

**Legislative Council Panel on Constitutional Affairs**

**Proposed Guidelines on Election-related Activities  
in respect of the Election Committee Subsector Elections  
issued by the Electoral Affairs Commission**

**PURPOSE**

This paper seeks Members' views on the Proposed Guidelines on Election-related Activities in respect of the Election Committee Subsector ("ECSS") Elections ("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.

3. It has been the established practice of the EAC to update and publish the guidelines before an ECSS ordinary election for adoption in the ordinary election and any by-elections to be held thereafter. The updated guidelines will incorporate changes in the electoral legislation and take into account revisions which are needed in the light of past experience to enhance and align the provisions therein.

4. Since the guidelines were last updated in October 2011, legislative amendments have been made to the electoral legislation to put into effect a number of changes relating to the electoral and voter registration arrangements. Furthermore, in December 2015, the Government introduced to the Legislative Council ("LegCo") the Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015 ("the Bill") to make technical amendments to certain electoral arrangements, such as aligning certain deadlines for filing election returns, updating the electorate of certain ECSSs, aligning the electoral arrangements of the ECSS elections and the Chief Executive election with other public elections, etc. The second reading debate of the Bill will be resumed later in LegCo.

**THE PROPOSED GUIDELINES**

5. The next ECSS ordinary election will be held on 11 December 2016. In this regard, the EAC released the proposed guidelines on 11 May 2016 for public consultation. The consultation period will end on 9 June 2016. The

guidelines finalised afterwards will be adopted in the 2016 ECSS ordinary election and any by-elections to be held thereafter. Compared to the last edition issued in October 2011, the major revisions in the proposed guidelines are-

- (a) to incorporate the legislative amendments made to the subsidiary legislation under the EAC Ordinance concerning voter registration arrangements;
- (b) to reflect the legislative amendments to be made to the Schedule to the Chief Executive Election Ordinance (Cap. 569) and the Legislative Council Ordinance (Cap. 542) for the updating of the constituents of the Election Committee subsectors<sup>1</sup>;
- (c) to reflect the legislative amendments to be made to the subsidiary legislation under the EAC Ordinance in relation to some technical details concerning electoral procedures<sup>1</sup>;
- (d) to reflect the legislative amendments to be made to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) for the alignment of deadlines for candidates to file election returns<sup>1</sup>; and
- (e) to elaborate on certain parts of the guidelines to enhance understanding and, where appropriate, align with the other electoral guidelines.

6. In drawing up the proposed guidelines, the EAC has taken into account the experience in past elections and has suggested revisions in the interest of clarity and compliance. Furthermore, relevant Government departments have been consulted on the parts of the proposed guidelines which fall within their respective purview. For Members' easy reference, the major changes, as compared with the existing guidelines, are set out at the **Annex**. Most of the changes are for alignment purpose and similar changes have been incorporated in the Guidelines for the District Council Election published in September 2015 and the Proposed Guidelines for the Legislative Council Election published in March 2016.

## **PUBLIC CONSULTATION PERIOD**

7. Section 6(2) of the EAC Ordinance stipulates that the EAC shall consult the public in relation to the guidelines. The public consultation for the proposed guidelines runs for a period of 30 days from 11 May to 9 June 2016 (both dates inclusive).

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<sup>1</sup> Regarding paragraph 5(b) to (d), the Government introduced the Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015 into the Legislative Council in December 2015 to make the relevant amendments. The amendments will take effect subject to the passage of the Bill in the Legislative Council.

8. During the consultation period, members of the public are welcome to provide their views on the proposed guidelines to the EAC in writing. They may also attend the public forum to be held on 24 May 2016 to present their views to the EAC orally.

9. 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 late September 2016.

### **ADVICE SOUGHT**

10. Copies of the proposed guidelines have been distributed to Members. Members are invited to note and comment on the proposed guidelines. Members are also welcome to 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 ([eaceng@reo.gov.hk](mailto:eaceng@reo.gov.hk)), during the public consultation period.

Registration and Electoral Office  
May 2016

**Major Proposed Changes in the Proposed Guidelines  
On Election-related Activities in respect of the  
Election Committee Subsector Elections  
as Compared with the Guidelines Issued in October 2011**

<b>Relevant Chapter</b>	<b>Major changes</b>
<b>Chapter 2 and Appendices C to E</b> <i>Composition of the Election Committee</i>	<ul style="list-style-type: none"><li>● updating the constituents of the Election Committee subsectors <i>subject to the enactment</i> of the proposed amendments to be made to section 2 of the Schedule to the Chief Executive Election Ordinance (Cap 569) and the Legislative Council Ordinance (Cap 542) (<b>para. 2.3(d) to (f) and Appendices C to E</b>).</li></ul>
<b>Chapter 3</b> <i>Registration of voters and voting system</i>	<ul style="list-style-type: none"><li>● revising the key dates of the voter registration timeframe in accordance with the amendments made to sections 19, 29(1)(a), 29(3)(a), 30(2) and 31(8) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B) (“EAC (ROE) (FCSEC) Reg”) (<b>paras. 3.11, 3.15 and 3.19</b>); and</li><li>● aligning the deadline for change of registration particulars with the deadline for new registration in accordance with the amendments made to sections 26(5) of EAC (ROE) (FCSEC) Reg (<b>para. 3.13(d)</b>).</li></ul>
<b>Chapter 5</b> <i>Polling and counting arrangements</i>	<ul style="list-style-type: none"><li>● specifying a deadline for gazetting the list of polling stations and counting stations and revising the deadline for the Returning Officer to give notice to candidates of the place(s) and time of the counting of votes, <i>subject to the enactment</i> of the proposed amendments to sections 28(1) and 63(4) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap 541I) (“EAC (EP) (EC) Reg”) (<b>paras. 5.2 , 5.3 and 5.38</b>).</li></ul>

