

Legislative Council Panel on Constitutional Affairs

**Proposed Guidelines on Election-related Activities
in respect of the Chief Executive 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 Chief Executive ("CE") 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.

3. It has been the established practice of the EAC to update and publish the guidelines before each CE election for adoption in the coming election. 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 November 2011, legislative amendments have been made to the electoral legislation to put into effect a number of changes relating to the electoral arrangements and the maximum amount of election expenses. Furthermore, the Electoral Legislation (Miscellaneous Amendments) (No. 2) Ordinance 2015 ("the Ordinance") has made technical amendments to certain electoral arrangements for alignment of the electoral arrangements of the CE election with other public elections. With the passage of the Ordinance by the Legislative Council on 2 June 2016, the Ordinance has commenced operation on 10 June 2016 upon gazettal.

THE PROPOSED GUIDELINES

5. The next CE election will be held on 26 March 2017. In this regard, the EAC released the proposed guidelines on 13 June 2016 for public consultation. The consultation period will end on 26 June 2016. The guidelines finalised afterwards will be adopted in the coming CE election.

6. Compared to the last edition issued in November 2011, the major revisions in the proposed guidelines are:

- (a) incorporate the legislative amendments made to the subsidiary legislation under the EAC Ordinance concerning the simplified arrangements for submission of election advertisements for public inspection;
- (b) to reflect the legislative amendments made to the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A) for the revision of the maximum amount of election expenses;
- (c) to reflect the legislative amendments made to the subsidiary legislation under the EAC Ordinance in relation to some technical details concerning electoral procedures; and
- (d) to elaborate on certain parts of the guidelines to enhance understanding and, where appropriate, align with the other electoral guidelines.

7. 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 with the other guidelines on election-related activities. For example, similar changes have been incorporated in the Guidelines for the District Council Election published in September 2015, the Proposed Guidelines for the Legislative Council Election published in March 2016 and the Proposed Guidelines for the Election Committee Subsector Elections published in May 2016.

PUBLIC CONSULTATION PERIOD

8. 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 14 days from 13 June to 26 June 2016 (both dates inclusive).

9. 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 16 June 2016 to present their views to the EAC orally.

10. The EAC will take into account the views received during the public consultation period in finalising the guidelines. The final guidelines will be issued around late October 2016.

ADVICE SOUGHT

11. 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 (eacnq@reo.gov.hk), during the public consultation period.

Registration and Electoral Office
June 2016

**Major Changes in the Proposed Guidelines
on Election-related Activities in respect of the
Chief Executive Election
as Compared with the Guidelines Issued in November 2011**

Relevant Chapter	Major changes
Chapter 5 <i>Polling and counting arrangements</i>	<ul style="list-style-type: none">• specifying a deadline for gazetting the main polling station, the counting station and the dedicated polling station(s) (para 5.1).
Chapter 7 <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i>	<ul style="list-style-type: none">• 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 agent, election expense agents, polling agents and counting agents (Parts V to VIII of the Chapter).
Chapter 8 <i>Election advertisements</i>	<ul style="list-style-type: none">• reminding any person or organisation publishing materials to appeal directly or indirectly to electors to vote or not to vote for a candidate 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 (para. 8.3);• 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 (para. 8.4);• 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 (para. 8.6);

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> ● reminding candidates to follow the application guidelines issued by the Lands Department for temporary occupation of government land for holding electioneering activities (Part V of the Chapter); and ● setting out the simplified arrangements for submission of EAs for public inspection in accordance with the amendments made to section 87 of the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) (paras. 8.44 to 8.50).
<p>Chapter 9, Appendix H and I <i>Electioneering activities at premises or buildings where electors reside, work or frequent</i></p>	<ul style="list-style-type: none"> ● 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 electors to election agents or other contractors for electioneering purpose (para. 9.12 and Appendix H); ● setting out four cases as suggested by the OPCPD to facilitate better understanding of the privacy concerns of the electors and compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) (Appendix I); ● requesting candidates to respect electors’ 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 electors over email (para. 9.13); and ● 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 (para. 9.20).

Relevant Chapter	Major changes
<p>Chapter 11 <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● 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) (paras. 11.3 to 11.5, 11.9 and 11.20); and ● reminding the print media to ensure that any news reporting or references made in their publications should not give unfair publicity to any candidate in accordance with the fair and equal treatment principle (paras. 11.17 and 11.19).
<p>Chapter 15 <i>Exit poll</i></p>	<ul style="list-style-type: none"> ● updating the administrative procedures in approving applications for the conduct of exit polls and the enhanced measures to be adopted to ensure the fairness of election (paras. 15.4, 15.5 and 15.7).
<p>Chapter 16 and Appendix R <i>Election expenses and election donations</i></p>	<ul style="list-style-type: none"> ● reminding candidates of the need of apportionment of expenses between election-related purposes and any other purposes (para. 16.6); ● revising the maximum amount of election expenses for the election in accordance with the amendment made to section 2 of the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap 554A) (para. 16.9); and ● 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 R (para. 16.22).
<p>Chapter 18 <i>Namedropping</i></p>	<ul style="list-style-type: none"> ● 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 (para. 18.4).