

Legislative Council Panel on Constitutional Affairs

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

PURPOSE

This paper seeks Members' view on the Proposed Guidelines on Election-related Activities in respect of the District Council (DC) 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. 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. Since the guidelines were last updated in January 2010, there have been proposed legislative amendments to nine regulations under the EAC Ordinance on electoral procedures, voter registration and other practical arrangements to prepare for the coming DC, Election Committee subsectors, Chief Executive and Legislative Council elections to be held in 2011 and 2012. Details are at the Legislative Council Brief (Reference: REO ES/23/52) issued in May 2011.

4. In addition, the Electoral Legislation (Miscellaneous Amendments) Bill, which was introduced into the Legislative Council on 4 May 2011, proposes among others to amend the financial assistance scheme and election expenses limit for the candidates of the DC election to be held in November 2011. The bill also proposes to put in place a leap-frog appeal mechanism for election petitions arising from LegCo election, DC election and the Village Representative elections.

THE PROPOSED GUIDELINES

5. The next DC ordinary election will be held on 6 November 2011. The EAC has updated guidelines for DC elections for public consultation. The finalised guidelines will be adopted in the coming DC ordinary election and by-elections held afterwards. The major revisions are to-

- (a) reflect the proposed legislative amendments in respect of the DC election referred to in paragraph 3 and 4 above, subject to their enactment;
- (b) align, where appropriate, with the amendments made to the Guidelines for the Village Representative Elections published in October 2010.

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

7. Since the start of the public consultation on the proposed guidelines, we note that there are discussions in society on the chapter relating to the broadcast of election-related programmes on the Internet. In view of the increasing popularity of the Internet which can widely reach the public, the Internet programmes relating to candidates contesting in elections have substantial impact on elections. The EAC released the proposed guidelines in the chapter for public consultation with a view to bringing up for discussion among members of the public whether these programmes should also abide by the guidelines. The EAC fully respects the freedom of speech. The proposed guidelines are not intended to impose any restrictions on discussions or broadcasting activities on the Internet. There are absolutely no political considerations. The EAC has heard the opposing views expressed by some members of the public on the proposal and was of the view that there is room for revision. It will continue to listen to public views on the proposed guidelines and will carefully consider all the views received during the consultation period in a fair manner. The EAC will consider making amendments as appropriate so that the guidelines can be more practicable before releasing the finalised guidelines.

PUBLIC CONSULTATION PERIOD

8. Section 6(2) of the EAC Ordinance stipulates that the EAC shall consult the public in relation to the guidelines for a period of 30 days. The public consultation period for the proposed guidelines runs from 24 May 2011 to 22 June 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 a public forum held on 9 June 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. The finalised guidelines will be issued around September 2011.

ADVICE SOUGHT

11. Copies of the proposed guidelines have been distributed to Members. 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), before the deadline on 22 June 2011.

Registration and Electoral Office
June 2011

**Major Changes in the Proposed Guidelines
for District Council Election
as Compared with the Guidelines Issued in January 2010**

Relevant Chapter	Major changes
Chapter 3 <i>Nomination of candidates</i>	<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. 3.58); and● reminding candidates that electors, who are only able to read English, are equally entitled to be informed of the candidates’ election platforms (para. 3.58).
Chapter 4 <i>Polling and counting arrangements</i>	<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 (DPSs) in prisons is allowed subject to the enactment of the proposed amendment to section 43 (13) of the Electoral Affairs Commission (Electoral Provision) (District Councils) Regulation (EAC (EP) (DC) Regulation) (para. 4.12(b)); and● setting out the revised sorting process in the ballot paper sorting stations subject to the enactment of the proposed amendment to section 75A of the EAC (EP) (DC) Regulation (para. 4.45).
Chapter 5 <i>Election Petitions</i>	<ul style="list-style-type: none">● Part II of the Chapter will be suitably amended subject to the enactment of the proposed amendment to the District Councils Ordinance to put in place an appeal mechanism for election petitions (Part II of the Chapter).
Chapter 6 <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i>	<ul style="list-style-type: none">● setting out that civil servants, who work in a constituency or have extensive contacts with the public in a constituency, are strongly advised not to accept appointment by a candidate in the constituency to be his agent and/or participate in electioneering activities to avoid any unfairness, semblance of unfairness or conflict of interest (para. 6.5).

Relevant Chapter	Major changes
<p>Chapter 7 and Appendix B <i>Election Advertisements</i></p>	<ul style="list-style-type: none"> ● setting out the revised election expenses limit of \$53,800 subject to the enactment of the proposed amendment to the Maximum Amount of Election Expenses (District Council Election) Regulation (para. 7.10); ● lifting the restriction on display of joint election advertisements in the common parts of private premises in order to align with the existing arrangement for the display of joint election advertisements (EAs) allowed at designated spots (para. 7.29); ● 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. 7.32); ● specifying the deadline for the removal of EAs in relation to an uncontested election (para. 7.40); ● setting out the arrangements for submitting by electronic means the declaration and copy of EA to be displayed, distributed or otherwise used by electronic means, subject to the enactment of the proposed amendments to sections 103 (4A), (5A), (6) and (7) of the EAC (EP) (DC) Regulation (paras. 7.45 to 7.47 and Appendix B); ● clarifying that before the display of an EA in the form of a bill or poster, the candidate must deposit with the Returning Officer a copy of the permission or other authorisation obtained for the purposes of section 104A(1) of the Public Health and Municipal Services Ordinance subject to the enactment of the proposed amendments to section 103(9) of the EAC (EP) (DC) Regulation (para 7.45(b)); and ● reminding candidates that they should carefully study the requirements governing free postage for election advertisements and that they should submit their EA specimens to the respective Manager of the post office 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. 7.79 to 7.80).

Relevant Chapter	Major changes
<p>Chapter 8 <i>Electioneering at the living or 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 F to the Guidelines) before they undertake such activities (para. 8.18).
<p>Chapter 10 and Appendix I <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● covers aspects relating to TV and radio broadcast on the Internet (paras. 10.3 and 10.9 to 10.12); ● drawing broadcasters' attention to the observations made by the Court in an election petition as set out in Appendix I, 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 constituency and to give equal treatment to all candidates concerned when producing multi-episode programmes which are election-related (para. 10.5 and Appendix I); ● reminding candidates and the media of the need to avoid unfair extra publicity for candidates (paras. 10.10, 10.12 and 10.15); ● adding that the guidelines as set out in Part III also apply to the online editions of the print media (para.10.17); and ● 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. 10.22).
<p>Chapter 11 <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. 11.7).

Relevant Chapter	Major changes
<p>Chapter 15 <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 donation in accordance with section 37 of the ECICO (para. 15.17); and ● revising the subsidy rate of financial assistance for the eligible candidate (who get elected or who have received 5% of valid votes or more) to the lowest of \$12 per vote times the number of valid votes received by the candidate; 50% of the election expenses limit; or the amount of the declared election expenses of the candidate, subject to the enactment of the proposed amendment to Schedule 7 of the District Councils Ordinance (para. 15.32).
<p>Chapter 16 <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. 16.8).
<p>Chapter 17 <i>Namedropping</i></p>	<ul style="list-style-type: none"> ● reminding candidates to observe the relevant data protection principle as set out in the guidance notes at Appendix F before using an image of an identified person for the purpose other than the original purpose of collection (para. 17.12).