<b>Relevant Chapter</b>	<b>Major changes</b>
<p><b>Chapter 7</b> <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i></p>	<ul style="list-style-type: none"> <li>● updating the guidelines to include the use of electronic mail as a means of delivery of certain electoral documents, such as notices of appointment and revocation of appointment of election agents, election expense agents, polling agents and counting agents <b><i>subject to the enactment</i></b> of the proposed amendments to sections 23(13) and (15), 25(6) and (9A), 42(5AA), (11) and (11A), 64(5A) and (10A) of the EAC (EP) (EC) Reg (<b>Parts V to VIII of the Chapter</b>).</li> </ul>
<p><b>Chapter 8</b> <i>Election advertisements</i></p>	<ul style="list-style-type: none"> <li>● reminding any person or organisation publishing materials to appeal directly or indirectly to voters to vote or not to vote for certain candidates or candidates of certain organisations to observe the legislative requirements for incurring election expenses on the behalf of candidates since the materials may be capable of being understood as referring to certain identified candidates (<b>para. 8.3</b>);</li> <li>● reminding candidates and web surfers that the statutory definition of election advertisements (“EAs”) is very wide and encompasses anything published publicly by any means, including a message published through internet platforms for promoting the election of a candidate or prejudicing the election of other candidates (<b>para. 8.4</b>);</li> <li>● reminding any person who intends to stand as a candidate at the election to remove all publicity materials published by him/her prior to the election period before he/she has been nominated as a candidate or has publicly declared an intention to run for the election. Otherwise, any such unremoved publicity material may be regarded as an EA (<b>para. 8.6</b>);</li> <li>● reminding candidates to follow the application guidelines issued by the Lands Department for temporary occupation of government land for holding electioneering activities (<b>Part V of the Chapter</b>); and</li> </ul>

<b>Relevant Chapter</b>	<b>Major changes</b>
	<ul style="list-style-type: none"> <li>● setting out the simplified arrangements for submission of EAs for public inspection in accordance with the amendments made to section 108 of the EAC (EP) (EC) Reg (<b>paras. 8.47 to 8.54</b>).</li> </ul>
<p><b>Chapter 9, Appendix K and L</b> <i>Electioneering activities at premises or buildings where voters/ARs reside, work or frequent</i></p>	<ul style="list-style-type: none"> <li>● updating the guidelines issued by the Office of the Privacy Commissioner for Personal Data (“OPCPD”) to remind candidates to adopt security measures when transferring personal data of voters to election agents or other contractors for electioneering purpose (<b>para. 9.12 and Appendix K</b>);</li> <li>● setting out four cases as suggested by the OPCPD to facilitate better understanding of the privacy concerns of the voters/authorised representatives and compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) (<b>Appendix L</b>);</li> <li>● requesting candidates to respect voters’ privacy when using their contact information for canvassing and reminding them to use the “bcc” function of email or other proven means to prevent inadvertent disclosure of the email addresses when distributing EAs to voters over email (<b>para. 9.13</b>); and</li> <li>● reminding the office bearers of building organisations not to abuse their positions in the organisations to give unfair treatment to any candidate in the conduct of electioneering or canvassing activities in the buildings concerned, especially when the office bearers themselves are candidates in the election (<b>para. 9.20</b>).</li> </ul>
<p><b>Chapter 11</b> <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> <li>● elaborating on the requirement of the fair and equal treatment principle in producing and conducting election-related and news reporting programmes by broadcasters licensed under the Broadcasting Ordinance (Cap 562) and the Telecommunications Ordinance (Cap 106) (<b>paras. 11.3 to 11.5, 11.10 and 11.22</b>); and</li> </ul>

<b>Relevant Chapter</b>	<b>Major changes</b>
	<ul style="list-style-type: none"> <li>reminding the print media to ensure that any news reporting or references made in their publications should not give unfair publicity to any candidates in accordance with the fair and equal treatment principle (<b>paras. 11.19 and 11.21</b>).</li> </ul>
<b>Chapter 15</b> <i>Exit poll</i>	<ul style="list-style-type: none"> <li>updating the administrative procedures in approving the application for the conduct of exit polls and the enhanced measures to be adopted to ensure the fairness of election (<b>paras. 15.4, 15.5 and 15.7</b>).</li> </ul>
<b>Chapter 16 and Appendix T</b> <i>Election expenses and election donations</i>	<ul style="list-style-type: none"> <li>reminding candidates of the need of apportionment of expenses between election-related purposes and any other purposes (<b>para. 16.6</b>);</li> <li>reminding candidates, or any person or organisation acting as an agent for the candidate(s), to comply with all the legislative requirements in seeking or soliciting election donations and to adopt the suggested good practice in Appendix T (<b>para. 16.22</b>); and</li> <li>aligning the deadlines for submitting the return and declaration of election expenses and election donations for all candidates in the same election, <i>subject to the enactment</i> of the proposed amendments to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (<b>para. 16.26</b>).</li> </ul>
<b>Chapter 18</b> <i>Namedropping</i>	<ul style="list-style-type: none"> <li>setting out clearly the guidelines for giving consent of support when the office title of the supporter providing the consent and/or the name of the organisation concerned are mentioned (<b>para. 18.4</b>).</li> </ul>