

IMPORTANT

1. These Guidelines come into operation on 26 May 2005 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: reoenq@reo.gov.hk and its website at <http://www.reo.gov.hk>.
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, the updated Guidelines will be made available at the website of the Electoral Affairs Commission at <http://www.eac.gov.hk>.

香港灣仔港灣道 25 號
海港中心 10 樓

10/F, Harbour Centre
25 Harbour Road
Wan Chai
Hong Kong

本函檔號 OUR REF.: REO CR/14/19/CE-12

圖文傳真 Fax: 2511 1682

來函檔號 YOUR REF.:

電話 Tel.: 2827 1269

網址 Web Site: <http://www.eac.gov.hk>

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(With Chinese translation)

Message from the Chairman

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

The 2012 Chief Executive (“CE”) Election will be held in early 2012. The Electoral Affairs Commission (“EAC”) is empowered under section 6(1)(a) of the EAC Ordinance (Cap. 541 of the Laws of Hong Kong) to issue guidelines to facilitate the conduct or supervision of an election. These guidelines aim to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities. They also give guidance in layman’s language on compliance with the relevant electoral legislation.

The EAC has at all times made its best endeavours in refining and improving the electoral arrangements for public elections. A new set of proposed guidelines has now been drawn up by the EAC for the coming CE Election and all CE Elections to be held afterwards. The proposed guidelines are prepared basically on the basis of the existing guidelines for the CE Elections (January 2010 edition) with suitable alterations mainly to reflect the legislative amendments recently made to the Chief Executive Election Ordinance (Cap. 569), the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A), the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) and the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) on the voting system and election expense limit for the CE Election, the arrangements for submitting by electronic means the declaration and copy of an election advertisement and the statutory relief mechanism for handling minor errors or omissions in the return and declaration of election expenses and donations, and align, where appropriate, the

proposed guidelines with the guidelines for the District Council Election published in early September 2011. The major changes proposed as compared with the existing guidelines for CE Elections 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 during the period from **11 to 24 October 2011**, both dates inclusive. At this stage the EAC has taken no decision with respect to the issues addressed in the proposed guidelines. The final decision will be taken in the light of the responses received in 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 (eaceng@reo.gov.hk) the latest by **24 October 2011**. **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 **20 October 2011** from **6:30 pm to 8:00 pm** at the **Leighton Hill Community Hall, 133 Wong Nai Chung Road, Happy Valley, 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 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 important that supporting views should also be made known to us, otherwise it may be said that no one supports or agrees with our proposed guidelines.**

Yours faithfully,



(Barnabas W FUNG)

Chairman

Electoral Affairs Commission

(With enclosure)

**Major Changes in the Proposed Guidelines
for 2012 Chief Executive Election
as Compared with the Guidelines Issued in January 2010**

Relevant Chapter/ Appendix	Major changes
Chapter 3 <i>Nomination of candidates</i>	<ul style="list-style-type: none">● updating the minimum number of qualified subscribers for a valid nomination as stipulated in section 16(2) of the Chief Executive Election Ordinance (Cap 569) (“CEEO”) (paras. 3.7 and 3.17).
Chapter 4 <i>The voting system</i>	<ul style="list-style-type: none">● setting out the changes to the voting system for the Chief Executive Election as stipulated in sections 22(3) and 27(2) of the CEEO:<ul style="list-style-type: none">(a) when there are two validly nominated candidates at the close of nominations or two candidates remain after the elimination of all other candidates at the end of all the necessary rounds of voting, a single round of voting must be conducted for them. If a candidate obtains more than 600 valid votes, the candidate is returned at the election. However, if no candidate obtains more than 600 valid votes in that single round of voting, no candidate is returned at the election and the proceedings for the election shall be terminated (paras. 4.3 and 4.4); and(b) when there is only one validly nominated candidate in the election, the candidate shall be returned at the election if the number of “support” votes obtained by him exceeds 600. If the number of support votes obtained by the candidate does not exceed 600, the candidate shall not be returned at the election and the proceedings for the election shall be terminated (paras. 4.7 and 4.8).

Relevant Chapter/ Appendix	Major changes
<p>Chapter 5 <i>Polling and counting arrangements</i></p>	<ul style="list-style-type: none"> ● adding that the use of sound amplifying device within the no canvassing zone for the performance of duties by officers of the Correctional Services Department at dedicated polling station in prisons is allowed as stipulated in section 24 of the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) (“EP (CEE) Reg”) (para. 5.14).
<p>Chapter 8 and Appendix D <i>Election advertisements</i></p>	<ul style="list-style-type: none"> ● setting out the revised election expense limit of \$13,000,000 as specified in section 2 of the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (para. 8.10); ● setting out the arrangements for submitting by electronic means the declaration and copy of an election advertisement (“EA”) to be displayed, distributed or otherwise used by electronic means as specified in section 81 of the EP (CEE) Reg (para. 8.41(a) and Appendix D); ● clarifying that before the display of an EA in the form of a bill or poster, the candidate must deposit with the RO a copy of the permission or other authorisation obtained for the purposes of section 104A of the Public Health and Municipal Services Ordinance (Cap 132) as stipulated in section 81 of the EP (CEE) Reg (para. 8.41(b)); and ● reminding candidates that they should carefully study the requirements governing free postage for EAs and that they should submit their EA specimens to the respective Manager of the designated post offices/delivery offices for approval as early as possible before mass production so as to allow sufficient time for revising the contents of their EA specimens, if necessary (para. 8.74).

Relevant Chapter/ Appendix	Major changes
<p>Chapter 9 <i>Electioneering at the living and working places of electors, premises of organisations to which electors belong and buildings which electors frequent</i></p>	<ul style="list-style-type: none"> ● reminding candidates and their election agents to read carefully the guidance notes on personal data privacy in respect of electioneering activities (prepared by the Office of the Privacy Commissioner for Personal Data at Appendix H to the Guidelines) before they undertake such activities (para. 9.12).
<p>Chapter 11 and Appendix K <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● aligning the guidelines for election broadcasting, media reporting and election forums with those adopted in the Guidelines on Election-related Activities in respect of the District Council Election (“DC Guidelines”) published in September 2011.
<p>Chapter 12 <i>Use of sound amplifying device and vehicles</i></p>	<ul style="list-style-type: none"> ● setting out the Transport Department’s updated requirements for the display of EAs on public light buses and taxis (para. 12.7).
<p>Chapter 15 <i>Exit poll</i></p>	<ul style="list-style-type: none"> ● aligning the guidelines for the conduct, publication and broadcast of exit polls with those adopted in the DC Guidelines.
<p>Chapter 16 <i>Election expenses and donations</i></p>	<ul style="list-style-type: none"> ● reminding candidates that they should give the unspent or unused election donations to charitable institutions or trusts before lodging the return and declaration of election expenses and donations in accordance with section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”) (para. 16.17); and ● setting out the statutory relief mechanism for handling minor errors or omissions in the return and declaration of election expenses and donations as stipulated in section 37A of the ECICO (paras. 16.28 – 16.30).

Relevant Chapter/ Appendix	Major changes
Chapter 17 <i>Corrupt and illegal conduct</i>	<ul style="list-style-type: none"> ● reminding candidates and other persons that any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication (para. 17.8).
Chapter 18 <i>Namedropping</i>	<ul style="list-style-type: none"> ● reminding candidates to observe the relevant data protection principle as set out in the guidance notes at Appendix H before using an image of an identified person for a purpose other than the original purpose of collection (para. 18.11).
Appendix B <i>The 4 Sectors of the Election Committee and Subsectors of Sectors</i>	<ul style="list-style-type: none"> ● updating the number of members to be returned to each sector and subsector of the Election Committee in the fifth term as specified in section 2 of the Schedule to the CEEO.

ABBREVIATIONS

ARO, AROs	Assistant Returning Officer, Assistant Returning Officers
Cap	Chapter of the Laws of Hong Kong
CCS	Commissioner of Correctional Services
CE	Chief Executive
CEEEO	Chief Executive Election Ordinance (Cap 569)
CEO	Chief Electoral Officer
CFA	Court of Final Appeal
CFI	Court of First Instance
CPG	Central People's Government
CPPCC	Chinese People's Political Consultative Conference
CSB	Civil Service Bureau
CSD	Correctional Services Department
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)
FR	final register
HKSAR	Hong Kong Special Administrative Region
HYK	Heung Yee Kuk
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
PD(P)O	Personal Data (Privacy) Ordinance (Cap 486)
POBO	Prevention of Bribery Ordinance (Cap 201)
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
TD	Transport Department
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 (“CPG”). The specific method for selecting the CE is prescribed in Annex I to the Basic Law [s 7 of the CEEO].

1.2 In accordance with Article 46 of the Basic Law, the term of office of the CE of the HKSAR shall be five years, and he may serve for not more than two consecutive terms. When a vacancy arises in the office of the CE other than due to expiry of the term of office, the new CE who is elected to fill the vacancy in a by-election may, if re-elected, only serve for one more term after the expiry of the remainder term. The remainder of the term is regarded as one term.

1.3 The term of office of the CE shall commence on the date on which he assumes office being the date specified for this purpose by the CPG in the instrument of appointment and published by notice in the Gazette. The first term of office of the CE commenced on 1 July 1997 [ss 3 and 4 of the CEEO].

1.4 Article 53 of the Basic Law stipulates that in the event that the office of the CE becomes vacant, a new CE shall be selected within 6 months in accordance with the provisions of Article 45 of the Basic Law. A polling

date will be fixed in accordance with ss 10 and 11 of the Chief Executive Election Ordinance (Cap 569) (“CEEEO”) to elect a CE. If an election for a new (5-year) term CE will be held within 6 months after a vacancy in the office of the CE has arisen, it will not be necessary to hold a by-election [s 6 of the CEEEO].

Governing Legislation

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

1.6 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.

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

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

1.9 These ordinances are complemented by 6 pieces of subsidiary legislation which provide the detailed procedures for the conduct of the CE elections.

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

1.11 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, amongst other things, registration of members of the EC who are to elect the CE.

1.12 The Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap 569B) sets out the procedures for, amongst other things, hearing and ruling by Revising Officers concerning the registration of Members of the EC.

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

1.14 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.

1.15 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

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

1.17 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.

1.18 This set of Guidelines applies to both the CE ordinary election and by-election. It 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

1.19 Any person including candidates and their election agents may make enquiries with the ICAC on the provisions of the ECICO. Candidates

may 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

1.20 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.

1.21 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 will include the name of the candidate or person concerned and, where appropriate, 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, TERM OF OFFICE AND COMPOSITION OF THE ELECTION COMMITTEE

2.1 The EC is responsible for electing the CE [s 7 of the CEEO]. The term of office of the EC is 5 years and will commence on 1 February in the year in which the term of office of the CE is to expire [s 9 of the CEEO]. The composition of the EC is provided in s 2 of the Schedule to the CEEO and is set out in **Appendix B** for easy reference.

PART II : EC SUBSECTOR ELECTIONS

2.2 Before the office of the CE becomes vacant on the expiry of a 5-year term, EC subsector ordinary elections will be held, and nominations will be called for from the religious subsector, to form a new term EC which will then elect the new term CE.

2.3 When a vacancy for the office of the CE arises otherwise than due to expiry of the term of the office, the current term EC will elect a new CE¹. Before a by-election is held to elect a CE, a subsector by-election and/or supplementary nomination will be held to fill any vacancies among the EC members [ss 4 and 5 of the Schedule to the CEEO].

¹ If an election for a new (5-year) term CE will be held within six months after a vacancy in the office of the CE has arisen, it will not be necessary to hold a by-election.

2.4 For details on the compilation of the different types of registers of EC members, please refer to paras. 2.5 to 2.12 of the Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections.

PART III : DISQUALIFICATION OF EC MEMBERS

(a) from making nomination

2.5 An EC member is disqualified from making nomination at the CE election if he:

- (a) has resigned as an EC member (other than an ex-officio member);
- (b) is serving a sentence of imprisonment on the date of nomination;
- (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, to be incapable, by reason of mental incapacity, of managing and administering his property and affairs under the Mental Health Ordinance (Cap 136);
- (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.

[S 16(5) of the CEEO.]

(b) from voting

2.6 An EC member will be eligible to vote at the CE election unless he has become disqualified to do so because he:

- (a) has resigned as an EC member (other than an ex-officio member);
- (b) has ceased to have a substantial connection with the subsector concerned;

- (c) has ceased to be registered or eligible to be registered as an elector for a geographical constituency;
- (d) is found for the time being, to be incapable, by reason of mental incapacity, of managing and administering his property and affairs under the Mental Health Ordinance (Cap 136); or
- (e) is a member of the armed forces of the People's Republic of China or any other country or territory.

[S 26 of the CEEO.]

2.7 For the subsectors of the Chinese People's Political Consultative Conference ("CPPCC"), Heung Yee Kuk ("HYK") and District Councils, EC members representing these subsectors who cease to be members of these bodies will be deemed to have resigned from the EC².

² Unless the cessation of their membership in these bodies is due to the expiry of the term of office in these respective representing bodies and they are members in the immediately following term of office of the bodies concerned.

CHAPTER 3

NOMINATION OF CANDIDATES

PART I : QUALIFICATION 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 40 years of age, and have ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

[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.

Disqualifications

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 officer³;
- (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

³ 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, by reason of mental incapacity, of managing and administering his property and affairs under the Mental Health Ordinance (Cap 136).

[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 (“CFA”), a Justice of Appeal or a judge of the Court of First Instance (“CFI”) 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 Registration and Electoral Office (“REO”).

3.7 The nomination form comprises:

- (a) The Nomination. This must be subscribed to by not less than **150 members of the EC**. An EC member 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 EC members subscribing his nomination form are eligible and have not subscribed another nomination previously. EC members subscribing a nomination should sign the nomination form **personally**.

Please see **Appendix C** on legal provisions against pressuring electors not to nominate a particular candidate.

- (b) The Candidate's Consent to Nomination and Declarations. This must be completed and signed by the candidate. There are the following declarations which must be made before a justice, notary, commissioner or other authorised person:
- (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 candidate'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). Under the EP (CEE) Reg, a person who knowingly or recklessly makes a false or incorrect statement in a material particular or omits a material particular from an election-related document commits an offence and he shall be punishable by a fine and

imprisonment for 6 months with the disqualifying effect as described in paras. 16.43 and 17.33 of these Guidelines [s 84 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 other information required by the RO and the candidate has made the declarations referred to in para. 3.7(b).

PART IV : WITHDRAWAL OF CANDIDATURE

3.15 A candidate may withdraw his candidature 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].

IMPORTANT:

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 V : PUBLICATION OF NOMINATIONS

3.16 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 EC members 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].

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

- (a) the number of qualified subscribers are less than 150 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.

3.18 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 is dead or is disqualified from being elected, the RO must publicly declare that the proceedings for the election are terminated [s 22(1AA) and 22(1) of the CEEO].

PART VI : PUBLICITY

3.19 In a contested election, 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 the **Introduction to Candidates**. The number of each candidate on the ballot paper allocated to him by the drawing of lots will also be shown on the Introduction to Candidates, which will be mailed to electors near the

polling day. The Introduction to Candidates will be published even if there is only one validly nominated candidate at an uncontested election, although no candidate number will be allocated to the candidate. Copies of the Introduction to Candidates will be made available in the Correctional Services Department (“CSD”) and other law enforcement agencies for persons imprisoned or held in custody.

3.20 Candidates are free to make use of the Introduction to Candidates⁴ to promote themselves. Any candidate who so wishes should submit the following to the RO **before the close of nominations**:

- (a) a duly completed grid paper affixing a colour photograph which must be in a specified size and taken within the last 6 months; and
- (b) 2 additional copies of his photograph identical to the one affixed to the grid paper with his name label affixed on the back.

3.21 The contents, nature and presentation of the candidate’s message in the Introduction to Candidates 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, unlawful or contain information not relating to the direct promotion of the candidature of the candidate concerned.

⁴ If a candidate does not submit the grid paper, the Introduction to Candidates will only show the name and candidate number in respect of him, and “Relevant information has not been provided by the candidate” will be printed in the space provided for the election platform.

CHAPTER 4

THE VOTING SYSTEM

4.1 A poll would be held in a contested as well as an uncontested election, and different voting systems will be adopted, as appropriate [ss 23 and 24 of the CEEO]. Details of the 2 different systems are provided in Parts I and II of this chapter.

PART I : CONTESTED ELECTION

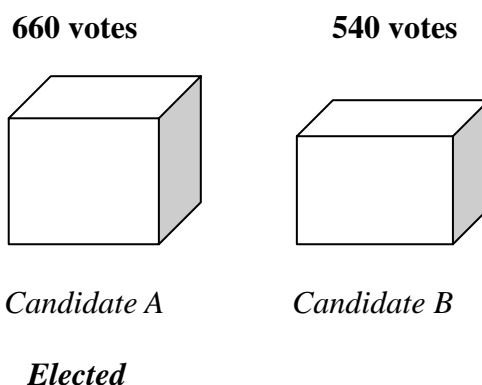
4.2 The voting system to be adopted if there are 2 or more validly nominated candidates contesting in an election is detailed below.

4.3 Each elector can cast 1 vote by marking the candidate of his choice with the chop with a “✓” provided. When there are only 2 validly nominated candidates at the close of nominations or 2 candidates remain after the elimination of all other candidates at the end of all the necessary rounds of voting as described in para. 4.4 below, a single round of voting must be conducted for them. If a candidate obtains more than 600 valid votes in that single round of voting, the candidate is returned at the election. The RO shall as soon as practicable publicly declare him as elected at the election and publish the result of the election in the Gazette. However, if no candidate obtains more than 600 valid votes in that single round of voting, no candidate is returned at the election and the RO must publicly declare that no candidate is returned at the election, publish the declaration and the result of the poll in the Gazette, and terminate the proceedings for the election by a public declaration. There will then be another round of nomination and, if necessary, the electoral process will be repeated until a candidate is returned [ss 22(3), 24, 27(2), 27(2A) and 28(2) of the CEEO].

4.4 When there are 3 or more validly nominated candidates, if a candidate obtains more than 600 valid votes at the first round of voting of the election, he will be elected. Otherwise, all other candidates will be eliminated except those who obtain the highest and the same number of valid votes; or if there is only 1 candidate who obtains the highest number of valid votes, such candidate and those who obtain the next highest and the same number of valid votes. The remaining candidates will proceed to the next round of voting. If there are only 2 remaining candidates, only one single round of voting must be conducted for these 2 candidates, as described in para. 4.3 above. Otherwise, the aforesaid voting and elimination process shall repeat until at the end of any subsequent round of voting, a candidate obtains more than 600 valid votes. In that case, the RO shall as soon as practicable publicly declare the candidate as elected at the election and publish the result of the election in the Gazette. But, where only 2 candidates remain after the elimination of all other candidates at the end of any round of voting, only one single round of voting must be conducted for these 2 candidates, as described in para. 4.3 above. [Ss 24, 27(3) and (4) and 28 of the CEEO.]

4.5 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 – a single round of voting must be conducted for the 2 candidates)



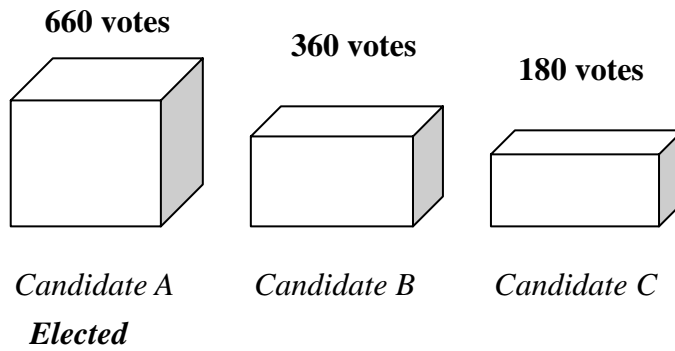
- Candidate A is elected as he has obtained more than 600 votes.

