

IMPORTANT

1. These Guidelines come into operation on _____ and will apply to all Chief Executive elections conducted under the Chief Executive Election Ordinance (Cap 569) to be held after that date.
2. In these Guidelines, “he” means “he” or “she” as far as the context permits; and “elector” means a member of the Election Committee constituted under section 8 of the Chief Executive Election Ordinance (Cap 569) who is not disqualified under section 26 of the Ordinance from voting.
3. The law stated in these Guidelines is that prevailing as at the date of publication.
4. All specified forms referred to in these Guidelines are obtainable from the Registration and Electoral Office, tel: 2891 1001; fax: 2891 1180; e-mail: reoeng@reo.gov.hk and its web site at <http://www.info.gov.hk/reo>.
5. Electioneering, campaigning and canvassing activities referred to in these Guidelines include any positive and negative campaigning conducted for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.
6. In the event that future amendments to these Guidelines are necessary, loose-leaf amendment sheets would be issued. Amendment sheets will be obtainable from the Registration and Electoral Office (tel: 2891 1001; website <http://www.info.gov.hk/reo>).

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15 April 2005

Message from the Chairman

Public Consultation on the Proposed Guidelines on Election-related Activities in respect of the Chief Executive Elections

A Chief Executive (“CE”) Election will be held in July 2005. The Electoral Affairs Commission (“EAC”) is empowered under section 6(1)(a) of the EAC Ordinance (Chapter 541 of the Laws of Hong Kong) to issue guidelines to facilitate the conduct or supervision of an election. The aim of 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 due to inadvertence.

The EAC has at all times made its best endeavour in refining and improving the electoral arrangements for public elections. A set of proposed guidelines has now been drawn up by the EAC for the conduct of the CE Election to be held in July 2005 and for all CE elections to be held afterwards. The proposed guidelines are modelled on the guidelines used for the 2002 CE Election, with reference to the latest amendments made to the guidelines for other public elections, basically those used for the District Council elections and the Legislative Council elections. In drawing up the proposed guidelines, we have taken into account the operational experience of previous elections, as well as suggestions and complaints received from the public and other parties concerned. The major changes proposed as compared against the guidelines for the 2002 CE Election are set out in the **Appendix**.

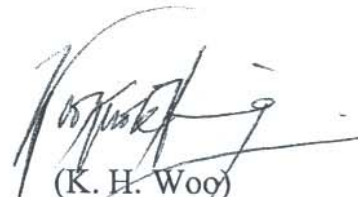
Before finalising the guidelines for issue to the public, we shall, in accordance with section 6(2) of the EAC Ordinance, consult the public on the proposed guidelines for a period of 14 days starting from **15 April to 28 April 2005**, both dates inclusive. A set of final guidelines will be issued in the light of responses to this consultation exercise.

Please send your written representations on the proposed guidelines to the EAC Secretariat at 10/F, Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong, or by fax (fax no.: 2511 1682) or e-mail (eacenq@reo.gov.hk) the latest by **28 April 2005**. **Late representations will not be considered.** Please indicate clearly in your response if you wish your response or your name to remain confidential. You may also make representations to us orally at a public forum to be held on **25 April 2005 at 10:00 am** at the **EAC Conference Room, 10/F, Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong**. For enquiries, please call 2827 1269.

The EAC will consider the representations received during the public consultation period and revise the guidelines as appropriate. The finalised guidelines will be published around late May 2005.

The EAC is committed to making every endeavour to ensure that all public elections are held in an open, fair and honest manner. No doubt those who have opposing views and suggestions will make representations to us. **However, it is equally important that supporting views should also be made known to us, for otherwise it may be said that no one supports or agrees with our proposed guidelines.**

Yours faithfully,



(K. H. Woo)

Chairman

Electoral Affairs Commission

(With enclosure)

Appendix

Major Changes Proposed in the Guidelines for Chief Executive Elections as Compared Against the Guidelines for the 2002 Chief Executive Election

Relevant Chapter	Major Changes
Chapter 1 <i>Introduction</i>	<ul style="list-style-type: none"> • A list of the governing legislation for Chief Executive (“CE”) elections is included for ease of reference (paras. 1.2 to 1.12 of the guidelines); and • the aim of the guidelines is spelt out for clarity (paras. 1.14 to 1.15).
Chapter 2 <i>The Election Committee</i>	<ul style="list-style-type: none"> • A paragraph is added to explain the composition of the Election Committee (para. 2.2).
Chapter 3 <i>Nomination of candidates</i>	<ul style="list-style-type: none"> • A note is added to remind candidates of the importance in observing the subscription requirements (para. 3.7(a)); and • inclusion of an example to illustrate how a nomination form submitted to the Returning Officer (“RO”) may be rectified within the nomination period (para. 3.11).
Chapter 5 <i>Polling and counting arrangements</i>	<ul style="list-style-type: none"> • The chapter is recasted to render it more reader friendly. • Rules governing the conduct and communication with electors during the poll and the count and measures introduced to safeguard the secrecy of the vote are included (paras. 5.13, 5.16, 5.31, 5.34, 5.36 and 5.41 to 5.43); and • inclusion of a new part setting out the procedures on disposal of documents after the election (paras. 5.44 to 5.46).
Chapter 8 <i>Election advertisements</i>	<ul style="list-style-type: none"> • Explaining the scope and definition of election advertisement in greater detail. Clarifying that a performance report shown on a website of an incumbent candidate during or before the election period will be regarded as an election advertisement if it is published for the purpose of promoting or

Relevant Chapter	Major Changes
	<p>prejudicing the election of a candidate (paras. 8.3 to 8.5 and 8.55) as recommended in para. 14.60 of the report on the 2004 Legislative Council (“LC”) Election;</p> <ul style="list-style-type: none"> • more details on how election expenses should be counted when the election advertisements are published for the purpose of prejudicing the election of candidates (paras. 8.7 to 8.8); • more details as to how the value of a commercial or non-commercial space for display of election advertisements should be accounted for (para. 8.16); • clarifying that if the contents of a candidate’s website are changed, the candidate must make a new declaration and to deposit 2 hard copies of the modified pages with the RO (para. 8.41); and • addition of a new paragraph to clarify how election advertisements in folder forms should be sealed for handling by the Post Office under the free postage arrangement (para. 8.66 and Appendix C).
<p>Chapter 9</p> <p><i>Election meetings</i></p>	<ul style="list-style-type: none"> • Updating the particulars to be included in the notification to the Police on holding of election meetings or public processions and the requirements for such notification (paras. 9.7, 9.8 and 9.12); and • inclusion of a guidance note on safe conduct of election-related activities issued by the Commissioner of Police (para. 9.11 and Appendix E).
<p>Chapter 10</p> <p><i>Electioneering at the living or working places of electors, premises of organisations to which electors belong and buildings which electors frequent</i></p>	<ul style="list-style-type: none"> • Defining the scope of electioneering activities in greater detail (para. 10.1); • requesting all management bodies of the organisations or buildings concerned to apply fair and equal treatment to all candidates, instead of dealing with each application from them separately (para. 10.8); • requiring all persons who put up any publicity materials, including those which do not look election-related, in the nomination period at private premises should declare to the management body concerned in writing whether they are candidates or

Relevant Chapter	Major Changes
	<p>intend to stand as candidates in the election (para. 10.11); and</p> <ul style="list-style-type: none"> • adding a guidance note on personal data privacy in respect of electioneering activities prepared by the Office of the Privacy Commissioner for Personal Data (para. 10.15 and Appendix H).
<p>Chapter 11</p> <p><i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> • Inclusion of a statement that service providers which are not licensees under the Broadcasting Ordinance should not be regarded as commercial broadcasters as mentioned in para. 11.2 of the guidelines, and are allowed to carry election advertisements territory wide (para. 11.2). (As recommended in paras. 14.57-14.58 of the report on the 2004 LC Election.) • Allowing candidates to take part freely in non election-related programmes in which the ‘equal time’ principle will not apply (para. 11.3); • adding that comments made by broadcasters for the purpose of promoting or prejudicing candidate(s) are treated as election advertisements, if reference can be made from the materials to identify the candidate(s) being promoted or prejudiced (para. 11.7); • restricting a candidate’s appearance on TV/radio/movie as presenters, regular contributors, actors, musicians, singers or other entertainers and in commercial advertisements after declaring his intention to run for the election (paras. 11.8 to 11.11); and • advising broadcasters to invite all candidates to attend election forums and appealing to any organisations such as schools to invite all candidates to attend any such forums (paras. 11.15 to 11.17).
<p>Chapter 12</p> <p><i>Use of sound amplifying device and broadcasting vans</i></p>	<ul style="list-style-type: none"> • Adding a definition on amplification device (para. 12.3); • making a nuisance by using megaphone, or other device or instrument for magnifying sound is also an offence under the Noise Control Ordinance (para. 12.4); and

Relevant Chapter	Major Changes
	<ul style="list-style-type: none"> reminding the candidates to observe the traffic regulations including seating requirements, wearing of seat belts etc and not to stand up in moving vehicles (para. 12.6).
Chapter 13 <i>Electioneering activities conducted in schools or participated by school pupils</i>	<ul style="list-style-type: none"> A new chapter is added as recommended in paras. 12.4 to 12.5 of the report on the 2002 CE Election. The content of the chapter is adapted from Chapter 13 of the guidelines for LC elections.
Chapter 14 <i>Prohibition against canvassing activities outside polling station</i>	<ul style="list-style-type: none"> The RO should issue a notice to candidates requiring them to remove their election advertisements posted at the private premises within the No Canvassing Zone on the polling day (para. 14.12).
Chapter 15 <i>Exit poll</i>	<ul style="list-style-type: none"> Specifying that details of persons or organisations allowed to conduct exit polls will be announced to the public prior to the polling day, and such details will also be displayed at the polling station (para. 15.4).
Chapter 16 <i>Election expenses and donations</i>	<ul style="list-style-type: none"> Clarifying that the term “candidate” relating to election expenses includes a person who has publicly declared an intention to stand for election at any time before the close of nominations for the election, regardless of whether he has submitted his nomination form or after the submission of the nomination form, his nomination is ruled invalid by the RO (para. 16.2); elaboration on the deadline for submission of the return and declaration of election expenses and donations to the Chief Electoral Officer, in order to reflect the latest amendment to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) in this regard (para. 16.23); and reminding candidates that it is a corrupt conduct if a candidate makes a statement that he knows or ought to know is materially false or misleading in an election return (para. 16.26).

Relevant Chapter	Major Changes
Chapter 17 <i>Corrupt and illegal conduct</i>	<ul style="list-style-type: none"> • Inclusion of a paragraph to specify that a candidate who fails to provide printing details or deposit copies of election advertisements with the RO commits an offence, but he may apply to the court for an order to relief him from penalties under certain circumstances (para. 17.25).
Chapter 18 <i>Namedropping</i>	<ul style="list-style-type: none"> • More clarification as to why written consent of support is needed and as to what amounts to “support” (para. 18.1); • more clarification on the use of title of office bearer (para. 18.4); • more clarification on whether a candidate needs to share the expenses for the election advertisements if he appears in another candidate’s election advertisement to indicate his support (para. 18.9); • a new provision introducing the addition of a caption to a photograph in an election advertisement as a means to minimize misunderstanding regarding consent of support (para. 18.10); and • advising the candidates not to distribute their election advertisements together with any materials published by any person, organisation, or government agency or department (para. 18.11).
Chapter 19 <i>Attendance of public functions by both government officials and candidates</i>	<ul style="list-style-type: none"> • Reminding civil servants that they should observe the rules of the Civil Service Bureau when participating in electioneering activities (para. 19.2); and • inclusion of a new Part IV on “Principal Officials” (paras. 19.9 to 19.12).
Chapter 20 <i>Complaints procedure</i>	<ul style="list-style-type: none"> • Adding a statement that before the issue of warning to a complainee, a reasonable effort should be made to contact the person and give him a reasonable opportunity to give explanations (para. 20.14(b)), as adapted from the guidelines for District Council elections.

ABBREVIATIONS

ARO, AROs	Assistant Returning Officer, Assistant Returning Officers
Cap	Chapter of the Laws of Hong Kong
CE	Chief Executive
CEEO	Chief Executive Election Ordinance (Cap 569)
CEO	Chief Electoral Officer
CSB	Civil Service Bureau
DC, DCs	District Council, District Councils
DCO	District Councils Ordinance (Cap 547)
EAC	Electoral Affairs Commission
EP (CEE) Reg	Electoral Procedure (Chief Executive Election) Regulation (Cap 541J)
EAC (ROE) (FCSEC) Reg	Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B)
EACO	Electoral Affairs Commission Ordinance (Cap 541)
EC	Election Committee
ECICO	Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554)
ERO	Electoral Registration Officer
FR	final register
HKSAR	Hong Kong Special Administrative Region
ICAC	Independent Commission Against Corruption
LCO	Legislative Council Ordinance (Cap 542)

LegCo	Legislative Council
NCZ	No Canvassing Zone
NPC	National People's Congress
NSZ	No Staying Zone
para., paras.	paragraph, paragraphs
POBO	Prevention of Bribery Ordinance (Cap 201)
PR	provisional register
printing details	name and address of the printer, date of printing and number of copies printed
PRO	Presiding Officer
REO	Registration and Electoral Office
RO	Returning Officer
S, s, Ss, ss	section, sections
VR	village representative
VREO	Village Representative Election Ordinance (Cap 576)

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CHAPTER 1

INTRODUCTION

PART I : THE CHIEF EXECUTIVE ELECTION

1.1 The Chief Executive (“CE”) of the Hong Kong Special Administrative Region (“HKSAR”) is the head of the HKSAR and the head of the HKSAR Government. The CE is elected by the Election Committee (“EC”) and appointed by the Central People’s Government. The specific method for selecting the CE is prescribed in Annex I to the Basic Law.

Governing Legislation

1.2 The CE elections are governed by the statutory requirements provided in 3 different ordinances, namely the Chief Executive Election Ordinance (Cap 569) (“CEEEO”), the Electoral Affairs Commission Ordinance (Cap 541) (“EACO”) and the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”).

1.3 The CEEEO provides for the election of the CE in accordance with Annex I to the Basic Law. The Schedule to the CEEEO provides details on how the EC is to be constituted to elect the CE.

1.4 The EACO tasks the Electoral Affairs Commission (“EAC”) with the conduct and supervision of CE elections, and matters incidental thereto.

1.5 The ECICO prohibits election-related corrupt and illegal conduct and is administered by the Independent Commission Against Corruption (“ICAC”).

1.6 These ordinances are complemented by 6 subsidiary legislations which provide the detailed procedures for the conduct of the CE elections.

1.7 The electoral procedures for conducting CE elections are provided in the Electoral Procedure (Chief Executive Election) Regulation (Cap 541 J) (“EP (CEE) Reg”).

1.8 The Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B) (“EAC (ROE) (FCSEC) Reg”) sets out the procedures for registration of voters for the EC subsector elections. Members of the EC are to elect the CE.

1.9 The Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap 569B) sets out the procedures for hearing and ruling by Revising Officers concerning the registration of voters for the EC subsector elections.

1.10 The Election Committee (Appeals) Regulation (Cap 569A) sets out the procedures for appeal against result of subsector election to the Revising Officer and in relation to registration of nominees declared by the Returning Officer (“RO”) as members of the EC.

1.11 The Chief Executive Election (Election Petition) Rules (Cap 569E) sets out the procedures for lodgement of petitions against the result of a CE election to the High Court.

1.12 The Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap 554A) sets out the maximum amount of election expenses that can be incurred by or on behalf of a candidate at a CE election.

PART II : THE GUIDELINES

1.13 According to s 6 of the EACO, the EAC may, in connection with an election, issue guidelines relating to:

- (a) the conduct or supervision of or procedure at an election;
- (b) the activities of a candidate, an agent of a candidate or any other person assisting a candidate, or any other person;
- (c) the election expenses;
- (d) the display or use of election advertisements or other publicity material; and
- (e) the procedure for making a complaint.

1.14 The aim of such 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 can avoid breaching them due to inadvertence. Guidelines are issued for reference by the public to ensure that all public elections are conducted in an open, honest and fair manner.

1.15 This set of Guidelines explains the various electoral arrangements made for CE elections, the legislative provisions and regulations as well as guidelines that should be observed by all parties concerned before, during and after an election and the procedure for lodging an election-related complaint. An action checklist for candidates can be found in **Appendix A**.

PART III : ADVISORY SERVICE TO CANDIDATES ON THE GUIDELINES

1.16 Any person including candidates and their election agents may make enquiries with the ICAC on the provisions of the ECICO. Candidates should also seek their own legal advice in case of doubt. In addition, candidates (including those who have publicly declared their intention to stand for election, whether or not they have submitted a nomination form) may raise, in writing, with the EAC any questions that they may have on the interpretation or operation of this set of guidelines, other than those covered by the ICAC. The EAC will, wherever practicable, respond to the candidate concerned within 3 working days after receiving his written enquiry; the question(s) and answer(s) relevant to these guidelines will be published for public information for the better understanding of these guidelines.

PART IV : SANCTION

1.17 Members of the public, in particular, electors, candidates and their agents as well as government officials engaged in election-related duties should read, familiarise themselves with, and strictly observe, the guidelines.

1.18 The EAC is committed to ensuring that all elections are conducted openly, honestly and fairly. If it comes to know that any candidate or person is in breach of the guidelines, apart from notifying the relevant authorities for actions to be taken, it may make a reprimand or censure in a public statement which may include the name of the candidate or person concerned and other relevant parties, if any. The reprimand or censure is separate from and additional to the criminal liability for any offences committed.

CHAPTER 2

THE ELECTION COMMITTEE

PART I : FUNCTIONS AND COMPOSITION OF THE ELECTION COMMITTEE

2.1 The EC is constituted under the CEEO for the purpose of electing the CE when the office of the CE becomes vacant [s 7 of the CEEO].

2.2 The EC consists of 4 sectors, each of which consists of various subsectors. The composition of 4 sectors and their constituent subsectors are provided in s 2 of the Schedule to the CEEO and are set out in **Appendix B** for easy reference. Most of the EC members were elected by voters in the subsectors at the subsector ordinary elections and by-elections. The Hong Kong deputies to the National People's Congress ("NPC") and Members of the Legislative Council ("LegCo") are ex-officio members of the EC, while the religious subsector returns members to the EC by way of nomination.

PART II : UPDATING THE LIST OF EC MEMBERS

List of EC Members

2.3 The Electoral Registration Officer ("ERO") may from time to time amend the final register ("FR") to give effect to any change in the ex-officio membership of the EC by publishing a notice listing the names so added or removed [s 41 of the Schedule to the CEEO and s 37(3) of the EAC (ROE) (FCSEC) Reg].

Provisional Register of EC Members and Omissions List

2.4 When a vacancy of the CE arises, the ERO shall compile a provisional register (“PR”) of members of the EC within 14 days after the declaration of the vacancy. In compiling the PR, the ERO shall scrutinise the existing FR of the members of the EC, and strike out the names of persons whom the ERO is satisfied on reasonable grounds that they (other than ex-officio members) have passed away, resigned or deemed to have resigned from the EC, or ceased to be eligible to be registered, or have been disqualified from being registered, under the Legislative Council Ordinance (Cap 542) (“LCO”) as an elector for a geographical constituency. The name of such members would be entered on an omissions list [ss 4(1)(b), (3), (4)(a) and (b) of the Schedule to the CEEEO].

2.5 The ERO will publish the omissions list at the same time when the PR is published [s 4(5) of the Schedule to the CEEEO].

Objections and Claims

2.6 The PR and the omissions list will be made available for public inspection at the Registration and Electoral Office (“REO”) and all of the District Offices for a specified period [s 4(6) of the Schedule to the CEEEO and s 25(2)(b) of the EAC (ROE) (FCSEC) Reg]. On or before the last day of the specified period, any person can lodge with the ERO an objection against any entry in the PR, and any person whose name has been included in the omissions list can lodge a claim with the ERO in respect of the omission of his name [s 48 of the Schedule to the CEEEO].

Final Register of EC Members

2.7 Based on the EC PR published, the EAC will ascertain the number of members representing each subsector (other than the NPC and LegCo

subsectors) to see if the number of members representing a subsector is less than the number of members allocated to the subsector. For subsectors where vacancies are identified, supplementary nomination(s) (in the case of the religious subsector) and/or subsector by-election(s) will be arranged to fill such vacancies [s 5 of the Schedule to the CEEO].

2.8 Within 7 days after the results of the subsector by-election(s) are published, the ERO will publish the EC FR [s 40(2) of the Schedule of the CEEO]. For supplementary nomination(s) (in the case of the religious subsector), the ERO shall compile and publish the EC FR within 7 days after a nominee is declared as an EC member, unless the period during which the nomination is to be made and the nomination period for a subsector by-election coincide or partly coincide [s 40(3) of the Schedule of the CEEO]. This EC FR, which will be made available for public inspection at the REO and all of the District Offices, will include:

- (a) changes, if any, in the ex-officio membership of the EC (see para. 2.3); and
- (b) new members returned by the supplementary nomination(s) and/or subsector by-election(s) (see para. 2.7).

2.9 Subject to any appeal against the result of the supplementary nomination(s) and/or subsector by-election(s), and the determination of the Revising Officer on such appeal, an EC member whose name and other relevant particulars appear in this EC FR will be eligible to subscribe to nomination and to vote at the CE election unless he has become disqualified to do so because he:

- (a) has resigned as a member of the EC (other than an ex-officio member);

- (b) is serving a sentence of imprisonment on the date of nomination or the polling date;
- (c) has ceased to have a substantial connection with the subsector concerned;
- (d) has ceased to be registered or eligible to be registered as an elector for a geographical constituency;
- (e) has in Hong Kong or in any other place been sentenced to death or imprisonment (by whatever name called) and has not either-
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon;
- (f) is found for the time being under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs;
- (g) is a member of the armed forces of the People's Republic of China or any other country or territory; or
- (h) is or has been convicted, within the 3 years before the polling date
 - (i) of having engaged in corrupt conduct or illegal conduct in contravention of the ECICO;

- (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201) (“POBO”); or
- (iii) of any offence prescribed by the EAC Regulations.

[Ss 16(5) and 26 of the CEEO]

CHAPTER 3

NOMINATION OF CANDIDATES

PART I : QUALIFICATIONS AND DISQUALIFICATION FOR NOMINATION

3.1 The law governing the qualification and disqualification for the nomination of candidates for a CE election is contained in the CEEO. The procedure for nomination of candidates for the CE election is provided in the EP (CEE) Reg made by the EAC.

Qualifications

3.2 To qualify for nomination as a candidate at the election, a person must:

- (a) be a permanent resident of the HKSAR;
- (b) be a Chinese citizen as defined by s 2 of the Hong Kong Special Administrative Region Passports Ordinance (Cap 539);
- (c) have no right of abode in any foreign country; and
- (d) have reached the age of 40 on, and have ordinarily resided in Hong Kong for a continuous period of not less than 20 years before, the day on which the office of the CE becomes vacant.

[S 13 of the CEEO]

3.3 A person is considered to **have ordinarily resided in Hong Kong** when he has habitually and normally lived in Hong Kong lawfully for a settled purpose, apart from temporary and occasional absences such as holidays and absence abroad for business or studying purposes. Each case has to be examined upon its own facts. Matters like the length of the person's absence, the reason for his absence, the location of the home of him, his spouse, children and parents and his maintenance of connections with Hong Kong are all relevant factors. In case of doubt, prospective candidates are advised to consult their legal adviser.

Disqualification

3.4 A person will be disqualified from being nominated, if he:

- (a) is the incumbent CE and holds the office for the second consecutive term;
- (b) is a judicial officer, or a prescribed public officer¹;
- (c) has been adjudged bankrupt;
- (d) holds a passport or similar travel document other than a passport or Certificate of Identity issued by the HKSAR or an entry permit

¹ A prescribed public officer means any of the following-

- (i) the Chairman of the Public Service Commission;
- (ii) the Commissioner and Deputy Commissioner of the ICAC and the holder of any other office under the ICAC Ordinance (Cap 204);
- (iii) the Ombudsman and the holder of any appointment under s 6 of The Ombudsman Ordinance (Cap 397);
- (iv) a member of the EAC;
- (v) the Chief Executive of the Hong Kong Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (vi) the Privacy Commissioner for Personal Data and any person employed or engaged by him under the Personal Data (Privacy) Ordinance (Cap 486);
- (vii) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480);
- (viii) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

issued by an authority in any part of the People's Republic of China;

- (e) has been convicted of treason or sentenced to death;
- (f) has been convicted, within 5 years before the commencement of the nomination period, of any offence in Hong Kong or in any other place, the sentence for which is imprisonment (suspended or not) for not less than 3 months, or convicted of having engaged in corrupt or illegal conduct in contravention of the ECICO, or convicted of an offence against Part II of the POBO or any offence prescribed by the regulations made by the EAC; or
- (g) has been found, for the time being, to be incapable, because of mental incapacity, of managing or administering his property and affairs.

[S 14 of the CEEO]

PART II : WHEN AND HOW TO NOMINATE

When to Nominate

3.5 Nomination may be made during the **nomination period** specified in the notice published in the Gazette [s 3 of the EP (CEE) Reg]. The nomination period for a CE election shall not be less than 14 days, and shall terminate at least 21 days before the polling date [s 15 of the CEEO]. The EAC shall appoint a judge of the Court of Final Appeal, a Justice of Appeal or a judge of the Court of First Instance to be the RO of a CE election [s 41 of the CEEO]. An election timetable will be provided to each candidate

by the RO. The ordinary business hours on each working day (ie any day other than a general holiday or Saturday) in the nomination period for the RO to accept nominations are from 9 am to 5 pm, and on a Saturday, from 9 am to 12 noon. **Candidates are encouraged to submit their nominations well before the expiration of the nomination period to allow time for any errors in their nomination forms to be corrected.**

How to Nominate

3.6 Nomination forms specified by the EAC are available from the REO.

3.7 The nomination form comprises:

- (a) The Nomination. This must be subscribed to by not less than **100 electors**. An elector may nominate only one candidate, and the nomination shall not be withdrawn or revoked.

IMPORTANT :

A candidate who submits a nomination form on the last few days of the nomination period is advised to include more than the required number of subscribers for his nomination, to avoid the risk of invalidation of the nomination should 1 or more of the subscribers be subsequently found not to be qualified as subscribers. A candidate should make his best endeavour to ensure that the electors subscribing his nomination form are eligible and have not subscribed another nomination previously. Electors subscribing a nomination should sign the nomination form **personally**.

(b) The Candidate's Consent to Nomination and Declarations. This must be completed and signed by the candidate. There are the following declarations:

- (i) a declaration to the effect that the candidate stands for the election in an individual capacity and that he will uphold the Basic Law and pledge allegiance to the HKSAR; and
- (ii) a declaration as to the candidate's nationality and whether he has a right of abode in any foreign country.

[S 16 of the CEEO]

3.8 Candidates should ensure that their nomination forms are properly completed before submission. The completed nomination form must be lodged with the RO by the candidate **in person** during ordinary business hours within the nomination period (see para. 3.5). The RO may, in exceptional circumstances, eg the nominee's temporary absence from Hong Kong or incapacity due to illness, authorise any other form of delivery of the nomination form [s 4(1)(e) of the EP (CEE) Reg].

False Declarations

3.9 A candidate who knowingly and wilfully makes a statement which is false in a material particular in the declaration in the nomination form shall be guilty of an offence punishable by a fine and imprisonment for up to 2 years under the Crimes Ordinance (Cap 200) and the EP (CEE) Reg with the disqualifying effect as described in paras. 16.38 and 17.31 of these Guidelines [s 84(4) and (5) of the EP (CEE) Reg].

PART III : VALIDITY OF NOMINATIONS

3.10 The RO will make a decision as to the validity of a nomination as soon as practicable after receipt of the nomination form [s 17 of the CEEEO].

3.11 Where a nomination appears to the RO to be invalid because of some errors which can be corrected **within** the nomination period, the RO will, if practicable, give the candidate a reasonable opportunity of correcting the errors before making a decision that the nomination is invalid [s 5 of the EP (CEE) Reg]. For example, if the eligibility of any subscriber is in doubt, a prospective candidate may be allowed to make a substitution as soon after the submission of his nomination form as practicable. However, no substitution for any subscriber or re-submission of a nomination form will be accepted after the close of the nomination period.

3.12 A nomination may be ruled invalid if any errors on the nomination form are not corrected by the close of the nomination period.

3.13 The RO may require such additional information from a candidate as he considers necessary to satisfy himself as to the validity of the nomination.

3.14 A nomination will not be valid unless it contains all the information and signatures required to be shown on the nomination form or by the RO and the candidate has made the declarations referred to in para. 3.7(b).

PART IV : PUBLICATION OF NOMINATIONS

3.15 The RO shall, as soon as practicable after determining that a person is validly nominated as a candidate or is not so nominated, send a written notice of the determination to the person and to each validly nominated candidate [s 7(1) of the EP (CEE) Reg]. Within 7 days after the close of nominations, the RO will declare by notice in the Gazette the names of the validly nominated candidates and, for each of these candidates, the names of the electors nominating him. The RO will also make available copies of the nomination forms for public inspection free of charge at his office during ordinary business hours [s 18 of the CEEO and s 8 of the EP (CEE) Reg].

3.16 The RO can decide that a nomination is invalid only where:

- (a) the number of qualified subscribers are less than 100 as required by s 16 of the CEEO;
- (b) the nomination form, including the nomination and declarations, has not been completed or signed as required by s 16 of the CEEO and s 4(1) of the EP (CEE) Reg;
- (c) he is satisfied that the candidate is not qualified to be, or is disqualified from being, nominated as a candidate;
- (d) he is satisfied that the candidate is dead; or
- (e) the nomination form is not duly lodged within the nomination period.

3.17 If at any time after the close of nominations but before the declaration of the result of the election, proof is given to the satisfaction of the

RO that any candidate has died or is disqualified from being elected, the RO must publicly declare that the proceedings for the election are terminated [s 22 of the CEEO].

3.18 A candidate will be elected ipso facto if he is the only one validly nominated at the close of nominations. In the circumstances, the RO should publicly declare the candidate to be returned at the election [s 23 of the CEEO].

PART V : WITHDRAWAL OF CANDIDATURE

3.19 A candidate may withdraw his nomination only before the close of nominations. He should complete and sign a specified form titled “Withdrawal of Candidature” and lodge it with the RO [s 19 of the CEEO and s 9 of the EP (CEE) Reg].

3.20 All parties concerned should note that it is an offence under ss 7 and 8 of the ECICO for a person to bribe, or use or threaten to use force or duress against, a candidate to withdraw his candidature, and for a candidate to solicit or accept a bribe to withdraw his candidature.

PART VI : PUBLICITY

3.21 After the close of nominations, the RO will inform each validly nominated candidate the time and date on which he will draw lots to allocate a number to each of such candidates to be shown on the ballot paper, and they may attend if they so wish. Thereafter, the REO will publish a brief introduction of the candidates in the form of a leaflet. The number of each candidate on the ballot paper allocated to him by the drawing of lots will also

be shown on this introductory leaflet. This leaflet will be mailed to electors near the polling day.

3.22 Candidates are free to make use of this introductory leaflet to promote themselves. Any candidate who so wishes should submit the following to the RO before the close of nominations:

- (a) an introductory message in a specified form provided by the RO;
and
- (b) 3 identical copies of his photograph with his name on the back, which must be of passport size, in colour and taken within the last 6 months.

3.23 The contents, nature and presentation of the candidate's message in the introductory leaflet are exclusively the idea and work of the candidate himself. They will not be subject to alteration or edition by the REO unless they are considered to be indecent, defamatory or in any other way unlawful. Candidates are reminded that some electors may only be able to read English.

CHAPTER 4

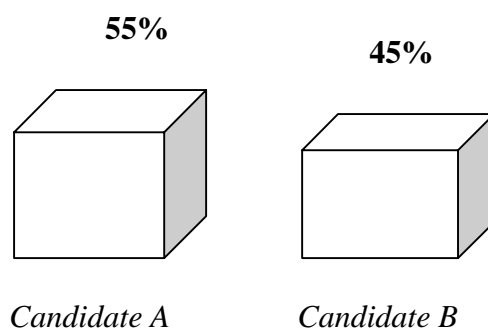
THE VOTING SYSTEM

4.1 A poll will be held if there are 2 or more validly nominated candidates.

4.2 Each elector can cast one vote by marking the candidate of his choice with the chop with a “✓” provided. If a candidate obtains more than half of the total number (ie the absolute majority) of valid votes at the first round of voting of the election, he will be elected. Otherwise, all candidates will be eliminated except those who obtain the highest number of valid votes and, if there is only one candidate who obtains the highest number of valid votes, those who obtain the second highest number of valid votes. These candidates will proceed to the next round of voting. The process will continue until one candidate obtains an absolute majority of votes to win [s 27 of the CEEQ].

4.3 Examples are given below to illustrate how the voting system operates:

Scenario 1 (where there are 2 candidates in the election or 2 candidates remain after the elimination of all other candidates)

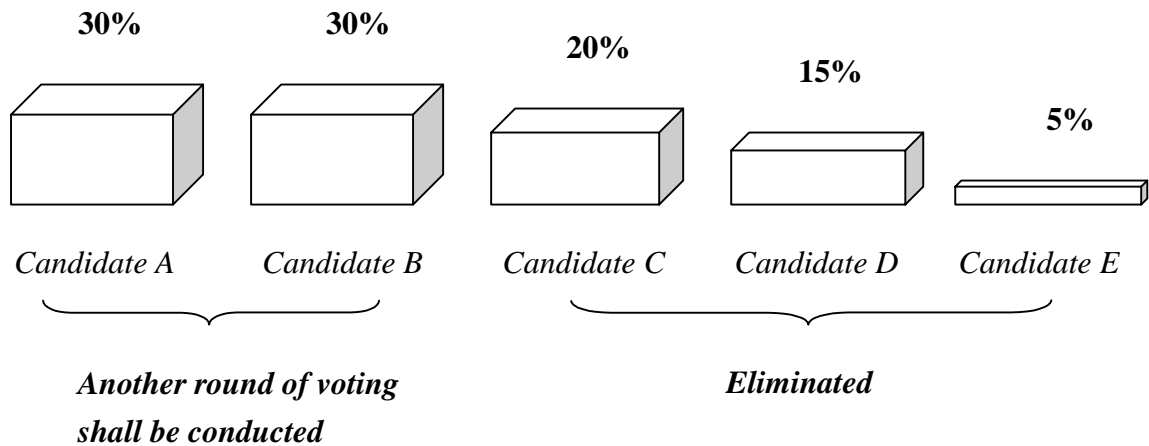


Elected

- Candidate A is elected as he has obtained more than half of the total number of valid votes cast.

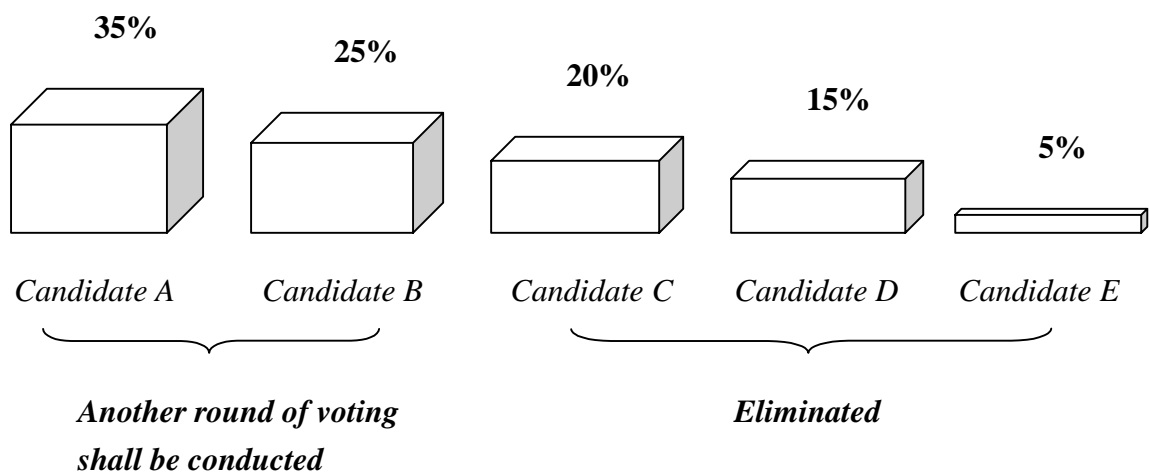
Scenario 2 (where there are 3 or more candidates in the election)

Scenario 2(a)

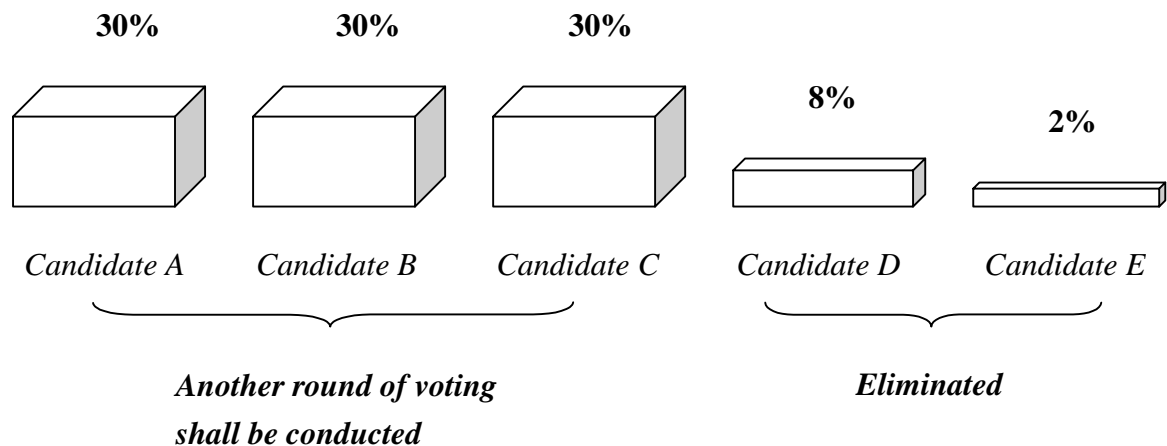


- Only 2 candidates (Candidates A and B) have obtained the highest and the same number of valid votes cast.
- As many rounds of voting as may be necessary shall be conducted until one of them (Candidate A or B) is returned (see scenario 1).

