

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

### **The Proposed Guidelines on Election-related Activities in respect of the Chief Executive Elections**

#### **Purpose**

This paper seeks Members' views on the Proposed Guidelines on Election-related Activities in respect of the Chief Executive ("CE") Elections (the "proposed guidelines") issued by the Electoral Affairs Commission ("EAC").

#### **Background**

2. The EAC is empowered under section 6(1) of the EAC Ordinance (Cap. 541) 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 them inadvertently.

#### ***The Proposed Guidelines***

3. A Chief Executive election will be held on 10 July 2005. The EAC has drawn up a set of proposed guidelines to facilitate the conduct and supervision of this election. The proposed guidelines are modelled basically on those used for the 2002 CE Election, with suitable amendments to reflect operational experience and suggestions for improvements obtained from recent elections. Where appropriate, new provisions in the guidelines for the 2003 District Councils election and the 2004 Legislative Council election are adopted in the current set of proposed guidelines. A list showing the major changes as compared with the guidelines for the 2002 CE Election is attached at Annex.

#### ***Public Consultation***

4. The EAC is conducting a consultation exercise on the proposed guidelines for a period of 14 days from 15 to 28 April 2005. During the consultation period, members of the public are welcome to give their views on the proposed guidelines and lodge their written representations to the EAC. They can also express their views orally to the EAC at a public forum to be held

on 25 April 2005. Before finalizing the guidelines for issue to candidates and the public, the EAC will take into account the views received during the public consultation period. The final guidelines will be issued to the public in late May before the start of the nomination period for the coming CE election.

5. The proposed guidelines were made public on 15 April 2005, and copies were distributed to Members on the same day.

### **Advice Sought**

6. Members are invited to give their views on the proposed guidelines. 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 ([eaceng@reo.gov.hk](mailto:eaceng@reo.gov.hk)) before the deadline on 28 April 2005.

Registration and Electoral Office  
15 April 2005

**Major Changes Proposed in the Guidelines for Chief Executive Elections  
as Compared Against the Guidelines for the 2002 Chief Executive Election**

<b>Relevant Chapter</b>	<b>Major Changes</b>
<b>Chapter 1</b> <b>Introduction</b>	<ul style="list-style-type: none"><li>• A list of the governing legislation for Chief Executive (“CE”) elections is included for ease of reference (paras. 1.2 to 1.12 of the guidelines); and</li><li>• the aim of the guidelines is spelt out for clarity (paras. 1.14 to 1.15).</li></ul>
<b>Chapter 2</b> <b><i>The Election Committee</i></b>	<ul style="list-style-type: none"><li>• A paragraph is added to explain the composition of the Election Committee (para. 2.2).</li></ul>
<b>Chapter 3</b> <b><i>Nomination of candidates</i></b>	<ul style="list-style-type: none"><li>• A note is added to remind candidates of the importance of observing the subscription requirements (para. 3.7(a)); and</li><li>• an example is included to illustrate how a nomination form submitted to the Returning Officer (“RO”) may be rectified within the nomination period (para. 3.11).</li></ul>
<b>Chapter 5</b> <b><i>Polling and counting arrangements</i></b>	<ul style="list-style-type: none"><li>• The chapter is recast to make it more reader friendly;</li><li>• rules governing the conduct of, and communication with, electors during the poll and the count and measures introduced to safeguard the secrecy of the vote are included (paras. 5.13, 5.16, 5.31, 5.34 and 5.36);</li><li>• new provisions are added to elaborate on how to determine the validity of ballot papers (para. 5.41); and</li><li>• a new part is included to set out the procedures on disposal of documents after the election (paras. 5.44 to 5.46).</li></ul>
<b>Chapter 8</b> <b><i>Election advertisements</i></b>	<ul style="list-style-type: none"><li>• New provisions are included to explain the scope and definition of election advertisements in greater detail. In the light of a recommendation in para. 14.60 of the report on the 2004 Legislative Council (LC) Election, it is clarified in the proposed guidelines that a performance</li></ul>