IMPORTANT:

If no candidate obtains more than 600 votes, no candidate will be returned at the election. The RO must terminate the proceedings for the election.

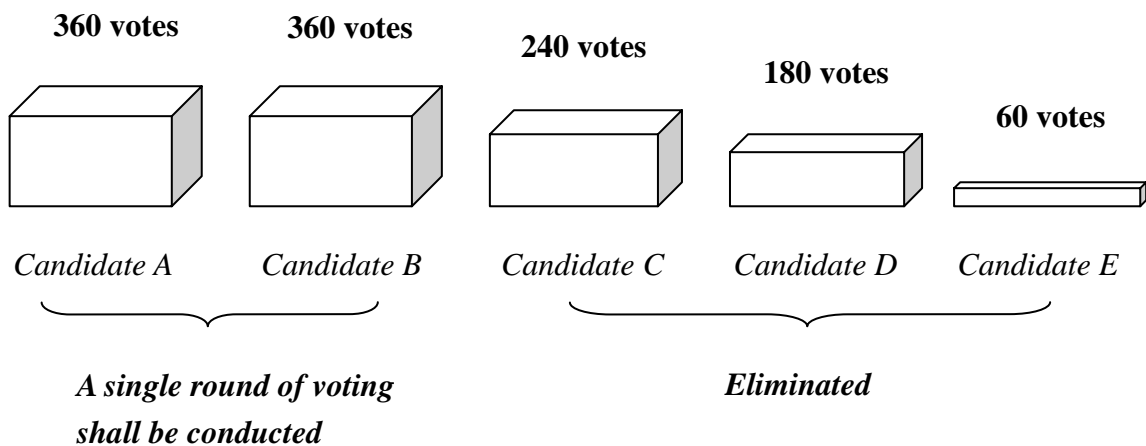
Scenario 2 (where there are 3 or more candidates in the election)

Scenario 2(a)

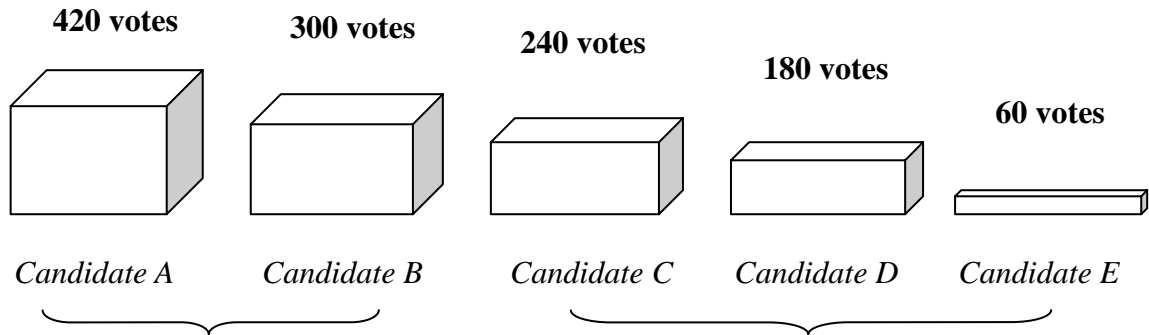


- 1 candidate (Candidate A) has obtained more than 600 votes in the first round of voting.
- Candidate A is elected.

Scenario 2(b)



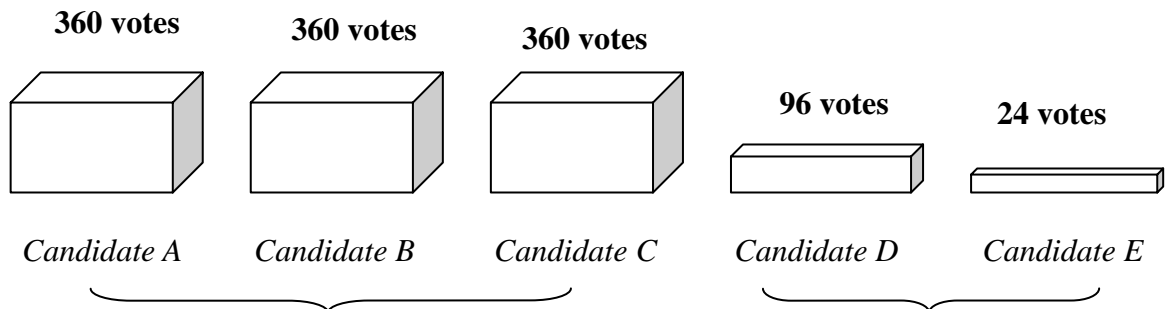
- Only 2 candidates (Candidates A and B) have obtained the highest and the same number of votes cast.
- A single round of voting shall be conducted for Candidates A and B (see scenario 1).

Scenario 2(c)

A single round of voting shall be conducted

Eliminated

- Only 1 candidate (Candidate A) has obtained the highest number of votes cast but he does not obtain more than 600 votes.
- Only 1 candidate (Candidate B) has obtained the next highest number of votes cast.
- A single round of voting shall be conducted for Candidates A and B (see scenario 1).

Scenario 2(d)

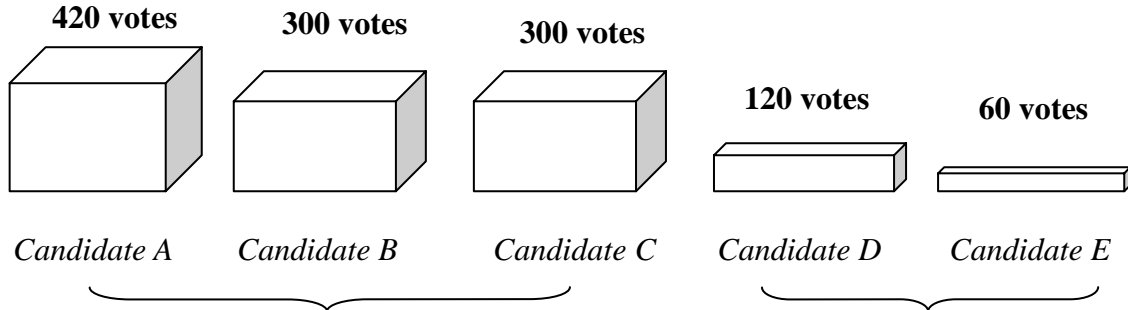
Another round of voting shall be conducted

Eliminated

- 3 candidates (Candidates A, B and C) have obtained the highest and the same number of votes cast.
- As many rounds of voting as may be necessary shall be conducted until (i) one of them (Candidate A, B or C) who has obtained more than 600 votes in any round of voting and is returned (see scenarios 1, 2(a), 2(b) and 2(c)); or (ii) the proceedings for the election are terminated when neither one of the 2 candidates who remain after elimination of the other

candidate obtains more than 600 votes in the required single round of voting (see scenario 1).

Scenario 2(e)



*Another round of voting
shall be conducted*

Eliminated

- Only 1 candidate (Candidate A) has obtained the highest number of votes cast but he does not obtain more than 600 votes.
- 2 candidates (Candidates B and C) have obtained the next highest and the same number of votes cast.
- As many rounds of voting as may be necessary shall be conducted until (i) one of them (Candidate A, B or C) who has obtained more than 600 votes in any round of voting and is returned (see scenarios 1, 2(a), 2(b) and 2(c)); or (ii) the proceedings for the election are terminated when neither one of the 2 candidates who remain after elimination of the other candidate obtains more than 600 votes in the required single round of voting (see scenario 1).

(Note: “vote” and “votes” mentioned in the aforesaid scenarios refer to “valid vote” and “valid votes” respectively.)

PART II : UNCONTESTED ELECTION

4.6 The voting system to be adopted if there is only 1 validly nominated candidate in the election is detailed below.

4.7 Each elector can cast either a “support” vote or a “not support” vote. The candidate shall be returned at the election if the number of “support” votes obtained by him exceeds 600. The RO shall then publicly declare him as elected at the election, and publish the result of the election in the Gazette [ss 23, 26A(1), (2) (3) and 28 of the CEEO].

4.8 If the number of support votes obtained by the candidate does not exceed 600, the candidate shall not be returned at the election. The RO shall publicly declare that no candidate is returned at the election, publish the declaration and the result of the poll in the Gazette, and terminate the proceedings for the election by a public declaration [ss 22(1AB) and 26A(1), (2) and (4) of the CEEO]. There will then be another round of nomination and, if necessary, the electoral process will be repeated until a candidate is returned.

CHAPTER 5

POLLING AND COUNTING ARRANGEMENTS

PART I : THE VENUE

5.1 The Chief Electoral Officer (“CEO”) may designate a place as the main polling station or the counting station, and one or more places as dedicated polling station(s)⁵. Subject to the availability of suitable venues, both the main polling station and the counting station will be set up at the same location, or locations in close proximity to each other, with accessibility to electors with disability [s 18 of the EP (CEE) Reg].

5.2 If both the main polling station and the counting station are set up at the same location, the venue will be partitioned into 2 parts, ie the main polling station and the counting station. Within the counting station, there will be a counting zone, seating areas for the electors, the candidate(s) and his/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 An area outside each 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 or the PRO may also vary the NCZ or the NSZ [see Chapter 14: Prohibition Against Canvassing Activities Outside Polling Station].

⁵ A dedicated polling station means a place situated inside penal institutions or other suitable places at which registered electors, who are imprisoned or held in custody by the law enforcement agencies on the polling day, will be allocated to vote.

PART II : VOTING AND COUNTING

Contested Election

5.4 In a contested election where there is more than one validly nominated candidate, different rounds of voting may need to be held on the polling day, and generally the first round of voting will start at 9 am and close at 11 am (except for dedicated polling stations situated in penal institutions – please see para. 5.5 below). Thereafter the count will start. If none of the candidates obtains more than 600 valid votes and another round of voting has to be held in accordance with the voting system described in Part I of Chapter 4, the new round will start at 2 pm and close at 3 pm. The count will follow thereafter. If again none of the candidates obtains more than 600 valid votes, the third round of voting will be held as required in accordance with the voting system. This round, if required, 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 to be conducted in accordance with the voting system, it will be held on the following day [s 17(3) of the EP (CEE) Reg]. Under the voting system, where only 2 candidates remain and none of them obtains more than 600 valid votes in a single round of voting conducted for them, the election proceedings will be terminated and no further round of voting will be required [s 22(3)(e) of the CEEO]. For details of the voting system, please refer to Part I of Chapter 4.

5.5 Due to security reasons, different polling hours may be appointed for dedicated polling stations situated in penal institutions and there is a need to separate some persons imprisoned or held in custody from others inside the penal institutions. The Commissioner of Correctional Services (“CCS”) will assign a time slot during the polling hours of a dedicated polling station situated in a penal institution to an elector allocated to that polling station to vote, and inform the elector of the time slot assigned. The CCS must assign

time slots so as to give the electors a reasonable opportunity to vote. An elector to whom a time slot is assigned may only cast his vote during that time slot (see para. 5.25 below). [S 17(7) to (11) of the EP (CEE) Reg.]

Uncontested Election

5.6 In an uncontested election where there is only 1 validly nominated candidate, the time for conducting the poll will be published in the gazette notice and in the polling notice sent to electors. The polling arrangements in respect of the dedicated polling station are similar to those for a contested election as set out in para. 5.5 above. For details on the voting system, please refer to Part II of Chapter 4.

Polling Notice

5.7 For both contested and uncontested elections, 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 allocated to him, and the time of the first 3 rounds of voting at a contested election or the time of voting at an uncontested election. 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. To allow electors who will be serving a sentence of imprisonment on the polling day to receive the polling notices as early as possible, the REO will send the polling notice to the prison address as far as practicable [s 19 of the EP (CEE) Reg].

5.8 In both contested and uncontested elections, the RO shall give notice in writing to a candidate or the election agent or any counting agent of the time of counting of votes.

PART III : INSIDE AND OUTSIDE THE POLLING STATION

5.9 The Presiding Officer (“PRO”) will be responsible for maintaining peace and order inside a polling station, the NCZ and the NSZ. At the main polling station, there will be police officers and members of the Civil Aid Service present to provide assistance whenever necessary. For dedicated polling stations, the PRO will be assisted by officers of the CSD or other law enforcement agencies.

5.10 About 15 minutes before the commencement of the poll, the PRO will show the candidate(s), his/their election agent(s) or polling agent(s), if present, the empty ballot boxes before proceeding to lock and seal them. Candidate(s) or his/their agent(s) may observe the locking and sealing of the ballot boxes [s 29 of the EP (CEE) Reg]. For each candidate, only 1 such person may be present to observe the locking and the sealing of the ballot boxes: a candidate, his election agent or his polling agent. For security reasons,

- (a) only a maximum of 2 candidates may be present to observe the locking and the sealing of the ballot boxes at a dedicated polling station situated inside a maximum security prison; and
- (b) a maximum of 2 candidates, election agents or polling agents may be present to observe the locking and the sealing of the ballot boxes at a dedicated polling station situated in a prison other than a maximum security prison.

Admission of candidates, election agents or polling agents to the aforesaid dedicated polling stations to observe the locking and sealing of ballot boxes will be on a **first-come-first-served basis**. [See also Chapter 7 on the procedures for applying for the presence of election agents or polling agents in

dedicated polling stations situated in prisons.]

5.11 The PRO will also inform and show to the candidate(s), his/their election agent(s) and polling agents, if they are present, the number of unissued ballot papers which are in his possession.

5.12 Where circumstances permit, the PRO will arrange a copy of the relevant Introduction to Candidates published by the REO to be displayed outside the main polling station, or if it is a dedicated polling station inside the polling station to facilitate easy reference by electors.

5.13 The CEO will display a map or plan showing the delineation of the polling station outside the main polling station and counting station, or if it is a dedicated polling station inside the polling station [s 18(7) of the EP (CEE) Reg]. 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/exit of a polling station to avoid any obstruction of entry/exit. [See Chapter 14: Prohibition Against Canvassing Activities Outside Polling Station]

5.14 On the polling day, a person must not:

- (a) engage in canvassing for votes (including suggesting not to vote for any candidate in the case of a contested election, or suggesting not to vote in support of the candidate in the case of an uncontested election) in a NCZ;
- (b) use a sound amplifying system or device for any purpose in the NCZ without lawful authority, except for the performance of duties by officers of the CSD on the polling day at the dedicated

polling stations situated in prisons;

- (c) conduct any activity for canvassing for votes, so that the sound of the activity 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.

5.15 If a person contravenes the requirements in para. 5.14 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, or an officer of the CSD or any law enforcement agency if the NCZ or NSZ is determined in relation to a dedicated polling station. The person so removed may not re-enter the relevant zone except with the permission of the RO or PRO.

5.16 A person who violates the provisions in paras. 5.14 and 5.15 commits an offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 3 months [s 82 of the EP (CEE) Reg].

PART IV : ADMISSION TO THE POLLING STATION

5.17 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 CEO;
- (e) the PRO;
- (f) a polling officer;
- (g) a candidate;
- (h) an election agent (this does not apply to dedicated polling stations situated in maximum security prisons);
- (i) a polling agent appointed for the polling station (this does not apply to dedicated polling stations situated in maximum security prisons);
- (j) a public officer on duty at the polling station;
- (k) a police officer and a member of Civil Aid Service on duty at the polling station;

- (l) a child who accompanies an elector to the main 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 main polling station);
- (m) a person authorised by a member of the EAC or the CEO, subject to the conditions as imposed in the authorisation; or
- (n) a person authorised in writing by the RO for liaison purposes.

[S 26 of the EP (CEE) Reg.]

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

5.18 For each candidate, only 1 such person may be present in a dedicated polling station (other than that situated inside a maximum security prison) to observe the poll at any one time: a candidate, his election agent or his polling agent. For security reasons,

- (a) only a maximum of 2 candidates may be present at any one time to observe the poll at a dedicated polling station situated inside a maximum security prison; and
- (b) a maximum of 2 candidates, election agents or polling agents may be admitted to a dedicated polling station situated in a prison other than a maximum security prison at any one time.

Admission to the dedicated polling station is on a **first-come-first served basis**. Observers will have to take turn in case more than two candidates/agents intend

to observe the poll at the same time. The PRO may regulate the number of people entering the dedicated polling stations. [See also Chapter 7 : Appointment and Roles of Election Agent, Election Expense Agents, Polling Agents and Counting Agents.]

5.19 Except for an elector, a police officer, an officer of the CSD, an officer of any law enforcement agency 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

5.20 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 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 [s 34 of the EP (CEE) Reg]. At the time of issuing the ballot paper, the polling staff will also supply an elector with a chop with a “✓” sign.

5.21 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.

5.22 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? (for a contested election)

or

Have you already cast a vote? (for an uncontested election)

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].

5.23 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. If the polling station is a dedicated polling station, the PRO may request the officer of the CSD or the law enforcement agency to remove the person concerned from the polling station and report the case to the police [s 33 of the EP (CEE) Reg].

5.24 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].

5.25 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 [s 35(1) of the EP (CEE) Reg]. For a dedicated polling station

situated in a prison, the elector has to return to cast his vote within the existing or newly assigned time slot [s 35(2A) and (2B) of the EP (CEE) Reg]. 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 at a contested election or the close of poll at an uncontested election, provided that before he left the polling station, his ballot paper has been retrieved by the PRO. For a dedicated polling station situated in a prison, the elector has to return to cast his vote within the existing or newly assigned time slot. Under either of the above circumstances, the following actions must be taken by the PRO and/or the CCS:

- (a) the PRO must keep that ballot paper in his custody and return it, in the presence of a police officer for the main polling station and an officer of the CSD or of the concerned law enforcement agency for a dedicated polling station, to the elector in question when the latter returns before the close of that round of voting at a contested election or the close of poll at an uncontested election to cast his vote. But if at the close of that round of voting at a contested election or the close of poll at an uncontested election, the elector has not returned, the PRO shall endorse the ballot paper with the word “UNUSED” and deal with it accordingly [ss 35 and 39 of the EP (CEE) Reg]; and/or
- (b) the CCS must, as far as practicable, assign to an elector of a dedicated polling station situated in a prison a new time slot during the polling hours appointed for the polling station and notify the elector of the time slot.

5.26 The PRO would need to keep a ballot paper left in the polling station in his custody in the circumstances described in para. 5.25 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. 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.

5.27 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 39 and 50 of the EP (CEE) Reg].

5.28 Upon obtaining his ballot paper, the elector should then proceed to any one of the voting compartments to mark his ballot paper.

5.29 An elector must use the chop supplied to mark his choice of candidate on the ballot paper at a contested election or his choice of “support” or “not support” at an uncontested election. 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.

5.30 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. Such spoiled ballot papers will be endorsed on the front with the word “**SPOILT**” and will be kept by the PRO. The spoiled

ballot papers will not be counted at the counting of the votes.

5.31 An elector may seek help from the polling staff to mark his ballot paper if he finds it necessary (see para. 7.35 of Chapter 7).

5.32 **The ballot is secret. No one can force a person to vote or not to vote for any particular candidate at a contested election [s 13 of the ECICO], or to vote or not to vote in support of the candidate at an uncontested election. Also no one is required to tell which candidate he has voted for or is about to vote for at a contested election, or whether or not he has voted or is about to vote in support of the candidate at an uncontested election.** 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 at a contested election or disclose whether or not he has voted in support of the candidate at an uncontested election commits an offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 6 months [ss 78 and 82 of the EP (CEE) Reg].

5.33 No one shall, at any time, disclose the identity of an elector at a dedicated polling station to protect the elector's privacy and safety. Anyone who makes such disclosure commits an offence punishable by a fine at level 2 (up to \$5,000) and imprisonment up to 6 months [s 70(1)(aa) of the EP (CEE) Reg].

5.34 After casting their votes, electors at the main polling station may proceed to the counting station to observe the count, or leave the venue. In a contested election, electors at the main polling station 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 main polling station should keep a close watch on

such an announcement and return to the main 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.

