

IMPORTANT

1. These Guidelines are expected to be published in early September 2015. Subject to any subsequent revision, they apply to all District Council ordinary elections and by-elections conducted under the District Councils Ordinance (Cap. 547) to be held after publication .
2. The law stated in these Guidelines is that prevailing as at the date of publication.
3. All specified forms referred to in these Guidelines are obtainable from the Registration and Electoral Office (tel: 2891 1001; fax: 2891 1180; e-mail: reoenq@reo.gov.hk) and its website at <http://www.reo.gov.hk>.
4. 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.
5. In the event that future amendments to these Guidelines are necessary, the updated Guidelines will be made available at the website of the Electoral Affairs Commission at <http://www.eac.gov.hk>.

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5 May 2015

(With Chinese translation)

Message from the Chairman

Public Consultation on the Proposed Guidelines on Election-related Activities in respect of the District Council Election

The 2015 District Council (“DC”) Ordinary Election will be held on 22 November 2015. The Electoral Affairs Commission (“EAC”) is empowered under section 6(1)(a) of the Electoral Affairs Commission Ordinance (Chapter 541) (“EACO”) to issue guidelines to facilitate the conduct or supervision of an election. These guidelines aim to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities. They also give guidance in layman’s language on compliance with the relevant electoral legislation.

The EAC has at all times made its best endeavours in refining and improving the electoral arrangements for public elections. A new set of the proposed guidelines has now been drawn up by the EAC for the coming DC Ordinary Election and all DC by-elections to be held afterwards. The proposed guidelines are prepared on the basis of the existing guidelines for the DC Election (September 2012 edition) with suitable alterations to:

- (a) reflect the legislative amendments made to the District Councils Ordinance (Chapter 547) to update the composition of the DCs and the total number of DC constituencies with effect from 1 January 2016;

- (b) reflect the legislative amendments made to the Legislative Council Ordinance (Chapter 542) and the subsidiary legislation under the EACO in relation to some technical details concerning voter registration arrangements and electoral procedures; and
- (c) elaborate on certain parts of the guidelines to enhance understanding and, where appropriate, align with the other electoral guidelines.

The major changes proposed, as compared with the existing DC guidelines, are set out in the **Appendix**.

Before finalising the guidelines for issue to the public, we shall, in accordance with section 6(2) of the EACO, consult the public on the proposed guidelines for a period of 30 days from **5 May to 3 June 2015**, both dates inclusive. At this stage, the EAC has taken no decision with respect to the issues addressed in the proposed guidelines. The final decision will be taken in the light of the responses received in this consultation exercise.

Please send your written representations on the proposed guidelines to the EAC Secretariat at 10/F, Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong, or by fax (fax no.: 2511 1682) or e-mail (eacencq@reo.gov.hk) the latest by **3 June 2015**. **Late representations will not be considered.** You may also make oral representations to the EAC at the public forum to be held on **19 May 2015 from 7:00 p.m. to 9:00 p.m. in the Quarry Bay Community Hall, 1 Greig Road, Quarry Bay, Hong Kong.** It is optional for you to supply your name or other personal data when providing views on the proposed guidelines. But, if you wish to remain anonymous or request to keep your views confidential in part or in whole, you should indicate your request clearly in your submissions. Unless so requested in the submissions, all responses received will be treated as public information. For enquiries, please call the EAC Secretariat at 2827 1269.

In view of the limited time available for the making of oral representations at the public forum, it is anticipated that the EAC will not be able to entertain lengthy representations at the forum. Therefore, members of the public who wish to make detailed representations are invited to send in written representations.

The EAC is committed to making every endeavour to ensure that all public elections are held in an open, fair and honest manner. The electoral guidelines play an important role in the conduct of the 2015 DC Ordinary Election. We therefore encourage members of the public to make known their views to us through submission of written representations or attendance at the public forum, no matter they support or oppose the proposed guidelines. The EAC will consider the representations received during the public consultation period and revise the guidelines as appropriate.

Yours faithfully,



(Barnabas W FUNG)

Chairman

Electoral Affairs Commission

(With enclosure)

**Major Changes in the Proposed Guidelines
as Compared with the Guidelines Issued in September 2012**

Relevant Chapter	Major changes
Chapter 1 <i>Introduction</i>	<ul style="list-style-type: none">• setting out the updated composition of the District Councils (“DC”) with effect from 1 January 2016 after the abolition of appointed members (para. 1.3); and• revising the total number of DC constituencies for the 2015 DC ordinary election to 431 in accordance with Schedule 3 of the District Councils Ordinance (Cap. 547)(“DCO”) (para. 1.5).
Chapter 2 <i>Registration of electors and voting system</i>	<ul style="list-style-type: none">• revising the key dates of the voter registration timeframe in accordance with the amendments made to sections 4, 13(1), 14(2), 15(7) and 17(9)(a) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) (paras. 2.6, 2.11, 2.13 to 2.16); and• setting out clearly the Electoral Registration Officer’s checking measures to ensure the accuracy of electors’ particulars in the registers and stating that it is an offence to knowingly or recklessly give false or misleading information for voter registration (para. 2.12).
Chapter 4 <i>Polling and counting arrangements</i>	<ul style="list-style-type: none">• specifying a deadline for gazetting the list of polling stations, ballot paper sorting stations and counting stations and revising the deadline for the Returning Officer to give notice to candidates about the place(s) of the counting of votes in accordance with the amendments made to sections 31(1) and 65(4) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) (“EAC (EP) (DC) Reg”) (para. 4.1); and• amending the description of counting procedures for main counting stations to remove possible procedural ambiguities

Relevant Chapter	Major changes
	in accordance with the amendment made to section 75(1A) of the EAC (EP) (DC) Reg (para. 4.53(a) and (h)).
Chapter 6 <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i>	<ul style="list-style-type: none"> • updating the guidelines to include the use of electronic mail as a means of delivery of certain electoral documents, such as notices of appointment and revocation of appointment of election agents, election expense agents, polling agents and counting agents in accordance with the amendments made to sections 26(13), 26(15), 28(7), 28(12A), 45(5D), 45(11), 45(11A), 66(4A) and 66(9A) of EAC (EP) (DC) Reg (Parts V to VIII of the Chapter).
Chapter 7 <i>Election advertisements</i>	<ul style="list-style-type: none"> • providing guidelines on application for temporary occupation of government land at public place for holding electioneering activities to remind candidates of the relevant procedures (Part V of the Chapter).
Chapter 8 and Appendix G <i>Electioneering activities at premises or buildings where electors reside, work or frequent</i>	<ul style="list-style-type: none"> • incorporating a case as suggested by the Office of the Privacy Commissioner for Personal Data to remind candidates who wish to use the personal data collected from other sources for electioneering purpose to state clearly the intended use of the data at the time of collection (para. 8.18 and Case 4 of Appendix G).
Chapter 10 <i>Election broadcasting, media reporting and election forums</i>	<ul style="list-style-type: none"> • elaborating on the requirement of the “fair and equal treatment” principle in producing and conducting election-related and news reporting programmes by broadcasters licensed under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) (paras. 10.5, 10.10 and 10.21); and • reminding the print media to ensure that any news report or reference made in their publications should not give unfair publicity to any particular candidate or particular candidates in accordance with the “fair and equal treatment” principle (paras. 10.18 and 10.20).

Relevant Chapter	Major changes
<p>Chapter 14 <i>Exit poll</i></p>	<ul style="list-style-type: none"> • updating the administrative procedures in approving applications for the conduct of exit polls to ensure the fairness of election (para. 14.6).
<p>Chapter 15 and Appendix O <i>Election expenses and election donations</i></p>	<ul style="list-style-type: none"> • reminding candidates of the need of apportionment of expenses between election-related purposes and any other purposes (para. 15.6); • revising the maximum amount of election expense which can be incurred by or on behalf of a candidate in a DC election <i>subject to the enactment</i> of the proposed amendment to the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C) (para. 15.10); • reminding candidate(s), or any person or organisation acting as an agent for the candidate(s) to comply with all the legislative requirements in seeking or soliciting election donations and to adopt the suggested good practices in Appendix O (para. 15.22); and • revising the subsidy rate of financial assistance for eligible candidates of DC election <i>subject to the enactment</i> of the proposed amendments to Schedule 7 of the DCO (para. 15.38).
<p>Chapter 17 <i>Namedropping</i></p>	<ul style="list-style-type: none"> • providing clearer guidelines on the use of office titles by supporters when giving consent to candidates (para. 17.4).

ABBREVIATIONS

ARO, AROs	Assistant Returning Officer, Assistant Returning Officers
Cap.	Chapter of the Laws of Hong Kong
CCS	Commissioner of Correctional Services
CEEO	Chief Executive Election Ordinance (Cap. 569)
CE	Chief Executive
CEO	Chief Electoral Officer
CFA	Court of Final Appeal
CFI	Court of First Instance
CSB	Civil Service Bureau
CSD	Correctional Services Department
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)
DO, DOs	District Office, District Offices
DLO, DLOs	District Lands Office, District Lands Offices
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	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
OPCPD	the Office of the Privacy Commissioner for Personal Data
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)
PRO, PROs	Presiding Officer, Presiding Officers
REO	Registration and Electoral Office
RO, ROs	Returning Officer, Returning Officers
RR	Rural Representative
RREO	Rural Representative Election Ordinance (Cap. 576)
S, s, Ss, ss	section, sections
SMS	short message service
TD	Transport Department

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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 With effect from 1 January 2016, each DC comprises elected 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].

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”).

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 431 DC constituencies for the 2015 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.

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.

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

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

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.

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 (“NACs”) and the procedures for seeking the NAC’s advice on the candidates’ eligibility for nomination for the DC elections.

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.

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.

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.

1.16 The Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C) sets out the maximum amount of election expense that may be incurred by or on behalf of a candidate for election to the DC.

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. They also give guidance in layman's language on compliance with the relevant electoral legislation. 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 the various electoral arrangements made for the DC elections, the legislative provisions and regulations as well as guidelines that should be observed by all parties concerned before, during and after an election and the procedure for lodging an election-related complaint. An action checklist for candidates can be found in **Appendix A**.

1.20 In the context of this set of Guidelines, the term "election" means ordinary election or 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, the 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.

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. A person may only vote in respect of the DC constituency for which the person is registered as an elector in the register. [S 29(3) of the DCO]

Qualifications for Registration as an Elector

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

- (a) in any year other than a year in which a DC ordinary election is to be held (“non DC election year”), he/she has to be aged 18 years or above as at 25 July next following his/her application for registration (or 25 September in a DC election year) [s 29 of the LCO];
- (b) he/she is a permanent resident of Hong Kong [s 27 of the LCO];

- (c) (i) he/she ordinarily resides in Hong Kong and the residential address in his/her application for registration is his/her only or principal residence in Hong Kong [s 28(1) of the LCO]; or
- (ii) if he/she is a person serving a sentence of imprisonment and at the time of the application does not have a home in Hong Kong outside the prison, the following prescribed address is deemed to be the person's only or principal residence in Hong Kong for the purpose of voter registration:
 - (1) the last dwelling-place in Hong Kong at which the person resided and which constituted his/her sole or main home; or
 - (2) the residential address of the person last recorded by the Immigration Department under the Registration of Persons Regulations (Cap. 177A) if the person cannot provide any proof on his/her last dwelling-place in Hong Kong [s 28(1A) and (1B) of the LCO].
- (d) he/she holds an identity document or has applied for a new identity document or a replacement identity document [s 30 of the LCO]; and
- (e) he/she 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 **need not apply** to be registered as an elector in a GC any further as his/her name and residential address will be repeated in the next register (a provisional register) [s 8(1) of the EAC (ROE) (GC) Reg]. However, he/she is not entitled to be included as an elector in the next register of GCs if:

- (a) he/she has ceased to ordinarily reside in Hong Kong [s 24(2)(a) of the LCO];
- (b) he/she no longer resides at the residential address recorded against his/her name in the existing register and the ERO does not know his/her new principal residential address in Hong Kong [s 24(2)(b) of the LCO and s 9(2) of the EAC (ROE) (GC) Reg];
- (c) he/she is no longer a permanent resident of Hong Kong [s 27 of the LCO];
- (d) he/she was an imprisoned person who used his/her last dwelling-place in Hong Kong at which he/she resided or the address last recorded under the Registration of Persons Regulations (Cap. 177A) as the address for registration as an elector and who had served his/her sentence of imprisonment and left the prison without reporting his/her new residential address to the ERO [s 9(2A) of the EAC (ROE) (GC) Reg]; or
- (e) he/she is disqualified from being registered as an elector by virtue of s 31 of the LCO.

Disqualifications

2.4 An elector is disqualified from voting at the DC election if he/she:

- (a) has ceased to be eligible to be registered as an elector under the LCO (see paras. 2.2 and 2.3 above) [s 30(a) of the DCO];
- (b) is found for the time being to be incapable, by reason of mental incapacity, of managing and administering his/her property and affairs under the Mental Health Ordinance (Cap. 136) [s 30(e) of the DCO]; or
- (c) is a member of any armed forces [s 30(f) of the DCO].

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/her application for voter registration on the specified form to the ERO any time in the year. However, for inclusion of his/her name in the final register of GCs to be published not later than 25 July in a non DC election year (or 25 September in a DC election year), his/her application form must have been received by the ERO **not later than 2 May** in that year (or 2 July in a DC election year). [S 4 of the EAC (ROE) (GC) Reg]

2.7 The ERO will process the application forms after they have been received. The ERO will send written enquiries to applicants to seek information or proof if the information on their applications is incomplete or incorrect. An applicant who qualifies for registration will be allocated to the

relevant constituency on the basis of his/her residential address. Applicants who are not qualified for registration will also be informed of the result by registered mail.

2.8 The name and residential address of all eligible applicants will be entered in the registers of electors.

Change of Residential Address and other Personal Particulars

2.9 It will not be necessary for a registered elector to re-apply for registration every year. However, if a registered elector has changed his/her residential address, he/she **should notify** the ERO of **his/her new address** in Hong Kong to ensure that he/she will continue to be registered in the next register of electors.

2.10 Apart from residential address, any registered elector who has changed his/her other personal particulars (e.g. name, telephone numbers and email address) should also notify the ERO of such change.

2.11 An elector should notify the ERO of any change of his/her registration particulars by writing to or sending an application form¹ to the ERO for report on change of particulars. In order to allow the alteration of his/her particulars to be effected in the next final register of electors, he/she **should notify** the ERO as soon as possible and **latest by 25 June in a non DC election year** (or 25 August in a DC election year) [s 17(9)(a) of the EAC (ROE) (GC) Reg]. An elector who has reported change of particulars will be sent a notice by the ERO showing his/her updated electoral record [s 11(4) of the EAC (ROE) (GC) Reg].

¹ Application form: Application for Voter Registration (Geographical Constituencies)/ District Council (Second) Functional Constituency/ Report on Change of Particulars. The form, also known as “REO-1”, is available on www.reo.gov.hk.

2.12 To keep the register of voters up-to-date, an elector has the civic responsibility to notify the ERO of any change in his/her principal residential address in Hong Kong in a timely manner. To enhance the accuracy of the register of voters, the Registration and Electoral Office (“REO”) has put in place suitable checking measures to assist electors to update their addresses as needed. **If it has come to the knowledge of the ERO that an elector’s registered address might not be up-to-date**, the ERO will invoke the statutory inquiry process to ascertain whether the address recorded in the existing register is no longer the elector’s principal residential address in Hong Kong [s 7 of the EAC (ROE) (GC) Reg]. **The elector’s name and other registration particulars may be removed from the next register of electors** if he/she fails to respond to the satisfaction of the ERO during the inquiry process. Meanwhile, for any election held before the publication of the next register, the person remains a registered elector for the GC (and the designated DC constituency) as recorded in the current register of voters [s 48 of the LCO]. It is of utmost importance for everyone to provide the ERO with true, accurate and updated information for voter registration and it is an offence for a person to knowingly or recklessly give false or misleading information for voter registration no matter whether or not he/she subsequently votes at an election [s 22 of the EAC (ROE) (GC) Reg].

The Provisional Register

2.13 The provisional register for GCs will be published **not later than 1 June in a non DC election year** (or 1 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 2 May of that year (or 2 July in a DC election year).

The provisional register will be **available for public inspection** at the REO and District Offices (“DOs”) as specified in the Gazette notice of publication for a period after its publication and before the appeal deadline referred to in para. 2.16 below. Upon request by a person imprisoned or held in custody by a law enforcement agency, the ERO may make available, at a penal institution or the premises of a law enforcement agency as the case may be, a copy of the provisional register for his/her inspection if the ERO considers it appropriate to do so. The ERO may require persons who want to inspect the provisional register to produce an identity document and complete a form furnished by him/her. [Ss 12 and 13 of the EAC (ROE) (GC) Reg]

The Omissions List

2.14 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 formerly registered as GC electors. These particulars 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 these persons do not wish to remain registered in the register of electors; or are no longer eligible to be registered; or have been disqualified [s 32(4)(a) and (b) of the LCO and ss 9 and 10 of the EAC (ROE) (GC) Reg]. For an imprisoned person who used his/her last dwelling-place in Hong Kong at which he/she resided or the address last recorded under the Registration of Persons Regulations (Cap. 177A) as the address for registration as an elector, if the ERO is satisfied on reasonable grounds that he/she has served his/her sentence of imprisonment and left the

prison without reporting his/her new residential address to the ERO, the ERO must enter his/her name and address on the omissions list according to the procedures prescribed in the relevant legislation. [S 9(2A) of the EAC (ROE) (GC) Reg]

2.15 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

2.16 Any person may lodge in person with the ERO objections as regards entries in the relevant provisional register **not later than 25 June in a non DC election year** (or 25 August in a DC election year). On or before that date, a dissatisfied applicant whose name has not been recorded in the provisional register or a person whose name has been included in the omissions list may lodge a claim in person with the ERO in respect of the entry or any omission concerning himself/herself. To facilitate a person imprisoned or held in custody by a law enforcement agency to make such an objection or claim, he/she is allowed to deliver a notice of objection or claim to the ERO by post. 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 3 of the EAC (ROE) (GC) Reg]

The Final Register

2.17 The final register for GCs is to be published **not later than 25 July in a non DC election year** (or 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 25 June of that year (or 25 August in a DC election 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 provisional register. This final register remains valid until the publication of the final register in the following year. The final register in force will be available for public inspection at the REO and DOs. Upon request by a person imprisoned or held in custody by a law enforcement agency, the ERO may make available at a penal institution or the premises of a law enforcement agency as the case may be a copy of the final register for his/her inspection if the ERO considers it appropriate to do so. The ERO may require persons who want to inspect the final register to produce an identity document and complete a form furnished by him/her. [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(3) of the EAC (ROE) (GC) Reg].

PART II : THE VOTING SYSTEM

2.18 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/she will be declared elected. In such a case, polling in respect of the constituency will not be necessary.

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

2.20 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. The RO would draw the lot on behalf of the candidate if the latter is absent at the time of drawing lots.

- (a) Where there are 2 candidates, the candidate who draws the larger number from 1 to 10 will be the winner. 1 is the smallest number and 10 is the largest number.

- (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. Only those candidates who have drawn the same larger number in the first draw will participate in the second draw.

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

2.22 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 : ELIGIBILITY AND DISQUALIFICATION FOR NOMINATION

3.1 The law governing the eligibility 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.

Eligibility

3.2 To be eligible 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/her nomination.

[S 20 of the DCO]

3.3 A person is considered to **ordinarily reside in Hong Kong** when he/she habitually and normally lives 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/her absence, the location of the home of him/her, his/her spouse, children and parents and his/her maintenance of connections with Hong Kong are all relevant factors. In case of doubt, a prospective candidate should seek advice from the NAC and/or consult his/her own legal adviser [see paras. 3.5 to 3.11 below].

Disqualification

3.4 A person is disqualified from being nominated as a candidate at an election, and from being elected as an elected member, if he/she:

- (a) is a judicial officer, or a prescribed public officer²;

² 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 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/her 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 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 pardon³;
- (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,
 - (i) 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;
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the ECICO;
 - (iii) of any offence against Part II of the Prevention of Bribery Ordinance (Cap. 201) (“POBO”); or
 - (iv) of any offence prescribed by the regulations made by the EAC;
- (f) is ineligible because of operation of the DCO or any other law;

³ The Court of First Instance delivered written judgment on 21 June 2012 on *Wong Hin Wai v Secretary for Justice* (HCAL 51/2012) and *Leung Kwok Hung v Secretary for Justice* (HCAL 54/2012) and declared section 39(1)(b) of the LCO (which is similar to paragraph 3.4(b) or section 21(1)(b) of DCO) to be unconstitutional. On 12 July 2012, the Administration announced its decision not to appeal against the judgment. The future DC Election will be organised in accordance with the prevalent electoral laws. Any person who would like to be nominated as a candidate for DC Election and is doubtful about his/her eligibility for nomination may seek independent legal advice, and may also apply to the Nominations Advisory Committee appointed by the EAC for advice where appropriate.

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

[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 [s 3 of the EAC (NAC) (DC) Reg]. 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.

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

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

3.7 The completed application must be:

- (a) sent to the Chief Electoral Officer (“CEO”) by post or facsimile transmission so as to be received by him/her; 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/her intended candidature. The NAC may also request the applicant to present himself/herself 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/her 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/herself 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/herself 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/she so wishes [s 9 of the EAC (NAC) (DC) Reg].

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 end 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/she 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 [s 6 of the EAC (NAC) (DC) Reg].

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]. The ordinary business hours on each working day in the nomination period (i.e. any day other than a general holiday) for the ROs to receive nominations are from 9 am to 5 pm from Monday to Friday, and from 9 am to 12 noon on a Saturday. **Candidates are encouraged to submit their nominations well before the end of the nomination period to allow time for any errors in their nomination forms to be corrected.**

How to Nominate

3.15 Nomination forms specified by the EAC are available from any DO or from the REO, or can be downloaded from the website of the REO (<http://www.reo.gov.hk>).

3.16 The nomination form comprises:

(a) **The Nomination**

This must be subscribed by **10 registered electors** (other than the candidate himself/herself) in respect of the relevant constituency 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 as regards a particular election [s 7(2) of the DC Subscribers & Deposit Reg]. Where the number of persons subscribing a nomination has exceeded the required number (i.e. 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/her nomination or has died, the elector may subscribe another one instead before the end of the relevant nomination period, and his/her signature shall not be inoperative on that other nomination form. Under this scenario, if he/she subscribes more than 1 nomination form in contravention of the regulation, his/her 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/her 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/her best endeavours to ensure that the electors subscribing his/her nomination form are eligible and have not subscribed another nomination previously. Electors subscribing a nomination should sign the nomination form **personally**.

No unlawful 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 and imprisonment for 2 years on summary conviction or by imprisonment for 5 years on conviction upon indictment. Bribery is also an offence punishable by fine or imprisonment.

Candidates are also required to observe Principle 4 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486) (“PD (P) O”) in collecting the personal data of subscribers for completing the nomination form. They should take all practicable steps to ensure that the aforesaid personal data are protected against unauthorised or accidental access, erasure or other use.

(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/she 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/her nomination form, he/she should have withdrawn all his/her prior nominations, if any. He/She is required to make a declaration (contained in the specified form) that either he/she has not been nominated before for any other constituency in the election, or if he/she has been so, he/she has withdrawn all those prior nominations [s 21 of the EAC (EP) (DC) Reg]. Where a candidate stands nominated [see para. 3.24 below], any subsequent nominations of his/hers will be rejected as invalid.

In the nomination form, a candidate is free to state his/her occupation and political affiliation for publication if he/she 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 (i.e. 9 am to 5 pm from Monday to Friday, and from 9 am to 12 noon on a Saturday) on a working day (i.e. any other day other than a general holiday) in the nomination period. The CEO may, in exceptional circumstances, e.g. 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/her 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 for 2 years. Under the EAC (EP) (DC) Reg, a person who knowingly makes a false statement in a material particular or recklessly makes an incorrect statement in a material particular or omits a material particular in an election-related document commits an offence and he/she shall be punishable by a fine and imprisonment for 6 months with the same disqualifying effect as described in paras. 15.56 and 16.29 of these Guidelines regarding the disqualification effect for persons convicted of a corrupt conduct or illegal conduct within the meaning of the ECICO [s 104(4) and (5) of the EAC (EP) (DC) Reg]. If elected, he/she will also be disqualified from holding office as a member of the DC in accordance with s 24(1)(d)(iv) of the DCO.

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 end of the nomination period. Candidates must note that, in the case of dishonoured cheque, the RO may not be able to advise the candidate(s) concerned in good time to rectify the situation before the end of the nomination period. Therefore, 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.

Return of Election Deposit

3.23 The deposit will be returned to the candidate if:

- (a) he/she is not validly nominated;
- (b) his/her nomination has been withdrawn;
- (c) after his/her nomination is confirmed valid for the election, he/she has passed away or is disqualified from being nominated before the date specified for holding the election;
- (d) the election is terminated;
- (e) he/she is elected; or
- (f) he/she secures in his/her 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 end 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 eligible to be nominated, he/she may apply to an NAC for advice [see para. 3.12 above].

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/her nomination form as practicable. However, no substitution for any subscriber or re-submission of a nomination form will be accepted after the end of the nomination period.

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

3.29 The RO may require such additional information from a candidate as he/she considers necessary to satisfy himself/herself 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 other information required 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 fall short of the requirements under 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/she is satisfied that the candidate is not eligible 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/her 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/she 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 end of the nomination period;
 - (f) he/she 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 died, he/she must publicly declare that the candidate has died 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/She must then publicly declare his/her varied decision and which candidate is or candidates are validly nominated for that constituency. The RO may not vary his/her decision if the candidate who has been disqualified is uncontested in his/her 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/she is the only one validly nominated for a particular constituency at the end of the nomination period. 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/her candidature only before the end of the nomination period. He/She 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 induce him/her to withdraw his/her candidature; and for a candidate to solicit or accept a bribe to withdraw his/her candidature.

PART VII : NOTICE OF VALID NOMINATIONS

3.36 The RO for the constituency concerned will publish a notice in the Gazette within 14 days after the end 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 be separately informed of the validity of all nominations of the same constituency.

**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 bodies⁴, registered emblems of prescribed persons⁵, words indicating that a candidate is an independent candidate or a non-affiliated candidate, and personal photographs of candidates.

Request to Print Particulars Relating to Candidates on Ballot Papers

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

- (a) the registered names and/or registered emblems relating to not more than 3 prescribed bodies (see para. 3.40);
- (b) the registered emblem relating to the candidate; or
- (c) the registered names and/or registered emblems relating to not more than 2 prescribed bodies and the registered emblem relating to the candidate.

In any case, the candidate can also choose the words “Independent Candidate” or “Non-affiliated Candidate” for printing on ballot papers.

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.

⁴ A prescribed body means a prescribed political body or a prescribed non-political body.

⁵ 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.

[S 3 of PCBP (LC & DC) Reg]

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 Legislative Council (“LegCo”) and DC elections. All subsequent registrations will be applicable to both LegCo and DC elections.

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 organisation that regulates the body under the laws of Hong Kong and showing the name of the body.

[S 8 of PCBP (LC & DC) Reg]

Application by prescribed person for the registration of his/her emblem

3.43 A prescribed person intending to run in a DC election may in accordance with the registration cycle 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]

Timing for Application

3.45 Applications for registration may be submitted to the EAC for processing and approval. A register containing the particulars in respect of the registered names and emblems of prescribed bodies and registered emblems of prescribed persons, which have been approved by the EAC and published in the Gazette, is maintained by the CEO for public inspection. The register is updated annually to reflect any approved additions/deletions and only the approved particulars may be used by candidates in an election. The relevant cut-off date for the receipt of applications for processing and inclusion in the register in each year is as follows:

- (a) 15 June in a year in which an ordinary DC election is to be held;
- and

- (b) 15 April in any other years.

