

Legislative Council Panel on Constitutional Affairs

Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the Legislative Council Election

Purpose

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

2. Under section 6(1) 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.

The Proposed Guidelines

3. The coming LegCo general election will be held on 7 September 2008. The EAC has updated the existing guidelines for the LegCo elections to facilitate the conduct and supervision of this election. Basically, the proposed guidelines are modeled on those used for the 2004 LegCo Election, the 2007 District Council Election and 2007 LegCo By-election, with suitable alteration to:

- a) reflect the proposed amendments to the Electoral Affairs Commission (Electoral Procedures) (Legislative Council) Regulation (Cap. 541D), and to align the electoral arrangements for the LegCo election, where appropriate, with those for the Chief Executive, Election Committee Subsector and District Council elections;
- b) reflect amendments to the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap. 541M); and
- c) propose suggestions for improvements taking into account operational experience gained from recent elections and by-elections.

4. Key points on the major changes in the proposed guidelines, as compared with the guidelines issued in 2004, are set out at the **Annex**.

Public Consultation

5. The proposed guidelines were issued on 25 March 2008. The public consultation also commenced on the same day and will end on 23 April 2008. Copies of the proposed guidelines have been distributed to Members. During the consultation period, members of the public are welcome to give EAC their views in writing on the proposed guidelines. A public forum was also held on 10 April 2008 at which EAC gauged views from the public.

6. 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 early July 2008.

Advice Sought

7. Members are invited to give their views on the proposed guidelines. Members may also forward their views to the EAC Secretariat by post (address: 10/F Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong), by fax (fax no.: 2511 1682) or by e-mail (eaceny@reo.gov.hk) before the deadline on 23 April 2008.

Registration and Electoral Office
April 2008

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Summary of Major Proposed Changes

Number of Members to be returned by Geographical Constituencies

- To update the number of members to be returned by the 5 geographical constituencies (“GCs”) in the fourth term of the LegCo (para. 2.2 of the proposed guidelines).

Nomination of candidates

- To clarify that according to section 39(1)(i) of the Legislative Council Ordinance, apart from the “undischarged bankrupt”, a person who, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person’s creditors, in either case without paying the creditors in full, will be disqualified from being nominated (para. 4.5(j) of the proposed guidelines).
- To add a note that no illegal act should be used to cause an elector to nominate or not to nominate a person as a candidate (para. 4.18(a) of the proposed guidelines).
- To draw candidates’ attention that under the relevant law, a candidate making false declaration in the nomination form will commit an offence and be disqualified for nomination as a

candidate (para. 4.21 of the proposed guidelines).

Polling and counting arrangements

- To clarify that engaging in canvassing voters includes suggesting not to vote for any candidate (para. 5.17(a) of the proposed guidelines).
- To clarify that besides the candidate, his election agent and counting agent, a polling agent may also stay in the polling station while it is closed for the preparation for the counting of GC votes to tally with the proposed amendments to section 63(1A) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (paras. 5.44 and 7.29(c)(ii) of the proposed guidelines).
- To clarify that the candidate, his election agent or a counting agent may inspect invalid ballot papers apart from questionable ballot papers, but are not entitled to make representations to the Presiding Officer concerning invalid ballot papers to tally with the proposed amendments to section 80(4) of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (para. 5.56 and para. 5.70 of the proposed guidelines).
- To add the special arrangement for counting of votes for GCs in case the counting station will no longer be available or suitable for the counting of votes (para. 5.66 of the proposed guidelines).

Election advertisements

- To clarify that any Election Advertisements (EAs) displayed by the GC list on Government land/property other than designated

spots are unauthorized and will be removed, save those EAs displayed in connection with electioneering activities conducted on Government land/property with approval by the authorities concerned (para. 8.22 of the proposed guidelines).

- To remove references to distribute and otherwise use of election advertisement in light of the proposed amendments to section 102(10) of the EAC (Electoral Procedure)(Legislative Council) Regulation (paras. 8.23 and 8.29 of the proposed guidelines).
- To add that the erection of buntings on railings on public pavements is not allowed (para 8.36 of the proposed guidelines).
- To clarify that candidates may send the declaration and a copy of each EA to the RO by fax or e-mail before submitting the original copy of the declaration and 2 copies of the EAs (para. 8.50 of the proposed guidelines).
- To clarify that candidates may, after delivering a speech during an election meeting or ad hoc visit, send a copy of the speech, together with the declaration, to the RO by fax or e-mail prior to distributing them to the audience or media (para. 8.51 of the proposed guidelines).
- To draw candidates' attention to the Post Office's latest arrangement on the layout of election items to be mailed under the free postage requirement for EAs, and to remind candidates to comply with the latest requirements issued by the Post Office at the time of the election concerned (para. 8.77 and 8.89 of the proposed guidelines).

Electioneering at the living or working places of electors, premises of organizations to which electors belong and buildings which electors frequent

- To remind candidates that different organisations may have their own guidelines on the conduct of electioneering activities, and it is desirable for candidates to consult them in advance and obtain permission if required (para. 9.2 of the proposed guidelines).
- To add that access to a private office may require the approval of the management of the office building or companies which employ the electors, and such a decision should have regard to the fair and equal treatment principle (para. 9.12 of the proposed guidelines).
- To advise candidates and their supporters of the importance of handling the personal data of electors carefully when conducting electioneering activities (para. 9.17 and Appendix H of the proposed guidelines).
- To propose including short message service (SMS) under the guidelines governing electioneering calls (para. 9.17 of the proposed guidelines).

Election meetings

- To clarify that meetings which are not held for the purpose of promoting or prejudicing the election of candidates will not be regarded as election meetings (para. 10.1 of the proposed guidelines).
- To remind candidates that individual government departments and management authorities may have their own guidelines on the conduct of election meetings, and it is desirable for

candidates to consult them in advance and obtain permission from them, if necessary (para. 10.6 of the proposed guidelines).

- To add a guidance note on safe conduct of election-related activities issued by the Commissioner of Police (para. 10.13 and Appendix I of the proposed guidelines).

Election broadcasting, media reporting and election forums

- To clarify that the service providers which are not licensable under the Broadcasting Ordinance are allowed to carry EAs territory wide (para. 11.2 of the proposed guidelines).

Use of sound amplifying device and vehicles

- To remind candidates of the Transport Department requirements relating to display of EAs on public light bus and carriage of standing passengers on vehicles (paras. 12.7 - 12.8 of the proposed guidelines).

Prohibition against canvassing activities outside polling stations

- To set out that under the amendments to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, a Returning Officer may perform any act which that Officer is required or authorized to perform under subsections (9), (10) and (11) in section 40, which is related to the display of notice of no canvassing zone and no staying zone and the variation of such zones, through a Presiding Officer (para. 14.8 of the proposed guidelines).

Exit poll

- To propose additional measures to step up the control on conduct of exit polls and enhance the transparency of organizations/ persons with approval to conduct exit polls (paras. 15.7 and 15.9 of the proposed guidelines).

Election expenses and donations

- To advise candidates that the amount of election donations received by a candidate or a list of candidates will not be taken into account in calculating the amount of financial assistance payable to the candidate (Part VI of Chapter 16 of the proposed guidelines).

Attendance of public functions by both government officials and candidates

- To replace references to “Principal Officials under the Accountability System” by “Officials under the Political Appointment System” (sub-title of Part IV of Chapter 19 and paras. 19.9 – 19.12 of the proposed guidelines).