the Education Bureau to discuss with the various school sponsoring bodies in the hope that these bodies may give an active and positive response to the REO's request and make the school premises 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 future elections, we will join hands with the relevant policy bureaux and venue management bodies to look for alternative solutions.

4.09 Based on the above analysis, our preliminary view is that it will be difficult to significantly shorten the polling hours. However, 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. In light of the above, we consider that on the premise of ensuring that the elections are conducted in an open, fair and honest manner, if the community reaches a consensus of slightly shortening the polling hours (e.g. by half an hour or one hour, in the start and/or close of poll), we can relay the relevant proposal to the EAC to facilitate its consideration of the polling arrangements.

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<sup>6</sup> Out of the 571 ordinary polling stations at the 2016 LegCo General Election, 315 were set up at schools.

## **Views Sought**

4.10 We would like to consult the public on the following issues in respect of polling hours:

- (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?

## Chapter 5: Views Sought

### Views Sought

- 5.01 We welcome views from the public on various electoral arrangements. Your views and comments will be taken into account when the Government conducts relevant reviews.
- 5.02 Specifically, we would like to mainly seek the community's views on the following:

#### 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?

#### Regulation of Election Surveys

- (a) Whether election surveys (including those on electors' voting preference and choice) conducted outside the 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?

### Polling Hours

- (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?

### **Ways of Providing Views**

5.03 Please send us your views by mail, facsimile or email on or before **29 December 2017**—

Address: Team 2  
Constitutional and Mainland Affairs Bureau  
Central Government Offices, 12/F, East Wing  
2 Tim Mei Avenue, Tamar, Hong Kong

Fax number: 2840 1976

E-mail address: [rea\\_consultation@cmab.gov.hk](mailto:rea_consultation@cmab.gov.hk)

5.04 It is voluntary for any member of the public to supply his/her personal data upon providing views on this consultation document. Submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise. The

Government bureaux and departments receiving the data are bound by such purposes in their subsequent use of such data.

- 5.05 The names and views of individuals/organisations which put forth submissions in response to this consultation document may be published for public viewing. We may, either in discussion with others, whether privately or publicly, or in any subsequent reports, attribute comments submitted in response to this consultation document.
- 5.06 To safeguard the data privacy of individuals/organisations which put forth views, we will remove their relevant data (if provided), such as residential/return addresses, email addresses, identity card numbers, telephone numbers, facsimile numbers and signatures, when publishing their submissions.
- 5.07 We will respect the wishes of individuals/organisations which put forth views to remain anonymous and/or keep the views confidential in part or in whole. If individuals/organisations which put forth views request anonymity in the submissions, their names will be removed when publishing their views. If they request confidentiality of their views, their submissions will not be published.
- 5.08 If individuals/organisations which put forth views do not request anonymity or confidentiality in the submissions, it will be assumed that they can be named and their views can be published in their entirety.
- 5.09 Any individuals/organisations providing personal data to this Bureau in the submission will have rights of access and correction with respect to such personal data. Requests for data access and correction of personal data should be made in writing to —

Address: Assistant Secretary (2A)  
Constitutional and Mainland Affairs Bureau  
Central Government Offices, 12/F, East Wing  
2 Tim Mei Avenue, Tamar, Hong Kong

Fax number: 2840 1976

E-mail address: [rea\\_consultation@cmab.gov.hk](mailto:rea_consultation@cmab.gov.hk)

**Extract on the regulation of views expressed through the Internet, publication of election advertisements (“EAs”) and/or election expenses under electoral laws or guidelines in Hong Kong and selected places**

	<b>Hong Kong</b>	<b>Australia</b>	<b>Canada</b>	<b>New Zealand</b>	<b>Singapore</b>	<b>United Kingdom</b>
What publications on the Internet are exempted from being regarded as EAs?	No express provision, but publications which are not intended to promote or prejudice the election of any candidates will not be regarded as EAs. <sup>1</sup>	Any publication that forms part of a general commentary on a website. <sup>2</sup>	The transmission of personal political views by an individual or a group <sup>3</sup> on a non-commercial basis on the Internet. <sup>4</sup>	Any publication on the Internet, or other electronic medium, of personal political views by an individual (but not a group) who does not make or receive a payment in respect of the publication of those views are not EAs. <sup>5</sup>	Telephonic or electronic transmission by an individual to another individual of the first-mentioned individual’s own political views, on a non-commercial basis. <sup>6</sup>	No express provision, but publications which are not intended to promote or prejudice the election of any candidates will not be regarded as EAs. <sup>7</sup>
Is a third party allowed to publish EAs on the Internet?	No express provision.	Yes. For paid-for EAs, public disclosure of the name and address of the publisher is required. <sup>8</sup>	Yes. Public disclosure of identity is required. <sup>9</sup>	Yes. Public disclosure of the name and address of the publisher is required. <sup>10</sup>	Yes. Public disclosure of the name and address of the publisher is required. <sup>11</sup>	Yes.

