

Legislative Council Panel on Constitutional Affairs

**Proposed Guidelines on Election-related Activities
in respect of the Election Committee Subsector Elections issued by the
Electoral Affairs Commission**

PURPOSE

This paper seeks Members' view on the Proposed Guidelines on Election-related Activities in respect of the Election Committee (EC) Subsector Elections (the Proposed ECSS Guidelines) issued by the Electoral Affairs Commission (EAC).

BACKGROUND

2. Under section 6(1)(a) of the EAC Ordinance (Cap. 541), the EAC may issue guidelines relating to 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 to provide directions in layman's language on how to comply with the relevant electoral legislation, so that candidates and other interested parties can avoid breaching the provisions inadvertently.

3. Under the amended Chief Executive Election Ordinance (CEEEO), the number of members of the EC will be increased from 800 to 1 200, and the number of members of the four sectors of the EC will each be increased by the same proportion to 300 members. In this regard, consequential legislative amendments have been made to the relevant regulations under the EAC Ordinance to provide for matters on electoral procedures, voter registration and other practical arrangements.

4. In addition, the Electoral Legislation (Miscellaneous Amendments) Bill, was passed by the Legislative Council on 6 July 2011. It includes amendments to allow candidates contesting in the same EC subsector election to each send joint promotional letters to electors free of postage.

THE PROPOSED ECSS GUIDELINES

5. Before the conduct of each ordinary election, the EAC will revise the electoral guidelines. The next EC subsector ordinary elections will be held on 11 December 2011. The EAC has drawn up a set of proposed updated guidelines for the EC subsector elections for public consultation. The final guidelines will be adopted in the coming EC subsector ordinary elections and the by-elections held afterwards. The major revisions are to :

- (a) reflect the legislative amendments made earlier to the CEEO relating to the ECSS Elections and the proposed legislative amendments to the relevant subsidiary legislation under the EAC Ordinance as mentioned in paragraphs 3 and 4 above; and
- (b) align the guidelines, where appropriate, with the provisions of the guidelines in respect of other elections, including in particular the District Council Election (the Proposed DC Guidelines) issued for public consultation in May 2011.

6. In drawing up the Proposed ECSS Guidelines, the EAC has also taken into account the operational experience and suggestions for improvement obtained from recent elections. For Members' easy reference, the major changes, as compared with the existing guidelines issued in January 2010, are set out at the **Annex**.

7. The guidelines relating to election broadcasting, media reporting and election forums in Chapter 11 of the Proposed ECSS Guidelines are the same as those originally set out in the corresponding Chapter 10 of the Proposed DC Guidelines. During the public consultation period in respect of the Proposed DC Guidelines, which ended on 22 June 2011, the EAC received some 700 written representations and 45 oral representations from members of the public. The majority of these representations raised objection to the proposal to extend the existing guidelines for the production of election-related programmes by licensed TV/radio to programmes broadcast through Internet TV and radio.

8. After considering carefully the views received from the public, the EAC announced at the press conference on 23 June 2011 its decision not to take forward the aforesaid proposal having regard to the very different operating nature of the Internet as a medium for broadcasting TV and radio programmes and the practical problems which could arise if this were applied to the Internet. The Proposed DC Guidelines will be finalised on this basis. The final ECSS Guidelines will also be adjusted accordingly.

PUBLIC CONSULTATION PERIOD

9. In accordance with section 6(2) of the EAC Ordinance, the EAC shall consult the public in relation to the guidelines. The public consultation period for the Proposed ECSS Guidelines runs from 23 June 2011 to 22 July 2011 (both dates inclusive).

10. During the consultation period, members of the public are welcome to give their views on the Proposed ECSS Guidelines to the EAC in writing. Members of the public may also attend a public forum to be held on 15 July 2011 to put forth their views to the EAC orally.

11. The EAC will take into account the views received during the public consultation period in finalising the guidelines. The final guidelines will be issued around October 2011.

