

**立法會**  
**Legislative Council**

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**Panel on Constitutional Affairs**  
**Background brief prepared by the Legislative Council Secretariat**  
**for the meeting on 17 October 2011**

**Proposed Guidelines on Election-related activities**  
**in respect of the Chief Executive Elections**

**Purpose**

This paper summaries the major issues raised by members of the Panel on Constitutional Affairs ("the Panel") on the proposed guidelines issued by the Electoral Affairs Commission ("EAC") on election-related activities in respect of the Chief Executive ("CE") Elections ("the Guidelines") held in 2005 and 2007.

**Background**

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. According to section 6(1)(a) of the EAC Ordinance (Cap. 541), EAC may issue guidelines relating to the conduct or supervision of an election. In accordance with section 6(2) of the Ordinance, EAC shall consult the public on the proposed Guidelines before they are finalized for issue to the public.

3. According to EAC, the aim of the 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.

**Relevant issues raised**

Attendance of public functions by government officials and Principal Officials

4. Under Civil Service Bureau guidelines, certain officers at the senior level and those who may be particularly susceptible to accusations of bias, namely Directorate Officers, Administrative Officers, Police Officers and Information Officers and those officers acting in these grades and ranks with a view to substantive appointment thereto ("government officials"), should not openly support any candidate or be seen to lend support to a candidate. They should

not participate in any form of electioneering including seeking election donations for any candidate. According to section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), "candidate" includes a person who has publicly declared an intention to stand for election at any time before the close of nominations for the election, whether or not he has submitted a nomination form.

5. According to Chapter 19 of the current Guidelines, government officials are required to exercise care in accepting invitations from persons or organizations to attend any public function that may also be attended by a candidate(s). The term "government officials" used in that chapter does not include Principal Officials ("PO") appointed under the Accountability System. While POs are required not to use any public resources for any election-related activities, they may participate in election-related activities. When taking part in such activities, a PO is required to take great care that there is no actual or potential conflict of interest with the business of the Government or his own official duties.

6. Some members expressed concern that there would be conflict of interest if POs were allowed to participate in election-related activities. They pointed out that in the United Kingdom, the incumbent Prime Minister, if deciding to run for the next election, would resign and let the civil servants run the Government starting from a specified date in order to avoid any conflict of interest. If POs were allowed to assist any incumbent CE standing for election in election-related activities, this would give the CE an unfair advantage over other candidates. They questioned whether POs were given too much freedom, and whether by taking part in election-related activities, there would be conflict of interest with POs' own official duties.

7. The Administration explained that different countries had different practices and some countries allowed the head of government to continue to lead the government while the election was going on. In Hong Kong, the incumbent CE was not required to resign if he decided to run for the next term. On the other hand, POs who decided to run for the CE election must resign. The design of the Accountability System provided two tiers of public officers, namely "civil servants" and POs. "Civil servants" were to remain politically neutral while POs, being political appointees, could have their own political inclination, participate in election-related activities and shoulder political responsibilities where necessary. POs had to comply with the then "Code for Principal Officials under the Accountability System".

8. Some members asked whether a PO would breach the guidelines if he, in engaging in election-related activities, required his subordinates to assist him. They also asked whether senior officials who were members of a candidate's

campaign team had to resign from office and if not, whether a portion of their salary would be counted as election expenses. The Administration advised that a PO who wished to show his support to a CE candidate by attending election-related activities should not involve his subordinates who were civil servants or government officials. The principle laid down in the proposed Guidelines was very clear. POs should exercise great care to ensure that their support for electioneering activities of a candidate would not give rise to any conflict of interest with their official duties. Voluntary services provided to a candidate by any person, irrespective of whether he was a PO, could be excluded from being counted as election expenses.

### Election expenses

9. Members sought clarification as to whether expenses incurred for electioneering activities not targeting at members of the Election Committee ("EC") members would be counted as election expenses.

10. The Administration advised that the CE election was a major event that would attract a lot of media coverage and publicity. It was likely for a candidate to target his electioneering campaign not only at the EC members but also the community at large. Whether the expenses incurred for a particular activity should be regarded as an election expense had to be determined by EAC on a case by case basis.

11. Members asked about the mechanism under which the election expenses of a candidate would be monitored once he declared his intention to stand for election and the criteria adopted by EAC in determining whether an activity was election-related, the cost of which should therefore be counted towards the election expenses.

