

# **Contesting Campaigns in Hong Kong: A Critical Look at Infrastructure and Practices**

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## **National Democratic Institute for International Affairs (NDI)**

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government.

Democracy depends on legislatures that represent citizens and oversee the executive, independent judiciaries that safeguard the rule of law, political parties that are open and accountable, and elections in which voters freely choose their representatives in government. Acting as a catalyst for democratic development, NDI bolsters the institutions and processes that allow democracy to flourish.

***Build Political and Civic Organizations:*** NDI helps build the stable, broad-based and well-organized institutions that form the foundation of a strong civic culture. Democracy depends on these mediating institutions—the voice of an informed citizenry, which link citizens to their government and to one another by providing avenues for participation in public policy.

***Safeguard Elections:*** NDI promotes open and democratic elections. Political parties and governments have asked NDI to study electoral codes and to recommend improvements. The Institute also provides technical assistance for political parties and civic groups to conduct voter education campaigns and to organize election monitoring programs. NDI is a world leader in election monitoring, having organized international delegations to monitor elections in dozens of countries, helping to ensure that polling results reflect the will of the people.

***Promote Openness and Accountability:*** NDI responds to requests from leaders of government, parliament, political parties and civic groups seeking advice on matters from legislative procedures to constituent service to the balance of civil-military relations in a democracy. NDI works to build legislatures and local governments that are professional, accountable, open and responsive to their citizens.

International cooperation is key to promoting democracy effectively and efficiently. It also conveys a deeper message to new and emerging democracies that while autocracies are inherently isolated and fearful of the outside world, democracies can count on international allies and an active support system. Headquartered in Washington D.C., with field offices in every region of the world, NDI complements the skills of its staff by enlisting volunteer experts from around the world, many of whom are veterans of democratic struggles in their own countries and share valuable perspectives on democratic development.

Since 1997, NDI has conducted a series of assessment missions to Hong Kong to consider the development of the HKSAR's "post-reversion" election framework, the status of autonomy, rule of law and civil liberties under Chinese sovereignty, and the prospects for democratization beyond the 10 year transition period set forth in the Basic Law. In 2002, NDI established a field office in Hong Kong.

NDI works with political parties and democratic activists to encourage public discussion and debate on political reform. The Institute shares information with and provides technical assistance to Hong Kong political parties, political groups, and civil society organizations seeking to increase their ability to increase citizen participation in the HKSAR's political life. NDI does not provide funding to any political party or political group in Hong Kong.

Since 2002, NDI has provided technical assistance to Hong Kong's political parties and political groups to address issues such as: membership recruitment; media relations; communicating with constituents; voter contact; and fundraising. Through multi-party and single party workshops as well as consultations with party leaders, NDI has worked with all of the HKSAR's major parties to discuss the external political environment and the parties' internal structural weaknesses. Participating parties and political groups have included the Democratic Alliance for the Betterment and Progress of Hong Kong, the Democratic Party, the Liberal Party, The Frontier, the Hong Kong Progressive Alliance, the Citizens Party, and the Article 45 Concern Group.

## **PREFACE**

Despite the important role of political parties in democratic governance, parties are more often seen as an impediment to democratic development in Hong Kong than as essential and vibrant players in the political arena. Since 2002, the National Democratic Institute for International Affairs (NDI) has worked with the full spectrum of Hong Kong's political parties to enhance technical skills of members, to provide resources to help leaders develop better strategic planning, and to engage civil society and the public on important party issues such as party financing and laws. This report is the result of an assessment conducted in February 2006 by a team comprised of George Rakis, Political Director of the Democratic Governors' Association; Tom Bonier, National Committee for an Effective Congress client liaison; and Christine Chung, NDI China Country Director. The team met with Chairman of the Electoral Affairs Commission Justice Woo Kwok Hing, the Hong Kong General Chamber of Commerce, the Hong Kong Transition Project of the Hong Kong Baptist University, the University of Hong Kong's Public Opinion Programme, APCO consultants, local Hong Kong politicians and party members, and journalists. The assessment team wrote this report with the assistance of NDI Program Officer Belinda Winterbourne. This report is intended to both inform NDI's ongoing training programs of party members as well as to serve as a resource material for Hong Kong parties as they undertake their own strategic planning.

