

IMPORTANT

1. These Guidelines are expected to be published in early September 2019. Subject to any subsequent revisions, 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 the Guidelines is that prevailing as at the date of publication.
3. Upon publication of the Guidelines, all specified forms referred to in the 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 <https://www.reo.gov.hk>.
4. Electioneering, campaigning and canvassing activities referred to in the 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 <https://www.eac.hk>.

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(With Chinese translation)

Message from the Chairman

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

The 2019 District Council (“DC”) Ordinary Election will be held on 24 November 2019. 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 to refine and improve the electoral arrangements for public elections. A new set of the proposed guidelines has now been drawn up by the EAC for the 2019 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 2015 edition) with suitable revisions to:

- (a) reflect the legislative amendments made to the District Councils Ordinance (Chapter 547) to increase the total number of DC constituencies with effect from 1 January 2020;

- (b) reflect the legislative amendments made to the subsidiary legislation under the EACO in relation to some technical details concerning voter registration arrangements and electoral procedures;
- (c) reflect the legislative amendments made to the Elections (Corrupt and Illegal Conduct) Ordinance (Chapter 554) in relation to arrangements for lodging election returns by candidates and the exemption from criminal liability for a third party (other than a candidate and his/her election expense agents) publishing an election advertisement on the Internet and the only election expenses thus incurred are merely electricity and/or Internet access charges; and
- (d) 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**. Indeed, many of the changes are for alignment purpose and similar changes have been incorporated in the Guidelines for the Legislative Council Election issued in June 2016, the Guidelines for the Election Committee Subsector Elections issued in September 2016, the Guidelines for the Chief Executive Election issued in October 2016 and the Guidelines for the Rural Representative Election issued in October 2018.

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 **11 June to 10 July 2019**, both dates inclusive. At this stage, the EAC has not made any decision with respect to the issues addressed in the proposed guidelines (except for those under the requirements of the relevant legislation). The final decision will be taken in the light of the responses received in this consultation exercise.

Please send in 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 (eacnq@eac.hk) the latest by **10 July 2019**. **Late representations will not be considered.** You may also make oral representations to the EAC at the public forum to be held on **25 June 2019 (Tuesday) from 7:00 p.m. to 9:00 p.m. at 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 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.

Members of the public may make oral representations at the public forum. However, due to the limited time, members of the public please send in written representations if they wish to make detailed representations.

The EAC has always made its best endeavours 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 2019 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
for the District Council Election
as Compared with the Guidelines Issued in September 2015**

Relevant Chapter	Major changes
Chapter 1 <i>Introduction</i>	<ul style="list-style-type: none">● increasing the total number of District Council (“DC”) constituencies for the 2019 DC Ordinary Election to 452 in accordance with Schedule 3 to 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">● specifying the use of ordinary surface mail, instead of registered post, for sending all inquiries and notifications to electors in accordance with the amendment made to section 5(9) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541A) (“EAC (ROE) (GC) Reg”) (para. 2.13);● specifying the requirement to submit documentary evidence proving an elector’s principal residential address upon an application for change of that address by the elector in accordance with the amendment made to section 10A(3) of the EAC (ROE) (GC) Reg (para. 2.17);● revising the statutory deadline for electors to report on change of principal particulars in accordance with the amendment made to section 10A(12) of the EAC (ROE) (GC) Reg (paras. 2.17 and 2.27);● setting out clearly the fine and imprisonment that electors who knowingly or recklessly give false or misleading information for voter registration are liable to in accordance with the amendment made to section 22 of the EAC (ROE) (GC) Reg (para. 2.18); and● specifying that a person who lodges an objection or a

Relevant Chapter	Major changes
	<p>claim must provide sufficient information so as to inform the Revising Officer of the grounds of the objection or claim and that the Revising Officer may dismiss the objection or claim if the person does not attend the hearing in accordance with the amendments made to sections 2(5A) and 2B of the Registration of Electors (Appeals) Regulation (Cap 542B) (para. 2.26).</p>
<p>Chapter 3 <i>Nomination of candidates</i></p>	<ul style="list-style-type: none"> ● updating the guidelines to reflect the introduction of the Confirmation Form for use by the Returning Officer (“RO”) in the exercise of his/her statutory power to discharge his/her duties under the nomination procedure (para. 3.9(b)).
<p>Chapter 4 <i>Polling and counting arrangements</i></p>	<ul style="list-style-type: none"> ● setting out precisely the types of documents that an elector should produce before a ballot paper can be issued to him/her in accordance with the amendment made to section 53 of the Electoral Affairs Commission (Electoral Procedure) (District Councils Election) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”) (paras. 4.30 and 4.31); and ● updating the category of invalid ballot papers to include the ballot paper on which a vote for a deceased or disqualified candidate is recorded and the name of, and other information relating to, the candidate are crossed out in accordance with the amendment made to section 78 of the EAC (EP) (DC) Reg (para. 4.75(f)).
<p>Chapter 7 <i>Election advertisements</i></p>	<ul style="list-style-type: none"> ● reminding any person or organisation publishing materials to appeal directly or indirectly to electors to vote or not to vote for a candidate or candidates of certain organisations to observe the legislative requirements for incurring election expenses on behalf of the candidates since the materials may be capable of being understood as referring to certain identified candidates (para. 7.9);

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> ● reflecting the new provision under section 23(1A) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”) that a person (other than a candidate and his/her election expense agents) who publishes an election advertisement (“EA”) on the Internet is exempted from the relevant criminal liability under section 23(1) of the ECICO if the only election expenses incurred are either or both of electricity charges and charges necessary for accessing the Internet (para. 7.10); ● reminding any person who intends to stand as a candidate at the election to remove all publicity materials published by him/her prior to the election period before he/she has been nominated as a candidate or has publicly declared an intention to run for the election. Otherwise, any such unremoved publicity material may be regarded as an EA (para. 7.12); ● revising the deadline for candidates to post corrective information in relation to EAs after the polling day (para. 7.57); and ● reflecting the new technical requirements on election mails that may be sent free of postage by candidates <i>subject to the enactment of</i> the proposed amendments made to section 102 of the EAC (EP) (DC) Reg (para. 7.78(d) and (e)).
<p>Chapter 8 and Appendix F <i>Electioneering activities in premises or buildings where electors reside, work or frequent</i></p>	<ul style="list-style-type: none"> ● reflecting the guidelines issued by the Office of the Privacy Commissioner for Personal Data to remind candidates to adopt security measures when transferring personal data of electors to election agents or other contractors for electioneering purpose (para. 8.20 and Appendix F); and ● reminding the office bearers of building organisations not to abuse their positions in the organisations to give unfair treatment to any candidate in the conduct of

Relevant Chapter	Major changes
	<p>electioneering or canvassing activities in the buildings concerned, especially when the office bearers themselves are candidates in the election (para. 8.33).</p>
<p>Chapter 10 <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● specifying that for the purpose of the principle of fair and equal treatment of candidates under the guidelines in the Chapter, “candidate” refers to a person whose nomination form has been received by the relevant RO (para. 10.5); and ● elaborating on the requirements of the fair and equal treatment principle for producing and publishing election-related programmes and reports by broadcasters licensed under the Broadcasting Ordinance (Cap 562) and the Telecommunications Ordinance (Cap 106) as well as the print media (the Chapter).
<p>Chapter 13 and Appendix D <i>Prohibition against Canvassing Activities outside Polling Stations</i></p>	<ul style="list-style-type: none"> ● reminding candidates of the canvassing activities which are forbidden in the No Canvassing Zone (“NCZ”) (para. 13.3 and Appendix D); ● setting out clearly the statutory requirement under section 43 of the EAC (EP) (DC) Reg that canvassing activities are strictly prohibited on the storey at street level of all the buildings within the NCZ (para. 13.12); and ● reminding candidates to remove the EAs on the windows or the bodywork of a public service vehicle before the polling day if it will pass through or be parked within the NCZ on the polling day (para. 13.13).
<p>Chapter 15 and Appendix A <i>Election expenses and election donations</i></p>	<ul style="list-style-type: none"> ● revising the maximum amount of election expenses which can be incurred by or on behalf of a candidate <i>subject to the enactment</i> of the proposed amendment to section 3 of the Maximum Amount of the Election Expenses (District Council Election) Regulation (Cap 554C) (para. 15.16);

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> ● aligning the deadlines for submitting the return and declaration of election expenses and election donations (“election return”) for all candidates in the same election, in accordance with the amendments made to section 37(1), (1F), (1G) and (1N) of the ECICO (para. 15.32); ● revising the threshold for submission of invoices and receipts giving particulars of the election expenses for the purpose of election return <i>subject to the enactment</i> of the proposed amendment to section 37 of the ECICO (para. 15.33 and Appendix A); ● revising the limit in relation to relief for minor errors in election returns <i>subject to the enactment</i> of the proposed amendment to item 6 of the Schedule to the ECICO (para. 15.38 and Appendix A); and ● revising the subsidy rate of financial assistance for the eligible candidates <i>subject to the enactment</i> of the proposed amendment to Schedule 7 to the DCO (para. 15.45).
<p>Chapter 17 <i>Namedropping</i></p>	<ul style="list-style-type: none"> ● reminding candidates to comply with the requirements under the Personal Data (Privacy) Ordinance (Cap 486) in handling the personal data of his/her supporters (paras. 17.4 and 17.11); and ● setting out the guidelines for seeking prior written consent from supporters when a candidate publishes EAs and live broadcast of electioneering activities through online platforms (para. 17.5).

ABBREVIATIONS

APRO, APROs	Assistant Presiding Officer, Assistant Presiding Officers
ARO, AROs	Assistant Returning Officer, Assistant Returning Officers
BO	Buildings Ordinance (Cap 123)
Cap	Chapter of the Laws of Hong Kong
CAS	Civil Aid Service
CEEO	Chief Executive Election Ordinance (Cap 569)
CE	Chief Executive
CEO	Chief Electoral Officer
CFA	Court of Final Appeal
CFI	Court of First Instance
CMLS	Candidate Mailing Label System
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)
DLO, DLOs	District Lands Office, District Lands Offices
DO, DOs	District Office, District Offices

DPRO, DPROs	Deputy Presiding Officer, Deputy Presiding Officers
EA, EAs	election advertisement, election advertisements
EAC	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
election return	return and declaration of election expenses and election donations
ERO	Electoral Registration Officer
FAQs	Frequently Asked Questions
FR	final register
GC, GCs	geographical constituency, geographical constituencies

HKID	Hong Kong Permanent Identity Card
HKSAR	Hong Kong Special Administrative Region
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
NCO	Noise Control Ordinance (Cap 400)
NCZ, NCZs	no canvassing zone, no canvassing zones
NSZ	no staying zone
OL	omissions list
OVIES	Online Voter Information Enquiry System
para., paras.	paragraph, paragraphs
PCBP (LC & DC) Reg	Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap 541M)
PCPD	Privacy Commissioner for Personal Data
PD(P)O	Personal Data (Privacy) Ordinance (Cap 486)
PHMSO	Public Health and Municipal Services Ordinance (Cap 132)
POBO	Prevention of Bribery Ordinance (Cap 201)
POO	Public Order Ordinance (Cap 245)
PR	provisional register
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)
RTO	Road Traffic Ordinance (Cap 374)
S, s, Ss, ss	section, sections
SOO	Summary Offences Ordinance (Cap 228)
TD	Transport Department

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PROLOGUE

ROLE OF THE ELECTORAL AFFAIRS COMMISSION AND THE GUIDELINES

1. Under the Electoral Affairs Commission Ordinance (Cap 541) (“EACO”), the Electoral Affairs Commission (“EAC”) is an independent statutory body responsible for organising and supervising public elections, and to ensure that the elections are conducted in an open, fair and honest manner. Under the EACO, the EAC shall perform its function through the Chief Electoral Officer (“CEO”).

2. The EAC is empowered by the law to issue guidelines on election-related activities. The guidelines cover two different aspects, namely, to explain the relevant legislative provisions and to promulgate a code of conduct in election-related activities based on the fair and equal treatment principle.

Legislation Aspect

3. With regard to the legislation aspect, the guidelines seek to explain in simple language the relevant provisions under the electoral legislation, and where applicable to give examples of best practices.

4. Safeguarding the autonomy and secrecy of the vote are important aspects of the electoral legislation. The electors must mark the ballot papers by themselves inside the voting compartments, and are not required to disclose their voting preference. It is a criminal offence to influence the voting preference of the elector by corrupt conduct such as the use of force, threat, coercion, inducement or deception; or by the illegal conduct of making false

statements about a candidate. It is also a criminal offence to require an elector to disclose his/her voting preference. In any case, the voting choice is ultimately made by the elector voluntarily and under the protection of secrecy. Electors may discuss among themselves their voting preference, but in no case under the influence of any corrupt or illegal conduct.

5. Another important aspect of the electoral legislation is to prescribe the maximum limit for election expenses. Election expenses mean the expenses in promoting or prejudicing the election of a candidate. The definition of “candidate” means a person who stands nominated as a candidate at an election and includes a person who has publicly declared an intention to stand for election before the close of nominations. The public declaration of the intention to stand as a candidate is a legal question which must be determined on the basis of evidence of actual facts and intention, rather than on the face of any statement alone. The setting of a maximum limit of election expenses is to ensure that the candidates do compete on a level playing field and within a reasonable level of expenditures. It is a criminal offence for a candidate to incur election expenses in excess of the prescribed maximum limit.

6. For the effective sanction of the limit on election expenses, the law also stipulates that only candidates and their authorised election expense agents may incur election expenses. It is a criminal offence for other unauthorised persons to incur election expenses.

7. Election advertisement (“EA”) has always been an important part of election expenses. Notwithstanding that EAs are regulated, the paramount principles of freedom of speech, press freedom and the dissemination of election information must be guaranteed. In determining whether certain statements are EAs and whether election expenses are involved, consideration must be given to the overall circumstances and evidence, including the nature

of those statements, the expenses involved and the intention of promoting or prejudicing any candidate from being elected.

8. As the EAC is not a law enforcement agency, it will refer any complaint involving any offence to the law enforcement agency for follow-up and investigation. Any issues over the law or fact will ultimately be a matter for the adjudication of the Court.

9. The EAC will seek to provide a statement of principle on the compliance of the electoral legislation. However, the EAC is not the legal advisor for a candidate and any person who has any question on any particular matter should seek independent legal advice.

Code of Conduct

10. Apart from the electoral legislation, the EAC has promulgated guidelines on election-related activities based on the fair and equality principle. The EAC is authorised under the law to issue censure or reprimand against unfair conduct in breach of the guidelines. An important application of the fair and equal treatment principle is concerned with the utilisation of the public resources. For example:

- (a) The guidelines prescribe a fair and equal system in allocating the designated spots for display of EAs on Government land, premises and roadways;
- (b) Licensed radio and television stations as well as registered newspapers and magazines should uphold the fair and equal treatment principle in their treatment of the candidates ;

- (c) Building management organisations, owners' incorporations and mutual aid residents' associations should observe the fair and equal treatment principle in handling the requests of the candidates for the display of EAs and conducting electioneering activities in the common parts of the buildings under their management; and
- (d) A candidate must not make use of any public resources for electioneering.

11. However, as Hong Kong is a pluralistic society with different sectors of people who may have different pursuits, whether a particular matter is fair or not will often have contrary views. Whereas it is ideal to achieve absolute fairness, but that is often not practicable. The bottom line is to guard against serious and material unfairness.

12. The EAC will solemnly handle complaints against any breach of the fair and equality principle as set out in the election guidelines. Investigation must be in accordance with the principle of procedural fairness and be based on factual evidence. The parties concerned must be given the opportunity to make representations in defence. In the context of considering whether any conduct is unfair in the absence of contravention of the law, a decision could not be made lightly without careful consideration of all relevant matters and circumstances. Furthermore, while complaints are often made shortly before the polling day, the EAC cannot circumvent or compress the established procedure because of the time constraint so as to avoid any unfairness.

13. If the complaint is substantiated, the EAC may, if necessary, make a censure in a public statement to enable that the electors and the public be informed of the major occurrences during the election. The EAC may also

issue press statements on matters of principle which have attracted widespread public concern in order to set the record straight. Apart from that, the EAC, as a long-standing practice, does not comment on the political platforms of candidates, individual comments and reporting, or hearsays.

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 a 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 DC elections are governed by the statutory requirements provided in 4 different ordinances, namely the DCO, the 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 452 DC constituencies for the 2019 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 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 the DC 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 These ordinances are complemented by 8 pieces of subsidiary legislation, which provide the detailed procedures for the conduct of the DC elections.

1.10 The electoral procedures for conducting the DC elections are provided in the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”).

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 eligible persons as 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 expenses that can be incurred by or on behalf of a candidate at a DC election.

1.17 The District Councils (Election Petition) Rules (Cap 547C) sets out the procedures for lodgement of election petitions against the result of a DC election to the High Court.

PART II : THE GUIDELINES

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

1.19 The aim of this set of Guidelines is twofold: with regard to matters governed by relevant electoral legislation, the Guidelines provide

candidates and their electioneering teams with guidance in layman's terms on compliance with the electoral legislation; they also lay down a code of conduct based on the principle of fairness and equality, and provide standard good practices regarding election-related activities not covered by electoral legislation, such as media report and conduct of electioneering activities in buildings, etc. The Guidelines are also issued for reference by members of the public, to enable them to give play to the role of monitoring the elections and ensure that the elections are conducted in an open, fair and honest manner.

1.20 This set of Guidelines applies to 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 (in relation to election campaigns) and the procedure for lodging an election-related complaint. An action checklist for candidates is set out in **Appendix A**.

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

PART III : SANCTION

1.22 Electors, candidates and their agents, government officials engaged in election-related duties, and other persons involved in election-related activities should read, familiarise themselves with, and strictly observe, the Guidelines.

1.23 The EAC is committed to ensuring that all elections are conducted openly, fairly and honestly. 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) to allow full disclosure of the relevant facts to the public. If the candidate, the person or persons concerned committed any offences under the electoral legislation, he/she will also bear criminal liability responsibility.

CHAPTER 2

REGISTRATION OF ELECTORS AND VOTING SYSTEM

PART I : GENERAL

2.1 Only registered electors whose names appear on the final register (“FR”) of electors may vote at an election. Registered electors may visit the Online Voter Information Enquiry System (“OVIES”) (www.voterinfo.gov.hk) at any time to check their registration particulars. The FR is valid for one year and is updated on an annual basis. In a year which a DC ordinary election is to be held (“DC election year”), the deadline for new voter registration is on 2 July and the deadline for change of residential address and other registration particulars is on 2 June, while the deadlines are on 2 May and 2 April respectively in a non-DC election year.

2.2 True and accurate information should be provided for registration as an elector. Giving false information for voter registration (so-called “vote rigging”) is an offence under the law, no matter whether the elector has subsequently voted or not.

2.3 The Registration and Electoral Office (“REO”) will assign a DC constituency to each elector according to the residential address provided by him/her. Under the law, an elector must provide his/her sole or principal residential address at the time of his/her application for voter registration. If an elector has more than one residential address, the principal residence should be furnished. Electors are not required under the law to update the principal residential address with the REO upon moving residence. It does not constitute an act of providing false information or an offence even if an elector does not update his/her principal residential address after moving residence,

provided that the principal residential address is true and correct at the time of application for registration. As long as his/her entry has not been removed from the register and his/her name remains on the FR, an elector may still vote at the DC constituency corresponding to his/her registered residential address after moving residence.

2.4 Pursuant to civic responsibility, registered electors should provide the updated residential address to the REO after moving residence in order to ensure the accuracy of the particulars in the register of electors. It is a statutory requirement to submit an address proof issued within the last 3 months together with the submission of the application form for change of address. However, address proof is presently not required for new voter registration. Due to the submission of address proof, the statutory deadline for application for change of registration particulars has been advanced by 30 days compared with that for new registration in order to allow sufficient time to verify the information on the address proof. Although address proof is not required for new voter registration, the Electoral Registration Officer (“ERO”) can request the applicant to provide the address proof if in doubt on an application for registration.

2.5 The REO has all along put in place appropriate checking measures. If an elector is suspected to have moved residence without notifying the REO of the new principal residential address, an inquiry procedure will be initiated under which the elector may be removed from the register. If an elector has responded to the inquiry to update his/her new principal residential address by the deadline, his/her name may remain on the register. Otherwise, his/her name will be included in the omissions list (“OL”).

2.6 Before the FR is published, the REO will publish the provisional register (“PR”) and OL for public inspection. The procedure for objections

and claims in respect of eligibility for voter registration will also commence at the same time. Any person who has suspicion on the eligibility of an elector may make an objection and the Revising Officer will make a determination on the case. A person whose name has been included in the OL may make a claim with the Revising Officer to reinstate his/her voter registration. However, a person who makes an objection or a claim must provide sufficient information on the objection or claim to inform the Revising Officer of the grounds. If the person does not attend the hearing, the Revising Officer may dismiss the objection or claim.

PART II: REGISTRATION OF ELECTORS

Eligibility to Vote

2.7 For the DC election, only a registered elector is eligible to vote. A registered elector is a person whose name appears on the existing FR of geographical constituencies (“GCs”) that is in effect at the time of election as compiled and published by the ERO under the LCO. FR contains information on which DC constituency is assigned to each registered elector. An elector may only vote in the DC constituency assigned to him/her. [S 29(3) of the DCO]

Qualifications for Registration as an Elector

2.8 To qualify for registration as an elector in a GC under the LCO, a person has to satisfy all the following requirements:

- (a) in any 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.

2.9 A person who is **already registered** in the existing FR 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 PR) [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] (see para. 2.18 below);
- (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 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 from Voting

2.10 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. 2.8 and 2.9 above) [s 30(a) of the DCO];
- (b) is found 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 and De-registration

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

2.12 A person may send in his/her application for registration as an elector on the specified form¹ to the ERO any time in the year. For application for de-registration, no specified form is required but the written notice must be signed by the elector. However, for inclusion/exclusion of his/her name in the FR 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 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]

¹ The application form, “Application for New Voter Registration (Geographical Constituencies)” (REO-1), is available at the website of the REO (www.reo.gov.hk).

2.13 The ERO will process the application forms for registration and notification of de-registration after they have been received. The ERO will send written enquiries to applicants to seek information or proof if the information on their applications/notifications is incomplete or incorrect [s 5(2) of the EAC (ROE) (GC) Reg]. 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 post [s 5(9) of the EAC (ROE) (GC) Reg].

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

Change of Residential Address and Other Registered Particulars

2.15 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 principal residential address in the FR, 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.

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

2.17 An elector should notify the ERO of any change of his/her registration particulars on the specified form² to the ERO to report the change of particulars. For an application for change of principal residential address recorded in the FR, relevant documentary evidence should be provided to prove

² The application form, "Report on Change of Particulars by an Elector in a Geographical Constituency" (REO-2), is available at the website of the REO (www.reo.gov.hk).

that the address stated in the application is his/her principal residential address³ [s 10A(3) of the EAC (ROE) (GC) Reg]. The address proof must be a document issued within the last 3 months or any other period as specified by the ERO⁴. In order to allow the alteration of his/her particulars to be effected in the next FR of electors, he/she should notify the ERO as soon as possible and latest **by 2 April in a non-DC election year** (or 2 June in a DC election year) [s 10A(12) 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 10A(10) of the EAC (ROE) (GC) Reg].

2.18 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 electors, the REO has put in place suitable checking measures. **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 still the elector's only or principal residential address in Hong Kong [s 7(1) 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 electors [s 33 of the LCO]. It is of utmost importance for electors 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

³ For electors who are the authorised occupants of public rental housing under the Housing Department or registered residents in the tenancy of subsidised housing under the Hong Kong Housing Society applying for change of registered address, and that the addresses in the tenancy records match the residential addresses provided by the electors, address proof requirement for such electors may be exempted.

⁴ For details of the acceptable address proofs, please refer to guidance notes of the application form "Report on Change of Particulars by an Elector in a Geographical Constituency" (REO-2).

votes at an election. Offenders will be liable to a fine at level 3 (\$10,000) and to imprisonment for 2 years. [S 22 of the EAC (ROE) (GC) Reg]

The Provisional Register and the Omissions List

2.19 The PR for GCs will be published **not later than 1 June in a non-DC election year** (or no later than 1 August in a DC election year). It should include:

- (a) the names and principal residential addresses of those electors whose names appear in the existing FR for GC, updated and corrected by the ERO based on reported or available information; and
- (b) the names and principal residential 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 PR will be **available for public inspection** at the REO and specified District Offices (“DOs”) not later than 25 June in a non-DC election year (or 25 August in a DC election year). [S 13 of the EAC (ROE) (GC) Reg]

2.20 At the same time when the PR for GCs is published, the ERO will also publish for public inspection an OL, containing the names and principal residential addresses of persons formerly registered as GC electors, which are struck out of the PR and proposed to be omitted from the next FR, where the ERO is satisfied on reasonable grounds based on the information received that the persons concerned 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 s 9 of the EAC (ROE) (GC) Reg].

2.21 For an imprisoned person who has 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 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 shall enter his/her name and principal residential address in the OL according to the procedures prescribed in the relevant legislation. [S 9(2A) of the EAC (ROE) (GC) Reg]

2.22 The names and principal residential addresses of the persons included in the OL will not appear in the PR [s 32(4)(a) and (b) of the LCO and ss 9 and 10(3) of the EAC (ROE) (GC) Reg].

2.23 The time and place where the PR and the OL can be inspected will be published in the Gazette and in newspapers. Publication of the PR is deemed to be done by publication of that notice. 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 PR and OL for his/her inspection if the ERO considers it appropriate to do so. The ERO may require persons who want to inspect the PR and/or OL to produce an identity document and complete a form furnished by him/her. [Ss 10 and 13 of the EAC (ROE) (GC) Reg]

Online Voter Information Enquiry System

2.24 Registered electors may log on to the OVIES (www.voterinfo.gov.hk) anytime to check whether they are registered as electors and their latest registration particulars including registered addresses and respective constituencies.

Appeals – Objections and Claims

2.25 Members of the public may lodge in person with the ERO a notice of objection on the specified form as regards any entry in the relevant PR **not later than 25 June in a non-DC election year** (or 25 August in a DC election year) [s 14 of the EAC (ROE) (GC) Reg]. The procedures for making claims or objections are provided in the REO website (www.reo.gov.hk) during the public inspection period. On or before the same date, an applicant who claims that he/she is entitled to be registered as an elector but his/her name has not been recorded in the PR or has been included in the OL or an elector whose particulars have not been correctly recorded in the PR may lodge in person with the ERO a notice of claim on the specified form in respect of the entry or any omission concerning himself/herself [s 15 of the EAC (ROE) (GC) Reg]. To facilitate the making of such an objection or claim by a person imprisoned or held in custody by a law enforcement agency, he/she is allowed to deliver a notice of objection or claim to the ERO by post [s 15(7A) of the EAC (ROE) (GC) Reg].

2.26 Cases of objections and claims will be referred to the Revising Officer⁵ for consideration. The Revising Officer will rule on each objection or claim and decide on the inclusion, exclusion, or correction of the entry concerned in the relevant FR. [Ss 34 and 77 of the LCO and Part 3 of the EAC (ROE) (GC) Reg] A person who lodges an objection or a claim must provide sufficient information so as to inform the Revising Officer of the grounds of the objection or claim. The Revising Officer may dismiss the objection or claim if the person does not attend the hearing. [Ss 2(5A) and 2B of the Registration of Electors (Appeals) Regulation (Cap 542B)]

⁵ The Revising Officer may be any magistrate, former magistrate, retired magistrate or any legal officer within the meaning of the Legal Officers Ordinance (Cap 87), appointed by the Chief Justice [s 77 of the LCO].

The Final Register

2.27 The FR for GCs will be published **not later than 25 July in a non-DC election year** (or 25 September in a DC election year) [s 32(1)(b) and (1A)(b) of the LCO]. It will include the entries in the relevant PR with the updated names and principal residential addresses of electors who have applied to alter their particulars not later than 2 April of that year (or 2 June in a DC election year), and the names and principal residential addresses of those who were subject to a notice of objection or claim as updated and corrected to reflect the decisions of the Revising Officer [s 19(1) of the EAC (ROE) (GC) Reg]. The ERO will also take the opportunity to delete those entries of electors who are known to have died and to correct any mistakes in the PR. This FR shall remain valid until the publication of the next FR in the following year. The FR in force is available for public inspection at the REO and DOs.

2.28 The time and place where the FR can be inspected will be published in the Gazette and in newspapers. The publication of the notice is to be taken as the publication of the FR. 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 FR for his/her inspection if the ERO considers it appropriate to do so. The ERO may require persons who wish to inspect the FR 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 and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [s 22(3) of the EAC (ROE) (GC) Reg].

PART III : THE VOTING SYSTEM

2.29 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 the constituency, he/she will be declared elected by the Returning Officer (“RO”) [s 39(1) of the DCO]. In such a case, polling in respect of the constituency will not be necessary and electors of the constituency concerned should not attend the relevant polling stations since they no longer need to vote. If no candidates were validly nominated for the constituency, the RO must declare the election to have failed [s 39(2) of the DCO]. A by-election will then be necessary.

2.30 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. 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. [S 41(2) of the DCO] In the event that more than 1 candidate has the equal highest number of valid votes, the RO will have to draw lots to determine which one of these candidates should be elected to fill the vacancy [s 41(3) of the DCO].

2.31 When the drawing of lots has to be used to determine the result, 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 RO. 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 RO would draw the lot on behalf of the candidate if the candidate is absent at the time of drawing lots. The candidate on whom the lot falls is to be returned at the election:

- (a) Where there are 2 candidates, the candidate who draws the larger number from 1 to 10 will be the winner. If both candidates have drawn the same number, further draw(s) will be held until a candidate eventually wins. 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. As the system of voting for the election is “first past the post”, only those candidates who have drawn the same larger number in the first draw will participate in the second draw.

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

Death or Disqualification of a Candidate

2.33 If, after the RO has decided that a candidate is validly nominated but before the election day, proof is given to the satisfaction of the RO that the candidate has died or is disqualified from being nominated as a candidate, the RO must, as soon as practicable, publicly declare that the candidate has died or

that the RO's earlier decision is varied to the effect that the candidate is not validly nominated. The RO must further declare which candidates are validly nominated for election for the relevant constituency. [S 36(2) and (4) of the DCO and ss 24 and 25 of the EAC (EP) (DC) Reg]

2.34 On the polling day but before the close of poll for the election, if proof is given to the satisfaction of the RO that a validly nominated candidate has died or is disqualified from being elected, the RO should publicly declare that the proceedings for the election for the constituency are terminated. The declaration is to be made by a notice displayed in a prominent place outside each polling station of the relevant constituency and published in the Gazette as soon as practicable [s 40(1) of the DCO and s 95(1) of the EAC (EP) (DC) Reg].

