

IMPORTANT

1. These Guidelines apply to all Chief Executive elections conducted under the Chief Executive Election Ordinance (Cap 569) to be held after publication, subject to any subsequent revisions.
2. The law stated in these Guidelines is that prevailing as at the date of publication (unless otherwise specified).
3. For the 2022 Chief Executive Election, all specified forms referred to in these Guidelines will be gradually 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 these Guidelines include any positive and negative campaigning conducted for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.
5. In the event that future amendments to these Guidelines are necessary, the updated Guidelines will be made available at the website of the Electoral Affairs Commission at <https://www.eac.hk>.

2022 CHIEF EXECUTIVE ELECTION

Key Information

- (1) Polling Date : 27 March 2022
- (2)(a) Polling Hours for Contested Election : First round of voting: 9 am to 11 am
Second round of voting: 3 pm to 4 pm
Third round of voting: 7 pm to 8 pm *
- (b) Polling Hours for Uncontested Election : 9 am to 11 am
- (3) Nomination Period of Candidature : From 15 February to 2 March 2022 (16 days) (tentative, to be formally announced via Gazette notice)
- (4) Chairman's Briefing for Candidates : To be announced
- (5) Maximum Amount of Election Expenses : \$ 17,600,000
- (6) Deadline to Remove all Election Advertisements on Display : Not later than 6 April 2022 (Assuming that the poll is completed on 27 March 2022)
- (7) Submission of Return and Declaration of Election Expenses and Election Donations by Candidates : Not later than 26 May 2022 (Assuming that the election result is published in Gazette notice on 27 March 2022)
- (8) Deadline to Lodge Election Petition : Not later than 4 April 2022 (Assuming that the election result is published in Gazette notice on 27 March 2022)

** In the event that there is a need for a fourth round or further rounds of voting, such round(s) of voting will be held on the following day.*

ABBREVIATIONS

Amendment Bill	Improving Electoral System (Consolidated Amendments) Bill 2021
Amendment Ordinance	Improving Electoral System (Consolidated Amendments) Ordinance 2021
ARO, AROs	Assistant Returning Officer, Assistant Returning Officers
Basic Law	Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China
BO	Buildings Ordinance (Cap 123)
Candidate's Platform	an open platform maintained by the candidate(s) or a person authorised by the candidate(s)
Cap	Chapter of the Laws of Hong Kong
CAS	Civil Aid Service
CE	Chief Executive
CEEEO	Chief Executive Election Ordinance (Cap 569)
Central Platform	an open platform maintained by the CEO or a person authorised by the CEO
CEO	Chief Electoral Officer
CERC	Candidate Eligibility Review Committee
CFA	Court of Final Appeal
CFI	Court of First Instance
Committee on National Security	Committee for Safeguarding National Security of the Hong Kong Special Administrative Region
CPG	Central People's Government
CSD	Correctional Services Department
DC	District Council

DCO	District Councils Ordinance (Cap 547)
DLO, DLOs	District Lands Office, District Lands Offices
EA, EAs	Election Advertisement, Election Advertisements
EAC	Electoral Affairs Commission
EAC (ROE) (FCSEC) Reg	Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B)
EACO	Electoral Affairs Commission Ordinance (Cap 541)
EC	Election Committee
ECICO	Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554)
election return	return and declaration of election expenses and election donations
EP (CEE) Reg	Electoral Procedure (Chief Executive Election) Regulation (Cap 541J)
EPR	Electronic Poll Register
ERO	Electoral Registration Officer
FR	final register
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	mutual aid committee
NCO	Noise Control Ordinance (Cap 400)
NCZ	no canvassing zone

NPC	National People's Congress
NPCSC	Standing Committee of the National People's Congress
NSZ	no staying zone
para., paras.	paragraph, paragraphs
PCPD	Office of the 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)
PRO	Presiding Officer
REO	Registration and Electoral Office
RO	Returning Officer
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
the National Security Law	Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

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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 impartial, independent and apolitical body responsible for conducting and supervising public elections in accordance with the electoral law and strives to conduct public elections under the principles of openness, fairness and honesty. Although the EAC is responsible for making the subsidiary legislation on electoral procedures, the guidelines on election-related activities, and the related practical arrangements, it is not part of the Government. All along, the EAC does not formulate electoral policies nor take into account any political considerations, but considers whether the relevant arrangements do comply with the law and are reasonably practicable and will facilitate the smooth operation of the election. Under the EACO, the EAC shall perform its function through the Chief Electoral Officer (“CEO”). The Registration and Electoral Office (“REO”) is the executive arm of the EAC. Apart from making the practical arrangements for the elections, the REO also advises the EAC on the practicality of various electoral arrangements.

2. All electoral arrangements in Hong Kong are regulated under the relevant primary legislation and subsidiary legislation. The EAC must conduct and supervise the conduct of elections in strict compliance with the subsisting law. Under the present institution, matters relating to electoral policies and system are under the purview of the executive authorities, whereas the legislature is responsible for the enactment and amendment of the primary legislation. On the other hand, pursuant to the principles and provisions in the primary legislation, the EAC makes the corresponding subsidiary legislation to

specify the detailed electoral procedures for various elections. The EAC cannot act beyond the power conferred by the primary legislation. Where necessary, the EAC would provide its advice from practical and operational points of view for the Government's reference. Under the existing arrangement, any enactment or amendment of the primary legislation must be introduced by the Government in the form of bills to the Legislative Council ("LegCo") for deliberation and passage. Subsidiary legislation must also be submitted by the Government to the LegCo by way of the negative vetting procedure.

3. The EAC is empowered by the law to issue guidelines on election-related activities. The electoral guidelines are not law, and cover the following two aspects: (1) to explain in simple language the subsisting electoral law so as to remind candidates and other stakeholders of the provisions and requirements under the electoral law. As the EAC is not a court of law, it has no authority to make judicial interpretation for disputed provisions of the statutes; and (2) with regard to election-related activities not stipulated by the law, to promulgate a code of conduct based on the principle of fairness and equality.

Legislation Aspect

4. With regard to the legislation aspect, all relevant provisions are enacted by the legislature. The guidelines only seek to explain in simple language the relevant provisions based on the electoral law, and where applicable to give examples to illustrate the best practices.

5. In order to ensure the fairness of an election, safeguarding the autonomy and secrecy of the vote is the most important principle of the electoral law. 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, deception or obstruction; or by the illegal conduct of making false statements about a candidate. It is also a criminal offence to compel 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 well discuss among themselves their voting preference, but in no case involving any corrupt or illegal conduct.

6. Nomination of candidates is an important part of an election. According to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law"), the Candidate Eligibility Review Committee ("CERC") shall be responsible for reviewing and confirming the eligibility of candidates for the Chief Executive ("CE") (for details of the CERC, please refer to paras. 3.17 and 3.18 of Chapter 3). The CERC may request the Returning Officer ("RO") to provide advice to the CERC regarding the nomination of candidates. It may also make decisions pursuant to the opinion of the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region ("Committee on National Security"). The Committee on National Security shall, on the basis of the review by the National Security Department of the Hong Kong Police Force, make findings regarding candidates' compliance with the legal requirements and conditions on "upholding the Basic Law and pledging allegiance to the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China" and will issue an opinion to the CERC for those who fail to meet such legal requirements and conditions. According to Article 14 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the National Security Law"), no institution, organisation or individual in the Region shall interfere with the work of the Committee on National Security. Information relating to the work of the Committee on National

Security shall not be subject to disclosure. As stipulated in Annex I to the Basic Law and the electoral law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee on National Security. For details, please refer to Chapter 3.

7. Whether the nomination of a candidate is valid or not is solely determined by the CERC. The EAC is neither empowered nor involved in the making of such decision, and will not provide any advice. The EAC will only make practical arrangements for the election according to the validly nominated candidates determined by the CERC. 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 32(1) of the Chief Executive Election Ordinance (Cap 569) (“CEEO”). However, as mentioned in para. 6 above, by virtue of Annex I to the Basic Law and the electoral law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee of National Security.

8. Another important aspect of the law is to prescribe the maximum limit for election expenses. 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. According to the law, 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 actual facts and intention, rather than on the face of any statement alone. It is a criminal offence for a candidate to incur election expenses in excess of the prescribed maximum

limit. Hence, the candidate must, in accordance with the law, submit an election return after the election to rigorously declare all the election expenses incurred by him/her; otherwise, he/she commits an offence.

9. 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, no matter it is for the purpose of promoting or prejudicing the election of a candidate, to incur election expenses. Nevertheless, as far as opinions published on the Internet are concerned, even though they promote or prejudice the election of a candidate and amount to election advertisements (“EAs”), if the publisher is a third party (i.e. a person other than a candidate and his/her election expense agents) and the only election expenses incurred are either electricity charges and/or charges necessary for accessing the Internet, he/she is exempted from the relevant criminal liability. However, if the publisher is a candidate or his/her election expense agent, the exemption does not apply. As such, the candidate should declare all election expenses in his/her election return (i.e. including election expenses incurred in relation to the Internet and all other media).

10. EA has always been an important part of election expenses, and therefore it is necessary to regulate EAs for calculation 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.

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

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

Code of Conduct

13. Apart from the electoral law, the EAC has promulgated guidelines on election-related activities based on the principle of fairness and equality. However, the guidelines promulgated by the EAC are not legally binding. Any breaches of the guidelines will not constitute a legal offence. Where necessary, the EAC will issue public statements of censure in order to inform the electors and the general public of important matters that have occurred during the elections. An important application of the principle of fairness and equality 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' corporations and mutual aid residents' associations should observe the principle of fairness and equality 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.

The management organisations mentioned under (c) above should handle the applications from the candidates fairly and equally. If a management organisation decided to allow a particular candidate to conduct electioneering activities in the common parts of the buildings under its management, it should also allow other candidate(s) to do so (whether to make the same request is individual candidate's own choice). On the other hand, if it is decided to reject an application from a particular candidate, the same applications from other candidate(s) should also be rejected. However, this principle does not apply to election activities and EAs concerning private properties.

14. It is noteworthy that, 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.

15. The EAC will solemnly handle complaints against any breach of the principle of fairness and equality as set out in the electoral guidelines. Investigation must be based on factual evidence and be in accordance with the principle of procedural fairness. 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, the

EAC's 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.

16. If a complaint is substantiated, the EAC may, where necessary, issue public statements of censure in order to inform the electors and the general public of important matters that have occurred during the elections. 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.

17. Election is a solemn matter, the electoral procedures are strictly sanctioned by the relevant electoral law. Persons who wish to run for an election and other stakeholders must understand and comply with the requirements of the electoral law so as to avoid committing any criminal offence inadvertently.

18. Apart from the legislation aspect, candidates and stakeholders should also make reference to the good practices provided in the Guidelines in order to ensure that the elections are conducted in an open, fair and honest manner.

19. The EAC appeals to members of the public to be acquainted with and to uphold the electoral law and electoral guidelines in order to carry on the good election culture in Hong Kong, so that the election can be conducted smoothly in a fair and equal manner.

CHAPTER 1

INTRODUCTION

PART I : THE CHIEF EXECUTIVE ELECTION

1.1 On 11 March 2021, the National People’s Congress (“NPC”) passed the “Decision of the NPC on Improving the Electoral System of the HKSAR”, and authorised the Standing Committee of the National People’s Congress (“NPCSC”) to amend Annex I to the Basic Law “Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region” and Annex II to the Basic Law “Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures”. The NPCSC on 30 March 2021 adopted the amended Annex I and Annex II to the Basic Law. For the corresponding enactment of local legislation, the Government introduced the Improving Electoral System (Consolidated Amendments) Bill 2021 (“Amendment Bill”) to the LegCo on 14 April 2021. The Amendment Bill was passed by the LegCo on 27 May 2021. The Improving Electoral System (Consolidated Amendments) Ordinance 2021 (“Amendment Ordinance”) was published in the Gazette and came into operation on 31 May 2021. Pursuant to the changes provided under the Amendment Ordinance to the method for the selection of the CE, this set of Guidelines has been updated to reflect the new arrangements and procedures of the CE elections. *[Added in January 2022]*

1.2 The CE of the HKSAR is the head of the HKSAR and the head of the HKSAR Government. The CE is elected by the Election Committee (“EC”) and appointed by the Central People’s Government (“CPG”). The specific method for selecting the CE is prescribed in Annex I to the Basic Law [s 7 of the CEEO].

1.3 According to the newly amended Annex I to the Basic Law, a candidate for the office of the CE shall be nominated by not less than 188 members of the EC, of which the number of members of each of the 5 EC sectors should not be less than 15. The CE shall be elected by the EC by secret ballot on a one-person-one-vote basis. The CE designate must obtain more than 750 votes in order to be returned at the election. *[Added in January 2022]*

1.4 In accordance with Article 46 of the Basic Law, the term of office of the CE of the HKSAR shall be 5 years, and he/she may serve for not more than two consecutive terms. When a vacancy arises in the office of the CE other than due to expiry of the term of office, the new CE who is elected to fill the vacancy during the remainder term is regarded as having served for one term and he/she may, if re-elected, only serve for one more term after the expiry of the remainder term. [S 3(1A), (2) and (2A) of the CEEO] *[Added in January 2007]*

1.5 The term of office of the CE shall commence on the date on which he/she assumes office being the date specified for this purpose by the CPG in the instrument of appointment and published by notice in the Gazette [s 3 of the CEEO]. The first term of office of the CE commenced on 1 July 1997. *[Added in January 2007]*

1.6 Article 53 of the Basic Law stipulates that in the event that the office of the CE becomes vacant, a new CE shall be selected within 6 months in accordance with the provisions of Article 45 of the Basic Law. A polling date will be fixed in accordance with ss 10 and 11 of the CEEO to elect a CE. If an election for a CE of a new term (5-year) is to be held within 6 months after a vacancy in the office of the CE has arisen, it will not be necessary to hold a by-election [s 6 of the CEEO]. *[Added in January 2007]*

Governing Legislation

1.7 The CE elections are governed by the statutory requirements provided in 3 different ordinances, namely the CEEO, the EACO and the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”).

1.8 The CEEO provides for the election of the CE in accordance with Annex I to the Basic Law. The Schedule to the CEEO provides details on how the EC is to be constituted to elect the CE.

1.9 Under the EACO, the EAC is responsible for the conduct and supervision of the CE elections and matters incidental thereto.

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

1.11 These ordinances are complemented by 7 pieces of subsidiary legislation, including those set out in paras. 1.12 to 1.18 below, which provide the detailed procedures for the conduct of the CE elections.

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

1.13 The Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B) (“EAC (ROE) (FCSEC) Reg”) sets out the procedures for, among other things, registration of members of the EC who are to elect the CE. *[Amended in January 2007]*

1.14 The Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap 541I) sets out the electoral procedures for conducting EC subsector elections, the procedures for nominating members of the EC by the designated bodies, and the registration procedures of ex-officio members of the EC, etc. *[Added in January 2022]*

1.15 The Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap 569B) sets out the procedures for, among other things, hearing and ruling by the Revising Officer concerning the registration of voters for EC subsectors. *[Amended in January 2007]*

1.16 The Election Committee (Appeals) Regulation (Cap 569A) sets out the procedures for appeal against the results of any subsector election to the Revising Officer, and for appeal in relation to the declaration and registration of nominees as members of the EC, and the registration of ex-officio members of the EC. *[Amended in January 2022]*

1.17 The Chief Executive Election (Election Petition) Rules (Cap 569E) set out the procedures for the lodgement of an election petition against the result of a CE election to the High Court.

1.18 The Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap 554A) sets out the maximum amount of election expenses that can be incurred by or on behalf of a candidate at a CE election.

PART II : THE GUIDELINES

1.19 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, 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.

[Amended in November 2011]

1.20 The aim of this set of Guidelines is: (1) to explain in simple language the subsisting electoral law so as to remind candidates and other stakeholders of the provisions and requirements under the electoral law; and (2) with regard to election-related activities not stipulated by the law, such as media report and conduct of electioneering activities involving public places of buildings, to promulgate a code of conduct based on the principles of fairness and equality, and provide standard good practices. The Guidelines are also issued for reference by members of the public, so as to enable them to give play to the function of monitoring the elections and ensure that the elections are conducted in an open, fair and honest manner. *[Amended in November 2011 and January 2022]*

1.21 This set of Guidelines explains the various electoral arrangements for the CE elections, and the legislative provisions and regulations as well as guidelines to be observed by all relevant parties before, during and after an election (in relation to machinery of the election). The Guidelines also provide the procedure for lodging an election-related complaint. An action checklist for candidates is set out at **Appendix 1**. *[Amended in November 2011]*

PART III : ADVISORY SERVICE TO CANDIDATES ON THE GUIDELINES

1.22 Any person including candidates and their election agents may make enquiries with the ICAC on the provisions of the ECICO. Candidates may also seek independent legal advice in case of doubt. In addition, candidates (including those who have publicly declared their intention to stand for election but have not submitted a nomination form) may raise, in writing, with the EAC any questions that they may have on the interpretation or operation of this set of Guidelines, other than those covered by the ICAC. The EAC will, wherever practicable, respond to the candidate concerned within 3 working days after receiving his/her written enquiry. The question(s) and answer(s) relevant to the Guidelines will be published for public information for the better understanding of the Guidelines.

PART IV : SANCTION

1.23 Members of the EC, candidates and their agents, government officials engaging in election-related duties, and other persons involved in election-related activities should read, familiarise themselves with, and strictly observe the Guidelines.

1.24 The EAC always strives to conduct public elections under the principles of openness, fairness and honesty. If the EAC comes to know that any candidate or person has breached the Guidelines, it may notify the relevant authorities for actions to be taken and, furthermore, 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. Should any offences under the electoral law be committed, the candidate, the person or other parties concerned will also incur criminal liabilities pertinent to the offence

accordingly. *[Amended in November 2011 and January 2022]*

CHAPTER 2

THE ELECTION COMMITTEE

PART I : FUNCTIONS, TERM OF OFFICE AND COMPOSITION OF THE ELECTION COMMITTEE

2.1 The EC is responsible for electing the CE [s 7 of the CEEO]. The term of office of the EC is 5 years. For the new term of the EC elected in 2021, the term of office shall be from 22 October 2021 to 21 October 2026. *[Amended in January 2007 and January 2022]*

2.2 Only members of the EC whose names appear on the EC Final Register (“FR”) may vote at a CE election. The term of office for the new term of EC shall commence on the date on which the FR is published. For the year of 2021, the FR has been published on 22 October 2021. The EC for the subsequent terms shall be constituted on 1 February in the year in which the term of office of the CE is to expire [s 9 of the CEEO]. The composition of the EC is provided in s 2 of the Schedule to the CEEO, and the relevant information is set out in **Appendix 2** for easy reference. *[Amended in January 2022]*

PART II : EC SUBSECTOR ELECTIONS

2.3 Before the office of the CE becomes vacant on the expiry of a 5-year term, EC subsector ordinary elections/nominations¹ of members of the

¹ The members to be returned by nomination shall consist of all the members of the religious subsector and the representatives of associations of Hong Kong residents in the Mainland subsector, and some of the members of the technology and innovation subsector, the accountancy subsector, the legal subsector, the sports, performing arts, culture and publication subsector and the Chinese medicine subsector, where nominations are made by the designated bodies in the subsectors.

relevant subsectors will be conducted to form the EC of a new term, which will then be responsible for electing the CE of a new term. *[Amended in January 2007 and January 2022]*

2.4 When a CE vacancy arises otherwise than due to the expiry of the term of office, the current term EC will be responsible for electing a new CE². Before a by-election is held to elect a CE, if there are vacancies among the members of the EC, a subsector by-election and/or supplementary nomination will be held with a view to updating the register of the members of the EC [ss 4 and 5 of the Schedule to the CEEO]. *[Amended in January 2007 and January 2022]*

2.5 For details on the compilation of the different types of registers of members of the EC, please refer to paras. 2.5 to 2.18 of the Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections. *[Amended in January 2007]*

PART III : DISQUALIFICATION OF EC MEMBERS

(a) Disqualification from Making Nomination of Candidate

2.6 A member of the EC is disqualified from making a nomination of candidate at the CE election if he/she:

- (a) has resigned from the membership of the EC (other than an ex-officio member) by giving written notice of resignation to the Electoral Registration Officer (“ERO”);
- (b) is serving a sentence of imprisonment for the time being;

² If an election for a CE of a new term (5-year) is to be held within 6 months after a vacancy in the office of the CE has arisen, it will not be necessary to hold a by-election.

- (c) has ceased to have a substantial connection with the subsector concerned;
- (d) has ceased to be registered or eligible to be registered as an elector for a geographical constituency;
- (e) has in Hong Kong, or in any other place, been sentenced to death or imprisonment (by whatever name called) and has not either served the sentence or any substitute sentence or received a free pardon³;
- (f) is found for the time being under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his/her property and affairs;
- (g) is a member of the armed forces of the People's Republic of China or any other country or territory;
- (h) is or has been convicted, within the 5 years before the polling date-
 - (i) of having engaged in corrupt conduct or illegal conduct in contravention of the ECICO;
 - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201) ("POBO"); or
 - (iii) of any offence prescribed by the EAC Regulations.
- (i) has breached the written oath of members of the EC;

³ On 21 June 2012, the Court of First Instance handed down a written judgment on *Wong Hin Wai & another v. Secretary for Justice* (HCAL 51 & 54/2012), declaring that similar provisions under section 39(1)(b) of the Legislative Council Ordinance (Cap 542) are unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. The future CE election will be organised in accordance with the prevailing legislation. Any EC member who wishes to make a nomination at the CE election and is doubtful about his/her eligibility for making the nomination may seek independent legal advice.

- (j) has failed, or has been declared or decided in accordance with any law to have failed, to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR of the People's Republic of China; or
- (k) his/her functions as a member of the EC are suspended under s 43A(2) of the Schedule to the CEEO.

[S 16(5) and (5A) of the CEEO] [*Amended in January 2010 and January 2022*]

(b) Disqualification from Voting

2.7 A member of the EC will be eligible to vote at the CE election unless he/she has become disqualified to do so because he/she:

- (a) has resigned from the membership of the EC (other than an ex-officio member) by giving written notice of resignation to the ERO;
- (b) has ceased to have a substantial connection with the subsector concerned;
- (c) has ceased to be registered or eligible to be registered as an elector for a geographical constituency;
- (d) is found for the time being under the Mental Health Ordinance, to be incapable, by reason of mental incapacity, of managing and administering his/her property and affairs;
- (e) is a member of the armed forces of the People's Republic of China or any other country or territory;

- (f) has breached the written oath of members of the EC;
- (g) has failed, or has been declared or decided in accordance with any law to have failed, to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR of the People's Republic of China; or
- (h) his/her functions as a member of the EC are suspended under s 43A(2) of the Schedule to the CEEO.

[S 26(1) and (2) of the CEEO] *[Amended in January 2010 and January 2022]*

2.8 For details on the method for the constitution of the EC and compilation of the EC FR, please refer to Chapter 2 of the Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections. *[Added in January 2007 and amended in January 2022]*

Online Voter Information Enquiry System

2.9 Members of the EC may log on to the Online Voter Information Enquiry System (www.voterinfo.gov.hk) anytime to check whether they are registered members of the EC. *[Added in October 2016]*

CHAPTER 3

NOMINATION OF CANDIDATES

PART I : GENERAL

3.1 On 11 March 2021, the NPC passed the “Decision of the NPC on Improving the Electoral System of the HKSAR”. Pursuant to the Decision, the HKSAR shall establish a CERC which is responsible for reviewing and confirming the eligibility of candidates for the members of EC, the CE, and LegCo members so as to ensure that the qualifications of candidates are in conformity with the Basic Law, the National Security Law, the NPCSC’s interpretation of Article 104 of the Basic Law, the NPCSC’s decision on the qualification of HKSAR LegCo members, and provisions of relevant local laws of the HKSAR. The NPC authorised the NPCSC to amend Annex I to the Basic Law “Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region” and Annex II to the Basic Law “Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures”. *[Added in January 2022]*

3.2 In accordance with the Annex I to the Basic Law amended by the NPCSC on 30 March 2021, the CERC is responsible for reviewing and confirming the eligibility of CE candidates. The CERC may request the RO to provide advice to the CERC regarding the nominations of candidates throughout the review. It may also make decision pursuant to the opinion of the Committee on National Security. The Committee on National Security shall, on the basis of the review by the National Security Department of the Hong Kong Police Force, make findings as to whether a CE candidate meets the legal requirements and conditions on “upholding the Basic Law and bearing allegiance to the HKSAR of the People’s Republic of China”, and issue an opinion to the CERC in respect of candidates who fail to meet such legal requirements and conditions.

According to Article 14 of the National Security Law, no institution, organisation or individual in the Region shall interfere with the work of the Committee on National Security. Information relating to the work of the Committee on National Security shall not be subject to disclosure. By virtue of Annex I to the Basic Law and the electoral law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee on National Security. *[Added in January 2022]*

3.3 Legislative provisions governing the eligibility for being nominated as a candidate at the CE election, the disqualification from being nominated as a candidate, and the requirements to be complied with by nominated candidates are set out respectively in ss 13, 14 and 16 of the CEEO (see Parts II and III of this chapter). *[Amended in January 2022]*

3.4 As stipulated in s 16 of the CEEO, the nomination of a candidate is invalid unless a declaration is made in the nomination form to the effect that he/she stands for the election in an individual capacity, and will uphold the Basic Law and bear allegiance to the HKSAR⁴. In accordance with s 84 of the EP (CEE) Reg, a person who makes a false statement in the nomination form commits a criminal offence, and shall be subject to criminal liability upon conviction. *[Added in January 2022]*

3.5 Under the subsisting law, the validity of a candidate's nomination is solely determined by the CERC. The EAC is neither empowered nor involved in the making of such decision and will not provide any advice. The

⁴ Upholding the Basic Law means to uphold all the provisions of the Basic Law, including:
 Article 1: The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China.
 Article 12: 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.
 Article 159(4): No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong.
 Please see s 3AA of the Interpretation and General Clauses Ordinance (Cap 1) for details of upholding the Basic Law and bearing allegiance to the HKSAR.

EAC will only make practical arrangements for the election according to the validly nominated candidates determined by the CERC. In accordance with s 6 of the EP (CEE) Reg, if the CERC determines that a nomination is invalid, the CERC must endorse on the nomination form the determination and the reason(s) for it, including the reason(s) to determine the invalidation of nomination is/are pursuant to the opinion of the Committee on National Security or other reasons. The RO shall make available a copy of each of the nomination form for public inspection pursuant to s 8 of the Regulation (please refer to para. 3.26 of this chapter). 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 32(1) of the CEEO. However, as mentioned in para. 3.2 above, by virtue of Annex I to the Basic Law and the electoral law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee on National Security. *[Added in January 2022]*

PART II : ELIGIBILITY AND DISQUALIFICATION FOR NOMINATION

Eligibility for Nomination

3.6 To be eligible for nomination as a candidate at a CE election, a person must:

- (a) be a permanent resident of the HKSAR;
- (b) be a Chinese citizen as defined by s 2 of the Hong Kong Special Administrative Region Passports Ordinance (Cap 539);
- (c) have no right of abode in any foreign country; and

- (d) have reached 40 years of age, and have ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

[S 13 of the CEEO]

“Ordinarily Residing in Hong Kong”

3.7 The definition of “ordinarily residing in Hong Kong” is not set out in the subsisting electoral law. In assessing whether a person “ordinarily resides in Hong Kong”, one needs to take into account a host of factors and the specific situation of each case, and determine according to the relevant judgments of the Court. The conclusion cannot be generalised and one cannot say someone does not “ordinarily reside in Hong Kong” simply because he/she has a place of residence abroad. According to a court precedent⁵, a person is considered ordinarily residing in a place if he/she remains in that place legally, voluntarily and for a settlement purpose (such as for education, employment or residence), regardless of the duration, and even if he/she is temporarily absent from that place for some reasons. The Court also pointed out that a person may ordinarily reside in two places at the same time. *[Added in January 2022]*

3.8 Generally speaking, for a Hong Kong permanent resident who used to reside in Hong Kong all along, if he/she has now set up for personal reasons another residence elsewhere but still returns to live in Hong Kong from time to time (such as for handling personal matters, social gatherings or family reunion), then he/she can still be regarded as maintaining a reasonable connection with Hong Kong. A condition which must be considered in parallel is that in accordance with the electoral law, the person must provide, for the purpose of registration as an elector, a residential address which is his/her only or principal residence in Hong Kong (i.e. not a correspondence address but a residential address where he/she habitually resides when he/she is in Hong

⁵ *Lau San Ching v. Liu Apollonia* (1995) 5 HKPLR 23 citing *R.v. Barnet London Borough Council, ex parte Shah* [1983] 2 AC 309

Kong). Under such circumstances, whether the person still satisfies the statutory requirement of “ordinarily residing in Hong Kong” must be determined according to the actual circumstances of individual case. *[Added in January 2022]*

3.9 To sum up, the individual circumstances of the person must be considered when determining whether that person is “ordinarily residing in Hong Kong”, and it is not a matter capable of summary determination. In case of doubt, a prospective candidate should consult his/her independent legal adviser. *[Amended in January 2022]*

Disqualification for Nomination

3.10 A person is disqualified from being nominated as a candidate, if he/she:

- (a) is the incumbent CE and holds the office for the second consecutive term;
- (b) is a judicial officer, or a prescribed public officer⁶;
- (c) is adjudged bankrupt under the Bankruptcy Ordinance (Cap 6) and has not been discharged under section 30A or 30B of the Ordinance;

⁶ A prescribed public officer means any of the following-

- (i) the Chairman of the Public Service Commission;
- (ii) the Commissioner and Deputy Commissioner of the ICAC and the holder of any other office under the ICAC Ordinance (Cap 204);
- (iii) the Ombudsman and the holder of any appointment under s 6 of the Ombudsman Ordinance (Cap 397);
- (iv) a member of the EAC;
- (v) the Chief Executive of the Hong Kong Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (vi) the Privacy Commissioner for Personal Data and any person employed or engaged by him/her under the Personal Data (Privacy) Ordinance (Cap 486);
- (vii) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480); or
- (viii) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

- (d) holds a passport or similar travel document other than a passport or Certificate of Identity issued by the HKSAR or an entry permit issued by an authority in any part of the People's Republic of China;
- (e) has, in Hong Kong, or any other place, been sentenced to death, and has not either served the sentence or any substitute sentence or received a free pardon⁷;
- (f) has been convicted of treason;
- (g) has been convicted, within 5 years before the date of nomination,
 - (i) of any offence in Hong Kong or in any other place, the sentence for which is imprisonment (suspended or not) for not less than 3 months;
 - (ii) of having engaged in corrupt conduct or illegal conduct in contravention of the ECICO;
 - (iii) of an offence against Part II of the POBO; or
 - (iv) of any offence prescribed by the EAC Regulations;
- (h) is found, for the time being, to be incapable, by reason of mental incapacity, of managing and administering his/her property and affairs under the Mental Health Ordinance; or

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 the similar provision under section 39(1)(b) of the Legislative Council Ordinance (which is similar to para. 3.10(e) above) to be unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. The future CE election will be organised in accordance with the prevalent electoral laws. Any person who would like to be nominated as a candidate for CE election and is doubtful about his/her eligibility for nomination may seek independent legal advice.

