

Legislative Council Panel on Constitutional Affairs

**Proposed Guidelines on Election-related Activities
in respect of the Legislative 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 Legislative Council ("LegCo") Election ("proposed guidelines") issued by the Electoral Affairs Commission ("EAC").

BACKGROUND

2. Under section 6(1)(a) of the Electoral Affairs Commission Ordinance (Cap. 541) ("EACO"), the EAC may issue guidelines relating to the conduct or supervision of or procedure at an election. These guidelines aim to explain in simple language the relevant provisions under the electoral legislation and to promulgate a code of conduct in election-related activities based on the fair and equal treatment principle.

3. It has been the established practice of the EAC to update and publish the guidelines before a LegCo general election for adoption in the upcoming general 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 seventh-term LegCo general election will be held in the third quarter of this year. In this regard, the EAC has promulgated the proposed guidelines on 9 March 2020 for public consultation, and the consultation period will last until 7 April. The guidelines that are being finalised afterwards will be adopted in the seventh-term LegCo general election and any by-elections to be held thereafter. The proposed guidelines are prepared on the basis of the existing guidelines in respect of the LegCo election (June

2016 edition) with revisions as appropriate. On the legislative amendments front, the major changes include:

- (a) reflecting the proposed amendments made to the Legislative Council Ordinance (Cap. 542) to increase the subsidy rate of financial assistance for eligible candidates of LegCo elections¹;
- (b) reflecting the amendments made to the subsidiary legislation under the EACO in relation to some technical details concerning voter registration arrangements and electoral procedures, such as the requirement that Returning Officers only need to publish the address instead of principal residential address of each candidate in the gazette notice of validly nominated candidates;
- (c) reflecting the amendments made to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in relation to arrangements for lodging election returns by candidates and the exemption from criminal liability for a third party (other than a candidate and his/her election expense agents) who publishes an election advertisement on the Internet and the only election expenses thus incurred are merely electricity and/or Internet access charges; and
- (d) reflecting the proposed amendments made to the Maximum Amount of the Election Expenses (Legislative Council Election) Regulation (Cap. 554D) to increase the limits on the maximum amount of election expenses which can be incurred by candidates for each geographical/functional constituency².

On the guidelines relating to the fairness of the election, the major changes include:

- (e) with reference to the operational experience gained in previous public elections, some measures are proposed to refine the electoral arrangements such as facilitating electors with special needs to vote, permitting electors to make a request to check if a line has been drawn across their names and identity document numbers in the register of electors when applying for ballot

¹ The Legislative Council Ordinance (Amendment of Schedule 5) Order 2020, which aim to effect the relevant amendments, was tabled at the LegCo in February 2020 for negative vetting.

² The Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2020, which aim to effect the relevant amendments, was tabled at the LegCo in February 2020 for negative vetting.

papers, specifying the seating capacity of the area for members of the public to observe the counting of votes at each counting station and the registration arrangements upon admission, etc.; and

- (f) providing further elaboration on certain parts of the guidelines to enhance understanding, and aligning the guidelines with the other electoral guidelines where appropriate.

5. 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 purviews. Most of the changes aim to align the proposed guidelines 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 EACO 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 9 March to 7 April 2020 (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. Due to public health considerations, no public forum will be arranged during the public consultation period in order to reduce the risk of the spread of the epidemic in the community.

8. The EAC will take into account the views received during the public consultation period when finalising the guidelines, which will be issued around mid-June 2020.

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

Registration and Electoral Office
March 2020

**Major Changes in the Proposed Guidelines
for the Legislative Council Election
as Compared with the Guidelines Issued in June 2016**

Relevant Chapter	Major changes
<p>Chapter 2 <i>Composition, Registration of electors and voting system for Geographical Constituencies</i></p> <p>Chapter 3 and Appendix 2 <i>Composition, Registration of electors and voting system for Functional Constituencies</i></p>	<ul style="list-style-type: none">● 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 Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541A) (“<i>EAC (ROE) (GC) Reg</i>”) and section 26A(3) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B) (“<i>EAC (ROE) (FCSEC) Reg</i>”) in February 2018 (paras. 2.22 and 3.31);● 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 and section 26A(12) of the EAC (ROE) (FCSEC) Reg in February 2018 (paras. 2.22, 2.33, 3.31 and 3.44);● 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 and section 42 of the EAC (ROE) (FCSEC) Reg in January 2019 (paras. 2.23 and 3.33); and● 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

