

Conclusion of Public Consultation on the Review of Regulation on Election Advertisements

To consult the public on the review of regulation on election advertisements (“EAs”), the Administration issued a consultation paper on 6 December 2011. The consultation ended on 31 December 2011. The Administration has received four written submissions. The full texts of all submissions are available for public inspection at the Constitutional and Mainland Affairs Bureau (“CMAB”) and the website of the CMAB.

Summary of Views

2. Three political parties and one professional group have made written submissions. They generally support our proposals to relax the regulation on EAs. However, there were views that the public might not be able to obtain a full and complete record of a candidate’s EAs in certain circumstances under the revised arrangements, owing to the nature of exchanges conducted on the social networking and communication websites. Under the revised arrangements, although the candidates are required to maintain their election websites for one year after the result of the election is published, the public could only view the latest update of the candidates’ EAs in the election websites instead of all updates made during the election period.

3. Some submissions expressed concern about the impact of the revised arrangements on the regulation of election expenses. For example, under the revised arrangements, a candidate is not required to make declaration and submission of electronic EAs to the Returning Officer if he has posted such EAs onto his election website for public inspection within one working day after the publication of such EAs. Some raised questions on whether it would be difficult for the relevant authorities in checking the election returns as there is no need for candidate to make declaration and submission of his EAs under the above circumstance.

4. Among the written submissions, there are questions on the operational aspects of the revised arrangements. For example, some raised questions on the capacity of the central portal to be maintained by the Registration and Electoral Office (“REO”) and the details of arrangements for posting EAs onto the central portal.

5. Regarding the issues relating to the consent of support in EAs, some raised questions on how the Government could address the issue if supporters of a certain candidate, out of their own volition, invited other people on the Internet to provide support to that candidate.

Consideration

Interactive electronic EAs

6. At meetings of the Subcommittee on Nine Amendment Regulations made under the Electoral Affairs Commission (“EAC”) Ordinance in June 2011, Legislative Council Members raised concern over the practical problems in keeping full and complete records of electronic EAs especially those displayed or sent interactively and spontaneously through social networking or communication websites on the Internet. Members requested legislative amendments to relieve the difficulties in complying with the requirements governing EAs as a result of increasing use of the Internet in electioneering activities.

7. In response to the request of Members, the Administration has reviewed the existing requirements and proposed to allow candidates to provide the hyperlink of the platforms on which such EAs are published on their election websites or the central portal maintained by the REO. This arrangement will enable the public to gain access to and be informed of the contents of such EAs which can facilitate public inspection. Moreover, this can relieve the burden of candidates in making declaration and submission of those interactive and spontaneous EAs which may change rapidly and frequently.

Regulation on election expenses

8. As regards the regulation on election expenses, there is no change in the regime under the proposed revised arrangements. Candidates must comply with the existing requirements under the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) to lodge with the appropriate authority an election return setting out the candidate’s election expenses. The candidate must ensure that the election return is accompanied by an invoice and a receipt giving particulars of the expenditure in the case of each election expense of \$100 or more. A candidate who fails to lodge an election return within the specified time commits an offence.

9. Upon receipt of the election returns and invoices submitted by candidates, the appropriate authority will conduct checking. In accordance with section 41 of the ECICO, the appropriate authority must keep all election returns lodged for public inspection for one year after the results of the relevant election are published. If there are any questions or complaints about such returns and invoices, the authority concerned will take appropriate actions, such as investigation. We are of the view that the existing requirements mentioned above can ensure the accuracy of the election returns and can prevent candidates from incurring election expenses exceeding the prescribed limit. This can ensure that elections can be conducted in a fair, open and honest manner.

Operational details

10. For the operational aspects of the revised arrangements, the EAC will specify details of the arrangements, such as the manner and timeframe for candidates to post their EAs onto the central portal or their election websites for public inspection, in the relevant election guidelines. The REO will also take into account the technical issues when setting up the central portal. According to section 6(2) of the EAC Ordinance, the Commission shall consult the public in relation to the guidelines. Following the established practice, the EAC will conduct public consultation on the proposed guidelines for the elections concerned. Members of the public will be invited to give their views on the details of the revised arrangements to be set out in the election guidelines. The EAC will take into account the views received from the public consultation in finalizing the guidelines.

Consent of Support

11. Under the proposed arrangements, a candidate or a person is not required to obtain prior written consent from those who provide support in the EAs if the candidate or person has neither requested or directed nor authorized any other person to request or direct the inclusion of such support in EAs. This would relieve the candidate or the person from the burden of seeking consent in circumstances in which this is not practicable.

12. According to section 23 of the ECICO, only a candidate or a person who has been duly appointed by a candidate as the candidate's election expense agent may incur election expenses. It is a question of fact in each case whether expenses incurred will or will not be counted as election expenses. If complaints about election expenses are received, the

relevant authority will take appropriate actions, such as investigation, to ensure the fairness and integrity of elections.

Conclusion

13. Our proposed revised arrangements set out in the consultation paper aim to relieve the burden of candidates in making declaration and submission of EAs. They can facilitate candidates to conduct electioneering activities and simplify the procedures for handling EAs while maintaining the integrity, fairness and openness of elections.