- (i) has vacated an office or has been disqualified from entering on an office under the law for declining or neglecting to take a specified oath⁸ within the 5 years before the date of nomination, or has been declared or decided in accordance with any law:
- (i) to be in breach of a specified oath; or
- (ii) to have failed to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR of the People’s Republic of China.

[S 14 of the CEEO] *[Amended in October 2016 and January 2022]*

PART III : WHEN AND HOW TO NOMINATE

When to Nominate

3.11 Any person who intends to stand for the election may submit a nomination form during the **nomination period** specified in the notice published in the Gazette [s 3 of the EP (CEE) Reg]. The nomination period for a CE election shall not be less than 14 days, and shall terminate at least 21 days before the polling date [s 15 of the CEEO]. The EAC shall appoint a judge of the Court of Final Appeal (“CFA”), a Justice of Appeal or a judge of the Court of First Instance (“CFI”) of the High Court to be the RO of a CE election [s 41 of the CEEO]. An election timetable in the format of an “Action Checklist for Candidates” (see **Appendix 1**) will be provided to each candidate by the RO. The RO shall receive nominations during the ordinary business hours (i.e. from 9 am to 5 pm from Monday to Friday, and from 9 am to 12 noon on a Saturday)

⁸ Specified oath means an oath taken under the law that the oath-taker will uphold the Basic Law and bear allegiance to the HKSAR of the People’s Republic of China.

on each working day (i.e. any day other than a general holiday) in the nomination period. **Candidates are 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.** *[Amended in October 2016 and January 2022]*

How to Nominate

3.12 Nomination forms specified by the EAC are available from the REO and may also be downloaded from the website of the REO (<https://www.reo.gov.hk>).

3.13 The nomination form for candidates comprises the parts of (a) nomination and (b) candidate(s)' consent to nomination and declaration of eligibility:

(a) **The Nomination**

The nomination must be subscribed by not less than **188 members of the EC**, with not less than 15 members of the EC from each of the 5 sectors referred to in s 2(3) and (4) of the Schedule to the CEEO. A member of the EC may nominate only one candidate, and the nomination shall not be withdrawn or revoked. *[Amended in November 2011 and January 2022]*

IMPORTANT :

A candidate who submits a nomination form on the last few days of the nomination period is advised to include more than the required number of subscribers for his/her nomination, so as to avoid the risk of invalidation of the nomination should any of the subscribers be subsequently found to be not qualified as

subscribers. A candidate should ensure that the members of the EC subscribing his/her nomination form are eligible to do so and these members of the EC have not subscribed another nomination previously. Each member of the EC subscribing a nomination shall sign the nomination form **personally**.

No unlawful means shall be used to procure a member of the EC to subscribe or not to subscribe a nomination. Please see Appendix 3 on legal provisions against pressuring electors not to nominate a particular candidate.

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 to the nomination form held by them. They should take all practicable steps to ensure that the aforesaid personal data are protected against accidental or unauthorised access, processing, erasure, loss or use. *[Added in October 2016 and amended in January 2022]*

(b) Candidate’s Consent to Nomination and Declarations of Eligibility

According to the CEEO and the EP (CEE) Reg, a candidate must duly complete the nomination form and the declarations, which shall be attested by a witness. The following declarations must be made before a justice, notary, commissioner or other authorised person:

- (i) a declaration to the effect that the candidate stands for the election in an individual capacity and that he/she will uphold the Basic Law and bear allegiance to the HKSAR; and

- (ii) a declaration as to the candidate's nationality and whether he/she has a right of abode in any foreign country.

[S 16 of the CEEO and s 4(1) of the EP (CEE) Reg] *[Amended in January 2007, October 2016 and January 2022]*

3.14 Candidates should ensure that their nomination forms are properly completed before submission. The completed nomination form must be delivered to the RO by the candidate **in person** during ordinary business hours (i.e. from 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 (see para. 3.11). In exceptional circumstances (e.g. the candidate is temporary absent from Hong Kong, suffers incapacity due to illness or is undergoing mandatory quarantine, etc.) which precludes the candidate from delivering the nomination form in person, the RO may authorise other manner of delivery of the nomination form [s 4(1)(e) of the EP (CEE) Reg]. *[Amended in January 2007]*

3.15 The RO will make available copies of the nomination forms for public inspection free of charge at the specified address during ordinary business hours until relevant notice of the election result is published [s 8 of the EP (CEE) Reg]. If the CERC determines that a nomination is invalid (see Part V below), it must endorse on relevant nomination form the determination and the reasons for it [s 6(1) of the EP (CEE) Reg]. If the CERC's decision that the nomination of the candidate is invalid is made pursuant to the opinion of the Committee on National Security, such decision shall be endorsed on the nomination form specifying that the decision is based on the opinion of the Committee on National Security. Under such circumstances, by virtue of Annex I to the Basic Law and the electoral law, no legal proceedings may be instituted in respect of the decision made by the CERC. *[Added in January 2022]*

False Declarations

3.16 A candidate who knowingly and wilfully makes a statement which is false in a material particular in the nomination form or makes a false declaration is in breach of the requirements of s 84 of the EP (CEE) Reg. The provision 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. The provision also specifies that an election-related document means a form, declaration, etc. required or used for the purposes of the EP (CEE) Reg. Besides, a person making a false statement in statutory document is in breach of s 36 of the Crimes Ordinance (Cap 200) and shall be liable to imprisonment for 2 years and a fine. A violation against s 84 of the EP (CEE) Reg is a prescribed offence, with the same disqualification on conviction of a corrupt or illegal conduct under the ECICO (as described in paras. 16.53 and 17.37 of the Guidelines). *[Amended in January 2007, November 2011, October 2016 and January 2022]*

PART IV : CANDIDATE ELIGIBILITY REVIEW COMMITTEE

3.17 As stipulated in Annex I to the Basic Law and the CEEO, the CERC is responsible for reviewing and confirming the eligibility of candidates for the CE. The CERC may request the RO to provide advice to the CERC regarding the nominations of candidates. It may also make decisions pursuant to the opinion of the Committee on National Security. The Committee on National Security shall, on the basis of the review by the National Security Department of the Hong Kong Police Force, make findings as to whether a candidate meets the legal requirements and conditions on “upholding the Basic Law and bearing allegiance to the HKSAR of the People’s Republic of China”,

and issue an opinion to the CERC in respect of candidates who fail to meet such legal requirements and conditions. According to Article 14 of the National Security Law, no institution, organisation or individual in the Region shall interfere with the work of the Committee on National Security. Information relating to the work of the Committee on National Security shall not be subject to disclosure. By virtue of Annex I to the Basic Law and the electoral law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee on National Security. [S 9B of the CEEO] *[Added in January 2022]*

3.18 Under s 9A of the CEEO, the CERC consists of the chairperson, at least 2 but not more than 4 official members and at least 1 but not more than 3 non-official members. Each member of the CERC is appointed by the CE by notice published in the Gazette. Only a principal official appointed pursuant to a nomination under Article 48(5) of the Basic Law is eligible for appointment as the chairperson or an official member, and only a person who is not a public officer is eligible for appointment as a non-official member. Besides, the CE shall report any appointment made to the Central People's Government for record. [S 9A of the CEEO] *[Added in January 2022]*

PART V : VALIDITY OF NOMINATIONS

3.19 Whether a nomination is valid or not is determined by the CERC. The CERC must make a decision on the validity of a nomination as soon as practicable after receipt of a nomination form, and publish a notice stating the persons who are validly nominated as candidates at the CE election within 7 days after the end of the nomination period [ss 17 and 18 of the CEEO]. *[Amended in January 2022]*

3.20 If the RO detects on a nomination form an error which may amount to a ground for deciding that the nomination form is invalid, and if the error can

be rectified before the close of the nomination period, the RO may, before forming an opinion as to whether the nomination form is valid, give the candidate a reasonable opportunity to rectify it as far as practicable [s 5 of the EP (CEE) Reg]. For example, if the qualification of a subscriber to a submitted nomination form is in doubt, the prospective candidate may, where possible, be allowed to find another subscriber as substitute as soon as practicable. However, no substitution of subscriber or re-submission of a nomination form is allowed after the end of the nomination period. *[Amended in January 2022]*

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

3.22 The RO may require a candidate to furnish any other information that he/she considers appropriate for him/her to advise the CERC on any of the specified matters [s 4(3) of the EP (CEE) Reg]. *[Amended in January 2022]*

3.23 A nomination will be invalid unless the nomination form contains all 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. 3.13(b). *[Amended in November 2011]*

3.24 Without prejudice to ss 13, 14 and 16 of the CEEO⁹, the CERC may decide that a nomination of a candidate is invalid only when:

- (a) the nomination form has not been signed by not less than 188 members of the EC (with not less than 15 members of the EC from each of the 5 sectors referred to in s 2(3) and (4) of the Schedule to the CEEO) qualified to make the nomination as required under s 16(2)(a) of the CEEO;

⁹ Please see paras. 3.6, 3.10, 3.13(b) and 3.16 for reference.

- (b) the nomination form, including the parts on nomination and declaration thereof, has not been completed or signed as required under the EP (CEE) Reg;
- (c) the CERC is satisfied that the candidate is not eligible to be, or is disqualified from being, nominated as a candidate under the CEEO;
or
- (d) the RO is satisfied that the candidate has died.

In deciding whether a candidate is validly nominated, the CERC may request the RO to advise the CERC as to any of the specified matters. The CERC may also require the candidate to furnish any other information that the CERC considers appropriate for enabling the CERC to be satisfied as to the validity of the nomination.

[S 4A(4) and (5) of the EP (CEE) Reg] [*Amended in January 2022*]

PART VI : WITHDRAWAL OF CANDIDATURE

3.25 A candidate may withdraw his/her candidature only before the end of the nomination period. He/She is required to complete and sign a specified form entitled “Notice of Withdrawal of Candidature”, which must be delivered to the RO by the candidate or the candidate’s election agent in person [s 19 of the CEEO and s 9 of the EP (CEE) Reg]. Under the subsisting law, candidates are not allowed to withdraw their candidature after the end of the nomination period and there is no such mechanism as the so-called “abandonment of election”. Even if a candidate has made public his/her claim about the so-called “abandonment of election”, his/her name will still be shown on the ballot papers for the members of EC to vote for 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.

[Amended in November 2011 and January 2022]

PART VII : NOTICE OF VALID NOMINATIONS

3.26 The CERC must, within 7 days after the end of the nomination period, publish a notice in the Gazette declaring the name(s) of candidate(s) who is/are validly nominated, together with the names of those members of the EC nominating him/her [s 18(1) and (2) of the CEE0]. The RO shall, as soon as practicable after the CERC determining that a person is validly nominated as a candidate or is not so nominated, send a written notice of the determination to the person and to each validly nominated candidate [s 7(1) of the EP (CEE) Reg]. 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 result of the election is declared or until the termination of the proceedings for the election under s 22(1AA), (1AB)(e), (1) or (3)(e) of the CEE0 [s 18(3) of the CEE0 and s 8 of the EP (CEE) Reg]. Should the CERC determine that a nomination is invalid, it is required to endorse on the nomination form the determination and the reasons for it, inform the RO of the decision and return the nomination form to the RO for retention [s 6 of the EP (CEE) Reg].

[Amended in October 2016 and January 2022]

3.27 If at any time after the end of the nomination period but before the declaration of the result of the election, proof is given to the satisfaction of the RO that any candidate has died, or proof is given to the satisfaction of the CERC that any candidate is disqualified under s 20(1) of the CEEO from being elected, the RO must publicly declare that the proceedings for the election are terminated [s 22(1AA) and (1) of the CEEO]. *[Amended in January 2022]*

PART VIII : CANDIDATES' BRIEFING AND INTRODUCTION TO CANDIDATES

3.28 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 lots drawing session and the date and time of the Candidates' Briefing. In the case of a contested election, the RO will draw lots to determine for each of the validly nominated candidates the candidate number to be shown on the ballot paper and the designated spots allocated to each of them to display EAs (please refer to para. 8.37). *[Amended in October 2016 and January 2022]*

3.29 The REO will publish an **Introduction to Candidates**. The candidate number of each candidate allocated by the drawing of lots and to be shown on the ballot papers will also be shown on the Introduction to Candidates, which will be mailed to the members of the EC together with the polling notice before the polling day. The Introduction to Candidates will be published even if there is only one validly nominated candidate at an uncontested election, although no candidate number will be allocated to the candidate. Copies of the Introduction to Candidates will be made available in the Correctional Services Department ("CSD") and other law enforcement agencies for the members of the EC imprisoned or held in custody. *[Amended in January 2007, January 2010 and October 2016]*

3.30 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 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 contested election) in respect of him/her, with the sentence “Relevant information has not been provided by the candidate” printed in the space provided for his/her electoral message. *[Amended in January 2010, November 2011, October 2016 and January 2022]*

3.31 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 obscene, immoral, indecent, offensive, defamatory, unlawful or containing information irrelevant to the promotion of the candidature of the candidate concerned. *[Amended in January 2010, November 2011, October 2016 and January 2022]*

3.32 To assist persons with visual impairment in reading 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 will prepare a text

version of the Introduction to Candidates for uploading onto the dedicated website of the CE election. If a 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 (in contested election) in respect of him/her 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 the members of the EC and, in the course of their electioneering campaign, make their utmost efforts to ensure that persons with different needs can have fair access to the electoral messages. *[Added in October 2016 and amended in January 2022]*

CHAPTER 4

THE VOTING SYSTEM

4.1 A poll would be held in a contested election as well as in an uncontested election, and different voting systems will be adopted as appropriate [ss 23 and 24 of the CEEO]. In both cases, if a candidate obtains more than 750 valid votes, he/she is returned at the election. Details of the two different voting systems are provided in Part I and Part II of this chapter. *[Added in January 2007 and amended in October 2016 and January 2022]*

PART I : CONTESTED ELECTION

4.2 The voting system to be adopted if there are 2 or more validly nominated candidates contesting in an election is detailed below. *[Amended in January 2007]*

4.3 Each elector may cast only 1 vote by marking a single “✓” with the chop provided by the polling station in the circle against the name of the candidate of his/her choice on the ballot paper.

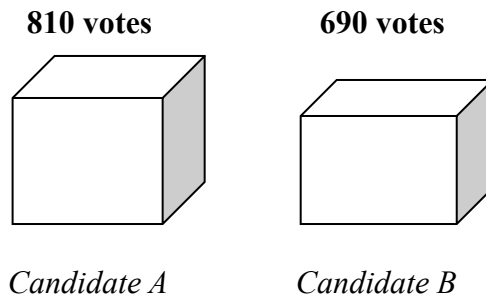
4.4 Where there are only 2 validly nominated candidates at the end of the nomination period, the candidate who obtains more than 750 valid votes in that single round of voting is returned at the election. The RO shall as soon as practicable publicly declare that the candidate as elected at the election and publish the result of the election in the Gazette. However, if no candidate obtains more than 750 valid votes in that single round of voting, no candidate is returned at the election and the RO must publicly declare that no candidate is returned at the election, and publish the declaration, the result of the poll and a notice of termination of the proceedings for the election in the Gazette.

[Ss 22(3), 24, 27(2) and (2A) and 28(2) of the CEEO] *[Amended in November 2011, October 2016 and January 2022]*

4.5 Where there are 3 or more validly nominated candidates, the candidate who obtains more than 750 valid votes in the first round of voting at the election will be elected. If no candidate obtains more than 750 valid votes, the candidate who obtains the highest number of valid votes and those candidate(s) who obtain the next highest and the same number of valid votes, or those candidates who obtain the highest and the same number of valid votes shall remain and all other candidates shall be eliminated. If there are only 2 remaining candidates, only one single round of voting shall be conducted for these 2 candidates as described in para. 4.4 above. Otherwise, the aforesaid voting and elimination process shall be repeated until a candidate obtains more than 750 valid votes, or until 2 candidates remain and one single round of voting is conducted for the 2 candidates as described in para. 4.4 above. If a candidate obtains more than 750 valid votes at the end of any subsequent round of voting in the election, the RO shall as soon as practicable publicly declare that the candidate as elected at the election and publish the result of the election in the Gazette. [Ss 24, 27(3) and (4) and 28 of the CEEO] *[Amended in January 2007, November 2011, October 2016 and January 2022]*

4.6 Examples are given below to illustrate how the voting system operates:

Scenario 1 (where there are 2 candidates in the election or 2 candidates remain after the elimination of all other candidates – a single round of voting must be conducted for the 2 candidates)



Elected

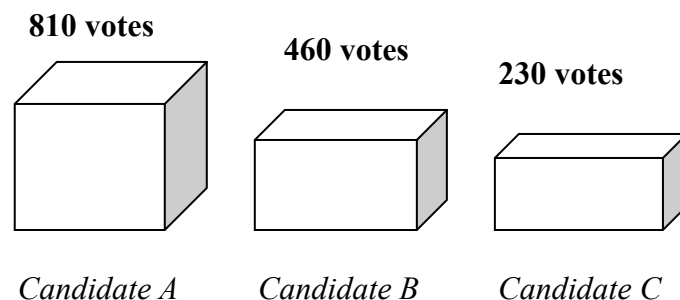
- Candidate A is elected as he/she has obtained more than 750 votes.

IMPORTANT:

If no candidate obtains more than 750 votes, no candidate will be returned at the election. The RO must terminate the proceedings for the election.

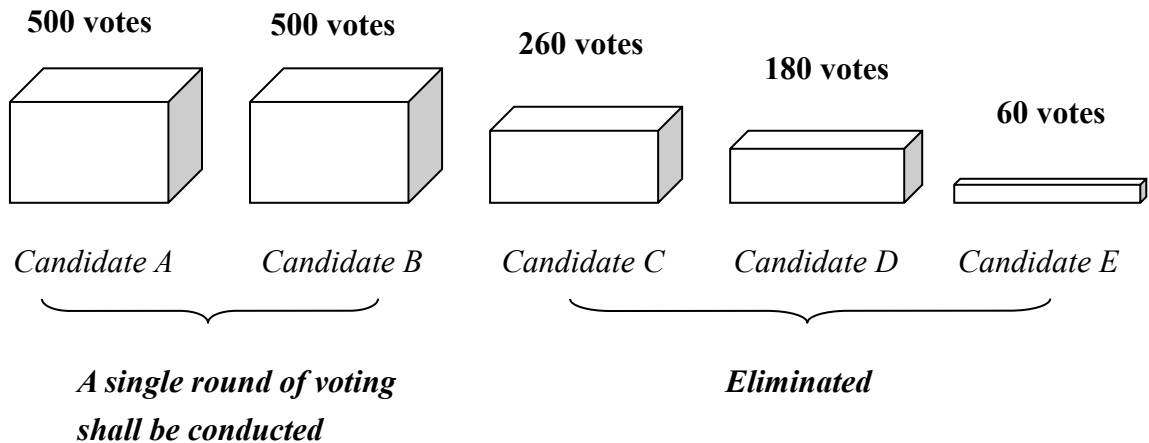
Scenario 2 (where there are 3 or more candidates in the election)

Scenario 2(a)

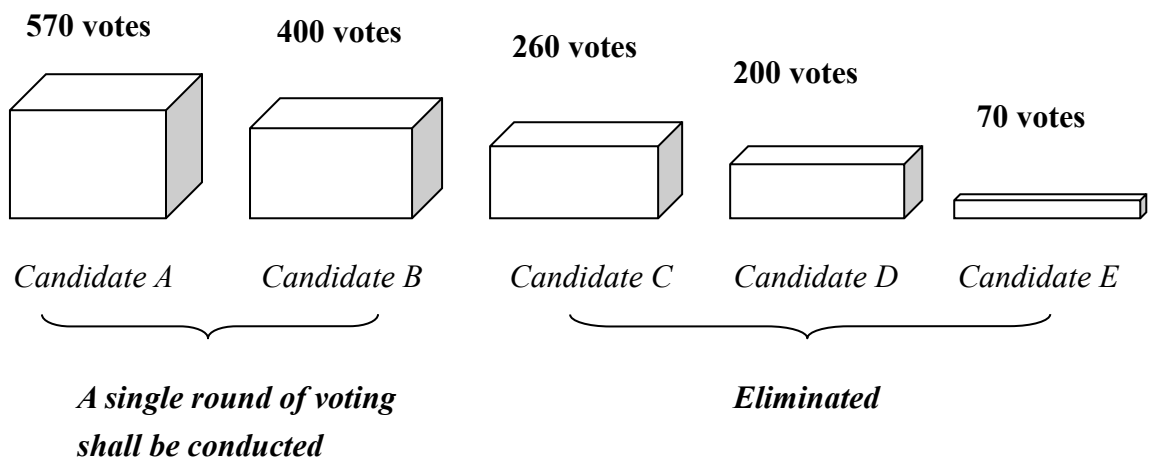


Elected

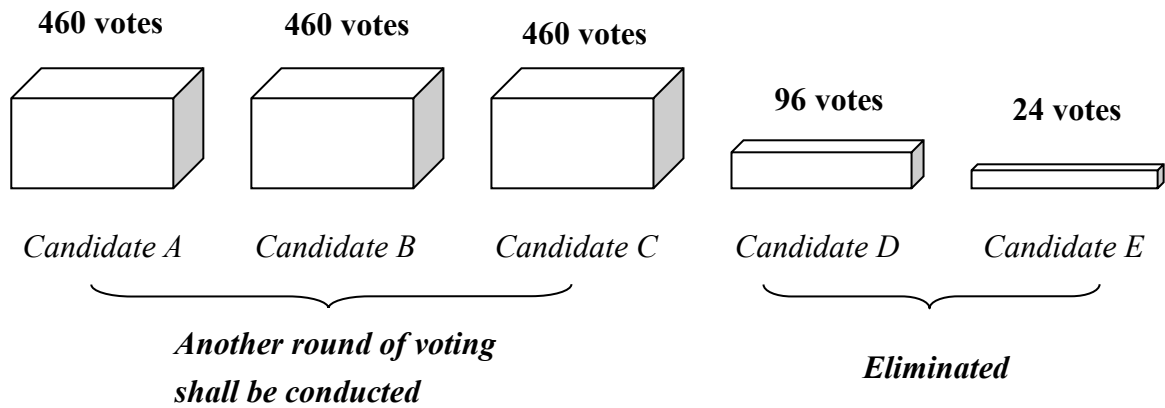
- 1 candidate (Candidate A) has obtained more than 750 votes in the first round of voting.
- Candidate A is elected.

Scenario 2(b)

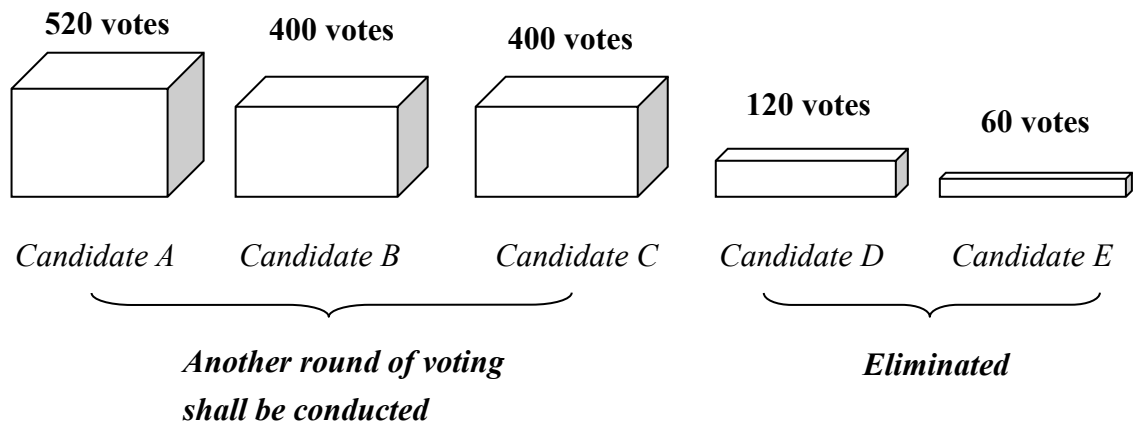
- Only 2 candidates (Candidates A and B) have obtained the highest and the same number of votes cast.
- A single round of voting shall be conducted for Candidates A and B (see scenario 1).

Scenario 2(c)

- Only 1 candidate (Candidate A) has obtained the highest number of votes cast but he/she does not obtain more than 750 votes.
- Only 1 candidate (Candidate B) has obtained the next highest number of votes cast.
- A single round of voting shall be conducted for Candidates A and B (see scenario 1).

Scenario 2(d)

- 3 candidates (Candidates A, B and C) have obtained the highest and the same number of votes cast.
- As many rounds of voting as may be necessary shall be conducted until (i) one of the candidates (Candidate A, B or C) has obtained more than 750 votes in any round of voting and is returned (see scenarios 1, 2(a), 2(b) and 2(c)); or (ii) the proceedings for the election are terminated when neither one of the 2 candidates who remain after elimination of one of the candidates obtains more than 750 votes in the required single round of voting (see scenario 1).

Scenario 2(e)

- Only 1 candidate (Candidate A) has obtained the highest number of votes cast but he/she does not obtain more than 750 votes.
- 2 candidates (Candidates B and C) have obtained the next highest and the same number of votes cast.
- As many rounds of voting as may be necessary shall be conducted until (i) one of the candidates (Candidate A, B or C) has obtained more than 750 votes in any round of voting and is returned (see scenarios 1, 2(a), 2(b), 2(c) and 2(d)); or (ii) the proceedings for the election are terminated when neither one of the 2 candidates who remain after elimination of one of the candidates obtains more than 750 votes in the required single round of voting (see scenario 1).

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

[Amended in November 2011 and January 2022]

PART II : UNCONTESTED ELECTION

4.7 The voting system to be adopted if there is only 1 validly nominated candidate in the election is detailed below. *[Added in January 2007]*

4.8 Each elector may cast either a “support” vote or a “not support” vote. The candidate shall be returned at the election if the number of valid “support” votes obtained by him/her exceeds 750. The RO shall then publicly declare him/her as elected at the election, and publish the result of the election in the Gazette. [Ss 23, 26A(1), (2) and (3) and 28 of the CEEO] *[Added in January 2007 and amended in November 2011 and January 2022]*

4.9 If the number of valid “support” votes obtained by the candidate does not exceed 750, the candidate shall not be returned at the election. The RO shall publicly declare that no candidate is returned at the election, and publish the declaration, the result of the poll and a notice of termination of the proceedings for the election in the Gazette [Ss 22(1AB) and 26A(1), (2) and (4) of the CEEO]. There will then be another round of nomination and, if necessary, the electoral process will be repeated until a candidate is returned. *[Added in January 2007 and amended in November 2011 and January 2022]*

CHAPTER 5

POLLING AND COUNTING ARRANGEMENTS

PART I : GENERAL

5.1 A poll would be held in a contested election as well as in an uncontested election. Please refer to Chapter 4 for the respective voting systems. Regarding the polling arrangements and polling hours for both contested and uncontested elections, please refer to Part III of this chapter. *[Added in January 2022]*

5.2 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 in the immediate vicinity outside the entrance/exit of a polling station to avoid any obstruction of entry/exit. *[Added in January 2022]*

5.3 About 30 minutes before the commencement of poll (or 15 minutes for dedicated polling stations situated in penal institutions), 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, the PRO will lock and seal the ballot boxes in the presence of the candidates and their agents, if any. The count will only commence when polling at all polling stations has closed. *[Added in January 2022]*

5.4 Only electors and designated authorised persons are allowed entry into a polling station. Electors requiring assistance from others for entering into a polling station may make a request to the PRO for discretionary

arrangements as appropriate. *[Added in January 2022]*

5.5 In order to increase the flexibility, efficiency and accuracy in the issuance of ballot papers, starting from the 2022 CE Election, an electronic poll register (“EPR”) system will be adopted in the procedures of issuing ballot papers at the main polling station, which will include scanning the identity cards of the electors, verifying the registered particulars of electors and issuing ballot papers to the electors. Upon entry to the polling station, electors can follow the instructions provided by polling staff on site and collect ballot papers at any of the ballot paper issuing desks. Please refer to Parts VI and VII of this chapter for details. *[Added in January 2022]*

5.6 The ballot is autonomous and secret. No one may use any force or threaten to use force against a person to make him/her to vote or not to vote for any particular candidate at a contested election or to vote or not to vote in support of the candidate at an uncontested election. Also, no one is obligated to disclose which candidate he/she has voted for or is going to vote for at a contested election or whether or not he/she has voted or is going to vote in support of the candidate at an uncontested election. *[Added in January 2022]*

5.7 After collecting the ballot paper, an elector should immediately proceed to a voting compartment to mark the ballot paper on his/her own. Each voting compartment can only be used by one elector at a time only. Based on the principle of the autonomous and secret ballot, the law prohibits anyone (not even the relative or friend of the elector) to accompany or assist an elector to vote. If an elector has difficulty in marking his/her ballot paper, he/she may, as stipulated under the law, ask the PRO or the PRO’s deputy to mark the ballot paper on his/her behalf according to his/her voting preference, in the presence of 1 polling staff as a witness. Please refer to para. 5.42 below for details. *[Added in January 2022]*

5.8 No one is allowed to display, circulate, share or discuss with others any material containing the name and/or number of a candidate inside the polling station or the NCZ. Such acts are against the law. Nevertheless, it is not prohibited by the law for an elector to enter the polling station with a memorandum containing the name or number of the candidate of his/her choice (such as a leaflet bearing the information of the candidate or a reminder note commonly known as “thunder in the palm (掌心雷)”) for that elector’s own reference to mark the ballot paper inside the voting compartment. *[Added in January 2022]*

5.9 Under no circumstances is anyone allowed to induce an elector to vote or not to vote for a particular candidate at a contested election or to vote or not to vote in support of the candidate at an uncontested election by offering advantages, food, drink or entertainment, by using force or duress against a person, or by a deception, or to wilfully obstruct or prevent an elector from voting at the election. Such acts violate the ECICO. There are occasions when electors may require others to assist or transport them to access the polling station. However, the above acts must not be done deliberately to induce an elector to vote or not to vote for a particular candidate at a contested election or to vote or not to vote in support of the candidate at an uncontested election. For details about corrupt conduct to wilfully obstruct or prevent another person from voting at an election, please refer to para. 17.26 of Chapter 17. *[Added in January 2022]*

5.10 Exit polls may be conducted outside the exit of the polling station within the NCZ by organisations approved by the REO. Participation in any exit poll is entirely voluntary. Electors need not disclose to the organisations concerned which candidate they have voted for at a contested election or whether or not they have voted in support of the candidate at an uncontested election unless they wish to do so voluntarily. Please see Chapter 15 for matters relating to exit polls. *[Added in January 2022]*

PART II : THE VENUE

Gazettal of Notice

5.11 The CEO must designate by notice in the Gazette a place as the main polling station, a place as the counting station, and one or more places as dedicated polling station(s) (i.e. a place situated inside penal institutions or other suitable places (e.g. police stations) for registered electors who are imprisoned or held in custody by the law enforcement agencies on the polling day to cast their votes) at least 10 days before the polling day. Subject to the availability of suitable venues, both the main polling station and the counting station will be set up at the same location, or locations in close proximity to each other, with accessibility to electors with mobility difficulty [s18 of the EP (CEE) Reg]. *[Amended in January 2010, November 2011 and October 2016]*

