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From : Chief Council Secretary (2)3
To : All Members of the Legislative Council

**Guidelines on Election-related Activities in respect of
the District Councils Elections**

The Electoral Affairs Commission has informed that some paragraphs of the captioned Guidelines have recently been amended, having regard to the recommendations in the final report of the 2004 Legislative Council Election and the Court's recent determination on an election petition case. This necessitates the replacement of the relevant pages with amendment sheets. A reference list of the amendments issued is at the **Annex**.

2. The Chinese and English versions of the loose-leaf amendment sheets are attached. Members are requested to arrange for the relevant pages in the Guidelines to be replaced.


(Mrs Percy MA)
Chief Council Secretary (2)3

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c.c. LA
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〈區議會選舉活動指引〉
於二零零五年一月發布的修訂

Guidelines on Election-related Activities in respect of
the District Councils Elections
Amendments issued in January 2005

英文版本 English version		中文版本 Chinese version	
須予替換的頁數 Pages to be replaced	須予插入的 修訂活頁頁數 Pages of amendment sheets to be inserted	須予替換的頁數 Pages to be replaced	須予插入的 修訂活頁頁數 Pages of amendment sheets to be inserted
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also authorise the PRO to vary the NCZ or NSZ on the polling day [s 90 of the EAC (EP) (DC) Reg]. [See Chapter 13: Prohibition Against Canvassing Activities Outside Polling Station.]

4.3 A polling station for a constituency is normally situated within the boundaries of the constituency, but where there are no suitable premises for use within the constituency, polling stations will have to be designated in nearby areas outside the constituency. Where circumstances require, non-permanent structures may be designated as polling stations. The polling stations designated for the constituencies are localised in the sense that an elector of a particular constituency will be assigned to a polling station close to his principal residence as shown on the final register of electors.

4.4 About 10 days before the polling day, electors of contested constituencies will be sent poll cards, addressed to their last addresses known to the REO, notifying them of the date, time and place of the poll [s 34 of the EAC (EP) (DC) Reg]. In the case where there is only one validly nominated candidate for a constituency, the candidate will be declared elected [s 23 of the EAC (EP) (DC) Reg]. Electors in respect of such a constituency do not need to vote, and a notice to that effect will be sent to them. The polling stations designated for the constituency will not be used for polling in respect of that constituency.

4.5 An elector **may vote only at the polling station allocated to him** by the CEO. Many of the polling stations are accessible to persons with a disability including those who have difficulty in walking. An elector with a disability finding it difficult for him to access the polling station allocated to him may **at least five days** before the polling day apply to the CEO for re-allocation of a polling station specifically designated for such electors (“special polling station”) [s 35 of the EAC (EP) (DC) Reg]. If a special polling station is re-allocated to him, then he can vote only at that polling

station. In case circumstances require, the CEO may allocate an alternative polling station or alternative special polling station to an elector in addition to or in substitution of the one originally allocated to him. Electors concerned can make enquiries with the REO on this subject by telephone or facsimile.

PART II : INSIDE THE POLLING STATION

4.6 About 15 minutes before the commencement of polling, which is at 7:30 am on the polling day, the Presiding Officer (“PRO”) at a polling station will show the candidates, their election agents and polling agents, if they are present, the empty ballot boxes before proceeding to lock and seal them. Candidates concerned and their agents may observe the locking and the sealing of the ballot boxes. For a small polling station, a notice about the venue for the counting for the votes will be displayed by the PRO outside the station.
[Amended in Jan 2005]

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

PART III : OUTSIDE THE POLLING STATION

4.8 Where circumstances permit, the PRO will arrange an enlarged copy of the relevant introductory leaflets on candidates published by the REO to be displayed outside the polling station to facilitate easy reference by electors. A NCZ will be designated outside each polling station to ensure the free and safe passage of electors into the polling station. Door-to-door

[Amended in Jan 2005]

canvassing and, for the purpose of such canvassing, the display of any propaganda material, eg any badge, emblem, clothing or head-dress, which may promote or prejudice the election of a candidate or candidates at the election, or makes direct reference to a body any member of which is standing as a candidate in the election or to a political body in Hong Kong, will be allowed on the storeys above or below street level in a building within a NCZ other than a building in which there is a polling station, provided that permission has been obtained for entry to the building for canvassing votes, obstruction is not posed to electors and no amplifying system or device is used [s 43(14) and (15) of the EAC (EP) (DC) Reg]. Apart from this, no other canvassing activities will be allowed within a NCZ except for static display of election advertisements that are authorised by the RO or the PRO of the relevant polling station. A notice of the declaration of a NCZ and a map or plan showing the boundary of the area will be put up at or near the polling station. A NSZ in which no one is allowed to stay or loiter will also be designated immediately outside the entrance of a polling station to avoid any obstruction of entry. [See Chapter 13: Prohibition Against Canvassing Activities outside Polling Stations.]