12. The Administration explained that a person had to keep an accurate account of all election expenses incurred and donations received once he had publicly declared his intention to stand for election. Over the years EAC had accumulated valuable experience to determine whether a particular item of expenditure should be regarded as an election expense. Although the guidelines were for reference, candidates who did not observe or respect the rules set out therein would be subject to public sanctions. Election expenses and donations of candidates were monitored by the mechanism provided in ECICO and the guidelines promulgated for the CE election. The Administration further explained that a list of common expenditure items which could be counted towards election expenses was at an appendix to the proposed Guidelines. The list was only illustrative and was not exhaustive. Whether the conduct of a candidate should be regarded as an election activity and whether a particular item of expenditure should be regarded as an election

expense was a question of fact to be answered in the circumstances of each case.

13. Members noted that a person who had publicly declared an intention to stand for election, but had not submitted his nomination form, was required to submit a return and declaration of election expenses and donations. In response to members' enquiry about the policy purpose for imposing such a requirement, the Administration advised that the requirement was to prevent the person concerned from deterring other prospective candidates from contesting the election by announcing his own intention to stand for election.

#### Provisions against pressuring electors

14. Some members asked about the types of conduct which would be regarded as pressuring an elector not to nominate a particular candidate and forcing an elector to vote or not to vote for any particular candidate in a contested election respectively.

15. The Administration explained that intimidation was an offence under section 24 of the Crimes Ordinance (Cap. 200). A person who forced an elector to vote or not to vote for any particular candidate committed an offence under section 13 of ECICO. Whether a type of conduct would constitute an offence would depend on the actual nature of the cases, and the enforcement agency would take prosecution actions against a person under the relevant statutory provisions accordingly. Members noted that Appendix C to the proposed Guidelines made clear that intimidating subscribers of a CE election was an offence under section 24 of the Crimes Ordinance and bribing them was a common law offence.

#### Nomination and electioneering activities

16. Some members queried why the names of the subscribers to candidates of the CE election were required to be published in the Gazette. They pointed out that while the names of subscribers for the Legislative Council ("LegCo") and District Council elections were made available for public inspection, there was no requirement for them to be published in Gazette. It was also considered that more time should be allowed for electioneering activities for the CE election, given that the candidates had to promote their political platform on a territory-wide basis.

17. The Administration advised that it had been a well established practice of local elections for the names of subscribers to candidates to be made public. According to electoral law, the nomination period for candidates for the office of the CE should not be less than 14 days, and should terminate on a date earlier

than the 21 day before the polling date. If a candidate wished to have a longer period for electioneering activities, he was free to declare his candidacy in advance of the nomination period. However, election expenses would start to be counted upon the declaration of his intention to stand for election.

### Political affiliation of CE

18. Some members reiterated their view that the requirement that the CE-elect should relinquish his political affiliation should be removed in order to promote political party development. It was asked whether the CE would be allowed to have political affiliation when universal suffrage was implemented for the election of CE.

19. The Administration explained that in the first term CE election, candidates with political party background were prohibited from running in the election. In the second term CE election, a candidate with political party background was allowed to run in the election, although he was required to relinquish his political affiliation once elected. It was the Administration's view that the existing requirement, which enabled a CE to go beyond partisan considerations and to take into account the views of LegCo Members, political parties and groups, and different sectors of the community when making important policy decisions, should be maintained for the third term CE. As regards whether the requirement might be changed in the longer run, the Administration was prepared to listen if members had any views. In addition, the Administration had taken a number of measures to facilitate greater participation in the political system, including participation by political parties.

### **Recent development**

20. The CE Election (Amendment) Ordinance 2011 which was passed on 3 March 2011 has increased the number of EC members from 800 to 1 200. The Amendment Ordinance has also specified that a candidate shall only be elected as CE if the candidate obtains more than half of the votes of all EC members. If no candidate can obtain more than 600 valid votes after two rounds of voting, the election will be terminated and a new round of nomination and election will commence.

21. The election for the fourth term CE will be held on 25 March 2012. The proposed Guidelines were issued by EAC on 11 October 2011 for public consultation until 24 October 2011. The Administration is scheduled to brief the Panel on the proposed Guidelines for the 2012 CE Election at the upcoming meeting on 17 October 2011.

**Relevant papers**

22. A list of the relevant papers available on the LegCo website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
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**Relevant documents on Proposed Guidelines on  
Election-related activities in respect of the Chief Executive Elections**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	18.4.2005 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a> <a href="#">CB(2)1589/04-05(01)</a>
	20.11.2006 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>