5.12 If both the main polling station and the counting station are set up at the same location, the venue will be partitioned into 2 parts, i.e. the main polling station and the counting station. Within the counting station, there will be a counting zone, a media centre and seating areas for the electors, the candidate(s) and his/her/their agent(s), and members of the public to observe the counting of votes [s 46 of the EP (CEE) Reg]. *[Amended in January 2010 and January 2022]*

No Canvassing Zone and No Staying Zone

5.13 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 will be notified of these zones before the polling day [s 23 of the EP (CEE) Reg]. The RO may also authorise the PRO to vary the NCZ or the NSZ on the polling day [s 23(5A) of the EP (CEE) Reg]. (See Chapter 14) *[Amended in January 2007, January 2010 and October 2016]*

PART III : VOTING AND COUNTING

Polling Hours of Contested Election

5.14 At a contested election where there is more than 1 validly nominated candidate, multiple rounds of voting may need to be held on the polling day, and generally the first round of voting will start from 9 am until 11 am (except for dedicated polling stations situated in penal institutions – please see para. 5.15 below). Thereafter the count will start. If none of the candidates obtains more than 750 valid votes, another round of voting has to be held in accordance with the voting system described in Part I of Chapter 4. The new round of voting will start from 3 pm until 4 pm. The count will follow thereafter. If again none of the candidates obtains more than 750 valid votes and more than 2 candidates remain after the elimination process, the third round of voting will be held as required in accordance with the voting system. This round, if required, will start from 7 pm until 8 pm. Again, the count will follow thereafter. In the event that there is a need for the fourth round or further rounds of voting to be conducted in accordance with the voting system, it will be held on the following day [s 17(3) of the EP (CEE) Reg]. Under the voting system, where only 2 candidates remain or only 2 validly nominated candidates contested in the election and none of them obtains more than 750 valid votes in a single round of voting conducted for them, the election proceedings will be terminated and no further round of voting will be conducted [s 22(3)(e) of the CEEEO]. For details of the voting system, please refer to Part I of Chapter 4. *[Amended in January 2007, January 2010, November 2011 and January 2022]*

5.15 Different polling hours may be appointed for dedicated polling stations situated in penal institutions. As there is a need to separate some persons imprisoned or held in custody from others inside the penal institutions, the Commissioner of Correctional Services shall assign a time slot during the polling hours of a dedicated polling station situated in a penal institution to an elector allocated to that polling station to vote, and inform the elector of the time

slot assigned. The 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. 5.45 below). [S 17(7) to (11) of the EP (CEE) Reg] *[Amended in January 2007, January 2010 and October 2016]*

Polling Hours of Uncontested Election

5.16 At an uncontested election where there is only 1 validly nominated candidate, the time for conducting the poll will be published in the Gazette notice and in the polling notice sent to electors at least 10 days before the polling day. The polling arrangements in respect of the dedicated polling station are similar to those for a contested election as set out in para. 5.15 above. For details of the voting system, please refer to Part II of Chapter 4. *[Added in January 2007 and amended in January 2010 and October 2016]*

Polling Notice

5.17 For both contested and uncontested elections, at least 10 days before the polling day, the REO will issue to each elector a polling notice. The polling notice details the polling date, the address of the polling station allocated to him/her, and the time of the single round or the first 3 rounds of voting, depending on the number of validly nominated candidate(s). Along with the polling notice, there will be a location map of the polling station, detailed voting instructions and procedures on how the poll and the count will be conducted. If the CEO decides to change the polling station, the CEO must as early as practicable inform the electors, RO and PRO concerned in a manner deemed appropriate. To allow electors serving a sentence of imprisonment on the polling day to receive the polling notices as early as possible, the REO will send the polling notices to the penal institutions where the electors are serving their sentences insofar as practicable. [S 19 of the EP (CEE) Reg] *[Amended in January 2007, January 2010 and January 2022]*

5.18 At both contested and uncontested elections, the RO shall give notice in writing to a candidate or the election agent or any counting agent of the address of the counting station and the time of counting of votes. *[Added in January 2007 and amended in October 2016]*

PART IV : INSIDE AND OUTSIDE THE POLLING STATION

5.19 The PRO will be responsible for maintaining order inside a polling station, the NCZ and the NSZ. At the main polling station, there will be police officers and members of the Civil Aid Service (“CAS”) present to provide assistance whenever necessary. For dedicated polling stations, the PRO will be assisted by officers of the CSD or other law enforcement agencies. *[Amended in January 2010]*

5.20 About 30 minutes (or 15 minutes for dedicated polling stations situated in penal institutions) before the commencement of poll, the PRO will admit the candidate(s), his/her/their election agent(s) or polling agent(s) into the polling station to observe the opening of the sealed packets of ballot papers and the locking and sealing of ballot boxes. The PRO will show them that the sealed packets are not tampered with before opening them and the ballot boxes are empty before locking and sealing them. [S 29 of the EP (CEE) Reg] 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. *[Amended in January 2022]*

5.21 For dedicated polling stations situated in penal institutions, due to security reasons,

- (a) at a dedicated polling station situated inside a maximum security prison, only a maximum of 2 candidates may be present to observe the opening of the sealed packets of ballot papers and the locking and sealing of ballot boxes;
- (b) at a dedicated polling station situated in a penal institution other than a maximum security prison, only a maximum of 2 candidates, their 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.

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**. (Please refer to Chapter 7 for the procedures for election agents or polling agents to apply for admission to dedicated polling stations situated in penal institutions.)

[Amended in November 2011 and January 2022]

5.22 Where no candidates or none of their agents are present at the polling station, the above process of opening of the sealed packets of ballot papers and the locking and sealing of ballot boxes will be conducted in the presence of any 2 of the following persons inside the polling station: police officers, members of the CAS, officers of the CSD or polling staff (as the case may be). *[Amended in January 2010, October 2016 and January 2022]*

5.23 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 main polling station, or inside a dedicated polling station, to facilitate easy reference by electors. *[Amended in November 2011 and October 2016]*

5.24 The CEO will display a map or plan showing the respective boundaries of the main polling station, counting station and dedicated polling station outside the main polling station and counting station, or inside a dedicated polling station [s 18(7) of the EP (CEE) Reg]. An NCZ will be designated outside the 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 in the immediate vicinity 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 the static display of EAs authorised by the RO, such as EAs mounted at designated spots). A notice of the determination of the NCZ and a map or plan showing the boundary of the area will be put up at or near the polling station. (See Chapter 14) *[Amended in January 2007, January 2010, November 2011 and October 2016]*

5.25 On the polling day, a person must not:

- (a) engage in canvassing for votes (including suggesting not to vote for any candidate in the case of a contested election, or suggesting not to vote in support of the candidate in the case of an uncontested election) in an NCZ; *[Amended in January 2007]*
- (b) use a sound amplifying system or device for any purpose in the NCZ without lawful authority, except for the performance of duties by officers of the CSD on the polling day at the dedicated polling stations situated in penal institutions; *[Amended in November 2011]*
- (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 the activity can be heard in the NCZ; *[Amended in January 2007 and October 2016]*

- (d) display in the NCZ any promotional material relating to any candidate or the election of the CE, except for static display of EAs authorised by the RO (e.g. EAs mounted at designated spots);
[Amended in October 2016]
- (e) stay or loiter in the NSZ without the express permission of the PRO;
- (f) fail to comply with a lawful direction given by the RO or the PRO in an NCZ or NSZ;
- (g) cause an obstruction to any person who is in the NCZ or NSZ and on his/her way to vote; or
- (h) otherwise misconduct himself/herself in an NCZ or NSZ.

[S 24 of the EP (CEE) Reg]

5.26 If a person contravenes the requirements in para. 5.25 above, he/she may be required by the RO or PRO to produce his/her identity card for inspection and ordered by the RO or PRO to leave the NCZ or NSZ immediately. 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 RO or PRO, or an officer of the CSD or any law enforcement agency if the NCZ or NSZ is determined in relation to a dedicated polling station. The person so removed may not re-enter the relevant zone except with the express permission of the RO or PRO.
[Amended in January 2010 and October 2016]

5.27 A person who violates the provisions in paras. 5.25 and 5.26 commits an offence with a maximum penalty of a fine at level 2 (\$5,000) and an imprisonment for 3 months [s 82 of the EP (CEE) Reg].

PART V : ADMISSION TO THE POLLING STATION

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

- (a) a member of the EAC;
- (b) the RO;
- (c) an Assistant Returning Officer (“ARO”);
- (d) the CEO;
- (e) the PRO;
- (f) a polling staff;
- (g) a candidate;
- (h) an election agent (not applicable to dedicated polling stations situated in maximum security prisons);
- (i) a polling agent appointed for the polling station (not applicable to dedicated polling stations situated in maximum security prisons);
- (j) a public officer on duty at the polling station, including a police officer and a member of the CAS, etc.;
- (k) an officer of the CSD and other law enforcement agencies on duty at dedicated polling stations;
- (l) a child who accompanies an elector who enters the main polling

station for the purpose of voting (if the PRO considers that the child should not be left unattended while that elector is inside the polling station and will not disturb or cause inconvenience to any person in the main polling station);

- (m) a person authorised in writing by a member of the EAC or the CEO, subject to the conditions as imposed in the authorisation; or
- (n) a person authorised in writing by the RO for liaison purposes.

[S 26 of the EP (CEE) Reg] *[Amended in January 2007, January 2010 and October 2016]*

A notice will be displayed at the entrance to the main polling station or inside dedicated polling stations to show that only electors and designated/authorised persons may be allowed to enter. *[Amended in January 2010]*

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

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

Admission to the dedicated polling station is on a **first-come-first-served basis**. Observers will have to take turn in case more than 2 candidates/agents intend to

observe the poll at the same time. The PRO may regulate the number of people entering the dedicated polling station (see also Chapter 7). *[Added in January 2010]*

5.30 Except for electors, police officers, officers of the CSD, officers of any law enforcement agencies or members of the CAS who are on duty, all other persons permitted to enter a polling station are required to make a **Declaration of Secrecy** on a specified form¹⁰ before entering the polling station and observe the regulations on the secrecy of voting [s 69 of the EP (CEE) Reg]. *[Amended in January 2010]*

PART VI : HOW TO ISSUE BALLOT PAPERS

5.31 In accordance with s 34 of the EP (CEE) Reg, an EPR system will be adopted in the procedures for issuing ballot papers at the main polling station to increase the flexibility, efficiency and accuracy in issuance of ballot papers. If the polling stations concerned are dedicated polling stations, or in the event of a EPR system failure, the printed copy of EC FR will be used by polling staff in issuing ballot papers.

(a) Use of EPR System in Issuing Ballot Papers

Upon entry to the polling station, an elector will be directed to one of the ballot paper issuing desks to collect the ballot paper. The polling staff will request the elector to present his/her Hong Kong Permanent Identity Card (“HKID”). The polling staff will then check the elector’s HKID, and scan it with a tablet so as to verify whether the person is a member of the EC. If a specified identity document other than the HKID is presented by the elector, then the

¹⁰ Declaration can be made before Commissioner for Oaths/member of the EAC/RO/CEO/Justice of the Peace/solicitor with a practising certificate.

PRO's authorisation is to be obtained for the manual input of the elector's HKID number into the EPR system for verification purpose.

The polling staff will softly call out the name of the elector as stated in the entry in the EPR system. The polling staff will then show 1 unmarked ballot paper to the elector and issue the ballot paper to the elector. The EPR system will record the time of issuing ballot paper to the elector, but **no record will be made** as to which particular ballot paper is given to the elector. To ensure accurate record-keeping, the elector may view his/her name and partial HKID number on the screen of the EPR system during the issuance process.

(b) **Use of Printed Copy of EC FR in Issuing Ballot Papers**

If the polling stations concerned are dedicated polling stations, or in the event of EPR system failure, the **printed copy** of EC FR will be used by polling staff in issuing ballot papers. The polling staff will check the elector's identity document against the entry in the printed copy of EC FR to verify whether the person is a member of the EC. Thereafter, the polling staff will softly call out the name of the elector as stated in the entry in the printed copy of EC FR, and draw a line across the name and the identity document number therein to indicate that the ballot paper has been issued to the elector. The polling staff will conduct the line-drawing under observation of the elector to ensure accuracy, while at the same time covering up the entries of other electors in the printed copy of EC FR to ensure the privacy of other electors' personal data.

The polling staff will show 1 unmarked ballot paper to the elector and issue the ballot paper to the elector, and then request the elector to acknowledge the ballot paper is received. No record will be made as to which particular ballot paper is given to the elector.

(c) **Use of Printed Copy of EC FR in the Event of EPR System Failure**

In case the EPR system breaks down while in use on the polling day rendering the system inoperable, the fallback arrangement will be activated and the polling staff will use the printed copy of EC FR (as stated in (b) above) to issue ballot papers to electors until close of poll. At the same time, the fallback mode of the EPR system has to be activated to retrieve the information from the local storage device of the system inside the polling station. With this storage device, the polling staff can, prior to issuance of any ballot papers, check to confirm that an elector applying for ballot paper has not collected any ballot paper at the polling station when the EPR system was in use. The HKID numbers of electors who have collected their ballot papers when the EPR system was in use are recorded in the storage device in an encrypted form, but the personal particulars of these electors, such as their names, will not be recorded.

[S 34 of the EP (CEE) Reg] *[Amended in January 2022]*

At the time of issuing the ballot paper, the polling staff will also supply an elector with a chop with a “✓” sign.

5.32 To facilitate the verification of the total number of ballot papers issued, the counterfoil of each ballot paper bears a serial number on its front. However, the serial number will not appear on the ballot paper, and neither the polling staff nor the EPR system will record the serial number of the ballot paper issued to an elector [ss 30(3) and 34(4) of the EP (CEE) Reg]. The polling staff and the EPR system will only register the quantity of ballot papers issued to electors at the ballot paper issuing desks for calculating the hourly voter turnout and cumulative voter turnout. *[Amended in January 2022]*

5.33 According to the established procedures, all ballot papers are issued at the ballot paper issuing desks and counted towards the cumulative voter turnout. “TENDERED” ballot papers and ballot papers issued to electors in replacement of “SPOILT” ballot papers must be handled by the PRO and issued at the PRO desk (please refer to paras. 5.50 and 5.51 below for details). *[Added in January 2022]*

PART VII : QUEUING ARRANGEMENT

5.34 Electors have to queue up to enter the polling station. A seated waiting area is provided outside the polling station for electors with special needs to take rest before entering the polling station to collect their ballot papers. Besides, to avoid long queues during the poll, a number of ballot paper issuing desks and voting compartments will be set up inside the polling station. The practical arrangements for electors to collect their ballot papers at ballot paper issuing desks will be different having regard to different ways of issuing ballot papers.

(a) Queuing Arrangement When the EPR System is Used

When ballot papers are issued via the EPR system, all ballot paper issuing desks are equipped with the tablets of the EPR system.

The ballot paper issuing desks are no longer individually confined to a group of HKID prefixes allocated according to the printed copy of EC FR, and electors can flexibly collect their ballot papers at any ballot paper issuing desks.

(b) **Queuing Arrangement When Printed Copy of EC FR is Used**

As for polling stations where the EPR system cannot be adopted, the printed copy of EC FR will be used in issuing ballot papers. To avoid duplicate issuance of ballot papers, the printed copy of EC FR will be split into parts, by the alphabetical prefixes of HKID number. The number of parts shall match the number of the ballot paper issuing desks, and the parts of the printed copy of the EC FR are then distributed to the issuing desks accordingly. Electors are required to collect their ballot papers at their respective ballot paper issuing desk according to their HKID number. A line will be drawn across the entry of the elector in the printed copy of EC FR when that elector has collected the ballot paper.

(c) **Queuing Arrangement When Switching to Printed Copy of EC FR is Required due to EPR System Failure**

In case the EPR system is rendered inoperable after it breaks down during use, the polling station should activate the fallback mode and switch to using the printed copy of EC FR for issuing ballot papers. The arrangement of collecting ballot papers at each ballot paper issuing desk will be identical to the arrangement when using the printed copy of EC FR for issuing ballot papers. However, polling staff must first check the record in the encrypted local storage device and confirm that the elector has not collected any ballot paper prior to activation of the fallback mode so as to avoid duplicate issuance of ballot papers.

[Added in January 2022]

**PART VIII : PRESENTATION OF DOCUMENT FOR
COLLECTING BALLOT PAPER**

5.35 Upon 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. The elector only be issued with the ballot paper only if the PRO or polling staff is satisfied with the document presented:

- (a) the original of the elector's HKID;
- (b) alternative documents:
 - (i) 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);
 - (ii) a document issued by the Commissioner of Registration acknowledging that the elector has applied:
 - (1) to be registered under the Registration of Persons Ordinance; or
 - (2) for a new HKID issued under regulation 13 or 14 of the Registration of Persons Regulations but is awaiting its issuance;

- (iii) a valid HKSAR Passport issued to the elector under the Hong Kong Special Administrative Region Passports Ordinance;
 - (iv) a valid HKSAR seaman's identity book issued to the elector under regulation 3 of the Immigration Regulations (Cap 115A);
 - (v) a valid document of identity issued to the elector under regulation 3 of the Immigration Regulations; or
- (c) a document evidencing the elector's report to a police officer of the loss or destruction of document referred to in para. 5.35(a), (b)(i) or (ii) above, together with the original of a valid passport or similar travel document (not being one referred to in para. 5.35(a), (b)(i) to (v) above) issued to him/her showing his/her name and photograph.

[S 34 of the EP (CEE) Reg] *[Amended in January 2022]*

5.36 An elector applying for a ballot paper at a dedicated polling station situated in a penal institution is required to produce 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 34 of the EP (CEE) Reg] *[Added in January 2022]*

5.37 If there are reasonable grounds 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 EC FR as follows (the PRO to read the whole entry as it is recorded in the FR)?
- (b) Have you already cast a vote in this round of voting? (for a contested election)

or

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

The person will not be issued with any ballot paper unless he/she has answered the questions to the satisfaction of the PRO. [S 32 of the EP (CEE) Reg] *[Amended in January 2007]*

5.38 Where there is reasonable cause to believe that a person has engaged in corrupt conduct of impersonation of an elector, the PRO may request a police officer to arrest that person. If the polling station is a dedicated polling station, the PRO may request the officer of the CSD or the law enforcement agency to remove the person concerned from the polling station and report the case to the police. [S 33 of the EP (CEE) Reg] *[Amended in January 2010]*

PART IX : VOTING METHODS

5.39 After being issued with the ballot paper, the elector should immediately proceed to one of the voting compartments to mark his/her ballot paper. One compartment can only be used by one elector at one time. *[Amended in January 2007 and October 2016]*

5.40 An elector must use the chop supplied to mark his/her choice of candidate on the ballot paper at a contested election or his/her choice of “support” or “not support” at an uncontested election. He/She should then fold

the ballot paper so that the marked side is inside, before leaving the voting compartment and insert the folded ballot paper into the ballot box located near the exit of the polling station. *[Amended in January 2007]*

NOTE :

After being issued with the ballot paper, an elector must proceed to a voting compartment to mark the ballot paper immediately and, after casting his/her vote, leave the polling station without undue delay. A person who fails to obey any order of the PRO or misconducts himself/herself commits an offence. The PRO may seek assistance from the police and order the person to leave the polling station immediately [s 27(7), (8) and (10) of the EP (CEE) Reg].

If an elector deliberately makes an error in marking the ballot paper and asks the PRO to issue a new ballot paper to him/her repeatedly, the PRO may reject his/her request. If there is a reasonable cause to believe that a person impersonates an elector to apply for a ballot paper, the PRO may request a police officer to arrest that person [s 33 of the EP (CEE) Reg]. A person engages in corrupt conduct if he/she directly or indirectly, by a deception, induces another person not to vote at the election, or wilfully (whether or not deception is involved) obstructs or prevents another person from voting at the election [s 14 of the ECICO]. It is an offence for a person to take away a ballot paper from a polling station. Furthermore, it is a corrupt conduct for any person to, without lawful authority, destroy, deface, take or otherwise interfere with a ballot paper in use or having been used at the election; or without lawful authority, destroy, remove, open or otherwise interfere with a ballot box in use at the election [s 17 of the ECICO].

Candidates/their agents and electors should make a complaint to the PROs, RO, law enforcement agencies or EAC with regard to any event possibly contravening the electoral law. All complaints will be treated in strict confidence. The EAC will refer any complaints of suspected violation of the law to the law enforcement agencies for follow-up action.

[Added in January 2022]

5.41 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 37(3) of the EP (CEE) Reg]. The template should be returned to the polling staff after use (for details about the template, see para. 7.38 of Chapter 7). *[Added in January 2022]*

5.42 An elector must mark his/her ballot paper by himself/herself and cannot request other electors to do it on his/her behalf. If an elector is unable to mark the ballot paper by himself/herself (e.g. due to inability to read or visual impairment or other physical conditions), he/she may ask the PRO, Deputy PRO or any Assistant PRO to mark the ballot paper on his/her behalf. The marking of the ballot paper as such must be made in the presence of 1 polling staff as a witness. [S 37(1) of the EP (CEE) Reg] (See paras. 7.37 and 7.38 of Chapter 7) *[Amended in January 2022]*

5.43 **The ballot is secret. No one is allowed to use force or duress, or threaten to use force or duress, against a person to make him/her vote or not vote for any particular candidate at a contested election, or vote or not vote in support of the candidate at an uncontested election [s 13 of the ECICO]. Also no one is required to disclose which candidate he/she has voted for or is going to vote for at a contested election, or whether or not he/she has voted or is going to vote in support of the candidate at an uncontested election.** A person who, without lawful authority, requires or

purports to require an elector to disclose the name of, or any particular relating to, the candidate for whom the elector has voted at a contested election or disclose whether or not he/she has voted in support of the candidate at an uncontested election commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [ss 78 and 82 of the EP (CEE) Reg].
[Amended in January 2007 and January 2022]

5.44 To safeguard the secrecy of the ballot by electors, 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 the law, commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months. [Ss 70(1)(a), (aa), (2) and 82 of the EP (CEE) Reg]
[Added in January 2010 and amended in October 2016]

Issuance of “UNUSED”, “SPOILT” or “TENDERED” Ballot Papers

5.45 If for a reason considered justified by the PRO, an elector cannot cast his/her vote after a ballot paper has been issued to him/her, he/she may, with the permission of the PRO, hand back the ballot paper to the PRO and return later to cast his/her vote [s 35(1) of the EP (CEE) Reg]. If after having been issued with a ballot paper, an elector has become incapacitated from voting by physical illness and has left the polling station without casting his/her vote, he/she may return to the polling station to cast his/her vote before the close of that round of voting at a contested election or the close of poll at an uncontested election, provided that before he/she leaves the polling station, his/her ballot paper has been returned to the PRO [s 35(5) of the EP (CEE) Reg]. For a dedicated polling station situated in a penal institution, the elector concerned will also need to return to cast his/her vote within the existing or any newly assigned time slot [s 35(5B) of the EP (CEE) Reg].

5.46 Under the above circumstances, for the main polling station, the following procedures must be taken by the PRO:

- (a) the PRO must keep the ballot paper in his/her custody and re-issue such ballot paper, in the presence of a police officer to the elector in question when the latter returns before the close of that round of voting at a contested election or the close of poll at an uncontested election to cast his/her vote [s 35(3) of the EP (CEE) Reg]; and
- (b) if at the close of that round of voting at a contested election or the close of poll at an uncontested election, the elector has not returned, the PRO shall endorse the ballot paper with the 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 35, 39 and 50 of the EP (CEE) Reg].

[Amended in January 2007, January 2010, October 2016 and January 2022]

5.47 For a dedicated polling station, 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 the 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 that round of voting at a contested election or the close of poll at an uncontested election to cast his/her vote [s 35(3) and (6) of the EP (CEE) Reg];

- (c) where a dedicated polling station situated in a penal institution is concerned, the Commissioner of Correctional Services or his/her officer must as far as practicable assign to the elector a new time slot within the polling hours appointed for that dedicated polling station, and notify the elector of the new time slot [s 35(2B) and (5A) of the EP (CEE) Reg]; and
- (c) if at the close of that round of voting at a contested election or the close of poll at an uncontested election, the elector has not returned, the PRO shall endorse the ballot paper with the 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 39 and 50(1)(d) of the EP (CEE) Reg].

[Added in January 2022]

5.48 If any issued ballot paper (whether marked or unmarked) is found abandoned or left behind in a voting compartment or other areas inside the polling station, it must be handed in to the PRO. The ballot paper will be endorsed with the words “**UNUSED**” and “**未用**” on the front and be kept by the PRO. In no circumstances can such ballot paper be put into the ballot box. Such a ballot paper will not be counted at the counting of votes. [Ss 39 and 50 of the EP (CEE) Reg]

5.49 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. 5.45 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 will not be counted at the counting of votes [ss 39 and 50 of the EP (CEE) Reg]. *[Amended in January 2007 and October 2016]*

5.50 Any elector who has inadvertently torn or damaged his/her ballot paper or has made an error in marking the 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 with the words “**SPOILT**” and “**損壞**” on the front and be kept by the PRO. Spoiled ballot papers will not be counted at the counting of votes. [Ss 40 and 50 of the EP (CEE) Reg] *[Amended in January 2007 and October 2016]*

5.51 Where a person, claiming to be a particular elector on the EC FR, 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 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. 5.37 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. Such a ballot paper shall not be counted at the counting of votes [ss 38 and 50 of the EP (CEE) Reg]. *[Amended in October 2016]*

5.52 After casting their votes, electors shall leave the main polling station and may proceed to the counting station to observe the count, or leave the venue. In a contested election, electors at the main polling station are encouraged to observe the count and stay until the counting result is known so that they may proceed to the polling station for the second round of voting and so on if required (please see para. 5.14). If any additional round of voting is required, the RO will make a public announcement through the electronic media. Electors who have left the venue should keep a close watch on such an announcement and return to the main polling station in time to cast their votes. Alternatively, they may enquire through the REO hotline about the need to return for another round of voting if they do not have access to the electronic media. *[Amended in January 2007 and January 2010]*

5.53 An elector who has cast his/her vote in a dedicated polling station in the first round of voting will be informed by an officer of the CSD or law enforcement agency if an additional round of voting is required. The Commissioner of Correctional Services or his/her officer shall assign a time slot to an elector allocated to vote at a dedicated polling station situated in a penal institution to cast his/her vote in the next round of voting. *[Added in January 2010 and amended in October 2016]*

PART X : CONDUCT INSIDE THE POLLING STATION

5.54 In a polling station, a person must not:

- (a) engage in canvassing for votes (including suggesting not to vote for any candidate in the case of a contested election, or suggesting not to vote in support of the candidate in the case of an uncontested election); *[Amended in January 2007]*
- (b) display any promotional material relating to the CE election or any candidate;
- (c) fail to comply with a lawful direction given by the RO or PRO;
- (d) disrupt the poll or disturb or cause inconvenience to any person; or
- (e) otherwise misconduct himself/herself,

otherwise he/she commits an offence and will be liable to a fine and to imprisonment and may be required by the RO or PRO to produce his/her identity card for inspection and ordered by the RO or PRO to leave the polling station immediately. 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 the main polling station);
- (b) an officer of the CSD or other law enforcement agency (if the polling station is a dedicated polling station); or
- (c) any other person authorised in writing by the RO or PRO to remove him/her.

The person so removed may not re-enter the polling station on the polling day except with the express permission of the RO or PRO. Nevertheless, the powers conferred on the RO and PRO are not to be exercised to order an elector to leave the polling station or remove an elector from the polling station for the purpose of preventing the elector from voting. [S 27 of the EP (CEE) Reg] *[Added in January 2010 and amended in October 2016 and January 2022]*

5.55 Only the following persons may speak to or communicate with electors, and use a mobile phone, paging machine or any other form of communication device within a polling station:

- (a) a member of the EAC;
- (b) the RO and an ARO;
- (c) the CEO;
- (d) the PRO and other polling staff;
- (e) a public officer, a police officer or a member of the 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 RO for liaison purposes; and
- (h) a person authorised in writing by a member of the EAC or the CEO.

[S 27 of the EP (CEE) Reg] *[Amended in January 2007, January 2010, October 2016 and January 2022]*

5.56 Any person who undertakes photographing, filming and video or audio recording within a polling station without the express permission of the PRO, the RO or a member of the EAC, commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [ss 27 and 82 of the EP (CEE) Reg]. Normally such permission is only granted to government photographers for publicity purposes. *[Amended in January 2007]*

PART XI : CLOSE OF POLL

5.57 After the close of poll, the PRO will lock and seal the ballot box [s 41 of the EP (CEE) Reg]. Candidate(s) and his/her/their agent(s) can accompany the PRO in the delivery of the ballot boxes from a polling station to the counting station. *[Added in January 2010]*

NOTE :

Under the principle of secrecy of the ballot, given the relatively small number of votes cast at the dedicated polling stations, votes cast will not be counted therein. After the close of poll, the ballot boxes at the dedicated polling stations will be delivered to the

counting station and mixed with the ballot papers received from the main polling station before counting. *[Added in January 2022]*

PART XII : THE COUNT

5.58 The count will be conducted in the presence of the candidate(s), or his/her/their election agent(s) or counting agent(s), if they are present. The ballot box(es) at the dedicated polling station(s) will be delivered to the counting station under police escort. Such ballot box(es), together with the ballot box(es) at the main polling station, will then be unsealed and opened by the RO, witnessed by all those present in the counting zone. The ballot papers cast at all polling stations will be mixed and the count will be conducted manually by counting staff. *[Amended in January 2010]*

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

- (a) a member of the EAC;
- (b) the RO, an ARO and counting staff;
- (c) the CEO;
- (d) candidate(s), his/her/their election agent(s) and counting agent(s);
- (e) an elector;
- (f) a public officer, a police officer or a member of the CAS on duty at the counting station; and

- (g) a person authorised in writing by a member of the EAC or the CEO, subject to the conditions as imposed in the authorisation.