2.35 After the close of poll, if proof is given to the RO's satisfaction that a candidate has died or is disqualified from being elected, the RO should complete the counting of votes. After the counting of votes is finished, if the candidate concerned is successful at the election, the RO should not declare that candidate as elected and should publicly declare that the election for that constituency has failed [s 40(2) and (3) of the DCO and s 81 of the EAC (EP) (DC) Reg].

CHAPTER 3

NOMINATION OF CANDIDATES

PART I : GENERAL

3.1 Candidates nominated for the DC election must satisfy the requirements in two parts. For the first part, the candidates must fulfil the nomination eligibility as set out in s 20 of the DCO and must not be disqualified from being nominated as a candidate or elected as an elected member under the circumstances stipulated in s 21 of the DCO. The second part is the requirement of making a statutory declaration. Pursuant to s 34 of the DCO, candidates are required to make a declaration in the nomination form to the effect that they will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region (“HKSAR”). Under the law, the validity of a candidate’s nomination is to be determined by the RO. The EAC is neither empowered nor involved in the making of such decision and would not provide any advice on the decision made by the RO.

3.2 In accordance with s 19 of the EAC (EP) (DC) Reg, if an RO decides that a nomination is invalid, the RO must endorse on the nomination form his/her decision and the reason(s) for it, which will be made available for public inspection pursuant to s 14 of the EAC (EP) (DC) Reg. If any person is disqualified from being a candidate at an election, he/she may make an election petition to question the result of the election in accordance with s 49 of the DCO.

3.3 A candidate is not required by the law to provide information on his/her political affiliation. However, a candidate may state his/her political affiliation in the nomination form and the Introduction to Candidates.

Candidates may also request to print the registered names and/or registered emblems of prescribed bodies (political/non-political) they are affiliated with on the ballot papers. If a candidate chooses to state his/her political affiliation in the nomination form, Introduction to Candidates or ballot papers, the information shown in those documents should not be mutually inconsistent (for example, if the candidate indicates membership of a political party in the nomination form, he/she is not allowed to indicate himself/herself as a non-affiliated candidate on the ballot papers). Moreover, it is an offence for a candidate to make a false statement about his/her political affiliation in an election-related document (including nomination form or ballot papers).

PART II : ELIGIBILITY AND DISQUALIFICATION FOR NOMINATION

Eligibility

3.4 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 (see para. 2.10 above);
- (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 (see para. 3.6 below); 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]

3.5 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 occasional or temporary 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 consult his/her independent legal adviser. In a DC ordinary election, a candidate may also seek the advice of the NAC. (See paras. 3.15 to 3.21 below)

Disqualification

3.6 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 officer⁶;

⁶ 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 pardon⁷;
- (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 an offence in Hong Kong or in any other place, the sentence for which is imprisonment (suspended or not) for a term exceeding 3 months without the option of a fine;
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the ECICO;
 - (iii) of an 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;

⁷ The Court of First Instance delivered written judgment on 21 June 2012 on *Wong Hin Wai & another v Secretary for Justice* (HCAL 51 & 54/2012) and declared s 39(1)(b) of the LCO (which is similar to para. 3.6(b) or s 21(1)(b) of DCO) to be unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. The future DC elections will be organised in accordance with the prevailing 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 in a DC ordinary election may also apply to the NAC 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 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 III : WHEN AND HOW TO NOMINATE

When to Nominate

3.7 Nominations may be made during the **nomination period** specified in the notice published in the Gazette [s 8 of the EAC (EP) (DC) Reg]. The nomination period for a DC election must not be less than 14 days or more than 21 days, and must end not less than 28 days and not more than 42 days before the polling date [s 9 of the EAC (EP) (DC) Reg]. An election

timetable in the format of the Action Checklist for Candidates at **Appendix A** will be provided to each candidate by the RO for the relevant constituency. The ROs shall receive nominations during the ordinary business hours (i.e. from 9 am to 5 pm on Monday to Friday, and from 9 am to 12 noon on a Saturday) on each working day (i.e. any day other than a general holiday) in the nomination period. **Candidates are well advised to submit their nominations in good time before the end of the nomination period to allow time for any errors in their nomination forms to be corrected.**

How to Nominate

3.8 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 (<https://www.reo.gov.hk>).

3.9 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 minimum required number of subscribers for his/her nomination, to avoid the risk of invalidation of the nomination should any of the subscribers be subsequently found not to be qualified as subscribers. A candidate should ensure that the electors subscribing his/her nomination form are eligible and that the electors have not subscribed another nomination previously. Each elector subscribing a nomination shall sign the nomination form **personally**. A candidate should not sign as a subscriber in his/her nomination form.

No unlawful acts shall be used to procure an elector to subscribe or not to subscribe a nomination. Intimidation is an offence under s 24 of the Crimes Ordinance (Cap 200), liable to a fine and to imprisonment for 2 years on summary conviction or imprisonment for 5 years on conviction upon indictment.

Bribery is also a corrupt conduct liable to a fine and to imprisonment.

Candidates are also required to observe Data Protection Principle 4 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap 486) (“PD(P)O”) in safeguarding the personal data of subscribers held for the nomination form. They should take all practicable steps to ensure that the aforesaid personal data are protected against access, processing, erasure, loss or use accidentally or without authorisation.

(b) Consent and Declarations on Nomination Form

According to the DCO, a candidate must complete the nomination form and the declarations, and have it attested by a witness⁸. The candidate must declare that he/she will uphold the Basic Law and pledge allegiance to the HKSAR. [S 34(1)(b) of the DCO].

Any person who makes a statement which he/she knows to be false in a material particular in an election-related document, including the nomination form, or recklessly makes a statement which is incorrect in a material particular in such document, or omits a material particular in such document, commits an offence and shall be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [s 104 of the EAC (EP) (DC) Reg].

⁸ A witness can be any person in possession of an identity document and aged 18 years or over. According to s 2 of the DCO, identity document means:

- (a) an identity card issued to a person under the Registration of Persons Ordinance (Cap 177); or
- (b) a document issued by the Commissioner of Registration to a person certifying that the person is exempt, under regulation 25 of the Registration of Persons Regulations (Cap 177A), from being required to register under that Ordinance; or
- (c) any other document issued to a person that is acceptable to the ERO as proof of the person’s identity.

To ensure that all candidates clearly understand the relevant provisions of the Basic Law and the legal requirements and responsibilities involved and, are bona fide on such basis in signing the relevant declarations in the nomination form, the EAC has prepared a Confirmation Form for signature by the candidate with a view to assisting the RO in the exercise of his/her statutory power to discharge his/her duties to ensure that the nomination procedure is completed in accordance with the law. The Confirmation Form also enables the candidate to confirm that he/she understands the above requirements and responsibilities. Candidates are reminded to note that to uphold the Basic Law means to uphold all the provisions of the Basic Law, including Article 1⁹, Article 12¹⁰ and Article 159(4)¹¹.

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 must have withdrawn all his/her other prior nominations, if any. He/She is required to make a declaration in the nomination 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, any subsequent nominations of his/hers will be rejected as invalid.

⁹ Article 1 of the Basic Law provides that “The Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China.”

¹⁰ Article 12 of the Basic Law provides that “The Hong Kong Special Administrative Region shall be a local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government.”

¹¹ Article 159(4) of the Basic Law provides that “No amendment to this Law shall contravene the established basic policies of the People’s Republic of China regarding Hong Kong.”

3.10 In the nomination form, a candidate may choose to state his/her occupation and/or political affiliation for public information if he/she so prefers. If the candidate mentions the name of any organisation when stating his/her political affiliation, he/she must seek the consent of the organisation concerned beforehand. The candidate should make sure that his/her nomination form is properly completed before submission. Information (such as occupation and political affiliation) provided by the candidate in the grid paper for Introduction to Candidates or the specified form for printing of particulars relating to the candidate on a ballot paper¹² should not be inconsistent with the information stated in the nomination form (for example, if the candidate indicates membership of a political party in the nomination form, he/she is not allowed to indicate himself/herself as a non-affiliated candidate on the ballot papers).

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

3.12 The completed nomination form must be submitted to 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 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 any other manner of delivery of the nomination form to the RO. [S 12(12) and (13) of the EAC (EP) (DC) Reg]

¹² The form is known as (REO/BP/7) Form, i.e. "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".

3.13 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 until the relevant notice of the election result is published [s 14 of the EAC (EP) (DC) Reg]. Should the RO decide that a nomination is invalid (see Part VI below), he/she is required to endorse on the nomination form his/her decision and the reasons for it [s 19(1) of the EAC (EP) (DC) Reg].

False Declarations

3.14 A candidate who knowingly and wilfully makes a statement which is false in a material particular in the declaration in the nomination form shall violate s 104 of the EAC (EP) (DC) Reg, which stipulates that a person who makes a statement which he/she knows to be false in a material particular in an election-related document, or recklessly makes a statement which is incorrect in a material particular in such document, or omits a material particular in such document, commits an offence and shall be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months. Besides, the person making such a false statement in any document required under any enactment shall also be in breach of s 36 of the Crime Ordinance and be liable to imprisonment for 2 years and to a fine. A violation against s 104 of the EAC (EP) (DC) Reg is a prescribed offence with the same disqualifying effect as conviction of a corrupt or illegal conduct under the ECICO (as described in paras. 15.63 and 16.35 of the Guidelines). Even if elected, he/she will be disqualified from holding office as a member of the DC in accordance with s 24(1)(d)(iv) of the DCO.

PART IV: NOMINATIONS ADVISORY COMMITTEES

3.15 The EAC has the power to appoint NACs to provide advice, on request, to prospective candidates and ROs on the candidates' eligibility for

nomination [ss 2 and 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 Prospective Candidates

3.16 NAC's service will be provided to prospective candidates **only at a DC ordinary election**. During a period to be specified by the EAC [s 3(4) of the EAC (NAC) (DC) Reg] which normally ends 1 day before the commencement of the nomination – a prospective candidate may apply, by completing a specified 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. According to s 1(2) of the EAC (NAC)(DC) Reg, the Regulation does not empower or require the NAC to advise on any matter relating to any requirements under s 34 of the DCO (i.e. the declaration in the nomination form). He/She may make only 1 application in respect of the election [s 5(4) of the EAC (NAC) (DC) Reg].

3.17 The completed application must be:

- (a) sent to the 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.
[S 5(2) of the EAC (NAC) (DC) Reg]

3.18 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. [S 5(7) and (8) of the EAC (NAC) (DC) Reg]

3.19 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.

[S 5(9) of the EAC (NAC) (DC) Reg]

3.20 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 [s 5(10) of the EAC (NAC) (DC) Reg].

3.21 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

3.22 NAC's service will be provided to ROs at both DC ordinary elections and by-elections during the period specified by the EAC, normally from the commencement until up to 1 day after the end of the nomination period. During the 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. According to s 1(2) of the EAC (NAC)(DC) Reg, the Regulation does not empower or require the NAC to advise on any matter relating to any requirements under s 34 of the DCO (see para. 3.16). 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. [S 6 of the EAC (NAC) (DC) Reg]

3.23 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 and s 6(4) of the EAC (NAC) (DC) Reg]. The decision on the validity of nomination, however, remains with the RO alone [ss 16, 90(1) and (2)(a) of EAC (EP) (DC) Reg].

PART V : ELECTION DEPOSIT

Payment of Election Deposit

3.24 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].

3.25 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

3.26 The deposit will be returned to the candidate if:

- (a) he/she is not validly nominated;

- (b) his/her nomination is withdrawn;
- (c) after his/her nomination is confirmed valid for the election, he/she has died 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 the DC Subscribers & Deposit Reg)

PART VI : VALIDITY OF NOMINATIONS

3.27 Whether the nomination is valid or not is decided by the RO. 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 after the end of the nomination period [s 36(1) of the DCO and s 22 of the EAC (EP) (DC) Reg].

3.28 Where the 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. 3.22 above).

3.29 Where a nomination appears to the RO to be invalid because of some errors that can be corrected within the nomination period, the RO will, if practicable, give the candidate a reasonable opportunity of correcting the errors before making a decision that the nomination is invalid [s 18 of the EAC (EP) (DC) Reg]. 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.

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

3.31 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 [s 12(10) of the EAC (EP) (DC) Reg].

3.32 A nomination will not be valid unless it contains all the information and signatures required to be shown on the nomination form or other information required by the RO and the candidate has made the declarations referred to in para. 3.9(b) above.

3.33 Without prejudice to ss 20, 21 and 34 of the DCO¹³, the RO may decide that a nomination is invalid only where:

- (a) the number or qualifications of the subscribers fall short of the requirements under s 7 of the DC Subscribers & Deposit Reg;

¹³ Please see paras. 3.4, 3.6, 3.9(b) and 3.14 for reference.

- (b) the nomination form, including the nomination and declarations, 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 under the DCO;
- (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; or
- (f) he/she is satisfied that the candidate has died.

[S 16 of the EAC (EP) (DC) Reg]

3.34 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 declarations 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].

3.35 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 does not have to vary his/her decision if the candidate who has been disqualified is uncontested in the election for the relevant 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].

3.36 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 in the election for that constituency [s 23 of the EAC (EP) (DC) Reg].

PART VII : WITHDRAWAL OF CANDIDATURE

3.37 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 “Notice of Withdrawal of Candidature”. The completed form should be delivered to the RO concerned by the candidate in person or the candidate’s election agent in person [s 35 of the DCO and s 20 of the EAC (EP) (DC) Reg]. Under the prevailing law, candidates are not allowed to withdraw their candidature after the end of the nomination period and there is no such mechanism of so-called “abandonment of election”. Even if a candidate has publicly announced about his/her so-called “abandonment of election”, his/her name will still be shown on the ballot papers and electors may vote for that candidate if they so wish. All candidates must comply with the election-related legislation, including reporting all election expenses.

IMPORTANT :

It is an offence under ss 7 and 8 of the ECICO for a person to bribe, or to 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 VIII : NOTICE OF VALID NOMINATIONS

3.38 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 IX : PARTICULARS RELATING TO CANDIDATES ON
BALLOT PAPERS**

3.39 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 the DC elections. These particulars include registered names and emblems of prescribed bodies¹⁴, registered

¹⁴ A prescribed body means a prescribed political body or a prescribed non-political body.

emblems of prescribed persons¹⁵, 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

3.40 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 paras. 3.41 and 3.43 below);
- (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 (see para. 3.41 below).

[S 3(2) and (3) of the PCBP (LC & DC) Reg]

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

3.41 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 written consent given, during the nomination period, by the body or each of the bodies in relation to the request. Where the subject of the request includes a photograph, it must be accompanied

¹⁵ A prescribed person means a person that is registered in an FR of electors for GCs as compiled and published in accordance with the LCO and that is not disqualified from being so registered or from voting at an election.

by two photographs with the name of the candidate shown on the back of the photograph. [S 3(4) of PCBP (LC & DC) Reg]

Application for Registration of Name and Emblem

3.42 The particulars already registered with the EAC under the former Particulars Relating to Candidates on Ballot Paper (Legislative Council) Regulation are 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

3.43 Subject to the time frame for application as detailed in para. 3.47, 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.

[S 8(1) of the PCBP (LC & DC) Reg]

3.44 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 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(2) of PCBP (LC & DC) Reg]

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

3.45 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 [s 9(1) of the PCBP (LC & DC) Reg].

3.46 An application must be made in the specified form and signed by the applicant [s 9(2) of the PCBP (LC & DC) Reg].

Timing of Application

3.47 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 a DC ordinary election is to be held;
and
- (b) 15 April in any other years.

[S 2 of the PCBP (LC & DC) Reg]

Processing of Application

3.48 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 cut-off 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 the PCBP (LC & DC) Reg]

3.49 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 in writing to the EAC on why it should not refuse to grant the application. [Ss 12 and 13(1) and (2) of the PCBP (LC & DC) Reg]

3.50 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 the PCBP (LC & DC) Reg.

[S 14 of the PCBP (LC & DC) Reg]

3.51 Under s 15 of the 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.

3.52 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. [S 17 of the PCBP (LC & DC) Reg]

3.53 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 the PCBP (LC & DC) Reg]

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

3.54 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 the PCBP (LC & DC) Reg].

3.55 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.

[S 21(1) of the PCBP (LC & DC) Reg]

3.56 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(2) of the PCBP (LC & DC) Reg]

PART X : CANDIDATES' BRIEFING AND INTRODUCTION TO CANDIDATES

3.57 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 before the briefing to allocate to each candidate a candidate number to be shown on the ballot paper; and a set of designated spots for displaying EAs (please refer to para. 7.33).

3.58 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.

3.59 Candidates are free to make use of the Introduction to Candidates to promote their elections. 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 affixed with a colour photograph of the candidate 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 the 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 his/her electoral message.

3.60 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 obscene, immoral, indecent, offensive, defamatory, unlawful, or contain information not relating to the promotion of the candidature of the candidate concerned.

3.61 To assist persons with visual impairment to read the contents of the Introduction to Candidates, candidates may provide the REO with typed texts of their messages to enable persons with visual impairment to read the contents of the document with the aid of computer software. The typed texts can be submitted after the end of the nomination period and by the deadline specified by the REO. 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. If the candidate does not provide the typed text for preparing the text version of the Introduction to Candidates, the website will only show his/her name and the candidate number allocated with the remark that the candidate has not provided a text version of his/her electoral message. The EAC appeals to all candidates to support this initiative and make use of this text version to convey their electoral messages to persons with visual impairment. As a general principle, candidates should be sensitive to the needs of electors and, in the course of their electioneering campaign, make their utmost efforts to ensure that persons with different needs can have fair access to their electoral messages.

CHAPTER 4

POLLING AND COUNTING ARRANGEMENTS

PART I : GENERAL

4.1 An elector may vote only at the polling station allocated to him/her. In general, the REO will assign an elector to vote at a polling station within his/her constituency close to his/her registered residential address. However, as the DC constituencies are generally small in size, it is possible that there may be no suitable venue for use as a polling station in some constituencies. And even if there are suitable venues, it also depends on whether the venue can be made available for use as polling stations by the owners. Therefore, the polling station(s) in particular constituencies may not be situated within the boundary of the constituencies concerned, but in the neighbouring constituencies.

4.2 If an elector with mobility difficulty is assigned to a polling station not easily accessible by him/her, he/she may apply to the REO for being re-assigned to an access-free special polling station.

4.3 A No Canvassing Zone (“NCZ”) will be designated outside each polling station to ensure that electors can gain access to the polling station without interference. In addition, a No Staying Zone (“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.

4.4 No canvassing activities are allowed within the NCZ. Regarding buildings within the NCZ, all canvassing activities by candidates and their campaigners are prohibited in the entire building where a polling

station is located as well as on the ground floor of other buildings, regardless of whether they are government or private premises, and even if approval from the building management concerned is obtained. Please see Part III of this chapter for details.

4.5 The poll starts at 7:30 am and ends at 10:30 pm. Before the commencement of polling (about 30 minutes), the Presiding Officer (“PRO”) will admit the candidates, their election agents or polling agents into the polling station to observe the opening of the sealed packets of ballot papers and the locking and sealing of ballot boxes. After the close of poll, ballot boxes will be locked and sealed in the presence of the candidates and their agents, if present. The count will only commence when polling at all polling stations of the same constituency has closed.

4.6 Only electors and designated/authorised persons are allowed entry into a polling station. Electors requiring special assistance may make a request to the PRO for discretion as appropriate. Please see Part V of this chapter for details.

4.7 Upon arrival at the polling station, an elector should show to the polling staff at the ballot paper issuing desk the original of his/her Hong Kong Permanent Identity Card (“HKID”) or other identity documents permitted by the law (such as the HKSAR Passport) before a ballot paper can be issued to him/her.

4.8 The ballot is secret. No one may use any force or threaten to use force against a person to vote or not to vote for any particular candidate at an election. Also, no one is obligated to disclose which candidate he/she has voted for or is going to vote for.

4.9 After collecting the ballot paper, an elector should immediately proceed to a voting compartment to cast his/her vote. Each voting compartment is to be used by one elector at a time only. An elector who has difficulty in marking the ballot paper by himself/herself may, in accordance with the law, ask the PRO or the PRO's deputy to mark the ballot paper on his/her behalf in the presence of one polling staff as a witness. However, it is prohibited under the law to have an elector's relative or friend (even if he/she is also an elector) to mark the ballot paper on the elector's behalf.

4.10 An elector may enter the polling station with a memorandum (such as so-called "thunder in the palm") containing the name or candidate number of the candidate he/she is going to vote for. If this memorandum only serves as a reference for the elector to mark his/her ballot paper inside the voting compartment, it is not prohibited by the law. However, under no circumstances should any material containing the name and/or number of a candidate be displayed, circulated, shared or be discussed with other persons inside the polling station or the NCZ, otherwise it will constitute an offence.

4.11 In no circumstances can the assistance provided to the electors in accessing the polling station involve any acts of promoting or prejudicing the election of any candidate or be an inducement to the electors in voting or not to vote for any particular candidate(s). Otherwise, it will be a violation of the ECICO.

4.12 Exit polls may be conducted outside polling stations by organisations approved by the REO. Participation in any exit poll is entirely voluntary. Electors need not disclose to the organisations concerned which candidates they have voted for unless they wish to do so. Please see Chapter 14 for matters relating to exit polls.

PART II: BEFORE THE POLL

4.13 The CEO must designate by notice in the Gazette place(s) as polling station(s) (including small polling station(s) and special polling station(s)¹⁶), dedicated polling station(s)¹⁷, ballot paper sorting station(s)¹⁸ or 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**¹⁹. 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 station or a dedicated polling station, he/she will designate 1 polling station (other than a small polling station, a special polling station or a dedicated 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 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].

¹⁶ A special polling station is one accessible to electors who are wheelchair users or have difficulty in walking. Such electors will normally be small in number (see also para. 4.18 below).

¹⁷ 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.

¹⁸ 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.

¹⁹ For a constituency with two or more counting stations, the counting station serving the largest number of registered electors will be designated as the dominant counting station to coordinate the results of counting of votes of all the counting stations for the constituency.

4.14 An area outside each polling station will be designated as the NCZ and NSZ, the boundaries of which will be determined by the RO. All candidates of the constituency concerned will be notified of these zones before the polling day. The RO may also authorise PRO to vary the NCZ or NSZ on the polling day. [S 43 of the EAC (EP) (DC) Reg] (See Chapter 13)

4.15 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, temporary structures may be designated as polling stations. The polling stations designated for the constituencies will be, as far as practicable, close to the principal residential addresses of electors as shown on the FR, 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].

4.16 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 addresses or correspondence addresses (if applicable). 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. [S 34 of the EAC (EP) (DC) Reg]

4.17 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.

4.18 An elector **may vote only at the polling station allocated to him/her** by the CEO [s 36(1) of the EAC (EP) (DC) Reg]. Most of the polling stations are accessible to persons with mobility difficulty. Whether the polling station allocated to an elector is accessible to persons who are wheelchair users or have difficulty in walking will be specified clearly in the location map attached to the poll card sent to each elector. If an elector with mobility difficulty is allocated to a polling station not accessible to him/her, he/she may **at least 5 days** before the polling day apply to the CEO for re-allocation to a 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 may vote only at that polling station [s 36(2) of the EAC (EP) (DC) Reg]. Subject to availability, free Rehabus service may also be arranged to take those electors to the special polling station. In case special circumstances require, the CEO may allocate to an elector an alternative polling station, in addition to or in substitution of the one originally allocated to him/her [s 33(4) of the EAC (EP) (DC) Reg]. Electors concerned may make enquiries with the REO on this subject by telephone or in writing.

4.19 Due to security reasons, there is a need to separate some persons imprisoned or held in custody from others inside the prisons. The Commissioner of Correctional Services will assign a time slot during the polling hours of a dedicated polling station situated in a prison to an elector allocated to that polling station to vote, and inform the elector of the time slot assigned. The Commissioner of Correctional Services 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. 4.36 below). [S 30(2A), (2B), (3A) and (5) of the EAC (EP) (DC) Reg]

PART III : OUTSIDE THE POLLING STATION

4.20 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.

4.21 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]. An NCZ will be designated outside each polling station to ensure the undisturbed passage of electors into the polling station. An 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. Canvassing activities within an NCZ will not be allowed (except for static display of EAs that are authorised by the RO, e.g. EAs mounted at designated spots). A notice of the determination of an NCZ and a map or plan showing the boundary of the area will be put up at or near the polling station [s 43(7) of EAC (EP) (DC) Reg]. (See Chapter 13)

4.22 On the polling day, a person must not:

- (a) engage in canvassing votes (including suggesting not to vote for any candidate) within the NCZ other than the door-to-door canvassing activities stated in para. 4.23 below;
- (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. badge, emblem, clothing or head-dress (except for static display of EAs authorised by the RO, e.g. EAs mounted at designated spots), 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 and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months [ss 43 and 48 of the EAC (EP) (DC) Reg].

4.23 No canvassing is allowed on the street level (i.e. ground floor) within the NCZ. Door-to-door canvassing may be allowed on the storeys above or below the street level in any building other than the building in which the polling station is located within an NCZ, provided that permission has been obtained for entry into the building for canvassing votes, that no obstruction is caused to any person, and that no sound amplifying system or device is used. For the purpose of such canvassing, the display or wearing of any promotional

material (e.g. badge, emblem, clothing or head-dress which may promote or prejudice the election of any candidate at the election) or any material making direct reference to any body a member of which is standing as a candidate in the election, or the registered name or emblem of a prescribed body printed on any ballot paper for the election, may be allowed but in no case to appear on the street level within the NCZ. [S 43(13), (14) and (15) of the EAC (EP) (DC) Reg] (see Chapter 13)

PART IV: POLLING HOURS

4.24 The poll starts at 7:30 am and ends at 10:30 pm. For security reasons, dedicated polling stations situated in prisons open from 9:00 am to 4:00 pm. About 30 minutes (or 15 minutes for dedicated polling stations situated in prisons) before the commencement of polling, the PRO at a polling station will admit the candidates, their election agents or polling agents into the polling station to observe the opening of the sealed packets of ballot papers and the locking and sealing of ballot boxes. He/She will show them that the sealed packets are not tampered with before opening them and the ballot boxes are empty before proceeding to lock and seal them. The PRO will also inform and show to such persons the number of ballot papers in his/her possession. For each candidate, only 1 such person may be present to observe the opening of sealed packets of ballot papers and the locking and sealing of ballot boxes: a candidate, the election agent or a polling agent.

4.25 For dedicated polling stations situated in prisons, due to security reasons,

- (a) only a maximum of 2 candidates may be present to observe the opening of the sealed packets of ballot papers and locking and

sealing of 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 opening of the sealed packets of ballot papers and the locking and sealing of 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 opening of the sealed packets of ballot papers and the locking and sealing of ballot boxes will be on a **first-come-first-served basis**. Where no candidates or any of their agents are present at the polling station, the above process of opening of the sealed packets of ballot papers and locking and sealing of ballot boxes will be conducted in the presence of any 2 of the following persons at the polling station: police officer, member of the Civil Aid Service (“CAS”), officer of the CSD or polling staff, as the case may be. (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)

4.26 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 [s 42(1A) of the EAC (EP) (DC) Reg]. 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].

PART V : ADMISSION TO THE POLLING STATION

4.27 Other than electors, only the following persons may be admitted to a polling station:

- (a) the PRO and other polling staff;
- (b) members of the EAC;
- (c) the CEO;
- (d) the RO 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 CAS;
- (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 according to para. 4.28;
- (h) polling agents appointed for the polling station (this does not apply to dedicated polling stations situated in maximum security prisons) according to para. 4.28;
- (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 who enters 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 of the polling stations (other than dedicated polling stations²⁰) to show that only electors and designated/authorised persons may be allowed to enter.

4.28 For the purpose of maintaining order at 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: [s 47(2) of the EAC (EP) (DC) Reg]

- (a) for each candidate, only 1 of the following persons may enter and be present in the polling station at any one time: the candidate, his/her election agent or polling agent [s 47(6), (7), (8) and (9) of the EAC (EP) (DC) Reg];
- (b) 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;

²⁰ For a dedicated polling station, the notice will be displayed inside the polling station.

- (c) admission of candidates, election agents and polling agents will be on a **first-come-first-served basis**. In order that as many candidates, election agents and polling agents as possible may 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) as stated in (c) above, to ensure fairness, waiting slots for entering a polling station are all allocated on a first-come-first-served basis. If a candidate or his/her agent seeks admission to a polling station but all the waiting slots are full until the close of poll, no vacant slot can be allocated to the candidate or his/her agent. However, if none of this candidate or his/her agent has earlier entered the polling station to observe the poll on the polling day, the PRO concerned will endeavour to give the candidate/agent an opportunity to enter the polling station to observe the poll before the close of poll under a special arrangement. Under this special arrangement, the person concerned will replace the candidate or his/her agent who has been allocated the last waiting slot for admission to the polling station if this last candidate or any of his/her agents has already been given an earlier slot to observe the poll at that polling station;
- (e) anyone on admission into a polling station has to sign and enter his/her time of entry on a log sheet. A candidate, an election agent or a 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. The person who has lost his/her place due to his/her absence will have to obtain a new number chit when he/she returns; and

- (f) 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 2 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)

4.29 Except for an elector, a police officer, an officer of the CSD, an officer of any law enforcement agency or a member of the CAS on duty, all other persons permitted to enter a polling station are required to make a **Declaration of Secrecy** on a specified form²¹ before entering the polling station and observe the provisions governing the secrecy of voting [s 93 of the EAC (EP) (DC) Reg].

²¹ Declaration can be made before Commissioner for Oaths/member of the EAC/RO/CEO (or a person whose official designation is that of a deputy to the CEO)/Justice of the Peace/solicitor with a practicing certificate.

PART VI : CONDUCT INSIDE THE POLLING STATION

4.30 On arrival at the polling station, an elector should show to the polling staff at the ballot paper issuing desk the original of any of the following documents, to the satisfaction of the PRO or polling staff, before a ballot paper can be issued to him/her:

- (a) the elector's HKID;
- (b) a document issued by the Commissioner of Registration to the elector certifying that the elector is exempt, under regulation 25 of the Registration of Persons Regulations (Cap 177A), from being required to register under the Registration of Persons Ordinance (Cap 177);
- (c) a document issued by the Commissioner of Registration acknowledging that the elector has applied:
 - (i) to be registered under the Registration of Persons Ordinance; or
 - (ii) for a new HKID issued under regulation 13 or 14 of the Registration of Persons Regulations but is awaiting its issuance;
- (d) a valid HKSAR Passport issued to the elector under the Hong Kong Special Administrative Region Passports Ordinance (Cap 539);
- (e) a valid HKSAR seaman's identity book issued to the elector under regulation 3 of the Immigration Regulations (Cap 115A);

- (f) a valid document of identity issued to the elector under regulation 3 of the Immigration Regulations; or
- (g) a document evidencing the elector's report to a police officer of the loss or destruction of document referred to in para. (a), (b) or (c) above, together with the original of a valid passport or similar travel document (not being one referred to in (a) - (f) above) issued to him/her showing his/her name and photograph.

