



Guidelines on

**Election-related Activities
in respect of
the District Council Election**

Electoral Affairs Commission

August 2008 Revised Edition

IMPORTANT

1. These Guidelines come into operation on 29 September 2003 and will apply to all District Council ordinary elections and by-elections conducted under the District Councils Ordinance (Cap 547) to be held after that date.
2. In these Guidelines, “he” means “he” or “she” as far as the context permits.
3. The law stated in these Guidelines is that prevailing as at the date of publication.
4. All specified forms referred to in these Guidelines are obtainable from the Registration and Electoral Office, tel: 2891 1001; fax: 2891 1180; e-mail: reoeng@reo.gov.hk and its 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, loose-leaf amendment sheets would be issued. Amendment sheets will be obtainable from the Registration and Electoral Office (tel: 2891 1001; website: <http://www.reo.gov.hk>).

2008 YAU TSIM MONG DISTRICT COUNCIL BY-ELECTION
(Jordan East Constituency)

Key Information

- | | | | |
|------|---|---|---|
| (1) | Polling Date | : | 5 October 2008 (Sun) |
| (2) | Polling Hours | : | 7:30 am to 10:30 pm |
| (3) | Nomination Period of Candidature | : | 14 August to 27 August 2008 |
| (4) | Period to submit Request for Printing of Particulars Relating to Candidates on Ballot Papers by Candidate | : | 14 August to 27 August 2008 |
| (5) | Chairman's Briefing for Candidates | : | 30 August 2008 (Sat) morning |
| (6) | Maximum Amount of Election Expenses | : | \$48,000 |
| (7) | Deadline to remove all Election Advertisements on display | : | Not later than 15 October 2008 |
| (8) | Submission of Return and Declaration of Election Expenses and Donations by Candidate | : | Not later than 8 November 2008
(Assuming that the election result will be published in Gazette Notice on 9 October 2008) |
| (9) | Submission of Claim for Financial Assistance by Candidate | : | Not later than 8 November 2008
(Assuming that the election result will be published in Gazette Notice on 9 October 2008) |
| (10) | Deadline to lodge Election Petition | : | Not later than 9 December 2008
(Assuming that the election result will be published in Gazette Notice on 9 October 2008) |

ABBREVIATIONS

ARO, AROs	Assistant Returning Officer, Assistant Returning Officers
Cap	Chapter of the Laws of Hong Kong
CEEO	Chief Executive Election Ordinance (Cap 569)
CE	Chief Executive
CEO	Chief Electoral Officer
CSB	Civil Service Bureau
DAS	Director of Accounting Services
DC, DCs	District Council, District Councils
DC election year	a year in which a DC ordinary election is to be held
DCO	District Councils Ordinance (Cap 547)
DC Subscribers & Deposit Reg	District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap 547A)
EAC or the Commission	Electoral Affairs Commission
EAC (EP) (DC) Reg	Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F)
EAC (FA) (APP) Reg	The Electoral Affairs Commission (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) Regulation (Cap 541N)
EAC (NAC) (DC) Reg	Electoral Affairs Commission (Nominations Advisory Committees (District Councils)) Regulation (Cap 541E)
EAC (ROE) (GC) Reg	Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541A)
EACO	Electoral Affairs Commission Ordinance (Cap 541)
EC	Election Committee
ECICO	Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554)

election	ordinary election or by-election as appropriate
ERO	Electoral Registration Officer
GC, GCs	geographical constituency, geographical constituencies
ICAC	Independent Commission Against Corruption
LCO	Legislative Council Ordinance (Cap 542)
LegCo	Legislative Council
MAC, MACs	Mutual Aid Committee, Mutual Aid Committees
NAC, NACs	Nominations Advisory Committee, Nominations Advisory Committees
NCZ, NCZs	no canvassing zone, no canvassing zones
NSZ	no staying zone
para., paras.	paragraph, paragraphs
PCBP (LC & DC) Reg	Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap 541M)
PD (P) O	Personal Data (Privacy) Ordinance (Cap 486)
POBO	Prevention of Bribery Ordinance (Cap 201)
printing details	name and address of printer, date of printing and number of copies printed
PRO, PROs	Presiding Officer, Presiding Officers
REO	Registration and Electoral Office
RO, ROs	Returning Officer, Returning Officers
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 DISTRICT COUNCIL ELECTION

1.1 The District Councils (“DCs”) are constituted under the District Councils Ordinance (Cap 547) (“DCO”) for the purpose of advising the Government on district affairs and promoting recreational and cultural activities, and environmental improvements within the districts [s 61 of the DCO].

1.2 According to Schedule 1 to the DCO, there are 18 districts, and the area of each district is delineated in a map deposited in the office of the Director of Home Affairs. Schedule 2 provides that a DC should be established in each of the 18 districts. Schedule 3 sets out the composition of the 18 DCs.

1.3 Each DC comprises elected members, appointed members and, in the case of DCs in rural areas, the chairmen of Rural Committees as ex officio members. The term of office of an elected member is 4 years beginning on 1 January next following the ordinary election in which the member was elected [s 22(1) of the DCO]. An ordinary election will be held in each subsequent fourth year after the first ordinary election, which was held in 1999, and on a date specified by the Chief Executive (“CE”) [s 27 of the DCO]. A by-election will be held to fill any vacancy in the office of an elected member. However, no by-election is to be held within the 4 months preceding the end of the current term of office of the elected member [s 33 of the DCO].

[Amended in September 2007]

Governing Legislation

1.4 The conduct of elections for returning elected members to the DCs are governed by the statutory requirements provided in 4 different ordinances, namely the DCO, the Electoral Affairs Commission Ordinance (Cap 541) (“EACO”), the Legislative Council Ordinance (Cap 542) (“LCO”) and the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”). *[Amended in September 2007]*

1.5 The DCO provides for the declaration of districts, the establishment, composition and functions of DCs, the declaration of constituencies, the procedures for election of persons to be members of DCs, and other related matters. The number of elected members to be returned to the 18 DCs is set out in s 5(1) of, and Part I of Schedule 3, to the DCO. There are to be 405 DC constituencies for the 2007 DC ordinary election and each constituency is to return 1 elected member. Under s 6(1) of the DCO, the CE in Council may declare any area within a district to be a constituency for the purpose of an election to elect the members of the DC established for that district. *[Amended in September 2007]*

1.6 The EACO tasks the Electoral Affairs Commission (“EAC”) with making recommendations regarding the delineation of DC constituencies for the DC election and demarcation of their boundaries. The EAC is also responsible for the conduct and supervision of elections, and matters incidental thereto.

1.7 The LCO stipulates the qualification for registration as an elector. *[Added in September 2007]*

1.8 The ECICO prohibits election-related corrupt and illegal conduct and is administered by the Independent Commission Against Corruption (“ICAC”). *[Added in September 2007]*

1.9 The ordinances are complemented by a number of pieces of subsidiary legislation, including the 7 set out in paras 1.10 – 1.16 below, which provides the detailed procedures for the conduct of the DC elections. *[Added in September 2007]*

1.10 The electoral procedures for conducting the DC election are provided in the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”). The Regulation has been amended by the EAC, as appropriate, taking into account representations on the EAC’s proposed guidelines in respect of the DC election after the conduct of a public consultation exercise.

1.11 The Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541A) (“EAC (ROE) (GC) Reg”) sets out the procedures for registration of electors for the DC elections. *[Added in September 2007]*

1.12 The Electoral Affairs Commission (Nominations Advisory Committees (District Councils)) Regulation (Cap 541E) (“EAC (NAC) (DC) Reg”) stipulates the appointment and functions of the Nominations Advisory Committees (“NAC”) and the procedures for seeking the NAC’s advice on the candidates’ eligibility for nomination for the DC elections. *[Added in September 2007]*

1.13 The District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap 547A) (“DC Subscribers & Deposit Reg”) sets

out the requirements for subscription and the payment and return of election deposit for the DC elections. *[Added in September 2007]*

1.14 The Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap 541M) (“PCBP (LC & DC) Reg”) sets out the procedures for printing specified particulars relating to candidates on ballot papers for use in the DC elections. *[Added in September 2007]*

1.15 The Electoral Affairs Commission (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) Regulation (Cap 541N) (“EAC (FA) (APP) Reg”) stipulates the detailed implementation procedures for the Financial Assistance Scheme for candidates standing in DC elections. *[Added in September 2007]*

1.16 The Maximum Amount of Election Expenses (District Council Election) Regulation sets out the maximum amount of election expense that may be incurred by or on behalf of a candidate for election to the District Council. *[Added in September 2007]*

PART II : THE GUIDELINES

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

- (a) the conduct or supervision of or procedure at an election;
- (b) the activities of a candidate, an agent of a candidate or any other person assisting a candidate, or any other person;

- (c) the election expenses;
- (d) the display or use of election advertisements or other publicity material; and
- (e) the procedure for making a complaint.

1.18 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.

1.19 This set of Guidelines applies to both the DC ordinary election and by-election. It explains what electoral arrangements are made for the DC election, what legislative provisions and regulations as well as guidelines should be observed by parties concerned before, during and after an election and how an election-related complaint could be lodged. An action checklist for candidates can be found in **Appendix A**.

1.20 In the context of this set of Guidelines, the term "election" means ordinary election and by-election, as appropriate.

PART III : SANCTION

1.21 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, these Guidelines.

1.22 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. *[Amended in August 2008]*

CHAPTER 2

REGISTRATION OF ELECTORS AND VOTING SYSTEM

PART I : REGISTRATION OF ELECTORS

Eligibility to Vote

2.1 For the DC election, only a registered elector is eligible to vote. A registered elector is a person whose name appears on the final register of geographical constituencies (“GCs”) which is in force at the time of election as compiled and published by the Electoral Registration Officer (“ERO”) under the LCO. An elector may only vote in respect of the DC constituency within which his residential address, as stated in the register, is located. [S 29(3) of the DCO.] *[Amended in September 2007]*

Qualifications for Registration as an Elector for DC Election [ss 24, 27, 28, 29, 30 and 31 of the LCO]

2.2 To qualify for registration as an elector in a GC, an individual has to satisfy all the following requirements:

- (a) in a year in which a DC ordinary election is to be held (“DC election year”), he has to be aged 18 years or above as at 25 September next following his application for registration;
- (b) he is a permanent resident of Hong Kong;

- (c) he ordinarily resides in Hong Kong and the residential address in his application for registration is his only or principal residence in Hong Kong;
- (d) he holds an identity document or has applied for a new identity document or a replacement identity document; and
- (e) he is not disqualified from being registered as an elector by virtue of s 31 of the LCO.

2.3 A person who is **already registered** in the existing final register of GCs under the LCO will be automatically registered as an elector for a DC constituency. He **does not need to apply** to be so registered. [S 29(3) of the DCO.] However, he is not entitled to be registered as an elector in the next register of GCs if he has ceased to ordinarily reside in Hong Kong, or no longer resides at the residential address recorded against his name in the existing register and the ERO does not know his new principal residential address in Hong Kong.

Disqualifications [s 30 of the DCO]

- 2.4 An elector is disqualified from voting at the DC election if he:
- (a) has ceased to be eligible to be registered as an elector for the GC (see paras. 2.2 and 2.3 above);
 - (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either served the sentence or any substitute sentence or received a free pardon;

- (c) on the polling day, is serving a sentence of imprisonment;
- (d) is or has been convicted of the following offences within 3 years before the polling day:
 - (i) of having engaged in corrupt or illegal conduct in contravention of the ECICO, or
 - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201) (“POBO”); or
 - (iii) of any offence prescribed by regulations in force under the EACO, eg the provision of false information to the ERO;
- (e) is found for the time being under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or
- (f) is a member of any armed forces.

Application for Registration as GC electors for DC Election

2.5 The registration of GC electors is undertaken in accordance with the provisions of the EAC (ROE) (GC) Reg.

2.6 A person may send in his application for voter registration on the specified form to the ERO any time in the year. However, for inclusion of his name in the final register of GCs to be published not later than 25 September in DC election year, his application form must have been received by the ERO **not later than 16 July** in that year. [S 4 of the EAC (ROE)(GC) Reg.]

2.7 The ERO will process the application forms after they have been received. An applicant who qualifies for registration will be allocated to the relevant constituency on the basis of his residential address. Closer to the polling day, he will also be allocated to the appropriate polling station on the basis of his residential address and he will be notified. The ERO will send written inquiries to applicants to seek information or proof if the information on their applications is incomplete or incorrect. Applicants who are not qualified for registration will also be informed of the result, by registered mail.

Change of Residential Address

2.8 It will not be necessary for a registered elector to re-apply for registration every year unless he has changed his residential address. In such a case, he **must notify** the ERO of his new address in Hong Kong to ensure that he will be registered in the current register of electors. **If he fails to do so, his name and particulars may be removed from the register.**

2.9 If the elector has emigrated overseas and ceased to be a permanent resident of Hong Kong or ceased to be ordinarily resident in Hong Kong, his name may also be removed from the register of electors.

Change of Other Personal Particulars

2.10 Any registered elector who has changed his other personal particulars (eg name), or has ceased to be a permanent resident of Hong Kong or ceased to be ordinarily resident in Hong Kong, should also report to the ERO.

2.11 An elector should notify the ERO of any change of any of his particulars in writing or by sending in a new registration form with the altered particulars. If the elector wishes to have the alteration of his particulars

effected in the next final register of electors, he **must notify** the ERO as soon as possible and the latest by **29 August in a DC election year** [s 17(9)(a)(i) of the EAC (ROE) (GC) Reg]. An elector who has reported change of particulars will be sent a notice by the ERO showing his updated electoral record.

The Provisional Register

2.12 The provisional register for GCs will be published **not later than 15 August in a DC election year**. It includes:

- (a) the names and addresses of those electors whose names appear in the existing final register for GC currently in force, updated and corrected by the ERO based on reported or available information; and
- (b) the names and addresses of the eligible new applicants who have applied for registration in the constituency concerned on or before 16 July of that year.

The provisional register will be **available for public inspection** at the Registration and Electoral Office (“REO”) and various other places, such as local District Offices, as specified in the Gazette notice of publication for a period after its publication and before the appeal deadline referred to in para. 2.14 below. [Ss 12 and 13 of the EAC (ROE) (GC) Reg.]

The Omissions List

2.13 At the same time when the provisional register for GCs is published, the ERO will also publish an omissions list, containing the names and residential addresses of persons who have been formerly registered as GC

electors, which are struck out from the provisional register and proposed to be omitted from the next final register, based on the information received by the ERO who is satisfied on reasonable grounds that the concerned persons are no longer eligible to be registered or have been disqualified. The names and residential addresses of the persons included in the omissions list will not appear on the provisional register. [S 32(4)(a) and (b) of the LCO and ss 9 and 10 of the EAC (ROE) (GC) Reg.]

Appeals – Objections and Claims

2.14 Members of the public may lodge with the ERO objections as regards entries in the relevant provisional register **not later than 29 August in a DC election year**. On or before that date, a dissatisfied applicant or a person whose name has been included in the omissions list may lodge a claim in respect of the entry or any omission concerning himself. Cases of objections and claims will be referred to the Revising Officer for consideration. The Revising Officer, who is a member of the Judiciary, will rule on each objection or claim and decide on the inclusion, exclusion, or correction of the entry concerned in the relevant final register. [S 34 of the LCO and Part III of the EAC (ROE) (GC) Reg.]

The Final Register

2.15 The final register for GCs is to be published **not later than 25 September in a DC election year**. It includes the entries in the relevant provisional register, the updated names and residential addresses of electors who have applied to alter their particulars not later than 29 August of that year, and the names and residential addresses of those who were subject to a notice of objection or claim, updated and corrected to reflect the decisions of the Revising Officer as appropriate. The ERO will also take the opportunity to delete those entries of electors who are known to be dead and to correct any

mistakes in the relevant provisional register. This final register remains valid until the publication of the relevant final register in the following year. The final register in force will be available for public inspection at the REO and local District Offices. [S 20 of the EAC (ROE) (GC) Reg.]

IMPORTANT :

Information relating to a person contained in any register of electors or in any extract of any register of electors **can only be used for election-related purposes** under the electoral legislation. Any **abuse** or **misuse** of such information is an **offence** punishable with a fine at level 2 (up to \$5,000) and imprisonment for 6 months [s 22 of the EAC (ROE)(GC) Reg].

PART II : THE VOTING SYSTEM

2.16 A poll will be taken in respect of a DC constituency to return a member for that constituency if there are 2 or more validly nominated candidates contesting the election. Where there is only 1 validly nominated candidate for a constituency, he will be declared elected. In such a case, polling in respect of the constituency will not be necessary and electors of the constituency concerned should not attend the relevant polling stations since they no longer need to vote.

2.17 The voting system adopted for the DC election is the simple majority or relative majority system, commonly known as the **“first past the post”** system [s 41(2) of the DCO]. The system means, simplistically, that only **1 vote** will be allowed to be cast by any elector in favour of **1 of the candidates** whose name appears on the ballot paper and that the candidate who obtains the largest number of votes cast will be elected. In the event that more

than 1 candidate has the equal highest number of votes, the Returning Officer (“RO”) will have to draw lots to determine which one of these candidates should be elected to fill the vacancy.

2.18 When the successful candidate has to be determined by the drawing of lots, 10 table-tennis balls each marked with a number from 1 to 10 will be put into an empty opaque bag, to be provided by the REO. Each candidate is to draw 1 ball from the bag. The number marked on the ball should be noted by the RO and the ball should be put back into the bag. The other candidate(s) will draw in the same way. The candidate on whom the lot falls is to be returned at the election.

- (a) Where there are 2 candidates, the candidate who draws the larger number from 1 to 10 will be the winner.
- (b) Where there are more than 2 candidates, if in the first draw, the numbers drawn by the candidates are different, then the candidate who draws the largest number will win. If, on the other hand, 2 or more of the candidates have drawn the same larger number and the remaining candidate(s) has/have drawn a smaller number, there must be a second draw. As the system of voting for the election is “first past the post”, only those candidates who have drawn the same larger number in the first draw will participate in the second draw.

2.19 As soon as practicable after the result of the elections has been determined, the RO should publicly declare the successful candidate as elected.

2.20 In the event that before the declaration of the result of the elections, proof is given to the RO’s satisfaction that the successful candidate for a constituency has passed away or has been disqualified from being elected,

then the RO should not declare that candidate as elected and should declare that the election to have failed for that constituency [s 81 of the EAC (EP) (DC) Reg].

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 the DC election is contained in the DCO. The procedure for nomination of candidates for the DC election is provided in the EAC (EP) (DC) Reg and EAC (NAC) (DC) Reg made by the EAC. *[Amended in September 2007]*

Qualifications

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

- (a) be 21 years of age or over;
- (b) be an elector;
- (c) not be disqualified from voting at an election by virtue of s 30 of the DCO;
- (d) not be disqualified from being nominated as a candidate or elected as an elected member by virtue of s 21 of the DCO or any other law; and

- (e) have ordinarily resided in Hong Kong for the 3 years immediately preceding the date of his nomination.

[S 20 of the DCO.]

3.3 A person is considered to **have ordinarily resided in Hong Kong** when he has habitually and normally lived there lawfully for a settled purpose, apart from temporary and occasional absences such as holidays and absence abroad for 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, a prospective candidate should consult his own legal adviser or seek advice from the NAC [see paras. 3.5-3.11 below].

Disqualifications

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

- (a) is a judicial officer, or a prescribed public officer¹;

¹ A prescribed public officer means any of the following:

- (a) the Chairman of the Public Service Commission;
- (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption ("ICAC") and the holder of any other office under the ICAC Ordinance (Cap 204);
- (c) the Ombudsman and the holder of any appointment under s 6 of The Ombudsman Ordinance (Cap 397);
- (d) a member of the EAC;
- (e) the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (f) the Privacy Commissioner for Personal Data and any person employed or engaged by him under the Personal Data (Privacy) Ordinance (Cap 486);
- (g) 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); or
- (h) any person holding an office, whether permanent or temporary, in a government department or bureau and employed in the department or bureau.

- (b) has, in Hong Kong, or any other places, been sentenced to death or imprisonment (by whatever name called), and has not either served the sentence or any substitute sentence or received a free pardon;
- (c) has been convicted of treason;
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment;
- (e) is or has been convicted, within 5 years before the polling day, 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 any offence against Part II of the POBO or any offence prescribed by the regulations made by the EAC;
- (f) is ineligible because of operation of the DCO or any other law;
- (g) is a representative or a salaried functionary of the government of a place outside Hong Kong;
- (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level;
- (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a

voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full; *[Amended in August 2008]*

- (j) is found for the time being under the Mental Health Ordinance (Cap 136) to be incapable, because of mental incapacity, of managing and administering his property and affairs.

[S 21 of the DCO.]

PART II : NOMINATIONS ADVISORY COMMITTEES

3.5 The EAC has the power to appoint NACs to provide advice, on request, to prospective candidates and ROs on the candidates' eligibility for nomination. Each of these NACs is in the charge of either a Senior Counsel or a legal practitioner of not less than 10 years standing in accordance with established practice who, in the opinion of the EAC, is unconnected to any candidate or political organisation in Hong Kong, independent and impartial. [S 3 of the EAC (NAC) (DC) Reg.] *[Amended in September 2007]*

NAC's Service to Candidates [s 5 of the EAC (NAC) (DC) Reg]

3.6 NAC's service will be provided to candidates at a DC ordinary election only. During a period to be announced by the REO – which normally ends 1 day before the commencement of the nomination – candidates may apply, by completing a specified application form obtainable from the REO or from any District Office, for the advice of the NAC as to whether he is qualified to be, or is disqualified from being, nominated as a candidate at the DC ordinary election. He may make only 1 application in respect of the election.

3.7 The application must be:

- (a) sent to the Chief Electoral Officer (“CEO”) so as to be received by him:
 - (i) by post at the REO; or
 - (ii) by facsimile transmission; or
- (b) served on the CEO personally,

on or before the deadline for application to be specified by the EAC.

3.8 An NAC may, before giving its advice, request the applicant to make available to it within a specified period any information, particulars and evidence relating to his intended candidature. The NAC may also request the applicant to present himself before it at a specified time and place to assist it in the consideration of the application. The applicant may, at the specified time and place, make representations to the NAC personally or through any person authorised by him in writing for the purpose.

3.9 Where an applicant does not make available any information, particulars or evidence as requested by the NAC, or fails to present himself before the NAC in response to a request, the NAC may:

- (a) refuse to consider the application or to give any advice on it; or
- (b) give qualified advice on the application having regard to either or both of the following:

- (i) the fact that any information, particulars or evidence, or where appropriate, all of them, were not available to it;
- (ii) the failure of the applicant to present himself before the NAC.

3.10 The NAC's advice to an applicant, including a decision to refuse to consider an application or to give advice, will be in writing and will be sent to the applicant not later than a date to be specified by the EAC.

3.11 Any advice given by an NAC or a refusal to give any such advice does not preclude a person from seeking nomination as a candidate in an election or proceeding with a nomination, if he so wishes.

NAC's Service to ROs [s 6 of the EAC (NAC) (DC) Reg]

3.12 NAC's service will be provided to ROs at both DC ordinary elections and by-elections. During the period from the commencement, up to 1 day after the close of the nomination period, ROs may seek the advice of an NAC, where they consider necessary, on the eligibility for nomination of the candidates who have submitted their nominations. Such application must be in writing and made to the NAC through the CEO. The NAC will, not later than a date specified by the EAC, advise the RO concerned as to whether the candidate concerned is eligible to be nominated.

3.13 The RO is required, in making a decision as to whether a particular candidate is validly nominated in respect of the constituency for which he seeks nomination, to have regard to any advice given by an NAC on that candidate [s 17 of the EAC (EP) (DC) Reg]. The decision on the validity of nomination, however, remains with the RO alone.

PART III : WHEN AND HOW TO NOMINATE

When to Nominate

3.14 Nominations may be made during the **nomination period** specified in the Notice of Election published in the Government Gazette [ss 8 and 9 of the EAC (EP) (DC) Reg]. 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 ROs to receive 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.** *[Amended in September 2007]*

How to Nominate

3.15 Nomination forms specified by the EAC are available from any District Office or from the REO, or can be downloaded from the website of the REO (<http://www.reo.gov.hk>). *[Amended in August 2008]*

3.16 The nomination form comprises:

(a) **The Nomination**

This must be subscribed by **10 registered electors** (other than the candidate himself) and the number of persons that may subscribe a nomination shall not be more than 20 [s 7(1) and (1A) of the DC Subscribers & Deposit Reg]. A subscribing elector must be registered for the constituency concerned and may only subscribe 1 nomination. Where the number of persons subscribing a

nomination has exceeded the required number (ie 10), any surplus over the required number of qualified subscribers will be regarded as not having subscribed the nomination concerned [s 7(3A) of the DC Subscribers and Deposit Reg]. In this case, the elector may subscribe another nomination instead. If the nomination subscribed by an elector has been held to be invalid, or the candidate has withdrawn his nomination or has died, the elector may subscribe another one instead before the end of the relevant nomination period, and his signature shall not be inoperative on that other nomination form. Under this scenario, if he subscribes more than 1 nomination form in contravention of the regulations, his signature shall be operative only on the first one delivered. [S 7(4) of the DC Subscribers & Deposit Reg.]

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 use his best endeavour to ensure that the electors subscribing his nomination form are eligible and have not subscribed another nomination previously. Electors subscribing a nomination should sign the nomination form **personally**.

No illegal act shall be used to cause an elector to subscribe or not to subscribe a nomination. Intimidation is an offence under s 24 of the Crimes Ordinance (Cap 200), punishable by a fine or up to 5 years' imprisonment. Bribery is also an offence punishable by fine or imprisonment. *[Added in September 2007]*

(b) The Candidate's Consent to Nomination and Declaration

This must be completed and signed by the candidate and endorsed by a witness. The candidate must sign a declaration to the effect that he will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region. [S 34(1)(b) of the DCO.]

IMPORTANT :

No person shall be nominated in an election as a candidate for more than 1 constituency. When a person submits his nomination form, he must have withdrawn all his prior nominations, if any, and make a declaration (contained in the specified form) that either he has not been nominated before for any other constituency in the election, or if he has been so, he has withdrawn all those prior nominations. Where a candidate stands nominated [see para. 3.24 below], any subsequent nominations of his will be rejected as invalid.

In the nomination form, a candidate is required to state his occupation, and he is free to state his political affiliation for publication if he so prefers. Candidates should make sure that their nomination forms are properly completed before submission.

