

立法會 *Legislative Council*

LC Paper No. CB(4)1122/20-21(06)

Ref : CB4/PL/CA

Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 21 June 2021

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

Purpose

This paper summarizes the past discussion held by the Panel on Constitutional Affairs ("the Panel") on the proposed guidelines issued by the Electoral Affairs Commission ("EAC") in May 2016 on election-related activities in respect of the 2016 Election Committee ("EC") subsector elections ("the 2016 Proposed Guidelines").

Background

2. EAC is an independent statutory 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. These guidelines aim to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities, and give guidance in layman's language on compliance with the relevant electoral legislation. EAC will update the guidelines before each election taking into account the operational experience and suggestions for improvements obtained from recent elections and by-elections. The 2021 EC subsector elections will be held on 19 September 2021.

Past discussion of the Panel

3. The Panel discussed the 2016 Proposed Guidelines at its meeting on 16 May 2016. The major changes in the 2016 Proposed Guidelines as compared with the last updated version (issued in October 2011) are set out in **Appendix I**. The finalized 2016 Guidelines were published by EAC on 23 September 2016.

The major concerns expressed by members on the 2016 Proposed Guidelines are summarized below.

Election advertisements

4. A number of members expressed concern about the regulation of election-related materials published or distributed on social networking and communication websites. Some members asked whether a person would be considered to have published an election advertisement ("EA") if the person changed the profile picture of his/her Facebook account into a picture of supporting a certain candidate of an election. They also requested the Administration to explain whether any text, email or message expressing support for a certain candidate and sent through social networking or communication websites on the Internet (such as Facebook) would be considered as an EA.

5. The Administration advised that what constituted an EA was explained in the relevant chapter on EAs in the 2016 Proposed Guidelines. The definition of EA was provided in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), according to which messages published by web surfers through social media for the purpose of promoting the election of a candidate/list of candidates or prejudicing the election of other candidates/lists of candidates would be regarded as EAs.

6. In response to members' concern about the regulation of EAs published through the Internet (including social media), the Administration undertook to conduct a study on the relevant regulatory regimes in overseas jurisdictions. At the Panel meeting on 19 December 2016, the Administration reported the findings of its study on whether views expressed on the Internet (including social media) were regarded as EAs in selected places¹ and sought members' views on the relevant practices in Hong Kong. Subsequently, the Constitutional and Mainland Affairs Bureau issued the Consultation Paper on Review of Electoral Arrangements in November 2017 to invite public views on, among others, the regulation of EAs published through the Internet. Having considered the views received during the public consultation, it was proposed that the Government should introduce a targeted exemption from criminal liability under ECICO in respect of a third party (i.e. individuals or bodies that were neither the relevant candidates whose elections were being promoted or prejudiced nor their election expense agents) who incurred merely electricity and Internet access charges in publishing EAs on the Internet (including social media) ("the proposed targeted exemption").

¹ The findings of the Administration's study are set out in Annex A to LC Paper No. CB(2)394/16-17(03).

7. The Panel discussed the Administration's legislative proposals for implementation of, among others, the proposed targeted exemption at its meeting on 21 May 2018. Members in general expressed support for the legislative proposals. The Electoral Legislation (Miscellaneous Amendments) Bill 2018, which sought to provide for, among others, the proposed targeted exemption under ECICO, was introduced into the Legislative Council ("LegCo") on 11 July 2018 and passed on 16 January 2019.

Interpretation of "substantial connection"

8. Members noted from the 2016 Proposed Guidelines that to be eligible for nomination as a candidate at an EC subsector election, a person must be, among others, eligible to be registered as a voter for the relevant EC subsector, or satisfy the Returning Officer ("RO") for the relevant subsector that he/she had a substantial connection with the subsector. Some members expressed concern that there seemed to be inconsistent interpretation of "substantial connection" when it was applied to different subsectors and lacked objective criteria. They requested the Administration to explain the considerations for determining what constituted "substantial connection".

9. The Administration explained that the eligibility for nomination as a candidate at a subsector election was set out in the Chief Executive Election Ordinance (Cap. 569) ("CEEEO"), and the Schedule to CEEEO had provided an interpretation of the term "substantial connection". In making the decision, ROs would take into consideration the electorate and the constituents of the subsector concerned. However, each subsector varied in these respects under the law. Hence, the circumstances in which a person had substantial connection with a subsector also varied amongst different subsectors. As such, whether a nominee had substantial connection with his/her subsector needed to be considered on a case-by-case basis. Some members suggested that guidelines on the criteria for determining whether a nominee had "substantial connection" with the relevant subsector should be provided for reference by persons who intended to stand as candidates.

