

Legislative Council Panel on Constitutional Affairs

Review of Practical Electoral Arrangements

Introduction

This paper sets out the feedback we have received from Members on the major issues regarding the current practical electoral arrangements, and seeks Members' views so that we can take them into consideration in reviewing the electoral arrangements for the District Council election and Election Committee subsector elections in 2011, and the Chief Executive election and Legislative Council election in 2012.

Background

2. At the meeting of the Establishment Subcommittee on 8 December 2010 deliberating on the proposal to create one supernumerary post of Principal Executive officer in the Registration and Electoral Office, Members raised some suggestions and views on lodging of election returns and on calculation of election expenses. The Chairman of the Establishment Subcommittee advised that issues relating to the review of electoral arrangements should more appropriately be followed up by the Constitutional Affairs Panel. Besides, we have received feedback from various parties after the major elections on the current practical electoral arrangements. We will take all these suggestions and views into account in reviewing the practical electoral arrangements for the coming major elections.

Lodging of Election Returns

3. Section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance, Cap. 554 ("ECICO") stipulates that each candidate at an election must lodge an election return setting out the election expenses and all election donations received by and on behalf of the candidate in connection with the election. A candidate at a Legislative Council election must ensure that the election return is lodged not later than 60 days after the date of publication of the result of the election.

4. Some Members commented that as the dates of publication of election result for uncontested and contested constituencies were different, the "60-day rule" under section 37 of the ECICO would give rise to

different deadlines for submission of election returns by candidates in contested elections and those in uncontested elections. Since uncontested candidates may participate in the election campaign activities of political parties which support contested candidates, the need for uncontested candidates to submit election returns at a date ahead of contested candidates would make it difficult for such uncontested candidates to accurately calculate their election expenses and donations.

5. The period for lodging election returns for the Legislative Council elections was extended in 2003 from 30 days to 60 days to allow sufficient time for candidates to submit audited reports on their election expenses to substantiate their claims under the financial assistance scheme. However, some Members still considered that the “60-day rule” to be too short for candidates to prepare an accurate election return.

Calculation of Election Expenses

6. Section 2(1) of the ECICO stipulates that “election expenses”, in relation to a candidate or group of candidates at an election, means expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate or group for the purpose of –

- (a) promoting the election of the candidate or group; or
- (b) prejudicing the election of another candidate or group,

and includes the value of election donations consisting of goods and services used for that purpose.

7. Some Members expressed concern that the taxi fares incurred by candidates’ assistants returning home in the small hours of the morning after the election were not regarded as an expense incurred for promoting the election of the candidates, and hence could not be counted towards the candidates’ election expenses for claiming financial assistance.

Election Advertisements

8. Both the electoral law and election guidelines stipulate that before the display, distribution or otherwise use of any election advertisement, a candidate must furnish two copies of it to the Returning officer. An extract of the relevant legislative provisions and election guidelines is at the *Annex*.

9. There have been comments from candidates that they spent a considerable amount of time and resources to comply with the requirement. An example cited was the election website. The contents of the election websites would usually need to be revised regularly in order to keep the information up-to-date. Candidates spent a lot of effort and used a lot of paper to print out two hard copies of the modified webpages and furnish them with a new declaration to the Returning Officer after each update.

10. To minimize the workload and for environmental protection purpose, there have been calls for accepting the submission of an electronic copy of election advertisement by e-mail, so that a candidate is no longer required to submit two hard copies of the election advertisement after he or she has sent in the electronic copy.

11. Separately, section 2(1) of the ECICO stipulates that “election advertisement” means, inter alia, a notice delivered by hand or electronic transmission. Questions have been raised as to whether election advertisements should include those messages transmitted through the Internet such as social websites and blogs and what requirements or arrangements should be applicable.

Form of Consent of Support

12. The full Hong Kong Identity Card Number of a supporter¹, whether as an individual or on behalf of an organisation, has to be stated in the Form of Consent of Support, which is designed for meeting the requirements specified in section 27 of the ECICO and the relevant provisions of the subsidiary legislation on Electoral Procedure for various elections². The Returning Officer must make available a copy of the

¹ According to section 27 of the ECICO, if a person publishes or authorises the publication of an election advertisement that includes the name/logo/pictorial representation associated with another person or organisation in such a way as to imply or likely to cause electors to believe that a particular candidate has the support of the other person or organisation, he needs to obtain a written consent from such other person or organisation before the publication of the election advertisement.

