



**Proposed Guidelines on Election-related Activities  
In respect of the Election Committee Subsector Elections**

**Submissions on Election Advertisements**

1. The Electoral Affairs Commission (the “Commission”) on 11 May 2016 issued a set of *Proposed Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections* (“Proposed Guidelines”), and sought views. These guidelines shall apply to all ordinary elections and by-elections of the Election Committee subsectors to be held after its publication.
2. The Law Society of Hong Kong has the following observations on election advertisements set out in the Proposed Guidelines.

**Sharing or forwarding of election campaigns through internet platforms**

3. Election advertisements are canvassed in Chapter 8 of the Proposed Guidelines. Paragraph 8.4 therein states that

“... if web surfers merely share or forward different candidates’ election campaigns through internet platforms for expression of views and do not intend to promote or prejudice the elections of any candidates, such sharing or forwarding will not normally be construed as publishing [election advertisements]. However, if the web surfers are instructed by the candidate or his/her election helpers to share or forward the election campaigns through internet platforms with the intention to promote or prejudice the election of a candidate or candidates at the election, such act will be regarded as publication of the candidate’s or candidates’ [election advertisements] ...”.

We take the view that when web surfers share or forward election campaigns to express their own views, this act by itself will, by implication or otherwise, have the effect of approving or disapproving a candidate, and therefore promotes or prejudices the election platform or candidacy of that candidate (or his or her political party, if any). However, in reality, there could be various reasons for such

sharing or forwarding of election materials. Such reasons could be for analysis, educational purposes or others.

4. To help clarify the above, we suggest that there should be exemptions and also that generous considerations should be given to requests for exemptions. Additionally, the Commission should offer illustrations on their intended meanings of election advertisements in the above context.
5. We also note that paragraph 8.4 of the Proposed Guidelines as quoted above is premised on the intention of the person in question. Intention may often be nebulous and is quite often arguable. Considerations should hence be given to premising the regulation on whether the action in question has the effect of promoting or prejudicing the election of a candidate (in addition to merely sharing the information), coupled with appropriate exemptions and illustrations as we have suggested above.

### **Removal of publicity materials related to the election**

6. Paragraph 8.6 of the Proposed Guidelines sets out the definition of “publish”. It states that any publicity materials published prior to the election period (including posters or banners bearing the name or photograph of the candidate displayed at a public place or the common parts of a building) should be removed before the candidate has been nominated or has publicly declared an intention to stand as a candidate. Otherwise, any non-removed publicity material may be regarded as an election advertisement.
7. We note the use of the word “*may*” in the above, but yet, *prima facie*, that is still a very broad formulation. Posters or banners concerning the candidate’s previous participation in seminars / public events, which are unrelated to the election, may be caught by the Guidelines, unintentionally or inadvertently.
8. On the other hand, in para. 8.64, a distinction is made for the material published by an organization, as opposed to a candidate. For material published by an organization which only advertises a particular activity, and such activity:
  - (a) is organized from time to time either as part of the organization’s normal functions, and/or according to the local tradition;
  - (b) is not related to the election; and
  - (c) does not explicitly or implicitly promote or prejudice the election of a candidate in the election,

then the appearance in the published material of the name of the candidate will not be regarded as an election advertisement.

We suggest para. 8.6 should be amended and that the formulation set out in paragraph 8.64, which we consider are clearer and fairer, should be applied *mutatis mutandis* to paragraph 8.6. In addition, insofar as paragraph 8.6 of the Proposed Guidelines refers to the removal of publicity materials, careful considerations should be given, with appropriate illustrations given, as to how such removal may be implemented in relation to publications made through the internet or other electronic media such as Facebook, twitters, blogs, chatrooms etc.

**The Law Society of Hong Kong**

**7 June 2016**