4.9 On the polling day, a person must not:

- (a) other than the door-to-door canvassing activities stated in para. 4.8 above, engage in canvassing votes within the NCZ;
- (b) use a sound amplifying system or device for any purpose within the NCZ;
- (c) use a sound amplifying system or device, or conduct any activity (eg lion dance) for canvassing votes, so that the sound emitted by it can be heard in the NCZ;

- (d) without any reasonable excuse, display in the NCZ any propaganda material, eg any badge, emblem, clothing or head-dress, which:
 - (i) may promote or prejudice the election of a candidate or candidates at the election; or
 - (ii) makes direct reference to a body any member of which is standing as a candidate in the election or to a political body in Hong Kong; or
- (e) stay or loiter in the NSZ without the express permission of the PRO;

otherwise he commits an offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for three months [ss 43 and 48 of the EAC (EP) (DC) Reg].

PART IV : ADMISSION TO THE POLLING STATION

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

- (a) the PRO and other polling staff;
- (b) members of the EAC;
- (c) the CEO;

PART VII : THE COUNT

4.34 A polling station, other than a small polling station or a special polling station which has not been designated as a counting station, will be converted to a counting station for the purpose of conducting the count and making known the results to the candidates and their agents present. The PRO, assisted by his Deputy PROs, Assistant PROs and counting staff, will be responsible for the conversion and the conduct of the count. Before the counting of votes begins, a notice will be displayed outside the counting station to inform the public the time that the station is open to them to observe the counting of votes [s 65(8) of the EAC (EP) (DC) Reg]. The telephone number of a polling officer who may be contacted by agents should also be shown on such a notice to facilitate communication between agents and the station staff. *[Amended in Jan 2005]*

Conduct at the Counting Station

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

- (a) the ROs, AROs, PROs, Deputy PROs, Assistant PROs and counting staff for the relevant constituencies;
- (b) members of the EAC;
- (c) the CEO;
- (d) candidates and their election agents and counting agents of the relevant constituencies;

[Amended in Jan 2005]

- (e) police officers and members of the Civil Aid Service on duty at the counting station;
- (f) public officers authorised in writing by the CEO;
- (g) any person authorised by the RO or the PRO; and
- (h) any person authorised in writing by a member of the EAC.

The PRO will designate a restricted zone inside the counting zone where the counting staff will count the votes. Candidates and their agents must not go into the restricted zone. Any member of the public may observe the counting of the votes from an area (“the public area”) at the counting station set apart for that purpose by the PRO unless the PRO considers that his presence may:

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

[S 68 of the EAC (EP) (DC) Reg.] *[Amended in Sept 2004]*

4.36 Before entry, every person authorised to be present at a counting station, other than 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 93 of the EAC (EP) (DC) Reg]. Members of the public present within the public area will not be required to make a Declaration of Secrecy. *[Amended in Sept 2004]*

4.37 Except with the express permission of the relevant PRO, the RO for the constituency or constituencies for which the polling station is used or a member of the EAC, as the case may be, any person who undertakes

photographing, filming and video or audio recording within a counting zone of a counting station 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 [s 69 of the EAC (EP) (DC) Reg].

4.38 A person must not misconduct himself in or in the vicinity of a counting station or fail to obey any lawful order of the PRO; otherwise he commits an offence punishable with a fine and imprisonment and may be ordered by the PRO to leave the area. A person misconducts himself if he disrupts the counting of votes or disturbs or causes inconvenience to any person in the counting station. The PRO may also order a person to leave the counting station if the person conducts himself in such 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 PRO to remove him. The person so removed may not re-enter the counting station during that day except with the permission of the PRO [ss 69 and 70 of the EAC (EP) (DC) Reg].

Counting of Votes

4.39 The PRO will conduct the count in the presence of the candidates, or their election or counting agents, if they are present. The PRO will check whether ballot boxes and sealed packets are properly sealed. The seal on the ballot box will be broken by the PRO in the presence of the candidates or their election or counting agents, if they are present at the time. The ballot box will then be opened and the contents emptied onto a counting table. After the PRO has opened the ballot box, the candidates and their election or counting agents may request to inspect any papers other than ballot papers taken out from the ballot boxes before they are disposed of. **At no time should a**

candidate, his election agent or counting agent touch any ballot papers.

