

**Administration's Responses to Points raised on 28 March 2001
by Members of the Bills Committee
on the Chief Executive Election Bill**

Q1: How would the election-related activities in respect of the Chief Executive Election be regulated? For example, will electoral guidelines be issued as in the Legislative Council election and District Councils election?

A1: Under the Chief Executive Election Bill, it is proposed that the Electoral Affairs Commission (EAC) will be empowered to supervise the Chief Executive election. As in the Legislative Council election and District Councils election, the EAC will issue guidelines relating to the conduct of the Chief Executive election and the electioneering activities of candidates at the election. The EAC will consult the public on the content of the guidelines.

Also, a number of subsidiary legislation such as the regulations on electoral procedure will have to be made by the EAC, pursuant to the Bill, to regulate activities relating to the Chief Executive election. They will be submitted to the Legislative Council for negative vetting after the Chief Executive Election Bill is passed by the Legislative Council and comes into effect.

Q2: Will there be any guideline governing the participation of senior government officials in the electioneering activities of the Chief Executive election?

A2: Civil Service Bureau has issued a circular on the participation of civil servant in electioneering activities for the Legislative Council election. It is provided in this circular that certain officers at the senior level and those who may be particularly susceptible to accusations of bias because of the nature of their duties are prohibited from participating in any form of electioneering activities. Officers subject to this prohibition include all members of the directorate, Administrative Officers, Information Officers and all disciplined officers in the Police Force. Civil

Service Bureau will issue a similar circular for the purpose of the Chief Executive election.

The EAC has recommended in the report for the 2000 Legislative Council elections, among other things, that in future the electoral guidelines should be extended to cover the participation of senior government officials at functions during the election period.

Q3: How would the electioneering activities of an incumbent Chief Executive be regulated in order to avoid any potential conflict of roles as a Chief Executive and as a candidate?

A3: In the case of an incumbent Chief Executive seeking re-election, we see a need to differentiate between official duties of the Chief Executive and electioneering activities undertaken by him in his capacity as a candidate. Given the important constitutional role of the Chief Executive as provided in the Basic Law, an incumbent Chief Executive must continue to perform his duties during the election period. It is inappropriate to regulate a Chief Executive's official activities; otherwise, the ability of the Chief Executive to discharge his constitutional obligations would be undermined.

But, in the interests of fairness, we consider that safeguards should be put in place to ensure a level playing field for all candidates in the conduct of electioneering activities. We have been advised by the EAC that the EAC will set out in the electoral guidelines for the Chief Executive election the principles and practical arrangements to ensure that the process of the election is fair, open and honest.

Q4: Would there be any restriction imposing on election campaigning undertaken by members of a political party to a fellow member being a candidate?

A4: Any person (no matter whether they are members of political parties or not) can provide services (whether voluntarily or for a fee) to a candidate for the purpose of promoting the election of the candidate. A candidate must, however, observe the relevant requirement as stipulated in law.

Most campaign activities such as election advertisement or other electioneering activities will inevitably involve election expenses. Section 23 of the Election (Corrupt and Illegal Conduct) Ordinance prohibits any person other than a candidate or a candidate's election expense agent from incurring election expenses at or in connection with an election. The candidate and other persons assisting him in electioneering have to ensure that section 23 is observed.

As a candidate has to declare that he stands at the election in an individual capacity, he must ensure that the campaign activities for which he has authorized expenses (including the content of his election advertisements) is consistent with the declaration and will not lead the electors or the public to believe that he is representing his party. A candidate's freedom to accept support from any organization is subject to this limitation. In this respect, the EAC will consider issuing guidelines to provide guidance to candidates and their supporters.

Q5: Will there be any ceiling set on the election expenses for Chief Executive election ?

A5: The issue of election expenses ceiling is regulated by the Elections (Corrupt and Illegal Conduct) Ordinance which provides that Chief Executive in Council may set a ceiling on election expenses for local public elections of all levels. As for Chief Executive election, we will consider the need for setting a ceiling on election expenses in due course.

We hold that the following measures are essential in addressing the issue of election expenses –

- (1) whether or not a ceiling on election expenses will be set, all candidates are required by the Elections (Corrupt and Illegal Conduct) Ordinance to declare in detail their election expenses as well as any election donation of over \$1,000 and the public is entitled to inspect such information.
- (2) whether or not a ceiling on election expenses will be set, the Elections (Corrupt and Illegal Conduct) Ordinance has already laid down stringent provisions for the prevention against and cracking down on bribery at election, thereby ensuring, that the election is fair, honest, open and clean.

Constitutional Affairs Bureau
2 April 2001