3.17 Each nomination form must be submitted to the RO for the constituency concerned together with the payment of an appropriate election deposit (see Part IV of this chapter for details). The RO may refuse to accept any nomination form where there is a material alteration of its content.

3.18 The completed nomination form must be lodged with the RO for the constituency concerned by the candidate **in person** during ordinary

business hours, ie the hours between 9 am and 12 noon on a Saturday and the hours between 9 am and 5 pm on any other day other than a general holiday, within the nomination period. The CEO may, in exceptional circumstances, eg the nominee's temporary absence from Hong Kong or incapacity due to illness, authorise other forms of delivery of the nomination form to the RO [s 12(12) and (13) of the EAC (EP) (DC) Reg].

3.19 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 14 of the EAC (EP) (DC) Reg].

False Declarations

3.20 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 under the Crimes Ordinance (Cap 200) punishable by a fine and imprisonment of up to 2 years. Under the EAC (EP) (DC) Reg, a person who knowingly or recklessly makes a false or incorrect statement in a material particular or knowingly 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. 15.47 and 16.31 of these Guidelines [s 104(4) and (5) of the EAC (EP) (DC) Reg]. If elected, he will also be disqualified from holding office as a member of the DC in accordance with s 24(1)(d)(iv) of the DCO. *[Amended in September 2007]*

PART IV : ELECTION DEPOSIT

Payment of Election Deposit

3.21 Each nomination form must be presented with the payment of an election deposit of \$3,000, in cash, cashier order or by cheque, as prescribed by regulation made by the CE in Council [ss 34(2) and 81(2)(b) of the DCO and s 2 of the DC Subscribers & Deposit Reg].

3.22 A nomination form will not be received by the RO unless it is accompanied by the required sum of election deposit.

IMPORTANT :

Candidates are encouraged to pay their election deposit by cash or cashier order although they may pay by crossed cheque. In the event that a cheque is dishonoured, the nomination will be ruled invalid unless the sum of deposit is made good before the expiration of the nomination period. In order to avoid the risk of invalidation of the nomination due to dishonoured cheque, candidates are strongly advised to submit the election deposit in cash or cashier order if they submit their nomination in the last 3 working days (excluding Saturday) of the nomination period.

Return of Election Deposit

3.23 The deposit will be returned to the candidate if:

- (a) he is not validly nominated;
- (b) his nomination has been withdrawn;
- (c) he has passed away or is disqualified from being nominated;

- (d) the election is terminated;
- (e) he is elected; or
- (f) he secures in his favour not less than 5% of the total number of ballot papers containing valid votes received.

The deposit will be forfeited if none of the above conditions is satisfied.

[For details, see ss 3, 4 and 5 of DC Subscribers & Deposit Reg.]

PART V : VALIDITY OF NOMINATIONS

[Ss 12, 16, 18 and 22 of the EAC (EP) (DC) Reg.]

3.24 Where the RO has received a nomination form within the nomination period, the candidate will be deemed to stand nominated unless the RO decides that the nomination is invalid.

3.25 The RO will make a decision as to the validity of a nomination as soon as practicable after receipt of the nomination form and will publish a notice stating which persons are validly nominated as candidates within 14 days of the expiry of the nomination period [s 36(1) of the DCO and s 22 of the EAC (EP) (DC) Reg].

3.26 Where an RO has doubts as to whether or not a particular candidate is qualified to be nominated, he may apply to an NAC for advice.

3.27 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. For example, if the entitlement 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.

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

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

3.30 A nomination will not be valid unless it contains all the information and signatures required to be shown on the nomination form or by the RO and the candidate has made the declaration referred to in para. 3.16(b) above.

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

- (a) the number or qualifications of the subscribers are not as required by the regulation made by the CE in Council [s 7 of the DC Subscribers & Deposit Reg];
- (b) the nomination form, including the nomination and declaration, has not been completed or signed as required by s 12 of the EAC (EP) (DC) Reg;

- (c) he is satisfied that the candidate is not qualified to be, or is disqualified from being, nominated as a candidate, having regard to any advice given by the NAC to an application made by him or by that candidate [see paras. 3.13 and 3.26 above];
- (d) the candidate has been nominated for another constituency in the same election and the RO is not satisfied that he has withdrawn that candidature;
- (e) the cheque for the payment of the election deposit of the candidate is dishonoured and has not been made good before the expiration of the nomination period;
- (f) he is satisfied that the candidate has passed away; or
- (g) the nomination form is not duly lodged within the nomination period [see paras. 3.14 and 3.18 above].

3.32 If, having decided that a candidate is validly nominated but before the polling day, proof is given to the satisfaction of the RO that the candidate has passed away, he must publicly declare that the candidate has passed away and further declare which candidate is or candidates are validly nominated for that constituency. The RO does not have to make any such declaration if the candidate who has died is uncontested in the election for the relevant constituency and the RO has publicly declared that the candidate was duly elected [s 36(2) and (3) of the DCO and s 24 of the EAC (EP) (DC) Reg].

3.33 If, having decided that a candidate is validly nominated but before the polling day, proof is given to the satisfaction of the RO that the candidate is disqualified from being nominated as a candidate, the RO must vary the decision to the effect that the candidate is not validly nominated. He

must then publicly declare his varied decision and which candidate is or candidates are validly nominated for that constituency. The RO may not vary his decision if the candidate who has been disqualified is uncontested in his constituency and the RO has publicly declared that the candidate was duly elected [s 36(4) and (5) of the DCO and s 25 of the EAC (EP) (DC) Reg].

3.34 A candidate will be elected ipso facto if he is the only 1 validly nominated for a particular constituency at the close of nominations. In the circumstances, the RO should publicly declare the candidate to be returned at the election for that constituency [s 23 of the EAC (EP) (DC) Reg].

PART VI : WITHDRAWAL OF CANDIDATURE

3.35 A candidate may withdraw his candidature only before the close of nominations. He should complete and sign a specified form entitled “Withdrawal of Candidature” and lodge it with the RO concerned [s 35 of the DCO and s 20 of the EAC (EP) (DC) 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 VII : NOTICE OF NOMINATION

3.36 The RO for the constituency concerned will publish a notice in the Gazette within 14 days after the close of the nomination period, stating the name and the principal residential address of each of all the validly nominated candidates for the constituency, together with the number (which will be shown on the ballot paper) allocated by the drawing of lots to each candidate [s 22(1) and (4) of the EAC (EP) (DC) Reg]. Each validly nominated candidate will also be separately informed.

PART VIII : PARTICULARS RELATING TO CANDIDATES ON BALLOT PAPERS

3.37 Under the PCBP (LC & DC) Reg, candidates may, **during the nomination period**, request the EAC to print specified particulars relating to candidates on ballot papers for use in DC elections. These particulars include registered names and emblems of prescribed bodies², registered emblems of prescribed persons³, words indicating that a candidate is an independent candidate or a non-affiliated candidate, and personal photographs of candidates. *[Added in September 2007]*

Request to Print Particulars Relating to Candidates on Ballot Papers

3.38 A candidate may request the EAC to print on ballot papers his personal photograph and a choice of combinations of specified particulars –

² A prescribed body means a prescribed political body or a prescribed non-political body.

³ A prescribed person means a person that is registered in a final register of electors for geographical constituencies as compiled and published in accordance with the LCO and that is not disqualified from being so registered or from voting at an election.

including the registered names relating to not more than 3 prescribed bodies, the registered emblems relating to not more than 3 prescribed bodies and the candidate concerned, and with or without the words “Independent Candidate” or “Non-affiliated Candidate”.

3.39 A request must be made in the specified form and signed by the requestor. Where the subject of the request relates to 1 or more prescribed bodies, it must be accompanied by a consent given, during the nomination period, by the body or each of the bodies in relation to the request. Where the subject of request includes a photograph, it must be accompanied by the photograph with the name of the candidate shown on the back of the photograph.

[S 3 of PCBP (LC & DC) Reg.] *[Added in September 2007]*

Application for Registration of Name and Emblem

3.40 The particulars already registered with the EAC under the former Particulars Relating to Candidates on Ballot Paper (Legislative Council) Regulation will be deemed to have been registered with the EAC in relation to both LegCo and DC elections. All subsequent registrations will be applicable to both LegCo and DC elections. *[Added in September 2007 and amended in August 2008]*

Application by prescribed body for the registration of its name and emblem

3.41 A prescribed body intending to support a candidate in a DC election may at any time apply to the EAC for the registration of all or any of the following particulars:

- (a) the Chinese name of the body;

- (b) an abbreviation of the Chinese name of the body;
- (c) the English name of the body;
- (d) an abbreviation of the English name of the body;
- (e) an emblem of the body.

3.42 An application must be made in the specified form and signed by the applicant. It should indicate that the applicant is a prescribed political body or a prescribed non-political body and that the applicant intends to consent to the subject of application being printed on a ballot paper as particulars relating to 1 or more persons as the candidates. The application must also be accompanied by a copy of the certificate or document issued to the body by an authority or regulatory organization that regulates the body under the laws of Hong Kong and showing the name of the body.

[S 8 of PCBP (LC & DC) Reg.] *[Added in September 2007]*

Application by prescribed person for the registration of his emblem

3.43 A prescribed person intending to run in a DC election may at any time apply to the EAC for the registration of an emblem of the person.

3.44 An application must be made in the specified form and signed by the applicant.

[S 9 of PCBP (LC & DC) Reg.] *[Added in September 2007]*

Timing for Application

3.45 Applications for registration may be submitted at any time. However, applicants should note that the relevant cut-off date of the annual registration cycle ending on 31 December 2008 is 15 April 2008.

[Added in September 2007 and amended in August 2008]

Processing of Application

3.46 The EAC will process any application made by a prescribed body or a prescribed person:

- (a) if the application is made on or before 15 April in a year, as soon as practicable after that date, and in any event within that annual registration cycle; or
- (b) if the application is made after the 15 April in a year, as soon as practicable after 15 April of the next following annual registration cycle, and in any event within the next following annual registration cycle.

[S 11 of PCBP (LC & DC) Reg.] *[Added in September 2007 and amended in August 2008]*

3.47 If the EAC is of the opinion that it may refuse to grant an application made by a prescribed body or a prescribed person, it must give the applicant a notice in writing. The applicant may, within 14 days after the notice is given, vary the application or make representations to the EAC on why it should not refuse to grant the application. [Ss 12 and 13 of PCBP (LC & DC) Reg.] *[Added in September 2007]*

3.48 If the EAC, having considered an application made by a prescribed body or a prescribed person, is of the opinion that it may grant the application, it will publish a notice in respect of the application in the Gazette:

- (a) specifying the name of the applicant and the subject of the application;
- (b) stating that the EAC may grant the application; and
- (c) inviting any person who objects to the granting of the application to make objection to the EAC in accordance with s 15 of PCBP (LC & DC) Reg.

[S 14 of PCBP (LC & DC) Reg.] *[Added in September 2007]*

3.49 Under s 15 of PCBP (LC & DC) Reg, any person may, within 14 days after the publication of a notice in respect of an application in the Gazette, by notice in writing given to the EAC, object to the granting of the application. *[Added in September 2007]*

3.50 In the event of an objection, the EAC will conduct a hearing. Under normal circumstances, a hearing will be held in public. However, a hearing may be held in private if it is in the interest of justice to do so. The EAC will make a decision on whether the application should be granted after hearing the representations and examining the relevant materials. *[Added in September 2007]*

3.51 The EAC will, as soon as practicable after a decision is made to grant an application made by a prescribed body or a prescribed person, publish a notice in respect of the application in the Gazette specifying the name of the applicant and the subject of the application. If a decision is made to refuse an

application, the EAC will notify the applicant in writing of the EAC's decision with reasons for its refusal. [S 19 of PCBP (LC & DC) Reg.] *[Added in September 2007]*

Registration and De-registration of Name, Emblem, etc.

3.52 A register of the relevant particulars in respect of the registered names and emblems of prescribed bodies and the registered emblems of prescribed persons is established and maintained by the CEO who makes the register available for inspection, free of charge, by members of the public during ordinary business hours at the REO. [S 20 of PCBP (LC & DC) Reg.] *[Added in September 2007]*

3.53 The EAC may de-register the name, the abbreviation of the name and the emblem that is registered in relation to a prescribed body on the grounds that:

- (a) no request is made to print the subject of registration on ballot papers:
 - (i) in 2 consecutive LegCo general elections;
 - (ii) in 2 consecutive DC ordinary elections, one of which is held between such LegCo general elections; and
 - (iii) in any LegCo or DC by-election held between such LegCo general elections or DC ordinary elections; or
- (b) the body ceases to exist.

3.54 The EAC may also de-register the emblem that is registered in relation to a prescribed person on the grounds that:

- (a) no request is made to print the subject of registration on ballot paper:
 - (i) in 2 consecutive LegCo general elections;
 - (ii) in 2 consecutive DC ordinary elections, one of which is held between such LegCo general elections; and
 - (iii) in any LegCo or DC by-election held between such LegCo general elections or DC ordinary elections; or
- (b) the person has died.

[S 21 of PCBP (LC & DC) Reg.] *[Added in September 2007]*

PART IX: PUBLICITY

3.55 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 candidate to be shown on the ballot paper and the candidate may attend if he so wishes. Thereafter, the REO will publish an 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 the electors close to the time of the polling day. *[Amended in August 2008]*

3.56 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 relevant 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.

[Amended in September 2007 and August 2008]

3.57 To reduce the use of paper for environmental protection, each candidate will be allocated with the size of no more than a quarter of an A4 paper. *[Added in September 2007]*

3.58 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 or in any other way unlawful. Candidates are reminded that some electors are only able to read English. *[Amended in August 2008]*

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

POLLING AND COUNTING ARRANGEMENTS

PART I : BEFORE THE POLL

4.1 The CEO may designate the same place as a polling station and a counting station. If there are 2 or more counting stations for a constituency, he will designate the polling station at which the largest number of electors are to vote as the dominant counting station. He will also designate a polling station at which less than 200 electors are to vote as a small polling station. If 2 or more polling stations have been designated for a constituency and at least 1 of them is a small polling station or special polling station, he will designate 1 polling station as a main counting station for the purpose of counting the votes of the small polling station or special polling station. A special polling station is one accessible to electors with disability (see para. 4.5 below). Such electors will normally be small in number. The aggregate of the electors to vote at the polling station to be designated as the main counting station and the electors to vote at the small polling station must not be less than 200. [S 31(1A), (1B), (1C), (1D) and (1E) of the EAC (EP) (DC) Reg.] The RO will, at least 1 working day before the polling day, give notice in writing to each candidate of the place or places at which vote counting is to take place for the constituency contested by the candidates [s 65(3) and (4) of the EAC (EP) (DC) Reg]. *[Amended in August 2008]*

4.2 An area outside the polling station will be designated as the No Canvassing Zone (“NCZ”) and No Staying Zone (“NSZ”), the boundaries of which will be determined by the RO. All candidates will be notified of these zones before the polling day. The RO may also authorise the Presiding

Officer (“PRO”) to vary the NCZ or NSZ on the polling day. [S 43 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 1 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 5 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]. Whether the polling station allocated to an elector is accessible to persons with mobility

difficulty will be specified clearly in the location map attached to the poll card sent to each elector, together with a note indicating that if any elector allocated to this polling station has any difficulty in mobility and wishes to vote at a special polling station, he may apply to the CEO for re-allocation. If a special polling station is re-allocated to him, then he can vote only at that polling station. If circumstances permit, free Rehabus service will also be arranged to take those electors to the special polling station. In case circumstances require, the CEO may allocate to an elector an alternative polling station, 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.

[Amended in September 2007]

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 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.

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 Introduction to 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 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 a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election, 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, and that obstruction is not posed to electors and no sound amplifying device is used [s 43(14) and (15) of the EAC (EP) (DC) Reg]. Apart from this, the RO or the PRO of the relevant polling station will allow no other canvassing activities within a NCZ except for static display of election advertisements that are authorised. 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 13: Prohibition Against Canvassing Activities Outside Polling Stations.]
[Amended in September 2007 and August 2008]

- 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 (including suggesting not to vote for any candidate) 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 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 a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election;
 - (e) stay or loiter in the NSZ without the express permission of the PRO;

otherwise he commits an offence with a maximum penalty of a fine at level 2 (up to \$5,000) and imprisonment for 3 months [ss 43 and 48 of the EAC (EP) (DC) Reg].

[Amended in September 2007]

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;
- (d) the ROs and Assistant Returning Officers (“AROs”) for the relevant constituency;
- (e) public officers on duty at the polling station, including police officers and members of the Civil Aid Service;
- (f) candidates and election agents of the relevant constituency;
- (g) polling agents for the polling station (only 1 at a time in respect of each candidate);
- (h) public officers authorised in writing by the CEO;
- (i) any person authorised in writing by a member of the EAC;
- (j) a person authorised in writing by the RO for liaison purposes; and
- (k) a child who accompanies an elector to the polling station for the purpose of voting (if the PRO considers that the child should not

be left unattended while that elector is in the polling station and the child will not disturb or cause inconvenience to any person in the polling station).

[S 47 of the EAC (EP) (DC) Reg.] *[Amended in September 2007]*

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

NOTE :

For the purpose of ensuring that polling takes place smoothly and efficiently, the PRO may regulate the number of electors, candidates, election agents and polling agents to be admitted to the polling station at any one time. Only 1 such person may be present in the polling station: a candidate or his election agent or his polling agent. [See also Chapter 6: Appointment and Roles of Election Agent, Election Expense Agents, Polling Agents and Counting Agents.]

4.11 Except for an elector or a police officer on duty or a member of the Civil Aid Service on duty, all other persons permitted to enter a polling station are required to sign a **Declaration of Secrecy** on a specified form and observe the provisions governing the secrecy of voting [s 93 of the EAC (EP) (DC) Reg].

PART V : CONDUCT INSIDE THE POLLING STATION

4.12 On arrival at the polling station, an elector should show to the polling staff at the ballot paper issuing desks his identity card or such other identity document or documents, which show the identity card/document number, name and photograph of the elector, to the satisfaction of the PRO. The polling staff will check the elector's identity document against the entries on the register of electors to ascertain if the elector is registered in respect of the constituency. If so, 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. No record will be made as to which particular ballot paper is given to an elector.

4.13 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.

4.14 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 final register now in effect for this constituency, as follows (reads the whole of the relevant entry in the register)?
- (b) Have you already voted for this or any other constituency in this election?

A person will not be issued with any ballot paper unless he has answered the questions to the satisfaction of the PRO. [S 54 of the EAC (EP) (DC) Reg.]

4.15 Where there is reasonable cause to believe that a person has committed an offence of impersonation of an elector, the PRO may request the police officer on duty at the polling station to arrest that person [s 55 of the EAC (EP) (DC) Reg].

4.16 If an elector has been issued with a ballot paper but chooses not to take it, he cannot return to the polling station later on and claim for that or another one. If for a reason considered justified by the PRO, an elector who has not marked the ballot paper issued to him, may, with the permission of the PRO, hand back the ballot paper to the PRO and return later to cast his vote. If, after having been issued with a ballot paper, an elector has become incapacitated by physical illness and has left the polling station without marking his ballot paper, he may return to the polling station to cast his vote before the close of the poll, provided that before he leaves the polling station, his ballot paper has been retrieved by the PRO. Under either of the above circumstances, the PRO must keep that ballot paper in his custody and re-issue it, in the presence of a police officer, to the elector in question when the latter returns before the close of poll to cast his vote. But if at the close of poll, the elector has not returned, the PRO shall endorse the ballot paper with the word “UNUSED”; such ballot paper shall not be counted. [S 56(A) of the EAC (EP) (DC) Reg.] *[Amended in September 2007]*

4.17 The PRO would need to keep a ballot paper left in the polling station in his custody in the circumstances described in para. 4.16 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.

4.18 When issued with a ballot paper, an elector will also be provided with a cardboard to which a chop with a “✓” sign is attached. The elector should then immediately proceed to one of the voting compartments where he should affix the chop to give a single “✓” in the circle opposite the name of the candidate of his choice on the ballot paper. No other mode of marking the ballot paper is allowed. The elector should then fold the ballot paper, face inside, to conceal the marking, when he comes out of the voting compartment and proceeds to the sealed ballot box [s 57 of the EAC (EP) (DC) Reg].

4.19 Immediately after an elector comes out of the voting compartment, he should put his marked ballot paper as folded into the sealed ballot box as directed by the polling staff and return the cardboard and the chop to the polling staff, after which the elector should leave the polling station immediately.

NOTE :

An elector must not remove a ballot paper from a polling station. It is an offence under s 57(5) of the EAC (EP) (DC) Reg for a person to bring out a ballot paper from a polling station. Any person who removes a ballot paper from a polling station with an intent to deceive may commit an offence under s 17(1)(c) of the ECICO and may be prosecuted. It will also be a corrupt conduct under s 17(1)(d) of the ECICO if any person, without lawful authority, destroys, defaces, takes or otherwise interferes with a ballot paper at the election.

4.20 A visually impaired elector who so requests will be provided with a **template** to facilitate his marking of the ballot paper without any assistance from anyone [s 59(3) of the EAC (EP) (DC) Reg]. [For details about the template, see para. 6.35 of Chapter 6.] The template should be returned to the polling staff after use.

4.21 An elector who is unable to mark a ballot paper to indicate the choice of candidate (eg being unable to read or write or incapacitated by visual deficiency or other physical cause) may ask the PRO, Deputy PRO or Assistant PRO to mark the ballot paper on his behalf. The marking of the ballot paper will be made to show the elector's choice in the presence of one of the Polling Officers as a witness. [S 59 of the EAC (EP) (DC) Reg.]

4.22 **The ballot is secret. No one can force a person to vote or not to vote for any particular candidate** [s 13 of the ECICO]. **Also no one is required to tell which candidate he has voted for or is going to vote for.** A person who, without lawful authority, requires or purports to require an elector to disclose the name of, or any particular relating to, the candidate for whom the elector has voted is guilty of a criminal offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 6 months [s 48 of the DCO and s 94 of the EAC (EP) (DC) Reg]. *[Amended in September 2007]*

4.23 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 unmarked ballot paper. Such spoilt ballot papers will be endorsed on the front with the word '**SPOILT**' and will be kept by the PRO. The spoilt ballot papers will not be counted at the counting of the votes. [Ss 62 and 78 of the EAC (EP) (DC) Reg.]

4.24 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 a ballot paper shall not be counted at the counting of the votes. [Ss 60 and 78 of the EAC (EP) (DC) Reg.] However, if an elector who has been issued with a ballot paper chooses not to cast his vote and leaves the polling station and a person 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 person is the elector who had been issued with a ballot paper earlier, and he answers the appropriate questions set out in para. 4.14 to the satisfaction of the PRO.
[Amended in September 2007 and August 2008]

4.25 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 61 and 78 of the EAC (EP) (DC) Reg.]

4.26 Inside a polling station, an elector must not interfere with or attempt to influence any other elector, specifically:

- (a) speak to or communicate with any other elector contrary to a direction of the RO, ARO, PRO, Deputy PRO, Assistant PRO or any polling officer not to do so;
- (b) attempt to obtain information, or disclose any knowledge acquired, concerning the vote of another elector;
- (c) exhibit or distribute any campaign material;
- (d) without any reasonable excuse, display 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 a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election;
- (e) use a mobile telephone or any telephone or paging machine or any other form of electronic communication device contrary to a direction of the RO, ARO, PRO, Deputy PRO, Assistant PRO or any polling officer not to do so.

If a person contravenes any of the above prohibitions, he commits an offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 3 or 6 months, as the case may be [ss 48(7) and 94 of the EAC (EP) (DC) Reg].

[Amended in September 2007 and August 2008]

4.27 A person must not misconduct himself at a polling station or its vicinity or fail to obey any lawful order 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 polling station or the vicinity of the polling station. A person misconducts himself if he disrupts the poll or disturbs or causes inconvenience to any person in the polling station. If he fails to leave immediately as ordered by the RO or the PRO, he may be removed by a police officer or by 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 [s 49 of the EAC (EP) (DC) Reg].

4.28 Only the following persons may speak to or communicate with electors within a polling station:

- (a) the PRO and other polling staff;
- (b) members of the EAC;
- (c) the CEO;
- (d) the ROs and AROs for the relevant constituency;
- (e) police officers and members of the Civil Aid Service on duty at the polling station;
- (f) a person authorised in writing by the ROs for liaison purposes; and
- (g) any person authorised in writing by a member of the EAC.

[S 48(1) and (6) of the EAC (EP) (DC) Reg.] *[Amended in September 2007]*

4.29 No person may canvass or display any election advertisement within a polling station. Any person who undertakes photographing, filming and video or audio recording within a polling station without the express permission of the PRO, the RO for the constituency or constituencies for which the polling station is used 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 [s 48(2) and (9) of the EAC (EP) (DC) Reg]. Normally such permission is only granted to members of the media or government photographers for publicity purposes. *[Amended in September 2007]*

PART VI : CLOSE OF POLL

A Polling Station Other Than a Small Polling Station or a Special Polling Station

4.30 Polling will close at 10:30 pm. At the close of poll, a notice will be displayed by the PRO outside the polling station (which is also designated as a counting station) to inform the public that the poll has been closed and that the station is being arranged for the counting of votes and will be open to them when such arrangements are completed. Electors who intend to vote but are not at the door of their designated polling station by the close of poll will not be allowed in afterwards. A candidate, and his election agent, a counting agent and a polling agent may stay in the polling station while it is closed for the preparation for the counting of votes. The ballot boxes will be locked and sealed by the PRO in the presence of the candidates and their agents, if they are present. The PRO will also inform them of the numbers of unissued ballot papers, spoilt ballot papers and unused ballot papers in his possession. All such ballot papers and the marked copies of the register will then be made up into sealed packets. [S 63(1), (1A) and (2) of the EAC (EP) (DC) Reg.] *[Amended in September 2007]*

4.31 The sealed ballot boxes and sealed packets of unissued ballot papers etc will be kept by the PRO until the counting of votes begins [see Part VII below].

A Small Polling Station or a Special Polling Station

4.32 At the close of poll, a notice will be displayed by the PRO outside the polling station to inform the public that the poll has been closed.

A candidate and his election agent and a polling agent may stay in the polling station while it is closed. Electors who intend to vote but are not at the door of their designated polling station by the close of poll will not be allowed in afterwards. The ballot boxes will be locked and sealed by the PRO in the presence of the candidates and their agents, if they are present. The PRO will also inform them of the numbers of unissued ballot papers, spoiled ballot papers and unused ballot papers in his possession. All such ballot papers and the marked copies of the register will then be made up into sealed packets. [S 63A(1) and (2) of the EAC (EP) (DC) Reg.]

