

CHAPTER 3

THE LEGISLATION AND THE GUIDELINES

Section 1 – The Electoral Legislation

Ordinances and Subsidiary Legislation

3.1 The supervision and conduct of the 2011 ECSS Elections and 2012 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 (Cap 541I) (“EAC (EP) (EC) Reg”);

- (b) the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) (“EP (CEE) Reg”);
- (c) the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (Cap 541H) (“EAC (NAC) (EC) Reg”);
- (d) the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B) (“EAC (R) (FCSEC) Reg”);
- (e) the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap 569B);
- (f) the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap 569C);
- (g) the Election Committee (Appeals) Regulation (Cap 569A);
- (h) the Distribution of Number of Members Among Designated Bodies (Election Committee) Order 2001 (Cap 569D);
- (i) the Maximum Scale of Election Expenses (Election Committee) Order (Cap 554I);
- (j) the Chief Executive Election (Election Petition) Rules (Cap 569E); and

- (k) the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap 554A).

Voting by Imprisoned Persons Ordinance

3.3 The Administration introduced the Voting by Imprisoned Persons Bill (“VIPB”) into the LegCo in May 2009 to remove the disqualification of imprisoned persons and persons convicted of specified election-related or bribery offences from being registered as electors and from voting in the LegCo, DC, CE, ECSS and Village Representative (“VR”) Elections. The VIPB was passed by the LegCo on 24 June 2009.

3.4 The EAC subsequently made eight amendment regulations to provide for the detailed practical arrangements for imprisoned persons to register as electors and for registered electors imprisoned, remanded or detained to vote. These arrangements included the setting up of Dedicated Polling Stations (“DPSs”) for registered electors imprisoned, remanded or detained to vote.

The Chief Executive Election (Amendment) Bill 2010

3.5 On 24 and 25 June 2010, the LegCo passed by a two-thirds majority the motions put forth by the Government concerning the draft amendments to the method for the selection of the CE and the method for the formation of the LegCo in 2012. On 29 June 2010, the CE gave consent to the draft amendments. On 28 August 2010, the Standing Committee of the National People’s Congress approved and recorded respectively the amendments to Annexes I and II of the Basic Law concerning the methods of the two elections. The Administration introduced the Chief Executive

Election (Amendment) Bill 2010 to the LegCo on 15 December 2010. The Bill sought to amend the CEEO and its subsidiary legislation to implement the amendments to the method for the selection of the CE and some other consequential amendments.

3.6 The main provisions of the Bill are set out below:

- (a) the EC will be composed of 1,200 members and the number of members for each of the four sectors of the EC will be increased from 200 to 300. The number of seats allocated to the existing 32 subsectors in the first three sectors will be increased generally by proportion according to the existing distribution of seats. In addition, the eligibility criteria in the Chinese Medicine subsector were revised and two constituents of the Higher Education subsector have changed their names;
- (b) candidates for the office of CE shall be nominated by not less than 150 members of the EC;
- (c) only elected DC members for the new term of DCs starting from 1 January 2012 are eligible for registration as voters in the two DC subsectors;
- (d) the elected DC members may only be registered as voters in the Hong Kong and Kowloon DCs and the New Territories DCs subsectors as the case may be but not other subsectors and the ERO will be empowered to amend the FRs of voters and arrange for the automatic registration of the newly elected DC members after the DC Election in November 2011;

- (e) only elected DC members may be nominated as candidates in the DC subsectors election;
- (f) election of a person as a DC member does not affect his/her nomination made earlier in a non-DC subsector;
- (g) in any case, a newly elected DC member may only be nominated in one subsector for election;
- (h) 10 Special Member seats will be created temporarily to make up the shortfall of 10 seats until the number of LegCo seats increases from 60 to 70 in October 2012. The Special Member seats will be taken up by the remaining candidates who obtain the highest number of votes in the Chinese People's Political Consultative Conference, Heung Yee Kuk, Hong Kong and Kowloon DCs and the New Territories DCs subsectors after the successful candidates of the respective subsectors are returned. The term of office of the Special Members will expire upon the commencement of the term of office of the fifth-term LegCo in October 2012; and
- (i) the number of seats to be allocated to each of the six designated bodies of the Religious subsector will be increased to ten.