² Sections 102(10), (11) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, Cap.541D;

Sections 103(9A), (10) of the Electoral Affairs Commission (Electoral Procedure) (District Council) Regulation, Cap.541F;

Sections 100(9), (10) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation, Cap.541I; and

Sections 81(1), (2) of the Electoral Procedure (Chief Executive) Regulation, Cap. 541J

written consent for inspection by the public. Under the existing practice, the full Hong Kong Identity Card Number of a supporter specified in the Form of Consent is blackened out before the Form is made available for public inspection.

13. Some supporters have expressed concerns about the privacy of their personal data, and suggested that the provision of the first 4 digits of the Hong Kong Identity Card Number should suffice to validate the consent in writing for the purpose of meeting the legislative requirements.

Advice Sought

14. Members are invited to give their views on the issues set out in this paper and other electoral arrangements such as polling hours, ballot papers, ballot boxes, polling arrangements and vote counting arrangements. Views expressed by Members will be considered by the Constitutional and Mainland Affairs Bureau, the Electoral Affairs Commission and the Registration Electoral Office in reviewing the electoral arrangements for the four elections to be conducted in 2011 and 2012. We will consult the Panel again after we have reviewed the arrangements.

15. As for other practical arrangements such as arrangements for the polling stations, in line with the normal practice, we will consult the Panel about six months prior to the general elections.

Constitutional and Mainland Affairs Bureau
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Sections 102(6), (7) and (9) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, Cap.541D

102. Election advertisements

- (6) Subject to subsection (7), a candidate must, before he or she displays, distributes or otherwise uses an election advertisement, furnish 2 copies of it to the Returning Officer.
- (7) If it is not practicable to make a copy of an election advertisement, the candidate must furnish to the Returning Officer 2 colour photographs in postcard size of that election advertisement.
- (9) If an election advertisement is recorded on a videotape or an audio tape or disc, the candidate must, for the purposes of subsection (6), furnish to the Returning Officer 2 copies of the tape or disc.

Sections 103(6), (7) and (8) of the Electoral Affairs Commission (Electoral Procedure) (District Council) Regulation, Cap.541F

103. Election advertisements

- (6) Subject to subsection (7), a candidate must before he or she displays, distributes or otherwise uses an election advertisement, furnish 2 copies of it to the Returning Officer. (L.N. 125 of 2003)
- (7) If it is not practicable to make a copy of an election advertisement, the candidate must furnish to the Returning Officer 2 colour photographs in postcard size of the election advertisement.
- (8) If an election advertisement is recorded on a videotape or an audio tape or disc, the candidate must, for the purposes of subsection (6), furnish to the Returning Officer 2 copies of the tape or disc.

Sections 100(6), (7) and (8) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation, Cap.541I

100. Election advertisements

- (6) Subject to subsection (7), a candidate must, before he or she displays, distributes or otherwise uses an election advertisement, furnish 2 copies of it to the Returning Officer.
- (7) If it is not practicable to make a copy of an election advertisement, the candidate must furnish to the Returning Officer 2 colour photographs in postcard size of that election advertisement.
- (8) If an election advertisement is recorded on a videotape or an audio tape or disc, the candidate must, for the purposes of subsection (6), furnish to the Returning Officer 2 copies of the tape or disc.

Section 81(1)(c) of the Electoral Procedure (Chief Executive) Regulation, Cap. 541J

81. Election advertisement

- (1) No candidate shall display, distribute or otherwise use an election advertisement unless –
 - (c) he submits beforehand the declaration to the Returning Officer together with –
 - (i) 2 copies of the advertisement;
 - (ii) where it is not practicable to make a copy of the advertisement, 2 colour photographs in postcard size of the advertisement; or
 - (iii) where the advertisement is recorded on a video tape or an audio tape or disc, 2 copies of the tape or disc.

Guidelines on Election-related Activities in respect of the Legislative Council Election (Paras. 8.48 – 8.51)

8.48 A candidate must ensure that every time the contents of his website are changed or updated, he must make a new declaration to the RO and deposit 2 copies of the modified pages with the RO accordingly [see also para. 8.49(a)(iii) below].