ADVICE SOUGHT

12. Copies of the Proposed ECSS Guidelines have been distributed to Members. Members are invited to note and comment on the Proposed ECSS Guidelines. Members may also forward their views to the EAC Secretariat by post (at 10/F Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong), by fax (fax no.: 2511 1682) or by e-mail (eacenq@reo.gov.hk), before the deadline on 22 July 2011.

Registration and Electoral Office
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**Major Changes in the Proposed Guidelines
for Election Committee Subsector Elections
as Compared with the Guidelines Issued in January 2010**

Relevant Chapter/ Appendix	Major changes
Chapter 1 and Appendix B <i>Introduction</i>	<ul style="list-style-type: none">● updating the number of members to be returned to each sector and subsector of the Election Committee (“EC”) in the fifth term (para. 1.1 and Appendix B).
Chapter 2 <i>Composition of the Election Committee</i>	<ul style="list-style-type: none">● setting out the arrangement for Electoral Registration Officer (“ERO”) to compile and publish interim register of members of the EC if the elections for different subsectors are held on different days (para. 2.5).
Chapter 3 <i>Registration of voters and voting system</i>	<ul style="list-style-type: none">● setting out that if a person is eligible to be registered for the Hong Kong and Kowloon District Councils (“DCs”) subsector or the New Territories DCs subsector, he may be registered only as a voter for either of the aforesaid subsectors as the case may be according to section 12(11)(c) and (d) of the Schedule to the CEEO (para. 3.7); and● in accordance with section 14(1B) and (1C) of the Schedule to the CEEO, adding that (i) the newly elected DC members in the DC election in November 2011 will be automatically registered in the DCs subsectors; (ii) if a newly elected DC member has already been registered as a voter in another subsector, his name would be removed from the Final Register (“FR”) of such subsector at the same time when he is automatically registered in the DCs subsectors; and (iii) the ERO would arrange the publication of the revised FR for the Hong Kong and Kowloon DCs subsector and the New Territories DCs subsector (para. 3.21).
Chapter 4 <i>Nomination of candidates</i>	<ul style="list-style-type: none">● adding that only the first nomination paper which has been delivered to the Returning Officer (“RO”) by a voter of the subsector is operative according to section 8(5) of the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap 569C) (para. 4.17);● specifying the arrangements for the newly elected DC members in respect of nomination and candidature (para. 4.34);

<p>Relevant Chapter/ Appendix</p>	<p>Major changes</p>
	<ul style="list-style-type: none"> ● adding that the “Introduction to Candidates”, if considered to contain information not relating to the direct promotion of the candidature of the candidate concerned, will be subject to alteration or edition (para. 4.39); and ● reminding candidates that voters, who are only able to read English, are equally entitled to be informed of the candidates’ election platforms (para. 4.39).
<p>Chapter 5 <i>Polling and counting arrangements</i></p>	<ul style="list-style-type: none"> ● adding that the use of sound amplifying device within the no canvassing zone for the performance of duties by officers of the Correctional Services Department at Dedicated Polling Stations set up in prisons is allowed, subject to the enactment of the proposed amendment to section 40 of the EAC (Electoral Procedure) (Election Committee) [EAC (EP)(EC)] Regulation (para. 5.12(b)).
<p>Chapter 7 <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i></p>	<ul style="list-style-type: none"> ● setting out that civil servants, who work in a subsector or have extensive contacts with the public in a subsector, are strongly advised not to accept appointment by a candidate in the subsector to be his agent and/or participate in electioneering activities in the subsector concerned to avoid any unfairness, semblance of unfairness or conflict of interest (para. 7.5).
<p>Chapter 8 and Appendix G <i>Election advertisements</i></p>	<ul style="list-style-type: none"> ● setting out the advice of the Independent Commission Against Corruption that apart from the cost of refurbishing old publicity boards (which will be re-used for an election), their estimated value will also be counted towards the concerned candidate’s election expenses (para. 8.31); ● specifying the deadline for the removal of election advertisements (“EAs”) in relation to an uncontested election (para. 8.39);