## **INTRODUCTION**

NDI has reported periodically on Hong Kong's elections and democratic development since 1997. Hong Kong's electoral system does not meet international standards; the Chief Executive (CE) is elected by an 800 member Election Committee while only half of the legislature is elected by universal suffrage. This report covers the operating environment for those elections that do offer contests for candidates and choice for citizens - that is, the Legislative Council (Legco) and District Council (DC) elections. Much of the basic infrastructure necessary to run a competitive modern electoral campaign appears to be available in the Hong Kong Special Administrative Region (HKSAR). Where this infrastructure does not exist, there is an opportunity to build it for the pending 2007 District Council elections and expand the said infrastructure for the 2008 LegCo elections. This infrastructure should include: trained political cadre, voter list building, tracking of issues and partisan affiliation, evaluation of party performance by polling place, and survey research.

The rules regulating electioneering practices are restrictive in Hong Kong. However, they offer ample opportunity to advance candidates and political parties and to apply modern electioneering practices. Unfortunately, the lack of understanding of the regulations and an unwillingness to engage in activities that push to the limits of conventions have resulted in electoral practices that are largely ineffectual. Neither political parties nor candidates have explored the limits of the campaign regulations or taken advantage of available infrastructure to advance their candidacies. This represents a lost opportunity in terms of both engaging the public and creating a case for more space for political parties.

The pending District Council elections in 2007 present political parties and candidates with a unique opportunity to, prior to the larger and more competitive 2008 Legislative Council elections:

- test the limits of the law to electoral advantage;
- build and expand the use of the existing electoral infrastructure;
- collect data and conduct research for more systematic campaigning;
- bring modern, professional campaign practices into Hong Kong electioneering for a more lively event to attract greater citizen interest.

## **ELECTION FRAMEWORK**

Hong Kong elections are regulated by the Electoral Affairs Commission (EAC), a statutory body whose responsibility is to ensure the fairness of Hong Kong elections. The election regulations of the EAC are written for candidates and not political parties as there is no specific political party law in Hong Kong. However, the broad definition of agents of a candidate can clearly include political parties. The EAC is responsible for the discharge of statutory functions under the Electoral Affairs Commission Ordinance (EACO). The EAC's primary functions include the delineation of geographic

constituencies, issuing regulations, guidelines and rules for the conduct of elections, and supervising the registration of voters. Many of the functions of the EAC are what one would expect of a municipal clerk or registrar who is responsible for maintaining a list of eligible voters and administering elections. Other functions, however, give the EAC broad authority to regulate election advertising and communications, meetings, candidate finance and reporting of expenses to name a few.

The role of the EAC is:<sup>1</sup>

- (a) to ensure that, as far as practicable, elections to elect the Chief Executive and persons to membership of the Legislative Council, District Councils and certain other public bodies and to be Village Representatives (VR) are conducted fairly, openly and honestly and are free from corrupt conduct and illegal conduct; and
- (b) to regulate electoral advertising so as to ensure, as far as practicable, the fairness and honesty of electoral advertising; and
- (c) to ensure that candidates properly account for the expenditure of money at elections and the soliciting and receipt of election donations and that they do not exceed the prescribed levels of expenditure.

### ***Legislative Council Elections***

The Legislative Council elections are governed by the following laws:

- Legislative Council Ordinance (Cap 542) (LCO)
- Electoral Affairs Commission Ordinance (Cap 541)(EACO)
- Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554)(ECICO)

The EACO tasks the Electoral Affairs Commission with making recommendations regarding the delineation of geographical constituencies for the Legco election and demarcation of their boundaries, regulating printing of particulars relating to candidates on ballot papers and financial assistance for candidates.<sup>2</sup>

In brief, the Legislative Council Ordinance (Cap 542) governs mainly the constitution and membership of Legco, establishment of constituencies, registration of electors, conduct of elections, financial assistance for candidates, election petitions and other related matters.<sup>3</sup>

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<sup>1</sup> s. 3 Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap 554).

<sup>2</sup> s. 4, s. 5, s. 6, and s. 7 EACO.

<sup>3</sup> s. 10, s. 14, s. 15, s. 20, s. 27, s. 47 and s. 54 Cap. 542.