Recent development

10. The Administration will brief the Panel on the Guidelines on election-related activities in respect of EC subsector elections to be issued by EAC for the 2021 EC subsector elections at the next meeting on 21 June 2021.

Relevant papers

11. A list of the relevant papers available on the LegCo website is in the **Appendix II**.

Council Business Division 4
Legislative Council Secretariat
16 June 2021

**Major Proposed Changes in the Proposed Guidelines
On Election-related Activities in respect of the
Election Committee Subsector Elections
as Compared with the Guidelines Issued in October 2011**

Relevant Chapter	Major changes
<p>Chapter 2 and Appendices C to E <i>Composition of the Election Committee</i></p>	<ul style="list-style-type: none"> ● updating the constituents of the Election Committee subsectors <i>subject to the enactment</i> of the proposed amendments to be made to section 2 of the Schedule to the Chief Executive Election Ordinance (Cap 569) and the Legislative Council Ordinance (Cap 542) (para. 2.3(d) to (f) and Appendices C to E).
<p>Chapter 3 <i>Registration of voters and voting system</i></p>	<ul style="list-style-type: none"> ● revising the key dates of the voter registration timeframe in accordance with the amendments made to sections 19, 29(1)(a), 29(3)(a), 30(2) and 31(8) 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”) (paras. 3.11, 3.15 and 3.19); and ● aligning the deadline for change of registration particulars with the deadline for new registration in accordance with the amendments made to sections 26(5) of EAC (ROE) (FCSEC) Reg (para. 3.13(d)).
<p>Chapter 5 <i>Polling and counting arrangements</i></p>	<ul style="list-style-type: none"> ● specifying a deadline for gazetting the list of polling stations and counting stations and revising the deadline for the Returning Officer to give notice to candidates of the place(s) and time of the counting of votes, <i>subject to the enactment</i> of the proposed amendments to sections 28(1) and 63(4) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap 541I) (“EAC (EP) (EC) Reg”) (paras. 5.2 , 5.3 and 5.38).

Relevant Chapter	Major changes
<p>Chapter 7 <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i></p>	<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 agents, election expense agents, polling agents and counting agents <i>subject to the enactment</i> of the proposed amendments to sections 23(13) and (15), 25(6) and (9A), 42(5AA), (11) and (11A), 64(5A) and (10A) of the EAC (EP) (EC) Reg (Parts V to VIII of the Chapter).
<p>Chapter 8 <i>Election advertisements</i></p>	<ul style="list-style-type: none"> ● reminding any person or organisation publishing materials to appeal directly or indirectly to voters to vote or not to vote for certain candidates 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); ● 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

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> ● setting out the simplified arrangements for submission of EAs for public inspection in accordance with the amendments made to section 108 of the EAC (EP) (EC) Reg (paras. 8.47 to 8.54).
<p>Chapter 9, Appendix K and L <i>Electioneering activities at premises or buildings where voters/ARs 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 voters to election agents or other contractors for electioneering purpose (para. 9.12 and Appendix K); ● setting out four cases as suggested by the OPCPD to facilitate better understanding of the privacy concerns of the voters/authorised representatives and compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) (Appendix L); ● requesting candidates to respect voters’ 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 voters 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).
<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, 11.10 and 11.22); and

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> reminding the print media to ensure that any news reporting or references made in their publications should not give unfair publicity to any candidates in accordance with the fair and equal treatment principle (paras. 11.19 and 11.21).
Chapter 15 <i>Exit poll</i>	<ul style="list-style-type: none"> updating the administrative procedures in approving the application 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).
Chapter 16 and Appendix T <i>Election expenses and election donations</i>	<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); 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 T (para. 16.22); and aligning the deadlines for submitting the return and declaration of election expenses and election donations for all candidates in the same election, <i>subject to the enactment</i> of the proposed amendments to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (para. 16.26).
Chapter 18 <i>Namedropping</i>	<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).

Source: Annex to the Administration's paper entitled "Proposed guidelines on election-related activities in respect of the Election Committee subsector elections issued by the Electoral Affairs Commission" for the meeting of the Panel on Constitutional Affairs on 16 May 2016 (LC Paper No. CB(2)1458/15-16(03))

Appendix II

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

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	16.5.2016 (Item III)	Agenda Minutes
	21.11.2016 (Item V)	Agenda Minutes
	19.12.2016 (Item IV)	LC Paper No. CB(2)394/16-17(03)
	21.5.2018 (Item IV)	Agenda Minutes

Council Business Division 4
Legislative Council Secretariat
16 June 2021