

Legislative Council Panel on Constitutional Affairs

**Proposed Guidelines on Election-related Activities
in respect of the Legislative Council 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 Legislative Council 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.

Amendments to Legislative Council Ordinance

3. With the passage of the Legislative Council (Amendment) Bill 2010 by the Legislative Council ("LegCo") in March 2011, the Legislative Council Ordinance (Cap. 542) ("LCO") was amended mainly to:

- (a) increase the number of LegCo Members to be returned respectively by the Geographical Constituencies ("GCs") and Functional Constituencies ("FCs") from 30 to 35;
- (b) retain the number of GCs at five;
- (c) establish the District Council (Second) Functional Constituency ("DC(second)FC") under which five seats will

be returned from the whole Hong Kong Special Administrative Region as a single constituency in accordance with the proportional representation list system; and

- (d) set out the transitional arrangement for voter registration for the DC(second)FC.

Amendments to Electoral Affairs Commission Regulations

4. Following the aforesaid amendments to the LCO, consequential amendments were made to the relevant subsidiary legislation under the EAC Ordinance (Cap. 541) to prepare for the 2012 LegCo election. The major amendments are set out in paragraphs 5 to 7 below.

Proportional representation list system for the District Council (Second) Functional Constituency Candidates

5. Following the amendments to the LCO as set out in paragraph 3 above, the relevant sections on the interpretation of an FC candidate, nomination form, LegCo candidate, list of LegCo candidates, etc. in the EAC (Nominations Advisory Committees) (LegCo) Regulation (Cap. 541C), the EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D), the Particulars Relating to Candidates on Ballot Papers (LegCo and District Councils) Regulation (Cap. 541M) and the EAC (Financial Assistance for LegCo Elections and District Council Elections) (Application and Payment Procedure) Regulation (Cap. 541N) were amended in May 2011 to cater for the adoption of the proportional representation list system for the DC(second)FC.

6. Amendments to Cap. 541D were also made in May 2011 to set out the electoral arrangements for the DC(second)FC (e.g. how the candidates appoint agents, the form of the ballot paper, etc.). These arrangements, wherever appropriate, mirror the electoral arrangements for the GC election which also adopts the proportional representation list system.

Voter registration for DC(Second)FC – transitional arrangement

7. Following the amendments to the LCO, consequential amendments were made in May 2011 to the EAC (Registration of Electors) (LegCo GCs) (District Council Constituencies) Regulation (Cap. 541A) and the EAC (Registration) (Electors for LegCo FCs) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) to provide for arrangements for voter registration and compilation of the first provisional register of electors for the DC(second)FC.

Proposed Amendments to EAC Regulations on Election Advertisements and Electoral Procedures

8. In view of the increasing use of the internet by candidates for electioneering activities, legislative amendments were passed last year to allow candidates to file their declarations on election advertisements (“EAs”) electronically with the aid of emails.

9. Taking into account the experience gained in the 2011 District Council election and the 2011 Election Committee Subsectors elections, the EAC has proposed further measures to relax the current regulatory requirements governing EAs. In this regard, legislative amendments will be made to the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) (Cap. 554) and the various EAC Regulations to simplify the procedures for making available candidates’ EAs for public inspection while upholding the transparency and openness of elections. Under the proposed regime, the existing requirement for filing an ex ante declaration on each and every EA would be removed. Instead, to satisfy the requirement for public inspection, candidates would only be required to post a copy each of their EAs onto an open platform on the Internet within one working day after the publication of the concerned EAs.

10. Besides, the EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D) will be amended to provide for the vote counting arrangements for the new DC(second)FC.

11. To take forward the proposed legislative amendments mentioned in paragraphs 9 and 10 above, the Administration introduced the Electoral Legislation (Miscellaneous Amendments) Bill 2012 into the LegCo in February 2012. The Bill is now being scrutinised by the LegCo.

THE PROPOSED GUIDELINES

12. The next LegCo election will be held on 9 September 2012. Following established practices, the EAC has drawn up a new set of proposed guidelines for the LegCo election for public consultation. The finalised guidelines will be adopted in the coming LegCo election. The major revisions aim to:

- (a) reflect the legislative amendments and proposed legislative amendments in respect of the LegCo election as set out in paragraphs 3 to 11 above;
- (b) include the amendments proposed to be made in light of the suggestions and complaints received from the public and other parties concerned since the last edition was issued; and
- (c) align, where appropriate, with the amendments made to other electoral guidelines to ensure consistency.

13. For Members' easy reference, the major changes in the Proposed Guidelines as compared with the guidelines for LegCo election last issued in January 2010 are summarised at **Appendix**.

PUBLIC CONSULTATION PERIOD

14. In accordance with section 6(2) of the EAC Ordinance, 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 28 March 2012 to 26 April 2012 (both dates inclusive).

15. 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 April 2012 to put forth their views to the EAC orally.

16. 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 mid June 2012.

ADVICE SOUGHT

17. 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 (eacnq@reo.gov.hk) by 26 April 2012.