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 the relevant cut-off date 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 relevant cut-off date in a year, as soon as practicable after the relevant cut-off date 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]

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]

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]

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.

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.

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]

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]

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 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 person has died.

[S 21 of PCBP (LC & DC) Reg]

PART IX : CANDIDATES' BRIEFING

3.55 The EAC will conduct a briefing for all validly nominated candidates on important matters related to the election. After the end of the nomination period, the RO will inform each validly nominated candidate of the date and time of the Candidates' Briefing. The RO will conduct a lots drawing session immediately after the briefing to allocate to each candidate a candidate number to be shown on the ballot paper and designated spots for displaying election advertisements (please refer to para. 7.24).

3.56 The REO will publish an **Introduction to Candidates**. The number of each candidate on the ballot paper allocated to him/her by the drawing of lots will also be shown on the Introduction to Candidates, which will be mailed to the electors together with the poll cards before the polling day. Copies of the Introduction to Candidates will be made available in the Correctional Services Department ("CSD") and other law enforcement agencies for electors imprisoned or held in custody.

3.57 Candidates are free to make use of the Introduction to Candidates to promote their election platforms. Any candidate who so wishes should

submit the following to the relevant RO **before the end of the nomination period:**

- (a) a duly completed grid paper affixing a colour photograph which must be in a specified size and should be taken within the last 6 months; and
- (b) 2 additional copies of his/her photograph identical to the one affixed to the grid paper with his/her 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/her, and “Relevant information has not been provided by the candidate” will be printed in the space provided for the election platform.

3.58 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 in the Introduction to Candidates.

3.59 The contents, nature and presentation of a candidate’s message in the Introduction to Candidates are exclusively the idea and work of the candidate himself/herself. They will not be subject to alteration or editing by the REO unless they are considered to be indecent, defamatory, unlawful, or contain information not relating to the promotion of the candidature of the candidate concerned.

3.60 To assist persons with visual impairment to read the contents of the election platform in the Introduction to Candidates, the REO has put in place a mechanism for candidates to provide separately the typed texts of their messages therein. With these typed texts, the REO would prepare a text

version of the Introduction to Candidates for uploading onto the dedicated website of an ordinary election or the REO's website in the case of a by-election. This text version would enable persons with visual impairment to read the contents of the document with the aid of a computer. If the candidate does not provide the typed text of the Introduction to Candidates, the website will only show his/her name and candidate number with the remark that the candidate has not provided a text version of his/her election platform. The EAC appeals to all candidates to support this initiative and make use of this text version to communicate their electoral messages to persons with visual impairment. As a general principle, candidates should be sensitive to the needs of persons with disabilities and, in the course of their electioneering campaign, make their utmost efforts to ensure that persons with disabilities, irrespective of their different forms of disability, can have fair access to their electoral messages.

CHAPTER 4

POLLING AND COUNTING ARRANGEMENTS

PART I : BEFORE THE POLL

4.1 The CEO must designate a place(s) as a polling station(s) (including small polling station(s) and special polling station(s)), a dedicated polling station(s)⁶, a ballot paper sorting station(s)⁷ or a counting station(s) at least 10 days before the polling day. The CEO may also designate the same place as a polling station and a counting station. If there are 2 or more counting stations for a constituency, he/she will designate the polling station at which the largest number of electors are to vote as the **dominant counting station**. He/She will also designate a polling station (other than a special 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, a special polling station⁸ or a dedicated polling station, he/she will designate 1 polling station as a **main counting station** for the purpose of counting the votes cast at the polling station, the small polling station(s), the special polling station(s) and/or the dedicated polling station(s). [Ss 31(1), (1A), (1B), (1C), (1CA), (1D) and 32 of the EAC (EP) (DC) Reg] The RO must, at least 10 days before the polling day, give notice in writing to each candidate of the place or places at which

⁶ A dedicated polling station means a place situated inside penal institutions or other suitable places at which registered electors, who are imprisoned or held in custody by the law enforcement agencies on polling day, will be allocated to vote.

⁷ A ballot paper sorting station may be set up to sort ballot paper received from the dedicated polling stations according to each constituency before they are delivered to the respective main counting stations for counting of votes.

⁸ A special polling station is one accessible to electors with mobility difficulty. Such electors will normally be small in number (see also para. 4.6 below).

vote counting and, where applicable, at which sorting of ballot papers received from the dedicated polling stations is to take place for the constituency contested by the candidates [ss 2(3), 65(3) and (4) of the EAC (EP) (DC) Reg].

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.]

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 may 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 will be, as far as practicable, close to the principal residence of electors as shown on the final register, save for registered electors imprisoned or held in custody by the law enforcement agencies who will be assigned to vote at the appropriate dedicated polling stations [s 33(3) and (4) of the EAC (EP) (DC) Reg].

4.4 At least 10 days before the polling day, poll cards notifying electors of contested constituencies of the date, time and place of the poll will be sent to their registered address or correspondence address (if any). To allow electors who will be serving a sentence of imprisonment on the polling day to receive the poll cards as early as possible, the REO will send the poll cards to their prison addresses as far as practicable before the poll. [S 34 of the EAC (EP) (DC) Reg]

4.5 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.

4.6 An elector **may vote only at the polling station allocated to him/her** by the CEO. Most of the polling stations are accessible to persons with mobility difficulty. 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. If an elector with mobility difficulty finds it difficult for him/her to access the polling station allocated to him/her, he/she may **at least 5 days** before the polling day apply to the CEO for re-allocation to another polling station which is accessible to electors with mobility difficulty (“special polling station”) [s 35 of the EAC (EP) (DC) Reg]. If a special polling station is re-allocated to him/her, then he/she can vote only at that polling station. Subject to availability, free Rehabus service may 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 special polling station, in addition to or in substitution of the one originally allocated to him/her. Electors concerned can make enquiries with the REO on this subject by telephone or in writing.

4.7 Due to security reasons, there is a need to separate some persons imprisoned or held in custody from others inside the penal institutions. The Commissioner of Correctional Services (“CCS”) will assign a time slot during the polling hours of a dedicated polling station situated in a penal institution to an elector allocated to that polling station to vote, and inform the elector of the time slot assigned. The CCS must assign time slots so as to give the electors a reasonable opportunity to vote. An elector to whom a time slot is assigned may only cast his/her vote during that time slot (see para. 4.19 below). [S 30(2A), (2B), (3A) and (5) of the EAC (EP) (DC) Reg]

PART II : INSIDE THE POLLING STATION

4.8 The poll starts at 7:30 am and ends at 10:30 pm. For security reasons, dedicated polling stations situated in prisons normally open from 9:00 am to 4:00 pm. About 15 minutes before the commencement of polling, the PRO at a polling station will show the candidates, their election agents or polling agents, if they are present, the empty ballot boxes before proceeding to lock and seal them. Candidates concerned or their agents may observe the locking and the sealing of the ballot boxes. For each candidate, only 1 such person may be present to observe the locking and the sealing of the ballot boxes: a candidate, his/her election agent or his/her polling agent. For security reasons,

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

Admission of candidates, election agents or polling agents to the aforesaid dedicated polling stations to observe the locking and sealing of ballot boxes will be on a **first-come-first-served basis**. [See also Chapter 6 on the procedures for applying for the presence of election agents or polling agents in dedicated polling stations situated in prisons.]

4.9 For a small polling station and a special polling station where the votes cast will not be counted therein, a notice about the venue for the counting

of votes will be displayed by the PRO outside the station. For a dedicated polling station, a notice providing information on the ballot paper sorting station (if any) and the main counting station will be displayed inside the station [s 42(1B) of the EAC (EP) (DC) Reg]. The PRO will also inform and show to the candidates, their election agents or polling agents, if they are present, the number of unissued ballot papers relating to the constituency, which are in his/her possession.

PART III : OUTSIDE THE POLLING STATION

4.10 Unless it is not practicable to do so, the PRO will arrange a copy of the relevant Introduction to Candidates published by the REO to be displayed outside the polling station, or if it is a dedicated polling station inside the polling station to facilitate easy reference by electors.

4.11 The CEO will display a map or plan showing the delineation of the polling station outside the polling station, or if it is a dedicated polling station inside the polling station [s 46(1A) of the EAC (EP) (DC) Reg]. A NCZ will be designated outside each polling station to ensure the free and safe passage of electors into 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. The RO or the PRO of the relevant polling station will allow no 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. Door-to-door canvassing and, for the purpose of such canvassing, the display or wearing of any propaganda material, e.g. 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 sound amplifying device is used (except for the performance of duties by officers of the CSD on the polling day at the dedicated polling stations situated in prisons) [s 43(13A), (14) and (15) of the EAC (EP) (DC) Reg]. [See Chapter 13.]

4.12 On the polling day, a person must not:

- (a) other than the door-to-door canvassing activities stated in para. 4.11 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, except for the performance of duties by officers of the CSD on the polling day at the dedicated polling stations situated in prisons;
- (c) use a sound amplifying system or device or conduct any activity (e.g. lion dance) for canvassing votes so that the sound emitted by it can be heard in the NCZ;
- (d) display or wear in the NCZ any propaganda material, e.g. any badge, emblem, clothing or head-dress, which:
 - (i) may promote or prejudice the election of a candidate or candidates at the election; or

- (ii) makes direct reference to a body any member of which is standing as a candidate in the election or to a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election; or
- (e) stay or loiter in the NSZ without the express permission of the PRO;

otherwise he/she 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].

PART IV : ADMISSION TO THE POLLING STATION

4.13 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) officers of the CSD and other law enforcement agencies on duty at dedicated polling stations;
- (g) candidates and election agents of the relevant constituency ^{Note};
- (h) polling agent(s) appointed for the polling station (this does not apply to dedicated polling stations situated in maximum security prisons ^{Note});
- (i) public officers authorised in writing by the CEO;
- (j) any person authorised in writing by a member of the EAC;
- (k) a person authorised in writing by the RO for liaison purposes; and
- (l) a child who accompanies an elector to the polling station for the purpose of voting (if the PRO considers that the child should not be left unattended while that elector is 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]

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

NOTE (para. 4.13(g) and (h)):

- (a) For the purpose of maintaining order in the polling station, 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.

- (b) For each candidate, only 1 of the following persons may be present in the polling station to observe the poll at any one time: the candidate, his/her election agent or his/her polling agent. A notice will be displayed outside each polling station showing the capacity of the designated area inside the polling station for candidates, their election agents or polling agents to observe the poll.
- (c) Admission of candidates, election or polling agents will be on a **first-come-first-served basis**. In order that as many candidates, election agents and polling agents as possible will have the chance to observe the poll at the polling station, any candidate, election agent or polling agent who has been admitted to the polling station may only stay for 1 hour. He/She must then leave the polling station unless there is no other candidate, election agent or polling agent waiting for admission. He/She may apply for re-admission into the polling station again on a first-come-first-served basis.
- (d) Anyone on admission into a polling station has to sign and enter his/her time of entry on a log sheet. A candidate, election agent or polling agent who has to queue outside the polling station for his/her turn to observe the poll at the designated area will be given a number chit that indicates the order of admission. The polling staff will call out the number to admit the holder of the number chit concerned. If the holder concerned is not present at the time, his/her

place will be taken over by the person next in line. He/She who has lost his/her place due to his/her absence will have to obtain a new number chit when he/she returns.

- (e) For security reasons, only a maximum of 2 candidates may be present at any one time to observe the poll at a dedicated polling station situated inside a maximum security prison, and a maximum of 2 candidates, election agents or polling agents may be admitted to a dedicated polling station situated in a prison other than a maximum security prison at any one time. Observers will have to take turn in case more than two candidates/agents intend to observe the poll at the same time. The PRO may regulate the number of people entering the dedicated polling stations. [See also Chapter 6.]

4.14 Except for an elector, a police officer, an officer of the CSD, an officer of any law enforcement agency or a member of the Civil Aid Service on duty, all other persons permitted to enter a polling station are required to 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].

PART V : CONDUCT INSIDE THE POLLING STATION

4.15 On arrival at the polling station, an elector should show to the polling staff at the ballot paper issuing desks his/her 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 [s 53 of the EAC (EP) (DC) Reg]. 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. [S 56 of the EAC (EP) (DC) Reg]

4.16 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.

4.17 If there is reasonable ground for questioning the bona fides of an elector, the PRO shall ask him/her the following questions at the time of his/her 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/she has answered the questions to the satisfaction of the PRO. [S 54 of the EAC (EP) (DC) Reg]

4.18 Where there is reasonable cause to believe that a person has committed an offence of impersonation of an elector, the PRO may request the police officer on duty at the polling station to arrest that person. If the polling

station is a dedicated polling station, the PRO may request the officer of the CSD or the law enforcement agency to remove the person concerned from the polling station and report the case to the police [s 55 of the EAC (EP) (DC) Reg].

4.19 If an elector has been issued with a ballot paper but leaves the station without casting his/her vote, he/she cannot return to the polling station later to cast the vote. However, for a reason considered justified by the PRO, an elector who has not marked the ballot paper issued to him/her may, with the permission of the PRO, hand back the ballot paper to the PRO and return later to cast his/her vote. For a dedicated polling station situated in a prison, the elector has to return to cast his/her vote within the existing or newly assigned time slot. 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/her ballot paper, he/she may return to the polling station to cast his/her vote before the close of the poll, provided that before he/she leaves the polling station, his/her ballot paper has been retrieved by the PRO. For a dedicated polling station situated in a prison, the elector has to return to cast his/her vote within the existing or newly assigned time slot. Under either of the above circumstances, the following actions must be taken by the PRO and/or the CCS:

- (a) the PRO must keep that ballot paper in his/her custody and re-issue it, in the presence of a police officer for polling stations other than a dedicated polling station or an officer of the CSD or of the concerned law enforcement agency for a dedicated polling station, to the elector in question when the latter returns before the close of poll to cast his/her 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 [ss 56A and 78 of the EAC (EP) (DC) Reg]; and/or

- (b) the CCS must, as far as practicable, assign to an elector of a dedicated polling station situated in a prison a new time slot during the polling hours appointed for the polling station and notify the elector of the time slot.

4.20 The PRO would need to keep a ballot paper left in the polling station in his/her custody in the circumstances described in para. 4.19 above only when he/she knows which elector had left the ballot paper behind. Otherwise, a ballot paper found to be left in the polling station should be endorsed as “UNUSED” and would not be counted.

4.21 When issued with a ballot paper, an elector will also be provided with a cardboard to which a chop with a “✓” sign is attached. In a DC ordinary election or where the CEO considers it appropriate in a by-election, an envelope (on which the name and the number of the relevant DC constituency will be marked by the polling staff on issue of the ballot paper) will be provided to an elector of a dedicated polling station to enclose his/her marked ballot paper to facilitate the subsequent sorting of the ballot paper in a ballot paper sorting station while preserving the secrecy of vote. The elector should then immediately proceed to one of the voting compartments where he/she should affix the chop to give a single “✓” in the circle opposite the name of the candidate of his/her choice on the ballot paper. No other mode of marking the ballot paper is allowed. The elector should then fold the ballot paper. An elector of a dedicated polling station should fold the ballot paper so that the marked side is faced inside and put the folded ballot paper into the aforesaid envelope (if such envelope is provided) [s 57(2), (2A) and (4) of the EAC (EP) (DC) Reg].

4.22 Immediately after an elector comes out of the voting compartment, he/she should put his/her marked ballot paper as folded or the envelope containing his/her marked ballot paper, as the case may be, 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 [s 57(2), (2A) and (4) of the EAC (EP) (DC) Reg].

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.

4.23 An elector with visual impairment who so requests will be provided with a **braille template** to facilitate his/her marking of the ballot paper without any assistance from anyone. The template should be returned to the polling staff after use [s 59(3) of the EAC (EP) (DC) Reg]. [For details about the template, see para. 6.40 of Chapter 6.]

4.24 An elector who is unable to mark a ballot paper to indicate the choice of candidate (e.g. 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/her 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]

4.25 **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/she 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].

4.26 No one shall, at any time, disclose the identity of an elector at a dedicated polling station to protect the elector's privacy and safety. Anyone who makes such disclosure commits an offence punishable by a fine at level 2 (up to \$5,000) and imprisonment up to 6 months [s 94(1A) of the EAC (EP) (DC) Reg].

4.27 Any elector who has inadvertently torn or damaged any ballot paper or has made an error in marking any ballot paper issued to him/her may ask the PRO to exchange it for another unmarked ballot paper. If the PRO considers the request reasonable, he/she will issue a new ballot paper to the elector in exchange for the spoiled ballot paper. Such spoiled ballot papers will be endorsed on the front with the word '**SPOILT**' and will be kept by the PRO. The spoiled ballot papers will not be counted at the counting of the votes. [Ss 62 and 78 of the EAC (EP) (DC) Reg]

4.28 Where a person, claiming to be a particular elector entered on the register, applies for any ballot paper after a person has been issued with a ballot paper as such an elector, the PRO may issue a tendered ballot paper to the elector **ONLY IF** he/she is not certain that the person is the elector who had been issued with a ballot paper earlier, and the elector answers the appropriate questions in accordance with the law as set out in para. 4.17 to the satisfaction of the PRO. The PRO may in such circumstances issue 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]

4.29 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. 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 such 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]

4.30 Subject to para. 4.31, no person including an elector should 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 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) display or wear any propaganda material, e.g. any badge, emblem, clothing or head-dress, which:
 - (i) may promote or prejudice the election of a candidate or candidates at the election; or

- (ii) makes direct reference to a body any member of which is standing as a candidate in the election or to a 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 or any polling officer not to do so.

If a person contravenes any of the above prohibitions, he/she 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].

4.31 Only the following persons may speak to or communicate with electors, and use a mobile telephone, paging machine or any other form of electronic communication device 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) an officer of the CSD or other law enforcement agency on duty at a dedicated polling station;
- (g) a person authorised in writing by the ROs for liaison purposes; and
- (h) any person authorised in writing by a member of the EAC.

[S 48(1) and (6) of the EAC (EP) (DC) Reg]

4.32 A person who misconducts himself/herself at a polling station or its vicinity or fails to obey any lawful order of the RO or the PRO 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/herself if he/she disrupts the poll or disturbs or causes inconvenience to any person in the polling station. An elector must cast his/her vote without undue delay. If an elector who is allocated to vote at a dedicated polling station fails to cast his/her vote without undue delay, the RO or the PRO may order him/her to leave the polling station immediately. If a person fails to leave immediately as ordered by the RO or the PRO, he/she may be removed by:

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

The person so removed may not re-enter the polling station on that day except with the permission of the RO or the PRO [s 49(2A) and (3) of the EAC (EP) (DC) Reg].

4.33 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.

PART VI : CLOSE OF POLL

A Polling Station which is also a Counting Station

4.34 Except for the small polling stations, special polling stations and dedicated polling stations, all other polling stations will be designated as counting stations for the counting of votes. So, at the close of poll, a notice will be displayed by the PRO outside these polling stations 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/her 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/her possession. All such ballot papers and the marked copies of the register will then be made up into separate sealed packets. [S 63(1), (1A) and (2) of the EAC (EP) (DC) Reg]

4.35 The sealed ballot boxes and sealed packets referred to in para. 4.34 above will be kept by the PRO until the counting of votes begins [see Part VII below].

A Polling Station which is not a Counting Station

4.36 Small polling stations, special polling stations and dedicated polling stations will not be converted into a counting station after the close of poll. For small polling station and special polling station, a notice will be displayed by the PRO outside the polling station at the close of poll to inform the public that the poll has been 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. After the close of poll, a candidate, his/her election agent and polling agent may stay in the polling station to observe the process of locking and sealing of ballot boxes. For dedicated polling station, the following persons may stay behind to observe the process:

- (a) a candidate, his/her election agent and a polling agent may stay in a dedicated polling station not situated in a prison;
- (b) a maximum of 2 candidates, election agents or polling agents may stay in a dedicated polling station situated in a prison other than a maximum security prison; and
- (c) a maximum of 2 candidates may stay in a dedicated polling station situated in a maximum security prison.

[S 63A(2) and (2A) of the EAC (EP) (DC) Reg]

In the presence of the candidates and/or their agents, if any, the ballot boxes will be locked and sealed by the PRO. The PRO will also inform them of the numbers of unissued ballot papers, spoilt ballot papers and unused ballot papers in his/her possession. All such ballot papers and the marked copies of the register will then be made up into separate sealed packets. [S 63A(1) and (2) of the EAC (EP) (DC) Reg]

4.37 As the votes cast at the small polling stations, special polling stations and dedicated polling stations will not be counted therein, the PRO will deliver the sealed ballot boxes, the sealed packets referred to in para. 4.36 above and the ballot paper accounts to respective counting stations for counting of votes under police escort. The ballot boxes of small polling stations and special polling stations will be delivered to the designated main counting station, whereas the ballot boxes of the dedicated polling stations will be transported to the respective ballot paper sorting station(s) or the main counting station, as the case may be [s 63A(4) of the EAC (EP) (DC) Reg].

4.38 Not more than 2 candidates and/or their agents, if they so wish, will be allowed to participate in the delivery. Where there are more than 2 of them 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.

PART VII : SORTING OF BALLOT PAPERS

Conduct at the Ballot Paper Sorting Station

4.39 In a DC ordinary election or where the CEO considers it appropriate in a by-election, ballot paper sorting station(s) will be set up for sorting ballot papers received from dedicated polling stations according to each constituency before the ballot papers are delivered to the respective main counting stations for the counting of votes. The PRO of a ballot paper sorting station may determine the time at which the sorting of ballot papers is to begin, which must be a time after the poll has closed at all the dedicated polling stations situated in prisons and may be a time before the poll has closed at all the other polling station(s). Before the polling day, candidates will be informed of the expected time of the commencement of the sorting of ballot papers at the ballot paper sorting station(s). [Ss 2(3), 63A(4) and 65(2A) of the EAC (EP) (DC) Reg]

4.40 The following persons may be present at the sorting of ballot papers:

- (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 ballot paper sorting 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 area where the counting staff will sort the ballot papers. Candidates and their agents must not go into the restricted area. Any member of the public may observe the sorting of ballot papers from the public area designated by the PRO unless the PRO considers that his/her presence may:

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

[Ss 2(3) and 68 of the EAC (EP) (DC) Reg]

4.41 Before entry, every person authorised to be present at a ballot paper sorting 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 [ss 2(3) and 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.

4.42 Except with the express permission of the relevant PRO, the RO for the constituency or constituencies for which the ballot paper sorting 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 the restricted area of a ballot paper sorting station during the period commencing from the time at which the sorting of ballot papers is to begin and ending upon the completion of the sorting commits an offence [ss 2(3), 69 and 70 of the EAC (EP) (DC) Reg].

4.43 A person who misconducts himself/herself in or in the vicinity of a ballot paper sorting station or fails to obey any lawful order of the PRO commits an offence punishable with a fine and imprisonment and may be ordered by the PRO to leave the area. A person misconducts himself/herself if he/she disrupts the sorting of ballot paper or disturbs or causes inconvenience to any person in the sorting station. The PRO may also order a person to leave the ballot paper sorting station if the person behaves himself/herself in such way that the purpose of his/her presence is not that for which he/she was authorised or permitted to enter or remain in the ballot paper sorting station. If he/she fails to leave immediately, he/she may be removed by a police officer or by any other person authorised in writing by the PRO to remove him/her. The person so removed may not re-enter the ballot paper sorting station on that day except with the permission of the PRO [ss 2(3), 69 and 70 of the EAC (EP) (DC) Reg].

Sorting of Ballot Papers

4.44 The PRO of a ballot paper sorting station will sort the envelopes containing the ballot papers, delivered from dedicated polling station, in the presence of the candidates, their election agents 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, their election agents or counting agents, if they are present at the time. The ballot box will then be opened and the contents

emptied onto a sorting table. After the PRO has opened the ballot box, the candidates, their election agents or counting agents may request to inspect any papers, other than the envelopes which contain the ballot papers, taken out from the ballot boxes before they are disposed of. **At no time should a candidate, his/her election agent or counting agent touch any envelopes or ballot papers.**

4.45 The PRO of a ballot paper sorting station shall:

- (a) open the ballot boxes received from the dedicated polling stations;
- (b) sort the envelopes in each ballot box according to each constituency;
- (c) count and record the number of envelopes for each constituency;
- (d) verify the ballot paper account by comparing it with the number of envelopes recorded under para. 4.45(c) above;
- (e) prepare a statement in writing as to the result of the verification;
- (f) prepare a statement in writing as to the number of envelopes recorded under para. 4.45(c) above;
- (g) make into separate bundles the sorted envelopes together with the relevant statement prepared under para. 4.45(f) above;
- (h) place each bundle in a separate receptacle and seal it in the presence of those present at the counting zone;

- (i) arrange the receptacles to be delivered to the PROs of respective main counting stations of the relevant constituencies; and
- (j) send to the CEO the ballot paper accounts, verification of the ballot paper accounts and the sealed packets made up under para. 4.36.

[S 75A of the EAC (EP) (DC) Reg]

PART VIII: THE COUNT

Conversion of Polling Station into Counting Station

4.46 A polling station, other than a small polling station, a special polling station or a dedicated polling station which is not 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. Where the same place is designated as both a polling station and a counting station, the PRO of the polling station is to be regarded as the PRO of the counting station [s 37 of the EAC (EP) (DC) Reg]. The PRO, assisted by his/her 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

- 4.47 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/her 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]

4.48 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.

4.49 Except with the express permission of the relevant PRO, the RO for the constituency or constituencies for which the counting 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].

4.50 A person who misconducts himself/herself in or in the vicinity of a counting station or fails to obey any lawful order of the PRO commits an offence punishable with a fine and imprisonment and may be ordered by the PRO to leave the area. A person misconducts himself/herself if he/she 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/herself in such way that the purpose of his/her presence is not that for which he/she was authorised or permitted to enter or remain in the counting station. If he/she fails to leave immediately, he/she may be removed by a police officer or by any other person authorised in writing by the PRO to remove him/her. 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

4.51 The PRO will conduct the count in the presence of the candidates, their election agents 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, their election agents 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, their election agents 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/her election agent or counting agent touch any ballot papers.**

4.52 The PRO who is not a PRO of a main counting station or a ballot paper sorting station shall:

- (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.

[Ss 74, 75 and 76 of the EAC (EP) (DC) Reg]

4.53 The PRO of a main counting station shall:

- (a) count and record the number of ballot papers in the ballot box(es) from each small polling station, special polling station and/or dedicated polling station and verify the respective ballot paper accounts;
- (b) open the envelopes in each receptacle received from a ballot paper sorting station, count and record the number of ballot papers in the envelopes and verify the statement on the number of envelopes in the receptacle(s) prepared by the PRO of the ballot paper sorting station where such station has been set up in a DC ordinary election or in a by-election as considered appropriate by the CEO;
- (c) mix the ballot papers in at least one of the ballot boxes at the polling station designated as the main counting station together with the ballot papers that have been delivered from the small polling stations and/or, special polling stations, and ballot paper sorting stations or dedicated polling stations as the case may be;
- (d) sort all 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;
- (h) verify the ballot paper account in respect of the main counting station concerned; and
- (i) compile the final counting results.

[Ss 74, 75 and 76 of the EAC (EP) (DC) Reg]

Invalid Ballot Papers

4.54 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]

Questionable Ballot Papers

4.55 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/she is satisfied that the elector’s intention is clear);
- (c) it is substantially mutilated; or
- (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]

4.56 The validity of all questionable ballot papers shall be decided by the PRO [s 79(2) of the EAC (EP) (DC) Reg]. The PRO will invite the candidates, their election or counting agents present to witness the process.