5.35 An elector, who has cast his vote in a dedicated polling station in the first round of voting, will be informed by the CCS or the head of the law enforcement agency concerned if an additional round of voting is required. The CCS will also assign a time slot to an elector allocated to vote at a dedicated polling station situated in a prison to cast his vote in the next round of voting.

5.36 In a polling station, no person shall:

- (a) engage in canvassing for votes (including suggesting not to vote for any candidate in case of a contested election, or suggesting not to vote in support of the candidate in the case of an uncontested election);
- (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. An

elector must cast his vote without undue delay. If an elector who is allocated to vote at a dedicated polling station fails to cast his vote without undue delay, the RO or the PRO may order him to leave the polling station immediately. If a person fails to leave immediately, he may be removed by:

- (a) a police officer if the polling station is the main polling station; or
- (b) an officer of the CSD or other law enforcement agency if the polling station is a dedicated polling station; or
- (c) any other person authorised in writing by the RO or PRO to remove him.

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].

5.37 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) a public officer, a police officer or a member of the Civil Aid Service on duty at the polling station;
- (f) an officer of the CSD or other law enforcement agency on duty at a dedicated polling station;

- (g) a person authorised in writing by the RO for liaison purposes;
and
- (h) a person authorised in writing by a member of the EAC or the
CEO.

[S 27 of the EP (CEE) Reg.]

5.38 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 RO, ARO, PRO or any polling officer 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 6 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.

5.39 After the close of poll, the PRO will lock the flap on the lid of the ballot boxes and seal it. Candidate(s) and his/their agents can accompany the PRO in the delivery of the ballot boxes from a polling station to the counting station.

PART VI : THE COUNT

5.40 The count will be conducted in the presence of the candidate(s), or his/their election agent(s) or counting agents, if they are present. The ballot

box(es) at the dedicated polling station(s) will be delivered to the counting station under police escort. Such ballot box(es), together with the ballot box(es) at the main polling station, will then be unsealed and opened by the RO, witnessed by all those present in the counting zone. The ballot papers cast at all polling stations will be mixed and the count will be conducted manually by counting staff.

5.41 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) candidate(s), his/their election agent(s) and counting agents;
- (e) an elector;
- (f) a public officer, a police officer or a member 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.

Candidate(s) and his/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.

[Ss 46 and 47 of the EP (CEE) Reg.]

5.42 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.

5.43 The valid ballot papers will be placed in separate plastic and transparent boxes on the table according to the choices marked by the electors on the ballot papers and counted manually. Questionable ballot papers, if any, will be put aside. The RO will then gather together all candidates or their election/counting agents at a contested election, or, the only validly nominated candidate or his election/counting agents at an uncontested election 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/the 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 at a contested election, or valid “support” and “not support” votes cast for the only validly nominated candidate at an uncontested election, as well as invalid ballot papers.

5.44 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 of the CEEEO].

5.45 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.gov.hk>. There will also be press coverage.

5.46 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 during the period commencing from the time at which the counting of the votes is to begin at the zone and ending upon the completion of the counting and re-count, if any, at the zone commits an offence [ss 47(2), 47(2A) and 82(1) of the EP (CEE) Reg].

5.47 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

Invalid Ballot Papers

5.48 A ballot paper is invalid if:

- (a) it is endorsed on the front with the word “TENDERED”;
- (b) it is endorsed on the front with the word “SPOILT”;
- (c) it is endorsed on the front with the word “UNUSED”; or
- (d) it is unmarked.

These ballot papers will be set aside as invalid on the spot. They will not be counted and will not be treated as questionable ballot papers. A candidate, an election agent or a counting agent may inspect these ballot papers but is not entitled to make representations to the RO concerning these ballot papers. [S 50 of the EP (CEE) Reg.]

Questionable Ballot Papers

5.49 Ballot papers with doubtful validity in the following areas are set aside as questionable ballot papers. A questionable ballot paper will be decided as invalid if in the opinion of the RO:

- (a) it has any writing or mark by which the elector can possibly be identified;
- (b) it is substantially mutilated;
- (c) it is not marked in accordance with s 36(1)(b) of the EP (CEE) Reg, ie
 - (i) in the case of a contested election, not marked by giving a single “√” in the circle opposite the name of the candidate of his choice on the ballot paper; or
 - (ii) in the case of an uncontested election, not marked by giving a single “√” in the circle opposite the word “SUPPORT” or “NOT SUPPORT” on the ballot paper; or
- (d) it is void for uncertainty.

[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. [S 51(1), (2) and (3) of the EP (CEE) Reg.]

5.50 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, his election agent or counting agent is allowed to inspect questionable ballot papers so set aside, in the presence of the RO and, in a contested election, other candidates or their election or counting agents who are present. The candidate(s), his/their election agent(s) or counting agent(s) 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.

5.51 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 “不獲接納” on the front of the ballot paper. If a candidate, his election agent or counting agent objects to the rejection, the RO will endorse the words “rejection objected to” and “反對此選票不獲接納” on the front of the ballot paper [s 51(4) of the EP (CEE) Reg].
- (b) If a candidate, his election agent or counting agent objects to the decision of the RO to count a ballot paper, the RO will endorse

the words “acceptance objected to” and “反對此選票獲接納” on the front of the ballot paper [s 51(5)(b) of the EP (CEE) Reg].

PART VIII : DISPOSAL OF DOCUMENTS

5.52 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. Candidate(s) and his/their agents may observe the packaging, if they wish [s 56 of the EP (CEE) Reg].

5.53 The RO will deposit these sealed packets together with the nomination form(s), 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].

5.54 **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:

- (a) the person declared as elected by the RO was not duly elected because:
 - (i) he was not eligible to be nominated as a candidate;
 - (ii) he was disqualified from being nominated as a candidate;
 - (iii) he should have been disqualified from being elected but he was not so disqualified;
 - (iv) he engaged in corrupt conduct or illegal conduct at the election;
 - (v) another person engaged in corrupt conduct or illegal conduct at the election in respect of him in connection with his candidature;
 - (vi) corrupt conduct or illegal conduct was generally prevalent at the election; or

- (vii) material irregularity occurred in relation to the election, the poll at the election or the counting of votes in respect of the election; or
- (b) the only validly nominated candidate was not returned at the election because material irregularity 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 CEE0.]

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

6.2 An election petition:

- (a) may be lodged by a candidate; or
- (b) may be lodged by:
 - (i) a person who was determined to be not validly nominated by the RO;
 - (ii) a person whose nomination was not accepted by the RO; or
 - (iii) a person who was disqualified from being elected after the close of nomination under section 20 of the CEE0,provided that the election petition is supported by at least 10 electors.

[S 33 of the CEE0.]

6.3 An election petition must be lodged with the CFI within 7 working days from the declaration of the election result. Any application for leave to appeal against the decision of the CFI, if any, must be lodged with the CFA within 7 working days after the day on which the relevant judgment of the CFI is handed down, and the applicant shall give the opposite party 3 days notice of his intended application at any time during the period of 7 working days. At the end of the trial of an election petition, the CFI 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 a candidate is duly determined to be not returned at an election and whether the candidate elected 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 CEEO.]

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 for the main polling station, **1** polling agent for each dedicated polling station not situated in a maximum security prison and not more than **2** counting agents [ss 12, 13, 25 and 44 of EP (CEE) Reg].

(For arrangements regarding admission of election agents or polling agents to dedicated polling stations situated in prisons, please refer to paras. 7.12 to 7.14 and paras. 7.21 to 7.24 below.)

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, ie other than for temporary relief purpose, may act as agents or assist in electioneering activities provided that they are not already appointed as PROs, 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. To avoid any unfairness, semblance of unfairness or conflict of interest, civil servants who have extensive contacts with the public are strongly advised not to accept appointment by a candidate to be his agent and/or participate in electioneering activities. Civil servants who 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 or other candidates 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 and in the specified form 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. If the new election agent wishes to observe the

poll at a dedicated polling station situated in a prison (other than a maximum security prison), he is required to follow the arrangements set out in paras. 7.12 to 7.14 below. [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 (such as names and addresses) to every other candidate (including a person who is being or has been nominated to stand for the election) [s 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 the **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, including the making of declaration accompanying the nomination, and the signing of the nomination form as the candidate being nominated;
- (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;
- (f) to revoke the appointment of an election agent or election expense agent; and
- (g) to be present in a dedicated polling station situated in a maximum security prison.

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

IMPORTANT :

An election agent is, along with the candidate, responsible for the management of the election 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, in particular, the ECICO, and may 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. If so authorised, the election agent becomes also an election expense agent. [See Part VI of this Chapter.]

7.12 The candidate(s) and his/their election agent(s) may 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]. Due to security reasons, only candidates may enter dedicated polling stations situated in maximum security prisons to observe the poll. An election agent, who wishes to observe the poll at a dedicated polling station situated in a prison other than a maximum security prison, must lodge an

application in the specified form with the CEO at least 1 week before the polling day. The election agent may not be present at that dedicated polling station unless the CCS has given consent to his presence. If the CCS refuses to give consent to the application lodged, he will notify the candidate or his election agent as soon as practicable. [S 12(3) and (3C) of the EP (CEE) Reg.]

7.13 The CCS may, on an application lodged during the week before the polling day, give consent if he is satisfied that a person imprisoned or held in custody by the CSD, who is entitled to vote at a dedicated polling station concerned, is admitted and transferred to the prison concerned during that week and the application is lodged without undue delay after the admission or transfer. The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual prisons every working day starting from three weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference. [S 12 (3B) of the EP (CEE) Reg.]

7.14 No election agent may be present at a dedicated polling station situated in a prison if a polling agent has already been appointed by the same candidate for that polling station [s 12 (3A) of the EP (CEE) Reg].

PART VI : ELECTION EXPENSE AGENT

Appointment

7.15 The appointment shall be in writing on a specified form and state the name, identity document number 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].

7.16 The appointment is not effective until it has been received by the RO or the CEO, as the case may be. Before the notice of appointment is received, no election expenses should be incurred by a person purported to be appointed in the notice of appointment as an election expense agent. 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]. The expenses so incurred may also be counted as the candidate's election expenses.

Revocation

7.17 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 and in the specified form 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

7.18 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

7.19 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 invoices and receipts issued by recipients of the payments not later than 30 days after the publication in the Gazette 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 in which each item of expenditure of \$100 or above has to be supported by an invoice and a receipt. 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 copy of the receipt issued to a donor (in specified form signed by the donor). Without such statements, invoices and receipts issued by recipients of the payments 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 of Election Expense Agents

7.20 The RO will make available for public inspection all notices of appointment of election expense agents 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 maximum amount of election expenses that could be incurred by the election expense agents on behalf of the candidates [s 14(9) of the EP (CEE) Reg].

PART VII : POLLING AGENT

Appointment

7.21 A candidate may appoint **not more than 3 polling agents** for the main polling station and **1** polling agent for a dedicated polling station situated in a prison subject to the consent of the CCS. No polling agent may be appointed if the CCS has given consent to the presence of the election agent of that candidate in that polling station. No polling agent may be appointed for a dedicated polling station situated at a maximum security prison. [S 25(1) and (1A) of the EP (CEE) Reg.]

7.22 The appointment of a polling agent for the main polling station or a dedicated polling station not situated in a prison 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 at least **7 days** 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].

7.23 For the appointment of a polling agent for a dedicated polling station situated in a prison other than a maximum security prison, the candidate must lodge an application in a specified form with the CEO at least one week before the polling day. The appointment will not be effective unless the CCS consents to the appointment. If the CCS refuses to give consent to the application lodged, he will notify the candidate or his election agent as soon as practicable. [S 25(4A) and (4C) of the EP (CEE) Reg.]

7.24 The CCS may, on an application lodged during the week before the polling day, give consent if he is satisfied that a person imprisoned or held in custody by the CSD, who is entitled to vote at a polling station concerned, is admitted and transferred to the prison concerned during that week and that the application is lodged without undue delay after the admission or transfer. The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual prisons on every working day starting from 3 weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference. [S 25(4B) of the EP (CEE) Reg.]

Revocation

7.25 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 other than a PRO of a dedicated polling station situated in a prison [s 25(6) and (6A) 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 other than a PRO of a dedicated polling station situated in a prison, as the case may require [s 25(9) of the EP (CEE)

Reg]. For the revocation of a polling agent appointed for a dedicated polling station situated in a prison, the candidate must give a notice in the specified form to the CEO. If a replacement polling agent is appointed and he wishes to observe the poll at a dedicated polling station in a prison (other than a maximum security prison), he is required to follow the arrangements set out in paras. 7.21 to 7.24 above.

Role of Polling Agents

7.26 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

7.27 The polling agent(s) appointed for a polling station 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. The polling agents appointed for the main polling station may remain inside the polling station even when the candidate they represent or his election agent is present. Where a candidate is present in a dedicated polling station (other than that situated in a maximum security prison), the election agent or the polling agent of that candidate appointed for that dedicated polling station will not be allowed to be present at the same time within the polling station [s 26(1A) and (1B) of the EP (CEE) Reg]. [See also Part IV of Chapter 5 regarding the admission of candidates, election agents and polling agents to the polling station.]

7.28 Before entering a polling station, every person, other than an elector or a police officer, an officer of the CSD, an officer of a law enforcement agency 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 at a contested election or whether or not an elector has voted in support of the candidate at an uncontested election.

7.29 On attending the polling station for which he has been appointed, a polling agent shall report to the PRO and produce his identity card and the Declaration of Secrecy completed by him for inspection.

7.30 The following will occur before, during and after the poll on the polling day:

(a) Before

- (i) About 15 minutes before the commencement of the poll, the PRO will inform the candidate(s) or his/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/the 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 [s 39 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 may ask the PRO to exchange it for another ballot paper. Such spoiled ballot papers will be endorsed on the front with the word “**SPOILT**” and will be kept by the PRO. The spoiled 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/the 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 spoiled ballot papers.

- (ii) The candidate(s) or his/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) The candidate(s) and his/their agents who do not accompany the PRO in the delivery must then leave the polling station.

7.31 Generally speaking, a polling agent may observe all proceedings in the polling station for which he has been appointed and record his observations but shall not do anything that may interfere with the conduct of the poll. 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. The candidate(s) is/are advised to keep a list of his/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? (for a contested election)
- or
- Have you already cast a vote? (for an uncontested election)

NOTE :

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].

7.32 Inside polling station, 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, any Assistant PRO or any polling officer has given direction to him not to do so, or interfere with or attempt to interfere with any ballot boxes, ballot papers, the marked copy of 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; and
- (f) use a mobile telephone or any telephone or paging machine or any other form of electronic communication device if the RO, the ARO, the PRO, the Deputy PRO, any Assistant PRO or any polling officer has given direction to him not to do so.

7.33 A polling agent must not misconduct himself in or in the vicinity of a polling station or fail to obey any lawful direction of the RO or the PRO; otherwise he commits an offence punishable with a fine and imprisonment and may be ordered by such officer to leave the area. If he fails to leave immediately, he may be removed by:

- (a) a police officer if the polling station is not a dedicated polling station; or
- (b) an officer of the CSD or a law enforcement agency if the polling station is a dedicated polling station; or
- (c) any other person authorised in writing by the RO or the PRO to remove him.

The person so removed may not re-enter the polling station during that day except with the permission of the RO or the PRO. [Ss 27 and 82 of the EP (CEE) Reg.]

Other Useful Information for Polling Agents

7.34 Persons who may be admitted to a polling station are listed in para. 5.17 of Chapter 5. Most of the persons admitted to a polling station will be wearing identifications (eg badges). The candidate(s), his/their election agent(s) 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.

7.35 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 candidate(s) or his/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.

7.36 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]. The template contains the following features:

- (a) the template is of the same width and length as the ballot paper;
- (b) the template contains embossed numbers or numbers in braille starting with the first numeral in a sequence assigned to the candidates on the top followed downwards by other numerals in that sequence, and on the right hand side against each of the number is a round hole;
- (c) the **left hand top corner** of the ballot paper and the template is cut so as to enable the elector to place the template on top of the face of the ballot paper in the proper direction; and
- (d) when the template is placed properly on the ballot paper, each embossed or brailled number corresponds with the candidate number; and each of the holes on the template corresponds with the circle on the ballot paper against the candidate number. The

number of candidates equals the number of holes under which there is ballot paper.

The choice of candidate is made by the visually impaired elector by pressing the chop with a “✓” sign provided on the circle (through the holes of the templates) against the candidate’s number.

7.37 Persons who may speak to or communicate with electors within the polling station are listed in para. 5.37 of Chapter 5. No person may canvass or display any election propaganda material relating to any candidate or the election within a polling station. The candidate(s) and his/their agents should not bring electioneering literature into the polling station or leave them there and should remove any promotional badges, emblems, clothing or head-dress 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. However, an officer of the CSD may on the polling day use a sound amplifying system or device in the NCZ of a dedicated polling station situated in a prison for the performance of his/her duties [s 24(2)(b) and (3A) of the EP (CEE) Reg]. 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 Parts I to V of Chapter 5 on all matters relating to polling and in particular, paras. 5.36 to 5.38 of Chapter 5 for other activities that are prohibited, and the consequences of conducting such activities in a polling station.

7.38 **The ballot is secret.** No one can force a person to vote or not to vote for any particular candidate at a contested election [s 13 of the ECICO] or to vote or not to vote in support of the candidate in the case of an uncontested election. Also, no one is required to tell which candidate he has voted for or is about to vote for at a contested election or whether or not he has voted or is about to vote in support of the candidate at an uncontested election. 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 at a contested election or disclose whether or not he has voted in support of the candidate at an uncontested election commits an offence [ss 78 and 82 of the EP (CEE) Reg].

7.39 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 of these Guidelines.

PART VIII : COUNTING AGENT

Appointment

7.40 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 **7 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 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

7.41 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

7.42 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

7.43 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 and, in particular, not to divulge which elector has voted for which candidate at a contested election or whether or not an elector has voted in support of the candidate at an uncontested election.

7.44 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.

7.45 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; and
- (d) observe, where he wishes, the packing of ballot papers by the Counting Officers and the RO at the conclusion of the count.

7.46 A counting agent **MUST NOT**:

- (a) handle, separate or arrange ballot papers; and
- (b) misconduct himself in the counting station, or fail to comply with a lawful direction of the RO; otherwise he commits an offence punishable with a fine and imprisonment and may be ordered by the RO to leave the counting station immediately. 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 to remove him. The person so removed may not re-enter the counting station during

that day except with the permission of the RO, as the case may be.
[Ss 47 and 82 of the EP (CEE) Reg.]

7.47 Persons who may enter or stay in the counting station are listed in para. 5.41 of Chapter 5. Counting agents should read Part VI of Chapter 5 on all matters relating to counting of votes, and in particular, para. 5.47 of Chapter 5 for activities that are prohibited, and the consequences of conducting 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 it is 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, roll-up 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, facsimile transmissions, balloons, 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 its 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 meals, 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 HYK; 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 their 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. At a contested 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 \$13,000,000 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 2 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 Designation of designated spots for the use of candidates to display their election advertisements will be made 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 may designate spots on such allocated land 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 **8 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(1) of the Public Health and Municipal Services Ordinance (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 9: Electioneering at the Living and Working Places of Electors, Premises of Organisations to which Electors belong and Buildings which Electors Frequent of the Guidelines].