Candidate(s) and his/her/their agent(s) are prohibited from entering the restricted zone. Any member of the public may observe the counting of votes from an area (“the public area”) at the counting station set apart for that purpose by the RO, unless the RO considers that his/her presence may:

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

[S 46 of the EP (CEE) Reg] *[Amended in January 2007]*

5.60 Members of the public and the media have the rights to observe the count at the counting station. That said, to maintain order inside the counting station, there are always occasions that the RO has to reject further entrants when the area designated for the public reaches the maximum capacity. To enhance the transparency of the admission arrangement for counting stations, a notice stating the maximum capacity of the public area will be displayed outside the counting station by the RO. *[Added in January 2022]*

5.61 Besides, photography and/or video-recording is allowed inside the counting station. Members of the public (including the media) can take photographs and/or videos inside the public area (excluding inside the counting zone). For record purposes, closed-circuit televisions will be installed in the counting station (including inside the counting zone) to record the actual situation of the counting station (including the public area). *[Added in January 2022]*

5.62 As mentioned in para. 5.52 above, electors may proceed to the counting station to observe the count and wait for the counting result after casting their votes, but they are not allowed to enter or stay inside the counting zone. Every person authorised to be present at the counting zone, other than the police officers and members of the CAS on duty, must make a **Declaration of Secrecy** on a specified form¹¹ before entering the counting zone and observe the regulations on the secrecy of voting [s 69 of the EP (CEE) Reg]. Members of the public and the media present within the public area and the media area will not be required to make a Declaration of Secrecy. *[Amended in January 2010 and January 2022]*

5.63 The valid ballot papers will be placed in separate transparent plastic boxes on the table according to the choices marked by the electors on the ballot papers and counted manually. Questionable ballot papers, if any, will be put aside. The RO will then gather together all candidates or their election/counting agents at a contested election, or, the only validly nominated candidate or his/her election/counting agent(s) at an uncontested election, to witness his/her determination on the validity of these questionable ballot papers. For details of the procedure, see Part XIII below. Thereafter, the valid votes obtained by each/the candidate will be counted. **At no time should a candidate, his/her election agent or counting agent(s) touch any ballot papers.** At the end of the count, the number of ballot papers will be verified by comparing the summation of valid votes cast for individual candidates at a contested election, or valid “support” and “not support” votes cast for the only validly nominated candidate at an uncontested election, as well as invalid ballot papers, with the ballot paper account of the main polling station. *[Amended in January 2007 and January 2022]*

5.64 When the number of ballot papers has been verified, the RO will declare the election result. He/She shall display a notice of the result of the

¹¹ Declaration can be made before Commissioner for Oaths/member of the EAC/RO/CEO/Justice of the Peace/solicitor with a practising certificate.

election at a prominent place immediately outside the counting station and publish the result of the election in the Gazette as soon as practicable [s 55 of the EP (CEE) Reg and s 28 of the CEEEO]. *[Amended in January 2022]*

5.65 Except with the express permission of the RO or a member of the EAC (as the case may be), any person who undertakes photographing, filming and video or audio recording in the counting zone during the period commencing from the time at which the counting of the votes is to begin at the zone and ending upon the completion of the counting and re-count, if any, at the zone commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months [ss 47(2) and (2A) and 82(1) of the EP (CEE) Reg]. *[Amended in November 2011]*

5.66 In a counting station, a person must not:

- (a) fail to comply with a lawful direction given by the RO;
- (b) display any promotional material relating to the CE election or any candidate;
- (c) use a sound amplifying system or device for any purpose without lawful authority or the express permission of the RO;
- (d) disrupt the counting of the votes or disturb or cause inconvenience to any person; or
- (e) otherwise misconduct himself/herself,

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 required by the RO to produce his/her identity card for inspection and ordered by the RO to leave the counting station immediately. The RO may also require a person to produce

his/her identity card for inspection and order the person to leave the counting station immediately if the person conducts himself/herself in such a 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 RO. The person so removed may not re-enter the counting station on the same day except with the permission of the RO [ss 47 and 82(1) of the EP (CEE) Reg]. *[Amended in October 2016]*

PART XIII : RULES RELATING TO COUNTING

Invalid Ballot Papers

5.67 A ballot paper is invalid if:

- (a) it is endorsed on the front with the words “**TENDERED**” and “**重複**”;
- (b) it is endorsed on the front with the words “**SPOILT**” and “**損壞**”;
- (c) it is endorsed on the front with the words “**UNUSED**” and “**未用**”;
- (d) it is unmarked; or
- (e) votes for more than one candidate are recorded for a contested election or both “**SUPPORT**” and “**NOT SUPPORT**” votes are recorded for an uncontested election.

These ballot papers will be set aside as invalid on the spot. They will not be counted and will not be treated as questionable ballot papers. A candidate, an election agent or a counting agent may inspect these ballot papers but is not

entitled to make representations to the RO concerning these ballot papers.
[S 50 of the EP (CEE) Reg] [*Amended in January 2007 and January 2022*]

Questionable Ballot Papers

5.68 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 RO:

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

However, the RO 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; or

- (d) it is void for uncertainty.

[Ss 50 and 51 of the EP (CEE) Reg] *[Added in January 2007 and amended in October 2016]*

When deciding on the validity of the ballot papers in (a) above, the RO will make reference to the judgment made by the Court on an election petition case (HCAL 127/2003). In that case, the Court ruled that the handwritten tick found on the ballot paper in question in the said election petition was considered a mark by which the elector could possibly be identified. The validity of ballot papers with any other writing or mark will remain to be determined by the RO on a case-by-case basis. [S 51(3) of the EP (CEE) Reg] *[Added in November 2011]*

5.69 A ballot paper which appears to the **counting staff** to be one which may not be valid or which may not be counted for any of the reasons set out in the preceding paragraph will be placed aside as **questionable ballot paper**. The validity of all questionable ballot papers shall be decided by the RO [s 51(2) of the EP (CEE) Reg]. Before the RO makes his/her decision, a candidate, his/her election agent or counting agent(s) is allowed to inspect questionable ballot papers so set aside, in the presence of the RO and (in a contested election) other candidates or their election or counting agents who are present. The candidate(s), his/her/their election agent(s) or counting agent(s) may also make representations to the RO [s 51(1)(b) of the EP (CEE) Reg]. After considering the representations, the RO must make his/her decision on the validity of the questionable ballot paper. *[Amended in January 2007]*

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

- (a) The RO will inform the candidate(s) and the election/counting agent(s) 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 51(1) of the EP (CEE) Reg];

- (b) The RO will then consider their representations and make his/her final decision on the validity of the questionable ballot paper (see para. 5.71 below) [s 51(2) of the EP (CEE) Reg];
- (c) If the RO decides that a questionable ballot paper is invalid and, therefore, not to be counted, he/she must endorse the words “rejected” and “不獲接納” on the front of it. In that case, if any candidate, election agent or counting agent objects to the decision, the RO must also endorse the words “rejection objected to” and “反對此選票不獲接納” on the front of the ballot paper [s 51(4) of the EP (CEE) Reg];
- (d) If any candidate, election agent or counting agent objects to the decision of the RO to count a questionable ballot paper, the RO must endorse the words “acceptance objected to” and “反對此選票獲接納” on the front of the ballot paper [s 51(5) of the EP (CEE) Reg]; and
- (e) The RO shall prepare a statement to record his/her decisions made in respect of all questionable ballot papers [s 51A of the EP (CEE) Reg].

[Amended in January 2007 and October 2016]

5.71 The decision of the RO with regard to any question arising in respect of any ballot paper shall be **final** [s 51(8) of the EP (CEE) Reg], which may only be questioned by an election petition [s 32 of the CEEO].

5.72 After the vote counting is completed, the RO will make known the counting result to the candidate(s) or his/her/their election agents or counting agents present. Candidate(s) or his/her/their election agent(s) may request the RO to re-count the votes, and the RO shall comply with the request unless in his/her opinion the request is unreasonable. [S 53 of the EP (CEE) Reg] *[Added in January 2022]*

5.73 A candidate who obtains more than 750 valid votes in any round of voting is returned at the election. The RO shall as soon as practicable publicly declare that candidate as elected at the election and publish the result of the election in the Gazette. However, if no candidate obtains more than 750 valid votes in the single round of voting conducted for the candidate(s), no candidate is returned at the election. The RO must publicly declare that no candidate is returned at the election, and publish the declaration and the result of the poll as well as a notice of termination of the election proceedings for the election in the Gazette. (Please refer to Chapter 4 for details) [Ss 22 and 28 of the CEEO] *[Added in January 2022]*

PART XIV : DISPOSAL OF DOCUMENTS

5.74 As soon as practicable after the RO has ascertained the result of the poll in an election, he/she shall seal all the relevant documents and ballot papers into packets. Candidate(s) and his/her/their agent(s) may observe the packaging [s 56 of the EP (CEE) Reg].

5.75 The RO will deposit these sealed packets together with other documents including the nomination form(s), notices of appointment of agents, etc. with the CEO for safe custody for at least 6 months from the termination of the proceedings for or the result of the election to which they relate before they are destroyed. [Ss 57 and 59 of the EP (CEE) Reg]

5.76 **Except pursuant to a court order** in relation to an election petition or other legal proceedings, **no person may inspect any ballot paper in the custody of the CEO.** [S 58 of the EP (CEE) Reg]

PART XV : POSTPONEMENT OR ADJOURNMENT OF THE POLLING OR THE COUNTING OF VOTES

5.77 The CEEO and the EP (CEE) Reg stipulate the provisions on the postponement or adjournment of the polling or counting of votes of a CE election. *[Added in January 2022]*

5.78 If, before the commencement of or during the poll or counting of votes of a CE election, the EAC is of the opinion that the poll or counting is likely to be or is being obstructed, disrupted, undermined or seriously affected by (a) riot, open violence or any danger to public health or safety; (b) a typhoon or other climatic condition of a serious nature; or (c) an occurrence which appears to the EAC to be a material irregularity relating to the election, the poll or counting of the votes, then the EAC may direct the postponement or adjournment of the poll or the counting of votes. [S 21(1) and (2) of the CEEO and s 61(1) and (2) of the EP (CEE) Reg] *[Added in January 2022]*

5.79 If the poll or counting of votes of a CE election has to be postponed or adjourned in accordance with s 21 of the CEEO or s 61 of the EP (CEE) Reg, the EAC shall appoint a date for conducting the poll or counting of votes (if the poll or counting of votes is postponed) or resuming the poll or counting of votes (if the poll or counting of votes is adjourned) as soon as practicable after the postponement or adjournment of the poll or counting of votes. The date appointed must not be later than 14 days after the date originally scheduled. Pursuant to the established contingency measures of the EAC, the poll or counting of votes will usually be postponed or adjourned to the fallback polling day on the following Sunday. The relevant electoral ordinance and regulation

do not provide that the poll or counting of votes once postponed or adjourned can be further postponed or adjourned. [S 65 of the EP (CEE) Reg] [*Added in January 2022*]

CHAPTER 6

ELECTION PETITION AND JUDICIAL REVIEW

PART I : GROUNDS FOR LODGING AN ELECTION PETITION

6.1 Under s 32(1) of the CEEO, the result of a CE election may be questioned only by an election petition. However, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee on National Security [s 9B of the CEEO]. Subject to the above requirement, an election petition to question a CE election can only be lodged on the following grounds:

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

- (vi) corrupt or illegal conduct was generally prevalent at the election; or
 - (vii) material irregularity occurred in relation to the election, the poll at the election or the counting of votes in respect of the election; or
- (b) the only validly nominated candidate was not returned at the election because material irregularity occurred in relation to the election, the poll at the election or the counting of votes in respect of the election.

[Amended in January 2007 and January 2022]

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

6.2 An election petition may be lodged:

- (a) by a candidate; or
- (b) by a person:
 - (i) who was determined to be not validly nominated by the CERC; or
 - (ii) who was disqualified from being elected after the end of the nomination period under s 20 of the CEEO,

provided that the election petition is supported by at least 10 EC members.

[S 33 of the CEEO] *[Amended in January 2007 and January 2022]*

6.3 An election petition must be lodged with the CFI within 7 working days from the declaration of the election result [s 34(1) of the CEEO]. If the office of the CFI is closed on the last day of the deadline for lodging election petitions, the relevant deadline will be extended to the date that the office resumes operation [s 71(1A)(a) of the Interpretation and General Clauses Ordinance]. Any application for leave to appeal against the decision of the CFI must be lodged with the CFA within 7 working days after the day on which the relevant judgment of the CFI is handed down, and the applicant shall give the opposite party 3 days' notice of his/her intended application at any time during the period of 7 working days [s 34(2) of the CEEO]. At the end of the trial of an election petition, the CFI shall announce its determination by means of a written judgment [s 37(2) of the CEEO]. *[Amended in November 2011 and January 2022]*

PART III : JUDICIAL REVIEW

6.4 An application for judicial review which puts in issue whether a candidate is duly determined to be not returned at an election or whether the candidate elected can lawfully assume the office of the CE must be made within 30 days after the publication of election result. This deadline may be extended only if:

- (a) the applicant has used his/her best endeavours to make the application or commence the proceedings within the 30 days; and

- (b) the Court considers that it would be in the interest of justice to do so.

[S 39 of the CEEO] *[Amended in January 2007]*

CHAPTER 7

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

PART I : GENERAL

7.1 This chapter deals with the appointment of agents at an election and their roles. 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 post, by electronic mail or by facsimile transmission, the notice must be delivered to the CEO or the RO, as the case may be, 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 or the RO, as the case may be, 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. *[Amended in January 2022]*

7.2 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 appointment. *[Added in January 2022]*

7.3 A candidate should think carefully before selecting any of his/her agents. He/She should choose persons suitable for the task. The agents 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

7.4 A candidate may appoint the following agents to assist him/her in the CE election:

- (a) **1** election agent [s 12 of the EP (CEE) Reg];
- (b) **any number** of election expense agents [s 13 of the EP (CEE) Reg];
- (c) not more than **3** polling agents for the main polling station [s 25 of the EP (CEE) Reg];
- (d) **1** polling agent for each dedicated polling station situated in a penal institution other than a maximum security prison [s 25 of the EP (CEE) Reg]; and

(Only candidates themselves may enter a maximum security prison (see para. 7.23 below). For arrangements regarding admission of election agents or polling agents to dedicated polling stations situated in penal institutions, please refer to paras. 7.13 to 7.15 and paras. 7.23 to 7.25 below.)

- (e) not more than **2** counting agents [s 44 of the EP (CEE) Reg].

[Amended in January 2010 and October 2016]

PART III : QUALIFICATIONS OF AGENTS

7.5 The election, polling and counting agents should be holders of Hong Kong identity card and have attained the age of 18 years [ss 12(2), 25(3) and 44(2) of the EP (CEE) Reg] while an election expense agent needs to be a person who has attained the age of 18 years [s 13(1) of the EP (CEE) Reg].

PART IV : CIVIL SERVANTS ACTING AS AGENTS

7.6 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 RO, 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 when participating in electioneering activities. To avoid any unfairness or appearance of unfairness or conflict of interest, civil servants who have extensive contacts with the public are strongly advised not to accept appointment by a candidate in the election to be his/her agent and/or participate in electioneering activities in the election. Civil servants who participate in electioneering activities, including the seeking of election donations, for any candidate 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 government staff¹². *[Amended in November 2011, October 2016 and January 2022]*

¹² For the purpose of this set of Guidelines, non-civil service government staff refer to the following types of staff appointed on non-civil service terms directly employed by the HKSAR Government –

- (a) those employed under the Non-Civil Service Contract Staff Scheme pursuant to Civil Service Bureau (CSB) Circular No. 2/2001;
- (b) those employed under the Post-retirement Service Contract Scheme pursuant to CSB Circular No. 13/2015; and
- (c) those employed on non-civil service terms holding public offices that do not fall under the categories of (a) or (b) above.

PART V : ELECTION AGENT

Appointment

7.7 A candidate may appoint **1** election agent to assist him/her in the CE election. The candidate shall give notice of the appointment of his/her election agent to the RO. The notice must be in the specified form, signed by both the candidate and the election agent and delivered by hand, by post, by electronic mail or by facsimile transmission 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 14(3) of the EP (CEE) Reg]. The appointment will not be effective until the notice of appointment is received by the RO [s 14(7) of the EP (CEE) Reg]. *[Amended in October 2016]*

7.8 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. Expenses incurred by an election agent purporting to be appointed as an election expense agent before the notice of appointment is duly received by the RO 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]. *[Amended in November 2011 and October 2016]*

Revocation

7.9 The appointment of an election agent may be revoked by the candidate at any time. The candidate must also give notice of the revocation in writing in the specified form and deliver the signed notice by hand, by post, by electronic mail or by facsimile transmission to the RO. If the notice of revocation

is given on the polling day, it should not be delivered to the RO by post. A revocation of an appointment of an election agent will not be effective until such notice is received by the RO. [S 14(4), (5) and (7) of the EP (CEE) Reg] *[Amended in November 2011 and October 2016]*

7.10 If an election agent dies or has his/her appointment revoked, the candidate may appoint another election agent. In such a case, the candidate must give notice of the replacement appointment in the specified form to the RO in accordance with para. 7.7 above. Like other election agents, the new election agent has to follow the arrangements set out in paras 7.12 to 7.15 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 penal institution (other than a maximum security prison). [S 14(6) of the EP (CEE) Reg] *[Amended in January 2010 and October 2016]*

Notification

7.11 As soon as practicable after the receipt of a notice of appointment of an election agent by a candidate, the RO will send a notice containing the particulars of the election agent (i.e. name and correspondence address) to every other candidate (including a person who is being or has been nominated to stand for the election) [s 15 of the EP (CEE) Reg]. The RO must also display outside his/her office a notice of the particulars of the election agents [s 14(8) of the EP (CEE) Reg]. *[Amended in November 2011]*

Role of an Election Agent

7.12 A duly appointed election agent ranks in the **most important position** amongst all kinds of agents of a candidate. He/She has the **authority to do everything a candidate is authorised to do** under the EP (CEE) 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 appoint an election agent;
- (d) to appoint an election expense agent;
- (e) to incur election expenses save where he/she has been appointed as an election expense agent by the candidate;
- (f) to revoke the appointment of an election agent or election expense agent; and
- (g) to be present in a dedicated polling station situated in a maximum security prison.

[S 12(3) of the EP (CEE) Reg] *[Amended in January 2007, January 2010 and October 2016]*

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 appointed as an election expense agent by a candidate to incur election expenses. If so appointed, the election

agent becomes also an election expense agent (see Part VI of this chapter). *[Amended in November 2011]*

7.13 The candidate(s) and his/her/their election agent(s) may be present inside the polling station and at the counting of the votes. They should observe the same rules as applied to the polling agents and counting agents (see Parts VII and VIII of this chapter). Due to security reasons, only candidates may enter dedicated polling stations situated in maximum security prisons to observe the poll. An election agent, who wishes to observe the poll at a dedicated polling station situated in a penal institution other than a maximum security prison, must deliver an application in the specified form to the CEO by hand, by post, by electronic mail or by facsimile transmission 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 the election agent as soon as practicable. [S 12(3) and (3C) of the EP (CEE) Reg] *[Amended in January 2007, January 2010 and October 2016]*

7.14 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 at the dedicated polling station concerned, is admitted or transferred to the penal institution concerned during that week and the application is made without undue delay after the admission or transfer [s 12(3B) of the EP (CEE) Reg]. The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual penal institutions 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. *[Added in January 2010 and amended in October 2016]*

7.15 No election agent may be present at a dedicated polling station situated in a penal institution if a polling agent has already been appointed by the same candidate for that polling station [s 12(3A) of the EP (CEE) Reg].
[Added in January 2010]

PART VI : ELECTION EXPENSE AGENTS

Appointment

7.16 A candidate may appoint **any number** of election expense agents to incur election expenses on his/her behalf in the CE election. The appointment shall be in writing in the specified form and state the name, identity document number and address of the election expense agent, and must specify the maximum amount of election expenses the agent may incur. It should be signed by both the candidate and the election expense agent [ss 14(3) and 16 of the EP (CEE) Reg]. A notice of appointment must be delivered by hand, by post, by electronic mail or by facsimile transmission to the RO, or the CEO if the RO has not been appointed. If the notice of appointment is given on the polling day, it should not be delivered to the RO by post. [S 14(1) and (3)(a) of the EP (CEE) Reg] *[Amended in November 2011 and October 2016]*

7.17 The appointment is not effective until it has been received by the RO or the CEO, as the case may be [s 14(1) and (7) of the EP (CEE) Reg]. Before the notice of appointment is received, no election expenses should be incurred by a person purporting to be appointed 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 his/her election expense agent to **incur election expenses** [s 23(1) of the ECICO]. The expenses so incurred may also be counted as the candidate's election expenses. *[Amended in November 2011]*

Revocation

7.18 The appointment of an election expense agent may be revoked by a candidate at any time. The candidate must give notice of the revocation as soon as possible in writing in the specified form and deliver the signed notice by hand, by post, by electronic mail or by facsimile transmission to the RO, or the CEO if the RO has not been appointed. If the notice of revocation is given on the polling day, it should not be delivered to the RO by post [s 14(1) and (5) of the EP (CEE) Reg]. The revocation will only be effective when the RO or the CEO, as the case may be, receives the notice [s 14(1) and (7) of the EP (CEE) Reg]. The election expenses already incurred before the RO or CEO receives the notice will still be counted as election expenses of the candidate. *[Amended in November 2011 and October 2016]*

Role of Election Expense Agents

7.19 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 notice of appointment; 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

7.20 Every candidate, whether elected or not, or who has withdrawn the candidature before the close of nominations, or has been decided by the CERC 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 (thereafter referred to as "election return") with supporting invoices and receipts issued by the goods or service providers. 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. The candidate must ensure that the election return is lodged **before the expiry of the period of 60 days** after the date on which —

- (a) the result of the election is published in the Gazette; or
- (b) the proceedings for the election are declared to have been terminated,

or within such extended period as may be allowed by the CFI under the relevant law [s 37(1A) and (1N) of the ECICO]. *[Amended in October 2016 and January 2022]*

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 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 goods or service providers or to donor(s), as the case may be, provided by the election expense agents, the candidate will 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. *[Amended in November 2011, October 2016 and January 2022]*

Public Inspection of Notices of Appointment of Election Expense Agents

7.21 The RO or the CEO, as the case may be, will make available for public inspection all notices of appointment of election expense agents submitted by candidates until the expiration of the period for which copies of the election return lodged by the candidates are available for inspection, i.e. the period ending with the 60th 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 14(9) of the EP (CEE) Reg]. *[Amended in November 2011, October 2016 and January 2022]*

PART VII : POLLING AGENTS

Appointment

7.22 A candidate may appoint **not more than 3 polling agents** for the main polling station [s 25(1) of the EP (CEE) Reg]. The notice of appointment must be in writing, in the specified form, signed by the candidate and the polling agent and delivered by hand, by post, by electronic mail or by facsimile transmission to the CEO, at least **7 days** before the polling day [s 25(4) and (5) of the EP (CEE) 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. Such a notice must be given by the candidate or the election agent **in person** by delivering the notice of appointment to the PRO of the polling station on the polling day. No admission of the polling agent is allowed in the polling station before the notice is delivered to the PRO [s 25(4) of the EP (CEE) Reg]. The appointment will not be effective until the notice of appointment is received

by the CEO or the PRO, as the case may be [s 25(9) of the EP (CEE) Reg].
[Amended in January 2010, November 2011 and October 2016]

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

- (a) only the candidate is allowed to be present in a dedicated polling station situated in a maximum security prison [s 25(1A)(b) of the EP (CEE) Reg];
- (b) only 1 polling agent may be appointed to be present in a dedicated polling station situated in a penal institution which is not a maximum security prison and the Commissioner of Correctional Services has given consent to the presence of the agent [s 25(1) and (4A) of the EP (CEE) Reg]. The appointment is effective only when an application made in the specified form is delivered to the CEO by hand, by post, by electronic mail or by facsimile transmission at least 7 days before the polling day [s 25(4)(a) of the EP (CEE) Reg];
and
- (c) for a dedicated polling station situated in a penal institution 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 25 (1A)(a) of the EP (CEE) Reg].

[Amended in October 2016]

7.24 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 25(4C) of the EP (CEE) Reg]. *[Added in January 2010 and amended in October 2016]*

7.25 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 at the dedicated polling station concerned, is admitted or transferred to the penal institution concerned during that week and that the notice of appointment is given without undue delay after the admission or transfer [s 25 (4B) of the EP (CEE) Reg]. The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual penal institutions on every 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. *[Added in January 2010 and amended in October 2016]*

Revocation

7.26 The appointment of a polling agent may be revoked by the candidate at any time. The candidate must give notice of revocation in writing in the specified form and deliver the signed notice by hand, by post, by electronic mail or by facsimile transmission to the CEO (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 penal institution, such notice must be delivered to the relevant PRO by either the candidate or the election agent **in person**;
- (b) for a polling agent appointed for a dedicated polling station situated in a penal institution, such notice must be delivered to the CEO by hand, by electronic mail or by facsimile transmission.

[S 25(7A) and (7B) of the EP (CEE) Reg] *[Amended in October 2016]*

7.27 A revocation of appointment of a polling agent is not effective until the notice thereof is received by the CEO or the PRO, as the case may be [s 25(9) of the EP (CEE) Reg]. If a replacement of polling agent is appointed and he/she wishes to observe the poll at a dedicated polling station in a penal institution (other than a maximum security prison), he/she is required to follow the arrangements set out in paras. 7.23 to 7.25 above. *[Amended in January 2010 and October 2016]*

Role of Polling Agents

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

Provisions which the Polling Agents should be Aware of

7.29 The polling agent(s) appointed for a polling station may be admitted at any time during the poll to the polling station, but they are required to stay and keep their movements within the area designated for observation of the poll and not outside. The polling agents appointed for the main polling station may remain inside the polling station even when the candidate they represent or his/her election agent is present. Where a candidate is present in a dedicated polling station other than that situated in a maximum security prison, the election agent or the polling agent of that candidate appointed for that dedicated polling station will not be allowed to be present at the same time within the polling station [s 26(1A) and (1B) of the EP (CEE) Reg]. (See also Part V of Chapter 5 regarding the admission of candidates, election agents and polling agents to the polling station.) *[Amended in January 2010]*

7.30 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 a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 69(1), (2) and (3) of the EP (CEE) Reg]. This is to make sure that, subject to penalty of making a false declaration, all persons inside a polling station will observe the secrecy of the vote of the elector and, in particular, not to divulge which elector has voted for which candidate at a contested election or whether or not an elector has voted in support of the candidate at an uncontested election. *[Amended in January 2007 and January 2010]*

7.31 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 69(1) of the EP (CEE) Reg]. *[Amended in January 2010]*

7.32 The following procedures shall apply on the polling day:

(a) Before the poll

- (i) About 30 minutes before the commencement of the poll (or 15 minutes for dedicated polling stations situated in penal institutions), the PRO will inform the candidate(s) or his/her/their agents (either election agent or polling agent) if they are present, of the number of ballot papers in the PRO's possession, and open the sealed packets of ballot papers to show 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 on the EC FR, 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. 5.37 to the satisfaction of the PRO. The PRO will in such circumstances issue a ballot paper with the word **“TENDERED”** and **“重複”** endorsed on the front. Such a ballot paper shall not be counted at the counting of the votes. [Ss 38(1) and 50(1)(b) of the EP (CEE) 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 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 spoilt one and shall endorse on the front of it with the word **“SPOILT”** and **“損壞”** and keep it in his/her own custody. The spoilt ballot paper will not be put into a ballot box and will not be counted at the counting of votes. [Ss 40 and 50(1)(c) of the EP (CEE) Reg]
- (iii) The PRO shall endorse on the front of any ballot papers which have been issued and abandoned or found left behind anywhere in the polling station with the word **“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 39 and 50(1)(d) of the EP (CEE) 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

- (i) The PRO shall, in the presence of persons at the polling station, lock and seal the flaps of the inserting slots of the ballot boxes. 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 spoilt ballot papers [s 41(1) of the EP (CEE) Reg].
- (ii) The candidate(s) or his/her/their respective agents may accompany the PRO in the delivery of the ballot boxes from the polling station to the counting station.
- (iii) The candidate(s) and his/her/their agents who do not accompany the PRO in the delivery must then leave the polling station.

[Amended in January 2007, October 2016 and January 2022]

7.33 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**: *[Amended in November 2011]*

- (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 or at the close of the poll; [*Amended in October 2016*]

NOTE :

Any 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. The candidate(s) is/are advised to keep a list of his/her/their own polling agents to facilitate checking when the sealing certificate is broken at the counting station.

- (b) leave the polling station at any time during the poll;
- (c) subject to para. 7.34(b) below, observe the issue of ballot papers to electors (either through the EPR system or the drawing of a line across concerned entries in the printed copy of the EC FR (if used)), subject to the condition that they will not 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 EC FR as follows (the PRO to read the whole entry as it is recorded in the FR)?
 - (ii) Have you already cast a vote in this round of voting? (for a contested election)

or

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

NOTE :

The person will not be issued with any ballot paper unless he/she has answered the questions to the satisfaction of the PRO [s 32(2), (3) and (4) of the EP (CEE) Reg]. *[Amended in January 2007 and October 2016]*

- (e) where there is reasonable cause to believe that a person who has applied for a ballot paper has engaged in corrupt conduct by impersonation, inform the PRO for appropriate action before that person leaves the polling station. This may possibly lead to the arrest of the person. The polling agent must however undertake in writing to give evidence to substantiate the allegation in a court of law. [S 33(1) of the EP (CEE) Reg]

[Amended in January 2010, October 2016 and January 2022]

7.34 Inside polling station, a polling agent **must not**:

- (a) interfere with or attempt to influence any elector;
- (b) speak to or communicate with any elector, or interfere with or attempt to interfere with any ballot boxes, ballot papers, all related facilities of the EPR system, the marked copy of the EC FR in printed form (if used) or other relevant election materials. In this regard, a polling agent should station within the designated area demarcated by red adhesive tapes, and must not enter, or move close to, the restricted zone delineated with yellow tapes which is about 1 metre, or 2 metres (depending on the configuration), around the voting compartments. Moreover, it is very improper for a polling

agent to ask an elector about his/her identity card number, and checking of an elector's identity card is prohibited;

- (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, leave or distribute any campaign material;
- (e) display any propaganda material relating to any candidate or the election; and
- (f) use a mobile telephone, paging machine or any other form of communication device.

[Ss 27 and 70 of the EP (CEE) Reg] *[Amended in January 2007, November 2011, October 2016 and January 2022]*

7.35 A polling agent must not misconduct himself/herself in or in the vicinity of a polling station or fail to obey any lawful order of the RO or the PRO; otherwise he/she commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months [ss 27(7) and 82 of the EP (CEE) Reg] 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;
- (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 on the polling day except with the express permission of the RO or the PRO. [S 27(10) and (11) of the EP (CEE) Reg]

[Added in November 2011]

Other Useful Information for Polling Agents

7.36 Polling staff, candidate(s), his/her/their election agent(s) and polling agents will be required to wear an identification device issued by the RO or the PRO for identification. If in doubt, a polling agent may enquire with the PRO as to the identities of the persons inside the polling station. No attempt, however, should be made to obtain information as to the identity of any elector who is about to vote or has voted [s 70(1) of the EP (CEE) Reg]. *[Amended in January 2007 and October 2016]*

7.37 Only the PRO, the Deputy PRO or an Assistant PRO may, in the presence of one of the polling staff as a witness, help an elector to mark a ballot paper if he/she claims that he/she is unable to read or is incapacitated from casting his/her vote by himself/herself due to visual impairment or other physical cause [s 37(1) of the EP (CEE) Reg]. The responsible officer should inform the candidate(s) or his/her/their agents who are present when such a request for assistance is received. A candidate or his/her polling agent in the polling station may suggest the PRO, the Deputy PRO or an Assistant PRO to choose a particular polling staff who is not working at the issuing counter as the witness, but the final decision as to which polling staff should be the witness remains with the PRO, Deputy PRO or Assistant PRO. An elector's relative, friend or any other person is in no circumstances allowed to accompany the elector in the course of voting. *[Amended in October 2016]*

7.38 In the polling station, a number of **braille templates** are made available for the use of persons with visual impairment, if they so choose, to facilitate them to mark their vote on the ballot paper [s 37(2) and (3) of the EP (CEE) Reg]. The basic features of the template are as follows:

- (a) the template is of the same width and length as the ballot paper;
- (b) the template contains numbers in braille and protruding Arabic numerals starting with the first numeral in a sequence assigned to the candidates 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 person with visual impairment to place the template on top of the face of the ballot paper in the proper direction; and
- (d) when the template is placed properly on the ballot paper, each braille number corresponds with the candidate number; and each of the holes on the template corresponds with the circle on the ballot paper against the candidate number. The number of holes equals the number of candidates.

