

## **Legislative Council Panel on Constitutional Affairs**

### **The Proposed Guidelines on Election-related Activities in respect of the Legislative Council Elections**

#### **Purpose**

This paper seeks Members' views on the Proposed Guidelines on Election-related Activities in respect of the Legislative Council (LegCo) Elections (the "Proposed Guidelines") issued by the Electoral Affairs Commission (EAC).

#### **Background**

2. Under section 6(1)(a) of the EAC Ordinance (Cap. 541), the EAC is empowered to issue guidelines to facilitate the conduct or supervision of an election. The aim of these guidelines is to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities, and directions in layman's language on how to comply with the relevant electoral legislation so that candidates can avoid breaching these guidelines inadvertently. Before each general election, the EAC will update the guidelines to reflect any latest changes in electoral arrangements.

3. The EAC has recently drawn up a set of proposed guidelines for the conduct of the LegCo election to be held on 12 September 2004 and for all LegCo general elections and by-elections to be held afterwards. The Proposed Guidelines were made public on 22 March 2004, and copies were distributed to Members on the same day. The Proposed Guidelines are modelled basically on those used for the 2000 LegCo election and the 2003 DC election, with suitable amendments to reflect the operational experience and suggestions for improvements obtained from the previous elections. The EAC is now conducting a 30-day public consultation on the Proposed Guidelines. The consultation period will end on 20 April 2004.

4. To facilitate Members' consideration of the Proposed Guidelines, major changes in the Proposed Guidelines as compared with the guidelines issued for the 2003 DC election are summarized in paragraphs 5 to 10 below.

## **Major Proposed Changes**

### ***(1) New Subsidiary Legislation made by the EAC***

#### **(a) Printing of Particulars Relating to Candidates on Ballot Papers**

5. To facilitate identification of candidates on ballot papers by the electors, the EAC made the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (Cap. 541M) in early 2004 to allow the printing of specified particulars relating to candidates on ballot papers for use in the LegCo elections. The specified particulars that may be printed on the ballot papers include registered names and emblems of prescribed bodies<sup>1</sup>, registered emblems of prescribed persons<sup>2</sup>, words indicating that a candidate is an independent candidate or a non-affiliated candidate, and personal photographs of candidates. Part VIII of Chapter 4 of the Proposed Guidelines sets out the relevant requirements of the regulation, including the processing of applications made by candidates to have the specified particulars printed on ballot papers, timing of applications, registration and de-registration of names, emblems, etc.

#### **(b) Financial Assistance Scheme for Candidates**

6. To encourage more candidates to participate in the LegCo elections, a Financial Assistance Scheme for candidates will be introduced. Under the Scheme, candidates or lists of candidates who get elected or who have received 5% of valid votes or more will be given financial assistance to offset part of their election expenses.

7. A new section (Part VI of Chapter 16) has been included in the Proposed Guidelines to set out the detailed arrangements of the Financial Assistance Scheme, as provided for under the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (Cap. 541N). The new section also addresses issues raised by Members at the meetings of the Subcommittee set up to

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<sup>1</sup> A prescribed body means a prescribed political body or a prescribed non-political body.

<sup>2</sup> A prescribed person means a person that is registered in a final register of electors for geographical constituencies as compiled and published in accordance with the Legislative Council Ordinance (Cap. 542) and that is not disqualified from being so registered or from voting at an election.

examine the regulation. These issues include how the financial benefit received from an organization (including a political party) or an individual either before or after the submission of an election return should be accounted for, and whether auditing fee should be regarded as an election expense. Appendix L of the Proposed Guidelines has also been revised to address the issue of how to report different types of loans in the election return.

### ***(2) Polling and Counting Arrangements***

8. At the Panel meetings held on 16 February 2004 and 15 March 2004, Members were consulted on the polling and vote counting arrangements proposed by the EAC for the 2004 LegCo election (LC Papers No. CB(2)1309/03-04(03) and CB(2)1686/03-04(05)). Under the proposed arrangements, vote counting for GCs will be decentralized to individual counting stations, while FC votes will be manually counted at the central counting station as in previous LegCo elections. The polling stations set up for the GCs will also serve all the 28 FCs. The detailed arrangements are reflected in Chapter 5 of the Proposed Guidelines, such as the designation of polling stations, admission to and conduct inside the polling stations, definitions of invalid and questionable ballot papers, the counting process, declaration of results, etc.

9. Subject to the outcome of the consultation exercise, the EAC will amend the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) to provide a legal basis for the proposed polling and counting arrangements.

### ***(3) Amendments Made in Response to Members' Suggestions***

10. At the Panel meetings held on 15 December 2003 and 16 February 2004, Members made a number of comments on the Guidelines on Election-related Activities in respect of the DC Election issued by the EAC. The Administration responded to the issues raised by the Members vide LC Papers No. CB(2)668/03-04(01) and CB(2)1309/03-04(05). In preparing the Proposed Guidelines, the EAC has taken on board Members' suggestions, as follows:

- (a) candidates are no longer required to provide the details about their periods of absence from Hong Kong in the past

three years. They simply need to make a declaration in the nomination form that they have ordinarily resided in Hong Kong for the three years preceding the nomination (paragraph 4.18(b)(v) of the Proposed Guidelines);

- (b) more details are set out on how election expenses should be counted when the election advertisements are published for the purpose of prejudicing the election of candidates (paragraphs 8.7 to 8.8 of the Proposed Guidelines);
- (c) more details are provided as to how the value of a commercial/non-commercial space for display of election advertisements should be accounted for (paragraph 8.18 of the Proposed Guidelines);
- (d) a Returning Officer may exercise his discretion to accept a joint declaration and a joint submission of two copies of election advertisements where candidates use identical copies of election advertisements (paragraph 8.50 of the Proposed Guidelines);
- (e) new paragraphs are added to clarify how election advertisements in folder forms should be sealed for handling by the Post Office under the free postage arrangement (paragraph 8.74 and Appendix E of the Proposed Guidelines);
- (f) more details are set out as to when a “prior written consent of support” is required, what amounts to “support”, and the circumstances under which the “prior written consent” of the person or organization concerned is required when the office title of an individual is quoted in an election advertisement. (paragraphs 18.1 and 18.4 of the Proposed Guidelines);
- (g) more clarifications are provided on whether a candidate needs to share the expenses for the election advertisement if

he appears in another candidate's election advertisement to indicate his support (paragraph 18.9 of the Proposed Guidelines); and

- (h) in response to Members' comments that it will be difficult to decide whether it will be necessary to obtain the written consent of persons whose pictorial representation is included in an election advertisement, a new paragraph is added to the Proposed Guidelines stating that a caption specifying the particular nature of the event can be added underneath the photograph in order to minimize misunderstanding (paragraph 18.10 of the Proposed Guidelines).

### **Advice Sought**

11. Members are invited to give their views on the Proposed Guidelines. Since the deadline for consultation is 20 April 2004, in the interest of time Members may also forward their views to the EAC Secretariat direct at 10/F, Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong, or by fax (fax no.: 2511 1682) or e-mail ([eacenq@reo.gov.hk](mailto:eacenq@reo.gov.hk)). The EAC will take into account the views received during the public consultation exercise before finalizing the guidelines for issue to the public.

Registration and Electoral Office  
14 April 2004