## **Election Deposit**

The amount of deposit which can be lodged on behalf of nominees on a nomination list in respect to their nomination as geographical constituency candidates in an election is \$50,000, and for a candidate in an election in respect of a functional constituency is \$25,000.<sup>4</sup>

## **Election Advertisement**

There are also restrictions placed on advertising. For example, letters that are sent out free of postage have to be posted in Hong Kong, contain materials relating only to the candidate's candidature at the subsector election concerned, not exceed 50g in weight and be not larger than 175mm x 245mm and not smaller than 90mm x 140mm in size.<sup>5</sup>

If a candidate displays, distributes or otherwise uses an election advertisement, he or she must allocate a number to each election advertisement. The number must be a consecutive number in a series beginning with the number 1 and is not to be used more than once for a particular type of election advertisement.<sup>6</sup>

“Commercial broadcasters, including operators of television and radio channels are generally not allowed to accept advertisements of a political nature, for current affairs or other programmes on TV and radio which are not election-related, candidates/GC lists may take part as guests in these programmes insofar as their participation is pertinent.” Otherwise, the ‘equal time’ principle will apply. “Equal time” means equal time for each of the candidates/GC lists contesting in the same constituency.

Rules also apply to presenters or people appearing in adverts since this may prejudice other candidates.<sup>7</sup> Candidates are also required to “ensure that every time the contents of his website are changed or updated, he must make a new declaration to the Returning Officer (RO) and deposit 2 copies of the modified pages with the RO accordingly.”<sup>8</sup>

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<sup>4</sup> Cap. 542C Legco (Subscribers and Election Deposit for Nomination) Regulation.

<sup>5</sup> Guidelines on Election related Activities in respect of the Legislative Council Elections 2004 – Chapter 8 on Election Advertisements (similar provisions found for District Council elections – Chapter 7 of the DC Guidelines and for Chief Executive Elections – Chapter 8 of the CE Elections Guidelines).

<sup>6</sup> Cap. 541 I Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation s. 100.

<sup>7</sup> Chapter 11 Guidelines on Legco Elections 2004.

<sup>8</sup> Chapter 8 Guidelines on Legco Elections.

## **Election Expenses**

For reference purposes, the maximum scale of election expenses have been listed below:<sup>9</sup>

- HK Island \$2,000,000 (for a list)
- Kowloon East \$1,500,000 (for a list)
- Kowloon West \$1,500,000 (for a list)
- New Territories East \$2,500,000 (for a list)
- New Territories West \$2,500,000 (for a list)
- Functional constituency election in one of the following constituencies: Heung Yee Kuk, Agriculture and Fisheries, Insurance or Transport \$100,000
- For a Functional Constituency other than those listed above with not more than 5,000 registered electors \$160,000
- Functional Constituency with 5,001 to 10,000 registered electors \$320,000
- Functional Constituency with over 10,000 registered electors \$480,000

## ***District Council Elections***

### **Election Deposit**

For District Council elections, the deposit differs from the Legco elections. The amount of deposit to be lodged by or on behalf of a candidate in respect of his nomination as a candidate in an election is \$3000.<sup>10</sup> And the maximum scale of election expenses in 2003 was \$45,000.<sup>11</sup>

### **Advertising**

The rule on advertising is similar as “the election expenses allowed by law to be incurred by a candidate include the expenses he incurs for the preparation and publication of election advertisements,” so he or she should therefore be careful in planning how much is spent in this area.<sup>12</sup>

Meanwhile commercial broadcasters, including operators of television and radio channels, which are the licensees under the Broadcasting Ordinance, are generally not allowed to accept advertisements of a political nature. Other service providers which are not licensable under the Broadcasting Ordinance are allowed to carry election advertisements territory wide.<sup>13</sup> It appears that this would mean only internet radio.

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<sup>9</sup> [http://www.eac.gov.hk/pdf/legco/2004/en/2004guideline/key\\_information.pdf](http://www.eac.gov.hk/pdf/legco/2004/en/2004guideline/key_information.pdf).

<sup>10</sup> Cap 547A District Councils (Subscribers and Election Deposit for Nomination Regulation s. 2 (1).

<sup>11</sup> [http://www.eac.gov.hk/pdf/distco/en/guideline/dc\\_key\\_e.pdf](http://www.eac.gov.hk/pdf/distco/en/guideline/dc_key_e.pdf).

<sup>12</sup> Chapter 7 of the District Council Elections Guidelines on Election Advertisements – Point 7.6 - District Council Elections Guidelines.

<sup>13</sup> Chapter 10 on Election Broadcasting, Media Reporting and Election Forums – Part 10.2 – District Council Elections Guidelines (amended in January 2005).

