

EAC statement on "primaries"

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

The Electoral Affairs Commission (EAC) today (July 14) issued the following statement in respect of the "primaries" for the Legislative Council General Election (LCGE) held last weekend (July 11 to 12).

Election is a solemn matter and the electoral procedures are strictly governed by the relevant electoral legislation. Public elections must be held in an open, fair and honest manner. There is no mechanism of "primaries" under the law of Hong Kong. The so-called "primaries" is not part of the electoral procedures of the Legislative Council Election or other public elections.

In accordance with Section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO), all candidates must lodge with the appropriate authority an election return setting out the candidate's election expenses and all election donations received. Therefore, if the definition of "candidate" under section 2 of the ECICO is met, regardless of whether he or she has submitted his or her nomination form to run for the 2020 LCGE, he or she must declare all election expenses involved. A spokesman for the EAC emphasised that Section 23 of the ECICO stipulates that only candidates and authorised election expense agents shall incur election expenses or else an illegal conduct is engaged. However, if a third party publishes an election advertisement on the Internet, and the only election expenses incurred by the person for the purpose of publishing the election advertisement are either or both of electricity charges and charges necessary for accessing the Internet, the person is exempted from the relevant criminal liability.

The spokesman reiterated that according to Sections 7 to 9 of the ECICO, it will be a corrupt conduct if a person corruptly affects a person to stand or not to stand as a candidate by bribery, force, duress or deception. The person who commits an offence is liable on conviction to a fine of \$500,000 and to imprisonment for seven years. In addition, according to Section 42 of the Legislative Council Ordinance, a candidate who has submitted a nomination form may withdraw his or her candidature only before the end of the nomination period. Under the subsisting law, candidates are not allowed to withdraw their candidature after the end of the nomination period and there is no such mechanism of so-called "abandonment of election".

Members of the public, including candidates and other relevant persons, should make a report to the Independent Commission Against Corruption if anyone is suspected to have violated the ECICO. The EAC will handle any relevant complaint received in a serious manner and refer to law enforcement agencies for follow-up.

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the National

Security Law) was implemented on June 30. Under Article 29 of the National Security Law, a person who steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China shall be guilty of an offence; a person who requests a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to commit rigging or undermining an election in the Hong Kong Special Administrative Region, which is likely to cause serious consequences, shall be guilty of an offence. Whether an election-related activity constitutes an offence will depend on the decisions of the prosecuting authorities and the court. Members of the public should take heed of the relevant provisions in the course of organising and participating in election-related activities.

The EAC is an independent, apolitical and impartial body which decides on public election matters in accordance with actual and objective considerations and related legislation. The EAC issued a statement last Wednesday (July 8) pointing out that as the nomination period of the 2020 LCGE was approaching, the EAC had noticed reports on various election-related activities held by individuals or organisations. The statement aimed at reminding those who wish to run for an election and other stakeholders that they must understand and comply with the legislative requirements so as to avoid committing any criminal offence inadvertently.