[Amended in Sept 2004]

4.40 The PRO other than the PRO of a main counting station will:

- (a) sort the ballot papers according to the choices marked by the electors on the ballot papers and place them in separate plastic and transparent boxes on the table;
- (b) separate and put aside the invalid and questionable ballot papers, if any;
- (c) determine the validity of questionable ballot papers;
- (d) count the valid votes obtained by each candidate;
- (e) verify the ballot paper account; and
- (f) compile the final counting results.

4.41 The PRO of a main counting station will:

- (a) count and record the number of ballot papers in each ballot box of the polling station designated as the main counting station and of such ballot box that has been delivered from the small polling stations or special polling stations;
- (b) verify the ballot paper account;
- (c) mix the ballot papers of the polling station designated as the main counting station together with the ballot papers that have been

[Amended in Jan 2005]

delivered from the small polling stations or special polling stations;

- (d) sort the ballot papers according to the choices marked by the electors on the ballot papers and place them in separate plastic and transparent boxes on the table;
- (e) separate and put aside the invalid and questionable ballot papers, if any;
- (f) determine the validity of questionable ballot papers;
- (g) count the valid votes obtained by each candidate; and
- (h) compile the final counting results.

[Ss 74, 75 and 76 of the EAC (EP) (DC) Reg.] *[Amended in Sept 2004]*

Invalid Ballot Papers

4.42 A ballot paper is invalid if:

- (a) no vote has been marked on it;
- (b) it is not marked with the chop provided;
- (c) it is endorsed on the front with the word "SPOILT";
- (d) it is endorsed on the front with the word "TENDERED";
- (e) it is endorsed on the front with the word "UNUSED"; and

[Amended in Jan 2005]

- (f) votes are given for more than one candidate.

These ballot papers will be counted as invalid on the spot and need not be treated as questionable ballot papers. A candidate, an election agent or a counting agent is not entitled to inspect and make representations to the PRO concerning these ballot papers. [S 78 of the EAC (EP) (DC) Reg.]

Questionable Ballot Papers

4.43 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 PRO:

- (a) it has any writing or mark by which the elector can possibly be identified;
- (b) it is not marked by affixing the chop to give a single “✓” in the circle opposite the name of the candidate of the elector’s choice on the ballot paper, and the elector’s intention is unclear. (However, the PRO may count that ballot paper if he is satisfied that the elector’s intention is clear);
- (c) it is substantially mutilated; and
- (d) it is void for uncertainty.

When deciding on the validity of the ballot papers in (a) above, the PRO 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 PRO on a case-by-case basis. [S 79(1), (2) and (3) of the EAC (EP) (DC) Reg.] *[Amended in Jan 2005]*

4.44 The validity of all questionable ballot papers shall be decided by the PRO [s 79(2) of the EAC (EP) (DC) Reg]. Before the PRO makes his decision, a candidate or his election agent or counting agent, if present at the counting zone, may inspect the questionable ballot papers as set aside, in the presence of the PRO and other candidates or their election or counting agents who are present. A candidate or his election agent or counting agent may object to the admission or rejection of a questionable ballot paper by making his objection known to the PRO who will decide whether the ballot paper (or the vote recorded thereon) is valid or to be rejected and, in the latter event, endorse on the ballot paper the word "rejected". [S 79(4) of the EAC (EP) (DC) Reg.]

4.45 A candidate or his election agent or counting agent may object to the rejection of a ballot paper by the PRO, in which case the PRO shall add to the endorsement the words "rejection objected to". Questionable ballot papers which are accepted by the PRO but objected to by a candidate or his election agent or counting agent will be marked "acceptance objected to". [S 79(4) and (5) of the EAC (EP) (DC) Reg.]

4.46 The decision of the PRO in regard to any question arising in respect of any ballot paper shall be **final** [s 80 of the EAC (EP) (DC) Reg], and may only be questioned by an election petition [s 49 of the DCO] [see Part II of Chapter 5].

4.47 The counting of the votes will proceed continuously, as far as possible, until the counting is completed.

Constituencies with one Counting Station

4.48 For a constituency with only one counting station, after the count, the PRO will make known the result to the relevant candidates or their election or counting agents present. Such a candidate or his election agent may request the PRO for the constituency to re-count the votes and the relevant PRO shall comply with any such request unless in his opinion it is unreasonably made. [S 80A of the EAC (EP) (DC) Reg.]