Copies

8.49 **Before display, distribution or otherwise use of any EA**, a candidate must deposit with the RO for his constituency (or with the CEO if the RO has not yet been appointed):

- (a) in respect of election advertisements
 - (i) 2 copies of all printed advertisements in original colours bearing in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed (“printing details”); *[Amended in July 2008]*
 - (ii) 2 identical copies of any video/audio tapes or discs or diskettes containing EAs;
 - (iii) 2 copies of any electioneering message sent by electronic means (including 2 copies of any modified webpages if the contents of the website are changed or updated); and
 - (iv) 2 identical postcard sized colour photographs of each type of EAs which cannot be practically or conveniently photocopied;

[s 102(6), (7) and (9) of the EAC (EP) (LC) Reg]

For the avoidance of doubt, for printed EAs, by depositing 2 copies with the RO for the constituency prior to the display, distribution or otherwise use of such EAs as stated above, the candidate would

have complied with both the requirement in s 102(6), (7) and (9) of the EAC (EP) (LC) Reg (which requires prior deposit) and that in s 34(4) of the ECICO (which requires deposit not later than 7 days after publication). Details of the relevant section of the ECICO and the reasons for the two different requirements under the two legislation are provided in paras. 17.16 – 17.17 of Chapter 17. *[Amended in October 2007]*

(b) in respect of permissions or authorisations for display

a copy of all permissions or authorisations for display obtained for the purposes of s 104A(1) of Cap 132 [s 102(10) of the EAC (EP) (LC) Reg]; and *[Amended in July 2008]*

(c) in respect of consent of support

a copy each of all consents of support referred to in s 27(1) or (2) of the ECICO, as the case may be [s 102(10A) of the EAC (EP) (LC) Reg]. *[Amended in July 2008]*

8.50 If a candidate has difficulty in depositing with the RO for his constituency an original copy of a declaration and 2 copies of an EA before its display, distribution or otherwise use, he may first send to the RO for the constituency by fax the declaration together with a copy of each EA or by e-mail with an image or a digital photo of each EA. The candidate should ensure that any submissions sent by fax or e-mail should reach the RO for the constituency properly. The candidate must, within 24 hours during weekdays (i.e. Monday to Friday) or within 48 hours during weekends (i.e. Saturday to Sunday) after sending the fax or e-mail, submit to the RO for the constituency the original copy of the declaration form and 2 copies of each such EA. *[Added in October 2007]*

8.51 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as EAs unless copies of the speech are provided to the audience or media. If the candidate would like to create certain impact by talking first before providing copies of the speech to the audience or media, he could, after delivering the speech, send a copy of the speech, together with the declaration, to the RO by fax or e-mail prior to distributing them to the audience or media. The candidate should ensure proper submissions by fax or e-mail to the RO

for the constituency. The candidate should submit to the relevant RO the original copy of the declaration form and 2 copies of each speech within 24 hours during weekdays (i.e. Monday to Friday) or within 48 hours during weekends (i.e. Saturday to Sunday) after sending the fax or e-mail. Since copies of the speeches distributed to the audience are regarded as printed EAs, the candidates concerned are also required to comply with s 34 of the ECICO and the provisions on serial numbering in paras. 8.44 and 8.45. *[Added in October 2007]*

Guidelines on Election-related Activities in respect of the District Council Election (Paras. 7.45 – 7.48)

7.45 A candidate must ensure that every time the contents of his website are changed or updated, he must make a new declaration to the RO and deposit 2 copies of the modified pages with the RO accordingly [see also para. 7.46(a)(iii) below].

Copies

7.46 **Before display, distribution or otherwise use of any election advertisement**, a candidate must deposit with the RO for his constituency (or with the CEO, if the RO has not yet been appointed):

- (a) in respect of election advertisements
 - (i) 2 copies of all printed advertisements in original colours bearing in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed (“printing details”); *[Amended in August 2008]*
 - (ii) 2 identical copies of any video/audio tapes or discs or diskettes containing election advertisements;
 - (iii) 2 copies of any electioneering message sent by electronic means (including 2 copies of any modified webpages if the contents of the website are changed or updated); and
 - (iv) 2 identical postcard sized colour photographs of each type of election advertisements which cannot be practically or conveniently photocopied;

[s 103(6), (7) and (8) of the EAC (EP) (DC) Reg]

For the avoidance of doubt, for printed election advertisements, by depositing 2 copies with the RO for the constituency prior to the display, distribution or otherwise use of such election

advertisements as stated above, the candidate would have complied with both the requirement in s 103(6), (7) and (8) of the EAC (EP) (DC) Reg (which requires prior deposit) and that in s 34(4) of the ECICO (which requires deposit not later than 7 days after publication). Details of the relevant section of the ECICO and the reasons for the two different requirements under the two legislation are provided in paras. 16.13-16.14 of Chapter 16. *[Added in September 2007]*

(b) in respect of permissions or authorisations for display

a copy each of all permissions or authorisations for display given or obtained for the purposes of s 104A of Cap 132 [s 103(9) of the EAC (EP) (DC) Reg]; and

(c) in respect of consent of support

a copy each of all consents of support referred to in s 27(1) or (2) of the ECICO, as the case may be.