4.57 The determination process will be conducted in the following manner:

- (a) the PRO will inform the candidates and their agents of his/her initial decision on the validity of each questionable ballot paper. A candidate, an election agent or a counting agent may inspect and make representations concerning any questionable ballot paper;
- (b) the PRO will then consider their representations and make his/her final decision on the validity of the questionable ballot paper (see para. 4.58 below);
- (c) if the PRO decides that a questionable ballot paper is invalid and, therefore, not to be counted, he/she must endorse the words “不獲接納” and “rejected” on the front of it. In that case, if a candidate, an election agent or a counting agent objects to the PRO’s final decision, the PRO must also endorse the words “反對此選票不獲接納” and “rejection objected to” on that ballot paper;
- (d) if a candidate, an election agent or a counting agent objects to the decision of the PRO to count a questionable ballot paper, the

PRO must endorse the words “反對此選票獲接納” and “acceptance objected to” on that ballot paper; and

- (e) the PRO will record his/her decisions made on all questionable ballot papers.

[S 79(4) and (5) of the EAC (EP) (DC) Reg]

4.58 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

4.59 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. 2.20 for the procedures for drawings of lots].

Constituencies with 1 Counting Station

4.60 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/her 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/her opinion it is unreasonably made. [S 80A of the EAC (EP) (DC) Reg]

Constituencies with 2 or More Counting Stations

4.61 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.

4.62 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/her election agent or his/her counting agent may request the PRO to re-count the votes and the PRO shall comply with the request unless in his/her 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/her 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/she decides that such a re-count is reasonable in the circumstances, he/she will inform the PROs of the other counting stations for the constituency to conduct a re-count at their respective counting stations, and he/she 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/her 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]

PART IX : DECLARATION OF RESULT

4.63 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]

4.64 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/her counting station. If the PRO is not the PRO of the dominant counting station, he/she shall also report to the PRO of the dominant counting station the final counting or re-count result of his/her 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), (12) and 81 of the EAC (EP) (DC) Reg]

4.65 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/She shall use the means of contact of such candidates provided in their nomination forms to request them to be present at his/her office or any other place as determined by him/her 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/She shall declare the candidate on whom the lot falls as elected. He/She shall display a notice of the result of the election at a prominent place outside his/her

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 X : DISPOSAL OF DOCUMENTS

4.66 As soon as practicable after the PRO has ascertained the result of the poll in an election, he/she shall 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]

4.67 These sealed packets of documents will be sent to the RO by the PRO. The RO shall 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]

4.68 **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/she was not eligible to be, or was disqualified from being, a candidate at the election; or
 - (ii) he/she 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.

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 (“CFI”) only during the period of 2 months following the date on which the RO has published the result of the election in the Gazette [s 53(1) of the DCO].

5.4 An election petition is triable in open court and before a single judge. At the end of the trial of an election petition, the CFI must determine questions of the validity of a nomination or whether the person was or was not duly elected, as appropriate. The CFI must announce its determination by means of a written judgment. [Ss 52 and 55 of the DCO]

5.5 An appeal against the decision of the CFI may be lodged to the Court of Final Appeal (“CFA”) direct, subject to leave being granted by the Appeal Committee of the CFA. Notice of a motion for applying for leave to the CFA to appeal must be filed within 14 working days after the date on which the written judgment of the CFI to be appealed against is handed down, and the applicant must give the opposite party 3 days’ notice of his/her intended

application at any time during the period of 14 working days. At the end of the hearing of an appeal against the determination of the CFI, the CFA must determine questions of the validity of a nomination or whether the person was or was not duly elected, as appropriate. The CFA must announce its determination by means of a written judgment. [Ss 53(2) and 58B of the DCO]

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/her agents. He/She should choose persons suitable for the task. They will be viewed as his/her representatives and their conduct may affect the public's perception of him/her.

PART II : TYPES AND NUMBERS OF AGENTS

6.3 A candidate may appoint the following agents to assist him/her 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/her constituency other than a dedicated polling station

situated in a prison [s 45(3) of the EAC (EP) (DC) Reg];

- (d) **1** polling agent for **each dedicated polling station** situated in a prison other than a maximum security prison [s 45(5A) of the EAC (EP) (DC) Reg]; and

(For arrangements regarding admission of election agents or polling agents to dedicated polling stations situated in prisons, please refer to paras. 6.12 to 6.15 and paras. 6.24 to 6.26 below.)

- (e) not more than **2** counting agents for **each counting station** in respect of his/her 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, i.e. other than for temporary relief purpose, may act as agents or assist in

electioneering activities provided that they are not already appointed as ROs, AROs, PROs, polling or counting staff, that there is no conflict of interest with their official duties, that no use of public resources is involved, and that no government uniform is worn. To avoid any unfairness, semblance of unfairness or conflict of interest, civil servants who work in a constituency or have extensive contacts with the public in a constituency are strongly advised not to accept appointment by a candidate in the constituency to be his/her agent and/or participate in electioneering activities in the constituency concerned. Civil servants who participate in electioneering activities, including the seeking of election donations, for any candidate should not use or be seen to use any public resources in such activities. The guidelines set out in this para. are equally applicable to the non-civil service contract staff of the Government.

PART V : ELECTION AGENT

Appointment

6.6 A candidate may appoint **1 election agent** to assist him/her and to act on his/her 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/her 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, signed by both the candidate and the agent, and delivered by hand, by electronic mail, by facsimile transmission or by post to the RO. If the notice of appointment is given on the polling day, it should not be delivered to the RO by post [s 26(5), (6) and (13) 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 expenses incurred by any purported agent for promoting the election of a candidate or for prejudicing the election of another candidate or other candidates may, depending on the circumstances, still be treated as the election expenses incurred in respect of the candidate. 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 election expenses at or in connection with an election** [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 in the specified form and deliver the signed notice by hand, by electronic mail, by facsimile transmission or by post to the RO. If the notice of revocation is given on the polling day, it should not be delivered to the RO by post. 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), (10) and (13) of the EAC (EP) (DC) Reg]

6.10 If an election agent passes away or has his/her 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]. If the new election agent wishes to observe the poll at a dedicated polling station situated in a prison (other than a maximum security prison), he/she is required to follow the arrangements set out in paras. 6.11 to 6.15 below.

Notification

6.11 Not later than 10 days after the end of the nomination period, and thereafter as required, each validly nominated candidate or his/her election agent will receive from the RO a notice containing the particulars of all the election agents (such as names and addresses) appointed by all candidates for the constituency concerned [s 27(1) and (3) of the EAC (EP) (DC) Reg]. The RO must also display outside his/her 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/She has the **authority to do everything a candidate is authorised to do** under the EAC (EP) (DC) Reg for the purposes of the election, **except:**

- (a) to sign the nomination form or make any requisite declaration in relation to a candidate's nomination;
- (b) to withdraw the candidate's candidature;
- (c) to incur election expenses save where he/she has been appointed as an election expense agent by the candidate;
- (d) to authorise an election expense agent to incur election expenses;
and
- (e) to be present in a dedicated polling station situated in a maximum security prison.

[S 26(14) and (15) of the EAC (EP) (DC) Reg]

IMPORTANT :

An election agent is, along with the candidate, responsible for the management of the election campaign. A candidate is responsible for all the acts of his/her election agent. If the election agent fails in his/her duties, he/she 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 as an election expense agent by a candidate to incur election expenses. If so authorised, the election agent becomes also an election expense agent. [See Part VI of this chapter.]

6.13 Candidates and their election agents are allowed admission to all polling stations in respect of the constituency concerned and are entitled to be present at the counting of the votes. Subject to the admission rules, only candidates may enter dedicated polling stations situated in maximum security prisons to observe the poll. An election agent, who wishes to observe the poll at a dedicated polling station situated in a prison other than a maximum security prison, must deliver an application in the specified form to the CEO by hand, by electronic mail, by facsimile transmission or by post at least one week before the polling day. The election agent may not be present at that dedicated polling station unless the CCS has given consent to his/her presence. If the CCS refuses to give consent to the application received, he/she will notify the candidate or his/her election agent as soon as practicable [s 26(15) and (18) of the EAC (EP) (DC) Reg].

6.14 The CCS may, on an application delivered to the CEO during the week before the polling day, give consent if he/she is satisfied that a person imprisoned or held in custody by the CSD, who is entitled to vote for the relevant constituency at the dedicated polling station concerned, is admitted or transferred to the prison concerned during that week and the application is made without undue delay after the admission or transfer. The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual prisons on every Monday to Friday (other than a general holiday) starting from three weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference [s 26(17) of the EAC (EP) (DC) Reg].

6.15 No election agent may be present at a dedicated polling station situated in a prison if a polling agent has already been appointed by the same candidate for that polling station [s 26(16) of the EAC (EP) (DC) Reg].

6.16 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, a counting station or a ballot paper sorting 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

6.17 A candidate may authorise **any number** of election expense agents to incur election expenses on his/her 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, i.e. 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].

6.18 The authorisation shall be in writing on a specified form and state the name, identity document number and residential 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 delivered by hand, by post, by electronic mail or by facsimile transmission to the RO, or the CEO if the RO has not been appointed. [S 28(6) and (7) of the EAC (EP) (DC) Reg]

6.19 The authorisation is not effective until it has been received by the RO or the CEO as the case may be [s 28(7A) of the EAC (EP) (DC) Reg]. Before the authorisation is received, no election expenses should be incurred by a person purporting to be authorised 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

6.20 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 in the specified form and deliver the signed notice by hand, by post, by electronic mail or by facsimile transmission to the RO, or the CEO if the RO has not been appointed [s 28(11), (12) and (12A) of the EAC (EP) (DC) Reg]. The revocation will only be effective when the RO or the CEO, as the case may be, 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.

Role of Election Expense Agents

6.21 An election expense agent is authorised **to incur election expenses on behalf of a candidate**. He/She must not incur election expenses in excess of the amount specified in the form of authorisation; otherwise he/she commits a criminal offence [s 23(4) of the ECICO].

Candidate's Duty to Know the Details of Election Expenses Incurred by his/her Election Expense Agents

6.22 Every candidate is under a **duty**, subject to criminal penalty for breach, to submit to the CEO a return and declaration of his/her election expenses and election donations (thereafter referred to as "election return") with supporting invoices and receipts issued by recipients of the payments not later than 30 days after the publication in the Gazette of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law or within such extended period as may be allowed by the CFI under the

relevant law [s 37 of the ECICO and Part IV of Chapter 15]. For the efficient and effective discharge of his/her duty, the candidate should **make sure** that his/her election expense agents will keep account of all election expenses incurred on his/her behalf and will provide to him/her, as soon as practicable but not later than the same 30-day period, a detailed statement of expenditure in which each item of expenditure of \$100 or above has to be supported by an invoice and a receipt. If any item of expenditure incurred by the election expense agents is paid or defrayed or contributed to by a donation, the candidate should **make sure** that they will provide him/her 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, invoices and receipts issued by recipients of the payments provided by the election expense agents, the candidate will no doubt have difficulty in discharging his/her duty to file the election return, which **may render him/her liable for a criminal offence** under s 38 of the ECICO.

Public Inspection of Authorisation of Election Expense Agents

6.23 The RO will make available for public inspection all copies of authorisations of election expense agents submitted by candidates until the expiration of the period for which copies of the election return lodged by the candidates are available for inspection, i.e. up to the first anniversary of the date on which the result of the election is published [s 41 of the ECICO]. This offers the public and other candidates an opportunity to scrutinise the maximum amount of election expenses that could be incurred by the election expense agents on behalf of the candidates [s 29 of the EAC (EP) (DC) Reg].

PART VII : POLLING AGENTS

Appointment

6.24 A candidate may appoint **not more than 2 polling agents for each polling station**, other than a dedicated polling station situated in a prison, in respect of the constituency for which he/she is nominated [s 45(3) of the EAC (EP) (DC) Reg]. The notice of appointment must be in writing, in the specified form, signed by the candidate and delivered by hand, by electronic mail, by facsimile transmission or by post to the RO, at least **7 days** before the polling day [s 45(5), (5D) and (8) of the EAC (EP) (DC) Reg]. Where a candidate appoints a polling agent after the above deadline, he/she 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 **in person** by delivering the notice of appointment to the PRO at the relevant polling station on the polling day [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].

6.25 In respect of the appointment of polling agent to be admitted in a dedicated polling station situated in prison, the following provisions should apply:

- (a) only the candidate is allowed to be present in a dedicated polling station situated at a maximum security prison;
- (b) only one polling agent may be appointed for a dedicated polling station situated in a prison which is not a maximum security prison. The appointment is effective only when an application

made in a specified form is delivered to the CEO by hand, by electronic mail, by facsimile transmission or by post at least 7 days before polling day, and the CCS has given consent to the presence of the agent; and

- (c) for a dedicated polling station situated in a prison (other than a maximum security prison), no polling agent may be present if the CCS has already given consent to the presence of the election agent of the same candidate at that polling station.

[s 45(5A) and (5D) of the EAC (EP) (DC) Reg]

6.26 If the CCS refuses to give consent to the application received, he/she will notify the candidate or his/her election agent as soon as practicable [s 45 (5C) of the EAC (EP) (DC) Reg]. The CCS may, upon receipt of an application given during the week before the polling day, give consent if he/she is satisfied that a person imprisoned or held in custody by the CSD, who is entitled to vote for the relevant constituency at the polling station concerned, is admitted or transferred to the prison concerned during that week and that the application is given without undue delay after the admission or transfer. The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual prisons on every Monday to Friday (other than a general holiday) starting from three weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference. [S 45(5B) of the EAC (EP) (DC) Reg]

Revocation

6.27 The appointment of a polling agent may be revoked by the candidate at any time. The candidate must give notice of revocation in writing in the specified form and deliver the signed notice by hand, by

electronic mail, by facsimile transmission or by post to the RO (other than on the polling day). If the notice of revocation is given on the polling day:

- (a) for a polling agent appointed for a polling station other than a dedicated polling station situated in a prison, such notice must be delivered to the relevant PRO by the candidate or the election agent **in person**;
- (b) for a polling agent appointed for a dedicated polling station situated in a prison, such notice must be delivered to the RO by hand, by electronic mail or by facsimile transmission.

[s 45(9), (10), (11) and (11A) of the EAC (EP) (DC) Reg]

6.28 A revocation of an appointment of a polling agent is not 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]. If a replacement of polling agent is appointed and he/she wishes to observe the poll at a dedicated polling station in a prison (other than a maximum security prison), he/she is required to follow the arrangements set out in paras. 6.24 to 6.26 above.

Role of Polling Agents

6.29 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

6.30 On behalf of each candidate, only 1 polling agent may be admitted at any one time to the polling station for which he/she has been

appointed [s 47(6) of the EAC (EP) (DC) Reg]. He/She is required to stay and keep his/her movements within the area designated for observation of the poll and not outside. Where a candidate or his/her 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]. [See also Part IV of Chapter 4 regarding the admission of candidates, election agents and polling agents to the polling station.]

6.31 Before entering a polling station, every person, other than an elector, a police officer, an officer of the CSD or an officer of a law enforcement agency or a member of the Civil Aid Service on duty, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 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.

6.32 On attending the polling station for which he/she has been appointed, a polling agent shall report to the PRO and produce his/her identity card and the Declaration of Secrecy completed by him/her for inspection [s 47(10) of the EAC (EP) (DC) Reg].

6.33 The following procedures shall apply before, during and after the poll on the polling day:

(a) Before

- (i) About 15 minutes before the commencement of the poll, the PRO will inform the candidates or their agents (either election agent or polling agent) if they are present, of the number of ballot papers in 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) Where a person, representing himself/herself 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, the PRO may, where appropriate, issue to him/her 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]

- (ii) Any elector who has inadvertently torn or damaged any ballot paper or has made an error in marking any ballot paper issued to him/her may ask the PRO to exchange it for another ballot paper. If the PRO considers the request reasonable, he/she will issue a new ballot paper to the elector in exchange for the spoiled one. The PRO should endorse on the front of such spoiled ballot paper with the word “**SPOILT**” and keep it in his/her own custody. The spoiled ballot paper will not be put into a ballot box and will not be counted at the counting of votes. [Ss 62 and 78 of the EAC (EP) (DC) Reg]

- (iii) The PRO will endorse on the front of 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”) with the word “UNUSED” and keep it in his/her own custody. Such ballot papers will not be put into a ballot box and will not be counted at the counting of votes. [S 61 of the EAC (EP) (DC) Reg] Under these circumstances, the PRO will show to each candidate or his/her election agent or polling agent, who is present at the relevant time, such ballot papers.

(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/She will also inform each candidate or his/her agent who is present of the number of the following types of ballot papers in his/her 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.

6.34 Generally speaking, a polling agent may observe all proceedings in the polling station for which he/she has been appointed and record his/her observations but shall not do anything that may interfere with the conduct of the poll. A polling agent **MAY**:

- (a) observe the locking and sealing of empty ballot boxes before the poll commences and the locking and sealing of the ballot boxes during or 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/her name in block letters beneath his/her 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.

- (b) leave the polling station at any time during the poll in which case his/her place may be taken by the relevant candidate, an election agent or another polling agent appointed to attend at the polling station [see para. 6.30 above];
- (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/her application for a ballot paper (but not afterwards):
 - (i) 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)?
 - (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/she 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 corrupt conduct by impersonation, inform 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]

6.35 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, or interfere with or attempt to interfere with any ballot boxes, ballot papers, the marked copy of the register of electors or other relevant election materials. In this regard, a polling agent should station within the designated area demarcated by red adhesive 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/her 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) display or wear any propaganda material, e.g. any badge, emblem, clothing or head-dress which:
 - (i) may promote or prejudice the election of a candidate or candidates at the election; or
 - (ii) makes direct reference to a body any member of which is standing as a candidate in the election or to a 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.

[S 48 of the EAC (EP) (DC) Reg]

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

- (a) a police officer if the polling station is not a dedicated polling station; or
- (b) an officer of the CSD or a law enforcement agency if the polling

station is a dedicated polling station; or

- (c) any other person authorised in writing by the RO or the PRO to remove him/her.

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

6.37 Polling staff, 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. [S 94(8) of the EAC (EP) (DC) Reg]

6.38 Electors with a disability may be permitted to vote in the polling station specifically designated for the constituency. Candidates or their agents can make inquiries with the RO for information.

6.39 Only the PRO, the Deputy PRO or an Assistant PRO may, in the presence of one of the Polling Officers as a witness, help an elector to mark a ballot paper if he/she claims that he/she is unable to read or write or incapacitated from casting his/her vote due to impaired eyesight or other physical cause [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/her polling agent in the polling station may suggest 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 elector's relative, friend and/or any other person are in no circumstances allowed to accompany the elector in the course of voting.

6.40 In each polling station, a number of **braille templates** are made available for the use of the elector with visual impairment, if he/she chooses, to facilitate him/her to mark his/her vote on the ballot paper [s 59(3) of the EAC (EP) (DC) Reg]. The basic features of the template are as follows:

- (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 elector with visual impairment by pressing the chop with a “✓” sign provided on the circle (through the holes of the templates) against the candidate’s number.

6.41 No person may canvass, display or wear 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/she use such system or device or conduct any activity (e.g. lion dance), for canvassing, so that the sound emitted by it can be heard in the NCZ. However, an officer of the CSD may use a sound amplifying system or device in the NCZ of a dedicated polling station situated in a prison for the performance of his/her duties on the polling day [s 43(13A) of the EAC (EP) (DC) Reg]. Also, a person must not stay or loiter in the NSZ without the express permission of the PRO [s 43 of the EAC (EP) (DC) Reg]. Any person who undertakes photographing, filming and video or audio recording within the polling station without the express permission of the PRO, the RO for the constituency, or a member of the EAC, commits an offence and will be liable to a fine at level 2 (up to \$5,000) and to imprisonment up to 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. Polling agents should also read Parts I to VI of Chapter 4 on all matters relating to polling and in particular, paras. 4.30 to 4.33 for activities that are prohibited, and the consequences of conducting such activities, in a polling station.

6.42 If a candidate or his/her election or polling agent has any complaint about whatever happens inside a polling station, he/she should follow the procedures laid down in Chapter 19 of these Guidelines.

PART VIII : COUNTING AGENTS

Appointment

6.43 A candidate may appoint **not more than 2 counting agents** for each counting station to attend at the count and for each ballot paper sorting station to observe the sorting of ballot papers received from dedicated polling stations [ss 2(3) and 66(2) of the EAC (EP) (DC) Reg].

6.44 The appointment must be in writing, in the specified form, signed by the candidate and delivered by hand, by electronic mail, by facsimile transmission or by post to the RO at least **7 days** before the polling day [ss 2(3), 66(4), (4A) and (6) of the EAC (EP) (DC) Reg]. Where a candidate appoints a counting agent after the above deadline, the notice of the appointment must be delivered by the candidate or the election agent **in person** to the PRO on the polling day during the period from the commencement of the poll to the conclusion of the count or the completion of the sorting of ballot paper as the case may be [ss 2(3) and 66(5) of the EAC (EP) (DC) Reg]. The appointment is only effective when the notice of such appointment is received by the RO or the PRO, as the case may be [ss 2(3) and 66(7) of the EAC (EP) (DC) Reg].

Revocation

6.45 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 in the specified form and deliver the signed notice by hand, by electronic mail, by facsimile transmission or by post to the RO (other than on the polling day) [ss 2(3), 66(9) and (9A) of the EAC (EP) (DC) Reg]. If the notice of revocation is given on the polling day, such notice must be delivered

by the candidate or his/her election agent **in person** to the PRO [ss 2(3) and 66(10) of the EAC (EP) (DC) Reg]. A revocation of an appointment of a counting agent is not effective until notice thereof is received by the RO or the PRO, as the case may be [ss 2(3) and 66(11) of the EAC (EP) (DC) Reg].

Role of Counting Agents

6.46 Counting agents are appointed to attend at:

- (a) the counting stations 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; or
- (b) the ballot paper sorting stations to observe the breaking of the seals on the ballot boxes received from dedicated polling stations and the sorting of the envelopes in the ballot boxes which contain ballot papers cast at the dedicated polling stations.

This arrangement ensures the transparency of the counting and sorting process and is conducive to openness and fairness. [See Parts VII and VIII of Chapter 4.]

Provisions which Counting Agents should be Aware of

6.47 Before the counting of votes or sorting of ballot papers commences, every person authorised to be present at a counting station or a ballot paper sorting 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]. This is to make sure that, subject to penalty of making a false declaration, all persons inside a counting station or a ballot paper sorting

station will observe the secrecy of the vote of the elector and, in particular, not to divulge which elector has voted for which candidate. Members of the public present within the area designated by the PRO will not be required to make a Declaration of Secrecy.

6.48 On attending the counting station or the ballot paper sorting station, a counting agent shall report to the relevant PRO and produce his/her identity card and the Declaration of Secrecy completed by him/her for inspection [ss 2(3) and 68(4) of the EAC (EP) (DC) Reg].

6.49 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 breaking of the seals on the ballot boxes and 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;
- (d) observe, where he/she wishes, the packing of ballot papers by the counting officers and the PRO at the conclusion of the count; and
- (e) observe the determination of questionable ballot papers by the PRO and make representations on behalf of the candidate concerned.

- 6.50 A counting agent in a ballot paper sorting station **MAY**:
- (a) observe the opening of the ballot boxes received from dedicated polling stations;
 - (b) inspect any papers other than the envelopes, which contain cast ballot papers, taken from the ballot boxes before they are disposed of;
 - (c) observe the counting of the envelopes, which contain cast ballot papers, in each ballot box;
 - (d) observe the sorting of the aforesaid envelopes according to each constituency; and
 - (e) observe the sealing of the receptacles containing the sorted envelopes before they are delivered to the PRO of the respective main counting stations of the relevant constituencies.
- 6.51 A counting agent **MUST NOT**:
- (a) touch, handle, separate or arrange ballot papers or envelopes; and
 - (b) misconduct himself/herself in or in the vicinity of a counting station or a ballot paper sorting station, or fail to obey any lawful order of the PRO; otherwise he/she commits an offence punishable with a fine and imprisonment and may be ordered by the PRO to leave the area. If he/she fails to leave immediately, he/she may be removed by a police officer or by any other person authorised in writing by the PRO to remove him/her. The

person so removed may not re-enter the counting station or the ballot paper sorting station during that day except with the permission of the PRO, as the case may be. [Ss 2(3) and 70 of the EAC (EP) (DC) Reg]

6.52 Counting agents should read Parts VII and VIII of Chapter 4 on all matters relating to sorting of ballot papers and counting of votes, and in particular, paras. 4.39 to 4.43 and paras. 4.47 to 4.50 for activities that are prohibited, and the consequences of conducting such activities, within the ballot paper sorting station and counting station.

CHAPTER 7**ELECTION ADVERTISEMENTS****PART I : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT**

- 7.1 An election advertisement, in relation to the DC election, means:
- (a) a publicly exhibited notice, leaflet, circular, bill, booklet, placard or poster; or
 - (b) a notice, leaflet, circular, bill, booklet, placard or poster 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 and s 2 of the EAC (EP) (DC) Reg].

IMPORTANT :

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

“Publish” means print, display, exhibit, distribute, post up, publicly announce or make publicly known by any other means, and includes continue to publish [s 105 of the EAC (EP) (DC) Reg].

Any person who authorises the publication of an election advertisement is taken to have published the election advertisement [s 105 of the EAC (EP) (DC) Reg].

7.2 **An 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;
- (b) audio/video cassette tapes, discs, diskettes, electronic messages, websites, facsimile transmissions, balloons, badges, emblems, carrier bags, head-dress and clothing; or
- (c) any thing or material published by any person or any organisation, including political organisation, professional or trade organisation, owners’ corporation, mutual aid committee (“MAC”), tenants’ association, owners’ committee, etc. (irrespective of whether or not the candidate concerned is its office-bearer or member) showing his/her 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 In addition, any publicity materials containing the name or photograph of a candidate issued or displayed during the election period (i.e. the period beginning on the first day of the nomination period for the election and ending on the day on which the polling for the election ends, or on the day on which a declaration is made in accordance with s 39 of the DCO) may most probably be regarded as election advertisements. Even though the content of the publicity materials is not, on the face of it, election-related, the candidates will still receive the promotional effect depending on circumstances. Examples include opinion survey questionnaires and exhibited publicity materials publicising functions like vegetarian meals, tours, offer of free legal or medical or other professional service, etc.

7.4 Under s 105(4) of the EAC (EP) (DC) Reg, a document published by a candidate **during** an election period that gives details of the work done by the candidate in the capacity of:

- (a) the CE; or
- (b) a member of the LegCo; or
- (c) a member of a DC; or
- (d) a member of the Heung Yee Kuk; or
- (e) the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee within the meaning of s 3(3)(a) of the Heung Yee Kuk Ordinance (Cap. 1097); or
- (f) a Rural Representative (“RR”).

is also regarded as an election advertisement.

7.5 For the avoidance of doubt, if a person who has publicly declared his/her intention to stand as a candidate at an election **before** the election period, publishes a document as mentioned in para. 7.4 above, the document 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 document referred to in this para. and para. 7.4 above must comply with all the requirements for an election advertisement and the expenditure so incurred be accounted for as election expenses.

7.6 If a person publishes a document before he/she submits his/her nomination form or publicly declares his/her intention to stand as a candidate that gives details of his/her work done by him/her in his/her capacity as set out in para. 7.4 above without promoting or prejudicing the election of a candidate or candidates at the election, the document will not be construed as an election advertisement. On such basis, the expenditure incurred in the publication of such a document would not be counted as their election expenses.

7.7 A candidate in an election may put up and display election advertisements in accordance with these guidelines and relevant law and regulations.

Election Advertisements Prejudicing the Election of a Candidate

7.8 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/her own election advertisements with a view to prejudicing B's candidature at the election, candidate A has to include the expenditure incurred in his/her 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, the third party must obtain candidate A's prior written consent for incurring the production expenses before he/she produces that election advertisement. Accordingly, 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 written consent of candidate A, he/she 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/her election expense agent may incur election expenses. It would only be fair to candidate A that the third party needs to obtain candidate A's written consent before publishing such election advertisement. 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.

7.9 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.