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.] Any election advertisements displayed by the candidates on Government land/property other than designated spots are unauthorised and will be removed, save those election advertisements displayed in connection with electioneering activities conducted on Government land/property with approval by the authorities concerned. A candidate will be provided with a list of the designated spots allocated to him, together with a set of standardised map or 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(1) of the Public Health and Municipal Services Ordinance (Cap 132) and s 4 of the Land (Miscellaneous Provisions) Ordinance (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 [s 104A(1) of the Public Health and Municipal Services Ordinance (Cap 132)]. 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 the Public Health and Municipal Services Ordinance (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(1G) and (1H) 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 the candidate(s) concerned asking him/them to remove all of his/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 candidate(s) fail to remove the election advertisements as requested by the RO, the RO may issue a warning to the candidate(s) to remove the offending election advertisements immediately. If the candidate(s) fail to do so, the EAC may issue a censure or reprimand. The RO will provide the candidate with 1 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 designated spots on or over flyovers, bridges including footbridges, central

dividers of roads, 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 form 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** within the nomination period.

8.25 Designated spots are allocated by agreement of the representatives of candidate/candidate(s) or by the drawing of lots. After allocation of the spots and the necessary authorisations have been obtained from the relevant authorities [s 104A(1) of the Public Health and Municipal Services Ordinance (Cap 132) and s 4 of the Land (Miscellaneous Provisions) Ordinance (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, distribution or otherwise use of any election advertisement** [s 81(1G) and (1H) of the EP (CEE) Reg].

8.27 Designated spots allocated are not transferable. Nor are they exchangeable with other spots. At a contested election, where a candidate no longer wishes to use one or more of the designated spots allocated to him, he should inform the RO in writing within 1 week after the allocation of those spots. 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. At a contested election, 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 as well as the estimated value of the old publicity boards will be counted towards the candidate's election expenses.

Size

8.29 As a general rule, election advertisements displayed at railings and fences should not exceed 1 metre high and 2.5 metres long. Before displaying election advertisements, candidates are reminded to ensure that the election advertisements 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.

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 irremovable 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 the publication in the Gazette 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 or sent to EC members through the free postage service [see Part IX] or transmitted by

electronic means (eg facsimile, electronic mail, computer network or electronic display boards), and balloons, badges, carrier bags, clothing and head-dress, 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 displayed, distributed or otherwise used and **the date of printing/publication** [s 81(1) and (1B) of the EP (CEE) Reg and s 34 of the ECICO]. 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(1G) 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.

Submission

8.41 **Before display, distribution or otherwise use of any election advertisement**, a candidate must submit the declaration referred to in para. 8.39 above and copies of the election advertisements declared therein to the RO (or with the CEO if the RO has not yet been appointed) in the manner as stipulated below:

- (a) in respect of election advertisements
 - (i) for all printed advertisements, to deposit with the RO the declaration and 2 copies each of the advertisements in original colours 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) for election advertisements recorded in video/audio tapes or discs or diskettes, to deposit with the RO the declaration and 2 identical copies each of the tapes/discs/diskettes;
 - (iii) for any electioneering message sent by electronic means, to either submit to the RO the declaration and an electronic copy each of the messages through an electronic means in accordance with the procedures set out in **Appendix D** and subject to the size limit stipulated therein; or deposit with the RO the declaration and 2 identical copies of a CD-ROM or DVD-ROM each containing the electronic copies of the messages; or deposit with the RO the declaration and 2 hard copies each of the messages.

For the aforesaid advertisements sent by electronic means which are displayed or distributed through a website, the candidate is required to submit the declaration and a copy each of the modified webpages when the contents of the relevant websites are changed or updated. Where it is not practicable to submit such advertisements to the RO before they are displayed, distributed or otherwise used (such as when the messages are sent through social networking or communication websites on the Internet like Twitter, Facebook, blogs etc. and the exchanges are of an interactive and spontaneous nature), to deposit with the RO the declaration and an electronic copy or 2 hard copies each of the advertisements **by the end of the first working day** following the day on which the advertisements are displayed, distributed or otherwise used; and

- (iv) for election advertisements that cannot be practically or conveniently photocopied, to submit to the RO the declaration together with either 2 identical postcard sized colour photographs of the advertisement; or a digital image of the advertisement in accordance with the procedures set out in **Appendix D** and subject to the size limit stipulated therein.

[S 81(1A), (1B), (1C), (1D), (1E) and (1F) of the EP (CEE) Reg.]

For the avoidance of doubt, for printed election advertisements, by depositing 2 copies with the RO prior to the display, distribution or otherwise use of such election advertisements as stated above, the candidate would have complied with **both** the requirement in s 81(1B), (1C), (1D), (1E) and (1F) of the EP (CEE) Reg (which requires prior deposit) and that in s 34(4) of the ECICO (which requires deposit not later than 7 days after publication). Details of the relevant section of the

ECICO and the reasons for the two different requirements under the two legislation are provided in paras. 17.13 to 17.14 of Chapter 17.

- (b) in respect of permissions or authorisations for display of election advertisement in the form of a bill or poster, to submit to the RO a copy each of all permissions or authorisations for display given or obtained for the purposes of s 104A(1) of the Public Health and Municipal Services Ordinance (Cap 132) [s 81(1G) of EP (CEE) Reg].
- (c) in respect of consent of support referred to in s 27(1) or (2) of the ECICO, to submit to the RO a copy each of all consents of support in the form at **Appendix P**.

8.42 If a candidate has difficulty in depositing with the RO an original copy of a declaration and 2 copies of an election advertisement in para. 8.41(a)(i) above before its display, distribution or otherwise use, he may first send to the RO by fax the declaration together with a copy of each election advertisement or by e-mail with an image or digital photograph of each election advertisement. The candidate should ensure that any submissions sent by fax or e-mail should reach the RO properly. The candidate must, within 24 hours during weekdays (ie Monday to Friday) or within 48 hours during weekends (ie Saturday to Sunday) after sending the fax or e-mail, submit to the RO the original copy of the declaration form and 2 copies of each such election advertisement.

8.43 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as election advertisements unless copies of the speech are provided to the audience or media. If the candidate would like to create certain impact by talking first before providing copies of the speech to the audience or media, he could, after delivering the speech, send a copy of the speech, together with the declaration, to the RO by fax or e-mail prior to distributing them to the audience or media. The candidate should ensure proper

submissions by fax and e-mail to the RO. The candidate must submit to the RO the original copy of the declaration form and 2 copies of each speech within 24 hours during weekdays (ie Monday to Friday) or within 48 hours during weekends (ie Saturday to Sunday) after sending the fax or e-mail. Since copies of the speeches distributed to the audience in the circumstances above-stated serve to promote the candidate's election, they are regarded as printed election advertisements. The candidates concerned are also required to comply with s 34 of the ECICO in publishing the speech and the provisions on serial numbering in paras. 8.37 and 8.38.

8.44 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 declaration 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.

8.45 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.

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

8.47 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 MATERIALS

Printing Details

8.48 S 34 of the ECICO requires all printed election advertisements, with the exception of those printed in a registered local newspaper, 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

8.49 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

8.50 A candidate who has inadvertently omitted the printing details from his 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

8.51 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 81(1), (1B), (1D), (1E), (1F) and (1G) of the EP (CEE) Reg is punishable with a fine at level 2 (up to \$5,000) and imprisonment for up to 6 months [s 82(2) of the EP (CEE) Reg].

8.52 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. At a contested election, candidates and their supporters should report any non-compliance to the RO and should not take removal action themselves.

8.53 Any unauthorised or offending election advertisements displayed may be seized, disposed of, destroyed, covered, or obliterated by the RO or any person authorised by him 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 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 (Cap 132) or the Housing Ordinance (Cap 283), as the case may be, and the procedures of the relevant authority [s 104C of the Public Health and Municipal Services Ordinance (Cap 132) and s 24 of the Housing Ordinance (Cap 283)].

8.54 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.

8.55 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

8.56 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 office-bearer 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.

8.57 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].

8.58 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.

8.59 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

8.60 A candidate who is declared to have been 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 (Cap 98A)].

8.61 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.

8.62 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 postage-free mail items to EC members in bulk is liable for payment of postage for all items in that bulk if any item in the bulk does not meet requirement (a), (b), (c) or (d) above.

Postal Requirements Stipulated by the Post Office

Make-up

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

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

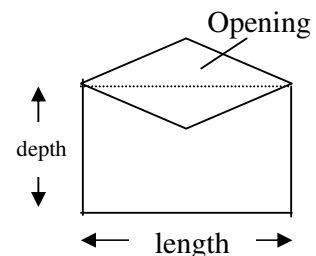
8.65 When a wrapper is used, it must extend over the full length of the item which it encloses. Envelopes must not be fastened with staples or with paper fasteners with sharp edges or points, but they may be closed by means of an adhesive flap or tape.

8.66 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 6.3 of the Post Office Guide):

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

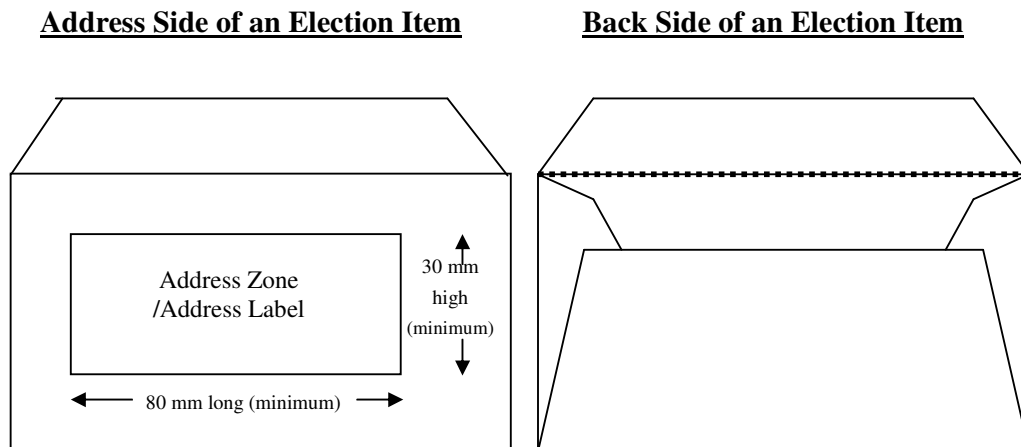
Not over 100 mm in depth - opening not over 140 mm in length

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



8.67 Folders of A4 size with openings should be closed by means of adhesive flap or tape so as to avoid entrapping smaller letters. All open edges must not be longer than 90 mm in width. Otherwise, adhesive tapes should be applied to the midpoints of the open edges to reduce the width. For details, please refer to the illustration in **Appendix E**.

8.68 The characters “選舉郵件” or “選舉廣告” or words “Election Mail” or “Election Advertisement” must be printed on the address (front) side of the election item, or the address side of the folder (unenvveloped mail). The layout of election items is as follows:



Addressing

8.69 To avoid delay or misdelivery, the full postal address should be typed or legibly written on the front of the envelope in 4 rows as follows:

Name of addressee

Floor and flat number and name of building

Street number, name of street

Name of district

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

8.71 The name of the candidate and other propaganda slogans, including photographs, should appear on the back or the front (address) side of the item. An address zone of at least 80 mm long and 30 mm high, preferably at the right-hand half or at the centre of the front (address) side for the address of an elector, should be reserved exclusively for the address. If an adhesive address label is used, it should not be less than 80 mm long and 30 mm high. The address label should only contain the name and address of elector(s) and be affixed to the address zone. The whole address zone and address label should be free of advertisement and should appear on the front side of the item. The address zone and address label should be in white background colour while the characters of the postal address should be in black. [Please refer to para. 8.68 for better illustration.]

8.72 No postage-free election advertisement bearing an address outside Hong Kong will be accepted. Specifically, **only 1 address of elector(s) should be shown on the postage-free election mail.**

Posting Arrangements

8.73 In order to allow adequate time for the Post Office to process the election mail during the election period, candidates are advised to make their postage-free election advertisement postings **before the posting deadline as designated by the Post Office.** Candidates and their agents are therefore **reminded that postings made after the posting deadline may fail to reach the addressees before the polling day.**

8.74 **Candidates should apply to the Post Office for approval of their election advertisement specimens for free postage. They should carefully study the requirements governing free postage for election advertisements before deciding on the contents of their election advertisements and seek advice from the Post Office relating to postal requirements and the REO on other aspects as appropriate if in doubt. Candidates should make every effort to submit their election advertisement specimens to the Post Office for approval as early as possible before mass production of their election advertisements so as to allow sufficient time for revising the contents of their election advertisement specimens, if necessary.**

8.75 Candidates should submit 3 unsealed specimens of their election advertisements, together with a Notice of Posting of Election Mail in duplicate (which will be provided by the REO at the time of candidates submitting their nominations) to the Manager(s) of the designated post offices/delivery offices for approval of their election advertisement specimens. **At least 1 clear working day's notice** (excluding Saturday) must be given to the Manager(s) of the designated post office/delivery office before the postings are made.

8.76 Candidates should post their postage-free mail at the respective post offices/delivery offices designated by the Post Office for the election concerned.

8.77 The postings should be made up in bundles of 50 or 100 each for easy counting. All election mails should face the same direction.

8.78 With each posting, the candidate or his representative must present a signed declaration (which will be given to a candidate by the REO upon his submission of nomination) **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 his postage-free mail;
- (c) declaring that each packet contains materials relating to the candidature of the candidate only at the election; is identical to the unsealed specimens 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 mails 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 postage-free mail items to EC members in bulk is liable for payment of postage for all the items in that bulk if the declaration made by him or his representative is false in any particular.

8.79 If a candidate makes posting in more than 1 batch, the same declaration form should be presented at the same post office/delivery office on each occasion.

8.80 Government reserves the right to charge a candidate postage where any of the requirements under s 80(3) of the EP (CEE) Reg is not met or the free postage arrangements are abused in any way. 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 CEO. The EAC may also issue public statements in such manner as it deems fit to denounce any abuse of the free postage arrangements.

8.81 **The postal requirements stated in the above guidelines (paras. 8.63 to 8.80) are quoted for general reference only. Candidates should comply with the latest requirements issued by the Post Office at the time of the election concerned.**

Enquiries

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

Manager (Retail Business Support)
1/F, 650 Cheung Sha Wan Road,
Kowloon

Telephone : 2921 2305 / 2921 2190
Fax : 2868 1442

PART X : ELECTION ADVERTISEMENTS FOR REGISTERED ELECTORS IN THE CUSTODY OF CSD AND OTHER LAW ENFORCEMENT AGENCIES

8.83 Candidates may send election advertisements to registered electors in the custody of the CSD and other law enforcement agencies according to their registered address or correspondence address (if any). For security reasons, the CSD has laid down a set of guidelines for sending election advertisements to registered electors in its custody at **Appendix Q**. Candidates should adhere to these guidelines.

8.84 Candidates may note that persons imprisoned or held in custody by the law enforcement agencies who are electors may access election-related information through the mass media in accordance with the existing policies of the law enforcement agencies on access to the mass media.

CHAPTER 9

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

PART I : GENERAL

9.1 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 F** gives some kind of reference as to what activity is to be regarded as an electioneering activity. This chapter explains the general guidelines to be observed by candidates in conducting electioneering activities, 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.

9.2 Candidates are reminded that different organisations may have their own guidelines to allow or disallow the conduct of electioneering activities on the premises under their management. To ensure the smooth conduct of electioneering activities in public or private places, it is always desirable for candidates to consult the relevant authorities or management in advance and to obtain permission from them for the conduct of electioneering activities in the places within their jurisdiction, if required.

9.3 The general guidelines to be observed for conducting electioneering activities at the living and working places of electors, premises of organisations to which electors belong and buildings which electors frequent are set out in Part II below. The specific guidelines to be observed for conducting electioneering activities in the premises managed by the Housing Department and the Hong Kong Housing Society are set out in **Appendix G**.

9.4 For the purpose of ensuring fair treatment and equal opportunity of access to all candidates in conducting electioneering activities and to avoid causing undue disturbance to the public, Part III below provides the owners/management of premises and organisations with some guidelines in handling applications for conducting electioneering activities in the premises under their control.

PART II : GUIDELINES TO BE OBSERVED BY CANDIDATES IN THE CONDUCT OF ELECTIONEERING ACTIVITIES

Visits to Living and Working Places of Electors

9.5 Candidates should note that electors have the right to allow or deny access by anyone, including the candidates, to their own 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.

9.6 However, access to a private office may require the approval of the management of the office building or the companies which employ the electors, and such management when making a decision should have due regard to the fair and equal treatment principle mentioned in Part III below. In conducting electioneering activities at the common parts of the living or working places of electors, candidates should observe the general guidelines set out in paras. 9.9 to 9.15 below.

9.7 Any government offices, which are working places of electors, 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 treatment principle mentioned in Part III below.

9.8 Due to security reasons, arrangements will not be made to facilitate in-person canvassing activities in a prison or the premises of a law enforcement agency. A visitor, who visits a prison or the premises of a law enforcement agency for a business or official purpose, is not allowed to canvass for votes. This is to ensure that such a visitor will not have an advantage over other persons who cannot make the visit. A person, who canvasses for votes during the aforesaid visit, commits an offence punishable with a fine at level 2 (up to \$5,000) and imprisonment for up to 3 months [s 67A of the EP (CEE) Reg].

Respect for the Decision and Privacy

9.9 After a candidate has been notified of the decision relating to electioneering activities, 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.

9.10 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. If the candidate concerned acts against the 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 candidate 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 in the first instance and then to the EAC or its Complaints Committee which may publish a reprimand or censure against the candidate concerned.

9.11 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.

9.12 **Privacy of the electors should be respected.** Candidates and their election agents should read carefully the guidance notes on personal data privacy in respect of electioneering activities at **Appendix H**, prepared by the Office of the Privacy Commissioner for Personal Data, before they undertake such activities. It serves as a general reference on compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) ("PD(P)O") in relation to electioneering activities that may involve the collection and use of personal data of an individual. Candidates are supplied by the REO with the FR of EC Members which contains the name and residential address of the electors,

but not their telephone numbers. Some members of the public do not like or detest being called over the **telephone**, the **entrance intercom system**, and some do not like their names being called out aloud. Many electors consider canvassing messages sent to them through **short message service (SMS)** annoying. Their disapproval may be reflected in the electors' voting preference. It is therefore unwise to telephone or send messages by SMS to electors who find such approaches objectionable or to act in any other way that may antagonise them. As a matter of good practice, candidates and their supporters should maintain a list of electors that they know finding such electioneering telephone calls or messages or visits objectionable and avoid approaching these electors again. On the other hand, electors who receive objectionable telephone calls or messages can just disconnect them. If the caller or sender does not desist from calling or sending messages and causes a nuisance, the elector should report the matter as soon as possible to the **Police** who may take action against the caller or sender.

9.13 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 voting preference. [See also Chapter 12 on "Use of Sound Amplifying Device and Vehicles".]

9.14 Canvassing through the use of the **entrance intercom system** in a building is prohibited unless it is expressly allowed by the building management.

Identification of Canvassers

9.15 For security reasons and for prevention of abuse, the EAC advises that each candidate should provide some forms 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 III : GUIDELINES TO BE OBSERVED BY OWNERS, MANAGEMENT AND ORGANISATIONS FOR HANDLING APPLICATIONS FOR CONDUCT OF ELECTIONEERING ACTIVITIES ON THE PREMISES WITHIN THEIR JURISDICTION

Electioneering at Premises of Organisations to which Electors Belong and Buildings which Electors Frequent

9.16 The premises of the organisations to which the electors belong and the buildings which electors frequent usually 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.

9.17 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.

9.18 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.

9.19 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**.

9.20 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.

9.21 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.

9.22 Even though such an organisation or any member of it may have reasons to exclude a particular candidate from the building, it should still adhere to the principle of fair and equal treatment for all candidates competing without any discrimination.

Notification of Decision

9.23 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.** Enquiries may be made with the District Officer or sub-offices of the District in which the building is located. 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.

Display of Election Advertisements

9.24 The management bodies of the organisations or buildings concerned should avoid handling candidate's applications 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) decide on the maximum size of posters and banners to be allowed;
- (c) after the close of nominations of candidature, find out from the RO how many candidates are contesting in the election;
- (d) 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
- (e) 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.

