

Legislative Council Panel on Constitutional Affairs

Election of the Legislative Council : Election Forums

PURPOSE

This paper seeks Members' views on the guidelines on the holding of election forums by broadcasters¹ for Legislative Council ("LegCo") elections.

EXISTING GUIDELINES

2. The Electoral Affairs Commission ("EAC") is established under the EAC Ordinance (Cap. 541) to ensure that public elections are conducted openly, fairly and honestly at all times. Under section 6(1)(a) of the EAC Ordinance, 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.

3. The latest set of EAC's Guidelines on Election-related Activities in respect of the LegCo Election ("the Guidelines") was issued by the EAC in June 2012 for the LegCo election conducted in September 2012. The Guidelines set out various electoral arrangements made for the 2012 LegCo election, the legislative provisions and regulations, as well as guidelines that should be observed by all parties concerned before, during and after the 2012 LegCo election. Chapter 11 of the Guidelines sets out, under the principle of "fair and equal treatment", guidelines on election broadcasting on the radio and television, media reporting on election-related matters and the holding of election forums, for concerned parties to comply with. If the EAC comes to know of unfair or unequal treatment of candidates by any broadcaster, publisher or forum organiser, it may make a reprimand or censure in a public statement and may notify the relevant authorities for appropriate action to be taken. The focus of

¹ For the purposes of this paper, "broadcasters" mean operators of television broadcasting services licensed under the Broadcasting Ordinance (Cap 562) and operators of radio broadcasting services licensed under the Telecommunications Ordinance (Cap 106).

this paper is the application of this Chapter on election forums held by the broadcasters as defined in Footnote 1. For reference, extracts of the Chapter concerning election-related programmes and election forums broadcast on radio and television² is at the **Annex**.

FAIR AND EQUAL TREATMENT PRINCIPLE

4. The principle of “fair and equal treatment”, as enshrined in Chapter 11 of the Guidelines, seeks to ensure that elections are conducted honestly and fairly and, at the same time, the freedom of expression and editorial independence are duly respected and upheld. It stresses that no unfair advantage should be offered to or obtained by any candidate over others. Application of the “fair and equal treatment” principle to radio and television programmes is elucidated in paragraphs 5 to 11 below.

Election-related programmes

5. The Guidelines require that, election-related programmes (i.e., programmes the entire or partial theme of which is on an election) by broadcasters should comply with the “fair and equal treatment” principle by –

- (a) inviting all candidates/lists of candidates of the same constituency to attend such programmes, and including in the invitation a notice informing the invitee the same³;
- (b) ensuring that each of the candidates/lists of candidates contesting in the same constituency will be introduced and reported in the programme; and
- (c) ensuring that no favourable or unfavourable treatment will be given to any of the candidates/lists of candidates.

² Paragraphs 11.10 to 11.13 of the Guidelines are about election candidates appearing on TV/radio/movie as presenters, regular contributors, actors, musicians, singers or other entertainers, or appearing in commercial advertisements; paragraphs 11.14 to 11.17 are about advertising through the print media. As these issues are not the concern of this paper, they are not reproduced in the Annex or discussed in this paper.

³ In this regard, the EAC appeals to all candidates/lists of candidates to attend the programmes as far as possible in order to enable electors and the public to be apprised of their election platforms.

6. Should any candidate/list of candidates choose not to attend the concerned programme due to any reason, the relevant broadcaster may continue with the production of the programme as planned without contravening the “fair and equal treatment” principle.

7. If there is fair and equal treatment to all candidates/lists of candidates of the same constituency, the editorial line of the broadcaster or personal opinions of the programme presenter on each of the candidates can be freely expressed, insofar as they are fair comments and based on true facts.

8. The Guidelines also make it clear that the “fair and equal treatment” principle does not apply to programmes which are not election-related; candidates/lists of candidates are free to take part as guests in these programmes insofar as their participation is pertinent.

9. When first introduced in 1994, the principle of “fair and equal treatment” went hand in hand with the “equal time” principle requiring that broadcasters should allot equal time to each of the candidates taking part in their election-related current affairs or other programmes. After taking into account the feedbacks in past elections, the EAC has since the 2011 District Council election relaxed the requirement. Instead of mandating “equal time” for all candidates, the current Guidelines require only that broadcasters give “fair and equal treatment” to candidates in their programmes except for election forums (see paragraph 10 below). Such a relaxation is meant to provide broadcasters with more flexibility in running and broadcasting their programmes.

