

**Legislative Council Panel on Constitutional Affairs**

**Guidelines on election-related activities issued by the  
Electoral Affairs Commission**

**Purpose**

This paper sets out the rationale of the various requirements under paragraphs 7.13, 7.26, 7.41 and 17.1 of the Guidelines on Election-related Activities in respect of the District Councils Elections (“the DC Guidelines”) issued by the Electoral Affairs Commission (“EAC”) and section 12 of the Election (Corrupt and Illegal Conduct) Ordinance (“ECICO”), pursuant to Members’ request for discussion of the matter.

**EAC Guidelines on election-related activities**

2. The EAC is empowered under s 6(1)(a) of the Electoral Affairs Commission Ordinance (Cap 541) to issue guidelines to facilitate the conduct or supervision of an election. The purpose of producing the guidelines is to ensure that all public elections are conducted in an open, honest and fair manner. The guidelines attempt to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities and some directions in layman’s language on how to comply with the relevant electoral legislation so that candidates can avoid breaching them due to inadvertence.

3. The Commission has at all times made its best endeavours in refining the electoral arrangements for elections. Before each general election, the EAC will revise the electoral guidelines. The revision is done on the basis of the guidelines used for previous elections, taking into account the operational experience of each election, as well as suggestions and complaints received from the public and other parties concerned. Before the promulgation of each set of guidelines, a 30-day consultation period will be announced inviting representations from the public and other parties concerned on the draft revisions of the guidelines. A public forum will also be held where the EAC will receive oral representations from the public. The guidelines will then be revised taking into account the views received during the public consultation period before they are finalised for issue to the public.

4. The DC Guidelines which came into operation on 29 September 2003 were prepared and issued in the manner described in

paragraph 4 above. It is the most up-to-date version of electoral guidelines issued by the EAC which is modeled basically on the Guidelines on Election-related Activities in respect of the 1999 District Council Election, the 2000 Legislative Council (“LegCo”) Elections, the Election Committee Subsector Elections and the Village Representative Elections, with suitable and necessary amendments to reflect the experience and suggestions for improvement obtained from those elections.

5. A new set of guidelines will be prepared for the LegCo Elections to be held in September 2004. It will be modeled basically on the guidelines used for the 2000 LegCo Elections and the 2003 DC Election, taking into account the operational experience and suggestions for improvements from all parties concerned. A 30-day public consultation period and a one-day public forum will be conducted before the issue of the final guidelines. The public will be invited to submit their representations on the draft guidelines.

### **Rationale of requirements**

6. It has been reported in the press before the 2003 District Council election that some candidates considered that certain requirements in the DC Guidelines were too stringent, namely paragraphs 7.13, 7.26, 7.41 and 17.1 of the Guidelines, and section 12 of the ECICO. The relevant extract from the Guidelines and the Ordinance are at **Annex**. We set out below the rationale of these requirements.

#### ***Paragraph 7.13 of the DC Guidelines***

7. Paragraph 7.13 of the DC Guidelines states that if a commercial advertising space for rent is allowed by the private owner or occupier to be used free of charge by a candidate for display of his election advertisements (“EAs”), a reasonable market value for the use of that space will have to be accounted for by the candidate as an election donation and counted as election expenses.

8. Such a provision is to ensure that the candidate concerned will not have unfair advantage over the others who do not have access to such facilities. Under the ECICO, “election expenses” means the expenses incurred for the purpose of promoting or prejudicing the election of a candidate. If the private spot for displaying the EA is normally used for commercial purpose, the actual rent charged or the usual rent or market

rent that would normally be charged should be counted as the election expenses of the candidate concerned, irrespective of whether it is owned by the candidate or whether the owner of it allows the candidate to use it free of charge (in which case it would be a donation of the rent).

9. Members may wish to note that where a space provided by a particular private owner or occupier for a candidate to display election advertisements is not used for commercial advertising, but similar space belonging to other owners or occupiers are available for commercial advertising, the market value of the space should also be accounted for. If a space is not normally used by any private owners or occupiers for commercial advertising, there is no need for the candidate to account for the market value of the space.