A person with visual impairment should affix the chop provided at the polling station to give a single “✓” in the circle through the holes of the templates against the candidate number of the candidate of his/her choice.

[Amended in November 2011 and October 2016]

7.39 No person may canvass or display any promotional material relating to any candidate or the election within a polling station. The candidate(s) and his/her/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. A person must not use a sound amplifying system or device for any purpose within the NCZ; nor should he/she use such system or device or conduct any activities (e.g. lion dance) for canvassing, so that the sound emitted by it can be heard within the NCZ. However, an officer of the CSD may use a sound amplifying system or device in the NCZ of a dedicated polling station situated in a penal institution for the performance of his/her duties on the polling day [s 24(2)(b) and (3A) of the EP (CEE) Reg]. Also, a person must not stay or loiter in the NSZ without the express permission of the PRO [s 24(2)(e) of the EP(CEE) Reg]. Any person who undertakes photographing, filming and video or audio recording within the polling station without the express permission of the PRO, the RO, 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 [ss 27(4) and 82 of the EP (CEE) Reg]. Normally such permission is only granted to government photographers for publicity purposes. Polling agents should also read Parts II to XI of Chapter 5 on all matters relating to polling and in particular, paras. 5.54 to 5.56 for activities that are prohibited, and the consequences of conducting such activities, in a polling station. *[Amended in January 2007 and November 2011]*

7.40 **The ballot is secret.** No one can force a person to vote or not to vote for any particular candidate at a contested election or to vote or not to vote in support of the candidate in the case of an uncontested election [s 13 of the ECICO]. Also, no one is required to tell which candidate he/she has voted for or is about to vote for at a contested election or whether or not he/she has voted or is about to vote in support of the candidate at an uncontested election. A person who, without lawful authority, requires or purports to require an elector to disclose the name of, or any particulars relating to, the candidate for whom the elector voted at a contested election or disclose whether or not he/she has voted in support of the candidate at an uncontested election commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [ss 78 and 82 of the EP (CEE) Reg]. *[Amended in January 2007]*

7.41 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 20 on Complaints Procedure of the Guidelines.

PART VIII : COUNTING AGENTS

Appointment

7.42 A candidate may appoint **not more than 2** counting agents. The notice of appointment must be in writing, in the specified form signed by the candidate and the counting agent and delivered by hand, by post, by electronic mail or by facsimile transmission to the RO at least **7 days** before the polling day [s 44(3) and (4) of the EP (CEE) Reg]. Where a candidate wishes to appoint a counting agent after the above deadline, the notice of appointment must be delivered by the candidate or the election agent **in person** to the RO on the polling day [s 44(3) of the EP (CEE) Reg]. The appointment is only effective when the notice of such appointment is received by the RO [s 44(8) of the EP (CEE) Reg]. *[Amended in January 2007 and October 2016]*

Revocation

7.43 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 post, by electronic mail or by facsimile transmission to the RO (other than on the polling day). 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 RO [s 44(6), (6A) and (6B) of the EP (CEE) Reg]. A revocation of an appointment of a counting agent is not effective until notice thereof is received by the RO [s 44(8) of the EP (CEE) Reg]. *[Amended in October 2016]*

Role of Counting Agents

7.44 Counting agents are appointed to attend at the counting station **to observe the breaking of the seals on the ballot boxes, the counting of ballot papers and the counting of votes on the valid ballot papers.** This arrangement ensures the transparency of the counting process and is conducive to the principle of openness and fairness (see Part XIII of Chapter 5).

Provisions which the Counting Agents should be Aware of

7.45 Before the counting of votes commences, every person authorised to be present at a counting station, other than an elector, police officers and members of the CAS on duty or a member of the public observing the counting of the votes, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 69(2) of the EP (CEE) Reg]. This is to make sure that, subject to penalty of making a false declaration, all persons inside a counting station will observe the secrecy of the vote of the elector and, in particular, not to divulge which elector has voted for which candidate at a contested election or whether or not an elector has voted in support of the candidate at an uncontested election. *[Amended in November 2011]*

7.46 On attending the counting station, a counting agent shall report to the RO and produce his/her identity card and the Declaration of Secrecy completed by him/her for inspection [s 69(1) of the EP (CEE) Reg].

7.47 Counting agents are entitled to be present throughout the count to observe the entire counting proceedings. They will be allowed by the RO to stay close to, and around the counting table to observe the count. Nonetheless, they must not touch 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 by the RO;

- (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 votes on individual ballot papers are counted;
- (d) observe the determination of the validity of questionable ballot papers by the RO and make representations on behalf of the candidate [s 51(1) of the EP (CEE) Reg]; and
- (e) observe, where he/she wishes, the packing of ballot papers by the counting staff and the RO at the conclusion of the count.

[Amended in October 2016]

7.48 A counting agent **must not**:

- (a) touch, handle, separate or arrange ballot papers; and
- (b) misconduct in the counting station, or fail to obey any lawful order of the RO, 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 RO to leave the counting station [ss 47(3), (4) and 82 of the EP (CEE) Reg]. If he/she fails to leave immediately, he/she may be removed by a police officer or by other person authorised in writing by the RO to remove him/her. The person so removed may not re-enter the counting station during that day except with the permission of the RO. [Ss 47(6) and (7) of the EP (CEE) Reg]

[Amended in November 2011 and October 2016]

7.49 Persons who may enter or stay in the counting station are listed in para. 5.59 of Chapter 5. Counting agents should read Part XII of Chapter 5 on all matters relating to counting of votes, and in particular, para. 5.66 for activities that are prohibited, and the consequences of conducting such activities in the counting station. Matters and rules relating to the count can be found in Parts XII and XIII of Chapter 5. *[Amended in January 2007 and November 2011]*

CHAPTER 8

ELECTION ADVERTISEMENTS

PART I : GENERAL

8.1 Election expenses are regulated by the law to ensure that the candidates compete on a level playing field within a reasonable level of expenditures. For the regulation of election expenses, please refer to Chapter 16. *[Added in January 2022]*

8.2 EAs account for a major portion of election expenses. Given that only candidates and their election expense agents are permitted to incur election expenses (also see Chapter 7), they are the only persons allowed to incur election expenses because of the publication of EAs. It is, therefore, necessary to set down statutory regulations for EAs. *[Added in January 2022]*

8.3 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, the overall circumstances, including the background, time of publication (e.g. whether the candidate has publicly declared his/her intention to stand for the election or whether the incident happens during the election period), the expenses incurred etc., must be taken into account so as to infer whether there is any intention to promote or prejudice the election of a candidate or candidates. If the statement is simply for expression of views and comments based on the facts without any intention to promote or prejudice the election of a candidate or candidates, then it is not to be treated as an EA. *[Added in January 2022]*

8.4 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 platform¹³ maintained by the CEO or a person authorised by the CEO (“Central Platform”) or an open platform maintained by the candidate(s) or a person authorised by the candidate(s) (“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 to restrict the contents of EAs. Rather, it keeps track of candidates’ publication of EAs for the purpose of regulating their election expenses. If any false statement is contained in EAs, it will be regulated by other provisions under the subsisting law (see para. 8.23 below). *[Added in January 2022]*

8.5 It is an illegal conduct to publish false or misleading statements about a candidate under s 26 of the ECICO (please see para. 17.11 of Chapter 17 for details). In this regard, candidates publishing EAs should pay extra attention to ensure that the contents in their EAs have factual basis to avoid controversies and legal proceedings. Besides, if a candidate makes references to other candidates in the EAs, he/she should ascertain the factual basis of such references and that the references do not constitute a false or misleading statement. In the 2019 District Council (“DC”) Ordinary Election, the CFI of the High Court ruled in the election petition (HCAL 3665/2019) that an elected candidate (i.e. the first respondent) who had published a false and misleading statement about another candidate in one of the EAs was not duly elected. *[Added in January 2022]*

8.6 Interactive EAs published on Internet platforms can be updated constantly. 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. *[Added in January 2022]*

¹³ 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.

8.7 With the proliferation of the Internet, online platforms are widely used to publish election-related opinions. As such opinions may sometimes constitute EAs, if the publication involves the incurrance of election expenses, the publisher may have committed offences relating to election expenses if he/she is not a candidate or a candidate's 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 a candidate or a candidate's 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 candidates' election expense agents (for details, please refer to para. 8.11 below). *[Added in January 2022]*

PART II : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT

8.8 An EA, in relation to the CE 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 EP (CEE) Reg] *[Amended in January 2007, November 2011 and October 2016]*

IMPORTANT :

“Candidate” includes a person who has publicly declared an intention to stand for an election at any time before the close of nominations for the election, whether or not he/she has submitted a nomination form [s 2 of the ECICO and s 2(2) of the EP (CEE) 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 86(1) of the EP (CEE) Reg]. *[Added in October 2016]*

If any candidate has authorised the publication of an EA by another person, that EA is taken to have been published by that candidate [s 86(2) of the EP (CEE) Reg]. *[Added in October 2016]*

8.9 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 tape or disc, diskette, electronic message (e.g. messages published through social media, mobile messaging apps,

communication networks, etc.), website, facsimile transmission, balloon, badge, emblem, carrier bag, 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 or candidates by name or photograph or in any other form or manner.

[Amended in November 2011 and January 2022]

8.10 As stated in para. 8.8 above, an 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 publicity 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 certain candidates or organisations which certain candidates belong to or are affiliated with, 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 (e.g. 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 with the intent to promote or prejudice 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 an EA and the publisher is neither a candidate nor a candidate's election expense agent, the publisher may have violated s 23 of the ECICO. If a candidate instructs that person or organisation to publish the EA, and such

expenses are not accounted for as election expenses, the candidate will also violate the law. *[Added in October 2016 and amended in January 2022]*

8.11 In accordance with s 23(1A) of the ECICO, a person (other than candidates or their 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 one 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/or charges necessary for accessing the Internet, will still have to be included in the election expenses of the candidate. The candidate should also fully fulfill the requirements relating to publication of EAs as set out in para. 8.53 below. *[Added in October 2016 and amended in January 2022]*

8.12 Any publicity materials containing the name or photograph of a candidate issued or displayed during the election period (i.e. the period beginning on the first day of the nomination period for the election and ending on the day on which the polling for the election ends, or on the day on which the RO is required to make relevant declaration in accordance with s 22 of the CEEO) may also be regarded as EAs if they are published for the purpose of publicity with the intent to promote the election of the candidate. *[Amended in October 2016 and January 2022]*

8.13 Under s 86(1) of the EP (CEE) Reg, the definition of "publish" includes "continue to publish". In this regard, for 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), if he/she continues to display any previously published publicity materials with an intent to promote his/her election, once he/she has been nominated as a candidate or has publicly declared an intention

to stand as a candidate at the election, such publicity materials **may** be regarded as EAs. Particular attention should be drawn to posters or banners bearing that person's name or photograph displayed at a public place or at the common parts of a building (and the terms and conditions under the Lands Department's Management Scheme for the Display of Roadside Non-commercial Publicity Materials shall also apply if the publicity materials are being displayed under the said Scheme). For the sake of prudence, the person concerned should remove all the published publicity materials before he/she is nominated as a candidate or publicly declares an intention to run for the election. *[Added in October 2016 and amended in January 2022]*

8.14 Under s 86(4) of the EP (CEE) 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) an EC member;
- (c) a member of the LegCo;
- (d) a member of a DC;
- (e) a member of the Heung Yee Kuk;
- (f) 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
- (g) a Rural Representative ("RR"),

is also regarded as an EA. *[Amended in October 2016 and January 2022]*

8.15 For the avoidance of doubt, if a person has publicly declared his/her intention to stand as a candidate at an election **before** the election period, and then publishes a document as mentioned in para. 8.14 above, the document will also be regarded as an EA as long as 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 paragraph and para. 8.14 above must comply with all the requirements for an EA and the expenses so incurred be accounted for as election expenses. *[Amended in November 2011 and October 2016]*

8.16 If a person publishes a document to give details of the work done by him/her in a capacity listed in para. 8.14 above without promoting or prejudicing the election of any candidate at the election before submitting the nomination form or publicly declaring an intention to stand as a candidate, the document will not be construed as an EA. On such basis, the expenses incurred in the publication of such a document would not be counted as election expenses. *[Amended in October 2016]*

8.17 A candidate in an election should put up and display EAs in accordance with all the relevant laws and regulations and the guidelines herein. *[Amended in October 2016]*

Election Advertisements Prejudicing the Election of a Candidate

8.18 There are occasions that a candidate or a third party may publish EAs for the purpose of prejudicing the election of other candidates at the election. At a contested election, the concept of “promoting” and “prejudicing” the election of someone can be relative. Any kind of publication with the intent 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 expenses 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 expenses incurred will have to be included in candidate A's election expenses; or
- (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 (unless exempted under s 23(1A) as mentioned in para. 8.11 above) because 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. This requirement would also prevent candidate A from circumventing the law by asking the third party to publish materials prejudicing candidate B without having to account for the expenses of those materials.

[Amended in January 2007, October 2016 and January 2022]

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

8.20 The **election expenses** allowed by the 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.)

8.21 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 a CE election is \$17,600,000 as specified in the Maximum Amount of Election Expenses (Chief Executive Election) Regulation. *[Amended in November 2011, October 2016 and January 2022]*

8.22 The costs incurred for the display of EAs must be counted as election expenses. A candidate must not incur election expenses in excess of the prescribed maximum amount, otherwise he/she will commit an offence. However, if election expenses in excess of the prescribed maximum amount have been incurred by a candidate, he/she may apply to the CFI for a relief order according to the relevant legislation. The CFI may make an order relieving the candidate from consequences of the illegal conduct if it is satisfied that the illegal conduct caused by the act was due to inadvertence, an accidental miscalculation or any other reasonable cause and was not due to bad faith, and considers that the candidate should not be subjected to corresponding penalties/punishments under the principle of justice [s 31 of the ECICO]. Any person who, because of any reason not due to bad faith, may need to incur election expenses in excess of the prescribed maximum amount should seek independent legal advice to ascertain whether the statutory requirements for applying a court relief order may be fulfilled before incurring such election expenses. *[Added in January 2022]*

8.23 A candidate must ensure the correctness and accuracy of factual information 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 18. If a candidate has any question about the legal requirements on EAs and election expenses, he/she should seek independent legal advice. (For criminal sanctions, see ss 25, 26 and 27 of the ECICO.) He/She must also ensure that the content of his/her EAs is consistent with the declaration he/she has made that he/she stands for the election in an individual capacity and will not lead the electors or the public to believe that he/she is representing a political party. *[Amended in October 2016 and January 2022]*

PART III : PERIOD AND AREA OF DISPLAY

8.24 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)]

8.25 Display spots are classified into 2 types:

- (a) **designated spots** which are spots on government land/property and sometimes even on land/property 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 to be obtained from the owner or occupier concerned by the candidate himself/herself.

Government or Private Land/Property - Designated Spots

8.26 Allocation of designated spots for the use of candidate to display his/her EAs will be made by the RO. 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 may designate spots on such allocated land/property in coordination with the said authorities. At a contested election, **each candidate** (who has registered his/her interest in displaying EAs at designated spots) will be allocated **the same number of designated spots**. *[Amended in November 2011 and October 2016]*

8.27 Prospective candidates are welcome to suggest to the RO the locations of display in which they are interested. The RO will take into consideration such suggestions in drawing up the list of “**designated spots**”, but with absolute discretion to decide whether to adopt the suggestions.

NOTE :

Suggestions under para. 8.27 should reach the CEO **not later than 8 weeks before the polling day**. *[Amended in November 2011]*

Other Land/Property - Private Spots

8.28 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 the spots concerned 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. 8.53 below (please

see para. 8.33 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 that private spot 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. This requirement 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. 16.30 of Chapter 16. 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. *[Amended in October 2016]*

8.29 For the display of EAs at the common parts of private land/property (those parts for which exclusive rights of use or occupation do not belong to a particular owner or tenant), the EAC appeals to owners or occupiers of private land/property concerned to give all candidates **fair and equal treatment**. (For details, please see Chapter 9) *[Amended in October 2016]*

8.30 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. *[Amended in January 2010 and October 2016]*

Allocation of Designated Spots

8.31 The RO will allocate the designated spots to candidates either in accordance with the agreement among the candidates or by the drawing of lots after the end of the nomination period, when the number of candidates contesting in the election has been ascertained. **No display of EAs will be allowed on any designated spots before the allocation** (also see the requirements in para. 8.37 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 maps to help identify the locations. *[Amended in November 2011 and October 2016]*

8.32 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 website. To safeguard the safety of road users, candidates must ensure that the EAs on display do not distract motorists or interfere with the sight lines of motorists and pedestrians, or obscure any traffic sign or traffic light signal. *[Added in October 2016]*

Written Permission or Authorisation

8.33 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 that written permission or authorisation as required under the relevant legislation will be provided to the candidates by the RO (see Part IV below). For display of EAs

on private land/property, 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 [ss 104A(2) and 150 of the PHMSO]. 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 for public inspection in the manner as set out in para. 8.53 below. All candidates are also reminded that if carrying out of building works (including erection of any 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. *[Amended in October 2016]*

No Canvassing Zone

8.34 No EA may be displayed within the boundaries of a polling station (including all storeys and the outer walls of the premises) or within the NCZ on the polling day (see Chapter 14), but except for static display of EAs that are authorised by the RO (e.g. EAs mounted at designated spots). Where there are premises situated within the NCZ, the RO should issue a notice in advance to all the candidate(s) asking him/her/them to remove all of his/her/their EAs, displayed at the premises within the NCZ before the polling day. The exhibition of portable displays of EAs 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 the removal of EAs on the windows or bodywork of any public service vehicles (e.g. public light buses, taxis, etc.) before the polling day if those vehicles will pass through or be parked within the NCZ on the polling day. If a candidate fails to remove the EAs as requested by the RO, the RO may issue a warning to the him/her to remove the offending EAs immediately. If the candidate does not comply, the EAC may issue a censure or reprimand. The RO will issue 1 set of sketch maps or plans to each candidate, showing the boundaries of the polling station and the NCZ outside the polling station. *[Amended in November 2011 and January 2022]*

PART IV : ALLOCATION OF DESIGNATED SPOTS

8.35 A candidate can obtain the following information from the RO when he/she submits the nomination form:

- (a) the general locations of the designated spots, which may include unleased government land, property and buildings managed by the Housing Department, and occasionally private land/property (if any) available for allocation of designated spots to the candidates. The number and size of spots for allocation will be finalised by the RO, taking into account the number of candidates, **after** the end of the nomination period. In order to allow all 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 3 to 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 that have already given a blanket approval, to be present to give the necessary written authorisation for the spots allocated.

[Amended in October 2016]

8.36 The RO 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 RO within the nomination period.**

[Amended in November 2011 and October 2016]

8.37 Designated spots are allocated by agreement of the representatives of candidates or by drawing of lots. At a contested election, the principle of allocation of designated spots is that candidates should each be allocated the same number of designated spots and an equal area of space for mounting EAs. 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 the allocated spots. *[Amended in October 2016]*

8.38 A copy of the permissions or authorisations obtained by a candidate himself/herself, as opposed to those provided to him/her by the RO, must be provided in the manner as set out in para. 8.53 below for public inspection [s 87(2) and (3) of the EP (CEE) Reg]. *[Amended in November 2011 and October 2016]*

8.39 Designated spots allocated are neither transferable nor exchangeable with other spots. At a contested election, where a candidate no longer wishes to use one or more of the designated spots allocated to him/her, he/she should inform the RO in writing within 1 week after the allocation of those spots. Upon request by any other candidate, the RO, if he/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. In such a case, paras. 8.37 and 8.38 above apply. *[Amended in November 2011 and October 2016]*

PART V : CONDITIONS AND LIMITATIONS ON DISPLAY

Re-use of Old Publicity Boards

8.40 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 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 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. *[Amended in November 2011 and October 2016]*

Size

8.41 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 promotional messages of the relevant EAs must be **printed on one side only and facing the designated direction of the spots**. Before displaying any 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. 8.32 above). *[Amended in November 2011 and October 2016]*

Mounting and Installation

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

[Amended in October 2016]

8.43 Permanent fixing devices, such as nails or insoluble glue, should not be used. *[Amended in October 2016]*

8.44 “Tie-on” posters (rather than “stick-on” posters or metallic wires) should be used to facilitate subsequent removal. *[Amended in October 2016]*

8.45 Use of metal wires for fixing flags onto any highway structure, railing, barrier, fence, post or any other street furniture, is strictly prohibited.

[Added in January 2022]

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

8.47 Do not install into or erect any structure on public pavements, e.g. nailing boards to the ground. Do not use any tree or plant as anchor point for EAs. *[Amended in October 2016 and January 2022]*

8.48 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

8.49 All candidates should remove all their EAs displayed on government land/property **within 10 days** following the election. Failure to do

so may result in prosecution being brought against the offending candidate and such 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 publication of the election result in the Gazette. 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. *[Amended in October 2016]*

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

8.50 For temporary occupation of government land including any public street, pavement, footbridge, public escalator system and pedestrian tunnel for holding electioneering activities (such as setting up a manned street counter and displaying EAs which may include banners, roll-up banners and vertical flying posters or bunting), candidates are required to submit applications specifying the scheduled date, time, location/spot and brief description of the proposed set-up to the relevant District Lands Office (“DLO”) of the Lands Department for consideration. Only applications from validly nominated candidates will be considered by DLOs. The site approved for occupation must not exceed 2 m² (i.e. 1 m x 2 m) in area and 2 m in height. The respective DLO will consult the government departments concerned in considering the applications. Where necessary, DLOs may adjust the location of the government site to be occupied in light of the physical setting and actual situation. The decision of the DLO shall prevail. *[Added in October 2016 and amended in January 2022]*

8.51 The Lands Department will issue detailed guidelines for candidates to apply for temporary occupation of government land at public places 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 deadline as specified in the guidelines. The DLO will arrange drawing of lots to determine the allocation if necessary. If the allocated spot falls within the NCZ on the polling day, the approval will be deemed to have been revoked. *[Added in October 2016]*

8.52 The DLOs will not consider applications for holding electioneering activities on government land outside the designated periods. No fee is required for the applications above. The display of EAs will not be permitted for a street counter not manned by staff. *[Added in October 2016]*

PART VII : REQUIREMENTS RELATING TO PUBLICATION OF ELECTION ADVERTISEMENTS

Copies for Public Inspection

8.53 A candidate must make available a copy of each of his/her EAs, and the relevant information/documents (see **Appendix 4**) including the 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 and Saturday) **after the publication of the EAs** by the following means:

- (a) posting an electronic copy of each of his/her EAs and relevant information/documents onto the Central Platform in accordance with the procedures set out in **Appendix 4**;
- (b) posting an electronic copy of each of his/her EAs and 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 the publication of the first EA (for details, please see Appendix 4);

- (c) if it is technically impracticable to comply with (a) or (b) above for EAs published through an open platform on the Internet (for example, when messages are exchanged on social networking or communication websites on the Internet, such as Instagram, Twitter, Facebook or blogs, in a real-time interactive manner), a hyperlink of the open platform and the information/documents relevant to the EAs should be posted onto the Candidate's Platform or the Central Platform in accordance with the procedures set out in **Appendix 4**. 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 need for the candidate to upload each and every comment separately;
- (d) providing 2 hard copies of each EA (or 2 identical full colour photographs/printouts/photocopies of each EA which cannot be practically or conveniently produced in specie) and a hardcopy of information/documents in relation to the EA to the RO; or
- (e) providing 2 identical copies of a CD-ROM or DVD-ROM each containing the EAs and a hardcopy of information/documents in relations to the EAs to the RO.

As an interim arrangement, pending the appointment of the RO and the establishment of the Central Platform, the candidates should deposit their EAs and the related information/documents with the CEO in the same manner as stated in (d) or (e) above.

[S 87(2) and (3) of the EP (CEE) Reg] *[Amended in October 2016 and January 2022]*

Publication Details

8.54 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 submitting relevant information in a specified form to the RO **within 1 working day after the publication of the EA** (see **Appendix 4**) [s 87(4) and (6) of the EP (CEE) Reg]. A candidate must ensure the accuracy of all the information provided. *[Added in October 2016]*

8.55 If the information uploaded onto the Candidate's Platform or Central Platform or provided to the RO as set out in para. 8.54 above contains a mistake, the candidate should post the amended information onto the Candidate's Platform or Central Platform or submit the amended information in a specified form to the RO for public inspection. All the amended information must be posted onto the Candidate's Platform or Central Platform or deposited with the relevant RO **within 3 working days at the latest after the polling day**. The information will be used as the basis for checking the candidate's election return and for removing unauthorised or offending EAs on display. For the avoidance of doubt, any amendment to the content of an EA will be regarded as the publication of a new EA and hence subject to the requirements stated in paras. 8.53 and 8.54 above. However, for the addition of a candidate number allocated to the candidate at the Candidates' Briefing onto a published EA (in contested election), in which case a copy of the EA bearing the newly added and amended information must be made available for public inspection as per this paragraph. *[Added in October 2016 and amended in January 2022]*

8.56 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. *[Added in October 2016]*

8.57 A candidate must not display his/her EAs other than at the places permitted or authorised. *[Added in October 2016]*

8.58 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. Given that the copies of speeches provided to the audience are regarded as printed EAs, the candidates concerned are required to comply with the requirements in this chapter regarding the distribution of copies of an EA and those on making available the copies for public inspection. *[Added in January 2007 and amended in November 2011 and October 2016]*

8.59 All copies of the EAs and the relevant information/documents must be made available for public inspection till the end of the period in which copies of election returns are available for inspection under s 41 of the ECICO, i.e. the period ending with the 60th day before the first anniversary of the date of the deadline for lodging the relevant election return (see para. 7.20 of Chapter 7) [s 41(6) of the ECICO and s 87(7) of the EP (CEE) Reg]. A candidate electing to comply with para. 8.53(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 87(2)(b) of the EP (CEE) Reg]. The CEO will also make public 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. 8.53(d) or (e) above, the RO will make available a copy of the EAs and the relevant information/documents for public inspection at a specified address as soon as practicable after copies of such EAs and information/documents have been furnished till the end of the aforesaid public

inspection period [s 87(7) and (8) of the EP (CEE) Reg]. *[Amended in October 2016 and January 2022]*

PART VIII : REQUIREMENTS RELATING TO PRINTED ELECTION MATERIALS

Printing Details

8.60 All printed EAs, with the exception of those printed in a registered local newspaper, should bear the printing details in Chinese or English stating the name and address of the printer, the date of printing and the number of copies printed. It applies to all materials reproduced by any method of making 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 87(4), (5) and (6) of the EP (CEE) Reg] *[Amended in November 2011 and October 2016]*

Election Advertisements Placed in Print Media

8.61 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 among readers that it is not an EA.

Inadvertent Omission of Printing Details

8.62 A candidate who has inadvertently omitted the printing details from his/her printed EAs can make a statutory declaration to give the omitted details, and deposit such declaration with the RO **within 7 days after the publication** of the offending EA [s 87(6) of the EP (CEE) Reg]. Candidates who have taken this remedial step will not be prosecuted for contravention of s 87(4) of the EP (CEE) Reg. The statutory declaration will be made available for public inspection by the RO till the end of the period in which copies of election return are available for inspection under s 41(6) of the ECICO [s 87(7) of the EP (CEE) Reg]. *[Amended in November 2011 and October 2016]*

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

Enforcement and Penalties

8.63 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 87(9) of the EP (CEE) Reg]. *[Amended in October 2016]*

8.64 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 requirements will be removed and seized. At a contested election, candidates and their supporters should report any non-compliance to the RO and should not take removal action themselves against

any unauthorised or offending EAs. *[Amended in January 2007, November 2011 and October 2016]*

8.65 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 [s 89 of the EP (CEE) Reg]. The candidate or his/her election agent responsible for the matter may also be prosecuted and if convicted, may be liable to a fine and to imprisonment [s 87(9) of the EP (CEE) Reg]. The cost of removal, being a civil debt, will be counted as election expenses and 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]. *[Amended in January 2007 and October 2016]*

8.66 Each candidate must observe and comply with the conditions agreed between him/her and the owner or occupier of the private land or property concerned for the display of EAs, and any additional charges or damages payable by a candidate to the owner or occupier may be construed as election expenses.

8.67 Complaints, if any, should be made to the RO. After a complaint is received, the EAC may also issue a public statement in such manner as it deems fit to reprimand or censure any non-compliance with the guidelines. Despite the fact that a censure may be a further detriment to a candidate in addition to his/her liability for removal expenses and criminal liability, the EAC will not hesitate to publish one as appropriate. *[Amended in October 2016]*

Relief for Election Advertisements

8.68 A person, who publishes an EA without complying with the requirements as set out in paras. 8.53 (except that related to the submission of permission/authorisation document under s 104A(1) of the PHMSO), 8.54, 8.55, and 8.60 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 88 of the EP (CEE) Reg]. The judgments of precedent court decisions¹⁴ regarding applications for the relief of election-related penalties and liabilities are as follows:

“if an applicant did not place enough significance on the obligation to file an election return, the court would require some good reason before it should exercise its discretion to grant relief. Section 40(2) gives the court a discretion. I think it is important that the discretion should be exercised in a manner which is consistent with the integrity of our election legislation. Those participate in election should be aware that these are serious matters and therefore they should take reasonable steps to comply with their legal obligation at the time when they put themselves forward as a candidate for any election.”

[Added in October 2016 and amended in January 2022]

¹⁴ *Yiu Chun Fat* (HCMP 1482/2007), *Leung Wai Kuen Edward v. Secretary for Justice* (HCMP 1321/2012) and *Lee Hin Long (Timothy Lee) v. Secretary for Justice* (HCMP 1183/2020).

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

8.69 Any thing or material published by any organisation, including a political body, professional body 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 with the intent to promote the election of the candidate may be treated as an EA put up by, or on behalf of, or on account of, the candidate. The expenses of such EA may be construed as election expenses incurred by or on behalf of the candidate. A candidate should be responsible for election expenses incurred by himself/herself or his/her authorised election expense agents, excluding those incurred 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 of the name and/or photograph of a candidate who is involved in organising the activity in the published material will not be regarded as an EA. *[Amended in January 2022]*

8.70 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]

8.71 To protect their own interest, candidates should advise their organisations of these guidelines as soon as they have any intention or plan to run for the CE election.

8.72 In short, if any organisation publishes an EA to promote a candidate, then:

- (a) the expenses incurred will be treated as the candidate's own election expenses;
- (b) the officer-in-charge of the organisation should be appointed in writing by the candidate to be the candidate's election expense agent before any election expense is incurred, or else the organisation or the responsible person commits an offence under s 23 of the ECICO;
- (c) such advertisement must comply with the requirements of s 87 of the EP (CEE) Reg [*Amended in October 2016*]; and
- (d) such advertisement can only be displayed at the locations with relevant written permission or authorisation. [*Amended in October 2016*]

PART XI : FREE POSTAGE FOR ELECTION ADVERTISEMENTS

Conditions for Free Postage

8.73 A candidate who has been declared 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 up to **2** letters to each EC member [s 45 of the CEEO]. 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 (i.e. the postage of all items in that bulk to be posted) in default of the postage payment 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)]. *[Amended in October 2016]*

8.74 The purpose of the free postage is to enable the candidate to mail EAs to EC members to promote or advertise himself/herself and in relation to the election. The free postage arrangement, which is a privilege of validly nominated candidates, should not be abused. 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 the guidelines herein. In this regard, EAs sent by a candidate through free postage should not contain any unlawful content.** *[Amended in October 2016]*

8.75 Specifically, the letter must:

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

- (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;
- (e) not exceed 5 mm in thickness; and
- (f) not contain any obscene, immoral, indecent, offensive or libellous writing, picture or other thing.