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

7.11 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/her. The maximum amount allowed for the DC election is specified in the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C), which is \$63,100 [s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C)] (from the 2015 DC ordinary election onwards, subject to the enactment of the relevant regulation).

7.12 A candidate must ensure the correctness and accuracy of all factual statements in his/her election advertisements. In particular, a candidate is reminded to comply with the requirements for obtaining prior written consent of support from other persons or organisations which are summarised in Chapter 17. [For criminal sanctions, see ss 25, 26 and 27 of the ECICO.]

PART II : PERIOD AND AREA OF DISPLAY

7.13 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)].

- 7.14 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/herself.

Government or Private Land/Property - Designated Spots

7.15 Allocation of designated spots for the use of **contested** candidates to display their election advertisements will be made 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 may designate spots on such allocated land in coordination with the said authorities. **Each candidate competing in the same constituency will be allocated the same number of designated spots.**

7.16 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 should reach the CEO not later than **8 weeks before the polling day.**

Other Land/Property : Private Spots

7.17 Candidates who wish to display their election advertisements on land/property other than government land/property and other than the designated spots must obtain the **prior written permission or authorisation** of the owner or occupier [s 104A(1) of the Public Health and Municipal Services Ordinance (Cap. 132)]. The obtaining of written permission or authorisation from the private owner or occupier is a matter for private arrangement between the candidate and the owner or occupier, and they are therefore called “**private spots**”. A copy of all the permissions or authorisations obtained by a candidate himself/herself must be provided by him/her for public inspection in the manner as set out in para. 7.45 below. [Please also see para. 7.22 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/her election advertisements forms part of his/her election expenses. If the private spot secured 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 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. For details on how the estimated value should be assessed, please refer to para. 15.24 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.

7.18 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.]

7.19 Candidates should note that public corporations (e.g. the MTR Corporation Limited) may have their own rules for display of election advertisements in properties under their management.

Allocation of Designated Spots

7.20 The RO for each constituency will allocate the designated spots to candidates of the constituency either in accordance with the mutual consent of the candidates or by the drawing of lots after the end of the nomination period, when the number of candidates contesting in the constituency will have been ascertained. **No designated spot will be provided to a candidate who is returned uncontested. No display of election advertisements will be allowed on any designated spots before the allocation.** [Also see the requirements in para. 7.26 and Part VI 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/her, together with a set of standardised map or maps to help identify the locations.

7.21 Use of the designated spots is subject to the compliance of the “Conditions for Display of Election Advertisements”, which will be provided to each candidate in the candidate’s folder and uploaded onto the EAC’s webpage for reference. In particular, 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. Because of this safety consideration, no election advertisement should be mounted on or over flyovers, bridges including external faces of footbridges, within 30 metres of traffic upstream of pedestrian crossings or road junctions, central dividers of roads, lamp posts, road signs and railings at corners of road junctions or at or near pedestrian crossings, bus stops and bus termini.

Written Permission or Authorisation

7.22 The RO will obtain prior approval from the relevant authorities under s 104A(1) of the Public Health and Municipal Services Ordinance (Cap. 132) and s 4 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) for candidates to display their election advertisements at designated spots. Immediately after the allocation of designated spots is made, a copy of the necessary written permission or authorisation under the relevant legislation will be provided to the candidates by the RO [see Part III below]. For any display on private premises, written permission or authorisation of the private owner or occupiers will have to be obtained by the candidates themselves [s 104A(1) of the Public Health and Municipal Services Ordinance (Cap. 132)]. A person displaying an election advertisement without the necessary written permission or authorisation commits an offence punishable by a fine up to \$10,000 and, where the offence is a continuing offence, by an additional daily penalty of

\$300 for each day during which it is proved to the satisfaction of the court that the offence has continued [s 104A of the Public Health and Municipal Services Ordinance (Cap. 132)]. The fines so incurred may be treated as election expenses. A copy of all the written permissions or authorisations obtained by a candidate himself/herself, as opposed to those provided to him/her by the RO, must be provided by him/her for public inspection in the manner as set out in para. 7.45 below. All candidates are also reminded that if there are any building works, signboard and/or minor works to be erected in private premises associated with the election advertisement, the Buildings Ordinance (Cap. 123) and the relevant subsidiary regulations should be complied with.

No Canvassing Zone

7.23 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], 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 candidates fail to do so, the EAC may issue a censure or reprimand. The RO will provide each 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.

PART III : ALLOCATION OF DESIGNATED SPOTS

7.24 A candidate of a constituency can obtain the following information from the RO for that constituency at the time of submitting the nomination form:

- (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 (if any) 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 end of the nomination period. 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 working days after the end of the nomination period. 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.

7.25 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/she can finalise the number of designated spots and their size for allocation. Therefore, candidates who wish to display election advertisements

at designated spots **must register their interest in writing by filing a completed form to the relevant RO within the nomination period. Only candidates of contested constituencies will be allocated with designated spots.**

7.26 The principle of allocation of designated spots is that candidates contesting in the same constituency should each be allocated the same number of designated spots and an equal area of space for mounting election advertisements. 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(1) of the Public Health and Municipal Services Ordinance (Cap. 132) and s 4 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28)] and after complying with the requirements set out under Part VI, the candidate may display election advertisements at such spots allocated to him/her.

7.27 A copy of all the permissions or authorisations obtained by a candidate himself/herself, as opposed to those provided to him/her by the RO, must be provided by him/her in the manner as set out in para. 7.45 below [s 106 of the EAC (EP) (DC) Reg].

7.28 Subject to para. 7.30, 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/her, he/she should inform the RO of that constituency in writing within 1 week after the allocation of those spots. At a contested election, upon request by any other candidate of the same constituency, the RO, if he/she considers appropriate, will re-allocate by agreement or by the drawing of lots the designated spots amongst all other

candidates who are eligible to be allocated with designated spots of the same constituency. In such a case, paras. 7.26 and 7.27 above apply.

NOTE :

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

7.29 Candidates will not in principle be allocated designated spots outside the constituencies in which they stand for election. This is especially the case for an ordinary election. In the case of a by-election, the RO may however include designated spots outside the constituency of the by-election to ensure that a reasonable number of designated spots can be made available for allocation to candidates contesting in the by-election. If, for any reason, a candidate wishes to be allocated designated spots outside his/her constituency, he/she should write to the CEO to state the reasons as soon as possible after his/her nomination form has been handed in. If such request is considered technically feasible, the CEO will proceed to identify suitable designated spots for inclusion in an allocation exercise but the CEO has the final decision as to whether or not to accede to the request.

7.30 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, for each one of the joined candidates, the total area of all the spaces actually occupied for advertising the candidate on all his/her election advertisements, including the joint election advertisements, mounted at the designated spots (as measured by the dimension of election advertisements) does not exceed the total area of the designated

spots allocated to the candidate. A joint election advertisement is also subject to the size restrictions specified in para. 7.34 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 proportional shares as their respective election expenses, to be calculated by the proportion of the size of the portion advertising each. In this connection, it is important to note that only a candidate himself/herself or his/her election expense agent may incur election expenses on his/her behalf [s 23 of the ECICO]. In order to comply with the requirement stipulated in s 27 of the ECICO, the candidates concerned also have to seek prior written consent of support from each other before publishing the joint election advertisement. [See also paras. 6.17 to 6.19 of Chapter 6 and para. 17.10 of Chapter 17]

PART IV : CONDITIONS AND LIMITATIONS ON DISPLAY

Name of the Constituency

7.31 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.

7.32 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

7.33 A candidate may re-use old publicity boards used at a previous election. However, any information in relation to the previous election, e.g. 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/herself open to allegations of false claim of support of persons who might not have consented to support him/her at the current election. The cost incurred in refurbishing as well as the estimated value of the old publicity boards will be counted towards the candidate's election expenses.

Size

7.34 As a general rule, election advertisements displayed at designated spots should not exceed 1 metre high and 2.5 metres long. Only one side of the election advertisement will be used to display promotional message. 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. [See also para. 7.21 above.] For the rules on display of joint advertisements, see para. 7.30 above.

Mounting and Installation

7.35 The mounting and display of election advertisements must not cause any risk to injuries or property. The election advertisements must be firmly and separately fastened.

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

7.37 Use “tie-on” posters (rather than “stick-on” posters or metallic wires) to facilitate subsequent removal.

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

7.39 Do not excavate or erect any structure on public pavements, e.g. nailing boards to the ground.

7.40 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

7.41 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. 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). The **cost of removal** will be construed as **election expenses** and the candidates must include all these costs in their returns and declarations of election expenses and election donations (thereafter referred to as “election return”) which must be submitted not later than 30 days after the publication in the Gazette of the election result, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law or within such extended period as may be allowed by the CFI under the relevant law [s 37 of the ECICO].

PART V : APPLICATION FOR TEMPORARY OCCUPATION OF GOVERNMENT LAND AT PUBLIC PLACE FOR HOLDING ELECTIONEERING ACTIVITIES

7.42 For temporary occupation of government land including public street, pavement, footbridge, public escalator systems and pedestrian tunnel for holding electioneering activities (such as setting up of a manned street counter and displaying of election advertisement which may include banners, roll up banners and vertical flying poster or bunting), candidates are required to submit applications with scheduled date, time, location/spot and brief description of the proposed set-up, to the relevant District Lands Office (“DLO”) of Lands Department for consideration. DLOs will only consider applications from validly nominated candidates. Approved occupation should not exceed 2m² in area and 2m in height. The respective DLO will consult the government departments concerned in considering the applications.

7.43 The Lands Department will issue detailed guidelines for candidates to apply for temporary occupation of government land at public

place for holding electioneering activities during election period. The deadlines for submission of applications will be specified in the guidelines. Applications should be submitted to the relevant DLO according to the designated deadlines. Applications for occupying government land on the polling day should be submitted to the relevant DLO by the subject deadline as specified in the guidelines. On the polling day, the approval will be deemed to have been revoked if and when the spot falls under the NCZ. The DLO will arrange drawing of lots to determine the allocation if necessary.

7.44 The DLOs will not consider applications for holding electioneering activities on government land outside the designated periods. No fee is required for the application above. Display of election advertisements is not permitted if and when the street counter is not manned.

PART VI : REQUIREMENTS RELATING TO PUBLICATION OF ELECTION ADVERTISEMENTS

Copies for Public Inspection

7.45 A candidate must make available a copy of each of his/her election advertisements, and the relevant information/documents (see **Appendix B**) including publication information, permission or consent in relation to the election advertisements for public inspection **within 1 working day** (i.e. any day other than a general holiday or Saturday) **after publication of the election advertisements** by the following means:

- (a) posting an electronic copy each of all his/her election advertisements and the relevant information/documents onto an

open platform⁹ maintained by the CEO or a person authorised by the CEO (“Central Platform”) in accordance with the procedures set out in **Appendix B**;

- (b) posting an electronic copy each of all his/her election advertisements and the relevant information/documents onto an open platform maintained by the candidate or a person authorised by the candidate (“Candidate’s Platform”) and provide the **electronic address** of the platform to the CEO **at least 3 working days before publication of the first election advertisement (For details, please see Appendix B)**;
- (c) if it is technically impracticable to comply with (a) or (b) above for election advertisements published through an open platform on the internet (such as when messages are sent through social networking or communication websites on the Internet like Twitter, Facebook, blogs, etc. and the exchanges are of an interactive and spontaneous nature), posting a hyperlink of such open platform and the information/documents relevant to the election advertisements onto the Candidate’s Platform or the Central Platform in accordance with the procedures set out in **Appendix B**;
- (d) providing 2 hard copies each of the election advertisements (or 2 identical postcard sized colour photographs of each election advertisement which cannot be practically or conveniently produced in specie) and 1 hardcopy each of the relevant information/documents to the RO; or

⁹ Open platform means a platform operated through the Internet to which the public has access without having to go through an access control process put in place for that platform.

- (e) providing 2 identical copies of a CD-ROM or DVD-ROM each containing the election advertisements and 1 hardcopy each of the relevant information/documents to the RO.

[S 106 of the EAC (EP) (DC) Reg]

Publication Details

7.46 A candidate should provide information related to the printing/publication of his/her election advertisements (i.e. the name and address of the printer, date of printing/publication and number of copies printed) when posting the election advertisements onto the Candidate's Platform or Central Platform or submit the information in a specified form to the RO **within 1 working day after publication of the election advertisements** (see **Appendix B**). A candidate must ensure the accuracy of all information required.

7.47 Where the information uploaded onto the Candidate's Platform or Central Platform or provided to the RO as set out in para. 7.46 above contains a mistake, the candidate should post such corrective information onto the Candidate's Platform or Central Platform or submit the corrective information in a specified form to the RO for public inspection. All such corrective information must be posted onto the Candidate's Platform or Central Platform or deposited with the relevant RO **2 working days after the polling day, the latest**. The information will be used as one of the basis for checking the candidate's election return for the removal of unauthorised or offending displays.

7.48 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as election advertisements, but the copies of the speech provided to the audience or media will be regarded as

printed election advertisements. Therefore, the candidates concerned are required to comply with all the requirements in this Chapter as applicable to election advertisements in the distribution of the copies and for public inspection.

7.49 In the circumstances where candidates contesting different constituencies use identical copies of an election advertisement, each candidate concerned should each post an electronic copy of the election advertisement and the relevant information/documents onto his/her Candidate's Platform or the Central Platform or deposit 2 copies of the election advertisement and 1 copy of the relevant information/documents with the RO(s) concerned.

7.50 Copies of the election advertisements and the relevant information/documents must be made available for public inspection till the end of the first anniversary from the date on which the election result is published [s 106(2) and (7) of the EAC (EP) (DC) Reg]. A candidate electing to comply with para. 7.45(b) above must ensure that the Candidate's Platform is maintained till the end of the first anniversary from the date on which the election result is published to facilitate public inspection of the election advertisements [s 106(2)(b) of the EAC (EP) (DC) Reg]. The CEO will also publicise the Central Platform and the electronic address of the Candidate's Platform to facilitate public inspection of the election advertisements. For a candidate electing to comply with para. 7.45(d) or (e) above, the RO concerned will make available a copy of the election advertisements and the relevant information/documents for public inspection at the RO's office as soon as practicable after copies of such election advertisements and information/documents have been furnished [s 106(7) of the EAC (EP) (DC) Reg].

PART VII : REQUIREMENTS RELATING TO PRINTED ELECTION MATERIALS

Printing Details

7.51 All printed election advertisements, with the exception of those printed in a registered local newspaper, should bear printing details in Chinese or English, which should state the name and address of the printer together with the date of printing and the number of copies printed. It applies to all materials reproduced by any method of multiplying copies (e.g. 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

[S 106(4) and (6) of the EAC (EP) (DC) Reg]

Election Advertisements Placed in Print Media

7.52 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.

Inadvertent Omission of Printing Details

7.53 A candidate who has inadvertently omitted the printing details from his/her printed 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. Having taken this remedial step, he/she will not be prosecuted for contravention of s 106(4) of the EAC (EP) (DC) Reg. The statutory declaration will be made available for public inspection till the end of the first anniversary from the date on which the election result is published [s 106(7) of the EAC (EP) (DC) Reg].

PART VIII : NON-COMPLIANCE AND CONSEQUENCES

Enforcement and Penalties

7.54 A candidate who fails to comply with the requirements set out in Parts VI and VII above commits an offence and is liable to a fine at level 2 (i.e. \$5,000) and to imprisonment for 6 months [s 106(9) of the EAC (EP) (DC) Reg].

7.55 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 the RO and should not take removal action themselves.

7.56 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/her as he/she thinks fit [s 108 of the EAC (EP) (DC) Reg]. The candidate or his/her election agent responsible may also be prosecuted and if convicted, may be liable to a fine or imprisonment [s 106(9) 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 election return. The seized articles may be kept as evidence and will be disposed of or returned upon application in accordance with the Public Health and Municipal Services Ordinance (Cap. 132) or the Housing Ordinance (Cap. 283), as the case may be, and the procedures of the relevant authority. [S 104C of the Public Health and Municipal Services Ordinance (Cap. 132) and s 24 of the Housing Ordinance (Cap. 283)]

7.57 Each candidate must observe and comply with the conditions agreed between him/her 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.

7.58 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/her liability for removal expenses and criminal liability, the EAC will not hesitate to publish one in an appropriate case.

Relief for Election Advertisements

7.59 A person, who publishes an election advertisement without complying with the requirements as set out in paras. 7.45, (except that related to the submission of permission/authorisation document under s 104A(1) of the Public Health and Municipal Services Ordinance (Cap. 132) and consent document under s 27 of the ECICO), 7.46, 7.47 and 7.51 above may apply to the CFI for an order allowing the publication of the above election advertisements to be excepted from the relevant requirements and relieving him/her from the penalties. The CFI may make such an order provided that the CFI 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 107 of the EAC (EP) (DC) Reg]

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

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

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

7.62 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.

7.63 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 106 of the EAC (EP) (DC) Reg; and
- (d) such advertisement can only be displayed at the spots with the relevant written permission or authorisation.

PART X : FREE POSTAGE FOR ELECTION ADVERTISEMENTS

Conditions for Free Postage

7.64 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/she is validly nominated [s 37 of the DCO]. However, before the publication of the notice of nomination in the Gazette, a candidate wishing to exercise his/her right to free postage may be required to furnish the Postmaster General with a security (full postage of the items posted) for the payment of postage in the event that his/her name is not subsequently shown in the notice of nomination [s 6(2)(a) of the Post Office Regulations (Cap. 98A)].

7.65 The purpose of the free postage is to enable the candidate to mail election advertisements to promote or advertise himself/herself 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.

- 7.66 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(5) 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.

Postal Requirements Stipulated by the Post Office

Make-up

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

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

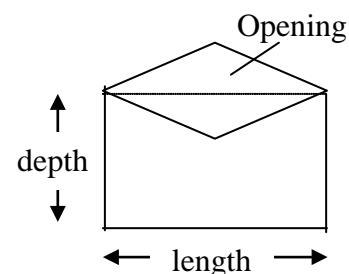
7.69 When a wrapper is used, it must extend over the full length of the item which it encloses. Envelopes must not be fastened with staples or with paper fasteners with sharp edges or points, but they may be closed by means of an adhesive flap or tape.

7.70 Envelopes, folders or lettergrammes having an opening large enough to entrap smaller letters are prohibited. **Unsealed mail item** contained in envelopes with ordinary tuck-in flaps may be used up to the following size limits (s 6.3 of the Post Office Guide):

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

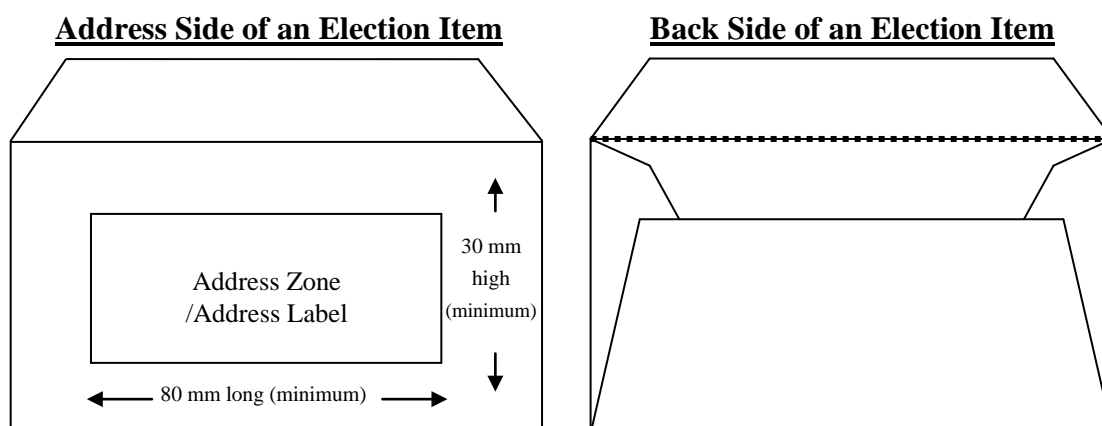
Not over 100 mm in depth - opening not over 140 mm in length

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



7.71 Folders (e.g. 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 C**.

7.72 **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 (unenvloped mail). The layout of election items is as follows:**



Addressing

7.73 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

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

7.75 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. 7.72 for better illustration.]

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

Posting Arrangements

7.77 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**.

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

7.79 Candidates should present 3 unsealed specimens of their election advertisements, together with a Notice of Posting of Election Mail in duplicate (the notice will be provided by the REO to a candidate upon his/her submission of nomination) to the manager(s) at the designated post offices for written approval of their election advertisement specimens. At least **1 clear working day's notice** (excluding Saturday) must be given to the respective manager(s) at the designated post office before the postings are made.

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

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

7.82 With each posting, the candidate or his/her representative must present a signed declaration (the declaration form will be given to a candidate by the REO upon his/her submission of nomination) **in duplicate** (the original to be kept by the Post Office and the duplicate copy duly signed by the Post Office official and kept by the candidate or his/her 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/her postage-free mail;
- (c) declaring that each packet contains materials relating to the candidature of the candidate only at the election; is identical to the unsealed specimens submitted by the candidate or his/her representative for inspection and retention by the Post Office; and
- (d) declaring that not more than 1 postage-free mail will be sent to any of the electors.

It is important to note that under s 102(5) 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/her or his/her representative is false in any particular.

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

7.84 Government reserves the right to charge a candidate postage where any of the requirements under s 102(5) of the EAC (EP) (DC) Reg is not met or the free postage arrangements are abused in any way. The charge counts towards the candidate's election expenses and must be included in his/her election return 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.

7.85 The postal requirements stated in the above guidelines (paras. 7.67 to 7.83) are quoted for general reference only. Candidates should comply with the latest requirements issued by the Post Office at the time of the election concerned.

Enquiries

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

Assistant Manager (Retail Business Support)
Room 1M05
General Post Office
2 Connaught Place
Central
Hong Kong

Telephone: 2921 2190 / 2921 2307

Fax: 2501 5930

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

7.87 Candidates may send election advertisements to registered electors in the custody of the CSD where the electors have provided the addresses of the penal institutions concerned as their corresponding addresses for the receipt of election advertisements. For security reasons, candidates should adhere to the guidelines laid down by CSD at **Appendix Q** when sending election advertisements to these electors.

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

CHAPTER 8

ELECTIONEERING ACTIVITIES AT PREMISES OR BUILDINGS WHERE ELECTORS RESIDE, WORK OR 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/her/their living/working places;
- (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 may 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 D** 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.

8.2 Candidates are reminded that different organisations/buildings 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, candidates should consult the relevant authorities or management in advance and if required, obtain prior permission from them for the conduct of electioneering activities in the places within their jurisdiction.

8.3 The general guidelines to be observed for conducting electioneering activities at the living and working places of electors, premises of organisations to which electors belong and buildings which electors frequent are set out in Part 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 E**.

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 organisations with some guidelines in handling applications for conducting electioneering activities in the premises under their control.

PART II : RIGHTS OF TENANTS AND OWNERS

Tenant's Right - His/Her 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.

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/she occupies, he/she **has the right to invite anyone to visit his/her unit for any lawful purpose**, including electioneering, but he/she 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/her 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, MACs

8.10 Sometimes there are tenants' associations or residents' associations or MACs 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. 8.15 to 8.22 below.

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.

8.14 Due to security reasons, arrangements will not be made to facilitate in-person canvassing activities in a prison or the premises of a law enforcement agency. A visitor, who visits a prison or the premises of a law enforcement agency for a business or official purpose, is not allowed to canvass for votes. This is to ensure that such a visitor will not have an advantage over other persons who cannot make the visit. A person, who canvasses for votes during the aforesaid visit, commits an offence punishable with a fine at level 2 (up to \$5,000) and imprisonment up to 3 months [s 88A of the EAC (EP) (DC) Reg].

Respect for the Decision and Privacy

8.15 After a candidate has been notified of the decision relating to electioneering activities, he/she should ensure that he/she and his/her followers comply with the decision and should not avail himself/herself of or obtain any unfair advantage over any other candidate.

8.16 If a decision to disallow electioneering in an organisation or a building has been made, the candidate or his/her followers should conduct no electioneering activity in such places. If the candidate concerned acts against the decision of the organisation or building in whatever manner, then he/she commits trespass and the organisation or building management can simply stop him/her 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.

8.17 A candidate and his/her 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.

8.18 **Privacy of the electors should be respected.** The guidance notes on personal data privacy in respect of electioneering activities at **Appendix F**, prepared by the Office of the Privacy Commissioner for Personal Data ("OPCPD"), serves as a general reference on compliance with the requirements of the PD (P) O in relation to electioneering activities that may involve the collection and use of personal data of an individual. According to the aforesaid guidance notes, the act of canvassing for votes is not in contravention of the PD (P) O provided that collection and handling of personal

data is in compliance with the data protection principles in schedule 1 to the PD (P) O. The aforesaid guidance notes also reminds candidates, inter alia, that:

- (a) individuals should be informed of the purpose of collection of their personal data when collecting the data directly from them for electioneering;
- (b) personal data should not be collected by deceptive means or by misrepresentation (e.g. collecting personal data in the pretext of opinion poll or assisting citizens to apply for government welfare); and
- (c) before using personal data from sources other than the extract from the Final Register provided by the REO for electioneering purpose, express consent from the data subjects should be obtained unless the original purpose of collection of the data is directly related to the electioneering purpose.

In addition, in order to facilitate better understanding of the privacy concerns of the electors and compliance with the requirements of the PD (P) O, the OPCPD has provided 4 complaint cases at **Appendix G** for illustration purpose. **Candidates and their election agents are strongly advised to strictly follow the guidance provided by the OPCPD in the aforesaid notes when conducting electioneering activities.**

8.19 Candidates are supplied by the REO with an **extract of the Final Register** which contains the name and residential address of electors of the relevant constituency and their email addresses (where the electors concerned have provided to REO for the purpose of receiving election advertisements from candidates), but **not their telephone numbers**. As a general rule, candidates should respect elector's privacy when using their contact

information for canvassing. In particular, candidates are reminded to use the “b.c.c.” function of email for mass distribution of election advertisements over email so that the email addresses of individual electors would not be inadvertently disclosed to other recipients. Candidates should note that 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 also consider canvassing messages sent to them through electronic devices annoying. Their disapproval may be reflected in their choice of candidates on the polling day. It is therefore unwise to telephone or send messages through electronic devices 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 find 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.

8.20 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. They should be mindful that some people working shift hours need to take rest during the daytime and the noise generated from the use of loudspeakers for electioneering activities may affect their daily life. 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.]

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

Identification of Canvassers

8.22 For security reasons and for prevention of abuse, the EAC advises that each candidate should provide some forms of identification to his/her 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/her canvasser who should produce his/her identification document together with his/her 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**

8.23 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.

8.24 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.

- (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.

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

Decision to be Made at a Tenants' Meeting

8.26 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.

8.27 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.

8.28 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.

8.29 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 H**].

Decision Must Provide Fair and Equal Treatment

8.30 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.

8.31 All types of building organisations be it an owners' corporation, owners' committee, MAC, 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.**

8.32 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.

Notification of Decision

8.33 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/her. A **form** of notification to the RO can be obtained from the REO. **Where no notification is received by the RO after the end of the nomination period, he/she may assume that there is no objection from the organisation regarding electioneering by candidates in the building.** Enquiries may be made with the DO 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 end of nomination period 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

8.34 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/her. 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;
- (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;

- (e) when one of the candidates applies for display, allow him/her to draw lots to obtain a portion of the spots still available at the time of his/her application; and
- (f) where 2 or more candidates wish to display their joint election advertisements, they should be allowed to do so but the joint election advertisements should occupy no more than the total of all the portions of the spots allocated to them by the restriction of size under (b) and the drawing of lots under (e).

8.35 If a building has any spaces in the common area that can be made available through any arrangement including rental for candidates to display election advertisements or conduct other electioneering activity, the building shall ensure that such spaces are **equally available** to all the candidates contesting the same constituency, and give reasonable notice to all such candidates accordingly. Providing 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.