4.33 For the small polling stations and special polling stations which have not been designated as counting stations, the sealed ballot boxes and sealed packets of unissued ballot papers and the ballot paper accounts etc will be delivered to the main counting station by the PRO under police escort. Not more than 2 candidates or their agents, if they so wish, will be allowed to participate in the delivery. Where there are more than 2 such persons wishing to participate in the delivery, the PRO will draw lots to determine which 2 persons will participate. Candidates and their agents are allowed to remain in the polling station only until they see that the police escort for the delivery is available, and thereafter all of them, except those 2 persons who are to participate in the delivery, must leave the polling station. [*Amended in September 2007*]

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.

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;
- (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.]

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.

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.**

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 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.]

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
- (f) votes are given for more than 1 candidate.

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 PRO concerning these ballot papers. [S 78 of the EAC (EP) (DC) Reg.] *[Amended in September 2007]*

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; or *[Amended in September 2007]*
- (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.]

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 acceptance 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.] *[Amended in September 2007]*

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].

Counting Arrangements

4.47 The counting of the votes will proceed continuously, as far as possible, until the counting is completed. In the event that more than 1 candidate has the equal highest number of votes, the RO will have to draw lots to determine which one of these candidates should be elected to fill the vacancy [see para. 2.18 for the procedures for drawings of lots]. *[Amended in September 2007]*

Constituencies with 1 Counting Station

4.48 For a constituency with only 1 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 2 or More Counting Stations

4.49 For a constituency with 2 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 or 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. In the case of a counting station other than the dominant counting station, 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 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 or 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.] *[Amended in August 2008]*

PART VIII : DECLARATION OF RESULT

4.51 For a constituency with only 1 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 2 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 1 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 forms 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 6 months before they are destroyed. [Ss 84 and 86 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.]

CHAPTER 5

ELECTION PETITIONS

PART I : GROUNDS FOR LODGING AN ELECTION PETITION

5.1 The result of the DC election may be questioned only by an election petition made on the following grounds:

- (a) the ground that the person declared as elected by the RO in accordance with regulations in force under EACO was not duly elected because:
 - (i) he was not eligible to be, or was disqualified from being, a candidate at the election; or
 - (ii) he engaged in corrupt or illegal conduct at the election; or
 - (iii) corrupt or illegal conduct was generally prevalent at the election; or
 - (iv) material irregularity occurred in relation to the election, the poll or the count; or
- (b) a ground specified in any other enactment that enables an election to be questioned.

[S 49 of the DCO.] *[Amended in September 2007]*

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

5.2 An election petition may be lodged:

- (a) by 10 or more electors entitled to vote in the relevant constituency; or
- (b) by a person claiming to have been a candidate in the relevant constituency.

[S 50 of the DCO.]

5.3 An election petition questioning an election may be lodged with the Court of First Instance only during the period of 2 months following the date on which the RO has published the result of the election in the Gazette. An election petition is triable in open court and before 1 judge. At the end of the trial of an election petition, the court must determine questions of the validity of a nomination or whether a person was or was not duly elected, as appropriate. The Court must certify the determination in writing. The determination as certified is final as to the matters at issue concerning the election petition. [Ss 52, 53 and 55 of the DCO.] *[Amended in September 2007]*

CHAPTER 6

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

PART I : GENERAL

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

6.2 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.

PART II : TYPES AND NUMBERS OF AGENTS

6.3 If he so wishes, a candidate may appoint the following agents to assist him in an election:

- (a) **1** election agent [s 26(1) of the EAC (EP) (DC) Reg];
- (b) **any number** of election expense agents [s 28(1) of the EAC (EP) (DC) Reg];
- (c) not more than **2** polling agents for **each polling station** in respect of his constituency [s 45(3) of the EAC (EP) (DC) Reg]; and

- (d) not more than **2** counting agents for **each counting station** in respect of his constituency [s 66(2) of the EAC (EP) (DC) Reg].

PART III : QUALIFICATIONS OF AGENTS

6.4 The election, polling and counting agents should be holders of the Hong Kong identity card and have attained the age of 18 years [ss 26(2), 45(4) and 66(3) of the EAC (EP) (DC) Reg] while an election expense agent needs to be a person who has attained the age of 18 years [s 28(2) of the EAC (EP) (DC) Reg].

PART IV : CIVIL SERVANTS ACTING AS AGENTS

6.5 Civil servants, other than Directorate Officers, Administrative Officers, Information Officers and Police 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 ROs, 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. However, to avoid any unfairness, semblance of unfairness or conflict of interest, civil servants who work in a constituency or have extensive contacts with the public in a constituency are well advised not to accept appointment by a candidate in the constituency to be his agent. Civil servants who are allowed to participate in electioneering activities, including the seeking of election donations, for any candidate should not use or be seen to use any public resources in such activities. *[Amended in September 2007 and August 2008]*

PART V : ELECTION AGENT

Appointment

6.6 A candidate may appoint **1** election agent to assist him and to act on his behalf in an election [s 26(1) of the EAC (EP) (DC) Reg]. The appointment may be made at any time after a candidate hands in his own nomination form.

6.7 The candidate must give notice of such appointment to the RO for the constituency for which the candidate is nominated [s 26(3) of the EAC (EP) (DC) Reg]. The notice must be in the specified form and signed by both the candidate and the agent [s 26(5) and (6) of the EAC (EP) (DC) Reg]. The appointment will not be effective until the notice of appointment is received by the RO [s 26(4) of the EAC (EP) (DC) Reg].

6.8 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 expenditure** [s 23 of the ECICO].

Revocation

6.9 The appointment of an election agent may be revoked by the candidate at any time. The candidate must also give notice of the revocation in writing to the RO. A revocation of an appointment of an election agent will

not be effective until such notice is received by the RO. [S 26(8), (9) and (10) of the EAC (EP) (DC) Reg.]

6.10 If an election agent passes away 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. 6.7 above [s 26(11), (12) and (13) of the EAC (EP) (DC) Reg].

Notification

6.11 Not later than 10 days after the expiration of the nomination period, and thereafter as required, each validly nominated candidate or his election agent will receive from the RO a notice containing the details of all the election agents appointed by all candidates for the constituency concerned [s 27(1) and (3) of the EAC (EP) (DC) Reg]. The RO will also display outside his office a notice of the particulars of the election agents [s 27(5) of the EAC (EP) (DC) Reg].

Role of an Election Agent

6.12 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;
- (b) to withdraw the candidate's candidature;

- (c) to incur election expenses save where he has been appointed as an election expense agent by the candidate; and
- (d) to authorise an election expense agent to incur election expenses.

[S 26(14) and (15) of the EAC (EP) (DC) Reg.] *[Amended in September 2007]*

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 authorised 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.]

6.13 Candidates and their election agents are entitled to be present at the counting of the votes and are normally allowed admission to all polling stations in respect of the constituency concerned. However, the PRO of a polling station may regulate the number of candidates and their agents to be admitted to the polling station at any one time, for the purpose of maintaining order in the polling station and ensuring that polling is conducted smoothly. **Whilst inside a polling station or a counting station, the provisions to be observed by polling agents and counting agents are also applicable to candidates and their election agents.** They are therefore advised to familiarise themselves also with the guidelines set out in Parts VII and VIII of this chapter.

PART VI : ELECTION EXPENSE AGENTS

Authorisation

6.14 A candidate may authorise any number of election expense agents to incur election expenses on his behalf in an election [s 28(1) of the EAC (EP) (DC) Reg]. The authorisation will remain in force until the end of the election period, ie the end of the polling day or the last polling day if there is more than 1 polling day [ss 2 and 23 of the ECICO]. *[Amended in September 2007]*

6.15 The authorisation 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 [s 28(3), (4) and (5) of the EAC (EP) (DC) Reg]. A copy of the authorisation must be lodged with the RO for the constituency, or the CEO if the RO has not been appointed, by the candidate. [S 28(6) of the EAC (EP) (DC) Reg]. *[Amended in September 2007]*

6.16 The authorisation is not effective until it has been received by the RO or the CEO as the case may be. Before the authorisation is received, no election expenses should be incurred by a person purported to be authorised in the authorisation 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

6.17 The authorisation 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 [s 28(11) and (12) of the EAC (EP) (DC) Reg]. The RO or the CEO, as the case may be, will only regard a revocation as effective when he receives the notice [s 28(13) of the EAC (EP) (DC) Reg]. The election expenses already incurred will still be counted as election expenses of the candidate. *[Amended in September 2007]*

Role of Election Expense Agents

6.18 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 form of authorisation; 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

6.19 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 receipts and/or invoices 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 and Part IV of Chapter 15]. 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 days 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 a specified form signed by the donor). Without such statements and vouchers provided by the election expense agents, the candidate will no doubt have difficulty in discharging his duty to file the return and declaration of election expenses and donations, which **may render him liable for a criminal offence.** *[Amended in September 2007]*

Public Inspection of Authorisation

6.20 The RO will make available for public inspection all copies of authorisations submitted by candidates until the expiration of the period for which copies of the election return lodged by the candidates are available for inspection, ie up to the first anniversary of the date on which the result of the election is published. This offers the public and other candidates an opportunity to scrutinise the amount of election expenses [s 29 of the EAC (EP) (DC) Reg].

PART VII : POLLING AGENTS

Appointment

6.21 A candidate may appoint **not more than 2 polling agents** for each polling station in respect of the constituency for which he is nominated [s 45(3) of the EAC (EP) (DC) Reg].

6.22 The appointment shall be made on a specified form. The candidate must give notice of such appointment in writing signed by him to the RO at least **7 days** before the polling day [s 45(5) and (8) of the EAC (EP) (DC) Reg]. Where a candidate appoints a polling agent after the above deadline, he is required to give notice of the appointment to the PRO of the polling station for which that agent has been appointed. Such a notice must be given by the candidate or the election agent **personally** by delivering the notice of appointment to the PRO at the relevant polling station on the polling day and before the agent concerned enters the polling station [s 45(6) of the EAC (EP) (DC) Reg]. The appointment will not be effective until the notice of appointment is received by the RO or the PRO, as the case may be [s 45(7) of the EAC (EP) (DC) Reg].

Revocation

6.23 The appointment of a polling 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 before the polling day or to the PRO on the polling day in the manner specified in the preceding paragraph [s 45(9), (10) and (11) of the EAC (EP) (DC) Reg]. A revocation of an appointment of a polling agent will not be effective until notice thereof is received by the RO or the PRO, as the case may be [s 45(12) of the EAC (EP) (DC) Reg].

Role of Polling Agents

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

Provisions which Polling Agents should be Aware of

6.25 Although 2 polling agents may be appointed by a candidate for each polling station, only 1 polling agent per candidate may be admitted at any one time to the polling station for which he has been appointed [s 47(6) of the EAC (EP) (DC) Reg]. He is required to stay and keep his movements within the area designated for observation of the poll and not outside. Where a candidate or his election agent is present within a polling station, a polling agent of that candidate may not be present at the same time within the polling station [s 47(7) and (8) of the EAC (EP) (DC) Reg].

NOTE :

The PRO of a polling station may regulate the number of candidates, election agents and polling agents to be admitted to the polling station at any one time, for the purpose of maintaining order in the polling station and ensuring that polling is conducted smoothly. A notice will be displayed outside each polling station to inform all parties concerned about the capacity of the area designated inside the polling station for candidates and their agents to observe the poll. Admission will be on a first-come-first-served basis. In order that as many candidates, election agents and polling agents as possible will have a chance to attend at the polling station to observe the conduct of the poll, any candidate, election agent or polling agent who has been admitted to the polling station will only be allowed to stay in for 1 hour. Thereafter he must leave the polling station unless the designated area is not yet full and no other candidate, election agent or polling agent is waiting to be admitted. The fact that a candidate, election agent or polling agent has left after attending at a polling station will not preclude him from being admitted to the polling station again, on a first-come-first-served basis and

subject to the capacity of the designated area not being exceeded. Everyone admitted is required to sign in with the time of entry written down by him. Each person queuing outside the polling station will be issued with a number chit to record the order of his application to get into the designated area; and when the turn of his number is reached, the number will be called, but if he is not there at that time, he will be automatically discounted from the queue and he will have to get another number chit when he returns. The bearer of the chit with a number next after the absentee's number will be allowed to get in instead.

6.26 Before entering a polling station, every person, other than an elector or a police officer on duty or a member of the Civil Aid Service on duty, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 93 of the EAC (EP) (DC) 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 elector and, in particular, not to divulge which elector has voted for which candidate.

6.27 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 [s 47(10) of the EAC (EP) (DC) Reg].

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

- (a) Before

- (i) Before the commencement of the polling, the PRO will inform the candidates or their agents (either election agent or polling agent) if they are present, the number of ballot papers in his (the PRO's) possession, showing them the books of ballot papers not yet issued to any elector (“**UNISSUED** ballot papers”).
 - (ii) The PRO will show the empty ballot boxes to such persons before proceeding to lock and seal them.
- (b) During
- (i) In the course of polling, the PRO will show to each candidate or his election or polling agent, who is present at the relevant time, any abandoned ballot papers that have been issued or any torn pieces of such ballot papers found lying anywhere in the polling station (“**UNUSED** ballot papers”). Such ballot papers will not be put into a ballot box and will not be counted at the counting of votes. [Ss 61 and 78 of the EAC (EP) (DC) 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 votes. [Ss 60 and 78 of the EAC (EP) (DC) 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 spoilt ballot paper will be

endorsed on the front with the word “**SPOILT**” and will be kept by the PRO. The spoilt ballot papers will not be counted at the counting of votes. [Ss 62 and 78 of the EAC (EP) (DC) Reg.]

(c) After

The PRO will, in the presence of persons present, lock the flap on the lid of the ballot boxes and seal it. He will also inform each candidate or his agent who is present of the number of the following types of ballot papers in his possession: unissued ballot papers, unused ballot papers, and spoilt ballot papers. Candidates, their election agents, polling agents and counting agents, if present, may stay inside the polling station to observe the conversion of the venue into a counting station. The count will commence upon the completion of the conversion. *[Amended in August 2008]*

6.29 Generally speaking, a polling agent may observe all proceedings in the polling station and record his observations but shall not do anything that may interfere with the conduct of the poll. A polling agent **MAY**:

- (a) leave the polling station at any time during the poll in which case his place may be taken by a candidate, an election agent or another polling agent appointed to attend at the polling station [see para. 6.25];
- (b) observe the locking and sealing of empty ballot boxes before the poll commences and the locking and sealing of the ballot boxes at the close of the poll;

NOTE :

A polling agent who signs the sealing certificate of a ballot box as witness is required to write his name in block letters beneath

his signature for easy identification. Candidates are advised to keep a list of their own polling agents to facilitate checking when the sealing certificate is broken at the counting station.

- (c) observe the issue of ballot papers to electors and the crossing out of the relevant entries from the copy of the register of electors, 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 final register of electors now in effect for this constituency, as follows (reads the whole of the relevant entry in the register)?
 - (ii) Have you already voted for this or any other constituency in this 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 54(3) and (4) of the EAC (EP) (DC) Reg.]

- (e) where there is reasonable cause to believe that a person who has applied for a ballot paper has engaged in 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 55 of the EAC (EP) (DC) Reg.]

- 6.30 Inside a 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, the 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 the register or other relevant election materials. In this regard, a polling agent should station within the designated area demarcated by red adhesive tape, 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 any reasonable excuse, display 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 a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election;
- (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, the Assistant PRO or any polling officer has given direction to him not to do so.

[S 48 of the EAC (EP) (DC) Reg.] *[Amended in September 2007]*

6.31 A polling agent must not misconduct himself in or in the vicinity of a polling station or fail to obey any lawful order 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 police officer or by 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. [S 49 of the EAC (EP) (DC) Reg.]

Other Useful Information for Polling Agents

6.32 Most of the persons admitted to a polling station will be wearing identifications (eg badges). Candidates, their election agents and polling agents will be required to wear an identification device issued by the RO or the 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. [See s 47 of the EAC (EP) (DC) Reg.]

6.33 There may be electors with a disability who have been permitted to vote in the polling station specifically designated for the constituency for the purpose. Candidates or their agents can make inquiries with the RO for information.

6.34 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 who claims he is unable to read or write or incapacitated by visual deficiency or other physical cause to mark a ballot paper to indicate the choice of the elector [s 59 of the EAC (EP) (DC) Reg]. The responsible officer should inform the candidates and 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, Deputy PRO or Assistant PRO. An incapacitated elector's relatives, friends and any other persons are in no circumstances allowed to accompany the elector in the course of voting.

6.35 In each 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 59(3) of the EAC (EP) (DC) Reg]. The template contains the following features:

- (a) the template for each constituency 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 of the constituency 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 in the constituency; and each of the holes on the template corresponds with the circle on the ballot paper against the candidate number. The number of candidates in the constituency 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.

6.36 No person may canvass or display any election propaganda material relating to any candidate or the election within a polling station. Candidates and their agents should not bring electioneering literature into the polling station or leave them there and should remove any promotional badges, emblems, clothing and 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 activity (eg lion dance), for canvassing, so that the sound emitted by it can be heard in the NCZ. Also, a person must not stay or loiter in the NSZ without the express permission of the

PRO. Any person who undertakes photographing, filming and video or audio recording within the polling station without the express permission of the PRO, or the RO for the constituency, or a member of the EAC, commits an offence [s 48(2) of the EAC (EP) (DC) 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 – VI of Chapter 4 on all matters relating to polling and in particular, paras. 4.26 and 4.27 for activities that are prohibited, and the consequences of conducting such activities, in a polling station. *[Amended in September 2007]*

6.37 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 para. 19.9 of Chapter 19.

PART VIII : COUNTING AGENTS

Appointment

6.38 A candidate may appoint not more than 2 counting agents for each counting station to attend at the count [s 66(2) of the EAC (EP) (DC) Reg].

6.39 The appointment should be made on a specified form [s 66(6) of the EAC (EP) (DC) Reg]. The candidate must give notice of such appointment in writing to the RO at least **7 days** before the polling day [s 66(4) of the EAC (EP) (DC) Reg]. Where a candidate appoints a counting agent after the above deadline, the notice of the appointment must be given by the candidate or the election agent **personally** by delivering the notice of appointment to the PRO during the period from the commencement of the poll

to the conclusion of the count, but before the agent concerned enters the counting station [s 66(5) of the EAC (EP) (DC) Reg]. The appointment will not be effective until the notice of appointment is received by the RO or the PRO, as the case may be [s 66(7) of the EAC (EP) (DC) Reg].

Revocation

6.40 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 66(9) of the EAC (EP) (DC) Reg]. Any such notice given after the commencement of the poll shall be given by the candidate or his election agent **personally** by delivering the notice to the PRO [s 66(10) of the EAC (EP) (DC) Reg]. A revocation of an appointment of a counting agent will not be effective until notice thereof is received by the RO or the PRO, as the case may be [s 66(11) of the EAC (EP) (DC) Reg].

Role of Counting Agents

6.41 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 VII of Chapter 4: Polling and Counting Arrangements.]

Provisions which Counting Agents should be Aware of

6.42 Before the counting commences, 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. 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. Members of the public present within the area designated by the PRO will not be required to make a Declaration of Secrecy.

6.43 On attending the counting station, a counting agent shall report to the relevant PRO and produce his identity card and the Declaration of Secrecy completed by him for inspection [s 68(4) of the EAC (EP) (DC) Reg].

6.44 Generally speaking, counting agents are entitled to be present throughout the count to observe the relevant counting proceedings. They will be allowed by the PRO to stay close to, and round the counting tables to monitor the count. A counting agent **MAY**:

- (a) observe the opening of the ballot boxes for the relevant constituency by the PRO;
- (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 including how individual votes are counted; and
- (d) observe, where he wishes, the packing of ballot papers by the Counting Officers and the PRO at the conclusion of the count.

6.45 A counting agent **MUST NOT**:

- (a) handle, separate or arrange ballot papers; and

- (b) 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. 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, as the case may be. [S 70 of the EAC (EP) (DC) Reg.]

6.46 Counting agents should read Part VII of Chapter 4 on all matters relating to counting and in particular, paras. 4.35 to 4.38 for activities that are prohibited, and the consequences of conducting such activities, within the counting station. *[Amended in September 2007]*

CHAPTER 7

ELECTION ADVERTISEMENTS

PART I : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT

7.1 Election advertisement, in relation to the DC 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 the 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].

7.2 **Election advertisement** includes the following if it is published for the purpose of promoting or prejudicing the election of any candidate or candidates 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; *[Amended in August 2008]*
- (b) audio/video cassette tapes, discs, diskettes, electronic messages, websites, facsimile transmissions, balloons, badges, emblems, carrier bags, head-dress and clothing; or *[Amended in September 2007]*
- (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 officer 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.

7.3 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) 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.]

7.4 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.

7.5 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.

7.6 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

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

- (a) If candidate A criticises candidate B in his own election advertisements with a view to prejudicing B’s candidature at the election, candidate A has to include the expenditure incurred in his election expenses.
- (b) If a third party criticises candidate B in an election advertisement and that the election advertisement has the effect of indicating support for candidate A, that person must obtain candidate A’s prior consent for incurring the production expenses before he produces that election advertisement. The expenditure incurred will have to be included in candidate A’s election expenses.
- (c) If the third party publishes an election advertisement as described in (b) above without the prior consent of candidate A, he will be

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

7.8 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.

7.9 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.]

7.10 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 DC election is specified in the Maximum Amount of Election Expenses (District Council Election) Regulation, which is \$48,000.

[Amended in September 2007]

7.11 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.]

PART II : PERIOD AND AREA OF DISPLAY

7.12 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)].

7.13 Display spots are classified into 2 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.

Government or Private Land/Property - Designated Spots

7.14 Designated spots on public land for the use of contested candidates to display their election advertisements will be designated by the RO for the relevant constituency. 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 for the constituency will designate public spots in coordination with the said authorities. **Each candidate** will be as far as practicable allocated **the same number of designated spots**.

7.15 Prospective candidates as well as political organisations are welcome to suggest locations of display in which they are interested. The ROs concerned 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 must reach the CEO not later than **8 weeks before the polling day**. *[Amended in August 2008]*

Other Land/Property : Private Spots

7.16 Candidates who wish to display their election advertisements on land/property other than government land/property and other than the designated spots must obtain the **prior written permission or authorisation** of the owner or occupier [s 104A of Cap 132]. The obtaining of written permission or authorisation from the private owner or occupier is a matter for private arrangement between the candidate and the owner or occupier, and they are therefore called “**private spots**”. A copy of the written permission or authorisation must be deposited with the RO for the relevant constituency before display. [Please also see para. 7.20 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. 15.21 of Chapter 15. 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.

7.17 The EAC appeals to owners and occupiers of private premises to give all candidates competing in the same constituency **fair and equal treatment** in the display of election advertisements. [For details, please see Chapter 8: Electioneering at the Living or Working Places of Electors, Premises of Organisations to which Electors belong and Buildings which Electors Frequent of the Guidelines.]

7.18 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

7.19 The RO for each constituency will allocate the designated spots, as the case may be, to candidates of the constituency 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 constituency 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. 7.25 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. *[Amended in August 2008]*

Written Permission or Authorisation

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

the offence has continued [s 104A of Cap 132]. The fines so incurred will also be treated as election expenses. **A copy of the written permission or authorisation must be deposited by the candidate with the RO before display or distribution** [s 103(9) of the EAC (EP) (DC) Reg].

No-Display Areas

7.21 No election advertisement may be displayed within the boundaries of a polling station (including the outer walls of the premises) or within any **NCZ** [see Chapter 13: Prohibition Against Canvassing Activities Outside Polling Stations], except for static displays that are authorised by the RO or the PRO of the relevant polling station. Where there are private premises situated within the NCZ, the ROs should issue a notice in advance to all the candidates in the constituencies concerned asking them to remove all of their election advertisements, if any, posted up at the private premises within the NCZ which can be seen by electors on their way to the polling stations on the polling day. If the candidates fail to remove the election advertisements as requested by the ROs, the ROs may issue a warning to them to remove the offending election advertisements immediately. If the candidate fails 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 all polling stations in respect of the relevant constituency and all NCZs outside those polling stations.

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

PART III : ALLOCATION OF DESIGNATED SPOTS

7.23 The RO for a constituency will make known to each candidate of the constituency 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 for a particular constituency. The size and number of spots for allocation will be finalised by the RO, taking into account the number of candidates in the constituency, **after** the close of nominations. In order to allow all contested 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.

7.24 The RO for the constituency 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.

7.25 Designated spots are allocated by agreement of the representatives of all the contested candidates of a constituency or by drawing of lots. After allocation of the spots and the necessary authorisations have been obtained from the relevant authorities [s 104A of Cap 132 and s 4 of Cap 28] and after complying with the requirements set out under Part V, the candidate may display election advertisements at such spots allocated to him.

7.26 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 relevant RO **before display, distribution or otherwise use** [s 103(9) of the EAC (EP) (DC) Reg]. *[Amended in September 2007]*

7.27 Designated spots allocated are not transferable. Nor are they exchangeable with other spots. Where a candidate of a particular constituency no longer wishes to use one or more designated spots allocated to him, he should inform the RO of that constituency in writing within one week after the allocation of those spots. Upon request by any other candidate of the same constituency, the RO, if he considers appropriate, will re-allocate by agreement or by the drawing of lots the designated spots amongst all candidates of the same constituency except the one first mentioned. In such a case, paras. 7.25 and 7.26 above apply. *[Amended in August 2008]*

NOTE :

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

7.28 Authorisation to display will generally not be given to a candidate in respect of spots outside the constituency in which he stands, save

in exceptional circumstances, as directed or decided by the CEO. The CEO may in principle agree to display outside a particular constituency generally or upon application by a candidate. A candidate who wishes to apply for display outside his constituency should write to the CEO to state the reasons for his application as soon as possible after his nomination form has been handed in, so that (if the CEO agrees in principle) there may be sufficient time for the RO for the constituency to include spots outside the constituency in an allocation exercise.