## *The Independent Commission Against Corruption (ICAC)*

One of the more unique aspects of Hong Kong election law, and one that candidates are aware of, is the role of the Independent Commission Against Corruption (ICAC). While the EAC administers and sets out rules for the electoral process, the ICAC is responsible for investigating and enforcing the Elections Corrupt and Illegal Conduct Ordinance (ECICO). The Ordinance governs all conduct concerning an election. As with any corruption ordinance, the ECICO includes provisions on corruption, bribery, use of force and duress.

The ECICO, however, goes much further in defining corrupt or illegal conduct to include areas that Americans and others would consider common or free speech. Electioneering conduct enforced by the ECICO includes: print election advertising, use of election expenses and donations, statements about candidates and deceptive behavior. Violations of the electioneering practices range from HK\$200,000 to HK\$500,000 fine and three to seven years in prison. Complaints of candidates violating the law can be made directly to the ICAC, or to the EAC which would refer appropriate cases to the ICAC.

According to a report by the ICAC, it received 593 election-related complaints by the end of November 2004. Of these, 468 related to the 2003 District Council Election, seven to the Village Representatives (VR) Election and 118 to the 2004 Legislative Council Election.<sup>14</sup>

For illustration the following are some examples of the complaints which were received:

- In December 2003, a registered elector of the 2003 VR elections was sentenced to 3 months imprisonment for voting offences relating to the VR election for Sok Kwu Wan Lamma Island. He falsely declared his residential address as Sok Kwu Wan even though he had already moved away since early 1990.<sup>15</sup>
- In August 2004, three registered voters of the VR election were charged by the ICAC for alleged voting offences in relation to the election for Ngau Hom Tsuen. The defendants basically gave information to an electoral officer which they knew to be false or misleading.<sup>16</sup>

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<sup>14</sup> "ICAC faces heavy caseload despite less corruption report," Dec 21, 2004 (<http://www.icac.org.hk/eng/0/1/8/14943.html>).

<sup>15</sup> "Three months' jail for voting offence in Sok Kwu Wan VR Election," December 17, 2003 (<http://www.icac.org.hk/eng/0/1/8/14268.html>). The elector was found guilty of one count of engaging in corrupt conduct with respect to voting at an election contrary to s. 16 (1)(b)(i) of the ECICO.

<sup>16</sup> "Three voters charged for alleged voting offences at Ngau Hom Tsuen VR Election," August 1, 2004 (<http://www.icac.org.hk/eng/0/1/8/14312.html>).

- In 2005, Leung Kwok Hung aka “Long Hair” filed a complaint with the ICAC urging it to investigate two newspaper adverts supporting Donald Tsang’s bid for Chief Executive, saying the Election (Corrupt and Illegal Conduct) Ordinance may have been breached. The adverts were published in two pro-Beijing newspapers Takungpao and Wenweipo and were placed by the Hong Kong Young Industrialists Council (HKYIC) and the Shun Tak Fraternal Association (STFA) without the candidate’s consent.<sup>17</sup> The ICAC found the complaint against the two groups was substantiated. Interestingly, the HKYIC and the STFA applied to the Court of First Instance for an Exemption Order<sup>18</sup> to relieve them from criminal liabilities in the matter. Their applications were granted by a High Court judge on the grounds of “inadvertence and no involvement of bad faith.”<sup>19</sup>
- In June 2005, a former member of the Eastern District Council and his wife were charged by the ICAC and sentenced to two months’ imprisonment for committing voting offences at the 2003 Eastern DC Election. In 1993, the couple bought an apartment in the Tai Hang Constituency, Wanchai District. But in filling out their change of address application, they stated that their principal residential address was in a commercial unit in North Point allowing them to vote in another constituency.<sup>20</sup>

### **Consequences of Hong Kong’s Electoral Framework**

In order to comply with far flung rules governing campaign activity, and to maximize electioneering efforts, candidates and political parties in Hong Kong have developed a host of essentially counter-productive practices that are ineffective. The most glaring of these is an unwillingness to learn and understand the rules of the election and how to use them to one’s advantage. In many cases, this languid attitude and approach is manifested in practical terms by candidates and political parties who learn of the election process and “rules of the road” from rumors and by word of mouth. This practice has generated a number of myths that candidates believe are facts. The myths persist in spite of the EAC’s website clearly outlining the rules and regulations, printed guides for candidates, and public briefings for candidates. Of course, one reason for this would be a lack of specific training by parties that focus on these rules rather than the adaptive responses to the rules themselves.