[S 80 of the EP (CEE) Reg and s 32(1)(f) of the Post Office Ordinance (Cap 98)] *[Amended in October 2016 and January 2022]*

IMPORTANT:

Under s 80(3)(a) of the EP (CEE) Reg, the candidate sending postage-free mail items to EC members in bulk is liable for payment of postage for all items in that bulk if any item therein does not meet the requirements in (a) to (e) above. Besides, according to s 32(1)(f) of the Post Office Ordinance, item (f) above refers to prohibited articles. *[Amended in November 2011 and January 2022]*

Postal Requirements Stipulated by Hongkong Post

Make-up

8.76 The letter may take the form of an envelope, a lettergramme, a postcard or a folder. Items in roll form or enclosed in plastic wrappers are **not** acceptable.

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

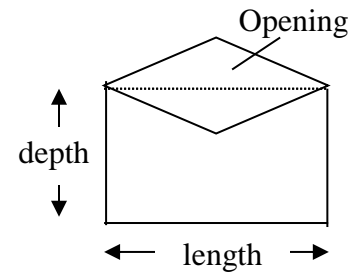
8.78 When a wrapper is used, it must be long enough to cover the full length of the item to be enclosed. Envelopes must not be fastened with staples or with paper fasteners with sharp or pointy edges, but they may be sealed by means of an adhesive flap or tape.

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

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

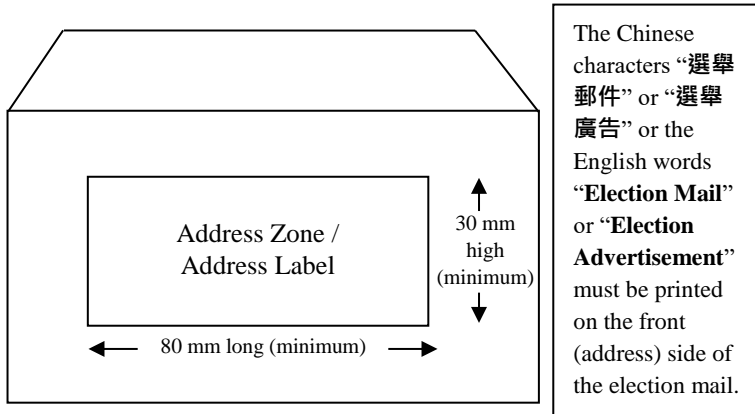
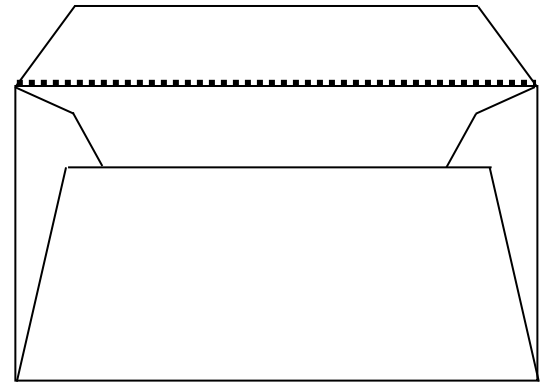
Not over 100 mm in depth - opening not over
140 mm in length

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



8.80 Folders (e.g. A4 size paper) with openings should be sealed by means of adhesive flap or tape to avoid entrapping other letters of smaller sizes. All open edges must not be longer than 90 mm in width. Otherwise, adhesive tapes should be applied to the middle of the open edges to reduce the width. For details, please refer to the illustration in **Appendix 5**. [*Amended in November 2011*]

8.81 **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 mail, or the address side of the folder (unenveloped mail). The layout of the election mail is as follows:**

Front Side of an Election Item**Back Side of an Election Item**

[Amended in November 2011 and October 2016]

Address

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

Name of addressee

Floor and flat number and name of building

Street number, name of street

Name of district

8.83 Address slips may be used for the mailing of EAs provided that they are legible and **securely affixed** to the election mail.

IMPORTANT:

For the purpose of posting election mail, candidates may request the REO to provide 2 sets of mailing labels in respect of the EC members and/or USB flash drives containing the “Candidate Mailing Label System” (CMLS). To protect the environment and respect the wish of EC members, no mailing labels will be provided for EC members who have provided their e-mail addresses for

receiving EAs or who have indicated that they do not wish to receive any EA. *[Added in October 2016 and amended in January 2022]*

8.84 The name of the candidate and other publicity slogans, including photographs, should appear on the back or the front (address side) of the mail 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 EC member, 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 EC member(s) and be affixed to the address zone. The whole address zone and address label should be free of advertisement and the entire address label should be affixed to the address zone on the front of the item. The background colour of the address zone and address label should be white while the text colour of the postal address should be black. (Please refer to the clear illustration in para. 8.81) *[Amended in November 2011]*

8.85 No free postage will be given to any EA bearing an address outside Hong Kong. Specifically, **only 1 address is allowed on the postage-free election mail to EC members.** *[Amended in November 2011]*

Posting Arrangements

8.86 In order to allow adequate time for Hongkong Post to process the election mail during the election period, candidates are advised to send their postage-free EAs **before the posting deadline as designated by Hongkong Post.** Candidates and their agents are therefore **reminded** that **mail sent after the posting deadline will likely fail to reach the EC members before the polling day.** *[Amended in November 2011 and October 2016]*

8.87 **Candidates should apply to Hongkong Post for a written approval from Hongkong Post of their EA specimens for free postage. They should read carefully the requirements regarding free postage for EAs before deciding on the content of their EAs, and should seek advice from Hongkong Post relating to the postal requirements and from the REO in respect of other matters 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 content of their EA specimens when necessary. [Added in November 2011]**

8.88 Candidates should submit 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 the candidates when they submit their nominations) to the designated manager(s) of Hongkong Post for written approval. At least **2 clear working days** (excluding any Saturday, Sunday and public holiday) are required for Hongkong Post to process each set of specimens, and the EA should only be posted after an official approval has been received from Hongkong Post. The EA specimens submitted will be processed as soon as practicable, but there is no guarantee that the EA specimens will necessarily be approved in 2 working days immediately after the submission. *[Amended in January 2007, November 2011, October 2016 and January 2022]*

8.89 To save time, candidates may consider submitting their EA specimens before being assigned with a 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 content of the election mail**. There is no need for the candidates to re-submit the revised specimens to Hongkong Post for approval. *[Added in January 2022]*

8.90 To comply with the relevant requirements, candidates should attach the translations in Chinese or English together with the “Notice of Posting of Election Mail” if the specimens contain languages other than Chinese and English. *[Added in January 2022]*

8.91 Candidates should post their postage-free mail at the respective post offices designated by Hongkong Post for election mail. When posting mail, the candidates should furnish a copy of the election mail to the manager(s) of the designated post office(s) for record purpose. *[Amended in January 2007, November 2011 and October 2016]*

8.92 The election mail should be packed in bundles of 50 or 100 for easy counting. All of them must be stacked on the same side and arranged in the same order as the address labels/address lists (e.g. by building name or block number) provided by the REO. *[Amended in November 2011 and October 2016]*

8.93 When posting a mail item, the candidate or his/her election agent must present a signed “Declaration for Posting of Election Mail” (which will be given to the candidate by the REO when he/she submits the nomination) **in duplicate** (the original to be kept by Hongkong Post while the duplicate copy to be duly signed by Hongkong Post and kept by the candidate or his/her election agent as a confirmation of the posting) on each occasion:

- (a) stating the quantity of mail items in the posting and the name of the candidate;
- (b) declaring that the mail to be sent is the postage-free mail of the candidate;
- (c) declaring that each mail packet contains materials relating only to the election concerned and that the item is identical to the unsealed

specimen submitted by the candidate or his/her election agent for inspection and application for approval; and

- (d) declaring that not more than 2 postage-free mails will be sent to any of the EC members.

It is important to note that under s 80(3)(b) of the EP (CEE) Reg, a candidate sending postage-free mail items to EC members in bulk is liable for the 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. *[Amended in November 2011 and October 2016]*

8.94 If a candidate sends the election mail in more than 1 batch, he/she must present the same “Declaration for Posting of Election Mail” at the same designated acceptance post office on each occasion. *[Amended in November 2011]*

8.95 If the name, logo or pictorial representation of a person or an organisation 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 must ensure that **prior written consent** has been obtained from the person or organisation concerned. Please refer to Chapter 18 for the detailed requirements. *[Added in October 2016]*

8.96 The Government reserves the right to charge a candidate postage if any of the requirements under s 80(3) of the EP (CEE) Reg is not met or the free postage arrangements are abused in any way. The charge on postage 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 a manner as it deems fit to censure any abuse of the free postage arrangements. *[Amended in November 2011 and in October 2016]*

8.97 **The postal requirements stated in the above guidelines (paras. 8.76 to 8.94) are for general reference only. Candidates should comply with the latest requirements issued by Hongkong Post at the time of the election concerned.** *[Added in November 2011]*

Enquiries

8.98 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

[Amended in November 2011 and October 2016]

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

8.99 Candidates may send EAs to registered electors in the custody of the CSD if the electors have provided the addresses of the penal institutions concerned as their correspondence addresses for receiving EAs. For security reasons, candidates should adhere to the guidelines laid down by the CSD at **Appendix 17** when sending EAs to these electors. *[Added in January 2010 and amended in October 2016]*

8.100 Candidates may note that persons imprisoned or held in custody by the law enforcement agencies who are registered electors may have access to election-related information through the mass media in accordance with the existing policies of the law enforcement agencies on access to the mass media. *[Added in January 2010]*

PART XIII : COMMERCIAL ADVERTISEMENTS RELATING TO CANDIDATES

8.101 Any commercial advertisement in physical form showing the portrait and/or name of a candidate (e.g. commercial advertisements displayed on the bodywork of buses or the exterior walls of buildings) will not be regarded as an EA if it is merely for business promotion without any intention to promote or prejudice the election of any candidate. However, such a commercial advertisement may give extra publicity to the candidate concerned even though it is not an EA. In order to avoid such unfair publicity, the candidate should make his/her best endeavours to request the person(s)-in-charge not to display the advertisement after his/her declaration of intention to stand for the 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. If any complaint about unfair publicity of a candidate is received, the EAC will handle it according to established procedures. Nevertheless, if the display of the advertisement cannot be suspended due to contractual obligation, and the candidate has made best endeavours to request the person(s)-in-charge concerned not to display the advertisement, the candidate will not be subject to any liability. (For commercial advertisements broadcast on television/radio or in cinemas, please refer to paras. 11.28 to 11.29 of Chapter 11.) *[Added in January 2022]*

CHAPTER 9

ELECTIONEERING ACTIVITIES IN PREMISES OR BUILDINGS WHERE ELECTORS RESIDE, WORK OR FREQUENT

PART I : GENERAL

9.1 There are occasions when candidates may wish to target their electioneering activities at an individual elector or a group of electors:

- (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 6** 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 organisations of the buildings which the electors frequent to **provide fair and equal treatment** to all candidates so as to ensure that the election is conducted fairly. *[Amended in January 2007 and November 2011]*

9.2 Occupiers who have exclusive possession of private properties (houses, flats, shops, office buildings or factories) have the right to decide whether to allow individual candidates to display EAs or conduct electioneering activities in their premises without having to treat all candidates equally. *[Added in January 2022]*

9.3 However, management organisations (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 chairmen or executive committee members of the management organisations are candidates or their relatives or friends, where the principle of fair treatment must be upheld and no preferential treatment should be given. *[Added in January 2022]*

9.4 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 organisations in advance and, if required, obtain prior permission from them for the conduct of electioneering activities in the places within their jurisdiction. *[Added in January 2007 and amended in October 2016]*

9.5 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 II below. The specific guidelines to be observed for conducting electioneering activities in the premises managed by the Housing Department and the Hong Kong Housing Society are set out in **Appendix 7**. *[Added in January 2007]*

9.6 For the purpose of ensuring fair treatment and equal opportunity of access for all candidates in conducting electioneering activities and to avoid causing disturbance to the public, Part III below provides the owners/management organisations of premises and organisations with some guidelines in handling applications for conducting electioneering activities in the premises under their control. *[Added in January 2007]*

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

Visits to Living and Working Places of Electors

9.7 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. *[Amended in November 2011]*

9.8 However, access to a private office may require the approval of the management organisations of the office building or the companies which employ the electors, and such management organisations when making a decision should have due regard to the **fair and equal treatment principle** mentioned in Part III below. In conducting electioneering activities at the common parts of the living or working places of electors, candidates should observe the general guidelines set out in paras. 9.11 to 9.19 below. *[Amended in January 2007]*

9.9 Any government offices, which are working places of electors, will be treated in the same manner as the premises referred to in this chapter. Government offices may allow or disallow electioneering activities as they wish, but such decision should comply with the fair and equal treatment principle mentioned in Part III below. *[Amended in January 2007]*

9.10 Due to security reasons, no arrangements will be made for in-person canvassing activities by a candidate in a penal institution or the premises of a law enforcement agency. A visitor, who visits a penal institution 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 67A of the EP (CEE) Reg].
[Added in January 2010]

Respect for the Decision and Privacy

9.11 After a candidate has been notified of the decision made by the management organisation 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). *[Amended in January 2007 and November 2011]*

9.12 If a decision to disallow electioneering activities in an organisation or a building has been made by the management organisation, the candidate and 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 make a complaint to the EAC or its Complaints Committee. The EAC may publish a reprimand or censure against the candidate concerned. *[Amended in January 2007 and November 2011]*

9.13 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.

9.14 **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 ("the Guidance") at **Appendix 8**, prepared by the Office of the Privacy Commissioner for Personal Data ("PCPD"), serves as a general reference on compliance with the requirements of the PD(P)O in relation to electioneering activities that may involve the collection and use of personal data of an individual. According to the Guidance, 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 Guidance 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 EC 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 for illustration purpose. **Candidates and their election agents are strongly advised to strictly follow the Guidance provided by the PCPD when conducting electioneering activities.**

[Amended in October 2016 and January 2022]

9.15 REO will supply a validly nominated candidate with **an extract of the EC FR** which contains the names and residential addresses of the electors and their email addresses (where the electors concerned have provided such 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 the 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. To prevent an email containing an election mail from being mistakenly-detected as a spam email and blocked by the email system, candidates are advised to understand the sending limit adopted by the relevant email service provider before arranging the sending of election mails to their electors through email in bulk. If necessary, candidates may consider first applying to their email service providers for raising the daily sending limit of their email accounts.

9.16 Besides, candidates should note that some people do not like or even 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 candidate 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. *[Amended in January 2007, November 2011, October 2016 and January 2022]*

IMPORTANT :

Information relating to a person contained in any EC FR or in any extract of the register **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 42(3) of the EAC (ROE) (FCSEC) Reg].

In accordance with Data Protection Principle 3 of Schedule 1 to the PD(P)O, personal data relating to a person (as a data subject) contained in any EC FR or in any extract of the register shall not, without the prescribed consent of an individual¹⁵, or if the exemption under Part 8 of the PD(P)O is not applicable, be used for a “new purpose”¹⁶. Moreover, according to s 64(3A) of the PD(P)O, if a person (as a discloser) discloses any personal data relating to a person (as a data subject) contained in any EC FR or in any extract of the register without the relevant consent of the data subject with an intent to cause any specified harm¹⁷ to or being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject, the discloser commits an offence and will be liable on conviction to a fine of \$100,000 and to imprisonment for 2 years. According to s 64(3C) of the PD(P)O, if the disclosure causes any specified harm to the data subject or any family member of the data subject, the

¹⁵ In accordance with s 2(3) of the PD(P)O, “prescribed consent” (a) means the express consent of the person given voluntarily, (b) does not include any consent which has been withdrawn by notice in writing served on the person to whom the consent has been given (but without prejudice to so much of that act that has been done pursuant to the consent at any time before the notice is so served).

¹⁶ In accordance with Data Protection Principle 3(4) of Schedule 1 of the PD(P)O, new purpose, in relation to the use of personal data, means any purpose other than the purpose for which the data was to be used at the time of the collection of the data or a purpose directly related to that purpose.

¹⁷ In accordance with s 64(6) of the PD(P)O, “specified harm”, in relation to a person, means (a) harassment, molestation, pestering, threat or intimidation to the person; (b) bodily harm or psychological harm to the person; (c) harm causing the person reasonably to be concerned for the person’s safety or well-being; or (d) damage to the property of the person.

discloser will be liable on conviction to a fine of \$1,000,000 and to imprisonment for 5 years.

[Added in January 2022]

9.17 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 may affect their daily life. In order to reduce the nuisance caused to members of the public, candidates **should not** 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 12). *[Amended in January 2007 and October 2016]*

9.18 Canvassing through the use of the **entrance intercom system** by candidates and their supporters in a building is prohibited unless it is expressly allowed by the building management organisation. *[Added in November 2011]*

Identification of Canvassers

9.19 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 III: GUIDELINES TO BE OBSERVED BY OWNERS, MANAGEMENT AND ORGANISATIONS FOR HANDLING APPLICATIONS FOR CONDUCT OF ELECTIONEERING ACTIVITIES IN THE PREMISES WITHIN THEIR JURISDICTION

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

9.20 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 organisations of the organisations or the buildings concerned. *[Amended in January 2007]*

9.21 The EAC appeals to all management organisations of the organisations or buildings concerned to provide **equal opportunity** to all candidates for the purposes of electioneering. However, if it is decided **not** to allow a particular candidate to conduct electioneering activities in the premises of the organisation or in the common parts of the building, no other candidate should be allowed to do so, for **it is important to provide fair and equal treatment to all candidates** so as to ensure that the election is conducted fairly.

9.22 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. *[Amended in October 2016]*

9.23 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.

[Added in October 2016]

9.24 The organisation concerned should make a decision that applies equally and fairly to all candidates instead of dealing with each application from them separately. This will avoid having to convene a meeting to deal with each application upon its receipt, sometimes incurring delay in dealing with some

applications. The EAC may treat such delay as a device to avoid compliance with the fair and equal treatment principle and may issue a reprimand or censure.

9.25 As a motion on whether or not electioneering should be allowed in a building concerns the rights of tenants and occupiers more than those of owners, it is advisable for owners or owners' corporations to allow occupiers who are not owners to vote on the motion and a secret ballot is always the fairest way of voting on such a controversial subject. If approval or consent has been obtained from the owners having the control of the common parts of the building or the owners' corporation, the building management organisation may conduct a questionnaire survey to collect the views of the tenants and occupiers of each flat and act according to the majority view relating to matters covered by and in accordance with this chapter.

Notification of Decision

9.26 The management organisations of organisations and buildings are urged to notify the RO in writing as soon as possible of their decision on electioneering by candidates, so as to equip the RO with the correct information to be provided to the candidates/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. 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. *[Amended in November 2011, October 2016 and January 2022]*

Display of Election Advertisements

9.27 The management organisations 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 organisations are advised to: *[Amended in November 2011]*

- (a) ascertain all the available spots in 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 end of the nomination period, check with the RO how many candidates are contesting in the election;
- (d) divide all the available spaces according to quality and quantity to ensure equality as far as possible into portions equivalent to the number of candidates; and
- (e) when one of the candidates applies for display of EAs, allow him/her to draw lots to obtain a portion of the spots still available at the time of his/her application.

[Amended in January 2007]

9.28 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 organisation 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 organisation is also advised to exercise its own judgment on whether the publicity materials are serving electioneering purposes and then make a decision with due regard to the fair and equal treatment principle.

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

9.29 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 7**. *[Added in January 2007]*

PART V : SANCTION

9.30 If the EAC receives a complaint of **unfair or unequal treatment** of candidates by any organisation or building or a person acting or purporting to act on behalf of such organisation or building, and is satisfied that the complaint is justified, it may make a **reprimand** or **censure** in a public statement which will include the names of the candidates favourably and unfavourably treated. Candidates should therefore advise the organisation management or building owners whom they approach of these guidelines. On the other hand, however, if it is proved that a person has made a false, unfounded or unreasonable allegation of unfair treatment by an organisation or a building, the EAC may issue a reprimand or censure in a public statement against that person.

9.31 Candidates should also refrain from accepting any unfair advantage over other candidates even though such may be readily on offer by an organisation or a building. The EAC may publish a public **reprimand** or **censure** against the candidate who contravenes the guidelines in this chapter or whose act or behaviour results in any unfair or unequal treatment by organisations or buildings towards any other candidate.

CHAPTER 10

ELECTION MEETINGS

PART I : GENERAL

10.1 An **election meeting** is a meeting held to promote or prejudice the election of a particular candidate or particular candidates [s 12(5) of the ECICO]. Expenses incurred before, during or after the CE election (in relation to machinery of the election) 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 are not treated as election meetings (see Part III of Chapter 11). 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. *[Amended in January 2007 and January 2022]*

10.2 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 16). 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].

10.3 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 incurring liability. 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 expenses on behalf of the candidate.
[Added in January 2022]

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

10.5 An election meeting may take place in a public place or in private premises. A public procession for election campaigning purposes is a form of election meeting, as is an exhibition organised with a view to promoting or prejudicing the election of a particular candidate or particular candidates.

10.6 Candidates are reminded that individual government departments and management authorities may have their own guidelines to allow or disallow the conduct of election meetings 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. *[Added in January 2007 and amended in October 2016]*

10.7 The relevant 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. 10.9 to 10.21 below. *[Added in January 2007 and amended in October 2016]*

PART II : ELECTION-RELATED “TREATING”

10.8 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 17). Nevertheless, the act of serving of non-alcoholic drinks at an election meeting in itself will not be deemed corrupt for the aforementioned purposes, unless the purpose of such treat is to influence 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 an election meeting serves the purpose of promoting or prejudicing the election of a candidate or candidates, 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. *[Added in January 2022]*

PART III : ELECTION MEETINGS IN PUBLIC PLACES

10.9 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].

10.10 The written notification shall be **handed in** to the officer in charge of any police station in person by the person who gives the notice, or by any person on his/her behalf. 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.

10.11 Notification to the Commissioner of Police of an election meeting is not required if the meeting is to be:

- (a) attended by not more than 50 persons;
- (b) held in 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. *[Amended in October 2016]*

10.12 The Commissioner of Police may prohibit the holding of any public meeting notified (referred to in paras. 10.9 and 10.10 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 under such circumstances, he/she shall give notice of the prohibition to the person who gave the notification in accordance with s 8 of the POO or to the person who acts in place of the organiser 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. 10.13 below [s 11(2) and (3) of the POO]. *[Amended in January 2007 and October 2016]*

10.13 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]

10.14 A guidance note on safe conduct of election-related activities is at **Appendix 9**. It serves as a general advice to candidates and organisers of election-related activities, to enable them to conduct such activities safely.

Public Processions

10.15 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] *[Amended in October 2016]*

10.16 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. 10.10 above should be used. [S 13A(1) and (4) of the POO] [*Amended in October 2016*]

10.17 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] [*Amended in January 2007 and October 2016*]

10.18 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 13A(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] *[Amended in January 2007 and October 2016]*

10.19 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 IN PRIVATE PREMISES

10.20 Any person who organises an election meeting in 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 7**. *[Amended in January 2007]*

10.21 Notification in writing to the Commissioner of Police will need to be given, in accordance with the procedures set out in paras. 10.9 and 10.10 above, if at the proposed meeting the attendance will exceed 500 persons.

PART V : ELECTIONEERING EXHIBITIONS

General

10.22 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 estate manager or officer-in-charge, 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. *[Amended in January 2007]*

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

10.23 Where approval has been given by an estate manager or officer-in-charge for such an exhibition in any estate 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 8 are applicable to such displays and must be observed by the candidate concerned. The estate manager or officer-in-charge should send a copy of the letter of approval to the RO for record and for public inspection. Please also see **Appendix 7** for reference. *[Amended in January 2007 and November 2011]*

PART VI : FUND-RAISING ACTIVITIES AT ELECTION MEETINGS

10.24 A permit is required for organising, participating in, or providing equipment for 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 10** for general information.

CHAPTER 11

ELECTION BROADCASTING, MEDIA REPORTING AND ELECTION FORUMS

PART I : GENERAL

11.1 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. *[Amended in January 2022]*

11.2 The EAC highly respects the freedom of the press and hopes that electors are able to obtain sufficient election information through 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 aims to ensure a fair and equal opportunity of media coverage for all candidates. *[Added in January 2022]*

11.3 During the election period (i.e. from the commencement of the nomination period up to the close of poll), 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 candidates. *[Amended in January 2022]*

11.4 Provided that fair and equal treatment is given in reporting all candidates, the media can freely express opinions and comments based on the

facts, expressing approval or disapproval on the platforms of individual candidates. *[Amended in January 2022]*

11.5 Most importantly, media organisations should ensure that their programmes or reports will not become EAs (i.e. promoting or 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 8 and 16. *[Added in January 2022]*

IMPORTANT :

The definition of “candidate” in this chapter (i.e. Chapter 11) 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, 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 11), “candidate” means a person whose nomination form has been received by the RO¹⁸. 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 all such persons. Hence, a

¹⁸ After receiving the nomination form, the RO must, as soon as practicable, forward the form to the CERC for determining the validity of nomination. Meanwhile, 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.

definition of “candidate” for the operational convenience of the media is specially given in this chapter. The media may, based on the list of candidates whose nomination forms have been received by the RO as provided on the election website, treat all the candidates in accordance with the principle of fair and equal treatment. **It should be noted that the definition of “candidate” in this chapter is only an operational definition for the purpose of the implementation of the principle of fair and equal treatment, but is not a legal definition under any legislation.** On the legislation aspect, as mentioned above, for compliance with the requirements on EAs, election expenses or other requirements under the ECICO, the definition of “candidate” under s 2 of the ECICO must be followed.

[Amended in January 2022]

PART II : NEWS REPORTS (BROADCASTERS AND PRINT MEDIA)

11.6 News report means the report of events happening on the day or of a recent period. *[Added in January 2022]*

11.7 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. *[Amended in January 2022]*

11.8 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 must at least be mentioned. The mention should be made in the same programme or publication by the media in an appropriate

way. It 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. *[Added in January 2022]*

11.9 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 mentioned in the report. Reference to other candidates need not be made. In any case, the relevant news reporting should not give favourable or unfavourable treatment to any candidates. *[Added in January 2022]*

11.10 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. *[Added in January 2022]*

PART III : ELECTION FORUMS

11.11 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 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 must be kept by the broadcaster of the date, time and contents of the invitation and notice until 3 months after the election. *[Amended in January 2022]*

11.12 The entire election forum should be produced and conducted by the broadcaster according to the fair and equal treatment principle. The principle does not require broadcasters to give each participating candidate

“equal time” in the entire election forum, but it requires broadcasters to give each candidate “equivalent time” in the relevant session of the forum to present his/her election platform. For other sessions of the forum, such as the debate session in which each candidate may freely express his/her views on specific issues, most importantly, the presenter should try his/her best to ensure that each candidate has the opportunity to express views or make responses in accordance with the fair and equal treatment principle at any time throughout the programme. *[Amended in January 2022]*

11.13 Other organisations or groups, such as professional bodies or trade organisations, academic institutions or 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 to attend these 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. Information and records relating to the invitation must be kept by the relevant organisation or group until 3 months after the election. *[Amended in January 2022]*

11.14 During the conduct of election forums, broadcasters and other organisations or groups should not give favourable or unfavourable treatment to any candidates, causing unfairness to any candidates. *[Amended in January 2022]*

11.15 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. *[Amended in January 2022]*

PART IV : FEATURE REPORTS (BROADCASTERS)

11.16 Under the principle of fair and equal treatment, when producing a feature programme or interview to introduce individual candidates, whether in news bulletins or during the airtime of other programmes, the broadcasters should give equal opportunity and approximate time to all the candidates. *[Added in January 2022]*

11.17 When inviting any candidate to an interview, broadcasters should invite all candidates 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 must be kept by the broadcaster of the date, time and contents of the invitation and the notice until 3 months after the election. *[Amended in January 2022]*

11.18 To avoid any possible misunderstanding, broadcasters should provide the audience of the programmes with clear information on the total number and names of candidates. Furthermore, to ensure fair 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 11**, and where appropriate, follow the arrangements set out therein when producing election-related multi-episode feature reporting. *[Amended in November 2011, October 2016 and January 2022]*

11.19 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.
[Added in January 2022]

PART V : FEATURE REPORTS (PRINT MEDIA)

11.20 If the print media conducts interviews to introduce individual candidates during the election period, it should also give the other candidates 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.
[Amended in January 2022]

11.21 In the interview reports of individual candidates by the print media, mention of other candidates should be made. Such mention may be made in an appropriate way by the media organisations. It 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 may be listed on the same page of the report or on other pages. *[Added in January 2022]*

11.22 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 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 12**. 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. *[Amended in January 2022]*

11.23 The print media should ensure that, during the election period, their reporting will not give unfair publicity to particular candidate, or lead the public to 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 16. The publisher may contravene the relevant legislation if not being an authorised election expense agent. *[Amended in January 2022]*

PART VI : NON-ELECTION-RELATED PROGRAMMES AND ARTICLES

11.24 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 documented 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 machinery of the election of the candidate) will 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 an equal opportunity of appearance/being interviewed. *[Amended in January 2022]*

PART VII : AVOIDING UNFAIR PUBLICITY

11.25 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. *[Amended in January 2022]*

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

11.26 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.

11.27 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. *[Amended in November 2011]*

Candidates Appearing in Commercial Advertisements

11.28 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 relevant 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.

11.29 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. *[Amended in November 2011]*

Candidates Contributing Regularly to Print Media

11.30 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. *[Amended in November 2011]*

PART VIII : PLACING ELECTION ADVERTISEMENTS IN MEDIA

11.31 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. *[Amended in January 2022]*

11.32 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. 8.61 of Chapter 8). The expenses so incurred must be accounted for in the return and declaration of election expenses and election donations. An EA placed in a registered local newspaper is exempted from the requirement on bearing printing details (see para. 8.60 of Chapter 8 for details). The EAC appeals to all members of the print media to give all candidates **equal opportunity** for placing EAs in the print media. *[Amended in November 2011 and October 2016]*

PART IX : SANCTION

11.33 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. *[Added in January 2022]*

11.34 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 8 and 16) 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.

[Amended in October 2016 and January 2022]

11.35 Candidates mentioned in paras. 11.26 to 11.30 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. *[Added in November 2011]*

CHAPTER 12

USE OF SOUND AMPLIFYING DEVICE AND VEHICLES

PART I : GENERAL

12.1 The law relevant to this chapter can be found in the POO, the SOO, the Noise Control Ordinance (Cap 400) (“NCO”) and the Road Traffic Ordinance (Cap 374) (“RTO”).

12.2 Candidates are reminded that some members of the public find the sound or noise emitted by loudspeakers annoying and intrusive. When using loudspeakers, candidates should particularly bear in mind possible annoyance caused to people in hospitals, homes for the elderly, kindergartens, nurseries, schools and dwelling houses. Electors’ voting preference may be affected as a result of any noise nuisance caused by candidates or their supporters.