7.29 An election advertisement advertising 2 or more candidates of different constituencies is allowed to be displayed on the designated spots in the respective constituencies allocated to the candidates concerned. Nevertheless, it is important to ensure that the total number of spots as well as the total area of all the spaces actually occupied for joint advertisements and for advertising each one of the joined candidates (ie measured by the dimension of election advertisements) do not exceed the total number of spots as well as the total area of the designated spots allocated to each of the candidates, and subject to the size restrictions specified in para. 7.33 below. Through joint advertisement, the candidates concerned promote themselves at the election, and so each of the candidates would benefit from the joint advertisement. The expenses incurred for the joint election advertisements will therefore have to be borne by the candidates concerned in equal or unequal shares as their respective election expenses, to be calculated by the proportion of the size of the portion advertising each [see also para. 17.9 of Chapter 17: Namedropping]. In this connection, it is important to note that only a candidate himself or his election expense agent may incur election expenses on his behalf [s 23 of the ECICO]. **Joint election advertisements should not, however, be displayed in the common parts of private premises**, in order to prevent confusing electors or causing them to make mistakes as to the identity of the candidates running for the constituency concerned, or to prevent dilution of the principle of fair and equal treatment of candidates. *[Amended in September 2007]*

PART IV : CONDITIONS AND LIMITATIONS ON DISPLAY

Name of the Constituency

7.30 To avoid possible confusion to electors, election advertisements of all candidates of the constituency must bear the name of the constituency for which the candidate concerned is standing. Similarly, in respect of joint election advertisements, the name of the constituency and the constituency code should be stated clearly in relation to each of the candidates advertised. Either the full name of the constituency or its abbreviated name (to be advised by the RO for the constituency) may be used, dependent on the choice of the candidate for the constituency.

7.31 Likewise, all candidates should make known to the electors the name of their respective constituencies when they conduct joint canvassing activities.

Re-use of Old Publicity Boards

7.32 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, name of constituency, party affiliation and names of persons who supported the candidate at that election, should be fully obliterated before any old publicity board is re-used. This would not only avoid confusion to electors but would also help the candidate to avoid laying himself open to allegations of false claim of support of persons who might not have consented to support him at the current election. The cost incurred in refurbishing the old publicity boards will be counted towards the candidate's election expenses.

Size

7.33 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. For the rules on display of joint advertisements, see para. 7.29 above. *[Amended in September 2007 and August 2008]*

Mounting and Installation

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

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

7.36 Use “tie-on” posters (rather than “stick-on” posters) to facilitate subsequent removal.

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

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

7.39 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

7.40 All candidates should remove all their election advertisements displayed on government land/property **within 10 days** following an 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]. *[Amended in September 2007]*

PART V : SERIAL NUMBERING, DECLARATIONS AND COPIES

Serial Numbering

7.41 Save where the exemption applies, all copies of each type of all election advertisements intended to be displayed or distributed by a candidate must be marked distinctly and legibly on the face with **consecutive serial numbers** starting from “1” [s 103(1) and (2) of the EAC (EP) (DC) Reg]. Printed materials are exempted from the requirement of serial numbering if each of them:

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

Examples of the above may include handbills, leaflets and simulated ballot papers. Election advertisements printed in a registered local newspaper/magazine or sent to electors 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, head-dress and clothing, or of such other class or types as the EAC may specify by notice published in the Gazette are exempted from the requirement of serial numbering [s 103(15) and (16) of the EAC (EP) (DC) Reg].

7.42 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

7.43 **Before display, distribution or otherwise use of any election advertisement**, a candidate must make a **declaration in a specified form** to the RO for his constituency (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. 7.41 above) of each type of all election advertisements displayed, distributed or otherwise used and **the date of printing/publication**. 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 103(4) and (5) of the EAC (EP) (DC) 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. *[Amended in September 2007]*

7.44 Where an election advertisement is to be distributed by facsimile transmission and where the exemption referred to in para. 7.41 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.

7.45 A candidate must ensure that every time the contents of his website are changed or updated, he must make a new declaration to the RO and deposit 2 copies of the modified pages with the RO accordingly [see also para. 7.46(a)(iii) below].

Copies

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

- (a) in respect of election advertisements
 - (i) 2 copies of all printed advertisements 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”); *[Amended in August 2008]*

- (ii) 2 identical copies of any video/audio tapes or discs or diskettes containing election advertisements;
- (iii) 2 copies of any electioneering message sent by electronic means (including 2 copies of any modified webpages if the contents of the website are changed or updated); and
- (iv) 2 identical postcard sized colour photographs of each type of election advertisements which cannot be practically or conveniently photocopied;

[s 103(6), (7) and (8) of the EAC (EP) (DC) Reg]

For the avoidance of doubt, for printed election advertisements, by depositing 2 copies with the RO for the constituency 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 103(6), (7) and (8) of the EAC (EP) (DC) 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. 16.13-16.14 of Chapter 16. *[Added in September 2007]*

(b) in respect of permissions or authorisations for display

a copy each of all permissions or authorisations for display given or obtained for the purposes of s 104A of Cap 132 [s 103(9) of the EAC (EP) (DC) Reg]; and

(c) in respect of consent of support

a copy each of all consents of support referred to in s 27(1) or (2) of the ECICO, as the case may be.

7.47 If a candidate has difficulty in depositing with the RO for his constituency an original copy of a declaration and 2 copies of an election advertisement before its display, distribution or otherwise use, he may first send to the RO for the constituency by fax the declaration together with a copy of each election advertisement or by e-mail with an image or a digital photo of each election advertisement. The candidate should ensure any submissions sent by fax or e-mail should reach the RO for the constituency 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 for the constituency the original copy of the declaration form and 2 copies of each such election advertisement. *[Added in September 2007]*

7.48 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 or e-mail to the RO for the constituency. The candidate should submit to the relevant 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 are regarded as printed election advertisements, the candidates concerned are also required to comply with s 34 of the ECICO and

the provisions on serial numbering in paras. 7.41 and 7.42. *[Added in September 2007]*

7.49 In the rare circumstances where candidates contesting different constituencies use identical copies of an election advertisement, the RO of the relevant constituency may exercise his discretion to accept a joint declaration by all the candidates concerned and a joint submission of 2 copies of the election advertisement.

7.50 Where a Declaration of Election Advertisements under s 103 of the EAC (EP) (DC) Reg made by a candidate and deposited with the relevant 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 relevant 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.

7.51 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.

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

7.53 The RO for each constituency 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 103(10) of the EAC (EP) (DC) Reg].

PART VI : REQUIREMENTS RELATING TO PRINTED ELECTION MATERIALS

Printing Details

7.54 S 34 of the ECICO requires all printed election advertisements, with the exception of those printed in a registered local newspaper/magazine, to bear printing details, ie they must bear, in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed (“printing details”). 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

7.55 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

7.56 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 relevant 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 relevant RO for 6 months after the result of the election is published [s 34(7) of the ECICO].

Enforcement and Penalties

7.57 A candidate who fails to provide the printing details or deposit copies of election advertisements with the relevant 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 103(13) of EAC (EP) (DC) Reg is punishable with a fine at level 2 (up to \$5,000) and imprisonment for up to 6 months.

7.58 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. Candidates and their supporters should report any non-compliance to RO and should not take removal action themselves.

7.59 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 he thinks fit [s 103(14) of the EAC (EP) (DC) Reg]. The candidate or his election agent responsible may also be prosecuted and if convicted, may be liable to a fine or imprisonment [s 103(13) of the EAC (EP) (DC) Reg]. 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 or the Housing Ordinance (Cap 283), as the case may be, and the procedures of the relevant authority. [S 104C of Cap 132 and s 24 of Cap 283.] *[Amended in September 2007 and August 2008]*

7.60 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.

7.61 Complaints should be made to the relevant 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

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

- (a) is organised from time to time either as part of the organisation's normal functions, and/or according to the local tradition;

- (b) is not related to the election; and
- (c) does not explicitly or implicitly promote or prejudice the election of a candidate in the election,

then the appearance in the published material of the name and/or photograph of a candidate who is involved in organising the activity should not be regarded as an election advertisement.

7.63 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].

7.64 Candidates should protect their own interest by advising their political bodies or their organisations of these guidelines as soon as they have any intention or plan to run for an election.

7.65 To sum up the important points, where any organisation, including a political 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 authorised 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 103 of the EAC (EP) (DC) 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

7.66 A candidate of a constituency 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 1 letter to each elector of the constituency for which he is nominated [s 37 of the DCO]. 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].

7.67 The purpose of the free postage is to enable the candidate to mail election advertisements to promote or advertise himself and in relation to that election to electors in the constituency. 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.

7.68 Specifically, the letter must:

- (a) be posted in Hong Kong;
- (b) contain materials relating only to the candidature of the candidate at the election concerned;

- (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 102 of the EAC (EP) (DC) Reg, a candidate sending postage-free mail items to electors 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. [Amended in September 2007]

Postal Requirements Stipulated by the Post Office

Make-up

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

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

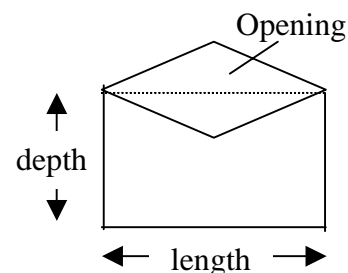
7.71 When a wrapper is used, it must extend over the full length of the item which it encloses. Envelopes must not be fastened with staples or with paper fasteners with sharp edges or points, but they may be closed by means of an adhesive flap or tape.

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

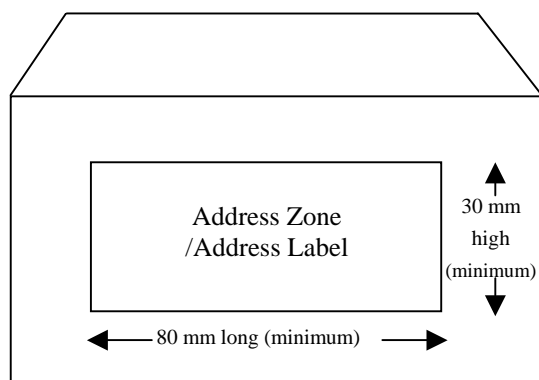
Over 100 mm in depth - opening not over 115 mm in length



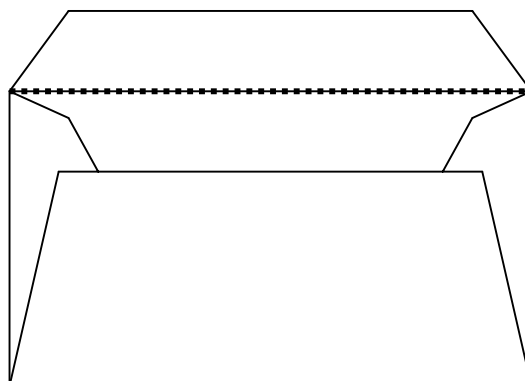
7.73 Folders of A4 size with openings should be closed by means of adhesive flap or tape to avoid entrapping smaller letters. All open edges must not be longer than 90 mm in width. Otherwise, adhesive tapes should be applied to the midpoints of the open edges to reduce the width. For details, please refer to the illustration in **Appendix B**. *[Amended in August 2008]*

7.74 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:

Address Side of an Election Item



Back Side of an Election Item



[Amended in September 2007 and August 2008]

Addressing

7.75 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

7.76 Addressing slips may be used for the mailing of election advertisements provided that they are legible and **securely pasted** onto the election items. *[Amended in September 2007]*

7.77 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. 7.74 for better illustration.] *[Amended in September 2007 and August 2008]*

7.78 No postage-free election advertisement bearing an address outside Hong Kong will be accepted. Specifically, only one address of elector(s) should be shown on the postage-free election mail. *[Amended in August 2008]*

Posting Arrangements

7.79 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.** *[Amended in September 2007]*

7.80 At least **1 clear working day's notice** must be given to the respective Manager of the Post Office before the postings are made. Candidates should present 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), for inspection 1 clear working day before the postings are made. *[Amended in September 2007 and August 2008]*

7.81 When handing in the specimens, the candidates may indicate any one of the posting offices to be designated by the Post Office where they intend to make their postings. In this connection, the Manager concerned will arrange and confirm the requests after approving the specimens. *[Amended in September 2007]*

7.82 The postings should be made up in bundles of 50 or 100 each for easy counting. All election mail should face the same direction. *[Amended in August 2008]*

7.83 With each posting, the candidate or his representative must present a signed declaration **in duplicate** (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 material relating to the candidature of the candidate to the election only; is identical to the unsealed specimen submitted by the candidate or his representative for inspection and retention by the Post Office; and is addressed by name to a duly registered elector in respect of the constituency for which the candidate has been nominated; and
- (d) declaring that not more than 1 postage-free mail will be sent to any of the electors.

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 102 of the EAC (EP) (DC) Reg, a candidate sending postage-free mail items to electors 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.

[Amended in September 2007]

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

7.85 Government reserves the right to charge a candidate postage where any of the requirements under s 102 in Cap 541F is not met or the free postage arrangements are abused in any way [S 102 of the EAC (EP) (DC)

Reg]. The charge counts towards the candidate's election expenses and must be included in his return and declaration of election expenses and donations to be sent to the CEO. The EAC may also issue public statements in such manner as it deems fit to denounce any abuse of the free postage arrangements.

[Amended in August 2008]

7.86 The postal requirements stated in the above guidelines (paras. 7.69 – 7.85) 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. *[Added in August 2008]*

Enquiries

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

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

Telephone: 2926 1161 / 2926 1169

Fax: 2868 1442

[Amended in September 2007 and August 2008]

CHAPTER 8

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

PART I : GENERAL

8.1 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 C** 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. *[Amended in September 2007]*

8.2 Candidates are reminded that different organizations 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. *[Added in September 2007]*

8.3 The general guidelines to be observed for conducting electioneering activities at the living and working places of electors, premises of organizations to which electors belong and buildings which electors frequent are set out in Part III 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 D**. *[Added in September 2007]*

8.4 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 IV below provides the owners/management of premises and organizations with some guidelines in handling applications for conducting electioneering activities in the premises under their control. *[Added in September 2007]*

PART II : RIGHTS OF TENANTS AND OWNERS

Tenant's Right - His House, Flat, Office or Factory

8.5. The tenant who has exclusive possession of a house, flat, office or factory, and not the owner, has the right to allow or deny access by anyone to the place.

Owners' Right - the Common Parts

8.6 The **common parts** of a building (those parts to which exclusive rights of use or occupation do not belong to a particular owner or tenant) 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.

8.7 The carrying out of the powers and duties and the acts of an owners' corporation do not affect the rights of the tenants of the individual flats, offices or factories in the building except in relation to matters concerning the common parts. Candidates and tenants should note that as **a tenant** has exclusive possession of the unit that he occupies, he **has the right to invite anyone to visit his unit for any lawful purpose**, including electioneering, but he has no right to allow the invitee to approach other tenants' units, such as knocking on other people's doors, or to do anything in the common parts of the building, except for accessing and leaving his unit or for the purposes allowed by the owners.

Owners' Committees

8.8 In some buildings, no owners' corporation has been established, but instead an owners' committee is formed. While an owners' committee generally operates in the same manner as an owners' corporation, its powers vis-à-vis the rights of the individual owners are not standardised and may differ from case to case.

Management Companies

8.9 Very often, the management of the common parts of a building has been delegated by the owners or owners' corporation or owners' committee to a management company. Management companies are only managing the common parts on behalf of the owners and unless specifically empowered to do so, have no independent right or power to decide whether electioneering by candidates in the common parts should or should not be allowed.

Tenants' Associations, Residents' Associations, Mutual Aid Committees

8.10 Sometimes there are tenants' associations or residents' associations or mutual aid committees representing tenants' interests in buildings. As against the owners, they have no right to control or manage the common parts. If they are given the authority by the owners, then they are entitled to control and manage the common parts on behalf of the owners.

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

Visits to Living and Working Places of Electors

8.11 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.

8.12 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 IV 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. 8.14 to 8.20 below. *[Added in September 2007]*

8.13 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 IV below. *[Amended in September 2007]*

Respect for the Decision and Privacy

8.14 After a candidate has been notified of the decision of an organization or a building relating to electioneering, he should ensure that he and his followers comply with the decision.

8.15 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 from doing the contravening act or carry out the decision to exclude the candidates concerned. If the candidate refuses to leave, it would be wise in such circumstances for the organisation or building management, as the case may be, to report the matter to the Police in the first instance and then to the EAC or its Complaints Committee which may publish a **reprimand** or **censure** against the candidate concerned. *[Amended in September 2007]*

8.16 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.

8.17 **Privacy of the electors should be respected.** A guidance note on personal data privacy in respect of electioneering activities, prepared by the Office of the Privacy Commissioner for Personal Data, is at **Appendix E**. 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 an extract of the Final Register which contains the name, gender, and residential address of electors of the relevant constituency, 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 their choice of candidates on the polling day. 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 the 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. *[Amended in September 2007 and August 2008]*

8.18 Some candidates or their supporters may use **loud-hailers** to assist their campaign. They should exercise restraint in the use of loud-hailers so as not to create a nuisance to the persons in the vicinity, including those who live in the buildings nearby. Candidates are therefore required **NOT** to use loudspeakers in electioneering **between 9 pm and 9 am**. If the EAC comes to know that a candidate has breached the time restriction, it may make a reprimand or censure against the candidate. Excessive noise will amount to an offence and the Police may be called. Anyway, it is unwise to create a nuisance through the use of loud-hailers, for the annoyance of the electors will obviously be reflected in their choice of candidate. [See also Chapter 11 on “Use of Sound Amplifying Device and Vehicles”.]

8.19 Canvassing through the use of the **entrance intercom system** in a building is prohibited unless it is expressly allowed by the building management. *[Amended in August 2008]*

Identification of Canvassers

8.20 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 his 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 IV: 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

8.21 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.
[Amended in September 2007]

8.22 On the polling day or even quite some time before, candidates and their supporters may wish to carry out canvassing or electioneering

activities at the premises mentioned above. Such activities mainly consist of the following:

- (a) distribution of election leaflets or advertisements by delivering them into the flats themselves, or into mail boxes of the flats, or placing them in the common parts of the building for collection, or handing them out to residents or people in the common parts of the building (but not distribution by post which is not subject to the control of the private premises);
- (b) display of posters, banners, placards, boards and any other election advertisements, etc at any of the places within the common parts of the building;

NOTE :

Candidates who are allowed to display or distribute election advertisements at the premises mentioned above must comply with the guidelines set out in Chapter 7: Election Advertisements.

[Amended in September 2007]

- (c) personal contact with people or using amplifying devices to advertise in the common parts of the building; and
- (d) household or home visits to occupiers of flats.

8.23 **A tenant's right to invite lawful visitors to his own flat or office or factory cannot be lawfully restrained by any decision made by the owners or owners' corporation.** If he invites a candidate and his supporters into his own place, the owners or owners' corporation have no right to stop or obstruct it.

Decision to be Made at a Meeting with Tenants

8.24 During election time, there may be tenants wishing to entertain the approaches by candidates and their followers, but different tenants may invite different candidates to their units, and there may be arguments as to which candidate should be allowed to electioneer in the building. It is therefore advisable for owners or owners' corporations to make a decision on whether to allow candidates and their followers to conduct electioneering activities in the building, so that arguments relating to who is allowed and who is not allowed to do so will be resolved for the benefit of all concerned. It is also advisable for owners or owners' corporations to invite all the tenants to attend the meeting held for discussing this matter so that tenants' views will be heard before any decision to allow or deny electioneering activities in the building is taken.

8.25 As a motion on whether or not electioneering 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.

8.26 Candidates in an election see electioneering as a form of freedom of expression whereby they express to electors their platforms and the electors have a corresponding right to receive such information. Electors can only make a proper choice when casting their votes if they know the platforms of each of the contesting candidates.

8.27 If a decision is made to allow electioneering by all candidates, the decision can also set out the hours of access and other conditions, such as not causing annoyance to occupiers, and the maximum number of persons allowed for home visits, etc for the candidates to comply [see also **Appendix F**].

Decision Must Provide Fair and Equal Treatment

8.28 The EAC appeals to all management bodies of the organisations or buildings concerned to provide **equal opportunity** to all candidates competing in the same constituency for the purposes of electioneering. However, if it is decided **not** to allow a particular candidate to conduct electioneering activities at the premises of the organisation or in the common parts of the building, no other candidate in the same constituency should be allowed to do so, for **it is important to provide fair and equal treatment for all candidates** so as to ensure that the election is conducted fairly. Discriminatory treatment of candidates may also lead to unequal treatment of tenants, and have the undesirable effect of giving rise to dissatisfaction and discord amongst neighbours in the same building.

8.29 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**.

8.30 The organisation concerned should make a decision that applies equally and fairly to all candidates of each constituency 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.

8.31 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 in the same constituency without any discrimination.

Notification of Decision

8.32 The management bodies of organisations and buildings are urged to notify the relevant 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 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 Office 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

8.33 The management bodies of the organisations or buildings

concerned should avoid handling candidates' 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 at the premises for candidates to display posters and banners;
- (b) decide on the maximum size of posters and banners to be allowed;
[Added in September 2007]
- (c) after the close of nominations of candidature, find out from the relevant RO how many candidates are contesting in the constituency concerned;
- (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.

8.34 If a building has any spaces in the common area to **let** to candidates for them to display election advertisements or conduct other electioneering activity, the building shall ensure that such spaces are equally available to let to all the candidates contesting the same constituency, and give reasonable notice to all such candidates accordingly. Letting a space to only one of the candidates but not the others will be considered to be offering an

unfair advantage to the candidates concerned and operating unfairly towards the other candidates. Candidates should not take any such unfair advantage.

8.35 Where a decision has been made, notice of its contents together with the conditions should be posted up at the entrance so that candidates or their agents will be able to know. This openness will help prevent misunderstanding and complaint.

8.36 Whenever a decision has been taken by a building, insofar as the decision does not offend against the fair and equal treatment principle regarding electioneering activities of all candidates of the same constituency, and such decision is not carried out unfairly towards any of the candidates, the EAC will not intervene.

8.37 An owners' corporation or other organisation or person should be very careful not to incur any election expenses for promoting a candidate, such as putting up a banner to show support for a candidate, because it is an illegal conduct at an election for a person, other than a candidate or a candidate's election expense agent, to incur election expenses at or in connection with the election [s 23 of the ECICO].

8.38 All persons who put up any publicity materials, including those which do not look election-related, in the nomination period on 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 judgement whether the publicity materials are serving electioneering purposes and then make a decision with due regard to the fair and equal treatment principle.

**PART V : CONDUCT OF ELECTIONEERING ACTIVITIES IN
PREMISES UNDER THE MANAGEMENT OF HOUSING
DEPARTMENT AND HONG KONG HOUSING SOCIETY**

8.39 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 D**. *[Amended in September 2007]*

PART VI : SANCTION

8.40 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. *[Amended in August 2008]*

8.41 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 9

ELECTION MEETINGS

PART I : GENERAL

9.1 An **election meeting** is a meeting held to promote or prejudice the election of a particular candidate or particular candidates [s 12(5) of the ECICO]. For the avoidance of doubt, election forums organised for all candidates in the same constituency are not treated as election meetings [see Part IV: Election Forums of Chapter 10]. 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. *[Amended in September 2007]*

9.2 Expenses incurred before, during or after the DC 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 15.] The person who uses the meeting for promoting the candidate may also be liable for prosecution for his failure in obtaining the candidate's prior authorisation to appoint him as the candidate's election expense agent for incurring election expenses on behalf of the candidate [see s 23 of the ECICO].

9.3 Candidates should refer to the part on “Treating” in Part IV of Chapter 16, regarding the serving of drinks and meals at or incidental to an election meeting.

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

9.5 An election meeting may take place in a public place or at 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.

9.6 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. *[Added in September 2007]*

9.7 The requirements of the Hong Kong Police Force and the Housing Department/Hong Kong Housing Society with regard to the organisation of the election meetings in public places and private premises within their jurisdiction are set out in paras. 9.8 – 9.21 below for reference. *[Added in September 2007]*

PART II : ELECTION MEETINGS IN PUBLIC PLACES

9.8 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 Cap 245].

9.9 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 amplification devices, if any, intended to be used at the meeting; and
- (g) the nature, form and contents of the advertisements, printed matter, posters or banners intended for publication, distribution or display in respect of the meeting.

[S 8(4) of Cap 245.]

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

[Amended in September 2007]

9.10 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 Cap 245.]

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

9.11 The Commissioner of Police may prohibit the holding of any public meeting notified (referred to in paras. 9.8 and 9.9 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 Cap 245]. On the other hand, the Commissioner of Police may give notice to the organisers and impose conditions for the meeting to take place, and the organisers must comply with such conditions and comply forthwith with any direction given by a police officer for ensuring compliance with or the due performance of the conditions and the requirements referred to in para. 9.12 below. [S 11 of Cap 245.]
[Amended in September 2007]

- 9.12 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 Cap 245.]

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

Public Processions

9.14 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 Cap 245.]

9.15 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 Cap 245]:

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

A notification **form** mentioned in para. 9.9 above should be used.

9.16 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. 9.17 below. [Ss 14 and 15 of Cap 245.] *[Amended in September 2007]*

9.17 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 Cap 245.]

PART III : ELECTION MEETINGS AT PRIVATE PREMISES

9.18 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 D**. *[Amended in September 2007]*

9.19 Notification in writing to the Commissioner of Police will need to be given, in accordance with the procedure set out in paras. 9.8 and 9.9 above, if at the proposed meeting the attendance will exceed 500 persons.

PART IV : MOBILE EXHIBITIONS

General

9.20 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 the other parts in this chapter should also be observed, in addition to compliance with regulations and conditions imposed by other relevant authorities. *[Amended in September 2007]*

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

9.21 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 7: 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 relevant RO for record and for public inspection. Please also see **Appendix D** for reference. *[Amended in September 2007]*

PART V : FUND RAISING ACTIVITIES AT ELECTION MEETINGS

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

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 (Cap 562), 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.

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

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

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 3 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 and to a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election. *[Amended in September 2007]*

10.7 During the election period (ie the period beginning with the commencement of the nomination 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 and the said prescribed bodies, 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 or a prescribed body the registered name or registered emblem of which has been printed on ballot paper for the election, whether or not contesting the same constituency, should also be invited. *[Amended in September 2007]*

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. 7.8 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.

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.

10.10 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. *[Amended in September 2007]*

Candidates Appearing in Commercial Advertisements

10.11 A person should not participate in the making of an advertisement in which his image, name or voice appear ("the relevant advertisement") and which he knows will be broadcast on TV/radio/cinema after his declaration of intention to stand for the election or during the election period if he becomes a candidate.

