

## CHAPTER 3

### THE LEGISLATION AND THE GUIDELINES

#### Section 1 – The Electoral Legislation

##### Ordinances and Subsidiary Legislation

3.1 The supervision and conduct of the 2006 EC Subsector Elections and 2007 CE Election were governed by the following ordinances:

- (a) the EACO which empowers the EAC to perform its various functions in supervising the conduct of the elections;
- (b) the CEEO which provides the legal basis for conducting the elections; and
- (c) the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”) which prohibits election-related corrupt and illegal activities and is enforced by the Independent Commission Against Corruption (“ICAC”).

3.2 These ordinances were complemented by the following subsidiary legislation which provide for the detailed procedures for the conduct of the elections:

- (a) the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (“EAC (EP) (EC) Reg”);

- (b) the Electoral Procedure (Chief Executive Election) Regulation (“EP (CEE) Reg”);
- (c) the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (“EAC (NAC) (EC) Reg”);
- (d) the EAC (R) (FCSEC) Reg;
- (e) the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation;
- (f) the Election Committee (Subscribers and Election Deposit for Nomination) Regulation;
- (g) the Election Committee (Appeals) Regulation;
- (h) the Distribution of Number of Members Among Designated Bodies (Election Committee) Order 2001;
- (i) the Maximum Scale of Election Expenses (Legislative Council) (Election Committee) Order;
- (j) the Chief Executive Election (Election Petition) Rules; and
- (k) the Maximum Amount of Election Expenses (Chief Executive Election) Regulation.

## **The Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006**

3.3 To ensure the smooth conduct of the 2007 CE Election, the Administration introduced the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 (“the Bill”) into the LegCo on 8 March 2006. The Bill mainly sought to address the legal issues identified in the Fifth Report of the Constitutional Development Task Force and to provide for the electoral arrangement in the event that only one CE candidate is validly nominated. The Bill also addressed some technical issues.

3.4 The Bill proposed amendments to the CEEO, the LegCo Ordinance, the Election Committee (Appeals) Regulation and the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation. The Bill provided for the following:

- (a) if an election for a new-term CE will be held within six months after a vacancy in the office of the CE has arisen, it will not be necessary to hold a by-election;
- (b) a new CE returned in a by-election may only serve for one more term after expiry of the remainder term, and that remaining term is regarded as one term;
- (c) the term of office of the EC will commence on 1 February in the year during which the term of office of the CE expires;
- (d) if only one CE candidate is validly nominated, election proceedings shall continue (see paragraph 3.5 below);

- (e) only individuals who are Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference ("CPPCC"), the Chairman or Vice-Chairman of the Heung Yee Kuk ("HYK") or Councillors of the Full Council of HYK, and members of DCs may be members of the relevant EC subsectors; and
- (f) an IR of members of the EC shall be compiled and published within seven days after the results of EC subsector ordinary elections are published.

The Bill also introduced other technical legislative amendments relating to the electorate to elect the EC.

3.5 Under the Bill, the electoral arrangements for an uncontested election are as follows:

- (a) when voting, EC members may indicate in the ballot papers either to support or not support the sole candidate;
- (b) the sole candidate shall be returned at the election if the number of support votes he obtains constitutes more than half of the total number of valid votes cast. The Returning Officer ("RO") shall publicly declare that the candidate is elected;
- (c) if the number of support votes obtained by the candidate falls short of more than half of the total valid votes cast, the RO shall publicly declare that the candidate is not elected at the election and the election is terminated;

- (d) following termination of the election, there shall be a new round of nominations;
- (e) if, at the close of the new round of nominations, there is still only one candidate (regardless of whether he is the same or a different candidate), the election process shall continue by following the arrangements set out in (a) - (d) above; and
- (f) if, at the close of the new round of nominations, there are two or more candidates, the election shall be conducted following the existing arrangements for a contested election. If necessary, the process will be repeated until a candidate is returned.

3.6 The Bill was passed by LegCo on 10 May 2006 and came into operation on 13 May 2006.

### **Subsidiary legislation relating to EC Subsector Elections**

3.7 For the EC subsector elections, the EAC enacted on 15 May 2006 three amendment regulations to introduce amendments under the following three categories:

- (a) amendments consequential to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006;
- (b) amendments to align the electoral procedures for EC subsector elections, where appropriate, with those for the LegCo election in 2004; and

- (c) technical amendments to remove obsolete provisions.

The amendments involved the following three regulations under the EACO: the EAC (R) (FCSEC) Reg; the EAC (NAC) (EC) Reg; and the EAC (EP) (EC) Reg.

3.8 The amendment regulations were published in the Gazette on 19 May 2006 and tabled in LegCo on 24 May 2006. LegCo set up a sub-committee to examine the amendment regulations. With a few minor modifications, the amendment regulations came into operation on 14 July 2006.