8.36 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.

8.37 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.

8.38 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].

8.39 Any person who puts 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 he/she is a candidate or intend to stand as a candidate in the election. This is to prevent a prospective candidate to make use of such device to promote himself/herself. 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**

8.40 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 E**.

PART VI : SANCTION

8.41 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.

8.42 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 of Chapter 10]. During the election period, a candidate may attend any other meetings as part of his/her 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 particular candidates, they will not be regarded as election meetings.

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/her behalf. In that event, it will be for the candidate to assess the expenses which have been incurred for the said purposes. [S 2 of the ECICO and see Chapter 15.] The person who uses the meeting for promoting the candidate may also be liable for prosecution for his/her failure in obtaining the candidate's prior authorisation to appoint him/her as the candidate's election expense agent for incurring election expenses on behalf of the candidate [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, candidates should consult the relevant authorities concerned in advance and if required, obtain prior permission from them for the conduct of election meetings on the premises within their jurisdiction.

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 at private premises within their jurisdiction are set out in paras. 9.8 to 9.19 below for reference.

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 immediately preceding that day which is not a general holiday) of the week in the preceding week as the day on which the meeting is intended to be held** [s 8(1) of the Public Order Ordinance (Cap. 245)]. “Public place” means any place to which for the time being the public or any section of the public are entitled or permitted to have access, whether on payment or otherwise, and, in relation to any meeting, includes any place which is or will be, on the occasion and for the purposes of such meeting, a public place [s 2 of the Public Order Ordinance (Cap. 245)].

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 the Public Order Ordinance (Cap. 245)]

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

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 the Public Order Ordinance (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/she 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/she shall give notice of the prohibition to the person who gave the notification not later than 48 hours prior to the time of commencement of the meeting [s 9 of the Public Order Ordinance (Cap. 245)]. On the other hand, the Commissioner of Police may give notice to the organisers and impose conditions for the meeting to take place, and the organisers must comply with such conditions and comply forthwith with any direction given by a police officer for ensuring compliance with or the due performance of the conditions and the requirements referred to in para. 9.12 below [s 11 of the Public Order Ordinance (Cap. 245)].

9.12 At every public meeting:

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

[S 11(1) of the Public Order Ordinance (Cap. 245)]

9.13 A guidance note on safe conduct of election-related activities, issued by the Commissioner of Police, is at **Appendix H**. 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 where:

- (a) it consists of not more than 30 persons; or
- (b) it is held at a place other than a public highway, public thoroughfare or public park; or
- (c) it is of a nature or description specified by the Commissioner of Police by notice in Gazette.

[S 13(2) of the Public Order Ordinance (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 immediately 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:

- (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. [S 13A of the Public Order Ordinance (Cap. 245)]

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/she 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/she shall issue a notice of objection to the organiser not later than 48 hours before the commencement time of the procession, otherwise he/she 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 the Public Order Ordinance (Cap. 245)]

9.17 At every public procession:

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

[S 15(1) of the Public Order Ordinance (Cap. 245)]

PART III : ELECTION MEETINGS AT PRIVATE PREMISES

9.18 Any person who organises an election meeting at private premises should consult the owner, occupier, owners' corporation, building management or the MAC concerned, etc. in advance and if required, obtain prior permission from them. 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 E**.

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 : ELECTIONEERING 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 if required, obtain prior permission from the Housing Manager, owner, occupier, owners' corporation, building management or the MAC concerned, etc. 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.

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 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 E** for reference.

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 I** 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 of the radio and television stations licensed under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106)), 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/she has submitted a nomination form [s 2 of the ECICO].

PART II : ELECTIONEERING ON TV AND RADIO

10.2 Under the existing legislation, operators of television broadcasting services licensed under the Broadcasting Ordinance (Cap. 562) are not allowed to broadcast advertisements of a political nature, and operators of radio broadcasting services licensed under the Telecommunications Ordinance (Cap. 106) are not allowed to broadcast advertisements of a political nature except with the prior approval of the Communications Authority.

10.3 Operation of the broadcasters licensed under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) involves the use of public resources with broad coverage and substantial social influence. As such, they are required under the **“fair and equal treatment” principle** to handle any programmes relating to the election and candidates in compliance with the guidelines set out in this chapter and ensure that no favourable or unfavourable treatment will be given to any of the candidates.

10.4 For programmes the entire or part of the theme is on the election (e.g. for introducing the candidates or reporting/analysing the candidates’ election platforms and activities), the **“fair and equal treatment”** principle will apply. In accordance with the “fair and equal treatment” principle, broadcasters should ensure that each of the candidates contesting in the same constituency will be introduced and reported in the programme and no favourable or unfavourable treatment will be given to any of the candidates.

10.5 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 to the subject matters of the programmes. Under the “fair and equal treatment” principle, broadcasters should be careful to avoid giving unfair publicity to any candidates, and should be prepared to justify their choices of guests having regard to all the circumstances of the case, including the subject matter of the programmes, the candidates’ background and expertise, availability of other guests having similar background and expertise, etc.

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

10.7 To comply with the “fair and equal treatment” principle, when inviting a candidate to attend a programme the entire or part of the theme of

which is on the election, broadcasters should invite all candidates contesting in the same constituency and 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. The EAC also appeals to all candidates to attend these programmes as far as possible in order to enable electors and the public to be apprised of their election platforms. Some candidates may choose not to attend due to personal or other reasons. Under such circumstances, the relevant broadcaster, may continue with the production of the programme as planned without contravening the “fair and equal treatment” principle. The “fair and equal treatment” principle applies to the entire programme and, in particular, requires the broadcaster to give equal time to each of the candidates in that part of the programme to present his/her election platform. **A record should be kept by the broadcaster of the date, time and contents of the invitation and the notice until 3 months after the election.** To avoid any possible confusion, broadcasters should provide the audience of the programmes with clear information on the total number and the names of candidates in the same constituency. Furthermore, to ensure equal treatment to all candidates concerned, broadcasters should in particular take heed of the observations made by the Court in an election petition relating to the 2010 Legislative Council By-election as set out in **Appendix J** and, where appropriate, follow the arrangement set out therein when producing multi-episode programmes which are election-related.

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

10.9 The principles stated in paras. 10.4 to 10.8 above apply equally to political parties or political organisations of which the candidate is a member as they apply to the candidate himself/herself and to a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election.

10.10 The aforesaid principles do not apply to programmes which are entirely news reporting and are not related to the candidates' participation in the election. Nonetheless, the broadcaster is obliged to ensure fair treatment for all candidates and that no candidate is offered an unfair opportunity of publicity in all circumstances as required under paras. 10.4 and 10.5.

10.11 During the election period (i.e. 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 "fair and equal treatment" principle is 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 the entire or part of the theme of which 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.

10.12 The EAC appeals to broadcasters to treat all candidates competing in the same constituency fairly and equally when making comments 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. 7.9 of Chapter 7]. Moreover, if such comments are determined as election advertisements, the EAC will refer the matter to the Communications Authority for appropriate action. Where 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, as election is a solemn matter, to prevent any person from having a perception that favourable or unfavourable treatment is given to any candidate(s), broadcasters should ensure that in the expression of such ideas, no candidate, political parties or organisations to which the candidate belongs will be offered unfair extra publicity or advantage.

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

10.13 A presenter, including a guest presenter, or a regular contributor should not appear in any programme in his/her normal programme role after he/she has publicly declared his/her intention to stand for the election or during the election period if he/she becomes a candidate. This is to avoid unfair extra publicity for him/her 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.

10.14 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/her 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/her utmost endeavours to request the person(s) responsible not to broadcast his/her

appearance in any media after his/her declaration of intention to run for the election or during the election period if he/she becomes a candidate. The EAC appeals to the aforesaid responsible person(s) to accede to such a request as far as practicable in order to avoid giving unfair extra publicity to the person concerned.

Candidates Appearing in Commercial Advertisements

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

10.16 If, after the relevant advertisement has been made, the person then decides to run in the election, and it comes to his/her attention that the relevant advertisement will appear in TV/radio/cinema after his/her declaration of intention to stand for the election or after the nomination period has commenced if he/she becomes a candidate during that period, he/she should make his/her utmost endeavours to request the person(s) responsible not to broadcast the relevant advertisement after his/her declaration of intention to stand for the election or during the election period. The EAC appeals to the aforesaid responsible person(s) to accede to such a request as far as practicable in order to avoid giving unfair extra publicity to the person concerned.

PART III : ADVERTISING THROUGH THE PRINT MEDIA

10.17 A candidate may advertise in the print media to promote his/her 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. 7.52 of Chapter 7]. The expenses so incurred must be accounted for in the return and declaration of election expenses and donations. Election advertisements printed in a registered local newspaper would be exempted from the requirement of bearing printing details [see also para. 7.51 of Chapter 7 for details]. The EAC appeals to all publishers to provide **equal opportunity** to all candidates competing in the same constituency for placing advertisement in the print media.

10.18 The print media should ensure that, during the election period, any news reporting or reference made in its publications will not give unfair extra publicity to any particular candidate or particular candidates, or lead to a public perception that such reporting or reference is made for the publicity of a particular candidate or particular candidates. Therefore, publishers have the responsibility to handle carefully any news reporting or reference made in relation to the election or candidates, and ensure that no favourable or unfavourable treatment is given to any candidate in accordance with the “**fair and equal treatment**” principle. Nor should a candidate obtain from a publisher any unfair opportunity for publicity regarding election campaigning. Any publications (e.g. special newspaper editions or leaflets), whether for free or otherwise, which serve to promote or prejudice the election of a particular candidate or particular 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 may also 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.

10.19 A regular columnist should not contribute articles to the print media after he/she has publicly declared his/her intention to stand for the election or during the election period if he/she becomes a candidate. This is to avoid unfair extra publicity for them at the critical time. A person who has contracted to serve as columnist should make his/her utmost endeavours to request the person(s) responsible not to publish his/her commentaries in any media after his/her declaration of intention to run for the election or during the election period if he/she becomes a candidate. The EAC appeals to the aforesaid responsible person(s) to accede to such a request as far as practicable in order to avoid giving unfair extra publicity to the person concerned. A regular columnist may, of course, appear as candidate in election forums referred to in Part IV below.

10.20 As election is a solemn matter, 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 **Appendix K**. In addition, when reporting candidates competing in the same constituency in different pages or issues of a publication, members of the print media should provide readers with clear information on the total number and names of candidates competing in the same constituency in the reports. If there is evidence to substantiate that the relevant print media has provided/allowed favourable or unfavourable treatment to a particular candidate or particular candidates in the publication, such case will be regarded as a breach of the “fair and equal treatment” principle and the publication is very likely to have the effect of promoting or prejudicing the election of the candidate(s) concerned and thus become an election advertisement of the candidate(s). The relevant acts might therefore

be in breach of the statutory requirements on election advertisements and election expenses [see also Chapter 7 and Chapter 15] and both the print media and candidate(s) concerned may as a result be subject to criminal liability.

PART IV : ELECTION FORUMS

10.21 During the election period, broadcasters may organise election forums in their programmes. Broadcasters should ensure that the “fair and equal treatment” principle is applied to all candidates. If a candidate is invited to take part in the election forum, then all candidates of the same constituency should also be invited to be present at such forums so as to give the candidates an equal opportunity to attend the forum and present their election platforms. The “fair and equal treatment” principle applies to the production and conduct of the entire election forum and, in particular, requires the broadcaster to give each candidate in that part of the election forum equal time to present his/her election platform. Presenter(s) should treat each candidate in a courteous and fair manner at any time throughout the programme to avoid the impression that any particular candidate(s) is/are being treated favourably or unfavourably.

10.22 Other organisations, such as professional or trade organisations, academic institutions and schools, etc., may also organise election forums for civic education or other purposes. In line with the fair and equal treatment principle, the EAC appeals to all these organisers to invite all candidates 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.

10.23 The EAC appeals to all candidates to use their best endeavours to take part in election forums in order to enable electors and the public to be

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

PART V : SANCTION

10.24 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. Moreover, the programme, news reporting or article concerned is very likely to have the effect of promoting or prejudicing the election of a particular candidate or particular candidates and thus become an election advertisement of the candidate(s). The relevant acts might therefore be in breach of the statutory requirements on election advertisements and election expenses [see also Chapter 7 and Chapter 15] and both the media and candidate(s) concerned may as a result be subject to criminal liability. The EAC will refer any cases involving possible breach of the legislation to the relevant law enforcement agencies for follow-up actions. Therefore, the EAC appeals to broadcasters, publishers, forum organisers and candidates to strictly comply with the guidelines set out in this chapter and avoid any conduct which will cause public concern about the fairness of the election.

10.25 The candidates as mentioned in paras. 10.13 to 10.16 and 10.19 above should make their best endeavours as advised thereof to avoid taking unfair extra publicity. If the EAC receives a complaint about a candidate

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

CHAPTER 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 (Cap. 228). Candidates are therefore **not** required to submit any application for a permit. However, this does not exempt candidates from complying with the requirements of the law and the conditions imposed by the Commissioner of Police when any amplification device is used in an election meeting or

procession. An amplification device includes a loudspeaker and any device which can emit or amplify sound. [Please refer to Chapter 9 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 (Cap. 400), making a nuisance by using a loudspeaker, megaphone, or other device or instrument for magnifying sound from which the noise emitted is a source of annoyance either at any domestic premises or public place at any time of the day is an offence, and this includes use of loudspeakers attached to vehicles. Candidates should be mindful that some people working shift hours need to take rest during the daytime and the noise generated from the use of loudspeakers for electioneering activities may affect their daily life. 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/her. 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.

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

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

- (a) (i) for taxi, no election advertisements may be displayed on all windows;
- (ii) for public light bus, no election advertisements may be displayed:
 - (1) on all windows except on the interior surface of:
 - the window on the left of the first row of single-seat; and
 - the window on the right of the second row of double-seat.

The size of an election advertisement to be displayed in the abovesaid window shall not exceed an A4-size paper, i.e. 210 mm in width and 297 mm in length;
 - (2) at areas between the windows and the exterior roof panel; and
 - (3) on the exterior roof panel (except sticker-type election advertisements).

- (b) no luminous or reflecting material may be used for any election advertisements; and
- (c) no election advertisements may obstruct any statutory lighting/label/markings required to be shown on the vehicle body as specified by the Commissioner for Transport or stipulated in the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation.

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

11.8 Candidates and their supporters are reminded that they should observe the statutory requirements of the Road Traffic (Safety Equipment) Regulations (Cap. 374F) and Road Traffic (Traffic Control) Regulations (Cap. 374G) under the Road Traffic Ordinance (Cap. 374), including those relating to seating requirement, the wearing of seat belts and the permission to carry passengers in a vehicle. Standing up in moving vehicles would be **illegal** for both the drivers and standees except on trams, single-decked public service buses and the lower deck of double-decked buses. Passengers can also stand up on a vehicle used as a float if approved by the Commissioner for Transport. Candidates should apply to the Licensing Office of the TD for the exemption of the vehicle from carriage of standing passengers.

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 L**.

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.]

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 candidates.

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/her position to exert undue influence on youths of school age under his/her charge to recruit them for electioneering activities. If the EAC comes to know that a person has abused his/her position by involving youths of school age under his/her charge in electioneering activities, it may make a reprimand or censure against the person. For use of force or duress on a person's voting preference, see s 13 of the ECICO.

PART II : SCHOOL PUPILS

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 others. Therefore, pre-primary or primary school pupils should not take 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 in distribution of election advertisements of any candidate to the parents of pre-primary, primary or secondary school 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 subjected 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/her 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.

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 For each polling station which is used for polling for a constituency, the RO for that constituency must determine an area outside the polling station to be a NCZ. In so doing, he/she will take into account the characteristics and special conditions of the polling station. He/She 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].

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 specified for the purpose by the CEO [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/her own constituency and, where appropriate, 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/her 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 by hand, by post, by electronic mail or by facsimile transmission to the candidates or to the election agents or to the polling agents of the candidates [ss 43(11) and 98 of the EAC (EP) (DC) Reg].

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]. The notice of variation of a NCZ or NSZ on the polling day may be given orally if sending it by hand, by post, by electronic mail or by facsimile transmission is not practicable or is not suitable in the circumstances [s 98(3) of the EAC (EP) (DC) Reg]. However, a notice of variation need 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/her 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 or wearing of propaganda material, e.g. 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 sound amplifying system or device is used (except for the performance of duties by officers of the CSD on the polling day at the dedicated polling stations situated in prisons) [s 43(13A), (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 D**.

13.11 On the polling day, the PRO will use his/her 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/her 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 authorised by the RO [s 108 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].

13.12 The use of loudspeakers or loud-hailers will not be permitted within the NCZ, nor will any such device or any activity (e.g. lion dance) be permitted in the vicinity so that the sound emitted can be heard within the NCZ. However, an officer of the CSD may on the polling day use a sound amplifying system or device for the performance of his/her duties in the NCZ of a dedicated polling station situated in a prison [s 43(13)(b), (c), (ca) and (13A) 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.

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.

13.15 Any person who misconducts himself/herself 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 [ss 44(2) and 48(4) of the EAC (EP) (DC) Reg]. If he/she fails to leave immediately, he/she may be removed from the relevant zone by a police officer, an officer of the CSD or any law enforcement agency, 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 on that day except with the permission of the RO or the PRO [s 44(4) of the EAC (EP) (DC) Reg].

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/her 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 punishable by a fine at level 2 (up to \$5,000) and imprisonment up to 3 months [s 48(7) of the EAC (EP) (DC) Reg]. Any attempt to obtain information as described in para. 13.14 above 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.

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 and, at the same time, to strike a good balance between the need to maintain order outside polling stations and upholding the freedom of expression, freedom of the press and academic freedom.

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 electors' behaviour will not be unduly affected.**

PART II : SECRECY OF THE VOTE

14.3 **The ballot is secret.** It is an elector's right to keep his/her vote secret. An elector does not have to disclose his/her choice of candidate if he/she 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.

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

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.

PART III : CONDUCT OF EXIT POLLS

14.6 Any person or organisation may apply to the REO to conduct exit polls in respect of any constituency. However, to forestall public perception of unfairness, approval would normally not be granted in the following circumstances:

- (a) the applicant has publicly expressed support for any candidate(s) contesting in the constituency covered by the exit poll(s);
- (b) the applicant organisation has member(s) contesting in the constituency covered by the exit poll(s);

- (c) the person(s) responsible for the exit poll(s) or interviewers nominated for the poll(s) are currently members of the organisation(s) to which any of the candidates contesting in the constituency covered by the exit poll(s) belong, or which have publicly expressed support for any candidate(s) contesting in the constituency covered by the exit poll(s).

14.7 For security reasons, no exit poll may be conducted for dedicated polling stations. For the purpose of better control of the conduct of exit poll, persons or organisations intending to conduct exit polls must provide the following to the REO at **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/her telephone number(s) for contact, especially during the polling hours; and
- (c) a list showing the number of persons who will be deployed 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 deployed.

14.8 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 its terms and the guidelines governing the conduct of exit poll. If a person or an organisation who/which fails to comply with the terms of the undertaking and the guidelines set out in this chapter, the approval to conduct exit poll on the

polling day or during the polling hours may be revoked. The EAC may also make a reprimand or censure in a public statement which will include the name of the person or organisation who/which fails to comply with the terms of the undertaking/guidelines. A notice showing the persons or organisations allowed to conduct exit poll together with their contact telephone numbers will be released to the public prior to the polling day for the reference of the public and candidates. Such a notice will also be displayed at the respective polling stations.

14.9 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 sound amplifying device is used. Interviewers must therefore be extremely careful in conducting exit poll so as not to give rise to any suspicion that they are canvassing electors inside the NCZ. Interviewers, like any other person, are not allowed to stay or loiter in the areas designated as the NSZ (within the NCZ but immediately outside the entrance/exit to each polling station) [s 43 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.

PART IV : IDENTIFICATION OF INTERVIEWERS

14.10 There had been occasions where exit poll interviewers were mistaken for government officials or polling staff. Such interviewers are therefore required to display prominently an identification device showing the identity of the organisation/person conducting exit poll so that electors will not be misled into thinking that they are appointed by the Government. In addition, the interviewers are required to make known to the electors that any response is entirely voluntary. Arrangements should be made for electors to be aware of the name of the organisation/person conducting exit poll at the start of the interview and the fact that the exit poll is not commissioned by the Government.

14.11 After receipt of the information referred to in para. 14.7 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. 14.7(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.

PART V : SANCTION

14.12 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.

CHAPTER 15

ELECTION EXPENSES AND ELECTION 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 or on behalf of a candidate for the purpose of promoting the election of the candidate, 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 end of the nomination period for the election, regardless of whether he/she has submitted his/her nomination form, or after submission of the nomination form he/she has withdrawn his/her nomination, or his/her 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/her emblem registered should not, by that act alone, be treated as having publicly declared an intention to stand for election.

15.3 When considering what expenses would amount to “election expenses” under the law in different circumstances, it is considered both necessary and useful to take heed of the observations made by the CFA in a case relating to the 2008 LegCo Election, as summarised in **Appendix M**.

15.4 A candidate may receive election **donations** for the purpose of meeting the costs of his/her election expenses. Election donation, in relation to a candidate at an election, means any of the following donations:

- (a) any money given to or in respect of the candidate or candidates for the purpose of meeting or contributing towards meeting the election expenses; or
- (b) any goods given to or in respect of him/her for the purpose of promoting his/her 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/her for the purpose of promoting his/her 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.]

15.5 It is a question of fact in each case whether expenses incurred will or will not be counted as election expenses. For as long as an expense is incurred for the purpose either of:

- (a) promoting the election of a candidate; or
- (b) 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.

15.6 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. If an expense is incurred for more than one purpose, there is a need for apportionment of expenses between election-related purposes and any other purposes. The candidate concerned should include relevant particulars in his/her return and declaration of election expenses and election donations (hereafter referred to as “election return”). As a general principle, time and usage are relevant factors for consideration. The candidate may seek professional advice on apportionment of expenses as necessary. Any fees incurred for such professional advice will not be regarded as his/her election expenses.

15.7 Use of staff and other resources which are available to a candidate in his/her official capacity or at work for the purpose of promoting his/her candidature in the election should also be counted as election expenses. A list of common expenditure items which may be counted towards election expenses is at **Appendix N**. The list is only illustrative and should not be considered as having precedence over the legislation. 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 regarded as election expenses.

15.8 A candidate should not use any public resources for the purpose of promoting his/her election or prejudicing the election of another candidate or other candidates at the election.

PART II : WHO MAY INCUR ELECTION EXPENSES AND THEIR LIMIT

Maximum Amount of Election Expenses

15.9 The maximum amount of election expenses for the DC election is prescribed by the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C) 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.

15.10 The maximum amount of election expenses for the DC election is \$63,100. [S 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C)] (from the 2015 DC ordinary election onwards, subject to the enactment of the relevant regulation).

15.11 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

15.12 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(1) of the ECICO]. The authorisation should follow the procedures specified in Part VI of Chapter 6.

15.13 Before incurring expenses in carrying out any **negative campaigning (i.e. canvassing against other candidates)** 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.

15.14 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.

15.15 A candidate will be responsible for the overall amount of his/her election expenses. In the event the total amount incurred by him/her and/or on his/her behalf exceeds the limit prescribed, he/she will be liable for contravening the law, unless he/she can prove that the excess was incurred without his/her consent, or beyond his/her authorisation, and not due to any negligence on his/her part. The election expense agent, on the other hand, should not incur an amount of election expenses which exceed the limit authorised by the candidate lest the agent will contravene s 23(4) of the ECICO. [Ss 23 and 24 of the ECICO]

PART III : ELECTION DONATIONS

General Provisions

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

15.17 Election 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].

15.18 Election 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 election 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.

15.19 Any unspent or unused election donations must be given to charitable institution(s) or trust(s) of a public character chosen by the candidate. Any amount of election donations that exceeds the upper limit of election expenses must also be given to such charitable institution(s) or trust(s). It must be done before the time when the election return is lodged in accordance with s 37 of the ECICO. [S 19 of the ECICO]

15.20 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 election donation. The only exception is voluntary services obtained that are not treated as election donations (but any goods given incidental to the provision of a voluntary service will however be counted as an election donation). These points are elaborated in paras. 15.23 to 15.25 below.

15.21 On receiving an election 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 when he/she submits the 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 meeting election expenses and must be given to a charitable institution or trust of a public character chosen by the candidate(s). [S 19(1) and (2) of the ECICO]

15.22 Any person or organisation (including a political party) acting as an agent to solicit, receive or collect election donations for a candidate or some candidates should also comply with all the requirements under the ECICO as if the election donations are received by the candidate(s) direct. To avoid possible confusion to donors/members of the public, the agent is advised to note the points and adopt the good practice as suggested in **Appendix O**.

Election Donations in Kind

15.23 Election 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 an election donation and must be declared and included as such and correspondingly as an election expense in the form of election 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 an election donation and election expense in the form of election return. For premises provided free of charge to a candidate for his/her election campaign, a reasonable amount should be assessed as the deemed rental for the premises, declared and included as an election donation and election expense in the form of election return.

15.24 For services or goods obtained free of charge, a candidate must include in the election 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/her 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.

15.25 **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/her own time for the purpose of promoting the election of a candidate, or of prejudicing the election of another candidate or other candidates [s 2 of the ECICO]. Otherwise, the service provided

should be treated as an election donation and counted towards election expenses at a fair estimated value.

PART IV : RETURN AND DECLARATION OF ELECTION EXPENSES AND ELECTION DONATIONS

15.26 A candidate must keep an accurate account of all election expenses incurred and election donations (whether in cash or in kind) received, and submit to **the CEO an election return in a specified form 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 or within such extended period as may be allowed by the CFI under the relevant law** [s 37 of the ECICO].

15.27 The election return must cover all the election expenses incurred by the candidate or the person(s) so authorised by him/her, services or goods obtained free of charge or at a discount and any outstanding claims. It must be submitted with supporting invoices and receipts issued by recipients of the payments for all payments each of \$100 and above. The copies of receipts issued by the candidate for any election 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 election donations should also be attached. A declaration verifying the contents of the election return should also be submitted together with the election return. [S 37 of the ECICO]

15.28 At the time when a candidate submits his/her nomination form, he/she will be given:

- (a) the specified form for making election return mentioned in para. 15.26 above, together with a standard form of receipt for election donations mentioned in para. 15.21 above;
- (b) the specified form for advance return of election donations (see paras. 15.35 to 15.37 below); and
- (c) a specimen of the specified form with examples showing how the election return can be completed.

A candidate should read the explanatory notes attached to the election return carefully before completing it, and make reference to the specimen whenever necessary.

Statutory Relief Mechanism for Errors and False Statements

15.29 If a candidate is unable or fails to send to the CEO the election return before the end of the permitted period due to his/her own illness or absence from Hong Kong or the death, illness, absence from Hong Kong or misconduct of any agent or employee of the candidate, or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any reasonable cause, and not due to the candidate's bad faith, he/she can make an application to the CFI for an order allowing him/her to send in the election return within a further period as specified by the CFI [s 40(1) and (2) of the ECICO]. The legal costs so incurred will not be regarded as his/her election expenses.

15.30 If a candidate makes an error or a false statement in the election return due to misconduct of any agent or employee of the candidate, or by reason of inadvertence or accidental miscalculation by the candidate or any

other person, or any reasonable cause, and not due to the candidate's bad faith, he/she may apply to the CFI for an order enabling him/her to correct any error or false statement in the election return or in any document accompanying the election return [s 40(3) and (4) of the ECICO]. The legal costs so incurred will not be regarded as his/her election expenses.