Election forums

10. In the specific context of election forums, the principle of “fair and equal treatment” requires that –

- (a) all candidates/lists of candidates competing in the same constituency should be invited to the same forum so as to give the candidates/the lists of candidates an equal opportunity to attend the forum and present their election platforms (i.e., same as in paragraph 5(a) above); and

- (b) while the Guidelines do not seek to provide specific rules or guidance on the hosting, production and broadcasting arrangements, organisers of election forums must have due regard to the principle of “fair and equal treatment” throughout the programmes. In particular, the principle requires that each candidate/list of candidates taking part in the election forum be given equal time to present his/its election platform.

COMPLAINTS RELATING TO THE MEDIA CONCERNING 2012 LEGCO ELECTION

11. In the 2012 LegCo election, the EAC received a total of 237 complaints alleging that the media has failed to comply with the “fair and equal treatment” principle set out in the Guidelines. Among the 237 complaints, 156 allege that biased, unfair or inappropriate statements or remarks have been made in the relevant programmes or reports; 76 allege that the concerned media organisation has provided unfair or unequal treatment to candidates in terms of speaking time, media reporting or appearance in the programmes; and the remaining five cases are concerned with the production arrangements or queries about election advertisements placed in the media.

12. In accordance with established procedures, the EAC looks into the complaints thoroughly. While the EAC is still investigating the complaints, so far one complaint concerning the media providing unfair or unequal treatment to candidates in terms of media reporting has been substantiated. In this case, the media organisation involved has been reminded by the EAC to be more vigilant to the need to provide fair and equal treatment to all candidates and the danger of inadvertently giving rise to possible perception of unfair or unequal treatment.

13. It is worth noting that, out of the 237 complaints, there are 38 cases specifically about the conduct of election forums organised by broadcasters, as compared with only three complaints relating to election forums organised by broadcasters in the 2008 LegCo election. Out of these 38 cases, 32 allege that unfair comments or inappropriate remarks have been made about candidates in election forums while the remaining six are about alleged unfairness of the production or broadcasting

arrangements like regulation of speaking time and the airing arrangement of the programmes. Separately, the EAC has not received any complaint made against election forums not organised by broadcasters for the 2012 LegCo election.

14. There has been no evidence to suggest that the concerned election forums by broadcasters have caused unfairness in the 2012 LegCo election. Nevertheless, the increase in the number of complaints received about election forums organised by broadcasters for the 2012 LegCo election have raised concern in some quarters as to whether the existing EAC Guidelines are adequate. Specifically, there have been suggestions that the following two issues are worth looking into -

- (a) whether there is a need for guidelines to be specifically drawn up to regulate the production and broadcasting arrangements including the manner of hosting, the speaking time arrangement, and the design/construction of the relevant programmes; and
- (b) whether organisers should be given more freedom in inviting some or all candidates to their election forums, especially when the number of candidates contesting is very large.

15. At present, the EAC keeps an open mind regarding the issues outlined in paragraph 14 above. Nevertheless, to lay the ground for the eventual review of the Guidelines and public consultation before promulgating a new set of guidelines for the 2016 LegCo election, Members are invited to offer their views. Some elaborations on the issues are set out in paragraphs 16 to 19 below to facilitate deliberation.

Specific guidelines on the production and broadcasting of election forums

16. As explained in paragraph 13 above, the complaints received by the EAC in relation to election forums organised for the 2012 LegCo election by the broadcasters are mostly concerned with the way in which the broadcasters have produced, conducted and hosted the programmes. While the existing EAC Guidelines require the adoption of the “fair and equal treatment” principle, they at present do not impose any restriction

on the production design or the hosting style of election forums, to give due regard to the editorial independence and production freedom of the broadcasters in organising election forums. However, in the light of the complaints received in the 2012 LegCo election, it is for consideration as to whether and, if so, how a balance might be struck between the enforcement of the “fair and equal treatment” principle in public elections on the one hand, and the editorial independence and production freedom of the broadcasters on the other.