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

<sup>2</sup> Section 328A(2), Commonwealth Electoral Act 1918

<sup>3</sup> Under Elections Canada’s interpretation, opinion published by a group on the Internet may also escape from the definition on election advertising

<sup>4</sup> Section 319, Canada Elections Act

<sup>5</sup> Section 3A(2)(e), Electoral Act 1993

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

<sup>7</sup> Section 85(3), Political Parties, Elections and Referendums Act 2000

<sup>8</sup> Section 328A(1)(d), Commonwealth Electoral Act 1918

<sup>9</sup> Section 352, Canada Elections Act

<sup>10</sup> Website of the Electoral Commission New Zealand

<sup>11</sup> Sections 61(1)(c)(ii), 78A(1)(b) , Parliamentary Elections Act; and Parliamentary Elections (Election Advertising) Regulations Part III

	Hong Kong	Australia	Canada	New Zealand	Singapore	United Kingdom
Is a third party allowed to incur election expenses?	No. <sup>12</sup>	Yes. For an amount exceeding AUD 13,500, public disclosure is required. <sup>13</sup>	Yes. A third party is subject to registration and reporting requirement if he/she has incurred election advertising expenses of an amount exceeding CAD500. <sup>14</sup> Even if registration has been made, expenses shall not exceed CAD 3,000. <sup>15</sup>	A third party is allowed to publish EAs only after obtaining authorisation from the relevant candidate or political party. Moreover, expenses incurred in the promotion of candidates or political parties are included in the election expenses of the third party and candidates or political parties simultaneously.  A third party is required to register if he/she has incurred election advertising expenses of an amount exceeding NZD 12,600. Even so, expenses shall not exceed NZD 321,000. A return for expenses is required for an amount exceeding NZD 100,000. <sup>16</sup>	No. <sup>17</sup>	Yes. General campaigns <sup>18</sup> : A third party is required to register if the spending on regulated campaign activity exceeds GBP 20,000 (in England) or GBP 10,000 (in each of Scotland, Wales and Northern Ireland). <sup>19</sup>  Local campaigns <sup>20</sup> : A third party is required to obtain authorisation from the candidate if the spending exceeds GBP 700. <sup>21</sup>

<sup>12</sup> Section 23(1), Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)

<sup>13</sup> Website of the Australian Electoral Commission

<sup>14</sup> Section 353(1), Canada Elections Act

<sup>15</sup> Section 350(4), Canada Elections Act

<sup>16</sup> Sections 204(B)(1)(d), 206V and 206Z, Electoral Act 1993

<sup>17</sup> Section 65(1), Parliamentary Elections Act

<sup>18</sup> Non-party campaigns for or against (including campaigns on policies or issues closely associated with) a political party, or particular categories of candidates

<sup>19</sup> “Overview of non-party campaigns”, website of the Electoral Commission, United Kingdom

<sup>20</sup> Non-party campaigns for or against one or more candidates in a particular constituency

<sup>21</sup> “Overview of non-party campaigns”, website of the Electoral Commission, United Kingdom

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

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

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

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

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

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

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

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

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

	<b>Hong Kong</b>	<b>Australia</b>	<b>Canada</b>	<b>New Zealand</b>	<b>Singapore</b>	<b>United Kingdom</b>
	<p>Electoral Affairs Commission can revoke the approval for conduct of exit poll. The Electoral Affairs Commission may also make a censure or even reprimand in a public statement which will include the name of the person or the organisation concerned. If applicants or applicant organisations knowingly make a statement false in a material particular in the statutory declaration, they may be subject to criminal liability.</p>					

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<b>2. Other forms of election surveys on the polling day (e.g. by phone, on the Internet)</b>						
Application for the conduct of election surveys	Application is not required.	Application is not required.	Application is not required.	Conduct of election surveys is not allowed on the polling day before the close of the poll.	Application is not required.	Application is not required.
Whether the timing of publishing election survey results is subject to regulations	No regulation.	No regulation.	Yes. The Canada Elections Act provides that no person “shall knowingly cause to be transmitted to the public” or “transmit to the public” the results of an election survey that have not previously been transmitted to the public in an electoral district on polling day before the close of all of the polling stations. <sup>6</sup>	N/A	Yes. The Parliamentary Elections Act provides that “No person shall publish or permit or cause to be published on polling day before the close of all polling stations on polling day —  (a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they	Yes. The Representation of the People Act 2000 provides that “No person shall publish before the poll is closed (a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or (b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on

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

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					have voted; or  (b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on information so given.” <sup>7</sup>	information so given.”, with “publish” being defined as “making available to the public at large, or any section of the public, in whatever form and by whatever means”. <sup>8</sup>
<b>3. Election surveys ascertaining electors’ voting preferences before the polling day (e.g. by phone, on the Internet)</b>						
Application for the conduct of election surveys	Application is not required.	Application is not required.	Application is not required.	Application is not required.	Application is not required.	Application is not required.
Whether the timing of publishing election survey results is subject to regulations	No regulation.	No regulation.	Yes. The Canada Elections Act provides that no person “shall knowingly cause to be transmitted to the public” or “transmit to the public” the results of an election survey that have not previously been transmitted to the public in an electoral	In New Zealand, electors are allowed to cast their votes prior to the polling day. The law prohibits conduct of election surveys on how an elector actually voted prior to the polling day. However, there is no legal restriction on conduct of election	Yes. The Parliamentary Elections Act provides that “no person shall publish or permit or cause to be published the results of any election survey during the period beginning with the day the writ of election is issued for	No regulation.

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

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

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			<p>district on polling day before the close of all of the polling stations.<sup>9</sup></p> <p>No restriction on publishing the election survey result prior to the polling day.</p>	<p>surveys ascertaining electors' voting preferences.</p> <p>Besides, there is no legal restriction on the publication of election survey results prior to the polling day. However, the Electoral Act 1993 prohibits publication of "any statement advising or intended or likely to influence any elector as to the candidate or party for whom the elector should or should not vote" before close of poll on the polling day.<sup>10</sup></p>	<p>an election and ending with the close of all polling stations on polling day at the election.", where "election survey" is defined as "an opinion survey of how electors will vote at an election or of the preferences of electors respecting any candidate or group of candidates or any political party or issue with which an identifiable candidate or group of candidates is associated at an election".<sup>11</sup></p>	

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

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

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