

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1085/15-16(06)

Ref : CB2/PL/CA

**Panel on Constitutional Affairs**

**Background brief prepared by the Legislative Council Secretariat for the meeting on 21 March 2016**

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

**Purpose**

1. This paper summarizes the past discussions held by the Panel on Constitutional Affairs ("the Panel") on the proposed Guidelines on Election-related Activities in respect of Legislative Council ("LegCo") Election issued by the Electoral Affairs Commission ("EAC") in March 2012 ("the 2012 Proposed Guidelines") and the EAC Report on the 2012 LegCo Election.

**Background**

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. According to section 6(1)(a) of the EAC Ordinance (Cap. 541), 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. EAC will update the guidelines before each election taking into account the operational experience and suggestions for improvements obtained from recent elections and by-elections. In accordance with section 6(2) of the EAC Ordinance, EAC shall consult the public on the proposed guidelines before they are finalized for issue to the public.

3. The 2016 LegCo election will be held on 4 September 2016. The latest Proposed Guidelines on Election-related Activities in respect of the 2016 LegCo Election were issued by EAC on 3 March 2016 for public consultation until 1 April 2016. The major changes in the Proposed Guidelines as compared with the version last updated in June 2012 are set out in the Appendix to the Proposed Guidelines.

## **Relevant issues of concern of the Panel**

4. The Panel discussed the 2012 Proposed Guidelines at its meeting on 16 April 2012. Similar issues of concern were also raised at the meeting on 17 December 2012 in which the EAC Report on the 2012 LegCo Election was discussed. The major concerns raised by members at these meetings are summarized in the following paragraphs.

### *Election advertisements ("EAs")*

5. Some members expressed concern about the Registration and Electoral Office's ("REO") arrangement that candidates were not provided with printed address labels in respect of electors who had provided their email addresses to REO. The Administration explained that the address labels provided by REO to candidates for sending EAs to electors by post did not include electors who had provided their email addresses to REO. Instead, the email addresses of such electors would be included in a separate mailing database for candidates to send out their EAs electronically. The arrangement aimed to encourage candidates to disseminate EAs by electronic means for the protection of the environment.

6. Some members expressed concern that in the use of electronic platforms on the Internet to promote candidates, there were practical difficulties in obtaining prior written consent of support from persons indicating spontaneous support to a candidate on social networking and communication websites on the Internet. The Administration advised that the Electoral Legislation (Miscellaneous Amendments) Bill 2012 sought to amend section 27 of Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to provide that a candidate or a person was not required to obtain prior written consent from those who provided support in EAs if the candidate or the person had neither requested or directed nor authorized any other person to request or direct the inclusion of such support in EAs. If a candidate or person published or continued to publish EAs with the support without any modification of the content or description of the support, the candidate or the person was not required to obtain prior written consent from those who provided support in such EAs. Under the proposed arrangement, where it was an EA published through an open website on the Internet and it was technically impracticable to furnish a copy for public inspection, a candidate would only be required to post the hyperlink of such website onto an open platform maintained by him or the central platform maintained by REO for public inspection in order to comply with the public inspection requirements under the law.

7. A suggestion was made that the Administration should explore provision of an allowance to candidates in the form of a voucher in lieu of free postage so as to provide financial incentive and flexibility to candidates in distributing their

election-related materials by environmental-friendly means. The Administration advised that many candidates/electors favoured sending/receiving hardcopies of EAs, and therefore the free postage would continue to be provided. Notwithstanding that, candidates were free to choose under the present arrangements whether or not they would like to send EAs by post or by any other environmental-friendly means.

8. To facilitate the conduct of electioneering activities, some members enquired whether the existing procedural requirement for obtaining permission for the display or affixing of printed EAs in private premises/shops could be simplified. The Administration advised that display of bills or posters was regulated by the Public Health and Municipal Services Ordinance (Cap. 132), which stipulated that no bill or poster could be displayed or affixed in public or private places except with written permission. The existing provisions under the electoral law served to reflect the requirement of the Food and Environmental Hygiene Department under Cap. 132 by requiring a candidate to provide the Returning Officer with a copy of any such written permission obtained for the display or exhibition of an EA.