10.12 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. *[Amended in September 2007]*

PART III : ADVERTISING THROUGH THE PRINT MEDIA

10.13 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. 7.55 of Chapter 7 : 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/magazine would be exempted from the requirement of bearing printing details [see also para. 7.54 of Chapter 7 for details]. *[Amended in September 2007]*

10.14 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 (e.g. 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 7 and 15. 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. The EAC appeals to members of the print media to provide **fair and equal treatment** to all candidates competing in the same constituency in the reporting of them or their electioneering activities. How fair and equal treatment is to be applied in practice is set out in the **Appendix H**. *[Amended in August 2008]*

10.15 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 them at the critical time. A regular columnist may, of course, appear as candidate in election forums referred to in Part IV below.

PART IV : ELECTION FORUMS

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

10.17 Any 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 of the same constituency 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.

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

PART V : SANCTION

10.19 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. *[Amended in August 2008]*

CHAPTER 11

USE OF SOUND AMPLIFYING DEVICE AND VEHICLES

PART I : GENERAL

11.1 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).

11.2 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' choice of candidate in casting their votes may be affected as a result of any noise nuisance caused by candidates or their followers.

PART II : USE OF LOUDSPEAKERS AND VEHICLES

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

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

11.4 Although no permit is now required, any person using a loudspeaker should ensure that the noise emitted through the loudspeaker does not cause a nuisance to any other person. Under s 5(1)(b) of the Noise Control Ordinance, making a nuisance by using a loudspeaker, megaphone, or other device or instrument for magnifying sound from which the noise emitted is a source of annoyance either at any domestic premises or public place at any time of the day is an offence, and this includes use of loudspeakers attached to vehicles. In order to reduce the nuisance caused to members of the public, candidates are required **NOT** to use loudspeakers in electioneering **between 9 pm and 9 am**. If the EAC comes to know that a candidate has breached the time restriction, it may make a **reprimand** or **censure** against him. Candidates should note that some members of the public may find the noise emitted from loudspeakers on 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. *[Amended in September 2007]*

11.5 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.

11.6 All vehicles used for and in connection with canvassing activities must comply with the provisions and regulations of the Road Traffic Ordinance (Cap 374). Drivers of such vehicles are obliged to obey all directions given by uniformed police officers and traffic wardens. Additionally, drivers of all vehicles must comply strictly with all the stopping and parking regulations of the Ordinance. Deliberate slow driving may constitute "careless driving" as it could be deemed as driving "without reasonable consideration for other persons

using the road”.

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

- (a) no election advertisements should be displayed on the windows (in particular the front/rear windscreens or in any position that can obstruct the sight-line of the driver), at the areas above the windows and at the exterior roof panel;
- (b) no illumination should be used for the election advertisements;
and
- (c) no election advertisements should obstruct any statutory label/markings required to be shown on the vehicle body.

According to the TD’s performance pledge, 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.

[Amended in September 2007 and August 2008]

11.8 Candidates and their supporters are reminded that they should observe the statutory requirements of the Road Traffic (Safety Equipment) Regulations and Road Traffic (Traffic Control) Regulations under the Road Traffic Ordinance, including those relating to seating requirement, the wearing

of seat belts and the permission to carry passengers in a vehicle. Standing up in moving vehicles would be **illegal** for both the drivers and standees except on trams, single-decked public service buses and the lower deck of double-decked buses. 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 vehicle from carriage of standing passengers. *[Amended in September 2007]*

11.9 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 I**.

11.10 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 13: Prohibition Against Canvassing Activities Outside Polling Stations.]

PART III : SANCTION

11.11 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 [s 48(7) of the EAC (EP) (DC) Reg]. Candidates should also remind their supporters to observe these guidelines when they are campaigning on behalf of the candidate. *[Amended in September 2007 and August 2008]*

CHAPTER 12

ELECTIONEERING ACTIVITIES CONDUCTED IN SCHOOLS OR PARTICIPATED BY SCHOOL PUPILS

PART I : GENERAL

12.1 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.

12.2 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. *[Amended in September 2007]*

PART II : SCHOOL PUPILS

12.3 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.

12.4 Distribution of election advertisements is a form of electioneering activity. There may be school supervisors, principals or teachers who may support a particular candidate in a constituency. 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. 12.2 above, and could avoid any semblance of undue influence on young children under the charge of these persons in authority in the school.

12.5 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.

12.6 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.

12.7 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

12.8 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. 12.4 above.]

12.9 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 of the same constituency 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 of the same constituency 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

12.10 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. *[Amended in August 2008]*

CHAPTER 13

PROHIBITION AGAINST CANVASSING ACTIVITIES OUTSIDE POLLING STATIONS

PART I : GENERAL

13.1 This chapter deals with the ban on canvassing activities **outside** polling stations on the polling day.

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

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

13.3 The RO specified under para. 13.4 below 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 2 zones are to be determined with reference to a map or plan [s 43(1) of the EAC (EP) (DC) Reg]. *[Amended in September 2007]*

13.4 For a polling station which is used for more than 1 constituency, the determination of a NCZ or NSZ is to be made by the RO for the

constituency in which the polling station is located [s 43(3) of the EAC (EP) (DC) Reg].

13.5 The RO who made the determination of declaring a NCZ or NSZ in respect of a polling station must, at least **7 days** before the polling day, give notice of the declaration to the candidates of his own constituency and to the ROs of other constituencies for which polling will be held in the polling station; and thereafter each of the ROs of these other relevant constituencies must give notice of the declaration to the candidates of his own constituency as soon as practicable [s 43(3), (4) and (5) of the EAC (EP) (DC) Reg].

13.6 The notice will be given in writing, either in person or by post or by facsimile transmission, to the candidates or to the election agents or to the polling agents of the candidates [s 43(11) of the EAC (EP) (DC) Reg].
[Amended in September 2007]

13.7 Where the circumstances so warrant, the RO who has made a determination 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. 13.6 above [s 43(6) of the EAC (EP) (DC) Reg]. However, a notice of variation needs not be given to the candidates if it is not reasonably practicable to do so before the close of poll [s 43(10) of the EAC (EP) (DC) Reg].

13.8 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 the polling day, at or near the relevant polling station, in order to make the determination or variation effective [s 43(7), (8) and (9) of the EAC (EP) (DC) Reg].

13.9 The RO who is empowered to determine NCZ and NSZ may

authorise his ARO or the PRO of the relevant polling station to exercise the power to vary the determination and to perform the associated duties on the polling day [ss 43 and 90 of the EAC (EP) (DC) Reg].

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

13.10 Door-to-door canvassing and, for the purpose of such canvassing, the display of 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 prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election, 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, and that 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 (including suggesting not to vote for any candidate) will be allowed within a NCZ except for static displays of election advertisements that are authorised by the RO or the PRO of the relevant polling station. Where there are premises situated within the NCZ, the ROs should issue a notice in advance to all the candidates in the constituencies concerned 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 stations on the polling day. If the candidates fail to remove the election advertisements as requested by the ROs, the ROs may issue a warning to them to remove the offending election advertisements immediately. If the candidate fails to do so, the EAC may

issue a censure or reprimand. Canvassing activities may take many different forms. A list of common canvassing activities which are forbidden in a NCZ is at **Appendix C**. *[Amended in September 2007]*

13.11 On the polling day, the PRO will use his best endeavours to ensure that no person carries out any activity other than those permitted activities described in para. 13.10 above in the NCZ in respect of his polling station to persuade or induce any elector to vote or not to vote. Any unauthorised display of election advertisements in the area will be removed by the RO or other persons authorized by the RO [s 103(14) of the EAC (EP) (DC) Reg]; and any person found to have conducted canvassing activities prohibited in the area will be asked to leave the area [s 44 of the EAC (EP) (DC) Reg]. *[Amended in September 2007]*

13.12 The use of loudspeakers or loud-hailers will not be permitted within the NCZ, nor will any such device or any activity (eg lion dance) be permitted in the vicinity so that the sound emitted can be heard within the NCZ [s 43(13)(b), (c) and (ca) of the EAC (EP) (DC) Reg]. Save for canvassing activities allowed in para. 13.10, candidates and their supporters are not allowed to pass, let alone shout, appeal message to persons while inside the NCZ. [See Part II of Chapter 11 regarding the use of loudspeakers.]

13.13 Within the NCZ but immediately outside the entrance/exit of each polling station (and sometimes the entrance is also the same as the exit), there will be a **NSZ**, in which no person is allowed to stay or loiter, except where a person has been expressly permitted to do so by the PRO [s 44(1)(d) of the EAC (EP) (DC) Reg]. This is for the purpose of securing safe and smooth passage of electors into and out of polling stations. *[Amended in September 2007]*

13.14 A person shall not obtain or attempt to obtain (in any manner)

information as to which candidate an elector of the relevant polling station is about to vote for or has voted for, in a NCZ or in a NSZ without the express permission of the PRO who should have regard to exit pollsters who have complied with the requirements set out in Chapter 14: Exit Poll.

13.15 Any person who misconducts himself or carries out any forbidden activity in a NCZ or NSZ, or fails to obey a lawful order of the RO (who has made the determination in respect of that NCZ or NSZ) or the PRO, commits an offence punishable with a fine and imprisonment and may be ordered by such officer to leave the NCZ or NSZ [s 44(2) of the EAC (EP) (DC) Reg]. If he fails to leave immediately, he may be removed from the relevant zone by a police officer or by any other person authorised in writing by the RO or the PRO [s 44(3) of the EAC (EP) (DC) Reg]. The person so removed may not re-enter the NCZ or NSZ during that day except with the permission of the RO or the PRO [s 44(4) of the EAC (EP) (DC) Reg].
[Amended in September 2007]

13.16 Nevertheless, the RO or the PRO shall not exercise their powers to remove an elector from the NCZ or NSZ so as to prevent him from voting [ss 44(5) and 49(5) of the EAC (EP) (DC) Reg].

PART IV : PENALTY

13.17 Any canvassing within a NCZ except those exempted and any conduct prohibited under paras. 13.13 and 13.15 above will each be an offence under s 48(7) of the EAC (EP) (DC) Reg, punishable by a fine at level 2 (up to \$5,000) and imprisonment up to 3 months. Any attempt to obtain information as described in para. 13.14 without the necessary permission will be an offence under s 94 of the EAC (EP) (DC) Reg, punishable by a fine at

level 2 (up to \$5,000) and imprisonment up to 6 months. [*Amended in September 2007*]

CHAPTER 14

EXIT POLL

PART I : GENERAL

14.1 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.

14.2 **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 elector behaviour will not be unduly affected.** *[Amended in August 2008]*

PART II : SECRECY OF THE VOTE

14.3 **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 if he does not want to. **It is a criminal offence for a person, without lawful authority, to require, or purport to require, an elector to disclose the name of, or any particular relating to, the candidate for whom the elector voted at an election** [s 48 of the DCO and s 94 of the EAC (EP) (DC) 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. *[Amended in October 2007 and August 2008]*

14.4 Any announcement of results of exit polls or predictions, particularly in relation to any individual candidate, during the polling hours may affect elector 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.** *[Amended in August 2008]*

14.5 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. *[Amended in August 2008]*

PART III : CONDUCT OF EXIT POLLS

14.6 Exit polls may be conducted by any person or organisation. For the purpose of better control of the conduct of exit poll, persons or organisations intending to conduct exit polls must provide the following to the REO at **the latest 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 for the polling hours; and
- (c) a list showing the number of persons who will be employed for the conduct of the exit poll at each 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.

[Amended in August 2008]

14.7 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 allowed to conduct exit poll will be required to sign an **undertaking** to abide by 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 list of 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 list will also be displayed at the respective polling stations. *[Amended in August 2008]*

14.8 Interviews are not allowed inside polling stations. Interviewers should note that canvassing activity is prohibited under criminal sanction within the NCZ except door-to-door canvassing activities on the storeys above or below street level in a building other than the one in which there is a polling station provided that permission has been obtained for entry to the building for canvassing votes, and that obstruction is not posed to electors and no amplifying device is used. Interviewers must therefore be extremely careful in conducting the 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 areas designated as the NSZ (within the NCZ but immediately outside the entrance/exit to each polling station) [s 43(1) of the EAC (EP) (DC) Reg]. Interviewers are also not allowed to accost electors in the NSZ. All these measures are for the purpose of securing safe and smooth passage of electors into and out of polling stations. The PRO 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. *[Amended in September 2007]*

PART IV : IDENTIFICATION OF INTERVIEWERS

14.9 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 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. *[Amended in August 2008]*

14.10 After receipt of the information referred to in para. 14.6 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. 14.6(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 any polling station. *[Amended in August 2008]*

PART V : SANCTION

14.11 Apart from the criminal sanction provided in the DCO, 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. *[Amended in August 2008]*

CHAPTER 15

ELECTION EXPENSES AND DONATIONS

PART I : WHAT CONSTITUTES ELECTION EXPENSES

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

15.2 **Election expenses** mean expenses incurred or to be incurred **before, during or after an election**, by a candidate or his election expense agent on his behalf for the purpose of promoting his election, or prejudicing the election of another candidate or other candidates and include the value of election donations consisting of goods and services used for that purpose [s 2 of the ECICO]. The term “candidate” relating to election expenses (and donations) therefore includes a person who **has publicly declared an intention to stand for election** at any time before the close of the nominations for the election, regardless of whether he has submitted his nomination form, or after submission of the nomination form he has withdrawn his nomination or his nomination is ruled invalid by the RO [s 2 of the ECICO]. A prescribed person who has applied under PCBP (LC & DC) Reg to have his emblem registered should not, by that act alone, be treated as having publicly declared an intention to stand for election. *[Amended in September 2007]*

15.3 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.]

15.4 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.

15.5 A list of common expenditure items which may be counted towards election expenses is at **Appendix J**. 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 the 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.

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

PART II : WHO MAY INCUR ELECTION EXPENSES AND THEIR LIMIT

Maximum Amount of Election Expenses

15.7 The maximum amount of election expenses for the DC election is prescribed by the Maximum Amount of Election Expenses (District Council 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. *[Amended in September 2007]*

15.8 The maximum amount of election expenses for the DC election is \$48,000. *[Amended in September 2007]*

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

Persons Authorised to Incur Election Expenses

15.10 Only a candidate or a person who has been duly authorised by a candidate as the candidate's election expense agent may incur election expenses [s 23 of the ECICO]. The authorisation should follow the procedures specified in Part VI of Chapter 6.

15.11 **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 authorisation 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 EAC (EP) (DC) Reg must also be complied with. *[Amended in September 2007]*

15.12 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 an election, to avoid any offences being committed by these organisations out of ignorance.

15.13 A candidate will be responsible for the overall amount of his

election expenses. In the event the total amount incurred by him and/or on his behalf exceeds the limit prescribed or the limit he has authorised his election expense agent to expend, he will be liable for contravening the law, unless he can prove that the excess was incurred without his consent, beyond his authorisation, or not due to any negligence on his part. The election expense agent, on the other hand, should not incur an amount of election expenses which exceed the limit authorised by the candidate lest the agent will contravene s 23 of the ECICO. [Ss 23 and 24 of the ECICO.] *[Amended in September 2007]*

PART III : DONATIONS

General Provisions

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

15.15 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].

15.16 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.

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

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

15.19 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). [S 19(2) of the ECICO.] *[Amended in September 2007]*

Donations in Kind

15.20 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.

15.21 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.

15.22 **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. *[Amended in September 2007]*

PART IV : RETURN AND DECLARATION OF ELECTION EXPENSES AND DONATIONS

15.23 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].
[Amended in September 2007]

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

15.25 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. 15.23 above, together with a standard form of receipt for donations mentioned in para. 15.19 above;
- (b) the specified form for advance return of donations (see para. 15.28 below);
- (c) a specimen of the specified form with examples showing how the return and declaration can be completed; and
- (d) explanatory notes on how to complete the returns.

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

Omissions and Mistakes

15.26 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 or omits an item in it or makes a mistake in it, and such inability, failure, omission or error was due to his own illness or absence from Hong Kong or of the absence from Hong Kong, death, illness or misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation or any reasonable cause (but not by reason of want of good faith of the candidate), he has the right to make an application to the Court of First Instance for an order to send in the return and declaration late, or to correct the omission or mistake [s 40 of the ECICO]. When the candidate finds himself in such a situation, it would be wise of him to make the application to the Court and inform the REO as soon as possible. The legal costs so incurred will not be regarded as his election expenses. It is a corrupt

conduct if a candidate who, in an election return lodged under s 37 of the ECICO, makes a statement that he knows or ought to know is materially false or misleading [s 20 of the ECICO]. *[Amended in September 2007]*

PART V : ADVANCE RETURN OF DONATIONS

15.27 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 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 [see s 37 of the ECICO]. The general provisions regarding donations in Part III must be observed. *[Amended in September 2007]*

15.28 Any **advance return of donations** must be made on the specified form mentioned in para. 15.25.

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

PART VI : FINANCIAL ASSISTANCE

15.30 Under the Financial Assistance Scheme for candidates standing in DC elections in respect of election expenses, candidates who get elected or who have received 5% of valid votes or more and are not disqualified will be eligible for financial assistance as follows –

- (a) in respect of a candidate in a contested constituency, the amount payable is the lower of the following:
 - (i) the amount obtained by multiplying the total number of valid votes cast for the candidate by the specified rate (now at \$10 per vote);
 - (ii) 50% of the declared election expenses of the candidate;

- (b) in respect of a candidate in an uncontested constituency, the amount payable is the lower of the following:
 - (i) the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate (now at \$10 per registered elector);
 - (ii) 50% of the declared election expenses of the candidate.

The amount of election donations received by a candidate will not be taken into account in calculating the amount of financial assistance payable to the candidate. As election donations will not be netted off in calculating the amount of financial assistance payable to a candidate, the amount of financial assistance payable to a candidate in some cases may be greater than the amount

of his net election expenses⁵. Any such ‘surplus’ financial assistance may be used by the candidates for their future political or community work, or it may be expended generally as a token recognition of their efforts in elections. The broad procedural and documentary requirements for making a claim, and general conditions for payment to be made are provided in Part VA of the DCO. The EAC (FA) (APP) Reg sets out the detailed implementation procedures for the Scheme.

[Added in September 2007]

Making Claims and their Submissions

Requirements to be complied with when making claims

15.31 A claim for financial assistance shall be made by a candidate in a specified form (which will be provided by the REO at the time when candidates submit their nominations). It shall be signed by an eligible candidate. The claim form shall be accompanied by an election return made under s 37 of the ECICO.

15.32 Candidates are not required to submit an auditor’s report on the amounts of their election expenses when making their claims for financial assistance. However, for cases in respect of which the REO considers that more in-depth checking is required, the REO may appoint an auditor to assist in verifying the claims.

[Ss 3 and 5 of the EAC (FA) (APP) Reg.] *[Added in September 2007]*

⁵ This may occur if the candidate secures donations which exceed 50% of his total election expenses.

Submissions of claims

15.33 The claim form, together with the accompanying documents, shall be submitted in person at the office of the CEO by the candidate, or his agent, within 30 days after the publication in the Gazette of the result of the election [s 4 of the EAC (FA) (APP) Reg]. *[Added in September 2007]*

Verification of Claims

Verification by CEO

15.34 On receiving a claim, the CEO will check the eligibility for financial assistance of the candidate. He will also verify that the claim conforms to the requirements set out in the EAC (FA) (APP) Reg.

Requirement for further Information

15.35 The CEO may require the claimant, through a written request, to provide further information to verify the claim. The claimant must provide the information within 14 days or within the period provided for in the ECICO for lodging an election return, whichever is later. If the claimant fails to provide the information within the period, the CEO may stop processing the claim without any prior notice.

[S 5 of the EAC (FA) (APP) Reg.] *[Added in September 2007]*

Withdrawal of Claims

15.36 A claim may be withdrawn before a payment of financial assistance is made by submitting a notice of withdrawal in person at the office of the CEO by the candidate. The notice of withdrawal must be in a specified form and signed by the candidate. [S 7 of the EAC (FA) (APP) Reg.]

[Added in September 2007]

Payment of Claim after Verification

Payment to be made by the Director of Accounting Services (“DAS”)

15.37 After verifying the claim, the CEO will certify the amount of financial assistance payable on the claim and notify the DAS of the amount payable and the person to whom it is to be paid. As soon as practicable after receiving the notification, the DAS must make the payment in accordance with the notification. [S 8 of the EAC (FA) (APP) Reg.] *[Added in September 2007]*

Recovery of Payment

15.38 Where a payment of financial assistance is made and the recipient is not entitled to receive the whole or part of the amount paid, the CEO is required to send a written notice under s 60G(1) of the DCO by registered post to the recipient requiring repayment. The recipient may make the repayment, in person, at the office of the CEO or send the repayment by post. [S 12 of the EAC (FA) (APP) Reg.] *[Added in September 2007]*

PART VII : ENFORCEMENT AND PENALTY

Enforcement

15.39 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.]

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

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

Penalties

15.42 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 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.]

15.43 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.]

15.44 A candidate who fails to submit the return and declaration of election expenses and donations by the prescribed date or who fails to provide an accurate account of all expenses incurred and all donations received with the

required supporting receipted vouchers and donation receipts commits an offence, punishable by a fine of up to \$200,000 and imprisonment for up to 3 years. [S 38 of the ECICO.]

15.45 A candidate who knowingly makes a materially false or misleading statement in his return and declaration of election expenses and donations or any advance return of donations commits a corrupt conduct punishable by a fine of up to \$500,000 and imprisonment for up to 7 years. [Ss 6 and 20 of the ECICO.]

15.46 A candidate, who having been elected to a DC, acts in the office or participates in the affairs of the DC, 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 sits or votes in such body. [S 39 of the ECICO.]

15.47 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 paras. 15.42-15.46 of this Chapter, be disqualified:

- (a) for 3 years from voting in the CE, EC subsector, LegCo, DC or VR election from the date of conviction [s 26(d) of the CEEO, s 30 of the Schedule to the CEEO, s 53 of the LCO, s 30 of the DCO and s 14 of the Village Representative Election Ordinance (Cap 576) (“VREO”)];
- (b) for 5 years from being nominated as a candidate for the election of, or elected as, the CE, a member of the LegCo or DC, or a VR 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

- (c) for 3 years from being nominated as a candidate for the election of, 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].

[Amended in September 2007]

CHAPTER 16

CORRUPT AND ILLEGAL CONDUCT

PART I : GENERAL

16.1 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.

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

16.3 A person who engages in:

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

In addition to these penalties, a convicted person will be disqualified from being registered as an elector or nominated as a candidate in elections, as

appropriate. For details, please see para. 16.31 below.

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

Offences Relating to Candidature

16.4 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.]

16.5 Similarly, a person engages in corrupt conduct if he uses force or duress against another person to affect the candidature of that person or a third person. The use of deception to induce another person to affect the candidature of that person or a third person is also a corrupt conduct. [Ss 8 and 9 of the ECICO.]

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

PART III : ILLEGAL CONDUCT RELATING TO ELECTIONEERING

False Statement that a Person is or is not a Candidate

16.7 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

16.8 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.]

False Claim of Support

[Please also see Chapter 17: Namedropping.]

16.9 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 consent form must be deposited with the relevant RO **prior to display, distribution or otherwise use of the election advertisements** [s 103(9A) of the EAC (EP) (DC) 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 the candidate or candidates [s 27(6) of the ECICO]. *[Amended in September 2007 and August 2008]*

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

16.11 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 of a particular constituency and the person or body to whom or which the false information is related.

Requirements Relating to Printed Election Advertisements

16.12 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 7 on Election Advertisements in particular Parts I, VI and VII thereof.]

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

16.14 The provisions of s 103 of the EAC (EP) (DC) 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 ROs in handling such complaints, the declaration and **2**

copies of the election advertisement must be deposited with the relevant RO **before** the election advertisement is displayed, distributed or otherwise used. If the relevant RO has not yet been appointed, the declaration and copies should be deposited with the CEO. By doing so, the candidate should have complied with s 34(4) of the ECICO as mentioned in para. 16.13 above.

PART IV : CORRUPT CONDUCT RELATING TO ELECTIONEERING AND VOTING

Bribery

16.15 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 voting for a particular candidate or candidates, not voting at an election, or not voting for a particular candidate or candidates.

Treating

16.16 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.]

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

16.18 Treating arises in daily situations. If it is used (by a candidate or another person) for promoting or prejudicing the election of a candidate, it is an offence. For example, a person or an organisation may host a banquet for a non-election-related purpose but, during the occasion, innocently calls on the guests to vote for a particular candidate. In such an event, the candidate concerned should immediately disown or dissociate with whatever has been said or done to promote his candidature. Otherwise, he would be liable to being charged with an offence under s 12 of the ECICO and the expenses so incurred would be counted towards his election expenses.

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

Force and Duress

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

16.21 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. *[Amended in September 2007]*

Voting Offences

- 16.22 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 at an election more than once in the same constituency or to vote at an election in more than one constituency; 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**

16.23 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 15: Election Expenses and Donations.

PART VI : POWER OF COURT TO EXCUSE INNOCENT ACTS

16.24 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.

16.25 A candidate who fails to provide the printing details or deposit copies of election advertisements with the RO commits an offence. However, he may apply to the court for an order allowing the publication of the above election advertisements be excepted from the relevant requirements and relieving him from the penalties, provided that the court is satisfied that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith [s 35 of the ECICO].

16.26 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 or omits an item in it or makes a mistake in it, and such inability, failure, omission or error was due to his own illness or absence from Hong Kong or of the absence from Hong Kong, death, illness or misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation or any reasonable cause (but not by reason of want of good faith of the candidate), has the right to make an application to the Court of First Instance for an order to send in the return and declaration late, or to correct the omission or mistake [s 40 of the ECICO]. When the candidate finds himself in such a situation, it would be wise of him to make the application to the Court and inform the REO as soon as possible. *[Amended*

in September 2007]

PART VII : NON-COMPLIANCE WITH THE LAW AND SANCTION

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

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

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

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

16.31 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 this chapter, be disqualified:

- (a) for 3 years from voting in the CE, EC subsector, LegCo, DC or VR election from the date of conviction [s 26(d) of the CEEO, s 30 of the Schedule to the CEEO, s 53 of the LCO, s 30 of the DCO and s 16 of the VREO];

- (b) for 5 years from being nominated as a candidate for the election of, or elected as, the CE, a member of the LegCo or DC, or a VR 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
- (c) for 3 years from being nominated as a candidate for the election of, 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].

[Amended in September 2007]

16.32 It is worthy to note that the Courts of Hong Kong view election-related offences and contravention of the ECICO being 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 17

NAMEDROPPING

False Claim of Support

[Please also see paras. 16.9 to 16.11 of Chapter 16.]