Constituencies with two or more Counting Stations

4.49 For a constituency with two or more counting stations, the counting station serving the largest number of registered electors will be designated by the CEO as the dominant counting station. Candidates and their election or counting agents of that constituency should be present at this station.

4.50 When vote counting is completed at any one of the counting stations for the constituency, the relevant PRO will inform the candidates and their election or counting agents present of the counting result. Any such candidate or his election agent or his counting agent may request the PRO to re-count the votes and the PRO shall comply with the request unless in his opinion it is unreasonably made. Where there is no request for a re-count or where the request for a re-count is rejected or the re-count is completed and there is no request for a further re-count or the request for a further re-count has been rejected by the PRO, the PRO will inform the candidates and their election or counting agents present of the counting results. If the PRO is not the PRO of the dominant counting station, he shall report to the PRO of the dominant counting station the counting results. If a candidate or his election agent present at the dominant counting station requests the PRO of that counting station to re-count all the votes of all the counting stations for the

constituency, the PRO will decide whether the request should be acceded to. If he decides that such a re-count is reasonable in the circumstances, he will inform the PROs of the other counting stations for the constituency to conduct a re-count at their respective counting stations, and he will conduct a re-count at the dominant counting station at the same time. The PRO of each of the other counting stations will make known the result of the re-count at his counting station to the candidates and their election or counting agents present at that counting station and shall report the same to the PRO of the dominant counting station who shall inform the candidates or their election or counting agents present at the dominant counting station of all such re-count results.

[S 80B of the EAC (EP) (DC) Reg.]

PART VIII : DECLARATION OF RESULT

4.51 For a constituency with only one counting station, the PRO shall report to the RO for the constituency the final counting or re-count result. The RO shall declare the candidate with the highest number of votes as elected.

[Ss 80A (7) and 81 of the EAC (EP) (DC) Reg.]

4.52 For a constituency with two or more counting stations, the PRO of each of the counting stations shall report to the RO for the constituency the final counting or re-count result of his counting station. If the PRO is not the PRO of the dominant counting station, he shall also report to the PRO of the dominant counting station the final counting or re-count result of his counting station. The PRO of the dominant counting station shall report to the RO the total of the final counting or re-count results of all the counting stations for the constituency. After tallying the total of the final counting or re-count results with all the final counting or re-count results reported from individual counting stations for the constituency, the RO shall declare the candidate with the

highest number of votes as elected. [Ss 80B(7), 80B(12) and 81 of the EAC (EP) (DC) Reg.]

4.53 In the event that more than one candidate have equal highest numbers of votes, the RO shall determine the result of the election by drawing lots. He shall use the means of contact of such candidates provided in their nomination papers to request them to be present at his office or any other place as determined by him for conducting the drawing of lots and such candidates shall comply as soon as possible. If the RO fails to contact such a candidate, the RO may draw lots on behalf of the candidate. He shall declare the candidate on whom the lot falls as elected. He shall display a notice of the result of the election at a prominent place outside his office and shall also publish the notice in the Gazette within 10 days of the declaration of the result [ss 80C and 82 of the EAC (EP) (DC) Reg].

PART IX : DISPOSAL OF DOCUMENTS

4.54 As soon as practicable after the PRO has ascertained the result of the poll in an election, he will seal all the relevant documents and ballot papers into packets. Candidates and their agents may observe the packaging, if they wish. [S 83 of the EAC (EP) (DC) Reg.]

4.55 These sealed packets of documents will be sent to the RO by the PRO. The RO will deposit these sealed packets together with the nomination forms, notices of appointment of agents, etc with the CEO for safe custody for six months before they are destroyed. [S 84 of the EAC (EP) (DC) Reg.]

4.56 **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 85 of the EAC (EP) (DC) Reg.]

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

who is running as a candidate for the DC 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.] A performance report shown on a website of an incumbent candidate during the election period will be an election advertisement if it is published for the purpose of promoting or prejudicing the election of a candidate. *[Amended in Jan 2005]*

7.4 For the avoidance of doubt, a performance report distributed **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 referred to in this paragraph and para. 7.3(b) above must comply with all the requirements for an election advertisement.

