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Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 16 May 2016

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

Purpose

This paper summarizes the past discussion held by the Panel on Constitutional Affairs ("the Panel") on the proposed guidelines issued by the Electoral Affairs Commission ("EAC") on election-related activities in respect of the Election Committee ("EC") subsector elections in June 2011 ("the 2011 Proposed Guidelines").

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. 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.

3. 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. The 2016 EC subsector elections will be held on 11 December 2016.

Past discussion of the Panel

4. The Panel discussed the 2011 Proposed Guidelines at its meeting on 18 July 2011. The major changes in the 2011 Proposed Guidelines as compared with the last updated version (issued in January 2010) are set out in **Appendix I**. The finalized Guidelines were published by EAC on 17 October 2011. The major concerns expressed by members at the meeting are summarized below.

Voter registration

5. Concern was raised about the eligibility of some staff in the post-secondary institutions for registration as voters in the Higher Education Subsector. The Administration advised that the composition of the Higher Education Subsector was set out in the Schedule to the Chief Executive Election Ordinance (Cap. 569) ("CEEEO"). According to CEEEO, full-time academic staff engaged in teaching or research and administrative staff of equivalent rank in the bodies listed in Table 5 of the Schedule to CEEEO were eligible to be registered as voters in the Higher Education Subsector. Those bodies included the eight institutions of higher education funded through the University Grants Committee, the Open University of Hong Kong, the Hong Kong Academy for Performing Arts, and the continuing education institutes of individual institutions. The Administration advised that the full-time academic staff engaged in teaching or research and administrative staff of equivalent rank in those continuing education institutes or community colleges should, for the purpose of voter registration, be regarded as the staff of the respective institutions, and were eligible for registration as voters in the Higher Education Subsector. The Constitutional and Mainland Affairs Bureau had published a press release on 12 July 2011 to address the concern of the staff in some post-secondary institutions. The Registration and Electoral Office ("REO") had liaised with the relevant higher education institutions and other post-secondary colleges as listed in the relevant legislation to ensure that the eligible staff had applied for registration as voters according to normal procedures.

6. In the run-up to the polling day of the 2011 EC subsector elections, there were reports that some registered voters of certain subsectors, including the Information Technology Subsector and the Education Subsector, might have ceased to be eligible to be registered as voters and should have been disqualified from voting at the EC subsector elections. To allay public concerns over these suspected irregularities, the Electoral Registration Officer ("ERO") issued letters to all umbrella organizations shortly before the poll setting out the legislative provisions relating to disqualification from voting¹, and the offence where a person voted at an election knowing that he was not entitled to vote at that election. The letter also appealed to the umbrella organizations to remind their members not to vote at the EC subsector elections if they were no longer eligible

¹ According to section 26 of CEEEO, an EC member whose name appears on the final register shall be disqualified from voting at the poll if he or she-

- (a) resigns from the EC;
- (b) has ceased to have a substantial connection with the subsector concerned;
- (c) has ceased to be registered or eligible to be registered as an elector for a geographical constituency;
- (d) is found for the time being under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or
- (e) is a member of the armed forces of the People's Republic of China or any other country or territory.

for voting and sought their assistance in providing ERO with a list of such persons.

Polling hours

7. Noting that the polling hours in other nearby countries or regions were much shorter than that in Hong Kong, some members asked whether the Administration would consider reducing the polling hours. The Administration advised that it was generally agreed that there was room for reducing the polling hours. However, no consensus had been reached on the number of hours to be reduced and the timing for the change. Having regard to the diverse views of members and the voting habits of the public, REO considered it appropriate to proceed cautiously and, therefore, maintain the existing polling hours for the time being. The Administration would further seek members' views on the subject and seriously consider whether the polling hours should be revised.

Election advertisements ("EAs") and electioneering activities

8. On the definition of EAs, some members asked whether materials published by an organization which explicitly or implicitly prejudiced the election of a candidate in an election would all be regarded as EAs. They pointed out that there were many occasions where materials designed to persuade voters not to vote for a candidate were not counted as EAs. The Administration advised that according to the existing definition of an EA, any material published for the purpose of promoting or prejudicing the election of any candidate in an election would be regarded as an EA. The Administration explained that if an advertisement was published for the purpose of prejudicing a particular candidate's candidature at an election, whether the name of the candidate had been explicitly cited or not, such an advertisement would be treated as an EA especially when it was displayed during the election period.

