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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 20 June 2016**

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

Purpose

1. This paper summarizes the past discussion held by the Panel on Constitutional Affairs ("the Panel") on the Proposed Guidelines on Election-related Activities in respect of the Chief Executive ("CE") Election in 2012 ("the 2012 Proposed Guidelines") issued by the Electoral Affairs Commission ("EAC").

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. The aim of such guidelines is to provide a code of conduct, based on the principle of fairness and equality, for conducting election-related activities, and to give guidance in layman's language on how to comply with the relevant electoral legislation, so that candidates and other interested parties can avoid breaching the provisions inadvertently.

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.

Relevant issues of concern of the Panel

4. The Panel discussed the 2012 Proposed Guidelines at its meeting on 17 October 2011. The major changes in the 2012 Proposed Guidelines as compared with the guidelines last issued by EAC in January 2010 are set out in **Appendix I**. The major concerns expressed by members are summarized below.

Calculation of election expenses

5. According to the 2012 Proposed Guidelines, the term "candidate" relating to election expenses included a person who had publicly declared an intention to stand for election at any time before the close of nominations for the election, regardless of whether he/she had submitted a nomination form. Some members noted with concern that some prospective candidates as reported by the media had deferred the declaration of their candidacies so that the relevant expenses incurred in the conduct of their electioneering activities would not be counted as election expenses. They were also dissatisfied that the Registration and Electoral Office ("REO") was unable to tell unequivocally whether the conduct of these "potential candidates" could be regarded as public declaration of an intention to stand for election and whether the expenses incurred in the conduct of relevant activities should be counted towards election expenses and subject to requirements relating to the declaration and lodgment of election return.

6. The Administration advised that section 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO") stipulated that "election expenses" meant expenses incurred or to be incurred, before, during or after an election, by a candidate. The term "candidate" in relation to election expenses was clearly defined in law. Any expenditure incurred for such election purpose should be regarded as election expenses. The Administration explained that according to ECICO, a person had to keep an accurate account of all election expenses incurred and submit an election return to REO declaring his election expenses within a period specified in law. Candidates who intended to run for the CE election should abide by the relevant electoral legislation as any breach of the requirements might involve legal liabilities.

7. Some members questioned why a person once having publicly declared his intention to run was required to submit election return even though he/she had not stood as a candidate eventually. The Administration advised that the requirement was to prevent the person concerned from deterring other prospective candidates from contesting the election by announcing his own intention to stand for election.

Electioneering activities and visits to public bodies

8. Some members raised concern that some "potential candidates" had been conducting high profile visits to public bodies and such activities might be seen as an unfair advantage over other candidates. Given that the "potential candidates" concerned were no longer holders of public offices, there were doubts as to whether it was appropriate for the public bodies, which involved

the use of public funds, to entertain such visits. The Administration advised that there were guidelines to be observed by owners, management and organizations for handling applications for conduct of electioneering activities in the premises within their jurisdiction. They should adhere to the fair and equal treatment principle in respect of all candidates for the purposes of electioneering. Such visits should not undermine the operation and the provision of service of the public organization to members of the public.

Attendance of public functions by government officials and politically appointed officials

9. Concern was raised about the relevant rules governing the participation of government officials and politically appointed officials in election-related activities. The Administration advised that a chapter of the 2012 Proposed Guidelines was on the attendance of public functions by government officials. The guiding principles were that their participation should not give rise to any conflict of interest with their official duties, and that it should not involve the use of public resources.

Relevant question raised at Council meeting

10. At the Council meeting of 29 June 2011, Hon Alan LEONG raised an oral question on "Guidelines on election-related activities in respect of the CE elections". The question of Mr LEONG and the reply of the Secretary for Constitutional and Mainland Affairs are in **Appendix II**.

Recent development

11. The fifth-term CE election will be held on 26 March 2017. The Administration will brief the Panel on the Proposed Guidelines on Election-related Activities in respect of the CE Election in 2017 at the next meeting on 20 June 2016.