9. Some members considered that display of EAs on the exterior roof panel or exterior body of vehicles had been commonly used by candidates because they were effective. However, the conditions on the display of EAs on public light buses and taxis as stipulated in paragraph 12.7 of the 2012 Proposed Guidelines seemed to be too strict. They enquired if there was room for relaxation. The Administration advised that for the display of any EA on public light buses and taxis, their owners/operators should obtain prior written approval from the Transport Department ("TD") and ensure that the display of EAs was in compliance with the conditions stipulated by TD. The Administration agreed to relay members' views to EAC and TD for consideration.

10. Some members expressed concern that there might be room for exempting certain types of EAs from the cost declaration requirement, such as those displayed through electronic means or social networking platforms as the cost involved was only minimal. The Administration advised that the requirement of declaration of EAs was made for the purpose of ensuring the accuracy of all factual statements in EAs and monitoring the election expenses. The Administration agreed to consider this view when REO examined if there was room for relaxation of the relevant requirements.

#### *Electioneering at buildings*

11. Some members expressed concern that the management bodies of some private buildings did not comply with the principle of "fair and equal treatment" of all candidates/geographical constituency ("GC") lists competing in the same

constituency for the purpose of electioneering. They suggested that there should be measures to publicize the issuance of a censure or reprimand to the buildings which failed to afford equal opportunity to different candidates. For example, prominent notices should be posted up in the surroundings of the building as a deterrent.

12. The Administration advised that the 2012 Proposed Guidelines required management bodies of buildings to give equal opportunity to all candidates/GC lists competing in the same constituency for the purpose of electioneering. If EAC received a complaint of unfair or unequal treatment of candidates by the building management, and was satisfied that the complaint was justified, it could make a reprimand or censure in a public statement which might include the names of candidates/GC lists favourably or unfavourably treated.

#### *Joint election mails for free postage*

13. Some members questioned whether the new arrangement for candidates to post joint promotional letters using the free-of-postage facility arrangement was able to encourage economy on the use of paper judging from the experience in the 2012 LegCo Election. The Administration explained that the arrangement was intended to allow greater flexibility for candidates/lists of candidates to jointly promote themselves in multiple-seat constituencies and constituencies with overlapping electorate (as in the case of GC and District Council (second) functional constituency). While the arrangement was expected to help reduce consumption of paper, REO acknowledged that, judging from the experience in the 2012 LegCo Election, where as all contesting candidates had utilized their entitlement to sending a free election mail to electorates, the effect of reducing paper consumption was not apparent.

#### *Exit poll*

14. Some members considered it inadequate to simply require the organizations which conducted exit polls to sign an undertaking not to release the results of the exit polls before the close of polls to the specified parties. They opined that EAC should look into whether the organizations concerned had contravened the undertakings signed, and whether the sanction for such contraventions had sufficient deterrent effect.

15. The Administration explained that in drawing up the guidelines to regulate the conduct of exit polls, it was necessary to avoid giving the impression that the guidelines were intended to undermine the freedom of expression and academic freedom. To ensure transparency, the list of the approved organizations to conduct exit polls was uploaded onto the election website and displayed in a prominent place outside the polling stations for public inspection. In the event

of a prima facie case of a possible breach of the undertaking signed by the organization concerned, the Administration would take it up with the organization which would have to bear the legal consequences.

### *Election forums*

16. Some members noted that organizers of election forums under the existing arrangement had to provide equal time to all candidates according to the "equal treatment principle" in election-related programmes on the television and radio. They raised concern about the effectiveness of these forums in enabling the public to understand candidates' election platforms. They pointed out that given the trend that more and more candidates/lists of candidates competed in the same GC, each candidate could only have very limited speaking time in such forums according to the "equal treatment principle". These members suggested that EAC should consult the relevant stakeholders including political parties on the possible improvement measures.

17. The Administration advised that with regard to the "fair and equal treatment" principle, broadcasters were no longer mechanically required to give equal time to each of the candidates taking part in these forums as long as the principle of "fair and equal treatment" was not compromised. Regarding the suggestion of further relaxing the principle of "fair and equal treatment", e.g. whether every single list of candidates was bound to be invited to participate in the forums, REO was open-minded and would listen to the views of the community on the matter.

### **Recent development**

18. The Panel will discuss the Proposed Guidelines on Election-related Activities in respect of the 2016 LegCo Election at the next meeting on 21 March 2016.

### **Relevant papers**

19. A list of the relevant papers available on the LegCo website is in **Appendix**.

## Appendix

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

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	16.4.2012 (Items III and IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	17.12.2012 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>

Council Business Division 2  
Legislative Council Secretariat  
17 March 2016