3.7 Committee Stage Amendments to the Bill were made in February 2011. The major amendments set out that:

- (a) a candidate shall only be elected as the CE if he/she obtains more than 600 valid votes under an election with one candidate only and a

contested election;

- (b) after the required voting process, if no candidates obtain more than 600 valid votes, the election will be terminated and, a new round of nomination and election will commence; and
- (c) overseas government organisations are not eligible to be registered as corporate voters in any EC subsector.

3.8 The Bill was passed by LegCo on 3 March 2011. The provisions of the Bill relating to the DC subsectors election came into operation on 25 September 2011 while those relating to the increase in the number of seats for LegCo subsector from 60 to 70 would come into operation on the commencement of the term of office of the fifth-term LegCo. As to the remaining provisions, the commencement date was 1 February 2012 (when the new EC was formed) but, for those required for enabling arrangements to be made for the holding of subsectors elections (other than the DC subsectors elections) to elect member of the EC in 2011, they came into operation earlier for only that purpose on 11 March 2011 (the date when the Amendment Ordinance was gazetted).

Electoral Legislation (Miscellaneous Amendments) Bill 2011

3.9 The Administration introduced the Electoral Legislation (Miscellaneous Amendments) Bill 2011 to the LegCo on 4 May 2011. The Bill proposed to amend various pieces of legislation to introduce changes to the electoral and related arrangements for the LegCo, DC, ECSS, CE and VR Elections. Major changes relating to the ECSS and CE Elections include:

- (a) providing that a promotional letter sent by a candidate of the ECSS Elections free of postage to a voter of an EC subsector for which the candidate is nominated might contain information on any other candidate nominated for the same subsector; and
- (b) increasing the election expenses limit that could be incurred by a candidate in the CE Election from \$9.5 million to \$13 million.

3.10 The Electoral Legislation (Miscellaneous Amendments) Bill 2011 was passed by the LegCo on 6 July 2011. The amendments referred to in paragraphs 3.9(a) and (b) above came into operation on 25 September 2011.

Amendment Regulations Made by the EAC

3.11 The EAC is committed to improving the electoral procedures and arrangements and shall propose revisions to the subsidiary legislation under the EACO (Cap. 541) in this regard when necessary. On 9 May 2011, the EAC made nine amendment regulations with proposed legislative amendments to nine regulations under the EACO.

3.12 The amendments made to three regulations, namely EAC (R) (FCSEC) Reg, EAC (EP) (EC) Reg and EP (CEE) Reg are related to the ECSS and CE Elections and, in terms of their nature, fall into the following three categories:

- (a) amendments consequential to the Chief Executive Election (Amendment) Ordinance 2011 enacted in March 2011;
- (b) amendments to refine and align, where appropriate, the electoral

procedures of the ECSS and CE Elections with those of other public elections; and

- (c) amendments to refine the voting arrangements for electors in custody.

3.13 The main amendments to the three EAC Regulations as mentioned in paragraph 3.12 above include:

- (a) providing for recording the particulars of Special Members in the registers of the EC and removing such particulars when their term of office expires;
- (b) providing for compilation and publication of the amended FRs of ECSS voters which would reflect amendments made consequential to the automatic registration of the newly elected DC members after the DC Election in November 2011;
- (c) requiring that when determining the validity of a nomination of the ECSS Elections, reference be made to the newly added provisions in the CEEO that:
 - (i) if a person is newly elected as a DC member, it would not affect the nomination that he/she had made earlier in a non-DC subsector; and
 - (ii) a newly elected DC member may only be nominated in one subsector for election;
- (d) consequential amendments to tie in with the updated voting

arrangements for the CE Election as stipulated in the amended CEEO;

- (e) allowing the Returning Officer (“RO”) in the ECSS Elections to display, through the Presiding Officer (“PRO”), a revised notice of the no canvassing zone (“NCZ”) and/or no staying zone (“NSZ”) at or near the polling station if the zones have been varied after the display of the notice of the zones on the polling day; and
- (f) miscellaneous amendments to refine the voting arrangements for electors in custody.