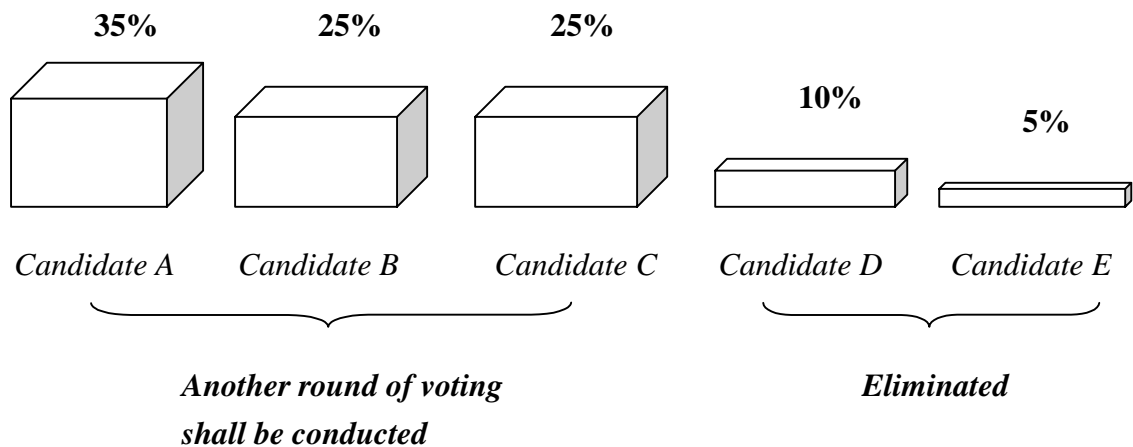
Scenario 2(b)



- Only 1 candidate (Candidate A) has obtained the highest number of valid votes cast but he does not obtain more than half of the total number of valid votes cast.
- Only 1 candidate (Candidate B) has obtained the next highest number of valid votes cast.
- As many rounds of voting as may be necessary shall be conducted until one of them (Candidate A or B) is returned (see scenario 1).

Scenario 2(c)

- 3 candidates (Candidates A, B and C) have obtained the highest and the same number of valid votes cast.
- As many rounds of voting as may be necessary shall be conducted until one of them (Candidate A, B or C) is returned (see scenarios 1, 2(a) and 2(b)).

Scenario 2(d)

- Only 1 candidate (Candidate A) has obtained the highest number of valid votes cast but he does not obtain more than half of the total number of valid votes cast.
- 2 candidates (Candidates B and C) have obtained the next highest and the same number of valid votes cast.
- As many rounds of voting as may be necessary shall be conducted until one of them (Candidate A, B or C) is returned (see scenarios 1, 2(a) and 2(b)).

CHAPTER 5

POLLING AND COUNTING ARRANGEMENTS

PART I : THE VENUE

5.1 Subject to the availability of suitable venues, both the poll and the count will be conducted at the same location, or locations in close proximity to each other, with accessibility to electors with disability.

5.2 If both the poll and the count are to be conducted at the same location, the venue will be partitioned into two parts, ie the polling station and the counting station. Within the counting station, there will be a counting zone, seating areas for the electors, the candidates and their agents, and an area for members of the public to observe the counting of votes [s 46 of the EP (CEE) Reg].

5.3 The area outside the polling station will be designated as the No Canvassing Zone (“NCZ”) and No Staying Zone (“NSZ”), the boundaries of which will be determined by the RO. All candidates will be notified of these zones before the polling day [s 23 of the EP (CEE) Reg]. The RO may also vary the NCZ or the NSZ [see Chapter 14: Prohibition Against Canvassing Activities Outside Polling Station].

PART II : ROUNDS OF VOTING AND COUNTING

5.4 As different rounds of voting may need to be held on the polling day, generally the first round of voting will start at 9 am and close at 10 am.

Thereafter the count will start. If none of the candidates gets the absolute majority of valid votes, another round of voting will be held. This round will start at 2 pm and close at 3 pm. The count will follow thereafter. If again none of the candidates gets the absolute majority, the third round of voting will be held. This round will start at 7 pm and close at 8 pm. Again, the count will follow thereafter. In the event that there is a need for the fourth round or further rounds, it will be held on the following day [s 17(3) of the EP (CEE) Reg].

5.5 At least 10 days before the polling day, the REO will issue to each elector a polling notice. The polling notice details the polling date, the address of the polling station, and the time of the first 3 rounds of voting. Along with the polling notice, there will be a location map of the polling station, detailed voting instructions and procedures on how the poll and the count will be conducted [s 19 of the EP (CEE) Reg].

PART III : INSIDE AND OUTSIDE THE POLLING STATION

5.6 The Presiding Officer (“PRO”) will be responsible for maintaining peace and order inside the polling station, the NCZ and the NSZ. There will be Police and Civil Aid Service presence to provide assistance whenever necessary.

5.7 About 15 minutes before the commencement of the poll, the PRO will notify the candidates, their election agents and polling agents, if present, that the ballot boxes will be locked and sealed. He will then show such persons that the ballot boxes are empty before proceeding to lock and seal them. Candidates and their agents may observe the locking and sealing of the ballot boxes [s 29 of the EP (CEE) Reg].

5.8 The PRO will also inform and show to the candidates, their election agents and polling agents, if they are present, the number of unissued ballot papers which are in his possession.

5.9 Where circumstances permit, the PRO will arrange an enlarged copy of the relevant introductory leaflets on candidates published by the REO to be displayed outside the polling station to facilitate easy reference by electors. A NCZ will be designated outside the polling station to ensure the free and safe passage of electors into the polling station. A notice of the declaration of a NCZ and a map or plan showing the boundary of the area will be put up at or near the polling station. A NSZ in which no one is allowed to stay or loiter will also be designated immediately outside the entrance of a polling station to avoid any obstruction of entry.

5.10 On the polling day, a person must not:

- (a) engage in canvassing for votes (including suggesting not to vote for any candidate) in a NCZ;
- (b) use a sound amplifying system or device for any purpose in the NCZ without lawful authority;
- (c) use a sound amplifying system or device, for canvassing for votes (eg lion dance), so that the sound emitted by it can be heard in the NCZ;
- (d) without reasonable excuse, display in the NCZ any propaganda material relating to any candidate or the election of the CE;
- (e) stay or loiter in the NSZ without the express permission of the PRO;

- (f) fail to comply with a lawful direction given by the RO or the PRO in a NCZ or NSZ;
- (g) cause an obstruction to any person who is in the zone and on his way to vote; or
- (h) otherwise misconduct himself in a NCZ or NSZ.

5.11 If a person contravenes the requirements in para. 5.10 above, he may be (a) required by the RO or PRO to produce his identity card for inspection and (b) ordered by the RO or PRO to leave the zone. If he fails to leave immediately, he may be removed by a police officer or by any other person authorised in writing by the RO or PRO. The person so removed may not re-enter the relevant zone except with the permission of the RO or PRO.

5.12 A person who violates the provisions in paras. 5.10 and 5.11 commits an offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 3 months [ss 24 and 82 of the EP (CEE) Reg].

PART IV : ADMISSION TO THE POLLING STATION

5.13 Other than electors, the following persons may also be admitted to a polling station:

- (a) a member of the EAC;
- (b) the RO;
- (c) an Assistant Returning Officer (“ARO”);

- (d) the Chief Electoral Officer (“CEO”);
- (e) the PRO;
- (f) a polling officer;
- (g) a candidate;
- (h) an election agent;
- (i) a polling agent;
- (j) a public officer on duty at the polling station;
- (k) a member of Civil Aid Service on duty at the polling station;
- (l) a child who accompanies an elector to the polling station for the purpose of voting (if the PRO considers that the child should not be left unattended while that elector is inside the polling station and will not disturb or cause inconvenience to any person in the polling station); or
- (m) a person authorised by a member of the EAC or the CEO, subject to the conditions as imposed in the authorisation.

[S 26 of the EP (CEE) Reg]

A notice will be displayed at the entrance to the polling station to show that only the above persons and electors may be allowed to enter.

5.14 Except for an elector or a police officer on duty or a member of the Civil Aid Service on duty, all other persons permitted to enter a polling

station are required to sign a **Declaration of Secrecy** on a specified form and observe the provisions governing the secrecy of voting [s 69 of the EP (CEE) Reg].

PART V : CONDUCT INSIDE THE POLLING STATION

5.15 Inside the polling station, there will be a number of ballot paper issuing desks and voting compartments. On arrival at the polling station, an elector can approach any of the ballot paper issuing desks to obtain his ballot paper by producing his identity document for verification of his identity by the polling staff manning the desk. The polling staff will call out the name of the elector as stated in the entry in the copy of the register of electors and cross out the name and the identity document number of that entry, before issuing a ballot paper to the elector. At the time of issuing the ballot paper, the polling staff will also supply an elector with a chop with a “✓” sign.

5.16 No record will be made as to which particular ballot paper is given to an elector. For control purpose regarding the total number of ballot papers issued, the counterfoil of each ballot paper bears a serial number on its front. The serial number on the counterfoil will not, however, be recorded or related to the particular elector to whom the ballot paper is issued.

5.17 If there is reasonable ground for questioning the bona fides of an elector, the PRO shall ask him the following questions at the time of his application for a ballot paper (but not afterwards):

- (a) Are you the person registered in the EC FR as follows (reads the whole of the relevant entry in the register)?
- (b) Have you already cast a vote in this round of voting?

A person will not be issued with any ballot paper unless he has answered the questions to the satisfaction of the PRO [s 32 of the EP (CEE) Reg].

5.18 Where there is reasonable cause to believe that a person has committed an offence of impersonation of an elector, the PRO may request the police officer on duty at the polling station to arrest that person [s 33 of the EP (CEE) Reg].

5.19 If a person representing himself to be a particular elector applies for a ballot paper after another person has been issued a ballot paper on the basis that he is that particular elector, he may be issued with a tendered ballot paper. Such ballot paper will not be counted at the counting of votes [ss 38 and 50 of the EP (CEE) Reg]. However, if an elector who has been issued with a ballot paper chooses not to cast his vote and leaves the polling station and returns later to claim that or another ballot paper, the PRO may issue a tendered ballot paper to the elector **ONLY IF** he is not certain that the elector is the one who has been issued with a ballot paper earlier.

5.20 If for a reason considered justified by the PRO, an elector cannot cast his vote after a ballot paper has been issued to him, he may, with the permission of the PRO, hand back the ballot paper to the PRO and return later to cast his vote. If after having been issued with a ballot paper, an elector becomes incapacitated by physical illness and has left the polling station without casting his vote, he may return to the polling station to cast his vote before the close of that round of voting, provided that before he left the polling station, his ballot paper has been retrieved by the PRO. Under either of the above circumstances, the PRO must keep that ballot paper in his custody and return it, in the presence of a police officer, to the elector in question when the latter returns before the close of that round of voting to cast his vote. But if at the close of that round of voting, the elector has not returned, the PRO shall endorse the ballot paper with the word “UNUSED” and deal with it accordingly [s 35 of the EP (CEE) Reg].

5.21 The PRO would need to keep a ballot paper left in the polling station in his custody in the circumstances described in para. 5.20 above only when he knows which elector had left the ballot paper behind. Otherwise, a ballot paper found to be left in the polling station should be regarded as “unused” and would not be counted.

5.22 Ballot papers which have been issued (whether marked or unmarked) are sometimes abandoned or found left behind by electors in the voting compartments or lying on the floor of the polling station, or otherwise not used. The intention of the electors is not clear in such cases. Any person who discovers such a ballot paper is required to hand it to the PRO. Such a ballot paper will be endorsed on the front with the word **‘UNUSED’** (unless it is not reasonably practicable to do so) and will be kept by the PRO. In no circumstances will the ballot paper be put into a ballot box. Such a ballot paper will not be counted at the counting of the votes [ss 35 and 39 of the EP (CEE) Reg].

5.23 The elector should then proceed to any one of the voting compartments to mark his ballot paper.

5.24 An elector must use the chop supplied to mark his choice of candidate on the ballot paper. He should then fold the ballot paper, face inside, before coming out of the voting compartment and insert the folded ballot paper into the ballot box located near the exit of the polling station.

5.25 Any elector who has inadvertently torn or damaged his ballot paper or has made an error in marking his ballot paper may ask the PRO to exchange it for a new one.

5.26 An elector may seek help from the polling staff to mark his ballot paper if he finds it necessary (see para. 7.29 of Chapter 7).

5.27 **The ballot is secret. No one can force a person to vote or not to vote for any particular candidate** [s 13 of the ECICO]. **Also no one is required to tell which candidate he has voted for or is going to vote for.** A person who, without lawful authority, requires or purports to require an elector to disclose the name of, or any particular relating to, the candidate for whom the elector voted commits an offence [ss 78 and 82 of the EP (CEE) Reg].

5.28 After casting their votes, electors may proceed to the counting station to observe the count, or leave the venue. They are however encouraged to observe the count and stay until the counting result is known so that they can proceed to the polling station for the second round of voting and so on if required (please see para. 5.4). If any additional round of voting is required, the RO will make a public announcement through the electronic media. Electors who have left the venue should keep a close watch on such an announcement and return to the polling station in time to cast their votes. Alternatively, they may enquire through the REO hotline about the need to return for another round of voting if they do not have access to the electronic media.

5.29 After the close of poll, the PRO will lock the flap on the lid of the ballot boxes and seal it. Candidates and their respective agents can accompany the PRO in the delivery of the ballot boxes from the polling station to the counting station.

5.30 In a polling station, no person shall:

- (a) engage in canvassing for votes (including suggesting not to vote for any candidate);
- (b) without reasonable excuse, display any propaganda material relating to any candidate or the election;

- (c) fail to obey any lawful order of the RO or PRO;
- (d) disrupt the poll or disturb or cause inconvenience to any person;
or
- (e) misconduct himself,

otherwise he commits an offence punishable with a fine and imprisonment and may be (a) required by the RO or PRO to produce his identity card for inspection, and (b) ordered by the RO or PRO to leave the polling station. If he fails to leave immediately, he may be removed by a police officer or by any other person authorised in writing by the RO or PRO. The person so removed may not re-enter the polling station except with the permission of the RO or PRO [ss 27 and 82(1) of the EP (CEE) Reg].

5.31 Only the following persons may communicate with electors inside a polling station:

- (a) a member of the EAC;
- (b) the RO and an ARO;
- (c) the CEO;
- (d) the PRO and other polling staff;
- (e) public officers and members of the Civil Aid Service on duty at the polling station; and
- (f) a person authorised in writing by a member of the EAC or the CEO.

[S 27 of the EP (CEE) Reg]

5.32 No person shall use a mobile telephone, paging machine or any other communication device to communicate with any other person, in the polling station during the polling hours, contrary to a direction of the PRO not to do so. Any person who undertakes photographing, filming and video or audio recording within a polling station without the express permission of the PRO, the RO or a member of the EAC, commits an offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 3 months [ss 27 and 82 of the EP (CEE) Reg]. Normally such permission is only granted to members of the media or government photographers for publicity purposes.

PART VI : THE COUNT

5.33 The PRO will conduct the count in the presence of the candidates, or their election or counting agents, if they are present. The ballot boxes will be unsealed and opened by the RO, witnessed by all those present in the counting zone. The count will then be conducted manually by counting staff.

5.34 Only the following persons may be present at the counting of votes:

- (a) a member of the EAC;
- (b) the RO, an ARO and counting staff;
- (c) the CEO;
- (d) candidates, their election agents and counting agents;
- (e) an elector;

- (f) public officers and members of the Civil Aid Service on duty at the counting station; and
- (g) a person authorised in writing by a member of the EAC or the CEO, subject to the conditions as imposed in the authorisation.

Candidates and their agents must not go into the restricted zone. Any member of the public may observe the counting of the votes from an area at the counting station set apart for that purpose by the RO unless the RO considers that his presence may:

- (a) cause disorder or disturbance in the counting station;
- (b) disrupt the counting of the votes; or
- (c) prejudice the secrecy of the individual votes.

[S 46 of the EP (CEE) Reg]

5.35 Before entry, every person authorised to be present at a counting station, other than an elector, the police officers and members of the Civil Aid Service on duty, must make a **Declaration of Secrecy** on a specified form and observe the provisions governing the secrecy of voting [s 69 of the EP (CEE) Reg]. Members of the public present within the public area will not be required to make a Declaration of Secrecy.

5.36 The valid ballot papers will first be sorted according to the choices marked by the electors on the ballot papers and placed in separate plastic and transparent boxes on the table. Questionable ballot papers, if any, will be put aside. The RO will then gather together all candidates or their election/counting agents to witness his determination on the validity of these questionable ballot papers. For details of the procedure, see Part VII below.

Thereafter, the valid votes obtained by each candidate will be counted. **At no time should a candidate, his election agent or counting agent touch any ballot papers.** At the end of the count, the ballot paper account will be verified by checking against the summation of valid votes cast for individual candidates and invalid ballot papers.

5.37 When the ballot paper account has been verified, the RO will declare the election result. He shall display a notice of the result of the election at a prominent place immediately outside the counting station and shall also publish the notice in the Gazette as soon as practicable [s 55 of the EP (CEE) Reg and s 28(a) of the CEEO].

5.38 Subject to the availability of funds and physical arrangement of the venue, the entire counting process will be broadcast live on the radio, the television and the internet at <http://www.info.gov.hk>. There will also be press coverage.

5.39 Except with the express permission of the RO or a member of the EAC, as the case may be, any person who undertakes photographing, filming and video or audio recording in a counting zone commits an offence [ss 47(2) and 82(1) of the EP (CEE) Reg].

5.40 In a counting station, no person shall:

- (a) fail to obey any lawful order of the RO;
- (b) without reasonable excuse, display any propaganda material relating to any candidate or the election;
- (c) use a sound amplifying system or device for any purpose without lawful authority or the express permission of the RO;

- (d) disrupt the counting of votes or disturb or cause inconvenience to any person; or
- (e) misconduct himself,

otherwise he commits an offence punishable with a fine and imprisonment and may be (a) required by the RO to produce his identity card for inspection, and (b) ordered by the RO to leave the counting station. The RO may also require a person to produce his identity card for inspection and order the person to leave the counting station if the person conducts himself in such a way that the purpose of his presence is not that for which he was authorised or permitted to enter or remain in the counting station. If he fails to leave immediately, he may be removed by a police officer or by any other person authorised in writing by the RO. The person so removed may not re-enter the counting station except with the permission of the RO [ss 47 and 82(1) of the EP (CEE) Reg].

PART VII : RULES RELATING TO COUNTING

5.41 A ballot paper shall not be counted at the counting of votes if:

- (a) on it there is any writing or mark by which an elector can be identified;
- (b) it has the words “TENDERED” and “重複” endorsed on it;
- (c) it has the words “SPOILT” and “損壞” endorsed on it;
- (d) it has the words “UNUSED” and “未用” endorsed on it;

- (e) it is substantially mutilated;
- (f) it is unmarked; or
- (g) it is not marked by affixing the “✓” chop provided to give a single “✓” in the circle opposite the name of a candidate.

[S 50 of the EP (CEE) Reg]

When deciding on the validity of the ballot papers in (a) above, the RO will make reference to the judgment made by the Court on an election petition case (HCAL 127/2003). In that case, the Court ruled that the handwritten tick found on the ballot paper in question in the said election petition was considered a mark by which the elector could possibly be identified. The validity of ballot papers with any other writing or mark will remain to be determined by the RO on a case-by-case basis.

5.42 A ballot paper which appears to the **counting staff** to be one which should or may not be valid or which should or may not be counted for any of the reasons set out in the preceding paragraph will be placed aside as **questionable ballot paper**. The validity of all questionable ballot papers shall be decided by the RO [s 51(2) of the EP (CEE) Reg]. Before the RO makes his decision, a candidate or his election agent is allowed to inspect questionable ballot papers so set aside, in the presence of the RO and other candidates or their election or counting agents who are present. The candidate or his election agent may also make representations to the RO [s 51(1)(b) of the EP (CEE) Reg]. After considering the representations, the RO must make his decision on the validity of the questionable ballot paper.

5.43 The decision of the RO in regard to any question arising in respect of any ballot paper shall be **final** [s 51(8) of the EP (CEE) Reg], and may be questioned only by an election petition [s 33 of the CEEO]. Evidence will be kept in the following manner:

- (a) Where the RO decides that a questionable ballot paper is not to be counted, he will endorse the words “rejected” and “不予接納” on the front of the ballot paper. If a candidate or his election agent objects to the rejection, the RO will endorse the words “rejection objected to” and “不予接納的決定遭反對” on the front of the ballot paper [s 51(4) of the EP (CEE) Reg].
- (b) If a candidate or his election agent objects to the decision of the RO to count a ballot paper, the RO will endorse the words “acceptance objected to” and “予以接納的決定遭反對” on the front of the ballot paper [s 51(5)(b) of the EP (CEE) Reg].

PART VIII: DISPOSAL OF DOCUMENTS

5.44 As soon as practicable after the RO has ascertained the result of the poll in an election, he will seal all the relevant documents and ballot papers into packets. Candidates and their agents may observe the packaging, if they wish [s 56 of the EP (CEE) Reg].

5.45 The RO will deposit these sealed packets together with the nomination forms, notices of appointment of agents, etc with the CEO for safe custody for 6 months before they are destroyed [ss 57 and 59 of the EP (CEE) Reg].

5.46 **Except pursuant to a court order** in relation to an election petition or a criminal proceeding, **no person may inspect any ballot paper in the custody of the CEO** [s 58 of the EP (CEE) Reg].

CHAPTER 6

ELECTION PETITION AND JUDICIAL REVIEW

PART I : GROUNDS FOR LODGING AN ELECTION PETITION

6.1 The result of a CE election may be questioned only by an election petition on the ground that the person declared as elected by the RO was not duly elected because:

- (a) he was not eligible to be nominated as a candidate;
- (b) he was disqualified from being nominated as a candidate;
- (c) he should have been disqualified from being elected but he was not so disqualified;
- (d) he engaged in corrupt conduct or illegal conduct at the election;
- (e) another person engaged in corrupt conduct or illegal conduct at the election in respect of him in connection with his candidature;
- (f) corrupt conduct or illegal conduct was generally prevalent at the election; or
- (g) material irregularities occurred in relation to the election, the poll at the election or the counting of votes in respect of the election.

[S 32 of the CEEO]

PART II : WHO COULD, AND WHEN TO, LODGE ELECTION PETITIONS AND APPEALS

6.2 An election petition may be lodged by:

- (a) a candidate; or
- (b) a person who was determined to be not validly nominated by the RO; or
- (c) a person whose nomination was not accepted by the RO; or
- (d) a person who was disqualified from being elected

provided that the election petition is supported by at least 10 electors [s 33 of the CEEO].

6.3 An election petition must be lodged with the Court of First Instance within 7 working days from the declaration of the election result. Any application for leave to appeal against the decision of the Court of First Instance, if any, must be lodged with the Court of Final Appeal within 7 working days after the relevant judgment of the Court of First Instance is handed down. At the end of the trial of an election petition, the Court shall announce its determination by means of a written judgment [ss 34 and 37 of the CEEO].

PART III : JUDICIAL REVIEW

6.4 An application for judicial review which puts in issue whether the CE-elect can lawfully assume the office of the CE must be made within 30

days after the publication of election result. This deadline may be extended only if:

- (a) the applicant has used his best endeavours to make the application or commence the proceedings within the 30 days; and
- (b) the Court considers that it would be in the interest of justice to do so.

[S 39 of the CEE0]

CHAPTER 7

APPOINTMENT AND ROLES OF ELECTION AGENT, ELECTION EXPENSE AGENTS, POLLING AGENTS AND COUNTING AGENTS

PART I : GENERAL

7.1 This chapter deals with the appointment of agents at an election and their roles.

7.2 A candidate should think carefully before selecting any of his agents. He should choose persons suitable for the task. They will be viewed as his representatives and their conduct may affect the public's perception of him and his election.

PART II : TYPES AND NUMBERS OF AGENTS

7.3 To assist him in the CE election, a candidate may appoint **1** election agent, **any number** of election expense agents, not more than **3** polling agents, and not more than **2** counting agents [ss 12, 13, 25 and 44 of EP (CEE) Reg].

PART III : QUALIFICATIONS OF AGENTS

7.4 The election, polling and counting agents should be holders of Hong Kong identity card and have attained the age of 18 years [ss 12(2), 25(3)

and 44(2) of the EP (CEE) Reg] while an election expense agent needs to be of the age of 18 years [s 13(1) of the EP (CEE) Reg].

PART IV : CIVIL SERVANTS ACTING AS AGENTS

7.5 Civil servants, other than Directorate Officers, Administrative Officers, Police Officers and Information Officers and those officers acting in the above grades and ranks with a view to substantive appointment thereto, may act as agents or assist in electioneering activities provided that they are not already appointed by the CEO as polling or counting staff, that there is no conflict of interest with their official duties, that no use of public resources is involved, and that no government uniform is worn. However, to avoid any unfairness, semblance of unfairness or conflict of interest, civil servants who have extensive contacts with the public are well advised not to accept appointment by a candidate to be his agent. Civil servants who are allowed to participate in electioneering activities, including the seeking of election donations, for any candidate should not use or be seen to use any public resources in such activities.

PART V : ELECTION AGENT

Appointment

7.6 A candidate shall give notice of the appointment of his election agent to the RO. The notice must be in the specified form and signed by both the candidate and the agent [s 14(3) of the EP (CEE) Reg]. The appointment will not

be effective until the notice of appointment is received by the RO [s 14(7) of the EP (CEE) Reg].

7.7 However, before the notice of appointment is received, the acts of the election agent purported to be appointed by the candidate and the expenses incurred by any purported agent for promoting the election of the candidate or for prejudicing the election of another candidate may be treated as the candidate's own acts and election expenses. It is **important** to note that it is an **illegal conduct** for any person other than a candidate or a candidate's election expense agent to **incur such expenses** [s 23 of the ECICO].

Revocation

7.8 The appointment of an election agent may be revoked by the candidate at any time. The candidate must also give notice of the revocation in writing to the RO. A revocation of an appointment of an election agent will not be effective until such notice is received by the RO [s 14(4), (5) and (7) of the EP (CEE) Reg].

7.9 If an election agent dies or has his appointment revoked, the candidate may appoint another election agent. In such a case, the candidate must give notice of the replacement appointment in the specified form to the RO in accordance with para. 7.6 above [s 14(6) of the EP (CEE) Reg].

Notification

7.10 As soon as practicable after the receipt of a notice of appointment of an election agent by a candidate, the RO will send a notice containing the particulars of the election agent to every other candidate (including a person who is being or has been nominated to stand for the election) [ss 2(2)(a) and 15 of the

EP (CEE) Reg]. The RO will also display outside his office a notice of the particulars of the election agent [s 14(8) of the EP (CEE) Reg].

Role of an Election Agent

7.11 A duly appointed election agent ranks in a **most important position** amongst all kinds of agents of a candidate. He has the **authority to do everything a candidate is authorised to do** for the purposes of the election **except:**

- (a) anything a candidate is required to do in relation to his nomination;
- (b) to withdraw the candidate's candidature;
- (c) to appoint an election agent;
- (d) to appoint an election expense agent;
- (e) to incur election expenses save where he has been appointed as an election expense agent by the candidate; and
- (f) to revoke the appointment of an election agent or election expense agent.

[S 12(3) of the EP (CEE) Reg]

IMPORTANT :

An election agent is, along with the candidate, responsible for the management of the campaign. A candidate is responsible for all the acts of his election agent. If the election agent fails in his

duties, he may contravene the law, and in particular, the ECICO, and commit criminal offences for which the candidate may also be liable, with serious consequences. An election agent will need to be appointed as an election expense agent by a candidate to incur election expenses [see Part VI of this Chapter].

7.12 Candidates and their election agents are entitled to be present inside the polling station and at the counting of the votes. They should observe the same rules as applied to the polling agents and counting agents [see Parts VII and VIII of this Chapter].

PART VI : ELECTION EXPENSE AGENT

Appointment

7.13 The appointment shall be in writing on a specified form and state the name and address of the election expense agent, and must specify the maximum amount of election expenses the agent may incur. It should be signed by both the candidate and the agent [ss 14(3) and 16 of the EP (CEE) Reg]. A notice of appointment must be lodged with the RO, or the CEO if the RO has not been appointed, by the candidate [s 14(1) and (2) of the EP (CEE) Reg].

7.14 The appointment is not effective until it has been received by the RO or the CEO, as the case may be. However, before the notice of appointment is received, the election expenses incurred by an election expense agent purported to be appointed in the notice of appointment may be counted as the candidate's election expenses. It is also important to note that it is an **illegal conduct** for any person other than a candidate or a candidate's election expense agent to **incur such expenses** [s 23 of the ECICO].

Revocation

7.15 The appointment of an election expense agent may be revoked by a candidate at any time. The candidate must give notice of the revocation as soon as possible in writing to the RO, or the CEO if the RO has not been appointed. The RO or the CEO, as the case may be, will only regard a revocation as effective when he receives the notice [s 14(1) and (7) of the EP (CEE) Reg]. The election expenses already incurred will still be counted as election expenses of the candidate.

Role of Election Expense Agents

7.16 An election expense agent is authorised to incur election expenses on behalf of a candidate. He must not incur election expenses in excess of the amount specified in the notice of appointment; otherwise he commits a criminal offence [s 23(4) of the ECICO].

Candidate's Duty to know the Details of Election Expenses incurred by his Election Expense Agents

7.17 Every candidate is under a **duty**, subject to criminal penalty for breach, to submit to the CEO a return and declaration of his election expenses and donations with supporting vouchers not later than 30 days after the gazettal of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law [s 37 of the ECICO]. For the efficient and effective discharge of his duty, the candidate should **make sure** that his election expense agents will keep account of all election expenses incurred on his behalf and will provide to him, as soon as practicable but not later than the same 30-day period, a detailed statement of expenditure supported by receipted vouchers for each

item of expenditure of \$100 or more. If any item of expenditure incurred by the election expense agents is paid or defrayed or contributed to by a donation, the candidate should **make sure** that they will provide him with a statement stating the expenses. If an item is not explicit in monetary terms, it should be assessed at a reasonable value; and if any item is more than \$1,000, it should be supported by a receipt of donation (in specified form) signed by the donor. Without such statements and vouchers provided by the election expense agents, the candidate will no doubt have difficulty in discharging his duty to file the return and declaration of election expenses and donations, which **may render him liable for a criminal offence**.

Public Inspection of Notices of Appointment

7.18 The RO will make available for public inspection all notices of appointment submitted by candidates until the expiration of the period for which copies of the election return lodged by the candidates are available for inspection, ie up to the first anniversary of the date on which the result of the election is published. This offers the public and other candidates an opportunity to scrutinise the amount of election expenses [s 14(9) of the EP (CEE) Reg].

PART VII : POLLING AGENT

Appointment

7.19 The appointment shall be made on a specified form. The candidate must give notice of such appointment in writing signed by him and the polling agent to the CEO or the PRO at least **1 week** before the date of election [s 25(4) and (10) of the EP (CEE) Reg]. Where a candidate appoints a polling agent after the above deadline, he is required to give notice of the appointment to

the PRO. Such a notice must be given by the candidate or the election agent **personally** by delivering the notice of appointment to the PRO (or the Deputy PRO or an Assistant PRO) at the polling station on polling day and before the agent concerned enters the polling station [s 25(10) of the EP (CEE) Reg]. The appointment will not be effective until the notice of appointment is received by the CEO or the PRO, as the case may require [s 25(9) of the EP (CEE) Reg].

Revocation

7.20 The appointment of a polling agent may be revoked by the candidate at any time. The candidate must give notice of revocation in writing and in the specified form to the CEO or the PRO [s 25(6) of the EP (CEE) Reg]. A revocation of an appointment of a polling agent will not be effective until notice thereof is received by the CEO or PRO, as the case may require [s 25(9) of the EP (CEE) Reg].

Role of Polling Agents

7.21 Polling agents are appointed **to assist a candidate in observing the conduct of the poll** to detect impersonation or irregularity at the polling station.

Provisions which the Polling Agents should be aware of

7.22 The polling agents may be admitted at any time during the poll to the polling station, but they are required to stay and keep their movements within the area designated for observation of the poll and not outside. They may remain inside the polling station even when the candidate they represent or his election agent is present.

7.23 Before entering a polling station, every person, other than an elector or a police officer on duty or a member of the Civil Aid Service on duty, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 69(1) of the EP (CEE) Reg]. This is to make sure that, subject to penalty of making a false declaration, all persons inside a polling station will observe the secrecy of the vote of the electors and, in particular, not to divulge which elector has voted for which candidate.

7.24 On attending the polling station, a polling agent shall report to the PRO and produce his identity card and the Declaration of Secrecy completed by him for inspection.

7.25 The following will occur before, during and after each round of polling on the polling day:

(a) Before

- (i) About 15 minutes before the commencement of the poll, the PRO will inform the candidates or their agents (either election agent or polling agent) if they are present, the number of ballot papers in his (the PRO's) possession, showing them the books of ballot papers not yet issued to any elector ("**UNISSUED** ballot papers").
- (ii) The PRO will show the empty ballot boxes to such persons before proceeding to lock and seal them.

(b) During

- (i) In the course of polling, the PRO will show to each candidate or his election or polling agent, who is present at

the relevant time, any abandoned ballot papers that have been issued or any torn pieces of such ballot papers found lying anywhere in the polling station (“**UNUSED** ballot papers”). Such ballot papers will not be put into a ballot box and will not be counted at the counting of vote [ss 39 and 50 of the EP (CEE) Reg].

(ii) Where a person, representing himself to be a particular elector entered on the register, applies for any ballot paper after a person has been issued with any ballot paper as such an elector, he may be issued with a ballot paper with the word “**TENDERED**” endorsed on the front. Such ballot paper will not be counted at the counting of the votes [ss 38 and 50 of the EP (CEE) Reg].

(iii) Any elector who has inadvertently torn or damaged any ballot paper or has made an error in marking any ballot paper issued to him (“spoilt ballot papers”) may ask the PRO to exchange it for another ballot paper. Such spoilt ballot papers will be endorsed on the front with the word “**SPOILT**” and will be kept by the PRO. The spoilt ballot papers will not be counted at the counting of the votes [ss 40 and 50 of the EP (CEE) Reg].

(c) After

(i) The PRO will, in the presence of persons present, lock the flap on the lid of the ballot boxes and seal it. He will also inform each candidate or his agent who is present of the number of the following types of ballot papers in his

possession: unissued ballot papers, unused ballot papers, and spoilt ballot papers.

- (ii) Candidates or their respective agents, if they so wish, may accompany the PRO in the delivery of the ballot boxes from the polling station to the counting station.
- (iii) Candidates and their agents who do not accompany the PRO in the delivery must then leave the polling station.

7.26 Generally speaking, a polling agent may observe all proceedings in the polling station and record his observations but shall not do anything that may interfere with the conduct of the poll. The following shows what a polling agent can do and cannot do inside a polling station. A polling agent **MAY**:

- (a) Leave the polling station at any time during the poll.
- (b) Observe the locking and sealing of ballot boxes both before the poll commences and at the close of the poll.

NOTE :

A polling agent who signs the sealing certificate of a ballot box as witness is required to write his name in block letters beneath his signature for easy identification. Candidates are advised to keep a list of their own polling agents to facilitate checking when the sealing certificate is broken at the counting station.

- (c) Observe the issue of ballot papers to electors and the recording of the issue against the relevant entries on the EC FR by the polling

staff, subject to the condition that they cannot interfere with the work of the polling staff.

- (d) Where there is reasonable ground for questioning the bona fides of an elector, ask the PRO to put the following prescribed questions (subject to necessary modifications) to that person at the time of his application for a ballot paper (but not afterwards):

- (i) Are you the person registered in the EC FR as follows (reads the whole of the relevant entry in the register)?

- (ii) Have you already cast a vote in this round of voting?

The person will not be issued with any ballot paper unless he has answered the questions to the satisfaction of the PRO [s 32 of the EP (CEE) Reg].

- (e) Where there is reasonable cause to believe that a person who has applied for a ballot paper has engaged in corrupt conduct by impersonation, declare it to the PRO for appropriate action before that person leaves the polling station. This may possibly lead to the arrest of the person. The polling agent must however undertake in writing to substantiate the charge in a court of law [s 33 of the EP (CEE) Reg].

7.27 A polling agent **MUST NOT**:

- (a) Interfere with or attempt to influence any elector.
- (b) Speak to or communicate with any elector if the RO, the ARO, the PRO, the Deputy PRO or any Assistant PRO has given direction to

him not to do so, or interfere with or attempt to interfere with any ballot boxes, ballot papers, the register of electors or other relevant election materials. In this regard, a polling agent should station within the designated area demarcated by red adhesive tapes, and must not enter, or move close to, the restricted zone delineated with yellow tapes about 1 metre, or 2 metres if the configuration allows, around the voting compartments. Moreover, it is most improper for a polling agent to ask an elector about his identity card number, let alone check an elector's identity card.