15.31 Notwithstanding the provision set out in para. 15.30 above, if a candidate makes any error(s) and/or false statement(s) in the election return, the nature of which is either a failure to set out in the election return any election expense of the candidate at the election or any election donation received by or on behalf of the candidate in connection with the election, or incorrectness in the amount of any election expense or any election donation, **and** the aggregate value of the error(s) and/or false statement(s) does **not** exceed \$500, he/she may, subject to the conditions set out in para. 15.32 below, seek to have the error(s) and/or false statement(s) rectified in accordance with a simplified relief arrangement for minor errors or false statements as provided under s 37A of the ECICO. Under the arrangement, the candidate may lodge with the CEO a revised election return which will be a copy of the original election return earlier submitted to the CEO marked with the necessary revision to have the error(s) or false statement(s) in question corrected. An error or false statement made in an election return also includes an error or false statement in any document accompanying the election return; or a failure to send any document required by s 37(2)(b) of the ECICO in relation to the election return [s 37A(12) of the ECICO].

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

- (a) lodged within 30 days after the date on which the candidate receives a notice from the CEO relating to the error(s) and/or false statement(s) in the election return;

- (b) if applicable, accompanied by all relevant documents as required under s 37(2)(b) of the ECICO (e.g. invoice and/or receipt) and/or an explanation; and
- (c) accompanied by a declaration to be made by the candidate in a specified form verifying the contents of the revised election return.

In case a candidate has identified any error(s) and/or false statement(s), of which the aggregate value does not exceed \$500, in his/her election return on his/her own, he/she should inform the CEO in writing providing all the necessary details and requesting permission for rectification under the simplified relief mechanism. When satisfied that the request is prima facie allowable under the relief mechanism, the CEO will issue a notice relating to the error(s) or false statement(s) to the candidate for correction in accordance with the mechanism. A copy of the revised election return made under the relief mechanism cannot be withdrawn or further amended after it has been lodged with the CEO. If the candidate fails to correct the error(s) or false statement(s) within the specified period, the election return will be subject to the normal checking and investigation under the ECICO.

15.33 The relief mechanism will not be applicable if, after including the cumulative amount of errors or false statements, the aggregate amount of election expenses incurred at or in connection with the election, exceeds the maximum amount of election expenses prescribed for a candidate, which is an illegal conduct under s 24 of the ECICO. If the ICAC has received complaints or intelligence indicating that a candidate may have made a statement that he/she knows or ought to know is materially false or misleading which amounts to corrupt conduct under s 20 of the ECICO, the ICAC will conduct investigation into this case despite the relief arrangement set out

above. The rectifications of the election return under the relief arrangement will not exempt the candidate from being investigated or subsequently prosecuted under the ECICO in such circumstances. Moreover, this relief mechanism will not relieve the candidate from liability under other provisions in the ECICO if the election return concerned has contravened any such provisions [s 37A of the ECICO].

15.34 When the candidate finds himself/herself in any of the situations set out in paras. 15.29 and 15.30 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.31, it would be wise of him/her to make the application to the CFI and inform the REO as soon as possible. The legal costs so incurred will not be regarded as his/her election expenses. It is a corrupt conduct if a candidate who, in an election return lodged under s 37 of the ECICO, or a copy of an election return lodged under s 37A of the ECICO, makes a statement that he/she knows or ought to know is materially false or misleading [s 20 of the ECICO].

PART V : ADVANCE RETURN OF ELECTION DONATIONS

15.35 Any candidate who is an incumbent public servant under the POBO, e.g. a serving member of the LegCo or a DC, etc., may give advance disclosure to the CEO of any election donations received. This may enable such an incumbent member to avoid any inadvertent contravention of the provisions of the POBO relating to the acceptance of “advantages”. The donations so disclosed must also be incorporated in the election return 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 or within such extended period as may be allowed by the CFI under the relevant law [s 37 of the ECICO]. The general provisions regarding election donations in Part III must be observed.

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

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

PART VI : FINANCIAL ASSISTANCE

15.38 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 lowest of the following:
 - (i) the amount obtained by multiplying the total number of valid votes cast for the candidate by the specified rate at \$14 per vote (from the 2015 DC ordinary election onwards, subject to the enactment of the relevant ordinance);
 - (ii) 50% of the election expenses limit; or

- (iii) the declared election expenses of the candidate.
- (b) in respect of a candidate in an uncontested constituency, the amount payable is the lowest of the following:
- (i) the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate at \$14 per registered elector (from the 2015 DC ordinary election onwards, subject to the enactment of the relevant ordinance);
 - (ii) 50% of the election expenses limit; or
 - (iii) the declared election expenses of the candidate.

[S 60D and Schedule 7 of the DCO]

The amount of election donations received by a candidate will not affect the calculation of 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/her net election expenses¹⁰. Any such 'surplus' financial assistance may be used by the candidate for his/her future political or community work, or it may be expended generally as a token recognition of his/her efforts in election. 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.

¹⁰ This may occur if the candidate secures election donations which exceed 50% of his/her total election expenses.

15.39 In the claim for financial assistance, a candidate should deduct the estimated value of the reused publicity materials (the expenses of which had been the subject of claims for financial assistance in a previous election) from calculation of the amount of financial assistance to be made payable to the candidate.

Making Claims and their Submissions

Requirements to be complied with when making claims

15.40 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 a candidate submits his/her nomination). It shall be signed by the candidate. The claim form shall be accompanied by an election return made under s 37 of the ECICO.

15.41 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]

Submission of claims

15.42 The claim form, together with the accompanying documents, shall be submitted in person at the office of the CEO during ordinary business hours by the candidate, or his/her agent, 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 4 of the EAC (FA) (APP) Reg].

Verification of Claims

Verification by the CEO

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

Requirement for further information

15.44 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 from the date of receipt of the written request or within the period or extended period provided for in s 37 of the ECICO for lodging an election return, whichever is the 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]

Withdrawal of Claims

15.45 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 during the ordinary business hours by the candidate or his/her agent. The notice of withdrawal must be in a specified form and signed by the candidate. [S 7 of the EAC (FA) (APP) Reg]

Payment of Claim after Verification

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

15.46 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]

Recovery of Payment

15.47 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 within 3 months after the date of the notice. 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].

PART VII : ENFORCEMENT AND PENALTY

Enforcement

15.48 The election 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 election 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]

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

15.50 The REO will check all election returns. Irregularities detected will be reported to the relevant authorities for investigation.

Penalties

15.51 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/she incurs election expenses in excess of the amount authorised. Such an illegal conduct is punishable by a fine up to \$200,000 and imprisonment up to 3 years. [Ss 22, 23 and 24 of the ECICO]

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

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

15.54 A candidate who knowingly makes a materially false or misleading statement in his/her election return lodged under s 37 of the ECICO or a copy of an election return lodged under s 37A of the ECICO, commits a corrupt conduct punishable by a fine up to \$500,000 and imprisonment up to 7 years. [Ss 6 and 20 of the ECICO]

15.55 A candidate who, having been elected to a DC, acts in the office or participates in the affairs of the DC, without filing the election return before the end of the permitted period commits an offence, punishable by a fine of \$5,000 for each day on which a candidate acts in the office or participates in the affairs of the DC as a member without having complied with s 37 of the ECICO. [S 39 of the ECICO]

15.56 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. 15.51 to 15.55 above, be disqualified:

- (a) for 5 years from being nominated as a candidate for the election of, or from being elected as, the CE, a member of the LegCo or DC, or a RR from the date of conviction [ss 14 and 20 of the Chief Executive Election Ordinance (Cap. 569) (“CEEEO”), s 39 of the LCO, s 21 of the DCO and s 23 of the Rural Representative Election Ordinance (Cap. 576) (“RREO”)]; and
- (b) for 3 years from being nominated as a candidate for the Election Committee (“EC”) Subsector Elections, or from being nominated or elected as, an EC member from the date of conviction [ss 9 and 18 of the Schedule to the CEEEO].

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 will prepare an Information Booklet on “Clean District Council Election” for distribution to candidates. The content of the Information Booklet will also be uploaded onto the website of the ICAC (www.icac.org.hk/elections).

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

In addition to these penalties, a convicted person will be disqualified from being nominated as a candidate in future elections. For details, please see para. 16.29 below.

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

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/her candidature or for not using his/her best endeavours to promote his/her 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/her best endeavours to promote his/her election;
- (c) solicits or accepts an advantage from another person as an inducement or reward to affect the candidature of himself/herself or for not using his/her best endeavours to promote his/her 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/her best endeavours to promote his/her election.

[S 7 of the ECICO]

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

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

PART III : ILLEGAL CONDUCT RELATING TO ELECTIONEERING

False Statement that a Person is or is not a Candidate

16.7 A person must not publish any statement that he/she is no longer a candidate at an election if he/she 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/she 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/herself or another candidate or other candidates for the purpose of promoting the election of himself/herself 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 or candidates, e.g. a person who makes a materially false or misleading statement of fact about a candidate, thereby calling into question the integrity and honesty of that candidate, may contravene the above provision. [S 26 of the ECICO] Any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication.

Claim of Support

[Please also see Chapter 17.]

16.9 A candidate engages in illegal conduct if he/she fails to 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/her election advertisements as an indication of support from that person or organisation unless he/she has neither requested or directed nor authorised any person to request or direct the inclusion of the aforesaid name, logo or pictorial representation in his/her election advertisements. Also, should any content of an election advertisement (where either the candidate has

obtained the prior written consent mentioned above or the candidate has neither requested or directed nor authorised any person to request or direct the inclusion of the name, logo or pictorial representation in his/her election advertisements) be provided by a person or an organisation, the candidate engages in illegal conduct if he/she modifies, or authorises any person to modify, the name, logo, or pictorial representation or the content unless **before** the modification, the person or organisation concerned **consented in writing** to the name, logo, pictorial representation or content as modified. Oral consent is **not** sufficient. [S 27(1), (1A) and (1B) of the ECICO] The EAC provides a sample consent form for this purpose. A candidate is required to post a copy of the consent form relevant to the election advertisement concerned onto the Candidate's Platform or Central Platform or deposit a copy of the consent form with the relevant RO in the manner as set out in para. 7.45 of Chapter 7 [s 106 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/she 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].

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. In such case, the candidate is required to notify the relevant RO in writing of any revocation of consent or post a notice or copy of the revocation onto the Candidate's Platform or the Central Platform in the manner as set out in para. 7.45 of Chapter 7.

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/her election agent, an elector of the constituency concerned and the person or body to whom or which the false information is related.

PART IV : CORRUPT CONDUCT RELATING TO ELECTIONEERING AND VOTING

Bribery

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

Treating

16.13 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]

16.14 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 for details.]

16.15 If a person or an organisation hosts a banquet for a non-election-related purpose but, during the occasion, calls on the guests to vote for a particular candidate and if the candidate is present, the candidate concerned should immediately stop any promotion of his/her election and disown or dissociate with whatever has been said or done to promote his/her candidature. Otherwise, the occasion will be regarded as an election meeting held to promote his/her candidature and expenses incurred will have to be counted towards his/her election expenses and the host who uses the meeting for promoting the candidate may also be liable for prosecution for his/her failure in obtaining the candidate's prior authorisation to appoint him/her as the candidate's election expense agent for incurring election expense on behalf of the candidate. [See para. 9.2 above and s 23 of the ECICO]

16.16 If a banquet is used (by a candidate or another person) for affecting a person's voting preference, it is an offence under s 12 of the ECICO.

Force and Duress

16.17 The use of or the threat to use force or duress against a person to induce him/her 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]

16.18 Persons in position to exert pressure and influence on others should be careful not to breach the provisions under the ECICO, e.g. employers over employees, school principals or teachers over students, religious advisers over believers and doctors over patients, etc.

Voting Offences

- 16.19 It is a corrupt conduct for any person:
- (a) to vote at an election knowing that he/she 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 except as expressly permitted by an electoral law; or
 - (d) to invite or induce another person to commit (a), (b) or (c) above.

[S 16 of the ECICO]

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

16.20 Candidates should be careful when handling election expenses and election 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.

PART VI : POWER OF COURT TO EXCUSE INNOCENT ACTS

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

16.22 A candidate who is unable or has failed to send to the CEO the return and declaration of election expenses and election donations (thereafter referred to as “election return”) before the end of the permitted period due to his/her own illness or absence from Hong Kong, or the death, illness, absence from Hong Kong or misconduct of any agent or employee of the candidate, or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any reasonable cause, and not due to the candidate’s bad faith, can make an application to the CFI for an order allowing him/her to send in the election return within a further period as specified by the CFI [s 40(1) and (2) of the ECICO].

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

16.24 When the candidate finds himself/herself in any of the situations set out in paras. 16.22 and 16.23 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.29 of Chapter 15, it would be wise of him/her to make the application to the CFI and inform the REO as soon as possible.

PART VII : NON-COMPLIANCE WITH THE LAW AND SANCTION

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

16.26 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.

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

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

16.29 A person convicted of a **corrupt conduct or illegal conduct** within the meaning of the ECICO will, in addition to the penalties set out in para. 16.3 above, be disqualified:

- (a) for 5 years from being nominated as a candidate for the election of, or from being elected as, the CE, a member of the LegCo or DC, or a RR 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 RREO];
and
- (b) for 3 years from being nominated as a candidate for the EC Subsector Elections, or from being nominated or elected as, an EC member from the date of conviction [ss 9 and 18 of the Schedule to the CEEO].

16.30 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

Claim of Support

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

17.1 A candidate engages in illegal conduct if he/she fails to 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/her election advertisements as an indication of support from that person or organisation unless he/she has neither requested or directed nor authorised any person to request or direct the inclusion of the aforesaid name, logo or pictorial representation in his/her election advertisements. Also, should any content of an election advertisement (where either the candidate has obtained the prior written consent mentioned above or the candidate has neither requested or directed nor authorised any person to request or direct the inclusion of the name, logo or pictorial representation in his/her election advertisements) be provided by a person or an organisation, the candidate engages in illegal conduct if he/she modifies, or authorises any person to modify, the name, logo, or pictorial representation or the content unless **before** the modification, the person or organisation concerned **consented in writing** to the name, logo, pictorial representation or content as modified. [S 27(1), (1A) and (1B) of the ECICO]

17.2 Oral consent is **not** sufficient. The EAC provides a sample consent form for this purpose. 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.

17.3 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/she 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].

17.4 For the avoidance of doubt, it is advisable for the written consent to set out clearly whether consent is given:

- (a) by a supporter in his/her personal capacity - in which case no mention should be made of any office title which he/she may have, in the candidate’s election advertisements and campaign activities;
- (b) by a supporter with the mention of his/her office title (bearing no reference to the name of the organisation concerned) - in which case the consent should indicate whether the supporter consents to the mention of his/her office title(s) and the description of such a title(s). Where such office title(s) is to be mentioned in an election advertisement, the supporter and the candidate should take particular care to ensure that the information should not be

used in such a way to misrepresent the support of the organisations(s) concerned.

For example, where the office title of “the school principal” (for example, “Chan Tai Man, the Principal”) or “chairman of an owners’ corporation” (for example, “Chan Tai Man, Chairman of Owners’ Corporation”) is to be included in an election advertisement, and if the election advertisement is to be posted in the school or the building in which he/she is serving, it would be desirable for the candidate to seek the relevant organisation’s prior written approval;

- (c) by a supporter with the mention of his/her office title and the name of the organisation concerned - in which case the candidate should ensure that the supporter has obtained the prior written approval of the organisation for using the name of the organisation together with his/her office title(s) by the candidate.

The candidate should be careful not to give the impression that it represents the support of the whole organisation except where the consent of support has been approved in accordance with the organisation’s internal rules and procedures or any established convention, e.g. approved by the governing body of the organisation or by a resolution of that organisation passed at a general meeting [s 27(5) of the ECICO]; and

- (d) by an organisation - in which case the consent must be signed by an authorised person such as its director, chairman or chief executive, etc., and must indicate that the consent of support has been approved in accordance with the organisation’s internal rules and procedures or any established convention, e.g. by the

governing body of the organisation or by a resolution passed at a general meeting as applicable [s 27(5) of the ECICO].

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

17.6 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/her constituency. The candidate is required to notify the relevant RO in writing of any revocation of consent or post a notice or copy of the revocation onto the Candidate's Platform or the Central Platform in the manner as set out in para. 7.45 of Chapter 7.

17.7 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 despatched or distributed 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.

17.8 If candidate A's name or photograph appears in the election advertisement of candidate B to indicate support for candidate B, whether expenditure incurred for an election advertisement will need to be borne by candidate A 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/her election advertisements [s 27 of the ECICO].

Scenario B

If candidate B wishes to publish the election advertisements for promoting his/her candidature and that of candidate A as well, he/she must obtain prior written authorisation from candidate A to act as his/her 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.

It should be noted that the election advertisement mentioned in Scenario B above should be treated as a joint election advertisement. To comply with the requirement stipulated in s 27 of the ECICO, both candidates A and B also have to seek written consent of support from each other before publishing the joint election advertisement.

17.9 It is not uncommon for candidates to put photographs with the appearance of other persons (which may include other candidates in the election), 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 avoid misunderstanding, for instance, if an election advertisement carries a photograph of the candidate attending an activity with other attendees, a caption specifying the particular nature of the event could be added underneath the photograph in such a way that will not imply, or likely to cause electors to believe, that the candidate has the support of those persons appearing in the photograph. If in the circumstances the photograph is likely to cause electors to believe that the candidate has the support of those persons appearing in the photograph, it is advisable that prior written consent of support should be obtained by the candidate.

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

17.11 As advised by OPCPD, an image of an identified person¹¹ will constitute his/her personal data and its use for a purpose other than the original purpose of collection or a directly related purpose, without the consent of the person concerned, will be an infringement of his/her personal data. Therefore, candidates when using the aforesaid image should also observe the relevant data protection principle as set out in the guidance notes on personal data

¹¹ "an identified person" shall refer to a person appearing in a photograph whose identity is known to members of the public either because his/her name is mentioned in the photo caption or he/she can easily be identified by virtue of his job, profession or business, etc.

privacy in respect of electioneering activities at **Appendix F**.

Form of Consent

17.12 A sample form on seeking “**Consent of Support**” prepared by the EAC will be provided to a candidate upon his/her submission of a nomination form for the election or can be downloaded from the REO website. 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, a candidate is required to post a copy of the consent form relevant to the election advertisement concerned onto the Candidate’s Platform or Central Platform or deposit a copy of the consent form with the relevant RO in the manner as set out in para. 7.45 of Chapter 7 [s 106 of the EAC (EP) (DC) Reg]. A candidate is also **required to post** onto the Candidate’s Platform or Central Platform a written notice of revocation **or notify** the relevant RO of such revocation in the manner as set out in para. 7.45 of Chapter 7. Such consent forms and notices of revocation received by the RO will be made available for public inspection (with the identity document numbers of the persons involved obliterated) 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. For details of penalty and sanction, please refer to para. 16.3(b) and Part VII of Chapter 16.

CHAPTER 18

PARTICIPATION IN ELECTION-RELATED ACTIVITIES BY CIVIL SERVANTS AND OFFICIALS UNDER THE POLITICAL APPOINTMENT SYSTEM AND ATTENDANCE OF PUBLIC FUNCTIONS BY BOTH CIVIL SERVANTS AND CANDIDATES

PART I : GENERAL

18.1 This chapter sets out the general guidelines on the participation in election-related activities of a DC election by civil servants and officials under the Political Appointment System and the attendance at public functions by civil servants 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 end of the nomination period for the election, whether or not he/she has submitted a nomination form [s 2 of the ECICO].

PART II : PARTICIPATION IN ELECTIONEERING ACTIVITIES BY CIVIL SERVANTS

18.2 Civil servants who wish to participate in electioneering activities in a DC election should observe the regulations, rules and guidelines issued by the Civil Service Bureau (“CSB”). 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, i.e. other than for temporary relief purpose, may act as agents or assist in electioneering activities provided that they are not already appointed as ROs, AROs, PROs, polling or counting staff, that there is no conflict of interest with their official duties, that no use of public resources is involved, and that no government uniform is worn. To avoid any unfairness, semblance of unfairness or conflict of interest, civil servants who work in a constituency or have extensive contacts with the public in a constituency are strongly advised not to accept appointment by a candidate in the constituency to be his/her agent and/or participate in electioneering activities in the constituency concerned. Civil servants who participate in electioneering activities, including the seeking of election donations, for any candidate should not use or be seen to use any public resources in such activities.

18.3 The guidelines set out in para. 18.2 above are equally applicable to the non-civil service contract staff of the Government.

PART III : ATTENDANCE OF PUBLIC FUNCTIONS BY CIVIL SERVANTS

On the Occasion of Being Invited

18.4 Civil servants 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 civil servant should satisfy himself/herself that:

- (a) by attending the function, he/she is performing an official duty normally required of the post he/she is currently holding; and
- (b) to his/her 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 civil servants not to have photographs taken with candidates at the function since such photographs, if published, may be seen as their lending support to the candidate. A civil servant may do so, however, if the photograph taking:

- (a) arises from the need for him/her to perform his/her official duty at the function normally required of the post he/she is currently holding;
- (b) is a natural part of the function which, if he/she 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.

18.8 The guidelines set out from paras. 18.4 to 18.7 above are equally applicable to the non-civil service contract staff of the Government.

PART IV : ATTENDANCE OF PUBLIC FUNCTIONS BY CANDIDATES

18.9 Similarly, the EAC appeals to all candidates who attend public functions not to have photographs taken with the civil servants, 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/her to perform his/her 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 V : OFFICIALS UNDER THE POLITICAL APPOINTMENT SYSTEM

18.10 The term “civil servants” used in the earlier parts of this chapter does 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”.

18.11 Politically appointed officials may, subject to the guidelines

below, participate in election-related activities.

18.12 Politically appointed officials are disqualified from being nominated as a candidate at an election of the CE, of the LegCo or of a DC.

18.13 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/her own official duties.

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

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 Guidelines or the provisions of the EAC (EP) (DC) Reg 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. Therefore, complaints should be lodged **not later than 45 days** after the date of the relevant election.

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

19.8 In each case, the complainant is required to identify himself/herself and provide his/her 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 the polling station, he/she should follow the following procedures:

- (a) he/she should direct his/her 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/her complaint is directed at the PRO, the Deputy PRO or an Assistant PRO, he/she 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 to report his/her complaint by giving a gist thereof. He/She should then try to obtain as much evidence as possible in order to substantiate his/her complaint. As he/she is not allowed to talk

to or communicate with any elector inside the polling station, he/she may need to go outside the polling station to obtain necessary evidence; and

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

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

19.10 The PRO himself/herself or his/her 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 CEO, the ROs and the PROs 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/her complaint or statement. If the further information required is not provided by the complainant or if he/she 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 [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/her 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/her or them a reasonable opportunity to make representations [s 6(4) of the EACO];
- (d) with or without comments, refer the matter to the ICAC for investigation and/or further action [s 5(e) of the EACO]; and
- (e) with or without comments, refer the matter to the Secretary for Justice or the Police for further action such as prosecution of the culprit [s 5(e) of the EACO].

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. Given the large number of complaints to be received during the election period and each complaint will be examined in detail, the EAC may need to take a longer time to conduct investigation into the complaints and seek representations from relevant parties before conclusion of the investigation results.

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 CHIEF ELECTORAL OFFICER

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

PART VIII : SANCTION FOR FALSE COMPLAINT

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/she commits an offence punishable by imprisonment for 2 years and a fine [s 36 of the Crimes Ordinance (Cap. 200)].

District Council Election
Action Checklist for Candidates

A. Major Steps to be Observed

Before and during
Nomination Period

1. Obtain the following from the Returning Officer (“RO”), any District Office (“DO”) of the Home Affairs Department or the Registration and Electoral Office (“REO”):
 - (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)”; and
 - (e) the form of “Intention to Display Election Advertisements at Designated Spots”.

During Nomination Period

2. Except where the Chief Electoral Officer (“CEO”) authorises otherwise, personally deliver the following to the RO before the end of the Nomination Period:
 - (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. Apply to the Post Office for written approval of their Election Advertisement specimens for free postage. Candidates should:
 - (a) carefully study the requirements governing free postage for election advertisements before deciding on the contents of their election advertisements and seek advice from the Post Office relating to postal requirements and the REO on other aspects; and
 - (b) make every effort to submit their election advertisement specimens to the Post Office for written approval as early as possible to allow sufficient time for revising the contents of their election advertisement specimens, if necessary.

4. Obtain the following from the RO:
 - (a) a CD-ROM containing the relevant legislation;
 - (b) A District Council Constituency Boundaries map for the relevant constituency;
 - (c) forms -
 - (i) Notice of Appointment of Election Agent
 - (ii) Notice of Authorisation of Person to Incur Election Expenses
 - (iii) Return and Declaration of Election Expenses and Election Donations (thereafter referred to as “election return”)
 - (iv) Notice of Appointment of Polling Agents for a Polling Station not Situated in a Prison
 - (v) Notice of Appointment of Polling Agent for a Dedicated Polling Station Situated in a Prison (Other than a Maximum Security Prison) and Application for Consent to the Presence of Election Agent/Polling Agent in a Dedicated Polling Station Situated in a Prison (other than a maximum security prison)
 - (vi) Notice of Appointment of Counting Agents
 - (vii) Notice of Revocation of Appointment of Agent

- (viii) Notice of Revocation of Authorisation to Incur Election Expenses
 - (ix) Notice of Withdrawal of Candidature
 - (x) Information Sheet in relation to Election Advertisements
 - (xi) Application for Creating an Account of the Central Platform and Undertaking in respect of the Terms and Conditions in Using the Central Platform for Candidates
 - (xii) Notification of the Electronic Address of the Candidate's Platform
 - (xiii) Notification of Corrected Information in relation to Election Advertisements
 - (xiv) Notification of Decision on Electioneering Activities
 - (xv) Consent of Support
 - (xvi) Permission for Display of Election Advertisements or Conduct of Electioneering Activities at Private Premises
 - (xvii) Standard Receipt for Election Donations
 - (xviii) Declaration of Secrecy
 - (xix) Return of Election Deposit
 - (xx) Advance Return and Declaration of Election Donations
 - (xxi) Notice of Posting of Election Mail
 - (xxii) Declaration for Posting of Election Mail
(Attachment: Summary on Free Postage for Election Mail)
 - (xxiii) Claim for Financial Assistance
(Attachment: District Council Election Financial Assistance Scheme - Notes for Candidate)
 - (xxiv) Notice of Withdrawal of Claim for Financial Assistance
 - (xxv) Notification of the Intention to Hold a Public Meeting/Procession;
- (d) Notice for Collection of Electors' Information;

- (e) Undertaking on the Use of Electors' Information (Attachment: Supplementary Note on Undertaking on the Use of Electors' Information); and
- (f) Note for Submission of a Text Version of Introduction to Candidates for Persons with Visual Impairment.
5. Lodge with the RO a Notice of Withdrawal of Candidature if the candidate wishes to withdraw his/her candidature.
- Any time before, during or after handing in Nomination Form
6. (a) Ensure that all printed election advertisements, except for the category exempted, contain the name and address of the printer, date of printing and the number of copies printed.
- (b) Ensure that all prior written Consent of Support or Permission/Authorisation have been obtained before the publication of election advertisements and lodged with the RO (or CEO if RO has not yet been appointed), if applicable.
- (c) (i) If the candidates choose to post the electronic copy of election advertisement and relevant information/documents onto the Candidate's Platform for public inspection, candidates should provide the CEO with the **electronic address** of the platform **at least 3 working days** (i.e. any day other than a general holiday or Saturday) **before publication of the first election advertisement.**
- (ii) If the candidates choose to post the electronic copy of election advertisement and relevant information/documents onto the Central Platform for public inspection, candidates should submit to the CEO the Application for Creating an Account of the Central Platform and Undertaking in respect of the Terms and Conditions in Using the Central Platform for Candidates.
Candidates will receive the username and passwords from CEO **within 3 working days** upon receipt of the duly completed application and undertaking.