[S 53 of the EAC (EP) (DC) Reg]

4.31 For an elector applying for a ballot paper at a dedicated polling station situated in a prison, the document to be shown is a document issued by the Commissioner of Correctional Services showing the elector's name, photograph and prisoner registration number allocated by the Commissioner to the elector for identification purpose. [S 53 of the EAC (EP) (DC) Reg]

4.32 The polling staff will check the elector's identity document against the entries on the copy of register of electors to ascertain if the elector is registered in respect of the constituency. The polling staff will softly call out the name of the elector as stated in the entry on 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]

4.33 For control purpose regarding the total number of ballot papers issued, the counterfoil of each ballot paper bears a serial number on its front. However, the counterfoil number will not be printed/shown on the ballot paper and the polling staff will not record the counterfoil number of the ballot paper issued to the elector. [Ss 52(11) and 56(4) of the EAC (EP) (DC) Reg]

4.34 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 entry as it is recorded 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]

4.35 Where there is reasonable cause to believe that a person has engaged in corrupt conduct 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]

4.36 If an elector has been issued with a ballot paper but leaves the polling station without casting his/her vote, he/she cannot return to the polling station later to cast the vote not yet cast, except under the following circumstances:

- (a) if, after having been issued with a ballot paper, 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 [s 56A(1) of the EAC (EP) (DC) Reg]; or

- (b) if, after having been issued with a ballot paper, an elector has become incapacitated from voting or completing the voting 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 poll, provided that before he/she leaves the polling station, his/her ballot paper has been returned to the PRO [s 56A(5) of the EAC (EP) (DC) Reg].

For a dedicated polling station situated in a prison, the elector concerned would also need to return to cast his/her vote within the existing or any newly assigned time slot [s 56A(5B) of the EAC (EP) (DC) Reg].

4.37 Under the above circumstances, for a polling station other than a dedicated polling station, the following procedures must be taken by the PRO:

- (a) the PRO must keep that ballot paper in his/her custody and return such ballot paper, in the presence of a police officer to the elector in question when the latter returns before the close of poll to cast his/her vote [s 56A(3) and (6) of the EAC (EP) (DC) Reg]; and
- (b) if at the close of poll, the elector has not returned, the PRO shall endorse the ballot paper with the words “**UNUSED**” and “**未用**” and show it to each candidate or his/her election agent or polling agent who is present at the time; such ballot paper shall not be put into a ballot box and will not be counted at the counting of votes [ss 61 and 78 of the EAC (EP) (DC) Reg]

4.38 For a dedicated polling station situated in a prison, the following procedures must be taken by the PRO and/or the Commissioner of Correctional Services or his/her officer:

- (a) the PRO must keep that ballot paper in his/her custody and return such ballot paper, in the presence of an officer of the CSD or any law enforcement agency, to the elector in question when the latter returns before the close of poll to cast his/her vote [s 56A(3) and (6) of the EAC (EP) (DC) Reg];
- (b) the Commissioner of Correctional Services or his/her officer 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 [s 56A(2A) and (5A) of the EAC (EP) (DC) Reg]; and
- (c) if at the close of poll, the elector has not returned, the PRO shall endorse the ballot paper with the words “**UNUSED**” and “**未用**” and show it to each candidate or his/her election agent or polling agent who is present at the time; such ballot paper shall not be put into a ballot box and will not be counted at the counting of votes [ss 61 and 78(1)(d) of the EAC (EP) (DC) Reg].

4.39 The PRO would only need to keep a ballot paper left in the polling station in his/her custody in the circumstances described in para. 4.36 above 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 “**未用**” and shall not be counted [ss 61 and 78(1)(d) of the EAC (EP) (DC) Reg].

4.40 When issued with the ballot paper, an elector will also be provided with a cardboard to which a chop with a “✓” sign is attached. The cardboard will be collected by the polling staff after the elector has inserted his/her ballot paper into the ballot box before leaving the polling station. In a DC ordinary election or where the CEO considers it appropriate in a by-election, an envelope (on which the name and the code 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.

4.41 After collecting the ballot paper, the elector should immediately proceed to the voting compartments to cast his/her vote. One compartment may be used only by one elector at one time. The elector 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** so that the marked side is inside. An elector of a dedicated polling station should fold the ballot paper so that the marked side is inside and put the folded ballot paper into the aforesaid envelope (if such envelope is provided) [s 57(2) and (2A) of the EAC (EP) (DC) Reg].

4.42 Immediately after an elector comes out of the voting compartment, he/she should put his/her marked ballot paper as folded or in an envelope issued together with the ballot paper, as the case may be, into the 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 without undue delay [s 57(2), (2A), (3) and (4) of the EAC (EP) (DC) Reg].

NOTE :

Concerning offence in relation to ballot papers, 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. According to s 17(1)(c) of the ECICO, any person who removes a ballot paper from a polling station with intent to deceive also commits an offence. 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 in use, or that has been used, at the election.

4.43 An elector with visual impairment who so requests will be provided with a **braille template** to facilitate his/her marking of the ballot paper by himself/herself [s 59(3) of the EAC (EP) (DC) Reg]. The template should be returned to the polling staff after use. (For details about the template, see para. 6.41 of Chapter 6)

4.44 An elector who is unable to mark a ballot paper by himself/herself to indicate the choice of candidate (e.g. being unable to read or incapacitated by visual deficiency or other physical cause) may ask the PRO, Deputy Presiding Officer (“DPRO”) or Assistant Presiding Officer (“APRO”) 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]

4.45 **The ballot is secret. No one can use force or threaten to use force against a person to vote or not to vote at an election, or to vote or not to vote for any particular candidate at an election** [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 particulars relating to, the candidate for whom the elector has voted commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months. [S 48 of the DCO and s 94 of the EAC (EP) (DC) Reg]

4.46 For the protection of the secrecy of voting, no one shall, at any time, disclose whether an elector has or has not applied for a ballot paper or voted; or disclose the identity of an elector at a dedicated polling station. Anyone who makes such disclosure, unless otherwise permitted by law, commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months. [S 94(1), (1A), (2) and (10) of the EAC (EP) (DC) Reg]

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

4.48 Where a person, claiming to be a particular elector entered on the register, applies for a ballot paper after a person has already 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 latter person is the former person who had been issued with a ballot paper earlier, and the latter person has answered the appropriate questions in accordance with the law as set out in para. 4.34 to the satisfaction of the PRO. The PRO may in such circumstances issue a ballot paper with the words “**TENDERED**” and “**重複**”

endorsed on the front of it. Such a ballot paper shall not be counted at the counting of the votes. [Ss 60 and 78 of the EAC (EP) (DC) Reg]

4.49 Any person who discovers ballot papers which have been issued (whether marked or unmarked) and may be abandoned or found left behind in the voting compartments or other areas inside the polling station is required to hand it to the PRO. Such a ballot paper will be endorsed on the front of it with the words “**UNUSED**” and “**未用**” and will be kept by the PRO. In no circumstances shall 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]

4.50 Subject to para. 4.51, no person, including an elector, should interfere with or attempt to influence any other elector, specifically no one shall:

- (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. 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) 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 (\$5,000) and to imprisonment for 3 or 6 months, as the case may be. [Ss 48 and 94 of the EAC (EP) (DC) Reg]

4.51 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 CAS 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]

4.52 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 and will be liable to a fine and to 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 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;
- (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(2), (2A), (3) and (4) of the EAC (EP) (DC) Reg]. Nevertheless, the RO or the PRO shall not exercise their powers to order an elector to leave or remove an elector from the polling

station so as to prevent him/her from voting at the polling station allocated to that person [s 49(5) of the EAC (EP) (DC) Reg].

4.53 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 (\$5,000) and to imprisonment for 6 months [s 48(2) and (9) of the EAC (EP) (DC) Reg]. Normally such permission is only granted to government photographers for publicity purposes.

PART VII : CLOSE OF POLL

4.54 Electors who intend to vote but are not already at the door of their designated polling station by the close of poll will not be allowed in afterwards.

A Polling Station which is also a Counting Station

4.55 Except for 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. 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. A candidate, his/her election agent, counting agent and polling agent may stay inside 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]

4.56 The locked and sealed ballot boxes referred to in para. 4.55 above will be kept by the PRO until the counting of votes begins (see Part VIII below).

A Polling Station which is not a Counting Station

4.57 Small polling stations, special polling stations and dedicated polling stations will not be converted into a counting station after the close of poll. For a small polling station or a special polling station, a notice will be displayed by the PRO outside the polling station to inform the public that the poll has been closed. 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 stations, 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]

4.58 As the votes cast at the small polling stations, special polling stations and dedicated polling stations will not be counted therein, the PRO (or APRO if it is a special polling station) will deliver the sealed ballot boxes, the sealed packets referred to in para. 4.57 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 relevant 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(3) and (4) of the EAC (EP) (DC) Reg]

4.59 Candidates and/or their agents (not more than a total of 2 persons), if they so wish, will be allowed to accompany the PRO in the delivery of the ballot boxes, together with the sealed packets and the ballot paper account prepared by the PRO, from the polling station to the counting station under police escort. Where there are more than 2 of them wishing to accompany in the delivery, the PRO will draw lots to determine which 2 persons will be allowed. 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 accompany in the delivery, must leave the polling station.

PART VIII : SORTING OF BALLOT PAPERS

Conduct at the Ballot Paper Sorting Station

4.60 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]

4.61 Only the following persons may be present at the sorting of ballot papers:

- (a) the ROs, AROs, PROs, DPROs, APROs 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 CAS 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]

4.62 Before entry, every person authorised to be present at a ballot paper sorting station, other than the police officers and members of the CAS on duty, must make a **Declaration of Secrecy** on a specified form²² 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.

²² Declaration can be made before Commissioner for Oaths/member of the EAC/RO/CEO (or a person whose official designation is that of a deputy to the CEO)/Justice of the Peace/solicitor with a practicing certificate.

4.63 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) and 69 of the EAC (EP) (DC) Reg].

4.64 A person who misconducts himself/herself at or in the vicinity of a ballot paper sorting station or fails to obey any lawful order of the PRO commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months and may be ordered by the PRO to leave the area immediately. 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

4.65 The PRO of a ballot paper sorting station will sort the envelopes containing the ballot papers, delivered from dedicated polling station(s), 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 PRO will then open the ballot boxes and empty the contents 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 marked 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.**

4.66 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. 4.66(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. 4.66(c) above;
- (g) make into separate bundles the sorted envelopes together with the relevant statement prepared under para. 4.66 (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 the respective main counting stations of the relevant constituencies²³; and
- (j) send to the CEO the ballot paper accounts, verification of the ballot paper accounts and the sealed packets made up under para. 4.57.

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

PART IX: THE COUNT

Conversion of Polling Station into Counting Station

4.67 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 counting 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(4) of the EAC (EP) (DC) Reg]. The PRO, assisted by his/her DPRO(s), APROs 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 expected to be opened to them

²³ If no electors of a constituency have cast vote in the dedicated polling station(s), no receptacles will be delivered to the relevant main counting station. In that case, the PRO of the main counting station will be notified accordingly.

to observe the counting of votes [s 65(8) of the EAC (EP) (DC) Reg]. The telephone number of the counting station should also be shown on such a notice to facilitate communication between the candidates/agents and the station staff.

Conduct at the Counting Station

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

- (a) the ROs, AROs, PROs, DPROs, APROs 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 CAS 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]

4.69 Before entry, every person authorised to be present at a counting zone, other than the police officers and members of the CAS on duty, must make a **Declaration of Secrecy** on a specified form²⁴ 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.

4.70 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 count and re-count, if any, at the zone commits an offence [s 69 of the EAC (EP) (DC) Reg].

4.71 A person who misconducts himself/herself at or in the vicinity of a counting station or fails to obey any lawful order of the PRO commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months and may be ordered by the PRO to leave the area immediately. A

²⁴ Declaration can be made before Commissioner for Oaths/member of the EAC/RO/CEO (or a person whose official designation is that of a deputy to the CEO)/Justice of the Peace/solicitor with a practicing certificate.

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 on that day except with the permission of the PRO [ss 69 and 70 of the EAC (EP) (DC) Reg].

Counting of Votes

4.72 The PRO of a counting station 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 all the ballot boxes and sealed packets are properly sealed. The seal on each 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 boxes will then be opened by the PRO and the contents will be 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 paper.** [S 74 of the EAC (EP) (DC) Reg]

4.73 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 prepare a statement in writing as to the result of the verification; and
- (f) compile the final counting results.

[Ss 75(1) and 76 of the EAC (EP) (DC) Reg]

4.74 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) prepare a statement in writing as to the respective result of the verification under (a) and (b);
- (d) 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;
- (e) 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;
- (f) separate and put aside the invalid and questionable ballot papers, if any;
- (g) determine the validity of questionable ballot papers;
- (h) count the valid votes obtained by each candidate;
- (i) verify the ballot paper account in respect of the main counting station concerned and prepare a statement in writing as to the result of the verification; and
- (j) compile the final counting results.

[Ss 75(1A) and 76 of the EAC (EP) (DC) Reg]

Invalid Ballot Papers

4.75 A ballot paper is invalid if:

- (a) no vote has been marked on it;
- (b) it is not marked with the chop provided at the polling station;
- (c) it is endorsed on the front with the words **“SPOILT”** and **“損壞”** ;
- (d) it is endorsed on the front with the words **“TENDERED”** and **“重複”** ;
- (e) it is endorsed on the front with the words **“UNUSED”** and **“未用”** ;
- (f) a vote for a deceased or disqualified candidate is recorded and the name of, and other information relating to, the candidate on the ballot paper are crossed out under s 40(2) of EAC(EP)(DC) Reg;
or
- (g) 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

4.76 Ballot papers with doubtful validity in the following categories 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 in accordance with s 58(2) of the EAC (EP) (DC) Reg, i.e. 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, notwithstanding the “✓” mark is not placed inside the circle;
- (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]

4.77 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 agents or counting agents present to participate in the determination process of questionable ballot paper.

4.78 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 papers [s 79(1) of the EAC (EP) (DC) Reg];
- (b) the PRO will then consider their representations and make his/her final decision on the validity of the questionable ballot paper (see para. 4.79 below) [s 79(2) of the EAC (EP) (DC) Reg];
- (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 [s 79(4) of the EAC (EP) (DC) Reg];
- (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 [s 79(5) of the EAC (EP) (DC) Reg]; and

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

4.79 The decision of the PRO in regard to any question arising in respect of any ballot paper at the counting of votes shall be final [s 80 of the EAC (EP) (DC) Reg], which may be questioned by an election petition [s 49 of the DCO]. (See Part II of Chapter 5)

Counting Arrangements

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

Constituencies with 1 Counting Station

4.81 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 agents 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

4.82 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 [s 31(1B) of the EAC (EP) (DC) Reg]. Only the candidates and their election agents of that constituency who are present at this station can request a re-count of all the votes cast in respect of the constituency concerned [s 80B(8) of the EAP (EP) (DC) Reg.].

4.83 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 agents 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. [S 80B(1), (2), (3), (4), (5) and (7) of the EAC (EP) (DC) Reg]

4.84 The PRO of the dominant counting station may decide whether a re-count of all the votes of all the counting stations for the constituency is necessary. If a candidate or his/her election agent requests to re-count all the votes of all the counting stations for the constituency, such a request shall be made to the PRO of the dominant counting station, and he/she 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. [S 80B(8) and (9) of the EAC (EP) (DC) Reg]

4.85 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 agents 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 agents or counting agents present at the

dominant counting station of all such re-count results. [S 80B(10) and (11) of the EAC (EP) (DC) Reg]

PART X : DECLARATION OF RESULT

4.86 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]

4.87 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]

4.88 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. (See para.

2.31 for detailed procedures for drawings of lots) He/She shall declare the candidate on whom the lot falls as elected. He/She shall display a notice of all the result of the election at a prominent place outside his/her office. The result of the election will also be published in the Gazette within 10 days of the declaration of the result. [Ss 80C and 82 of the EAC (EP) (DC) Reg]

PART XI : DISPOSAL OF DOCUMENTS

4.89 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 packing, if they wish. [S 83 of the EAC (EP) (DC) Reg]

4.90 These sealed packets together with other documents including the nomination forms, notices of appointment of agents, etc. will then be deposited with the CEO for safe custody for at least 6 months from the date of the election to which they relate before they are destroyed. [Ss 84 and 86 of the EAC (EP) (DC) Reg]

4.91 **Except pursuant to a court order** in relation to an election petition or criminal proceedings, **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 Pursuant to s 49 of the DCO, the result of the DC election may be questioned by an election petition made on the following grounds:

- (a) the ground that the person declared by the RO in accordance with regulations in force under the EACO to have been elected as an elected member at the election was not duly elected because:
 - (i) he/she was not eligible to be, or was disqualified from being, a candidate at the election;
 - (ii) corrupt or illegal conduct was engaged in by or in respect of that person at or in connection with the election;
 - (iii) corrupt or illegal conduct was generally prevalent at or in connection with the election; or
 - (iv) material irregularity occurred in relation to the election, or to the polling or counting of votes at the election; 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. Each candidate may appoint 4 types of agents, namely election agent, election expense agent, polling agent and counting agent. If a candidate intends to send the notice of appointment of polling agents and counting agents by hand, by electronic mail, by facsimile transmission or by post, the notice must be delivered to the RO or the CEO at least 7 days before the polling day so as to enable timely delivery of the information to the relevant PRO. After the said deadline, the candidate or his/her election agent must deliver in person the notice to the relevant PRO on the polling day. The REO will remind all candidates of the deadline for the appointment of agents about 10 days before the polling day and will also provide all candidates with name lists of election agents, polling agents and counting agents received by the REO for their reference 3 days before the polling day.

6.2 The aggregate amount of election expenses incurred by a candidate and his/her election expense agents must not exceed the maximum amount as prescribed by the law. An election expense agent must not incur election expenses in excess of the maximum amount specified by the candidate in the agent's authorisation.

6.3 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 and his/her election.

PART II : TYPES AND NUMBERS OF AGENTS

6.4 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) a maximum of **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

(Only candidates themselves may enter a maximum security prison (see para. 6.26 below). For arrangements regarding the admission of election agents or polling agents to dedicated polling stations situated in prisons, please refer to paras. 6.13 to 6.16 and paras. 6.25 to 6.27 below.)

- (e) a maximum of **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

6.5 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

6.6 Civil servants, other than directorate officers, Administrative Officers, Information Officers, Police Officers and those officers acting in the above grades or ranks with a view to substantive appointment thereto (i.e. other than acting for temporary relief purpose), may act as agents or assist in electioneering activities **provided that** they are not already appointed as the 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 or appearance 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 that 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 candidates should not use or give the impression of using any public resources in such activities. The guidelines set out in this paragraph are equally applicable to the non-civil service contract staff of the Government.

PART V : ELECTION AGENT

Appointment

6.7 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.

6.8 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 election 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].

6.9 Expenses incurred by any purported agent before the notice of appointment is received 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(1) of the ECICO]. An election agent must not incur election expenses for or on behalf of a candidate unless he/she has been appointed as an election expense agent.

Revocation

6.10 The appointment of an election agent may be revoked by the candidate at any time. The candidate must 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 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]

6.11 If an election agent dies or his/her appointment is 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. 6.8 above [s 26(11), (12) and (13) of the EAC (EP) (DC) Reg]. Like other election agents, the new election agent has to follow the arrangements set out in paras. 6.13 to 6.17 below, including the need to submit an application to the CEO if he/she wishes to observe the poll at a dedicated polling station situated in a prison (other than a maximum security prison).

Notification

6.12 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 correspondence addresses) appointed by all candidates for the constituency concerned [s 27(1), (3) and (7) 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

6.13 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)

6.14 Candidates and their election agents are entitled to be present at the counting of the votes and are normally allowed admission to polling stations in respect of the constituency concerned. Due to security reasons, only candidates may enter dedicated polling stations situated in maximum security prisons to observe the poll. An election agent, who wishes to observe the poll at a dedicated polling station situated in a prison other than a maximum security prison, must deliver an application in the specified form to the CEO by hand, by electronic mail, by facsimile transmission or by post at least 1 week before the polling day. The election agent may not be present at that dedicated polling station unless the Commissioner of Correctional Services has given consent to his/her presence. If the Commissioner of Correctional Services 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]

6.15 The Commissioner of Correctional Services 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 [s 26(17) of the EAC (EP) (DC) Reg]. The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual prisons daily from Monday to Friday (other than a general holiday) starting from 3 weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference.

6.16 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].

6.17 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 the polling is conducted smoothly [s 47(2) of the EAC (EP) (DC) Reg]. **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

6.18 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, unless it is revoked earlier [ss 2 and 23 of the ECICO].

6.19 The authorisation shall be in writing in the 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 election expense agent. [S 28(3), (4) and (5) of the EAC (EP) (DC) Reg]

A copy of the authorisation must be delivered by hand, by electronic mail, by facsimile transmission or by post to the relevant RO, or the CEO if the RO has not been appointed [s 28(6) and (7) of the EAC (EP) (DC) Reg].

6.20 The authorisation is not effective until it has been received by the relevant 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(1) of the ECICO]. The expenses so incurred may also be counted as the candidate's election expenses.

Revocation

6.21 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 electronic mail, by facsimile transmission or by post to the relevant 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 relevant 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

6.22 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 agent's 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

6.23 Every candidate, whether elected or not, or who was returned uncontested, or who has withdrawn the candidature before the close of nominations, or has been decided by the RO as not validly nominated, or has not incurred any election expenses, 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 (hereinafter referred to as "election return") with supporting invoices and receipts issued by recipients of the payments. The candidate must ensure that the election return is lodged before the expiry of the period of 30 days after the election is settled in relation to the constituency concerned (and in relation to all the constituencies concerned if the election is held for 2 or more constituencies) or within such extended period as may be allowed by the CFI under the relevant law. An election is settled in relation to a constituency on the date on which any of the following events occurs:

- (a) the result of the election is notified in the Gazette;
- (b) the proceedings for the election are declared to have been terminated;
- (c) the election is declared to have failed.

[S 37(1), (1F), (1G) and (1N) of the ECICO and Part V 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 period, a detailed statement of

expenditure in which each item of expenditure of \$500 or above (*subject to the enactment of the relevant ordinance*) 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 of donation is more than \$1,000, it should be supported by a copy of the receipt for the donation issued to the donor (in a standard form signed by the candidate). Without such statements, invoices and receipts issued by recipients of the payments or to donor(s), as the case may be, 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

6.24 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. the period ending with the 30th day before the first anniversary of the date of the deadline for lodging the relevant election return (disregarding any order made by the CFI under s 40 of the ECICO allowing a candidate to lodge an election return within a further period as specified by the CFI) [s 41(6) 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

6.25 A candidate may appoint **a maximum of 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 relevant RO, at least **7 days** before the polling day [s 45(5), (5D) and (8) of the EAC (EP) (DC) Reg]. Where a candidate wishes to appoint 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 relevant RO or PRO, as the case may be [s 45(7) of the EAC (EP) (DC) Reg].

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

- (a) only the candidate is allowed to be present at a dedicated polling station situated in a maximum security prison [s 45(5A)(c) of the EAC (EP) (DC) Reg];
- (b) only 1 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 the specified form is delivered to the CEO by hand, by electronic mail, by facsimile transmission or by post at least 7 days before the polling day, and the Commissioner of Correctional Services has given consent to the presence of the agent [s 45(5A) and (5D) of the EAC (EP) (DC) Reg]; and

- (c) for a dedicated polling station situated in a prison which is not a maximum security prison, no polling agent may be appointed if the Commissioner of Correctional Services has already given consent to the presence of the election agent of the same candidate at that polling station [s 45(5A)(b) of the EAC (EP) (DC) Reg].

6.27 If the Commissioner of Correctional Services refuses to give consent to the application received, he/she will notify the candidate or the election agent as soon as practicable [s 45 (5C) of the EAC (EP) (DC) Reg]. The Commissioner of Correctional Services may, upon receipt of a notice of appointment given during the week before the polling day, still 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 notice of appointment is given without undue delay after the admission or transfer [s 45(5B) of the EAC (EP) (DC) Reg]. The REO will post and update on its website the number of registered electors in custody in individual prisons daily from Monday to Friday (other than a general holiday) starting from 3 weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference.

Revocation

6.28 The appointment of a polling agent may be revoked by the candidate at any time. The candidate must give a notice of revocation in writing and in the specified form and deliver the signed notice by hand, by electronic mail, by facsimile transmission or by post to the relevant 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 relevant RO by hand, by electronic mail or by facsimile transmission.

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

6.29 A revocation of an appointment of a polling agent is not effective until the notice thereof is received by the relevant RO or 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. 6.25 to 6.27 above.

Role of Polling Agents

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

Provisions which Polling Agents should be Aware of

6.31 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]. Inside the polling station, he/she is required to stay 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 will not be allowed to be present at the same time within the polling station [s 47(7) and (8) of the EAC (EP) (DC) Reg]. (See also Part V of Chapter 4 regarding the admission of candidates, election agents and polling agents to the polling station)

6.32 Before entering a polling station, every person, other than an elector, a police officer, an officer of the CSD, an officer of any law enforcement agency or a member of the CAS on duty, must make and sign a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 93 of the EAC (EP) (DC) Reg]. 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.

6.33 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].

6.34 The following procedures shall apply on the polling day:

(a) Before the poll

- (i) About 30 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, opening the sealed packets of ballot papers and showing them the books of ballot papers not yet issued to any elector ("**UNISSUED ballot papers**").
- (ii) About 15 minutes before the commencement of the poll, the PRO will show the empty ballot boxes to such persons before proceeding to lock and seal them.

(b) During the poll

- (i) Where a person, claiming to be a particular elector entered on the register, applies for a ballot paper after a person has already been issued with a ballot paper under the name of such an elector, the PRO may issue a tendered ballot paper to the latter elector **only if** he/she is not certain that the latter person is the former person who had been issued with a ballot paper earlier, and the latter person has answered the appropriate questions in accordance with the law as set out in para. 4.34 to the satisfaction of the PRO. The PRO will in such circumstances issue a ballot paper with the words "**TENDERED**" and "重複" endorsed on the front of it. Such a ballot paper shall 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 shall endorse on the front of such spoiled ballot paper with the words “**SPOILT**” and “**損壞**” 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 shall 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 with the words “**UNUSED**” and “**未用**” and keep them in his/her own custody. Such ballot papers shall not be put into a ballot box and will not be counted at the counting of votes. [Ss 61 and 78 of the EAC (EP) (DC) Reg] 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 poll

The PRO shall, in the presence of persons at the polling station lock the flap of the inserting slot of the ballot box and seal it.

He/She will also inform each candidate or his/her agent, if present, of the number of the following types of ballot papers in his/her possession: unissued ballot papers, unused ballot papers, and spoiled ballot papers. [S 63A(1) of EAC (EP) (DC) Reg]. 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.

6.35 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 opening of sealed packets of ballot papers and the locking and sealing of empty ballot boxes before the poll commences and the locking and sealing of the ballot boxes during the poll or at the close of 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 within the 1-hour slot after he/she is admitted to the polling station in which case his/her place may be taken by the relevant candidate, election agent or another polling agent (representing the same candidate) appointed

to attend at the polling station (see para. 6.31 above);

- (c) subject to para. 6.36(b) below, observe the issue of ballot papers to electors and the crossing out of 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 entry as it is recorded 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(2), (3) and (4) of the EAC (EP) (DC) Reg]

- (e) where there is a 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 give evidence to substantiate the allegation in a court of law. [S 55 of the EAC (EP) (DC) Reg]

6.36 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 (depending on the configuration), 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. 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]

6.37 A polling agent must not misconduct himself/herself at or in the vicinity of a polling station or fail to obey any lawful direction of the RO or the PRO; otherwise he/she commits an offence and will be liable to a fine and to 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 any 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

6.38 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.

6.39 Electors with mobility difficulty may be permitted to vote at a special polling station designated for the constituency. Candidates or their agents can make inquiries with the RO for information.

6.40 Only the PRO, the DPRO or an APRO 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 incapacitated from casting his/her vote due to visual impairment or other physical cause [s 59 of the EAC (EP) (DC) Reg]. The responsible officer should inform the candidates or their agents who are present when such a request for assistance is received. A candidate or his/her polling agent at the polling station may suggest the PRO, the DPRO or an APRO 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, DPRO or APRO. An elector's relative, friend or any other person is in no circumstances allowed to accompany the elector in the course of voting.

6.41 At each polling station designated for an election, subject to practicability of production, a number of **braille templates** are made available for the use of electors with visual impairment, if they so choose, to facilitate their marking of votes on the ballot papers [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 numbers in braille starting with the first numeral in a sequence assigned to the candidates of the constituency from the top downwards and on the right hand side against each of the number is a round hole;
- (c) the **top left hand corner** of the ballot paper and the template is cut so as to guide 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 over the ballot paper, each braille 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 holes equals the number of candidates in the constituency.

An elector with visual impairment should affix the chop to give a single “✓” in the circle through the holes on the templates against the candidate’s number.

6.42 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 materials into the polling station or leave them there, and should remove any promotional badges, emblems, clothing or head-dress before entering. No person is allowed to use a sound amplifying system or device for any purpose within the NCZ; nor should he/she use such system or device for canvassing or any activities (e.g. lion dance), so that the sound emitted by it can be heard within the NCZ. [S 43(13) of the EAC (EP) (DC) Reg] 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(13)(d) of the EAC (EP) (DC) Reg]. 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 a member of the EAC, commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [s 48(2) and (9) of the EAC (EP) (DC) Reg]. Normally such permission is only granted to government photographers for publicity purposes. Polling agents should also read Parts II to VII of Chapter 4 on all matters relating to polling and in particular, paras. 4.50 to 4.53 for activities that are prohibited, and the consequences of conducting such activities, in a polling station.

6.43 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 on Complaints Procedure of the Guidelines.

PART VIII : COUNTING AGENTS

Appointment

6.44 A candidate may appoint **not more than 2 counting agents** to attend at a counting station to observe the counting of votes and to observe the sorting of ballot papers received from dedicated polling stations at a ballot paper sorting station [ss 2(3), 66(1) and 66(2) of the EAC (EP) (DC) Reg]. The same persons may, but need not, be appointed also as polling agents.