- (c) Attempt to obtain information, or disclose any knowledge acquired, concerning the vote of any elector. A polling agent should read and observe carefully the provisions governing the secrecy of voting issued with the form of Declaration of Secrecy.
- (d) Exhibit or leave or distribute any campaign material.
- (e) Without reasonable excuse, display any propaganda material relating to any candidate or the election.
- (f) Use a mobile telephone or any telephone or paging machine or any other form of electronic communication device if the PRO has given direction to him not to do so.

[S 27 of the EP (CEE) Reg]

Other Useful Information for Polling Agents

7.28 Persons who may be admitted to a polling station are listed in para. 5.13 of Chapter 5. Most of the persons admitted to a polling station will be wearing identifications (eg badges). Candidates, their election agents and

polling agents will be required to wear an identification device issued by the RO or PRO for identification. If in doubt, a polling agent may enquire with the PRO as to the identities of the persons inside the polling station. No attempt, however, should be made to obtain information as to the identity of any elector who is about to vote or has voted.

7.29 Only the PRO, the Deputy PRO or an Assistant PRO may, in the presence of one of the Polling Officers as a witness, help an elector to mark a ballot paper if he claims he is unable to read or incapacitated from casting his vote due to impaired eyesight or other physical cause [s 37(1) of the EP (CEE) Reg]. The responsible officer should inform the candidates or their agents who are present when such a request for assistance is received. A candidate or his polling agent in the polling station may request the PRO, the Deputy PRO or an Assistant PRO to choose a particular Polling Officer who is not working at the issuing counter as the witness, but the final decision as to which Polling Officer should be the witness remains with the PRO, the Deputy PRO or an Assistant PRO. An incapacitated elector's relative, friend or any other person is in no circumstances allowed to accompany the elector in the course of voting.

7.30 In the polling station, a number of **templates** are made available for the use of the visually impaired elector, if he chooses, to facilitate him to mark his vote on the ballot paper [s 37(2) and (3) of the EP (CEE) Reg].

7.31 Persons who may speak to or communicate with electors within the polling station are listed in para. 5.31 of Chapter 5. No person may canvass or display any propaganda material relating to any candidate or the election within a polling station. Candidates and their agents should not bring electioneering literature into the polling station or leave them there and should remove any promotional badges and emblems before entering. A person must not use a sound amplifying system or device for any purpose within the NCZ; nor should he use such system or device or conduct any activities (eg lion dance), for

canvassing, so that the sound emitted by it can be heard in the NCZ. Also, a person must not stay or loiter in the NSZ without the express permission of the PRO. Any person who undertakes photographing, filming and video or audio recording within the polling station without the express permission of the PRO, the RO, or a member of the EAC, commits an offence [ss 27(4) and 82 of the EP (CEE) Reg]. Normally such permission is only granted to members of the media or government photographers for publicity purposes. Polling agents should also read para. 5.30 of Chapter 5 for other activities that are prohibited, and the consequences of doing such activities in a polling station.

7.32 **The ballot is secret.** No one can force a person to vote or not to vote for any particular candidate [s 13 of the ECICO]. Also, no one is required to tell which candidate he has voted for or is going to vote for. A person who, without lawful authority, requires or purports to require an elector to disclose the name of, or any particulars relating to, the candidate for whom the elector voted commits an offence [s 78 and 82 of the EP (CEE) Reg].

7.33 If a candidate or his election or polling agent has any complaint about whatever happens inside a polling station, he should follow the procedures laid down in Chapter 20 on Complaints Procedure in the guidelines.

PART VIII : COUNTING AGENT

Appointment

7.34 The appointment should be made on a specified form. The candidate must give notice of such appointment in writing signed by him and the counting agent to the RO at least **3 days** before the polling day [s 44(4) and (9) of the EP (CEE) Reg]. Where a candidate appoints a counting agent after the above

deadline, the candidate or the election agent must **personally** deliver the notice of the appointment to the RO (or ARO) on the polling day, but before the agent concerned enters the counting station [s 44(9) of the EP (CEE) Reg]. The appointment will not be effective until the notice of appointment is received by the RO [s 44(8) of the EP (CEE) Reg].

Revocation

7.35 The appointment of a counting agent may be revoked by the candidate at any time. The candidate must also give notice of revocation in writing and in the specified form to the RO [s 44 (6) of the EP (CEE) Reg]. A revocation of an appointment of a counting agent will not be effective until notice thereof is received by the RO [s 44(8) of the EP (CEE) Reg].

Role of Counting Agents

7.36 Counting agents are appointed to attend at the counting station **to observe the breaking of the seals on the ballot boxes, the counting of ballot papers and the counting of votes recorded on the valid ballot papers**. This arrangement ensures the transparency of the counting process and is conducive to openness and fairness [see Part VI of Chapter 5 : Polling and Counting Arrangements].

Provisions which the Counting Agents should be aware of

7.37 Before the counting commences, every person authorised to be present at a counting station, other than an elector, the police officers or members of the Civil Aid Service on duty or a member of the public observing the counting of the votes, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 69 of the EP (CEE) Reg]. This is to make sure that, subject to penalty of making a false

declaration, all persons inside a counting station will observe the secrecy of the vote of the elector.

7.38 On attending the counting station, a counting agent shall report to the RO and produce his identity card and the Declaration of Secrecy completed by him for inspection.

7.39 Generally speaking, counting agents are entitled to be present throughout the count to observe the counting proceedings. They will be allowed by the Counting Supervisor or RO to stay close to, and around the counting table to monitor the count. A counting agent **MAY**:

- (a) Observe the breaking of the seals on the ballot boxes and the opening of the ballot boxes by the RO or AROs.
- (b) Inspect any papers other than ballot papers taken from the ballot boxes before they are disposed of.
- (c) Observe the conduct of the count by Counting Officers.
- (d) Observe, where he wishes, the packing of ballot papers by the Counting Officers and the RO at the conclusion of the count.

7.40 A counting agent **MUST NOT** handle, separate or arrange ballot papers.

7.41 Persons who may enter or stay in the counting station are listed in para. 5.34 of Chapter 5. Counting agents should read para. 5.40 of Chapter 5 for activities that are prohibited, and the consequences of doing such activities in the counting station. Matters and rules relating to the count can be found in Parts VI and VII of Chapter 5.

CHAPTER 8

ELECTION ADVERTISEMENTS

PART I : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT

8.1 Election advertisement, in relation to the CE election, means:

- (a) a publicly exhibited notice; or
- (b) a notice delivered by hand or electronic transmission; or
- (c) a public announcement made by radio or television or by video or cinematographic film; or
- (d) any other form of publication,

published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election [s 2 of ECICO].

IMPORTANT :

“Candidate” includes a person who has publicly declared an intention to stand for election at any time before the close of nominations for the election, whether or not he has submitted a nomination form [s 2 of the ECICO].

8.2 **Election advertisement** includes the following if they are published for the purpose of promoting or prejudicing the election of any candidate in an election:

- (a) any address, notice, bill, placard, poster, board, banner, flag, standard, colour, sign, message, sound, image or picture and any article, thing or material;
- (b) audio/video cassette tapes, discs, diskettes, electronic messages, websites (except those discussion forums on website), facsimile transmissions, balloons, caps, badges, emblems, carrier bags, head-dress and clothing; or
- (c) any thing or material published by any person or any organisation, including political organisation, professional or trade organisation, owners corporation, mutual aid committee, tenants association, owners committee, etc (irrespective of whether or not the candidate concerned is an office bearer or member) showing his or its support for any candidate or advertising the platform or services of such an organisation with reference to a candidate by name or photograph or in any other form or manner.

8.3 An election advertisement also includes:

- (a) publicity materials containing the name or photograph of a candidate issued or displayed during the election period (ie the period beginning with the nomination day for the election and ending with the polling day for the election) even though the content of the publicity material is not, on the face of it, election related. Examples include surveys, questionnaires, posters

publicising functions like vegetarian meal, tours, courses, offer of free legal or medical or other professional service, etc; and

- (b) any printed performance report published or distributed **during** the election period by-
 - (i) the incumbent CE; or
 - (ii) a serving member of the LegCo; or
 - (iii) a serving member of a District Council (“DC”); or
 - (iv) a serving member of the Heung Yee Kuk; or
 - (v) a serving chairman or vice-chairman or member of the Executive Committee of a Rural Committee; or
 - (vi) a serving village representative (“VR”),

who is running as a candidate for the CE election. These persons are termed “incumbent candidates” under the ECICO. A performance report means a document giving details of activities organised, services rendered or work done by such an incumbent candidate [ss 33 and 34(9) of the ECICO].

8.4 A performance report whether in the format of a website or a printed document published or distributed by an incumbent candidate **during** or **before** the election period will also be regarded as an election advertisement **if it is published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election**. It is important to note that a performance report which is treated as an election advertisement must comply with all the requirements for an election advertisement.

8.5 If the incumbent members distribute performance reports before they submit their nomination forms or publicly declare their intention to stand as candidates, they are not candidates at the time when their performance reports are being distributed. On such basis, the expenditure incurred in the distribution of such reports before the submission of nomination or public declaration of their intention to stand as candidates would not be counted as his election expenses.

8.6 A candidate in an election may put up, display and distribute election advertisements in accordance with these guidelines which summarise the relevant law and regulations.

Election Advertisements Prejudicing the Election of a Candidate

8.7 There are occasions that candidates or a third party may publish election advertisements for the purpose of prejudicing the election of a candidate at the election. The concept of “promoting” and “prejudicing” the election of someone can be relative. To publish a document which is designed to persuade electors not to vote for one candidate would have the effect of improving the chances of success of other candidate(s) and could therefore be said to promote the latter’s election.

- (a) If candidate A criticises candidate B in his own election advertisements with a view to prejudicing B’s candidature at the election, candidate A has to include the expenditure incurred in his election expenses.
- (b) If a third party criticises candidate B in an election advertisement and that the election advertisement has the effect of indicating support for candidate A, that person must obtain candidate A’s prior consent for incurring the production expenses before he

produces that election advertisement. The expenditure incurred will have to be included in candidate A's election expenses.

- (c) If the third party publishes an election advertisement as described in (b) above without the prior consent of candidate A, he will be breaching s 23 of the ECICO as only a candidate or a person who has been duly authorised by a candidate as his election expense agent may incur election expenses. The election advertisement should be regarded as the election advertisement for candidate A. It would only be fair to candidate A that the third party needs to obtain candidate A's consent before publishing such election advertisement since candidate A is ultimately responsible for his own election expenses. It would also prevent candidate A from circumventing the law by asking the third party to publish materials prejudicing candidate B without having to account for the expenses of those materials.

8.8 Materials published by any person, including a candidate, for the purpose of prejudicing a candidate or candidates are treated as election advertisements, if reference could be made from the materials to identify the candidate(s) being prejudiced.

8.9 The **election expenses** allowed by law to be incurred by a candidate include the expenses he incurs for the preparation and publication of election advertisements, and he should therefore be careful in planning how much he should spend in this area [for the definition of election expenses, see s 2 of the ECICO].

8.10 Subject to the maximum amount that can be incurred by a candidate for election expenses [s 24 of the ECICO], there is no restriction as to the quantity of election advertisements employed by him. The maximum amount

allowed for a CE election is \$9,500,000 as specified in the Maximum Amount of Election Expenses (Chief Executive Election) Regulation.

8.11 A candidate must ensure the correctness and accuracy of all factual statements in his election advertisements [for criminal sanctions, see ss 25, 26 and 27 of the ECICO]. He must also ensure that the content of his election advertisements is consistent with the declaration he has made that he stands for the election in an individual capacity and will not lead the electors or the public to believe that he is representing a political party.

PART II : PERIOD AND AREA OF DISPLAY

8.12 With the necessary **written permission or authorisation**, a candidate may display election advertisements on government or private land and property [s 104A of the Public Health and Municipal Services Ordinance (Cap 132) and s 4 of the Land (Miscellaneous Provisions) Ordinance (Cap 28)].

8.13 Display spots are classified into two types:

- (a) **designated spots** which are spots on government land/property and sometimes even on premises owned or occupied privately that have been made available to the Government for allocation to candidates; and
- (b) **private spots** which are spots on private land/property in respect of which written permission or authorisation for display has been obtained from the owner or occupier concerned by the candidate himself.

Government or Private Land/Property - Designated Spots

8.14 Designated spots on public land for the use of candidates to display their election advertisements will be designated by the RO. Some of the government land and property have been allocated to some public authorities, such as the Housing Authority, and are under their respective control. The RO will designate public spots in coordination with the said authorities. **Each candidate** will be as far as practicable allocated **the same number of designated spots**.

8.15 Prospective candidates are welcome to suggest locations of display in which they are interested. The RO will take into consideration such suggestions in drawing up the list of “**designated spots**”, with absolute discretion to decide whether to adopt the suggestions.

NOTE :

Suggestions should reach the CEO not later than **6 weeks before the polling day**.

Other Land/Property : Private Spots

8.16 Candidates who wish to display their election advertisements on land/property other than government land/property and other than the designated spots must obtain the **prior written permission or authorisation** of the owner or occupier [s 104A of Cap 132]. The obtaining of written permission or authorisation from the private owner or occupier is a matter for private arrangement between the candidate and the owner or occupier, and they are therefore called “**private spots**”. A copy of the written permission or authorisation must be deposited with the RO before display [please also see para. 8.20 below]. Any consideration, fee or money incurred or agreed to be paid by

or on behalf of the candidate to the owner or occupier for display of his election advertisements forms part of his election expenses. If a commercial advertising space for rent is allowed by the private owner or occupier to be used free of charge by a candidate for display of his election advertisements, a reasonable market value for the use of that space will have to be accounted for by the candidate as an election donation and counted as election expenses. Such a provision is to ensure that the candidate concerned will not have unfair advantage over the others who do not have access to such facilities. If the private spot for displaying the election advertisement is normally used for commercial purpose, the actual rent charged or the usual rent or market rent that would normally be charged should be counted as the election expenses of the candidate concerned, irrespective of whether it is owned by the candidate or whether the owner of it allows the candidate to use it free of charge (in which case it would be a donation of the rent). Where a space provided by a particular private owner or occupier for a candidate to display election advertisements is not used for commercial advertising, but similar space belonging to other owners or occupiers is available for commercial advertising, the market value of the space should also be accounted for. The provision of this kind of rent-free space should be regarded as donation. For details on how the estimated value should be assessed, please refer to para. 16.21 of Chapter 16. If a space is not normally used by any private owners or occupiers for commercial advertising, there is no need for the candidate to account for its value.

8.17 The EAC appeals to owners and occupiers of private premises to give all candidates **fair and equal treatment** in the display of election advertisements [for details, please see Chapter 10 of these Guidelines: Electioneering at the Living or Working Places of Electors, Premises of Organisations to which Electors belong and Buildings which Electors Frequent].

8.18 Candidates should note that public corporations may have their own rules for display of election advertisements, eg the Mass Transit Railway

Corporation Limited has its own set of rules for such display in residential estates under its management.

General Principle in Allocating Designated Spots

8.19 The RO will allocate the designated spots, as the case may be, to candidates either in accordance with the mutual consent of the candidates or by the drawing of lots after the close of nominations, when the number of candidates contesting in the election will have been ascertained. **No display of election advertisements will be allowed on any designated spots before the allocation** [also see the requirements in para. 8.25 and Part V below]. A candidate will be provided with a list of the designated spots allocated to him, together with a set of maps to help identify the locations.

Written Permission or Authorisation

8.20 The RO will have already obtained prior approval from the relevant authorities under s 104A of Cap 132 and s 4 of Cap 28 for candidates to display their election advertisements at designated spots. Immediately after the allocation of designated spots is made, a copy of the necessary written permission or authorisation under the relevant legislation will be provided to the candidates by the RO [See Part III below]. For any display at private premises, written permission or authorisation of the private owner or occupiers will have to be obtained by the candidates themselves. A person displaying an election advertisement without the necessary written permission or authorisation commits an offence punishable by a fine of up to \$10,000 and, where the offence is a continuing offence, by an additional daily penalty of \$300 for each day during which it is proved to the satisfaction of the court that the offence has continued [s 104A of Cap 132]. The fines so incurred will also be treated as election expenses. **A copy of the written permission or authorisation must be**

deposited by the candidate with the RO before display or distribution [s 81(1)(d) of the EP (CEE) Reg].

No-Display Areas

8.21 No election advertisement may be displayed within the boundaries of a polling station (including the outer walls of the premises) or within the NCZ [see Chapter 14: Prohibition Against Canvassing Activities Outside Polling Station], except for static displays that are authorised by the RO or the PRO. Where there are private premises situated within the NCZ, the RO should issue a notice in advance to all the candidates concerned asking them to remove all of their election advertisements, if any, posted up at the private premises within the NCZ which can be seen by electors on their way to the polling station on the polling day. If the candidates fail to remove the election advertisements as requested by the RO, the RO may, after making a reasonable effort to contact the persons and giving them a reasonable opportunity to give explanations, issue a warning to candidates to remove the offending election advertisements immediately. If the candidates fail to do so, the EAC may issue a censure or reprimand. The RO will provide the candidate with one set of sketch maps or plans showing the boundaries of the polling station and the NCZ outside the polling station.

8.22 Election advertisements on display must not distract motorists or interfere with the sight lines of motorists and pedestrians, obscure any traffic sign or traffic light signal, or obstruct the circulation of pedestrians. Thus, there will be no public spots or designated spots on or over flyovers, bridges including footbridges, lamp posts, road signs and railings at corners of road junctions or at or near pedestrian crossings, bus stops and bus termini.

PART III : ALLOCATION OF DESIGNATED SPOTS

8.23 The RO will make known to each candidate at the time of receipt of the nomination paper the following information:

- (a) The general locations of the designated spots, which may include unleased government land and premises managed by the Housing Department and the Hong Kong Housing Society, and private premises available for allocation to the candidates. The size and number of spots for allocation will be finalised by the RO, taking into account the number of candidates, **after** the close of nominations. In order to allow all candidates to display their election advertisements at all locations, particularly popular ones, the size of each spot may vary from location to location; and
- (b) The date and time for conducting the allocation of designated spots, which would normally be held within 3 days following the close of nominations. The RO will invite representatives from the relevant authorities relating to government land/property, save those who have already given a blanket approval, to be present to give the necessary written authorisation for the spots allocated.

8.24 The RO will need to know the exact number of candidates who wish to display election advertisements at designated spots so that he can finalise the number of designated spots and their size for allocation. Therefore, candidates concerned **must contact the RO to register their interest in writing** when they submit their nomination forms or before the close of nominations.

8.25 Designated spots are allocated by agreement of the representatives of all candidates or by the drawing of lots. After allocation of the spots and the

necessary authorisations have been obtained from the relevant authorities [s 104A of Cap 132 and s 4 of Cap 28] and after complying with the requirements set out under Part V, the candidate may display election advertisements at such spots allocated to him.

8.26 A copy of all the permissions or authorisations obtained by a candidate himself, as opposed to those provided to him by the RO, must be provided by him to the RO **before the display or distribution** [s 81(1)(d) of the EP (CEE) Reg].

8.27 Designated spots allocated are not transferable. Nor are they exchangeable with other spots. Where a candidate informs the RO in writing that he no longer wishes to use one or more of the designated spots allocated to him, upon request by any other candidate, the RO, if he considers appropriate, will re-allocate by agreement or by the drawing of lots the designated spots amongst all candidates except the one first mentioned. In such a case, paras. 8.25 and 8.26 above apply.

NOTE :

In some cases, designated spots allocated in the first round of allocation are left unused for various reasons. The RO may re-allocate such spots to the relevant candidates by mutual consent or the drawing of lots. Candidates may wish to plan accordingly their resources in respect of election advertisements.

PART IV : CONDITIONS AND LIMITATIONS ON DISPLAY

Re-use of Old Publicity Boards

8.28 A candidate may re-use old publicity boards used at a previous election. However, any information in relation to the previous election, eg the candidate number and names of persons who supported the candidate at that election, should be fully obliterated before any old publicity board is re-used. This would not only avoid confusion to electors but would also help the candidate to avoid laying himself open to allegations of false claim of support of persons who might not have consented to support him at the current election. The cost incurred in refurbishing the old publicity boards will be counted towards the candidate's election expenses.

Size

8.29 Election advertisements displayed at railings and fences must not exceed the height and length of these structures, and in no circumstances be more than 1 metre high and 2.5 metres long.

Mounting and Installation

8.30 The mounting and display of election advertisements must not cause any risk to life or property.

8.31 Permanent fixing devices, such as nails or insoluble glue, should not be used.

8.32 Use "tie-on" posters (rather than "stick-on" posters) to facilitate subsequent removal.

8.33 Do not stick posters on painted or varnished surfaces as their subsequent removal will cause damage or leave unremovable marks.

8.34 Do not erect any structure on pavements, eg nailing boards to the ground.

8.35 Owners or occupiers of a property including a government authority may specify the way in which election advertisements are to be displayed, and may require an indemnity against any claim or damage arising from the display of such materials.

Dismounting

8.36 All candidates should remove all their election advertisements displayed on government land/property **within 10 days** following the election. Failure to do so may result in prosecution being brought against the offending candidate and such advertisements removed and seized by the relevant authority. The **cost of removal** will be recovered from the candidate concerned and will be construed as **election expenses**. Relevant authorities will issue demand notes for the removal costs to the candidates concerned within 21 days after the election results have been published in the Gazette (normally the Friday after the polling day). This is to allow sufficient time for the candidates to include all these costs in their election returns which must be submitted not later than 30 days after gazettal of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law [s 37 of the ECICO].

PART V : SERIAL NUMBERING, DECLARATIONS AND COPIES

Serial Numbering

8.37 Save where the exemption applies, all copies of each type of all election advertisements intended to be displayed, distributed or otherwise used by a candidate must be marked distinctly and legibly on the face with **consecutive serial numbers** starting from “1” [s 81(1)(a) of the EP (CEE) Reg]. Printed materials are exempted from the requirement of serial numbering if each of them:

- (a) is of or smaller than A4 size, ie 30 cm x 21 cm;
- (b) is contained in a single sheet of paper; and
- (c) bears upon it the printer’s name and address, number of copies printed and date of printing.

Examples of the above may include handbills, leaflets and simulated ballot papers. Election advertisements printed in a registered local newspaper/magazine or sent to EC members through the free postage service [see Part IX] or transmitted by electronic means (eg facsimile, electronic mail, computer network, electronic display boards) and balloons, T-shirts, caps, badges and carrier bags, or of such other class or type as the EAC may specify by notice published in the Gazette are exempted from the requirement of serial numbering [s 81(5) of the EP (CEE) Reg].

8.38 The size of the number marked on each type of election advertisements which are not larger than 60 cm x 42 cm (A2 size) must not be

smaller than 2 cm in diameter, and the size of the number marked on those which are larger must not be smaller than 4 cm in diameter.

Declarations

8.39 **Before display, distribution or otherwise use of any election advertisement**, a candidate must make a **declaration in a specified form** to the RO (or to the CEO, if the RO has not yet been appointed) declaring the **quantity**, with the **serial numbers** (save those covered by the exemption referred to in para. 8.37 above), of each type of all election advertisements intended to be displayed or distributed and **the date of printing/publication** [s 81(1)(a) and (b) of the EP (CEE) Reg]. Such declaration should also show all the **intended places** of display (designated spots or private spots) which may be identified by reference to the permissions or authorisations obtained by the candidate [s 81(1)(d) of the EP (CEE) Reg]. A candidate can submit as many declarations as circumstances may from time to time require. A candidate must ensure the correctness and accuracy of all the details contained in his declarations.

8.40 Where an election advertisement is to be distributed by facsimile transmission and where the exemption referred to in para. 8.37 applies (which includes election advertisements sent to electors through the free postage service detailed in Part IX below or transmitted by electronic means), it will not be necessary to state the serial numbers in the declaration. Only the quantity of that election advertisement is to be stated in the declaration.

8.41 A candidate must ensure that every time the contents of his website are changed or updated, he must make a new declaration to the RO and deposit 2 copies of the modified pages with the RO accordingly [see also para. 8.42(a)(iii) below].

Copies

8.42 **Before display, distribution or otherwise use of any election advertisement**, any person, including a candidate must deposit with the RO (or with the CEO if the RO has not yet been appointed):

- (a) in respect of election advertisements
 - (i) 2 copies of all printed advertisements bearing in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed (“printing details”);
 - (ii) 2 identical copies of any video/audio tapes or discs or diskettes containing election advertisements;
 - (iii) 2 copies of any electioneering message sent by electronic means (including 2 copies of any modified webpages if the contents of the website are changed or updated); and
 - (iv) 2 identical postcard sized colour photographs of each type of election advertisements which cannot be practically or conveniently photocopied;

[s 81(1)(c) of the EP (CEE) Reg]

- (b) in respect of permissions or authorisations for display

a copy each of all permissions or authorisations for display given or obtained for the purposes of s 104A of Cap 132 [s 81(1)(d)(i) of the EP (CEE) Reg]; and

(c) in respect of consent of support

a copy each of all consents of support referred to in s 27(1) or (2) of the ECICO, as the case may be [s 81(1)(d)(ii) of the EP (CEE) Reg].

8.43 Where a Declaration of Election Advertisements under s 81 of the EP (CEE) Reg made by a candidate and deposited with the RO contains a mistake or where the candidate's declared intention as to the number of any type of election advertisements displayed or the location of display, etc has changed, the candidate should make a corrective declaration to correct the mistake or record the change. All such corrective declarations must be deposited with the RO at the **latest by 12 noon on the day preceding the polling day**. If no corrective declaration has been so deposited, then the declaration of election advertisements will be used as one of the bases for examining and checking the candidate's return and declaration of election expenses and donations, and as the basis for removal of unauthorised or offending displays.

8.44 No election advertisements shall be displayed apart from those referred to in the declarations made by the candidate and as shown by the copies or on the photographs.

8.45 A candidate must not display his election advertisements other than at the places set out in his declaration.

8.46 The RO will make available a copy of the declarations, election advertisements, photographs, permissions or authorisations and consents at a specified address for inspection by the public as soon as practicable after such documents and photographs have been furnished until the expiration of the same period as declarations of election returns lodged by candidates are available for inspection under s 41 of the ECICO, ie until the first anniversary of the date on

which the result of the relevant election is published [s 81(2) of the EP (CEE) Reg].

PART VI : REQUIREMENTS RELATING TO PRINTED ELECTION ADVERTISEMENTS

Printing Details

8.47 S 34 of the ECICO requires all printed election advertisements, with the exception of those printed in a registered local newspaper/magazine to bear printing details ie they must bear, in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed . It applies to all materials reproduced by any method of multiplying copies (eg, printing machines, duplicators or photocopiers). The following are some suggested formats:

- (a) Printed by ABC Printing Works,
XX XZY Street, HK
on (date) in (number) copies

or

- (b) Printed by own office machine
XX XZY Street, HK
on (date) in (number) copies

Election Advertisements Placed in Print Media

8.48 Where an election advertisement is placed in the print media and takes the form of a news report or any other form which does not clearly show that it is an election advertisement, the words “**Election Advertisement**” or “**選舉廣告**” must be stated in the advertisement, to avoid misunderstanding by readers that it is not an election advertisement.

PART VII : NON-COMPLIANCE AND CONSEQUENCES

Inadvertent Omission of Printing Details

8.49 A candidate who has inadvertently omitted the printing details from his printed election advertisements can make a statutory declaration giving the omitted details, and deposit such declaration with the RO **not later than 7 days after** the publication of the offending election advertisement [s 34(3) of the ECICO]. Having taken this remedial step, he will not be prosecuted for contravention of s 34(1) of the ECICO. The statutory declaration will be retained by the RO for 6 months after the result of the election is published [s 34(7) of the ECICO].

Enforcement and Penalties

8.50 A candidate who fails to provide the printing details or deposit copies of printed election advertisements with the RO commits an offence punishable by a fine of up to \$200,000 and imprisonment for up to 3 years [s 34(6) of the ECICO]. However, he may apply to the court for an order allowing the publication of the above election advertisements be excepted from the relevant requirements and relieving him from the penalties, provided that the

court is satisfied that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith [s 35 of the ECICO]. Non-compliance with the requirements of s 82(2) of the EP (CEE) Reg is punishable with a fine at level 2 (up to \$5,000) and imprisonment for up to 6 months.

8.51 Each candidate must observe and comply with the conditions imposed by the permissions or authorisations for the display of election advertisements. Any election advertisements displayed in contravention of these guidelines will be removed and seized. Other candidates and their supporters should report any non-compliance to the RO and should not take removal action themselves.

8.52 Any unauthorised or offending election advertisements displayed may be seized, disposed of, destroyed, covered, or obliterated by the relevant authorities as they think fit [s 81(3) of the EP (CEE) Reg]. The candidate or his election agent responsible may also be prosecuted and if convicted, may be liable to a fine or imprisonment. The cost of removal, being a civil debt, will be counted as election expenses. Such civil debt must be reported to the RO in the candidate's return and declaration of election expenses. The seized articles may be kept as evidence and will be disposed of or returned upon application in accordance with the Public Health and Municipal Services Ordinance or the Housing Ordinance (Cap 283), as the case may be, and the procedures of the relevant authority [s 104C of Cap 132 and s 6 of Cap 28].

8.53 Each candidate must observe and comply with the conditions agreed between him and the owner or occupier of private land or property for the display of election advertisements, and any additional charges or damages that a candidate is liable to pay to the owner or occupier may be construed as election expenses.

8.54 Complaints should be made to the RO. Upon complaints being received, the EAC may also issue public statements in such manner as it deems fit to censure or denounce any non-compliance with these guidelines. Although a censure may be a further detriment to the candidate in addition to his liability for removal expenses and criminal liability, the EAC will not hesitate to publish one in an appropriate case.

PART VIII : ADVERTISEMENTS OF POLITICAL, PROFESSIONAL/ TRADE BODIES OR OTHER ORGANISATIONS

8.55 Any thing or material published by any organisation including political organisation, professional or trade organisation, owners corporation, mutual aid committee, tenants association, owners committee, etc (irrespective of whether or not the candidate concerned is its officer or member) which advertises its platform or services during or **even before the election period with reference to the candidate** by name or photograph or otherwise may be treated as election advertisement put up by, or on behalf of, or on account of the candidate. The expenses for doing so may be construed as election expenses incurred by or on behalf of the candidate. It is therefore a prudent step for the relevant organisations to suspend their advertising activities. However, if the material published by the organisation concerned, as opposed to the candidate himself, advertises only a particular activity, which:

- (a) is organised from time to time either as part of the organisation'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 and/or photograph of a candidate who is involved in organising the activity should not be regarded as an election advertisement.

8.56 It is an offence for anyone to incur election expenses unless he is a candidate or an election expense agent of a candidate [s 23 of the ECICO].

8.57 Candidates should protect their own interest by advising their organisations of these guidelines as soon as they have any intention or plan to run for the CE election.

8.58 To sum up the important points, where any organisation publishes an election advertisement promoting a candidate,

- (a) the expenses incurred will be treated as the candidate's own election expenses;
- (b) the officer-in-charge of the organisation needs to be appointed by the candidate to be the candidate's election expense agent, or else it or the responsible person commits an offence under s 23 of the ECICO;
- (c) such advertisement must comply with the requirements of s 34 of the ECICO and s 81 of the EP (CEE) Reg; and
- (d) such advertisement can only be displayed at the spots authorised to the candidate.

PART IX : FREE POSTAGE FOR ELECTION ADVERTISEMENTS

Conditions for Free Postage

8.59 A candidate who is validly nominated in the notice of nomination published in the Gazette in accordance with regulations made under the EACO is permitted to post free of postage up to **2** letters to each EC member [s 45 of the CEEO]. However, before the publication of the notice of nomination, a candidate wishing to exercise his right to free postage may be required to furnish the Postmaster General with a security for the payment of postage in the event that his name is not subsequently shown in the notice [s 6(2)(a) of the Post Office Regulations].

8.60 The purpose of the free postage is to enable the candidate to mail election advertisements to EC members to promote or advertise himself and in relation to the election. The free postage, which is the candidate's own privilege, cannot and should not be used for any other purpose or any other election or for promoting or advertising any other person.

8.61 Specifically, the letter must:

- (a) be posted in Hong Kong;
- (b) contain materials relating only to the candidature of the candidate at the election;
- (c) not exceed 50 grams in weight; and
- (d) be not larger than 175 mm x 245 mm and not smaller than 90 mm x 140 mm in size.

It is important to note that under s 80(3)(a) of the EP (CEE) Reg, a candidate sending letters to EC members in bulk is liable for payment of postage for all letters in that bulk if any letter in the bulk does not meet requirement (a), (b), (c) or (d) above.

Make-up

8.62 The letter may take the form of envelope, lettergramme, card or folder. Items in roll form or enclosed in plastic wrappers are **not** acceptable.

8.63 Cards and folders must be made of ordinary cardboard or paper not less than 0.25 mm thick, and must be rectangular in shape.

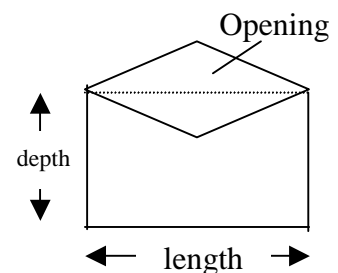
8.64 When a wrapper is used, it must extend over the full length of the item which it encloses. Envelopes must not be fastened with staples or with paper fasteners with sharp edges or points, but they may be closed by means of an adhesive flap or tape.

8.65 Envelopes, folders and lettergrammes having an opening large enough to entrap smaller letters are prohibited. **Unsealed mail item** contained in envelopes with ordinary tuck-in flaps may be used up to the following size limits (s 6 of Post Office Guide):

Not over 90 mm in depth - opening not
over 150 mm in length

Not over 100 mm in depth - opening not
over 140 mm in length

Over 100 mm in depth - opening not
over 115 mm in length



8.66 Folders of A4 size with openings should be closed by means of adhesive flap or tape so as to avoid entrapping smaller letters. For details, please refer to the illustration in **Appendix C**.

8.67 **The characters “選舉廣告” or words “Election Advertisement” must be printed on the address (front) side of the envelope, or the address side of the folder (unenvveloped advertisement).**

Addressing

8.68 To avoid delay or misdelivery, the full postal address should be typed or legibly written on the front of the envelope in four rows as follows:

Name of addressee

Floor and flat number and name of building

Street number, name of street

Name of district

8.69 Addressing slips may be used for the mailing of election advertisements provided that they are legible and **securely pasted** onto the envelopes.

8.70 The name of the candidate and other propaganda slogans, including photographs, should appear on the back of the item or on the left-hand half of the address side reserving the right-hand half of the front exclusively for the address.

8.71 No postage-free election advertisement bearing an address outside Hong Kong will be accepted.

Posting Arrangements

8.72 Candidates are advised that the Post Office will deliver their postage-free election advertisement within **3 working days** after postings. Candidates and their agents are therefore **reminded** that **postings which do not meet the above timing requirement may fail to reach the addressees before the polling day.**

8.73 At least **2 clear working days' notice** must be given to the Managers listed at **Appendix D** before the postings are made. Candidates should present two unsealed specimens of their election advertisements, together with a notice of posting of election mail (which will be provided by the REO at the time of candidates submitting their nominations) for inspection 2 clear working days before the postings are made.

8.74 When handing in the specimens, the candidates may indicate any one of the posting offices listed in **Appendix D** where they intend to make their postings. In this connection, the Manager concerned will arrange and confirm the requests after approving the specimens.

8.75 The postings should be made up, preferably in bundles of 50 or 100 for easy counting. All letters should face the same direction.

8.76 With each posting, the candidate or his representative must present a signed declaration **in duplicate** (the original to be kept by the Post Office and the duplicate copy duly signed by the Post Office official and kept by the candidate or his representative as acknowledgement of the posting):

- (a) stating the quantity of packets in the posting and the name of the candidate;

- (b) declaring that the posting is the first or second batch of his postage-free communication;
- (c) declaring that each packet contains material relating to the election only; is identical to the unsealed specimen submitted by the candidate or his representative for inspection and retention by the Post Office; and is addressed by name to an EC member; and
- (d) declaring that not more than 2 postage-free communication has been or will be sent to any of the EC members.

The declaration form will be provided to the candidates by the REO at the time of their submission of nominations. It is important to note that under s 80(3)(b) of the EP (CEE) Reg, a candidate sending letters to EC members in bulk is liable for payment of postage for all the letters in that bulk if the declaration made by him or his representative is false in any particular.

8.77 If a candidate makes each posting in more than one batch, the same declaration form should be presented at the same posting office on each occasion.

8.78 Government reserves the right to charge a candidate postage where any of the above requirements is not met or the free postage arrangements are abused in any way [s 80(3) of the EP (CEE) Reg]. The charge counts towards the candidate's election expenses and must be included in his return and declaration of election expenses and donations to be sent to the RO. The EAC may also issue public statements in such manner as it deems fit to denounce any abuse of the free postage arrangements.

Enquiries

8.79 For general enquiries concerning the posting of election advertisements, please contact:

Senior Manager (Retail Business)
M/F, Middle Road Carpark Building
15 Middle Road,
Tsim Sha Tsui,
Kowloon

Telephone : 2926 1484

Fax : 2312 1455

CHAPTER 9

ELECTION MEETINGS

PART I : GENERAL

9.1 An **election meeting** is a meeting held to promote or prejudice the election of a particular candidate or particular candidates [s 12(5) of the ECICO]. For the avoidance of doubt, election forums organised for all candidates are not treated as election meetings [see Part IV: Election Forums of Chapter 11].