- (d) Make available a copy of each type of election advertisements and relevant information/documents for public inspection **within 1 working day after publication** by:
- (i) posting an electronic copy each of all his/her election advertisements and the relevant information/documents onto the Central Platform in accordance with the procedures set out in **Appendix B**;
 - (ii) posting an electronic copy each of all his/her election advertisements and the relevant information/documents onto the Candidate's Platform and provide the CEO with the **electronic address** of the platform **at least 3 working days before publication of the first election advertisement** (For details, please see **Appendix B**);
 - (iii) if it is technically impracticable to comply with (i) or (ii) above for election advertisements published through an open platform on the internet (such as when messages are sent through social networking or communication websites on the Internet like Twitter, Facebook, blogs, etc. and the exchanges are of an interactive and spontaneous nature), posting a hyperlink of such open platform and the information/documents relevant to the election advertisements onto the Candidate's Platform or the Central Platform in accordance with the procedures set out in **Appendix B**;
 - (iv) providing 2 hard copies each of the election advertisements (or 2 identical postcard sized colour photographs of each election advertisement which cannot be practically or conveniently produced in specie) and 1 hardcopy each of the relevant information/documents to the RO; or

- (v) providing 2 identical copies of a CD-ROM or DVD-ROM each containing the election advertisements and 1 hardcopy each of the relevant information/documents to the RO.

Candidates may make submission as required from time to time.

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| Any time before handing in Nomination Form till the end of election period | 7. Submit to the CEO an Advance Return and Declaration of Election Donations when an election donation is received. |
| Any time after handing in Nomination Form | 8. Lodge with the RO (or CEO if RO has not yet been appointed) Notices of Authorisation of Persons to Incur Election Expenses. |
| Any time after handing in Nomination Form, but before end of Nomination Period | 9. Lodge with the RO (or CEO if RO has not yet been appointed) a Notice of Appointment of Election Agent. |
| | 10. (a) If a candidate wishes to have his/her photograph and election platform printed in the Introduction to Candidates, he/she should: <ul style="list-style-type: none"> (i) lodge with the RO a duly completed grid paper affixed with 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/her photograph identical to the one affixed to the grid paper with his/her name label affixed on the back. <p>(If a candidate does not submit the grid paper, the Introduction to Candidates will only show his/her name and candidate number. The statement, “Relevant Information has not been provided by the candidate”, will also be printed in the space provided for the election platform.)</p> <ul style="list-style-type: none"> (b) Lodge with the RO the form “Intention to Display Election Advertisements at Designated Spots”. |

- (c) If a candidate wishes to have his/her photograph and particulars printed on a ballot paper, he/she 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, which should be affixed to the form at (c)(i) above, and an additional copy of his/her photograph identical to the one affixed to the form with his/her name label affixed on the back.

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

11. Make a request to the CEO for obtaining, **within 5 working days**, one set of mailing labels of electors and/or a Candidate Mailing Label System (“CMLS”) DVD-ROM containing information of electors in the constituency (Candidates or their election agents are required to submit an Undertaking on the Use of Electors’ Information with the request).

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

12. Lodge with the RO Notices of Appointment of Polling Agents for a Polling Station not Situated in a Prison.
13. Lodge with the RO Notices of Appointment of Counting Agents.

14. Lodge with the CEO the Notice of Appointment of Polling Agent for a Dedicated Polling Station Situated in a Prison (Other than a Maximum Security Prison) and Application for Consent to the Presence of Election/Polling Agent in a Dedicated Polling Station Situated in a Prison (other than a maximum security prison).

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

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

Around 3 days after end of
Nomination Period

15. Attend the briefing for candidates and collect from the RO the following:
- (a) location maps and layout plans of the polling/counting stations; and
 - (b) name badges for candidates and their agents.
16. Attend meetings held by the RO to determine the candidate numbers by drawing of lots and to allocate display spots for display of election advertisements.
17. Receive from the RO copy of the permission/authorisation for display of election advertisements at designated spots allocated to the candidate (except for uncontested candidates who will not be allocated with designated spots).

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| Around 14 days after end of Nomination Period | <p>18. Check the ballot paper printing proof and verify the particulars relating to the candidate to be printed on the ballot paper. If a candidate or his/her election agent cannot perform the check in person, the candidate may authorise a representative in writing to check the particulars concerned on the ballot paper printing proof on his/her behalf.</p> <p>19. Send by e-mail to e-intro_to_can@reo.gov.hk by the deadline specified by the REO the completed e-form of the text version of the Introduction to Candidates (available on website) for REO's uploading to the election dedicated website.</p> <p>(If a candidate does not submit the file by the said deadline, only his name and candidate number and the words "Relevant information has not been provided by the candidate" will be shown in the appropriate area of the form.)</p> |
| Within 10 days after end of Nomination Period | 20. Receive from the RO information about the election agents appointed by other candidates of the same constituency. |
| After end of Nomination Period | 21. 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 | 22. Receive from the RO information regarding the delineation of no canvassing zones and no staying zones for the polling stations (including dedicated polling stations). |
| During the week before the polling day | 23. Lodge with the CEO the Notice of Appointment of Polling Agent for a Dedicated Polling Station Situated in a Prison (Other than a Maximum Security Prison) and Application for Consent to the Presence of Election/Polling Agent in a Dedicated Polling Station Situated in a Prison (other than a maximum security prison) ONLY if – |

- (a) an elector imprisoned or held in custody who is entitled to vote for the relevant constituency at the aforesaid dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and
- (b) the application is lodged without undue delay after the admission or transfer.
- 1 clear working day before posting postage-free election mail
24. Give notice of the free posting 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 Support) of the Hongkong Post for inspection and retention.
- Make postage-free election mail before the posting deadline as designated by the Post Office
25. Post postage-free election mail and present to the Post Office a Declaration for Posting of Election Mail (in duplicate).
- Within 2 working days after the polling day
26. Post the corrected information of the election advertisements concerned onto the Candidate's Platform or Central Platform alongside the original information and input the date of correction; or deposit with the RO a Notification of the Corrected Information in relation to Election Advertisements.
- Before entering the polling station, counting station or the ballot paper sorting station
27. Complete the Declarations of Secrecy (to be made by all candidates, their election agents, polling agents and counting agents).
- Any time before polling day
28. Lodge with the RO Notices of Revocation of Appointment of Agent, if any.
- On polling day
29. Attend the poll and the count if so wishes, bringing along the Declaration of Secrecy.
30. Candidates or their election agents personally deliver Notices of Appointment of Polling Agents for a Polling Station not Situated in a Prison and Notices of Revocation of Appointment of Agent to the relevant Presiding Officer ("PRO") other than a PRO of a dedicated polling station situated in a prison, if not yet lodged pursuant to paras. 12 and 28 respectively.

31. Candidates or their election agents personally deliver Notices of Revocation of Appointment of Agent to the RO to revoke the appointment of polling agent for a dedicated polling station situated in a prison, if not yet lodged pursuant to para. 28.
32. 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. 13 and 28 respectively.
- Within 10 days after polling day 33. Remove all election advertisements displayed on Government land/property.
- Within 2 weeks after polling day 34. Destroy or return to REO the CMLS DVD-ROM and unused mailing labels, if any. If a candidate has downloaded the electors' information from the CMLS for processing, he/she must also delete the information (use of data erasing software is recommended to completely erase the information).
- Not later than 30 days of the publication of election result in the Gazette¹² 35. (a) Lodge with the CEO an election return [See 4(c)(iii)] signed by the candidate in a contested constituency with invoices and receipts issued by recipients of the payments for all payments each of election expense of \$100 or above and duplicate donation receipts.
- (b) A candidate who is returned uncontested should lodge with the CEO an election return signed by the candidate with invoice and receipts issued by recipients of the payments for all payments each of election expense of \$100 or above and duplicate donation receipts not later than 30 days after the gazettal of the Notice of Nominations.
36. (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 election return, should be presented in person by the candidate or his/her agent to the CEO.

¹² or not later than 30 days of the declaration of the termination of the election proceedings or the declaration of the failure of the election under relevant electoral law or within such extended period as may be allowed by the Court of First Instance under the relevant law. If uncontested, the election result will be gazetted in the Notice of Nominations.

- (b) If a candidate who is returned uncontested wishes to apply for financial assistance, he/she should complete a Claim for Financial Assistance. The completed form, together with the candidate's election return, should be presented in person by the candidate or his/her agent to the CEO not later than 30 days after the gazettal of the Notice of Nominations.

Till the end of the first anniversary from the date on which the election result is published

37. Maintain the Candidate's Platform for public inspection of election advertisements and relevant information/documents.

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 election donations received.
2. Keep the original invoices and receipts issued by recipients of the payments 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 may use the Standard Receipt for Election Donations provided by the REO.)
4. (a) Keep records of the attachments posted onto the Candidate's Platform and maintain this platform till the end of the first anniversary from the date on which the election result is published; or
 - (b) Keep records of the attachments posted onto the Central Platform; or
 - (c) Keep copies of all relevant information/documents and election advertisements 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 under the EAC (EP) (DC) Reg for the purposes of the election, **except**:
 - (a) to sign the nomination form or make any requisite declaration in relation to a candidate's nomination;
 - (b) to withdraw the candidate's candidature;
 - (c) to incur election expenses unless he/she has been so authorised by the candidate;
 - (d) to authorise a person as an election expense agent to incur election expenses; and
 - (e) to be present in a dedicated polling station situated in a maximum security prison.

6. Each candidate can appoint 1 or more persons authorised to incur election expenses on his/her behalf, i.e. the election expense agents, by completing the Notice of Authorisation of Persons to Incur Election Expenses. A candidate **may** also authorise his/her election agent to incur election expenses for him/her. These agents may incur expenses only after the candidate has authorised them to do so.

Lodging Authorisation and Information Sheet of Election Advertisements with the appropriate authority and Posting Election Advertisements on Central Platform or Candidate's Platform

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 Authorisation for Persons to Incur Election Expenses. The authorisation is not effective until it has been received by the RO.
9. Make available a copy of each type of election advertisements and relevant information/documents for public inspection **within 1 working day after publication** by:
 - (a) posting an electronic copy each of all his/her election advertisements and the relevant information/documents onto the Central Platform in accordance with the procedures set out in **Appendix B**;

- (b) posting an electronic copy each of all his/her election advertisements and the relevant information/documents onto the Candidate's Platform and provide the **electronic address** of the platform to the CEO **at least 3 working days before publication of the first election advertisement (For details, please see Appendix B)**;
- (c) if it is technically impracticable to comply with (a) or (b) above for election advertisements published through an open platform on the internet (such as when messages are sent through social networking or communication websites on the Internet like Twitter, Facebook, blogs, etc. and the exchanges are of an interactive and spontaneous nature), posting a hyperlink of such open platform on the Candidate's Platform or the Central Platform in accordance with the procedures set out in **Appendix B**;
- (d) providing 2 hard copies each of the election advertisements (or 2 identical postcard sized colour photographs of each election advertisement which cannot be practically or conveniently produced in specie) and 1 hardcopy each of the relevant information/documents to the RO; or
- (e) providing 2 identical copies of a CD-ROM or DVD-ROM each containing the election advertisements and 1 hardcopy each of the relevant information/documents to the RO.

Submission of Return and Declaration of Election Expenses and Election Donations

- 10. (a) A candidate must lodge his/her completed election return with the CEO **not later than 30 days after the publication of election result in the Gazette or the declaration of the termination of the election proceedings or the declaration of the failure of the election under the relevant electoral law or within such extended period as may be allowed by the Court of First Instance ("CFI") under the relevant law.**
- (b) For a candidate who is returned uncontested, he/she must lodge his/her completed election return with the CEO **not later than 30 days after the publication of the Notice of Nominations in the Gazette.**

11. The completed election return should include all election expenses incurred by the candidate, or by the candidate's election expense agents or by the candidate's contractors and also the removal cost for his/her election advertisements by Government Departments, if he/she has not removed all his/her election advertisements, any fines so incurred for displaying unauthorised election advertisements, and the election donations (including services and goods) received. All election advertisements submitted on the Information Sheet in relation to Election Advertisements, the Central Platform and the Candidate's Platform should be included in the completed election return. ***A candidate is required to submit his/her election return even if no election expenses have been incurred.***
12. A candidate must make the declaration/supplementary declaration(s) verifying the contents of the election return before a Commissioner for Oaths or a Justice of the Peace or a solicitor holding a practising certificate.
13. The completed election return and the declaration verifying its contents must be submitted together with all supporting documents as required by s 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap. 554).
14. If a candidate is unable or has failed to lodge the election return by the deadline, he/she can apply to the CFI for an order allowing him/her to lodge the election return within such a further period as specified by the CFI.
15. If a candidate wishes to change any information in his/her submitted election return before the deadline, he/she 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/her election return (including any document accompanying his/her election return) after the deadline, he/she must apply to the CFI for an order enabling him/her to do so. Notwithstanding this, if the aggregate value of any error or false statement found in the election return does not exceed the relief arrangement limit (i.e. HK\$500), the candidate may rectify the error or false statement in the election return in accordance with a simplified relief arrangement for minor errors or false statements as provided under s 37A of the ECICO within a specified period upon receipt of a notice from the CEO relating to the error and/or false statement (see paras. 15.29 to 15.34 of the Guidelines).

(This “Action Checklist for Candidates” is for general reference only. Candidate is advised to refer to the Action Checklist included in the candidate folder of the respective ordinary election/by-election.)

**Submission Method, Formats and Standard on Posting
Electronic Copy of Election Advertisement
and Relevant Documents onto an Open Platform for Public Inspection
(with Annexes I and II on the guidelines and basic layout
design requirements for Candidate's Platform)**

1. To comply with the public inspection requirement governing election advertisements (“EA”) under the electronic submission method as stipulated in s 106(2) of EAC (EP) (DC) Reg, a candidate must post the following EA particulars as applicable, **within one working day**¹³ after the publication of an EA, onto an **open platform** either maintained by the Chief Electoral Officer (“CEO”) (“Central Platform”) or himself/herself/a person authorised by him/her (“Candidate’s Platform”) for public inspection:

- (a) an electronic copy of an EA;
- (b) a hyperlink of an open platform¹⁴ which publishes an EA (where it is technically impracticable to make available an electronic copy of the EA [such as when messages are sent through social networking or communication websites on the Internet like Twitter, Facebook, blogs etc. and the exchanges are of an interactive and spontaneous nature]);
- (c) the relevant printing/publication information pertaining to such EA including:
 - the name and address of the producer/printer;
 - the date of production/printing;
 - the size/dimension;
 - the manner of publication;
 - the date of publication;
 - the number of copies published; and
 - the number of copies produced/printed as applicable;
- (d) an electronic copy each of the relevant permission/authorisation for the publication of such EA, as applicable (except those provided by the Returning Officer in connection with the allocation of designated spots); and
- (e) an electronic copy each of the documents providing consent of support.

¹³ A “working day” means any day other than a general holiday or Saturday.

¹⁴ Open platform means a platform operated through the Internet to which the public has access without having to go through an access control process put in place for that platform.

Central Platform

2. If a candidate chooses to post the EA particulars onto the Central Platform, he/she must comply with the requirements set out in the ensuing paragraphs.

Submission Method

3. A candidate is required to apply to the CEO in a specified form for creation of an account to access the Central Platform before he/she can post EA particulars onto the platform for public inspection. Only one account will be created for each candidate.

4. The CEO will inform the candidate concerned upon creation of the account and will provide a username and passwords (which can subsequently be changed by the relevant candidate) to the candidate concerned **within 3 working days** upon receiving an application. The candidate then can access the platform by using the registered username and passwords.

5. Uploading of EA particulars onto the platform at any one time by a candidate will be treated and referred to as one single submission. Subject to the file size limit stipulated in para. 7 below, there is no limit on the number of EA or other documents to be included in a submission. If subsequent correction to any EA particulars in a submission is required, the candidate is required to post the corrected EA particulars, including the corrected printing/publication information (“corrected information”) of the EA, onto the platform by selecting the EA particulars concerned. If accepted, both the original and the corrected EA particulars would be displayed alongside for public inspection. Any such corrective information should be posted onto the platform **not later than 2 working days after the polling day**.

6. An acknowledgement of receipt in the form of a summary report of the EA particulars successfully uploaded would be automatically generated for reference by the candidate after each submission. In addition, an e-mail and a Short Message Service (“SMS”) to acknowledge receipt of the EA particulars successfully uploaded would also be sent to the e-mail address and mobile phone number provided on the application form for creating an account.

File Size

7. The total size of each submission **must not exceed 50 MB**. Otherwise, the submission will be rejected.
8. Files included in a submission may be compressed using a file format of either Zip (.zip) or GNU zip (.gz).
9. A submission exceeding the above size limit will not be accepted. In such circumstances, the candidate may upload the EA particulars in separate submissions.

Format

10. Files included in a submission must be given, served or presented in the following file formats –

General Document

- (a) Rich Text Format (RTF) or Microsoft Word Format (DOC/DOCX);
- (b) Hypertext Mark Up Language (HTML) Format;
- (c) Adobe Portable Document Format (PDF);
- (d) Plain Text (TXT)

Graphics/Images

- (e) Graphics Interchange Format (GIF);
- (f) Joint Photographic Experts Group (JPEG);
- (g) Tag Image File Format (TIFF);
- (h) Portable Network Graphics (PNG)

Audio

- (i) Waveform Audio Format (WAV);
- (j) MPEG-1 Audio Layer 3 (MP3);

Video

- (k) Audio Video Interleave (AVI);
- (l) Moving Picture Experts Group (MPEG).

Candidates are encouraged to make arrangement such that the files, including text and video etc., uploaded onto the Central Platform should be accessible to persons with disabilities (e.g. persons with visual impairment) as far as possible.

Computer Instructions

11. The files given, served or presented must not contain any computer viruses or any computer instructions including, but not limited to, macros, scripts and fields which depend on the execution environment and the execution of which will cause changes to the files themselves or the information system displaying the files.

Candidate's Platform

12. If a candidate chooses to maintain a platform of his/her own for the posting of EA particulars for public inspection, he/she must provide the electronic address of the platform to the CEO **at least 3 working days before publication of the first EA**. To avoid causing confusion to members of the public, the platform should be dedicated to the sole purpose of posting EA particulars for public inspection. Candidates of different constituencies are also allowed to use a common platform but candidates concerned are advised to ensure that their EA particulars should be presented in a way that will not cause confusion to the public during the inspection process. The EA particulars posted on the platform should be virus-free and should be organized in a descending order of the date of submission. The required printing/publication information should also be posted alongside the relevant EAs to which the information relates. To maintain consistency in design and, also, to facilitate public inspection, the CEO will provide guidelines and specify the basic layout design requirements for such platform for candidates to follow (see **Annex (I) and Annex (II)**). The guidelines and basic layout design requirements can also be downloaded from the EAC website.

13. If the candidate wishes to correct any EA particulars already posted onto the platform, he/she should post the corrected EA particulars, together with date of correction alongside with the original EA particulars for public inspection (see **Annex (II)**). Any such corrected information should be posted onto the platform **not later than 2 working days after the polling day**.

14. The candidate should not remove any EA particulars already uploaded onto the platform at will except in circumstances where such removal has been directed by the CEO, EAC or the Court, as applicable, in respect of any content/information which is unlawful or not related to any EAs published by the candidate. In the event that an EA has to be removed as directed by the CEO, EAC or the Court, the candidate should post a note to inform the public about the removal of the EA and the reason for such removal. Other documents/information related to the removed EA should still be displayed at the

platform for public inspection (see **Annex (II)**).

15. When posting EA particulars onto the Candidate's Platform, candidates should also follow the requirements regarding file format and computer instructions as detailed in paras. 10 to 11 above.

16. The CEO will arrange to publicise the electronic address of the platform to facilitate public inspection of the EA particulars.

Important Points to Note

17. EA particulars must conform to the requirements as set out above. For any electronic files containing images, they should be of sufficient resolution to ensure that the content is both legible and readable to readers.

18. A candidate is solely responsible for (and that the CEO has no responsibility to him/her or any third party for) the content/information of the EA particulars uploaded and posted onto the Central Platform, including any hyperlinks to external websites. The CEO reserves the right to remove any of the EA particulars posted on the Central Platform containing such content/information which is unlawful, not related to any EAs published by the candidate or which has been contaminated with computer virus after the submission. In case if the removal is due to computer virus contamination, the candidate will be informed to upload the relevant EA particulars onto the Central Platform again.

19. Candidates should observe all prevailing legal requirements on personal data privacy when uploading information onto the aforesaid platforms for public inspection. In particular, for the documents containing/conveying the required permission/authorisation and/or consent of support pertaining to an EA, candidates are reminded to obliterate the identity document number(s), if any therein, of the person(s) providing such permission/authorisation and/or consent of support before uploading them onto the platforms.

Points to Note for Building Candidate's Platform**General**

- The name of the election should be shown on the candidate's platform, e.g. 20XX XXX District Council XXX Constituency Election/By-election.
- The name of the constituency should be shown on the candidate's platform.
- The name of the candidate should be shown on the candidate's platform.
- The candidate number should be shown on the candidate's platform once available.
- The election advertisement ("EA") particulars (including electronic copy of the EA, hyperlink, consent, permission or authorisation documents, etc.) should be displayed and arranged in descending order according to the date of publication.
- The required information to be shown for each EA can be found in **Annex II**.
- The corrected EA particulars should be posted alongside or beneath the original version.
- The candidate should not remove any EA particulars already uploaded onto the candidate's platform at will except in circumstances where such removal has been directed by the Chief Electoral Officer ("CEO"), Electoral Affairs Commission ("EAC") or the Court, as applicable, in respect of any content/information which is unlawful or not related to any EAs published by the candidate. In the event that an EA has to be removed as directed by the CEO, EAC or the Court, the candidate should post a note onto the platform to indicate any removed EA and the reason for such removal. Other documents/information related to the removed EA should still be displayed at the platform for public inspection.
- The file format and computer instruction should follow the details shown at Appendix B of the Guidelines on Election-related Activities in respect of the District Council Election.
- Sensitive personal data should not be posted onto the candidate's platform. For example, any Hong Kong Identity Card Number shown on the consent form should be covered before uploading onto the candidate's platform.
- An e-mail contact and/or telephone number should preferably be provided on the platform for handling public enquiry and providing technical assistance as required.

Security

- To guard against intruder attacks, the candidate's platform should be protected by firewall and/or Intrusion Protection System.

- All files posted in the candidate's platform should be properly scanned by anti-virus software before posting.
- To protect against data loss, please conduct regular backup.
- The hyper-links to external websites should also be checked regularly in order to ensure that they are up-to-date.
- For more information and resources on the information security on the web, please refer to www.infosec.gov.hk.

Accessibility

- The candidate's platform should be accessible by browsers and operating systems commonly used in personal computers.
- For any electronic files containing images, they should be of sufficient resolution to ensure that the content is both legible and readable to readers.
- The platform should be available in English and Chinese and the text content thereon should be readable and understandable. Furthermore, suitable instructions should be provided to assist readers to navigate through the platform.
- The candidate's platform should be accessible to persons with disabilities (e.g. persons with visual impairment) as far as possible.

候選人平台建議版面設計 Proposed Layout Design of Candidate's Platform

選舉 Election: 20XX 年 XX 區議會 XX 選區選舉／補選 20XX XXX District Council XXX Constituency Election/By-election
 候選人編號 Candidate No.: 1
 候選人姓名 Name of Candidate: 陳大文 Chan Tai Man

選舉廣告詳情 (依發布日期降序排列) Election Advertisement Particulars (in descending order according to 'Date of Publication')

項目 Item	選舉廣告類別 Election Advertisement Type	製作/ 印製日期 Date of Production/ Printing (dd-mm-yyyy)	製作/ 印製的文本 數目 Number of Copies Produced/ Printed	發布日期 Date of Publication (dd-mm-yyyy)	發布的文本 數目 Number of Copies Published	選舉廣告 檔案/連結 Election Advertisement File/Link	准許/授權文件 Permission/ Authorization Document	尺寸/ 面積 Size/ Dimension	發布方式 Manner of Publication	製作人/ 印刷人的 姓名 Name of Producer / Printer	製作人/ 印刷人的 地址 Address of Producer/ Printer	修正日期 Date of Correction (dd-mm-yyyy)	選舉廣告 檔案/連結 移除日期 Date of Removal of Election Advertisement File/Link (dd-mm-yyyy) [Reason 原因]
1	小冊子	12-04-2012	100	14-04-2012	100	File1.jpg	-	A4	街頭派發	AA 印刷公司	九龍青山道 X 號 39 樓	-	17-04-2012 [根據總選舉事務主任指示移除該選舉廣告(原因:與候選人的選舉宣傳無關)]
註	-	-	200	-	200	-	-	-	-	-	-	15-04-2012	-
2	橫額	11-04-2012	20	13-04-2012	20	File2.jpg	Authorization.jpg	5 尺 x 3 尺	懸掛於路邊鐵欄	BB 製作公司	九龍彌敦道 9999 號十樓	-	-
註	-	-	-	-	-	File2 (Revised).jpg	-	-	-	-	-	14-04-2012	-
3	海報	10-04-2012	150	12-04-2012	150	http://www.XXX.com.hk/poster.jpg	Permission.jpg	A3	大廈大堂張貼	CC 印刷公司	旺角 Z 大廈 1 樓	-	-

註：只顯示曾被修正的資料。Only corrected particular(s) will be shown.

