

**For discussion on
21 June 2021**

Legislative Council Panel on Constitutional Affairs

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

PURPOSE

This paper briefs Members on the major changes made to the Guidelines on Election-related Activities in respect of the Election Committee Subsector (“ECSS”) Elections (“the Guidelines”) to be issued by the Electoral Affairs Commission (“EAC”).

BACKGROUND

2. Under section 6(1)(a) of the Electoral Affairs Commission 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 an ECSS 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 and take into account revisions which are needed in the light of past experience to enhance and align the provisions therein.

4. The Guidelines that are currently applicable to ECSS Elections were last updated in September 2016. The Legislative Council passed the Improving Electoral System (Consolidated Amendments) Ordinance 2021 (“the Ordinance”) last month, and the Ordinance was gazetted and came into operation on 31 May. The Ordinance amended a number of electoral laws to put into effect a number of changes relating to the enhancement measures on electoral and voter registration arrangements. These laws are elaborated in the Guidelines to facilitate the awareness and

understanding of the relevant requirements by candidates and other stakeholders and the compliance of such.

MAJOR CHANGES

5. The updated Guidelines to be published is based on the September 2016 edition, with suitable alterations and adaptations to:

- (a) reflect the legislative amendments in respect of the ECSS elections mentioned in paragraph 4 above;
- (b) align, where appropriate, with the amendments already agreed by the EAC and made to other electoral guidelines;
- (c) elaborate on certain parts of the Guidelines to facilitate and enhance public understanding; and
- (d) include the amendments proposed by the relevant government bureaux/departments and organisations.

6. For Members' easy reference, the major changes in the 2021 Guidelines as compared with the September 2016 edition are summarised at **Annex**.

THE WAY FORWARD

7. To tie in with the 2021 ECSS elections, the EAC will publish the Guidelines in late July 2021.

Registration and Electoral Office
June 2021

**Major Changes in the Guidelines on
Election-related Activities in respect of the
Election Committee Subsector Elections
as compared with the edition issued in September 2016**

Relevant Chapter	Major changes
<p>Chapter 1 <i>Introduction</i></p> <p><i>and</i></p> <p>Chapter 2 and Appendices 2 and 3 <i>Composition of the Election Committee</i></p>	<ul style="list-style-type: none"> ● updating the functions of the Election Committee (“EC”); in addition to nominating candidates for the Chief Executive (“CE”) election and electing the CE designate, the EC is also responsible for electing 40 members of the Legislative Council (“LegCo”) and nominating candidates at LegCo elections in accordance with the amended Annexes I and II to the Basic Law (paras. 1.2 and 2.18); ● updating the composition of the EC and the method for constitution of the EC as well as detailing the distribution of seats among subsectors and methods for returning members of each subsector in accordance with the amendment made to section 2 of the Schedule to the Chief Executive Election Ordinance (Cap. 569) (“CEEEO”) in May 2021 (para. 1.3, Part I of this Chapter and Appendices 2 & 3); ● specifying that the EC shall be constituted on 22 October 2021 for the year of 2021 and the term of office shall end on 21 October 2026 in accordance with the amendment made to section 9 of the CEEEO in May 2021 (paras. 1.4 and 2.7); ● specifying that after the interim register of members of the EC is published, each member-elect must submit a signed written oath to the Electoral Registration Officer (“ERO”) 7 days before the publication of the final register of members of the EC for that term of office in accordance with the amendment made to section 42A of the Schedule to the CEEEO in May 2021 (para. 2.8); ● specifying the circumstances of which a person will be regarded as having resigned from the membership of the EC as an ex-officio member in accordance with the amendment made to section 3 of the Schedule to the CEEEO in May 2021 (para. 2.11); and ● specifying that if the end of the term of the current LegCo is more than 12 months away from the constitution date of the EC or the date of publication of the provisional register