The EAC’s rules appear intended to promote fairness and honesty in the electoral process. These positive values are pervasive in local political culture and may be one of the reasons there is so much misinformation about election rules in circulation. When asked about rules regulating elections, candidates and party representatives respond with

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<sup>17</sup> “Ads may have breached rules, says Long Hair,” South China Morning Post, June 1, 2005.

<sup>18</sup> Under s. 31 of the Elections (Corrupt and Illegal Conduct) Ordinance.

<sup>19</sup> Letter from the Electoral Affairs Commission dated June 16, 2006.

<sup>20</sup> Ex-District Councillor and wife jailed for voting offences at Eastern DC Election,” June 23, 2005 (<http://www.icac.org.hk/eng/0/1/8/15226.html>).

their own interpretation of what constitutes fairness or honesty. No place is this more apparent than during discussion about the development of voter lists and systematic direct voter contact. Individual privacy is highly important in local culture. However, no one the assessment team spoke to understood the exact standards of data privacy laws and instead provided their own interpretation or definition of what activities are allowable.

Each former candidate we spoke with informed us that a list of eligible voters was not available for voter contact activities due to restrictive privacy laws. In fact, the guidelines on electioneering activity provided by the EAC merely states that personal data be collected by lawful means, and that personal data be used for the purpose for which it was collected. It stands to reason that a person who registers to vote and provides his or her phone number, address and e-mail address could be legitimately contacted by candidates or campaign staff as part of an electoral campaign. Nevertheless, the EAC admitted to discouraging those who call their offices to obtain voter lists. However, the EAC conceded that candidates who physically go to the EAC office would be given a list in database form on a disk, while non-candidates could be given a list of voters on paper provided that they pay for copying. The EAC could clarify this policy in writing to help reduce this common misconception.

## **COMMON PRACTICES AND THE ELECTION SCHEDULE**

Common electoral practices in Hong Kong are driven by a hand full of factors. Foremost among them is the spending cap: District Council candidates have a spending cap of \$45,000 (approximately USD5,800). The maximum scale of expenses limits the extent of election campaigns and serves “to prevent candidates with ample financial resources from having an unfair advantage.”<sup>21</sup> Candidates are defined as persons who have publicly declared an intention to run for public office before the close of the nomination process. According to the District Councils Ordinance (Cap547), “A person is not validly nominated as a candidate for an election unless:

- (a) a deposit has, in the manner prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541), been lodged by or on behalf of the person with the Returning Officer concerned; and
  - (b) the nomination form includes or is accompanied by a declaration to the effect that the person will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region.
- (2) The deposit is to be of such an amount as is prescribed by the regulations for the purposes of this section.”<sup>22</sup>

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<sup>21</sup> The maximum scale of expenses is set out in Point 15.7 (Part II: Who May Incur Election Expenses and their Limit) which states that “the maximum scale of election expenses for the DC election is prescribed by the Maximum Scale of Election Expenses (District Councils) Order made by the CE in council pursuant to s. 45 of the ECICO to limit the maximum amount of expenses a candidate may incur on account of the election.” – District Council Elections Guidelines.

<sup>22</sup> s. 34 District Councils Ordinance.

Expenses are counted against the spending limit once a candidate has publicly declared his/her intention to run. Candidates report their donations and expenses 30 days after the election results are published. In an effort to avoid incurring expenses against this cap, candidates wait until the last possible moment in the election year to announce their candidacy – usually the October filing deadline. This results in a four to five week election period.

In the Legco Elections Guidelines, election expenses mean expenses incurred or to be incurred before, during or after an election, by a candidate or his election expense agent on his behalf for the purpose of promoting his election, or prejudicing the election of another candidate or other candidates and include the value of election donations consisting of goods and services used for that purpose.