9.2 Expenses incurred before, during or after an election on account of an election meeting organised for any of the purposes stated above are **election expenses**. There may be cases where a meeting is not organised for any of the above purposes, but has nevertheless been used for such purposes by a candidate or any other person on his behalf. In that event, it will be for the candidate to assess the expenses which have been incurred for the said purposes [see s 2 of the ECICO and the guidelines on Election Expenses and Donations in Chapter 16]. The person who uses the meeting for promoting the candidate may also be liable for prosecution for his failure in obtaining the candidate's prior authorisation to appoint him as the candidate's election expense agent for incurring election expenses on behalf of the candidate [see s 23 of the ECICO].

9.3 Candidates should refer to the section on "Treating" in Part IV of Chapter 17, regarding the serving of drinks and meals at or incidental to an election meeting.

9.4 In addition to the election expenses incurred, candidates are responsible for the election meetings or public processions which they organise, including the keeping of order and safety, controlling noise level, cleanliness and other liabilities.

9.5 An election meeting may take place in a public place or in private premises. A public procession for election campaigning purposes is a form of election meeting, as is an exhibition organised with a view to promoting or prejudicing the election of a particular candidate or particular candidates.

PART II : NOTIFICATION TO THE POLICE

Election Meetings in Public Places

9.6 Any person who organises an election meeting in a public place must notify the Commissioner of Police in writing **not later than 11 am on the same day (if a general holiday, the first day preceding that day which is not a general holiday) of the week in the preceding week as the day on which the meeting is intended to be held** [s 8(1) of the Public Order Ordinance (Cap 245)]. “Public place” means any place to which for the time being the public or any section of the public are entitled or permitted to have access, whether on payment or otherwise, and, in relation to any meeting, includes any place which is or will be, on the occasion and for the purposes of such meeting, a public place [s 2 of Cap 245].

9.7 The written notification may be **handed in** to the officer in charge of any police station. It should contain the following particulars:

- (a) the name, address and telephone number of the person organising the meeting, any society or organisation promoting or connected

with the holding of the meeting and a person able to act, if necessary, in place of the organiser;

- (b) the purpose and subject matter of the meeting;
- (c) the date, location, time of commencement and duration of the meeting;
- (d) an estimate of the number of people expected to attend the meeting;
- (e) the number and names of persons proposed as platform-speakers for the meeting;
- (f) the sound amplification devices, if any, intended to be used at the meeting; and
- (g) the nature, form and contents of the advertisements, printed matter, posters or banners intended for publication, distribution or display in respect of the meeting.

[S 8(4) of Cap 245]

A **form** of notification for a public meeting or procession together with notes provided by the Police will be given to a candidate upon his submission of nomination. The Police has advised that the use of the form will speed up processing time.

9.8 Notification to the Commissioner of Police of an election meeting is not required if the meeting is to be:

- (a) attended by not more than 50 persons; or

- (b) held at the private premises where the number of persons attending will not exceed 500 persons; or
- (c) held in a school, college, university or other educational establishment with the approval of an accredited society or similar body of such school, college or educational establishment **and** consent of the governing body of the establishment concerned.

[S 7(2) of Cap 245]

Where in doubt, a candidate should seek advice from the Police.

9.9 The Commissioner of Police may prohibit the holding of any public meeting notified (referred to in paras. 9.6 and 9.7 above) where he reasonably considers such prohibition to be necessary in the interests of national security or public safety, public order (*ordre public*) or the protection of the rights and freedoms of others, and if so, he shall give notice of the prohibition to the person who gave the notification not later than 48 hours prior to the time of commencement of the meeting [s 9 of Cap 245]. On the other hand, the Commissioner of Police may give notice to the organisers and impose conditions for the meeting to take place, and the organisers must comply with such conditions and comply forthwith with any direction given by a police officer for ensuring compliance with or the due performance of the conditions and the requirements referred to in para. 9.10 below [s 11 of Cap 245].

9.10 At every public meeting:

- (a) there shall be present throughout the meeting either the organiser, or if he is not present, a person nominated by him to act in his place;

- (b) good order and public safety shall be maintained throughout the meeting; and
- (c) the control of any amplification device that is used in such a manner that it causes a noise that would not be tolerated by a reasonable person, shall if so required by a police officer, be surrendered to the police officer for the duration of the meeting.

[S 11(1) of Cap 245]

9.11 A guidance note on safe conduct of election-related activities, issued by the Commissioner of Police, is at **Appendix E**. It serves as a general advice to candidates and organisers of election-related activities, to enable them to conduct such activities safely.

Public Processions

9.12 A public procession for election campaigning purposes may be held without notification to the Commissioner of Police:

- (a) where it consists of not more than 30 persons; or
- (b) where it is held at a place other than a public highway, public thoroughfare or public park.

[S 13(2) of Cap 245]

9.13 In all other cases, written notification of a public procession, including a vehicle procession, must be given by the person organising the procession to the Commissioner of Police (which may be handed in to the officer in charge of any police station) **not later than 11 am on the same day (if a general holiday, the first day preceding that day which is not a general**

holiday) of the week in the preceding week as the day on which the procession is intended to be held containing the following information [s 13A(4) of Cap 245]:

- (a) the name, address and telephone number of the person organising the procession, any society or organisation promoting or connected with the holding of the procession and a person able to act, if necessary, in place of the organiser;
- (b) the purpose and subject matter of the procession;
- (c) the date, precise route, time of commencement and duration of the procession;
- (d) in respect of any meeting to be held in conjunction with the procession, the location, time of commencement and duration of the meeting; and
- (e) an estimate of the number of people expected to attend the procession.

A notification **form** mentioned in para. 9.7 above should be used.

9.14 The Commissioner of Police may issue a notice of no objection for the public procession, or alternatively issue a notice of objection to the procession if he reasonably considers that the objection is necessary in the interest of national security or public safety, public order (*ordre public*) or the protection of the rights and freedoms of others. If the Commissioner of Police so objects to the public procession, he shall issue a notice of objection to the organiser not later than 48 hours before the commencement time of the procession, otherwise he is taken to have issued a notice of no objection for the public procession. The Commissioner of Police may give notice to the

organisers and impose conditions for the procession to take place, and the organisers must comply with such conditions and comply forthwith with any direction given by a police officer for ensuring compliance with or the due performance of the conditions and the requirements referred to in para. 9.15 below [ss 14 and 15 of Cap 245].

9.15 At every public procession:

- (a) there shall be present throughout the procession either the organiser of the procession, or if he is not present, a person nominated by him to act in his place;
- (b) good order and public safety shall be maintained throughout the procession; and
- (c) the control of any sound amplification device that is used in such a manner that it causes a noise that would not be tolerated by a reasonable person, shall if so required by a police officer, be surrendered to the police officer for the duration of the procession.

[S 15(1) of Cap 245]

Election Meetings at Private Premises

9.16 Any person who organises an election meeting at private premises should obtain prior permission from the owner, occupier, owners corporation, building management or the mutual aid committee etc concerned. Housing estates under the management of the Housing Department and the Hong Kong Housing Society are treated as private premises in the guidelines.

9.17 Insofar as the decision regarding election meetings by candidates in the common areas of a building accords fair and equal treatment to all candidates, the EAC will not intervene.

9.18 Candidates must obtain **prior approval** from the Housing Manager before conducting any election meeting inside a housing estate, in addition to compliance with regulations and conditions imposed by other relevant authorities. An **application** for approval **should be made at least 2 clear working days (excluding Saturday, Sunday or public holiday) before the date of the meeting**, and the applicant will be notified as soon as practicable after a decision is arrived at. To avoid conflict that may arise from allowing 2 or more candidates and their supporters to hold election meetings in a housing estate at the same venue and time, the Housing Department and the Hong Kong Housing Society will process the applications as soon as practicable and will adopt the following arrangements:

- (a) if only 1 application for holding an election meeting at a particular venue and at a particular time is received, that application will be approved;
- (b) if 2 or more applications for the same venue and the same period are received by the Housing Department or the Hong Kong Housing Society 2 clear working days before the activity takes place, the applicants will be advised to negotiate among themselves to reach a compromise on condition that no canvassing from 2 or more groups will be held at the same place and at the same time to avoid any dispute or clash. If no compromise can be reached, allocation of venue or time will be made by the drawing of lots at a time to be decided by the relevant estate Housing Manager;

- (c) for the purpose of (a) and (b) above, an application for several periods will be dealt with as separate applications for each of the periods; and
- (d) the Housing Manager should send a copy of the letter of approval to the RO for record and for public inspection.

9.19 Notification in writing to the Commissioner of Police will need to be given, in accordance with the procedure set out in paras. 9.6 and 9.7 above, if at the proposed meeting the attendance will exceed 500 persons.

PART III : MOBILE EXHIBITIONS

9.20 A candidate may hold an exhibition for election campaigning purposes. If such an exhibition is held in private premises, including housing estates managed by the Housing Department and the Hong Kong Housing Society, the prior permission of the Housing Manager, owner, occupier, owners corporation, building management or the mutual aid committee, etc concerned, as appropriate, must be obtained. Relevant guidelines in other parts in this chapter should also be observed, in addition to compliance with regulations and conditions imposed by other relevant authorities.

9.21 Where approval has been given by a Housing Manager for such an exhibition, the display of election advertisements at the venue of the exhibition will normally be subject to the conditions that they are displayed in connection with the activity in question and for a temporary duration of less than a day. The guidelines in Chapter 8: Election Advertisements are applicable to such displays and must be observed by the candidate concerned. The Housing Manager should send a copy of the letter of approval to the RO for record and for public inspection.

PART IV : FUND-RAISING ACTIVITIES AT ELECTION MEETINGS

9.22 A permit is required for organising, providing equipment for, or participating in any collection of money or sale of badges, tokens or similar articles or exchange the same for donations in a public place [s 4(17) of the Summary Offences Ordinance (Cap 228)]. Any person who wishes to raise funds at an election meeting for non-charitable purposes should apply to the Secretary for Home Affairs. A copy of the administrative guidelines and licensing conditions for the issue of such permits with an application form is at the **Appendix F** for general information.

CHAPTER 10

ELECTIONEERING AT THE LIVING AND WORKING PLACES OF ELECTORS, PREMISES OF ORGANISATIONS TO WHICH ELECTORS BELONG AND BUILDINGS WHICH ELECTORS FREQUENT

PART I : GENERAL

10.1 There are occasions when candidates may wish to target their electioneering activities at an individual elector or a group of electors at:

- (a) his/their living/working place(s);
- (b) the premises of the organisation(s) to which the elector(s) belong;
or
- (c) the building(s) which the elector(s) frequent.

These electioneering activities include visits to, personal contact with people, using amplifying devices to advertise in the common parts of the building, display or distribution of election advertisements and holding of election meetings at, the places mentioned above. **Appendix G** gives some kind of reference as to what activity is to be regarded as an electioneering activity. This chapter explains the rights of all concerned and appeals to the electors, the management bodies of the organisations to which the electors belong and the management bodies of the buildings which the electors frequent to **provide fair and equal treatment** to all candidates so as to ensure that the election is conducted fairly.

PART II : VISITS TO LIVING AND WORKING PLACES OF ELECTORS

10.2 Candidates should note that electors have the right to allow or deny access by anyone, including the candidates, to their living or working places. In other words, electors are free to invite, or accept the request from, a particular candidate(s), but not the others, to visit them at their living or working places.

10.3 Any government offices will be treated in the same manner as the premises referred to in this chapter. Government offices may allow or disallow electioneering activities as they wish, but such decision should comply with the fair and equal principle mentioned in this chapter.

PART III : ELECTIONEERING AT PREMISES OF ORGANISATIONS TO WHICH ELECTORS BELONG AND BUILDINGS WHICH ELECTORS FREQUENT

10.4 Unlike the living and working places of electors, the premises of the organisations to which the electors belong and the buildings which electors frequent do not belong to a particular elector or group of electors. They are usually under the control of the management bodies of the organisations or the buildings concerned.

10.5 The EAC appeals to all management bodies of the organisations or buildings concerned to provide **equal opportunity** to all candidates for the purposes of electioneering. However, if it is decided **not** to allow a particular candidate to conduct electioneering activities in the premises of the organisation or in the common parts of the building, no other candidate should be allowed to

do so, for **it is important to provide fair and equal treatment to all candidates** so as to ensure that the election is conducted fairly.

10.6 The **common parts** of a building are usually under the control and management of the owners of the various units in the building. Where there is an owners corporation of the building incorporated under the former Multi-storey Buildings (Owners Incorporation) Ordinance or the present Building Management Ordinance (Cap 344), the control and management of the common parts are exercised by the owners corporation representing all the owners of the building.

10.7 Whatever organisation it is in such a building, be it an owners corporation, owners committee, mutual aid committee, tenants association, residents association, management company or managers of the building, the decision that it makes relating to electioneering activities of candidates in the common parts of the building, including the office premises of the organisation and all private streets, etc, **must comply with the fair and equal treatment principle**.

10.8 The organisation concerned should make a decision that applies equally and fairly to all candidates instead of dealing with each application from them separately. This will avoid having to convene a meeting to deal with each application upon its receipt, sometimes incurring delay in dealing with some applications. The EAC may treat such delay as a device to avoid compliance with the fair and equal treatment principle and may issue a reprimand or censure.

10.9 As a motion on whether or not electioneering by candidates should be allowed in a building concerns the rights of tenants and occupiers more than those of owners, it is advisable for owners or owners corporations to allow occupiers who are not owners to vote on the motion and a secret ballot is always the fairest way of voting on such a controversial subject. If approval or consent

has been obtained from the owners having the control of the common parts of the building or the Owners Corporation, the building management organisation may conduct a questionnaire survey to collect the views of the occupiers of each flat and act according to the majority view relating to matters covered by and in accordance with this chapter.

PART IV : DISPLAY OF ELECTION ADVERTISEMENTS

10.10 The management bodies of the organisations or buildings concerned should avoid handling applications by candidates for display of election advertisements on a first-come-first-served basis as this may create unfairness. For example, if one candidate knows the decision and applies to put up posters and banners on all available spots in the common parts of the building, no space will be left for other candidates who apply after him. To ensure fairness, management bodies are advised to:

- (a) ascertain all the available spots in their premises for candidates to display posters and banners;
- (b) after the close of nominations of candidature, find out from the RO how many candidates are contesting in the election;
- (c) divide all the available spaces according to quality and quantity to ensure equality as far as possible into portions equivalent to the number of candidates; and
- (d) when one of the candidates applies for display, allow him to draw lots to obtain a portion of the spots still available at the time of his application.

10.11 All persons who put up any publicity materials, including those which do not look election-related, in the nomination period at private premises should declare to the management body concerned in writing whether they are candidates or intend to stand as candidates in the election. This is to prevent prospective candidates to make use of such device to promote themselves. The management body is also advised to exercise its own judgment on whether the publicity materials are serving electioneering purposes and then make a decision with due regard to the fair and equal treatment principle.

PART V : RESPECT FOR THE DECISION AND PRIVACY

10.12 After a candidate has been notified of the decision relating to electioneering, he should ensure that he and his followers comply with the decision and should not avail himself of or obtain any unfair advantage over any other candidate. If a decision to disallow electioneering in an organisation or a building has been made, the candidate or his followers should conduct no electioneering activity in such places.

10.13 If the candidate concerned acts against the fair and equal decision of the organisation or building and electioneers in whatever manner, then he commits trespass and the organisation or building management can simply stop him doing the contravening act or carry out the decision to exclude the candidates concerned. If the candidate refuses to leave, it would be wise in such circumstances for the organisation or building management, as the case may be, to report the matter to the Police and to the EAC or its Complaints Committee which may publish a **reprimand** or **censure** against the candidate concerned.

10.14 A candidate and his supporters should respect the decisions of the organisation or building management, and it is unwise to enter into **arguments**

with members of the organisation or the building residents who obstruct the candidate's electioneering inside the premises of the organisation or the building. Such arguments may affect the candidate's reputation or image with members of the organisation or the residents of the building. Any dissatisfaction with the decision or act of the organisation or the building should more properly be made a subject of a complaint as soon as possible to the EAC or its Complaints Committee which will decide whether the decision or act is fair or unfair.

10.15 **Privacy of the electors should be respected.** Some do not like or detest being called over the **telephone** or the **entrance intercom system** and some do not like their names being called out aloud. Their disapproval may be reflected in their choice of candidates on polling day. It is therefore unwise to telephone electors who find such approaches objectionable or to act in any other way that may antagonise them. On the other hand, electors who receive the objectionable telephone calls can just disconnect them. If the caller does not desist from calling and causes a nuisance, the elector should report the matter as soon as possible to the **Police** who may take action against the caller. A guidance note on personal data privacy in respect of electioneering activities, prepared by the Office of the Privacy Commissioner for Personal Data, is at **Appendix H**. It serves as a general reference on compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) in relation to electioneering activities that may involve the collection and use of personal data of an individual.

10.16 Some candidates or their supporters may use **loud-hailers** to assist their campaign. They should exercise restraint in the use of loud-hailers so as not to create a nuisance to the persons in the vicinity, including those who live in the buildings nearby. Candidates are therefore required **NOT** to use loudspeakers in electioneering between 9 pm and 9 am. If the EAC comes to know that a candidate has breached the time restriction, it may make a reprimand or censure against the candidate. Excessive noise will amount to an offence and the Police

may be called. Anyway, it is unwise to create a nuisance through the use of loud-hailers, for the annoyance of the electors will obviously be reflected in their choice of candidate.

PART VI : NOTIFICATION OF DECISION

10.17 The management bodies of organisations and buildings are urged to notify the RO in writing as soon as possible of their decision on electioneering by candidates so as to equip the RO with the correct information to be provided to the candidates who may make inquiries with him. A **form** of the notification to the RO can be obtained from the REO. **Where no notification is received by the RO after the expiration of the nomination period, he may assume that there is no objection from the organisation regarding electioneering by candidates in the building.** Nevertheless, candidates are advised to note that some buildings may not be able to make a decision on electioneering by candidates before the close of nominations and therefore have not given the notification to the RO as required. When candidates come across these buildings, they should respect the interim decision of these buildings not to allow electioneering.

PART VII : IDENTIFICATION OF CANVASSERS

10.18 For security reasons and for prevention of abuse, the EAC advises that each candidate should provide some form of identification to his canvassers for them to enter the premises of an organisation or a building for electioneering purposes. The EAC suggests that the candidate should devise an authenticated identification document containing the name and photograph of his canvasser

who should produce this identification document together with his identity card for inspection to gain entry into the premises of an organisation or a building. Candidates should note that the production costs of this kind of identification document will be counted as election expenses.

PART VIII : SANCTION

10.19 If the EAC receives a complaint of unfair or unequal treatment of candidates by any organisation or building or a person acting or purporting to act on behalf of such organisation or building, and is satisfied that the complaint is justified, it may make a **reprimand** or **censure** in a public statement which may include the names of the candidates favourably and unfavourably treated. Candidates should therefore advise the organisation management or building owners whom they approach of these guidelines. On the other hand, however, if it is proved that a person has made a false, unfounded or unreasonable allegation of unfair treatment by an organisation or a building, the EAC may issue a reprimand or censure in a public statement against that person.

10.20 Candidates should also refrain from accepting any unfair advantage over other candidates even though such may be ready on offer by an organisation or a building. The EAC may publish a public **reprimand** or **censure** against the candidate who contravenes the guidelines in this chapter or whose act or behaviour results in any unfair or unequal treatment by organisations or buildings towards any other candidate.

CHAPTER 11

ELECTION BROADCASTING, MEDIA REPORTING AND ELECTION FORUMS

PART I : GENERAL

11.1 This chapter deals with election broadcasting through electronic means (which covers all programmes including those on current affairs and news reporting on the radio and television), media reporting on election-related matters and the holding of any election forum.

IMPORTANT :

“Candidate” in this chapter includes a person who has publicly declared an intention to stand for election at any time before the close of nominations for the election, whether or not he has submitted a nomination form [s 2 of the ECICO].

PART II : ELECTIONEERING ON TV AND RADIO

11.2 Commercial broadcasters, including operators of television and radio channels, which are the licensees under the Broadcasting Ordinance, are generally not allowed to accept advertisements of a political nature. Other service providers which are not licensable under the Broadcasting Ordinance are allowed to carry election advertisements territory wide.

11.3 For current affairs or other programmes on TV and radio which are not election-related, candidates may take part as guests in these programmes insofar as their participation is pertinent. Otherwise, the **“equal time” principle** will apply. “Equal time” means **equal time for each of the candidates contesting in the election.**

11.4 **No unfair advantage** should be offered to or obtained by any candidate over others regarding election campaigning.

11.5 Broadcasters should ensure that the “equal time” principle as well as the “no unfair advantage” principle are applied to candidates contesting the election. If broadcasters intend to invite a candidate in the election to take part in a current affairs or any other programme whose entire or partial theme is on the election, they should also invite all candidates to take part in the programme.

11.6 When inviting a candidate to attend a programme whose entire or partial theme is on the election, broadcasters should include in the invitation a notice to the invitee that a similar invitation has been or will be made to other candidates, so as to give the invitees an equal opportunity to appear. **A record should be kept by the broadcaster of the date, time and contents of the invitation and the notice until 3 months after the election.**

11.7 The EAC appeals to broadcasters to treat all candidates fairly and equally when making comment on or reference to the candidates in any of their programmes. Comments made for the purpose of promoting or prejudicing a candidate or candidates are treated as election advertisements, if reference could be made from the materials to identify the candidate(s) being promoted or prejudiced [see also para. 8.8 of Chapter 8 : Election Advertisements]. Moreover, if such comments are determined by the EAC as election advertisements, the EAC will refer the matter to the Broadcasting Authority for appropriate action. If there is fair and equal treatment to all candidates, the

editorial line of the broadcaster or personal opinions of the programme presenter on each of the candidates can be freely expressed, insofar as they are fair comments and based on true facts. The guidelines do not seek to impose any shackle on the expression of such ideas. However, broadcasters should ensure that in the expression of such ideas, no unfair advantage may result towards any candidate over another.

Candidates Appearing on TV/Radio/Movie as Presenters, Regular Contributors, Actors, Musicians, Singers or Other Entertainers

11.8 A presenter, including a guest presenter, or a regular contributor should not appear in any programme in his normal programme role after he has publicly declared his intention to stand for the election or during the election period (from the commencement of the nomination period to the polling day) if he becomes a candidate. This is to avoid unfair extra publicity for him at the critical time. A presenter or regular contributor may, of course, appear as candidate in election forums referred to in Part IV below.

11.9 A person who has contracted to appear as presenter, regular contributor, actor, musician, singer or any other form of entertainer in any performance scheduled to be shown before his declaration of intention to stand for the election or before and after the election period may always do so and continue to do so. However, such a person should try his utmost endeavour to request the person(s) responsible not to broadcast his appearance in any media after his declaration of intention to run for the election or during the election period if he becomes a candidate.

Candidates Appearing in Commercial Advertisements

11.10 A person should not participate in the making of an advertisement in which his image, name or voice appear ("the relevant advertisement") and which he knows will be broadcast on TV/radio/cinema

after his declaration of intention to stand for the election or during the election period if he becomes a candidate.

11.11 If, after the relevant advertisement has been made, the person then decides to run in the election, and it comes to his attention that the relevant advertisement will appear in TV/radio/cinema after his declaration of intention to stand for the election or after the nomination period has commenced if he becomes a candidate during that period, he should use his utmost endeavour to request the person(s) responsible not to broadcast the relevant advertisement after his declaration of intention to stand for the election, or during the election period.

PART III : ADVERTISING THROUGH THE PRINT MEDIA

11.12 A candidate is at liberty to advertise in the print media to promote his candidature. Where such an advertisement is placed in the print media and takes the form of a news report or any other form which does not clearly show that it is an election advertisement, the words “**Election Advertisement**” or “選舉廣告” must be stated in the advertisement, to avoid misunderstanding by readers that it is not an election advertisement [see para. 8.48 of Chapter 8 : Election Advertisements]. The expenses so incurred must be accounted for in the return and declaration of election expenses and donations.

11.13 No unfair advantage should be offered by any publisher to a candidate. Nor should a candidate obtain from a publisher any unfair advantage regarding election campaigning. The EAC appeals to members of the print media to provide **fair and equal treatment** to all candidates in the reporting of them or their electioneering activities. How fair and equal treatment is to be applied in practice is set out in the **Appendix I**.

11.14 A regular columnist should not contribute articles to the print media after he has publicly declared his intention to stand for the election or during the election period if he becomes a candidate. This is to avoid unfair extra publicity for him at the critical time. A regular columnist may, of course, appear as a candidate in election forums referred to in Part IV below.

PART IV : ELECTION FORUMS

11.15 During the election period, broadcasters may organise election forums in their programmes. Broadcasters should ensure that the “equal time” principle as well as the “no unfair advantage” principle are applied to all candidates. If a candidate is invited to take part in the election forum, then all candidates should also be invited to be present at such forums so as to give the candidates an equal opportunity to appear.

11.16 Any organisations, such as professional or trade organisations, academic institutions and schools, etc, may organise election forums for civic education or other purposes. In line with the **fair and equal treatment** principle, the EAC appeals to all these organisers to invite all candidates to be present at such forums, so that no unfair advantage will be accorded to or obtained by any candidate over others regarding election campaigning.

11.17 The EAC also appeals to all candidates to use their best endeavours to take part in election forums in order to enable electors and the public to be apprised of their platform.

PART V : SANCTION

11.18 If the EAC comes to know of unfair or unequal treatment of candidates by any broadcaster, publisher or forum organiser, it may make a **reprimand** or **censure** in a public statement which may include the names of the candidates favourably and unfavourably treated and the broadcaster, publisher or forum organiser concerned. The EAC may also notify the relevant authorities for appropriate action to be taken.

CHAPTER 12

USE OF SOUND AMPLIFYING DEVICE AND BROADCASTING VANS

PART I : GENERAL

12.1 The law relevant to this chapter can be found in the Public Order Ordinance (Cap 245), the Summary Offences Ordinance (Cap 228) and the Noise Control Ordinance (Cap 400) and the Road Traffic Ordinance (Cap 374).

12.2 Candidates are reminded that some members of the public find the sound or noise emitted by loudspeakers annoying and intrusive. When using loudspeakers, candidates should particularly bear in mind possible annoyance caused to people in hospitals, homes for the elderly, kindergartens, nurseries, schools and dwelling houses. Elector's choice of candidate in casting their votes may be affected as a result of any noise nuisance caused by candidates or their followers.

PART II : USE OF LOUDSPEAKERS AND BROADCASTING VANS

12.3 With effect from July 1995, the Commissioner of Police ceases issuing loudspeaker permits under s 4(29) of the Summary Offences Ordinance. Candidates are therefore **NOT** required to submit any application for a permit. However, this does not exempt candidates from complying with the requirements of the law and the conditions imposed by the Commissioner of Police when any amplification device is used in an election meeting or procession. An amplification device includes a loudspeaker and any device

which can emit or amplify sound [please refer to Chapter 9: Election Meeting for details].

12.4 Although no permit is now required, any person using a loudspeaker should ensure that the noise emitted through the loudspeaker does not cause a nuisance to any other person. Under s 5(1)(b) of the Noise Control Ordinance, making a nuisance by using a loudspeaker, megaphone, or other device or instrument for magnifying sound from which the noise emitted is a source of annoyance either at any domestic premises or public place at any time of the day is an offence, and this includes use of loudspeakers attached to vehicles. In order to reduce the nuisance caused to members of the public, candidates are required **NOT** to use loudspeakers in electioneering **between 9 pm and 9 am**. If the EAC comes to know that a candidate has breached the time restriction, it may make a **reprimand** or **censure** against him. Candidates should note that some members of the public may find the noise emitted from loudspeakers on broadcasting vans disturbing. They should therefore seriously consider the public's tolerance over the noise level and try to keep the noise volume at a reasonable level.

12.5 Should any complaint be received by the Police concerning the volume of the loudspeaker, the volume of sound should be reduced on the instructions of any police officer. If verbal warning or instruction by the police officer is ignored, prosecution may be instituted.

12.6 All vehicles used for and in connection with canvassing activities must comply with the provisions and regulations of the Road Traffic Ordinance. Drivers of such vehicles are obliged to obey all directions given by uniformed police officers and traffic wardens. Additionally, drivers of all vehicles must comply strictly with all the stopping and parking regulations of the Ordinance. Deliberate slow driving may constitute "careless driving" as it could be deemed as driving "without reasonable consideration for other persons using the road". Paraphernalia attached to a vehicle must also comply with the Road Traffic

(Construction and Maintenance of Vehicles) Regulations of the Road Traffic Ordinance, ie, not to interfere with the working or safety of the vehicle. Candidates and their supporters are reminded that they should observe the statutory requirements of the Road Traffic (Safety Equipment) Regulations and Road Traffic (Traffic Control) Regulations under the Road Traffic Ordinance, including those relating to seating requirement, the wearing of seat belts and the permission to carry passengers in a vehicle. Standing up in moving vehicles would be **illegal** for both the drivers and standees except on trams, single-decked public service buses and the lower deck of double-decked buses.

12.7 Any vehicle modified to a float configuration for display or canvassing purposes must be approved by the Commissioner for Transport. Application procedures for approval of float design are included at **Appendix J**.

12.8 Candidates should also note the use of loudspeakers will not be permitted within the NCZ outside the polling station, nor will it be permitted in the vicinity where the sound emitted can be heard within the NCZ [see also Chapter 14: Prohibition Against Canvassing Activities Outside Polling Station].

PART III : SANCTION

12.9 If the EAC comes to know that any candidate is in breach of the guidelines in this chapter, apart from notifying the relevant authorities for actions to be taken, it may make a **reprimand** or **censure** in a public statement which may include the name of the candidate concerned. The censure may be in addition to the criminal liability for offences inside the NCZ, punishable with the maximum penalties of \$5,000 fine and imprisonment for 3 months [ss 24 and 82 of the EP (CEE) Reg].

CHAPTER 13

ELECTIONEERING ACTIVITIES CONDUCTED IN SCHOOLS OR PARTICIPATED BY SCHOOL PUPILS

PART I : GENERAL

13.1 Candidates, school supervisors, principals and teachers are requested to take note of these guidelines when considering allowing the conduct of electioneering activities in their schools or seeking the assistance of pupils in electioneering activities.

13.2 Involvement of school pupils in electioneering activities has always been a matter of public concern. Anybody in authority must **NOT** use his position to exert undue influence on youths of school age under his charge to recruit them for electioneering activities. If the EAC comes to know that a person has abused his position by involving youths of school age under his charge in electioneering activities, it may make a reprimand or censure against the person. For use of force or duress on a person's voting preference, see s 13 of the ECICO.

PART II : SCHOOL PUPILS

13.3 While it is for the promotion of civic education that school pupils are encouraged to take an interest in community affairs, including elections, it is considered undesirable for them to be involved in electioneering activities at too

young an age. Unattended young children can cause control problems and, particularly where large numbers are involved, or in overcrowded situations, can create a danger to themselves and the others. The EAC therefore advises strongly against any pre-primary or primary school pupil taking part in electioneering activities.

13.4 Distribution of election advertisements is a form of electioneering activity. There may be school supervisors, principals or teachers who may support a particular candidate. While they are free to support any candidate they prefer, they should not distribute or help distribution of election advertisements of any candidate to the parents of pre-primary, primary or secondary pupils using the pupils as conduits. Moreover, they must not ask such pupils to request their parents to vote for any particular candidate. The same applies to candidates who are themselves school supervisors, principals or teachers. This guideline is based on the same principle stated in para. 13.2 above, and could avoid any semblance of undue influence on young children under the charge of these persons in authority in the school.

13.5 The EAC adopts the advisory circular issued by the Secretary for Education and Manpower to all schools for general guidance, emphasising the following points:

- (a) participation by pupils in electioneering activities must be **entirely voluntary**;
- (b) the **written consent** of a parent or guardian must be obtained beforehand;
- (c) in no circumstances should pre-primary or primary school pupils be asked to take part in such activities;

- (d) there should be no disruption of the pupils' education, and in no circumstances should normal lessons be interrupted to enable pupils to take part in such activities; and
- (e) in no circumstances should pupils be asked to take part in activities in areas where they may be subject to various elements of danger, including those created by traffic.

13.6 Pupils who take part in canvassing activities should pay attention to their own school regulations, and in particular those regarding the wearing of school uniform in such activities.

13.7 The EAC recognises that school pupils who are 18 years of age or over are by law old enough to be responsible for their own acts and make election-related decisions for themselves.

PART III : ELECTIONEERING ACTIVITIES IN SCHOOLS

13.8 During the election period, school supervisors, principals or teachers may invite or be approached by candidates to give talks on topical issues to students in their schools. The topic to be covered by such a talk may or may not have direct reference to an election. In any case, the presence of the candidate delivering it and the copies of the speech which may be circulated to students and brought home to their parents may have the effect of promoting or advertising that candidate and should, therefore, be regarded as his electioneering activity [see also para. 13.4 above].

13.9 In line with the **fair and equal treatment** principle, the EAC appeals to all school supervisors, principals and teachers to provide equal opportunity to all candidates for the purpose of electioneering. If a school authority has decided to allow a particular candidate to conduct electioneering activities in the school, other candidates should be informed and given the opportunity to do the same, so that no unfair advantage will be accorded to or obtained by any candidate over others regarding election campaigning. Information on the name and address (and contact numbers if the candidate has no objection to releasing the same) of candidates can be obtained from the REO.

PART IV : SANCTION

13.10 If the EAC comes to know that any candidate or school or a person is in breach of the guidelines in this chapter, it may make a **reprimand** or **censure** in a public statement which may include the name of the candidate, the school and person concerned, and may also refer the case to the Education and Manpower Bureau. Candidates should therefore apprise the school or person concerned who offers them assistance of these guidelines.

CHAPTER 14

PROHIBITION AGAINST CANVASSING ACTIVITIES OUTSIDE POLLING STATION

PART I : GENERAL

14.1 This chapter deals with the ban on canvassing activities **outside** the polling station on the polling day.

14.2 A “No Canvassing Zone Scheme” is employed for the purpose of prohibiting canvassing activities outside the polling station on the polling day in order to maintain free and safe passage for electors, and to ensure that they are not unduly harassed on their way to the polling station.

PART II : DECLARATION OF A NO CANVASSING ZONE AND NO STAYING ZONE

14.3 The RO must determine an area outside the polling station to be a NCZ. In so doing, he will take into account the characteristics and special conditions of the polling station. He must also determine an area within the NCZ outside the entrance to the polling station as a NSZ. These two zones are to be determined with reference to a map or plan.

14.4 The RO must, at least 2 days before polling day, give notice of the declaration of the NCZ and NSZ to the candidates [s 23(2) of the EP (CEE) Reg].

14.5 The notice will be given in writing, either in person or by post or by facsimile transmission, to the candidates or to the election agents.

14.6 Where the circumstances so warrant, the RO may vary the NCZ or NSZ. Notice of the variation must be given as soon as practicable after the variation in the same manner as a notice referred to in para. 14.5 above [s 23(4)(a) of the EP (CEE) Reg].

14.7 A notice of the determination or the variation, together with indication of the boundaries of the NCZ or the NSZ, need to be displayed, on polling day, at or near the polling station, in order to make the determination or variation effective [s 23(4)(b) of the EP (CEE) Reg].

14.8 The RO may authorise his ARO or the PRO to exercise the power to vary the determination and to perform the associated duties on polling day.

PART III : CONDUCT IN NO CANVASSING ZONE AND NO STAYING ZONE

14.9 The PRO will keep order at the NCZ and NSZ.

14.10 On the polling date, no person shall:

- (a) engage in canvassing for votes in a NCZ (including suggesting not to vote for any candidate). A list of common canvassing activities which are forbidden in a NCZ is at **Appendix G**;
- (b) use a sound amplifying system or device for any purpose in the NCZ without lawful authority;

- (c) use a sound amplifying system or device, for canvassing for votes (including suggesting not to vote for any candidate), so that the sound emitted by it can be heard in the NCZ;
- (d) without reasonable excuse, display in the NCZ any propaganda material relating to any candidate or the election; or
- (e) stay or loiter in the NSZ without the express permission of the PRO.

[S 24(2) and (3) of the EP (CEE) Reg]

14.11 In a NCZ or a NSZ on the polling date, no person shall:

- (a) fail to comply with a lawful direction given by the RO or the PRO;
- (b) cause an obstruction to any person who is in the zone and on his way to vote; or
- (c) otherwise misconduct himself.

[S 24(4) of the EP (CEE) Reg]

14.12 No canvassing activities will be allowed within a NCZ except for static displays of election advertisements that are authorised by the RO or the PRO. Where there are private premises situated within the NCZ, the RO should issue a notice in advance to all the candidates asking them to remove all of their election advertisements, if any, posted up at the private premises within the NCZ which can be seen by the electors on their way to the polling station on the polling day. If the candidates fail to remove the election

advertisements as requested by the RO, the RO may, after making a reasonable effort to contact the persons and giving them a reasonable opportunity to give explanations, issue a warning to candidates to remove the offending election advertisements immediately. If the candidates fail to do so, the EAC may issue a censure or reprimand.

14.13 A person shall not obtain or attempt to obtain (in any manner) information as to which candidate an elector is about to vote for or has voted for, in a NCZ or in a NSZ without the express permission of the PRO who should have regard to exit pollsters who have complied with the requirements set out in Chapter 15: Exit Poll.