<p>Relevant Chapter/ Appendix</p>	<p>Major changes</p>
	<ul style="list-style-type: none"> ● setting out the arrangements for submitting by electronic means the declaration and copy of an EA to be displayed, distributed or otherwise used by electronic means, in line with the recent amendments to section 100(4A), (5A), (6) and (7) of the EAC (EP) (EC) Regulation (paras. 8.44 to 8.46 and Appendix G); ● clarifying that before the display of an EA in the form of a bill or poster, the candidate must deposit with the RO a copy of the permission or other authorisation obtained for the purposes of section 104A(1) of the Public Health and Municipal Services Ordinance, in line with the recent amendments to section 100(9) of the EAC (EP) (EC) Regulation (para 8.44(b)); ● setting out the arrangements for candidates to send joint promotional letters to electors free of postage, in line with the recent amendment to section 99 of the EAC (EP) (EC) Regulation (paras. 8.65, 8.66, 8.79 and 8.82(c)); and ● reminding candidates that they should carefully study the requirements governing free postage for EAs and that they should submit their EA specimens to the respective Manager of the designated post offices/delivery offices for approval as early as possible before mass production so as to allow sufficient time for revising the contents of their EA specimens, if necessary (paras. 8.78 and 8.79).
<p>Chapter 9 <i>Electioneering at the living and working places of voters/ARs, premises of organisations to which voters/ARs belong and buildings which voters/ARs frequent</i></p>	<ul style="list-style-type: none"> ● reminding candidates and their election agents to read carefully the guidance notes on personal data privacy in respect of electioneering activities (prepared by the Office of the Privacy Commissioner for Personal Data at Appendix K to the Guidelines) before they undertake such activities (para. 9.12).

<p>Relevant Chapter/ Appendix</p>	<p>Major changes</p>
<p>Chapter 11 and Appendix N <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● drawing broadcasters’ attention to the observations made by the Court in an election petition as set out in Appendix N, and advising them, where appropriate, to follow the arrangement therein to give a clear message to audience on the total number and the names of all candidates in the same subsector and to give equal treatment to all candidates concerned when producing multi-episode programmes which are election-related (para. 11.5 and Appendix N); ● reminding candidates and the media of the need to avoid unfair extra publicity for candidates (paras. 11.10, 11.12 and 11.15); ● reminding candidates that if the EAC receives a complaint about a candidate taking unfair extra publicity and it is subsequently found that the candidate has failed to make his best endeavours in accordance with the guidelines to avoid taking the aforesaid extra publicity, the EAC may make a reprimand or censure in a public statement against him (para. 11.22).
<p>Chapter 12 <i>Use of sound amplifying device and vehicles</i></p>	<ul style="list-style-type: none"> ● setting out the Transport Department’s updated requirements for the display of EAs on public light buses and taxis (para. 12.7).
<p>Chapter 15 <i>Exit poll</i></p>	<ul style="list-style-type: none"> ● aligning the guidelines for the conduct, publication and broadcast of exit polls with those adopted for the Legislative Council Election, DC Election and Village Representative Elections.
<p>Chapter 16 <i>Election expenses and donations</i></p>	<ul style="list-style-type: none"> ● reminding candidates that they should give the unspent or unused election donations to charitable institutions or trusts before lodging the return and declaration of election expenses and donations in accordance with section 37 of the ECICO (para. 16.17).
<p>Chapter 17 <i>Corrupt and illegal conduct</i></p>	<ul style="list-style-type: none"> ● reminding candidates and other persons that any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication (para. 17.8).

Relevant Chapter/ Appendix	Major changes
Chapter 18 <i>Namedropping</i>	<ul style="list-style-type: none">● reminding candidates to observe the relevant data protection principle as set out in the guidance notes at Appendix K before using an image of an identified person for the purpose other than the original purpose of collection (para. 18.12).