The term candidate relating to election expenses (and donations) therefore includes a person who has publicly declared an intention to stand for election in respect of a constituency at any time before the close of nominations for the election, regardless of whether he or she has submitted his/her nomination form or if after submission of the nomination form his nomination is ruled invalid by the RO. The candidate can receive donations for the purpose of meeting the costs of his election expenses, and only a candidate or a person (including a fellow candidate on the same list in a GC election) who has been duly authorized by a candidate as the candidate's election expense agent may incur election expenses.<sup>23</sup>

It is illegal for persons other than the candidates and election agents to incur election expenses. And the candidate “engages in illegal conduct at an election if the aggregate amount of election expenses incurred at or in connection with the election by or on behalf of the candidate exceeds the maximum amount of election expenses prescribed for a candidate by regulations.”<sup>24</sup>

In District Council elections, there is no defined time as to when expenses are incurred whereby they will or will not be counted as election expenses.<sup>25</sup> Penalties in case of breach range from imprisonment for one year to a fine of \$200,000 and imprisonment for three years.<sup>26</sup>

### **Problems with Loose Definitions of “Candidacy”**

The decision to announce one's candidacy in October is of little consequence to incumbent office holders who have a government financed staff and mailing and signage privileges to communicate with their constituents for almost five years. Their decision to announce late allows them more time at government expense to “perform the duties of office.” For non-incumbents, however, the late announcement drives the bulk of counterproductive electoral practices in Hong Kong. We believe that if the EAC had a

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<sup>23</sup> Chapter 16 Legco Election Guidelines.

<sup>24</sup> ECICO.

<sup>25</sup> District Council Elections Guidelines Chapter 15.

<sup>26</sup> s. 22, 23 and 24 of ECICO (Cap.554).

clearer definition of electioneering, bona fide campaigning would not be so readily confused with the work of politics.

District Council candidates tend not to raise money or start raising money until the October filing deadline. They rationalize this in a number of ways:

- I can't raise \$45,000 in just a few short weeks. And I can't start earlier because that would make me an announced candidate and any money I spend will be counted against the cap.
- Why raise money since I can't raise and spend \$45,000 in just four short weeks?
- Since candidates receive one "free" (that is, government financed) mailing to prospective voters in the district, there is no need for additional funding.

Candidates do not use lists for direct voter contact, for the following reasons:

- Voter lists are not available.
- Voter lists violate privacy laws.
- I can meet the voters I need to contact on the street because the districts are so small.
- If I received a list from the EAC, it would make me a declared candidate.
- It is illegal to call voters or knock on their doors.

These excuses are not really rooted in fact. At the same time, candidates who are not incumbents but seem to have some political knowledge do not hesitate to set-up constituency services organizations or provide services in their targeted districts in order to build viability through visibility.

### ***Common Communications Practices***

Once a candidate finally officially unequivocally declares his or her candidacy (or somehow acts in a way deemed to signal this), the candidate gets down to the business of campaigning. Many of these practices would be familiar in any democratic system. These include:

- Candidate visits/door knocking—that is, if it is allowable in the particular buildings in the candidate's district.
- Leafleting on the street—if the candidate has volunteers.
- Signage—in locations assigned by EAC lottery, manually numbered in order to allow monitoring of spending.
- Posters —again, manually numbered and primarily placed along with those of opponents in public and private buildings.
- Fax/blast fax —candidates seem to believe they are less intrusive than phone calls.
- E-mail—free.
- Direct mailing—the EAC pays for one free mailing to district voters, some candidates or parties do their own additional round.

- Constituency services events—these are used to meet voters, increase exposure, and determine viability as a candidate, used to build list of supporters.

### *The Data Divide*

The lack of real data driven communications and organizing by candidates or political parties is alarming given that Hong Kong is such a modern and tech savvy city. The EAC collects and maintains voter registration lists. The registration process to become an elector in a geographic constituency is fairly straightforward. Eligible citizens and residents may register online, by mail, fax, or in person at any one of a wide range of locations during the registration period. Once a voter is registered, he or she remains on the rolls, though it appears that the EAC does attempt to purge the rolls of deceased or otherwise ineligible voters.

The EAC collects several useful data points in their registration forms, including name, address, phone number, cell phone number, fax number, email address and Hong Kong identification number. Unfortunately, only the individual's name, address, and email are made available to declared candidates. Only names and addresses are available to the public.

The process by which candidates and other interested parties may obtain the registration rolls has been a subject of great debate and confusion. Conventional wisdom is that the registration rolls are not readily available, except to the candidates themselves, and only after they officially declare. Having put the question to the EAC, in terms of who may access the data, it seems that while the data should be made available to anyone who will use it solely for electoral purposes, the EAC does have discretion as to who they will make the file available to.