14.14 If a person contravenes paras. 14.10 and 14.11 above, the RO or the PRO may:

- (a) require the person to produce his identity card for inspection; and
- (b) order the person to leave the NCZ or NSZ immediately.

[S 24(5) of the EP (CEE) Reg]

If the person fails to leave when ordered to do so, he may be removed by a police officer or by a person authorised in writing by the RO or the PRO. The person so removed may not re-enter the NCZ or NSZ again on the polling date without the express permission of the RO or the PRO [s 24(5) – (8) of the EP (CEE) Reg].

14.15 For the avoidance of doubt, the RO or the PRO shall not exercise their powers to order or remove an elector from the NCZ or NSZ as to prevent an elector from voting [s 24(9) of the EP (CEE) Reg].

PART IV : PENALTY

14.16 A person who contravenes paras. 14.10, 14.11 and 14.14 above commits an offence under s 82(1) of the EP (CEE) Reg and shall be liable on conviction to a fine at level 2 (up to \$5,000) and to imprisonment for up to 3 months.

CHAPTER 15

EXIT POLL

PART I : GENERAL

15.1 This chapter sets out the guidelines for the conduct, publication and broadcast of exit polls to avoid unfair interference with the election process by unduly influencing electors. The aim is to ensure that elections are conducted honestly and fairly.

PART II : CONDUCT OF EXIT POLLS

15.2 The EAC appeals to the media and organisations concerned for self-regulation, goodwill and voluntary cooperation in the conduct, publication and broadcast of exit polls so that electors' behaviour will not be unduly affected.

15.3 Exit polls may be conducted by any person or organisation. For the purpose of better control of the conduct of exit poll, persons or organisations intending to conduct exit polls must provide the following to the REO at **the latest 7 days before the polling day**:

- (a) the name and address of the person or organisation intending to conduct exit poll on the polling day;
- (b) the identity document number and name of the person responsible together with his telephone number(s) for contact, especially for the polling hours; and

- (c) a list showing the number of persons who will be employed for the conduct of exit poll at the polling station on the polling day together with the identity document number and name of each of all the persons who will be so employed.

15.4 On the receipt of the application, the REO will consider the application and issue approval to the concerned person or organisation as appropriate. A list of such persons or organisations allowed to conduct exit poll will be announced to the public prior to the polling day for the reference of the public and candidates and such a list will also be displayed at the polling station.

15.5 Interviews are not allowed inside the polling station. Interviewers should note that canvassing activity is prohibited under criminal sanction within the NCZ. They must therefore be extremely careful in conducting exit poll so as not to give rise to any suspicion that they are canvassing electors inside the NCZ. Interviewers, like any other person, are not allowed to stay or loiter in the area designated as the NSZ (within the NCZ but immediately outside the entrance of the polling station). Interviewers are also not allowed to accost electors in the NSZ. All these measures are for the purpose of securing safe and smooth passage of electors into and out of polling stations. The PRO may, if circumstances require, designate an area outside the exit of the polling station so that interviewers may only conduct exit poll within that area.

15.6 Any announcement of results of exit polls or predictions, particularly in relation to any individual candidate, during the polling hour may affect electors' behaviour and have an impact on election results. The EAC, therefore, appeals to the media and organisations concerned to refrain from announcing the results of exit polls or making specific remarks or predictions on the performance of individual candidates **until after the close of poll.**

15.7 Broadcasters' attention is invited to the provisions of the Television and Radio Code of Practice on Programme Standards which require news and current affairs programmes to be fair, objective and impartial.

PART III : SECRECY OF THE VOTE

15.8 **The ballot is secret.** It is an elector's right to keep his vote secret. An elector does not have to disclose his choice of candidate if he does not want to. It is a criminal offence for a person, without lawful authority, to require, or purport to require, an elector to disclose the name of, or any particular relating to, the candidate for whom he voted at an election [s 78 of the EP (CEE) Reg]. Those who conduct exit polls must respect the electors' right and wish not to be disturbed.

PART IV : IDENTIFICATION OF INTERVIEWERS

15.9 There had been occasions where exit poll interviewers were mistaken to be government officials or polling staff. Such interviewers are therefore required to wear an identification device so that electors will not be misled into thinking that they are appointed by the Government.

15.10 After receipt of the information referred to in para. 15.3 above, the REO will notify the organisation or person concerned to collect a number of identification devices bearing the name of the organisation that is required to be worn by each of the persons included in the list in para. 15.3(c) above when conducting exit poll. Any person not wearing such a device or wearing such a device without the identity of the organisation being shown will not be allowed to conduct exit poll outside the polling station.

PART V : SANCTION

15.11 Apart from the criminal sanction provided in the EP (CEE) Reg, if the EAC comes to know that any broadcaster or organisation has failed to heed or comply with the guidelines in this chapter, it may make a **reprimand** or **censure** in a public statement which may include the name of the broadcaster or the organisation concerned.

CHAPTER 16

ELECTION EXPENSES AND DONATIONS

PART I : WHAT CONSTITUTES ELECTION EXPENSES

16.1 Provisions relating to election expenses can be found in the ECICO.

16.2 **Election expenses** mean expenses incurred or to be incurred **before, during or after an election**, by a candidate or his election expense agent on his behalf for the purpose of promoting his election, or prejudicing the election of another candidate or other candidates and include the value of election donations consisting of goods and services used for that purpose [s 2 of the ECICO]. The term “candidate” relating to election expenses (and donations) therefore includes a person **who has publicly declared an intention to stand for election** at any time before the close of the nominations for the election, regardless of whether he has submitted his nomination form or after submission of the nomination form, his nomination is ruled invalid by the RO [s 2 of the ECICO].

16.3 A candidate may receive **donations** for the purpose of meeting the costs of his election expenses. Donation, in relation to a candidate or candidates at an election, means any of the following donations:

- (a) any money given to or in respect of him for the purpose of meeting or contributing towards meeting his election expenses;
- or

- (b) any goods given to or in respect of him for the purpose of promoting his election or of prejudicing the election of another candidate or other candidates and includes any goods given incidental to the provision of voluntary service; or
- (c) any service provided to or in respect of him for the purpose of promoting his election or of prejudicing the election of another candidate or other candidates, but does not include voluntary service.

[S 2 of the ECICO]

All such donations, whether in cash or in kind, when spent or used, are counted as election expenses [for details, see Part III of this chapter].

16.4 There is no defined time as to when expenses are incurred whereby they will or will not be counted as election expenses. It is a question of fact in each case. For as long as an expense is incurred either for the purpose:

- (a) of promoting the election of a candidate; or
- (b) of prejudicing the election of another candidate or other candidates;

it will be an election expense, irrespective of when it is incurred, either before, during or after the election, and regardless of the source of funding.

16.5 A list of common expenditure items which may be counted towards election expenses is at **Appendix K**. The list is only illustrative and should not be considered as having precedence over the legislation. Whether a particular item of expenditure should be regarded as an election expense is a

question of fact to be answered in the circumstances of each case. Each case should be determined by reference to the purpose behind the expenses, taking account of the nature, circumstances and context of the expenditure. Personal expenses incurred in the normal course of a candidate's daily life are not election expenses. Use of staff and other resources which are available to a candidate in his official capacity or at work for the purpose of promoting his candidature in an election should also be counted as election expenses. Candidates should consult their legal advisers if they have doubt as to whether an expenditure item should count as an election expense. Any legal fees incurred as a result will not themselves be counted as election expenses. Wherever appropriate, they can also use the services as described in para. 1.16 of Chapter 1 of these guidelines.

16.6 A candidate should not use any public resources for the purpose of promoting his election or prejudicing the election of another candidate or other candidates at the election. However, any security, transportation, secretarial and living quarters services to which he is entitled to use for his private purposes by virtue of his post or job are not treated as public resources in this context.

PART II : WHO MAY INCUR ELECTION EXPENSES AND THEIR LIMIT

Maximum Amount of Election Expenses

16.7 The maximum amount of election expenses for the election (ie \$9,500,000) is prescribed by the Maximum Amount of Election Expenses (Chief Executive Election) Regulation made by the CE in Council pursuant to s 45 of the ECICO to limit the maximum amount of expenses a candidate may incur on account of the election. This limit controls the extent of election

campaigns and serves to prevent candidates with ample financial resources from having an unfair advantage.

16.8 A candidate must not incur any election expenses in excess of the maximum amount prescribed [s 24 of the ECICO].

Persons Appointed to Incur Election Expenses

16.9 Only a candidate or a person who has been duly appointed by a candidate as the candidate's election expense agent may incur election expenses [s 23 of the ECICO]. The appointment should follow the procedures specified in Part VI: Election Expense Agent of Chapter 7.

16.10 As a candidate has to declare that he stands at the election in an individual capacity, he must ensure that the campaign activities for which he has authorised expense are consistent with the declaration and will not lead the electors or the public to believe that he is representing his party. A candidate's freedom to accept support from any organisation is subject to this condition.

16.11 **Negative campaigning.** Before incurring expenses in carrying out any negative campaigning for or for the benefit of a candidate, a person will need the appointment of the candidate to be the election expense agent of the candidate. Such expenses will be counted towards election expenses of the candidate. If the negative campaign includes election advertisements, all the requirements of the ECICO and of the EP (CEE) Reg must also be complied with.

16.12 Candidates should advise the organisations with which they are associated and which may incur expenses to support them of these guidelines as soon as they have any intention or plan to run for the election, to avoid any offences being committed by these organisations out of ignorance.

16.13 A candidate will be responsible for the overall amount of his election expenses. In the event the total amount incurred by him and/or on his behalf exceeds the limit prescribed or the limit he has authorised his election expense agent to expend, he will be liable for contravening the law, unless he can prove that the excess was incurred without his consent, beyond his authorisation, or not due to any negligence on his part. The election expense agent, on the other hand, should not incur an amount of election expenses which exceeds the limit authorised by the candidate, lest the agent will contravene s 23 of the ECICO [ss 23 and 24 of the ECICO].

PART III : DONATIONS

General Provisions

16.14 A person who has made known his intention to stand as a candidate in the election may receive donations for the sole purpose of meeting his election expenses.

16.15 Donations can only be used for meeting, or contributing towards meeting, a candidate's election expenses, or in the case of an election donation consisting of goods or services, for the purpose of promoting the election of the candidate or of prejudicing the election of another candidate or other candidates [s 18 of the ECICO].

16.16 Donations can be in cash or in kind, and include any money's worth, any valuable security or other equivalent of money and any valuable consideration. All spent or used donations, whether in cash or in kind, which may be received before, during or after an election, are counted towards the total election expenses which are subject to the maximum amount prescribed.

16.17 Any unspent or unused donations must be given to charitable institution(s) or trust(s) of a public character chosen by the candidate(s). Any amount of donations that exceeds the upper limit of election expenses must also be given to such charitable institution(s) or trust(s) [s 19 of the ECICO].

16.18 Since election donations can only be lawfully spent for meeting or contributing towards meeting election expenses, donations and expenses are often corresponding to each other. For every item of election expense which is avoided or reduced by obtaining the goods supplied or services rendered free of charge or at a discount, there should normally be a corresponding item of donation. The only exception is voluntary services obtained that are not treated as donations (any goods given incidental to the provision of a voluntary service will however be counted as an election donation). These points are elaborated in the paragraphs under Donations in Kind of this chapter.

16.19 On receiving a donation, of money or in kind, of more than \$1,000 in value, a candidate must issue to the donor a receipt which specifies the name and address of the donor (as supplied by the donor). A standard form of receipt is obtainable from the REO and will be provided to a candidate at the time of his submitting his nomination form. While it is not uncommon that some donors would like to be anonymous, if a donation, in cash or in kind, is more than \$1,000, then only where the donor's name and address (as supplied by the donor) are shown as required by the standard form of donation receipt can it be used as election donation. Donations exceeding \$1,000 or, in the case of an election donation consisting of goods, of more than \$1,000 in value received from anonymous donors must not be used for election expenses and must be given to a charitable institution or trust of a public character chosen by the candidate [s 19(2) of the ECICO].

Donations in Kind

16.20 Donations in kind include goods and services obtained free of

charge or at a discount. Unless the discount is generally available to all customers, the difference between the market/regular price and the price charged is a donation and must be declared and included as such and correspondingly as an election expense in the form of return. The same principle applies to loans obtained at no interest or at an interest rate lower than usual. Unless the facility is generally available to others, the interest not charged must be declared and included as a donation and election expense in the form of return. For premises provided free of charge to a candidate for his election campaign, a reasonable amount should be assessed as the deemed rental for the premises and such be included as a donation and election expense in the form of return.

16.21 For services or goods obtained free of charge, a candidate must include in the return their estimated value as if the expenses had been incurred. Where the services or goods are furnished by a person who deals in similar services or goods with the public, their estimated value should be assessed at the lowest price at which the person offers his services or goods to the public at the time when they are furnished. Where such services or goods are furnished by persons who do not deal in similar services or goods with the public, their estimated value should be assessed at the lowest market retail price at the time when they are furnished.

16.22 **Voluntary service** is the only service rendered free of charge which may be excluded from being counted as election expenses. In addition to being free of charge, the service must be provided by a natural person, voluntarily and personally, in his own time for the purpose of promoting the election of the candidate or candidates, or of prejudicing the election of another candidate or other candidates [s 2 of the ECICO]. It must not be service normally provided by the person during such time for the purpose of earning income or profit. Otherwise, the service provided should be treated as a donation and counted towards election expenses at a fair estimated value.

PART IV : RETURN AND DECLARATION OF ELECTION EXPENSES AND DONATIONS

16.23 A candidate must keep an accurate account of all election expenses incurred and donations (whether in cash or in kind) received, and submit to **the CEO a return and declaration of election expenses and donations in a specified form not later than 30 days after the gazettal of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law** [s 37 of the ECICO].

16.24 The return must cover all the election expenses incurred by the candidate or the person(s) so authorised by him, services or goods obtained free of charge or at a discount and any unpaid claims. It must be submitted with supporting invoices and receipts for all payments each of \$100 and above. The copies of receipts issued by the candidate for any donations of more than \$1,000 and those issued by charitable institutions or trusts of a public character for the collection of any unspent or excess donations should also be attached [s 37 of the ECICO].

16.25 At the time of his submitting his nomination form, a candidate will be given:

- (a) the specified form for making return and declaration of election expenses and donations mentioned in para. 16.23 above, together with a standard form of receipt for donations mentioned in para 16.19 above;
- (b) the specified form for advance return of donations (see para. 16.28 below);

- (c) a specimen of the specified form with examples showing how the return and declaration can be completed; and
- (d) explanatory notes on how to complete the returns.

A candidate should read the explanatory notes carefully in completing the return, and make reference to the specimen whenever necessary.

Omissions and Mistakes

16.26 If a candidate is unable or fails to send to the CEO the return and declaration of election expenses before the end of the permitted period or omits an item in it or makes a mistake in it, and such inability, failure, omission or error was due to his own illness or absence or of the absence, death, illness or misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation or any reasonable cause (but not by reason of want of good faith of the candidate), he has the right to make an application to the Court of First Instance for an order to send in the return and declaration late, or to correct the omission or mistake [s 40 of the ECICO]. When the candidate finds himself in such a situation, it would be wise of him to make the application to the Court and inform the REO as soon as possible. The legal costs so incurred will not be regarded as his election expenses. It is a corrupt conduct if a candidate who, in an election return lodged under s 37 of the ECICO, makes a statement that he knows or ought to know is materially false or misleading [s 20 of the ECICO].

PART V : ADVANCE RETURN OF DONATIONS

16.27 Any candidate who is an incumbent public servant eg a serving member of the LegCo or a District Council, etc., may give advance disclosure

to the CEO of any donations received. This may enable such an incumbent member to avoid any inadvertent contravention of the provisions of the POBO relating to the acceptance of “advantages”. The donations so disclosed must also be incorporated in the return and declaration of election expenses and donations to be submitted to the CEO not later than 30 days after the gazettal of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law [s 37 of the ECICO]. The general provisions regarding donations in Part III must be observed.

16.28 Any **advance return of donations** must be made on the specified form mentioned in para. 16.25.

16.29 Depending on the time and the number of donations received, a candidate may submit any number of advance returns of donations to the CEO.

PART VI : ENFORCEMENT AND PENALTY

Enforcement

16.30 The returns will be made available at the REO for public inspection up to the first anniversary of the date on which the result of an election is published. Copies of the returns will be furnished to any person upon request subject to payment of a copying fee at a fixed rate [s 41 of the ECICO].

16.31 Any complaint or report of breach of these guidelines may be made to the RO, the REO or to the EAC or its Complaints Committee direct. The EAC or its Complaints Committee may, after consideration, refer the cases

to the relevant authorities for investigation and prosecution.

16.32 The REO will check all returns of election expenses and donations. Irregularities detected will be reported to the relevant authorities for investigation.

Penalties

16.33 It is an illegal conduct for a candidate to incur election expenses in excess of the maximum amount prescribed. It is also an illegal conduct for a person, other than a candidate or a candidate's election expense agent, to incur election expenses. An election expense agent engages in illegal conduct if he incurs election expenses in excess of the amount authorised. Such an illegal conduct is punishable by a fine of up to \$200,000 and imprisonment for up to 3 years [ss 22, 23 and 24 of the ECICO].

16.34 A candidate who uses any donation for any purpose other than for meeting his election expenses, or fails to dispose of unspent or excess donations in accordance with s 19 of the ECICO commits a corrupt conduct punishable by a fine of up to \$500,000 and imprisonment for up to 7 years. [ss 6, 18 and 19 of the ECICO].

16.35 A candidate who fails to submit the return and declaration of election expenses and donations by the prescribed date or who fails to provide an accurate account of all expenses incurred and all donations received with the required supporting receipted vouchers and donation receipts commits an offence, punishable by a fine of up to \$200,000 and imprisonment for up to 3 years [S 38 of the ECICO].

16.36 A candidate who knowingly makes a materially false or misleading statement in his return and declaration of election expenses and donations or any advance return of donations commits a corrupt conduct

punishable by a fine of up to \$500,000 and imprisonment for up to 7 years [ss 6 and 20 of the ECICO].

16.37 A candidate, who having been elected to the office of the CE, acts in the office without filing the return and declaration of election expenses and donations before the end of the permitted period commits an offence, punishable by a fine of \$5,000 for every day after such expiration on which he so acts in the office [s 39 of the ECICO].

16.38 A person convicted of a **corrupt conduct or illegal conduct** within the meaning of the ECICO will be disqualified:

- (a) for 3 years from being registered as an elector or voting in the CE, LegCo, DC or VR election [s 26(d) of the CEEO, ss 31 and 53 of the LCO, s 30 of the District Councils Ordinance (Cap 547) (“DCO”) and s 16 of the Village Representative Election Ordinance (Cap 576) (“VREO”)];
- (b) for 5 years from being nominated as a candidate for the election of, or elected as, the CE, a member of the LegCo or DC, or a VR [ss 14 and 20 of the CEEO, s 39 of the LCO, s 21 of the DCO and s 23 of the VREO]; and
- (c) for 3 years from being nominated as a candidate for the election of, or elected or nominated as, an EC member from the date of the conviction [ss 9 and 18 of the Schedule to the CEEO].

CHAPTER 17

CORRUPT AND ILLEGAL CONDUCT

PART I : GENERAL

17.1 This chapter sets out the guidelines against corrupt and illegal conduct in conducting election-related activities. It is important that candidates are aware of the common pitfalls in election activities, which may involve corrupt and illegal conduct, and take appropriate preventive measures to guard against committing offences out of oversight.

17.2 Provisions relating to corrupt and illegal conduct can be found in the ECICO. To help candidates and their agents to get acquainted with the major provisions of the Ordinance, the ICAC has prepared a Handbook on the Ordinance, which is at **Appendix L** for easy reference.

17.3 A person who engages in:

- (a) a **corrupt conduct** will be liable to a fine of up to \$500,000 and imprisonment for up to 7 years and to pay to the court the amount or value or such part as specified by the court of any valuable consideration he or his agents received in connection with the conduct [s 6 of the ECICO]; and
- (b) an **illegal conduct** will be liable to a fine of up to \$200,000 and imprisonment for up to 3 years [s 22 of the ECICO].

In addition to these penalties, a convicted person will be disqualified from being registered as an elector or nominated as a candidate in elections, as appropriate. For details, please see para. 17.31 below.

PART II : CORRUPT CONDUCT RELATING TO NOMINATION AND WITHDRAWAL OF CANDIDATES

Offences relating to Candidature

17.4 Any act to affect a person's candidature by bribery, force, duress or deception is prohibited. Candidature includes standing as a candidate, not standing as a candidate, or withdrawal of nomination. It will be a corrupt conduct if a person corruptly:

- (a) offers an advantage to another person as an inducement or reward to affect his candidature or for not using his best endeavours to promote his election;
- (b) offers an advantage to another person as an inducement or reward to affect the candidature of a third person or get the third person not to use his best endeavours to promote his election;
- (c) solicits or accepts an advantage from another person as an inducement or reward to affect the candidature of himself or for not using his best endeavours to promote his election; or
- (d) solicits or accepts an advantage from another person as an inducement or reward to affect the candidature of a third person or get the third person not to use his best endeavours to promote his election.

[S 7 of the ECICO]

17.5 Similarly, a person engages in corrupt conduct if he uses force or duress against another person to affect the candidature of that person or a third

person. The use of deception to induce another person to affect the candidature of that person or a third person is also a corrupt conduct [ss 8 and 9 of the ECICO].

17.6 It will also be a corrupt conduct if a person defaces or destroys a nomination paper with intent to prevent or obstruct another person from standing for election [s 10 of the ECICO].

PART III : ILLEGAL CONDUCT RELATING TO ELECTIONEERING

False Statement that a Person is or is not a Candidate

17.7 A person must not publish any statement that a candidate is no longer a candidate at an election if he is a candidate, or that another person who has been nominated as a candidate is no longer a candidate at the election, or that he or another person is a candidate at an election, knowing that the statement is false [s 25 of the ECICO].

False or Misleading Statement about a Candidate

17.8 A person must not publish any materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates. Similarly, a candidate must not publish any materially false or misleading statement of fact about himself or any other candidate for the purpose of promoting the election of himself or prejudicing the election of another candidate or other candidates. Any such publication will amount to an illegal conduct. It should be noted that materially false or misleading statements about a candidate or candidates include, but are not limited to, statements concerning the character, qualifications or previous conduct of the candidate or

candidates, eg a person who makes a materially false or misleading statement of fact, thereby calling into question the integrity and honesty of that candidate, may contravene the above provision [s 26 of the ECICO].

Claim of Support

[Please also see Chapter 18 : Namedropping]

17.9 A candidate must obtain **prior written consent** from a person or an organisation before using the name or logo of that person or organisation, or a pictorial representation of that person in any of his election advertisements or activities as an indication of support from that person or organisation. Oral consent is **not** sufficient [s 27 of the ECICO]. The EAC provides a standardised consent form for this purpose. Any indication of support in election advertisements, be it a text, a photograph or any other material, must be covered by a written consent from the person or organisation concerned. A copy of the consent form must be deposited with the RO **prior to the display, distribution or otherwise use of the election advertisements** [s 81(1)(d)(ii) of the EP (CEE) Reg]. It is important to note that it is still an offence even if such an election advertisement contains a statement to the effect that it does not imply support from the person or organisation concerned [s 27(4) of the ECICO]. It is also an offence for a person to give materially false or misleading information to a candidate or candidates for promoting or prejudicing the election of a candidate or candidates [s 27(6) of the ECICO].

17.10 A consent given can be revoked. In case of a revocation, in order to avoid dispute, it is advisable for the person or organisation who has revoked the consent to send a notice or copy of the revocation to the candidate concerned and to the RO. Every candidate is required to deposit a copy of the completed consent forms with the RO and to notify the RO in writing of any revocation of consent.

17.11 S 28 of the ECICO provides for an injunction order by the Court to restrain the publication of any materially false or misleading statement or false claim of support. An application for such an injunction order may be made by a candidate, his election agent, an elector and the person or body to whom or which the false information is related.

Requirements relating to Printed Election Advertisements

17.12 Insofar as electioneering is concerned, it is also an offence if a candidate does not comply with the requirements relating to printed election advertisements. For details of the requirements, please refer to Chapter 8 on Election Advertisements in particular Parts I, VI and VII thereof.

17.13 A person must, **not later than 7 days after** publishing a printed election advertisement, deposit **2 copies** of the advertisement to the RO [s 34(4) of the ECICO].

17.14 The provisions of s 81(1) of the EP (CEE) Reg are more stringent. **Before** a candidate displays, distributes or otherwise uses an election advertisement, he must allocate a **number in a separate series** to each type of election advertisement, and make a **declaration** in a specified form to state the quantity of each type of election advertisement he proposes to so use. For a better control over the display of unauthorised election advertisements and to facilitate the RO in handling such complaints, the declaration and **2 copies** of the election advertisement must be deposited with the RO **before** the election advertisement is displayed, distributed or otherwise used. If the RO has not yet been appointed, the declaration and copies should be deposited with the CEO. By doing so, the candidate should have complied with s 34(4) of the ECICO as mentioned in para. 17.13 above.

PART IV : CORRUPT CONDUCT RELATING TO ELECTIONEERING AND VOTING

Bribery

17.15 Any act to affect a person's voting preference by offering or soliciting an advantage is prohibited [s 11 of the ECICO]. Voting preference covers voting for a particular candidate or candidates, not voting at an election, or not voting for a particular candidate or candidates.

Treating

17.16 A person must not at any time provide or meet all or part of the cost of providing another person with any food, drink or entertainment for the purpose of influencing that person's or a third person's voting preference. Likewise, the corrupt solicitation or acceptance of any such treating is prohibited [s 12 of the ECICO].

17.17 The serving of non-alcoholic drinks at an election meeting will not be deemed corrupt for the above purposes [s 12(5) of the ECICO]. An election meeting is any meeting held to promote or prejudice the election of a particular candidate or particular candidates. See Chapter 9 : Election Meetings for details.

17.18 Treating arises in daily situations. If it is used (by a candidate or another person) for promoting or prejudicing the election of a candidate, it is an offence. For example, a person or an organisation may host a banquet for a non-election-related purpose but, during the occasion, innocently calls on the guests to vote for a particular candidate. In such an event, the candidate concerned should immediately disown or dissociate with whatever has been said or done to promote his candidature. Otherwise, he would be liable to

being charged with an offence under s 12 of the ECICO and the expenses so incurred would be counted towards his election expenses.

17.19 If a banquet, albeit apparently not related to any election, is used to treat guests corruptly for the purpose of promoting a candidate or prejudicing other candidates, then both the host and the candidate will be guilty of a corrupt conduct. Moreover, the host will commit an **offence** under s 23 of the ECICO if he has not yet been authorised in writing by the candidate to incur election expenses at or in connection with an election.

Force and Duress

17.20 The use of force or duress against a person to induce him to vote or not to vote at an election, or to vote or not to vote for a particular candidate or particular candidates or to get a third person to do so is a corrupt conduct [s 13 of the ECICO].

17.21 Persons in position to exert pressure and influence on others should be careful not to breach the provisions under the ECICO, eg employers over employees, religious advisers over believers and doctors over patients, etc.

Voting Offences

17.22 It is a corrupt conduct for any person:

- (a) to vote at an election knowing that he is not entitled to vote at that election;
- (b) to vote at an election after having knowingly or recklessly given materially false or misleading information to an electoral officer, or to vote at an election after having knowingly omitted to give material information to an electoral officer;

- (c) to vote more than once in the same round of voting at an election except as expressly permitted by an electoral law; or
- (d) to invite or induce another person to commit (a), (b) or (c) above.

[S 16 of the ECICO]

PART V : CORRUPT AND ILLEGAL CONDUCT RELATING TO ELECTION EXPENSES AND DONATIONS

17.23 Candidates should be careful when handling election expenses and donations as non-compliance with the relevant requirements will be a corrupt or illegal conduct. For details of the requirements that have to be observed, please refer to Chapter 16: Election Expenses and Donations.

PART VI : POWER OF COURT TO EXCUSE INNOCENT ACTS

17.24 S 31 of the ECICO provides a mechanism for a candidate to apply for a Court order to relieve himself of criminal responsibility if he contravenes the illegal conduct provisions due to inadvertence, accidental miscalculation or any reasonable cause and was not due to bad faith. No prosecution against him may be instituted or carried on until the application is disposed of by the Court. He will not be liable to be convicted of an offence if the illegal conduct is the subject of a Court order.

17.25 A candidate who fails to provide the printing details or deposit copies of election advertisements with the RO commits an offence.

However, he may apply to the court for an order allowing the publication of the above election advertisements be excepted from the relevant requirements and relieving him from the penalties, provided that the court is satisfied that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith [s 35 of the ECICO].

17.26 A candidate who is unable or has failed to send to the CEO the return and declaration of election expenses and donations before the end of the permitted period or omits an item in it or makes a mistake in it, and such inability, failure, omission or error was due to his own illness or absence or of the absence, death, illness or misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation or any reasonable cause (but not by reason of want of good faith of the candidate), has the right to make an application to the Court of First Instance for an order to send in the return and declaration late, or to correct the omission or mistake [s 40 of the ECICO]. When the candidate finds himself in such a situation, it would be wise of him to make the application to the Court and inform the REO as soon as possible.

PART VII : NON-COMPLIANCE WITH THE LAW AND SANCTION

17.27 Any complaint or report of breach of these guidelines may be made to the RO, the REO or the EAC direct. The EAC may, after consideration, refer the cases to the relevant authorities for investigation and prosecution.

17.28 The ICAC may, subject to the decision of the Secretary for Justice, prosecute, issue a warning or caution to candidates and any other persons in appropriate cases concerning any breach of the electoral law or regulation, especially the ECICO.

17.29 The Director of Public Prosecutions has informed the EAC that the Department of Justice will not hesitate to prosecute appropriate cases of electoral offences.

17.30 The EAC may also issue public statements in such manner as it deems fit to reprimand or censure any non-compliance with these guidelines.

17.31 A person convicted of a corrupt conduct or illegal conduct under the ECICO will, in addition to the penalties set out in para. 17.3 of this chapter, be disqualified:

- (a) for 3 years from being registered as an elector or voting in the CE, LegCo, DC or VR election [s 26(d) of the CEEO, ss 31 and 53 of the LCO, s 30 of the DCO, and s 16 of the VREO];
- (b) for 5 years from being nominated as a candidate for the election of, or elected as, the CE, a member of the LegCo or DC or a VR [ss 14 and 20 of the CEEO, s 39 of the LCO, s 21 of the DCO and s 23 of the VREO]; and
- (c) for 3 years from being nominated as a candidate for the election of, or elected or nominated as, an EC member from the date of the conviction [ss 9 and 18 of the Schedule to the CEEO].

17.32 It is worthy of note that the Courts of Hong Kong view election-related offences and contravention of the ECICO as serious crimes. On 27 November 1997, the Court of Appeal laid down sentencing guidelines that a person found guilty of any such offence should properly be sent to jail immediately for no less than 2 months (4 months for a candidate or an agent).

CHAPTER 18

NAMEDROPPING

False Claim of Support

[Please also see paras. 17.9 to 17.11 of Chapter 17]

18.1 A candidate must obtain **prior written consent** from a person or an organisation before using the name or logo of that person or organisation, or a pictorial representation of that person in any of his election advertisements or activities as an indication of support from that person or organisation. Oral consent is **not** sufficient [s 27 of the ECICO]. The EAC provides a standardised consent form for this purpose. Any indication of support in election advertisements, be it a text, a photograph or any other material, must be covered by a written consent from the person or organisation concerned. The written consent is a requirement under the ECICO. It protects the candidates from unnecessary complaints and disputes which may arise if only oral consent is obtained. It also protects the electors from being misinformed as to whether a candidate has the support of a person or an organisation. Prior written consent is required if the inclusion of the name, logo or pictorial representation of a person or an organisation, as the case may be, implies support of the candidate concerned. What amounts to “support” will depend on the circumstances of each case. The question to consider is whether any reasonable man who has seen the pictorial representation would have the perception that the persons appearing in the election advertisement support the candidate.

18.2 It is important to note that it is still an offence even if such an election advertisement contains a statement to the effect that it does not imply support from the person or organisation concerned [s 27(4) of the ECICO]. It is also an offence for a person to give information which he knows or ought to

know is materially false or misleading information to a candidate for promoting or prejudicing the election of a candidate or candidates [s 27(6) of the ECICO].

18.3 To avoid confusion, it is advisable for the written consent to set out clearly whether consent is given:

- (a) by a person in his personal capacity - in which case no mention should be made of any office title which he may have, in the candidate's election advertisements and campaign activities;
- (b) by a person in his official capacity - in which case his office title may be used by the candidate concerned for the said purposes; and
- (c) by an organisation (which may be signed by an authorised person such as its director, chairman or chief executive, etc.) - in which case the name of the organisation may be used by the candidate concerned for the said purposes.

18.4 Care must also be exercised in the use of the office title of an individual and this should be cleared with the person concerned when seeking his written consent. In the case where an office bearer of an organisation wishes to use his office title to support a candidate, he should be careful not to give the impression that it represents the support of the whole organisation except where a decision has been so taken by the governing body of the organisation or in a general meeting of all the members of that organisation. This will prevent dispute and dissatisfaction amongst the members. Depending on circumstances, the approval of an organisation or a committee may or may not be needed if an office bearer uses his office title to support a candidate. If a supporter includes in an election advertisement which bears the title of "the principal of a school" (for example, "Chan Tai Man, the

Principal”) or “chairman of an owners corporation” (for example, “Chan Tai Man, Chairman of Owners’ Corporation”), it would not be necessary for the candidate to seek the consent of the school or the owners’ corporation concerned since there is no specific mentioning of which school or owners’ corporation. However, it would be desirable for the candidate to seek the organisation’s prior written approval as well if the election advertisement is posted in the school or the building in which he is serving.

18.5 When a candidate has obtained consent of support from a person who holds a certain position in an organisation, he must make sure that in his election advertisements he does not misrepresent that he has the support of the organisation. He must ensure that his election advertisements do not give any misleading information that he has the support of the organisation as opposed to the person who holds the position in the organisation. When he has the support of an organisation, he must ensure that his election advertisements do not represent or give a misleading impression that he has the support of all the members of that organisation, unless the decision of that organisation in giving him support was made at a meeting of all its members present and voting.

18.6 Consent of support in writing by an organisation must be approved by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting [s 27(5) of the ECICO].

18.7 Consent of support can be given to 2 or more candidates contesting in the election although that may cause confusion. A consent given can be revoked. In case of a revocation, in order to avoid dispute, it is advisable for the person or organisation who has revoked the consent to send a notice or copy of the revocation to the candidate concerned and to the RO.

18.8 Once a consent has been revoked, the candidate concerned should be careful to cease immediately using any election advertisement which

contains the support of the person or organisation who has made the revocation. The costs incurred for the production of election advertisements bearing such support which have been used before revocation should still be regarded as the candidate's election expenses and be declared in the return and declaration of election expenses and donations.

18.9 On the question of whether expenditure incurred by an election advertisement will need to be borne by candidate A if candidate A's name or photograph appears in the election advertisement of candidate B to indicate support for candidate B, this would depend on whether the publicity material in question has explicitly or implicitly promoted the election of candidate A. There may be 2 different scenarios in such cases:

Scenario A

If the appearance of candidate A in candidate B's election advertisement is solely to indicate support for candidate B but not to promote the election of candidate A, the election advertisement should not be treated as a joint election advertisement. The election expenses incurred should be counted as candidate B's election expenses only, but not as candidate A's. Candidate B has to obtain the prior written consent of support from candidate A before using candidate A's names or photographs in his election advertisements [s 27 of the ECICO].

Scenario B

If candidate B wishes to publish the election advertisements for promoting his candidature and that of candidate A as well, he must obtain prior written authorisation from candidate A to act as his election expense agent and the expenses so incurred will have to be borne by the candidates A and B in equal or unequal shares

as their respective election expenses, to be calculated by the proportion of the size of the portion advertising each.

18.10 It is not uncommon for candidates to put photographs in their election advertisements to show their past activities. However, it may be possible for electors to believe that those persons appearing in the photograph support a particular candidate when they receive such election advertisements. To minimise misunderstanding, for instance, if an election advertisement carries a photograph of the candidate attending an activity with other attendees, a caption specifying the particular nature of the event could be added underneath the photograph in such a way that will not imply, or likely to cause electors to believe, that the candidate has the support of the other people appearing in the photograph. If the photograph is likely to cause electors to believe that the candidate has the support of the other people appearing in the photograph, it is advisable that prior written consent of support should be obtained by the candidate.

18.11 To avoid misleading the electors to believe that a candidate has obtained support from a certain person, organisation, government agency or department, which is not the case, a candidate should not attach any materials published by any such person, organisation, government agency or department together with his own election advertisements.

Form of Consent

18.12 The standard form “**Consent of Support**” is at **Appendix M**.

18.13 There are occasions (as allegations and complaints were received) requiring confirmation of the compliance of the law by a candidate. Therefore, every candidate is **required to deposit a copy** each of the **completed consent forms** with the RO **before** the display, distribution or otherwise use of the relevant election advertisement [s 81(1)(d)(ii) of the EP

(CEE) Reg]. The RO will then be in a position to answer such enquiries, thus saving the trouble and sometimes the embarrassment of the candidates. Candidates are also **required to notify** the RO in writing of any **revocation** of consent. Such consent forms and notices of revocation (with the identity document numbers of the persons involved obliterated) will be made available for public inspection at the office of the RO.