Relevant Chapter	Major changes
	<p>for the EC subsector by-election, then an EC subsector by-election and/or supplementary nomination to fill the EC vacancies shall be arranged for the sake of the next LegCo General Election in accordance with the amendment made to sections 4 and 5 of the Schedule to the CEEO in May 2021 (paras. 1.5 and 2.14).</p>
<p>Chapter 3 and Appendix 4 <i>Registration of Ex-officio members of Election Committee and voters and voting system</i></p>	<ul style="list-style-type: none"> ● outlining the arrangement for registering as ex-officio members of the EC in accordance with the amendment made to Part 1A of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) (“EAC (EP) (EC) Reg”) in May 2021 (paras. 3.12 to 3.19); ● specifying the important dates in relation to registration under special voter registration arrangement in 2021 and the standing arrangement of the 2022 voter registration cycle and thereafter in accordance with the amendment made to sections 26, 26A, 29, 30, 31 and 38 of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) (“EAC (ROE) (FCSEC) Reg”) in May 2021 (para. 3.20); ● updating the eligibility to be registered as a voter in accordance with the amendment made to sections 12 and 13 of the Schedule to the CEEO in May 2021 (paras. 3.22 and 3.23); ● specifying that the decision to appoint or replace an authorized representative (“AR”) of a corporate voter may only be made by the governing authority, by whatever name called, of the corporate voter in accordance with the new provisions under section 13(8) of the Schedule to the CEEO added in May 2021 (para. 3.24); ● specifying that an individual applicant is required to submit documentary evidence for an application for change of principal residential address in accordance with the amendment made to section 26A(3) of the EAC (ROE) (FCSEC) Reg in February 2018 (para. 3.34(d)); ● specifying that in determining whether or not a person has been “ordinarily resided in Hong Kong”, multiple factors and the circumstances of the case should be taken into consideration with reference to relevant court cases (paras.

Relevant Chapter	Major changes
	<p>3.36 to 3.39);</p> <ul style="list-style-type: none"> ● specifying the penalties of fine and imprisonment for knowingly or recklessly providing false or misleading information in voter registration in accordance with the amendment made to section 42 of the EAC (ROE) (FCSEC) Reg in January 2019 (para. 3.40); ● specifying that from the 2022 voter registration cycle onwards, only specified persons may inspect the subsector register containing the particulars of individual voters in accordance with the amendment made to sections 25, 29, 38 and 39 of the EAC (ROE) (FCSEC) Reg in May 2021. Only the first character/word of a voter’s name (whether in Chinese or English) and his/her registered residential address will be shown on such subsector register for inspection. The registers containing entries of corporate voters only will be made available for public inspection. Before the relevant legislation takes effect, the arrangement for inspection of registers of voters shall be made in compliance with the judgment and order issued by the Court of Appeal of the High Court in May 2020 (para. 3.47 and Appendix 4); ● 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 that appellant does not appear at the hearing in accordance with the amendment made to sections 2(5A) and 2B of the Registration of Electors (Appeals) Regulation (Cap. 542B) in January 2019. However, for the objection or claim made in relation to the subsector provisional register compiled for 2021, the Revising Officer will determine the objection or claim without a hearing on the basis of written submissions only (paras. 3.53).
<p>Chapter 4 and Appendix 3 <i>Nomination of candidates/nominees</i></p>	<ul style="list-style-type: none"> ● reminding candidates that it is imperative for any candidate claiming to be “independent” or “non-affiliated” (or other similar descriptions) to have factual basis for the claim in accordance with previous court cases. Candidates should seek independent legal advice if they have any doubts about the political affiliation information to be provided for the nomination form and the Introduction to Candidates. Besides, it is an offence for a candidate to make a false statement about his/her political affiliation in an election-