6.45 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 relevant 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 wishes to appoint 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 for the relevant counting station on the polling day during the period from the commencement of the poll to the conclusion of the count (for counting stations) or the completion of the sorting of ballot paper (for ballot paper sorting stations) [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

6.46 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 appointment of a counting agent is not effective until the 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

- 6.47 Counting agents are appointed to attend at:
- (a) the counting stations to observe the breaking of the seals on the ballot boxes, the sorting, separation and 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 sorting and counting process and is conducive to openness and fairness. (See Parts VIII and IX of Chapter 4)

Provisions which Counting Agents should be Aware of

6.48 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 CAS 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.

6.49 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].

6.50 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. Nonetheless, they must not handle any ballot papers. A counting agent **may**:

- (a) observe the breaking of the seals on the ballot boxes and the opening of the ballot boxes and where applicable, envelope(s) containing cast ballot paper(s), 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 the determination of questionable ballot papers by the PRO and make representations on behalf of the candidate concerned [s 79(1) of the EAC (EP) (DC) Reg]; and
- (e) observe, where he/she wishes, the packing of ballot papers by the counting officers and the PRO at the conclusion of the count.

- 6.51 A counting agent at 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.

- 6.52 A counting agent **must not**:
- (a) touch, handle, separate or arrange ballot papers or envelopes; and
 - (b) misconduct himself/herself at or in the vicinity of a counting station or a ballot paper sorting station, or fail to obey any lawful order of the PRO, as the case may be; otherwise he/she commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months and may be ordered by the PRO to leave the area [s 69(2) and (3) of the EAC (EP) (DC) Reg]. 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]

6.53 Counting agents should read Parts VIII and IX of Chapter 4 on all matters relating to sorting of ballot papers and counting of votes, and in particular, paras. 4.60 to 4.64 and paras. 4.68 to 4.71 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 : GENERAL

7.1 Election expenses are regulated by the law to ensure that the candidates compete on a level playing field and within a reasonable level of expenditures. For the regulation of election expenses, please refer to Chapter 15.

7.2 EAs account for a major portion of election expenses. Given that only candidates and their election expense agents are permitted to incur election expenses, they are the only persons allowed to publish EAs. It is, therefore, necessary to set down statutory regulations for EAs.

7.3 EAs refer to any publicity materials which are published for the purpose of promoting or prejudicing the election of a candidate or candidates. As to whether an individual statement will be construed as an EA, all the circumstances, including the expenses incurred, must be taken into account so as to infer whether there is any intention to promote or prejudice the election of a candidate. If the statement is merely for expression of views or comments based on the facts without any intention to promote or prejudice the election of a candidate, then it is not treated as an EA.

7.4 A candidate is required under the law to post a copy of any EA he/she has published as well as the relevant information and documents onto an open platform²⁵ maintained by the CEO or a person authorised by the CEO

²⁵ An 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”) or an open platform maintained by the candidate or a person authorised by the candidate (“Candidate’s Platform”), or submit a copy of the EA to the RO for public inspection within 1 working day after publication of the EA. This is not for the restriction of the contents of EAs, but to keep track of candidates’ publication of EAs for the purpose of regulating election expenses. If any false statement is contained in EAs, it will be regulated by other provisions under the subsisting law (see para. 7.21 below).

7.5 Interactive EAs published on Internet platforms may appear and be replaced continually. The law permits candidates to upload the relevant hyperlinks onto the Candidate’s Platform or Central Platform showing the publication of the EAs concerned and allowing public inspection of the EA contents.

7.6 With the proliferation of the Internet, online platforms are widely used to publish election-related opinions. As such opinions may sometimes constitute EAs, the publisher may have committed offences relating to election expenses if he/she is not a candidate or an election expense agent. Hence, legislative amendments have been made that where such person has published information constituting EAs, he/she will be exempted from criminal liability for incurring election expenses not in the capacity of an election expense agent if the only expenses incurred are either electricity charges and/or charges necessary for accessing the Internet. However, **it must be noted that** the exemption only applies to third parties who are neither candidates nor election expense agents. (For details, please refer to para. 7.10 below)

PART II : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT

- 7.7 EA, in relation to the DC election, means:
- (a) a publicly exhibited notice, leaflet, circular, bill, booklet, placard or poster;
 - (b) a notice, leaflet, circular, bill, booklet, placard or poster delivered by hand or electronic transmission;
 - (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 and s 2(2) of the EAC (EP) (DC) Reg].

“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 EA is taken to have published the EA [s 105 of the EAC (EP) (DC) Reg].

7.8 **An EA** 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, name card, letter paper bearing the name and/or logo of the candidate, image or picture and any article, thing or material;
- (b) audio/video cassette tapes, discs, diskettes, electronic messages (e.g. messages published through social media, mobile messaging apps, communication network, etc.), 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.

7.9 As stated in para. 7.7 above, EA is defined to include any messages published for the purpose of promoting or prejudicing the election of a candidate or candidates at an election under s 2 of the ECICO. Any materials published by any person or organisation during or before the election

period to appeal directly or indirectly to electors to vote or not to vote for a candidate or candidates belonging to or affiliated with certain organisations, irrespective of the form of publication and whether they contain any names or photographs of candidates, may also be regarded as EAs depending on all the circumstances at the time when read in their whole context, the materials concerned may be capable of being reasonably understood by an elector as referring to certain identified candidate(s). Materials issued through the press which have effects of promoting or prejudicing the election of a candidate or candidates at an election may also be regarded as EAs. The expenses incurred for the publication of such materials will be regarded as election expenses incurred by or on behalf of the candidate(s). If expenses are involved in the publication of the EA and the publisher is neither a candidate nor a candidate's election expense agent, the publisher may engage in illegal conduct under the ECICO. If a candidate instructs that person or organisation to publish the EAs, and such expenses are not accounted for as election expenses, the candidate will also violate the law.

7.10 In accordance with s 23(1A) of the ECICO, a person (other than candidates or election expense agents) is exempted from the relevant criminal liability under s 23(1) if the person publishes an EA on the Internet, and the only election expenses incurred by the person for the purpose of publishing the EA are either or both of electricity charges and charges necessary for accessing the Internet. However, if a candidate, a candidate's election expense agent, or a person who is authorised by a candidate or his/her election expense agent publishes an EA of the candidate on the Internet, any costs incurred, even though the costs only involve electricity charges and charges necessary for accessing the Internet, will have to be included in the election expenses of the candidate. The candidate should also observe fully the requirements relating to publication of EAs as set out in para. 7.55 below.

7.11 Any publicity materials containing the name or photograph of a candidate (e.g. name card or letter paper bearing the name/logo of the 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 also be regarded as EAs. Even though the content of the publicity material is not, on the face of it, election-related, it might still be seen as carrying a promotional purpose in favour of the candidate in respect of the election, depending on circumstances.

7.12 Under s 105(1) of the EAC (EP) (DC) Reg, the definition of “publish” includes “continue to publish”. In this regard, for the abundance of caution, any person who intends to stand as a candidate at the election, including but not limited to an incumbent member of the LegCo or a DC (who should also comply with the terms and conditions under the Lands Department’s Management Scheme for the Display of Roadside Non-commercial Publicity Materials, if his/her publicity materials are being displayed under the said Scheme), should ensure that all publicity materials published by him/her prior to the election period, especially posters or banners bearing his/her name or photograph displayed at a public place or at the common parts of a building, are removed before he/she has been nominated as a candidate or has publicly declared an intention to stand as a candidate at the election. Otherwise, any unremoved publicity material **may** be regarded as an EA in accordance with the foregoing principles.

7.13 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;

- (b) a member of the LegCo;
- (c) a member of a DC;
- (d) a member of the Heung Yee Kuk;
- (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 EA.

7.14 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. 7.13 above, the document will also be regarded as an EA 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. 7.13 above must comply with all the requirements for an EA and the expenditure so incurred be accounted for as election expenses.

7.15 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. 7.13 above without promoting or prejudicing the election of a candidate or candidates at the election, the document will not be construed as an EA. On such basis, the expenditure incurred in the publication of such a document would not be counted as their election expenses.

7.16 A candidate in an election may put up and display EAs in accordance with all the relevant law and regulations and these guidelines.

Election Advertisements Prejudicing the Election of a Candidate

7.17 There are occasions that candidates or a third party may publish EAs 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 have the purpose of promoting the latter’s election. For example:

- (a) If candidate A criticises candidate B in his/her own EAs 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 EA and the EA has the effect of indicating support for candidate A, the third party must obtain candidate A’s prior written authorisation for incurring the production expenses before he/she produces that EA, and the expenditure incurred will have to be included in candidate A’s election expenses;
- (c) If the third party publishes an EA as described in (b) above without the prior written authorisation of candidate A, that third party will be breaching s 23 of the ECICO (except for the exemption under s 23(1A) as mentioned in para. 7.10 above) 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 authorisation before incurring such expenses. It would also prevent candidate A from circumventing the law by asking the third party to publish materials prejudicing candidate B without having to account for the expenses of those materials.

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

7.19 The **election expenses** allowed by law to be incurred by a candidate include the expenses he/she incurs for the preparation and publication of EAs, 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)

7.20 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 EAs employed by him/her. The maximum amount allowed for the DC election is specified in s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap 554C), which is \$68,800 (*subject to the enactment of the relevant regulation*).

7.21 A candidate must ensure the correctness and accuracy of all factual statements in his/her EAs. 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 III : PERIOD AND AREA OF DISPLAY

7.22 Subject to the necessary **written permission or authorisation**, a candidate may display EAs on government or private land and property. [S 104A(1) of the Public Health and Municipal Services Ordinance (Cap 132) (“PHMSO”) and s 4 of the Land (Miscellaneous Provisions) Ordinance (Cap 28)]

7.23 Display spots are classified into 2 types:

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

7.24 Allocation of designated spots for the use of **contested** candidates to display his/her EAs will be made by the RO of the relevant constituency. Some of the government land/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/property in coordination with the said authorities. **Each candidate competing in the same constituency will be allocated the same number of designated spots.**

7.25 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 under para. 7.25 should reach the CEO not later than **8 weeks before the polling day.**

Other Land/Property – Private Spots

7.26 Candidates who wish to display their EAs 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 PHMSO]. 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. 7.55 below (Please also see para. 7.31 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 EAs forms part of his/her election expenses. If the private spot secured for displaying the EA 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 EAs 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. 15.30 of Chapter 15. If a space is not the type normally used by any private owners or occupiers for commercial advertising, there is no need for the candidate to account for its value.

7.27 For the display of EAs at the common parts of private premises (those parts to which exclusive rights of use or occupation do not belong to a particular owner or tenant), the EAC appeals to owners and occupiers of private premises to give all candidates competing in the same constituency **fair and equal treatment**. (For details, please see Chapter 8)

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

Allocation of Designated Spots

7.29 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 EAs will be allowed on any designated spots before the allocation.** (Also see the requirements in para.

7.35 and Part VII below) EAs displayed by the candidates on government land/property other than designated spots are unauthorised and will be removed, save those EAs 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.

7.30 Candidates using the designated spots are required to read and comply with all the requirements and conditions stipulated in the “Conditions for Display of Election Advertisements at Designated Spots”, which will be provided to each candidate in the candidate’s folder and uploaded onto the EAC’s webpage for reference. To safeguard the safety of road users, candidates should ensure that EAs on display must not distract motorists or interfere with the sight lines of motorists and pedestrians, or obscure any traffic sign or traffic light signal.

Written Permission or Authorisation

7.31 The RO will obtain prior approval from the relevant authorities under s 104A(1) of the PHMSO and s 4 of the Land (Miscellaneous Provisions) Ordinance for candidates to display their EAs 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 of the constituency concerned (see Part IV below). For any display in private premises, written permission or authorisation of the private owner or occupier will have to be obtained by the candidates themselves [s 104A(1) of the PHMSO]. A person displaying an EA without the necessary written permission or authorisation commits an offence and will be liable to a fine at level 3 (\$10,000) and, where the offence is a continuing offence, 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(2) of the PHMSO]. 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. 7.55 below. All candidates are also reminded that if carrying out of building works (including erection of signboard) in private premises is involved for the display of an EA, the relevant provisions of the Buildings Ordinance (Cap 123) (“BO”) and the subsidiary regulations should be complied with. In this regard, the candidates are strongly advised to consult building professionals, registered contractors and, where necessary, authorised persons on the compliance with the BO, and to make submission in accordance with the simplified requirements under the Minor Works Control System or formal application for approval and consent from the Buildings Department as appropriate before the carrying out of such works.

No Canvassing Zone

7.32 No EA may be displayed within the boundaries of a polling station (including the outer walls of the premises) or within any NCZ on the polling day (see Chapter 13), except for static displays of EAs that are authorised by the RO (e.g. EAs mounted at designated spots). 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 EAs, if any, posted up at the premises within the NCZ before the polling day. The exhibition of portable displays on vehicles (whether in motion or parked within the NCZ), or held or carried by persons is also regarded as a canvassing activity which is forbidden within an NCZ. Therefore, candidates should arrange removal of EAs on the windows or bodywork of any public service vehicles (e.g. public light buses, taxis, etc.) if those vehicles will pass through or be parked within the NCZ on the polling day. If the candidates fail to

remove the EAs as requested by the ROs, the ROs may issue a warning to them to remove the offending EAs immediately. If the candidates fail to do so, the EAC may issue a censure or reprimand. The RO for a constituency will provide each candidate of his/her constituency 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 IV : ALLOCATION OF DESIGNATED SPOTS

7.33 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 occasionally 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 contested candidates in the constituency, **after** the end of the nomination period. In order to allow all contested candidates to display their EAs 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 5 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.

7.34 The RO for the constituency will need to know the exact number of candidates who wish to display EAs 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 EAs 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.**

7.35 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 EAs. 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 PHMSO and s 4 of the Land (Miscellaneous Provisions) Ordinance] and after complying with the requirements set out under Part VII, the candidate may display EAs at such spots allocated to him/her.

7.36 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. 7.55 below [s 106 of the EAC (EP) (DC) Reg].

7.37 Subject to para. 7.39, 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 among all other candidates who are eligible to be allocated with designated spots of the same constituency. In such a case, paras. 7.35 and 7.36 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 EAs.

7.38 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.

7.39 An EA advertising 2 or more candidates of the same or different constituencies jointly is allowed to be displayed at the designated spots allocated to the candidates. Nevertheless, it is important to ensure that, for each one of the joint candidates, the total area of all the spaces actually occupied for advertising the candidate on all his/her EAs, including the joint EAs, mounted at the designated spots (as measured by the dimension of EAs) does not exceed the total area of the designated spots allocated to the candidate. A joint EA is also subject to the size restrictions specified in para. 7.43 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 EAs 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 EA. (See also paras. 6.18 to 6.20 of Chapter 6 and para. 17.12 of Chapter 17)

PART V : CONDITIONS AND LIMITATIONS ON DISPLAY

Name of the Constituency

7.40 To avoid possible confusion to electors, EAs 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 EAs, the name of the constituency 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. In the case of a breach for EAs displayed at designated spots, the approval for the use of the designated spots in question may be revoked.

7.41 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

7.42 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

7.43 As a general rule, EAs displayed at designated spots should not exceed 1 metre high and 2.5 metres long. In the case of designated spots at roadside railings, the EAs must be **printed on one side only** and be displayed at the **designated side of the railings** with the side of the EAs carrying the promotional messages **facing the designated direction of the spots**. Before displaying EAs, candidates are reminded to ensure that the EAs 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. 7.30 above). For the rules on display of joint advertisements, see para. 7.39 above.

Mounting and Installation

7.44 The EAs must be firmly and separately fastened. The mounting and display of EAs must not cause any risk to injuries or property damages.

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

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

7.47 Use of wire for fixing the flags onto any highway structure, and railing, barrier, fence, post or any other street furniture, is strictly prohibited.

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

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

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

Dismounting

7.51 All candidates should remove all their EAs 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 EAs 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 as election expenses in their election returns.

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

7.52 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 EA 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 and applications from uncontested candidates will not be considered. Approved occupation should not exceed 2 m² in area and 2 m in height. The respective DLO will consult the government departments concerned in considering the applications.

7.53 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. The DLO will arrange drawing of lots to determine the allocation if necessary. On the polling day, the approval will be deemed to have been revoked if and when the spot falls within the NCZ.

7.54 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 EAs is not permitted if and when the street counter is not manned.

PART VII : REQUIREMENTS RELATING TO PUBLICATION OF ELECTION ADVERTISEMENTS

Copies for Public Inspection

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

- (a) posting an electronic copy each of all his/her EAs 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 EAs 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 EA (For details, please see Appendix B)**;
- (c) if it is technically impracticable to comply with (a) or (b) above for EAs 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 EAs onto the

Candidate's Platform or the Central Platform in accordance with the procedures set out in **Appendix B**. In this case, if the hyperlink of the EA has already been posted onto the Candidate's Platform or the Central Platform, there is no requirement for candidates to file each and every comment separately;

- (d) providing 2 hard copies each of the EAs (or 2 identical full colour photographs/printouts/photocopies of each EA which cannot be practically or conveniently produced in specie) and 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 EAs and each of the relevant information/documents to the RO.

As an interim arrangement, in case the RO has yet to be appointed and the Central Platform has yet to be established, the candidates should deposit their EAs and the relevant information/documents with the CEO in the same manner as stated in (d) or (e) above.

[S 106(2) and (3) of the EAC (EP) (DC) Reg]

Publication Details

7.56 A candidate should provide information related to the printing/publication of his/her EAs (i.e. the name and address of the printer, date of printing/publication and number of copies printed) when posting the EAs 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 EAs** (see **Appendix B**) [s 106(4) and (6) of the EAC (EP)]

(DC) Reg]. A candidate must ensure the accuracy of all the information provided.

7.57 Where the information uploaded onto the Candidate's Platform or Central Platform or provided to the RO as set out in para. 7.56 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 **within 3 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 and for the removal of unauthorised or offending EAs. For the avoidance of doubt, any amendment to the content of an EA will be regarded as publication of a new EA for which the requirements stated in paras. 7.55 and 7.56 above should be complied with, except the addition of the number of each candidate allocated at the Candidates' Briefing onto a published EA, in which case a copy of the EA bearing such addition and the corrective information must be made available for public inspection in accordance with this paragraph.

7.58 All EAs published must be posted onto the Candidate's Platform or the Central Platform or deposited with the RO by the candidate for public inspection in the manner specified in this Part VII.

7.59 A candidate must not display his/her EAs other than at the places permitted or authorised.

7.60 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as EAs, but the copies of the speech provided to the audience or media will be regarded as printed EAs. Therefore, the candidates concerned are required to comply with all the requirements in

this Chapter as applicable to EAs in the distribution of the copies and for public inspection.

7.61 In the circumstances where candidates contesting different constituencies use identical copies of an EA, each candidate concerned should each post an electronic copy of the EA and the relevant information/documents onto his/her Candidate's Platform or the Central Platform or deposit 2 copies of the EA and 1 copy of the relevant information/documents with the RO(s) concerned. [S 106(2) and (3) of EAC (EP) (DC) Reg]

7.62 Copies of the EAs and the relevant information/documents must be made available for public inspection till the end of the period for which the election returns are available for inspection under s 41 of the ECICO, i.e. the period ending with the 30th day before the first anniversary of the date of deadline for lodging the relevant election return [s 41(6) of the ECICO and s 106(2) and (7) of the EAC (EP) (DC) Reg]. A candidate electing to comply with para. 7.55(b) above must ensure that the Candidate's Platform is maintained till the end of the aforesaid inspection period to facilitate public inspection of the EAs [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 EAs. For a candidate electing to comply with para. 7.55(d) or (e) above, the RO concerned will make available a copy of the EAs and the relevant information/documents for public inspection at the RO's office as soon as practicable after copies of such EAs and information/documents have been furnished till the end of the aforesaid inspection period [s 106(7) of the EAC (EP) (DC) Reg].

PART VIII : REQUIREMENTS RELATING TO PRINTED ELECTION MATERIALS

Printing Details

7.63 All printed EAs, 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. using 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), (5) and (6) of the EAC (EP) (DC) Reg]

Election Advertisements Placed in Print Media

7.64 Where an EA 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 EA, 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 EA.

Inadvertent Omission of Printing Details

7.65 A candidate who has inadvertently omitted the printing details from his/her printed EAs 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 EA [s 106(6) of the EAC (EP) (DC) Reg]. 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 by the relevant RO till the end of the period for which copies of election return are available for inspection under s 41(6) of the ECICO [s 106(7) of the EAC (EP) (DC) Reg].

PART IX : NON-COMPLIANCE WITH THE LAW AND THE CONSEQUENCES

Enforcement and Penalties

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

7.67 Each candidate must observe and comply with the conditions imposed by the permissions or authorisations for the display of EAs. Any EAs 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 against any unauthorised or offending EAs.

7.68 Any unauthorised or offending EAs displayed may be seized, disposed of, destroyed, obliterated or covered 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 PHMSO or the Housing Ordinance (Cap 283), as the case may be, and the procedures of the relevant authority. [S 104C of the PHMSO and s 24 of the Housing Ordinance]

7.69 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 EAs, and any additional charges or damages that a candidate is liable to pay to the owner or occupier may be construed as election expenses.

7.70 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 reprimand or censure 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

7.71 A person, who publishes an EA without complying with the requirements as set out in paras. 7.55, (except that related to the submission of permission/authorisation document under s 104A(1) of the PHMSO), 7.56, 7.57 and 7.63 above may apply to the CFI for an order allowing the publication of the above EAs 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 X : ADVERTISEMENTS OF POLITICAL, PROFESSIONAL/ TRADE BODIES OR OTHER ORGANISATIONS

7.72 Any thing or material published by any organisation, including political organisation, professional or trade organisation, owners' corporation, MAC, tenants' association, owners' committee, etc., which advertises its platform or services **with reference to a candidate** (irrespective of whether or not the candidate concerned is its office-bearer or member) **during or even before the election period** by name or photograph or otherwise may be treated as EA 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. A candidate should be responsible for election expense incurred by himself/herself or his/her authorised election expense agents but not those without his/her knowledge and consent. 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 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 will not be regarded as an EA.

7.73 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].

7.74 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.

7.75 To sum up the important points, where any organisation, including a political organisation, publishes an EA 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 in writing by the candidate to be the candidate's election expense agent prior to incurring any election expenses, 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 XI : FREE POSTAGE FOR ELECTION ADVERTISEMENTS

Conditions for Free Postage

7.76 A candidate of a constituency who is declared to have been validly nominated in the notice of valid nominations 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 valid nominations in the Gazette, a candidate wishing to exercise his/her right to free postage must 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 valid nominations [s 6(2)(a) of the Post Office Regulations (Cap 98A)].

7.77 The purpose of the free postage is to enable the candidate to mail EAs to promote or advertise himself/herself and in relation to that election to electors in the constituency. The free postage arrangement, which is the privilege of validly nominated candidate(s), should not be abused in any way. In particular, it cannot and should not be used for any other purpose or any other election or for promoting or advertising any other person. **As a general requirement, a candidate should publish EAs in accordance with all applicable laws and these guidelines. In this regard, EAs sent by a candidate through free postage should not contain any unlawful content.**

7.78 Specifically, the letter must:

- (a) be posted to an address 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;
- (d) be not larger than 165 mm x 245 mm and not smaller than 90 mm x 140 mm in size (*subject to the enactment of the relevant regulation*);
- (e) not exceed 5 mm in thickness (*subject to the enactment of the relevant regulation*); and
- (f) not contain any obscene, immoral, indecent, offensive or libellous writing, picture or other thing.

[S 102(2) of the EAC (EP) (DC) Reg and s 32(1)(f) of the Post Office Ordinance (Cap 98)]

IMPORTANT:

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 the requirements (a)-(e) above.

Postal Requirements Stipulated by Hongkong Post

Make-up

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

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

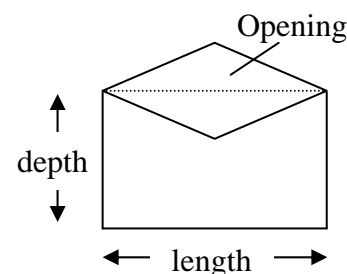
7.81 When a wrapper is used, it must extend over the full length of the item which it encloses. Envelopes must not be fastened with staples or with paper fasteners with sharp edges or points, but they may be closed by means of an adhesive flap or tape.

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

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

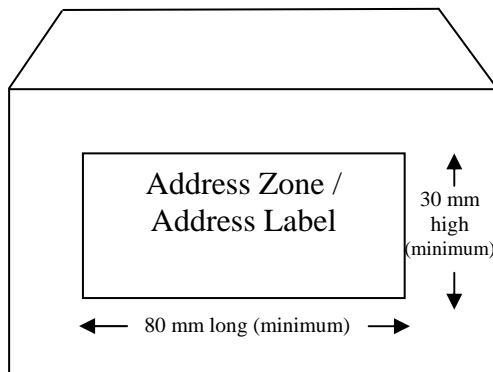
Not over 100 mm in depth - opening not over 140 mm in length

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

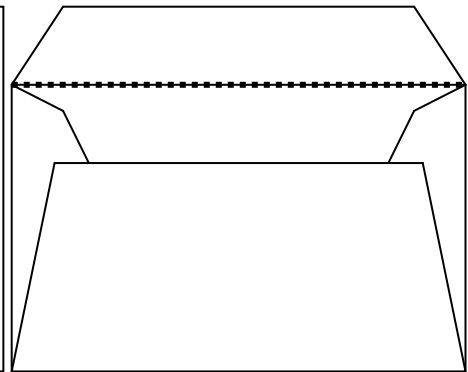


7.83 Folders (e.g. A4 size) with openings should be closed by means of adhesive flap or tape to avoid entrapping smaller letters. All open edges must not be longer than 90 mm in width. Otherwise, adhesive tapes should be applied to the midpoints of the open edges to reduce the width. For details, please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

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

Front Side of an Election Item

The Chinese characters “選舉郵件” or “選舉廣告” or the English words “Election Mail” or “Election Advertisement” must be printed on the front (address) side of the election mail.

Back Side of an Election Item**Addressing**

7.85 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

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

IMPORTANT :

For the purpose of posting of election mails, a candidate may request the REO to provide one set of mailing labels in respect of the electors of the relevant constituency and/or a “Candidate Mailing Label System” (CMLS) DVD-ROM. To protect the environment and respect the wish of electors, no mailing labels will be provided for electors who have provided their e-mail

addresses to receive EAs and who have indicated that they do not wish to receive any EA.

7.87 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. 7.84 for better illustration)

7.88 No postage-free EA 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

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

7.90 **Candidates should apply to Hongkong Post for written approval of their EA specimens for free postage. They should carefully**

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

7.91 Candidates should present 3 unsealed specimens of their EAs, 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 designated manager(s) of Hongkong Post for written approval of their EA specimens. At least **2 clear working days** (excluding Saturday, Sunday and public holiday) must be allowed for Hongkong Post to process each set of specimens, and postings should only be made after receipt of official approval from Hongkong Post. As a large number of EA specimens may have to be processed at the same time, there is no guarantee that the EA specimens will necessarily be approved in 2 working days immediately after their submission.

7.92 To save time, candidates may consider submitting their EA specimens before being assigned with candidate number or confirming the printing details of the election mail. Once the specimens concerned have been approved in writing by Hongkong Post, candidates may insert the candidate number or printing details into the election mail **without altering the approved design and text of the election mail**. There is no need for candidates to re-submit the revised specimens to Hongkong Post for approval.

7.93 Candidates should post their postage-free mail at the respective post offices/delivery offices designated by Hongkong Post for the election concerned. When making postings, the candidates should furnish a copy of

the election mail for the attention of the manager(s) of the designated post offices/delivery offices for record purpose.

7.94 The postings should be made up in bundles of 50 or 100 each for easy counting. All election mails must be stacked on the same side and arranged in accordance with the same order as the address labels/address lists (e.g. by building name or block number) provided by the REO.

7.95 With each posting, the candidate or his/her election agent 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 Hongkong Post and the duplicate copy duly signed by Hongkong Post and kept by the candidate or his/her election agent as acknowledgement of the posting):

- (a) stating the quantity of mail items in the posting and the name of the candidate;
- (b) declaring that the posting is his/her postage-free mail;
- (c) declaring that each mail item contains materials relating only to the candidature of the candidate at the election concerned; is identical to the unsealed specimens submitted by the candidate or his/her election agent for inspection and approval by Hongkong Post; 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 election agent is false in any particular.

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

7.97 If the name, logo or pictorial representation of a person or an organisation, as the case may be, is included in the election mail, and the publication is in such a way as to imply or to be likely to cause electors to believe that the candidate has the support of the person or organisation concerned, the candidate should ensure that **prior written consent** has been obtained from the person or organisation concerned. (Please refer to Chapter 17 for the detailed requirements)

7.98 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 censure any abuse of the free postage arrangements.

7.99 **The postal requirements stated in the above guidelines (paras. 7.79 to 7.96) are quoted for general reference only. Candidates should comply with the latest requirements issued by Hongkong Post at the time of the election concerned.**

Enquiries

7.100 For general enquiries concerning the posting of EAs, please contact:

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

Telephone: 2921 2190 / 2921 2307

Fax: 2501 5930

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

7.101 Candidates may send EAs to registered electors in the custody of the CSD and other law enforcement agencies where the electors have provided the addresses of the penal institutions concerned as their correspondence addresses for the receipt of EAs. For security reasons, candidates should adhere to the guidelines laid down by the CSD at **Appendix P** when sending EAs to these electors.

7.102 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 IN 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:

- (a) at his/her/their living/working places;
- (b) in the premises of the organisation(s) to which the elector(s) belong; or
- (c) in 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 EAs 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 Occupiers who have exclusive possession of private properties (houses, flats, shops, office buildings or factories) have the right decide whether to allow individual candidates to display EAs or conduct electioneering activities in their premises without having to treat all candidates equally.

8.3 However, management bodies (such as owners' corporations, MACs, property management companies, etc.) of the common parts of buildings should accord fair and equal treatment to all candidates. Applications of all candidates for the display of EAs or the conduct of electioneering activities in the common areas of buildings should be processed impartially, especially if the candidates are the chairmen or executive committee members of the management bodies or their relatives, where the principle of fair treatment must be upheld and no preferential treatment should be given.

8.4 Candidates are reminded that different organisations/buildings may have their own guidelines to allow or disallow the conduct of electioneering activities in 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.

8.5 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**.

8.6 For the purpose of ensuring fair treatment and equal opportunity of access for 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

8.7 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

8.8 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.