Greater flexibility in invitation of candidates

17. On the other hand, some broadcasters have raised that the production of election forums has become more difficult because of the increasing number of candidates/lists of candidates contesting in LegCo elections. While the “fair and equal treatment” principle does not specifically require that each candidate/list of candidates be provided with exactly the same speaking time in an election forum, the broadcaster is required to give each of them equal time to present his/its election platform. The concern is that, the increasingly large numbers of candidates/lists of candidates, coupled with the mandatory extension of invitation to all candidates/lists of candidates to an election forum, limit the speaking time that can be allocated to each candidate/list of candidates to articulate on their election platforms.

18. For the above reason, there has been a suggestion that the present guidelines should be relaxed to give the broadcasters the flexibility to decide on the number of and/or which candidates/lists of candidates to appear on election forums⁴.

19. On the other hand, such a proposal may give rise to concerns that some candidates/lists of candidates might be left with completely no invitation to any election forum by the broadcasters, contrary to the “fair and unequal treatment” principle.

⁴ Some members of the LegCo Constitutional Affairs Panel raised similar suggestions at the Panel meeting held on 17 December 2012.

ADVICE SOUGHT

20. Members are invited to express their views on the issues raised in paragraphs 14 to 19, which will be conveyed to the EAC for consideration in the context of its future review.

Registration and Electoral Office
April 2013

CHAPTER 11

ELECTION BROADCASTING, MEDIA REPORTING AND ELECTION FORUMS

PART I : GENERAL

11.1 This chapter deals with election broadcasting through electronic means (which covers all programmes including those on current affairs and news reporting on the radio and television), media reporting on election-related matters and the holding of any election forum.

IMPORTANT :

“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 [s 2 of the ECICO]. The reference of “candidate” in this chapter includes a list of candidates in a GC/DC (second) FC to which the list system of proportional representation applies. *[Amended in June 2012]*

PART II : ELECTIONEERING ON TELEVISION AND RADIO

11.2 Operators of television broadcasting services licensed under the Broadcasting Ordinance (Cap 562) are not allowed to broadcast advertisements of a political nature. Operators of radio broadcasting services licensed under the Telecommunications Ordinance (Cap 106) are not allowed to broadcast

advertisements of a political nature except with the prior approval of the Communications Authority. Other service providers which are not licensable under the above Ordinances are allowed to carry EAs territory wide. *[Amended in October 2007 and June 2012]*

11.3 For current affairs or other programmes on TV and radio which are not election-related, candidates/lists of candidates may take part as guests in these programmes insofar as their participation is pertinent. For programmes the entire or partial theme of which is on the election (eg for introducing the candidates/the lists of candidates or reporting/analysing the election platforms and activities of the candidates/the lists of candidates), the **“fair and equal treatment” principle** will apply. Following the “fair and equal treatment” principle, broadcasters should ensure that each of the candidates/the lists of candidates contesting in the same constituency will be introduced and reported in the programme and no favourable or unfavourable treatment will be given to any of the candidates/the lists of candidates. *[Amended in June 2012]*

11.4 **No unfair advantage** should be offered to or obtained by any candidate/list of candidates over others regarding election campaigning.

11.5 To comply with the “fair and equal treatment” principle, when inviting a candidate/a list of candidates to attend a programme the entire or partial theme of which is on the election, broadcasters should include in the invitation a notice to the invitee that a similar invitation has been or will be made to other candidates/lists of candidates of the same constituency, so as to give the invitees an equal opportunity to appear. The EAC also appeals to all candidates/lists of candidates to attend these programmes as far as possible in order to enable electors and the public to be apprised of their election platforms. Some candidates/lists of candidates may choose not to attend due to personal or other reasons. Under such circumstances, the relevant broadcaster may continue with the production of the programme as planned without contravening the “fair and equal treatment” principle. The “fair and equal

treatment” principle applies to the entire programme, and, in particular, requires the broadcaster to give equal time to each of the candidates/the lists of candidates taking part in the programme to present his/its election platform. **A record should be kept by the broadcaster of the date, time and contents of the invitation and the notice until 3 months after the election.** In order to provide the audience of the programmes with clear information on the total number and the names of candidates/the lists of candidates, and to give equal treatment to all candidates/lists of candidates concerned, broadcasters should take heed of the observations made by the Court in an election petition relating to the 2010 Legislative Council By-election as set out in **Appendix M** and, where appropriate, follow the arrangement set out therein when producing multi-episode programmes which are election-related. *[Amended in June 2012]*

11.6 If there is evidence to substantiate that the relevant broadcaster has provided/allowed favourable or unfair treatment to some candidates/lists of candidates in producing the programme the entire or partial theme of which is on the election, such case will be regarded as a breach of “fair and equal treatment” principle. *[Added in June 2012]*