3.14 The amendment regulations were published in the Gazette on 13 May 2011 and tabled in LegCo on 18 May 2011. The amendments grouped under category (a) in paragraph 3.12 above came into operation on 1 February 2012 except for the parts relating to the nominations of the ECSS Elections (as set out in paragraph 3.13(c) above) which came into operation on 25 September 2011. As to the other amendments grouped under categories (b) and (c) in paragraph 3.12, they came into operation on 8 July 2011.

Section 2 – The Electoral Guidelines

3.15 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 purpose of producing the guidelines is to ensure that all public elections are conducted in an open, honest and fair manner. The guidelines 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.

3.16 The EAC has at all times made its best endeavours in refining the electoral arrangements for elections. Before each ordinary election, the EAC will revise the electoral guidelines. The revision is done on the basis of the guidelines used for previous elections, taking into account the operational experience of each election, as well as suggestions and complaints received from the public and other parties concerned. Before the promulgation of each set of guidelines, public consultation will be conducted and representations are invited from the public and all parties concerned on the proposed guidelines. A public forum will also be held at which the EAC will receive oral representations from the public. The guidelines will then be revised taking into account the views received during the public consultation period before they are finalised for issue to the public.

The Guidelines for the ECSS Elections

3.17 For the 2011 ECSS Elections, the EAC published the proposed Guidelines on Election-related Activities in respect of the ECSS Elections (“proposed ECSS Elections Guidelines”) for public consultation from 23 June to 22 July 2011. The proposed ECSS Elections Guidelines were prepared on basis of the ECSS Elections Guidelines issued in January 2010 with suitable alternations mainly to reflect the legislative amendments made or proposed to be made in respect of the ECSS Elections mentioned in section 1 of this chapter and the amendments proposed to be made in light of operational experience gained as well as suggestions and complaints received from the public and other parties concerned in the recent elections.

3.18 The major changes proposed in the proposed ECSS Elections Guidelines, as compared with the ECSS Elections Guidelines issued in January

2010, include the following:

(I) Changes caused by proposed amendments to electoral legislation

Subject to the enactment of the relevant legislative amendments,

- (a) updating the number of members to be returned to each sector and subsector of the EC;
- (b) adding that (i) the newly elected DC members in the DC election in November 2011 will be automatically registered in the two DC subsectors; (ii) if a newly elected DC member has already been registered as a voter in another subsector, his name would be removed from the FR of such subsector at the same time when he is automatically registered in the DC subsectors; and (iii) the ERO would arrange the publication of the revised FRs for the Hong Kong and Kowloon DCs subsector and the New Territories DCs subsector;
- (c) specifying the arrangements for the newly elected DC members in respect of nomination and candidature;
- (d) adding that the use of sound amplifying device within the no canvassing zone for the performance of duties by officers of the Correctional Services Department (“CSD”) at the DPSs in prison is allowed;
- (e) setting out the arrangements for candidates to post joint promotional letters to electors free of postage; and

- (f) setting out the arrangements for candidates to submit to the RO by electronic means the declaration and copy of election advertisement (“EA”) to be displayed, distributed or otherwise used by electronic means.

(II) Changes made in the light of operational experience and suggestions/complaints received from recent elections

- (g) adding that the Introduction to Candidates, if considered to contain information not relating to the direct promotion of the candidature of the candidate concerned, will be subject to alternation or edition;
- (h) reminding candidates that they should carefully study the requirements governing free postage for EAs and that they should submit their EA specimens to the respective manager of the post office for approval as early as possible before mass production so as to allow sufficient time for revising the contents of their EA specimens, if necessary;
- (i) reminding candidates and their election agents to read carefully the guidance notes on personal data privacy in respect of electioneering activities (prepared by the Office of the Privacy Commissioner for Personal Data (“OPCPD”) at Appendix K to the proposed ECSS Elections Guidelines) before they undertake such activities;
- (j) reminding candidates to observe the relevant data protection principle as set out in the guidance notes issued by the OPCPD at Appendix K to the proposed ECSS Elections Guidelines before using an image of an identified person for a purpose other than the original purpose of

collection;