9. Some members considered it unfair that not all candidates were allowed to carry out electioneering activities at some housing estates. They were of the view that voters should have access to election-related information and management bodies of private housing estates and/or Owners' Corporation should not bar candidates from entering their premises. They asked whether there should be statutory requirement to allow free access by candidates to conduct electioneering activities in private premises.

10. The Administration advised that there were guidelines for owners and management of premises in handling applications for conducting electioneering activities on the premises within their jurisdiction. Any decision should comply with the principle that fair and equal opportunity of access should be provided to all candidates competing in the same EC subsector for electioneering purposes,

so as to ensure that the election was conducted fairly. In the event that a complaint was lodged against a management body for unequal treatment and was substantiated, EAC could consider making a reprimand or censure in a public statement against the management body concerned. EAC would appeal to all management bodies of buildings to provide equal opportunities to all candidates competing in the same EC subsector for the purposes of electioneering to ensure that the election was conducted fairly. In response to members' suggestion, REO would consider the feasibility of posting the letter of reprimand in a conspicuous place in private premises.

11. Concern was also raised that during the election period, many unauthorized publicity materials had been displayed all over the district. The Administration advised that complaints should be made to the relevant Returning Officer ("RO") who would look into the case. Any EAs displayed in contravention of the guidelines would be removed as soon as possible. RO might also require the candidate or his election agent to remove the unauthorized EAs if they could be reached.

Relevant question raised at Council meeting

12. At the Council meeting of 21 December 2011, Hon Ronny TONG raised an oral question on suspected vote-rigging and irregularities in the 2011 EC subsector elections. The question of Mr TONG and the reply of the Secretary for Constitutional and Mainland Affairs are in **Appendix II**.

Recent development

13. The Administration will brief the Panel on the proposed Guidelines for the 2016 EC subsector elections at the meeting on 16 May 2016.

Relevant papers

14. A list of the relevant papers available on the Legislative Council website is in the **Appendix III**.

**Major Changes in the Proposed Guidelines
for Election Committee Subsector Elections
as Compared with the Guidelines Issued in January 2010**

Relevant Chapter/ Appendix	Major changes
Chapter 1 and Appendix B <i>Introduction</i>	<ul style="list-style-type: none"> ● updating the number of members to be returned to each sector and subsector of the Election Committee (“EC”) in the fifth term (para. 1.1 and Appendix B).
Chapter 2 <i>Composition of the Election Committee</i>	<ul style="list-style-type: none"> ● setting out the arrangement for Electoral Registration Officer (“ERO”) to compile and publish interim register of members of the EC if the elections for different subsectors are held on different days (para. 2.5).
Chapter 3 <i>Registration of voters and voting system</i>	<ul style="list-style-type: none"> ● setting out that if a person is eligible to be registered for the Hong Kong and Kowloon District Councils (“DCs”) subsector or the New Territories DCs subsector, he may be registered only as a voter for either of the aforesaid subsectors as the case may be according to section 12(11)(c) and (d) of the Schedule to the CEEO (para. 3.7); and ● in accordance with section 14(1B) and (1C) of the Schedule to the CEEO, adding that (i) the newly elected DC members in the DC election in November 2011 will be automatically registered in the DCs subsectors; (ii) if a newly elected DC member has already been registered as a voter in another subsector, his name would be removed from the Final Register (“FR”) of such subsector at the same time when he is automatically registered in the DCs subsectors; and (iii) the ERO would arrange the publication of the revised FR for the Hong Kong and Kowloon DCs subsector and the New Territories DCs subsector (para. 3.21).
Chapter 4 <i>Nomination of candidates</i>	<ul style="list-style-type: none"> ● adding that only the first nomination paper which has been delivered to the Returning Officer (“RO”) by a voter of the subsector is operative according to section 8(5) of the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap 569C) (para. 4.17); ● specifying the arrangements for the newly elected DC members in respect of nomination and candidature (para. 4.34);