Relevant papers

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

**Major Changes in the Proposed Guidelines
for the 2012 Chief Executive Election
as Compared with the Guidelines Last Issued in January 2010**

Relevant Chapter/ Appendix	Major changes
Chapter 3 <i>Nomination of candidates</i>	<ul style="list-style-type: none"> ● Updating the minimum number of qualified subscribers for a valid nomination as stipulated in section 16(2) of the Chief Executive Election Ordinance (Cap 569) (“CEEEO”) (paras. 3.7 and 3.17).
Chapter 4 <i>The voting system</i>	<ul style="list-style-type: none"> ● Setting out the changes to the voting system for the Chief Executive Election as stipulated in sections 22(3) and 27(2) of the CEEEO: <ul style="list-style-type: none"> (a) when there are two validly nominated candidates at the close of nominations or two candidates remain after the elimination of all other candidates at the end of all the necessary rounds of voting, a single round of voting must be conducted for them. If a candidate obtains more than 600 valid votes, the candidate is returned at the election. However, if no candidate obtains more than 600 valid votes in that single round of voting, no candidate is returned at the election and the proceedings for the election shall be terminated (paras. 4.3 and 4.4); and (b) when there is only one validly nominated candidate in the election, the candidate shall be returned at the election if the number of “support” votes obtained by him exceeds 600. If the number of support votes obtained by the candidate does not exceed 600, the candidate shall not be returned at the election and the proceedings for the election shall be terminated (paras. 4.7 and 4.8).

Relevant Chapter/ Appendix	Major changes
<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 station in prisons is allowed as stipulated in section 24 of the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) (“EP (CEE) Reg”) (para. 5.14).
<p>Chapter 8 and Appendix D <i>Election advertisements</i></p>	<ul style="list-style-type: none"> ● Setting out the revised election expense limit of \$13,000,000 as specified in section 2 of the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (para. 8.10). ● Setting out the arrangements for submitting by electronic means the declaration and copy of an election advertisement (“EA”) to be displayed, distributed or otherwise used by electronic means as specified in section 81 of the EP (CEE) Reg (para. 8.41(a) and Appendix D). ● 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 of the Public Health and Municipal Services Ordinance (Cap 132) as stipulated in section 81 of the EP (CEE) Reg (para. 8.41(b)). ● 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 (para. 8.74).

Relevant Chapter/ Appendix	Major changes
<p>Chapter 9 <i>Electioneering at the living and working places of electors, premises of organisations to which electors belong and buildings which electors 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 H to the Guidelines) before they undertake such activities (para. 9.12).
<p>Chapter 11 and Appendix K <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● Aligning the guidelines for election broadcasting, media reporting and election forums with those adopted in the Guidelines on Election-related Activities in respect of the District Council Election (“DC Guidelines”) published in September 2011.
<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 in the DC Guidelines.
<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 Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”) (para. 16.17). ● Setting out the statutory relief mechanism for handling minor errors or omissions in the return and declaration of election expenses and donations as stipulated in section 37A of the ECICO (paras. 16.28 – 16.30).

Relevant Chapter/ Appendix	Major changes
Chapter 17 <i>Corrupt and illegal conduct</i>	<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).
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 H before using an image of an identified person for a purpose other than the original purpose of collection (para. 18.11).
Appendix B <i>The 4 Sectors of the Election Committee and Subsectors of Sectors</i>	<ul style="list-style-type: none"> ● Updating the number of members to be returned to each sector and subsector of the Election Committee in the fifth term as specified in section 2 of the Schedule to the CEEO.

Appendix II

Press Releases

LCQ3: Guidelines on Election-related Activities in respect of the
the Chief Executive Elections

Following is a question by the Hon Alan Leong Kah-kit and a
reply by the Secretary for Constitutional and Mainland Affairs,
Mr Stephen Lam, in the Legislative Council today (June 29):

Question:

The media earlier reported that the Chief Secretary for
Administration (CS) deployed public resources of the Government
to prepare for his Chief Executive (CE) electioneering campaign,
including the design of a relevant web site, which has aroused
public concern. In this connection, will the Government inform
this Council:

(a) whether the authorities will investigate the aforesaid
matter to ascertain if the alleged deployment of public
resources by CS for preparing his CE electioneering campaign has
contravened the Guidelines on Election-related Activities in
respect of the Chief Executive Elections, and if the provision
of advice by some civil servants on the design of and technical
support for the aforesaid web site has contravened the Civil
Service Code; if they will, of the details; if not, the reasons
for that;