9.25 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 IV : CONDUCT OF ELECTIONEERING ACTIVITIES IN PREMISES UNDER THE MANAGEMENT OF HOUSING DEPARTMENT AND HONG KONG HOUSING SOCIETY

9.26 The specific guidelines to be observed by candidates and their agents in the conduct of electioneering activities in premises under the management of Housing Department and Hong Kong Housing Society are set out in **Appendix G**.

PART V : SANCTION

9.27 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 will 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.

9.28 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 10

ELECTION MEETINGS

PART I : GENERAL

10.1 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]. During the election period, a candidate may attend any other meetings as part of his normal activities which are **not election-related**. Insofar as such meetings are **not** held for the purpose of promoting or prejudicing the election of a particular candidate or candidates, they will not be regarded as election meetings.

10.2 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].

10.3 Candidates should refer to the part on “Treating” in Part IV of Chapter 17, regarding the serving of drinks and meals at or incidental to an election meeting.

10.4 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.

10.5 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.

10.6 Candidates are reminded that individual government departments and management authorities may have their own guidelines to allow or disallow the conduct of election meetings on the premises under their control. To ensure the smooth conduct of election meetings in public or private places, it is always desirable for the candidates to consult the relevant authorities concerned in advance and to obtain any requisite permission from them for the conduct of election meetings on the premises within their jurisdiction, if necessary.

10.7 The requirements of the Hong Kong Police Force and the Housing Department/Hong Kong Housing Society with regard to the organisation of election meetings in public places and private premises within their jurisdiction are set out in paras. 10.8 to 10.19 for reference.

PART II : ELECTION MEETINGS IN PUBLIC PLACES

10.8 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 the Public Order Ordinance (Cap 245)].

10.9 The written notification shall 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 amplifying 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 the Public Order Ordinance (Cap 245).]

A **form** of notification for a public meeting or procession together with guidance 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.

10.10 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 the Public Order Ordinance (Cap 245).]

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

10.11 The Commissioner of Police may prohibit the holding of any public meeting notified (referred to in paras. 10.8 and 10.9 above) where he

reasonably considers such prohibition to be necessary in the interests of national security or public safety, public order 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 the Public Order Ordinance (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. 10.12 below [s 11 of the Public Order Ordinance (Cap 245)].

10.12 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 the Public Order Ordinance (Cap 245).]

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

Public Processions

10.14 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 the Public Order Ordinance (Cap 245).]

10.15 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 the Public Order Ordinance (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. 10.9 above should be used.

10.16 The Commissioner of Police shall 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 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. 10.17 below [ss 14 and 15 of the Public Order Ordinance (Cap 245)].

10.17 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 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 the Public Order Ordinance (Cap 245).]

PART III : ELECTION MEETINGS AT PRIVATE PREMISES

10.18 Any person who organises an election meeting at private premises is advised to consult the owner, occupier, owners' corporation, building management or the mutual aid committee etc concerned in advance and to obtain permission from them, if required. 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. Specific guidelines for conducting election meetings in the premises managed by the Housing Department and the Hong Kong Housing Society are set out in **Appendix G**.

10.19 Notification in writing to the Commissioner of Police will need to be given, in accordance with the procedures set out in paras. 10.8 and 10.9 above, if at the proposed meeting the attendance will exceed 500 persons.

PART IV : MOBILE EXHIBITIONS

General

10.20 A candidate may hold an exhibition for election campaigning purposes. If such an exhibition is to be held, the candidate should consult the relevant management authorities of the premises concerned in advance, and to obtain prior permission from the Housing Manager, owner, occupier, owners' corporation, building management or the mutual aid committee, etc as appropriate, if required. 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.

Premises under the Purview of the Housing Department and the Hong Kong Housing Society

10.21 Where approval has been given by a Housing Manager for such an exhibition in housing estates managed by the Housing Department and the Hong Kong Housing Society, 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. Please also see **Appendix G** for reference.

PART V : FUND-RAISING ACTIVITIES AT ELECTION MEETINGS

10.22 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 J** for general information.

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” 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 Operators of television broadcasting services licensed under the Broadcasting Ordinance (Cap 562) are not allowed to broadcast advertisements of a political nature. Operators of radio broadcasting services licensed under the Telecommunications Ordinance (Cap 106) are not allowed to broadcast advertisements of a political nature except with the prior approval of the Broadcasting Authority. Other service providers which are not licensable under the above Ordinances 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. For programmes the entire or partial theme of which is on the election (eg for introducing the candidates or reporting/analysing the candidates' election platforms and activities), the **“fair and equal treatment” principle** will apply. Following the “fair and equal treatment” principle, broadcasters should ensure that each of the candidates will be introduced and reported in the programme and no favourable or unfavourable treatment will be given to any of the candidates.

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

11.5 To comply with the “fair and equal treatment” principle, when inviting a candidate to attend a programme the entire or partial theme of which 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. The EAC also appeals to all candidates to attend these programmes as far as possible in order to enable electors and the public to be apprised of their election platforms. Some candidates may choose not to attend due to personal or other reasons. Under such circumstances, the relevant broadcaster, may continue with the production of the programme as planned without contravening the “fair and equal treatment” principle. The “fair and equal treatment” principle applies to the entire programme, and, in particular, requires the broadcaster to give equal time to each of the candidates taking part in the programme to present his election platform. **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.** In order to provide the audience of the programmes with clear information on the total number and the names of candidates and to give equal

treatment to all candidates concerned, broadcasters should take heed of the observations made by the Court in an election petition relating to the 2010 Legislative Council By-election as set out in **Appendix K** and, where appropriate, follow the arrangement set out therein when producing multi-episode programmes which are election-related.

11.6 If there is evidence to substantiate that the relevant broadcaster has provided/allowed favourable or unfair treatment to some candidates in producing the programme the entire or partial theme of which is on the election, such case will be regarded as a breach of “fair and equal treatment” principle.

11.7 The principles stated in paras. 11.3 to 11.6 above do not apply to the programmes which are entirely news reporting and are not related to the candidates’ participation in the election.

11.8 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 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

11.9 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 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 a candidate in election forums referred to in Part IV below.

11.10 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 make his utmost endeavours 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. The EAC appeals to the aforesaid responsible person(s) to accede to such a request as far as practicable in order to avoid giving unfair extra publicity to the person concerned.

Candidates Appearing in Commercial Advertisements

11.11 A person should not participate in the making of an advertisement in which his image, name or voice appears (“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.

11.12 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 make his utmost endeavours 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. The EAC appeals to the aforesaid responsible person(s) to accede to such a request as far as practicable in order to avoid giving unfair extra publicity to the person concerned.

PART III : ADVERTISING THROUGH THE PRINT MEDIA

11.13 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. 8.49 of Chapter 8 : Election Advertisements]. The expenses so incurred must be accounted for in the return and declaration of election expenses and donations. Election advertisements printed in a registered local newspaper would be exempted from the requirement of bearing printing details [see also para. 8.48 of Chapter 8 for details].

11.14 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. Any free publications (eg special newspaper editions or leaflets) which serve to promote or prejudice the election of a particular candidate/candidates may be construed as election advertisements for the candidate(s) concerned and are subject to the requirements for election advertisements and election expenses as stipulated in Chapters 8 and 16. A publisher is therefore likely to contravene the relevant

legislation if the requirements for publishing and distributing election advertisements are not complied with prior to distributing such free publication. Candidates and publishers should consult their legal advisors if they have doubt as to whether a free publication should be treated as election advertisements and counted towards election expenses.

11.15 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 person who has contracted to serve as columnist should make his utmost endeavours to request the person(s) responsible not to publish his commentaries in any media after his declaration of intention to run for the election or during the election period if he becomes a candidate. The EAC appeals to the aforesaid responsible person(s) to accede to such a request as far as practicable in order to avoid giving unfair extra publicity to the person concerned. A regular columnist may, of course, appear as a candidate in election forums referred to in Part IV below.

11.16 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 **Appendix L**.

PART IV : ELECTION FORUMS

11.17 During the election period, broadcasters may organise election forums in their programmes. Broadcasters should ensure that the “fair and equal treatment” principle is 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

attend the forum and present their election platforms. The “fair and equal treatment” principle applies to the entire election forum and, in particular, requires the broadcaster to give each candidate taking part in the election forum equal time to present his election platform.

11.18 Other organisations, such as professional or trade organisations, academic institutions and schools, etc, may also 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.

11.19 The EAC 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 platforms. Some candidates may choose not to attend due to personal or other reasons. Under such circumstances, the relevant forum organiser may continue to organise such activity as planned without contravening the “fair and equal treatment” principle.

PART V : SANCTION

11.20 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 will 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.

11.21 The candidates as mentioned in paras. 11.9 to 11.12 and 11.15 above should make their best endeavours as advised thereof to avoid taking

unfair extra publicity. If the EAC receives a complaint about a candidate taking the aforesaid extra publicity and it is subsequently found that the candidate has failed to make such an endeavour, the EAC may make a **reprimand** or **censure** in a public statement against the candidate.

CHAPTER 12

USE OF SOUND AMPLIFYING DEVICE AND VEHICLES

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), 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. Electors' voting preference may be affected as a result of any noise nuisance caused by candidates or their followers.

PART II : USE OF LOUDSPEAKERS AND VEHICLES

12.3 With effect from July 1995, the Commissioner of Police ceases issuing loudspeaker permits under s 4(29) of the Summary Offences Ordinance (Cap 228). 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 10: Election Meetings

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 (Cap 400), 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 vehicles 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 (Cap 374). Deliberate slow driving may constitute "careless driving" as it could be deemed as driving "without reasonable consideration for other persons using the road".

12.7 Paraphernalia attached to a vehicle must also comply with the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap 374A) of the Road Traffic Ordinance (Cap 374), ie, not to interfere with the working or safety of the vehicle. For display of advertisements including election advertisements on public light buses and taxis, their owners/operators should obtain prior written approval from the Transport Department (“TD”) and ensure that the display of election advertisements is in compliance with the conditions as stipulated by the TD in the approval letter, including in particular the following conditions:

- (a) no election advertisements should be displayed on all windows and at the areas above the windows and at the exterior roof panel;
- (b) no luminous or reflecting material should be used for the election advertisements; and
- (c) no election advertisements should obstruct any statutory lighting/label/markings required to be shown on the vehicle body as specified by the Commissioner for Transport or stipulated in the Road Traffic Ordinance and Regulations.

According to the TD’s performance pledge which is applicable to only public light buses and taxis, it normally takes no more than 7 working days to process an application for display of an election advertisement on public light buses and taxis.

12.8 Candidates and their supporters are reminded that they should observe the statutory requirements of the Road Traffic (Safety Equipment) Regulations (Cap 374F) and Road Traffic (Traffic Control) Regulations (Cap 374G) under the Road Traffic Ordinance (Cap 374), 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. Passengers can also stand up on a vehicle used as a float if approved by the Commissioner for Transport. Candidates should apply to the Licensing Office of the TD for the exemption of the vehicles from carriage of standing passengers.

12.9 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 M**.

12.10 Candidates should also note that 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

12.11 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 will 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]. Candidates should remind their supporters to observe these guidelines when they are campaigning on behalf of the candidate.

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 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 will include the name of the candidate, the school and person concerned, and may also refer the case to the Education 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/exit of the polling station as a NSZ. These two zones are to be determined with reference to a map or plan [s 23(1) of the EP (CEE) Reg].

14.4 The RO must, at least 7 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 by hand or by post or by facsimile transmission, to the candidates or to the election agents [ss 12(5), 23(2) and 72(1)(f) of the EP (CEE) Reg].

14.6 Where the circumstances so warrant, the RO, or the PRO 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. The notice may however be given orally if sending it by hand, by post or by facsimile transmission is not practicable or is not suitable in the circumstances [ss 23(4)(a) and 72(2) 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) and (5) 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 the polling day [s 41(4) of the CEEO and ss 23(5A) and 76 of the EP (CEE) Reg].

PART III : CONDUCT INSIDE THE NO CANVASSING ZONE AND NO STAYING ZONE

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

14.10 On the polling day, no person shall:

- (a) engage in canvassing for votes (including suggesting not to vote for any candidate, or not to vote in support of the only validly nominated candidate, as appropriate) in a NCZ. A list of

common canvassing activities which are forbidden in a NCZ is at **Appendix F**;

- (b) use a sound amplifying system or device for any purpose in the NCZ without lawful authority, except for the performance of duties by officers of the CSD on the polling day at the dedicated polling stations situated in prisons;
- (c) conduct any activity for canvassing for votes (including suggesting not to vote for any candidate, not to vote in support of the only validly nominated candidate, as appropriate), so that the sound generated by the activity 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; or
- (e) stay or loiter in the NSZ without the express permission of the PRO.

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

14.11 In a NCZ or a NSZ on the polling day, 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 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 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 issue a warning to them 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 at a contested election, or whether an elector is about to vote or has voted in support of the candidate at an uncontested election, 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, an officer of the CSD or any law enforcement agency, 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 day without the express permission of the RO or the PRO [s 24(7) and (8) of the EP (CEE) Reg].

14.15 Nevertheless, the RO or the PRO shall not exercise their powers to order an elector to leave or remove an elector from the NCZ or NSZ so as to prevent him 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. Any attempt to obtain information as described in para. 14.13 above without the necessary permission will be an offence under s 82(2) of the EP (CEE) Reg, punishable by a fine at level 2 (up to \$5,000) and imprisonment up to 6 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 and, at the same time, to strike a good balance between the need to maintain order outside polling stations and upholding the freedom of expression, freedom of the press and academic freedom.

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

PART II : SECRECY OF THE VOTE

15.3 **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 at a contested election or whether he has voted in support of the candidate at an uncontested election 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 in a contested election to disclose the name of, or any particular relating to, the candidate for whom the elector has voted ; or an elector in an uncontested election to disclose whether the elector has cast a "SUPPORT" or "NOT SUPPORT" vote for the candidate** [s 78 of the EP

(CEE) Reg]. **Those who conduct exit polls must respect the electors' right and wish not to be disturbed.** The interviewers should inform the electors being interviewed that their participation in the exit poll is voluntary prior to the conduct of exit poll.

15.4 Any announcement of results of exit polls or predictions, particularly in relation to any individual candidate, during the polling hours may affect electors' behaviour and have an impact on election results. **The EAC, therefore, reminds the media and organisations concerned that they should not announce the results of exit polls or make specific remarks or predictions on the performance of individual candidate before the close of poll.**

15.5 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 : CONDUCT OF EXIT POLLS

15.6 Exit polls may be conducted by any person or organisation. For security reasons, no exit poll may be conducted for dedicated polling stations. 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 10 days before the polling day:**

- (a) the name and address of the person or organisation intending to conduct an 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 during 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.

15.7 On the receipt of the application, the REO will consider the application and issue approval to the concerned person or organisation as appropriate. Before the grant of approval, the person or organisation to be allowed to conduct exit poll will be required to sign an **undertaking** to abide by its terms and the guidelines governing the conduct of exit poll. If a person or an organisation who/which fails to comply with the terms of the undertaking and the guidelines set out in this chapter, the approval to conduct exit poll on the polling day or during the polling hours may be revoked. The EAC may also make a reprimand or censure in a public statement which will include the name of the person or organisation who/which fails to comply with the terms of the undertaking/guidelines. A notice showing the persons or organisations allowed to conduct exit poll together with their contact telephone numbers will be released to the public prior to the polling day for the reference of the public and candidates. Such a notice will also be displayed at the polling station.

15.8 Interviews are not allowed inside the polling station. Interviewers should note that canvassing activity is prohibited under criminal sanction within the NCZ. Interviewers 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/exit 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 station. The PRO of a polling station 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.

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 display prominently an identification device showing the identity of the organisation/person conducting exit poll so that electors will not be misled into thinking that they are appointed by the Government. In addition, the interviewers are required to make known to the electors that any response is entirely voluntary. Arrangements should be made for electors to be aware of the name of the organisation/person conducting the interview and the fact that the exit poll is not commissioned by the Government.

15.10 After receipt of the information referred to in para. 15.6 above, the REO will notify the organisation or person concerned to collect a number of identification devices bearing the name of the organisation/person that is required to be displayed prominently by each of the persons included in the list in para. 15.6(c) above when conducting an exit poll. Any person not displaying prominently such a device will not be allowed to conduct an 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 will 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) 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 he has withdrawn his nomination or 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 N**. 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. 1.19 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. Please see **Appendix O** on elaboration of this paragraph.

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 \$13,000,000) 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(1) 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, if any. A candidate's freedom to accept support from any organisation is subject to this condition.

16.11 **Negative campaigning (ie canvassing against other candidates).** 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, he will be liable for contravening the law,

unless he can prove that the excess was incurred without his consent, or beyond his authorisation, and 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 exceed the limit authorised by the candidate, lest the agent will contravene s 23(4) 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). It must be done before

the time when the return and declaration of election expenses and donations is lodged in accordance with s 37 of the ECICO. [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 paras. 16.20 to 16.22 below.

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 in value, 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]. 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** (which will be given to a candidate upon his submission of nomination) **not later than 30 days after the publication in the Gazette 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 issued by recipients of the payments 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. A declaration verifying the contents of the return should also be submitted together with the return. [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 paras. 16.32-16.34 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.

Statutory Relief Mechanism for Errors and False Statement

16.26 If a candidate is unable or fails to send to the CEO the return and declaration of all election expenses and donations before the end of the permitted period due to his own illness or absence from Hong Kong or the death, illness, absence from Hong Kong or misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any reasonable cause, and not due to the candidate's bad faith, he has the right to make an application to the CFI for an order to send in the return and declaration late [s 40(1) and (2) of the ECICO].

16.27 If a candidate makes an error or a false statement in the return and declaration of election expenses and donations due to misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any reasonable cause, and not due to the candidate's bad faith, he may apply to the CFI for an order enabling him to correct any error or false statement in the return or in any document accompanying the return [s 40(3) and (4) of the ECICO].

16.28 Notwithstanding the provision set out in para. 16.27 above, if a

candidate makes an error and/or a false statement in the election return, the nature of which is either a failure to set out in the election return any election expense of the candidate at the election or any election donation received by or on behalf of the candidate in connection with the election, or incorrectness in the amount of any election expense or any election donation, **and** the aggregate value of the error(s) and/or false statement(s) does **not** exceed \$5,000, he may, subject to the conditions set out in para. 16.29 below, seek to have the error and/or false statement rectified in accordance with a simplified relief arrangement for minor errors or false statements as provided under s 37A of the ECICO. Under the arrangement, the candidate may lodge with the CEO a revised election return which will be a copy of the original election return earlier submitted to the CEO marked with the necessary revision to have the errors or false statements in question corrected.

16.29 A copy of the revised election return lodged by a candidate is of no effect unless it is:

- (a) lodged within 30 days after the date on which the candidate receives a notice from the CEO relating to the error and/or false statement in the election return;
- (b) accompanied by all relevant documents as required under s 37(2)(b) of the ECICO (eg invoice and/or receipt) and, if applicable, an explanation; and
- (c) a declaration to be made by the candidate in a specified form verifying the contents of the revised election return.

In case a candidate has identified an error and/or a false statement in his election return on his own, he should inform the CEO in writing providing all the necessary details and requesting permission for rectification under the simplified relief mechanism. When satisfied that the request is prima facie allowable under the relief mechanism, the CEO will issue a notice relating to the error or false statement to the candidate for correction in accordance with

the mechanism. A copy of the revised election return made under the relief mechanism cannot be withdrawn or further amended after it has been lodged with the CEO. If the candidate fails to correct the error or false statement within the specified period, the election return will be subject to the normal checking and investigation under the ECICO.