<b>Relevant Chapter</b>	<b>Major Changes</b>
	<p>report shown on a website of an incumbent candidate during or before the election period will be regarded as an election advertisement if it is published for the purpose of promoting or prejudicing the election of a candidate (paras. 8.3 to 8.5 and 8.55);</p> <ul style="list-style-type: none"> <li>• more details are included to elaborate on how election expenses should be counted when the election advertisements are published for the purpose of prejudicing the election of candidates (paras. 8.7 to 8.8);</li> <li>• more details are included as to how the value of a commercial or non-commercial space for display of election advertisements should be accounted for (para. 8.16);</li> <li>• new provisions are added to clarify that if the contents of a candidate’s website are changed, the candidate must make a new declaration and deposit two hard copies of the modified pages with the RO (para. 8.41); and</li> <li>• a new paragraph is added to clarify how election advertisements in folder forms should be sealed for handling by the Post Office under the free postage arrangement (para. 8.66 and Appendix C).</li> </ul>
<p><b>Chapter 9</b> <b>Election meetings</b></p>	<ul style="list-style-type: none"> <li>• Relevant provisions are updated to set out the particulars that have to be included in the notification to the Police on holding of election meetings or public processions and the requirements for such notification (paras. 9.7, 9.8 and 9.12); and</li> <li>• a guidance note on safe conduct of election-related activities issued by the Commissioner of Police is included (para. 9.11 and Appendix E).</li> </ul>
<p><b>Chapter 10</b> <b><i>Electioneering at the living or working places of electors, premises of organisations to which electors belong and</i></b></p>	<ul style="list-style-type: none"> <li>• New provisions are added to define the scope of electioneering activities in greater detail (para. 10.1);</li> <li>• new provisions are added to request all management bodies of the organisations or buildings concerned to apply fair and equal treatment to all candidates, instead of dealing with each application from them separately (para. 10.8);</li> </ul>

<b>Relevant Chapter</b>	<b>Major Changes</b>
<i>buildings which electors frequent</i>	<ul style="list-style-type: none"> <li>• new provisions are added to require all persons who put up any publicity materials, including those which do not look election-related, in the nomination period at private premises should declare to the management body concerned in writing whether they are candidates or intend to stand as candidates in the election (para. 10.11); and</li> <li>• a guidance note on personal data privacy in respect of electioneering activities prepared by the Office of the Privacy Commissioner for Personal Data is included (para. 10.15 and Appendix H).</li> </ul>
<b>Chapter 11</b> <i>Election broadcasting, media reporting and election forums</i>	<ul style="list-style-type: none"> <li>• As recommended in paras. 14.57-14.58 of the report on the 2004 LC Election, new provisions are added to clarify that service providers which are not licensable under the Broadcasting Ordinance are allowed to carry election advertisements territory wide (para. 11.2);</li> <li>• new provisions are added to allow candidates to take part freely in non election-related programmes in which the ‘equal time’ principle will not apply (para. 11.3);</li> <li>• new provisions are added to clarify that comments made by broadcasters for the purpose of promoting or prejudicing candidate(s) will be treated as election advertisements if reference can be made from the materials to identify the candidate(s) being promoted or prejudiced (para. 11.7);</li> <li>• the relevant provisions are amended to clarify that a guest presenter should not appear in any programme in his normal programme role after his declaration of intention to run for the election or during the election period if he becomes a candidate (para. 11.8);</li> <li>• the relevant provisions are amended to clarify that a person who has contracted to appear as presenter, regular contributor or singer should try his utmost endeavour to request the person(s) responsible not to broadcast his appearance in any media after his declaration of intention to run for the election or during the election period if he becomes a candidate (para. 11.9); and</li> </ul>