8.9 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

8.10 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

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

Tenants' Associations, Residents' Associations, Mutual Aid Committees

8.12 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

8.13 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.

8.14 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. 8.17 to 8.24 below.

8.15 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.

8.16 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 and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months [s 88A of the EAC (EP) (DC) Reg].

Respect for the Decision and Privacy

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

8.18 If a decision to disallow electioneering in an organisation or a building has been made, the candidate or his/her supporters 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 candidate concerned. If the candidate refuses to leave, it would be wise in such circumstances for the organisation or building management, as the case may be, to report the matter to the Police in the first instance and then to the EAC (which may publish a reprimand or censure against the candidate concerned) or its Complaints Committee.

8.19 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.

8.20 **Privacy of the electors should be respected.** The Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public at **Appendix F**, prepared by the Office of the Privacy Commissioner for Personal Data (“PCPD”), serves as a general reference in 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 note, 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 note 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);
- (c) before using personal data from sources other than the extract from the FR 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; and

- (d) if election agents or other contractors are engaged to process personal data of electors on behalf of the candidates for electioneering purpose, necessary means (contractual or otherwise) must be adopted to prevent the personal data transferred to the election agents or other contractors from: (i) being kept longer than is necessary for the electioneering purpose; and (ii) unauthorised or accidental access, processing, erasure, loss or use.

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 PCPD has provided relevant complaint cases in the guidance note for illustration purpose. **Candidates and their election agents are strongly advised to strictly follow the guidance provided by the PCPD in the aforesaid note when conducting electioneering activities.**

8.21 Candidates are supplied by the REO with an **extract of the FR** which contains the names and residential addresses of the electors of the relevant constituency and their email addresses (where the electors concerned have provided to REO for the purpose of receiving election mails from candidates), but **not their telephone numbers**. As a general rule, candidates should respect the privacy of electors when using their contact information for canvassing. In particular, for mass distribution of election mails by email, candidates are reminded to use the “bcc” function of email or other proven means to ensure 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 or 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 call 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 good practice, candidates and their supporters should maintain a list of electors that they know finding such electioneering telephone calls or messages or visits objectionable and avoid approaching these electors through these means again. On the other hand, electors who receive objectionable telephone calls or messages can just disconnect them or block the sender. 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.

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** and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [s 22(3) of the EAC (ROE) (GC) Reg].

8.22 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. 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 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)

8.23 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

8.24 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 IN THE PREMISES WITHIN THEIR
JURISDICTION**

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

8.25 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.

8.26 On the polling day or even quite some time before, candidates and their supporters may wish to carry out canvassing or electioneering activities in 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 EAs, etc. at any of the places within the common parts of the building;

NOTE :

Candidates who are allowed to display or distribute EAs 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.

8.27 **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

8.28 During election time, there may be tenants wishing to entertain the approaches by candidates and their supporters, 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 supporters 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.

8.29 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.

8.30 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.

8.31 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 G**).

Decision Must Provide Fair and Equal Treatment

8.32 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 in 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 to**

all candidates so as to ensure that the election is conducted fairly. Discriminatory treatment of candidates may also lead to unequal treatment of tenants/occupiers, and have the undesirable effect of giving rise to dissatisfaction and discord amongst neighbours in the same building.

8.33 For 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.**

IMPORTANT :

The office bearers of building organisations must not abuse their positions in the organisations to give unfair treatment to any candidate in the conduct of electioneering or canvassing activities in the buildings concerned. This is particularly the case when the office bearers themselves or their close relatives are candidates in the election. Furthermore, it would be the responsibility of the building organisations to ensure that the fair and equal treatment principle is strictly complied with in all circumstances and no candidates will be given unfair advantage in the election.

8.34 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

8.35 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/public who may make inquiries with him/her. A **form** of the notification to the RO can be obtained from the REO and can be downloaded from the REO's website. Enquiries may be made with the RO concerned for 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 and therefore have not yet 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

8.36 The management bodies of the organisations or buildings concerned should avoid handling applications by candidates for display of EAs on a first-come-first-served basis as this may create unfairness. For example, if one candidate knows the decision and applies for putting 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, check with 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 of the constituency concerned applies for display of EAs, 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 EAs, they should be allowed to do so but the joint EAs 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) mentioned above.

8.37 If a building has any spaces in the common area that can be made available through any arrangement including rental for candidates to display EAs or conduct other electioneering activity, the management body 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.

8.38 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.

8.39 Whenever a decision has been made by the management body, 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.

8.40 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(1) of the ECICO].

8.41 Any person who puts up any publicity materials, including those which do not look election-related, before or during the nomination period in private premises should declare to the management body concerned in writing whether he/she is a candidate or intends to stand as a candidate in the election. This is to prevent a prospective candidate from making use of such device to promote himself/herself. The management body is also advised to exercise its own judgement on whether the publicity materials are serving electioneering purposes and then make a decision with due regard to the fair and equal treatment principle.

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

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

PART VI : SANCTION

8.43 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.

8.44 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]. Expenses incurred before, during or after the DC election (in relation to election campaigns) on account of an election meeting organised for any of the purposes stated above are election expenses [s 2 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 III 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 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 (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 Similarly, sometimes a candidate may be invited to a meeting which is entirely non-election-related, but during the meeting, someone may

act out of his/her own volition to promote the election of the candidate or prejudice the election of other candidates. In such case, the candidate should immediately make it clear that he/she has nothing to do with the acts of the person and ask the organiser to stop any act relating to the election. If the organiser fails to do so, the candidate should leave the meeting immediately in order to avoid any liability concerned. Otherwise, the meeting will be regarded as an election meeting held to promote the election of the candidate or prejudice the election of other candidates and the expenses so incurred will have to be counted towards the candidate's election expenses. The organiser will contravene the relevant legislation 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.

9.4 In addition to the election expenses (e.g. treating in election meetings) 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 in 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 each of them for the conduct of election meetings in the premises within their jurisdiction.**

9.7 The statutory requirements for holding public meetings under the purview of the Hong Kong Police Force and the guidelines of the Housing Department/Hong Kong Housing Society for premises under their jurisdiction are set out in paras. 9.9 to 9.21 below.

PART II : ELECTION-RELATED “TREATING”

9.8 A person must not at any time provide or pay 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 (see also the part on “Treating” in Part IV of Chapter 16). Nevertheless, the serving of only non-alcoholic drinks at an election meeting, without more, will not be deemed corrupt for the aforementioned purposes unless the purpose of treating is influencing the electors’ voting preference. If an election meeting held by a candidate involves consumption of food and drink, and the participants have shared the costs of the food and drink that do not have the purpose of influencing the participants’ voting preference, it may not fall within the scope of s 12 of the ECICO. Nevertheless, since the election meeting is for the purpose of promoting or prejudicing the election of a candidate, such costs borne by each participant should be treated as election expenses and election donations and the candidate should comply with the legal requirements accordingly.

PART III : ELECTION MEETINGS IN PUBLIC PLACES

9.9 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) (“POO”)]. “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 POO].

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

- (a) the name, address and telephone number of the person organising the meeting, any society or organisation promoting or connected with the holding of the meeting and a person able to act, if necessary, in place of the organiser;
- (b) the purpose and subject matter of the meeting;
- (c) the date, location, time of commencement and duration of the meeting;
- (d) an estimate of the number of people expected to attend the meeting;
- (e) the number and names of persons proposed as platform-speakers for the meeting;
- (f) the sound amplifying devices, if any, intended to be used at the meeting; and
- (g) the nature, form and contents of the advertisements, printed matter, posters or banners intended for publication, distribution or display in respect of the meeting.

[S 8(4) of the POO]

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.

9.11 Notification to the Commissioner of Police of a public meeting is not required if the meeting is to be:

- (a) attended by not more than 50 persons;
- (b) held at private premises where the number of persons attending will not exceed 500 persons; or
- (c) held in a school registered or provisionally registered or exempted under the Education Ordinance (Cap 279), college registered under the Post Secondary Colleges Ordinance (Cap 320), or educational establishment established by any Ordinance 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 POO]

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

9.12 The Commissioner of Police may prohibit the holding of any public meeting notified (referred to in paras. 9.9 and 9.10 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 or to any person named in that notification

not later than 48 hours prior to the time of commencement of the meeting or by publication in writing in such manner, or by posting a notice of the prohibition in such place, as the Commissioner of Police may think fit [s 9 of the POO]. 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. 9.13 below [s 11(2) and (3) of the POO].

9.13 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 amplifying 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 POO]

9.14 A guidance note on safe conduct of election-related activities is at **Appendix G**. It serves as a general advice to candidates and organisers of election-related activities, to enable them to conduct such activities safely.

Public Processions

9.15 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;
- (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 the Gazette.

[S 13(2) of the POO]

9.16 In all other cases, written notification of a public procession, including a vehicle procession, must be given by the person organising the procession or by any person on his/her behalf, 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. 9.10 above should be used. [S 13A(1) and (4) of the POO]

9.17 The Commissioner of Police may object to a public procession being held if he/she reasonably considers that the objection is necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others. If the Commissioner of Police objects to the public procession being held, he/she shall as soon as reasonably practicable and within the time limit specified under the POO:

- (a) notify in writing the person who gave notice under s 13A of the POO or a person named for the purposes of s 13A(4)(a)(i) of the POO of his/her objection and reasons;
- (b) publish a written notice of objection and reasons in the manner he/she thinks fit; or
- (c) post a written notice of objection and reasons in the place he/she thinks fit.

[Ss 14(1) and (2), and 15(2) of the POO]

9.18 The Commissioner of Police shall not issue a notice of objection for a public procession:

- (a) if notice of a procession is given in accordance with s 13(A)(1)(b) of the POO, later than 48 hours before the notified commencement time of the procession;
- (b) if shorter notice of 72 hours or more is accepted by the Commissioner of Police under s 13A(2) of the POO, later than 24 hours before the notified commencement time of the procession;
or
- (c) if shorter notice of less than 72 hours is accepted by the Commissioner of Police under s 13A(2) of the POO, later than the notified commencement time of the procession.

[S 14(3) of the POO]

9.19 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 amplifying 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 POO]

PART IV : ELECTION MEETINGS AT PRIVATE PREMISES

9.20 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**.

9.21 Notification in writing to the Commissioner of Police will need to be given, in accordance with the procedures set out in paras. 9.9 and 9.10 above, if at the proposed meeting the attendance will exceed 500 persons.

PART V : ELECTIONEERING EXHIBITIONS

General

9.22 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

9.23 Where approval has been given by a housing manager or a competent officer for such an exhibition in housing estates managed by the Housing Department and the Hong Kong Housing Society, the display of EAs 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 or a competent officer 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 VI : FUND RAISING ACTIVITIES AT ELECTION MEETINGS

9.24 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)(“SOO”)]. 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 H** for general information.

CHAPTER 10

ELECTION BROADCASTING, MEDIA REPORTING AND ELECTION FORUMS

PART I: GENERAL

10.1 Based on the **fair and equal treatment principle**, the EAC promulgates the guidelines for election-related programmes and reports, including news reports, election forums and feature reports produced and published by broadcasters (covering television and radio stations licensed under the Broadcasting Ordinance (Cap 562) and the Telecommunications Ordinance (Cap 106) respectively) and the print media.

10.2 The EAC highly respects the freedom of the press and hopes that electors are able to obtain sufficient election information through the media reporting in making informed choices. In setting out the guidelines in this chapter, the EAC does not seek to regulate the contents of media reporting, but to ensure an equal opportunity of media coverage for all candidates.

10.3 During the election period (i.e. from the commencement of the nomination period up to the close of polling), the media should treat all candidates in accordance with the **principle of fair and equal treatment** in handling programmes and reports relating to the election and candidates and ensure that no favourable or unfavourable treatment be given to any candidate.

10.4 Provided that fair and equal treatment is given to all candidates, the media can freely express opinions and comments based on the facts, expressing approval or disapproval on the platforms of individual candidates.

10.5 **Most importantly, media organisations should ensure that their programmes or reports will not become EAs (i.e. promoting and prejudicing the election of a particular candidate or particular candidates) in order to avoid breaching the law and legal requirements on incurring election expenses in not being a candidate or an authorised election expense agent. Please see Chapters 7 and 15.**

IMPORTANT:

The definition of “candidate” in this chapter (i.e. Chapter 10) is different from the definition under s 2 of the ECICO. According to s 2 of the ECICO, “candidate” means a person who stands nominated as a candidate at an election and also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election. This legislative provision is applicable to the requirements on candidates’ EAs and election expenses or other requirements under the ECICO.

For the purpose of the principle of fair and equal treatment of candidates under the guidelines in this chapter (i.e. Chapter 10), “candidate” means a person whose nomination form has been received by the RO²⁶. Given the diverse means and platforms employed by different persons to publicly declare their intention to stand for the election, the media may have practical difficulties in obtaining full information on such persons. Hence, the definition of “candidate” in this chapter is different.

²⁶ It will take time for the RO to determine whether a nomination received is valid or not. However, the information of the person being nominated will be uploaded onto the relevant election website for public information on the day when the RO receives the nomination form.

PART II: NEWS REPORTS (BROADCASTERS AND PRINT MEDIA)

10.6 News report means the report of events happening on the day or of a recent period.

10.7 The media should follow the **principle of fair and equal treatment** in reporting news relating to the election and the candidates. However, the requirement of equivalent time/number of words is not applicable.

10.8 Election-related news involving a particular candidate can be reported by itself even if no other news on other candidates is carried that day. However, the other candidates of the same constituency must at least be mentioned. The mention should be made in the same programme or publication by the media in an appropriate way. They may not necessarily appear within the content of the same report, but in principle, should enable the viewers, listeners or readers to be informed of the other candidates.

10.9 News unrelated to the election, even if a candidate is involved, can be factually reported, as long as the status as a candidate is not featured in the report. Reference to other candidates of the same constituency need not be made. In any case, the relevant news reporting should not give favourable or unfavourable treatment to any candidates.

10.10 When determining whether any news reporting by the media is in breach of the principle of fair and equal treatment, the EAC may take into consideration the overall reporting by the media organisation during the election period.

PART III: ELECTION FORUMS

10.11 During the election period, broadcasters may organise election forums. Broadcasters should ensure that the principle of fair and equal treatment is applied to all candidates. If a candidate is invited to take part in an election forum, then all candidates contesting in the same constituency should also be invited so as to give them an equal opportunity to attend the forum and present their election platforms. Some candidates may choose not to attend due to personal or other reasons. Under such circumstances, the broadcaster may proceed with the programme without contravening the principle of fair and equal treatment. A record should be kept by the broadcaster of the date, time and contents of the invitation and notice until 3 months after the election.

10.12 The production and conduct of the entire election forum by the broadcaster should be according to the fair and equal treatment principle. Each candidate should be given same “equivalent time” in the relevant session of the forum to present his/her election platform. The requirement of equivalent time does not apply to other sessions of the forum, such as the debate session, in which each candidate may freely express his/her views on specific issues. The presenter(s) should treat all candidates courteously and fairly at any time throughout the programme to avoid the impression that any particular candidate(s) is/are being treated favourably or unfavourably, or in fact as such.

10.13 Other organisations or groups, such as professional bodies or trade organisations, academic institutions and schools, may also organise election forums for promoting civic education or other purposes. In line with the principle of fair and equal treatment of candidates, the EAC appeals to all organisers to invite all candidates of the same constituency to appear in the forums, so that no unfair advantage will be accorded to or obtained by any

candidate over others regarding election campaigning. Some candidates may choose not to attend due to personal or other reasons. Under such circumstances, the forum organisers may proceed with the activities without contravening the principle of fair and equal treatment.

10.14 During the conduct of election forums, broadcasters and other organisations or groups should not give favourable or unfavourable treatment to any candidates.

10.15 The EAC appeals to all candidates to attend these election forums as far as possible so as to keep electors and the public apprised of their election platforms.

PART IV: FEATURE REPORTS (BROADCASTERS)

10.16 Under the principle of fair and equal treatment, the broadcasters in producing whether a feature programme or interview to introduce individual candidates, in news bulletins or during the airtime of other programmes, should give equal opportunity and approximate time to all the candidates.

10.17 When inviting any candidate to an interview, broadcasters should invite all candidates contesting in the same constituency and give them an equal opportunity to appear. The EAC appeals to all candidates to accept invitations to interviews 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 accept the invitations due to personal or other reasons. Under such circumstances, the broadcaster may proceed with the programme without contravening the principle of fair and equal treatment. A record shall be kept by the broadcaster of the date, time and contents of the invitation and the notice until 3 months after the election.

10.18 To avoid any possible misunderstanding, broadcasters should provide the audience of the programmes with clear information on the total number and 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 by the Court in an election petition relating to the 2010 LegCo By-election as set out in **Appendix I**, and where appropriate, follow the arrangements set out therein when producing election related multi-episode feature reporting.

10.19 When determining whether an election-themed feature report produced by a broadcaster is in breach of the principle of fair and equal treatment, the EAC may take into consideration the overall circumstances of relevant feature reporting produced by the broadcaster during the election period.

PART V: FEATURE REPORTS (PRINT MEDIA)

10.20 If the print media conducts interviews to introduce individual candidates during the election period, it should also give the other candidates contesting in the same constituency an equal opportunity to be interviewed so as to ensure the electors receive more relevant information about the election, so as to make informed choices.

10.21 In the interview reports of individual candidates by the print media, mention of other candidates of the same constituency should be made. Such mention may be made in an appropriate way by the media organisations. They may not necessarily appear within the content of the same report, but in principle, should enable readers to be informed of the other candidates. For instance, when an interview with a candidate is published on a newspaper, the names of other candidates of the same constituency may be listed on the same page of the report or on other pages.

10.22 The EAC appeals to the print media to accord **fair and equal treatment** and equal opportunity as far as practicable to all candidates in respect of reporting on candidates contesting in the same constituency and their electioneering activities. How to treat the candidates fairly and equally in practice depends on the actual circumstances. Reference may be made to the elaboration in **Appendix J**. When determining whether any feature reporting by the print media is in breach of the principle of fair and equal treatment, the EAC may take into consideration the overall reporting by the media organisation during the election period.

10.23 The print media should ensure that, during the election period, their reporting will not give unfair publicity to particular candidate, or lead the public perceive that such reporting is made for the publicity of particular candidate. Publications (e.g. newspaper supplements or leaflets) that promote or prejudice the election of a particular candidate or particular candidates, whether for free or otherwise, may be regarded as EAs for the candidate(s) concerned and will be subject to the requirements on election expenses as stipulated in Chapter 15. The publisher may contravene the relevant legislation if not being an authorised election expense agent.

PART VI: NON-ELECTION-RELATED PROGRAMMES AND ARTICLES

10.24 During the election period, a candidate may appear as guest in a non-election-related programme on television/radio or an interview by the print media insofar as his/her participation is pertinent to his/her position, i.e. the candidate is invited because his/her professional knowledge or past experience is in close connection with the subject matters of the programme or interview. A record should be kept by the broadcaster/print media for providing justification regarding the choice of guests, including no better choice of

alternative guests, etc. The broadcaster/print media should ensure that no election-related topics (including the election campaigns of the candidate) would be mentioned in the programme/article and no unfair publicity will be given to the candidate. Otherwise, under the principle of fair and equal treatment, the broadcaster/print media should also give the other candidates contesting in the same constituency an equal opportunity of appearance/being interviewed.

10.25 Similarly, during the election period, if a representative of a political party or political organisation with members contesting in the election, or a prescribed body the registered name or registered emblem of which is to be printed on the ballot papers in the election, is invited to take part as a guest in a non-election-related programme/interview, the broadcaster/print media should also ensure that the participation of the representative is pertinent to his/her position, i.e. the candidate is invited because his/her professional knowledge or past experience is in close connection with the subject matters of the programme/interview. A record should be kept by the broadcaster/print media for providing justification regarding the choice of guests, including no better choice of alternative guests, etc. The broadcaster/print media should ensure that no election-related topics (including election campaigns) would be mentioned in the programme/article, that no election-related materials (including badges and clothing) of the political party, political organisation or prescribed body to which the representative belongs would be displayed in the programme/article, and that the programme/article will not cause any unfairness to any candidate. Otherwise, under the principle of fair and equal treatment, the broadcaster/print media should also give all political parties or political organisations with members contesting the election or prescribed bodies the registered names or registered emblems of which will be printed on the ballot papers in the election (whether or not they are contesting in the same constituency) and all independent candidates an equal opportunity of appearance/being interviewed.

PART VII: AVOIDING UNFAIR PUBLICITY

10.26 During the election period, media organisations should ensure that no favourable or unfavourable treatment will be given to any of the candidates, and **no** such unfair advantage should be **obtained** by candidates. If a candidate has more opportunities for publicity than other candidates on the basis of his/her background or profession, he/she should also endeavour to avoid obtaining such unfair publicity.

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

10.27 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 election or during the election period if he/she becomes a candidate. This is to avoid unfair 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 III above.

10.28 A person who has been 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 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)-in-charge not to broadcast his/her appearance in any media after his/her declaration of intention to stand for election or during the election period if he/she becomes a candidate. The EAC appeals to the aforesaid person(s)-in-charge to accede to such a request as far as practicable in order to avoid giving unfair publicity to the person concerned.

Candidates Appearing in Commercial Advertisements

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

10.30 If, after the relevant advertisement has been made, the person then decides to stand for election and knows that the relevant advertisement will be broadcast on television/radio/cinema after his/her declaration of intention to stand for 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)-in-charge not to broadcast the relevant advertisement after his/her declaration of intention to stand for election or during the election period. The EAC appeals to the aforesaid person(s)-in-charge to accede to such a request as far as practicable in order to avoid giving unfair publicity to the person concerned.

Candidates Contributing Regularly to Print Media

10.31 A regular columnist should not contribute articles to the print media after he/she has publicly declared his/her intention to stand for election or during the election period if he/she becomes a candidate. This is to avoid unfair publicity for him/her at the critical time. A person who has been contracted to serve as a regular columnist should make his/her utmost endeavours to request the person(s)-in-charge not to publish his/her commentaries in any media after his/her declaration of intention to stand for election or during the election period if he/she becomes a candidate. The EAC appeals to the aforesaid person(s)-in-charge to accede to such a request as far as practicable in order to avoid giving unfair publicity to the person concerned.

PART VIII: PLACING ELECTION ADVERTISEMENTS IN MEDIA

10.32 Television stations licensed under the Broadcasting Ordinance are not allowed to broadcast advertisements of a political nature under the law. Radio stations licensed under the Telecommunications Ordinance are not allowed to broadcast advertisements of a political nature under the Code of Practice issued by the Communications Authority unless prior approval has been given by the Communications Authority.

10.33 A candidate may advertise in the print media to promote his/her candidacy. Where such an EA 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 EA, the words “**Election Advertisement**” or “**選舉廣告**” must be stated therein to avoid misunderstanding by readers that it is not an EA (see para. 7.64 of Chapter 7). The expenses so incurred must be accounted for in the return and declaration of election expenses and elections donations. An EA placed in a registered local newspaper is exempted from the requirement on bearing printing details (see para. 7.63 of Chapter 7 for details). The EAC appeals to all members of the print media to give all candidates contesting in the same constituency **equal opportunity** for placing EAs in the print media.

PART IX: SANCTION

10.34 Whether the principle of fair and equal treatment is complied with or whether there is any favourable or unfavourable treatment by the media should be determined having regard to the overall reporting by the media organisation during the election period.

10.35 Any broadcaster, member of the print media or forum organiser who is found to have treated the candidates in an unfair or unequal manner may

be **reprimanded** or **censured** by the EAC in a public statement, in which the names of the candidates receiving favourable or unfavourable treatment as well as the names of the broadcaster, member of the print media or forum organiser concerned will be released. The EAC may also notify the relevant authorities for appropriate action to be taken. Moreover, the programme, news report or article concerned may very likely have the effect of promoting or prejudicing the election of a particular candidate or particular candidates and thus be construed as an EA for the candidate(s) concerned. As such, it may contravene the statutory requirements on EAs and election expenses (see Chapters 7 and 15), and both the media organisation and candidate(s) concerned may be subject to criminal liability. The EAC will refer cases of possible breaches to the relevant law enforcement agencies for follow-up. In view of the above, the EAC appeals to all broadcasters, members of the print media, 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.

10.36 Candidates mentioned in paras. 10.27 to 10.31 above should make their best endeavours to avoid unfair publicity according to the respective guideline stipulated in each paragraph. If the EAC receives any complaint about the unfair publicity of a candidate and subsequently discovers that he/she fails to make such endeavours, it may **reprimand** or **censure** the candidate concerned in a public statement.

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 POO, the SOO, the Noise Control Ordinance (Cap 400) (“NCO”) and the Road Traffic Ordinance (Cap 374) (“RTO”).

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’ voting preference may be affected as a result of any noise nuisance caused by candidates or their supporters.

11.3 The use of loudspeakers is not 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. Candidates should also arrange the removal of EAs on the windows or bodywork of any public service vehicles if those vehicles will pass through or be parked within the NCZ on the polling day. Otherwise, the vehicles on which EAs are displayed will not be allowed to enter the NCZ on the polling day. (Please also see Chapter 13)

PART II : USE OF LOUDSPEAKERS AND VEHICLES

11.4 With effect from July 1995, the Commissioner of Police ceases

issuing loudspeaker permits under s 4(29) of the SOO. 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 amplifying device is used in an election meeting or procession. An amplifying device includes a loudspeaker and any device which can emit or amplify sound. (Please refer to Chapter 9)

11.5 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 NCO, 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 at either domestic premises or public places 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 the candidate. 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 sound level and try to keep the volume at a reasonable level.

11.6 Should any complaint be received by the Police concerning the volume of loudspeakers, 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.

11.7 All vehicles used for and in connection with canvassing activities must comply with the provisions and regulations of the RTO. 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 RTO. Deliberate slow driving may constitute “careless driving” as it could be deemed as driving “without reasonable consideration for other persons using the road”.

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

- (a) (i) for taxi, no EA may be displayed on all windows;
- (ii) for public light bus, no EA 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,EA(s) to be displayed in each of the abovesaid windows shall not exceed a total size measuring 210 mm by 297 mm (equivalent to A4 size);
 - (2) at areas between the windows and the exterior roof panel; and

- (3) on the exterior roof panel (except sticker-type EAs);
- (b) no luminous or reflecting material may be used for EAs; and
- (c) no EA 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 RTO 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 EA on a public light bus or taxi. The TD has issued general approval to all franchised bus companies for advertising on the bodies and windows of buses subject to conditions imposed by the TD. The bus companies should comply with the conditions set out in the TD approval letters when they handle all kinds of advertisements. In this connection, there are no special guidelines on the display of EAs on buses. For those non-franchised buses with approval from TD for advertising on the bodies and windows of buses, they are subject to the conditions imposed by the TD. The non-franchised bus operators should comply with the conditions set out in the TD approval letters when they handle all kinds of advertisements. For the other modes of public transport, the operators concerned have their internal rules to govern the display of advertisements. In this regard, candidates should check with the operators for the relevant procedures and comply with the conditions imposed.

11.9 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 RTO, including those relating to seating requirement, wearing of seat belts and permission to carry passengers in a vehicle. Standing up in

moving vehicles is **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. The registered owner of the vehicle concerned should apply to the Licensing Office of the TD for the exemption of the vehicles from carriage of standing passengers.

11.10 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 K**.

11.11 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 [s 43 (13) of the EAC (EP) (DC) Reg]. Candidates should also arrange the removal of EAs on the windows or bodywork of any public service vehicles (e.g. public light buses or taxis) if those vehicles will pass through or be parked within the NCZ on the polling day. Otherwise, the vehicles on which EAs are displayed will not be allowed to enter the NCZ on the polling day. (See also Chapter 13)

PART III : SANCTION

11.12 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. The candidate concerned may be liable to a fine at level 2 (\$5,000) and to

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 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 youngsters 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 youngsters 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.

12.3 Candidates who are in authority (e.g. school principals) should not distribute their EAs to the parents of pre-primary, primary or secondary school pupils through these pupils to avoid any impression of undue influence on youngsters of school age under the charge of these persons in authority in the school.

PART II : SCHOOL PUPILS

12.4 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 to involve them in electioneering activities at too young an age. Unattended young children may cause control problems and, particularly where in large numbers or in overcrowded situations, may create a danger to themselves and others. Therefore, pre-primary or primary school pupils should not take part in electioneering activities.

12.5 Distribution of EAs is a form of electioneering activity. School supervisors, principals or teachers may be supporters of a particular candidate in a constituency. While they are free to support any candidate they prefer, they should not distribute or help in the distribution of EAs of any candidate to the parents of pre-primary, primary or secondary school pupils through these pupils. Moreover, they should not ask pupils to request their parents to vote for any particular candidate. The guideline above also 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 impression of undue influence on young children under the charge of these persons in authority in the school.

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

- (a) participation by pupils in electioneering activities must be **entirely voluntary**;
- (b) the **written consent** of a parent or guardian must be obtained beforehand;

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

12.7 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.

12.8 The EAC recognises that school pupils who are 18 years of age or above are by law responsible for their own acts and making election-related decisions for themselves.

PART III : ELECTIONEERING ACTIVITIES IN SCHOOLS

12.9 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. Regardless whether the topic to be covered by such a talk involves an election, the presence of a candidate delivering the talk and 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. Such activities should, therefore, be regarded as the relevant candidate's electioneering activities. (See also para. 12.5 above)

12.10 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 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.

PART IV : SANCTION

12.11 If the EAC comes to know that any candidate or school or 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 or 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. An NCZ will be designated outside each polling station to ensure that electors can gain access to the polling station without interference. In addition, an 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 the entry/exit.

13.2 No canvassing activities are allowed within the NCZ. Regarding buildings within the NCZ, all canvassing activities by candidates and their campaigners are prohibited in the entire building where a polling station is located as well as on the ground floor of other buildings, regardless of whether they are government or private premises, and even if approval from the building management concerned is obtained.

13.3 Any deliberate but disguised conduct for the canvassing of votes in the NCZ is prohibited, such as staying or loitering in the NCZ, smiling or showing goodwill to the electors, etc. for the purpose of canvassing votes. For details, please refer to **Appendix D**.

PART II : DETERMINATION OF NO CANVASSING ZONE AND NO STAYING ZONE

13.4 The RO for a constituency must determine, in respect of each polling station designated for that constituency, an area outside the polling station to be an 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 an NSZ. These two zones are to be determined with reference to a map or plan. [S 43(1) of the EAC (EP) (DC) Reg]

13.5 For a polling station which is used for more than one constituency, the determination of the NCZ and NSZ is to be made by the RO specified for the purpose by the CEO [s 43(3) of the EAC (EP) (DC) Reg].