17.1 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.

17.2 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 the candidate or candidates [s 27(6) of the ECICO].

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

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

17.4 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. *[Amended in September 2007]*

17.5 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.

17.6 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]. Candidates should note that the Home Affairs Department has its own guidelines for Mutual Aid Committees and their office-bearers in respect of their giving consent of support to candidates. A copy of such guidelines can be found at **Appendix L**.

17.7 Consent can be given to 2 or more candidates, even if they are competing in the same constituency, although that may cause confusion. A

consent given can be revoked. In case of a revocation, in order to avoid dispute, it is advisable for the person or organisation who has revoked the consent to send a notice or copy of the revocation to the candidate concerned and the RO for his constituency.

17.8 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.

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

Scenario A

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

Scenario B

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

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

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

Form of Consent

17.12 The standard form “**Consent of Support**” is at **Appendix M**. It should be noted that the form is designed to cover a specific constituency in a particular election. A candidate who subsequently switches to another constituency should seek afresh the consent from the person or organisation concerned.

17.13 There are occasions (as allegations and complaints were received) requiring confirmation of the compliance of the law by a candidate. Therefore, every candidate is **required to deposit a copy** each of the **completed consent forms** with the relevant RO **before** the display, distribution or otherwise use of the relevant election advertisement [s 103(9A) of the EAC (EP) (DC) Reg]. The relevant 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 relevant 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 relevant RO.

Penalty

17.14 It is an illegal conduct under the ECICO for a person to make false claim of support (ie a claim without **prior** written consent from the person or organisation concerned). For details of penalty and sanction, please refer to para. 16.3(b) and Part VII of Chapter 16.

CHAPTER 18

ATTENDANCE OF PUBLIC FUNCTIONS BY BOTH GOVERNMENT OFFICIALS AND CANDIDATES

PART I : GENERAL

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

IMPORTANT :

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

18.2 Although each person in Hong Kong may have his own political inclination, civil servants wishing to participate in electioneering activities in a DC election should observe the rules and guidelines issued by the Civil Service Bureau (“CSB”). Under the CSB guidelines currently in force, certain officers at the senior level and those who may be particularly susceptible to accusations of bias 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 (“government officials”), should not openly support any candidate or be seen to lend support to a candidate. They should not participate in any form of electioneering, including seeking election donations for any candidate. *[Amended in September 2007 and August 2008]*

18.3 There is no objection in principle to individual civil servants, other than the government officials listed in para. 18.2 above, supporting electioneering activities of a candidate provided that it does not give rise to any conflict of interest with their official duties, and that it does not involve the use of public resources or the wearing of any government uniform.

PART II : ATTENDANCE OF PUBLIC FUNCTIONS BY GOVERNMENT OFFICIALS

On the Occasion of Being Invited

18.4 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”).

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

18.6 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

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

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

PART III : ATTENDANCE OF PUBLIC FUNCTIONS BY CANDIDATES

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

- (a) arises from the need for him to perform his role at the function as requested by the function organiser;

- (b) is a natural part of the function which, if the candidate declines to participate, would be seen as breaching the protocol appropriate to that function; or
- (c) is participated by all other candidates of the same constituency.

PART IV : OFFICIALS UNDER THE POLITICAL APPOINTMENT SYSTEM

18.9 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”. *[Amended in August 2008]*

18.10 Politically appointed officials may, subject to the guidelines below, participate in election-related activities. *[Amended in August 2008]*

18.11 Politically appointed officials are disqualified from being nominated as a candidate at an election of a DC. *[Amended in August 2008]*

18.12 As far as the DC 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. *[Amended in August 2008]*

CHAPTER 19

COMPLAINTS PROCEDURE

PART I : GENERAL

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

19.2 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

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

19.4 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 EAC (EP) (DC) Reg or Guidelines or relating to election matters can be made to one of the following bodies or persons:

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

19.5 **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

19.6 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.

19.7 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.

19.8 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 A POLLING STATION

19.9 If a person has any complaint about whatever happens inside a 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 of the constituency of the polling station by using the telephone number appearing in the guide on procedures for complaint.
- (c) where the matter is still not resolved by the RO, the complainant should without any delay telephone the Complaints Hotline of the REO to report his complaint by giving a gist thereof. He should then try to obtain as much evidence as possible in order to substantiate his complaint. As he is not allowed to talk to or communicate with any elector inside the polling station, he may

need to go outside the polling station to obtain necessary evidence.

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

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

19.10 The PRO himself or his Deputy or Assistant PRO must record any complaint mentioned in para. 19.9(a) and (b) and any other complaints and enquiries concerning an elector's data.

PART V : THE PROCESSING OF COMPLAINT

19.11 The PROs, ROs and the CEO are obliged under s 101 of the EAC (EP) (DC) 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 relevant RO or the REO, if necessary.

19.12 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.

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 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 [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].

[Amended in September 2007]

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 substantiated, it will also give reasons. *[Amended in September 2007]*

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 3 months of the conclusion of the election [s 8(1) and (2) of the EACO].

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

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 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)].
[Amended in September 2007]

District Council Election**Action Checklist for Candidates****A. Major Steps to be Observed**

- | | |
|--|---|
| Before and during
Nomination Period | <ol style="list-style-type: none"> 1. Obtain the following from the Returning Officer (“RO”), any District Office (“DO”) of the Home Affairs Department or the Registration and Electoral Office (“REO”): <ol style="list-style-type: none"> (a) Nomination Form; (b) Grid paper and Guide on Completion of Grid Paper (for inclusion in the official Introduction to Candidates); (c) the form of “Request by a Candidate for a Legislative Council Functional Constituency or a Sole Candidate on a Legislative Council Nomination List or by a Candidate for a District Council Constituency for Printing of Particulars Relating to the Candidate on a Ballot Paper”; (d) The form of “Consent of a Prescribed Body for its Particulars to be Printed on a Ballot Paper in Relation to the Request by Candidate(s)”; (e) Intention to Display Election Advertisements at Designated Spots. |
| During Nomination Period | <ol style="list-style-type: none"> 2. Except where the Chief Electoral Officer (“CEO”) authorises otherwise, personally deliver the following to the RO before expiry of the Nomination Period: <ol style="list-style-type: none"> (a) the duly completed Nomination Form; and (b) an election deposit of \$3,000 in cash or by cheque or cashier order made payable to “The Government of the Hong Kong Special Administrative Region”. |

In order to avoid the risk of invalidation of the nomination due to dishonoured cheques, candidates are strongly advised to submit the election deposit in cash or cashier order.

3. Obtain the following from the RO:
 - (a) copies of the relevant legislation;
 - (b) an electoral boundary map of the relevant constituency;
 - (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 Authorization of Person to Incur Election Expenses
 - (iii) Return and Declaration of Election Expenses and Donations
 - (iv) Notice of Appointment of Polling Agents
 - (v) Notice of Appointment of Counting Agents
 - (vi) Notice of Revocation of Appointment of Agent
 - (vii) Notice of Revocation of Authorization to Incur Election Expenses
 - (viii) Notice of Withdrawal of Candidature
 - (ix) Declaration of Election Advertisements
 - (x) Corrective Declaration of Election Advertisements
 - (xi) Notification of Decision on Electioneering Activities
 - (xii) Consent of Support

- (xiii) Permission for Display/Distribution of Election Advertisements or Conduct of Electioneering Activities at Private Premises
 - (xiv) Standard Receipt for Donations
 - (xv) Declaration of Secrecy
 - (xvi) Return of Election Deposit
 - (xvii) Advance Return and Declaration of Donations
 - (xviii) Notice of Posting of Election Mail
 - (xix) Declaration for Posting of Election Mail
 - (xx) Claim for Financial Assistance
 - (xxi) Notice of Withdrawal of Claim for Financial Assistance
 - (xxii) Notification of the Intention to Hold a Public Meeting/Procession; 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 handing in Nomination Form
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 CEO if RO has not yet been appointed) a Declaration of Election Advertisements **before EAs are displayed, distributed or otherwise used.** Candidates may submit as many declarations as required from time to time.
- (c) Ensure that all printed EAs contain the name and address of the printer, date of printing and the number of copies printed.

- (d) Submit to the RO (or CEO if RO has not yet been appointed) 2 copies of each type of EAs **before they are displayed, distributed or otherwise used.**
- (e) 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.
- (f) 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 Authorization of Persons to Incur Election Expenses.
8. Submit to the CEO an Advance Return and Declaration of Donations when a donation is received.
- Any time after handing in Nomination Form, but before expiry of Nomination Period
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.
- (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
- (c) If a candidate wishes to have his photograph and particulars printed on a ballot paper, he should:
 - (i) lodge with the RO a duly completed form of “Request by a Candidate for a Legislative Council Functional Constituency or a Sole Candidate on a Legislative Council Nomination List or by a Candidate for a District Council Constituency for Printing of Particulars Relating to the Candidate on a Ballot Paper”;
 - (ii) lodge with the RO the duly completed form(s) of “Consent of a Prescribed Body for its Particulars to be Printed on a Ballot Paper in Relation to the Request by Candidate(s)”;
 - and
 - (iii) lodge with the RO a colour photograph of the candidate, in a specified size and taken within the last 6 months, be affixed to the form, and an additional copy of his photograph identical to the one affixed to the form with his name label affixed on the back.

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

10. Make a request to CEO for obtaining, within 5 working days, one set of address labels of electors and a CD-ROM containing information of electors in the constituency. (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 RO Notices of Appointment of Polling Agents.
12. Lodge with the RO Notices of Appointment of Counting Agents.

Around 3 days after close of nominations

13. Attend the briefing for candidates and collect from the RO the following:
- (a) location and layout plans of the polling/counting stations; and
 - (b) name badges for candidates and their agents.

- | | |
|--|---|
| | 14. Attend meetings held by the RO to determine the candidate numbers by drawing of lots and to allocate display spots for display of EAs. |
| | 15. Receive from the RO copy of the permission/authorization for display of EAs at designated spots allocated to the candidate. |
| Around 14 days after close of nominations | 16. Check the ballot paper proof and verify the particulars relating to the candidate to be printed on the ballot paper. If a candidate or his election agent cannot perform the check in person, the candidate may authorize a representative in writing to check the particulars concerned on the ballot proof on his/her behalf. |
| Within 10 days after expiry of Nomination Period | 17. Receive from the RO information about the election agents appointed by other candidates of the same constituency. |
| After expiry of Nomination Period | 18. Receive from the RO the notification on the validity of the candidate's nomination (which will also be sent to every other validly nominated candidate of the same constituency, if any). |
| Not later than 7 days before polling day | 19. Receive from the RO information regarding the delineation of no canvassing zone and no staying zone for the polling station. |
| At least 1 clear working day before posting postage-free election mail | 20. 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. |
| Before the posting deadline as designated by the Post Office | 21. 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 | 22. Lodge with the RO Corrective Declarations of Election Advertisements, if any. |
| Before entering polling/ counting station | 23. Complete the Declarations of Secrecy (to be made by all candidates, their election agents, polling agents and counting agents). |

- Any time before polling day 24. Lodge with the RO Notices of Revocation of Appointment of Agent, if any.
- On polling day 25. Attend the poll and the count if so wishes, bringing along the Declaration of Secrecy.
26. Candidates or their election agents personally deliver Notices of Appointment of Polling Agents and Notices of Revocation of Appointment of Agent to the relevant Presiding Officer (“PRO”), if not yet lodged pursuant to paras. 11 and 24 respectively.
27. Candidates or their election agents personally deliver Notices of Appointment of Counting Agents and Notices of Revocation of Appointment of Agent to the relevant PRO, if not yet lodged pursuant to paras. 12 and 24 respectively.
- Within 10 days after polling day 28. Remove all EAs on display.
- Not later than 30 days after the publication in the Gazette of the result of the election or the declaration of the termination of the election proceedings or the declaration of failure of the election 29. (a) Lodge with the CEO a Return and Declaration of Election Expenses and Donations signed by the candidate with original receipted vouchers and duplicate donation receipts.
- (b) An uncontested candidate who is returned as a Member should lodge with the CEO a Return and Declaration of Election Expenses and Donations signed by the candidate with original receipted vouchers and duplicate donation receipts not later than 30 days after the gazettal of the Notice of Nominations.
- (The election result of an uncontested constituency will be gazetted in the Notice of Nominations)
30. (a) Eligible candidates in contested constituencies who wish to apply for financial assistance should complete a Claim for Financial Assistance. The completed form, together with the candidate’s Return and Declaration of Election Expenses and Donations should be presented in person by the candidate or his agent to the CEO.

- (b) If an uncontested candidate who is returned as a Member wishes to apply for financial assistance, he should complete a Claim for Financial Assistance. The completed form, together with the candidate's Return and Declaration of Election Expenses and Donations should be presented in person by the candidate or his agent to the CEO not later than 30 days after the gazettal of the Notice of Nominations.

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 vouchers/receipts for expenses of \$100 or above.
3. Issue receipt for any non-anonymous donation of more than \$1,000 and keep a copy of the receipt. (The candidate should use the Standard Receipt for Donations provided by the 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 1 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:
 - (a) anything a candidate is required to do in relation to his nomination;
 - (b) to withdraw the candidate's candidature;

- (c) to incur election expenses unless he has been so authorised by the candidate; and
 - (d) to authorise a person as an election expense agent to incur election expenses.
6. Each candidate can appoint one or more persons authorised to incur election expenses on his behalf, i.e. the election expense agents, by completing the Notice of Authorization of Persons to Incur Election Expenses. A candidate **may** also authorise his election agent to incur election expenses for him. These agents may incur expenses only after the candidate has authorised them to do so.

Lodgement of Authorization and Declaration to appropriate authority

- 7. Lodge with the RO the Notice of Appointment of Election Agent at any time after handing in Nomination Form.
- 8. Lodge with the RO the Notice of Authorization for Persons to Incur Election Expenses. The authorization 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 together with a Declaration of Election Advertisements **before the EAs are displayed, distributed or otherwise used.**

Submission of Return and Declaration of Election Expenses and Donations

Not later than 30 days after the publication in the Gazette of election result or the declaration of the termination of the election proceedings or 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 Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).
- 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 or a Justice of the Peace or a solicitor holding a practising certificate.
13. (a) A candidate must lodge his completed return with the CEO at 13/Floor, Guardian House, 32 Oi Kwan Road, Wan Chai, 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 failure of the election under the relevant electoral law).

(b) For an uncontested candidate who is returned as a Member, he must lodge his completed election return with the CEO (at the above address) not later than 30 days after the publication of the Notice of Nominations in the Gazette.
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 further period as the Court specifies.
15. If a candidate wishes to change any information in his election return before the deadline, he may lodge with the CEO before the deadline a supplementary declaration stating the information to be changed.
16. If a candidate wishes to correct any error or false statement in his return or in 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.

(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 respective ordinary election/by-election.)

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

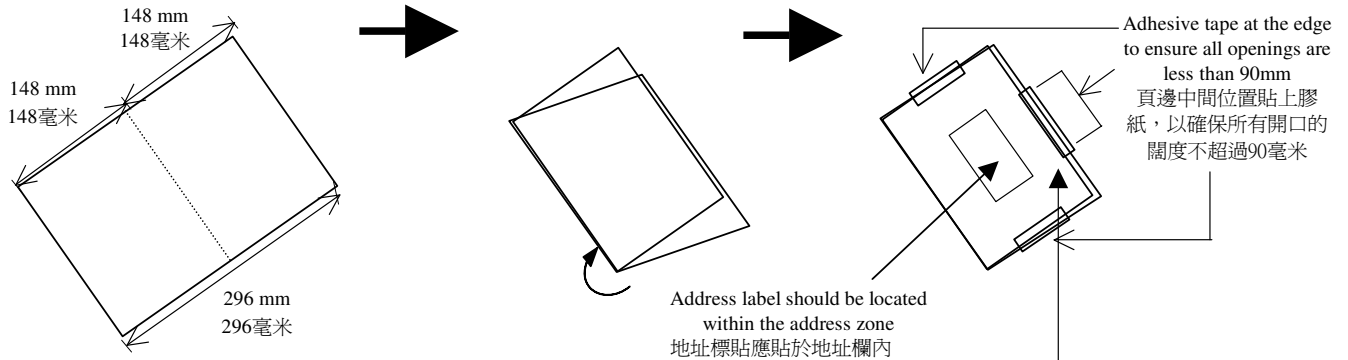


Figure 2 : Folder of A4 (296mm) size with 2 folds
圖示二：兩摺的A4(296毫米)尺寸紙張

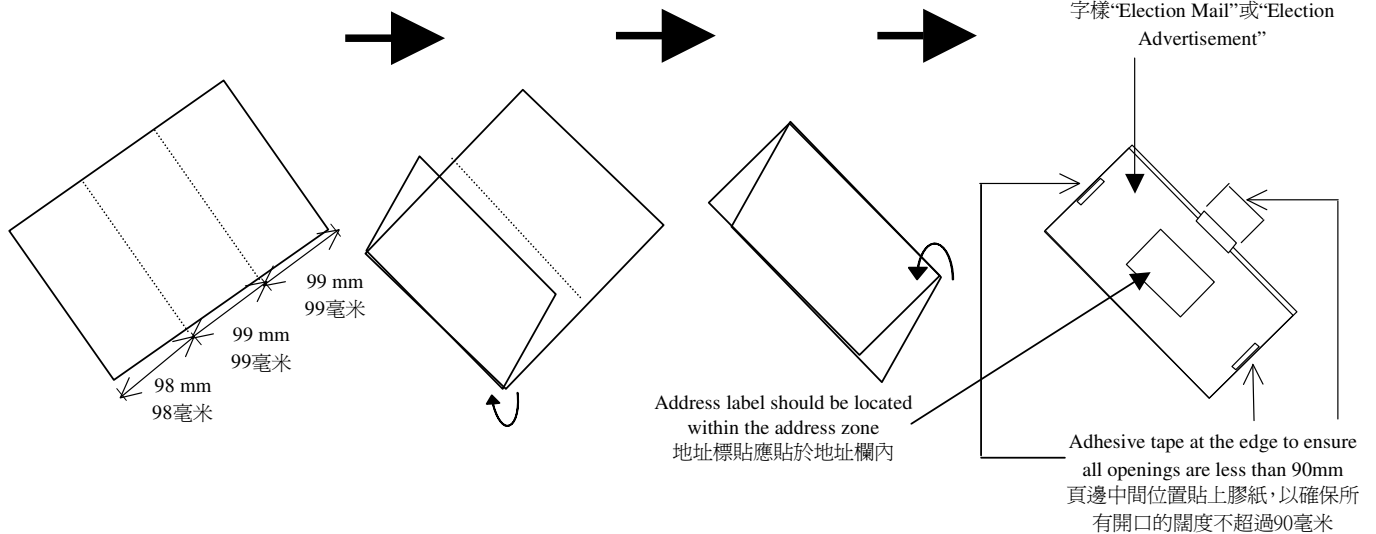
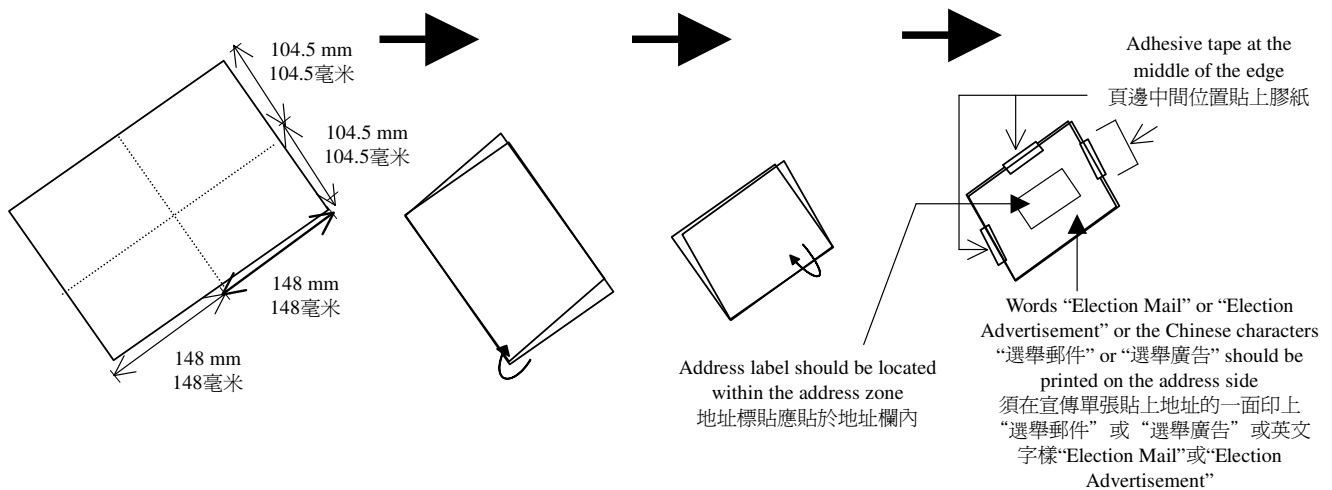


Figure 3 : Folder of A4 (296mm) size with 2 folds
圖示三：兩摺的A4 (296毫米)尺寸紙張



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

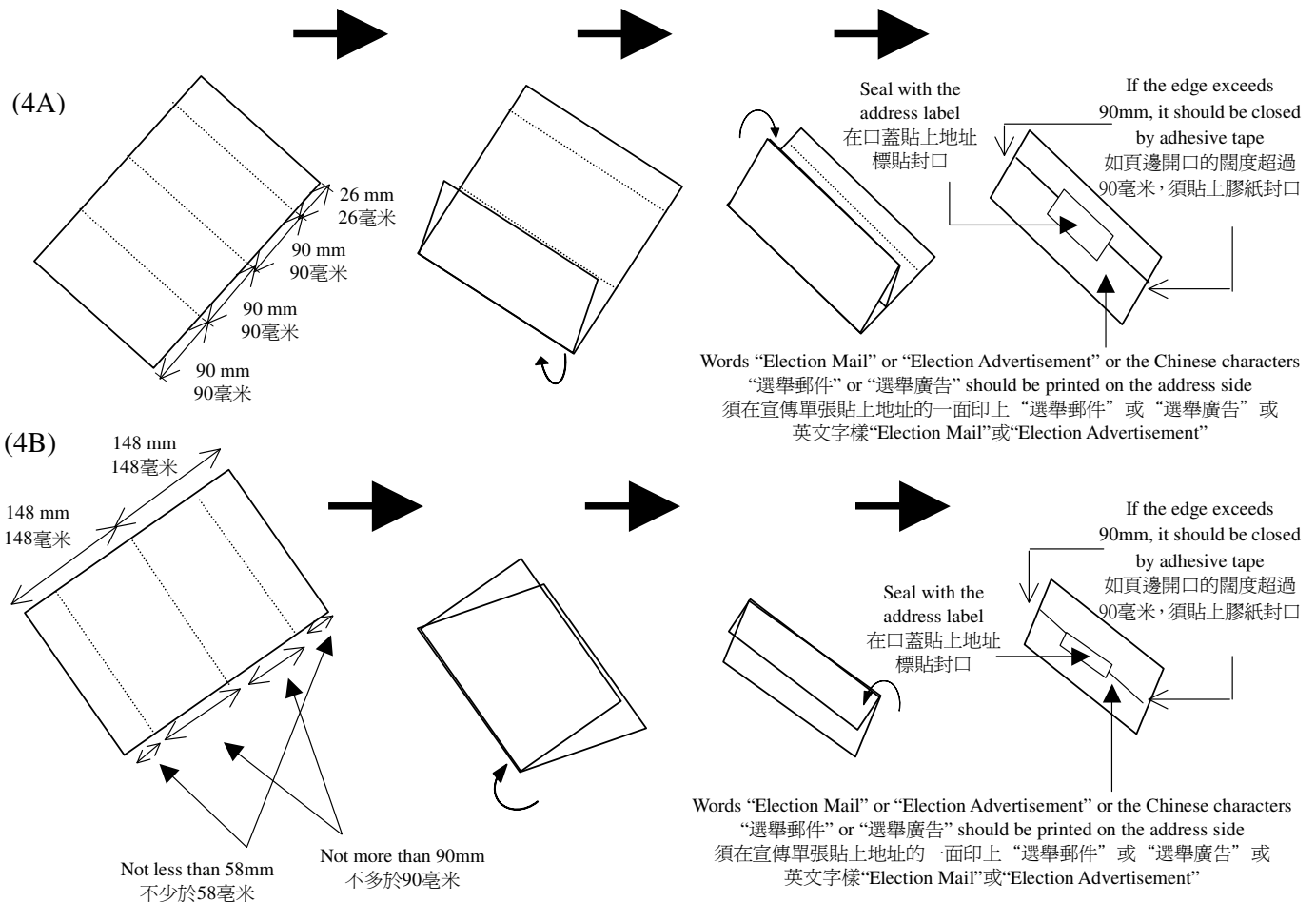
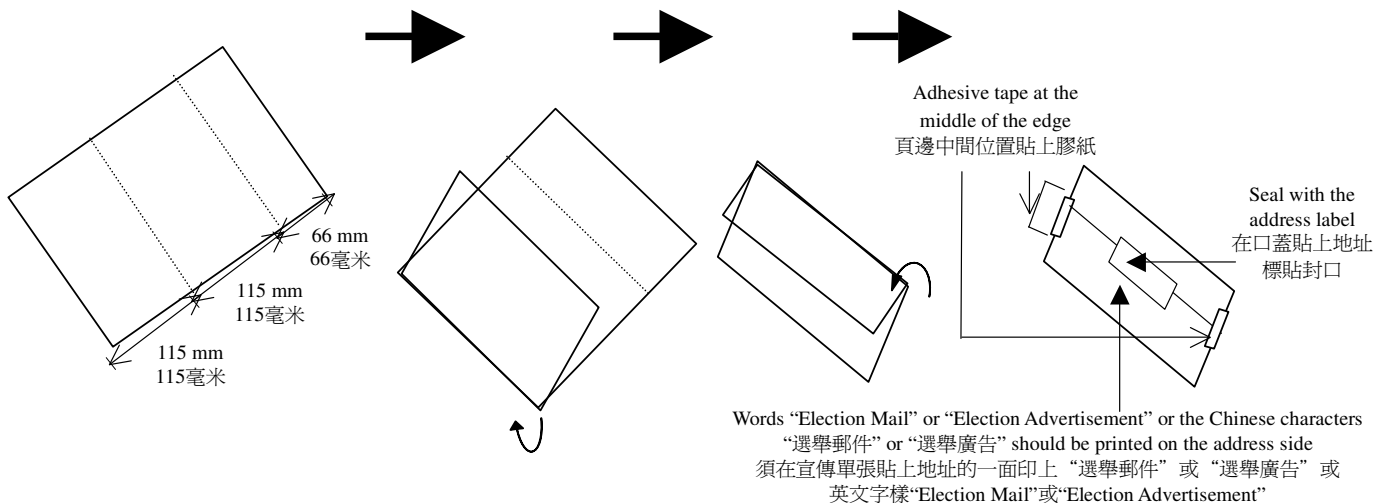


Figure 5 : Folder of A4 (296mm) size sealed with address label

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 exceed 90mm should be closed by means of adhesive tape.