The Electoral Registration Officer (ERO) may make available an extract of a published register for any purpose related to an election to any person that the ERO considers appropriate. Any person who wishes to request an extract is required to complete a specified form and sign an undertaking that the information obtained must be used solely for election-related purposes and not to use it otherwise. It is an offence for any person to reproduce or permit another person to reproduce in any form, use or permit another person to use, or impart to any other person, the information in the Register for any purpose other than a purpose related to the elections.<sup>27</sup> Any person who commits the above offence is liable to a fine at level 2 and to imprisonment for six months.<sup>28</sup>

As stated earlier, the individual's right to privacy is taken very seriously in Hong Kong. An entire government office, the Office of the Privacy Commissioner for Personal

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<sup>27</sup> Under the s. 22(3) of Cap. 541A and s. 42(3) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation, Cap. 541B.

<sup>28</sup> Criminal Procedure Ordinance (Cap 221) s. 113B (1) Where an Ordinance provides for a fine for an offence by reference to a level, the fine applicable for the offence is the amount shown for that level in Schedule 8 – Level 2 - \$5000.



Data, exists to ensure that private data is not misused. The ordinance that governs the work of this office states that individual level data may only be used for the purpose for which it was collected.

The ERO may pass the information to the person requesting the information in soft copy or hard copy. While the EAC does not charge for soft copy, it would charge for the hard copies according to the prevailing rate set by the Director of Accounting Services. Currently, the charge is \$1 per page.

The EAC also keeps a database of voters who voted in by polling station. These lists along with the actual ballots are only kept for six months before they are destroyed.

## **RECOMMENDATIONS FOR POLITICAL PARTIES AND CANDIDATES**

### **Voter Files**

Given the lack of several key data points at the individual level, it is clear that the parties in Hong Kong could benefit from an effort to enhance individual level voter files. First, adding phone numbers to the files would greatly improve the ability to communicate with voters. Currently, campaigns may only make targeted contact with voters via mail or door to door canvass. Because of the typical practice of campaigns only sending one piece of mail (that which is paid for by the government for declared candidates), and given the severe restrictions presented by the very commonly virtually inaccessible private housing buildings, telephone communication would present a viable alternative. Hong Kong politicians' reticence to phone voters is another matter.

The biggest hurdle to appending phone numbers to registration lists at this point is the privacy ordinance, as detailed above. A campaign or party cannot simply take the phone book and append the phone numbers to their registration list. The high level of repetition in surnames in Hong Kong would make this process difficult and inaccurate. Candidates and parties have, however, adopted unique processes to develop their own databases of contacts that could be helpful at a larger level to attain more individual level data, including phone numbers.

It is possible the candidate voter list could be enhanced with data from corporate data vendors, but this falls within a grey area in the privacy ordinances. It appears as if voters would have to "opt-in," allowing the use of their data for political purposes which would severely limit the amount of data available.

Beyond the enhancement of voter lists from public and private data sources, the parties and campaigns could serve themselves well by adopting additional methods to improve and maintain their files. First and foremost, the political parties could strengthen their standing significantly, while benefiting their candidates, by investing in a current, enhanced voter file.

The parties should make an effort to collect and build current registration databases at least twice a year – once approximately one year prior to the election, and once at the close of registration. Because the data will most likely be transferred to the parties in paper form, the building of the database will certainly involve a sizable amount of data entry for the initial building of the file, but significantly less for each update. A potential solution for this issue would be to make sure that the party fields candidates in each LegCo geographic constituency, allowing their candidates to obtain registration lists in database format, which could then be copied for the parties. A formidable barrier to their endeavor is not only the conservative application of the privacy law but also internal party relations issues. This may be less of a problem in some parties than in others. However, in general the information for these voter lists is collected and maintained by party members at district level but this is not necessarily shared with party headquarters for aggregation.

Once the party has a complete registration database, given the lack of useful targeting information initially provided, a plan should be implemented to update voter records with additional data. One fairly simple practice would be to establish a data flow process with all candidates. The strength of the parties is their candidates' and elected councillors' constituent services. It is an almost universal practice for Hong Kong councillors to work year round to build databases of contacts, often including not only the most basic contact information (including phone numbers), but also including very useful issue-specific data. The parties should ensure that all of this valuable information is appended to their centralized voter files, so that the data will benefit not only the candidate who collected it, but also geographically overlapping candidates (LegCo vs. DC) and future candidates. This practice can only serve to strengthen the parties, in that it will provide them with a valuable "deliverable" for their potential candidates.