16.30 The relief mechanism will not be applicable if, after including the cumulative amount of errors or false statements, the aggregate amount of election expenses incurred at or in connection with the election, exceeds the maximum amount of election expenses prescribed for a candidate, which is an illegal conduct under s 24 of the ECICO. If the ICAC has received complaints or intelligence indicating that a candidate may have made a statement that he knows or ought to know is materially false or misleading which amounts to corrupt conduct, the ICAC will conduct investigation into this case despite the relief arrangement set out above. The rectifications of the election return under the relief arrangement will not exempt the candidate from being investigated or subsequently prosecuted under the ECICO in such circumstances. Moreover, this relief mechanism will not relieve the candidate from liability under other offence provisions in the ECICO if the election return concerned has contravened any such provisions. [S 37A of the ECICO.]

16.31 When the candidate finds himself in any of the situations set out in paras. 16.26 and 16.27 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 16.28, it would be wise of him to make the application to the CFI 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, or a copy of an election return lodged under s 37A 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

16.32 Any candidate who is an incumbent public servant under the POBO, eg a serving member of the LegCo or a DC, 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 all election expenses and donations to be submitted to the CEO not later than 30 days after the publication in the Gazette 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.

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

16.34 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

16.35 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].

16.36 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.

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

Penalties

16.38 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].

16.39 A candidate who uses any donation for any purpose other than for meeting his election expenses, or fails to dispose of unspent or excessive 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.]

16.40 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 invoices and receipts issued by recipients of the payments commits an offence, punishable by a fine of up to \$200,000 and imprisonment

for up to 3 years [s 38 of the ECICO].

16.41 A candidate who knowingly makes a materially false or misleading statement in his return and declaration of election expenses and 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].

16.42 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].

16.43 A person convicted of a **corrupt conduct or illegal conduct** within the meaning of the ECICO will, in addition to the penalties as set out in paras. 16.38 to 16.42 above, be disqualified:

- (a) for 5 years from being nominated as a candidate for the election of, or from being elected as, the CE, a member of the LegCo or DC, or a VR from the date of conviction [ss 14 and 20 of the CEEO, s 39 of the LCO, s 21 of the DCO and s 23 of the VREO]; and
- (b) for 3 years from being nominated as a candidate for the EC Subsector Elections, or from being nominated or elected as, an EC member from the date of 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 will prepare an Information Booklet on “Support Clean Elections” for distribution to candidates. The content of the Information Booklet will also be uploaded onto the website of the ICAC (www.icac.org.hk).

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 nominated as a candidate in elections. For details, please see para. 17.33 below.

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

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 or threatens to use 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 completed or partly completed 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 another candidate or other candidates 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 to promote or prejudice the election of the candidate, 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]. Any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication.

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(1H) 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 information which he knows or ought to know is materially false or misleading to a candidate or candidates for promoting or prejudicing the election of a candidate or candidates [s 27(6) of the ECICO].

17.10 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 the RO. Every candidate is required to deposit a copy of the completed consent form 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 would 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 or accepting an advantage is prohibited [s 11 of the ECICO]. Voting preference covers, in a contested election, voting for a particular candidate, not voting at the election, or not voting for a particular candidate or candidates; and in an uncontested election, casting a "support" or a "not support" vote for the only validly nominated candidate, or not voting at the election.

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 10 : Election Meetings for details].

17.18 Treating arises in daily situations. If it is used (by a candidate or

another person) for affecting a person's voting preference, it is an offence under s 12 of the ECICO. If a person or an organisation hosts a banquet for a non-election-related purpose but, during the occasion, innocently calls on the guests to vote for a particular candidate, the candidate concerned should immediately stop any promotion of his election and disown or dissolve with whatever has been said or done to promote his candidature. Otherwise, the occasion will be regarded as an election meeting held to promote his candidature and expenses incurred will have to be counted towards his election expenses.

17.19 If a banquet, albeit apparently not related to any election, is used to affect a person's voting preference, then both the host and the candidate will be guilty of a corrupt conduct.

Force and Duress

17.20 The use of or the threat to use 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, school principals or teachers over students, 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 printed 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 all election expenses and donations before the end of the permitted period due to his own illness or absence from Hong Kong or the death, illness, absence from Hong Kong, or misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any reasonable cause, and not due to the candidate's bad faith, has the right to make an application to the CFI for an order to send in the return and declaration late [s 40(1) and (2) of the ECICO].

17.27 If a candidate makes an error or a false statement in the return and declaration of election expenses and donations due to misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any reasonable cause, and not due to the candidate's bad faith, he may apply to the CFI for an order enabling him to correct any error or false statement in the return or in any document accompanying the return [s 40(3) and (4) of the ECICO].

17.28 When the candidate finds himself in any of the situations, set out in paras. 17.26 and 17.27 above, other than the situations where correction

of errors or false statements is allowed under the relief arrangement in para. 16.28 of Chapter 16, it would be wise of him to make the application to the CFI and inform the REO as soon as possible.

PART VII : NON-COMPLIANCE WITH THE LAW AND SANCTION

17.29 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.

17.30 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.

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

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

17.33 A person convicted of a **corrupt conduct or illegal conduct** within the meaning of the ECICO will, in addition to the penalties set out in para. 17.3 above, be disqualified:

- (a) for 5 years from being nominated as a candidate for the election of, or from being elected as, the CE, a member of the LegCo or

DC or a VR from the date of conviction [ss 14 and 20 of the CEEO, s 39 of the LCO, s 21 of the DCO and s 23 of the VREO]; and

- (b) for 3 years from being nominated as a candidate for the EC Subsector Elections , or from being nominated or elected as, an EC member from the date of conviction [ss 9 and 18 of the Schedule to the CEEO].

17.34 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 serious election-related offence should be punished by an immediate custodial sentence.

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 or candidates for the purpose of 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 (please see para.18.4 below); 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 by a resolution of the members of that organisation passed at a general meeting [s 27(5) of the ECICO]. 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 being included in an election advertisement 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. 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 the RO.

18.8 Once 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 It is not uncommon for candidates to put photographs with appearance of other persons 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 those persons appearing in the photograph. If the photograph is likely to cause electors to believe that the candidate has the support of those persons appearing in the photograph, it is advisable that prior written consent of support should be obtained by the candidate.

18.10 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.

18.11 As advised by the Office of the Privacy Commissioner for Personal Data, an image of an identified person will constitute his personal data and its use for a purpose other than the original purpose of collection or a directly related purpose, without the consent of the person concerned, will be an infringement of his personal data. Therefore, candidates when using the

aforesaid image should also observe the relevant data protection principle as set out in the guidance notes on personal data privacy in respect of electioneering activities at **Appendix H**.

Form of Consent

18.12 The standard form “**Consent of Support**” is at **Appendix P**. 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(1H) 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

18.13 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**PARTICIPATION IN ELECTION-RELATED ACTIVITIES BY
CIVIL SERVANTS AND OFFICIALS UNDER
THE POLITICAL APPOINTMENT SYSTEM AND
ATTENDANCE OF PUBLIC FUNCTIONS
BY BOTH GOVERNMENT OFFICIALS AND CANDIDATES****PART I : GENERAL**

19.1 This chapter sets out the general guidelines on the participation in election-related activities of a CE Election by civil servants and officials under the Political Appointment System and the attendance at public functions by government officials 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].

**PART II : PARTICIPATION IN ELECTIONEERING ACTIVITIES BY
CIVIL SERVANTS**

19.2 Civil servants who wish to participate in electioneering activities in a CE election should observe the regulations, 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 because of the nature of their duties, 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 ie other than for temporary relief purpose, 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 those 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 III : 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 their 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 he 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 : 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 government 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 V : OFFICIALS UNDER THE POLITICAL APPOINTMENT SYSTEM

19.9 The terms “government officials” and “civil servants” used in the earlier parts of this chapter do not include officials under the Political Appointment System. Officials under the Political Appointment System are political appointees and they may belong to or be affiliated with political organisations. Politically appointed officials have to comply with a “Code for Officials under the Political Appointment System”.

19.10 Politically appointed officials may, subject to the guidelines below, participate in election-related activities.

19.11 Politically appointed 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, politically appointed officials should not use any public resources for any election-related activities. A politically appointed 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 of or non-compliance with the Guidelines and the provisions of 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, impartial and apolitical 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 Guidelines or the provisions of the EP (CEE) Reg 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;
and

- (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 RO, a PRO 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 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 substantiated, 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 substantiated, 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, A PRESIDING OFFICER AND THE CHIEF ELECTORAL OFFICER

20.17 The RO, a PRO and the CEO 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 [s 13B of 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 following from the Returning Officer (“RO”) or the Registration and Electoral Office (“REO”):
 - (a) Nomination Form;
 - (b) A declaration to the effect that the candidate stands for the election in an individual capacity, will uphold Basic Law and pledge allegiance to the HKSAR;
 - (c) A declaration as to the candidate’s nationality and as to whether he has a right of abode in any foreign country;
 - (d) Intention to Display Election Advertisements at Designated Spots; and
 - (e) Grid paper and Guide on Completion of Grid Paper (for inclusion in the Introduction to Candidates).

During Nomination Period

2. Except where RO authorises otherwise, personally deliver the following to the RO before expiry of the Nomination Period:
 - (a) the duly completed Nomination Form;
 - (b) a declaration to the effect that the candidate stands for the election in an individual capacity, will uphold Basic Law and pledge allegiance to the HKSAR; and
 - (c) a declaration as to the candidate’s nationality and as to whether he has a right of abode in any foreign country.
3. Obtain the following from the RO:
 - (a) copies of the relevant legislation;
 - (b) relevant extracts from the Final Register of Electors (both gum labels and soft copies) on signing an Undertaking on the Use of Electoral Records;
 - (c) information regarding display spots on government land or property that are available to candidates for display of election advertisements (“EAs”);

- (d) summary on Free Postage for Election Mails;
- (e) forms –
 - (i) Notice of Appointment of Election Agent
 - (ii) Notice of Appointment of Election Expense Agent
 - (iii) Return and Declaration of Election Expenses and Election Donations
 - (iv) Notice of Appointment of Polling Agents for a Polling Station not Situated in a Prison
 - (v) Application for Consent to the Presence of Election Agent /Polling Agent in a Dedicated Polling Station Situated in a Prison (other than a maximum security prison)
 - (vi) Notice of Appointment of Counting Agents
 - (vii) Notice of Revocation of Appointment of Agent
 - (viii) Notice of Withdrawal of Candidature
 - (ix) Declaration of Election Advertisements not Submitted by E-mail
 - (x) Declaration of Electronic Election Advertisements Submitted by E-mail
 - (xi) Notification of E-mail Address for Submission of Electronic Election Advertisement and Declaration
 - (xii) Corrective Declaration of Election Advertisements not Submitted by E-mail
 - (xiii) Corrective Declaration of Electronic Election Advertisements Submitted by E-mail
 - (xiv) Notification of Decision on Electioneering Activities
 - (xv) Consent of Support
 - (xvi) Permission for Display / Distribution of Election Advertisements or Conduct of Electioneering Activities at Private Premises

- (xvii) Standard Receipt for Election Donations
- (xviii) Declaration of Secrecy
- (xix) Advance Return and Declaration of Election Donations
- (xx) Notice of Posting of Election Mail
- (xxi) Declaration for Posting of Election Mail
- (xxii) Notification of the Intention to hold a Public Meeting/Procession
- (xxiii) Statutory Declaration⁶
- (xxiv) Undertaking⁷; and

(f) Notice for Collection of Electors' Information

4. Lodge with the RO a Notice of Withdrawal of Candidature if the candidate wishes to withdraw his candidature.

Any time before, during or after the Nomination Period

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 EAs are displayed, distributed or otherwise used except for EAs:**

- ◆ which are displayed, distributed or otherwise used by electronic means (see para. 8.41(a)(iii) of the Guidelines), and
- ◆ cannot be practically submitted in advance (see para. 8.41(a)(iii) of the Guidelines).

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.

⁶ 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 (Cap. 569).

⁷ 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 (Cap. 569).

- (d) Submit to the RO (or CEO if RO has not yet been appointed) 2 hard copies of each type of EAs before they are displayed, distributed or otherwise used except for EAs:
- ◆ which are displayed, distributed or otherwise used by electronic means (see para. 8.41(a)(iii) of the Guidelines), and
 - ◆ cannot be practically submitted in advance (see para. 8.41(a)(iii) of the Guidelines).
- (e) Submit to the RO (or CEO if RO has not yet been appointed) a Notification of E-mail Address for Submission of Electronic Election Advertisement and Declaration at least **one working day before sending the copy of EA and declaration to RO by electronic means.**
- (f) Submit to the RO (or CEO if RO has not yet been appointed), before EAs are displayed, distributed or otherwise used at private premises, a copy of Permission for Display/Distribution of Election Advertisements or Conduct of Electioneering Activities at Private Premises.
- (g) Submit to the RO (or CEO if RO has not yet been appointed) before EAs are displayed, distributed or otherwise used, a copy of Consent of Support, where necessary.
6. Lodge with the RO (or CEO if RO has not yet been appointed) a Notice of Appointment of Election Agent.
7. Lodge with the RO (or CEO if RO has not yet been appointed) Notices of Appointment of Election Expense Agent.
8. Submit to the CEO an Advance Return and Declaration of Election Donations when a donation is received.
9. (a) If a candidate wishes to have his photograph and election platform printed in the Introduction to Candidates, he should:
- (i) lodge with the RO a duly completed grid paper affixing a colour photograph of the candidate which must be in a specified size and taken within the last 6 months; and
 - (ii) provide 2 additional copies of his photograph identical to the one affixed to the grid paper with his name label affixed on the back.

Any time after handing in Nomination Form, but before expiry of Nomination Period

(If a candidate does not submit the grid paper, the Introduction to Candidates will only show the name and candidate number in respect of him, and “Relevant Information has not been provided by the candidate” will be printed in the space provided for the election platform.)

- (b) Lodge with the RO an “Intention to Display Election Advertisements at Designated Spots”.

Any time after handing in Nomination Form, but not later than 3 weeks before polling day

10. Make a request to the CEO for obtaining, within 5 working days, one set of address labels of electors and/or a CD-ROM containing information of electors. (On receiving the address labels and/or a CD-ROM, candidates or their election agents are required to sign an Undertaking on the Use of Electors’ Information).

Any time after handing in Nomination Form, but not later than 7 days before polling day

11. Lodge with the CEO Notices of Appointment of Polling Agents for a Polling Station not Situated in a Prison.
12. Lodge with the RO Notices of Appointment of Counting Agents.
13. Lodge with the CEO on a specified form for seeking the consent of the Commissioner of Correctional Services (“CCS”) to the presence of an election agent at or the appointment of a polling agent for a dedicated polling station situated in a prison (other than a maximum security prison).

(Note: (a) No consent will be given to the presence of an election agent at a dedicated polling station situated in a prison (other than a maximum security prison) if a polling agent has been appointed for that polling station. On the other hand, if consent has been given by the CCS to the presence of an election agent at a dedicated polling station situated in a prison, no polling agent may be appointed for that polling station.

(b) No polling agent may be appointed nor may election agent be present at a dedicated polling station situated in a maximum security prison.)

Within 3 days after expiry of Nomination Period

14. Attend the briefing for the candidate(s) and collect from the RO the following:
- (a) location maps and layout plans of the polling station and counting station; and
- (b) name badges for the candidate(s) and his/their agents.

- | | |
|---|---|
| | 15. (a) At an uncontested election, the candidate will be provided with a list of the designated spots for display of EAs allocated to him. |
| | (b) At a contested election, attend meetings held by the RO to determine, by drawing of lots, the candidate numbers and to allocate display spots for display of EAs. |
| | 16. Receive from the RO copy of the permission/authorisation for display of EAs at designated spots allocated to the candidate. |
| As soon as practicable after RO determines the candidate as validly nominated or not | 17. 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, if any). |
| As soon as practicable after RO receives a Notice of Appointment of Election Agent from another candidate | 18. Receive from the RO information about the election agent appointed by another candidate, if any. |
| Not later than 7 days before polling day | 19. Receive from the RO information regarding the delineation of no canvassing zones and no staying zones for the polling stations (including dedicated polling stations). |
| During the week before the polling day | 20. Lodge with the CEO on a specified form for seeking the CCS's consent to the presence of an election agent at or the appointment of a polling agent for a dedicated polling station situated in a prison (other than a maximum security prison) ONLY if –

(a) an elector imprisoned or held in custody who is entitled to vote at the aforesaid dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and

(b) the application is lodged without undue delay after the admission or transfer. |
| 1 clear working day before posting postage-free election mail | 21. Give notice of the free postings of election mail by using the Notice of Posting of Election Mail (in duplicate), and present 3 unsealed election mail specimens to the relevant Manager (Retail Business) of the Hongkong Post for inspection and retention. |
| Make postage-free election mail before the posting deadline as designated by the Post Office | 22. Post postage-free election mail and present to the Post Office a Declaration for Posting of Election Mail (in duplicate). |
| Not later than 12 noon on the day preceding polling day | 23. Lodge with the RO Corrective Declarations of Election Advertisements, if any. |

- | | |
|---|---|
| Not later than 1 clear working day before the count (except the count for the 4 th and subsequent rounds of voting at a contested election) | 24. Receive information from the RO on when and where the counting of votes is to take place. |
| Before entering polling/counting station | 25. Complete the Declarations of Secrecy (to be made by the candidate(s), his/their election agents, polling agents and counting agents). |
| Any time before polling day | 26. Lodge with the RO or CEO, as appropriate, Notices of Revocation of Appointment of Agent, if applicable. |
| On polling day | 27. Attend the poll and the count if so wishes, bringing along the Declaration of Secrecy. |
| | 28. Candidate(s) or his/their election agents personally deliver Notices of Appointment of Polling Agents for a Polling Station not Situated in a Prison and Notices of Revocation of Appointment of Agent to the PRO other than a PRO of a dedicated polling station situated in a prison, if not yet lodged pursuant to paras. 11 and 26. |
| | 29. Candidate(s) or his/their election agents personally deliver Notices of Appointment of Counting Agents and Notices of Revocation of Appointment of Agent to the RO, if not yet lodged pursuant to paras. 12 and 26. |
| Within 7 working days after publication of election result | 30. For the candidate who is declared as elected:

(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 polling day | 31. Remove all EAs on display. |
| Not later than 30 days after the publication of election result in the Gazette or the declaration of the termination of the election proceedings or the declaration of the failure of the election under relevant electoral law | 32. 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. |

Note:

Most of the forms mentioned in this checklist can be downloaded from REO website at <http://www.reo.gov.hk>

B. Handling and Declaring Election Expenses***Records Keeping******Before and After Nomination***

1. Record all election expenses spent and all donations received.
2. Keep invoices and receipts issued by recipients of the payment 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 for Election Donations provided by REO).
4. Keep copies of all Declarations 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 by completing a Notice of Appointment of Election Agent. An election agent has the authority to do everything a candidate is authorised to do for the purposes of the election except the matters set out in section 12(3)(a) to (i) of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J).
6. Each candidate can appoint one or more election expense agents by completing a Notice of Appointment of Election Expense Agent. An election expense agent is authorised to incur election expenses on behalf of a candidate. A candidate **may** also appoint his election agent as an election expense agent. These agents may incur election expenses only after appointment.

Lodging Authorisation and Declaration with the appropriate authority

7. Lodge with the RO the Notice of Appointment of Election Agent at any time after handing in Nomination Form.
8. Lodge with the RO the Notice of Appointment of Election Expense Agent. The Notice 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 the EAs are displayed, distributed or otherwise used except for EAs**
- ◆ which are displayed, distributed or otherwise used by electronic means (see para. 8.41(a)(iii) of the Guidelines), and
 - ◆ cannot be practically submitted in advance (see para. 8.41(a)(iii) of the Guidelines).

