

Legislative Council Panel on Constitutional Affairs

**Proposed Guidelines on Election-related Activities
in respect of the District Council 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 District Council ("DC") 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 a DC 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 relating to the electoral and voter registration arrangements, and take into account revisions which are needed in the light of past experience to enhance and align the provisions therein.

THE PROPOSED GUIDELINES

4. The next DC ordinary election will be held on 24 November 2019. In this regard, the EAC released the proposed guidelines on 11 June 2019 for public consultation. The consultation period will end on 10 July 2019. The guidelines finalised afterwards will be adopted in the 2019 DC Ordinary Election and any by-elections to be held afterwards. Compared to the last edition issued in September 2015, the major revisions in the proposed guidelines are:

- (a) to reflect the legislative amendments made to the District Councils Ordinance (Cap. 547) to increase the total number of DC constituencies with effect from 1 January 2020;
- (b) to reflect the legislative amendments made to the subsidiary legislation under the EAC Ordinance in relation to some technical details concerning voter registration arrangements and electoral procedures, such as the requirement for an elector to submit address proof upon an application for change of principal residential address, the type of documents that an elector should produce before a ballot paper can be issued to him/her, etc.;
- (c) to reflect the legislative amendments made to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) for introducing the exemption from criminal liability for a third party (other than a candidate and his/her election expense agents) publishing an election advertisement on the Internet if the only election expenses thus incurred are merely electricity and/or Internet access charges;
- (d) to reflect the legislative amendments to be made to the District Councils Ordinance for revising the subsidy rate of the financial assistance scheme for candidates¹;
- (e) to reflect the legislative amendments to be made to the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C) for revising the maximum amount of election expenses which can be incurred by candidates²; and
- (f) to elaborate on certain parts of the guidelines to enhance understanding and, where appropriate, align with the other electoral guidelines.

5. In drawing up the proposed guidelines, the EAC has taken into account the experience in past elections and has suggested revisions in the

¹ The District Councils Ordinance (Amendment of Schedule 7) Order 2019 for making the relevant amendments was tabled at the Legislative Council (“LegCo”) in May 2019, and, subsequent to the completion of negative vetting on 5 June, will take effect on 28 June.

² The Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2019 for making the relevant amendments was tabled at the LegCo in May 2019, and, subsequent to the completion of negative vetting on 5 June, will take effect on 28 June.

interest of clarity and compliance. Furthermore, relevant government departments have been consulted on the parts of the proposed guidelines which fall within their respective purviews. Most of the changes incorporated into the proposed guidelines are for alignment with the other guidelines on election-related activities. For Members' easy reference, the major changes, as compared with the existing guidelines, are set out at the Appendix to the "Message from the Chairman" of the proposed guidelines (see Annex of this paper).

PUBLIC CONSULTATION PERIOD

6. 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 June to 10 July 2019 (both dates inclusive).

7. 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 25 June 2019 to present their views to the EAC orally.

8. 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 early September 2019.

ADVICE SOUGHT

9. 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 (eacenq@eac.hk), during the public consultation period.

**Registration and Electoral Office
June 2019**

**Major Changes in the Proposed Guidelines
for the District Council Election
as Compared with the Guidelines Issued in September 2015**

Relevant Chapter	Major changes
Chapter 1 <i>Introduction</i>	<ul style="list-style-type: none">● increasing the total number of District Council (“DC”) constituencies for the 2019 DC Ordinary Election to 452 in accordance with Schedule 3 to the District Councils Ordinance (Cap. 547) (“DCO”) (para. 1.5).
Chapter 2 <i>Registration of electors and voting system</i>	<ul style="list-style-type: none">● specifying the use of ordinary surface mail, instead of registered post, for sending all inquiries and notifications to electors in accordance with the amendment made to section 5(9) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) (“EAC (ROE) (GC) Reg”) (para. 2.13);● specifying the requirement to submit documentary evidence proving an elector’s principal residential address upon an application for change of that address by the elector in accordance with the amendment made to section 10A(3) of the EAC (ROE) (GC) Reg (para. 2.17);● revising the statutory deadline for electors to report on change of principal particulars in accordance with the amendment made to section 10A(12) of the EAC (ROE) (GC) Reg (paras. 2.17 and 2.27);● setting out clearly the fine and imprisonment that electors who knowingly or recklessly give false or misleading information for voter registration are liable to in accordance with the amendment made to section 22 of the EAC (ROE) (GC) Reg (para. 2.18); and