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

13.7 The notice will be given in writing, and delivered by hand, by electronic mail, by facsimile transmission or by post, 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].

13.8 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. 13.7 above [s 43(6) of the EAC (EP) (DC) Reg]. The notice of variation of an NCZ or NSZ on the polling day may however be given orally if delivering it in the manner as referred to in para 13.7 above 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].

13.9 A notice of the determination or the variation, together with indication of the boundaries of the NCZ or the NSZ, must 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].

13.10 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

13.11 Canvassing activities (including displaying or wearing of propaganda materials, or suggesting not voting for any candidate) will not be allowed within an NCZ, except for static display of EAs that are authorised by the RO (e.g. EAs mounted at designated spots) and the permitted activities described in para. 13.12 below [s 43(13) of the EAC (EP) (DC) Reg].

13.12 No canvassing is allowed on the street level (i.e. ground floor) within the NCZ. Door-to-door canvassing may be allowed on the storeys above or below the street level in any building other than the building in which the polling station is located within an NCZ, provided that permission has been obtained for entry into the building for canvassing votes, that no obstruction is caused to any person, and that no sound amplifying system or device is used. For the purpose of such canvassing, the display or wearing of any promotional material (e.g. badge, emblem, clothing or head-dress which may promote or prejudice the election of any candidate at the election) or any material making direct reference to any body a member of which is standing as a candidate in the election, or the registered name or emblem of a prescribed body printed on any ballot paper for the election, may be allowed but in no case to appear on the street level within the NCZ. [S 43(13), (14) and (15) of the EAC (EP) (DC) Reg]

13.13 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 EAs, if any, posted up at the premises within the NCZ before the polling day. The exhibition of portable displays on vehicles (whether in motion or parked within the area), or held or carried by persons is also regarded as a canvassing activity which is forbidden within an NCZ. Therefore, candidates should arrange the removal of EAs on the windows or bodywork of any public service vehicles (e.g. public light buses or taxis) if those vehicles will pass through or be parked within the NCZ on the polling day. If the candidates fail to remove the EAs as requested by the ROs, the ROs may issue a warning to them to remove the offending EAs immediately. If the candidate fails to do so, the EAC may issue a reprimand or censure. Canvassing activities may take many different forms. A list of common canvassing activities which are forbidden in an NCZ is at **Appendix D**.

13.14 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. 13.12 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 EAs 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].

13.15 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 [s 43(13)(b) and (c) of the EAC (EP) (DC) Reg]. 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(13A) of the EAC (EP) (DC) Reg]. Save for canvassing activities allowed in para. 13.12, 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)

13.16 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 an **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.

13.17 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 an NSZ, or in an NCZ without the express permission of the EAC or the PRO who should have regard to exit pollsters

who have complied with the requirements set out in Chapter 14. [S 94(7) of the EAC (EP) (DC) Reg]

13.18 Any person who misconducts himself/herself or carries out any forbidden activity in an 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 and will be liable to a fine and to 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].

13.19 Nevertheless, the RO or the PRO shall not exercise their powers to order an elector to leave or remove an elector from the NCZ or NSZ so as to prevent him/her from voting at the polling station allocated to that person [ss 44(5) and 49(5) of the EAC (EP) (DC) Reg].

PART IV : PENALTY

13.20 Any canvassing within an NCZ except those exempted and any conduct prohibited under paras. 13.16 and 13.18 above will each be an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months [s 48(7) of the EAC (EP) (DC) Reg]. Any attempt to obtain information as described in para. 13.17 above without the necessary permission will be an offence under s 94 of the EAC (EP) (DC) Reg, and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 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 on the polling day. The EAC respects academic freedom and freedom of expression in conducting exit polls. However, the EAC also has to ensure that elections are conducted fairly and honestly, to avoid the electors being unduly influenced and interfered with, and to maintain the order outside the polling stations. As such, a fair balance between the two ends must be maintained.

14.2 Secrecy of the vote is an important principle under the electoral system. It is entirely voluntary for electors to participate in any exit polls and they are not required to disclose to the organisations conducting the exit polls their voting preference unless they wish to do so.

14.3 Voting polls inside a polling station or an NSZ are strictly prohibited under the law. However, exit polls may be conducted outside the exit in an NCZ if approval from the EAC is obtained. [S 94(7) of the EAC (EP) (DC) Reg].

14.4 Exit polls approved by the EAC are not for electioneering purpose in promoting or prejudicing the election of a candidate or candidates. Organisations or persons conducting exit polls must not be affiliated with the candidates. The organisations or persons have to ensure that the results of exit polls must not be announced or disclosed to any candidate and other persons before the close of poll. The interviewers should make clear to the electors

that participation in the exit poll is entirely voluntary.

14.5 To strictly regulate the exit polls, all applicants for the conduct of exit polls are required to make a statutory declaration to abide by the relevant terms and guidelines (see para. 14.12 below), in breach of which the approval may be revoked. If the person or organisation concerned deliberately makes false statutory declaration, they will be in breach of s 36 of the Crimes Ordinance and be sentenced to imprisonment for 2 years and to a fine.

14.6 Except for exit polls conducted within the NCZ on the polling day mentioned in para. 14.3 above, election-related opinion polls conducted outside the NCZ or before the polling day are not regulated by the current legislation. These polls do not fall within the scope of exit polls regulated by the EAC.

14.7 **The EAC appeals to the media to act with self-discipline, goodwill and in a spirit of voluntary cooperation in publishing and broadcasting the results of exit polls and other election-related opinion polls by refraining from announcing the said results before the close of poll so that electors' voting behaviour will not be unduly affected.**

PART II : SECRECY OF THE VOTE

14.8 **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 has voted at an election** [s 48 of the DCO and s 94(7) 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.

14.9 Any announcement or disclosure 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. Furthermore, interviewers of approved exit polls should not speak to or communicate with candidates or their agents when conducting the poll outside polling stations.**

PART III : CONDUCT OF EXIT POLLS

14.10 Any person or organisation may apply for conducting exit polls in respect of any constituency to the REO, which is appointed to handle such applications on behalf of the EAC. Individual applicants must reach the age of 18 as they are required to make a statutory declaration (see para. 14.12 below) and the consequences of failing to abide by the relevant terms and guidelines governing the conduct of exit polls are serious and may attract criminal liability. To forestall public perception of unfairness, approval would normally not be granted in one or more of the following circumstances:

- (a) the applicant has publicly expressed support for any candidate(s) contesting in the constituency, of which any polling stations are covered by the exit poll(s);

- (b) the applicant organisation has member(s) contesting in the constituency, of which any polling stations are covered by the exit poll(s);
- (c) the person(s) responsible for the exit poll(s) or interviewers deployed for the poll(s) are currently members of the organisation(s):
 - (i) which has candidate(s) contesting in the constituency, of which any polling stations are covered by the exit poll(s), or
 - (ii) which have publicly expressed support for any candidate(s) contesting in the constituency, of which any polling stations are covered by the exit poll(s).

14.11 For security reasons, no exit poll may be conducted for dedicated polling stations. For the purpose of better control of the conduct of exit poll, persons or organisations intending to conduct exit polls must provide the following to the REO at **the latest 10 days before the polling day**:

- (a) the name and address of the person or organisation intending to conduct an exit poll on the polling day;
- (b) the identity document number and name of the person responsible together with his/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.

14.12 A person or an organisation applying for the conduct of exit poll must make a statutory declaration by virtue of the Oaths and Declarations Ordinance (Cap 11) to abide by the relevant terms and the guidelines governing the conduct of exit poll. On the receipt of the application, the REO will consider the application and issue approval to the person or organisation concerned as appropriate. If a person or an organisation fails to comply with the terms of the declaration 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 declaration and the 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.

14.13 Interviews are not allowed inside polling stations and the NSZ. Interviewers should note that canvassing activity is prohibited under criminal sanction within the NCZ except door-to-door canvassing activities (in both residential premises and commercial premises such as restaurants or shops) on any storey above or below street level (i.e. not including the storey at the street level) in buildings other than the one in which a polling station is located, provided that permission has been obtained for entry to the building for canvassing votes, and that obstruction is not caused 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.

14.14 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 the exit poll within that area. As the entrance and exit of some polling stations are at the same location, organisations conducting exit polls should keep a reasonable distance from the exit and ensure that electors entering the polling station will not be affected when the said exit polls are being conducted.

PART IV : IDENTIFICATION OF INTERVIEWERS

14.15 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 person or organisation 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 person or organisation conducting the exit poll at the start of the interview and the fact that the exit poll is not commissioned by the Government.

14.16 After receipt of the information referred to in para. 14.11 above, the REO will notify the person or organisation concerned to collect a number of identification devices bearing the name of the person or organisation that is required to be displayed prominently by each of the persons included in the list in para. 14.11(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 : USE OF OTHER OPINION POLLS FOR ELECTIONEERING

14.17 As mentioned in para. 14.4, exit polls approved by the EAC are in all circumstances not for electioneering purpose.

14.18 If a candidate makes use of the results of other opinion polls for the purpose of promoting himself/herself or prejudicing the election of other candidate(s), the expenses incurred for conducting the polls will be regarded as his/her election expenses.

14.19 If persons other than candidates or the authorised election expense agents make use of the results of the exit polls or other opinion polls for the purpose of promoting or prejudicing the election of any candidate, they will commit the offence of incurring election expenses without being authorised as an election expense agent.

PART VI : SANCTION

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

CHAPTER 15

ELECTION EXPENSES AND ELECTION DONATIONS

PART I : GENERAL

15.1 The law has prescribed the maximum amount of election expenses in order to ensure that all candidates compete on a level playing field and within a reasonable level of expenditures. Candidates must submit an election return to the CEO after the election, listing the election expenses incurred and the election donations received by them and their election expense agents.

15.2 “Candidate” is defined as a person who stands nominated as a candidate at an election, and this also includes a person who, at any time before the close of nomination for an election, has publicly declared an intention to stand for the election. “Election expenses” is defined as the expenses related to election campaigns which are incurred for the purpose of promoting or prejudicing the election of a candidate, without time constraint, including those incurred before, during or after the election period. Please refer to Part II of this chapter for details. “Election expense agent” refers to a person who is authorised by a candidate to incur election expenses on the candidate’s behalf.

15.3 To ensure that election expenses will not exceed the statutory upper limit, the law stipulates that only candidates and their authorised election expense agents may incur election expenses and makes it an offence for others to do so. Persons other than the candidates and election expense agents are therefore not permitted to incur any election expenses. Non-compliance is an illegal conduct. Nevertheless, a third party (other than a candidate and his/her election expense agents) who published an EA on the Internet is exempted

from the relevant criminal liability if the only election expenses incurred are merely electricity charges and charges necessary for accessing the Internet.

15.4 Election expenses incurred by a third party without the consent or knowledge of a candidate are not attributed to the candidate concerned and the third party himself/herself must be held accountable for the expenses. However, if the election expenses are incurred by the third party under the instruction of the candidate, especially in the case where the upper limit of election expenses is exceeded, the candidate will be subject to legal liabilities.

15.5 If the expenses incurred by a candidate are partly related to the election and partly the general expenditures for other purposes, the candidate is required to apportion the part of the expenses that is election-related and include it in the election return. Time and usage are relevant factors in the apportionment.

15.6 Voluntary service is defined as any service provided by any natural person voluntarily, personally and free of charge in his/her own time for the purpose of promoting the election of a candidate or prejudicing the election of other candidates. Voluntary service is the only service rendered free of charge which may be excluded from being counted as election expenses. Nonetheless, goods or materials given incidental to the provision of voluntary service will be counted as election donation.

PART II : WHAT CONSTITUTES ELECTION EXPENSES

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

15.8 **Election expenses**, in relation to a candidate at an election, mean expenses incurred or to be incurred **before, during or after the election period**, by or on behalf of the 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” includes a person who **has publicly declared an intention to stand as a candidate at an election** at any time before the close of nominations 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.

15.9 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 General Election, as summarised in **Appendix L** for reference.

15.10 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 for the purpose of meeting or contributing towards meeting the election expenses of the candidate;
- (b) any goods given to or in respect of the candidate 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 the candidate 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 (see para. 15.31 below).

[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 IV of this chapter)

15.11 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.

15.12 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 election return. As a general principle, time and usage are relevant factors for consideration. The candidate can make reference to the examples of apportionment in the guide and video mentioned in para. 15.35 (c) below which show how the election return can be completed (see also para. 15.33 below). 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.

15.13 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 be counted as election expenses. A list of common expenditure items to be counted towards election expenses is at **Appendix M**. 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 be counted as an election expense. Any legal fees incurred as a result will not themselves be regarded as election expenses.

15.14 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 III : WHO MAY INCUR ELECTION EXPENSES AND THEIR LIMIT

Maximum Amount of Election Expenses

15.15 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. This expense limit controls the extent of election campaigns and serves to prevent candidates with ample financial resources from having an unfair advantage.

15.16 The maximum amount of election expenses for the DC election is \$68,800 [s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation] (*subject to the enactment of the relevant regulation*).

15.17 A candidate must not incur election expenses in excess of the maximum amount prescribed [s 24(1) of the ECICO].

Persons Authorised to Incur Election Expenses

15.18 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.

15.19 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 latter's election expense agent. Such expenses will be counted towards election expenses of the candidate. If the negative campaign includes EAs, all the requirements of the ECICO and of the EAC (EP) (DC) Reg must also be complied with.

15.20 Candidates should advise the organisations, with which they are associated and which may incur expenses to support them, of these requirements 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.

15.21 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 exceeds 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 IV : ELECTION DONATIONS

General Provisions

15.22 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.

15.23 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].

15.24 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. Election donations in kind include goods and services obtained free of charge or at a discount. All spent or used election donations, whether in cash or in kind, which may be received before, during or after an

election (in relation to election campaign), are counted towards the total election expenses which are subject to the maximum amount prescribed.

15.25 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 maximum amount of election expenses must also be given to such charitable institution(s) or trust(s). It must be done before the election return is lodged in accordance with s 37 of the ECICO. [S 19 of the ECICO]

15.26 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. 15.29 to 15.31 below.

15.27 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) as well as the particulars of the donation. A standard form of receipt is obtainable from the REO and will be provided to a candidate 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 for election-related purpose. 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 19(1) and (2) of the ECICO]

15.28 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 N**.

Election Donations in Kind

15.29 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 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 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 election return.

15.30 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.

15.31 **Voluntary service** is the only service rendered free of charge which may be excluded from being counted as election expenses. Nonetheless, goods or materials given incidental to the provision of voluntary service will be counted as election donation. 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 the candidate or candidates, or of prejudicing the election of another candidate or other candidates [s 2 of the ECICO]. Otherwise, the service provided should be treated as an election donation and counted towards election expenses at a fair estimated value.

PART V : RETURN AND DECLARATION OF ELECTION EXPENSES AND ELECTION DONATIONS (“ELECTION RETURN”)

15.32 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 before the expiry of the period of 30 days after the election is settled in relation to the constituency concerned (and in relation to all the constituencies concerned if the election is held for 2 or more constituencies) or within such extended period as may be allowed by the CFI under the relevant electoral law. An election is settled in relation to a constituency on the date on which any of the following events occurs:**

- (a) **the result of the election is notified in the Gazette;**
- (b) **the proceedings for the election are declared to have been terminated;**
- (c) **the election is declared to have failed.**

[S 37(1), (1F), (1G) and (1N) of the ECICO]

15.33 The election return must cover all the election expenses incurred by the candidate and his/her election expense agent(s). It must be submitted with supporting invoices and receipts issued by recipients of the payments for all payments each of \$500 or above [s 37(2)(b) of the ECICO] (*subject to the enactment of the relevant ordinance*). The invoice and receipt for an election expense may be submitted in separate documents, or may be contained in the same document. A candidate should submit invoices and receipts with the following particulars, including:

- (a) date;
- (b) details of the expense item (i.e. information and amount of the goods and services);
- (c) information of the organisation or person (other than the candidate himself/herself) providing the goods or services; and
- (d) information supporting that the organisation or person (other than the candidate himself/herself) providing the goods or services has received the relevant payment in full (e.g. name and signature of the recipient, or the stamp of the organisation or signature of its authorised person).

15.34 A candidate must also set out all election donations, whether in cash or in kind (including services or goods obtained free of charge or at a discount), received by or on behalf of him/her in connection with the election in the election return. The election return must be accompanied by the copies of receipts issued by the candidate for each election donation of more than \$1,000 in value and the copies of receipts issued by charitable institutions or trusts of a public character for the collection of any unspent election donations, anonymous donations of more than \$1,000 in value or election donations which are in excess of the limit of election expenses. A declaration verifying the contents of the election return must also be submitted together with the election return. [S 37 of the ECICO]

15.35 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. 15.32 above, together with a standard form of receipt for election donations mentioned in para. 15.27 above;
- (b) the standard form for advance return of election donations (see paras. 15.42 to 15.44 below);
- (c) a guide and a video showing how the election return can be completed; and
- (d) a set of Frequently Asked Questions (“FAQs”) related to the election return.

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

Statutory Relief Mechanism for Errors and False Statements

15.36 If a candidate is unable or fails to send to the CEO the election return before the expiry of the period of 30 days 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 to allow 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] (please see para. 15.32 above). The legal costs so incurred will not be regarded as his/her election expenses.

15.37 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 to enable 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.

15.38 Notwithstanding the provision set out in para. 15.37 above, if a candidate makes any error and/or false statement in the election return, the nature of which is either a failure to set out in the election return any election expense of the candidate at the election or any election donation received by or on behalf of the candidate in connection with the election, or incorrectness in the amount of any election expense or any election donation, **and** the aggregate value of the error(s) and/or false statement(s) does **not** exceed \$3,000 [item (6) of the Schedule to the ECICO] (*subject to the enactment of the relevant ordinance*), he/she may, subject to the conditions set out in para. 15.39 below,

seek to have the error and/or false statement rectified in accordance with a simplified relief arrangement for minor errors or false statements as provided under s 37A of the ECICO. Under the arrangement, the candidate may write to notify the CEO of his/her request for lodging a revised election return to rectify the error and/or false statement and provide the necessary details for consideration of the request. If the CEO is satisfied that it is appropriate to allow the candidate to lodge a revised election return under the simplified relief arrangement, the CEO would issue a notice to the candidate. Upon receipt of the notice, the candidate may, within the specified period, 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].

15.39 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) accompanied by all relevant documents as required under s 37(2)(b) of the ECICO (e.g. invoice and/or receipt) and, if applicable, 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.

[s 37A(6) of the ECICO]

A copy of the revised election return made under the relief arrangement 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.

15.40 The relief arrangement 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 information 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 the 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 arrangement will not relieve the candidate from liability under other offence provisions in the ECICO if the election return concerned has contravened any such provisions. [S 37A of the ECICO]

15.41 When the candidate finds himself/herself in any of the situations set out in paras. 15.36 and 15.37 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.38, 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 VI : ADVANCE RETURN OF ELECTION DONATIONS

15.42 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 election donations so disclosed must also be incorporated in the election return to be submitted to the CEO before the expiry of the period, or the extended period provided for in s 37 of the ECICO for lodging an election return (see para. 15.32 above) [s 37(1), (1F), (1G) and (1N) of the ECICO]. The general provisions regarding election donations in Part IV must be observed.

15.43 Any **advance return of election donations** must be made on the specified form mentioned in para. 15.35 above.

15.44 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 VII : FINANCIAL ASSISTANCE

15.45 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 \$15 per vote (*subject to the enactment of the relevant ordinance*);
 - (ii) 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate under s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation ; 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 \$15 per registered elector (*subject to the enactment of the relevant ordinance*);
 - (ii) 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate under s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation; or
 - (iii) the declared election expenses of the candidate.

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 expenses²⁷. 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.

15.46 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

15.47 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.

²⁷ This may occur if the candidate secures election donations which exceed 50% of his/her total election expenses.

15.48 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

15.49 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, before the expiry of the period, or extended period provided for in s 37 of the ECICO for lodging an election return (see para. 15.32 above) [s 37(1), (1F), (1G) and (1N) of the ECICO and s 4 of the EAC (FA) (APP) Reg].

Verification of Claims

Verification by the CEO

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

Requirement for further information

15.51 The CEO may, through a written request, require the claimant 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(3), (5) and (6) of the EAC (FA) (APP) Reg]

Withdrawal of Claims

15.52 A claim may be withdrawn before a payment of financial assistance is made by submitting a notice of withdrawal at the office of the CEO during the ordinary business hours. The notice of withdrawal has to be served in person by the candidate or his/her agent. It 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

15.53 After verifying the claim, the CEO will certify the amount of financial assistance and notify the Director of Accounting Services (“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

15.54 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 VIII : ENFORCEMENT AND PENALTY

Enforcement

15.55 The election returns will be made available at the REO for public inspection up to the 30th day before the first anniversary of the date of the deadline for lodging the relevant election return (disregarding any order made by the CFI under s 40 of the ECICO allowing a candidate to lodge an election return within a further period as specified by the CFI) (please see para. 15.32 above). 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]

15.56 Any complaint or report of breach of the relevant legislation 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.

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

Penalties

15.58 It is an illegal conduct for a candidate to incur election expenses in excess of the maximum amount prescribed. An election expense agent engages in illegal conduct if he/she incurs election expenses in excess of the amount authorised. It is also an illegal conduct for a person, other than a candidate or a candidate's election expense agent, to incur election expenses. Such an illegal conduct as mentioned above is liable to a fine of \$200,000 and to imprisonment for 3 years. [Ss 22, 23 and 24 of the ECICO] In accordance with s 23(1A) of the ECICO, a person (other than candidates or

election expense agents) is exempted from the relevant criminal liability under s 23(1) of the ECICO if the person publishes an EA on the Internet, and the only election expenses incurred by the person for the purpose of publishing the EA are either or both of electricity charges and charges necessary for accessing the Internet. However, if a candidate, a candidate's election expense agent, or a person who is authorised by a candidate or his/her election expense agent publishes an EA of the candidate on the Internet, any costs incurred, even though the costs only involve electricity charges and charges necessary for accessing the Internet, will have to be included in the election expenses of the candidate.

15.59 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 and will be liable to a fine of \$500,000 and to imprisonment for 7 years [ss 6, 18 and 19 of the ECICO].

15.60 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 and will be liable to a fine of \$200,000 and to imprisonment for 3 years [s 38 of the ECICO].

15.61 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 and will be liable to a fine of \$500,000 and to imprisonment for 7 years [ss 6 and 20 of the ECICO].

15.62 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 and will be liable to 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(1) and (2) of the ECICO].

15.63 A person convicted of a **corrupt or illegal conduct** within the meaning of the ECICO will, in addition to the penalties as set out in paras. 15.58 to 15.62 above, be disqualified:

- (a) 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, if the election is held within 5 years after 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) from being nominated as a candidate at the Election Committee (“EC”) Subsector Elections, and from being elected as a member of the EC if the election is held within 3 years after the date of conviction, or from being nominated as an EC member by the religious subsector for 3 years 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 has prepared an Information Booklet on “Clean District Council Election” for distribution to candidates. The content of the Information Booklet has also been 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 of \$500,000 and to imprisonment for 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(1) and (3) of the ECICO]; and
- (b) an **illegal conduct** will be liable to a fine of \$200,000 and to imprisonment for 3 years [s 22(1) 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. 16.35 below.

16.4 The ECICO applies to all conduct concerning an election, whether the conduct is engaged in within Hong Kong or elsewhere [s 5 of the ECICO].

16.5 According to the ECICO, if a candidate includes the name, logo or pictorial representation of a person or an organisation in his/her EA as an indication of support from that person or organisation, he/she has to obtain prior written consent to the inclusion. Oral or retrospective consent is not allowed. For details, please refer to paras. 16.12 to 16.16 and Chapter 17.

16.6 In no circumstances can the assistance provided to the electors in accessing the polling station involve any acts of promoting or prejudicing the election of any candidate or be an inducement to the electors in voting or not to vote for any particular candidate(s). Otherwise, it will be a violation of the ECICO.

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

Offences Relating to Candidature

16.7 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(1) of the ECICO]

16.8 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]

16.9 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

16.10 A person must not publish any statement (i) that he/she is no longer a candidate at an election if he/she is a candidate, or (ii) that another person who has been nominated as a candidate is no longer a candidate at the election, or (iii) 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

16.11 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. [S 26 of the ECICO] 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. 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)

16.12 A candidate engages in illegal conduct if he/she fails to obtain **prior written consent** to the inclusion of the name, logo or pictorial representation from a person or an organisation before using such name, logo or pictorial representation of that person or organisation in any of his/her EAs 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 EAs. Under the ECICO, **support** (支持), in relation to a candidate, includes support for the policies or activities of the candidate. Also, should any content of an EA (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 EAs) 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 has **consented in writing** to the inclusion of the modified name, logo, pictorial representation or content in the EA. [S 27(1), (1A), (1B) and (7) of the ECICO]

16.13 Oral or retrospective consent is **not** allowed. The EAC provides a sample form for seeking **consent of support** in writing from a person or an organisation (“consent form”). A candidate is required to post a copy of the consent form relevant to the EA 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. 7.55 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 EA 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].

16.14 A person or an organisation may give support to one or more of the candidates, even if they are competing in the same constituency, although that may cause confusion. This should be specified in the written consent. A sample form prepared by the EAC for seeking **consent of support** in writing from a person or an organisation will be available at the REO and the relevant RO's office after the gazettal of a notice specifying a period and place for submitting nomination forms for the election and can be downloaded from the REO website. It will also be provided to a candidate upon his/her submission of a nomination form for the election. Candidates are reminded that it is an offence to make a false claim of support (see Chapter 17).

16.15 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. 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. 7.55 of Chapter 7. The candidate concerned should cease to publish immediately any EA which contains the support of the person or organisation who has made the revocation.

16.16 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

16.17 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.

16.18 Candidates are advised to, during the election period, refrain from engaging in any financial dealing which may be perceived as having an influence on a person's voting preference.

Treating

16.19 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].

16.20 The serving of non-alcoholic drinks only at an election meeting, without more, 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)

16.21 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 the expenses incurred will have to be counted towards his/her election expenses. At the same time, 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]

16.22 If a candidate or another person offers food, drink or entertainment to affect a person's voting preference, it is an offence under s 12 of the ECICO.

Force and Duress

16.23 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 particular candidates or to get a third person to do so is a corrupt conduct [S 13 of the ECICO].

16.24 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

- 16.25 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 (1) and (2) of the ECICO]

Candidates must note that all their electioneering and canvassing activities must be conducted within the statutory confines of the ECICO. While candidates may engage in activities to promote themselves or to assist or facilitate electors to vote in an election, they must be extremely careful to ensure that these activities are not in breach of the provisions of the ECICO all the time.

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

16.26 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

16.27 S 31 of the ECICO provides a mechanism for a candidate to apply to the CFI for an 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 CFI. He/She will not be liable to be convicted of an offence if the illegal conduct is the subject of the court order.

16.28 A candidate who is unable or has failed to send to the CEO the election return before the expiry of the period of 30 days 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 to allow 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] (please see para. 15.32 above).

16.29 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 to enable 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] (please see para. 15.32 above).

16.30 When the candidate finds himself/herself in any of the situations set out in paras. 16.28 and 16.29 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.38 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

16.31 Any complaint or report of breach of the relevant legislation 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.

16.32 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.

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

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

16.35 A person convicted of a **corrupt 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) 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, if the election is held within 5 years after 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) from being nominated as a candidate at EC Subsector Elections and from being elected as, a member of the EC if the election is held within 3 years after the date of conviction, or from being nominated as an EC member by the religious subsector for 3 years from the date of conviction [ss 9 and 18 of the Schedule to the CEEO].

16.36 It is worth noting that the Courts of Hong Kong consider election-related offences and contravention of the ECICO as serious crimes. On 27 November 1997, the Court of Appeal laid down sentencing guidelines that a person found guilty of any serious election-related offence should be punished by an immediate custodial sentence.

CHAPTER 17

NAMEDROPPING

PART I : GENERAL

17.1 According to the ECICO, if a candidate includes the name, logo or pictorial representation of a person or an organisation in his/her EA as an indication of support from that person or organisation, he/she has to obtain prior written consent to the inclusion. Oral or retrospective consent is not allowed.

17.2 If the consent of support is given by a supporter in his/her personal capacity and he/she intends to mention his/her office title or the name of the organisation that he/she belongs to, the candidate should be careful not to give the impression that it represents the support of the whole organisation. If the EA indicates support by the relevant organisation, approval should be given by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting.

17.3 When a candidate publishes EA through online platforms, a person or an organisation may show his/her/its support to the candidate out of his/her/its own volition by giving response, indicating “like” or including his/her/its name, logo or pictorial representation in the EA published by the candidate. If the candidate has neither requested or directed nor authorised any person to request or direct the person or organisation to show his/her/its support, the candidate is not required to seek prior written consent provided that he/she must not modify that EA.

PART II : CLAIM OF SUPPORT

17.4 A candidate engages in illegal conduct if he/she fails to obtain **prior written consent** to the inclusion of the name, logo or pictorial representation from a person or an organisation before using such name, logo or pictorial representation of that person or organisation in any of his/her EAs 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 EAs. Under the ECICO, **support** (支持), in relation to a candidate, includes support for the policies or activities of the candidate. Also, should any content of an EA (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 EAs) 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 has **consented in writing** to the inclusion of the modified name, logo, pictorial representation or content in the EA. [S 27(1), (1A), (1B) and (7) of the ECICO] Moreover, modifying the name, logo or pictorial representation or the content without the person's consent may render his/her personal data inaccurate and hence constitute a contravention of Data Protection Principle 2(1)²⁸ in Schedule 1 to the PD(P)O.

(Please also see paras. 16.12 to 16.16)

²⁸ Data Protection Principle 2(1): All practicable steps shall be taken to ensure that personal data is accurate having regard to the purpose (including any directly related purpose) for which the personal data is or is to be used.

17.5 It is not uncommon that a candidate publishes EAs through online platforms such as social networking or communication websites for promoting his/her candidature. There may be cases that a person shows his/her support to the candidate out of his/her own volition by giving response or indicating “like” in the EA published by the candidate, or by appearing in the live broadcast of an electioneering activity published by the candidate. The candidate is not required to seek the prior written consent of the person if the candidate has neither requested or directed nor authorised any person to request or direct the inclusion of the name, logo or pictorial representation of the person in the EA. Nevertheless, if a person is invited by the candidate to show his/her support by giving response to the online EA or by participating in the electioneering activity which is covered by the live broadcast, the candidate should obtain prior written consent from the person. [S 27(1) and (1A) of the ECICO]

17.6 Oral or retrospective consent is **not** allowed. The EAC provides a sample form for seeking **consent of support** from a person or an organisation for the purpose set out in para. 17.4 above. 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 person, as opposite to the candidate or any other person publishing or authorising the publication of the EA, who has seen the pictorial representation would have the perception that the persons appearing in the EA support the candidate.