Penalty

18.14 It is an illegal conduct under the ECICO for a person to make false claim of support (ie a claim without **prior** written consent from the person or organisation concerned). For details of penalty and sanction, please refer to para. 17.3(b) and Part VII of Chapter 17.

CHAPTER 19

ATTENDANCE OF PUBLIC FUNCTIONS BY BOTH GOVERNMENT OFFICIALS AND CANDIDATES

PART I : GENERAL

19.1 This chapter deals with the subject of government officials attending public functions which are also attended by candidates.

IMPORTANT :

“Candidate” includes a person who has publicly declared an intention to stand for election at any time before the close of nominations for the election, whether or not he has submitted a nomination form [s 2 of the ECICO].

19.2 Although each person in Hong Kong may have his own political inclination, civil servants wishing to participate in electioneering activities in a CE election should observe the rules and guidelines issued by the Civil Service Bureau (“CSB”). Under the CSB guidelines currently in force, certain officers at the senior level and those who may be particularly susceptible to accusations of bias, namely Directorate Officers, Administrative Officers, Police Officers and Information Officers and those officers acting in these grades and ranks with a view to substantive appointment thereto (“government officials”), should not openly support any candidate or be seen to lend support to a candidate. They should not participate in any form of electioneering including seeking election donations for any candidate.

19.3 There is no objection in principle to individual civil servants, other than the government officials listed in para. 19.2 above, supporting electioneering activities of a candidate provided that it does not give rise to any conflict of interest with their official duties, and that it does not involve the use of public resources or the wearing of any government uniform.

PART II : ATTENDANCE OF PUBLIC FUNCTIONS BY GOVERNMENT OFFICIALS

On the occasion of being invited

19.4 Government officials should exercise care in accepting invitations from persons or organisations to attend any public function that may also be attended by a candidate(s) (“the function”).

19.5 They should take such care when any person has publicly declared an intention to run for an election or when the nomination commences, whichever is the earlier, up to the end of the polling day.

19.6 Before deciding to attend the function, a government official should satisfy himself that:

- (a) by attending the function, he is performing an official duty normally required of the post he is currently holding; and
- (b) to his best knowledge, the organiser of the function has no intention whatsoever of making use of the function to promote or prejudice any candidate.

When attending

19.7 The EAC appeals to government officials not to have photographs taken with candidates at the function since such photographs, if published, may be seen as the official lending support to the candidate. A government official may do so, however, if the photograph taking:

- (a) arises from the need for him to perform his official duty at the function normally required of the post he is currently holding;
- (b) is a natural part of the function which, if the official declines to participate, would be seen as breaching the protocol appropriate to that function; or
- (c) is participated by all other candidates of an election.

PART III : ATTENDANCE OF PUBLIC FUNCTIONS BY CANDIDATES

19.8 Similarly, the EAC appeals to all candidates who attend public functions not to have photographs taken with the officials, since such photographs, if published, may be seen as an unfair advantage over other candidates. A candidate may do so, however, if the photograph taking:

- (a) arises from the need for him to perform his role at the function as requested by the function organiser;
- (b) is a natural part of the function which, if the candidate declines to participate, would be seen as breaching the protocol appropriate to that function; or

- (c) is participated by all other candidates of an election.

PART IV : PRINCIPAL OFFICIALS

19.9 The terms “government officials” and “civil servants” used in the earlier parts of this chapter do not include Principal Officials appointed under the Accountability System. Principal Officials are political appointees and they may belong to or be affiliated with political organisations. Principal Officials have to comply with a “Code for Principal Officials under the Accountability System” published on 28 June 2002 in the Gazette [GN 3845].

19.10 Principal Officials may, subject to the guidelines below, participate in election-related activities.

19.11 Principal Officials are disqualified from being nominated as a candidate at an election of the CE, of the LegCo or of a DC.

19.12 As far as the CE elections are concerned, Principal Officials should not use any public resources for any election-related activities. A Principal Official should ensure that when taking part in such activities, great care should be taken that there is no actual or potential conflict of interest with the business of the Government or his own official duties.

CHAPTER 20

COMPLAINTS PROCEDURE

PART I : GENERAL

20.1 This chapter deals with the procedure for making complaints relating to **any breach or non-compliance of the Guidelines and the EP (CEE) Reg or the spirit of them** which are for ensuring that elections are conducted honestly, fairly and openly.

20.2 A complaint against criminal, illegal or corrupt activities may be made direct to the relevant authorities such as the Police or the ICAC. The procedures for making and processing such a complaint will be handled by these authorities, and are not covered by this chapter.

PART II : TO WHOM A COMPLAINT MAY BE MADE

20.3 The EAC is an independent, apolitical and neutral body established by the EACO to deal with all matters concerning the conduct of elections including handling election-related complaints. The EAC may, if necessary, set up a **Complaints Committee** consisting of its 3 members and 1 or more judges of the District Court or High Court for the purpose of dealing with complaints.

20.4 Without limiting the right of a citizen to make a complaint to the Police or the ICAC or other authorities, a complaint for breach of or

non-compliance with the EP (CEE) Reg or Guidelines or relating to election matters can be made to one of the following bodies or persons:

- (a) the RO appointed by the EAC to deal with electoral arrangements;
- (b) the REO; or
- (c) the EAC or its Complaints Committee.

20.5 **Caution** : if the complaint is against the conduct, behaviour, or acts of any of the REO officers or the RO personally, it should be addressed to the EAC or its Complaints Committee and marked “CONFIDENTIAL” in order to ensure that only the EAC or its Complaints Committee will receive it.

PART III : TIME AND PROCEDURE FOR MAKING COMPLAINT

20.6 The Guidelines deal with election-related activities, and any non-compliances, abuses and irregularities that can be redressed should be remedied as soon as practicably possible. It is **imperative** that **all complaints should be made as soon as possible**, for any delay in the making of complaint may result in remedial measures being useless or futile and necessary evidence being lost. No complaint received **later than 45 days** after the date of the relevant election will be entertained.

20.7 No specified or specific form is required for making a complaint. A complaint can be made either orally or in writing, either in Chinese or in English. A person who wishes to make an oral complaint can call the REO Complaints Hotline.

20.8 In each case, the complainant is required to identify himself and provide his identity document number, address, telephone number and other means of communication. A written complaint must be signed. Save where it relates to a matter of minor nature or which requires urgent action, an oral complaint received will be recorded in writing and the complainant will be required to sign the written record afterwards. All personal particulars of a complainant will be **treated in strict confidence**.

PART IV : COMPLAINTS INSIDE THE POLLING STATION

20.9 If a person has any complaint about whatever happens inside the polling station, he should follow the following procedures:

- (a) he should direct his complaint to the PRO, the Deputy PRO or an Assistant PRO immediately.
- (b) if the matter is not resolved, or if the complainant still feels aggrieved or if his complaint is directed at the PRO, the Deputy PRO or an Assistant PRO, he should as soon as possible report the matter to the RO by using the telephone number appearing in the guide on procedures for complaint.
- (c) where the matter is still not resolved by the RO, the complainant should without any delay telephone the Complaints Hotline of the REO to report his complaint by giving a gist thereof. He should then try to obtain as much evidence as possible in order to substantiate his complaint. As he is not allowed to talk to or communicate with any elector inside the polling station, he may need to go outside the polling station to obtain necessary evidence.

- (d) a member of the EAC or its Complaints Committee or an officer of the REO will handle the complaint as soon as practicable.

A copy of the guide on procedures for handling of complaints at the polling station (together with telephone numbers of the RO and the REO Complaints Hotline) will be available for inspection inside the polling station.

20.10 The PRO or his Deputy or Assistant PRO must record any complaint mentioned in paras. 20.9(a) and (b) and any other complaints and enquiries concerning an elector's data.

PART V : THE PROCESSING OF COMPLAINT

20.11 The PRO, RO and the CEO are obliged under s 79 of the EP (CEE) Reg to report irregularities to the EAC or its Complaints Committee. By these guidelines, they are also required to report all complaints received by them to the EAC or its Complaints Committee. Except where a complaint is of a minor nature or the RO has been delegated with the authority to deal with it, any complaint received by the RO or the REO will be forwarded to the EAC or its Complaints Committee with comments and all the relevant information relating to the complaint. When the EAC or its Complaints Committee receives a complaint, it may seek additional information and comments from the RO or the REO, if necessary.

20.12 The EAC or its Complaints Committee, the RO or the REO (when they are so authorised by the EAC or its Complaints Committee), may seek further information on the complaint from the complainant or may arrange interviews with the complainant in order to seek clarification or evidence. The complainant may be required to make a statutory declaration for the truth and

correctness of his complaint or statement. If the further information required is not provided by the complainant or if he refuses to be interviewed or to make the statutory declaration, the EAC or its Complaints Committee, the RO or the REO may or may not take further action on the complaint.

20.13 All bona fide complaints will be processed and considered by the RO who has been delegated with the necessary authority or by the EAC or its Complaints Committee, as soon as reasonably practicable, taking into account the merits of the complaint with all the information and evidence gathered [see s 6(3) of the EACO].

20.14 Where a complaint is sustained, a decision will be made on the appropriate course to be taken, including one or more of the following:

- (a) take remedial measures against the matter complained of, such as the removal of election advertisements displayed in breach of the guidelines in that regard;
- (b) issue to the relevant person a warning on the matter under complaint after making a reasonable effort to contact the person and giving him a reasonable opportunity to give explanations. Where necessary, immediate rectification action against complaints proven on the spot should be taken without delay;
- (c) publish a public statement of reprimand or censure against the acts or omissions and the person or persons complained of [see various chapters in these Guidelines] after making a reasonable effort to contact the person or persons and giving him or them a reasonable opportunity to make representations [s 6(4) of the EACO];

- (d) with or without comments, refer the matter to the ICAC for investigation and/or further action [s 5(e) of the EACO]; and
- (e) with or without comments, refer the matter to the Secretary for Justice or the Police for further action such as prosecution of the culprit [s 5(e) of the EACO].

20.15 The EAC or its Complaints Committee will also notify the complainant in writing of its decision, and if the decision is that the complaint is not sustained, it will also give reasons.

PART VI : ELECTORAL AFFAIRS COMMISSION'S REPORT ON COMPLAINTS

20.16 The EAC is required to report to the CE on any complaint made to it in connection with an election within 3 months of the conclusion of the election [s 8(1) and (2) of the EACO].

PART VII : OBLIGATIONS OF THE RETURNING OFFICER, THE PRESIDING OFFICER AND THE REGISTRATION AND ELECTORAL OFFICE

20.17 The RO, PRO and the REO are required to report as soon as practicable to the EAC or its Complaints Committee (in writing or otherwise as circumstances may demand) on any complaints received by them and on any occurrence which they consider to be a material irregularity relating to an election, poll or count.

PART VIII : SANCTION FOR FALSE COMPLAINT

20.18 Any person who knowingly makes or causes to be made to an ICAC officer a false report of the commission of any offence or misleads such an officer by giving false information or by making false statements or accusations is guilty of an offence punishable by \$20,000 and imprisonment for 1 year under the ICAC Ordinance (Cap 204). A similar offence is committed where a false report is made or false information given to a police officer [s 64 of the Police Force Ordinance (Cap 232)]. If a person knowingly makes a false complaint and gives false information to the EAC or its Complaints Committee knowing that the EAC or its Complaints Committee will refer or direct such complaint and information to the ICAC or the Police, the person concerned will similarly be guilty of the relevant offence. If a person knowingly and wilfully makes to the EAC or its Complaints Committee, the RO or the REO a statement false in a material particular and such a statement is in a statutory declaration, he commits an offence punishable by imprisonment for 2 years and a fine [s 36 of the Crimes Ordinance (Cap 200)].

**Chief Executive Election
Action Checklist for Candidates**

A. Major Steps to be Observed

Before and during
Nomination Period

1. Obtain the Nomination Form and the following materials/forms from the Returning Officer (“RO”) or the Registration and Electoral Office (“REO”):
 - (a) copies of the relevant legislation
 - (b) forms -
 - (i) A declaration to the effect that he stands for the election in an individual capacity, will uphold Basic Law and pledge allegiance to the HKSAR
 - (ii) A declaration as to his nationality and as to whether he has a right of abode in any foreign country
 - (iii) Notice of Appointment of Election Agent
 - (iv) Notice of Appointment of Election Expense Agent
 - (v) Return and Declaration of Election Expenses and Donations
 - (vi) Notice of Appointment of Polling Agents
 - (vii) Notice of Appointment of Counting Agents
 - (viii) Notice of Revocation of Appointment of Agent
 - (ix) Notice of Withdrawal of Candidature
 - (x) Declaration of Election Advertisements
 - (xi) Corrective Declaration of Election Advertisements
 - (xii) Notification of Decision on Electioneering Activities
 - (xiii) Consent of Support

- (xiv) Permission for Display / Distribution of Election Advertisements or Electioneering Activities at Private Premises
- (xv) Standard Receipt for Donations
- (xvi) Declaration of Secrecy
- (xvii) Intention to Display Election Advertisements at Designated Spots
- (xviii) Advance Return of Donations
- (xix) Notice of Posting of Election-related Letters
- (xx) Declaration for Posting of Election-related Letters
- (xxi) Notification of the Intention to hold a Public Meeting / Procession
- (xxii) Statutory Declaration¹
- (xxiii) Undertaking²

(c) notes on the preparation of a brief introduction for inclusion in the official leaflet

During Nomination Period

2. Except where the RO authorises otherwise, personally deliver the duly completed Nomination Form accompanied by
 - (a) a declaration to the effect that he stands for the election in an individual capacity, will uphold Basic Law and pledge allegiance to the HKSAR; and
 - (b) a declaration as to his nationality and as to whether he has a right of abode in any foreign country

to RO before expiry of the Nomination Period.

¹ The 'Statutory Declaration' form is for the winning candidate to declare that he is not a member of any political party within 7 working days after the declaration of result of the election as required by the Chief Executive Election Ordinance.

² The 'Undertaking' form is for the winning candidate to state that he will not become a member of any political party or do any act that will subject himself to the discipline of any political party within 7 working days after the declaration of result of the election as required by the Chief Executive Election Ordinance.

3. Obtain from the RO the following:
 - (a) relevant extracts from the Final Register of Electors (both gum labels and soft copies) on signing an Undertaking on the Use of Electoral Records; and
 - (b) information regarding display spots on government land or property that are available to candidates for display of election advertisements (“EAs”).
4. Lodge with the RO a Notice of Withdrawal of Candidature if the candidate wishes to withdraw his/her candidature.
5.
 - (a) Except for the categories exempted, assign a serial number to all copies of each type of EAs intended for display, distribution or otherwise use.
 - (b) Submit to the RO (or Chief Electoral Officer (“CEO”) if RO has not yet been appointed) a Declaration of Election Advertisements before display, distribution or otherwise use of EAs. Candidates may submit as many declarations as required from time to time.
 - (c) Ensure that all printed EAs contain the name and address of the printer, date of printing and the number of copies printed.
 - (d) Submit to the RO (or CEO if RO has not been appointed) 2 copies of each type of EAs before display, distribution or otherwise use.
 - (e) Submit to the RO (or CEO if RO has not been appointed) before display, distribution or otherwise use of election advertisements on private premises, a copy of Permission for Display / Distribution of Election Advertisement or Electioneering Activities at Private Premises.
 - (f) Submit to the RO (or CEO if RO has not been appointed) before display, distribution or otherwise use of EAs, a copy of Consent of Support, where necessary.
6. Lodge with the RO (or CEO if RO has not been appointed) a Notice of Appointment of Election Agent.
7. Lodge with the RO (or CEO if RO has not been appointed) Notices of Appointment of Election Expense Agent.

Any time before, during or
after the Nomination Period

- | | |
|---|---|
| | 8. Submit to the CEO an Advance Return of Donations when a donation is received. Applicable to any candidate who is an incumbent public servant in the context of the Prevention of Bribery Ordinance eg a serving member of the Legislative Council or a District Council. |
| Any time after handing in Nomination Form, but before expiry of Nomination Period | 9. (a) Lodge with the RO 3 identical passport-size colour photographs of the candidate taken not longer than 6 months ago.

(b) Lodge with the RO an introductory message for publication in the official introductory leaflet.

(c) Lodge with the RO an “Intention to Display Election Advertisements at Designated Spots”. |
| Any time after handing in Nomination Form, but not later than 1 week before polling day | 10. Lodge with the CEO/Presiding Officer Notices of Appointment of Polling Agents. |
| Any time after handing in Nomination Form, but not later than 3 days before polling day | 11. Lodge with the RO Notices of Appointment of Counting Agents. |
| Within 3 days after close of nomination | 12. Attend the briefing for candidates and collect from the RO the following:

(a) location plans and layout plans of the polling station and counting station; and

(b) name badges for candidates and their agents. |
| | 13. Attend meetings held by the RO to determine, by drawing of lots, the candidate numbers and to allocate display spots for display of EAs. |
| | 14. Receive from the RO copy of the permission/authorisation for display of EAs at designated spots. |
| As soon as practicable after RO determines the candidate as validly nominated or not | 15. Receive from the RO the notice on the validity of the candidate’s nomination (which will also be sent to every other validly nominated candidate). |
| As soon as practicable after RO receives a Notice of Appointment of Election Agent from another candidate | 16. Receive from the RO information about the election agent appointed by another candidate. |

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|---|--|
| 2 working days before posting postage-free election mail | 17. Give notice of the free postings of election mail by using the Notice of Posting of Election-related Letters, and present 2 unsealed specimen packets to the relevant Manager (Retail Business) for inspection and retention. |
| Not later than 3 working days before the polling day | 18. Post postage-free election mail and present to the Post Office a Declaration for Posting of Election-related Letters. |
| Not later than 2 days before polling day | 19. Receive from the RO information regarding the delineation of no canvassing zone and no staying zone for the polling station. |
| Not later than 12 noon before polling day | 20. Lodge with the RO Corrective Declarations of EAs if any. |
| 24 hours before counting (except 4 th and subsequent rounds) | 21. Receive information from the RO on when the counting of votes is to commence. |
| Before entering polling/counting station | 22. Complete the Declarations of Secrecy (to be made by all candidates, their election agents, polling agents and counting agents). |
| Any time before polling day | 23. Lodge with the RO or the CEO, as appropriate, Notices of Revocation of Appointment of Agent, if any. |
| On polling day | 24. Attend the poll and the count if the candidate so wishes, bringing along the Declaration of Secrecy. |
| | 25. In respect of polling agents, candidates or their election agents personally deliver Notices of Appointment of Polling Agents and Notices of Revocation of Appointment of Agent to the Presiding Officer, if not yet submitted under paras. 10 and 23. |
| | 26. In respect of counting agents, candidates or their election agents personally deliver Notices of Appointment of Counting Agents and Notices of Revocation of Appointment of Agent to RO, if not yet submitted under paras. 11 and 23. |
| Within 7 working days after publication of election result | 27. For winning candidate only:

(a) make a statutory declaration that he is not a member of any political party; and

(b) lodge with the RO a written undertaking. |
| Within 10 days after publication of election result | 28. Remove all EAs on display. |

- Not later than 30 days after:
- (i) the gazettal of election result; or
 - (ii) the declaration of the termination of the election proceedings; or
 - (iii) the declaration of the failure of the election
29. Lodge with the CEO a Return and Declaration of Election Expenses and Donations signed by the candidate with original invoices and receipts of each election expense of \$100 or above and duplicate donation receipts.

B. Handling and Declaring Election Expenses

Records Keeping

Before and after nomination

1. Record all expenses spent and all donations received.
2. Keep invoices and receipts for expenses of \$100 or above.
3. Issue receipt for any non-anonymous donation of more than \$1,000 and keep a copy of the receipt (The candidate should use the standard receipt provided by REO.)
4. Keep copies of all Declaration of Election Advertisements and copies of the EAs lodged with the RO.

Appointment of Election Agents/Election Expense Agents

5. Each candidate can only appoint one election agent. He has the authority to do everything a candidate is authorised to do for the purposes of the election except:
 - (a) anything a candidate is required to do in relation to his nomination;
 - (b) to withdraw the candidate's candidature;
 - (c) to appoint or revoke an election agent;
 - (d) to incur election expenses save where he has been appointed also as an election expense agent by the candidate; and
 - (e) to appoint or revoke a person as an election expense agent.
6. Each candidate can appoint one or more persons authorised to incur election expenses on his behalf, ie the election expense agents, by completing the Notice of Appointment of Election Expense Agent. A candidate **may** also appoint his election agent as election expense agent to incur election expenses for him. These agents may incur expenses only after the candidate has appointed them to do so.

Lodgement of Authorisation and Declaration to appropriate authority

7. Lodge with the RO the Notice of Appointment of Election Agent at any time after handing in Nomination Form.
8. The candidate must serve the Notice of Appointment of Election Expense Agent on the RO. It is important to note that the appointment is not effective until it has been received by the RO.
9. 2 copies of each type of EAs must be deposited with the RO (or CEO if RO has not yet been appointed) together with a Declaration of Election Advertisements before display, distribution or otherwise use.

Submission of Return and Declaration of Election Expenses and Donations

Not later than 30 days after the gazettal of election result, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law

10. The completed return and declaration should be submitted together with all supporting documents as required by section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance.
11. The completed form should include all election expenses incurred by the candidate or by the candidate's agents, the removal cost for his EAs by government departments if he has not removed all his EAs by the deadline specified by the Electoral Affairs Commission and any election donations (including services and goods) received. ***Candidates are required to submit their returns even if no election expenses have been incurred.***
12. A candidate must make declaration before a Commissioner for Oaths or a Justice of the Peace or a solicitor holding a practising certificate.
13. A candidate must lodge his completed return with the CEO by the deadline (ie not later than 30 days after the gazettal of election result, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law).

14. If a candidate fails to lodge the return before the deadline, he can apply to the Court for an order allowing him to lodge the return with the CEO within such further period as the Court specifies.
15. If a candidate wishes to change any information in his election return before the deadline, he may lodge with the CEO before the deadline a supplementary declaration stating the information to be changed.
16. If a candidate wishes to change any information in the election return after the deadline, he must apply to the Court for an order enabling him to correct any error or false statement in his return or in any document accompanying his return.

The 4 Sectors of the Election Committee and Subsectors of Sectors

FIRST SECTOR

Item	Subsector	Number of members
1.	Catering	11
2.	Commercial (first)	12
3.	Commercial (second)	12
4.	Employers' Federation of Hong Kong	11
5.	Finance	12
6.	Financial services	12
7.	Hong Kong Chinese Enterprises Association	11
8.	Hotel	11
9.	Import and export	12
10.	Industrial (first)	12
11.	Industrial (second)	12
12.	Insurance	12
13.	Real estate and construction	12
14.	Textiles and garment	12
15.	Tourism	12
16.	Transport	12
17.	Wholesale and retail	12

SECOND SECTOR

Item	Subsector	Number of members
1.	Accountancy	20
2.	Architectural, surveying and planning	20
3.	Chinese medicine	20
4.	Education	20
5.	Engineering	20
6.	Health services	20
7.	Higher education	20
8.	Information technology	20
9.	Legal	20
10.	Medical	20

THIRD SECTOR

Item	Subsector	Number of members
1.	Agriculture and fisheries	40
2.	Labour	40
3.	Religious	40
4.	Social welfare	40
5.	Sports, performing arts, culture and publication	40

FOURTH SECTOR

Item	Subsector	Constituents	Number of members
1.	National People's Congress ("NPC")	Hong Kong deputies to the NPC	36
2.	Legislative Council	Members of the Legislative Council	60
3.	Chinese People's Political Consultative Conference ("CPPCC")	Hong Kong Members of the National Committee of the CPPCC	41
4.	Heung Yee Kuk	Chairman and Vice-chairmen of the Heung Yee Kuk and the Ex-Officio, Special and Co-opted Councillors of the Full Council of the Heung Yee Kuk	21
5.	Hong Kong and Kowloon District Councils	Members of the Hong Kong and Kowloon District Councils	21
6.	New Territories District Councils	Members of the New Territories District Councils	21

Methods of Folding of Election Advertisement 郵寄選舉廣告宜採用的摺疊方法

Figure 1 : Folder of A4 (296mm) size
圖示一：對摺的A4(296毫米)尺寸紙張

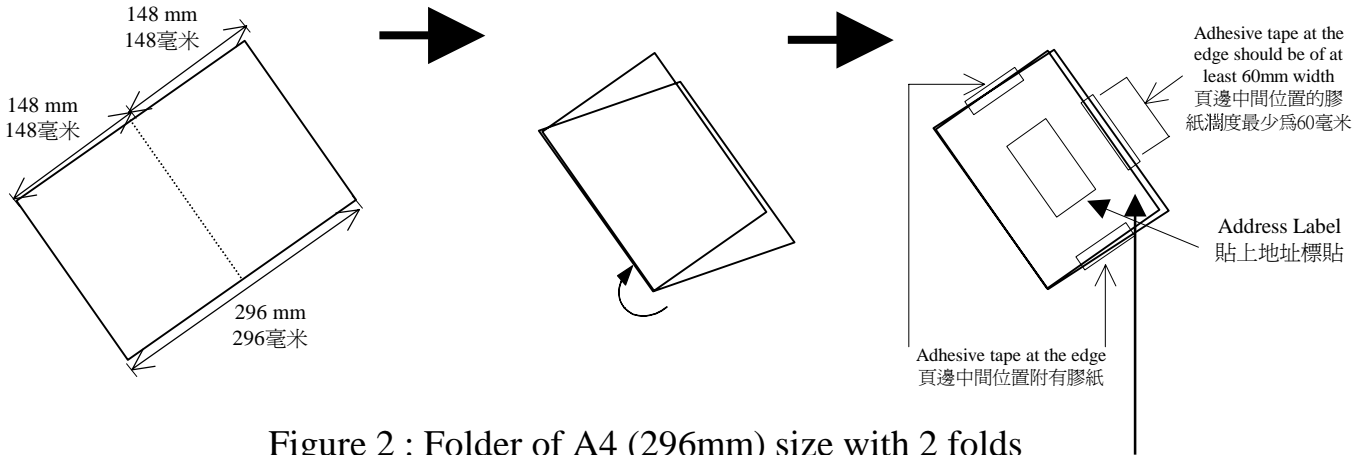


Figure 2 : Folder of A4 (296mm) size with 2 folds
圖示二：兩摺的A4(296毫米)尺寸紙張

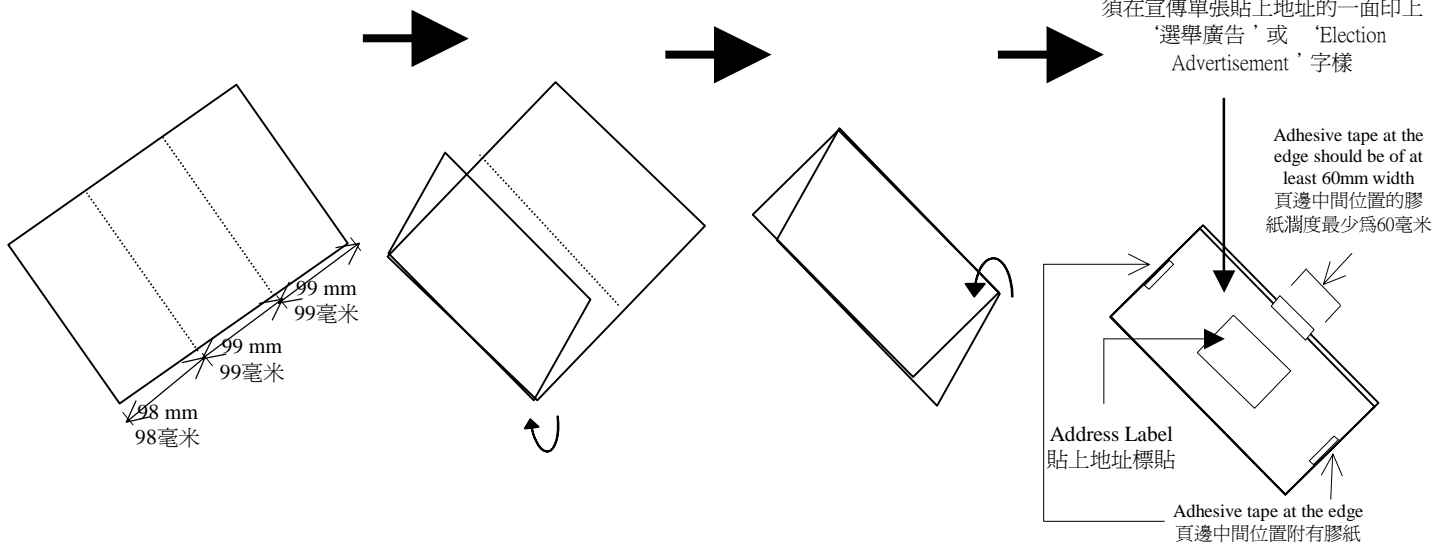


Figure 3 : Folder of A4 (296mm) size with 2 folds
圖示三：兩摺的A4 (296毫米)尺寸紙張

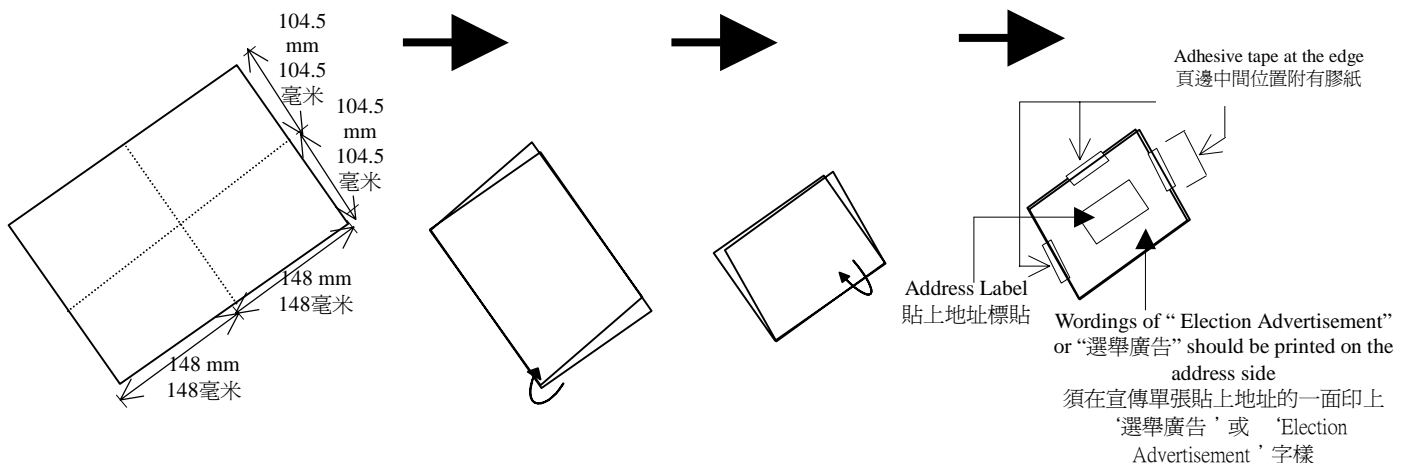


Figure 4 : Folder of A4 (296mm) size sealed with address label
圖示四：以地址標貼封口的A4(296毫米)尺寸紙張

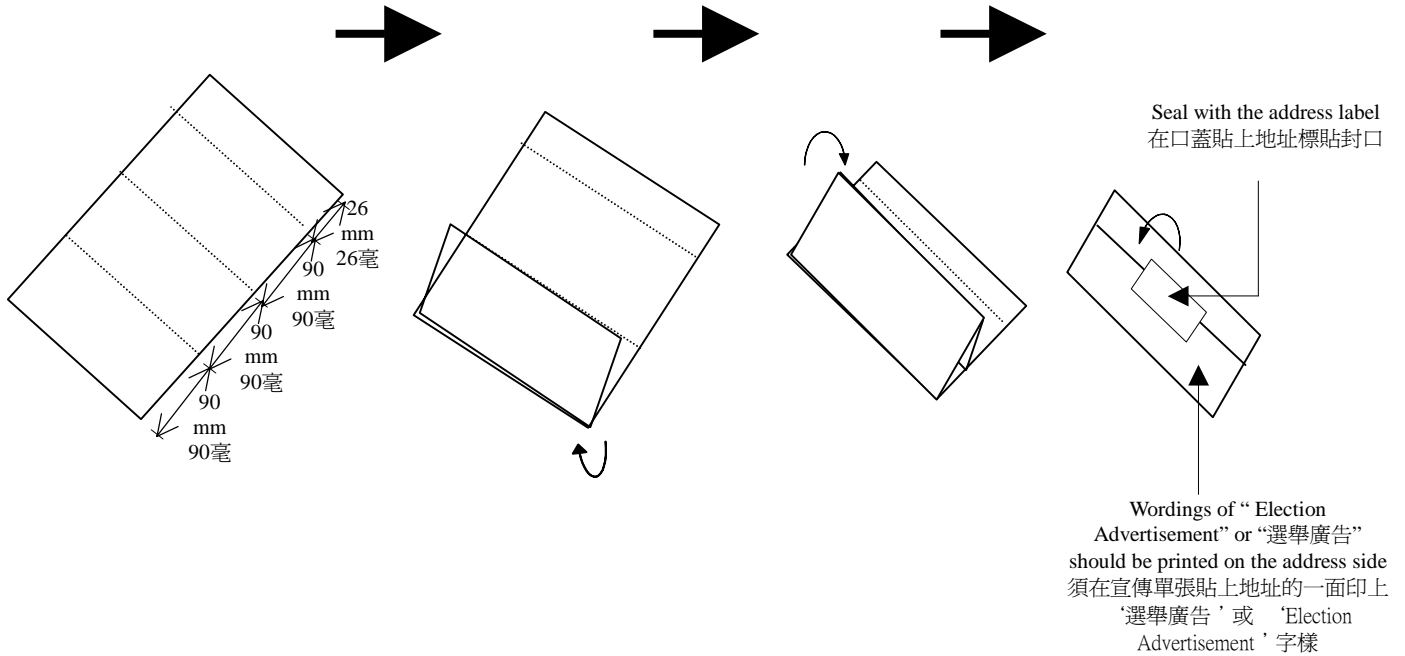
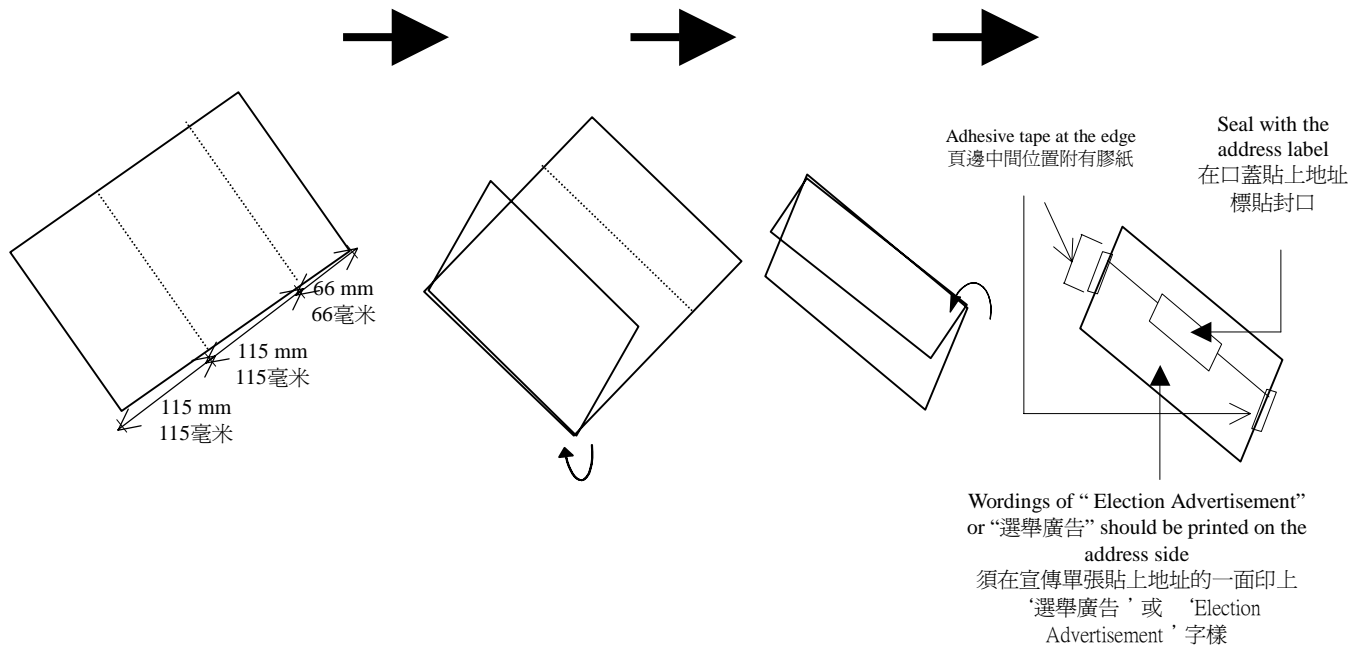


Figure 5 : Folder of A4 (296mm) size sealed with address label
圖示五：以地址標貼封口的A4(296毫米)尺寸紙張



備註:如以其他方法摺疊,所有超過90毫米的開口,必須以膠紙封口。

Note : For other methods of folding, all openings exceed 90mm should be closed by means of adhesive tape.