Submission of Return and Declaration of Election Expenses and Donations

Not later than 30 days after the publication of election result in the Gazette or the declaration of the termination of the election proceedings or the declaration of the failure of the election under the relevant electoral law

10. The completed return and the declaration verifying its contents must be submitted together with all supporting documents as required by section 37 of the ECICO.
11. The completed return must set out all election expenses incurred by the candidate or by the candidate's election expense agents on his behalf, the cost (if any) incurred by the Government in removing his EAs and the 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 the declaration verifying the contents of the return before a Commissioner for Oaths, a Justice of the Peace or a solicitor holding a practising certificate.
13. A candidate must lodge the completed return with the CEO at 8/F, 98 Caroline Hill Road, Causeway Bay, Hong Kong by the deadline (i.e. not later than 30 days after the publication of election result in the Gazette or the declaration of the termination of the election proceedings or the declaration of the failure of the election under the relevant electoral law).
14. If a candidate is unable or has failed to lodge the return by the deadline, he can apply to the Court of First Instance for an order allowing him to lodge the return within such extended period as may be allowed by the Court of First Instance.

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 correct any error of false statement in his return (including any document accompanying his return) after the deadline, he must apply to the Court of First Instance for an order enabling him to do so. Notwithstanding this, if the aggregate value of any error or false statement found in the election return does not exceed the relief arrangement limit (ie HK\$5,000), the candidate may rectify the error or false statement in the election return in accordance with a simplified relief arrangement for minor errors or false statements as provided under s 37A of the ECICO within a specified period upon receipt of a notice from the CEO relating to the error and/or false statement (see paras. 16.28 to 16.30 of the Guidelines).

(This "Action Checklist for Candidates" is for general reference only. Candidate is advised to refer to the Action Checklist included in candidate folder of the election.)

**The 4 Sectors of the Election Committee
and Subsectors of Sectors**

FIRST SECTOR

<u>Item</u>	<u>Subsector</u>	<u>Number of members starting from February 2012</u>
1.	Catering	17
2.	Commercial (first)	18
3.	Commercial (second)	18
4.	Employers' Federation of Hong Kong	16
5.	Finance	18
6.	Financial services	18
7.	Hong Kong Chinese Enterprises Association	16
8.	Hotel	17
9.	Import and export	18
10.	Industrial (first)	18
11.	Industrial (second)	18
12.	Insurance	18
13.	Real estate and construction	18
14.	Textiles and garment	18
15.	Tourism	18
16.	Transport	18
17.	Wholesale and retail	18

300

SECOND SECTOR

<u>Item</u>	<u>Subsector</u>	Number of members starting from <u>February 2012</u>
1.	Accountancy	30
2.	Architectural, surveying and planning	30
3.	Chinese medicine	30
4.	Education	30
5.	Engineering	30
6.	Health services	30
7.	Higher education	30
8.	Information technology	30
9.	Legal	30
10.	Medical	30
		<hr/> 300

THIRD SECTOR

<u>Item</u>	<u>Subsector</u>	Number of members starting from <u>February 2012</u>
1.	Agriculture and fisheries	60
2.	Labour	60
3.	Religious	60
4.	Social welfare	60
5.	Sports, performing arts, culture and publication	60
		<hr/> 300

FOURTH SECTOR

<u>Item</u>	<u>Subsector</u>	<u>Constituents</u>	<u>Number of members starting from February 2012</u> (Note 1)	
			February to September 2012	Starting from October 2012
1.	National People's Congress ("NPC")	Hong Kong deputies to the NPC	36	36
2.	Legislative Council ("LegCo")	Members of the LegCo	60	70
3.	Chinese People's Political Consultative Conference ("CPPCC")	Hong Kong Members of the National Committee of the CPPCC	55	51
4.	Heung Yee Kuk ("HYK")	Chairman and Vice-chairmen of the HYK and the Ex-Officio, Special and Co-opted Councillors of the Full Council of the HYK	28	26
5.	Hong Kong and Kowloon District Councils ("DCs")	Elected members of the Hong Kong and Kowloon DCs (Note 2)	59	57
6.	New Territories District Councils ("DCs")	Elected members of the New Territories DCs (Note 2)	62	60
			300	

Note 1 : 10 "Special Member" seats will be created temporarily to make up the difference of 10 seats until the number of LegCo seats increases from 60 to 70 in October 2012. 4 seats of "Special Member" will be allocated to members of the CPPCC, 2 to HYK, 2 to Hong Kong and Kowloon DCs and 2 to New Territories DCs.

Note 2 : These members refer to the elected members of the DCs for the new term of office starting from 1 January 2012.

**Legal Provisions against Pressuring Electors
Not to Nominate a Particular Candidate**

In response to media enquiries on legal provisions against pressuring electors not to nominate a particular candidate, the Electoral Affairs Commission (“EAC”) gave the following reply on 31 May 2005:

Intimidation is an offence under section 24 of the Crimes Ordinance (Cap. 200). A person found guilty of the offence is liable on summary conviction to a fine of \$2,000 and two years’ imprisonment and on conviction upon indictment to five years’ imprisonment.

Bribery has always been an offence at common law punishable by fine or imprisonment.

The EAC, the Independent Commission Against Corruption and related authorities will handle all complaints received during the election process in accordance with the law.

The EAC will continue to ensure that the 2005 Chief Executive Election and all other future elections will be conducted in a fair, open and honest manner.

Dated 31 May 2005

Submission Method, Formats and Standard on Sending Electronic Copy of Election Advertisement and Declaration

A candidate may deposit with the Returning Officer (RO) an electronic copy of the election advertisement (EA) and declaration (collectively referred to as “the attachments” hereunder) by e-mail sent through the Internet in accordance with the following requirements, if the EA is to be displayed, distributed or otherwise used by electronic means, or cannot be practically or conveniently photocopied.

Submission Method

2. Each e-mail should contain only **one** declaration and **one** electronic copy **each** of the EAs declared therein.

3. Each e-mail submission must be signed by the candidate with a digital signature (in his/her personal capacity) in accordance with the requirement stipulated in the Electronic Transactions Ordinance (Cap 553). For application of a personal digital certificate in relation to the use of digital signature, candidates may refer to the following website:

<http://www.gov.hk/en/residents/communication/infosec/digitalcert.htm>

4. The e-mail address used must be identical with that included in the digital certificate. A candidate is required to furnish the e-mail address to the RO (or the CEO, if the RO has not yet been appointed) at least one working day prior to submission to allow verification of the digital signature.

5. The attachments should be sent through e-mail; which must conform to the Simple Mail Transfer Protocol (SMTP) and the Secure Multipurpose Internet Mail Extension (S/MIME) standards.

6. An acknowledgement of receipt would be automatically generated and sent to the sender upon a successful transmission of the e-mail to the RO. Candidate should check with the RO if the acknowledgement is not received **within the same day** of the e-mail transmission.

File Size

7. The total file size of each e-mail **should not exceed 10 MB.**
8. The attachments may be compressed as either Zip file (.zip) or GNU zip file (.gz).
9. An e-mail exceeding the limit will not be accepted. In such circumstances, the candidate should deposit with the RO the declaration in hardcopy and two identical copies of a CD-ROM or DVD-ROM, which will not be returned to the candidate, each containing an electronic copy each of the EAs declared therein.

Format

10. The attachments must be given, served or presented in the following file formats –

General Document

- (a) Rich Text Format (RTF);
- (b) Hypertext Mark Up Language (HTML) Format;
- (c) Adobe Portable Document Format (PDF);

Graphics/Images

- (d) Graphics Interchange Format (GIF);
- (e) Joint Photographic Experts Group (JPEG);
- (f) Tag Image File Format (TIFF);

Audio

- (g) Waveform Audio Format (WAV);
- (h) MPEG-1 Audio Layer 3 (MP3);

Video

- (i) Audio Video Interleave (AVI);
- (j) Moving Picture Experts Group (MPEG).

11. The subject of the e-mail must be typed in the following format:

“Name of candidate⁸_eEA _submission date_batch number”

Examples:

- (i) Name of candidate_eEA _30/1_Batch 1
- (ii) Name of candidate_eEA _30/1_Batch 2(a)
- (iii) Name of candidate_eEA _30/1_Batch 2(b)
- (iv) Name of candidate_eEA _2/2_Batch 1

[Note: The candidate may submit a declaration and a copy each of the declared EAs to the RO in one or more e-mails. As shown in examples (ii) and (iii) above, if because of the size the relevant documents have to be sent in two e-mails, the candidate may attach a declaration and any number of the declared EAs in the first e-mail, and the remaining declared EAs in the second e-mail.]

Computer Instructions

12. The attachments given, served or presented must not contain any computer instructions, including but not limited to –

- (a) computer viruses; and
- (b) macros, scripts and fields that depend on the execution environment and the execution of which will cause changes to the attachments themselves or the information system displaying the attachments.

Important Point to Note

13. Attachments, which do not meet any of the requirements set out above, will render the submission invalid.

⁸ The candidate should use the same name in all e-mails to facilitate subsequent sorting and retrieval if required.

Methods of Folding of Election Mail
郵寄選舉郵件採用的摺疊方法

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

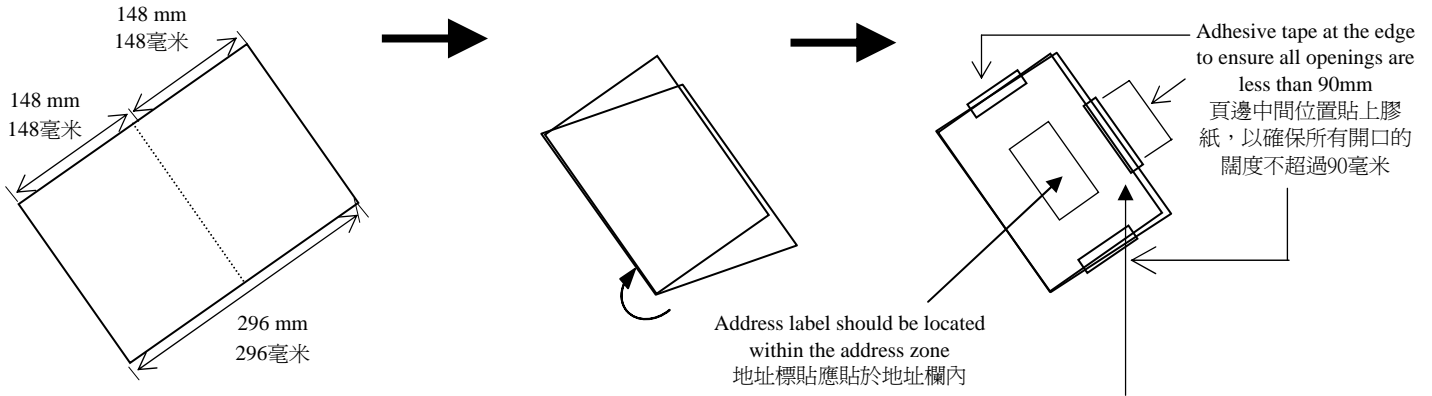


Figure 2 : Folder of A4 (296mm) size with 2 folds
圖示二：兩摺的A4(296毫米)尺寸紙張

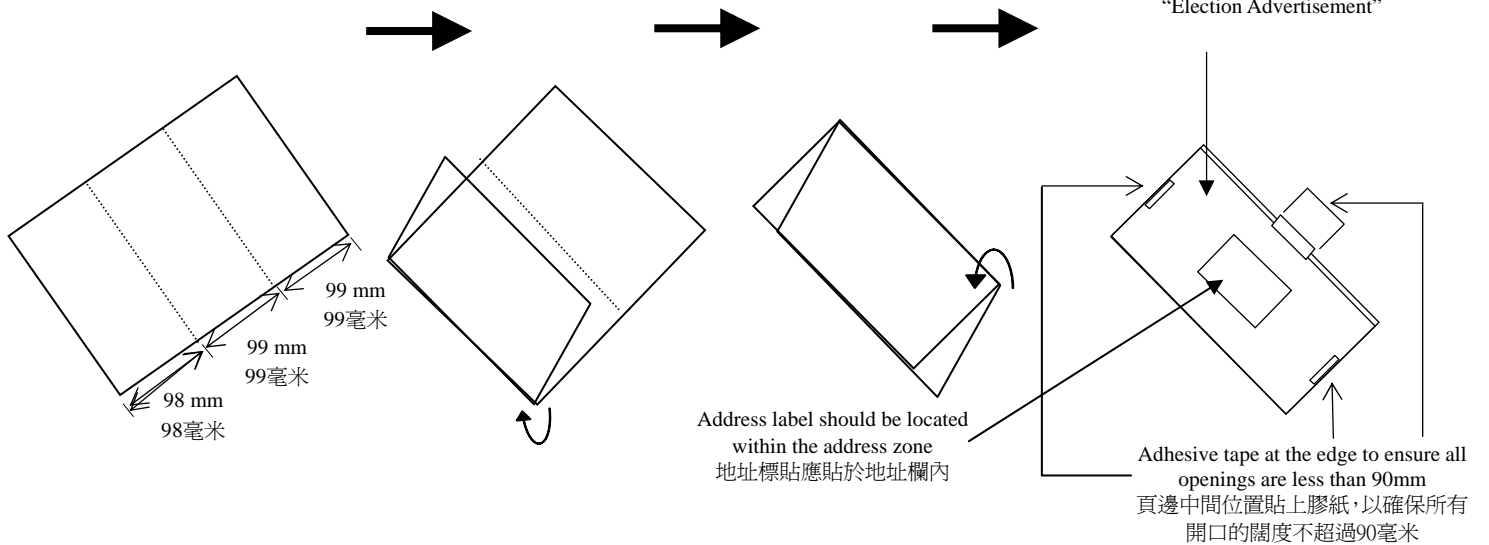
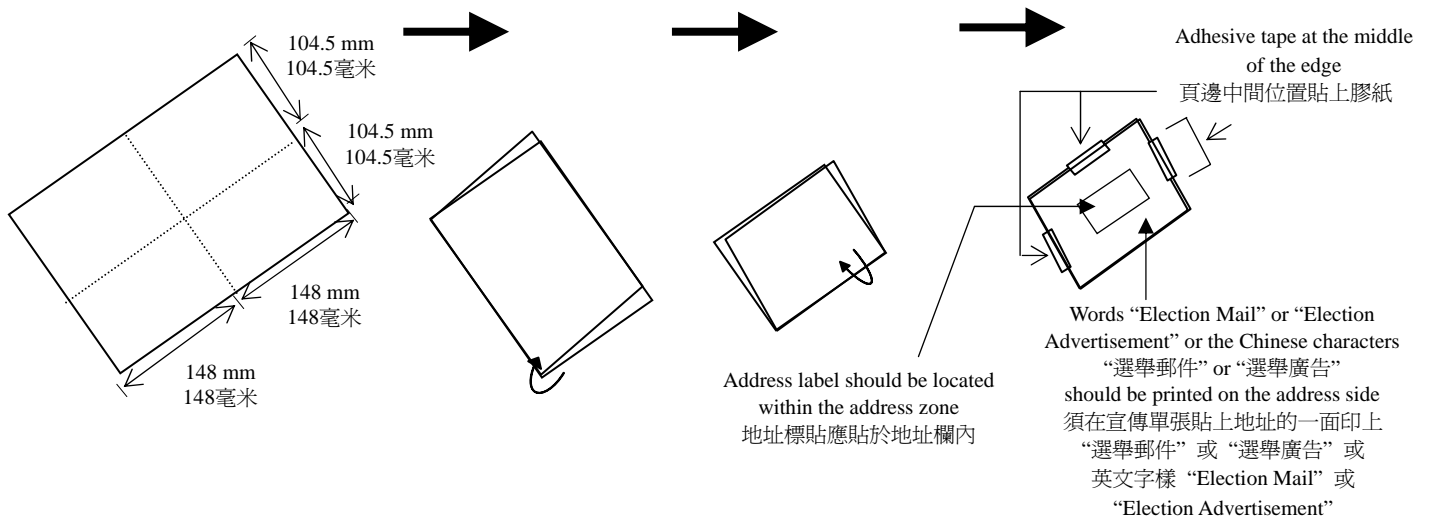


Figure 3 : Folder of A4 (296mm) size with 2 folds
圖示三：兩摺的A4 (296毫米)尺寸紙張



Methods of Folding of Election Mail
郵寄選舉郵件採用的摺疊方法

Figure 4A&4B : Folder of A4 (296mm) size sealed with address label
圖示四A及四B：以地址標貼封口的A4(296毫米)尺寸紙張

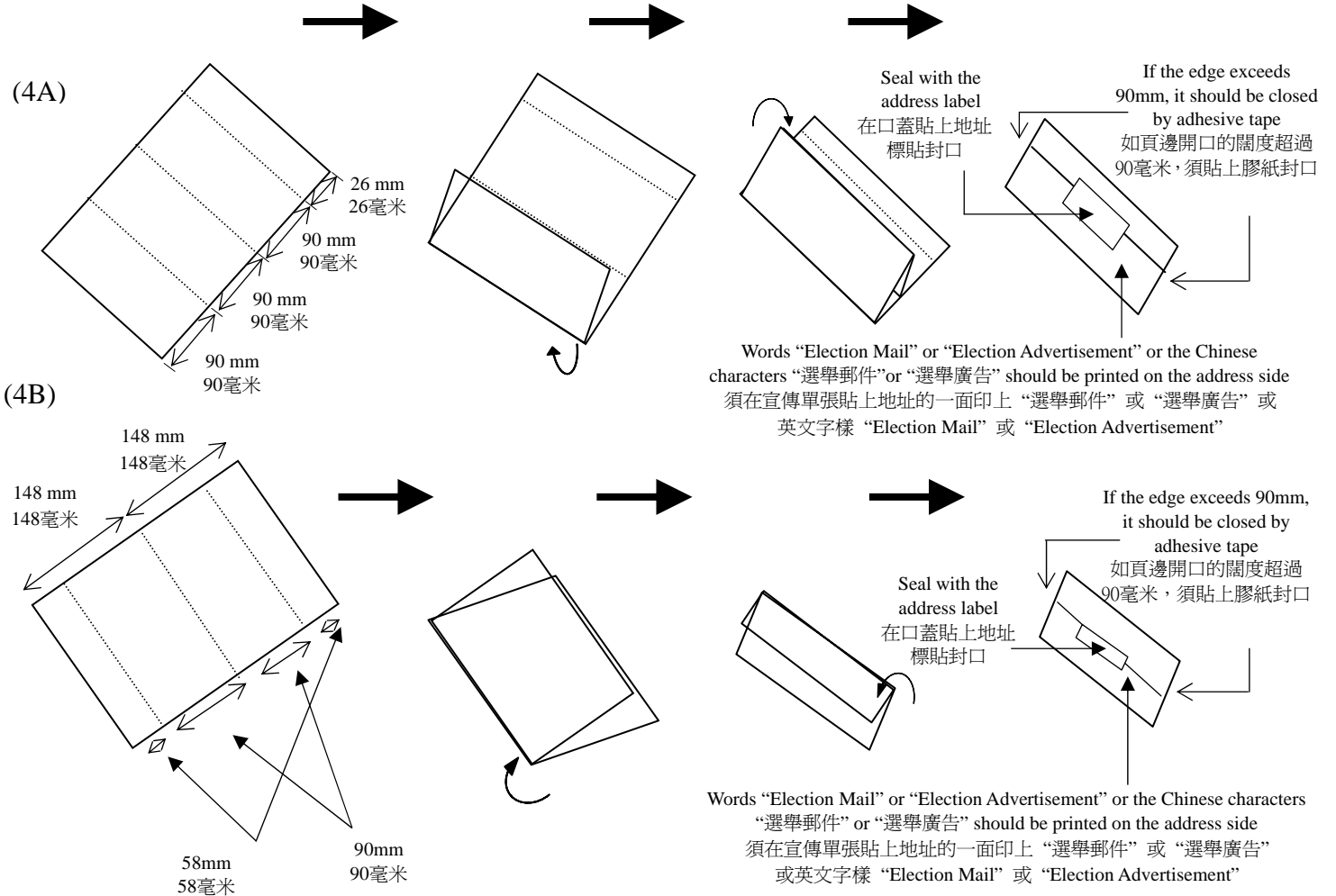
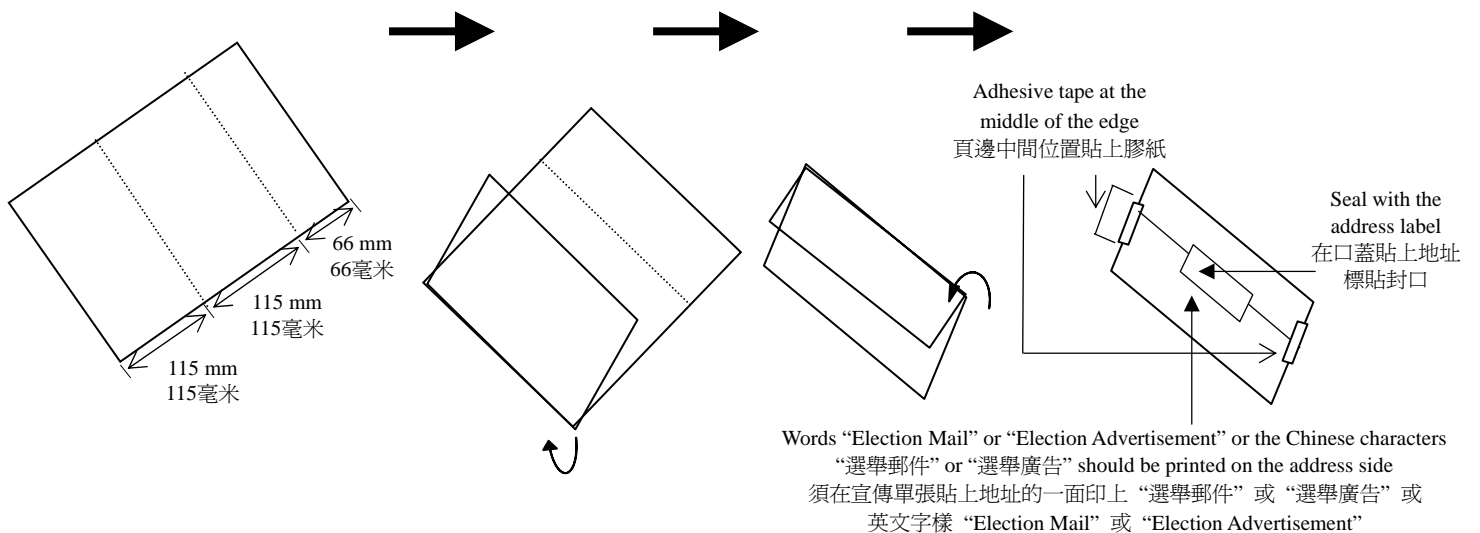