Canvassing Activities which are Forbidden within a No Canvassing Zone

- (Note: (1) 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.
- (2) Door-to-door canvassing and for the purpose of such canvassing, the display of 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 a prescribed body the registered name or registered emblem of which has been printed on ballot paper for the election, will be allowed on storeys above or below street level in a building within a no canvassing zone 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, and that obstruction is not posed to electors and no amplifying system or device is used.)
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. Except for the purpose of door-to-door canvassing referred to in Note (2) above, displaying, without reasonable excuse, propaganda material, eg any badge, emblem, clothing or head-dress which:
 - (a) may promote or prejudice the election of a candidate or candidates at the election; or

- (b) makes direct reference to a body any member of which is standing as a candidate in the election or a prescribed body the registered name or registered emblem of which has been printed on ballot paper for the election.
- 4. Distribution of election advertisements.
- 5. Canvassing for votes by:
 - (a) talking to electors;
 - (b) shouting slogans or the name or number of a candidate or any appeal message;
 - (c) singing or chanting; or
 - (d) making signals or signs to electors.
- 6. Broadcast of audio or video tape to appeal to or induce electors to vote.
- 7. Using loud-hailers or loudspeakers (whether carried by a person or mounted on a vehicle or installed in any other manner) to broadcast any message which appeals to or induce electors to vote.
- 8. Shaking hands with electors.

**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 respective RO for record and for public inspection.

Personal Data Privacy: Guidance on Electioneering Activities

Introduction

This guidance note 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, 3 and 4 ("DPP1", "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;

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, 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.

Guidance Note on Safe Conduct of Election-related Activities

Introduction

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

Election Meetings

2. The Public Order Ordinance (Cap 245) and Chapter 9 Part II of the 'Guidelines on Election-related Activities in respect of the District Council Election' 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 10 Part IV of the 'Guidelines on Election-related Activities in respect of the District Council Election', 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 8 of the 'Guidelines on Election-related Activities in respect of the District Council Election' 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 conduct of the activity.

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

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

June 2005

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.

A. Administrative Guidelines for Consideration

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

- (i) the organisation or group on behalf of which the permit is sought, and the organisation or group to benefit from the collection if different, are, where applicable, properly registered under the laws of Hong Kong;
- (ii) if the applicant is an individual, he should be aged 21 or above, and should either be a permanent resident of Hong Kong within the meaning of the Immigration Ordinance, or have been ordinarily resident in Hong Kong for a minimum of seven years;
- (iii) the funds collected will be used for purposes which would contribute directly or indirectly to the development of representative government in Hong Kong;
- (iv) the fund-raising activity will not cause public order and public safety problems, and will not cause nuisance or harassment to the general public;
- (v) the fund-raising activity should not be held on a morning which is a “flag day” approved by the Director of Social Welfare unless it is to be held in a confined public place;
- (vi) the fund-raising activity should not be held at the same time and in the same venue or its vicinity as a charitable fund-raising activity;
- (vii) there will be no more than one non-charitable fund-raising activity in the same venue or its vicinity on the same day except where the activities are organised by the same applicant;

- (viii) there will be a fair distribution of venues, dates and frequency of fund-raising among all potential applicants; and
- (ix) the permittee who had breached the conditions stipulated in the permit last granted would not be considered for a new permit unless explanations/justifications have been provided to the satisfaction of the Secretary for Home Affairs.

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

B. Licensing Conditions

- The following conditions will normally be imposed if an application is approved : -
- (i) permission must have been obtained or is likely to be forthcoming from the relevant authorities, including the authority responsible for the management of the venue(s), for the fund-raising activity to be held;
 - (ii) the funds collected will not be used to finance any profit-making ventures or activities;
 - (iii) the funds collected will be used only in Hong Kong;
 - (iv) no person will benefit improperly from the collection;
 - (v) the permission given for the fund-raising activity is only valid for the details specified in the permit. If there are any changes to such details, the approval of the Secretary for Home Affairs will be required;
 - (vi) the permission given for the fund-raising activity will become null and void if the funds collected are used for purposes other than those specified in the permit;
 - (vii) within 90 days after the conclusion of the fund-raising activity, the permittee will cause the money received from the public, less any reasonable expenses incurred, to be applied for the purpose for which the permission is given;
 - (viii) if after applying the funds collected as described in (vii) above, there is still a balance left, the permittee will donate the unspent funds to a charitable institution which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap.112) for charitable purpose;
 - (ix) the funds collected will be audited by a qualified accountant arranged by the

permittee. A copy of the audited accounts will be submitted to the Secretary for Home Affairs within 90 days after the conclusion of the fund-raising activity. The audited accounts will also be made available to members of the public for inspection upon demand;

- (x) all donations are to be purely voluntary, and that the activity shall not create public order problems or cause nuisance, including excessive noise, or harassment to the general public, and that the manner in which the activity is conducted should not be such as to be likely to produce a reaction generally against public fund-raising activities;
- (xi) during the course of the fund-raising activity, the name of the organisation and a copy of the permit/approval letter should be prominently displayed. Every participant of the activity should also wear a clear and legible badge identifying the name of the participant and the name of the organisation; and
- (xii) children under the age of 14 must not be allowed to take part in the activity. Participation by young persons between the age of 14 - 18 must be entirely voluntary and the prior written consent of parents must be obtained.

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

January 2003

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 competing in the same constituency. 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 of the same constituency. 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 competing in the same constituency alike.
5. If there is fair and equal treatment of all candidates competing in the same constituency in a publication, its editorial line or the personal opinions of the writer on each of the candidates can be freely expressed, insofar as they are fair comments and based on true facts. Any newspaper is at full liberty to express its support for or disapproval of a candidate. The guidelines do not seek to impose any shackle on the expression of such ideas.

Application Procedure for the Approval of Float Design

1. All applications in respect of the design of any float to be used in a procession or parade must be made in writing, with the following particulars clearly stated:
 - the name of the applicant
 - the address of the applicant
 - contact telephone number and fax number
 - the make, model and registration mark (or vehicle identity number in the case of a brand new vehicle) of the vehicle to be used as float

2. The application should be accompanied by 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 on requirements for carriage of passengers: subject to subregulation (7), no driver of a vehicle on a road shall permit a passenger to travel in any vehicle unless seated in a properly constructed seat secured to

the bodywork of the vehicle except where the vehicle is a public service vehicle licensed to carry standing passengers.

- detailed artwork is not required
3. All applications must be made at least **1 month** in advance of the date of the event to:

Engineer (Vehicle 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 cost for the election advertisements charged by government departments should also be included.
5. Costs incurred by the relevant authorities for removal of election advertisements displayed without 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 costs in connection with the election campaign, eg photocopying, hire of telephone line and fax line.
9. Postage for mailing of publicity materials (excluding the free mail provided by the Government).
10. Costs incurred for the hire of transport in connection with the election.
11. Costs incurred for publicity by 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 by a candidate who is 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 District Councils elections and the publication of performance reports for promoting the candidature any time on or before the date of election.
16. Costs incurred by the political body or organisation of the candidate in promoting his election. [Costs of meeting where the platform of the political body or organisation is publicised without specific reference to the candidate will not be counted as election expenses.]
17. Costs for obtaining legal advice incurred in respect of the management of an election (eg where a candidate asks his lawyer to vet an election publicity pamphlet to make sure that statements contained in it do not amount to libel). [Costs for obtaining legal advice on the general application of the election law including what is “election expenses” and “donations” will not be an election expense.]
18. Interest incurred from a loan to finance the campaigning activities of a candidate. [In case of an interest-free loan, the interest waived should be declared as a donation and correspondingly as an election

expense. A reasonable amount should be assessed by reference to the market interest rate.]

19. Subsidy of activities organised for promoting one's candidature is a form of donation which is counted as election expense.
20. Although some people may not charge the candidate for the goods supplied or work, labour and services rendered, a reasonable sum estimated for such charges, over any allowance or discount usually given to customers, is an election expense (which is correspondingly a donation made by these people).
21. Goods given incidental to the provision of voluntary service.
22. Charities undertaken for the purpose of promoting one's candidature.
23. Costs for any negative publicity launched against one's opponent.

Support Clean Elections

A Handbook by the ICAC

ICAC Election Enquiry Hotline : 2920 7878

24-Hr ICAC Report Hotline : 25 266 366

ICAC Corporate Website: www.icac.org.hk

INTRODUCTION

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap 554), which was enacted on 3 March 2000 with an aim to uphold fairness and prevent corrupt and illegal conduct in elections, also applies to the District Council Election and by-elections. The Independent Commission Against Corruption (ICAC) is responsible for enforcing the ECICO. It has produced this Handbook, which comprises a gist of the ECICO, a “Dos and Don’ts” checklist, a “questions-and-answers” section and a part showing the channels for lodging reports and enquiries with the ICAC. The Handbook serves to alert candidates, their election agents and helpers to the common pitfalls in elections so that they can take appropriate measures to avoid inadvertent infringement of the ECICO. Candidates, election agents and helpers, however, should note that this Handbook is intended to be a general reference only. They should refer to the original legislation and consult their legal advisers in case of doubt.

GIST OF THE ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) ORDINANCE

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap. 554) applies to the District Council Election (including by-elections) and other elections as specified in the Ordinance. The Ordinance governs all conduct concerning an election, whether it is engaged in before, during or after the election period, and whether it is engaged in within Hong Kong or elsewhere.

The following is a gist of major provisions of the ECICO which relates to the management of electioneering activities for the reference of candidates, their election agents and helpers.

To facilitate easy reference, “●” denotes an offence or elaboration of provisions under the ECICO and interpretation of terms is given under “□” in the following gist.

(1) NOMINATION OF CANDIDATES**Bribery in Relation to Standing or Not Standing as Candidate (Sections 2, 7)**

- It is an offence if a person corruptly offers an advantage to another person as an inducement to or a reward for :
 - (1) that person's standing, not standing, or if that person has been nominated as a candidate, withdrawal of his candidature, or his not using the best endeavours to promote his election; or
 - (2) that person to get and try to get a third person to stand, not to stand, or if that third person has been nominated as a candidate, to withdraw his candidature, or not to use that third person's best endeavours to promote his election.

- It is also an offence if a person authorizes another person, either expressly or by implication, to offer an advantage for getting any person to engage in the conduct stated in (1) or (2) above.

- It is also an offence if a person corruptly solicits or accepts an advantage for the conduct stated in (1) or (2) above.

- "Candidate":
 - (1) means a person who stands nominated as a candidate at an election; and
 - (2) also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election.

- "Advantage" includes (but is not limited to) any valuable consideration, gift, loan, office, employment, contract, favour or service (other than voluntary service or the provision of entertainment). However, it does not include an election donation if particulars of the donation are given in an election return that has been lodged with the Chief Electoral Officer.

- "Voluntary service" means any service provided free of charge to or in respect of any candidate(s) at an election by a natural person, voluntarily and personally, in the person's own time for the purpose of promoting the election of the candidate(s) or prejudicing the election of another candidate or other candidates.

Using or Threatening to Use Force or Duress in Relation to Standing or Not Standing as Candidate (Section 8)

- It is an offence if a person uses or threatens to use force or duress against another person to induce him :
 - (1) to stand or not to stand as a candidate, or to withdraw his candidature; or
 - (2) to get a third person to stand or not to stand as a candidate, or to withdraw the third person's candidature.

- It is an offence if a person uses or threatens to use force or duress against another person because the other person or the third person stood or did not stand as a candidate, or withdrew his candidature after having been nominated as a candidate.

- It is also an offence if a person authorizes another person, either expressly or by implication, to engage in the above-stated conduct.

Deceptive Behaviour for Inducing Others to Run or Not to Run at an Election (Section 9)

- It is an offence if a person, by deception, induces another person :
 - (1) to stand or not to stand as a candidate, or to withdraw his candidature; or
 - (2) to get a third person to stand or not to stand as a candidate, or to withdraw the third person's candidature.

- It is also an offence if a person authorizes another person, either expressly or by implication, to engage in the above-stated conduct.

Defacing or Destroying Nomination Papers (Section 10)

- It is an offence if a person defaces or destroys a completed or partly completed nomination paper in order to prevent or obstruct another person from standing for election.

(2) ELECTIONEERING**Publishing False Statement that a Person Is or Is Not a Candidate (Section 25)**

- It is an offence if a person knowingly publishes a false statement that:
 - (1) he or another person is a candidate at an election; or
 - (2) another person who has been nominated as a candidate is no longer a candidate at an election.

- It is an offence if a candidate knowingly publishes a false statement that he is no longer a candidate at an election.

Publishing False or Misleading Statements about a Candidate (Section 26)

- It is an offence if a candidate or a person publishes a materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates at an election.
- Statements about a candidate or candidates include (but are not limited to) statements concerning the character, qualifications or previous conduct of the candidate or candidates.

Election Advertisement with False Claim of Support (Sections 2, 27)

- It is an offence if a candidate or a person publishes or authorizes the publication of an election advertisement which includes the name or logo of or associated with a person or an organization; or a name or logo that is substantially similar to that of a person or an organization; or a pictorial representation of a person, in such a way that implies or is likely to cause electors to believe that the candidate or candidates have the support of the person or organization unless prior written consent from that person or organization has been obtained.
- It is still an offence even if such an election advertisement contains a statement to claim that such inclusion does not imply support by the person or organization concerned.
- It is an offence if a person purports to give written consent to the inclusion in an election advertisement of the name or logo of an organization without having been approved by the governing body of the organization or by a resolution of the members of the organization passed at a general meeting.
- It is also an offence if a person, for the purpose of promoting or prejudicing the election of a candidate or candidates, gives information to the candidate or candidates that the person knows or ought to know is materially false or misleading.
- “Support” includes support for the policies or activities of the candidate.
- “Election advertisement” means :
 - (1) a publicly exhibited notice; or
 - (2) a notice delivered by hand or electronic transmission; or

- (3) a public announcement made by radio or television or by video or cinematographic film; or
- (4) any other form of publication, published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.

Publishing Election Advertisements that Do Not Meet Certain Requirements (Sections 2, 33, 34)

- It is an offence if a person publishes a printed election advertisement, with exception to those printed in a registered local newspaper, which fails to show, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed.
- The above conduct is, however, not an offence if the publisher, or a person authorized by him, has lodged with the relevant Returning Officer a statutory declaration on the required printing details not later than 7 days after the publication of the advertisement.
- A person must, not later than 7 days* after publishing a printed election advertisement, furnish 2 copies of the advertisement to the relevant Returning Officer.
- * It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation, a candidate must submit 2 copies of his election advertisement to the relevant Returning Officer before he displays, distributes or otherwise uses the election advertisement. He should also comply with all other statutory requirements governing election advertisements in an election and relevant guidelines issued by the Electoral Affairs Commission.
- A performance report published by an incumbent candidate during election period (the period beginning with the nomination day and ending with the polling day of an election), is taken as an election advertisement.
- An “incumbent candidate” means the person being a serving member of the Legislative Council, a District Council, or 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, etc. who is seeking re-election to the same office or body or election to another office or body to which the ECICO applies.

(3) VOTING**Bribing Electors and Others (Section 11)**

- It is an offence if a person, without reasonable excuse, offers an advantage to another person as an inducement to or a reward for that person or for him to get or try to get a third person :
 - (1) not to vote, or for not having voted at an election; or
 - (2) to vote or not to vote, or for having or not having voted for a particular candidate or particular candidates at an election.
- It is also an offence if a person, without reasonable excuse, solicits or accepts an advantage in return for engaging in or getting or trying to get another person to engage in the conduct stated in (1) or (2) above.
- It is also an offence if a person authorizes another person, either expressly or by implication, to engage in the above-stated conduct.

Refreshments or Entertainment for Electors and Others (Section 12)

- It is an offence if a person provides, or meets all or part of the cost of providing any food, drink or entertainment for another person as an inducement to or a reward for that person or a third person :
 - (1) not to vote, or for not having voted at an election; or
 - (2) to vote or not to vote, or for having or not having voted for a particular candidate or particular candidates at an election.
 - It is an offence if a person solicits, accepts or takes any food, drink or entertainment as an inducement to or a reward for the conduct stated in (1) or (2) above.
 - It is also an offence if a person authorizes another person, either expressly or by implication, to engage in the above-stated conduct.
 - However, the serving of non-alcoholic drinks at an election meeting is not an offence.
- An election meeting is any meeting held to promote or prejudice the election of a particular candidate or particular candidates.

Using or Threatening to Use Force or Duress against Electors (Section 13)

- It is an offence if a person uses or threatens to use force or duress against another person to induce that person or to get him to induce a third person to vote or not to vote; or to vote or not to vote for a particular candidate or particular candidates, at an election.
- It is an offence if a person uses or threatens to use force or duress against another person because the other person voted or refrained from voting; or voted or refrained from voting for a particular candidate or particular candidates, at an election.
- It is also an offence if a person authorizes another person, either expressly or by implication, to engage in the above-stated conduct.

Deceptive Behaviour in Relation to Electors (Section 14)

- It is an offence if a person, by deception, induces another person or gets him to induce a third person not to vote; or to vote or not to vote for a particular candidate or particular candidates at an election.
- It is an offence if a person, by deception, obstructs or prevents another person or gets him to obstruct or prevent a third person from voting at an election.
- It is also an offence if a person authorizes another person, either expressly or by implication, to engage in the above-stated conduct.

Impersonating Another at Election (Section 15)

- It is an offence if a person applies for a ballot paper in another person's name, or having voted at an election, applies at the same election for a ballot paper in his own name, except as expressly permitted by an electoral law.

Other Offences with Respect to Voting (Section 16)

- It is an offence if a person :
 - (1) votes at an election knowing that he is not entitled to vote at that election;
or
 - (2) votes at an election after having knowingly or recklessly given materially false or misleading information to an electoral officer, or knowingly omitted to give material information to an electoral officer; or
 - (3) votes more than once in the same constituency, or votes in more than one constituency.

- It is an offence if a person invites or induces another person :
 - (1) to vote at an election knowing that the other person is not entitled to do so; or
 - (2) to vote at an election knowing that the other person has given materially false or misleading information to an electoral officer, or has omitted to give material information to an electoral officer; or
 - (3) to vote more than once in the same constituency, or to vote in more than one constituency.

Destroying or Defacing Ballot Papers (Section 17)

- It is an offence if a person, without lawful authority, supplies a ballot paper to another person, or destroys or interferes with a ballot box or ballot paper in use at an election or a ballot paper that has been used at an election.
- It is an offence if a person, with intent to deceive, puts into a ballot box a paper other than a ballot paper that he is lawfully authorized to put into the box or removes a ballot paper from a polling station.

(4) ELECTION EXPENSES AND ELECTION DONATIONS

Election Expenses (Sections 2, 24)

- “Election expenses” means expenses incurred or to be incurred before, during or after the election period, by or on behalf of a candidate for the purpose of :
 - (1) promoting the election of the candidate; or
 - (2) prejudicing the election of another candidate,
 and includes the value of election donations consisting of goods and services used for that purpose.
- A candidate commits an offence if the aggregate amount of the election expenses whether incurred by or on behalf of the candidate exceeds the prescribed maximum amount of election expenses. The maximum amount of election expenses for the District Council Election is \$48,000.

Use of Election Expenses (Sections 2, 23)

- It is an offence if a person, other than a candidate or a candidate’s election expense agent, incurs any election expenses.

- An “election expense agent” means a person authorized in writing by a candidate to incur election expenses on behalf of the candidate. The maximum amount of election expenses to be incurred by him has to be specified in the authorization, a copy of which has to be served on the relevant Returning Officer in order to effect his authorization.
- It is an offence if a candidate does not include election expenses incurred by the candidate or the candidate’s election expense agent(s) in the candidate’s election return.
- It is an offence for an election expense agent to incur election expenses that exceed the amount specified in his authorization.

Use and Disposal of Election Donations (Sections 2, 18, 19)

- “Election donation” means :
 - (1) any money given to a candidate for the purpose of meeting the election expenses of the candidate; or
 - (2) any goods (including any goods given incidental to the provision of voluntary service) or service (excluding voluntary service) provided to a candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate.
- It is an offence if a candidate or other person uses election donations for a purpose other than :
 - (1) meeting the candidate’s election expenses; or
 - (2) promoting the election of the candidate or prejudicing the election of another candidate.
- It is an offence if a candidate, on receiving an election donation of more than \$1,000 in value, does not issue a receipt to the donor.
- Any anonymous election donation of more than \$1,000 in value must not be used for meeting or contributing towards meeting his election expenses or for promoting the election of the candidate or prejudicing the election of another candidate or other candidates and must be given to a charitable institution or trust of a public character chosen by the candidate. A candidate engages in corrupt conduct if he fails to observe the above.
- It is an offence if a candidate does not give the unused election donations or donations that exceed the prescribed maximum amount of election expenses to a charitable institution or trust of a public character he chooses.

Election Returns (Sections 20, 36, 37, 38)

- It is an offence if a candidate makes a statement that he knows or ought to know is materially false or misleading in his election return.
- It is an offence if a candidate fails to lodge with the Chief Electoral Officer an election return of his election expenses and all election donations not later than 30 days after the date of publication of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law.
- The return must be accompanied by :
 - (1) an invoice and a receipt of each election expense, giving particulars of the expenditure (except for sums under \$100); and
 - (2) a copy of the receipt issued to every donor, giving particulars of the donor and the election donation (except for donations of \$1,000 in value or below); and
 - (3) a copy of the receipt of such election donation given to a charitable institution or trust of a public character chosen by the candidate in accordance with the law; and
 - (4) an explanation setting out the reason why an unused election donation was not disposed of in accordance with the requirement of giving the same to charitable institutions or trusts of a public character; and
 - (5) a declaration in a form provided or specified by the Chief Electoral Officer verifying the contents of the return.

(5) ELECTION PETITION OR ELECTION APPEAL**Bribery in Relation to Election Petition or Election Appeal (Section 21)**

- It is an offence if a person offers an advantage to another person:
 - (1) as an inducement for that person, or for him to get a third person, to withdraw an election petition or election appeal; or
 - (2) as a reward for that person for his having withdrawn or agreed to withdraw; or for his having got a third person to withdraw an election petition or election appeal.
- It is an offence if a person:
 - (1) withdraws his election petition or election appeal in return for an advantage; or
 - (2) solicits or accepts an advantage as an inducement to withdraw an election petition or election appeal; or

- (3) solicits or accepts an advantage as a reward for his having withdrawn or his having got a third person to withdraw an election petition or election appeal.

(6) MISCELLANEOUS AND RELATED PROVISIONS

Corrupt or Illegal Conduct Engaged in with the Knowledge and Consent of a Candidate (Section 29)

- A candidate is to be regarded as having personally engaged in corrupt or illegal conduct if the conduct was engaged in with the knowledge and consent of the candidate.

Officers Liable for Offences Committed by Corporation (Section 42)

- If a corporation is found guilty of having engaged in corrupt or illegal conduct, the director, executive officer or any person who is concerned in the management of the corporation during the material time will be liable for the conduct unless the person proves that:
 - (1) he has no knowledge of the conduct; or
 - (2) he has exercised reasonable diligence to prevent the conduct, if it was done with his knowledge.

Aiding, Abetting, etc. to Commit an Offence (Section 43 of the ECICO and Section 101C of the Criminal Procedure Ordinance (Cap.221))

- A person commits an offence if he incites, conspires with, aids, abets, counsels or procures another person to engage in corrupt or illegal conduct at an election or attempts to engage in corrupt or illegal conduct.

(7) APPLICATION FOR RELIEF

Relief for Certain Illegal Conduct (Section 31)

- A candidate, agent or any other person who has done or omitted to do an act that would be “illegal conduct” under the ECICO may apply to the Court for an order relieving him from penalties and disqualifications that are imposed on him by an electoral law.
- The applicant has to satisfy the Court that such act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to his bad faith.

Relief for Offences in Relation to Election Advertisements (Section 35)

- Any person who has published a printed election advertisement without the printing details required by Section 34 or has not furnished 2 copies of the printed election advertisement to the relevant Returning Officer in accordance with Section 34 may apply to the Court for an order:
 - (1) allowing the publication be excepted from the statutory requirements; and
 - (2) relieving him from penalties imposed on him by Section 34.
- The applicant has to satisfy the Court that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to his bad faith.

Relief for Offences in Relation to Election Returns (Section 40)

- A candidate who fails to lodge an election return as required by Section 37 before the end of the permitted period, or fails to send an invoice or a receipt, or a copy of a receipt, as required by the law or has lodged an election return or any document accompanying the return, which contains any error or false statement may apply to the Court for an order allowing the candidate to lodge with the Chief Electoral Officer an election return within such further period as the Court specifies, or an order excepting the candidate from the requirement to send an invoice or a receipt, or a copy of a receipt, as required by the law, or an order enabling the candidate to correct any error or false statement in an election return or in any document accompanying the return.
- The candidate has to satisfy the Court that the failure to comply with the requirement was attributable to the following reasons and was not due to his bad faith:
 - (1) the applicant's illness or absence from Hong Kong ; or
 - (2) the death, illness, absence from Hong Kong of an agent or employee of the applicant ; or
 - (3) misconduct of an agent or employee of the applicant; or
 - (4) inadvertence or an accidental miscalculation by the applicant or any other person; or
 - (5) an accidental loss or destruction of the invoice or receipt or copy of the receipt by the applicant or any other person; or
 - (6) any reasonable cause.

(1), (2), (3), (4) and (6) are reasons for the Court to consider an application whether an extended period for lodging an election return should be granted; (3), (4) and (6) are reasons for the Court to consider an

application which enables the candidate to correct any error or false statement in an election return or in any document accompanying the return while (3), (5) and (6) are reasons for considering whether an order for exempting the candidate from the requirement to send an invoice, or a receipt, or a copy of a receipt should be allowed. Depending on the circumstances of different cases, candidates should check whether the above reasons are applicable to their applications concerned.