Registration and Electoral Office
April 2012

**Major Changes in the Proposed Guidelines
for 2012 Legislative Council Election
as Compared with the Guidelines Issued in January 2010**

Relevant Chapter/ Appendix	Major changes
Chapter 1 <i>Introduction</i>	<ul style="list-style-type: none">● updating the composition of the fifth term of the Legislative Council (“LegCo”) in accordance with the amendments made to Annex II to the Basic Law (para. 1.3); and● setting out the number of members to be returned from the new District Council (second) Functional Constituency (“DC (second) FC”) and the voting system for its elections in accordance with the amendments made to section 49 of the Legislative Council Ordinance (Cap. 542) (“LCO”) (paras. 1.5 and 1.6).
Chapter 2 <i>Geographical constituencies</i>	<ul style="list-style-type: none">● updating the number of members to be returned from the five Geographical Constituencies (“GCs”) in the fifth term of the LegCo in accordance with the amendments made to section 19 of the LCO (para. 2.2).
Chapter 3 <i>Functional constituencies</i>	<ul style="list-style-type: none">● updating the number of members to be returned from the 29 Functional Constituencies (“FCs”) in the fifth term of the LegCo in accordance with the amendments made to section 21 of the LCO (para. 3.2); and● setting out the arrangement for the compilation of the first provisional register for the DC (second) FC in accordance with the amendments made to Schedule 3 to the LCO and the relevant sections of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors)

Relevant Chapter/ Appendix	Major changes
	(Members of Election Committee) Regulation (Cap. 541B) (paras. 3.25 to 3.27).
Chapter 4 <i>Nomination of candidates</i>	<ul style="list-style-type: none"> ● stating that to qualify to be nominated as a candidate at an election for a DC (first) FC or DC (second) FC, a person must be a member of any District Council established under the District Councils Ordinance (Cap 547) (“DCO”) who is elected under Part V of the DCO in accordance with the amendments made to section 37 of the LCO (para. 4.3(c)); and ● setting out the minimum number of qualified subscribers for a valid nomination and the amount of election deposit for an election for the DC (second) FC in accordance with the amendments made to sections 2 and 7 of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542C) (paras. 4.18(a)(ii) and 4.22).
Chapter 5 and Appendix D <i>Polling and counting arrangements</i>	<ul style="list-style-type: none"> ● setting out the polling and counting arrangements for an election for the DC (second) FC, subject to the proposed amendments to the relevant sections of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D) (“EAC (EP) (LC) Reg”) (paras. 5.8, 5.9, 5.30, 5.33, 5.34, 5.85, 5.86, 5.94 and Appendix D); ● stating 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 in prisons is allowed in accordance with the amendments made to section 40(19) of the EAC (EP) (LC) Reg (para. 5.19); and ● setting out the revised sorting process in a ballot paper sorting station to tally with the amendments made to section 74AA and the proposed amendments

Relevant Chapter/ Appendix	Major changes
	to section 74AB of the EAC (EP) (LC) Reg (paras. 5.59 to 5.61).
Chapter 6 <i>Election petition</i>	<ul style="list-style-type: none"> ● setting out the mechanism to lodge an appeal against the decision of the Court of First Instance in relation to an election petition arising from a LegCo election in accordance with the amendments made to sections 65, 70A and 70B of the LCO (para.6.5).
Chapter 8 and Appendix E <i>Election advertisements</i>	<ul style="list-style-type: none"> ● specifying the manner to allocate identified designated spots among the different constituencies, ie GCs, DC (second) FC and other FCs and that no designated spot will be provided to a candidate who is returned uncontested (para. 8.18); ● setting out the relaxed requirements for the publication of EAs, subject to the enactment of the proposed amendments to section 105 of the EAC (EP) (LC) Reg (paras. 8.41 to 8.48); and ● setting out the conditions that candidates contesting in a GC, DC (second) FC and Labour FC election must comply with when posting joint election mails to electors free of postage (paras. 8.62 to 8.69).
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>	<ul style="list-style-type: none"> ● advising candidates and their election agents to strictly follow the guidance provided in the notes on personal data privacy in respect of electioneering activities (prepared by the Office of the Privacy Commissioner for Personal Data at Appendix I to the Guidelines) before they undertake such activities (para. 9.18).

Relevant Chapter/ Appendix	Major changes
Chapter 11 and Appendix L <i>Election broadcasting, media reporting and election forums</i>	<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, the Election Committee Subsector Elections and the Chief Executive Election published in September 2011, October 2011 and November 2011 respectively.
Chapter 12 <i>Use of sound amplifying device and vehicles</i>	<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).

Relevant Chapter/ Appendix	Major changes
<p>Chapter 16 <i>Election expenses and donations</i></p>	<ul style="list-style-type: none"> ● setting out the election expense limit of \$6,000,000 for the DC (second) FC as specified in section 3A of the Maximum Amount of the Election Expenses (Legislative Council Election) Regulation (Cap 554D) (para. 16.8); ● 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 in accordance with the amendments made to section 37A of the ECICO (paras. 16.26 to 16.31); and ● revising the subsidy rate of financial assistance for the eligible candidate or the list of candidates (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 or the list of candidates; 50% of the election expenses limit of the respective constituency; or the amount of the declared election expenses of the candidate or the list of candidates in accordance with the amendments made to sections 60D and 60E of the LCO (para. 16.35).

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"> ● setting out the following revised arrangements for obtaining consent of support, subject to the enactment of the proposed amendments to section 27 of the ECICO: <ul style="list-style-type: none"> (a) a candidate is not required to obtain prior written consent from those who provide support in the EAs published by him if such support is provided by the supporters themselves out of their own volition; and (b) if a candidate or a person publishes or continues to publish the EAs with the support mentioned in (a) above without any modification of the name, logo or pictorial representation of the person or organisation concerned or any content provided by the person or organisation, the candidate is not required to obtain prior written consent from that person or organisation. Otherwise, prior written consent must be obtained before publishing such EAs (para. 18.1).