7.47 If a candidate has difficulty in depositing with the RO for his constituency an original copy of a declaration and 2 copies of an election advertisement before its display, distribution or otherwise use, he may first send to the RO for the constituency by fax the declaration together with a copy of each election advertisement or by e-mail with an image or a digital photo of each election advertisement. The candidate should ensure any submissions sent by fax or e-mail should reach the RO for the constituency properly. The candidate must, within 24 hours during weekdays (i.e. Monday to Friday) or within 48 hours during weekends (i.e. Saturday to Sunday) after sending the fax or e-mail, submit to the RO for the constituency the original copy of the declaration form and 2 copies of each such election advertisement. *[Added in September 2007]*

7.48 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as election advertisements unless copies of the speech are provided to the audience or media. If the candidate would like to create certain impact by talking first before providing copies of the speech to the audience or media, he could, after delivering the speech, send a copy of the speech, together with the

declaration, to the RO by fax or e-mail prior to distributing them to the audience or media. The candidate should ensure proper submissions by fax or e-mail to the RO for the constituency. The candidate should submit to the relevant RO the original copy of the declaration form and 2 copies of each speech within 24 hours during weekdays (i.e. Monday to Friday) or within 48 hours during weekends (i.e. Saturday to Sunday) after sending the fax or e-mail. Since copies of the speeches distributed to the audience are regarded as printed election advertisements, the candidates concerned are also required to comply with s 34 of the ECICO and the provisions on serial numbering in paras. 7.41 and 7.42. *[Added in September 2007]*

Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections (Paras. 8.44 – 8.47)

8.44 A candidate must ensure that every time the contents of his website are changed or updated, he must make a new declaration to the RO and deposit 2 copies of the modified pages with the RO accordingly [see also para. 8.45(a)(iii) below].

Copies

8.45 **Before display, distribution or otherwise use of any election advertisement**, any person, including a candidate, must deposit with the RO for his subsector (or with the CEO if the RO has not yet been appointed):

- (a) in respect of election advertisements
 - (i) 2 copies of all printed advertisements bearing in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed (“printing details”);
 - (ii) 2 identical copies of any video/audio tapes or discs or diskettes containing election advertisements;
 - (iii) 2 copies of any electioneering message sent by electronic means (including 2 copies of any modified webpages if the contents of the website are changed or updated); and
 - (iv) 2 identical postcard sized colour photographs of each type of election advertisements which cannot be practically or conveniently photocopied;

[s 100(6), (7) and (8) of the EAC (EP) (EC) Reg]

For the avoidance of doubt, for printed election advertisements, by depositing 2 copies with the relevant RO prior to the display, distribution or otherwise use of such election advertisements as stated above, the candidate would have complied with **both** the requirement in s 100(6), (7) and (8) of the EAC (EP) (EC) Reg (which requires prior

deposit) and that in s 34(4) of the ECICO (which requires deposit not later than 7 days after publication). Details of the relevant section in the ECICO and the reasons for the two different requirements under the two legislation are provided in paras. 17.13 - 17.14 of Chapter 17. *[Amended in September 2006]*

(b) in respect of permissions or authorisations for display

a copy each of all permissions or authorisations for display given or obtained for the purposes of s 104A of Cap 132 [s 100(9)(a) of the EAC (EP) (EC) Reg]; and

(c) in respect of consent of support

a copy each of all consent of support referred to in s 27(1) or (2) of the ECICO, as the case may be [s 100(9)(b) of the EAC (EP) (EC) Reg].