7.4A If the incumbent members distribute performance reports before they submit their nomination forms or publicly declare their intention to stand as candidates, they are not candidates at the time when their performance reports are being distributed. On such basis, the expenditure incurred in the distribution of such reports before the submission of nomination or public declaration of their intention to stand as candidates would not be counted as his election expenses. *[Amended in Sept 2004]*

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

Election Advertisements Prejudicing the Election of a Candidate

7.5A There are occasions that candidates or a third party may publish election advertisements for the purpose of prejudicing the election of a candidate at the election. The concept of “promoting” and “prejudicing” the election of someone can be relative. To publish a document which is designed to persuade electors not to vote for one candidate would have the effect of improving the chances of success of other candidate(s) and could therefore be said to promote the latter’s election.

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

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

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

[Amended in Sept 2004]

7.5B 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. *[Amended in Sept 2004]*

7.6 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.]

[Amended in Jan 2005]

7.7 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 DC election is specified in the Maximum Scale of Election Expenses (District Councils) Order, which is \$45,000.

7.8 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.]

PART II : PERIOD AND AREA OF DISPLAY

7.9 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)].

7.10 Display spots are classified into two types:

- (a) **designated spots** which are spots on government land/property and sometimes even at the 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.

9.37 Candidates should also refrain from accepting any unfair advantage over other candidates in the same constituency 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 BROADCASTING, MEDIA REPORTING AND ELECTION FORUMS

PART I : GENERAL

10.1 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

10.2 Commercial broadcasters, including operators of television and radio channels, which are the licensees under the Broadcasting Ordinance, are generally not allowed to accept advertisements of a political nature. Other service providers which are not licensable under the Broadcasting Ordinance are allowed to carry election advertisements territory wide. *[Amended in Jan 2005]*

10.3 For current affairs or other programmes on TV and radio which

[Amended in Jan 2005]

are not election-related, candidates may take part as guests in these programmes insofar as their participation is pertinent. Otherwise, the “equal time” principle will apply. “Equal time” means **equal time for each of the candidates contesting in the same constituency.** *[Amended in Sept 2004]*

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

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

10.6 The principles stated in paras. 10.3, 10.4 and 10.5 above apply equally to political parties or political organisations of which the candidate is a member as they apply to the candidate himself.

10.7 During the election period (ie the period beginning with the nomination day for the election and ending with the polling day for the election), broadcasters should ensure that the “equal time” principle as well as the “no unfair advantage” principle are applied to all political parties or political organisations which have members contesting the DC election, whether or not contesting the same constituency. If a political party or political organisation whose members contest as candidates in the election is invited to take part in a current affairs or any other programme whose entire or partial theme is on the election, then all political parties or political organisations which have members contesting the DC election, whether or not contesting the same constituency, should also be invited.

[Amended in Jan 2005]

10.8 The EAC appeals to broadcasters to treat all candidates competing in the same constituency 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. 7.5B of Chapter 7 : Election Advertisements]. Moreover, if such comments are determined by the EAC as election advertisements, the EAC will refer the matter to the Broadcasting Authority for appropriate action. If there is fair and equal treatment to all candidates of the same constituency, 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 or any political parties or organisations to which contesting candidates belong. *[Amended in Sept 2004]*

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

10.9 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. *[Amended in Sept 2004]*

10.10 A person who has contracted to appear as presenter, regular contributor, actor, musician, singer or any other form of entertainer in any

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.

19.13 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].

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

- (a) take remedial measures against the matter complained of, such as the removal of election advertisements displayed in breach of the guidelines in that regard;
- (b) issue to the relevant person a warning on the matter under complaint after making a reasonable effort to contact the person and giving him a reasonable opportunity to give explanations. Where necessary, immediate rectification action against complaints proven on the spot should be taken without delay. *[Amended in Jan 2005]*;
- (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 [see 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].

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

PART VI : ELECTORAL AFFAIRS COMMISSION'S REPORT ON COMPLAINTS

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

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

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

PART VIII : SANCTION FOR FALSE COMPLAINT

19.18 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 one year under the ICAC Ordinance (Cap 204). A similar offence is committed where a false report is made or false information given to a police officer [s 64 of the Police Force Ordinance (Cap 232)]. If a person knowingly makes a false complaint and gives false information to the EAC or its Complaints Committee knowing that the EAC or its Complaints Committee will refer or direct such complaint and information to the ICAC or the Police, the person concerned will similarly be guilty of the relevant offence. If a person knowingly and wilfully makes to the EAC or its Complaints Committee, the RO or the REO a statement false in a material particular and such a statement is in a statutory declaration, he commits an offence punishable by imprisonment for two years and a fine [s 36 of the Crimes Ordinance (Cap 200)].