<p>Relevant Chapter/ Appendix</p>	<p>Major changes</p>
	<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. 4.39); and ● reminding candidates that voters, who are only able to read English, are equally entitled to be informed of the candidates’ election platforms (para. 4.39).
<p>Chapter 5 <i>Polling and counting arrangements</i></p>	<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 set up in prisons is allowed, subject to the enactment of the proposed amendment to section 40 of the EAC (Electoral Procedure) (Election Committee) [EAC (EP)(EC)] Regulation (para. 5.12(b)).
<p>Chapter 7 <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i></p>	<ul style="list-style-type: none"> ● setting out that civil servants, who work in a subsector or have extensive contacts with the public in a subsector, are strongly advised not to accept appointment by a candidate in the subsector to be his agent and/or participate in electioneering activities in the subsector concerned to avoid any unfairness, semblance of unfairness or conflict of interest (para. 7.5).
<p>Chapter 8 and Appendix G <i>Election advertisements</i></p>	<ul style="list-style-type: none"> ● 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. 8.31); ● specifying the deadline for the removal of election advertisements (“EAs”) in relation to an uncontested election (para. 8.39);

<p>Relevant Chapter/ Appendix</p>	<p>Major changes</p>
	<ul style="list-style-type: none"> ● setting out the arrangements for submitting by electronic means the declaration and copy of an EA to be displayed, distributed or otherwise used by electronic means, in line with the recent amendments to section 100(4A), (5A), (6) and (7) of the EAC (EP) (EC) Regulation (paras. 8.44 to 8.46 and Appendix G); ● clarifying that before the display of an EA in the form of a bill or poster, the candidate must deposit with the RO a copy of the permission or other authorisation obtained for the purposes of section 104A(1) of the Public Health and Municipal Services Ordinance, in line with the recent amendments to section 100(9) of the EAC (EP) (EC) Regulation (para 8.44(b)); ● setting out the arrangements for candidates to send joint promotional letters to electors free of postage, in line with the recent amendment to section 99 of the EAC (EP) (EC) Regulation (paras. 8.65, 8.66, 8.79 and 8.82(c)); and ● reminding candidates that they should carefully study the requirements governing free postage for EAs and that they should submit their EA specimens to the respective Manager of the designated post offices/delivery offices 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. 8.78 and 8.79).
<p>Chapter 9 <i>Electioneering at the living and working places of voters/ARs, premises of organisations to which voters/ARs belong and buildings which voters/ARs 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 K to the Guidelines) before they undertake such activities (para. 9.12).

<p>Relevant Chapter/ Appendix</p>	<p>Major changes</p>
<p>Chapter 11 and Appendix N <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● drawing broadcasters’ attention to the observations made by the Court in an election petition as set out in Appendix N, 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 subsector and to give equal treatment to all candidates concerned when producing multi-episode programmes which are election-related (para. 11.5 and Appendix N); ● reminding candidates and the media of the need to avoid unfair extra publicity for candidates (paras. 11.10, 11.12 and 11.15); ● 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. 11.22).
<p>Chapter 12 <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. 12.7).
<p>Chapter 15 <i>Exit poll</i></p>	<ul style="list-style-type: none"> ● aligning the guidelines for the conduct, publication and broadcast of exit polls with those adopted for the Legislative Council Election, DC Election and Village Representative Elections.
<p>Chapter 16 <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 donations in accordance with section 37 of the ECICO (para. 16.17).
<p>Chapter 17 <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. 17.8).

Relevant Chapter/ Appendix	Major changes
Chapter 18 <i>Namedropping</i>	<ul style="list-style-type: none">● reminding candidates to observe the relevant data protection principle as set out in the guidance notes at Appendix K before using an image of an identified person for the purpose other than the original purpose of collection (para. 18.12).

Appendix IK**Press Releases**

LCQ6: 2011 Election Committee Subsector Elections

Following is a question by the Hon Ronny Tong Ka-wah and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, in the Legislative Council today (December 21):

Question:

It has been reported that there were a number of cases of suspected vote-rigging and irregularities in the 2011 Election Committee Subsector (ECSS) Elections. For example, people who used to be members of a subsector continue to receive poll cards of that subsector even though they are no longer eligible to be registered as voters for that subsector after changing jobs. Moreover, among those who were elected uncontested, some members of the agriculture and fisheries subsector are engaged in occupations which are unrelated to the agriculture and fisheries industry. In this connection, will the Government inform this Council:

(a) whether the Electoral Affairs Commission had verified and updated the registers of ECSS voters in accordance with the requirements in the law before sending out the poll cards for this year's ECSS Elections; if it had not, of the reasons for that; if it had, the methods employed to verify the eligibility of the voters, together with a table listing the number of voters who were disqualified in each subsectors, the reasons for their disqualification, the number of voters in each subsectors in the ECSS Elections in 2006 and this year, as well as the difference in the number of voters between 2006 and this year;

(b) whether it has assessed if people engaged in occupations which are unrelated to the agriculture and fisheries industry being elected as members of that subsector has contravened electoral law; if the assessment findings are negative, of the reasons for that; and

(c) whether the authorities have made reference to overseas examples in studying and reviewing ways to improve the electoral and verification systems so as to ensure that the Legislative Council Election to be held next year will really achieve the objectives of fairness, openness and being free from corruption; if they have, of the overseas examples to which they have made reference, and the details of those electoral and verification systems?

Reply:

President,

Regarding the three parts of the question, my response is as follows:

(a) 2011 is an ECSS Elections year. Following past practices, the Electoral Registration Officer (ERO) sent letters to all the umbrella organisations of the subsectors a few months before the voter registration deadline in the year. The letters requested each of the umbrella organisations to provide, within one to two months, a list of their members who are eligible for registration

as voters of the respective subsectors according to the requirements in the electoral legislation.

The ERO compared and checked the lists provided by the umbrella organisations against the current register of voters. The ERO sent written inquiries to those who were no longer members of the organisations and hence might no longer be eligible for registration as voters of the relevant subsectors. The written inquiries were sent by registered post and before the statutory deadline of June 30, 2011, in accordance with the relevant legislation. If the voters concerned did not provide, before the statutory deadline of July 16, proof that they were still eligible for registration as voters in the relevant subsectors, the ERO would delete them from the registers of voters to be published in the year, in accordance with the relevant legislation. The ERO would also put the voters concerned on the omissions list. If, after the publication of the omissions list, the voters concerned did not lodge claims before the statutory deadline of August 29, or the claims they lodged were not accepted by the Revising Officer, their names would not be included in the final register of voters.

After the publication of the final register of voters and before the election, if an organisation mentioned above provides updates of its membership list to the ERO, showing that a member has lost his membership and is therefore no longer eligible for registration as a voter of the relevant subsector, the ERO will send a letter by registered post to the voter, informing him that he has been disqualified from voting in the relevant subsector, and the consequences of engaging in corrupt conduct. On the poll register to be used in the polling station during the election, the ERO will put a marker next to the name of the person. If the person proceeds to the polling station and asks for issue of a ballot paper, the staff at the polling station will give warning to the person that he has been disqualified from voting in the relevant subsector, and the consequences of engaging in corrupt conduct. The ERO will also include the person in the inquiry process I just mentioned before, when compiling the provisional register of voters next year.

There are 249,499 voters in the 2011 final register of voters. There has been a net increase of some 29,000 voters when compared with the 220,307 voters in the 2006 final register. The number of voters by subsectors is set out at the Annex. The 2006 and 2011 final registers are five voter registration cycles apart. There were newly registered voters and voters who were deleted every year. Reasons for voters to be deleted include voters who are no longer eligible for registration in a subsector, voters who are no longer eligible for registration as electors for geographical constituencies, voters who have deceased, etc. Those voters who have been deleted may re-apply for registration as voters in the following year if they become eligible again (for example, renewal of membership). Therefore, there may be overlapping in the figures across the five years. The figures in the Annex are the net change in the number of voters between 2006 and 2011.

(b) All the public elections in Hong Kong are governed by legislation. Voter registration, eligibility of candidature, and electoral procedures are all handled in accordance with relevant legislation.

The Legislative Council Ordinance and the Schedule to the Chief Executive Election Ordinance stipulate who or which bodies

are eligible for registration in each of the functional constituencies and subsectors. According to section 20B of the Legislative Council Ordinance and section 12(1) of the Schedule to the Chief Executive Election Ordinance, the bodies which are eligible for registration as voters in the Agriculture and Fisheries Subsector may submit applications. Registered and eligible voters may participate in the election in accordance with the relevant legislation.