### **Subsidiary legislation relating to CE Election**

3.9 For the CE election, the EAC enacted on 9 October 2006 an amendment regulation to introduce amendments under the following two categories to the EP (CEE) Reg:

- (a) amendments consequential to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006; and
- (b) amendments to align the electoral procedures for the CE election, where appropriate, with those for the LegCo election in 2004.

3.10 The Chief Justice of the Court of Final Appeal enacted on 11 October 2006 a set of amendment rules to amend the Chief Executive Election (Election Petition) Rules to introduce amendments consequential to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006.

3.11 The amendment regulation and the amendment rules were published in the Gazette on 13 October 2006 and tabled in LegCo on 18 October 2006. Both came into operation on 8 December 2006.

## **Section 2 – The Electoral Guidelines**

3.12 The EAC is empowered under section 6(1)(a) of the EACO to issue guidelines to facilitate the conduct or supervision of an election. The aim of producing these guidelines is to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities and some directions in layman's language on how to comply with the relevant electoral legislation, so that candidates and relevant parties concerned can avoid breaching them inadvertently. The EAC published two sets of revised guidelines: one in October 2006 for the EC Subsector Elections and another in January 2007 for the CE Election. Details are given in the ensuing paragraphs.

### ***The Guidelines for the EC Subsector Elections***

3.13 The EAC drew up a set of proposed guidelines in respect of EC Subsector Elections which were modelled on those used for the 2005 EC Subsector By-elections, with suitable alterations to reflect the latest amendments made to the CEEO, and to align the electoral arrangements for the EC subsector elections, where appropriate, with those for the LegCo and DC elections. The proposed guidelines also took into account the operational experience and suggestions for improvements gauged from recent elections and by-elections. The major changes proposed in the draft guidelines for the EC Subsector Elections, as compared with the guidelines for the 2005 EC Subsector By-elections, included the following:

- (a) providing further details on the EC, including its terms of office and composition;
- (b) setting out the compilation and publication of IR and FR of EC members after the conduct of EC subsector ordinary elections;
- (c) stating the statutory requirement that, if a person is not a member of the DCs, or a Hong Kong member of the National Committee of the CPPCC, or the Chairman, a Vice-Chairman or a Councillor of the Full Council of the HYK, he is not qualified to be nominated as a candidate at an election of the respective subsectors, or be elected as a member of the respective subsectors;
- (d) stating the increased penalty for imprisonment (ie from three months to six months) for offences relating to secrecy of votes;
- (e) stating the increased penalty for imprisonment (ie from three months to six months) for unauthorised filming, photographing, audio/video recording within a polling station;
- (f) specifying the types of questionable ballot papers that must be separated for RO to decide whether the votes should be counted, and the types of ballot papers which are clearly invalid by their nature (ie tendered, unused, spoilt or unmarked ballot papers) and which must therefore be separated and not counted;
- (g) advising candidates to give notice of counting agent appointment to the RO at least one week (instead of three days) before the polling day;



- (h) increasing the flexibility for candidates by clarifying that they may send in their declaration on election advertisements (“EAs”) and a copy of each EA by fax or e-mail first, to be followed by the submission of the original copy of the declaration and two copies of each such EA;
- (i) advising candidates that different organisations may have their own guidelines on the conduct of electioneering/election meetings at places under their management, and that it is desirable for candidates to consult them in advance and obtain permission, if required, for these activities at such places;
- (j) making it clear that, during the election period, candidates may attend any meetings as part of their normal activities, insofar as they are not held for the purpose of promoting or prejudicing the election of candidates;
- (k) reminding candidates of the Transport Department (“TD”) requirements relating to the display of EAs on public light bus (for example, no EA should be displayed on the windows which can obstruct the sight-line of the driver);
- (l) stating the requirement for the RO to give a notice of at least seven days (instead of five days) to the candidates on the determination of the No Canvassing Zone (“NCZ”) and No Staying Zone (“NSZ”); and
- (m) clarifying that if an organisation decides to give support to a particular candidate, such a decision could be taken by the governing body of the organisation or by a resolution of the members of that organisation

passed at a general meeting.

3.14 The EAC consulted the public on the proposed guidelines for a period of 31 days from 15 July to 14 August 2006 in accordance with section 6(2) of the EACO. The LegCo Panel on Constitutional Affairs discussed the proposed guidelines on 17 July 2006. During the consultation period, members of the public were invited to give their views on the proposed guidelines and to lodge their written representations with the EAC. A public forum was held on 3 August 2006 in the Conference Room of the Registration and Electoral Office (“REO”) where the Commission was present to listen to the oral representations put forth in person by those who attended the forum. The consultation mechanism and the major changes listed in paragraph 3.13 above were highlighted in the “Message from the Chairman” enclosed in the proposed guidelines so as to provide a more focused basis for the public to give their views.