Figure 5 : Folder of A4 (296mm) size sealed with address label
圖示五：以地址標貼封口的A4(296毫米)尺寸紙張



備註：無論以任何方法摺疊，所有超過90毫米的開口，必須以膠紙封口。

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

**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 of the CE.
- (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.

**Conduct of Electioneering Activities and Election Meetings in Premises
under the Management of the Housing Department and the
Hong Kong Housing Society**

Candidates must obtain **prior approval** from the Housing Manager before conducting any electioneering activities or election meetings 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.

Guidance on Electioneering Activities

Introduction

This guidance notes serves as a general reference on compliance with the requirements of the Personal Data (Privacy) Ordinance ("the Ordinance") 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 electioneering approaches by telephone to prospective voters. Candidates may also choose to lobby potential voters by various forms of mailings such as fax messages, SMS/MMS 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.

The act of canvassing for votes is not in contravention of the Ordinance provided, inter alia, that personal data are obtained by means that are lawful and fair in the circumstances, and that the use of the data is directly related to the purpose for which the data are originally collected. Of particular relevance are the requirements under data protection principles 1, 2(2), 3 and 4 ("DPP1", "DPP2(2)", "DPP3" and "DPP4") in Schedule 1 to the Ordinance:

DPP1(2) requires that personal data shall be collected by means that are lawful and fair;

DPP2(2) requires that personal data shall not be kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data are or are to be used;

DPP3 provides that personal data shall not, without the prescribed consent of the data subject, be used for any purpose 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;

DPP4 requires that all practicable steps be taken to ensure that personal data are protected against unauthorized or accidental access, processing, or other use.

Guidance for Candidates

1. Candidates who use personal data in electioneering should be mindful of the provisions in DPP1, DPP2(2), DPP3 and DPP4.
2. Candidates should assume direct responsibility for briefing and supervising members of their campaign staff to ensure their compliance with the requirements of the DPPs.
3. Candidates who solicit personal data directly from an individual for electioneering should ensure that the individual is informed of the purpose of collection of the data.
4. Candidates should not collect personal data for electioneering by deceptive means or by mis-representing the purpose of the collection.
5. 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.
6. Should candidates want to use personal data from sources other than the voter register for electioneering purpose, express consent from the data subject must be obtained beforehand, unless the original purpose of collection of the data is directly related to the electioneering purpose.

7. With respect to the use of personal data gathered by a third party, e.g. a trade union or professional body as a means of accessing members of those bodies for electioneering purpose, the proper course of action would be for these bodies to determine whether this is a permitted purpose for which the personal data were collected, and mailings should preferably be handled by these bodies. As a matter of good practice, prior notification to members of such use of their data is recommended.
8. When candidates or their election agents contact individual voters for electioneering purpose, they should inform the voters how they obtained the voters' personal data when being asked.
9. It is recommended that candidates who use any form of mailings, e.g. through trade unions or 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 electioneering mailings from the candidates.
10. As a matter of good practice, candidates should maintain a list of individuals who, to their knowledge, find electioneering phone calls, mails or visits objectionable and avoid approaching them to canvass for votes.
11. When conducting electioneering activities, candidates and their election agents should safeguard the personal data in the list of voters held by them to prevent accidental or unauthorized access by unrelated parties.
12. Candidates should not retain any personal data collected for electioneering purpose after completion of all the electioneering activities.

**Office of the Privacy Commissioner for Personal Data,
Hong Kong**

Enquiry Hotline: (852) 2827 2827

Fax: (852) 2877 7026

Address: 12/F, 248 Queen's Road East, Wanchai, Hong Kong

Website : www.pcpd.org.hk

Email: enquiry@pcpd.org.hk

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Disclaimer

The information provided in this guidance notes is for general reference only. It does not provide an exhaustive guide to the application of the Personal Data (Privacy) Ordinance (the "Ordinance"). For a complete and definitive statement of the law, direct reference should be made to the Ordinance itself. The Privacy Commissioner for Personal Data (the "Commissioner") makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the above information. The above suggestions will not affect the functions and power conferred to the Commissioner under the Ordinance.

© Office of the Privacy Commissioner for Personal Data,
Hong Kong
First published in June 2000
April 2010 (Third Revision)

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 10 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 9 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.

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

This application should reach Division III of Home Affairs Department at 30/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. Non-charitable fund raising activities without permits for fund-raising for non-charitable purposes are subject to prosecution by the Police under S4(17) of Summary Offences Ordinance, Cap.228. For enquiries, please call 2835 1492.

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 (note) : _____

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.)

Note: If the activities concerned involve hawking in public places, please seek advice from the Food and Environmental Hygiene Department (Tel: 2867 5935) as to whether a temporary hawker licence is required.

September 2007

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 :

Executive Officer
Home Affairs Department
Tel. No. : 2835 1492

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.

Non-charitable fund raising activities without permits for fund-raising for non-charitable purposes are subject to prosecution by the Police under S4(17) of Summary Offences Ordinance, Cap.228.

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 application 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.

September 2007

Observations made by the Court in an Election Petition relating to a TV Programme on 2010 Legislative Council By-election

A candidate of the 2010 Legislative Council By-election made an election petition relating to a multi-episode TV programme which introduced the election platforms of all candidates of the By-election. Due to the airtime constraint, only four candidates were introduced in each episode and the time allocated to each candidate was more or less the same.

2. There were five candidates in the constituency in which the aforesaid candidate contested and the candidate number allocated to him was 5. According to the candidate number, the broadcaster of the TV programme mentioned above introduced the first four candidates of that constituency in the same episode while the aforesaid candidate was covered in the next episode. However, there was no mention in the episode on the first four candidates that there was a remaining candidate in that constituency who would be introduced in the next episode. The Court considered that it was possible that such arrangement might cause misunderstanding to the audience who only watched the former episode that there were only four candidates in the constituency concerned.

3. The EAC considers that the broadcaster should let the audience know (a) the total number and the names of all candidates in each relevant episode; and (b) the episode which will cover or has covered the candidate(s) who is/are not introduced in the current episode. Such an arrangement will ensure that the audience will be fully aware of the total number of candidates even if they watch only one single episode instead of all episodes and that equal treatment will be given to all candidates concerned.

4. Where appropriate, broadcasters are advised to follow the arrangement set out in para. 3 above when producing multi-episode programmes which are election-related.

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 information on the make, model and registration mark (or vehicle identification number in the case of a brand new vehicle) of the vehicle to be used as a float.

2. The application should be accompanied by 3 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 (Cap 374G) on requirements for carriage of passengers: No driver of a vehicle on a road shall permit a passenger to travel in the vehicle unless seated in a properly constructed seat secured to the bodywork of the vehicle except-

- (a) where the vehicle is a public service vehicle licensed to carry standing passengers; or
 - (b) where the vehicle is exempted under regulation 53A from this subregulation.
- detailed artwork is not required

3. All applications must be made at least **1 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 1 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 the government departments should also be included.
 - (5) Costs incurred by the relevant authorities for removal of election advertisements displayed without authorisation.
 - (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/miscellaneous costs in connection with the election campaign, eg photocopying, hire of telephone line and fax line.
- (9) Postage for mailing of publicity materials (excluding free mailing service provided by the Government).
- (10) Costs incurred for the hire of transport in connection with the election.
- (11) Costs incurred for publicity by vehicles.
- (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 for refurbishing as well as the estimated value of old publicity boards.
- (16) 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.
- (17) Costs incurred by the organisation of the candidate in promoting his election. [Note: Costs of meeting where the platform of the organisation is publicised without specific reference to the candidate will not be counted as election expenses.]

- (18) 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). [Note: Costs for obtaining legal advice on the general interpretation/application of the electoral laws including whether a particular item of expense can be regarded as “election expenses” and “donations” will not be an election expense.]
- (19) 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.]
- (20) Subsidy of activities organised for promoting one’s candidature is a form of donation which is counted as election expense.
- (21) 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).
- (22) Goods given incidental to the provision of voluntary service.
- (23) Charities undertaken for the purpose of promoting one’s candidature.
- (24) Costs for any negative publicity launched against one’s opponent.

**Guidelines on Election-related Activities
in respect of the Chief Executive Elections
Elaboration of Paragraph 16.6 of Chapter 16**

A candidate for the 2002 Chief Executive Election through his lawyers has raised questions about the ambit of paragraph 15.6 of the Guidelines on Election-related Activities in respect of the 2002 Chief Executive Election (“the Guidelines”) [ie paragraph 16.6 of the present Guidelines], whether the use of incumbent Chief Executive’s office at the Central Government Offices will be considered to be use of public resources and whether the expenses involved will be counted as election expenses.

The Electoral Affairs Commission gave the following answers on 24 December 2001:

The four examples given in paragraph 15.6 of the Guidelines [ie paragraph 16.6 of the present Guidelines], namely, security, transportation, secretarial services and living quarters, that are not considered to be public resources, are intended to be illustrative rather than exhaustive.

The Electoral Affairs Commission also understands that it would be impracticable for the incumbent Chief Executive not to deal with matters concerning his election from his office at the Central Government Offices as his election agents and staff might from time to time attend his office and brief him on matters concerning the election. While we accept that such contacts at his office are neither election meetings nor election forums, and we consider that using the office is not a use or misuse of public resources in the context of the Guidelines, we are of the view that a certain proportion of the office rental should be accounted for as election expenses. The method to compile the account in this respect, we suggest, is to assess the rental for the office at which the contacts are made at a reasonable rate, such as how many dollars per square foot per month, and make a record of the time spent in the office for the election-related matters. The election expenses would be the amount of time used for such matters multiplied by the monthly rental and divided by the number of hours for which the office is normally used.

The interpretation of election expenses and their ambit is within the exclusive function of the Independent Commission Against Corruption and the Department of Justice, and our view must be deferred to theirs.

Dated 24 December 2001

Consent of Support*(To be deposited with the Returning Officer as soon as it is completed)*

(Please read the notes attached before completing this form)

Name of Candidate : _____ Hong Kong Identity Card Number : _____
(in BLOCK LETTERS)

For individual(s) giving consent in personal capacity (see Note 1)

1. *I/Each of us hereby give(s) consent to the above-named candidate to use *my/our name(s) or logo(s) of or associated with *me/us or *my/our pictorial representation(s) in *my/our personal capacity in the manner described in section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), as an indication of *my/our support, for the purpose of promoting *his/her election as the Chief Executive at the election the poll at which is to be held on _____ [Date].

For an individual giving consent in official capacity (see Notes 2, 3 & 4)

2. I hereby give consent to the above candidate to use my name or logo of or associated with me or my pictorial representation in my official capacity as “_____” in the manner described in section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), as an indication of my support, for the purpose of promoting *his/her election as the Chief Executive at the election the poll at which is to be held on _____ [Date].
3. I have obtained the approval of _____ [name of organization] for my giving of the above consent *by the governing body of the organization/by a resolution of the members of the organization passed at the general meeting held on _____ [Date] at _____ [Time].

For an organization giving consent in organizational capacity (see Note 3 & 4)

4. I have been authorised by _____ [name of organization] to give consent to the above-named candidate to use the name or logo (including pictures and photographs) of or associated with the organization in the manner described under section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), as an indication of its support, for the purpose of promoting *his/her election as the Chief Executive at the election the poll at which is to be held on _____ [Date].
5. Regarding the above-mentioned consent, a resolution to such effect has been approved by *the governing body of the organization/by the members of the organization at its general meeting held on _____ [Date] at _____ [Time].

For completion in all cases

6. *I have/Each of us has/The organization has been given to understand from the above candidate that *he/she is not disqualified from being nominated as a candidate under section 14 of the Chief Executive Election Ordinance (Cap. 569).

TO BE COMPLETED BY CANDIDATE/ELECTION AGENT -

Name (in BLOCK LETTERS) : _____ Hong Kong Identity Card Number : _____

Signature : _____ Date : _____

TO BE COMPLETED BY INDIVIDUAL(S) GIVING CONSENT IN PERSONAL CAPACITY -

Name (in BLOCK LETTERS)	Identity Document (please specify) Number (see Note 6)	Signature	Date

TO BE COMPLETED BY INDIVIDUAL GIVING CONSENT IN OFFICIAL CAPACITY/ORGANIZATION GIVING CONSENT -

Name (in BLOCK LETTERS): _____

Identity Document (please specify) Number (see Note 6): _____

Signature : _____ Organization Chop : _____

Official Capacity : _____ Date : _____

TO BE COMPLETED BY A WITNESS (see Note 7) -

Name (in BLOCK LETTERS) : _____

Identity Document (please specify) Number (see Note 6): _____

Signature : _____ Date : _____

Note*** Please delete whichever is inapplicable.**

- 1 According to Chapter 18 of the Guidelines on Election-related Activities in respect of the Chief Executive Election, if a written consent is given by a person in his personal capacity, no mention should be made of any office title which he may have, in the candidate's election advertisements and campaign activities.
- 2 According to Chapter 18 of the Guidelines on Election-related Activities in respect of the Chief Executive Election, in the case where an office-bearer of an organization 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 organization except where a decision has been so taken by the governing body of the organization or by a resolution of the members of that organization passed at a general meeting. Items 2 and 3 of this consent form must be completed if the name of the organization concerned is specifically mentioned in the office-bearer's title or the relevant election advertisement is posted in the building in which he is serving.
- 3 According to section 27(5) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), a consent of support in writing by an organization must be approved by the governing body of the organization or by a resolution of the members of the organization passed at a general meeting.

The date of election referred to in this form is for the first three rounds of voting at a contested election or the voting at an uncontested election. In accordance with section 17(3) of the Electoral Procedure (Chief Executive Election) Regulation (Cap 541 sub. leg. J), if the voting has to proceed to the fourth or any subsequent round in a contested election, it will be held on the following day and, if necessary, day after day thereafter until a candidate is returned or until the election proceedings are terminated under section 22(3)(e) of the Chief Executive Election Ordinance (Cap. 569). This form is applicable to any round of voting at a contested election or the voting at an uncontested election.

4. In the case where a Mutual Aid Committee wishes to support a candidate in the name of the Mutual Aid Committee, the Home Affairs Department requires such a decision be taken in a general meeting convened in accordance with the Model Rules for the Mutual Aid Committee.
- 5 In accordance with section 81 of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J), 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.
- 6 According to section 2 of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J), "identity document" means –
 - (a) an identity card;
 - (b) a document issued to a person under the Registration of Persons Ordinance (Cap. 177) certifying that he is exempt from being required to register under that Ordinance; or
 - (c) any other document issued to a person which is acceptable to the Returning Officer as proof of the person's identity.
- 7 A witness can be any person aged 18 years or over and in possession of an identity document.
- 8 You may wish to note the following with regard to the personal data supplied in connection with this form-
 - (a) **Purpose of Collection**
The personal data and other related information supplied in connection with this form will be used by the Registration and Electoral Office and the Returning Officer for election-related purposes.
 - (b) **Transfer of Information**
The consent form will also be made available for public inspection. All identity document numbers as shown in the form will be covered before display. The information provided in this form may be provided to other authorised departments/agencies for election-related purposes.
 - (c) **Access to Personal Data**
A person has the right to request access to and correction of the personal data which he supplied in accordance with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486).
 - (d) **Enquiry**
Enquiries concerning the personal data collected by means of this form (including the making of requests for access and corrections) should be addressed to the Chief Electoral Officer at 10th Floor, Harbour Centre, 25 Harbour Road, Wanchai, Hong Kong.

**Guidelines for Candidates on
Sending Election Advertisements to Registered Electors in the
Custody of the Correctional Services Department**

(Note: The following guidelines serve to illustrate some of the articles which, if possessed by electors in the custody of the Correctional Services Department (“CSD”), may cause security hazards to prison, and will be rejected if they are mailed to them. The list of articles set out below is by no means exhaustive.)

For security reasons and to maintain good order and discipline of the prison, any electoral advertisements (“EA”) mailed to registered electors in the custody of the CSD will be subject to security checking and will be refused if the EA falls within any of the following categories:-

Materials

- (a) made of metal or plastic ;
- (b) laminated;
- (c) sharp object; or
- (d) coated with powder-like material.

Content/Information

- (a) on how to manufacture arms, ammunition, weapon, explosive, harmful or deleterious substance, intoxicating liquor, or any dangerous drugs within the meaning of the Dangerous Drugs Ordinance (Cap. 134);
- (b) depicts, describes or encourages violence in the prison, or the escape by any inmate/prisoner from the prison;
- (c) is of such a nature as to facilitate gambling in the prison, or is otherwise detrimental to the rehabilitation of any of the electors in the custody of the CSD ;
- (d) is of such a nature as to encourage the commission of any offence enumerated in Prison Rule (Cap. 234) or of any criminal offence by any of the electors in the custody of the CSD ;

- (e) is of such a nature as to pose a threat to any individual's personal safety or to the security, good order and discipline of the prison; or
- (f) obscene/indecent.

Size & quantity

- (a) bigger than A4 size; or
- (b) exceptionally bulky.

Remarks: In case of queries, please contact Principal Officer (Operations) of Correctional Services Department at 2582 4023.

Correctional Services Department
January 2010

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