List of Posting Offices for Election Communication

- (i) Manager (Retail Business/Hong Kong)
 Address: 1M/F, General Post Office
 2 Connaught Place, Central, Hong Kong
 Tel : 2921 2303
 Fax : 2868 1442

The District and Posting Offices for which the Manager (Retail Business/Hong Kong) is responsible:

Posting Office	Address
General Post Office 郵政總局	2 Connaught Place, Central Tel : 2921 2333 中環康樂廣場2號 電話 : 2921 2333
Wan Chai Post Office 灣仔郵政局	2/F, Wu Chung House, 197-213 Queen's Road East, Wan Chai Tel : 2892 5031 皇后大道東197號至213號胡忠大廈2樓 電話 : 2892 5031
Causeway Bay Post Office 銅鑼灣郵政局	Shop G12, G/F, Commercial Podium, Elizabeth House, 250-254 Gloucester Road Tel : 2833 5358 灣仔告士打道250至254號伊利莎伯大廈商場地下G12號舖位 電話 : 2833 5358
Gloucester Road Post Office 告士打道郵政局	1/F., Revenue Tower, 5 Gloucester Road, Wan Chai Tel : 2877 0929 灣仔告士打道5號灣仔稅務大樓1樓 電話 : 2877 0929
King's Road Post Office 英皇道郵政局	Shop Nos. 204 - 205A & 208 -210, 2/F, Olympia Plaza, 255 King's Road, North Point, HK. Tel : 2571 3366 北角英皇道255號國都廣場二樓204至205A及208至210號舖 電話: 2571 3366

Posting Office	Address
Shau Kei Wan Post Office 筲箕灣郵政局	G/F, Perfect Mount Gardens, 1 Po Man Street, Shau Kei Wan Tel : 2560 2071 筲箕灣寶文街1號峻峰花園地下 電話 : 2560 2071
Aberdeen Post Office 香港仔郵政局	G/F, Kam Fung Building, 171 Aberdeen Main Road/Sai On Street, Aberdeen Tel : 2555 9307 香港仔大道171號金豐大廈地下 電話 : 2555 9307
Sheung Wan Post Office 上環郵政局	1/F, Hong Kong Telecom CSL Tower, 322-324 Des Voeux Road Central Tel : 2543 0385 德輔道中322至324號香港電訊CSL中心1樓 電話 : 2543 0385

- (ii) **Manager (Retail Business/Kowloon)**
Address: M/F, Middle Road Car Park Building,
 15 Middle Road, Tsim Sha Tsui, Kowloon
Tel : 2926 1169
Fax : 2312 1455

The District and Posting Offices for which the Manager (Retail Business/Kowloon) is responsible:

Posting Office	Address
Tsim Sha Tsui Post Office 尖沙咀郵政局	G/F, Hermes House, 10 Middle Road, Tsim Sha Tsui Tel : 2366 4111 尖沙咀中間道10號國際電信大廈地下 電話 : 2366 4111
Gillies Avenue Post Office 機利士路郵政局	G/F, 140 Gillies Avenue, Hung Hom Tel : 2362 2727 紅磡機利士路140號地下 電話 : 2362 2727
Kowloon East Post Office 東九龍郵政局	G/F, Kowloon East Government Offices, 12 Lei Yue Mun Road, Kwun Tong Tel : 2340 1539 鯉魚門道12號東九龍政府合署地下 電話 : 2340 1539
Cheung Sha Wan Post Office 長沙灣郵政局	G/F, 650 Cheung Sha Wan Road Tel : 2741 0343 長沙灣道650號地下 電話 : 2741 0343
International Mail Centre 國際郵件中心	80 Salisbury Road Tel : 2356 2540 梳士巴利道80號 電話 : 2356 2540
Kowloon Central Post Office 九龍中央郵政局	G/F, Kowloon Government Offices, 405 Nathan Road Tel : 2928 6246 彌敦道405號九龍政府合署地下 電話 : 2928 6246

Posting Office	Address
Kowloon City Post Office 九龍城郵政局	G/F, 28 Lung Kong Road, Kowloon City Tel : 2382 2237 九龍城龍崗道28號地下 電話 : 2382 2237

- (iii) Manager (Retail Business/New Territories)
 Address: 10/F, Tsuen Wan Government Offices,
 Tsuen Wan, New Territories
 Tel : 2417 6478
 Fax : 2413 2853

The District and Posting Offices for which the Manager (Retail Business/New Territories) is responsible:

Posting Office	Address
Tsuen Wan Post Office 荃灣郵政局	1/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan Tel : 2417 6455 荃灣西樓角道38號荃灣政府合署1樓 電話 : 2417 6455
Tuen Mun Central Post Office 屯門中央郵政局	G/F Podium, Library and Post Office Building, 1 Tuen Hi Road, Tuen Mun Tel : 2441 3387 屯門屯喜路1號圖書館及郵政局大樓平台 電話 : 2441 3387
Yuen Long Post Office 元朗郵政局	Shop B, G/F, 8 Yuen Long Pau Cheung Square, Yuen Long Tel : 2477 3037 元朗炮仗坊8號地下B鋪 電話 : 2477 3037
Tai Po Post Office 大埔郵政局	G/F, Tai Po Government Offices Building, 1 Ting Kok Road, Tai Po Tel : 2650 8702 汀角路1號大埔政府合署地下 電話 : 2650 8702
Sha Tin Central Post Office 沙田中央郵政局	1/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin Tel : 2697 9813 沙田上禾輦路1號沙田政府合署1字樓 電話 : 2697 9813
Sai Kung Post Office 西貢郵政局	G/F, Sai Kung Government Offices Building, 34 Chan Man Street, Sai Kung Tel : 2792 2243 西貢親民街34號西貢政府合署地下 電話 : 2792 2243

Posting Office	Address
Fo Tan Post Office 火炭郵政局	G/F, Shatin Galleria, 18-24 Shan Mei Street, Fo Tan, Shatin Tel : 2690 9071 沙田火炭山尾街18至24號沙田商業中心地下 電話 : 2690 9071
Kwai Fong Post Office 葵芳郵政局	Shop No. 4-10, G/F, Kwai Kin House, Kwai Fong Estate Tel : 2422 4303 葵芳邨葵健樓地下4至10號舖位 電話 : 2422 4303
Ma On Shan Post Office 馬鞍山郵政局	Unit 2, G/F, Sunshine City Phase 4, Ma On Shan, Shatin Tel : 2630 5026 馬鞍山新港城第4期地下2號舖位 電話 : 2630 5026

Guidance Note on Safe Conduct of Election-related Activities

Introduction

1. This guidance note serves to provide general advice to candidates and organisers of election related activities, to enable them to conduct such activities safely.

Election Meetings

2. The Public Order Ordinance (Cap 245) and Chapter 9 Part II of the ‘Guidelines on Election-related Activities in respect of the Chief Executive Elections’ provide direction on when a meeting, to be held in a public place, is to be notified to the Police and the procedures to be followed.

3. In the interests of safety, and to minimise the potential for confrontation and/or the harassment of candidates, irrespective of whether an election meeting is required to be notified to the Police, candidates should be mindful of the sensitivities of their intended audience. In this regard, consideration should be given to making appropriate arrangements with the local management office, if one exists, to facilitate the holding of the meeting. Should a candidate have any concerns over the issue on his safety, consideration should be given to seeking advice from the local police station, prior to the holding of such meeting.

Election Forums

4. In addition to the provisions of Chapter 11 Part IV of the ‘Guidelines on Election-related Activities in respect of the Chief Executive Elections’, organisers of election forums should be aware of the potential for possible instances of harassment of candidates.

5. In order to ensure that order, fairness and impartiality are maintained and to avoid any embarrassment, where a forum is to be held at private premises, prior precautions should be made with the owner, occupier, owners’ corporation, building management or the mutual aid committee

concerned, to ensure the safety of all participants and the orderly proceeding of the forum. Where necessary, security guards should be employed at the forum venue.

Electioneering at Living or Working Places

6. Chapter 10 of the ‘Guidelines on Election-related Activities in respect of the Chief Executive Elections’ relates to the conduct of electioneering activities at the living and working places of electors, etc.

7. If a decision is made by the owners or owners’ corporations to allow electioneering by candidates, the decision can also set out the hours of access and other conditions. These conditions can also minimise the potential for confrontation and the harassment of candidates.

8. Related to this, candidates should be sensitive to the feelings of tenants, occupiers and owners in planning and carrying out electioneering activities. By doing so, they will ensure that such can be carried out in a safe and orderly manner.

9. In addition to obtaining the formal approval or consent of the owners or the owner’s corporation to conduct electioneering activities in the building, it is advisable for the candidates to notify the management office at the time that the electioneering activities are being carried out.

General

10. Should any safety issues be of particular concern, consideration should be given to seeking advice from the local police station, prior to the conducting of the activity.

**Administrative Guidelines and Licensing Conditions
for the issue of Public Fund-raising Permits
for Non-Charitable Purposes**

Applications for permission under Section 4(17) of the Summary Offences Ordinance (Cap.228) to raise funds by collection of money or sale or exchange for donations of badges, tokens or similar articles in a public place should, where the funds are to be used for a charitable purpose, be referred to the Director of Social Welfare. Where the funds are to be used for any other purpose, such applications should be referred to the Secretary for Home Affairs.

A. Administrative Guidelines for Consideration

When considering an application for a public fund-raising permit under section 4(17) of the Summary Offences Ordinance, the Secretary for Home Affairs will normally wish to be satisfied that : -

- (i) the organisation or group on behalf of which the permit is sought, and the organisation or group to benefit from the collection if different, are, where applicable, properly registered under the laws of Hong Kong;
- (ii) if the applicant is an individual, he should be aged 21 or above, and should either be a permanent resident of Hong Kong within the meaning of the Immigration Ordinance, or have been ordinarily resident in Hong Kong for a minimum of seven years;
- (iii) the funds collected will be used for purposes which would contribute directly or indirectly to the development of representative government in Hong Kong;
- (iv) the fund-raising activity will not cause public order and public safety problems, and will not cause nuisance or harassment to the general public;
- (v) the fund-raising activity should not be held on a morning which is a “flag day” approved by the Director of Social Welfare unless it is to be held in a confined public place;
- (vi) the fund-raising activity should not be held at the same time and in the same venue or its vicinity as a charitable fund-raising activity;

- (vii) there will be no more than one non-charitable fund-raising activity in the same venue or its vicinity on the same day except where the activities are organised by the same applicant;
- (viii) there will be a fair distribution of venues, dates and frequency of fund-raising among all potential applicants; and
- (ix) the permittee who had breached the conditions stipulated in the permit last granted would not be considered for a new permit unless explanations/justifications have been provided to the satisfaction of the Secretary for Home Affairs.

Each application will be considered on its own merits having regard to the above administrative guidelines.

B. Licensing Conditions

The following conditions will normally be imposed if an application is approved : -

- (i) permission must have been obtained or is likely to be forthcoming from the relevant authorities, including the authority responsible for the management of the venue(s), for the fund-raising activity to be held;
- (ii) the funds collected will not be used to finance any profit-making ventures or activities;
- (iii) the funds collected will be used only in Hong Kong;
- (iv) no person will benefit improperly from the collection;
- (v) the permission given for the fund-raising activity is only valid for the details specified in the permit. If there are any changes to such details, the approval of the Secretary for Home Affairs will be required;
- (vi) the permission given for the fund-raising activity will become null and void if the funds collected are used for purposes other than those specified in the permit;

- (vii) within 90 days after the conclusion of the fund-raising activity, the permittee will cause the money received from the public, less any reasonable expenses incurred, to be applied for the purpose for which the permission is given;
- (viii) if after applying the funds collected as described in (vii) above, there is still a balance left, the permittee will donate the unspent funds to a charitable institution which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap.112) for charitable purpose;
- (ix) the funds collected will be audited by a qualified accountant arranged by the permittee. A copy of the audited accounts will be submitted to the Secretary for Home Affairs within 90 days after the conclusion of the fund-raising activity. The audited accounts will also be made available to members of the public for inspection upon demand;
- (x) all donations are to be purely voluntary, and that the activity shall not create public order problems or cause nuisance, including excessive noise, or harassment to the general public, and that the manner in which the activity is conducted should not be such as to be likely to produce a reaction generally against public fund-raising activities;
- (xi) during the course of the fund-raising activity, the name of the organisation and a copy of the permit/approval letter should be prominently displayed. Every participant of the activity should also wear a clear and legible badge identifying the name of the participant and the name of the organisation; and
- (xii) children under the age of 14 must not be allowed to take part in the activity. Participation by young persons between the age of 14 - 18 must be entirely voluntary and the prior written consent of parents must be obtained.

The Secretary for Home Affairs may, if a particular applications so warrants, impose additional conditions such as those required for the protection of the participants in the fund-raising event, for the preservation of law and order, for crowd control, or for public safety purposes. In specific circumstances, he may waive certain conditions where it appears reasonable for him to do so.

**Application for a Permit under S4(17)
of Summary Offences Ordinance, Cap.228
for Non-Charitable Purposes**

This application should reach the Secretary for Home Affairs at 31/F, Southorn Centre, 130 Hennessy Road at least **FOUR WEEKS** before the date of the activity. This will enable the applicant to be notified of the result of his application about seven days before the event. For enquiries, please call 2835 1495.

1. Name of applicant : * Mr/Mrs/Miss/Ms _____

Name in Chinese (if any) : _____

2. Hong Kong Identity Card Number : _____

(Please enclose a photocopy of your Hong Kong Identity Card)

3. Address : _____

4. Contact Telephone No. : _____ Fax No. : _____

5. If this application is made on behalf of an organisation, please complete the following details : -

i) Name of organisation : _____

ii) Position of applicant in organisation : _____

iii) Details of key officers in organisation :

<u>Post</u>	<u>Name</u>	<u>Address</u>
<u>President/Chairman</u>	_____	_____
	_____	_____
<u>Secretary</u>	_____	_____
	_____	_____
<u>Treasurer/Accountant</u>	_____	_____
	_____	_____

iv) Date the organisation was formed : _____

v) Type of organisation : Society registered/exempt under the Societies Ordinance, or
Company incorporated in Hong Kong, or
Others (Please give details)

(Please enclose a copy of the certificate of registration/exemption of your organisation and also a copy of the memorandum and articles of association or the constitution or rules of your organisation whichever is applicable. If your organisation is a company incorporated in Hong Kong, a copy each of a Certificate of Incorporation and Certificate of Existence issued by the Companies Registry should also be produced.)

6. If the money raised is intended to benefit another organisation, please complete the following details : -

i) Name of organisation : _____

ii) Relationship between applicant and that organisation :

iii) Details of key officers in that organisation :

<u>Post</u>	<u>Name</u>	<u>Address</u>
<u>President/Chairman</u>	_____	_____
<u>Secretary</u>	_____	_____
<u>Treasurer/Accountant</u>	_____	_____

iv) Date the organisation was formed : _____

v) Type of organisation : Society registered/exempt under the Societies Ordinance, or
Company incorporated in Hong Kong, or
Others (Please give details)

(Please enclose a copy of the certificate of registration/exemption of the organisation and also a copy of the memorandum and articles of association or the constitution or rules of the organisation whichever is applicable. If the organisation is a company incorporated in Hong Kong, a copy each of a Certificate of Incorporation and Certificate of Existence issued by the Companies Registry should also be produced.)

vi) Has the organisation given consent to the activity being organised by you ? * Yes / No

7. If the applicant is making this application as an individual, please complete the following details : -

i) Date and place of birth : _____

ii) Length of residence in Hong Kong : _____

iii) Are you a permanent resident of Hong Kong ? * Yes / No

8. ✦ Intended use of money to be collected : _____

9. ✦ Format of the activity : _____

10. ✦ Method for money collection : _____

11. ✦ Date and time of the activity listed in priority : _____

(Note : To ensure a fair distribution of venues, dates and frequency of fund-raising among all potential applicants, there could be a restriction on the number of days approved, depending on prevailing circumstances.)

12. ✦ Venue and address : _____

Has permission to use venue been secured ? * Yes / No / Under application / Not applicable

(If the venues are in open public places, please give exact locations and enclose layout plan. Please also indicate where furniture (e.g. table) will be placed, if appropriate.)

- ✦ If approval is given to this application, the permit issued will specify the details given in these items. It will therefore be to the applicant's own advantage to plan the activity carefully, so as to avoid the need to seek fresh approval later on as a result of any changes to the above details.

13. Details of previous S4(17) application(s) to the Secretary for Home Affairs by the applicant, or the organisations named in 5(i) and 6(i) above, or any of the persons named in 5(iii) and 6(iii) above :

<u>Name of Applicant</u>	<u>Date of Application</u>	<u>Approved or Rejected</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

14. State here any additional information which the applicant wishes to provide in support of this application (e.g. reasons for requesting that the administrative guidelines or licensing conditions for the issue of permit be waived in whole or in part.)

I declare that to the best of my knowledge and belief, the information supplied by me in this form is true and correct.

Signed : _____
(Applicant)

(Chop of organisation, if applicable) Date : _____

* Delete where applicable

(If there is not enough space in this form for the filling in of the required information, the applicant may provide details on a separate sheet of paper and attach it to the form.)

Statement of Purpose

Purpose of Collection

The personal data provided by means of this form will be used by Home Affairs Department for the purpose of :

“to exercise functions on fund-raising activities for non-charitable purposes”

Classes of Transferees

2. The personal data you provided by means of this form may be disclosed to other Government bureaux, departments and relevant persons and bodies for the purposes mentioned in paragraph 1 above.

Access to personal data

3. You have a right of access and correction with respect to personal data as provided for in sections 18 and 22 and principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. Your right of access includes the right to obtain a copy of your personal data provided by this form.

Enquiries

4. Enquiries concerning the personal data collected by means of this form, including the making of access and corrections, should be addressed to :

Administrative Officer
Home Affairs Department
Tel. No. : 2835 1495

**Canvassing Activities which are Forbidden within
a No Canvassing Zone**

(Note : This list is by no means an exhaustive list of the canvassing activities which are prohibited within a no canvassing zone. It only serves to illustrate some of the common forms of canvassing activities.)

- (1) Unauthorised static display of election advertisements on walls (including the outer walls of the polling station), windows, railings, fences etc.
- (2) Exhibition of portable displays on vehicles (whether in motion or parked within the area), or held or carried by persons.
- (3) Displaying, without reasonable excuse, any propaganda material relating to any candidate or the election.
- (4) Distribution of election advertisements.
- (5) Canvassing for votes by:-
 - (a) talking to electors;
 - (b) shouting slogans or the name or number of a candidate or any appeal message;
 - (c) singing or chanting; or
 - (d) making signals or signs to electors.
- (6) Broadcast of audio or video tape to appeal to or induce electors to vote.
- (7) Using loud-hailers or loudspeakers (whether carried by a person or mounted on a vehicle or installed in any other manner) to broadcast any message which appeals to or induce electors to vote.
- (8) Shaking hands with electors.

Personal Data Privacy: Guidance on Electioneering Activities

1. This guidance note serves as a general reference on compliance with the requirements of the Personal Data (Privacy) Ordinance ("the PD(P)O"), in relation to electioneering activities that may involve the collection and use of personal data of an individual. Very often, candidates and/or their election agents make lobbying approaches by telephone to prospective voters with the intention of influencing their votes. Candidates may also choose to lobby potential voters by various forms of mailings such as fax messages, SMS or E-mails. In some cases, the individuals have no previous dealings with the caller and/or the candidate and they are concerned that the candidate might have obtained their personal data from sources other than the voter register.

2. The act of canvassing support for votes is not in contravention with the PD(P)O provided that personal data are obtained by means that are lawful and fair in the circumstances and the use of these data is directly related to the purpose for which the data are collected. Of direct relevance are the data protection principles 1 and 3 ("DPP1" and "DPP3") in Schedule 1 to the PD(P)O:

- (a) **DPP1(2)** requires that personal data shall be collected by means that are lawful and fair; and
- (b) **DPP3** requires that personal data shall not, without the prescribed consent of the individual, be used for any purposes other than the purpose for which the data were to be used at the time of collection of the data or a directly related purpose.

3. Candidates, who use personal data to facilitate electioneering, should be mindful of the provisions stated in the PD(P)O.

4. Candidates should assume direct responsibility for briefing and supervising members of their campaign staff to ensure their compliance with the requirements of the PD(P)O.

5. Candidates, who solicit personal data directly from an individual for electioneering, should ensure that the individual is informed about the potential use of the data for such a purpose.
6. Candidates should not collect personal data for electioneering by deceptive means or by mis-representing the purpose of the collection.
7. With respect to the use of personal data gathered from the published register of voters, due care should be taken to ensure that they are used only for purposes relating to an election as prescribed by relevant election legislations.
8. Candidates should not use personal data from sources other than the voter register or published data sources for electioneering unless the candidates have obtained prior express consent of the individual for such a purpose.
9. With respect to the use of personal data gathered by a third party, eg a trade union or professional body as a means of accessing members of those bodies for lobbying purposes, the proper course of action would be for these bodies to determine whether this is a permitted purpose for which the personal data have been collected, and mailings should preferably be handled by these bodies. As a matter of good practice, prior notification to member of such use of their data is recommended.
10. As a matter of good practice, candidates, who use any form of the mailings through professional bodies to lobby support, should allow those individuals to whom such mailings are directed to decline receipt of any subsequent mailings by providing for the exclusion of the individual from any future mailings.

Fair and Equal Treatment of Candidates by the Print Media

1. Fairness and equality will in each case be viewed by the Electoral Affairs Commission with reference to the surrounding circumstances.
2. Practical problems that may be experienced by publishers like limitation of column space and staff resources, and situations such as some candidates who have extensive arguments and opinions on issues of public relevance and those who have none, candidates who have made newsworthy statements or speeches as opposed to those who have not uttered a word, and the difference in status and standing of candidates as public figures, etc, are examples of circumstances against which the criteria of fairness and equality are to be judged.
3. What is important is that practical problems, in general terms without specifics, should not be allowed to be used as pretexts for not giving fair and equal treatment and coverage to all candidates. Merely saying that practical problems gave rise to the selective reporting will be viewed as a lame excuse, but if the other candidates had been approached and they refused to offer any interview, and this fact is made known in the same article, there can hardly be any suspicion or complaint that the guidelines have been breached.
4. Equal treatment and coverage are not necessarily equal space and equal number of words written on each candidate. It is an idea that has to be examined in all the circumstances of each individual case. Where a candidate says more on a topic and another candidate says less, that can be truthfully and faithfully reported, and no reasonable-minded person will say that that is unequal reporting. Fairness and equality here are in the sense of **equal opportunity** being given to all candidates alike.
5. If there is fair and equal treatment of all candidates in a publication, its editorial line or the personal opinions of the writer on each of the candidates can be freely expressed, insofar as they are fair comments and based on true facts. Any newspaper is at full liberty to express its support for or disapproval of a candidate. The guidelines do not seek to impose any shackle on the expression of such ideas.

Application Procedure for the Approval of Float Design

1. All applications in respect of the design of any float to be used in a procession or parade must be made in writing, with the following particulars clearly stated:
 - the name of the applicant
 - the address of the applicant
 - contact telephone number and fax number
 - the make, model and registration mark (or vehicle identity number in the case of a brand new vehicle) of the vehicle to be used as float
2. The application should be accompanied by three copies of a drawing, certified by qualified electrical or mechanical engineers, in minimum A3 size, showing the following details:
 - the float and vehicle outline, side, plan, front and rear view, with all major dimensions (both proposed and original) shown
 - the means of entry/exit to and from the driver's compartment
 - location of mirrors which will enable the driver to view both sides of the float
 - location of exhaust outlets from any internal combustion engines
 - location of any auxiliary power equipment installed
 - means of communication with the passengers on the float
 - location of passengers and support for passengers (seats, handles, etc.) on the float

Applicant's attention is drawn to regulation 53(2) of the Road Traffic (Traffic Control) Regulations on requirements for carriage of passengers: subject to subregulation (7), no driver of a vehicle on a road shall permit a passenger to travel in any vehicle unless seated in a properly constructed seat secured to the bodywork of the vehicle except where the vehicle is a public service vehicle licensed to carry standing passengers.

- detailed artwork is not required

3. All applications must be made at least **one month** in advance of the date of the event to:

Engineer (Vehicles Approval and Planning)
Vehicle Safety and Standards Division
Transport Department
Room 3402 Immigration Tower
7 Gloucester Road
Hong Kong
(Contact telephone : 2829 5550
Fax : 2802 7533)

4. If the application is approved in principle (subject to the vehicle inspection results), the applicant will be so advised within 14 days upon the receipt of the application, and also informed of further details of the vehicle inspection.
5. In case the design is considered unacceptable, the applicant should resubmit revised drawings within one week's time upon notice.

**Items of Expenses which may be
Counted towards Election Expenses**

(Note : This list is by no means an exhaustive list of items of expenditure which may be counted as election expenses. It only serves to illustrate the common items of such expenses.)

- (1) Fees and allowances, including travelling expenses, paid to agents and assistants engaged in relation to one's election activities.
- (2) Costs incurred for meals and drinks for agents and assistants before and on polling day.
- (3) Costs incurred for design and production of election advertisements such as :
 - (i) banners
 - (ii) signboards
 - (iii) placards
 - (iv) posters
 - (v) handbills
 - (vi) publicity pamphlets
 - (vii) video and audio tapes
 - (viii) electronic messages
 - (ix) various forms of literature or publicity material for the promotion of the candidate.
- (4) Costs incurred for display and removal of election advertisements including labour charges. If the election advertisements have not been removed by the deadline specified by the EAC, the removal costs for the election advertisements charged by government departments should also be included.
- (5) Costs incurred by the relevant authorities for removal of election advertisements displayed without authorization.
- (6) Costs incurred for renting space used in connection with the election campaign.

- (7) Cost of stationery used in connection with the election campaign.
- (8) Operation costs in connection with the election campaign, eg photocopying, hire of telephone line and fax line.
- (9) Postage for mailing of publicity materials (excluding the free mail provided by the Government).
- (10) Costs incurred for the hire of transport in connection with the election.
- (11) Costs incurred for publicity by broadcasting vans.
- (12) Costs of advertisements in newspapers, taxi or other public transport.
- (13) Costs incurred for election meetings, including venue charges.
- (14) Costs of T-shirts, armbands, caps, etc. and other identification devices for election agents and assistants.
- (15) Costs incurred by a candidate who is the incumbent Chief Executive; or a serving member of the Legislative Council, a District Council, the Heung Yee Kuk; or a serving chairman, vice-chairman or member of the Executive Committee of a Rural Committee; or a serving village representative in the publication of performance reports during the election period (ie from the commencement of the nomination period to the close of poll) of the Chief Executive election and the publication of performance reports for promoting the candidature any time on or before the date of election.
- (16) Costs incurred by the organisation of the candidate in promoting his election. [Costs of meeting where the platform of the organisation is publicised without specific reference to the candidate will not be counted as election expenses.]
- (17) Costs for obtaining legal advice incurred in respect of the management of an election (eg where a candidate asks his lawyer to vet an election publicity pamphlet to make sure that statements

contained in it do not amount to libel). [Costs for obtaining legal advice on the general application of the election law including what is “election expenses” and “donations” will not be an election expense.]

- (18) Interest incurred from a loan to finance the campaigning activities of a candidate. [In case of an interest-free loan, the interest waived should be declared as a donation and correspondingly as an election expense. A reasonable amount should be assessed by reference to the market interest rate.]
- (19) Subsidy of activities organised for promoting one’s candidature is a form of donation which is counted as election expense.
- (20) Although some people may not charge the candidate for the goods supplied or work, labour and services rendered, a reasonable sum estimated for such charges, over any allowance or discount usually given to customers, is an election expense (which is correspondingly a donation made by these people).
- (21) Goods given incidental to the provision of voluntary service.
- (22) Charities undertaken for the purpose of promoting one’s candidature.
- (23) Costs for any negative publicity launched against one’s opponent.

Support Clean Elections

A Handbook by the ICAC

24-Hr ICAC Election Enquiry Hotline: 2920 6530

24-Hr ICAC Report Hotline: 25 266 366

ICAC Corporate Website: www.icac.org.hk

INTRODUCTION

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap 554), enacted with an aim to upholding fairness and preventing corrupt and illegal conduct in elections, applies to all public elections including the Chief Executive Election. The Independent Commission Against Corruption (ICAC) is responsible for enforcing the ECICO. It has produced this Handbook which comprises a gist of the ECICO, a “Dos and Don’ts” checklist, a “questions-and-answers” section, and channels for lodging reports and enquiries with the ICAC. Apart from helping candidates, their election agents and helpers to better understand the ECICO, this Handbook also serves to alert them to the common pitfalls in elections so that appropriate measures can be taken to avoid inadvertent infringement of the legislation. Candidates, election agents and helpers, however, should note that this Handbook is intended to be a general reference only. They should refer to the original legislation and consult their legal advisers in case of doubt.

GIST OF THE ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) ORDINANCE

The Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (ECICO) applies to the Chief Executive Election and other elections as specified in the Ordinance. The Ordinance governs all conduct concerning an election, whether it is engaged before, during or after the election period, and whether it is engaged within Hong Kong or elsewhere.

The following is a gist of major provisions of the ECICO which relates to the management of electioneering activities for the reference of candidates, their election agents and helpers.

To facilitate easy reference, “●” denotes an offence or elaboration of provisions under the ECICO and interpretation of terms is given under “□” in the following gist.

(1) NOMINATION OF CANDIDATES**Bribing Candidates or Prospective Candidates (Sections 2, 7)**

- It is an offence if a person corruptly offers an advantage to another person as an inducement or a reward for:
 - (1) that person's standing, not standing, or if that person has been nominated as a candidate, withdrawal of his candidature, or his not using the best endeavours to promote his election; or
 - (2) that person to get a third person to stand, not to stand, or if that third person has been nominated as a candidate, to withdraw the third person's candidature, or not to use the third person's best endeavours to promote the election of the third person.
- It is also an offence if a person corruptly solicits or accepts an advantage for the above conduct.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.
- "Candidate"
 - (1) means a person who stands nominated as a candidate at an election; and
 - (2) 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.
- "Advantage" means any valuable consideration, gift, loan, office, employment, contract, favour or service (other than voluntary service or the provision of entertainment), etc. However, it does not include an election donation if particulars of the donation are given in an election return that has been lodged with the Chief Electoral Officer.
- "Voluntary service" means any service provided free of charge to or in respect of any candidate at an election by a natural person, voluntarily and personally, in the person's own time for the purpose of promoting the election of the candidate or prejudicing the election of another candidate.

Using or Threatening to Use Force or Duress against Candidates or Prospective Candidates (Section 8)

- It is an offence if a person uses or threatens to use force or duress against another person to induce him :
 - (1) to stand or not to stand as a candidate, or to withdraw his candidature; or

- (2) to get a third person to stand or not to stand as a candidate, or to withdraw the third person's candidature.
- It is an offence if a person uses or threatens to use force or duress against another person because the other person or the third person stood or did not stand as a candidate, or withdrew his candidature after having been nominated as a candidate.
 - It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

Deceptive Behaviour for Inducing Others to Run or Not to Run at an Election (Section 9)

- It is an offence if a person, by deception, induces another person :
 - (1) to stand or not to stand as a candidate, or to withdraw his candidature; or
 - (2) to get a third person to stand or not to stand as a candidate, or to withdraw the third person's candidature.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

Defacing or Destroying of Nomination Papers (Section 10)

- It is an offence if a person defaces or destroys a completed or partly completed nomination paper in order to prevent or obstruct another person from standing for election.

(2) ELECTIONEERING

Publishing False Statement that a Person Is or Is Not a Candidate (Section 25)

- It is an offence if a person knowingly publishes a false statement that:
 - (1) he or another person is a candidate at an election; or
 - (2) another person who has been nominated as a candidate is no longer a candidate at an election.
- It is an offence if a candidate knowingly publishes a false statement that he is no longer a candidate at an election.

Publishing False or Misleading Statements about a Candidate (Section 26)

- It is an offence if a candidate or a person publishes a materially false or misleading statement about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates at an election.
- Statements about a candidate or candidates include (but are not limited to) statements concerning the character, qualifications or previous conduct of the candidate or candidates.

Election Advertisement with False Claim of Support (Sections 2, 27)

- It is an offence if a candidate or a person publishes or authorises the publication of an election advertisement which includes the name or logo of or associated with a person or an organisation, or a name or logo that is substantially similar to that of a person or an organisation; or a pictorial representation of a person, in such a way that implies or causes electors to believe that the candidate or candidates have the support of the person or organisation unless prior written consent from that person or organisation has been obtained.
- It is still an offence even if such an election advertisement contains a statement to claim that such inclusion does not imply support by the person or organisation concerned.
- It is an offence if a person purports to give written consent to the inclusion in an election advertisement of the name or logo of an organisation without having been approved by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting.
- It is also an offence if a person, for the purpose of promoting or prejudicing the election of a candidate or candidates, knowingly gives materially false or misleading information to the candidate or candidates.
- “Support” includes support for the policies or activities of the candidate.
- “Election advertisement” means :
 - (1) a publicly exhibited notice; or
 - (2) a notice delivered by hand or electronic transmission; or
 - (3) a public announcement made by radio or television or by video or cinematographic film; or
 - (4) any other form of publication,

published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.

Publication of Election Advertisements that Do Not Meet Certain Requirements (Sections 33, 34)

- It is an offence if a person publishes a printed election advertisement, with exception to those printed in a registered local newspaper, which fails to show, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed.
- The above conduct is, however, not an offence if the publisher, or a person authorised by him, has lodged with the Returning Officer a statutory declaration on the required printing details not later than 7 days after the publication of the advertisement.
- A person must, not later than 7 days after publishing a printed election advertisement, furnish 2 copies of the advertisement to the Returning Officer.*

* *It should however be noted that under the Electoral Procedure (Chief Executive Election) Regulation, a candidate must submit 2 copies of his election advertisement to the Returning Officer and comply with the other statutory requirements stipulated therein before he displays, distributes or otherwise uses the election advertisement. Likewise, it is also stipulated in the Guidelines on Election-related Activities in respect of the Chief Executive Elections published by the Electoral Affairs Commission that any person must submit 2 copies of his election advertisement to the Returning Officer before he displays, distributes or otherwise uses the election advertisement.*

- A performance report published by an incumbent candidate, who is the person holding office as a serving member of the Legislative Council, a District Council, or the Heung Yee Kuk; a serving Chairman, Vice-chairman or member of the Executive Committee of a Rural Committee; or a serving Village Representative, between the period beginning with the nomination day and ending with the polling day, is taken as an election advertisement.

(3) VOTING

Bribing Electors and Others (Section 11)

- It is an offence if a person, without reasonable excuse, offers an advantage to another person as an inducement to or a reward for that person or for him to

get or try to get a third person :

- (1) not to vote at an election; or
- (2) to vote or not to vote for a particular candidate or particular candidates at an election.

- It is also an offence if a person, without reasonable excuse, solicits or accepts an advantage in return for the above conduct.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

Providing Electors and Others with Refreshments or Entertainment (Section 12)

- It is an offence if a person provides, or pays for the provision of any food, drink or entertainment for another person as an inducement to or a reward for that person or a third person :
 - (1) not to vote at an election; or
 - (2) to vote or not to vote for a particular candidate or particular candidates at an election.
- It is an offence if a person solicits, accepts or takes any food, drink or entertainment as an inducement to or a reward for the above conduct.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.
- However, the serving of non-alcoholic drinks at an election meeting is not an offence.
- ☐ An election meeting is any meeting held to promote or prejudice the election of a particular candidate or particular candidates.

Using or Threatening to Use Force or Duress against Electors (Section 13)

- It is an offence if a person uses or threatens to use force or duress against another person to induce that person or to get him to induce a third person to vote or not to vote at an election; or to vote or not to vote for a particular candidate or particular candidates.
- It is an offence if a person uses or threatens to use force or duress against another person because the other person voted or refrained from voting at an election, or voted or refrained from voting for a particular candidate or particular candidates.

- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

Deceptive Behaviour in Relation to Electors (Section 14)

- It is an offence if a person, by deception, induces another person or gets him to induce a third person not to vote at an election; or to vote or not to vote for a particular candidate or particular candidates.
- It is an offence if a person, by deception, obstructs or prevents another person or gets him to obstruct or prevent a third person from voting at an election.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

Impersonating Another at Election (Section 15)

- It is an offence if a person applies for a ballot paper in another person's name or, having voted at an election, applies at the same election for a ballot paper in his own name except as expressly permitted by an electoral law.

Other Offences with Respect to Voting (Section 16)

- It is an offence if a person :
 - (1) votes at an election knowing that he is not entitled to vote at that election; or
 - (2) votes at an election after having knowingly or recklessly given materially false or misleading information to an electoral officer, or knowingly omitted to give material information to an electoral officer; or
 - (3) votes more than once in the same round of voting at an election except as expressly permitted by an electoral law.
- It is an offence if a person invites or induces another person :
 - (1) to vote at an election knowing that the other person is not entitled to do so; or
 - (2) to vote at an election knowing that the other person has given materially false or misleading information to an electoral officer, or has omitted to give material information to an electoral officer; or
 - (3) to vote more than once in the same round of voting at an election except as expressly permitted by an electoral law.

Destroying or Defacing Ballot Papers (Section 17)

- It is an offence if a person, without lawful authority, supplies a ballot paper to another person, or destroys or interferes with a ballot box or ballot paper in use at an election or a ballot paper that has been used at an election.
- It is an offence if a person, with intent to deceive, puts into a ballot box a paper other than a ballot paper or removes a ballot paper from a polling station.