(c) In the light of the recent public concerns that some voters may have made false declarations about residential addresses, the Administration has conducted a review of the existing arrangements and identified areas for improvement.

Firstly, we propose to introduce a requirement that address proof should be provided as standard supporting evidence at the same time when a person applies for registration as an elector of geographical constituency or when a registered elector applies for change in his residential address.

Secondly, we will enhance the existing checking on the voter register.

Thirdly, we will consider introducing legislative amendments to require electors to report change of registered address and to introduce sanction for registered electors who fail to report change of addresses before the statutory deadline and who vote at an election afterwards.

Fourthly, we will enhance publicity measures.

Fifthly, we will conduct additional checks on lists of demolished buildings and buildings to be demolished.

The proposed measures were discussed at the Panel on Constitutional Affairs meeting on December 19, 2011. We will continue to listen to the views of Members and the public.

When deliberating these proposals, we have made reference to the legislation in other jurisdictions, including certain countries where common law is practised, such as Australia, the United Kingdom and Canada. For example, for address proof, driving licence is required under the voter registration system in Australia, and voters in Canada are required to produce address proof when casting votes. We will continue to make reference to the arrangements in other places to improve our voter registration system in the light of the actual situation of Hong Kong.

Since the Legislative Council Ordinance was enacted in 1997, the Administration conducts review on the Ordinance before every Legislative Council ordinary election. The sectors and trades covered by the functional constituencies and their electorates are updated as appropriate in the light of the latest developments and other relevant factors. In the process, if we have received reports or information indicating that certain corporate electors may have ceased operation, or should not continue to be electors of the relevant constituencies, the Administration will inquire into or examine the situation, and consider whether to propose certain corporate electors be deleted.

Ends/Wednesday, December 21, 2011
Issued at HKT 16:19

Number of Election Committee Subsector Voters in 2006 and 2011

Election Committee Subsectors	No. of Voters in 2006 Final Register	No. of Voters in 2011 Final Register	Net increase (/ decrease) in no. of voters in 2011 Final Register when compared to 2006 Final Register
First Sector			
1. Catering	8,191	7,934	(257)
2. Commercial (First)	990	860	(130)
3. Commercial (Second)	1,792	1,783	(9)
4. Employers' Federation of Hong Kong	112	122	10
5. Finance	136	125	(11)
6. Financial Services	580	568	(12)
7. Hong Kong Chinese Enterprises Association	319	321	2
8. Hotel	95	101	6
9. Import and Export	1,392	1,434	42
10. Industrial (First)	743	610	(133)
11. Industrial (Second)	517	695	178
12. Insurance	140	135	(5)
13. Real Estate and Construction	719	754	35
14. Textiles and Garment	3,779	3,188	(591)
15. Tourism	887	1,118	231
16. Transport	179	201	22
17. Wholesale and Retail	4,244	6,879	2,635
Second Sector			
18. Accountancy	20,765	24,630	3,865
19. Architectural, Surveying and Planning	5,584	6,778	1,194
20. Chinese Medicine	4,250	5,864	1,614
21. Education	78,840	86,618	7,778
22. Engineering	7,742	9,052	1,310
23. Health Services	35,873	39,128	3,255
24. Higher Education	6,865	9,106	2,241
25. Information Technology	5,004	5,522	518
26. Legal	5,560	6,583	1,023
27. Medical	10,087	11,118	1,031
Third Sector			
28. Agriculture and Fisheries	160	159	(1)
29. Labour	554	626	72
31. Social Welfare	11,656	14,429	2,773
32. Sports, Performing Arts, Culture and Publication	1,836	2,358	522
Fourth Sector			
35. Chinese People's Political Consultative Conference	118	141	23
36. Heung Yee Kuk	147	147	0
37. Hong Kong and Kowloon District Councils	221	200	(21)
38. New Territories District Councils	230	212	(18)
Total	220,307	249,499	29,192

Appendix III

Relevant documents on proposed guidelines on election-related activities in respect of the Election Committee subsector elections issued by the Electoral Affairs Commission

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	18.7.2011 (Item III)	Agenda Minutes
	18.6.2012 (Item I)	Electoral Affairs Commission Report on the 2012 Chief Executive Election

Council Business Division 2
Legislative Council Secretariat
11 May 2016