- (k) drawing broadcasters' attention to the observations made by the Court in an election petition as set out in Appendix N to the proposed ECSS Elections Guidelines, and advising them, where appropriate, to follow the arrangement therein to give a clear message to audience on the total number and the names of all candidates in the same constituency and to give equal treatment to all candidates concerned when producing multi-episode programmes which are election-related;
- (l) reminding candidates that if the EAC receives a complaint about a candidate taking unfair extra publicity and it is subsequently found that the candidate has failed to make his best endeavours in accordance with the guidelines to avoid taking the aforesaid extra publicity, the EAC may make a reprimand or censure in a public statement against him;
- (m) setting out the Transport Department ("TD")'s updated requirements for the display of EAs on public light buses and taxis;
- (n) reminding candidates that they should give the unspent or unused election donations to charitable institutions or trusts before lodging the return and declaration of election expenses and donation; and
- (o) reminding candidates and other persons that any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication.

3.19 The guidelines relating to election broadcasting, media reporting and election forums in Chapter 11 of the proposed ECSS Elections Guidelines were

the same as those set out in the corresponding Chapter 10 of the proposed DC Election Guidelines. It was originally proposed in the proposed DC Election Guidelines and ECSS Elections Guidelines to extend the existing guidelines on electioneering on licensed TV/radio to TV and radio broadcast on the Internet. However, having regard to the views received during the public consultation in respect of the proposed DC Election Guidelines and the public concern widely expressed on the matter, the EAC eventually decided not to take forward the aforesaid proposal. The decision had taken into consideration that Internet was an open platform and that everyone could broadcast programmes on the Internet and no one could monopolise its use. The aforesaid decision was announced at the press conference for the launch of the public consultation on the proposed ECSS Elections Guidelines held on 23 June 2011.

3.20 The EAC consulted the public on the proposed ECSS Elections Guidelines for a period of 30 days from 23 June to 22 July 2011 in accordance with section 6(2) of the EACO. As in the past, the changes set out in paragraph 3.18 above were highlighted in a Message from the Chairman enclosed in the proposed ECSS Elections Guidelines. 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 15 July 2011 in the Community Hall of the Causeway Bay Community Centre to receive oral representations. In the course of consultation, the LegCo Panel on Constitutional Affairs was also briefed and consulted on the proposed ECSS Elections Guidelines and the views of the LegCo Members were taken into account in finalising the Guidelines. At the close of the public consultation on the proposed ECSS Elections Guidelines, a total of four written representations had been received. No oral representation had been received.

Section 3 – Changes after Public Consultation

3.21 Having carefully considered all the representations received from the public and the views of the LegCo Members and in order to reflect the enactment of the latest legislative amendments, the EAC made a number of changes to the proposed ECSS Elections Guidelines. The major amendments include:

- (a) re-focusing on the “fair and equal treatment” principle as the foremost principle in Chapter 11 on election broadcasting, media reporting and election forums;
- (b) adding the newly introduced statutory provisions simplifying relief arrangements for rectifying minor errors and/or false statements in the return and declaration of election expenses and donations;
- (c) allowing the submission of printed copies of electronic EAs to ROs, as an alternative to electronic means; and
- (d) aligning with, where appropriate, the amendments already made to the corresponding chapters of the finalised DC Election Guidelines published on 6 September 2011 for the sake of consistency and clarity.

3.22 The EAC published the finalised ECSS Elections Guidelines on 17 October 2011. The Guidelines were made available for distribution at a number of venues, including District Offices and the REO and could be downloaded from the EAC website. Each candidate of the ECSS Elections was provided with a copy of the ECSS Elections Guidelines when he or she submitted the nomination form.