Relevant Chapter	Major changes
	<p>related document (paras. 4.7 to 4.9);</p> <ul style="list-style-type: none"> ● updating the circumstances where a person shall be disqualified from being nominated as a candidate/nominee at a subsector election in accordance with the amendment made to the relevant sections of the Schedule to the CEEO in May 2021 (paras. 4.11 to 4.13); ● specifying that a nomination is invalid unless a candidate/nominee makes a declaration in the nomination form to the effect that he/she will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region (“HKSAR”) in accordance with new provisions under sections 7A and 17A of the Schedule to the CEEO added in May 2021 (paras. 4.16(b) and 4.25(b)); ● specifying the time and method of nomination for EC members to be returned by designated bodies (paras. 4.22 to 4.26 and Appendix 3); ● specifying that the Nominations Advisory Committee is not empowered to advise on matters relating to the declaration by candidates/nominees of upholding the Basic Law and pledging allegiance to the HKSAR, or matters relating to their lodging of deposit in accordance with the amendment made to section 2 of the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (Cap. 541H) in May 2021 (para. 4.30); and ● setting out the composition of the Candidate Eligibility Review Committee (“CERC”), specifying that the CERC will decide whether a nominee/candidate is validly nominated and may request the opinion of Returning Officer (“RO”). The CERC may also make decision based on the opinion of the Committee for Safeguarding National Security of the HKSAR (“Committee on National Security of the HKSAR”) and that a decision made by the CERC on the eligibility of a nominee/candidate pursuant to the opinion of the Committee on National Security of the HKSAR is not subject to legal proceedings, specifying the procedures of determination of the validity of nominations for nominees/candidates, variation of decision on validity of nominations and declaration of valid nominations by the CERC s in accordance with the new provisions under sections 9A and 9B of the CEEO, and sections 12 and 13

Relevant Chapter	Major changes
	of the EAC (EP) (EC) Reg added in May 2021 (Part VI, VII and IX of this Chapter).
<p>Chapter 5 <i>Polling and counting arrangements</i></p>	<ul style="list-style-type: none"> ● specifying that the Chief Electoral Officer (“CEO”) may, by written notice, require an owner or occupier of a building occupied by any school or organisation/association/body receiving grants from the Government to make available the premises for use as a polling station or counting station, and that a person who fails to comply with the requirement made is liable to pay a financial penalty of \$50,000 in accordance with the amendment made to section 28A of the EAC (EP) (EC) Reg in May 2021 (para. 5.16); ● specifying the procedures of issuing ballot papers to a voter/AR under different situations. For issuing ballot papers by using the electronic poll register (“EPR”) system, a voter/AR may observe on the screen of the EPR system his/her name, part of his/her Hong Kong Identity Card number and the type(s) of ballot paper(s) issued to ensure accurate record-keeping in accordance with the amendment made to section 53 of the EAC (EP) (EC) Reg in May 2021 (para. 5.34); ● specifying that as a caring measure for voters/ARs with special needs (including senior citizens aged 70 or above, pregnant women and persons who, because of illness, injury, disability or dependence on mobility aids, are not able to queue for a long time or have difficulty in queuing), the Presiding Officer (“PRO”) may make special queuing arrangement and specifying the practical arrangements to be made, having regard to the different ways of issuing ballot papers under different situations, in accordance with the amendment made to section 49A of the EAC (EP) (EC) Reg in May 2021 (para. 5.37); ● specifying that to enable polling staff to return to their work posts as soon as possible to serve the voters/ARs, when they arrive at their assigned polling stations to vote but find a queue outside, they may present to the staff of the relevant polling station their own polling staff identification so that they can be given priority admission into the polling station to queue up for ballot papers and cast their votes (para. 5.38); ● setting out the identity document(s) that a voter/AR should produce when applying for a ballot paper in accordance with the amendment made to section 50 of the EAC (EP)

Relevant Chapter	Major changes
	<p>(EC) Reg in December 2018 (paras. 5.39 and 5.40);</p> <ul style="list-style-type: none"> ● specifying that a notice will be displayed at counting stations to show the capacity of the area where members of the public and the media can enter to observe the count, and that closed-circuit televisions will be installed in counting stations to record the situation inside for record purpose (paras. 5.68 and 5.69); ● updating the types of invalid ballot papers, and specifying that a ballot paper will not be regarded as valid if the number of candidates voted for exceeds the number of EC members to be elected in accordance with the amendment made to section 77 of the EAC (EP) (EC) Reg in January 2019 (para. 5.75(e)); ● specifying that during the count of votes, questionable ballot papers must be separated and forwarded to the RO to decide whether they are to be counted in accordance with the amendment made to section 74A of the EAC (EP) (EC) Reg in January 2019 (para. 5.76); ● setting out the provisions on the postponement or adjournment of the EC subsector elections or of the poll/count at a particular polling/counting station in accordance with the Schedule to the CEEO and the EAC (EP) (EC) Reg (Part XV of this Chapter); and ● specifying that after the ERO has published a provisional register of members of the EC, the Electoral Affairs Commission (“EAC”) must arrange for a supplementary nomination or a subsector by-election (as the case may be) to be held to fill the vacancy if the number of members ascertained as representing a subsector is less than the number of members allocated to the subsector in accordance with the amendment made to section 5 of the Schedule to the CEEO in May 2021 (Part XVI of this Chapter).
<p>Chapter 6 <i>Appeals</i></p>	<ul style="list-style-type: none"> ● specifying that if a person considers that a processing error occurred in relation to the process of registration for a nominee who has been declared as an EC member, he/she may object to the declaration and registration of the nominee as a member of the EC in the interim register or final register by submitting a written representation in accordance with the amendment made to section 4 of the Election Committee (Appeals) Regulation (Cap 569A)