12.3 The use of loudspeakers is not permitted within the NCZ outside the polling station, nor will it be permitted in the vicinity from 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 14). *[Added in January 2022]*

PART II : USE OF LOUDSPEAKERS AND VEHICLES

12.4 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 relevant law 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 10).

12.5 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 in 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 **should not** 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 take into account of the public's tolerance over the sound level and try to keep the volume at a reasonable level. *[Amended in October 2016]*

12.6 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.

12.7 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”.

12.8 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 advertisement 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 the TD for displaying advertisements 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. *[Amended in January 2007, November 2011, October 2016 and January 2022]*

IMPORTANT :

The definition of “publish” in the context of publication of EAs includes “continue to publish”. If any person who intends to stand as a candidate at an election continues to display publicity materials previously published (e.g. EAs displayed on public light buses or taxis during the previous election), in particular posters or banners bearing his/her name or photograph with the intent to promote his/her election at the current election in public places or common areas in buildings, after he/she has been nominated as a candidate or has publicly declared the intention to stand for election, such publicity materials may be regarded as EAs. For the sake of prudence, that person should remove the publicity materials previously published before he/she is nominated as a candidate or has publicly declared an intention to run for the election. *[Added in January 2022]*

12.9 Candidates and their supporters are reminded that they should observe the statutory requirements of the Road Traffic (Safety Equipment) Regulations (Cap 374F) and the 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. *[Amended in January 2007, November 2011 and October 2016]*

12.10 Any vehicle modified to a float configuration for display or canvassing purposes must be approved beforehand by the Commissioner for

Transport and a movement permit for a vehicle must be obtained. Application procedures for approval of float design are included at **Appendix 13**.

12.11 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 24(2) of the EP (CEE) 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 14). *[Amended in January 2022]*

PART III : SANCTION

12.12 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 [ss 24 and 82 of the EP (CEE) Reg]. Candidates should also remind their supporters to observe these guidelines when they are campaigning on behalf of the candidates. *[Amended in January 2007]*

CHAPTER 13

ELECTIONEERING ACTIVITIES CONDUCTED IN SCHOOLS OR PARTICIPATED BY SCHOOL PUPILS

PART I : GENERAL

13.1 Candidates, school supervisors, principals and teachers are requested to take note of these guidelines when considering allowing the conduct of electioneering activities in schools or seeking the assistance of pupils in electioneering activities.

13.2 Involvement of school pupils in electioneering activities has always been a matter of public concern. Anybody in authority must **not** use his/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 the regulatory provisions on use of force or duress on a person's voting preference, see s 13 of the ECICO.

13.3 Candidates who are school administrators (e.g. school principals, teachers) 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. *[Added in January 2022]*

PART II : SCHOOL PUPILS

13.4 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.

13.5 Distribution of EAs is a form of electioneering activity. School supervisors, principals or teachers may be supporters of a particular candidate. 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. 13.2 above, and could avoid any impression of undue influence on young children under the charge of these persons in authority in the school.

13.6 The EAC adopts the advisory circular issued by the Secretary for Education to all schools for general guidance, emphasising the following points:
[Amended in November 2011]

- (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.

13.7 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.

13.8 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

13.9 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. 13.5 above).

13.10 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 for the purpose of electioneering. If a school authority has decided to allow a particular candidate to conduct electioneering activities in the school, other candidates should be 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. *[Amended in January 2022]*

PART IV : SANCTION

13.11 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. *[Amended in November 2011]*

CHAPTER 14

PROHIBITION AGAINST CANVASSING ACTIVITIES OUTSIDE POLLING STATION

PART I : GENERAL

14.1 This chapter deals with the ban on canvassing activities **outside the polling station** on the polling day. An NCZ will be designated outside the 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 in the immediate vicinity outside the entrance/exit of the polling station to avoid any obstruction of the entry/exit. *[Amended in January 2022]*

14.2 No canvassing activities are allowed within the NCZ. 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 6**. *[Added in January 2022]*

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

14.3 The RO must determine 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 23(1)]

of the EP (CEE) Reg]. *[Amended in January 2007 and November 2011]*

14.4 The RO must, at least **7 days** before the polling day, give a notice of the determination of the NCZ and NSZ to the candidates [s 23(2) of the EP (CEE) Reg].

14.5 The notice will be given in writing, and delivered by hand, by post, by electronic mail or by facsimile transmission, to the candidates or to the election agents [ss 12(5), 23(2) and 72(1)(f) of the EP (CEE) Reg]. *[Amended in November 2011 and October 2016]*

14.6 Where the circumstances so warrant, the RO or the PRO may vary the NCZ or NSZ. Notice of the variation must be given as soon as practicable after the variation in the same manner as a notice referred to in para. 14.5 above [S 23(4) of the EP (CEE) Reg]. The notice of variation may however be given orally if delivering it in the manner as referred to in para. 14.5 above is not practicable or is not suitable in the circumstances [ss 23(4)(a) and 72(2) of the EP (CEE) Reg]. *[Amended in January 2007, November 2011 and October 2016]*

14.7 A notice of the determination or the variation, together with indication of the boundaries of the NCZ or the NSZ, must be displayed on polling day at or near the polling station in order to make the determination or variation effective [s 23(4)(b) and (5) of the EP (CEE) Reg].

14.8 The RO may authorise his/her ARO or the PRO to exercise the power to vary the determination and to perform the associated duties on the polling day [s 41(4) of the CEEO and ss 23(5A) and 76 of the EP (CEE) Reg].

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

14.9 The PRO will keep order at the NCZ and NSZ [s 24(1) of the EP (CEE) Reg].

14.10 On the polling day, no person shall:

- (a) engage in canvassing for votes (including suggesting not to vote for any candidate, or not to vote in support of the only validly nominated candidate, as appropriate) in an NCZ. A list of common canvassing activities which are forbidden in an NCZ is at **Appendix 6**;
- (b) use a sound amplifying system or device for any purpose in the NCZ without lawful authority, except for the performance of duties by officers of the CSD on the polling day at the dedicated polling stations situated in penal institutions; *[Amended in November 2011]*
- (c) use a sound amplifying system or device, or conduct any activity for canvassing for votes (including suggesting not to vote for any candidate, or not to vote in support of the only validly nominated candidate, as appropriate), so that the sound of the activity can be heard in the NCZ;
- (d) display in the NCZ any propaganda material relating to any candidate or the election of the CE, except for static display of EAs mounted at designated spots approved by the RO; or
- (e) stay or loiter in the NSZ without the express permission of the PRO.

[S 24(2), (3) and (3A) of the EP (CEE) Reg] *[Amended in January 2007 and October 2016]*

14.11 In an NCZ or an NSZ on the polling day, no person shall:

- (a) fail to comply with a lawful direction given by the RO or the PRO;
- (b) cause an obstruction to any person who is in the zone and on his/her way to vote; or
- (c) otherwise misconduct himself/herself.

[S 24(4) of the EP (CEE) Reg.]

14.12 No canvassing activities will be allowed within an NCZ, except for static displays of EAs that are authorised by the RO [s 24(2) of the EP (CEE) Reg]. Where there are premises situated within the NCZ, the RO should issue a notice in advance to all the candidates asking them to remove all of their EAs 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 RO, the RO 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. *[Amended in November 2011, October 2016 and January 2022]*

14.13 A person shall not obtain or attempt to obtain (in any manner) information as to which candidate an elector is about to vote for or has voted

for at a contested election, or whether an elector is about to vote or has voted in support of the candidate at an uncontested election in an NCZ or in an NSZ without the express permission of the EAC or the PRO. The PRO should recognise and give due regard to persons conducting exit polls who have in compliance with the requirements set out in Chapter 15. [S 70 of the EP (CEE) Reg] *[Amended in January 2007]*

14.14 If a person contravenes paras. 14.10 and 14.11 above, the RO or the PRO may:

- (a) require the person to produce his/her identity card for inspection;
and
- (b) order the person to leave the NCZ or NSZ immediately.

[S 24(5) of the EP (CEE) Reg]

If the person fails to leave when ordered to do so, he/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. The person so removed may not re-enter the NCZ or NSZ again on the polling day without the express permission of the RO or the PRO [s 24(7) and (8) of the EP (CEE) Reg]. *[Amended in January 2010]*

14.15 Nevertheless, the RO or the PRO shall not exercise their powers to order an elector to leave or remove an elector from the NCZ or NSZ so as to prevent him/her from voting at the polling station [ss 24(9) and 27(12) of the EP (CEE) Reg]. *[Amended in November 2011]*

PART IV : PENALTY

14.16 A person who contravenes any conduct prohibited under paras. 14.10, 14.11 and 14.14 above commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months [s 82(1) of the EP (CEE) Reg]. Any attempt to obtain information as described in para. 14.13 above without the necessary permission will be an offence under s 82(2) of the EP (CEE) Reg and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months. *[Amended in November 2011]*

CHAPTER 15

EXIT POLL

PART I : GENERAL

15.1 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 strives to conduct public elections under the principles of openness, fairness and honesty 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. *[Amended in November 2011 and January 2022]*

15.2 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 persons or organisations conducting the exit polls their voting preference unless they wish to do so. *[Added in January 2022]*

15.3 Voting polls inside a polling station, an NSZ and NCZ are strictly prohibited by virtue of the secrecy requirement under the law. However, the EAC may exercise discretion to grant approval for the conduct of exit polls within the NCZ outside the exit of the polling station in accordance with the criteria and guidelines set out in this chapter [s 70(1)(e) of the EP (CEE) Reg]. *[Added in January 2022]*

15.4 It is strictly forbidden for exit polls approved by the EAC to be used for electioneering purpose in promoting or prejudicing the election of a

candidate or candidates. Persons or organisations conducting exit polls must not be affiliated with the candidates. The persons or organisations must ensure that the results of exit polls will not be disclosed to any candidate or other persons before the close of poll. The interviewers should make clear to the electors that participation in the exit poll is entirely voluntary. *[Added in January 2022]*

15.5 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 terms and guidelines governing the conduct of exit poll (see para. 15.12 below). The approval may be revoked if the terms and guidelines are contravened. 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. *[Added in January 2022]*

15.6 Except for exit polls conducted within the NCZ on the polling day mentioned in para. 15.3 above, election-related opinion polls conducted outside the NCZ or before the polling day are not regulated by the subsisting legislation. These polls do not fall within the scope of exit polls regulated by the EAC. *[Added in January 2022]*

15.7 **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.** *[Amended in November 2011 and January 2022]*

PART II : SECRECY OF THE VOTE

15.8 **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 at a contested election or whether he/she has voted in support of the candidate at an uncontested election 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 in a contested election to disclose the name of, or any particular relating to, the candidate for whom the elector has voted; or an elector in an uncontested election to disclose whether the elector has cast a “SUPPORT” or “NOT SUPPORT” vote for the candidate** [s 78 of the EP (CEE) Reg]. **Those who conduct exit polls must respect the electors’ right and wish not to be disturbed.** The interviewers should inform the electors being interviewed that their participation in the exit poll is entirely voluntary prior to the conduct of exit poll. *[Amended in January 2007 and November 2011]*

15.9 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’ voting preference and have an impact on election results. **The EAC, therefore, reminds the media and persons/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 poll should not speak to or communicate with candidates or their agents when conducting the poll outside polling stations.** *[Amended in November 2011 and October 2016]*

PART III : CONDUCT OF EXIT POLLS

15.10 Any person or organisation may apply for conducting exit polls to the REO, which is appointed to handle such applications on behalf of the EAC. Individual applicants must reach the age of 18 as all applications by persons or organisations must be accompanied by a statutory declaration (see

para. 15.12 below) to abide by the relevant terms and guidelines governing the conduct of exit polls which, in case of breaches, carry serious consequences and possible criminal liability for offenders. To forestall public perception of unfairness and to maintain order at the polling station, 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) running in the election;
- (b) the applicant organisation has member(s) running in the election;
- (c) the person(s) responsible for the exit poll or interviewers deployed for the poll are currently members of the organisation(s) to which any of the candidates running in the election belong, or which have publicly expressed support for any candidate(s) running in the election;
- (d) the applicant organisation, the person(s) responsible for the exit poll, or the conduct of the proposed exit poll may cause embarrassment to the EAC given its role;
- (e) the proposed exit poll may cause disturbance or disorder at the polling station, compromise public perception of the credibility of the election, or lead to any public order or public health concerns, etc.

[Added in October 2016 and amended in January 2022]

15.11 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 for the exit poll 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 the polling station on the polling day together with the identity document number and name of each of all the persons who will be so deployed.

[Amended in January 2010, November 2011 and October 2016]

15.12 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 stipulated in the approval letter 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 stipulated in the approval letter and the guidelines. A notice showing the persons or organisations allowed to conduct exit poll and their contact telephone numbers will be released to the public prior to the polling day for the reference of the public and candidates. Such a notice will also be displayed at the polling station.

IMPORTANT :

Persons or organisations applying for the conduct of exit polls are not allowed to collect or retain any personal data relating to the identity of the electors (i.e. any data relating directly or indirectly to the electors, from which it is practicable for their identities to be directly or indirectly ascertained, such as names, HKID numbers, telephone numbers and addresses).

[Amended in November 2011, October 2016 and January 2022]

15.13 Exit polls are not allowed inside polling stations and the NSZ. Interviewers should note that canvassing activity is prohibited within the NCZ and is subject to criminal sanction. Interviewers must therefore be extremely careful in conducting exit poll so as not to give rise to any suspicion that they are canvassing electors inside the NCZ. Interviewers, like any other person, are not allowed to stay or loiter in the area designated as the NSZ (within the NCZ but immediately outside the entrance/exit of the polling station). [S 24(2) of the EP (CEE) 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 station. *[Amended in January 2007 and January 2022]*

15.14 The PRO of a polling station may, if circumstances require, designate an area **outside the exit of the polling station** for interviewers to conduct exit poll therein. If the entrance and exit of the polling station are at the same location, interviewers 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. *[Added in January 2022]*

PART IV : IDENTIFICATION OF INTERVIEWERS

15.15 There had been occasions where exit poll interviewers were mistaken for government officials or polling staff. 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. *[Amended in November 2011 and October 2016]*

15.16 After receipt of the information referred to in para. 15.11 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. 15.11(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 the polling station. *[Amended in November 2011 and October 2016]*

PART V : EXIT POLLS AND OTHER OPINION POLLS FOR ELECTIONEERING

15.17 As mentioned in para. 15.4, exit polls approved by the EAC are in all circumstances not for electioneering purpose. *[Added in January 2022]*

15.18 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. *[Added in January 2022]*

15.19 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. *[Added in January 2022]*

PART VI : SANCTION

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

CHAPTER 16

ELECTION EXPENSES AND ELECTION DONATIONS

PART I : GENERAL

16.1 The law has prescribed the maximum amount of election expenses in order to ensure that all candidates compete on a level playing field within a reasonable level of expenditures. Candidates must submit a return and declaration of election expenses and election donations (“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. *[Added in January 2022]*

16.2 “Candidate” is defined as a person who stands nominated as a candidate at an election, including a person who, at any time before the close of nomination period for an election, has publicly declared an intention to stand for the election. “Election expenses” is defined as expenses incurred or to be incurred for the purpose of promoting or prejudicing the election of a candidate, without any time constraint, including the expenses 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 authorised by a candidate to incur election expenses at an election on the candidate’s behalf. *[Added in January 2022]*

16.3 To ensure that election expenses do not exceed the statutory maximum amount, the law stipulates that only candidates and their authorised election expense agents may incur election expenses. In other words, persons other than the candidates and their election expense agents are not permitted to incur any election expense, or else an illegal conduct is engaged. Nevertheless,

a third party (other than a candidate and a candidate's election expense agents) who publishes an EA on the Internet is exempt from the relevant criminal liability if the only election expenses incurred are either electricity charges and/or charges necessary for accessing the Internet. *[Added in January 2022]*

16.4 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 has to bear the expenses. However, if the election expenses are incurred by the third party under the instruction of the candidate, especially when the maximum amount of election expenses is exceeded, the candidate should be held legally responsible. *[Added in January 2022]*

16.5 If the expenses incurred by a candidate are partly related to the election and are part of the recurrent expenditures for other purposes, the candidate is required to apportion the election-related expenses and include them in the election return. The apportionment can be made on a pro rata basis having regard to the time and usage involved. *[Added in January 2022]*

16.6 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 can be excluded from being counted as election expenses. Nonetheless, goods or materials incidental to the provision of voluntary service and given to the candidate will be counted as election donations; such donations will be counted as election expenses when used. *[Added in January 2022]*

PART II : WHAT CONSTITUTES ELECTION EXPENSES

16.7 For the provisions relating to election expenses, please refer to the ECICO.

16.8 **“Election expenses”**, in relation to a candidate at an election, means 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 includes the value of election donations consisting of goods and services used for that purpose [s 2 of the ECICO]. “Candidate” includes a person **who has publicly declared an intention to stand as a candidate** at the CE election at any time before the close of the nominations for the election, regardless of whether he/she has submitted his/her nomination form, he/she has withdrawn his/her nomination after submission of the nomination form, or his/her nomination is ruled invalid by the CERC [s 2 of the ECICO]. Regarding what it means to “have publicly declared an intention to stand as a candidate”, it depends on the overall circumstances as well as the objective facts and evidence. As to whether a particular item of expense would amount to election expenses, candidates and the relevant persons concerned should take heed of the points made by the CFA in a case relating to the 2008 LegCo General Election (FACV 2/2012), which state that expenses are likely to qualify as “election expenses” if they meet the following five criteria¹⁹:

- (a) They have been incurred by or on behalf of a candidate (as such a person is defined under s 2(1) of the ECICO);
- (b) Having identified the activities or matters to which the relevant expenses relate, such activities or matters are referable to a specific election;

¹⁹ (a) If there is any inconsistency or ambiguity between the English version and the Chinese version of the relevant criteria and issues, the English version shall prevail.

(b) 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.

- (c) Such activities or matters go to the conduct or management of the election, in particular to the machinery of the election;
- (d) The expenses were incurred for the purpose of promoting the election of the relevant candidate or prejudicing the election of another candidate; and
- (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.

The following two issues should also be noted:

- (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); and
- (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.

[Amended in January 2007, October 2016 and January 2022]

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

[Amended in November 2011]

- (a) any money given to or in respect of the candidate for the purpose of meeting or contributing towards meeting the election expenses;
- (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 incidentally given 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. 16.31 below).

[S 2 of the ECICO]

All such donations, whether in cash or in kind, are counted as election expenses when they are spent or used. (For details, see Part IV of this chapter.)

16.10 Whether an expense incurred should be counted as election expenses depends on the facts of each case. As long as the expense is incurred for the purpose of:

- (a) promoting the election of a candidate; or
- (b) prejudicing the election of another candidate or other candidates;

it will be counted as an election expense, irrespective of whether it is incurred before, during or after the election period, and regardless of the source of funding. *[Amended in November 2011]*

16.11 Whether a particular item of expenditure should be regarded as an election expense depends on the circumstances of the case. In addition to the actual use of the expenses, one should also take into account the nature, circumstances and context of the expenditure incurred. If an expense is used for more than one purpose, the expense should be apportioned between election-related purpose and other purposes. The candidate concerned should include relevant particulars of the expense in his/her election return. As a general principle, time and usage are relevant factors for consideration. The candidate may refer to the examples on the apportionment of expenses shown in the guide and the video on the completion of election return mentioned in para. 16.35(c) below (see also para. 16.33 below). The candidate may seek professional advice on the apportionment of expenses when necessary. Any fees incurred for such professional advice will not be regarded as election expenses. *[Amended in October 2016 and January 2022]*

16.12 Staff and other resources available for use by a candidate in his/her official capacity or when discharging his/her duties for the purpose of promoting his/her candidature in the election should be counted as an election expense. A list of common expenditure items to be counted towards election expenses is at **Appendix 14**. The list serves only as an illustration and should not be regarded as taking precedence over the legislation. Candidates should consult a legal adviser in case of doubt on whether an expenditure item should be counted as an election expense. Any legal fees so incurred will not be regarded as election expenses. *[Amended in January 2007 and October 2016]*

16.13 A candidate shall not use any public resources in election activities. However, if by virtue of his/her post or job, the candidate is entitled to the use for private purposes of any security, transportation, secretarial services and living quarters made available with public resources, and the use of such resources is unavoidably involved in his/her election activities in certain circumstances for the reason that he/she has to continue to hold the post or perform the job when standing for election, it will not be considered as use of

public resources in election activities in this context. Please see **Appendix 15** on the detailed responses given by the EAC in 2001 to an enquiry from a candidate for the 2002 CE Election about the use of public resources by an incumbent CE seeking re-election. Under Article 46 of the Basic Law, the CE may serve for not more than two consecutive terms. Therefore, an incumbent CE may seek re-election for a second term. In such case, the use of resources provided by the Government for his/her private use in electioneering may in certain circumstances become unavoidable. In this regard, if the use of such resources by an incumbent CE in electioneering is unavoidable and occasional in nature, it will not constitute a breach of the guidelines but the relevant part of the costs involved has to be accounted for as his/her election expenses. *[Amended in January 2007, October 2016 and January 2022]*

16.14 For an incumbent CE seeking re-election for a second term, the subsisting law does not require him/her to resign or take leave before standing for the election. Therefore, as mentioned in paras. 16.12 and 16.13 above, it may well become unavoidable for an incumbent CE to, after he/she stands for election, use the security, transportation, secretarial services and living quarters an incumbent CE is entitled to use for his/her private purposes by virtue of his/her post or job. As in the past, such a situation will not be considered as use of public resources in election activities in this context. When an incumbent CE wishes to seek re-election for a second term, he/she should arrange for the resources himself/herself for his/her electioneering activities. But, if the use of the above resources are unavoidably involved in his/her election activities in certain circumstances because of the continued need to discharge his/her duties as the CE, he/she is required to apportion clearly the use of resources between the two different purposes, i.e. CE duties versus electioneering activities, and to include the relevant items in his/her election expenses and set out the items clearly in the election return. For example, if an election meeting is to be held at a venue in the CE living quarters, the electioneering team is required to keep a clear record of the time spent and assess the rental for the venue at which the meeting is to be held at a reasonable rate. The election expenses would be

calculated by apportioning the time and space used for the purpose of electioneering activity at the venue on a pro rata basis. An incumbent CE seeking re-election for a second term and his/her electioneering team should keep a clear record of the particulars, such as time and usage, relating to the use of the above resources for conducting electioneering activities, and calculate prudently the relevant cost to be accounted for as election expenses. In case of doubt, the candidate should seek professional advice on the apportionment of expenses. *[Added in January 2022]*

PART III : WHO MAY INCUR ELECTION EXPENSES AND THE LIMIT

Maximum Amount of Election Expenses

16.15 The maximum amount of election expenses for the CE election (i.e. \$17,600,000) is prescribed by the Maximum Amount of Election Expenses (Chief Executive Election) Regulation made by the CE in Council pursuant to s 45 of the ECICO. This expense limit serves to control the scale of election campaigns and prevent candidates with ample financial resources from having an unfair advantage. *[Amended in November 2011, October 2016 and January 2022]*

16.16 A candidate and his/her election expense agents must not incur election expenses in excess of the maximum amount prescribed [s 24(1) of the ECICO].

Persons Appointed to Incur Election Expenses

16.17 Only a candidate or a person who has been duly appointed by a candidate as the candidate's election expense agent may incur election expenses [s 23(1) of the ECICO]. The appointment should follow the procedures

specified in Part VI of Chapter 7.

16.18 As a candidate has to declare that he/she stands at the election in an individual capacity, he/she must ensure that the campaign activities for which he/she has authorised expense are consistent with the declaration and will not lead the electors or the public to believe that he/she is representing his/her party, if any. A candidate's freedom to accept support from any organisation is subject to this condition.

16.19 Any person who is going to carry out **negative campaigning (i.e. canvassing against other candidates)** for or for the benefit of a candidate and hence incurring expenses should obtain the prior appointment by the candidate to act as the election expense agent of the candidate. The expenses will be counted towards the election expenses of the candidate. If the negative campaigning includes EAs, it should also comply with all the requirements of the ECICO and of the EP (CEE) Reg.

16.20 Candidates who have the intention or plan to run for an election should inform the organisations, with which they are associated and which may incur expenses to support them, of these requirements as soon as possible to prevent the organisations from committing an offence out of ignorance.

16.21 A candidate is responsible for the whole amount of his/her election expenses. If the total amount of expenses incurred by the candidate and/or the person acting on his/her behalf exceeds the prescribed limit, the candidate shall be liable for contravening the law, unless he/she can prove that the excess amount is incurred without his/her consent or authorisation and is not due to any negligence on his/her part. Besides, the election expense agent should not incur election expenses exceeding the limit authorised by the candidate, or else he/she contravenes s 23(4) of the ECICO. [Ss 23 and 24 of the ECICO] *[Amended in November 2011]*

PART IV : ELECTION DONATIONS

General Requirements

16.22 Any person who has made clear his/her intentions to stand as a candidate in an election may receive election donations for meeting his/her election expenses only.

16.23 Election donations can only be used for meeting, or contributing towards meeting, a candidate's election expenses. If an election donation consists of goods or services, it can only be used for the purpose of promoting the election of the candidate or of prejudicing the election of another candidate or other candidates [s 18 of the ECICO].

16.24 Election donations can be made in cash or in kind, and include any money value, 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, received before, during or after the election period (in relation to machinery of the election), are counted towards the total election expenses, and are subject to the maximum amount prescribed. *[Amended in October 2016]*

16.25 Any unspent or unused election donations must be given to charitable institution(s) or trust(s) of a public character chosen by the candidate(s). 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(3), (4) and (5) of the ECICO] *[Amended in November 2011]*

16.26 Since the only lawful usage for election donations is to be spent for meeting or contributing towards meeting election expenses, donations are often regarded as election expenses. Every item of election expense which is avoided or reduced as a result of the provision of goods or services free of charge or at a discount normally involves a corresponding item of election donation. The only exception is voluntary services obtained which are not treated as election donations (however, any goods incidentally given to the provision of a voluntary service will be counted as an election donation). Relevant details are elaborated in paras. 16.29 to 16.31 below.

16.27 On receiving an election donation in the form 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 made available at the REO and will be given to a candidate when he/she submits the nomination form. Though it is common that some donors would like to make it anonymous, a donation, whether in cash or in kind, more than \$1,000 in value must not be used for election-related purpose unless the donor's name and address (as supplied by the donor) are shown as required by the standard form of donation receipt. Donations over \$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. Instead, it 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] *[Amended in October 2016]*

16.28 Any person or organisation acting as an agent to solicit, receive or collect election donations for a candidate or candidates should comply with all the requirements under the ECICO as in the case of election donations received by the candidate(s) direct. To avoid causing confusion to donors/members of the public, the agent is advised to note the points and adopt the good practice suggested in **Appendix 16**. *[Added in October 2016]*

Election Donations in Kind

16.29 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 loan conditions are generally available to others, the waived interest 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 determined as the assessed rental for the premises, and should be declared and included as an election donation and election expense in the election return.
[Amended in October 2016]

16.30 For services or goods obtained free of charge, a candidate must include in the election return their estimated value as in the case of expenses being incurred. Where the services or goods are furnished by a person who deals in similar services or goods with the public, the estimated value of such services or goods 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 that time.

16.31 **Voluntary service** is the only service rendered free of charge which can be excluded from being counted as election expenses. Nonetheless, goods or materials incidental to the provision of voluntary service and given to the candidate will be counted as election donations. Apart from being provided 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 be counted towards election expenses at a fair estimated value. *[Amended in January 2007 and January 2022]*

PART V : ELECTION RETURN

16.32 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 before the expiry of the period of 60 days after the date on which:**

- (a) the result of the election is published in the Gazette; or**
- (b) the proceedings for the election are declared to have been terminated;**

or within such extended period as may be allowed by the CFI under the relevant law. The election return must be completed in the specified form. [S 37(1), (1A) and (1N) of the ECICO] *[Amended in January 2007, October 2016 and January 2022]*

16.33 The election return should set out all the election expenses incurred by the candidate and his/her election expense agent(s). For each election expense of \$500 or more, the return must be accompanied by an invoice and a receipt issued by the goods or service providers [s 37(2)(b) of the ECICO]. The invoice and receipt for an election expense may be submitted in separate documents, or may be included in the same document. Invoices and receipts submitted by a candidate should contain the following particulars, including:

- (a) date;
- (b) details of the expenditure item (i.e. information and amount of the goods or services);
- (c) information of the organisation or person (other than the candidate himself/herself) providing the goods or services; and
- (d) the information which proves 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 payee or stamp of the organisation or signature of its authorised representative).

[Amended in November 2011, October 2016 and January 2022]

16.34 A candidate must also set out in the election return all election donations, whether in cash or in kind (including goods and services obtained free of charge or at a discount), received by or on behalf of him/her in connection with the election. The election return must be accompanied by copies of receipts issued by the candidate for each election donation of more than \$1,000 in value and copies of receipts issued by charitable institutions or trusts of a public character for the collection of any unspent or unused election donations, anonymous donations of more than \$1,000 in value or election donations exceeding 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] *[Amended in November 2011, October 2016 and January 2022]*

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

- (a) the specified form for election return mentioned in para. 16.32 above, together with a standard form of receipt for election donations mentioned in para. 16.27 above;
- (b) the standard form for advance return and declaration of election donations (see paras. 16.42 to 16.44 below); *[Amended in January 2010, November 2011 and October 2016]*
- (c) a guide and a video on how to complete the election return; and
- (d) a full set of Frequently Asked Questions (“FAQs”) relating to the election return.

Candidates should read the explanatory notes attached to the election return carefully, and refer to the guide, the video and the FAQs before completing the election return. *[Amended in October 2016 and January 2022]*

Statutory Relief Mechanism for Errors and False Statements

16.36 If a candidate is unable or fails to send to the CEO the election return before the statutory deadline (please see para. 16.32 above) 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 other reasonable cause, and was not due to the candidate’s bad faith, he/she can make an application to the CFI for an order allowing him/her to send in the election return within a further period as specified by the CFI [s 40(1) and (2) of the ECICO]. The legal costs so incurred will not be regarded as his/her election expenses. For previous court’s decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 8.68 of Chapter 8 for the relevant judgments. *[Amended in November 2011, October 2016 and January 2022]*

16.37 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 other reasonable cause, and was not due to the candidate's bad faith, he/she may apply to the CFI for an order allowing 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. For previous court's decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 8.68 of Chapter 8 for the relevant judgments. *[Added in November 2011 and amended in October 2016 and January 2022]*

16.38 Notwithstanding the provision set out in para. 16.37 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 \$50,000 [item (1) of the Schedule to the ECICO], he/she may, subject to the conditions set out in para. 16.39 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 deems it 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 should 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]. *[Added in November 2011, amended in October 2016 and January 2022]*

16.39 A 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. *[Added in November 2011 and amended in October 2016]*

16.40 **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, the candidate engages in an illegal conduct under s 24 of the ECICO. In such case, the relief arrangement will not be applicable. 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 (an act 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 liabilities for other offences provided under the ECICO if the election return concerned is in breach of any such provisions. [S 37A of the ECICO] *[Added in November 2011]*

16.41 If the candidate finds himself/herself in any of the situations set out in paras. 16.36 and 16.37 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 16.38, it is advisable for him/her to make an 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]. *[Amended in November 2011]*

PART VI : ADVANCE RETURN OF ELECTION DONATIONS

16.42 Any candidate who is an incumbent public servant under the POBO, e.g. a serving member of the LegCo or a DC, etc., may disclose to the CEO in advance any election donations received. This may enable the 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 set out in the election return to be submitted to the CEO before the expiry of the period, or the extended period provided under s 37 of the ECICO for lodging an election return (see para. 16.32 above) [s 37(1) and (1A) of the ECICO]. Candidates must also observe the general provisions regarding election donations in Part IV. *[Amended in October 2016]*

16.43 Any **advance return of election donations** must be made on the standard form mentioned in para. 16.35 above. *[Amended in January 2010 and November 2011]*

16.44 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. *[Amended in January 2010 and November 2011]*

PART VII : ENFORCEMENT AND PENALTY

Enforcement

16.45 The election returns will be made available at the REO for public inspection up to the 60th 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. 16.32 above). Copies of the election returns will be furnished to any person upon request subject to the payment of a copying fee at a fixed rate. [S 41 of the ECICO] *[Amended in October 2016 and January 2022]*

16.46 Any complaint or report of breach of the relevant legislation may be made to the 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.