#### ***Paragraph 7.26 of the DC Guidelines***

10. Paragraph 7.26 of the DC Guidelines states that an EA advertising two or more candidates of different constituencies is allowed to be displayed on the designated spots in the respective constituencies allocated to the candidates concerned and the expenses incurred for the joint EAs will have to be borne by the candidates concerned in equal shares as their respective election expenses.

11. ECICO makes it clear that any publicity materials used for promoting or prejudicing the election of a candidate should be regarded as an EA and funds required for producing the EA should be counted towards the election expenses of the candidate(s) concerned.

12. Through joint advertisement, the candidates have an equal opportunity to promote themselves at the election, and so each of the candidates would derive the same amount of benefit from the joint EA. Therefore, they should share the expenses for the production and display of the election advertisement.

#### ***Paragraph 7.41 of the DC Guidelines***

13. Section 103 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (“EAC (EP) (DC) Reg”) requires that each candidate must, before he displays an EA, furnish two copies of it to the RO and a declaration stating the quantity of each type of EA he proposes to so use. Further, section 103 requires the RO for each constituency to display such copies of EAs and declaration for

public inspection. Paragraph 7.41 (and other relevant paragraphs) of the Guidelines essentially set out the statutory requirement.

14. The statutory requirement is necessary for transparency purpose. It also enables the ROs to exercise their statutory duties to control the display of EAs, and to deal with any complaints on the display of EAs. In practice, in circumstances where candidates contesting different constituencies in the same district use identical copies of an EA, the RO of that district may exercise his discretion to accept a joint declaration by all the candidates concerned and a joint submission of two copies of the EA.

***Paragraph 17.1 of the DC Guidelines***

15. Paragraph 17.1 deals with the issue of false claim of support. In essence, it sets out the requirements of section 27 of the ECICO. Section 27 provides that –

- “(1) A candidate engages in illegal conduct at an election if the candidate publishes or authorizes the publication of an EA that includes –
  - (a) the name or logo of or associated with a person or an organisation; or
  - (b) a name or logo that is substantially similar to the name or logo of or associated with a person or an organisation; or
  - (c) a pictorial representation of a person,

in such a way as to imply or to be likely to cause electors to believe, that the candidate or candidates with whom the candidate is associated have the support of the person or organization unless, before the publication of the EA, the person or organisation consented in writing to the inclusion of the name, logo or pictorial representation.”

16. The written consent protects the candidates from unnecessary complaints and disputes which may arise if only oral consent is obtained. It also protects the electors from being misinformed as to whether a candidate has the support of a person or an organization. Where the

inclusion of the name, logo or pictorial representation of a person or organisation, as the case may be, does not imply support of the candidate concerned, prior written consent is not required. What amounts to 'support' will depend on the circumstances of each case.

### **Providing electors and others with food, drink or entertainment (Section 12 of the ECICO)**

17. Under section 12 of the ECICO, it is an offence if a person provides or pays for the provision of any food, drink or entertainment for another person as an inducement to or a reward for that person or a third person:

- (a) not to vote at an election; or
- (b) to vote or not to vote for a particular candidate or particular candidates at an election. Likewise, the corrupt solicitation or acceptance of any such treating is prohibited under this section. The only exception is made under subsection (5) where the serving of non-alcoholic drinks only at an election meeting will not be deemed corrupt.

18. The intention of the provision is to ensure that no one would make use of food, drink or entertainment as an inducement to or reward for voting or not voting a particular candidate or particular candidates, or not voting at an election. What constitutes entertainment, however, is not defined in the ECICO. It will need to be considered on the facts of each case in the light of its own circumstances and eventually it is a matter for the court to determine.

### **Advice Sought**

19. Members are invited to note the content of this paper for information.

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**Extract from the Guidelines on Election-related Activities in respect of  
the District Councils Elections**

**Other Land/Property : Private Spots**

7.13 Candidates who wish to display their election advertisements on land/property other than government land/property and other than the designated spots must obtain the **prior written permission or authorisation** of the owner or occupier [s 104A of Cap 132]. The obtaining of written permission or authorisation from the private owner or occupier is a matter for private arrangement between the candidate and the owner or occupier, and they are therefore called “**private spots**”. Any consideration, fee or money incurred or agreed to be paid by or on behalf of the candidate to the owner or occupier for display of his election advertisements forms part of his election expenses. If a commercial advertising space for rent is allowed by the private owner or occupier to be used free of charge by a candidate for display of his election advertisements, a reasonable market value for the use of that space will have to be accounted for by the candidate as an election donation and counted as election expenses. A copy of the written permission or authorisation must be deposited with the RO for the relevant constituency before display [s 103(9) of the EAC (EP) (DC) Reg]. [Please also see para. 7.17 below.]