11.7 The principles stated in paras. 11.3 to 11.6 above apply equally to political parties or political organisations of which the candidate or candidates in a list for a GC or the DC (second) FC is/are member(s) as they apply to the candidates(s) himself/themselves and to a prescribed body the registered name or registered emblem of which has been printed on any ballot papers for the election. However, the aforesaid principles do not apply to programmes which are entirely news reporting and are not related to the candidates’ participation in the election. *[Amended in June 2012]*

11.8 During the election period (ie the period beginning with the commencement of the nomination for the election and ending with the polling day for the election), broadcasters should ensure that the “fair and equal

treatment” principle is applied to all political parties or political organisations which have members contesting the LegCo election and the said prescribed bodies, whether or not contesting the same constituency. If a political party or political organisation whose members contest as candidates in the election is invited to take part in a current affairs or any other programme the entire or partial theme of which is on the election, then all political parties or political organisations which have members contesting the LegCo election or a prescribed body the registered name or registered emblem of which has been printed on any ballot papers for the election, whether or not contesting the same constituency, should also be invited. *[Amended in June 2012]*

11.9 The EAC appeals to broadcasters to treat all candidates/lists of candidates competing in the same constituency fairly and equally when making comment on or reference to the candidates in any of their programmes. Comments made for the purpose of promoting or prejudicing a candidate or candidates are treated as EAs, if reference could be made from the materials to identify the candidate(s) being promoted or prejudiced [see also para. 8.8 of Chapter 8 : Election Advertisements]. Moreover, if such comments are determined as EAs, the EAC will refer the matter to the Communications Authority for appropriate action. If there is fair and equal treatment to all candidates/lists of candidates of the same constituency, the editorial line of the broadcaster or personal opinions of the programme presenter on each of the candidates can be freely expressed, insofar as they are fair comments and based on true facts. The guidelines do not seek to impose any shackle on the expression of such ideas. However, broadcasters should ensure that in the expression of such ideas, no unfair advantage may result towards any candidate over another or any political parties or organisations to which contesting candidates belong. *[Amended in June 2012]*

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PART IV : ELECTION FORUMS

11.18 During the election period, broadcasters may organise election forums in their programmes. Broadcasters should ensure that the “fair and equal treatment” principle is applied to all candidates/lists of candidates. If a candidate/a list of candidates is invited to take part in the election forum, then all candidates/lists of candidates of the same constituency should also be invited to be present at such forums so as to give the candidates/the lists of candidates an equal opportunity to attend the forum and present their election platforms. The “fair and equal treatment” principle applies to the entire election forum and, in particular, requires the broadcaster to give each candidate/list of candidates taking part in the election forum equal time to present his/its election platform. *[Amended in June 2012]*

11.19 Other organisations, such as professional or trade organisations, academic institutions and schools, etc, may organise election forums for civic education or other purposes. In line with the fair and equal treatment principle, the EAC appeals to all these organisers to invite all candidates/lists of candidates of the same constituency to be present at such forums, so that no unfair advantage will be accorded to or obtained by any candidate/list of candidates over others regarding election campaigning. *[Amended in June 2012]*

11.20 The EAC appeals to all candidates/lists of candidates to use their best endeavours to take part in election forums in order to enable electors and the public to be apprised of their platforms. Some candidates may choose not to attend due to personal or other reasons. Under such circumstances, the relevant forum organiser may continue to organise such activity as planned without contravening the “fair and equal treatment” principle. *[Amended in June 2012]*

PART V : SANCTION

11.21 If the EAC comes to know of unfair or unequal treatment of candidates by any broadcaster, publisher or forum organiser, it may make a **reprimand** or **censure** in a public statement which will include the names of the candidates favourably and unfavourably treated and the broadcaster, publisher or forum organiser concerned. The EAC may also notify the relevant authorities for appropriate action to be taken. *[Amended in July 2008]*

11.22 The candidates as mentioned in paras. 11.10 to 11.13 and 11.16 above should make their best endeavours as advised thereof to avoid taking unfair extra publicity. If the EAC receives a complaint about candidates taking the aforesaid extra publicity and it is subsequently found that the candidates have failed to make such endeavours, the EAC may make a **reprimand** or **censure** in a public statement against the candidates. *[Added in June 2012]*