Relevant Chapter	Major changes
	Electors (Appeals) Regulation (Cap 542B) in January 2019 (paras. 2.32 and 3.43).
Chapter 4 <i>Nomination of candidates</i>	<ul style="list-style-type: none"> ● specifying that Returning Officers (“ROs”) would state the “address” of each candidate in the notice of validly nominated candidates published in the Gazette in accordance with the amendments made to section 21 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council Election) Regulation (Cap 541D) (“EAC (EP) (LC) Reg”) in January 2020 (para. 4.47).
Chapter 5 <i>Polling and counting arrangements</i>	<ul style="list-style-type: none"> ● Presiding Officers (“PROs”) may make arrangement to facilitate electors with special needs (e.g. senior citizens aged 70 or above, pregnant women and physically-handicapped persons with mobility difficulties) to vote, or even to vote with priority (para. 5.37(a)); ● setting out precisely the types of identity document that an elector should produce before a ballot paper can be issued to him/her in accordance with the amendment made to section 50 of the EAC (EP) (LC) Reg in December 2018 (paras. 5.40 and 5.41); ● specifying that an elector may request to check if a line has been drawn across his/her name and identity document number in the copy of the register of electors when applying for a ballot paper (para. 5.42); ● reminding candidates that votes cast at the small polling stations and the dedicated polling stations will not be counted therein after the close of poll, and to note the delivery and counting arrangements of the relevant ballot papers (para. 5.71); ● specifying the seating capacity and admission arrangement of the public area for observation of counting of votes at each counting station (para. 5.86); ● updating the category of invalid ballot papers to include the ballot paper on which a vote for a deceased or disqualified candidate/list of candidates is recorded and the name of, and other information relating to, the candidate/list of candidates are crossed out in accordance with the amendment made to section 80 of

Relevant Chapter	Major changes
	<p>the EAC (EP) (LC) Reg in January 2019 (paras. 5.94(f) & 5.111(g));</p> <ul style="list-style-type: none"> ● specifying clearly that during the count, questionable ballot papers must be separated and forwarded to the RO or the PRO to decide whether the vote is to be counted in accordance with the amendment made to section 75(7) of the EAC (EP) (LC) Reg in January 2019 (para. 5.95); and ● setting out the provisions on the postponement or adjournment of a Legislative Council general election as a whole, or the election of a particular GC/FC, or the poll/count of a particular polling/counting station as stipulated under the Legislative Council Ordinance (“LCO”) and EAC (EP) (LC) Reg (Part XII of this Chapter).
<p>Chapter 8 <i>Election advertisements</i></p>	<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”) added in January 2019 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. 8.10); ● adjusting the allocation ratio of designated spots between GCs/FCs for candidates to display EAs on government land and property (para. 8.31); ● revising the deadline for candidates to post corrective information in relation to EAs after the polling day (para. 8.60); and ● reflecting the new technical requirements on election mails that may be sent free of postage by candidates in accordance with the amendments made to section 101A of the EAC (EP) (LC) Reg in December 2019 (para. 8.86(d) and (e)).

Relevant Chapter	Major changes
<p>Chapter 9 and Appendix 9 <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. 9.20 and Appendix 9); and ● reminding candidates that information relating to an elector contained in any register of electors or in any extract of any register of electors can only be used for election-related purposes under the electoral legislation and that any abuse or misuse of such information is an offence (para. 9.21).
<p>Chapter 11 <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. 11.5); 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. When determining whether any media is in breach of the principle of fair and equal treatment, the EAC may take into consideration the overall reporting by the media organisation during the election period. (the Chapter).
<p>Chapter 14 and Appendix 7 <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. 14.3 and Appendix 7); ● setting out clearly the statutory requirement under section 40 of the EAC (EP) (LC) Reg that canvassing activities are strictly prohibited on the storey at street level of all the buildings within the NCZ (para. 14.12); 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

Relevant Chapter	Major changes
	<p>parked within the NCZ on the polling day (para. 14.13).</p>
<p>Chapter 16 and Appendix 1 <i>Election expenses and election donations</i></p>	<ul style="list-style-type: none"> ● reminding persons who intend to stand as a candidate at an election to note that under the electoral law, the term “candidate” includes a person who has publicly declared an intention to stand as a candidate at an election before the close of nominations for the election regardless of whether he/she has submitted his/her nomination form. Whether a person has publicly declared an intention to stand for election is to be considered on the basis of substance and not form, including the intention to stand for election, whether the intention to stand for election is made public, and/or whether the acts constitute part of the machinery of the election. In this regard, prospective candidates must exercise due care to avoid incurring any legal liability inadvertently (para. 16.8); ● 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 sections 3, 3A and 4 of the Maximum Amount of the Election Expenses (Legislative Council Election) Regulation (Cap 554D) (para. 16.16); ● revising the threshold for submission of invoices and receipts giving particulars of the election expenses for the purpose of election return in accordance with the amendment to section 37 of the ECICO in December 2019 (para. 16.33 and Appendix 1); ● revising the limit in relation to relief for minor errors in election returns in accordance with the amendments to items 2, 3 and 4 of the Schedule to the ECICO in December 2019 (para. 16.38 and Appendix 1); and ● revising the subsidy rate of financial assistance for the eligible candidate/list of candidates <i>subject to the enactment</i> of the proposed amendment to Schedule 5 to the LCO (para. 16.45).

Relevant Chapter	Major changes
<p>Chapter 18 <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. 18.4 and 18.11); 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. 18.5).