

Legislative Council Panel on Constitutional Affairs

**Proposed Guidelines issued by the
Electoral Affairs Commission 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. Under section 6(1) of the EAC Ordinance (Cap. 541), the EAC may 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 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.

The Proposed Guidelines

3. The election for the third term CE will be held on 25 March 2007. The EAC has updated the existing guidelines for CE Elections to facilitate the conduct and supervision of the coming election. The proposed guidelines, at **Annex A**, are modelled basically on those used for the CE Election held in 2005, with suitable alterations :

- (a) to reflect the latest amendments made to the Chief Executive Election Ordinance (Cap. 569) and the relevant subsidiary legislation; and
- (b) to align the electoral arrangements for the CE elections, where appropriate, with those for the other public elections.

In drawing up the proposed guidelines, the EAC has also taken into account the operational experience and suggestions for improvements obtained from recent elections and by-elections. A summary of major proposed changes, as compared with the guidelines issued in 2005, is set out at **Annex B** for Members' reference.

Public Consultation

4. The proposed guidelines are made public today (16 November 2006) for consultation lasting two weeks until 29 November 2006. During the consultation period, members of the public are welcome to give EAC their views in writing on the proposed guidelines. There will also be a public forum on 24 November 2006, where members of the public may attend and express their views to the EAC.

5. 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 January 2007.

Advice Sought

6. Members are invited to give their views 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, or by fax (fax no.: 2511 1682) or e-mail (eacenq@reo.gov.hk) before the deadline on 29 November 2006.

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Summary of major proposed changes

General

- To set out information about the term of office of the Chief Executive (“CE”) as provided for in the Basic Law and the Chief Executive Election Ordinance (“CEEO”) (for example, that the term of office of the CE shall be five years, and that he may serve for not more than two consecutive terms). (*paragraphs 1.2 to 1.4*)
- To set out the statutory provisions (in sections 3 and 18A of the Schedule to CEEO) that for the subsectors of the Chinese People's Political Consultative Conference, Heung Yee Kuk and District Councils, Election Committee (“EC”) members representing these subsectors who cease to be members of these bodies will be deemed to have resigned from the EC, and will be disqualified from subscribing to nomination and voting at the CE election. (*paragraphs 2.5 to 2.6*)

Polling and counting arrangements

- To set out the polling and counting arrangements to be adopted when there is only one validly nominated candidate in the election. (*chapter 5*)
- To set out the increased penalty under the law (i.e. from 3 months imprisonment to 6 months) for offences relating to secrecy of votes. (*paragraph 5.29*)
- To set out the increased penalty under the law (i.e. from 3 months imprisonment to 6 months) for unauthorised filming, photographing, audio/video recording within the polling station. (*paragraph 5.34*)

- To set out the statutory provisions regarding the types of questionable ballot papers¹ that must be separated for the Returning Officer (“RO”) to decide whether the votes should be counted, and the types of ballot papers which are clearly invalid by their nature (i.e. tendered, spoiled, unused or unmarked ballot papers) and which must not be counted. (*paragraphs 5.43 to 5.44*)
- To set out the statutory requirement that the candidates’ notice of appointment of counting agents should be given to the RO at least seven days (instead of three days) before the polling day. (*paragraph 7.34*)

Election advertisements, electioneering and election meetings

- To increase the flexibility for candidates by clarifying that they may send to the RO their declaration on election advertisements (“EA”) and a copy of each EA by fax or e-mail first, to be followed by the submission of the original copy of the declaration and two copies of each such EA. (*paragraph 8.43*)
- To advise candidates that different organisations may have their own guidelines on the conduct of electioneering/election meetings at places under their management, and that it is desirable for candidates to consult them in advance and obtain permission, if required, for these activities at such places. (*paragraphs 9.2, 9.5 and 10.6*)
- To make it clear that, during the election period, candidates may attend any meetings as part of their normal activities, insofar as they are not held for the purpose of promoting or prejudicing the election of candidates. (*paragraph 10.1*)
- To remind candidates of the Transport Department requirements relating to the display of EAs on public light bus (for example, no EA should be displayed on the windows which can obstruct the sight-line of the driver). (*paragraph 12.7*)

¹ Any ballot paper which appears to have any writing or mark by which the elector can possibly be identified; appears to be substantially mutilated; appears to be not marked in accordance with section 36(1)(b) of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J); or appears to be void for uncertainty, is questionable.

- To set out the statutory requirement that the RO should give a notice of at least seven days (instead of two days) to the candidates on the determination of the No Canvassing Zone and the No Staying Zone. *(paragraph 14.4)*

- To clarify that if an organisation decides to give support to a particular candidate, such a decision should be taken by the governing body of the organisation or by a resolution of the members of that organisation passed at a general meeting. *(paragraph 18.4)*

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