(b) as it was reported that the contents of the aforesaid web
site focused mainly on CS, and the Internet Professional
Association (iProA) was involved in the production of the web
site, whether the aforesaid web site was set up for CS to
discharge his public duties; given that one of the organisations
commissioned by the Government to implement the Internet
Learning Support Programme (ILSP) is formed by iProA and another
organisation, if the aforesaid web site was set up for the
discharge of public duties, whether the ILSP selection board
members knew about the involvement of iProA in the production of
the aforesaid web site; if the web site was not set up for the
discharge of public duties, whether CS has made a declaration to
the government department responsible for implementing ILSP; and

(c) whether the Government will consider formulating guidelines
to explicitly require that principal officials under the
accountability system and Executive Council Members who plan to
stand for elections to public office must resign at a specified
time, so as to avoid the allegation of using public resources to
conduct electioneering campaigns and to ensure that elections to
public office are conducted in a fair, just and open manner; if
it will, of the details; if not, the reasons for that?

Reply:

President,

(a) According to the Guidelines on Election-related Activities
in respect of the Chief Executive Elections as well as the rules
and guidelines issued by the Civil Service Bureau (CSB),
officers who are particularly susceptible to accusations of
bias, namely Directorate Officers, Administrative Officers,
Police Officers and Information Officers, are prohibited from

participating in electioneering activities. There is no objection in principle to other civil servants and non-civil service contract staff to participate in electioneering activities in their private capacity provided that it does not give rise to any conflict of interest with their official duties. Officers concerned should also comply with the Civil Service Regulations on outside work. CSB will normally ask bureaux/departments to remind all staff of the rules on participation in electioneering by re-circulating the relevant guidelines before an election.

Regarding the incident reported by the media earlier, the Chief Secretary for Administration (CS) has already issued a statement emphasising that in the use of government resources he had fully complied with relevant government regulations.

It was alleged in the press report that one civil servant and one non-civil service contract staff had taken part in the design meeting of the website. The Information Services Department (ISD) had already stated that it had not sent any member of its staff to attend the meeting referred to in the press report and it had further investigated if the two public officers had attended the meeting in their private capacity. As mentioned in the statement by the ISD on June 27, the civil servant had not attended the meeting referred to in the press report, had not heard of the website mentioned, and had not participated in any electioneering activities. Regarding the non-civil service contract staff, the staff had, in a private capacity and outside office hours, exchanged views on issues not related to official duties. Neither remuneration nor government resources were involved. There was no conflict of interest with the staff's official duties. The ISD is therefore of the view that the staff has not breached any civil service rules or guidelines. The CSB had scrutinised the report submitted by the ISD and endorsed the findings.

(b) There is only one official website for the CS, i.e. www.cso.gov.hk. The ISD is the webmaster of the website, providing website design and technical support in relation to the official duties and responsibilities of the CS. The CS had firmly stated earlier that he was not involved in the work relating to the Internet Learning Support Programme.

(c) Section 14 of the Chief Executive Election Ordinance (Cap. 569) stipulates that any person holding an office, whether permanent or temporary in a Government department or bureau and employed in the department or bureau, is disqualified from being nominated as a candidate at a Chief Executive election. According to the Code for Officials under the Political Appointment System, politically appointed officials are disqualified from being nominated as a candidate at an election of the Chief Executive. Apart from the above requirements, if any principal official or member of the Executive Council wishes to stand for the election of the Chief Executive, he/she may decide on his/her own when to step down from office. As participation in a Chief Executive election is a personal decision, we believe that there is no need to specify the time by which a prospective candidate should step down from office. Moreover, it is stipulated in section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) that each candidate at an election of the Chief Executive must lodge with the Chief Electoral Officer an election return setting out the candidate's election expenses in the election and all election donations received by or on behalf of the candidate in

connection with the election. In view of the above, we consider that there already exist clear and definite provisions to ensure that elections will be held in a fair, just and open manner.

Ends/Wednesday, June 29, 2011
Issued at HKT 14:43

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Appendix III

Relevant documents on proposed guidelines on election-related activities in respect of the Chief Executive election issued by the Electoral Affairs Commission

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	17.10.2011 (Item III)	Agenda Minutes
	16.1.2012 (Item IV)	Agenda Minutes

Council Business Division 2
Legislative Council Secretariat
15 June 2016