(8) PENALTY

Corrupt Conduct

- As stipulated in the ECICO, a person who engages in corrupt conduct at an election commits an offence and is liable on conviction to:
 - (1) a fine of \$200,000 and imprisonment for 3 years, if tried summarily; or
 - (2) a fine of \$500,000 and imprisonment for 7 years, if tried on indictment.
- A person who is convicted of having engaged in corrupt conduct has to pay to the Court the amount or value of any valuable consideration received by the person or his agents in connection with the conduct or such part of the amount or value as specified by the Court.

Illegal Conduct

- As stipulated in the ECICO, a person who engages in illegal conduct at an election commits an offence and is liable on conviction to:
 - (1) a fine at level 5 and imprisonment for 1 year, if tried summarily; or
 - (2) a fine of \$200,000 and imprisonment for 3 years, if tried on indictment.
- A person who has contravened the provisions of Section 34 or 37 of the ECICO is liable on conviction to the same penalty as illegal conduct.

Corrupt conduct refers to that mentioned in Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the ECICO as listed in this Handbook, whereas **illegal conduct** in Sections 23, 24, 25, 26 and 27.

Disqualifications

- A person convicted of having engaged in corrupt conduct or illegal conduct under the ECICO will be :
 - disqualified for 3 years from voting in the Chief Executive, Election

Committee subsector, Legislative Council, District Councils or Village Representative elections from the date of conviction;

- disqualified for 5 years from being nominated as a candidate for the election of, or elected as, the Chief Executive, a member of the Legislative Council and District Council or a Village Representative from the date of conviction; and
- disqualified for 3 years from being nominated as a nominee for the election of, or from being nominated or elected as, an Election Committee member from the date of conviction.

Immediate Custodial Sentence

- According to the sentencing guideline set by the Court of Appeal on 27 November 1997, any person convicted of a serious election-related offence shall receive an immediate custodial sentence in order to uphold clean and fair elections in Hong Kong.

“DOS AND DON'TS” CHECKLIST

Candidates, their election agents and helpers should note the following in an election :

(1) NOMINATION OF CANDIDATES**Bribery**

- ✘ Do not engage in, or authorize another person either expressly or by implication, to engage in, any of the following corrupt conduct :
 1. offer any advantage to get any person to stand or not to stand as a candidate.
 2. offer any advantage to get any person having been nominated as a candidate to withdraw his candidature.
 3. offer any advantage to get any candidate not to use his best endeavours to promote his candidature.
- ✘ Do not solicit or accept any advantage for any person's standing or not standing as a candidate.
- ✘ Do not solicit or accept any advantage for any person's withdrawal of his candidature.
- ✘ Do not solicit or accept any advantage for any candidate's not using his best endeavours to promote his election.

Engaging in Deceptive Behaviour

- ✘ Do not induce by deception, any person to stand or not to stand as a candidate, or to withdraw his candidature.

Nomination Paper

- ✘ Do not deface or destroy any nomination paper to prevent or obstruct another person from standing for an election.

(2) ELECTIONEERING**Statements about a Candidate**

- ✘ Do not publish any false statement that a person is or is not a candidate.
- ✘ Do not make any false or misleading statement of fact including (but not limited to) the character, qualifications or previous conduct of a candidate or candidates.

Election Advertisements

- ✘ Do not use, without obtaining prior written consent, the name or logo of a person or an organization; or the pictorial representation of any person in an election advertisement in such a way as to infer that the candidate concerned has the support of the named person or organization.
- ✓ Do include in all printed election advertisements, except those printed in a registered local newspaper, the name and address of the printer, the date of printing and the number of copies printed.
- ✓ Do remember that a performance report published by an incumbent candidate during the election period is an election advertisement.
- ✓ Do furnish 2 copies of any printed election advertisement to the relevant Returning Officer not later than 7 days # after it is published.

It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation, a candidate must submit 2 copies of his election advertisement to the relevant Returning Officer before he displays, distributes or otherwise uses the election advertisement and comply with all other statutory requirements governing election advertisements in an election and relevant guidelines issued by the Electoral Affairs Commission.

(3) VOTING**Bribery**

- ✘ Do not engage in, or authorize another person either expressly or by implication, to engage in, any of the following corrupt conduct :
 1. offer any advantage as an inducement to or a reward for any person's not voting at an election.
 2. offer any advantage as an inducement to or a reward for any person's voting or not voting for a particular candidate at an election.

Providing Refreshments or Entertainment

- ✘ Do not engage in, or authorize another person either expressly or by implication, to engage in, any of the following corrupt conduct :
 1. provide or meet all or part of the cost of providing any food, drink or entertainment as an inducement to or a reward for any person's not voting at an election.
 2. provide or meet all or part of the cost of providing any food, drink or entertainment as an inducement to or a reward for any person's voting or not voting for a particular candidate at an election.

Using or Threatening to Use Force or Duress

- ✘ Do not use or threaten to use, or authorize another person, either expressly or by implication, to use or threaten to use, force or duress against any person for the purpose of influencing his or any other person's voting decision.

Engaging in Deceptive Behaviour

- ✘ Do not engage in, or authorize another person either expressly or by implication, to engage in, any of the following corrupt conduct :
 1. induce by deception any person not to vote at an election.
 2. induce by deception any person to vote or not to vote for a particular candidate at an election.

Other Offences in Relation to Voting

- ✘ Do not invite or induce ineligible persons to vote.
- ✘ Do not invite or induce a person to vote more than once in the same constituency, or to vote in more than one constituency.
- ✘ Do not destroy, deface, take or otherwise interfere with a ballot paper in use or that has been used unless being lawfully authorized.

(4) ELECTION EXPENSES AND ELECTION DONATIONS**Election Expenses**

- ✘ Do not incur election expenses more than \$48,000.
- ✘ Do not incur election expenses unless you are a candidate or a candidate's election expense agent with the required authorization.
- ✘ Do not incur election expenses in excess of the amount authorized by the candidate if you are an election expense agent.
- ✓ Do include all election expenses incurred by the candidate and any person on his behalf in the election return.

Election Donations

- ✘ Do not use election donations for meeting the costs of activities unrelated to a candidate's election.
- ✓ Do issue a receipt for any election donation of more than \$1,000 in value.
- ✓ Do send any election donation of more than \$1,000 in value received from an anonymous donor to a charitable institution or trust of a public character chosen by the candidate.
- ✓ Do send any unused election donations and donations in excess of the statutory limit of election expenses to a charitable institution or trust of a public character chosen by the candidate.

Election Returns

- ✓ Do submit a return on election expenses and donations to the Chief Electoral Officer not later than 30 days after the date of publication of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law.
- ✓ Do submit with your election return the invoices, receipts and declaration form, etc. as stipulated by the law.
- ✗ Do not make any false or misleading statement in the return on election expenses and donations.
- ✓ Do lodge your election return with the Chief Electoral Officer within the period as required by the law even if **NO** election expense has been incurred.

(5) ELECTION PETITION OR ELECTION APPEAL

- ✗ Do not withdraw an election petition or election appeal for an advantage.
- ✗ Do not offer any advantage to get any person to withdraw an election petition or election appeal.
- ✗ Do not solicit or accept any advantage to withdraw an election petition or election appeal.

QUESTIONS AND ANSWERS

The following questions and answers are summarized from the enquiries and concerns raised by candidates, etc. in the previous District Council (DC) Elections. The scenarios quoted serve to highlight the spirit of the law and its application on various processes of an election, viz the nomination of candidates, electioneering, voting, and handling of election expenses and donations, etc. and alert the candidates and their election helpers to the common corrupt and illegal pitfalls in conducting electioneering activities.

Q1. During a press interview conducted six months before the nomination period of a DC Election, the chairman of a district organization has revealed that he will be running for a seat thereof. Can he start to distribute publicity leaflets for promoting his election after the interview?

- A1.
- According to S.2 of the ECICO, a “candidate” is defined not only as a person who stands nominated as a candidate at any election, but also a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election. Although the chairman of the district organization has not yet been nominated, he is regarded as a “candidate” of the DC Election under the above definition when his intention to run in the said Election is made known to the public through the press interview.
 - In publicizing his election therefrom, the chairman has to abide by the provisions of the ECICO. For example, he has to make sure that his publicity leaflets which are published before the nomination period of the DC Election must contain all the printing particulars as required of any printed election advertisements by S.34 of the ECICO. He should also include the production cost incurred in respect of the said publicity leaflets and any other expenses incurred for promoting his election in his election expenses and reflect these clearly in his election return.

Q2. A candidate, who is an incumbent DC member, claims in his election advertisement that he has successfully persuaded the government to build a park in the district. In fact, he has only been involved in discussing the selection of the site. Has he contravened the law in making such a statement?

- A2.
- It is stipulated in S.26 of the ECICO that no person, including a candidate, is allowed to publish a materially false or misleading statement of fact concerning (but not limited to) the candidate's character, qualifications or previous conduct for the purpose of promoting the candidate's election.
 - If the candidate knows clearly that he has only taken part in discussing the selection of the site of the park, and this does not have any bearing on the government's decision to build the park, what he claims in his election advertisement is untrue. He may have contravened S.26 of the ECICO for having published a false statement of fact about himself as a candidate in his election advertisement.
- Q3. Is it legal for a candidate, after having obtained a verbal agreement from the chairman of an owners' corporation (OC), to include the name and logo of the OC, as well as a photograph which he took with executive committee members of the same OC in his election advertisement as a way to show the OC's support to his election? What should be done if the candidate comes to know that some OC members have objected to the chairman's decision to support him after he has distributed the said election advertisement?**
- A3.
- The candidate should have complied with S.27 of the ECICO and obtained a written consent from the OC and all the people appearing in the photograph before including the name and logo of the OC and the photograph in his election advertisement. According to this provision, if a candidate includes in his election advertisement the name or logo of a person or an organization, or the pictorial representation of a person in such a way that implies or is likely to cause electors to believe that the candidate has the support of the person or organization concerned, the candidate should have obtained prior written consent from the person or organization.
 - The candidate referred to in this question has committed an offence because he only has the verbal agreement from the chairman. This, however, does not meet the legal requirements as stipulated in S.27 mentioned above.
 - The said chairman has to ensure that the OC agrees to the written consent he has given to the candidate. It will be an offence under S.27 of the ECICO if he purports to give a written consent to a candidate to the inclusion of the name or logo of the OC in the candidate's election advertisements without having been approved by the governing body or by a resolution of the members of the OC passed at a general meeting.

- If the chairman's decision to support the candidate is eventually repudiated by the OC through proper procedures by those members who object to the chairman's decision, the candidate should take appropriate measures by withdrawing immediately the election advertisements already distributed. In any event, he is also required to count the costs incurred for the production and subsequent removal of the election advertisements towards his election expenses and reflect such costs in his election return.

Q4. A serving DC member and an incumbent candidate of the forthcoming DC Elections organizes a one-day tour to Shenzhen for electors of his constituency. With his sponsorship, the participants are able to enjoy a snake feast, visits to scenic spots and free transportation. Will this candidate contravene the law if he publicizes his election platform and calls for the participants to vote for him once the latter arrive in Shenzhen?

- A4.
- S.11 of the ECICO makes it an offence for any person to offer an advantage to another person for inducing the latter to vote for a particular candidate. The said candidate has committed an offence under the provision mentioned if the purpose of his sponsoring the tour to Shenzhen is to induce the participants to vote for him.
 - Since it is stipulated clearly in S.5 of the ECICO that any conduct concerning an election, no matter whether it is engaged in within Hong Kong or elsewhere, is regulated by the ECICO, the candidate's act of offering electors a free trip outside Hong Kong for inducing votes also falls within the purview of the said legislation.

Q5. The chairman of a residents' association, at a dinner party held to commemorate the inauguration of his tenure, announces that the honorary adviser of the association has stood as a candidate in a DC Election. Other than encouraging the participants thereat to vote for the candidate, he also invites the candidate to deliver his election platform. How should the candidate handle such a situation?

- A5.
- If a candidate who finds himself caught in the above-mentioned situation does not decline the invitation and immediately stop any promotion of his election at the dinner party, the occasion will be regarded as an election meeting held to promote his candidature and the expenses incurred by the said party will have to be counted towards the candidate's election expenses and be declared in his election return.
 - If the dinner party is solely an arrangement of the chairman who has not been authorized by the candidate as the latter's election expense agent to

incur election expenses in connection with the dinner arrangement, the chairman will contravene S.23 of the ECICO, which stipulates, amongst others, that it is an offence for any person other than the candidate or his election expense agent to incur election expenses.

- Both the chairman and the candidate should note that S.12 of the ECICO prohibits any person, whether by himself or through any other persons, to provide or meet all or part of the cost of providing food, drink or entertainment with a view to influencing the other people's voting decision.
- If the dinner party is deliberately organized by the chairman with a view to inducing votes for the candidate, the chairman has committed an offence under S.12 of the ECICO. The candidate is also guilty of the same offence if he has the knowledge of and has consented to the organization of the dinner party for the above purpose.

Q6. A company owner comes to know that a major client of his company has decided to stand as a candidate in the DC Election of a certain district. In order to please the client and promote his candidature, the owner repeatedly hints to his employees living in the district that they should vote for the client so as to secure their employment. Has this company owner contravened the law?

- A6.
- S.13 of the ECICO forbids any person to use or threaten to use force or duress against another person to induce that person to vote for a particular candidate at an election. The company owner has contravened the law if he induces his employees to vote for the candidate by threatening that it is a way to secure their employment.
 - The candidate has also contravened the law if he has, expressly or by implication, requested the company owner to do so.

Q7. A candidate in a DC Election owns a company and provides staff quarters in the constituency in which he is contesting. In order to support the election of the incumbent candidate, a group of his employees use the address of the staff quarters of the company to register as electors even though they are not living therein and then vote at the election in the constituency at which the said quarters are located. Are the employees guilty of an offence? Is the candidate liable to committing an offence for the act of his employees?

- A7.
- A person will be caught by S.16 of the ECICO if he votes at an election knowing that he is not entitled to vote at that election; or votes at an election after having knowingly or recklessly given materially false or misleading information to an electoral officer.

- Under the relevant legislation on the eligibility of a person to be registered as an elector, an applicant when submitting his application needs to satisfy the electoral officer that the residential address notified in his application is his only or principal residence in Hong Kong. In the scenario quoted, the above-mentioned employees have given materially false residential address to the electoral officer because they are in fact not living in the quarters of the company. They would commit an offence under S.16 of the ECICO if they vote at the election in the constituency at which the quarters are located.
- The company owner, i.e. the candidate, has contravened the same provision if he invites or induces his employees to vote at the election even though he knows that they have given materially false information to the electoral officer.

Q8. Can a candidate accept free design and production service offered to him by a graphic designer in producing his election advertisements?

- A8.
- There is no restriction as to the kind of services to be accepted by the candidate under the law. Consideration should, however, be given to whether the cost so incurred needs to be included in the candidate's election expenses. If the said designer renders free service in designing and producing election advertisements for the candidate voluntarily, personally and in his own time, the service is regarded as "voluntary service" as referred to in S.2 of the ECICO. Because of this, the candidate is not required to include the designer's service in his election expenses.
 - On the other hand, the candidate has to include the costs in respect of the raw materials purchased, printing and transportation services, etc. engaged in the process of producing the said election advertisements in his election expenses and reflect such costs, which do not fall within the definition of "voluntary service", in his election return.

Q9. Will an elected candidate of a DC Election be liable to an offence if he hosts a dinner party to celebrate his success in the election for district personalities and election helpers who have supported his election? Should the expenses incurred for the dinner party be counted towards his election expenses? Will it make any difference if the expenses of the dinner party are borne by the participants?

- A9.
- The candidate has nothing to worry about if the dinner party is hosted solely for the purpose of celebrating his success in the election. Since the dinner party is held after the election and its organization has in no way served to promote the candidate's election, the expenses thus incurred, whether being borne by the participants or not, need not be counted towards his election expenses.
 - If the dinner party is hosted to honour the candidate's promise made previously to the participants that they would be rewarded with a dinner party for their electioneering assistance upon the candidate's successful election, the hosting of this dinner party is related to the purpose of promoting his election and the expenses of the dinner party should be counted towards the candidate's election expenses. If the expenses of the dinner party are borne by the participants, the amount should be regarded as election donations to the candidate and be included in his election return.
 - If the dinner party is also hosted as a reward for the participants' having voted for the candidate, both the candidate and the participants have contravened S.12 of the ECICO.

Q10. What measures can a candidate or his election helper, who has contravened the ECICO out of inadvertence, take to redress the situation?

- A10.
- Candidates and their election helpers should take heed of complying with the provisions of the ECICO and the regulations of the Electoral Affairs Commission while running in an election so as to avoid any inadvertent infringement of the law and regulations.
 - Candidates should note that engaging in corrupt conduct referred to in the ECICO is a serious offence. Nothing can be done to redress the situation once an offence is committed.
 - A candidate or any other person who has done or omitted to do an act which is classified as illegal conduct under the ECICO may, according to S.31 of the ECICO, apply to the Court for an order to be made for relieving him from the penalties and disqualification to be imposed on him. He, however, has to satisfy the Court that such an act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to the applicant's bad faith.

- Any person who has published a printed election advertisement without the printing details required by the law or has failed to furnish 2 copies of the printed election advertisement to the relevant Returning Officer within 7 days after the said advertisement has been published may, according to S.35 of the ECICO, apply to the Court for an order to be made for relieving him from the penalties to be imposed on him for his non-compliance with S.34 of the ECICO. He, however, has to satisfy the Court that such non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to the applicant's bad faith.
- A candidate who fails to lodge an election return before the end of the permitted period as required by the law may, according to S.40(1) of the ECICO, apply to the Court for an order to be made for allowing him to lodge the election return with the Chief Electoral Officer within such further period as the Court specifies. The candidate, however, has to satisfy the Court that the failure to comply with the requirement was attributable to the applicant's illness or absence from Hong Kong; or the death, illness, absence from Hong Kong or misconduct of an agent or employee of the applicant; or due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to the applicant's bad faith.
- On the other hand, a candidate who fails to lodge an accurate election return or send in the required documents may, according to S.40(3) and S.40(5) of the ECICO, apply to the Court for an order enabling him to correct any error or excepting him from submitting documents which should be attached to the candidate's election return, etc. He, however, has to satisfy the Court that the error or non-compliance was attributable to the misconduct of his agent or employee; inadvertence or accidental miscalculation; an accidental loss or destruction of the documents concerned or any reasonable cause and was not due to the applicant's bad faith.

Q11. What is the penalty imposed on a person who has committed an offence under the ECICO? Would this affect his standing as a candidate and / or his voting eligibility in the District Council Elections and other public elections in future?

A11. ● The maximum penalty for a person who has been convicted of a corrupt conduct under the ECICO is a fine of \$500,000 and imprisonment of 7 years whereas that for an illegal conduct is a fine of \$200,000 and imprisonment of 3 years.

- A person who has committed a corrupt or illegal conduct under the ECICO will be disqualified for 3 years from voting in the Chief Executive, Election Committee subsector, Legislative Council and District Council or Village Representative elections from the date of conviction; for 5 years from being nominated as a candidate for the election of, or elected as, the Chief Executive, a member of a Legislative Council or District Council, or a Village Representative from the date of conviction; and for 3 years from being nominated as a nominee for the election of, or from being nominated or elected as, an Election Committee member from the date of conviction.

Q12. Is it necessary for a complainant to produce evidence to the ICAC while lodging a complaint against any conduct in contravention of the ECICO? Would the complainant be accused of having made a malicious report in the event that his complaint is not substantiated?

- A12.
- Any person who suspects any conduct in contravention of the ECICO is welcome to make a report to the ICAC. We will investigate each pursuable complaint to ascertain whether such a malpractice exists.
 - Any person who wishes to make a report to the ICAC can contact one of the seven ICAC Regional Offices or its 24-hour Report Centre direct. He can also lodge the complaint by calling on its hotline (Tel: 25 266 366) or writing to Hong Kong GPO Box 1000.
 - The ICAC welcomes reports on suspected corruption from the public. However, if a person knowingly furnishes false report of any offences, gives false information or makes false statements or accusations to mislead ICAC officers, he will commit an offence under S.13B of the ICAC Ordinance and will be liable to a maximum penalty of 1 year's imprisonment and a fine of \$20,000.
 - Any persons who wish to make enquiries on the ECICO may call the ICAC Election Enquiry Hotline (Tel: 2920 7878), or approach any ICAC Regional Offices.

CHANNELS FOR REPORTS AND ENQUIRIES

REPORTS

Any person who discovers or suspects any conduct in contravention of the ECICO may make a report in person to the 24-hour ICAC Report Centre (G/F, 303 Java Road, North Point, Hong Kong) or any ICAC Regional Office; call the 24-hour ICAC **Report Hotline 25 266 366**; or write to Hong Kong GPO Box 1000.

ENQUIRIES

Any person who wishes to make enquiries on the ECICO may call the ICAC **Election Enquiry Hotline 2920 7878**, or approach any ICAC Regional Office from 9:00 a.m. to 7:00 p.m. from Monday to Friday (closed on Saturday, Sunday and public holidays).

ADDRESSES AND TELEPHONE NUMBERS OF ICAC REGIONAL OFFICES

HONG KONG ISLAND

ICAC Regional Office (Hong Kong West/Islands)

G/F, Harbour Commercial Building
124 Connaught Road Central, Sheung Wan
Tel: 2543 0000

ICAC Regional Office (Hong Kong East)

G/F, Tung Wah Mansion
201 Hennessy Road, Wan Chai
Tel: 2519 6555

KOWLOON

ICAC Regional Office (Kowloon West)

G/F, Nathan Commercial Building
434-436 Nathan Road, Yau Ma Tei
Tel: 2780 8080

ICAC Regional Office (Kowloon East/Sai Kung)

Shop No.4, G/F, Kai Tin Building

67 Kai Tin Road, Lam Tin

Tel: 2756 3300

NEW TERRITORIES**ICAC Regional Office (New Territories South West)**

G/F, Foo Yue Building

271-275 Castle Peak Road, Tsuen Wan

Tel: 2493 7733

ICAC Regional Office (New Territories North West)

G/F Fu Hing Building

230 Castle Peak Road, Yuen Long

Tel: 2459 0459

ICAC Regional Office (New Territories East)

G06-G13, G/F, Shatin Government Offices

1 Sheung Wo Che Road, Sha Tin

Tel: 2606 1144

Guidelines for Mutual Aid Committees

1. Chapter 17 of the Electoral Affairs Commission's Guidelines on Election-related Activities in respect of the District Council Election provides that a candidate must obtain the 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.
2. In this respect, Mutual Aid Committees ("MACs") should comply with the following procedures:
 - (a) If the support is to be given to a candidate of a constituency in the name of the MAC, the written consent should be approved at a general meeting convened in accordance with the Model Rules for the MAC, and signed by the incumbent Chairman of the MAC.
 - (b) If the support to a candidate is to be given in the official capacity of an office-bearer of a MAC, that office-bearer should first obtain the approval of the MAC at a general meeting convened in accordance with the Model Rules for the MAC. Otherwise, that office-bearer should be careful not to give any impression or cause misunderstanding that the support in his official capacity represents the support of the MAC.
 - (c) If the support to a candidate is to be given in the personal capacity of an office-bearer of the MAC and his official title will not be mentioned in the election advertisements of the candidate, it will not be necessary for that office-bearer to seek approval from the MAC or its executive committee.
3. All general meetings of the MAC should be convened in accordance with the procedures laid down in the Model Rules for the MAC.
4. Decisions taken at the meetings of MACs must be properly recorded and the record must be prominently displayed in the block within 7 days after the meeting.

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

District Council

Constituency

(Name of District Council)_____
(Name of Constituency)

Name of Candidate : _____ Hong Kong Identity Card Number : _____

For individual(s) giving consent in personal capacity

1. *I/Each of us hereby give(s) consent to the above-mentioned 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 as an indication of *my/our support, for the purpose of promoting *his/her election as a Member to the District Council for the above-mentioned constituency at the election the poll at which is to be held on _____.

For an individual giving consent in official capacity

2. I hereby give consent to the above-mentioned candidate to use my name or logo of or associated with me or my pictorial representation in my official capacity as “_____” as an indication of my support, for the purpose of promoting *his/her election as a Member to the District Council for the above-mentioned constituency at the election the poll at which is to be held on _____.
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 of the organization held on _____ [Date] at _____ [Time].

For an organization

4. I have been authorized by _____ [name of organization] to give consent to the above-mentioned candidate to use the name or logo (including pictures and photographs) of or associated with the organization as an indication of its support, for the purpose of promoting *his/her election as a Member to the District Council for the above-mentioned constituency at the election the poll at which to be held on _____.
5. ## The giving of the above consent has been approved *by the governing body of the organization/by a resolution of the members of the organization passed at the general meeting of the organization held on _____ [Date] at _____ [Time].

For completion in all cases

6. *I have/Each of us has/The organization has been given to understand by the above-mentioned candidate that *he/she is not disqualified from being nominated as a candidate under section 21 of the District Councils Ordinance (Cap. 547).

TO BE COMPLETED BY CANDIDATE/ELECTION AGENT –

Name : _____ Hong Kong Identity Card Number : _____

Signature : _____ Date : _____

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

Name	Hong Kong Identity Card Number	Signature	Date

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

Name : _____

Hong Kong Identity Card Number : _____

Signature : _____ Organization Chop : _____

Official Capacity : _____ Date : _____

TO BE COMPLETED BY A WITNESS –

Name : _____ Hong Kong Identity Card Number : _____

Signature : _____ Date : _____

Note

- * Delete whichever is inapplicable
- # According to Chapter 17 of the Guidelines on Election-related Activities in respect of the District Council 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. This part must be completed if the name of the concerned organization is specifically mentioned in the office bearer's title or the relevant election advertisement is posted in the building in which he is serving.
- ## 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. 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.
- (1) In accordance with section 103 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F), the candidate must, **before he or she displays, distributes or otherwise uses an election advertisement**, deposit with the Returning Officer, in case the election advertisement is of a kind referred to in section 27(1) or (2) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), a copy of the consent in writing referred to in section 27(1) or (2), as the case may be, of that Ordinance.
- (2) 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. **The consent form will also be made available for public inspection and all identity document numbers in the form will be covered before display.**
- (b) **Transfer of Information**
The information provided in this form may be provided to other authorized 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 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, Wan Chai, Hong Kong.

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