

EAC responds to concern related to “candidate” definition in Legislative Council Election proposed guidelines

The following is issued on behalf of the Electoral Affairs Commission:

The Electoral Affairs Commission (EAC) released on March 9 the proposed guidelines on election-related activities in respect of the Legislative Council Election for public consultation. As there have been concern and discussions regarding the definition of "candidate" in Chapter 16 of the proposed guidelines, a spokesman for the EAC made the following clarifications today (March 19):

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) clearly states the definition of "candidate". According to the ECICO, "candidate":

- means a person who stands nominated as a candidate at an election; and
- also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election.

Such a legal definition had also been set out in the election guidelines released by the EAC in the past. The EAC has no intention or authority to change the definition of "candidate" in the proposed guidelines.

"The ECICO clearly sets out provisions regulating election expenses. Apart from prescribing the maximum amount of election expenses, it also requires candidates to submit election returns setting out all election expenses and election donations, in order to ensure that election expenses will not exceed the statutory upper limit and all candidates compete on a level playing field within a reasonable level of expenditures," the spokesman said.

"When considering what expenses would amount to 'election expenses', it is considered both necessary and useful to take heed of the points made by the Court of Final Appeal in a case which touched on election expenses (FACV No. 2 of 2012). Details can be found at Appendix 15 of the proposed guidelines."

The spokesman stressed that the definition of "candidate" in the proposed guidelines only follows what is stipulated in the ECICO. The EAC has the responsibility to remind those who intend to run for elections of the requirements in relevant laws, especially when a court case is available for reference, in order to avoid breaking the law inadvertently.

In case of doubts about whether an expense would constitute an election

expense, independent legal advice should be sought. Any suggestions of amending the existing legislation should be made to the Government. The EAC has no authority to make legislative amendment and will pass opinions received in this regard to the Government for consideration.

The spokesman reiterated that the EAC is an independent, impartial and apolitical body, and is committed to ensuring that public elections are held in an open, fair and honest manner. The 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.

The proposed guidelines can be downloaded from the EAC website (www.eac.hk). They are also available for viewing at the Registration and Electoral Office and the Home Affairs Enquiry Centres of District Offices. Members of the public are welcome to express their views on the proposed guidelines through written submissions to the EAC by post at 10/F, Harbour Centre, 25 Harbour Road, Wan Chai, by fax (2511 1682) or by email (eaceng@eac.hk) not later than April 7. Late submissions will not be considered. The EAC will consider the representations received during the public consultation period and revise the guidelines as appropriate.

For enquiries, please call 2891 1001.