

Legislative Council Panel on Constitutional Affairs

**Proposed Guidelines on Election-related Activities
in respect of the Chief Executive Election issued by the
Electoral Affairs Commission**

PURPOSE

This paper seeks Members' views on the Proposed Guidelines on Election-related Activities in respect of the Chief Executive Election ("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 may issue guidelines relating to the conduct or supervision of an election. These guidelines aim to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities. They also give guidance in layman's language on compliance with the relevant electoral legislation.

3. Following the enactment of the Chief Executive Election (Amendment) Ordinance 2011 in March 2011, amendments were made to the Chief Executive Election Ordinance (Cap. 569) mainly to put in place the revised voting arrangements for the Chief Executive ("CE") Election. The voting system of the CE Election has been amended to the effect that a candidate shall only be elected as the CE if the candidate obtains more than 600 valid votes under an election with one candidate only and a contested election respectively. Under a contested CE Election, after the first round of voting, if no candidate is elected, the candidates with the highest and second highest number of votes will proceed to the next round of voting while the other candidates will be eliminated. After the second round of voting, if no candidate can obtain more than 600 valid votes, the election will be terminated and a new round of nomination and election will commence. If necessary, this process will be repeated until a candidate can be returned.

4. In addition, the number of members of the Election Committee ("EC") will be increased from 800 to 1,200 and 10 special member seats will be created temporarily from February 2012 when the new term of the EC commences until the number of Legislative Council ("LegCo") seats increases from 60 to 70 upon commencement of the fifth term of the LegCo.

5. To tie in with the changes set out in paragraphs 3 and 4 above, consequential amendments have been made to the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) (“EP(CEE)Reg”). Amendments have also been made to EP(CEE)Reg with a view to aligning the electoral procedures of the CE Election with those of other elections. In addition, amendments have been made to the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A) and the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to set out the revised election expense limit and introduce a new statutory relief mechanism for handling minor errors or omissions in the return and declaration of election expenses and donations for the CE Election respectively.

THE PROPOSED GUIDELINES

6. The next CE Election will be held on 25 March 2012. The EAC has drawn up a new set of proposed guidelines for the CE Election for public consultation. The finalised guidelines will be adopted in the coming CE Election. The major revisions are :

- (a) to reflect the legislative amendments in respect of the CE Election mentioned in paragraphs 3 to 5 above; and
- (b) to align, where appropriate, with the updated guidelines for the District Council Election published in early September 2011.

7. For Members’ easy reference, the major changes in the Proposed Guidelines as compared with the guidelines for the CE Election last issued in January 2010 are summarised at **Appendix**.

PUBLIC CONSULTATION PERIOD

8. Section 6(2) of the EAC Ordinance stipulates that the EAC shall consult the public in relation to the guidelines. Following the established practice, the EAC will conduct a 2-week public consultation for the Proposed Guidelines for the CE Election from 11 to 24 October 2011 (both dates inclusive).

9. During the consultation period, members of the public are welcome to give their views on the Proposed Guidelines to the EAC in writing. Members of the public may also attend the public forum to be held on 20 October 2011 to put forth their views to the EAC orally.

10. The EAC will take into account the views received during the public consultation period in finalising the guidelines, which will be issued around late January 2012.

ADVICE SOUGHT

11. Copies of the Proposed Guidelines have been distributed to Members separately. Members are invited to note and comment on the Proposed 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), by the closing date of the consultation period on 24 October 2011.

Registration and Electoral Office
October 2011

**Major Changes in the Proposed Guidelines
for the 2012 Chief Executive Election
as Compared with the Guidelines Last Issued in January 2010**

Relevant Chapter/ Appendix	Major changes
Chapter 3 <i>Nomination of candidates</i>	<ul style="list-style-type: none">● Updating the minimum number of qualified subscribers for a valid nomination as stipulated in section 16(2) of the Chief Executive Election Ordinance (Cap 569) (“CEEEO”) (paras. 3.7 and 3.17).
Chapter 4 <i>The voting system</i>	<ul style="list-style-type: none">● Setting out the changes to the voting system for the Chief Executive Election as stipulated in sections 22(3) and 27(2) of the CEEEO:<ul style="list-style-type: none">(a) when there are two validly nominated candidates at the close of nominations or two candidates remain after the elimination of all other candidates at the end of all the necessary rounds of voting, a single round of voting must be conducted for them. If a candidate obtains more than 600 valid votes, the candidate is returned at the election. However, if no candidate obtains more than 600 valid votes in that single round of voting, no candidate is returned at the election and the proceedings for the election shall be terminated (paras. 4.3 and 4.4); and(b) when there is only one validly nominated candidate in the election, the candidate shall be returned at the election if the number of “support” votes obtained by him exceeds 600. If the number of support votes obtained by the candidate does not exceed 600, the candidate shall not be returned at the election and the proceedings for the election shall be terminated (paras. 4.7 and 4.8).

Relevant Chapter/ Appendix	Major changes
<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 station in prisons is allowed as stipulated in section 24 of the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) (“EP (CEE) Reg”) (para. 5.14).
<p>Chapter 8 and Appendix D <i>Election advertisements</i></p>	<ul style="list-style-type: none"> ● Setting out the revised election expense limit of \$13,000,000 as specified in section 2 of the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (para. 8.10). ● Setting out the arrangements for submitting by electronic means the declaration and copy of an election advertisement (“EA”) to be displayed, distributed or otherwise used by electronic means as specified in section 81 of the EP (CEE) Reg (para. 8.41(a) and Appendix D). ● 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 of the Public Health and Municipal Services Ordinance (Cap 132) as stipulated in section 81 of the EP (CEE) Reg (para. 8.41(b)). ● 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 (para. 8.74).

Relevant Chapter/ Appendix	Major changes
<p>Chapter 9 <i>Electioneering at the living and working places of electors, premises of organisations to which electors belong and buildings which electors 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 H to the Guidelines) before they undertake such activities (para. 9.12).
<p>Chapter 11 and Appendix K <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● Aligning the guidelines for election broadcasting, media reporting and election forums with those adopted in the Guidelines on Election-related Activities in respect of the District Council Election (“DC Guidelines”) published in September 2011.
<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 in the DC Guidelines.
<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 Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”) (para. 16.17). ● Setting out the statutory relief mechanism for handling minor errors or omissions in the return and declaration of election expenses and donations as stipulated in section 37A of the ECICO (paras. 16.28 – 16.30).

Relevant Chapter/ Appendix	Major changes
Chapter 17 <i>Corrupt and illegal conduct</i>	<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).
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 H before using an image of an identified person for a purpose other than the original purpose of collection (para. 18.11).
Appendix B <i>The 4 Sectors of the Election Committee and Subsectors of Sectors</i>	<ul style="list-style-type: none"> ● Updating the number of members to be returned to each sector and subsector of the Election Committee in the fifth term as specified in section 2 of the Schedule to the CEEO.