同意書文件 Consent Document

項目 Item	檔案 File	備註 Remark
1	Consent1.jpg	
2	Consent2.jpg	同意書已於 17-04-2012 撤銷
3	Consent3.jpg	

Methods of Folding of Election Mail 郵寄選舉郵件應採用的摺疊方法⁽¹⁾

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

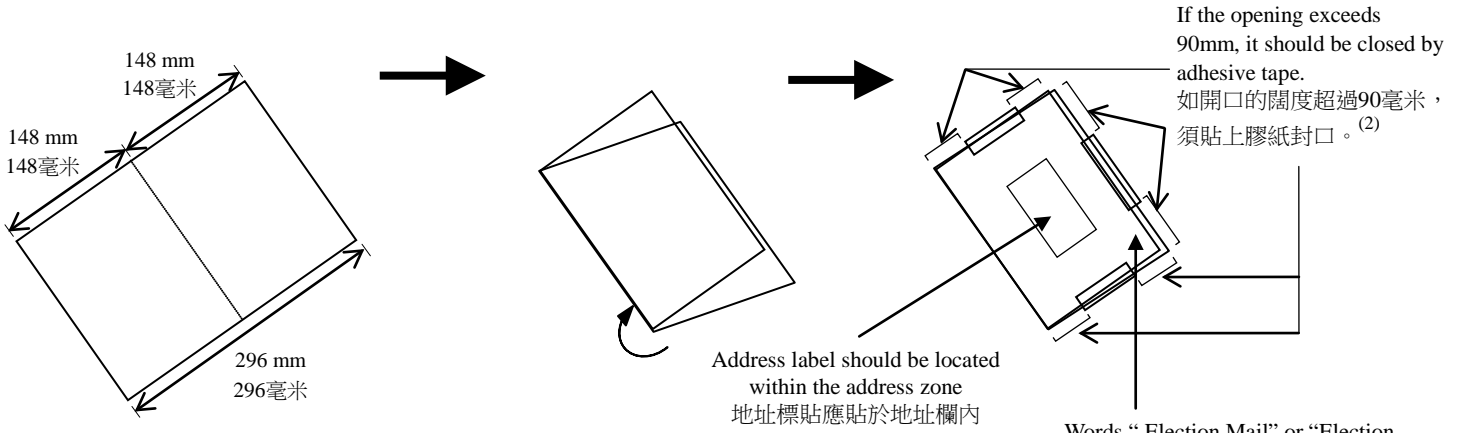


Figure 2 : Folder of A4 (296mm) size with 2 folds
圖示二：兩摺的A4（296毫米）尺寸紙張

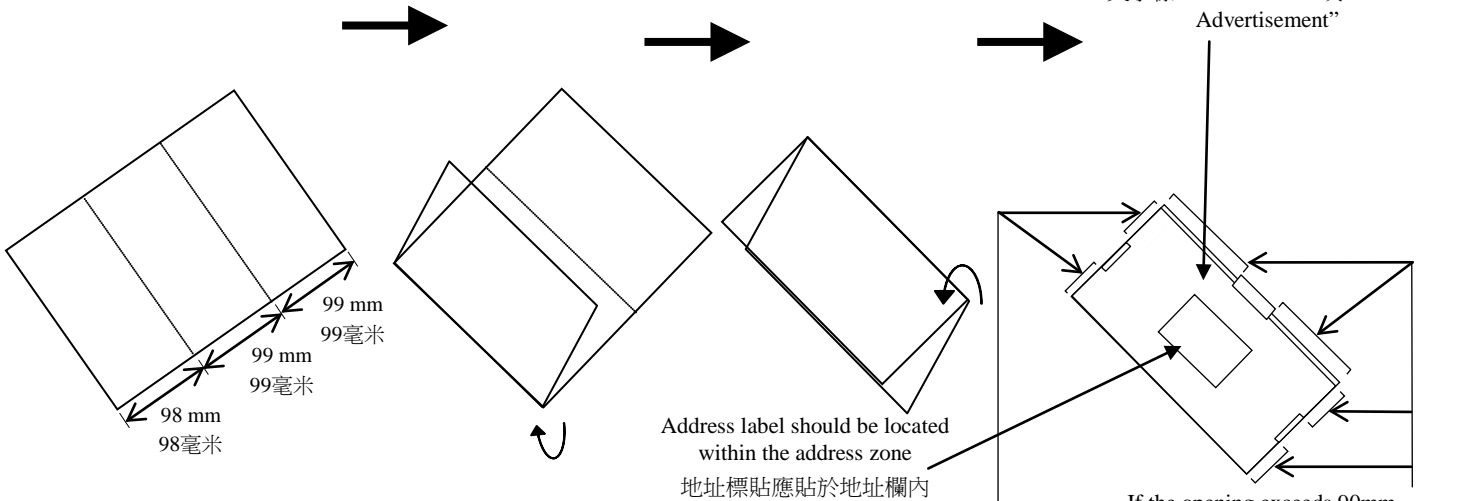
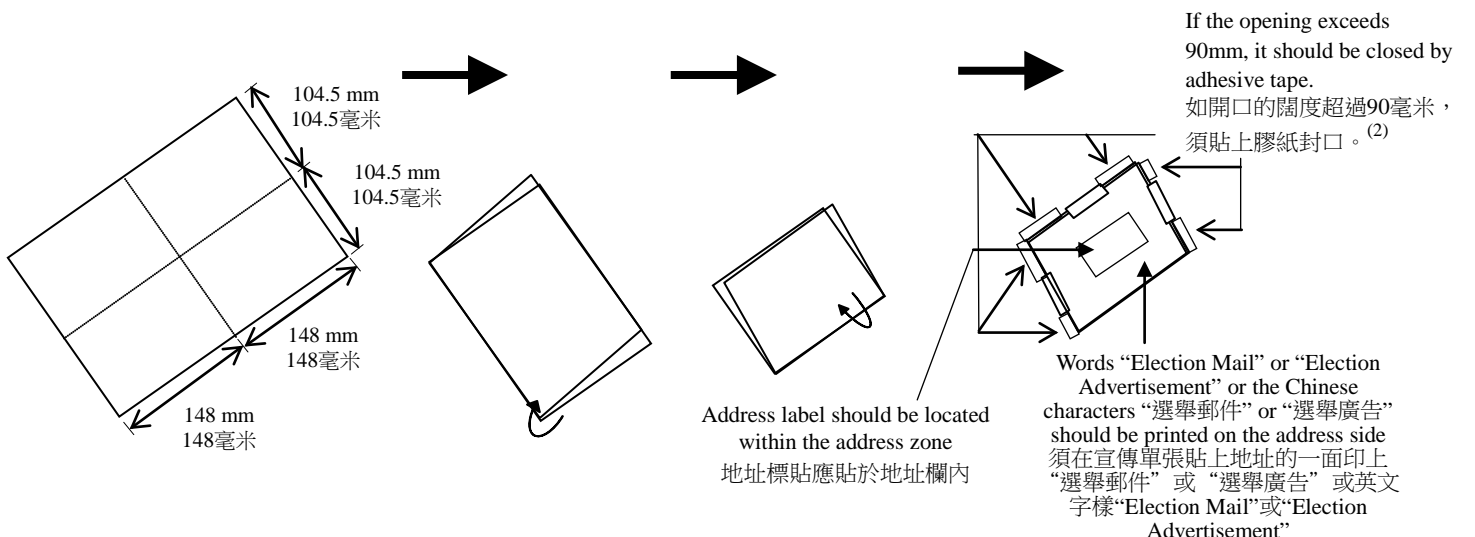


Figure 3 : Folder of A4 (296mm) size with 2 folds
圖示三：兩摺的A4（296毫米）尺寸紙張



Methods of Folding of Election Mail

郵寄選舉郵件應採用的摺疊方法⁽¹⁾

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

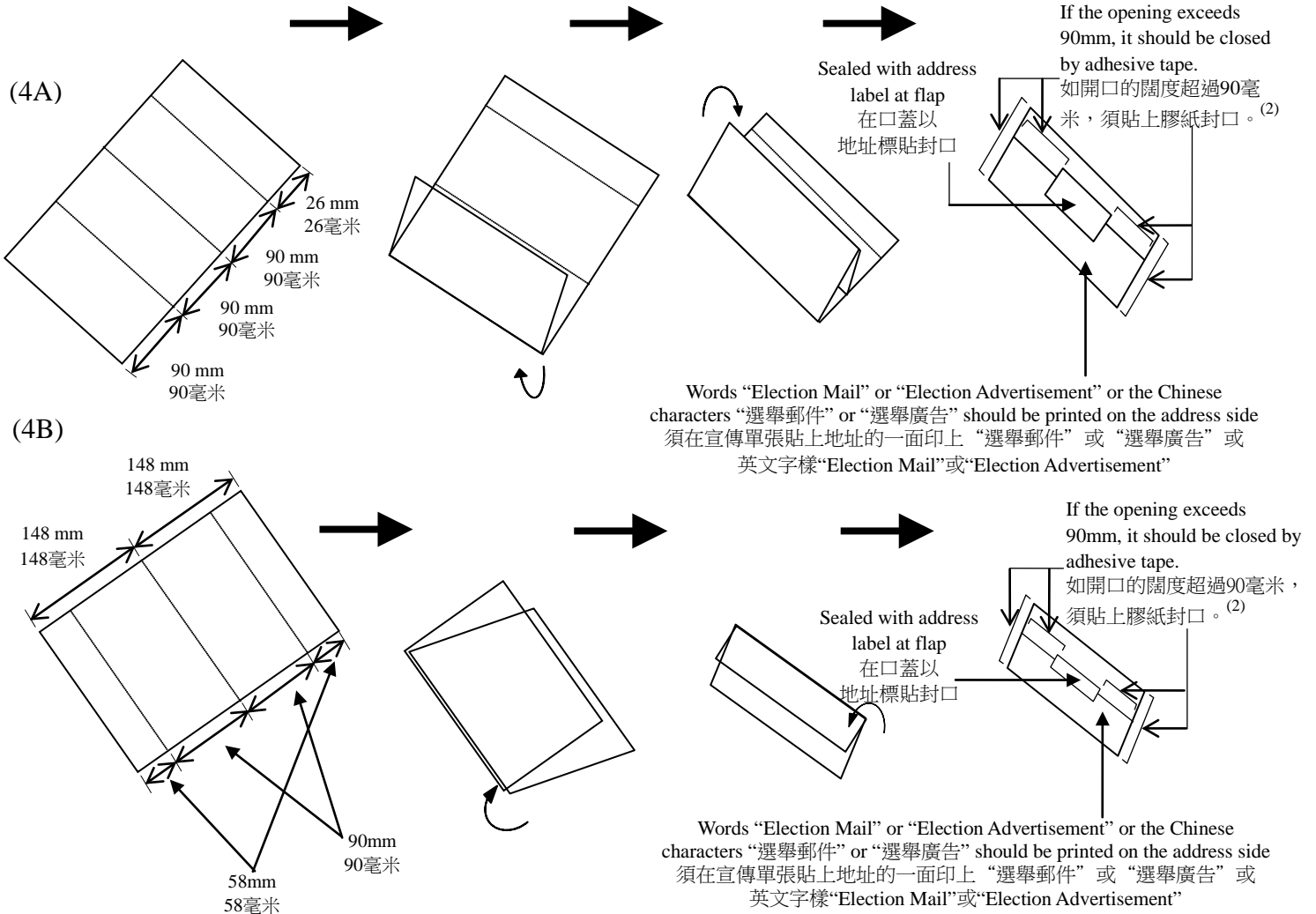
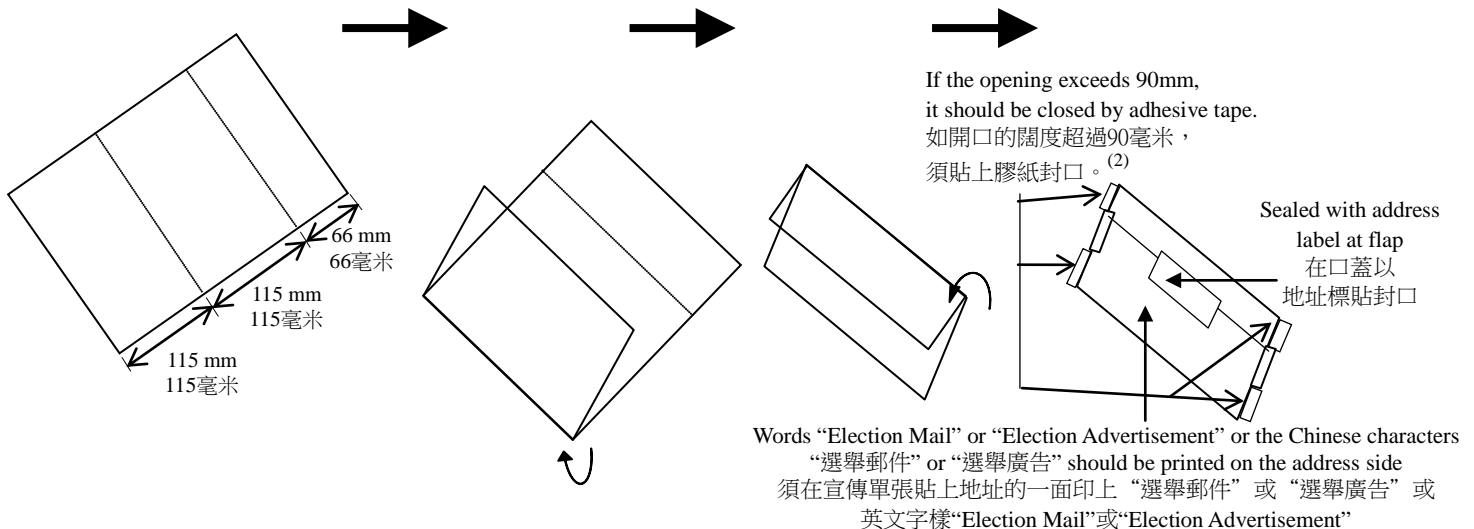


Figure 5 : Folder of A4 (296mm) size sealed with address label
圖示五：以地址標貼封口的A4（296毫米）尺寸紙張



(1) 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。

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

(2) 無論郵件的開口是否已經封口，所有開口部份不得超過90毫米，否則須以膠紙封口。

Regardless of whether the opening is closed or not, all openings shall not exceed 90 mm. Otherwise, they must be sealed with 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, e.g. 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 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 sound amplifying system or device is used (except for the performance of duties by officers of the CSD on the polling day at dedicated polling stations situated in prisons.)

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, e.g. any badge, emblem, clothing, carrier bags 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.

Guidance on Electioneering Activities

Introduction

This guidance note serves as a general reference on compliance with the requirements under the Personal Data (Privacy) Ordinance ("the Ordinance") in relation to electioneering activities that may involve the collection and use of personal data of individuals. 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 other approaches 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 that handling of personal data is in compliance with the data protection principles in schedule 1 to the Ordinance. Of particular relevance are the requirements under data protection principles 1, 2(2), 3 and 4 ("DPP1", "DPP2(2)", "DPP3" and "DPP4") in Schedule 1 to the Ordinance:

DPP1(1) requires that personal data should not be collected unless the data are collected for a lawful purpose directly related to a function or activity of the data user and the data collected is necessary, adequate but not excessive in relation to that purpose;

DPP1(2) requires that personal data shall be collected by means that are lawful and fair in the circumstances of the case;

DPP1(3) requires that on or before collecting personal data directly from a data subject, the data user shall take all reasonably practicable steps to ensure that the data subject has been informed of whether it is obligatory or voluntary for him to supply the data and the consequences for him if he fails to supply to

the data. The data subject should be explicitly informed of the purpose of data collection and the classes of transferees to whom the data might be transferred as well as the contacts to whom the request of access to and correction of the data subject's personal data might be made;

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

DPP3 provides that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of collection of the data or a directly related purpose; and

DPP4 requires that all reasonably 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 seek to collect and use personal data in electioneering should be mindful of the provisions in DPP1, DPP2(2), DPP3 and DPP4.
2. Candidates should assume direct responsibility for briefing and supervising members of their campaign staff to ensure their compliance with the requirements of the DPPs.
3. When collecting personal data directly from an individual or indirectly from a third party (e.g. a trade union or professional body) for the purpose of electioneering, only adequate but not excessive personal data necessary for electioneering purpose shall be collected (e.g. Hong Kong Identity Card number should not be collected).

4. 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.
5. Candidates should not collect personal data for electioneering by deceptive means or by mis-representing the purpose of the collection (e.g. collecting personal data in the pretext of opinion poll or assisting citizens to apply for government welfare).
6. 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.
7. 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.
8. 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 such electioneering communication 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.
9. 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.
10. As a matter of good practice, when canvassing for votes from individuals directly by the candidates, their agents or indirectly through a third party (e.g. trade

union or professional body), the individuals should be provided an option to decline receipt of any subsequent electioneering communication in relation to the election from the candidate so that they would not receive any unwanted electioneering communication from the candidate.

11. As a matter of good practice, candidates should maintain a list of individuals who, to their knowledge, find electioneering communication such as phone calls, mails, fax messages, E-mails or visits objectionable and avoid approaching them to canvass for votes.
12. 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 unauthorised access by unrelated parties.
13. Candidates should not retain any personal data collected for electioneering purpose after completion of all the electioneering activities.

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

Enquiry Hotline: (852) 2827 2827

Fax: (852) 2877 7026

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

Website : www.pcpd.org.hk

Email: enquiry@pcpd.org.hk

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Disclaimer

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

© Office of the Privacy Commissioner for Personal Data,
Hong Kong
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October 2011 (Fourth Revision)

Complaint Cases Provided by
Office of the Privacy Commissioner for Personal Data (“OPCPD”)

In order to facilitate better understanding of the privacy concerns of the electors and compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486), the OPCPD has provided the following 4 complaint cases for illustration purpose:

Case 1

This complaint relates to the collection and use of personal data. A complainant provided his name and telephone number to an incumbent member seeking his assistance in relation to disability allowance. Subsequently, the member used the complainant’s personal data without his consent for election publicity purposes. The member claimed that at the time when the complainant’s personal data was collected, the complainant had been verbally informed that his personal data would be used for communication purposes.

In response to the complaint, the member agreed to provide a written personal information collection statement to individuals stating explicitly that the personal data collected would be used for electioneering purpose.

Case 2

The complaint relates to the use of personal data. A complainant sought assistance from a political party in relation to the management of the building in which he resides and for this purpose supplied his personal data. Subsequently, the political party used the complainant’s personal data in canvassing him to vote for a candidate in an election.

The OPCPD relayed the complainant’s concern to the political party. The party should obtain an express and voluntary consent from the complainant before using his personal data for electioneering purpose.

Case 3

The complaint relates to the security of personal data. An incumbent member sent an email to a list of recipients canvassing vote for a candidate in an election without hiding the names and email addresses of the recipients (by, for example, use of “bcc”). The complainant, being one of the recipients of that email, complained that his name and email address were disclosed to all other recipients of that email.

The OPCPD relayed the complainant’s concern to the member, with the advice that he should safeguard the security of the personal data of the electors when transmitting messages via electronic means.

Case 4

The complaint relates to the use of personal data. A complainant enrolled in a course organised by a political party. After the completion of the course, the complainant was asked to fill in a questionnaire and provided her personal data for “communication purpose”. Subsequently, the political party used the complainant's personal data in canvassing her to vote for a candidate in an election.

The OPCPD relayed the complainant’s concern to the political party. In response, the party revised the personal information collection statement in the questionnaire by stating explicitly that personal data collected would be used for “electioneering purpose” and deleted the complainant’s personal data. The OPCPD accepted the remedial actions taken but warned the political party that enforcement notice may be issued if similar circumstances occur again.

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/her 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 activities 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 S. 4(17)
of Summary Offences Ordinance, Cap.228
for Non-Charitable Purposes

This application should reach Division III of Home Affairs Department at 30/F, Southorn Centre, 130 Hennessy Road at least **FOUR WEEKS** before the date of the activity. This will enable the applicant to be notified of the result of his application about seven days before the event. Non-charitable fund raising activities without permits for fund-raising for non-charitable purposes are subject to prosecution by the Police under S4(17) of Summary Offences Ordinance, Cap.228. For enquiries, please call 2835 1492.

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

Name in Chinese (if any) : _____

2. Hong Kong Identity Card Number : _____

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

3. Address : _____

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

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

i) Name of organisation : _____

ii) Position of applicant in organisation : _____

iii) Details of key officers in organisation :

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

iv) Date the organisation was formed : _____

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

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

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

i) Name of organisation : _____

ii) Relationship between applicant and that organisation :

iii) Details of key officers in that organisation :

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

iv) Date the organisation was formed : _____

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

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

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

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

i) Date and place of birth : _____

ii) Length of residence in Hong Kong : _____

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

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

9. ✦ Format of the activity : _____

10. ✦ Method for money collection (note) : _____

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

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

12. ✦ Venue and address : _____

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

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

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

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

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

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

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

Signed : _____
(Applicant)

(Chop of organisation, if applicable) Date : _____

* Delete where applicable

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

Note: If the activities concerned involve hawking in public places, please seek advice from the Food and Environmental Hygiene Department (Tel: 2879 5696 or 2309 2085) as to whether a temporary hawker licence is required.

Statement of Purpose

Purpose of Collection

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

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

Classes of Transferees

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

Access to personal data

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

Enquiries

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

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

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

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

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

A. Administrative Guidelines for Consideration

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

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

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

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

B. Licensing Conditions

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

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

- (ix) the funds collected will be audited by a qualified accountant arranged by the permittee. A copy of the audited accounts will be submitted to the Secretary for Home Affairs within 90 days after the conclusion of the fund-raising activity. The audited accounts will also be made available to members of the public for inspection upon demand;
- (x) all donations are to be purely voluntary, and that the activity shall not create public order problems or cause nuisance, including excessive noise, or harassment to the general public, and that the manner in which the activity is conducted should not be such as to be likely to produce a reaction generally against public fund-raising activities;
- (xi) during the course of the fund-raising activity, the name of the organisation and a copy of the permit/approval letter should be prominently displayed. Every participant of the activity should also wear a clear and legible badge identifying the name of the participant and the name of the organisation; and
- (xii) children under the age of 14 must not be allowed to take part in the activity. Participation by young persons between the age of 14 - 18 must be entirely voluntary and the prior written consent of parents must be obtained.

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

September 2007

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

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

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

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

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

Fair and Equal Treatment of Candidates by the Print Media

1. Fairness and equality will in each case be viewed by the Electoral Affairs Commission with reference to the surrounding circumstances.
2. Practical problems that may be experienced by publishers like limitation of column space and staff resources, and situations such as some candidates who have extensive arguments and opinions on issues of public relevance and those who have none, candidates who have made newsworthy statements or speeches as opposed to those who have not uttered a word, and the difference in status and standing of candidates as public figures, etc., are examples of circumstances against which the criteria of fairness and equality are to be judged.
3. What is important is that practical problems, in general terms without specifics, should not be allowed to be used as pretexts for not giving fair and equal treatment and coverage to all candidates 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 information on the make, model and registration mark (or vehicle identification number in the case of a brand new vehicle) of the vehicle to be used as a float.
2. The application should be accompanied by 3 copies of a drawing, certified by qualified electrical or mechanical engineers, in minimum A3 size, showing the following details:

- the float and vehicle outline, side, plan, front and rear view, with all major dimensions (both proposed and original) shown
- the means of entry/exit to and from the driver's compartment
- location of mirrors which will enable the driver to view both sides of the float
- location of exhaust outlets from any internal combustion engines
- location of any auxiliary power equipment installed
- means of communication with the passengers on the float
- location of passengers and support for passengers (seats, handles, etc.) on the float

Applicant's attention is drawn to regulation 53(2) of the Road Traffic (Traffic Control) Regulations (Cap. 374G) on requirements for carriage of passengers: No driver of a vehicle on a road shall permit a passenger to travel in the vehicle unless seated in a properly constructed seat secured to the bodywork of the vehicle except-

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

3. All applications must be made at least **1 month** in advance of the date of the event to:

Engineer (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.

**Observations made by the Court of Final Appeal
in a case touching upon Election Expenses
(FACV No. 2 of 2012)**

Expenses are likely to qualify as “election expenses” if they meet the following five criteria:

1. They have been incurred by or on behalf of a candidate (as such a person is defined under s 2(1) of the ECICO).
2. Having identified the activities or matters to which the relevant expenses relate, such activities or matters are referable to a specific election.
3. Such activities or matters go to the conduct or management of the election, in particular to the machinery of the election.
4. The expenses were incurred for the purpose of promoting the election of the relevant candidate or prejudicing the election of another candidate.
5. The activities or matters financed by the expenses have taken place or occurred either during the election period (as defined in s 2(1) of the ECICO) or during the period when the relevant person was a candidate.

There are two further inquiries as well:

1. The date when the relevant expenses were incurred should be ascertained (although this is not a critical question since election expenses may be incurred before, during or after an election period).
2. In relation to the relevant activities or matters of which the expense may be incurred for more than one purpose, it should be considered whether an apportionment exercise appropriate between election expenses and non election expenses is necessary.

Notes:

1. If there is any inconsistency or ambiguity between the English version and the Chinese version of this Appendix, the English version shall prevail.
2. If you have doubt as to whether an election expense falls within the criteria as mentioned above or whether an expense should be regarded as an election expense, you should consult your own legal advisor, and any legal fees so incurred will not be regarded as election expenses.

**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:
 - (a) banners
 - (b) signboards
 - (c) placards
 - (d) posters
 - (e) handbills
 - (f) publicity pamphlets
 - (g) video and audio tapes
 - (h) electronic messages
 - (i) various forms of literature or publicity material for the promotion of the candidate

[Note: Publicity materials to give thanks to electors for their support after the election will not be counted as election expense.]

4. Costs incurred for display and removal of election advertisements including labour charges. If the election advertisements have not been removed by the deadline specified by the EAC, the removal costs for the election advertisements charged by the government departments should also be included.
5. Costs incurred by the relevant authorities for removal of election advertisements displayed without authorisation.
6. Costs incurred for renting space used in connection with the election campaign.
7. Costs of stationery used in connection with the election campaign.

8. Operation/miscellaneous costs in connection with the election campaign, e.g. photocopying, hire of telephone line and fax line. [Note: Election deposit will not be counted as election expense.]
9. Postage for mailing of publicity materials (excluding free mailing service provided by the Government).
10. Costs incurred for the hire of transport in connection with the election.
11. Costs incurred for publicity by vehicles.
12. Costs of advertisements in newspapers, taxi or other public transport.
13. Costs incurred for election meetings, including venue charges.
14. Costs of T-shirts, armbands, caps, etc. and other identification devices for election agents and assistants.
15. Costs incurred for refurbishing as well as the estimated value of old publicity boards.
16. Costs incurred in the publication by a candidate during the election period (i.e. from the commencement of the nomination period to the day on which a declaration is made under s 39 of DCO, or the close of poll) of a document that gives details of work done by the candidate in the capacity of:
 - (a) the Chief Executive;
 - (b) a member of the Legislative Council, a District Council or the Heung Yee Kuk;
 - (c) the Chairman, Vice-chairman or a member of the Executive Committee of a Rural Committee; or
 - (d) a Rural Representative.
17. Costs incurred by the political body or organisation of the candidate in promoting his/her election. [Note: 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. However, for the avoidance of doubt, costs of electioneering activities (e.g. 造勢大會) participated by an uncontested candidate after declaration of the election result in respect of his/her constituency to promote other contested candidates will not

be counted as election expenses of the uncontested candidate.]

18. Costs for obtaining legal advice incurred in respect of the management of an election (e.g. where a candidate asks his/her lawyer to vet an election publicity pamphlet to make sure that statements contained in it do not amount to libel). [Note: Fees incurred for obtaining (a) legal advice on the general interpretation/application of the electoral laws including whether a particular item of expense can be regarded as “election expenses” and “election donations”, and (b) professional advice on the apportionment of expenses between purposes related to an election and any other purposes, will not be regarded as election expenses.]
19. Interest incurred from a loan to finance the campaigning activities of a candidate. [In case of an interest-free loan, the interest waived should be declared as an election donation and correspondingly as an election expense. A reasonable amount should be assessed by reference to the market interest rate.]
20. Subsidy of activities organised for promoting one’s candidature is a form of election donation which is counted as election expense.
21. Although some people may not charge the candidate for the goods supplied or work, labour and services rendered (except voluntary services), a reasonable sum estimated for such charges, over any allowance or discount usually given to customers, is an election expense (which is correspondingly an election donation made by these people).
22. Goods given incidental to the provision of voluntary service.
23. Charities undertaken for the purpose of promoting one’s candidature.
24. Costs for any negative publicity launched against one’s opponent.

Collection of Election Donations

Any person or organisation¹⁵ (including a political party) acting as an agent to solicit, receive or collect election donations for a candidate or some candidates is advised to:

1. have the prior consent/authorisation of the candidate(s);
2. set up a dedicated account for receiving and handling the election donations;
3. state the apportionment of the donations between candidates or other parties if more than one candidate or other parties are involved;
4. comply with all the requirements under the ECICO in respect of election donations as if the donations are received by the candidate(s) direct. For example, if the donation is more than \$1,000, a receipt to the donor by the concerned candidate instead of the agent should be issued to the donor;
5. ensure that clear information is provided to donors so that they are fully aware of the purpose/use of their donations; and
6. apply to the Secretary for Home Affairs for permission if the donations are collected through fund-raising activities in a public place for non-charitable purposes.

On the other hand, while candidates would not be prohibited to solicit donations on the behalf of political parties or any other organisations, they must make sure that the message is clear enough so that members of the public are adequately advised of the purpose and nature of the donation and would in no circumstances be misled to believe that the donation was solicited and used for the election of the candidates themselves.

¹⁵ All costs incurred by the person or organisation during the process of rendering the relevant service to the candidate(s) in this regard should be counted towards election expenses and the relevant requirements governing appointment of election expenses agents as set out in Chapter 6 must be complied with. If the person renders his/her service for the candidate free of charge, voluntarily, personally and in his/her own time, the service is regarded as "voluntary service" according to Section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance. The candidate is, therefore, not required to include such service costs in his/her election expenses (this exemption does not apply to the service rendered by an organisation).

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/her 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/her 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/her 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 made 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.

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

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

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

Materials

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

Content/Information

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

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

Size & quantity

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

Remarks: In case of queries, please contact Principal Officer (Penal Operations)³ of Correctional Services Department at 2582 4023.

Correctional Services Department
January 2015

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