17.7 It is important to note that it is still an offence even if such an EA 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].

17.8 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 EAs 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/are to be mentioned in an EA, 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 organisation(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 EA, and if the EA 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, 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), for using the name of the organisation together with his/her office title(s) by the candidate. In case of doubt, the candidate or his/her supporter should consult the organisation concerned on its internal rules and procedures. The candidate should be careful not to give the impression that it represents the support of the whole organisation; and
- (d) by an organisation - in which case the consent should indicate that approval has been given by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting [s 27(5) of the ECICO]. The consent must be signed by an authorised person such as its director, chairman or chief executive, etc.

17.9 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 O**.

17.10 Consent can be given to 2 or more candidates of a constituency, 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 of the revocation to the candidate concerned. The

candidate is required to notify the relevant RO in writing of any revocation of consent or post a copy of the revocation onto the Candidate's Platform or the Central Platform in the manner as set out in para. 7.55 of Chapter 7.

17.11 Once consent has been revoked, the candidate concerned should be careful to cease immediately using any EA which contains the support of the person or organisation who has made the revocation. The costs incurred for the production of EAs bearing such support should still be regarded as the candidate's election expenses and be declared in the election return. In accordance with the requirements of the PD(P)O, the candidate should not retain the personal data of the person for period longer than is necessary, in particular when his/her consent of support is revoked.

17.12 If candidate A's name or photograph appears in an EA of candidate B to indicate support for candidate B, whether expenditure incurred for the EA 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 EA is solely to indicate support for candidate B but not to promote the election of candidate A, the EA should not be treated as a joint EA. 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 EAs [s 27 of the ECICO].

Scenario B

If candidate B wishes to publish the EA 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 proportional 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 EA mentioned in Scenario B above should be treated as a joint EA. 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 EA.

17.13 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 EAs 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 EAs. To avoid misunderstanding, for instance, if an EA 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, to any reasonable person, it 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, prior written consent of support should be obtained by the candidate.

17.14 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 EAs.

17.15 As advised by the PCPD, an image of an identified person²⁹ 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 principles as set out in the Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public at **Appendix F**.

Consent in writing

17.16 A sample form prepared by the EAC for seeking **consent of support** in writing **from a person or an organisation** will be available at the offices of the REO and the relevant RO after the gazettal of a notice specifying a period and place for submitting nomination forms and can be downloaded from the REO website. It will also be provided to a candidate upon his/her submission of a nomination form for the election.

17.17 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 written consent relevant to the EA concerned onto the Candidate's Platform or Central Platform or

²⁹ "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/her job, profession or business, etc.

deposit a copy of the written consent with the relevant RO in the manner as set out in para. 7.55 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. 7.55 of Chapter 7. Such written consent and notices of revocation received by the RO will be made available for public inspection (with the identity document numbers, if any therein, of the persons involved obliterated) at the office of the relevant RO.

Penalty

17.18 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. The guidelines in respect of civil servants are also equally applicable to the non-civil service contract staff of the Government.

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. Civil servants, other than directorate officers,

Administrative Officers, Information Officers, Police Officers and those officers acting in the above grades or ranks with a view to substantive appointment thereto (i.e. other than acting for temporary relief purpose), may act as agents or assist in electioneering activities **provided that** they are not already appointed as the 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 or appearance 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 that 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 candidates should not use or give the impression of using 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 candidates. 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 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. (For details related to the DC elections, please see para. 3.6 in Chapter 3)

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 openly, fairly and honestly.

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.

19.3 The EAC will solemnly handle complaints against any breach of the fair and equality principle as set out in the election guidelines. Investigation must be in accordance with the principle of procedural fairness and be based on factual evidence. The party concerned must be given the opportunity to make representation in defence. In the context of considering whether any conduct is unfair in the absence of contravention of the law, a decision could not be made lightly without careful consideration of all relevant matters and circumstances. Furthermore, while complaints are often made shortly before the polling day, the EAC cannot circumvent or compress the established procedure because of the time constraint so as to avoid any unfairness.

19.4. If the complaint is substantiated, the EAC may, if necessary, make a censure in a public statement to enable the electors and the public be

informed of the major occurrences during the election. The EAC may also issue press statements on matters of principle which have attracted widespread public concern in order to set the record straight.

PART II : TO WHOM A COMPLAINT MAY BE MADE

19.5 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 professionals, who are independent and politically impartial, for the purpose of dealing with complaints.

19.6 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;
- (c) the EAC or its Complaints Committee; or
- (d) the PRO (on the polling day).

19.7 **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

19.8 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.

19.9 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 EAC Complaints Hotline.

19.10 In each case, the complainant is required to identify himself/herself and provide his/her correspondence 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

19.11 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 DPRO or an APRO 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 DPRO or an APRO, he/she should as soon as possible report the matter to the RO of the relevant 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 EAC 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 a polling station (together with telephone numbers of the relevant RO(s) and the EAC Complaints Hotline) will be displayed at each polling station.

19.12 The PRO or his/her DPRO or APRO must record any complaint mentioned in para. 19.11(a) and (b) and any other complaints and enquiries concerning an elector's data.

PART V : THE PROCESSING OF COMPLAINTS

19.13 The CEO, ROs and 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 a minor nature or the RO has been delegated with the authority to deal with it, any complaint received by the RO or the REO will be forwarded to the EAC or its Complaints Committee with comments and all the relevant information relating to the complaint. When the EAC or its Complaints Committee receives a complaint, it may seek additional information and comments from the relevant RO or the REO, if necessary.

19.14 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.

19.15 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].

19.16 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 EAs 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 the 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].

19.17 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. It is common that a large number of complaints are received during the election period. As each complaint will be examined in detail, the investigation of all complaints may take some time to complete.

PART VI : ELECTORAL AFFAIRS COMMISSION'S REPORT ON COMPLAINTS

19.18 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

19.19 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, the poll or a counting of the votes.

PART VIII : SANCTION FOR FALSE COMPLAINT

19.20 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 and will be liable to a fine of \$20,000 and to 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 and will be liable to a fine and to imprisonment for 2 years [s 36 of the Crimes Ordinance].

APPENDICES

District Council Election
Action Checklist for Candidates

<u>Time</u>	<u>Action</u>
Before and during Nomination Period	<ol style="list-style-type: none"> 1. Obtain the following from the Returning Officer (“RO”), any District Office (“DO”) of the Home Affairs Department or the Registration and Electoral Office (“REO”): <ol style="list-style-type: none"> (a) Nomination Form; (b) Confirmation Form; (c) Grid Paper for the production of the Introduction to Candidates and Guide on Completion of Grid Paper; (d) 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”; (e) 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)”; (f) the form of “Intention to Display Election Advertisements at Designated Spots”.
During Nomination Period	<ol style="list-style-type: none"> 2. Except where the Chief Electoral Officer (“CEO”) authorises otherwise, hand in the following to the RO by the candidate in person <u>before the end of the Nomination Period</u>: <ol style="list-style-type: none"> (a) the duly completed Nomination Form; and (b) an election deposit of \$3,000 in cash or by crossed 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 Hongkong Post for written approval of their election mail specimens for free postage. Candidates should:
 - (a) carefully study the requirements governing free postage for election mail before deciding on the contents of their election mail and seek advice from Hongkong Post relating to postal requirements and the REO on other relevant aspects; and
 - (b) make every effort to submit their election mail specimens to Hongkong Post for written approval as early as possible to allow sufficient time for revising the contents of their election mail specimens, if necessary.

4. Obtain from the RO a Candidate Folder containing various forms and reference materials for use by candidate participating in the election.

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

6. (a) Ensure that all printed election advertisements (“EAs”), 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 EAs 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 EA 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 EA**. Candidates should keep records

Any time before, during
or after handing in
Nomination Form

of the attachments posted onto the Candidate's Platform and maintain this platform till the end of the period for which copies of Return and Declaration of Election Expenses and Election Donations (thereafter referred to as "election return") are available for public inspection under section 41 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) ("ECICO").

- (ii) If the candidates choose to post the electronic copy of EA 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 two sets of 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 EAs and relevant information/documents, including publication information, permission/consent of support in relation to EAs, for public inspection **within 1 working day after publication** by:
- (i) posting an electronic copy each of all his/her EAs 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 EAs 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 EA (For details, please see Appendix B)**;

- (iii) if it is technically impracticable to comply with (i) or (ii) above for EAs 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 each EA that is published through the open platform (the hyperlink to the specific EA published should be provided, rather than the hyperlink to the entire election website or page of the social media) and the information/documents relevant to the EA 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 EAs (or 2 identical full colour photographs/printouts/photocopies of each EA which cannot be practically or conveniently produced in its actual form) and 1 hard copy 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 EAs and 1 hard copy each of the relevant information/documents to the RO.

Candidates may make submission as required from time to time. Candidates should keep records of all relevant information/documents and EAs posted onto the Central Platform or lodged with the RO.

- 7. (a) Record all election expenses spent and all election donations received.
- (b) Keep all original invoices and receipts issued by recipients of the payments for expenses of \$500 or above (*subject to the enactment of the relevant ordinance*).

- (c) Issue receipt to donor 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.)
- (d) Submit to the CEO an Advance Return and Declaration of Election Donations when an election donation is received (if required and as appropriate).

Any time before handing in
Nomination Form till the
end of election period

8. Appoint Election Expense Agents:

- (a) Lodge with the RO (or CEO if RO has not yet been appointed) Authorisations to Incur Election Expenses.
- (b) Each candidate can authorise 1 or more persons as the election expense agents to incur election expenses on his/her behalf at a prescribed amount specified by the candidate. A candidate **may** also authorise his/her election agent as an election expense agent. These agents may incur election expenses only after the candidate has authorised them to do so. It is important to note that the authorisation is not effective until it has been received by the RO or CEO (if the RO has not yet been appointed).
- (c) An election expense agent needs to be a person who has attained the age of 18 years.

Any time after handing in
Nomination Form

9. Appoint Election Agent:

- (a) Lodge with the RO a Notice of Appointment of Election Agent.
- (b) Each candidate can only appoint 1 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**:
 - (i) to sign the nomination form or make any requisite declaration in relation to a candidate's nomination;
 - (ii) to withdraw the candidate's candidature;

- (iii) to incur election expenses unless he/she has been so authorised by the candidate;
 - (iv) to authorise a person as an election expense agent to incur election expenses; and
 - (v) to be present at a dedicated polling station situated in a maximum security prison.
- (c) An election agent should be holder of the Hong Kong identity card and has attained the age of 18 years.

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

10. (a) If a candidate wishes to have his/her photograph and electoral message printed in the Introduction to Candidates, he/she should:
- (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.
- (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 electoral message.)
- (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 lodge with the RO:
- (i) 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) 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) 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.

(If a candidate does not submit the duly completed form(s) of request and consent, if any, specified above, only his/her name and candidate number will be printed on a ballot paper.)

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 sign an Undertaking on the Use of Electors’ Information with the request).

(Note: To protect the environment and respect the wish of electors, mailing labels of electors who have provided their email addresses for receiving election mails and who have indicated that they do not wish to receive any election mails will not be provided by the CEO.)

Any time after handing in Nomination Form, but at least 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 by hand, by electronic mail, by facsimile transmission or by post.
13. Lodge with the RO Notices of Appointment of Counting Agents by hand, by electronic mail, by facsimile transmission or by post.
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) for seeking the consent of the Commissioner of Correctional Services to the presence of an election agent or a polling agent at 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 5 working days
after the 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, by drawing of lots, to determine the candidate numbers and to allocate designated spots for display of EAs.

17. Receive from the RO copy of the permission/authorisation for display of EAs at designated spots allocated to the candidate (except for uncontested candidates who will not be allocated with designated spots).

After the end of
Nomination Period

18. Receive from the RO the notification on the validity of the candidate's nomination (which will also be sent to every other validly nominated candidate of the same constituency, if any).

Within 10 days after the
end of Nomination Period

19. Receive from the RO information about the election agents appointed by other candidates of the same constituency.

Around 14 days after the
end of Nomination Period

20. 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.

(If a candidate or his/her election agent/authorised representative does not perform the checking at the date and venue specified by the REO, the ballot paper printing proof will be printed without further notice.)

21. 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 onto the election dedicated website.

(If a candidate does not submit the file by the said deadline, only his/her 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.)

At least 10 days before
polling day

22. Receive information from the RO on when and where the counting of votes is to take place.

Not later than 7 days
before polling day

23. 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

24. 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.
- At least 2 clear working days before posting postage-free election mail
25. Give notice of the date 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 designated manager(s) of Hongkong Post for inspection and approval.
- Make postage-free election mail before the posting deadline as designated by Hongkong Post
26. Post postage-free election mail and present to Hongkong Post a Declaration for Posting of Election Mail (in duplicate). Furnish a copy of the election mail for the attention of the designated manager(s) of Hongkong Post for record purpose.
- (Note: Election mail sent after the deadline will likely fail to reach the electors before the polling day.)
- Before entering the polling station, counting station or the ballot paper sorting station
27. Complete the Declaration 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, by hand, by electronic mail, by facsimile transmission or by post.
- 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 submitted to the RO pursuant to paras. 12 and 28 respectively.

31. Notices of Revocation of Appointment of Agent must be delivered to the relevant RO by hand, by electronic mail or by facsimile transmission to revoke the appointment of polling agent for a dedicated polling station situated in a prison, if necessary and 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 submitted to the RO pursuant to paras. 13 and 28 respectively.
- Within 3 working days after the polling day
33. Post the corrected information of the EAs concerned onto the Candidate's Platform or the Central Platform alongside the original information and input the date of correction; or deposit with the RO a Notification of Corrected Information in relation to Election Advertisements.
- Within 10 days after polling day
34. Remove all EAs displayed on government land/property.
- Within 2 weeks after polling day
35. Destroy the unused mailing labels, if any, **and** return to REO the CMLS DVD-ROM. 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).
- Before the statutory deadline for submission of election return as required under section 37 of the ECICO
(REO will issue letters to inform candidates of the deadline for lodging election returns)
36. (a) Lodge with the CEO an election return setting out all election expenses incurred by the candidate and his/her election expense agents and all election donations received by or on behalf of the candidate.
- A candidate is required to submit his/her election return even if no election expenses have been incurred or no election donation is received.***

- (b) Ensure that the election return is accompanied by invoices and receipts for each election expense of \$500 or more (*subject to the enactment of the relevant ordinance*) and copies of standard receipts issued to donors for each election donation of more than \$1,000 in value and the copies of receipts issued by charitable institutions or trusts of a public character for the collection of any unspent election donations, anonymous donations of more than \$1,000 in value and election donations which are in excess of the limit of election expenses as required under section 37 of the ECICO (see Chapter 15 of the Guidelines for details).
- (c) A candidate must make the declaration/supplementary declaration(s) verifying the contents of the election return before a Commissioner for Oaths (at DOs), or a Justice of the Peace or a solicitor holding a practising certificate.
- (d) If a candidate is unable/fails to lodge the election return before the deadline, he/she may apply to the Court of First Instance (“CFI”) for an order allowing him/her to lodge the election return within such a further period as specified by the CFI.
- (e) 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 together with the related supporting documentations (e.g. receipt) as appropriate.

- (f) 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 prescribed relief arrangement limit for election concerned for purposes of s 37A of the ECICO (i.e. \$3,000) (*subject to the enactment of the relevant ordinance*), 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. 15.36 to 15.41 of the Guidelines).

37. Eligible candidates 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 (i.e. any other person on behalf of the candidate) to the CEO before the statutory deadline for submission of election return.

Until the end of the period for which copies of election returns are available for inspection under section 41 of the ECICO

38. Maintain the Candidate's Platform for public inspection of his/her EAs and relevant information/documents. If the hyperlink of a website on which an EA is published has been uploaded onto the Central Platform, ensure the hyperlink is valid and the relevant website continues to operate.

Note:

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

(This "Action Checklist for Candidates" is for general reference only. Candidates are advised to refer to the Action Checklist with timetable which will be included in the Candidate Folder for the respective ordinary election/by-election.)

**Submission Method, Formats and Standard
on Posting Electronic Copy of Election Advertisement and Relevant
Information/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 (“EAs”) under the electronic submission method as stipulated in s 106(2) of Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F), a candidate must post the following EA particulars as applicable, **within one working day**^{Note 1} 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 each EA that is published through an open platform^{Note 2} (the hyperlink to the specific EA published should be provided, rather than the hyperlink to the entire election website or page of the social media) 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;

^{Note 1} A “working day” means any day other than a general holiday or Saturday.

^{Note 2} 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.

- (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.

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 two sets of 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 EAs 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 3 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 size of each file **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 file exceeding the above size limit will not be accepted. In such circumstances, the candidate may upload the EA particulars in separate files.

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); or
- (d) Plain Text (TXT)

Graphics/Images

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

Audio

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

Video

- (k) Audio Video Interleave (AVI); or
- (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 visual impairment as far as possible.

Computer Instructions

11. The files uploaded 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 onto the platform should be virus-free and should be organised 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 Electoral Affairs Commission ("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 3 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, the 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, the 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 and 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 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.

20. If a candidate posts the hyperlink of an EA onto the Central Platform or Candidate's Platform, he/she must ensure that the hyperlink is valid and the relevant website on which the EA is uploaded continues to operate until the end of the period for which copies of election returns are available for inspection pursuant to section 41 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) to facilitate public inspection of the EAs.

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

1. The name of the election should be shown on the candidate's platform, e.g. 20XX District Council Ordinary Election/XXX Constituency By-election.
2. The name of the constituency should be shown on the candidate's platform.
3. The name of the candidate should be shown on the candidate's platform.
4. The candidate number should be shown on the candidate's platform once available.
5. The 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.
6. The required information to be shown for each EA can be found in **Annex II**.
7. The corrected EA particulars should be posted alongside or beneath the original version.
8. 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 CEO, the 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, the 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.
9. 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.
10. 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.
11. 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

1. To guard against intruder attacks, the candidate's platform should be protected by firewall and/or Intrusion Protection System.
2. All files posted onto the candidate's platform should be properly scanned by anti-virus software before posting.
3. To protect against data loss, please conduct regular backup.
4. The hyper-links to external websites should also be checked regularly in order to ensure that they are up-to-date.
5. For more information and resources on the information security on the web, please refer to www.infosec.gov.hk.

Accessibility

1. The candidate's platform should be accessible by browsers and operating systems commonly used in personal computers.
2. For any electronic files containing images, they should be of sufficient resolution to ensure that the content is both legible and readable to readers.
3. 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.
4. The candidate's platform should be accessible to 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*區議會一般選舉/XX 區議會 XX 選區補選

20XX *District Council Ordinary Election/XX District Council XX Constituency By-election

區議會名稱 (註 1)Name of District Council (Note 1):

XX 區議會 XX District Council

選區名稱 (註 1)Name of Constituency (Note 1):

XX 選區 XX Constituency

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	修正日期 Date of Correction (dd-mm-yyyy)	選舉廣告類別 Election Advertisement Type	製作/ 印刷日期 Date of Production/ Printing (dd-mm-yyyy)	尺寸/ 面積 Size/ Dimension	製作數量/ 印刷的 文本數目 Quantity Produced/ Number of Copies/ Printed	發布數量/ 發布的文本 數目 Quantity Published/ Number of Copies Published	發布日期 Date of Publication (dd-mm-yyyy)	發布方式 Manner of Publication	製作人/ 印刷人的 姓名或名稱 Name of Producer/ Printer	製作人/ 印刷人的 地址 Address of Producer/ Printer	選舉廣告 檔案/連結 Election Advertisement File/Link	准許/授權文件 Permission/ Authorisation Document	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 Pamphlets	15-9-20XX	A4	100	100	17-10-20XX	街頭派發 Distributed on street	AA 印刷公司 AA Printing Company	地址 Address	File1.jpg	-	-
2	-	橫額 Banners	11-9-20XX	1 米 x 2.5 米 1m x 2.5m	20	20	17-10-20XX	懸掛於 路邊鐵欄 Hung on roadside railing	BB 製作公司 BB Producer	地址 Address	File2.jpg	Authorisation .jpg	-
註 2 Note2	18-10-20XX	-	-	-	-	-	-	-	-	-	File2 (Revised).jpg	-	-
3	-	電子海報 Electronic posters	10-9-20XX	10Mb	1501	3	17-10-20XX	Facebook, Twitter, Instagram	CC 廣告設 計公司 CC Advertising Company	地址 Address	http://www. XXX.com.hk/ poster.jpg	Permission .jpg	-

註 1：只適用於區議會一般選舉。 Note 1: Only applicable to District Council ordinary elections.

註 2：只顯示曾被修正的資料。 Note 2: Only corrected particular(s) will be shown.

同意書 Consent

項目 Item	檔案 File	備註 Remark
1	Consent1.jpg	
2	Consent2.jpg	同意書已於 20-10-20XX 撤銷 Consent revoked on 20-10-20XX

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

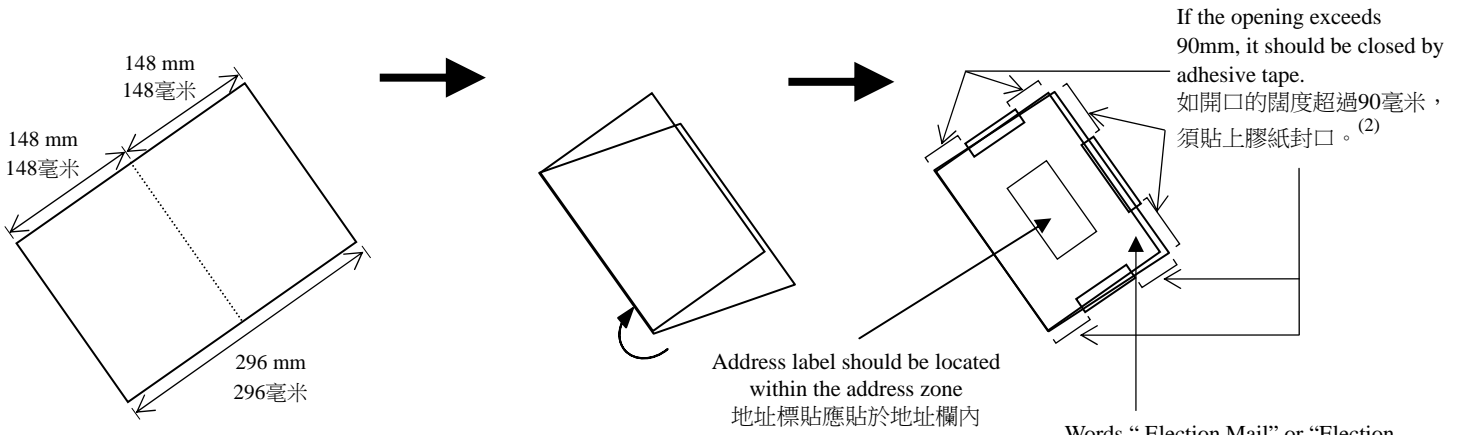


Figure 2 : Folder of A4 (296mm) size with 2 folds
圖示二：兩摺的A4（296毫米）尺寸紙張

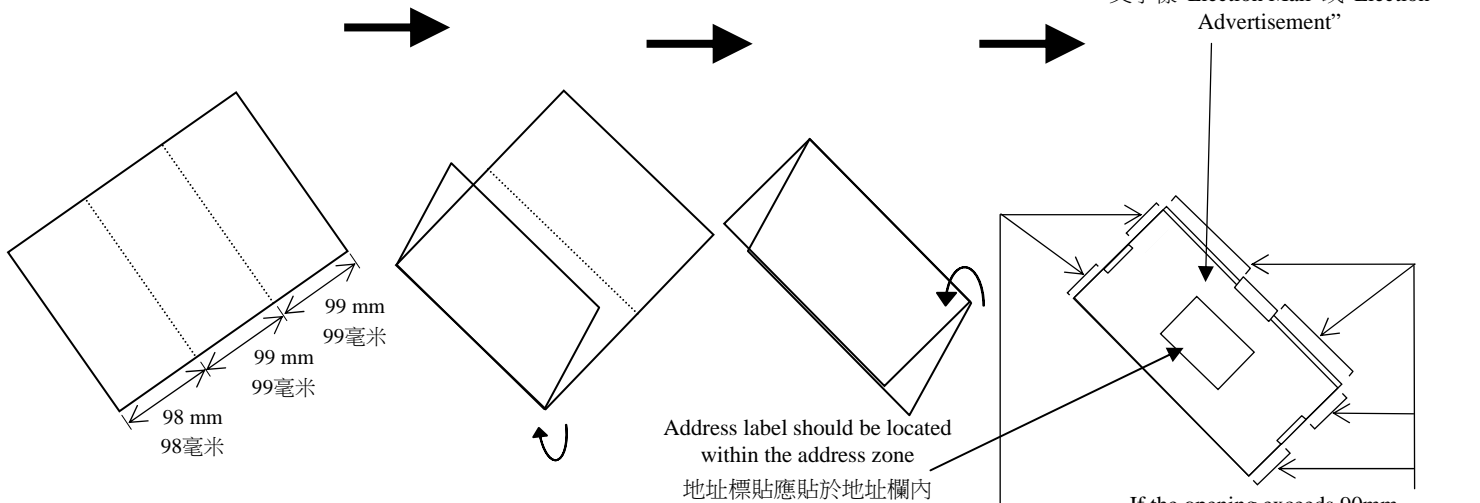
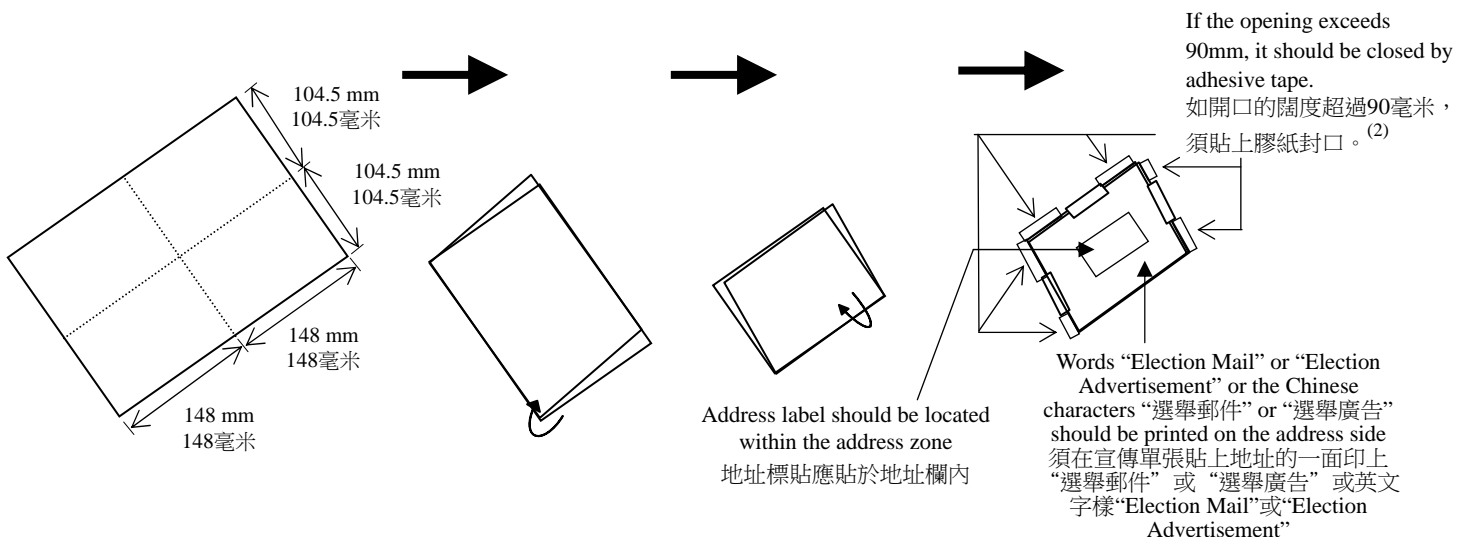