Relevant Chapter	Major Changes
	<ul style="list-style-type: none"> <li>• new provisions are added to advise broadcasters to invite all candidates to attend election forums and appeal to organisations such as schools to invite all candidates to attend any such forums (paras. 11.15 to 11.17).</li> </ul>
<p><b>Chapter 12</b> <i>Use of sound amplifying device and broadcasting vans</i></p>	<ul style="list-style-type: none"> <li>• A definition on amplification device is added (para. 12.3);</li> <li>• the relevant provisions are amended to set out that making a nuisance by using megaphone, or other device or instrument for magnifying sound is an offence under the Noise Control Ordinance (para. 12.4); and</li> <li>• new provisions are added to remind candidates to observe traffic regulations on seating requirements, wearing of seat belts, etc and not to stand up in moving vehicles (para. 12.6).</li> </ul>
<p><b>Chapter 13</b> <i>Electioneering activities conducted in schools or participated by school pupils</i></p>	<ul style="list-style-type: none"> <li>• A new chapter is added as recommended in paras. 12.4 to 12.5 of the report on the 2002 CE Election. The content of the chapter is adapted from Chapter 13 of the guidelines for LC elections.</li> </ul>
<p><b>Chapter 14</b> <i>Prohibition against canvassing activities outside polling station</i></p>	<ul style="list-style-type: none"> <li>• New provisions are added to specify that the RO should issue a notice to candidates requiring them to remove their election advertisements posted at the private premises within the No Canvassing Zone on the polling day (para. 14.12).</li> </ul>
<p><b>Chapter 15</b> <b>Exit poll</b></p>	<ul style="list-style-type: none"> <li>• New provisions are added to specify that details of persons or organisations which are allowed to conduct exit polls will be announced to the public prior to the polling day, and such details will also be displayed at the polling station (para. 15.4).</li> </ul>
<p><b>Chapter 16</b> <i>Election expenses</i></p>	<ul style="list-style-type: none"> <li>• The relevant provisions are amended to clarify that the term “candidate” includes a person who has publicly declared an intention to stand for election at any time</li> </ul>

<b>Relevant Chapter</b>	<b>Major Changes</b>
<i>and donations</i>	<p>before the close of nominations for the election, regardless of whether he has submitted his nomination form or after the submission of the nomination form, his nomination is ruled invalid by the RO (para. 16.2);</p> <ul style="list-style-type: none"> <li>• the relevant provisions are amended to elaborate on the deadline for submission of the return and declaration of election expenses and donations to the Chief Electoral Officer, in order to reflect the latest amendment to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) in this regard (para. 16.23); and</li> <li>• new provisions are added to remind candidates that it is a corrupt conduct if a candidate makes a statement that he knows or ought to know is materially false or misleading in an election return (para. 16.26).</li> </ul>
<b>Chapter 17</b> <i>Corrupt and illegal conduct</i>	<ul style="list-style-type: none"> <li>• a new paragraph is added to specify that a candidate who fails to provide printing details or deposit copies of election advertisements with the RO commits an offence, but he may apply to the court for an order to relief him from penalties under certain circumstances (para. 17.25).</li> </ul>
<b>Chapter 18</b> <b>Namedropping</b>	<ul style="list-style-type: none"> <li>• More clarification is added as to why written consent of support is needed and as to what amounts to “support” (para. 18.1);</li> <li>• more clarification is added on the use of title of office bearer (para. 18.4);</li> <li>• more clarification is added on whether a candidate needs to share the expenses for the election advertisements if he appears in another candidate’s election advertisement to indicate his support (para. 18.9);</li> <li>• a new provision is added on the addition of a caption to a photograph in an election advertisement as a means to minimize misunderstanding regarding consent of support (para. 18.10); and</li> <li>• new provisions are added to advise the candidates not to distribute their election advertisements together with any materials published by any person, organisation, or government agency or department (para. 18.11).</li> </ul>

<b>Relevant Chapter</b>	<b>Major Changes</b>
<b>Chapter 19</b> <i>Attendance of public functions by both government officials and candidates</i>	<ul style="list-style-type: none"><li>• New provisions are added to remind civil servants that they should observe the rules of the Civil Service Bureau when participating in electioneering activities (para. 19.2); and</li><li>• a new Part IV on “Principal Officials” is included (paras. 19.9 to 19.12).</li></ul>
<b>Chapter 20</b> <i>Complaints procedure</i>	<ul style="list-style-type: none"><li>• A new provision is added to specify that before the issue of warning to a complainee, a reasonable effort should be made to contact the person and give him a reasonable opportunity to give explanations (para. 20.14(b)). This provision is adapted from the guidelines for District Council elections.</li></ul>