8.46 If a candidate has difficulty in depositing with the RO for his subsector an original copy of a declaration and 2 copies of an election advertisement before its display, distribution or otherwise use, he may first send to the relevant RO by fax the declaration together with a copy of each election advertisement or by e-mail with an image or digital photo of each election advertisement. The candidate should ensure any submissions sent by fax or e-mail should reach the relevant RO properly. The candidate must, within 24 hours during weekdays (i.e. Monday to Friday) or within 48 hours during weekends (i.e. Saturday to Sunday) after sending the fax or e-mail, submit to the relevant RO the original copy of the declaration form and 2 copies of each such election advertisement. *[Added in September 2006]*

8.47 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as election advertisements unless copies of the speech are provided to the audience or media. If the candidate would like to create certain impact by talking first before providing copies of the speech to the audience or media, he could, after delivering the speech, send a copy of the speech, together with the declaration, to the RO by fax or e-mail prior to distributing them to the audience or media. The candidate should ensure proper submissions by fax or e-mail to the relevant RO. The candidate must submit to the relevant RO the original copy of the declaration form and 2 copies of each speech within 24 hours during weekdays (i.e. Monday to Friday) or

within 48 hours during weekends (i.e. Saturday to Sunday) after sending the fax or e-mail. Since copies of speeches distributed to the audience are regarded as printed election advertisements, candidates concerned are also required to comply with s 34 of the ECICO. *[Added in September 2006]*

Guidelines on Election-related Activities in respect of the Chief Executive Election (Paras. 8.41 – 8.44)

8.41 A candidate must ensure that every time the contents of his website are changed or updated, he must make a new declaration to the RO and deposit 2 copies of the modified pages with the RO accordingly [see also para. 8.42(a)(iii) below].

Copies

8.42 **Before display, distribution or otherwise use of any election advertisement**, a candidate must deposit with the RO (or with the CEO if the RO has not yet been appointed):

- (a) in respect of election advertisements
 - (i) 2 copies of all printed advertisements bearing in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed (“printing details”);
 - (ii) 2 identical copies of any video/audio tapes or discs or diskettes containing election advertisements;
 - (iii) 2 copies of any electioneering message sent by electronic means (including 2 copies of any modified webpages if the contents of the website are changed or updated); and
 - (iv) 2 identical postcard sized colour photographs of each type of election advertisements which cannot be practically or conveniently photocopied;

[s 81(1)(c) of the EP (CEE) Reg]

For printed election advertisements, by depositing 2 copies with the RO prior to the display, distribution or otherwise use of such election advertisements as stated above, the candidate would have complied with **both** the requirement in s 81(1)(c) of the EP (CEE) Reg (which requires prior deposit) and that in s 34(4) of the ECICO (which requires deposit not later than 7 days after publication). Details of the relevant section in the ECICO and the reasons for the two different requirements under the two legislation

are provided in paras. 17.13-17.14 of Chapter 17. *[Added in January 2007]*

(b) in respect of permissions or authorisations for display

a copy each of all permissions or authorisations for display given or obtained for the purposes of s 104A of Cap 132 [s 81(1)(d)(i) of the EP (CEE) Reg]; and

(c) in respect of consent of support

a copy each of all consent of support referred to in s 27(1) or (2) of the ECICO, as the case may be [s 81(1)(d)(ii) of the EP (CEE) Reg].

8.43 If a candidate has difficulty in depositing with the RO an original copy of a declaration and 2 copies of an election advertisement before its display, distribution or otherwise use, he may first send to the RO by fax the declaration together with a copy of each election advertisement or by e-mail with an image or digital photo of each election advertisement. The candidate should ensure any submissions sent by fax or e-mail should reach the RO properly. The candidate must, within 24 hours during weekdays (i.e. Monday to Friday) or within 48 hours during weekends (i.e. Saturday to Sunday) after sending the fax or e-mail, submit to the RO the original copy of the declaration form and 2 copies of each such election advertisement. *[Added in January 2007]*

8.44 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as election advertisements unless copies of the speech are provided to the audience or media. If the candidate would like to create certain impact by talking first before providing copies of the speech to the audience or media, he could, after delivering the speech, send a copy of the speech, together with the declaration, to the RO by fax or e-mail prior to distributing them to the audience or media. The candidate should ensure proper submissions by fax and e-mail to the RO. The candidate must submit to the RO the original copy of the declaration form and 2 copies of each speech within 24 hours during weekdays (i.e. Monday to Friday) or within 48 hours during weekends (i.e. Saturday to Sunday) after sending the fax or e-mail. Since copies of speeches distributed to the audience are regarded as printed election advertisements, candidates concerned are also required to comply with s 34 of the ECICO. *[Added in January 2007]*