3.15 At the close of the public consultation on the proposed guidelines, three written representations and one oral representation had been received. Having carefully considered all the representations received from the public and the views from the LegCo Members, the Commission refined the proposed guidelines and published the finalised guidelines for the EC Subsector Elections in loose-leaf format on 9 October 2006.

### ***The Guidelines for CE Elections***

3.16 For the 2007 CE Election, the EAC updated the guidelines, and the proposed guidelines were basically modelled on those used for the 2005 CE Election, with suitable alterations to reflect the latest amendments made to the CEEA and the EP (CEE) Reg, and to align the electoral arrangements for CE

elections, where appropriate, with those for the other public elections. The proposed guidelines also took into account the operational experience and suggestions for improvements gauged from recent elections and by-elections.

3.17 The major changes proposed in the draft revised guidelines, as compared with the guidelines for the 2005 CE Election, included the following:

- (a) setting out information about the term of office of the CE as provided for in the Basic Law and the CEEO (for example, that the term of office of the CE shall be five years, and that he may serve for not more than two consecutive terms);
- (b) setting out the statutory provisions that for the subsectors of the CPPCC, HYK and DCs, EC members representing these subsectors who cease to be members of these bodies will be deemed to have resigned from the EC, and will be disqualified from subscribing to nomination and voting at the CE election;
- (c) setting out the polling and counting arrangements to be adopted when there is only one validly nominated candidate in the election;
- (d) setting out the increased penalty under the law (ie from three months imprisonment to six months) for offences relating to secrecy of votes;
- (e) setting out the increased penalty under the law (ie from three months imprisonment to six months) for unauthorised filming, photographing, audio/video recording within the polling station;
- (f) setting out the statutory provisions regarding the types of questionable

ballot papers that must be separated for the RO to decide whether the votes should be counted, and the types of ballot papers which are clearly invalid by their nature (ie tendered, spoilt, unused or unmarked ballot papers) and which must not be counted;

- (g) setting out the statutory requirement that the candidates' notice of appointment of counting agents should be given to the RO at least seven days (instead of three days) before the polling day;
- (h) increasing the flexibility for candidates by clarifying that they may send to the RO their declaration on EAs and a copy of each EA by fax or e-mail first, to be followed by the submission of the original copy of the declaration and two copies of each such EA;
- (i) advising candidates that different organisations may have their own guidelines on the conduct of electioneering/election meetings at places under their management, and that it is desirable for candidates to consult them in advance and obtain permission, if required, for these activities at such places;
- (j) making it clear that, during the election period, candidates may attend any meetings as part of their normal activities, insofar as they are not held for the purpose of promoting or prejudicing the election of candidates;
- (k) reminding candidates of the TD requirements relating to the display of EAs on public light bus (for example, no EA should be displayed on the windows which can obstruct the sight-line of the driver);

- (l) setting out the statutory requirement that the RO should give a notice of at least seven days (instead of two days) to the candidates on the determination of the NCZ and the NSZ; and
- (m) clarifying that if an organisation decides to give support to a particular candidate, such a decision should be taken by the governing body of the organisation or by a resolution of the members of that organisation passed at a general meeting.

3.18 The EAC consulted the public on the proposed guidelines for a period of 14 days from 16 to 29 November 2006 in accordance with section 6(2) of the EACO. The LegCo Panel on Constitutional Affairs discussed the proposed guidelines on 20 November 2006. During the consultation period, members of the public were invited to give their views on the proposed guidelines and to lodge their written representations with the EAC. A public forum was held on 24 November 2006 in the Conference Room of the REO where the Commission was present to listen to the oral representations put forth in person by those who attended the forum. The consultation mechanism and the major changes listed in paragraph 3.17 above were highlighted in the “Message from the Chairman” enclosed in the proposed guidelines so as to provide a more focused basis for the public to give their views.

3.19 At the close of the public consultation on the proposed guidelines, four written representations were received. Having carefully considered all the representations received from the public and views from LegCo Members, the EAC considered that it was not necessary to make any amendments to the proposed guidelines.

3.20 The Commission published the finalised guidelines for the CE

Elections in loose-leaf format on 19 January 2007. Loose-leaf amendment sheets of the guidelines were printed and issued to parties concerned. The revised guidelines were also made available for browsing on the internet and for distribution at District Offices and the REO.

3.21 As in previous CE elections, advisory service was available for candidates on the interpretation and operation of the CE electoral guidelines. Candidates (including those who had publicly declared their intention to stand for the CE Election, whether or not they had submitted nomination forms) and their election agents were eligible to use the advisory service. The service, however, did not cover enquiries on the parts of the guidelines relating to the ECICO, which were to be handled by the ICAC since it was the enforcement authority for the legislation. The provision of the advisory service was laid down in the first chapter of the electoral guidelines.

3.22 The advisory service was available from 19 January 2007 (ie the day when the CE electoral guidelines were published) until the end of ordinary business hours before the polling day. For the 2007 CE Election, no candidate (or election agent) used the advisory service.