**Allocation of designated spots**

7.26 An election advertisement advertising two or more candidates of different constituencies is allowed to be displayed on the designated spots in the respective constituencies allocated to the candidates concerned. Nevertheless, it is important to ensure that the total area of all the spaces for joint advertisements and for advertising each one of the joined candidates does not exceed the total area of the designated spots allocated to each of the candidates. The expenses incurred for the joint election advertisements will have to be borne by the candidates concerned in equal shares as their respective election expenses. In this connection, it is important to note that only a candidate himself or his election expense agent may incur election expenses on his behalf [s 23 of the ECICO]. **Joint election advertisements should not, however, be displayed in the common parts of private premises**, in order to

prevent confusing electors or causing them to make mistakes as to the identity of the candidates running for the constituency concerned, or to prevent dilution of the principle of fair and equal treatment of candidates.

## **Copies**

7.41 **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) two 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) two identical copies of any video/audio tapes or discs or diskettes containing election advertisements;
  - (iii) two hard copies of any electioneering message sent by electronic means; and
  - (iv) two 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]

- (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.

S 34(4) of the ECICO also requires that a candidate must deposit with the relevant RO two copies of each type of the printed election advertisements which the candidate published **not later than seven days** after their publications.

### **False Claim of Support**

17.1 A candidate must obtain **prior written consent** from a person or organisation before using the name or logo of that person or organisation, or a pictorial representation of that person in any of his election advertisements or activities as an indication of support from that person or organisation. Oral consent is **not** sufficient. [S 27 of the ECICO.] The EAC provides a standardised consent form for this purpose. Any indication of support in election advertisements, be it a text, a photograph or any other material, must be covered by a written consent from the person or organisation concerned. It is important to note that it is still an offence even if such an election advertisement contains a statement to the effect that it does not imply support from the person or organisation concerned [s 27(4) of the ECICO]. It is also an offence for a person to give information which he knows or ought to know is materially false or misleading to a candidate for promoting or prejudicing the election of a candidate or candidates [s 27(6) of the ECICO].



**Extract of section 12 of the  
Election (Corrupt and Illegal Conduct) Ordinance (Cap.554)**

**12. Corrupt conduct to provide others with refreshments and entertainment at election**

(1) A person engages in corrupt conduct at an election if the person provides, or meets all or part of the cost of providing, food, drink or entertainment for another person for the purpose of inducing the other person or a third person-

- (a) to vote at the election for a particular candidate or particular candidates; or
- (b) not to vote at the election, or not to vote at the election for a particular candidate or particular candidates.

(2) A person engages in corrupt conduct at an election if the person provides, or meets all or part of the cost of providing, food, drink or entertainment for another person because the other person or a third person-

- (a) has voted at the election for a particular candidate or particular candidates; or
- (b) has not voted at the election, or has not voted at the election for a particular candidate or particular candidates.

(3) A person engages in corrupt conduct at an election if the person solicits, accepts or takes food, drink or entertainment-

- (a) as an inducement to vote at the election for a particular candidate or particular candidates; or
- (b) as an inducement not to vote at the election, or not to vote at the election for a particular candidate or particular candidates.

(4) A person engages in corrupt conduct at an election if the person solicits, accepts or takes food, drink or entertainment-

- (a) as a reward for having voted at the election for a particular candidate or particular candidates; or
- (b) as a reward for not having voted at the election, or not having voted at the election for a particular candidate or particular candidates.

(5) A person does not engage in corrupt conduct of a kind referred to in subsection (1) only because the person has, at an election meeting, served non-alcoholic drinks of any kind. An election meeting is any meeting held to promote or prejudice the election of a particular candidate or particular candidates.

(6) A person is taken to have engaged in corrupt conduct of a kind referred to in subsections (1) to (4) even though the conduct was engaged in by another person, but only if the other person was acting with the person's authority. That authority may be conferred expressly or by implication.