

## **Public Consultation on Electoral Arrangements**

### **Submission of the Hong Kong Bar Association**

1. The Constitutional and Mainland Affairs Bureau of the HKSAR Government (“CMAB”) has consulted the public on three issues relating to electoral arrangements: (1) the regulation of election advertisements (“EAs”) published through the Internet (including social media); (2) the regulation of election surveys; and (3) the hours of polling.
2. The Hong Kong Bar Association submits its views on the consulted issues.

#### *Election Advertisements published through the Internet*

3. The CMAB’s proposal regarding the regulation of EAs published through the Internet is a proposed exemption from illegal conduct in respect of an election, which is 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 election 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”.
4. The HKBA supports the proposal. The proposed exemption can provide greater certainty to the general public, and it is believed that the likelihood of abuse is low. The HKBA also agrees with the continuation of not exempting the costs of designing and setting up online platforms and costs involved in the design, paid-for publicity, paid publications of EAs.

#### *Regulation of Election Surveys*

5. Regulation of election surveys impinges upon the freedom of expression, the freedom of the press and the freedom of academic research. There is, on the other hand, the public concern that publication of results of election surveys at certain times may affect electors’ intention and prejudice the odds of candidates.
6. The HKBA considers that election surveys (including those on electors’ voting preference and choice) should not be prohibited. The HKBA recognizes that there is a legitimate public concern that publication, announcement or disclosure of election survey results prior to polling day and prior to the close of poll may unduly affect electors’ intention and prejudice the odds of candidates, bearing in mind that election surveys do

differ in methodology and election survey data are liable to be interpreted differently by different researchers. The HKBA therefore agrees that there should be regulation in the publication, announcement or disclosure of election survey results prior to the close of poll.

7. The HKBA agrees that both the announcement or disclosure of results of election surveys conducted outside the non-canvassing zones on polling day, and the making of specific remarks or predictions on the performance of individual candidates based on such election surveys should be prohibited before the close of poll. The HKBA believes that such announcements, disclosures, remarks and predictions, released to electors on polling day and before the close of poll, can induce electors to act on the relatively little information given to them (but branded with alleged credence of an “actual” trend) without any reasonable opportunity to verify and compare.

8. The HKBA on the other hand does not favour prohibition of announcement or disclosure of election surveys (including those on electors’ voting preference and choice) prior to polling day, subject to a consultation or further collation of views from stakeholders on the time period in respect of “prior to” should be, though it is likely that this time period would be in terms of days fewer than a week prior to polling day.

#### *Polling hours*

9. The HKBA notes that the CMAB’s proposal is for the shortening of polling hours, a matter that impinges on the right to vote of HKSAR permanent residents. The statistics provided by the CMAB show that while a small percentage of electors (2-3%) voted between 7:30 and 8:30 hours, a more significant percentage of electors (7-10%) voted between 21:30-22:30 hours.

10. Shortening of polling hours must serve a legitimate aim and be proportionate to the achieving of the legitimate aim. The purported reasons put forward by the CMAB in para 4.09 for shortening polling hours (namely long polling hours and vote counting was exhausting experience for polling and counting staff, candidates and their agents, as well as members of the media) do not appear to be genuine and reasonable. Also, to address these purported needs, the shortening would have to be in respect of the close of poll, affecting the exercise of the right to vote of a much larger portion of the electorate.

11. Accordingly, the HKBA opposes the CMAB’s proposal to shorten the current polling hours.

Dated: 11 January 2018.

HONG KONG BAR ASSOCIATION