Figure 3 : Folder of A4 (296mm) size with 2 folds
圖示三：兩摺的A4（296毫米）尺寸紙張



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

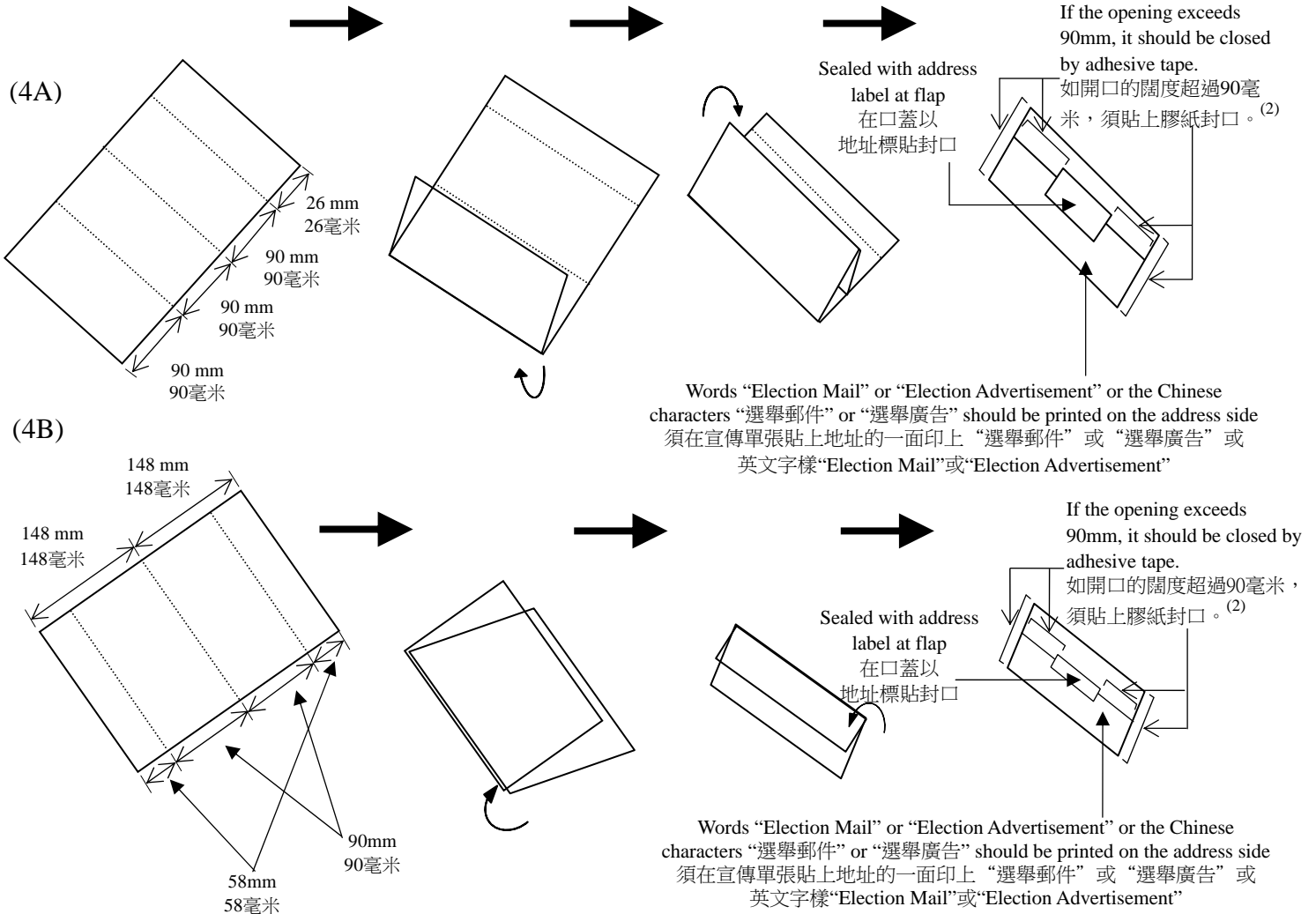
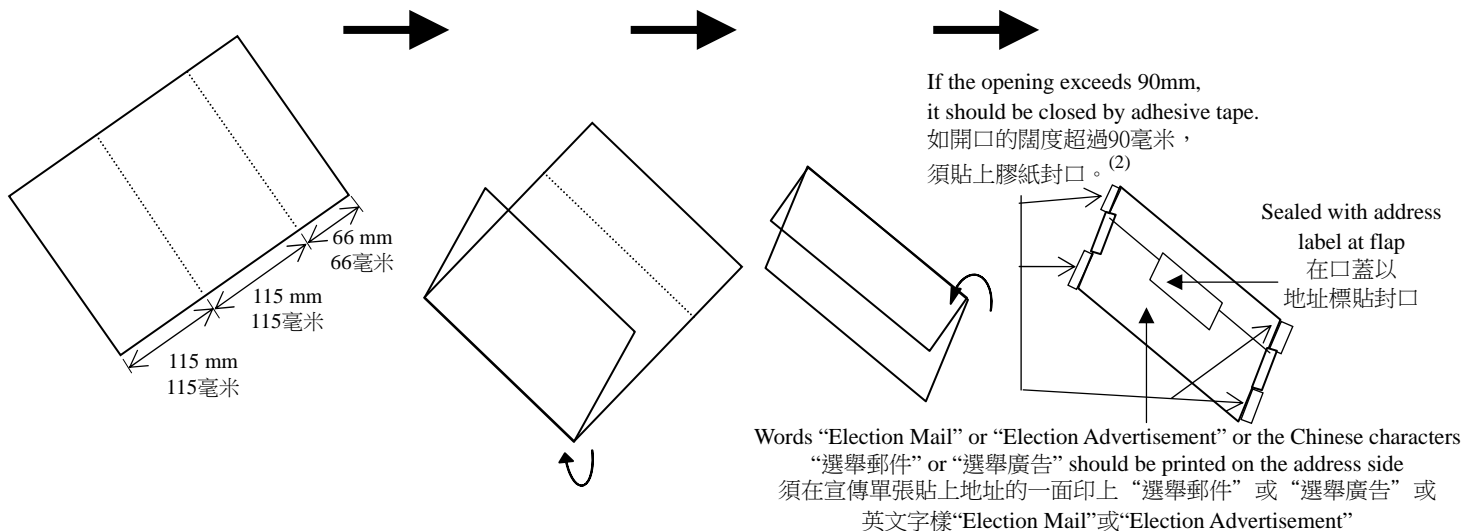


Figure 5 : Folder of A4 (296mm) size sealed with address label

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，所有開口部分不得超過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 (“NCZ”). 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 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 ballot paper for the election, will only be allowed on storeys **above or below street level (i.e. not including the storey at the street level) in a building** (including residential premises and commercial premises such as restaurants or shops) within an NCZ **other than a building in which a polling station is located** provided that permission has been obtained for entry to the building for canvassing votes, and that obstruction is not caused to any person and no sound amplifying system or device is used (except for the performance of duties by officers of the Correctional Services Department on the polling day at dedicated polling stations situated in prisons). **Nevertheless, candidates must note that canvassing activities are strictly prohibited on the storey at the street level of all the buildings within an NCZ.)**

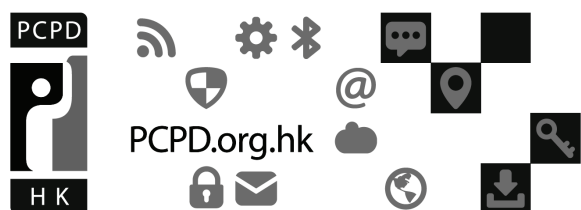
1. Unauthorised static display of election advertisements on walls (including the outer walls of the polling station), windows, railings, fences, etc.
2. Exhibition of portable displays on vehicles (whether in motion or parked within the area), or held or carried by persons.

3. Except for the purpose of door-to-door canvassing referred to in Note (2) above, displaying or wearing any, propaganda material, e.g. 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) greeting electors by smiling, waving, nodding, shaking hands, etc.;
 - (c) shouting slogans or the name or number of a candidate or any appeal message;
 - (d) singing or chanting; or
 - (e) making signals or signs to electors.
6. Broadcast of audio or video recording to appeal to or induce electors to vote or not 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 induces electors to vote or not to vote.
8. Candidates wilfully stay or loiter in the NCZ and show goodwill to electors, which constitutes canvassing for votes.

**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 a housing manager or a competent officer 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 election meeting/electioneering activity**, 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/election activities 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/electioneering activity 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;
- (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 Estate should send a copy of the letter of approval to the respective Returning Officer for record and for public inspection.



Guidance Note

香港個人資料私隱專員公署
Privacy Commissioner
for Personal Data, Hong Kong

Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public

1. Introduction

Collection, retention, processing and use of personal data are usually involved in election activities (including elector registration, candidate nomination, electioneering, public opinion researching, and casting and counting of votes). This guidance note provides assistance to candidates and their affiliated political bodies, government departments and public opinion research organisations in relation to compliance with the requirements under the Personal Data (Privacy) Ordinance (the Ordinance) when carrying out election activities. It also provides members of the public with advice on personal data protection in this regard.

2. Legal Liabilities of Candidates, Government Departments and Public Opinion Research Organisations as Principals

Candidates, government departments and public opinion research organisations (the Principals) may engage election agents, campaign staff, full-time or part-time employees, contractors and volunteers (the Agents) to assist in election-related activities. In such circumstances, the Principals are liable for the acts and practices of their Agents in the course of performing actions assigned

by them¹. The Principals are responsible for supervising their Agents to ensure compliance with the requirements under the Ordinance.

3. Guidance for Candidates and their Affiliated Political Bodies

Minimum Data Collection

3.1 When candidates collect personal data directly from an individual or indirectly from a third party (e.g. trade union, professional or political body) for election purposes (such as electioneering, organising an election forum, or fund raising), only adequate, and not excessive personal data, necessary for election purposes should be collected (for example, a Hong Kong Identity Card number should not be collected)².

Informed Collection

3.2 When a candidate or affiliated trade union, professional or political body solicits personal data directly from an individual for election purposes, the candidate should ensure that the individual is informed of the purpose of collection of the data and other matters³ set out in the Ordinance by, for example, providing a "Personal Information Collection Statement" (PICS) to the individual.

¹ According to section 65(1) and (2) of the Ordinance, any act done or practice engaged in by a person in the course of his employment or as agent for another person with the authority of that other person shall be treated as done or engaged in by his employer or that other person as well as by him.

² Data Protection Principle 1(1): Personal data shall not be collected unless the data is 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.

³ Data Protection Principle 1(3): On or before a data user collects 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 the data. The data subject shall be explicitly informed of the purpose of data collection and the classes of transferees to whom the data may be transferred as well as the name / job title and address of the individual to whom the request of access to and correction of the data subject's personal data may be made.

- 3.3 Candidates and their Agents may lobby electors by a variety of means⁴. In certain circumstances, the electors may have no previous dealings with the candidates and their Agents, and may be concerned as to where the candidates and their Agents obtained their personal data. When asked, candidates and their Agents should inform the electors as to how their personal data was obtained.

Case 1

The Election Committee members of a subsector, and Legislative Councillors of the functional constituency concerned, co-organised an election forum to provide a platform for electors of that subsector to exchange ideas on candidates' manifestoes. A complainant was dissatisfied that the organisers had failed to provide a PICS on the online registration form.

In response to the complaint, the forum organisers revised the online registration form by stating that personal data collected would be used only for enrolling participants, and the data would be destroyed after the event without it being transferred to third parties. Information on making data access and data correction requests was also made available on the registration form.

Lawful and Fair Collection

- 3.4 Candidates should not collect personal data for election purposes by deceptive means or by misrepresenting the purpose of the collection, for example, by collecting personal data on the pretext of assisting citizens to apply for government welfare.⁵

Collection Purpose

- 3.5 If a trade union, or a professional or political body intends to provide their members' personal data to candidates for election purposes, or to directly send election-related communication to their members, the proper course of action is for such bodies to determine whether this is a permitted purpose for which the personal data was collected. Prior notification to members of such use of their data, and the classes of possible transferees of the data, should be provided.

Case 2

After completing a training course organised by a political party, the complainant was asked to complete a questionnaire and provide his personal data for "communication purposes". Subsequently, the political party used the complainant's personal data in canvassing him to vote for a candidate.

In response to the complaint, the party revised the PICS in the questionnaire by explicitly stating that the personal data collected would be used for "election purposes".

Express Consent

- 3.6 Personal data may have been provided to candidates and their Agents for non-election purposes, such as in connection with the handling of building management matters, or requests for assistance. Should candidates or their Agents wish to use personal data so collected for an election purpose, express consent from the data subject must be obtained beforehand⁶.

Case 3

A resident of a building lodged a complaint with a political party in relation to the management of the building, and for this purpose supplied his personal data. Subsequently, the political party used his personal data in canvassing him to vote for a candidate in an election.

In response to the complaint, the political party undertook in future to obtain express and voluntary consent from any resident that had lodged a complaint with the party, before using their personal data for election purposes.

Registers of Electors

- 3.7 When using personal data from published registers of electors, candidates should ensure that such personal data is used only for election purposes as prescribed by the relevant election legislation. Using any information on the register for a purpose other than a purpose related to an election is an offence under the current electoral legislations and is liable to a fine at level 2 and to imprisonment for 6 months.

⁴ Such as telephone, fax messages, SMS/MMS or emails

⁵ Data Protection Principle 1(2): Personal data must be collected by means which are lawful and fair in the circumstances of the case

⁶ Data Protection Principle 3: Personal data shall not, without the prescribed consent of the data subject, be used for a new purpose. New purpose, in relation to the use of personal data, means any purpose other than the purpose, or a directly related purpose, for which the data was to be used at the time of the collection of the data.

Personal Data In Other Public Domains

3.8 Other than for the register of electors, personal data available in the public domain (such as professional registers) is generally not intended to be used for election purposes. Before using personal data obtained from the public domain, candidates must take into account the original purpose for which the public register was established, the restrictions on its use, and the reasonable privacy expectation⁷ of the data subjects.

Option to Decline

3.9 As a matter of good practice, when candidates and their Agents canvass for votes from individuals directly, or indirectly through a third party (such as a trade union, or a professional body or political body), the individuals should be given an option to decline receipt of any subsequent electioneering communication from the candidates in relation to the election concerned, so as to avoid receipt of unwanted electioneering communication from such candidates.

List of “No”

3.10 Candidates should also maintain a list of individuals who, to their knowledge, find election-related communication, such as phone calls, mail, fax messages, emails or visits, objectionable, and avoid approaching them to canvass for their votes.

Data Security

3.11 When conducting election activities, candidates and their Agents should take all practicable steps to protect personal data of electors against accidental or unauthorised access⁸. For example, they should safeguard electors’ personal data that they have obtained from the register of electors or government departments (such as a DVD of the “Candidate Mailing Label System”, and mailing labels of electors). If it is absolutely necessary to

access electors’ information outside office premises for an election purpose, only the minimal and necessary data should be taken away from the office premises. Furthermore, the data should be encrypted and protected from unauthorised access or retrieval. After use, the data should be returned to the office, or be delivered to a safe place for proper storage as soon as possible.

Case 4

A district councillor sent an email to a list of recipients canvassing votes for a candidate in an election without concealing the names and email addresses of the recipients. The complainant, being one of the recipients of that email, complained that his name and email address had been disclosed to all other recipients of the email.

In response to the complaint, the district councillor agreed to safeguard the security of the personal data of the electors when transmitting messages via electronic means (for example, by use of the “bcc” function).

Data Disposal

3.12 Personal data collected for election purposes should not be retained for a period beyond completion of all the election activities⁹. For example, after an election, candidates should dispose of all the electors’ personal data obtained from a published register of electors, or those provided by government departments for election purposes. When data processors¹⁰ are appointed or engaged by the candidates to destroy personal data of electors on their behalf, the candidates must use contractual or other means to prevent the personal data being transferred to data processors from: (i) being kept longer than is necessary for election purposes¹¹; and (ii) unauthorised or accidental access, processing, erasure, loss or use^{12,13}.

⁷ Reference can be made to the *Guidance on Use of Personal Data Obtained from the Public Domain* issued by the office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD)

⁸ Data Protection Principle 4(1): All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user is protected against unauthorised or accidental access, processing, erasure, loss or use.

⁹ Data Protection Principle 2(2): 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 is or is to be used.

¹⁰ “Data processor” means a person who processes personal data on behalf of another person; and does not process the data for any of the person’s own purposes.

¹¹ Data Protection Principle 2(3): If a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user’s behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data.

¹² Data Protection Principle 4(2): If a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user’s behalf, the data user must adopt contractual or other means to prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.

¹³ Reference can be made to the information leaflet *Outsourcing the Processing of Personal Data to Data Processors* issued by the PCPD

4. Guidance for the Relevant Government Departments

Security Measures

- 4.1 In campaigns launched by government departments for the purpose of promotion of elector registration or the updating of electors' particulars, such activity may involve collection of personal data in paper form (such as collection of elector registration forms at pavement booths). Government departments should take practicable steps to safeguard personal data so collected against accidental or unauthorised access by unrelated parties¹⁴. For example, the responsible staff should be alert to data leakage risks in the surroundings when receiving completed forms. If notebook computers / tablets or portable storage devices are used, extra care must be taken (see paragraph 4.3 below for more details). After the activity, the data should be returned to the office or delivered to a safe place for proper storage as soon as possible.
- 4.2 Government departments should, at all times, adopt all practicable security measures to protect the voluminous and sensitive personal data of electors held by them against unauthorised or accidental access, processing, erasure, loss or use¹⁵. In addition to encrypting the database, government departments should also:
- Make available the personal data for access or use only on a "need-to-know" and "need-to-use" basis, especially when portable storage devices, such as notebook computers, are involved;
 - Adopt the principle of least-privileged rights, by which only staff authorised to handle identity verification are able to retrieve or access relevant personal data;
 - Strictly evaluate the necessity of downloading and copying electors' personal data, and establish approval procedures and standards;
- Monitor to ascertain if any system containing electors' personal data has been downloaded or copied without authorisation. Such systems and related servers should record all activity logs in order to trace access, use, downloading, editing and / or deletion of the data by a system user; and
 - Install monitoring and alarm mechanisms in all systems containing electors' personal data, and the related servers, so that if there is an irregularity (such as downloading or deletion of huge personal data), timely reporting of the case, as well as tracing and reviews can be performed.
- 4.3 In circumstances when accessing electors' personal data outside office premises is required, a risk assessment should be conducted to ascertain the actual need of storing electors' personal data in portable storage devices (such as in USB flash cards, notebook computers / tablets, portable hard drives or optical discs). If it is necessary to store electors' personal data by such means, effective technical security measures should be adopted commensurate with the quantity and sensitivity of the data by, for example, use of two-factor authentication for data access. Adequate physical security measures should also be effected to safeguard devices (such as affixing the device with a cable lock to an appropriate fixture, or avoidance of departmental logos on the devices)¹⁶.
- 4.4 Government departments should formulate, systematically review and update their current personal data security policies, procedures and practical guidelines, according to their functions and activities. Steps should be taken to effectively disseminate personal data security policies to all staff, and provide clear instructions as to how to access such policies. Government departments should also review and formulate a compliance check mechanism to ensure personal data security policies, procedures and practical guidelines are complied with.

¹⁴ See footnote 8

¹⁵ See footnote 8

¹⁶ Reference can be made to the *Guidance on the Use of Portable Storage Devices* issued by the PCPD

Case 5

A backup notebook computer of a government department prepared for use in an election was discovered missing at the fallback election venue. The computer stored the name of Election Committee members eligible to vote in the election, and also the personal data of all electors in Hong Kong.

While the Privacy Commissioner for Personal Data, Hong Kong considered the chance of leakage being low, as the personal data of the electors involved had already undergone multiple layers of encryption, the assessment and approval of the use of an enquiry system containing the electors' data was not well thought out or adapted to the special circumstances of the case. The data user had simply followed past practices and had failed to review, update or appraise the existing mechanism in light of the circumstances, in a timely manner. The investigation revealed that the data user lacked the requisite awareness and vigilance expected of it in protecting personal data. Rules of application and implementation of various guidelines had not been clearly set out or followed, and internal communication was not sufficiently effective. The data user failed to take all reasonably practicable steps in consideration of the actual circumstances, or to ensure that electors' personal data was protected from accidental loss, and thereby contravened Data Protection Principle 4(1)¹⁷ of the Ordinance. An enforcement notice was served on the government department to remedy and prevent recurrence of the contravention¹⁸.

- 4.5 When handling requests for information that involve the personal data of individuals, including electors, candidates or nominees, government departments must carefully assess if the release of the requested information would amount to a breach of Data Protection Principle 3¹⁹. In making such a determination, the exemptions provided in part 8 of the Ordinance²⁰ are applicable. If necessary, more information may be sought from the requestor to facilitate appropriate consideration.

5. Guidance for Public Opinion Research Organisations

Informed Collection

- 5.1 Public opinion research organisations may conduct opinion or mock polls to gauge public views on candidates' approval ratings or electors' voting preferences. An elector's voting preference is considered to be very sensitive personal data, and organisers of these activities should exercise due care to ensure that participants are informed of the purpose of collecting the personal data, and other matters required by the Ordinance²¹.

Case 6

A complainant provided his personal data in a signature campaign organised by a political body. He noticed that the purpose of collecting the personal data and data transfer arrangement was not stated on the form used for collecting personal data. According to the organiser, it had indicated on the form that "the personal data is collected solely for expressing views, and it would be destroyed afterwards".

In response to the complaint, the organiser undertook to take all practicable steps to supply relevant information to the participants in similar future events launched, including, for instance, the purpose for which the data is to be used, whether it is obligatory or voluntary for participants to provide the data, the classes of person to whom the data may be transferred, and their right to request access to a copy of their personal data and to request correction of the data.

¹⁷ See footnote 8

¹⁸ The investigation report (R17-6249) is available on the PCPD website

¹⁹ See footnote 6

²⁰ If application of Data Protection Principle 3 is likely to prejudice security, defence and international relations; crime prevention or detection; assessment or collection of any tax or duty; news activities; health; legal proceeding; due diligence exercise; handling life-threatening emergency situation, the relevant personal data is exempt from the use limitation requirements.

²¹ See footnote 3

Lawful and Fair Collection

- 5.2 When collecting personal data in opinion or mock polls, organisers should carefully assess if the means of data collection could confuse or mislead the participants. Vigilance should be exercised to avoid providing untrue or misleading information concerning the background and objectives of the activities. If the organisers fail to identify themselves as the data user to the participants, or fail to state the nature of the activities clearly (e.g. whether the activities are “official” or “of legal effect”), this could amount to unfair collection of personal data²².

Case 7

A political body commissioned a public opinion research organisation to launch a mock poll during the election, but the website of the activity did not state clearly that the mock poll was “non-official” or “of no legal effect.”

Furthermore, despite the claim on the website that the research team was commissioned by a political association to launch the activity, other parties or associations had publicly stated that they were involved in planning or participating in the activity. While the website carried the emblem of a university and a contact email with the university’s domain name, there was a footnote in small print stating the activity was unrelated to the university. No clear explanation of the purpose and lawful basis for the data collection was given by the activity organiser, and the true identity of the data user was not made known. The Privacy Commissioner took the view that such a manner of collection of personal data was unfair.

After intervention by the Privacy Commissioner, the activity organiser stated on the website: the purpose of collecting the participants’ personal data; made clear to the participants that the activity was initiated by community organisations; and it had no connection with the official election and the result was of no legal effect. Information related to the university, including the university’s emblem and email domain name, were deleted from the website and the name of the organiser was clearly stated.

Data Security

- 5.3 If collection of personal data is involved, organisers of opinion or mock polls should safeguard personal data collected against accidental or unauthorised access by unrelated parties.²³ When employing the use of computer programmes or software developed by third parties, assessment should be made to identify possible privacy risks (including, for example, the security issues related to data transmission and storage, technical safeguards of the system and network, and the restriction on data access by staff). Measures should be taken to ensure the personal data collected is appropriately protected.

Case 7 (continued)

In this case, before casting their votes in a mock poll, participants were required to install an instant messaging programme for identity verification, and then input in the voting system their password used for the said programme. By giving away the password, participants had in effect allowed third parties to read the messages they had sent or received with the programme. A security loophole was thus created.

Subsequently, to remedy the security problem revealed in this case, the organiser replaced the voting system in question.

Data Disposal

- 5.4 Organisers should not retain personal data collected in opinion or mock polls after completion of these activities²⁴. If data processors are appointed or engaged by the organisers to destroy the personal data of participants on their behalf, the organisers must comply with the relevant requirements under the Ordinance (see paragraph 3.12 above).

²² See footnote 5

²³ See footnote 8

²⁴ See footnote 9

6. Personal Data Protection Advice for Members of the Public

- 6.1 Upon receipt of emails or letters soliciting personal data in relation to election, members of the public must verify senders' identity to ensure there is no fraudulent collection of personal data in the name of government departments.
- 6.2 In submitting the completed elector registration form to the relevant authority, due care must be exercised regardless of the means of submission. For example, the envelope should be properly sealed and the information of recipients should be input correctly.
- 6.3 Members of the public may indicate on the elector registration form that emailing is their preference for receiving electioneering communications from the candidates. Otherwise, the email address provided would only be used by the relevant authority for communication purposes.
- 6.4 Electors may exercise their right to object to receipt of electioneering communications from the candidates and their affiliated political bodies.
- 6.5 Electors who have changed their registration particulars should report the change to the relevant authority as soon as possible for the record update.
- 6.6 If participants of opinion or mock polls need to provide personal data, they must ascertain if the organisers of these activities have clearly stated the nature of the activities (e.g. whether the activities are "official" or "of legal effect") and identified themselves. Participants are also reminded to check if the organisers have provided them with information such as the purpose of collecting the personal data, and other matters required by the Ordinance²⁵. In case of doubts, enquiries should be made to the organisers.
- 6.7 If personal data is collected by political bodies in their activities, participants should ascertain whether the data collected will be used in subsequent elections. If participants do not consent to such use, they should not provide their personal data.

7. A Final Note

In view of the huge volume and sensitive nature of the personal data collected or used in election activities, candidates, government departments, public opinion research organisations and members of the public must make the best efforts to avoid leakage.

Data users are recommended to formulate a policy on data breach handling and the giving of breach notifications²⁶. In the unfortunate event of a data breach, data users should consider issuing notifications to lessen the harm caused by the breach.

The office of the Privacy Commissioner for Personal Data, Hong Kong stands ready to offer assistance and respond to data breach notifications to all stakeholders. For enquiries, please visit our website from which all publications referred to in this guidance can be downloaded, or call our hotline at 2827 2827.

²⁵ See footnote 3

²⁶ Reference can be made to the *Guidance on Data Breach Handling and the Giving of Breach Notifications* issued by the PCPD



PCPD.org.hk

Enquiry Hotline : (852) 2827 2827
Fax : (852) 2877 7026
Address : 12/F, Sunlight Tower, 248 Queen's Road East, Wanchai, Hong Kong
Email : enquiry@pcpd.org.hk

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Disclaimer

The information and suggestions provided in this publication are for general reference only. They do not serve as an exhaustive guide to the application of the Personal Data (Privacy) Ordinance. For a complete and definitive statement of the law, direct reference should be made to the Ordinance itself. The Privacy Commissioner makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the information and suggestions set out in this publication. The information and suggestions provided will not affect the functions and powers conferred upon the Privacy Commissioner under the Ordinance.

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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 III 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 or 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 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 owners' corporation which has the right to control or manage the common parts of the building to conduct electioneering activities in the building, it is advisable for the candidates to notify the management office at the time that the electioneering activities are being carried out.

General

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

Application for a Permit under 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 S 4(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. : _____
Email Address : _____
5. If this application is made on behalf of an organisation, please complete the following details : -
- i) Name of organisation (English) : _____
Name of organisation (Chinese) : _____
- 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 Society registered/exempt under the Societies Ordinance, or organisation : _____
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 (English) : _____

Name of organisation (Chinese) : _____

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 S 4(17) application(s) to the Secretary for Home Affairs by the applicant, or the organisations named in 5(i) and 6(i) above, or any of the persons named in 5(iii) and 6(iii) above :

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

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

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

Signed : _____
(Applicant)

(Chop of organisation, if applicable) Date : _____

* Delete where applicable

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

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

Statement of PurposePurpose of Collection

1. 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

1. Applications for permission under section 4(17) of the Summary Offences Ordinance (Cap 228) (“SOO”) 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.

2. 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 the SOO.

A. Administrative Guidelines for Consideration

3. When considering an application for a public fund-raising permit under section 4(17) of the SOO, 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. The number of non-charitable fund-raising activities by the same person or organisation will not be excessive so as to avoid undue inconvenience to the public. As a general rule, each approved activity should not last for more than five days in any two consecutive weeks and that each applicant (by an individual or an organisation) would not be allowed to conduct more than 20 fund-raising activities within a 12-month period. For an activity to be conducted in more than one location, a permit will be required for each location; 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.

4. 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.

6. 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.

7. Upon approval of the application, the relevant details about the fund-raising activity including the name of the activity and the date, time and venue for conducting it will be uploaded on the GovHK website (<http://www.gov.hk/fundraising>) and Data.One (<http://data.one.gov.hk>)

Observations made by the Court in an Election Petition relating to a Television 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 television 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 television 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 Electoral Affairs Commission 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, so as to help electors make informed choices.
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:

- (1) the float and vehicle outline, side, plan, front and rear view, with all major dimensions (both proposed and original) shown
- (2) the means of entry/exit to and from the driver's compartment
- (3) location of mirrors which will enable the driver to view both sides of the float
- (4) location of exhaust outlets from any internal combustion engines
- (5) location of any auxiliary power equipment installed
- (6) means of communication with the passengers on the float
- (7) 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 of the above mentioned Regulation.

(8) 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)**

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

- (a) They have been incurred by or on behalf of a candidate (as such a person is defined under s 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”)).
- (b) Having identified the activities or matters to which the relevant expenses relate, such activities or matters are referable to a specific election.
- (c) Such activities or matters go to the conduct or management of the election, in particular the election campaign.
- (d) The expenses were incurred for the purpose of promoting the election of the relevant candidate or prejudicing the election of another candidate.
- (e) 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.

2. There are two further inquiries as well:

- (a) 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).
- (b) 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 independent legal advisor, and any legal fees so incurred will not be regarded as election expenses.

Items of Expenses to be
Counted towards Election Expenses

(Note : This list is by no means an exhaustive list of items of expenditure to 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. (Remarks: If the agents and/or assistants are staff members currently employed by an incumbent member of District Council ("DC") who is seeking a new term in office, appropriate apportionment of the wages paid to the staff members concerned should be declared in the candidate's election return.)
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 ("EAs") such as:
 - (a) banners
 - (b) signboards
 - (c) placards
 - (d) posters
 - (e) handbills
 - (f) publicity pamphlets
 - (g) video and audio recordings
 - (h) electronic messages
 - (i) various forms of literature or publicity material for purpose of promoting the election of a candidate or prejudicing the election of another candidate(s).

(Note: Costs incurred for the publicity materials to give thanks to electors for their support after the election will not be counted as election expenses)

4. Costs incurred for display and removal of EAs including labour charges. If the EAs have not been removed by the deadline specified by the Electoral Affairs Commission, the removal costs for the EAs charged by the government departments should also be included.

5. Costs incurred by the relevant authorities for removal of EAs displayed without authorisation.
6. Costs incurred for renting space used in connection with the election campaign. (Remarks: (a) If the space used is part of the ward office of an incumbent member of DC who is seeking a new term in office, appropriate apportionment of the rentals paid should be declared in the candidate's election return and relevant invoice and receipt should be obtained from the landlord, instead of being issued by the incumbent member of DC. (b) If a candidate (who is not an incumbent member of DC) rents part of the ward office of an incumbent member of DC, appropriate apportionment of the rentals paid should be declared in the candidate's election return and relevant invoice and receipt should be obtained from the recipient of the apportioned rentals paid by the candidate.)
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 deposits will not be counted as election expenses.)
9. Postage for mailing of publicity materials.
10. Costs incurred for the hire of transport in connection with the election.
11. Costs incurred for publicity by vehicles. (Remarks: If a vehicle is lent to the candidate by any person(s) without charging the candidate, the candidate is also required to declare the estimated market value of rental of similar vehicles in his/her election return apart from reporting the free service or goods as election donation.)
12. Costs of advertisements in media, 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 materials 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 the District Councils Ordinance (Cap 547) or ss 24(9) or 25(9) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F), or the day on which the polling ends) 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 DC 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. Separately, 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/professional advice incurred in respect of the conduct or management of an election (e.g. (a) 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, (b) where a candidate engages building professionals to advise on or carry out building works for erection of EAs). (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 (e.g. (a) allowance paid to the workers in the activities organised by an organisation for promoting the candidate and/or (b) the sponsorship made by the organisation for the said activities).
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. Costs for 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

1. Any person or organisation^{Note} (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 ledger 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 Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) 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.

2. 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.

^{Note} 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 expense 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 (Cap 554). 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
Participating in Electioneering Activities

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 election advertisements (“EAs”) 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 and quantity

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

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

Correctional Services Department
January 2015

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