(4) ELECTION EXPENSES AND ELECTION DONATIONS**Election Expenses (Sections 2, 24)**

- ☐ “Election expenses” means expenses incurred or to be incurred before, during or after the election period, by or on behalf of a candidate for the purpose of :
 - (1) promoting the election of the candidate; or
 - (2) prejudicing the election of another candidate,and includes the value of election donations consisting of goods and services used for that purpose.
- A candidate commits an offence if the aggregate amount of the election expenses whether incurred by or on behalf of the candidate exceeds the prescribed maximum amount of election expenses.
- The maximum amount of election expenses for the Chief Executive Election is \$9,500,000.

Use of Election Expenses (Sections 2, 23)

- It is an offence if a person, other than a candidate or a candidate’s election expense agent, incurs any election expenses.
- ☐ An “election expense agent” means a person authorised in writing by a candidate to incur election expenses on behalf of the candidate, with the maximum amount of election expenses to be incurred by him being specified in the authorisation, a copy of which has been served on the Returning Officer.
- It is an offence if a candidate does not include election expenses incurred by the candidate or the candidate’s election expense agent in the candidate’s election return.

- It is an offence for an election expense agent to incur election expenses that exceed the amount specified in his authorisation.

Use and Disposal of Election Donations (Sections 2, 18, 19)

- “Election donation” means :
 - (1) any money given to a candidate for the purpose of meeting the election expenses of the candidate; or
 - (2) any goods (including any goods given incidental to the provision of voluntary service) or service (excluding voluntary service) provided to a candidate for the purpose of promoting the election of the candidate or of prejudicing the election of another candidate.
- It is an offence if a candidate or other person uses election donations for a purpose other than :
 - (1) meeting the candidate’s election expenses; or
 - (2) promoting the election of the candidate or prejudicing the election of another candidate.
- It is an offence if a candidate, on receiving an election donation of more than \$1,000, does not issue a receipt to the donor.
- It is an offence if a candidate uses an anonymous election donation of more than \$1,000 for meeting or contributing towards meeting his election expenses.
- It is also an offence if a candidate does not give an anonymous election donation of more than \$1,000 to a charitable institution or trust of a public character chosen by the candidate.
- It is an offence if a candidate does not give the unused election donations or donations that exceed the prescribed maximum amount of election expenses to a charitable institution or trust of a public character chosen by the candidate.

Election Returns (Sections 20, 36, 37, 38)

- It is an offence if a candidate knowingly makes a materially false or misleading statement in the election return.
- It is an offence if a candidate fails to lodge with the Chief Electoral Officer an election return of his election expenses and all election donations not later than 30 days after the date of publication of the result of the election, or not later than 30 days after the declaration of the termination of the election

proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law.

- The return must be accompanied by:
 - (1) an invoice and a receipt of each election expense, giving particulars of the expenditure (except for sums under \$100); and
 - (2) a copy of the receipt issued to every donor, giving particulars of the donor and the donation (except for donations of \$1,000 or below); and
 - (3) a copy of the receipt of such election donation given to a charitable institution or trust of a public character by the candidate in accordance with the law; and
 - (4) an explanation setting out the reason why the unused election donation was not disposed of in accordance with the law; and
 - (5) a declaration in a form provided or specified by the Chief Electoral Officer verifying the contents of the return.

(5) ELECTION PETITION OR ELECTION APPEAL

Bribery in Relation to Election Petition or Election Appeal (Section 21)

- It is an offence if a person offers an advantage to another person:
 - (1) as an inducement for that person, or for him to get a third person, to withdraw an election petition or election appeal; or
 - (2) as a reward for that person for his having withdrawn or agreed to withdraw; or for his having got a third person to withdraw an election petition or election appeal.
- It is an offence if a person solicits or accepts an advantage:
 - (1) to withdraw or as an inducement to withdraw an election petition or election appeal; or
 - (2) as a reward for his having withdrawn or his having got a third person to withdraw an election petition or election appeal.

(6) MISCELLANEOUS AND RELATED PROVISIONS

Corrupt or Illegal Conduct Engaged in with the Knowledge and Consent of a Candidate (Section 29)

- A candidate is to be regarded as having personally engaged in corrupt or illegal conduct if the conduct was engaged in with the knowledge and consent of the candidate.

Officers Liable for Offences Committed by Corporation (Section 42)

- If a corporation is found guilty of having engaged in a corrupt or illegal conduct, the director, executive officer or any person who is concerned in the management of the corporation during the material time will be liable for the conduct unless the person proves that:
 - (1) he has no knowledge of the conduct; or
 - (2) he has exercised reasonable diligence to prevent the conduct, if it was done with his knowledge.

Aiding, Abetting, etc. to Commit an Offence (Section 43 of the ECICO and Section 101C of the Criminal Procedure Ordinance)

- A person commits an offence if he incites, conspires with, aids, abets, counsels or procures another person or attempts to engage in a corrupt or illegal conduct.

(7) APPLICATION FOR RELIEF**Relief for Certain Illegal Conduct (Section 31)**

- A candidate, agent or any other person who has done or omitted to do an act that would be an “illegal conduct” under the ECICO may apply to the Court for an order relieving him from penalties and disqualifications to be imposed on him.
- The applicant has to satisfy the Court that such act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.

Relief for Offences in Relation to Election Advertisements (Section 35)

- Any person who has published a printed election advertisement without the printing details required by the legislation or has not furnished 2 copies of the printed election advertisement to the Returning Officer may apply to the Court for an order:
 - (1) allowing the publication be excepted from the statutory requirements; and
 - (2) relieving him from penalties to be imposed on him.
- The applicant has to satisfy the Court that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.

Relief for Offences in Relation to Election Returns (Section 40)

- A candidate who fails to lodge an accurate election return before the end of the permitted period, or fails to send an invoice or a receipt, or a copy of a receipt, as required by the law may apply to the Court for an order allowing the candidate to lodge with the Chief Electoral Officer an election return within such further period as the Court specifies, or an order enabling the candidate to correct any error or false statement in an election return, or an order excepting the candidate from the requirement to send an invoice or a receipt, or a copy of a receipt, as required by the law.
- The candidate has to satisfy the Court that the failure to comply with the requirement was attributable to the following reasons and was not due to bad faith:
 - (1) the applicant's illness or absence from Hong Kong *; or
 - (2) the death, illness, absence from Hong Kong of an agent or employee of the applicant *; or
 - (3) misconduct of an agent or employee of the applicant; or
 - (4) inadvertence or an accidental miscalculation or an accidental loss or destruction of the invoice or receipt or copy of the receipt by the applicant or any other person; or
 - (5) any reasonable cause.
- * *(1) and (2) are considerations only applicable to court orders granting an extended period during which a candidate may lodge an election return, but not applicable to court orders enabling a candidate to correct any error or false statement in an election return, or excepting the candidate from the requirement to send an invoice or a receipt, or a copy of receipt.*

(8) PENALTY**Corrupt Conduct**

- As stipulated in the ECICO, a person who engages in corrupt conduct at an election commits an offence and is liable on conviction to:
 - (1) a fine of \$200,000 and imprisonment for 3 years if tried summarily; or
 - (2) a fine of \$500,000 and imprisonment for 7 years if tried on indictment.

- A person who is convicted of having engaged in corrupt conduct has to pay to the Court the amount or value of any valuable consideration received in connection with the conduct or such part as specified by the Court.

Illegal Conduct

- As stipulated in the ECICO, a person who engages in illegal conduct at an election commits an offence and is liable on conviction to:
 - (1) a fine at level 5 and imprisonment for 1 year if tried summarily; or
 - (2) a fine of \$200,000 and imprisonment for 3 years if tried on indictment.
- A person who has contravened the provisions of Section 34 or 37 of the ECICO is liable on conviction to the same penalty as illegal conduct, except that a contravention of Section 34 is not subject to the following disqualifications.

Corrupt conduct refers to that mentioned in Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the ECICO as listed in this Handbook, whereas **illegal conduct** in Sections 23, 24, 25, 26 and 27.

Disqualifications

- A person convicted of an offence (except for contravention of Section 34 or 39) under the ECICO will be :
 - disqualified from being registered as an elector or voting in the Chief Executive, Legislative Council, District Councils or Village Representative elections for 3 years from the date of conviction;
 - disqualified from being nominated as a candidate for the election of, or elected as the Chief Executive, a member of the Legislative Council and a District Council or a Village Representative for 5 years from the date of conviction; and
 - disqualified from being nominated as a candidate for the election of, or elected or nominated as an Election Committee member for 3 years from the date of conviction.

Immediate Custodial Sentence

- According to the sentencing guideline set by the Court of Appeal on 27 November 1997, any person convicted of a serious election-related offence shall receive an immediate custodial sentence in order to uphold clean and fair elections in Hong Kong.

DOS AND DON'TS CHECKLIST

Candidates, their election agents and helpers should note the following in an election:

(1) NOMINATION OF CANDIDATES

Bribing Candidates or Prospective Candidates

- ☒ Do not offer any advantage to get any person to stand or not to stand as a candidate.
- ☒ Do not offer any advantage to get any person having been nominated as a candidate to withdraw his candidature.
- ☒ Do not authorise another person, either expressly or by implication, to offer advantage for getting any person to engage in the above conduct.
- ☒ Do not solicit or accept any advantage for any person's standing or not standing as a candidate.
- ☒ Do not solicit or accept any advantage for any person's withdrawal of his candidature.

Using or Threatening to Use Force or Duress

- ☒ Do not use or threaten to use force or duress to induce any person to stand or not to stand as a candidate, or to withdraw his candidature.
- ☒ Do not authorise another person, either expressly or by implication, to engage in the above conduct.

Deception

- ☒ Do not induce by deception, any person to stand or not to stand as a candidate, or to withdraw his candidature.

Nomination Paper

- ☒ Do not deface or destroy any nomination paper to prevent or obstruct another person from standing for an election.

(2) ELECTIONEERING

Statements about a Candidate

- ☒ Do not knowingly publish any false statement that a person is or is not a candidate.
- ☒ Do not make any materially false or misleading statement of fact including but not limited to the character, qualifications or previous conduct of a candidate or candidates.

Election Advertisement

- ☒ Do not use, without obtaining prior written consent, the name or logo of a person or an organisation; or the pictorial representation of any person in an election advertisement in such a way as to infer that the candidate concerned has the support of the named person or organisation.
- ☒ Do include in all printed election advertisements the name and address of the printer, the date of printing and the number of copies printed except those printed in a registered local newspaper.
- ☒ Do remember that a performance report published by an incumbent candidate between the nomination day and the polling day of the election is taken as an election advertisement.
- ☒ Do furnish 2 copies of the election advertisement to the Returning Officer not later than 7 days after publishing a printed election advertisement *.

* *It should however be noted that under the Electoral Procedure (Chief Executive Election) Regulation, a candidate must submit 2 copies of his election advertisement to the Returning Officer and comply with the other statutory requirements stipulated therein before he displays, distributes or otherwise uses the election advertisement. Likewise, it is also stipulated in the Guidelines on Election-related Activities in respect of the Chief Executive Elections published by the EAC that any person must submit 2 copies of his election advertisement to the Returning Officer before he displays, distributes or otherwise uses the election advertisement.*

(3) VOTING

Bribery

- ☒ Do not offer any advantage to induce any person not to vote at an election.
- ☒ Do not offer any advantage to induce any person to vote or not to vote for a particular candidate at an election.
- ☒ Do not authorise another person, either expressly or by implication, to offer advantage for getting any person to engage in the above conduct.

Providing Refreshments or Entertainment

- ☒ Do not provide or pay for the provision of any food, drink or entertainment as an inducement to or a reward for any person's not voting at an election.
- ☒ Do not provide or pay for the provision of any food, drink or entertainment as an inducement to or a reward for any person's voting or not voting for a particular candidate at an election.
- ☒ Do not authorise another person, either expressly or by implication, to provide any food, drink or entertainment for getting any person to engage in the above conduct.

Using or Threatening to Use Force or Duress

- ☒ Do not use or threaten to use force or duress against any person for the purpose of influencing his or any other person's voting decision.
- ☒ Do not authorise another person, either expressly or by implication, to engage in the above conduct.

Engaging in Deceptive Behaviour

- ☒ Do not induce by deception any person not to vote at an election.
- ☒ Do not induce by deception any person to vote or not to vote for a particular candidate at an election.
- ☒ Do not authorise another person, either expressly or by implication, to engage in the above conduct.

Other Offences in Relation to Voting

- ☐ Do not deface or destroy any ballot paper unless lawfully authorised.
- ☐ Do not knowingly invite or induce ineligible persons to vote at an election.
- ☐ Do not induce a person to vote more than once in the same round of voting at an election.

(4) ELECTION EXPENSES AND ELECTION DONATIONS**Election Expenses**

- ☐ Do not incur election expenses more than the prescribed maximum amount of election expenses.
- ☐ Do not incur election expenses unless you are a candidate or a candidate's election expense agent with the required authorisation.
- ☐ Do not incur election expenses in excess of the amount authorised by the candidate if you are an election expense agent.
- ☒ Do include the election expenses incurred by the candidate and his election expense agents in the election return.

Election Donations

- ☐ Do not use election donations on activities unrelated to an election.
- ☒ Do issue a receipt for any election donation of more than \$1,000.
- ☒ Do send any election donation of more than \$1,000 received from an anonymous donor to a charitable institution or trust of a public character chosen by the candidate.
- ☒ Do send any unused election donations and donations in excess of the statutory limit of election expenses to a charitable institution or trust of a public character chosen by the candidate.

Election Returns

- ☒ Do submit a return on election expenses and donations to the Chief Electoral Officer not later than 30 days after the date of publication of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law.
- ☒ Do submit with your election return the invoices, receipts and declaration form as stipulated by the law.
- ☒ Do not knowingly make any materially false or misleading statement in the return on election expenses and donations.
- ☒ Do lodge your election return with the Chief Electoral Officer even if **NO** election expense is incurred.

(5) ELECTION PETITION OR ELECTION APPEAL

- ☒ Do not offer any advantage to induce any person to withdraw an election petition or election appeal.
- ☒ Do not solicit or accept any advantage to withdraw an election petition or election appeal.

QUESTIONS AND ANSWERS

Q1. If a group of influential community leaders intend to send a letter to members of the Election Committee appealing them to vote for a particular candidate, what points should they take note in order not to infringe the ECICO?

A1. ● As the appeal letter quoted above is for the purpose of promoting the election of the candidate, it is clearly a printed election advertisement. As stipulated in Section 34 of the ECICO, all printed election advertisements, except those printed in a registered local newspaper, are required to show the name and address of the printer, date of printing and the number of copies printed. In addition, two copies of the said appeal letter should be deposited with the Returning Officer not later than 7 days after it has been published.

- In the circumstances, the cost incurred for printing and mailing the appeal letter should be counted as the said candidate's election expenses. In order to abide by the law, the community leaders concerned should have obtained the candidate's prior written approval before incurring election expenses on his behalf. The candidate, on the other hand, is required to include the production and mailing cost of the appeal letter in his election return.

* *It should however be noted that under the Electoral Procedure (Chief Executive Election) Regulation, a candidate must submit 2 copies of his election advertisement to the Returning Officer and comply with the other statutory requirements stipulated therein before he displays, distributes or otherwise uses the election advertisement. Likewise, it is also stipulated in the Guidelines on Election-related Activities in respect of the Chief Executive Elections published by the EAC that any person must submit 2 copies of his election advertisement to the Returning Officer before he displays, distributes or otherwise uses the election advertisement.*

Q2. Will a supporter of candidate A contravene the ECICO if he organises negative publicity against candidate B so as to discredit candidate B? Will candidate A be held accountable for this supporter's act?

A2. ● The ECICO has not laid down any restrictions on the format of election campaign arranged to promote a person's candidature, even if negative publicity is engaged in to prejudice the election of a contesting candidate. However, the person publishing a statement about a

particular candidate has to make sure that all statements of fact published about the particular candidate must be true. Otherwise, he will breach Section 26 of the ECICO which prohibits any person, including a candidate, from publishing a materially false or misleading statement of fact concerning (but not limited to) a candidate's character, qualifications or previous conduct for the purpose of promoting or prejudicing the election of a candidate.

- If the supporter of candidate A publishes a statement about candidate B which is materially false or misleading for the purpose of prejudicing the latter's election, the said supporter will have contravened the above-mentioned provision.
- If candidate A consents to his supporter's behaviour as described in the preceding paragraph, candidate A has breached Section 26 of the ECICO as well. The cost incurred in connection with the publishing of the false statement will have to be counted as candidate A's election expenses.
- Since Section 23 of the ECICO requires any person to obtain the candidate's prior written authorization before incurring any election expenses for the candidate, the supporter in the above-quoted situation needs to do so in order not to contravene the law.

Q3. Is it lawful for the chairman of a professional body to give his written consent to candidate C for using the name and logo of the said professional body in candidate C's election advertisements? What happens if the chairman's decision of supporting candidate C is not agreeable to some of its members?

- A3. ● The said chairman should ensure that the professional body agrees to the written consent he gave to candidate C. It will be an offence under Section 27 of the ECICO if a person of an organisation purports to give written consent to a candidate to the inclusion of the name or logo of the organisation in the candidate's election advertisements without having been approved by the governing body or by a resolution of the members of the said organisation passed at a general meeting.
- If the chairman's decision of supporting candidate C is eventually repudiated by the professional body through proper procedures by those members who object to the decision, the consent of support given by the chairman will become invalid. In this situation, candidate C must take reasonable measures, e.g. to make alterations to the publicity materials

not yet distributed and to retrieve the publicity materials already displayed. In any event, the cost incurred by the production and subsequent removal of the said advertisements should still be counted as candidate C's election expenses and be declared in candidate C's election return.

Q4. Is it an offence if a person has incurred election expenses on behalf of a candidate without obtaining his prior written authorisation? Can the said person claim that the expenses incurred are an election donation to be given to the candidate? Will he still be caught by the ECICO if the candidate eventually agrees to accept the 'donation'?

A4. Under Section 23 of the ECICO, only the candidate or persons authorised by him in writing may incur election expenses. Such an authorisation will become effective only after a copy of it has been served on the Returning Officer. It is therefore an offence for the said person to have incurred election expenses without the candidate's written authorisation and no subsequent actions can remedy the offence once an election expense has been incurred. Even if the items or services purchased were subsequently donated to the candidate, this would not alter the fact of the commission of the offence. The expenditure so incurred should be accounted for both as an election expense and as a donation.

Q5. Can a candidate keep the election donations in excess of the prescribed maximum amount of election expenses for purposes other than meeting his election expenses? Should he return the unspent election donations to the donors after the election?

A5. Under Sections 18 and 19 of the ECICO, election donations can only be used for the purpose of meeting a candidate's election expenses. A candidate who receives an election donation of more than \$1,000 must issue a receipt to the donor. Instead of returning the unspent election donations or donations that exceed the prescribed maximum amount of election expenses to the donors, the candidate must donate the unspent election donations to a charitable institution or trust of a public character.

Q6. At a dinner party hosted by some trade associations for members of the Election Committee, the chairman of the organising committee invites a candidate to present his election platform. How should the candidate handle such a situation? Will the chairman run into trouble by so doing? Will the candidate and the chairman be liable to any offence under the ECICO?

- A6. ● A candidate who finds himself caught in the above-mentioned situation should decline the invitation and immediately stop any promotion of his election at the dinner party. Otherwise, the occasion will be seen as an election meeting held to promote his candidature and the expenses incurred by the said party should be counted towards his election expenses.
- If the dinner party is solely an arrangement of the chairman who has not been authorised by the candidate to incur election expenses on his behalf under Section 23 of the ECICO, the chairman will have contravened the law for incurring election expenses without the authorisation of the candidate.
- On the other hand, according to Section 12 of the ECICO, no person shall by himself or by any other persons provide or meet all or part of the cost of providing other persons with food, drink or entertainment with a view to influencing the other persons' voting decisions.
- If the dinner party is deliberately organised by the chairman with a view to influencing the participants to vote for the candidate, the chairman has committed an offence. The candidate is also guilty of an offence under Section 12 of the ECICO if he has the knowledge of and has consented to the organising of the dinner party for the above purpose.

Q7. Will it be different if the above candidate is invited to promote his candidature at the general meeting of a trade association and if only non-alcoholic drinks are provided on the occasion?

- A7. ● The general meeting during which a candidate is invited to promote his candidature is regarded as an election meeting. Although the provision of non-alcoholic drinks at an election meeting does not constitute a corrupt act under the ECICO, the expenses so incurred are still counted as the candidate's election expenses.
- In the scenario quoted, it is necessary for the trade association to obtain prior written authorisation from the candidate for incurring the expenses

on behalf of him before the arrangement of the said general meeting lest it will contravene Section 23 of the ECICO. It is advisable, however, for the said trade association to invite all the candidates to present their election platforms at the said meeting as all candidates should be treated fairly and equally and no unfair advantage should be accorded to or obtained by any candidate over others regarding election campaigning.

- If all the candidates are invited to the said general meeting which is not held for the promotion of a particular candidate, there is no need for the candidates to count the expenses so incurred as their election expenses because the general meeting will not be regarded as an election meeting. Under the circumstances, it is neither necessary for the said trade association to obtain prior written authorisation from the candidates for incurring the expenses.

Q8. Will it constitute an offence under the ECICO if the election agent of a candidate hints to some voters that they will be awarded business if they cast their votes for the candidate? Will the candidate be liable to any offence under the ECICO?

- A8. ● It is an offence under Section 11 of the ECICO for a person, without reasonable excuse, to offer an advantage including gift, loan, office, employment, contract etc. to another person to influence the latter's voting decision. The election agent above-mentioned should have contravened Section 11 in this context.
- Along the same line, it is an offence if a person, without reasonable excuse, solicits or accepts an advantage in return for his voting at an election for a particular candidate.
 - Whether the candidate is liable to the same offence depends on whether he is aware of and agrees to the act of his agent. According to Section 29 of the ECICO, a candidate is to be regarded as having engaged in corrupt and illegal conduct if the said conduct is engaged in with his knowledge and consent, unless he can satisfy the court that the conduct is engaged in without his knowledge, consent or connivance.

Q9. Is it against the ECICO for a main contractor to request a sub-contractor of his firm to vote for the candidate he supports?

- A9. ● Section 13 of the ECICO makes it an offence for a person to use or threaten to use force or duress against another person with a view to inducing or compelling the latter to vote for a particular candidate at an election.
- Although it is difficult to define whether such a request will amount to “force or duress” as it will depend on the circumstances of each case, persons who are in positions of influence should be wary of their conduct which may cross the line between legitimate lobbying in support of a candidate and effecting a duress against others to vote for a particular candidate.

Q10. Should the expenses incurred for a dinner held to celebrate the election of a candidate be counted as election expenses of the candidate? Is it alright for a candidate to use the election donation received to pay for the cost of the celebration dinner?

- A10. ● If the dinner is hosted for the sole purpose of celebrating the election of a candidate and in no way is related to the promotion of his election, the expenses incurred need not be counted towards his election expenses.
- If the dinner is hosted to honour the candidate’s promise made previously to the participants that they would be rewarded with a dinner for their assistance given to the candidate’s election campaign upon the candidate’s successful election, the hosting of the dinner is related to the purpose of promoting his election. In this connection, expenses incurred by the dinner should be counted towards his election expenses and be included in his election return.
- If the dinner is hosted as a reward for the electors’ having voted for the candidate, both the host and the participants would have contravened Section 12 of the ECICO. Furthermore, the cost of the dinner should be counted towards the candidate’s election expenses.
- Since Section 18 of the ECICO clearly states that election donations must not be used for purposes other than meeting the election expenses of a candidate, the candidate would have contravened the law if he uses his election donation to pay for the cost of the celebration dinner which is not related to the promotion of his candidature.

Q11. Is it a must that all candidates have to submit an election return before the deadline specified by the ECICO? Which are the points a candidate should take note of while submitting his election return?

A11. ● Every candidate has to lodge with the Chief Electoral Officer an election return of his election expenses and election donations, whether or not election expenses have ever been incurred or election donations received, not later than 30 days after the result of the election is gazetted, or after the declaration of the termination of the election proceedings, or after the declaration of the failure of the election under the relevant electoral law in accordance with Section 37 of the ECICO. The election return must be accompanied with a declaration form signed by the candidate verifying the contents of the return.

- The election return must also give a full account of the election expenses incurred and donations (including money, goods, etc.) received by the candidate. The election return must be accompanied by an invoice and a receipt of each election expense of \$100 or above, and a copy of the receipt issued to the donor of each election donation of more than \$1,000.

- According to Section 24 of the ECICO, it will be an offence if the aggregate amount of election expenses incurred by or on behalf of a candidate exceeds the prescribed maximum amount of election expenses. The maximum amount of election expenses for the Chief Executive election is \$9,500,000.

- A candidate has to ensure that the information provided in his election return must be true and accurate as any candidate who knowingly makes a materially false or misleading statement in the election return will commit an offence under Section 20 of the ECICO.

Q12. An election agent, who has been too busy with electioneering activities, has inadvertently contravened the provisions of the ECICO. Is there anything he can do to redress the situation?

A12. ● Candidates and his election helpers should take heed of complying with the provisions of the ECICO and the regulations of the Electoral Affairs Commission in running an election so as to avoid any inadvertent infringement of the law and regulations.

- Candidates should note that a corrupt conduct referred to in the ECICO is a serious offence. Nothing can be done to redress the situation once an offence is committed.
- A candidate or any other person who has done or omitted to do an act which is classified as an “illegal conduct” under the ECICO may, according to Section 31 of the ECICO, apply to the Court for an order relieving him from the penalties and disqualification to be imposed on him. He, however, has to satisfy the Court that such an act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.
- Any person who has published a printed election advertisement without the printing details required by the law or has failed to furnish 2 copies of the printed election advertisement to the Returning Officer within 7 days after the said advertisement has been published may, according to Section 35 of the ECICO, apply to the Court for an order relieving him from the penalties to be imposed on him for his non-compliance with Section 34 of the ECICO.
- A candidate who fails to lodge an election return before the end of the permitted period as required by the law may, according to Section 40(1) of the ECICO, apply to the Court for an order allowing him to lodge the election return with the appropriate authority within such further period as the Court specifies. The candidate, however, has to satisfy the Court that the failure to comply with the requirement was attributable to the applicant’s illness or absence from Hong Kong; or the death, illness, absence from Hong Kong or misconduct of an agent or employee of the applicant; or due to inadvertence, an accidental miscalculation or an reasonable cause and was not due to bad faith.
- On the other hand, a candidate who fails to lodge an accurate election return or send in the required documents may, according to Section 40(3) and Section 40(5) of the ECICO, apply to the Court for an order for relief. He, however, has to satisfy the Court that the act was attributable to the misconduct of his agent or employee; inadvertence or accidental miscalculation; an accidental loss or destruction of the documents concerned or any reasonable cause and was not due to bad faith.

Q13. If a person knowingly provides the ICAC with false information with intent to harm or influence a certain candidate, what will the ICAC do?

- A13. ● Any person who makes or causes to be made to an ICAC officer a false report of the commission of any offence, or misleads an ICAC officer by giving false information or by making false statements or accusations commits an offence under Section 13B of the ICAC Ordinance. The maximum penalty for the offence is a fine of \$20,000 and imprisonment for one year.
- Any person who suspects any conduct in contravention of the ECICO is encouraged to make a report to the ICAC by visiting / calling its 24-hour Report Centre or any of the eight ICAC Regional Offices (addresses and telephone numbers as shown in this Handbook), or by writing to Hong Kong GPO Box 1000.
 - The ICAC will investigate each pursuable complaint so as to ascertain whether such malpractice exists.

CHANNELS FOR REPORTS AND ENQUIRIES

REPORTS

Any person who discovers or suspects any conduct in contravention of the ECICO may call the 24-hour ICAC Report Hotline 25 266 366, or make a report in person to any ICAC Regional Office, or write to Hong Kong GPO Box 1000.

ENQUIRIES

Any person who wishes to make enquiries on the ECICO may call the 24-hour ICAC Election Enquiry Hotline 2920 6530, or approach any ICAC Regional Office from 9:00 a.m. to 6:00 p.m. Monday to Friday and 9:00 a.m. to 1:00 p.m. on Saturday (except public holidays).

ADDRESSES AND TELEPHONE NUMBERS OF ICAC REGIONAL OFFICES

Hong Kong Island

ICAC Regional Office (Hong Kong West/Islands)

G/F, Harbour Commercial Building
124 Connaught Road Central, Sheung Wan
Tel: 2543 0000

ICAC Regional Office (Hong Kong East)

G/F, Tung Wah Mansion
201 Hennessy Road, Wanchai
Tel: 2519 6555

Kowloon

ICAC Regional Office (Kowloon West)

G/F, Nathan Commercial Building
434-436 Nathan Road, Yau Ma Tei
Tel: 2780 8080

ICAC Regional Office (Kowloon Central)

G/F, 21E Nga Tsin Wai Road

Kowloon City

Tel: 2382 2922

ICAC Regional Office (Kowloon East/Sai Kung)

Shop No.4, G/F, Kai Tin Building

67 Kai Tin Road, Lam Tin

Tel: 2756 3300

New Territories**ICAC Regional Office (New Territories South West)**

G/F, Foo Yue Building

271-275 Castle Peak Road, Tsuen Wan

Tel: 2493 7733

ICAC Regional Office (New Territories North West)

G/F, No. 4-5, North Wing Trend Plaza

Tuen Shun Street, Tuen Mun

Tel: 2459 0459

ICAC Regional Office (New Territories East)

G06-G13, G/F, Shatin Government Offices

1 Sheung Wo Che Road, Shatin

Tel: 2606 1144

支持同意書**Consent of Support**

(填妥後請盡快存案於選舉主任)

(To be deposited with the Returning Officer as soon as it is completed)

適用於個人 For an individual

1. 我同意 _____ [候選人姓名]
 (香港身份證號碼: _____) 可根據《選舉(舞弊及非法行為)條例》(第 554 章)第 27 條的規定, 以我的*個人名義/職銜名義“ _____ ”使用我的姓名或標識或與我有關聯的姓名或標識或我的圖像, 以示支持*他/她在 _____ [日期] 舉行的行政長官選舉中參選, 藉以促使或協助*他/她在選舉中獲選。

I hereby give consent to _____ [Name of candidate]
 (Hong Kong Identity Card Number: _____) to use my name or logo of or associated with me or my pictorial representation in *my personal capacity/in my official capacity as “ _____ ” under section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), as an indication of my support, for the purpose of promoting or procuring *his/her election as the Chief Executive at the election to be held on _____ [Date].

2. #我已在 _____ [組織名稱]
 於 _____ [日期] _____ [時間] 舉行的*管理層會議/大會中, 獲准同意支持上述候選人。
 # I have obtained the approval of _____ [Name of organisation]
 for my giving of the above consent *by the governing body of the organisation / at the general meeting of the organisation held on _____ [Date] at _____ [Time].

適用於組織 For an organisation

3. 我獲 _____ [組織名稱] 授權, 同意 _____ [候選人姓名] (香港身份證號碼: _____) 可根據《選舉(舞弊及非法行為)條例》(第 554 章)第 27 條的規定, 使用該組織的名稱或標識(包括圖片及照片)或與該組織有關的名稱或標識(包括圖片及照片), 以示支持*他/她在 _____ [日期] 舉行的行政長官選舉中參選, 藉以促使或協助*他/她在選舉中獲選。
 I have been authorised by _____ [Name of organisation]
 to give consent to _____ [Name of candidate]
 (Hong Kong Identity Card Number: _____) to use the name or logo of or associated with the organisation under section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), as an indication of its support, for the purpose of promoting or procuring *his/her election as the Chief Executive at the election to be held on _____ [Date].

4. ##有關同意支持上述候選人的決議，已在組織於 _____ [日期]
_____ [時間] 舉行的*管理層會議／大會中通過。

A resolution to give the above consent has been *approved by the governing body of organisation / passed at the general meeting of the organisation held on _____ [Date] at _____ [Time].

個人／組織均須填寫 For completion in both cases

5. *我／本組織從 _____ [候選人姓名]
(香港身份證號碼： _____) 處得悉，根據《行政長官選舉條例》(第 569 章) 第 14 條的規定，*他／她並沒有喪失獲提名為候選人的資格。
*I/The organisation *have/has been given to understand by _____
[name of candidate] (Hong Kong Identity Card Number : _____) that
*he/she is not disqualified from being nominated as a candidate under section 14 of the Chief Executive Election Ordinance (Cap 569).

由候選人簽署 —

SIGNED BY CANDIDATE

簽署： _____ 候選人姓名： _____
Signature Name of Candidate
香港身份證號碼： _____ 日期： _____
Hong Kong Identity Card Number Date

由同意人士／組織簽署 —

SIGNED BY INDIVIDUAL/ORGANISATION

簽署： _____
Signature

姓名： _____
Name

香港身份證號碼： _____
Hong Kong Identity Card Number

個人名義／職銜名義： _____
Capacity

由下列人士見證 —

WITNESSED BY

簽署： _____
Signature

姓名： _____
Name

香港身份證號碼： _____
Hong Kong Identity Card Number

日期： _____
Date

組織蓋章： _____
Chop of organisation

日期： _____
Date

備註
Note

- * 請刪去不適用者
Delete as appropriate.
- # 根據行政長官選舉活動指引第十八章，在某組織擔任職位的人如欲以他本人的職銜支持某候選人，除非經由他所屬組織召開全體大會議決同意，否則應小心處理，避免令人誤會他對該候選人的支持即是整個組織對該候選人的支持。如該人士的職銜有具體提及有關組織的名稱，或有關的選舉廣告將會在該人士服務的樓宇內張貼，是項必須填寫。
According to Chapter 18 of the Guidelines on Election-related Activities in respect of the Chief Executive Elections, in the case where an office-bearer of an organisation wishes to use his office title to support a candidate, he should be careful not to give the impression that it represents the support of the whole organisation except where a decision has been so taken in a general meeting of all the members of the organisation. This part must be completed if the name of the concerned organisation is specifically mentioned in the office bearer's title or the relevant election advertisement is posted in the building in which he is serving.
- ## 根據《選舉(舞弊及非法行為)條例》(第 554 章)第 27(5)條，一個組織所作的書面同意，必須由該組織的管理層批准，或由該組織的成員在全體大會所通過的決議批准。互助委員會如欲以互助委員會的名義支持某候選人，民政事務總署要求該決定必須經由根據《互助委員會規則範本》召開的大會批准。
According to section 27(5) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), a consent of support in writing by an organisation must be approved by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting. In the case where a Mutual Aid Committee ("MAC") wishes to support a candidate in the name of the MAC, the Home Affairs Department requires such a decision be taken in a general meeting convened in accordance with the Model Rules for the MAC.
- 此同意書內提及的選舉日期是指首三輪投票的日期。根據《選舉程序(行政長官選舉)規例》(第 541J 章)第 17(3)條，如須進行第四輪或其後任何一輪投票，便會於翌日進行，如有需要，則日復一日地進行，直至有候選人當選為止。此同意書適用於任何一輪投票。
The date of election referred to in this form is for the first three rounds of voting. In accordance with section 17(3) of the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J), if the voting has to proceed to the fourth or any subsequent round, it will be held on the following day and, if necessary, day after day thereafter until a candidate is returned. This form is applicable to any round of voting.
- (1) 根據《選舉程序(行政長官選舉)規例》(第 541J 章)第 81 條，候選人必須在展示、分發或以其他方式使用任何選舉廣告前，向選舉主任繳存《選舉(舞弊及非法行為)條例》(第 554 章)第 27(1) 或 (2) 條(視屬何情況而定)所提述的同意書的文本(如該選舉廣告屬該條例第 27(1) 或 (2) 條所提述的選舉廣告)。
In accordance with section 81 of the Electoral Procedure (Chief Executive Election) Regulation, (Cap 541J) the candidate must, before he or she displays, distributes or otherwise uses an election advertisement, deposit with the Returning Officer, in case the election advertisement is of a kind referred to in section 27(1) or (2) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), a copy of the consent in writing referred to in section 27(1) or (2), as the case may be, of that Ordinance.
- (2) 你須注意下列有關填報個人資料的說明：—
You may wish to note the following with regard to the personal data supplied in this form: -
- (a) **資料用途**
此表格內的個人及其他有關的資料，會供選舉事務處作選舉有關的用途。支持同意書亦會供公眾查閱。在展示支持同意書前，表格中所有香港身份證號碼將會被遮蓋。
Purpose of Collection
The personal data and other related information supplied in this form will be used by the Registration and Electoral Office and the Returning Officer for election-related purposes. The consent form will also be made available for public inspection and all Hong Kong Identity Card numbers provided in the form will be covered before the form is displayed.

(b) **資料轉介**

有關資料可能會提供給其他獲授權處理該等資料的部門或機構，以用作選舉有關的用途。

Classes of Transferees

The information provided in this form may also be provided to departments/agencies authorised to process the information for election-related purposes.

(c) **索閱個人資料**

任何人有權根據《個人資料（私隱）條例》(第 486 章) 內所載的條款要求索閱及修訂所提供的個人和其他有關資料。

Access to Personal Data

Any person has a right to request access to, and to request the correction of, the personal data which he/she provided in accordance with the provisions of the Personal Data (Privacy) Ordinance (Cap 486).

(d) **查詢**

有關透過本表格收集的個人資料的查詢、包括索閱及修正個人資料，應向總選舉事務主任（地址：香港灣仔港灣道 25 號海港中心 10 樓）提出。

Enquiry

Enquiries concerning the personal data collected by means of this form, including the making of access and corrections, should be addressed to the Chief Electoral Officer at 10th Floor, Harbour Centre, 25 Harbour Road, Wanchai, Hong Kong.

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