The Guidelines for CE Election

3.23 For the 2012 CE Election, the EAC published the proposed Guidelines on Election-related Activities in respect of the CE Election (“proposed CE Election Guidelines”) for public consultation from 11 to 24 October 2011. The proposed CE Election Guidelines were drawn up on the basis of the CE Election Guidelines issued in January 2010 with suitable alterations mainly to reflect the legislative amendments made in respect of the CE Election mentioned in section 1 of this chapter and the amendments proposed to be made in light of operational experience gained as well as suggestions and complaints received from the public and other parties concerned in recent elections.

3.24 The major changes proposed in the proposed CE Election Guidelines, as compared with the CE Election Guidelines issued in January 2010, include the following:

(I) Changes caused by amendments to electoral legislation

- (a) updating the minimum number of qualified subscribers required for a valid nomination from 100 to 150;
- (b) updating the number of members to be returned to each sector and subsector of the EC;
- (c) setting out the updated voting system for the CE Election;
- (d) setting out the revised election expense limit of \$13,000,000;

- (e) setting out the arrangements for candidates to submit to the RO by electronic means the declaration and copy of an EA to be displayed, distributed or otherwise used by electronic means;
- (f) setting out the statutory relief mechanism for minor errors and false statements in the return and declaration of election expenses and donations; and
- (g) adding that the use of sound amplifying device within the no canvassing zone for the performance of duties by officers of the CSD at the DPSs in prison is allowed.

(II) Changes made in the light of operational experience and suggestions/ complaints received from recent elections

- (h) reminding candidates that they should carefully study the requirements governing free postage for EAs and that they should submit their EA specimens to the respective manager of the post office for approval as early as possible before mass production so as to allow sufficient time for revising the contents of their EA specimens, if necessary;
- (i) reminding candidates and their election agents to read carefully the guidance notes on personal data privacy in respect of electioneering activities (prepared by OPCPD at Appendix H to the proposed CE Election Guidelines) before they undertake such activities;
- (j) reminding candidates to observe the relevant data protection principle as set out in the guidance notes issued by the OPCPD at Appendix H to the proposed CE Election Guidelines before using an image of an

identified person for a purpose other than the original purpose of collection;

- (k) aligning the guidelines for election broadcasting, media reporting and election forums with those adopted in the DC Election Guidelines published in September 2011;
- (l) setting out the TD's updated requirements for the display of EAs on public light buses and taxis;
- (m) reminding candidates that they should give unspent or unused election donations to charitable institutions or trusts before lodging the return and declaration of election expenses and donation; and
- (n) reminding candidates and other persons that any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication.

3.25 The EAC consulted the public on the proposed CE Election Guidelines for a period of 14 days from 11 to 24 October 2011 in accordance with section 6(2) of the EACO. As in the past, the changes set out in paragraph 3.24 above were highlighted in a Message from the Chairman enclosed in the proposed CE Election Guidelines. During the consultation period, members of the public were invited to give their views on the proposed CE Election Guidelines and to lodge their written representations with the EAC. A public forum was held on 20 October 2011 in the Leighton Hill Community Hall to receive oral representations.

3.26 In the course of the public consultation, the LegCo Panel on Constitutional Affairs was briefed and consulted on the proposed CE Election Guidelines and the views of the LegCo Members were taken into account in finalising the Guidelines. At the close of the public consultation on the proposed CE Election Guidelines, a total of two written representations and two oral representations had been received. Having carefully considered all the representations received from the public and the views of the LegCo Members, the EAC considered that it was not necessary to make major amendments to the proposed guidelines. Only minor amendments to the proposed guidelines were made for the sake of clarity.

3.27 The EAC published the finalised CE Election Guidelines on 25 November 2011. The guidelines were made available for distribution at a number of venues, including District Offices and the REO and could be downloaded from the EAC website. Each candidate of the CE Election was provided with a copy of the CE Election Guidelines when he or she submitted the nomination form.

3.28 As in previous CE elections, enquiry service was available for candidates on the interpretation and operation of the CE Election 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 enquiry 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 enquiry service was laid down in the first chapter of the CE Election Guidelines.

3.29 The enquiry service was available from 2 January 2012 until the end of ordinary business hours before the polling day. For the 2012 CE Election, no candidate (or election agent) used the enquiry service.