Relevant Chapter	Major changes
	<p>(“EC (Appeals) Reg”) in May 2021 (para. 6.3); and</p> <ul style="list-style-type: none"> ● specifying the justifications and procedures on the appeals in relation to registration of ex-officio members as members of the EC in accordance with the amendment made to section 4A of the EC (Appeals) Reg in May 2021 (Part III).
<p>Chapter 8 <i>Election advertisements</i></p>	<ul style="list-style-type: none"> ● reminding candidates to ensure the factual basis for the contents of any election advertisement (“EA”) published by them in order to avoid disputes and lawsuits in accordance with a previous court case (para. 8.5); ● specifying that a person (other than a candidate or his/her election expense agent) who publishes an EA on the Internet will be exempted from the criminal liability under section 23(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) if the only expenses incurred are electricity charges and/or charges necessary for accessing the Internet in accordance with the amendment made to section 23(1A) of the ECICO in January 2019 (para. 8.11); ● specifying that a document published by a candidate during an election period that gives details of the work done by the candidate in the capacity of the Chief Executive; an EC member; a member of the LegCo; a member of a District Council; a member of the Heung Yee Kuk, the Chairman/Vice-Chairman or a member of the Executive Committee of a Rural Committee or a Rural Representative is regarded as an EA in accordance with section 107(4) of the EAC (EP) (EC) Reg in May 2021 (para. 8.14); ● revising the deadline for candidates’ posting of amended information in relation to EAs after the polling day (para. 8.58); ● informing candidates of previous court judgments on applications for relief of liability for EAs. If an applicant did not place enough significance on the obligation to file an election return, the court would require some good reason before it should exercise its discretion to grant relief. It is important that the discretion should be exercised in a manner which is consistent with the integrity of the election legislation (para. 8.72); and

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> ● setting out the new technical requirements for postage-free election mail that may be sent by candidates in accordance with the amendment made to section 99 of the EAC (EP) (EC) Reg in December 2019 (para. 8.80(d) and (e)).
<p>Chapter 9 and Appendix 9 <i>Electioneering activities at premises or buildings where voters/ARs reside, work or frequent</i></p>	<ul style="list-style-type: none"> ● reminding candidates to comply with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486) in relation to election activities that may involve the collection and use of personal data of an individual and attaching the latest version of the “Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public” issued by the Office of the Privacy Commissioner for Personal Data (para. 9.14 and Appendix 9); and ● reminding candidates that any information relating to an individual contained in a register of voters or extract of the register can only be used for the election-related purposes specified under the electoral legislation, and that any abuse or misuse of such information, use of such information for other purposes, or disclosure of such information causing psychological harm to the voter is an offence (para. 9.15).
<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 which broadcasters licensed under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) as well as the print media must follow when producing and publishing election-related programmes and reports. In determining whether there is a breach of the principle, the EAC will take into consideration the overall reporting by the media organisation during the election period (the whole Chapter 11); and ● specifying that in this Chapter, “candidate” means a person whose nomination form has been received by the RO (para. 11.5).
<p>Chapter 14 and Appendix 7 <i>Prohibition against Canvassing Activities outside</i></p>	<ul style="list-style-type: none"> ● reminding candidates that no canvassing activities are allowed within the No Canvassing Zone (“NCZ”) (para. 14.3 and Appendix 7); ● setting out clearly that in accordance with section 40 of the EAC (EP) (EC) Reg, no canvassing is allowed at the street