Beyond establishing data flow procedures with LegCo and DC candidates, the parties should make a centralized effort to enhance their voter files from other sources. Such sources may be phone ID programs – using paid and/or volunteer phone banks to contact voters and determine their positions on various issues, as well as their support of various candidates and parties, pre-paid postage survey programs, as well as collecting data from voters at rallies, outings, or any one of a number of public events.

Because voters do not have the option of offering a partisan identification when they register to vote (and only 1-2 percent of Hong Kong residents identify themselves as being or having been a member of a political party or group), there is a lack of partisan information on the existing files. This issue is somewhat mitigated by the fact that voters in Hong Kong do not currently appear to have forged strong allegiances to the parties, making partisan allegiances or preferences less helpful. Assuming an objective of strengthening parties, an effort should be made to eventually build a base of partisan identification. For the most part this will have to rely on partisan identification programs, something that currently is not part of the political culture in Hong Kong.

Parties should also make an effort to collect the lists of registered functional constituency voters from the EAC on a regular basis, and append that information onto

their voter file. This data, which usually provides the occupation of its registered voters, could be very helpful for targeted communications.

### **Utilizing Other Data Sources**

While there is a dearth of readily available individual level voter data, a fair amount of politically relevant aggregate data does exist. However, it seems that this data is underused, if used at all.

For starters, Hong Kong conducts a decennial census with population updates performed on an annual basis.<sup>29</sup> Highly detailed census data is available down to the District Council geographic constituency level. This includes breakdowns of each constituency by age, gender, income, education, among dozens of other demographic data points. High mobility does limit the usefulness of this information the further one gets from the origination of the data. Nevertheless, this information should be used by the parties to build profiles of districts in order to recruit candidates who are best matched to the electorate of the district since residency in the locality is not a candidacy requirement. It should also be used for candidates as a tool to gain a more nuanced understanding of their districts. This enhanced understanding may be helpful in crafting a campaign strategy and message that is tailored to the district.

While at least some of the parties may use polling for a broader strategic purpose, polling is not currently widely used by candidates as a race by race strategy tool. The difficulty associated with building a list of phone numbers with their related district assignments makes it almost impossible to perform reliable district specific polls. For that reason, it is unlikely that polling can be helpful for DC elections, beyond generic tests of campaign themes and messages. Due to the lack of a campaign industry in Hong Kong, the majority of polling on public opinion is performed by academics, at least for polls whose methodology and results are made publicly available. The Hong Kong government does seem to do a fair amount of polling through its Central Policy Unit though results seem to be kept deliberately secretive though selectively released to suit political purposes.

Exit polls are conducted in Hong Kong on Election Day, and could be very useful to parties and candidates in their efforts to better understand the electorate. The parties could benefit from a systematic analysis of past exit polls to gain a greater understanding of why people vote (or do not), why they support certain parties, which demographic groups tend to be stronger partisans, which tend to be more persuadable and so forth. The findings should then be incorporated into an overarching strategy for each party.

While this information could be elicited through exit polling or post election surveys, exit polling is better. The types of questions that ought to be asked include:

1. Were you contacted by candidates by phone?
2. If so, by how many candidates?

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<sup>29</sup> <http://www.censtatd.gov.hk/home/index.jsp>.

3. Who? Which candidate or party?
4. Did you receive mail? If so, from whom?
5. Did you attend any political events?
6. Where do you get your political news from?
7. Also demographics – the number of times voted in the past, party affiliation, who one voted for, etc?

Beyond exit polls, the actual election results provide a useful tool to better understand the electorate. After each election the vote totals are published by polling place. A systematic analysis of this data will allow the parties to rank the polling places by turnout, partisan support, and ticket splitting. These indices should then be cross-referenced to help determine where party/candidate resources should be focused in future elections. For example – if a polling place has exhibited strong support for a candidate/party in past elections, but has a low turnout rate, an investment in turnout operations would make much more sense there than in a polling place area that has a history of turning out at a high rate.

## **CONCLUSION**

We hope this report provides some fuel for a fundamental re-assessment of strategic campaign planning. The following are recommendations for parties and candidates:

1. Review existing survey research and exit polling.
2. Conduct analysis of election returns.
3. Conduct post-election surveys and exit polling on communications and electioneering or campaigning.
4. Build district profiles.
5. Build, maintain and enhance voter file.
6. Conduct candidate trainings as much as possible.