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> specifying that a person who lodges an objection or a claim must provide sufficient information so as to inform the Revising Officer of the grounds of the objection or claim and that the Revising Officer may dismiss the objection or claim if the person does not attend the hearing in accordance with the amendments made to sections 2(5A) and 2B of the Registration of Electors (Appeals) Regulation (Cap. 542B) (para. 2.26).
<p>Chapter 3 <i>Nomination of candidates</i></p>	<ul style="list-style-type: none"> updating the guidelines to reflect the introduction of the Confirmation Form for use by the Returning Officer (“RO”) in the exercise of his/her statutory power to discharge his/her duties under the nomination procedure (para. 3.9(b)).
<p>Chapter 4 <i>Polling and counting arrangements</i></p>	<ul style="list-style-type: none"> setting out precisely the types of documents that an elector should produce before a ballot paper can be issued to him/her in accordance with the amendment made to section 53 of the Electoral Affairs Commission (Electoral Procedure) (District Councils Election) Regulation (Cap. 541F) (“EAC (EP) (DC) Reg”) (paras. 4.30 and 4.31); and updating the category of invalid ballot papers to include the ballot paper on which a vote for a deceased or disqualified candidate is recorded and the name of, and other information relating to, the candidate are crossed out in accordance with the amendment made to section 78 of the EAC (EP) (DC) Reg (para. 4.75(f)).
<p>Chapter 7 <i>Election advertisements</i></p>	<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 behalf of the candidates since the materials may be capable of being understood as referring to certain identified candidates (para. 7.9);

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> ● reflecting the new provision under section 23(1A) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) that a person (other than a candidate and his/her election expense agents) who publishes an election advertisement (“EA”) on the Internet is exempted from the relevant criminal liability under section 23(1) of the ECICO if the only election expenses incurred are either or both of electricity charges and charges necessary for accessing the Internet (para. 7.10); ● 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. 7.12); ● revising the deadline for candidates to post corrective information in relation to EAs after the polling day (para. 7.57); and ● reflecting the new technical requirements on election mails that may be sent free of postage by candidates <i>subject to the enactment of</i> the proposed amendments made to section 102 of the EAC (EP) (DC) Reg (para. 7.78(d) and (e)).
<p>Chapter 8 and Appendix F <i>Electioneering activities in premises or buildings where electors reside, work or frequent</i></p>	<ul style="list-style-type: none"> ● reflecting the guidelines issued by the Office of the Privacy Commissioner for Personal Data to remind candidates to adopt security measures when transferring personal data of electors to election agents or other contractors for electioneering purpose (para. 8.20 and Appendix F); 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

Relevant Chapter	Major changes
	concerned, especially when the office bearers themselves are candidates in the election (para. 8.33).
<p>Chapter 10 <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● specifying that for the purpose of the principle of fair and equal treatment of candidates under the guidelines in the Chapter, “candidate” refers to a person whose nomination form has been received by the relevant RO (para. 10.5); and ● elaborating on the requirements of the fair and equal treatment principle for producing and publishing election-related programmes and reports by broadcasters licensed under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) as well as the print media (the Chapter).
<p>Chapter 13 and Appendix D <i>Prohibition against Canvassing Activities outside Polling Stations</i></p>	<ul style="list-style-type: none"> ● reminding candidates of the canvassing activities which are forbidden in the No Canvassing Zone (“NCZ”) (para. 13.3 and Appendix D); ● setting out clearly the statutory requirement under section 43 of the EAC (EP) (DC) Reg that canvassing activities are strictly prohibited on the storey at street level of all the buildings within the NCZ (para. 13.12); and ● reminding candidates to remove the EAs on the windows or the bodywork of a public service vehicle before the polling day if it will pass through or be parked within the NCZ on the polling day (para. 13.13).
<p>Chapter 15 and Appendix A <i>Election expenses and election donations</i></p>	<ul style="list-style-type: none"> ● revising the maximum amount of election expenses which can be incurred by or on behalf of a candidate <i>subject to the enactment</i> of the proposed amendment to section 3 of the Maximum Amount of the Election Expenses (District Council Election) Regulation (Cap. 554C) (para. 15.16); ● aligning the deadlines for submitting the return and

Relevant Chapter	Major changes
	<p>declaration of election expenses and election donations (“election return”) for all candidates in the same election, in accordance with the amendments made to section 37(1), (1F), (1G) and (1N) of the ECICO (para. 15.32);</p> <ul style="list-style-type: none"> ● revising the threshold for submission of invoices and receipts giving particulars of the election expenses for the purpose of election return <i>subject to the enactment</i> of the proposed amendment to section 37 of the ECICO (para. 15.33 and Appendix A); ● revising the limit in relation to relief for minor errors in election returns <i>subject to the enactment</i> of the proposed amendment to item 6 of the Schedule to the ECICO (para. 15.38 and Appendix A); and ● revising the subsidy rate of financial assistance for the eligible candidates <i>subject to the enactment</i> of the proposed amendment to Schedule 7 to the DCO (para. 15.45).
<p>Chapter 17 <i>Namedropping</i></p>	<ul style="list-style-type: none"> ● reminding candidates to comply with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486) in handling the personal data of his/her supporters (paras. 17.4 and 17.11); and ● setting out the guidelines for seeking prior written consent from supporters when a candidate publishes EAs and live broadcast of electioneering activities through online platforms (para. 17.5).