Relevant Chapter	Major changes
<i>Polling Stations</i>	<p>level of buildings within the NCZ (para. 14.12); and</p> <ul style="list-style-type: none"> ● reminding candidates to arrange to remove the EAs on the windows or the bodywork of any public service vehicle before the polling day if the vehicle will pass through or be parked within the NCZ on the polling day (para. 14.13).
Chapter 15 <i>Exit poll</i>	<ul style="list-style-type: none"> ● reminding the person or organisation conducting exit polls that collection and retention of any personal data of voters/ARs are not allowed (para. 15.12).
Chapter 16 and Appendix 1 <i>Election expenses and election donations</i>	<ul style="list-style-type: none"> ● reminding persons who intend to stand for the election to pay attention to the definition of “candidate” under the electoral legislation. It covers, inter alia, anyone having publicly declared an intention to stand as a candidate at an election at any time before the close of nominations for the election. Illustration as to whether a particular item of expense would be counted as election expenses is also provided by citing the points made by the court in a relevant case (para. 16.8); ● specifying the permitted maximum amounts of election expenses to be incurred by candidates based on the number of registered voters in the subsector in accordance with the amendment made to section 2 of the Maximum Scale of Election Expenses (Election Committee) Order (Cap. 554I) in May 2021 (para. 16.15); ● revising the thresholds regarding submission of invoices and receipts giving particulars of the election expenses to accompany a candidate’s election return in accordance with the amendment made to section 37 of the ECICO in December 2019 (para. 16.32 and item 36(b) of Appendix 1); ● reflecting the limits regarding relief for minor errors in election returns which allow correction by candidates in accordance with the amendment to Item 5 of Schedule to the ECICO in December 2019 (para. 16.37 and item 36(f) of Appendix 1); and ● reminding candidates that those who fail to submit an election return as required by the law are liable to a fine and to imprisonment, and may be disqualified as with conviction of illegal conduct (para. 16.53).
Chapter 17	<ul style="list-style-type: none"> ● specifying that a person engages in illegal conduct if he/she

Relevant Chapter	Major changes
<i>Corrupt and illegal conduct</i>	<p>carries out any activity in public during the election period that incites another person not to vote or to cast an invalid vote, and setting out the activities that are regarded as “activity in public” in accordance with the amendment made to sections 22(1) and 27A of the ECICO in May 2021 (para. 17.17);</p> <ul style="list-style-type: none"> ● reminding candidates to, during the election period, avoid engaging in any financial dealing which may be perceived as having an influence on a person’s voting preference and any act that may be perceived as electoral bribery (para. 17.19); and ● specifying that a person engages in corrupt conduct if he/she, by means of deception, induces another person (or gets another person to induce a third person) not to vote at an election, or to vote or not to vote for a particular candidate or particular candidates at an election in accordance with the amendment made to section 14 of the ECICO in May 2021. Besides, a person also engages in corrupt conduct if he/she willfully obstructs or prevents another person (or gets another person to obstruct or prevent a third person) from voting at an election. In addition, it is also an offence to aid, abet, incite or attempt the said offence (para. 17.26).
<p>Chapter 18 <i>Namedropping</i></p>	<ul style="list-style-type: none"> ● reminding candidates to obtain prior written consent from supporters if the names of the supporters are to be included in the EAs by citing judgements of relevant court cases as reference. Besides, to comply with section 27(1A) of the ECICO, the written consent has to be a single document expressly stating the supporter’s consent to include his/her/its name, logo or pictorial representation in the candidate’s EAs. Regardless of the number of supporters, the written consent has to be a single document. It cannot be a composite document composed of multiple letters, documents or a chain of correspondence messages (para. 18.4); ● reminding candidates to comply with the requirements under the Personal Data (Privacy) Ordinance (Cap 486) when handling the personal data of their supporters (paras. 18.4 and 18.10); and ● setting out clear guidelines on seeking prior written consent from the supporters concerned if candidates intend

Relevant Chapter	Major changes
	to publish EAs or live broadcast of electioneering activities through online platforms (para. 18.5).