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

Penalties

16.48 It is an illegal conduct for a candidate to incur election expenses in excess of the maximum amount prescribed and for an election expense agent to incur 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. In these cases, the offender 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 a candidate or an election expense agent) is exempt 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 that purpose are electricity charges and charges necessary for accessing the Internet, other either one of them. However, if a candidate, a candidate's election expense agent or a person authorised by a candidate or his/her election expense agent publishes an EA of the candidate on the Internet, any costs incurred should be included in the election expenses of the candidate even though the costs only involve electricity charges and/or charges necessary for accessing the Internet. *[Amended in January 2022]*

16.49 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 engages in corrupt conduct and shall be liable to a fine of \$500,000 and to imprisonment for 7 years [ss 6, 18 and 19 of the ECICO].

16.50 If a candidate fails to submit the election return by the prescribed date or 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 the recipient(s) of the payments, he/she commits an offence and shall be liable to a fine of \$200,000 and to imprisonment for 3 years [s 38(1) of the ECICO]. *[Amended in November 2011 and October 2016]*

16.51 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, engages in corrupt conduct and shall be liable to a fine of \$500,000 and to imprisonment for 7 years [ss 6 and 20 of the ECICO]. *[Amended in January 2010, November 2011 and October 2016]*

16.52 If a candidate, who, having been elected to the office of the CE, acts in the office without filing an election return before the statutory deadline, he/she commits an offence and shall be liable to a fine of \$5,000 for each day for acting in the office of the CE in contravention of s 37 of the ECICO [s 39(1) and (2) of the ECICO]. *[Amended in October 2016]*

16.53 A person convicted of a **corrupt or illegal conduct** of the ECICO will, in addition to the penalties set out in paras. 16.48 to 16.52 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 Legislative Council Ordinance (Cap 542) (“LCO”), s 21 of the District Councils Ordinance (Cap 547) (“DCO”) and s 23 of the Rural Representative Election Ordinance (Cap 576) (“RREO”)]; and
- (b) from being nominated as a candidate at the EC Subsector Elections, and from being elected as a member of the EC if the election is held within 5 years after the date of conviction, or from being nominated as an EC member for 5 years from the date of

conviction, or from being registered as an ex-officio member of the EC within 5 years after the date of conviction [ss 5M, 9 and 18 of the Schedule to the CEEO].

[Amended in January 2007, January 2010, November 2011, October 2016 and January 2022]

16.54 If a candidate is convicted of the offence under s 38(1) of the ECICO (i.e. having failed to lodge an election return as required by s 37), apart from facing the penalties set out in para. 16.50 above, he/she will also be subject to the same disqualifications as a person convicted of having engaged in illegal conduct (see para. 16.53 above). [S 38(4) of the ECICO] *[Added in October 2016]*

CHAPTER 17

CORRUPT AND ILLEGAL CONDUCT

PART I : GENERAL

17.1 This chapter sets out the guidelines against corrupt and illegal conduct in conducting election-related activities. It is important that candidates are aware of the common pitfalls in election activities, which may involve corrupt and illegal conduct, and take appropriate preventive measures to guard against committing offences due to oversight.

17.2 Provisions relating to corrupt and illegal conduct can be found in the ECICO. To help candidates and their agents get acquainted with the major provisions of the Ordinance, the ICAC has prepared an information booklet on “Clean Chief Executive Election” for distribution to candidates. The content of the information booklet has also been uploaded onto the webpage of the ICAC (www.icac.org.hk/elections). *[Amended in November 2011]*

17.3 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] *[Amended in October 2016]*; 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. 17.37 below. *[Amended in January 2010]*

17.4 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] *[Added in October 2016]*

17.5 Under no circumstances is it permissible to induce an elector to vote or not to vote for a particular candidate or particular candidates by offering advantages, food, drink or entertainment, by using force or duress against a person, or by a deception, and to wilfully obstruct or prevent an elector from voting at the election. Such acts violate the ECICO. Electors may sometimes require assistance or transportation service from others in accessing the polling station. However, the above acts must not be done deliberately during the process to induce an elector to vote or not to vote for a particular candidate or particular candidates. *[Added in January 2022]*

17.6 According to s 27 of 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 written consent to the inclusion before the publication of the EA. Oral consent or retrospective written consent obtained after the publication of the EA does not comply with the legal requirements. For details, please refer to paras. 17.12 to 17.15 and Chapter 18. *[Added in January 2022]*

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

Offences Relating to Candidature

17.7 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. A person engages in corrupt conduct if the person corruptly:

- (a) offers an advantage to another person as an inducement or reward to affect that other person's 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 his/her candidature 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]

17.8 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 other person or a third person. The use of deception to induce another

person to affect the candidature of that other person or a third person is also a corrupt conduct. [Ss 8 and 9 of the ECICO] *[Amended in November 2011]*

17.9 It is also 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]. *[Amended in November 2011]*

PART III : ILLEGAL CONDUCT RELATING TO ELECTIONEERING

Publishing False Statement that a Person is or is not a Candidate

17.10 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].

Publishing False or Misleading Statement about a Candidate

17.11 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. 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. [S 26 of the ECICO] For example, 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. *[Amended in November 2011 and October 2016]*

Claim of Support

(Please also see Chapter 18)

17.12 A candidate who uses the name, logo or a pictorial representation of a person or an organisation in any of his/her EAs as an indication of support from that person or organisation engages in illegal conduct if he/she fails to obtain **written consent** to the inclusion before the publication of the EA 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 EA. Under the ECICO, **support** (支持), in relation to a candidate, includes support for the policies or activities of the candidate. In addition, 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] *[Amended in January 2022]*

17.13 Oral consent or retrospective written consent obtained after the publication of the EA does **not** comply with the legal requirements. The EAC provides a sample form for candidates to seek **consent of support** in writing

from a person or an organisation (“consent form”). A candidate is required to post 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 RO in the manner as set out in para. 8.53 of Chapter 8 [s 87(2) and (3) of the EP (CEE) Reg]. It is important to note that it still constitutes an offence even if such an EA contains a statement to the effect that it does not imply support by the person or organisation for a candidate or candidates [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]. *[Amended in January 2007, October 2016 and January 2022]*

17.14 Consent given can be revoked. In case of a revocation, in order to avoid dispute, it is advisable for the person or organisation revoking the consent to send a notice of the revocation to the candidate concerned. The candidate is required to notify the RO in writing of the 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. 8.53 of Chapter 8. The candidate concerned should immediately cease to publish any EA which contains the support of the person or organisation who has made the revocation. *[Amended in October 2016]*

17.15 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 and the person or body to whom or which the false information is related.

Inciting Another Person Not to Vote or to Cast Invalid Vote by Activity in Public

17.16 A person engages in illegal conduct if he/she carries out any activity in public during the election period that incites²⁰ another person not to vote or to cast an invalid vote, and will be liable to a fine of \$200,000 and to imprisonment for 3 years. According to s 27A(5) of the ECICO, activity in public includes any of the following activities, whether or not the person carrying out the activity is in a public place while carrying out the activity:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material;
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia;
- (c) the distribution or dissemination of any matter to the public.

[Ss 22(1) and 27A of the ECICO] *[Added in January 2022]*

17.17 It should be noted that in determining whether any activity in public incites another person not to vote or to cast an invalid vote, regard may be had to the contents of the activity, the intended audience of the activity and the circumstances in which the activity is carried out. Besides, it is a defence for a person who had lawful authority or reasonable excuse for doing the act to

²⁰ Although wording such as “encourage” or “advocate”, etc. has been used in the criminal legislation under some common law jurisdictions in recent years, there is no difference in the concept expressed in that of “incite” under the common law. There have been precedents pointing out that “incite” included “urge, encourage, persuade”. The prosecution must prove the relevant intent, i.e. the defendant intends to make the person being incited to do the incited act.

which the charge relates. [S 27A of the ECICO] *[Added in January 2022]*

PART IV : CORRUPT CONDUCT RELATING TO ELECTIONEERING AND VOTING

Bribery

17.18 A person engages in corrupt conduct at an election if he/she acts to affect a person's voting preference by offering, soliciting or accepting an advantage [s 11 of the ECICO]. Voting preference covers, in a contested election, voting for a particular candidate, not voting at the election, or not voting for a particular candidate or particular candidates; and in an uncontested election, casting a "support" or a "not support" vote for the only validly nominated candidate, or not voting at the election. *[Amended in January 2007 and November 2011]*

17.19 During the election period, candidates are advised to refrain from engaging in any monetary dealing which may be perceived as influencing a person's voting preference. Besides, during the election period, any person should avoid engaging in any act that may be perceived as electoral bribery, such as attaching election leaflets of candidate(s) to leaflets of community activities on free medical check-up, free legal consultation or discounted meals, etc. for distribution. *[Added in January 2022]*

Treating

17.20 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, it is a corrupt conduct at an election to solicit or accept any of such treating [s 12 of the ECICO].

17.21 The mere act of serving only non-alcoholic drinks at an election meeting will not be deemed as engaging in the corrupt conduct mentioned in para. 17.20 above [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. (For details, please see Chapter 10.)

17.22 Where 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, the candidate, if present, should immediately stop any promotion of his/her election and 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 occasion for promoting the candidate may also be liable to 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. (See paras. 10.2 and 10.3 of Chapter 10, and s 23 of the ECICO) [*Amended in November 2011 and October 2016*]

17.23 It is an offence under s 12 of the ECICO for any candidate or any person to offer food, drink or entertainment to affect another person's voting preference. [*Amended in November 2011 and October 2016*]

Force and Duress

17.24 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]. [*Amended in November 2011*]

17.25 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. *[Amended in November 2011]*

Deception or Obstruction

17.26 Furthermore, a person engages in corrupt conduct if he/she, by means of deception, induces another person (or gets another person to induce a third person) not to vote at an election, or to vote or not to vote for a particular candidate or particular candidates at an election. Besides, a person also engages in corrupt conduct if he/she wilfully obstructs or prevents another person (or gets another person to obstruct or prevent a third person) from voting at an election. Engaging in the above corrupt conduct will be liable to a fine of \$500,000 and to imprisonment for 7 years. [Ss 6(1), 14 and 14(1A) of the ECICO] It is also an offence to aid, abet, incite or attempt the said offence. *[Added in January 2022]*

Voting Offences

17.27 It is a corrupt conduct for any person:

- (a) to impersonate another person to apply for a ballot paper at an election or, having voted at an election, to apply again in the same round of voting at the election for a ballot paper in the person's own name;
- (b) to vote at an election knowing that he/she is not entitled to vote at that election;
- (c) 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;

- (d) except as expressly permitted by an electoral law, to vote more than once in the same round of voting at an election; or
- (e) to invite or induce another person to commit (b), (c) or (d) above.

[Ss 15, 16(1) and (2) of the ECICO]

Candidates must note that all their electioneering and canvassing activities must be conducted within the confines of the ECICO. While candidates may engage in activities to promote themselves or to provide assistance or facilitation for 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 at any time. *[Amended in October 2016 and January 2022]*

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

17.28 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 16.

PART VI : POWER OF COURT TO EXCUSE INNOCENT ACTS

17.29 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. For previous court's decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 8.68 of Chapter 8 for the

relevant judgments. 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. *[Amended in January 2022]*

17.30 A candidate who is unable or has failed to send to the CEO the election return before the expiry of the statutory deadline (see para. 16.32 of Chapter 16) 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 to the CEO the election return within a further period as specified by the CFI [s 40(1) and (2) of the ECICO]. *[Amended in November 2011 and October 2016]*

17.31 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 allow 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]. *[Added in November 2011]*

17.32 When the candidate finds himself/herself in any of the situations set out in paras. 17.30 and 17.31 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 16.38 of Chapter 16, it would be wise of him/her to make the application to the CFI and inform the REO as soon as possible. *[Amended in November 2011]*

PART VII : NON-COMPLIANCE WITH THE LAW AND SANCTION

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

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

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

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

17.37 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. 17.3 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 an 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 5 years after the date of conviction, or from being

nominated as a member of the EC for 5 years from the date of conviction, or from being registered as an ex-officio member of the EC within 5 years after the date of conviction [ss 5M, 9 and 18 of the Schedule to the CEEO].

[Amended in January 2007, January 2010, November 2011, October 2016 and January 2022]

17.38 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. *[Amended in January 2007]*

CHAPTER 18

NAMEDROPPING

PART I : GENERAL

18.1 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 written consent to the inclusion before the publication of the EA. Oral consent or retrospective written consent obtained after the publication of the EA does not comply with the legal requirements. *[Added in January 2022]*

18.2 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. *[Added in January 2022]*

18.3 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 indicating “like”, giving response 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. *[Added in January 2022]*

PART II : CLAIM OF SUPPORT

18.4 A candidate who uses the name, logo or a pictorial representation of a person or an organisation in any of his/her EAs as an indication of support from that person or organisation engages in illegal conduct if he/she fails to obtain **written consent** to the inclusion of the name, logo or pictorial representation in the candidate's EA before the publication of the EA 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 EA. It should be noted that there were legal proceedings over disputes concerning candidates claiming to have the support of certain individuals or organisations in their EAs. Two such cases involving a DC ordinary election were handled by the CFI of the High Court. In one of the cases, a candidate sought the court's order to relieve him from the consequences of breaching the relevant law (HCMP 1321/2012) and the trial judge referred to the legal stipulations and pointed out in the judgment that:

“The crucial issue is not whether the Applicant actually had the support of these 52 supporters, but whether he had their written consent for the inclusion of their names as his supporters in his election advertisements prior to their dispatch.”

The order of relief was eventually not granted. In another case involving an election petition (HCAL 247/2020), the trial judge put forward in his judgment that:

“to qualify as a written consent mentioned in section 27(1A) of the ECICO, the consent has to be a single document expressing consent to include one's name, logo or pictorial representation in the advertisement. It cannot be a composite document with more than one document read together. It cannot be permitted to be inferred from a chain of correspondence or messages.”

Therefore, a consent of support, regardless of the number of individual(s) signing to give consent, has to be a single document rather than a composite document comprising multiple letters, documents or a chain of correspondence messages. The EAC has prepared a sample form for candidates to seek consent of support in writing from a person or an organisation. *[Amended in January 2022]*

18.5 Under the ECICO, **support** (支持), in relation to a candidate, includes the support for the policies or activities of the candidate. In the case that the 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) is 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 the person or organisation concerned has **consented in writing** to the inclusion of the modified name, logo, pictorial representation or content in the EA **before** such modification. [S 27(1), (1A), (1B) and (7) of the ECICO] Moreover, when including personal data²¹ (which may include the name, logo or pictorial representation and/or the content) of a person in the EA, all practicable steps shall be taken to ensure that the personal data is correct and accurate. Otherwise, it may contravene the Data Protection Principle 2(1)²² in Schedule 1 to the PD(P)O. *[Amended in October 2016 and January 2022]*

(Please also refer to paras. 17.12 to 17.15 of Chapter 17.)

²¹ S 2(1) of the PD(P)O provides that “personal data” means any data:

- (a) relating directly or indirectly to a living individual;
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- (c) in a form in which access to or processing of the data is practicable.

²² 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.

18.6 It is not uncommon that a candidate publishes EAs through online platforms such as social networks or communication websites to promote 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] *[Added in January 2022]*

18.7 Oral consent or retrospective written consent obtained after the publication of the EA does **not** comply with the legal requirements. As set out in para. 18.4 above, a 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. The EAC provides a sample form for candidates to seek **consent of support** in writing from a person or an organisation for this purpose. 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 towards 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 opposed to the candidate or any other person publishing or authorising the publication of the EA, will have the perception that the person(s) appearing in the EA support the candidate after seeing the pictorial representation. *[Amended in October 2016 and January 2022]*

18.8 It is important to note that it is still an offence even if such an EA contains a statement to the effect that the EA does not imply support by the person or organisation for a candidate or candidates [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 the purpose of promoting or prejudicing the election of the candidate or candidates [s 27(6) of the ECICO].

18.9 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 the office title of the supporter should not be mentioned 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 the title(s). If office title(s) is/are to be mentioned in an EA, the supporter and the candidate should take particular care to ensure that the usage of the information does not give a misleading impression that the candidate has obtained the support of the organisation(s) concerned.

For instance, if an office title of "the school principal" (e.g. "Chan Tai Man, the Principal") or "chairman of an owners' corporation" (e.g. "Chan Tai Man, Chairman of Owners' Corporation") is to be included in an EA, and that the EA is to be posted in the school or the building in which the person is serving, it will 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 the candidate to use both the supporter's office title(s) and the name of the organisation. In case of doubt, the candidate or his/her supporter should consult the organisation concerned on the aforesaid internal rules and procedures. The candidate should be careful not to give the impression that he/she has obtained 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 the director, chairman or chief executive, etc. of the organisation concerned.

[Amended in January 2007, November 2011 and October 2016]

18.10 Although confusion may arise, consent may be given to 2 or more candidates contesting in the election. A consent given can be revoked. In case of revocation, in order to avoid dispute, it is advisable for the person or organisation revoking the consent to send a notice of the revocation to the candidate concerned. The candidate is required to notify the 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. 8.53 of Chapter 8. *[Amended in October 2016]*

18.11 After a revocation of consent is made, the candidate should handle with care and immediately cease to use any EA which contains the support of the person or organisation who/which has made the revocation. In accordance with the requirements of the PD(P)O, the candidate should not retain the personal data of the person for a period that is longer than necessary²³, particularly if his/her consent of support has been revoked. 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. *[Amended in October 2016 and January 2022]*

18.12 It is not uncommon for candidates (including an incumbent CE seeking re-election for a second term) to put photographs with the appearance of other persons (who may include other candidates standing for the same election) in their EAs to show their past activities. Candidates should exercise due care in handling photographs in their EAs. If a candidate includes such a photograph in his/her EA and the publication of that EA implies or is very likely to cause electors to believe that the candidate has obtained the support of the persons appearing in the photograph, prior written consent from the persons concerned must be obtained by the candidate **before** the publication of the EA. Otherwise, the candidate should take effective measures to avoid implying or causing electors to believe that he/she has obtained the support of the persons appearing in the photograph. For instance, if an EA carries a photograph of the candidate attending an activity with other attendees, the candidate may add a caption specifying the particular nature and relevant information of the event underneath the photograph in such a way that, to any reasonable and neutral person (as opposed to the candidate or any other person publishing or authorising the publication of the EA), it will not imply or will not be likely to cause the beholder to believe that the candidate has obtained the support of those persons appearing in the photograph. However, if the photograph concerned is still

²³ Personal data should not be kept longer than is necessary for the fulfillment of the purpose for which the data is used.

likely to cause electors to believe that the candidate has obtained the support of those persons appearing in the photograph, it is still an offence even if such an EA contains a statement to the effect that the EA does not imply that support of those persons has been obtained [s 27(4) of the ECICO]. In such circumstances, prior written consent of support from those persons must be obtained by the candidate. *[Amended in November 2011 and January 2022]*

18.13 To avoid misleading the electors to believe that a candidate has obtained support from a certain person, organisation, government agency or department when it 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.

18.14 According to the PD(P)O, any data (including images) relating to a living individual and from which it is practicable to ascertain the identity of the individual²⁴, constitutes personal data of the individual. The use of such image(s) without the consent of the person concerned for a purpose other than the original purpose of data collection, or for a purpose that is not directly related to the original purpose of data collection, constitutes infringement of personal data. Therefore, when using such image(s), candidates should 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 8**. *[Added in November 2011 and amended in October 2016 and January 2022]*

Written Consent

18.15 As stated in para. 18.4 above, a written consent cannot consist of

²⁴ As advised by the OPCPD, example of such data can be an image with a caption, from which it is practicable for the identity of the individual in the image to be directly ascertained; or it can be an image with no caption and additional information, but it is practicable for the identity of the individual in the image to be indirectly ascertained (the individual in the image is generally recognised by the public).

several documents, nor can it be inferred from a chain of correspondence or messages. The EAC has prepared a sample form for candidates to seek **consent of support** in writing **from a person or an organisation**. After the publication in the Gazette of the notice specifying the period and place for the submission of nominations forms, the form of written consent will be available at the offices of the REO and RO and for download from the REO website. The form will also be provided to candidates upon their submission of nomination forms for the election. *[Amended in October 2016 and January 2022]*

18.16 Among the allegations and complaints received in the past, there were cases where the compliance of the law by a candidate had to be ascertained. Therefore, candidates are required to post the written consent for EAs onto the Candidate's Platform or Central Platform, or deposit with the RO a copy of the written consent in the manner as set out in para. 8.53 of Chapter 8 [s 87(2) and (3) of the EP (CEE) Reg]. If consent has been revoked, candidates are also **required to post** onto the Candidate's Platform or Central Platform a written notice of revocation **or notify** the RO of such revocation in the manner as set out in para. 8.53 of Chapter 8. Copies of the written consent and notice 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 a specified location. *[Amended in October 2016]*

Powers of the Court to Grant Relief

18.17 Under s 31 of the ECICO, if a candidate breaches any offences of illegal conduct due to inadvertence, an accidental miscalculation or any reasonable cause (and not due to bad faith), the candidate may apply to the CFI for an order exempting him/her from the criminal liability (for details please refer to Part VI of Chapter 17). For previous court's decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 8.68 of Chapter 8 for the relevant judgments. *[Added in January 2022]*

Penalty

18.18 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. 17.3(b) and Part VII of Chapter 17. *[Amended in October 2016]*

CHAPTER 19

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

19.1 This chapter sets out the general guidelines on the participation in election-related activities of a CE election by civil servants and officials under the Political Appointment System (“politically appointed officials”) 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 government staff (please refer to para. 7.6 of Chapter 7 for the definition of non-civil service government staff). *[Amended in November 2011 and January 2022]*

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

19.2 Civil servants who wish to participate in electioneering activities in a CE election should observe the regulations, rules and guidelines issued by the Civil Service Bureau. 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 RO, 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 have extensive contacts with the public are strongly advised not to accept appointment by a candidate in the election to be his/her agent and/or participate in electioneering activities in the election. 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. *[Amended in November 2011 and October 2016]*

19.3 The guidelines set out in para. 19.2 above are equally applicable to the non-civil service government staff. *[Added in October 2016]*

PART III : ATTENDANCE OF PUBLIC FUNCTIONS BY CIVIL SERVANTS

On the Occasion of Being Invited

19.4 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”).

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

19.6 Before deciding to attend the function, a 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

19.7 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.

19.8 The guidelines set out from paras. 19.4 to 19.7 above are equally applicable to the non-civil service government staff. *[Added in October 2016]*

PART IV : ATTENDANCE OF PUBLIC FUNCTIONS BY CANDIDATES

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

- (a) arises from the need for him/her to perform his/her role at the function as requested by the function organiser;
- (b) is a natural part of the function which, if the candidate declines to participate, would be seen as breaching the protocol appropriate to that function; or
- (c) is participated by all other candidates.

PART V : OFFICIALS UNDER THE POLITICAL APPOINTMENT SYSTEM

19.10 The term “civil servants” used in the earlier parts of this chapter does not include politically appointed officials. Politically appointed officials are political appointees and they may belong to or be affiliated with political organisations. Politically appointed officials have to comply with a “Code for Officials under the Political Appointment System”. *[Amended in November 2011]*

19.11 Politically appointed officials may, subject to the guidelines below, participate in election-related activities. *[Amended in November 2011]*

19.12 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 CE election, please see para. 3.10 in Chapter 3). *[Amended in November 2011]*

19.13 As far as the CE elections are concerned, politically appointed officials should not use any public resources for any election-related activities. A politically appointed official should ensure that when taking part in such activities, great care should be taken that there is no actual or potential conflict of interest with the business of the Government or his/her own official duties. *[Amended in November 2011]*

CHAPTER 20

COMPLAINTS PROCEDURE

PART I : GENERAL

20.1 This chapter deals with the procedure for making complaints relating to any **breach or non-compliance of the Guidelines and the provisions of the EP (CEE) Reg or the spirit of them** which are for conducting public elections under the principles of openness, fairness and honesty.

20.2 A complaint against criminal, corrupt or illegal 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.

20.3 The EAC will solemnly handle complaints against any breach of the principles of fairness and equality as set out in the election guidelines. Investigation must be conducted 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 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 received 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. *[Added in January 2022]*

20.4 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. *[Added in January 2022]*

PART II : TO WHOM A COMPLAINT MAY BE MADE

20.5 The EAC is an impartial, independent 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. *[Amended in November 2011 and January 2022]*

20.6 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 EP (CEE) Reg or relating to election matters can be made to one of the following bodies or persons:

- (a) the RO appointed by the EAC to deal with electoral arrangements;
- (b) the REO;
- (c) the EAC or its Complaints Committee; or
- (d) the PRO (on the polling day).

[Amended in November 2011 and January 2022]

20.7 **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” on the envelop in order to ensure that only the EAC or its Complaints Committee will receive it.

PART III : TIME AND PROCEDURE FOR MAKING COMPLAINT

20.8 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 polling day of the relevant election. *[Amended in October 2016]*

20.9 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. *[Amended in October 2016]*

20.10 In each case, the complainant is required to identify himself/herself and provide his/her correspondence address, telephone number or 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**. *[Amended in October 2016]*

PART IV : COMPLAINTS INSIDE THE POLLING STATION

20.11 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 Deputy PRO or an Assistant PRO immediately;
- (b) if the matter is not resolved, or if the complainant still feels aggrieved or if his/her complaint is directed at the PRO, the Deputy PRO or an Assistant PRO, he/she should as soon as possible report the matter to the RO 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 the polling station (together with telephone numbers of the RO and the EAC Complaints Hotline) will be displayed at the polling station.

20.12 The PRO or his/her Deputy or Assistant PRO must record any complaint mentioned in para. 20.11(a) and (b) and any other complaints and enquiries concerning an elector's data.

PART V : THE PROCESSING OF COMPLAINT

20.13 The RO, a PRO and the CEO are obliged under s 79 of the EP (CEE) Reg to report irregularities to the EAC or its Complaints Committee. By these guidelines, they are also required to report all complaints received by them to the EAC or its Complaints Committee. Except where a complaint is of minor nature or the RO has been delegated with the authority to deal with it, any complaint received by the RO or the REO will be forwarded to the EAC or its Complaints Committee with comments and all the relevant information relating to the complaint. When the EAC or its Complaints Committee receives a complaint, it may seek additional information and comments from the RO or the REO, if necessary.

20.14 The EAC or its Complaints Committee, the RO and 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.

20.15 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].

20.16 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].

20.17 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. *[Amended in October 2016]*

PART VI : ELECTORAL AFFAIRS COMMISSION'S REPORT ON COMPLAINTS

20.18 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, A PRESIDING OFFICER AND THE CHIEF ELECTORAL OFFICER

20.19 The RO, a PRO and the CEO are required to report as soon as practicable to the EAC or its Complaints Committee (in writing or otherwise as circumstances may demand) on any complaints received by them and on any occurrence which they consider to be a material irregularity relating to an election, poll or count. *[Amended in November 2011]*

PART VIII : SANCTION FOR FALSE COMPLAINT

20.20 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]. *[Amended in October 2016]*

APPENDICES

Chief Executive Election
Action Checklist for Candidates

<u>Time</u>	<u>Action</u>
Before and during the Nomination Period	<ol style="list-style-type: none"> 1. Obtain the following from the Returning Officer (“RO”) or the Registration and Electoral Office (“REO”): <ol style="list-style-type: none"> (a) Nomination Form, including : <ol style="list-style-type: none"> (i) a declaration to the effect that the candidate stands for the election in an individual capacity and will uphold the Basic Law and bear allegiance to the HKSAR; and (ii) a declaration as to the candidate’s nationality and as to whether he/she has a right of abode in any foreign country; (b) designated form requested by the Candidate Eligibility Review Committee (“CERC”) for completion (if applicable); (c) the form of “Intention to Display Election Advertisements at Designated Spots”; and (d) grid paper for the production of the “Introduction to Candidates” and the “Guide on Completion of Grid Paper”.
During the Nomination Period	<ol style="list-style-type: none"> 2. Except where the RO authorises otherwise, hand in to the RO by the candidate in person <u>before the end of the Nomination Period</u> the duly completed Nomination Form, including: <ol style="list-style-type: none"> (a) a declaration to the effect that the candidate stands for the election in an individual capacity and will uphold the Basic Law and bear allegiance to the HKSAR; and (b) a declaration as to the candidate’s nationality and as to whether he/she has a right of abode in any foreign country.

3. Lodge with the CERC the designated form and requested information (if applicable).
4. 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.
5. Obtain from the RO a Candidate Folder containing various forms and reference materials for use by candidate participating in the election.
6. Lodge with the RO a “Notice of Withdrawal of Candidature” if the candidate wishes to withdraw his/her candidature.
7. (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 the Chief Electoral Officer (“CEO”) if RO has not yet been appointed), if applicable.

Any time before, during or
after handing in
Nomination Form

- (c) (i) Candidates who choose to post the electronic copy of the EAs and relevant information/documents onto the open platform maintained by the candidate(s) or a person authorised by the candidate(s) (“Candidate’s Platform”) for public inspection 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**. The Candidate’s Platform, as well as the attachments uploaded, should be maintained and kept by the candidate(s) till the end of the period during which copies of the “Return and Declaration of Election Expenses and Election Donations” (hereafter 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) Candidates who choose to post the electronic copy of the EAs and relevant information/documents onto the open platform maintained by the CEO or a person authorised by the CEO (“Central Platform”) for public inspection 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”. The CEO will provide each candidate with a username and 2 sets of passwords **within 3 working days** upon receipt of the duly completed application and undertaking.
- (d) Make available a copy of each of the EAs and relevant information/documents, including publication information, permission/consent of support in relation to EAs, for public inspection **within 1 working day** after the publication of the EA by:
- (i) posting an electronic copy of each of his/her EAs and relevant information/documents onto the Central Platform in accordance with the procedures set out in **Appendix 4**;

- (ii) posting an electronic copy of each of his/her EAs and relevant information/documents onto the Candidate's Platform and providing 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 4)**;
- (iii) if it is technically impracticable to comply with (i) or (ii) above for EAs published through an open platform on the Internet (for example, when messages are exchanged on social network or communication websites on the Internet, such as Instagram, Twitter, Facebook, or blogs in a real-time interactive manner), posting a hyperlink of each of the EAs 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 EAs onto the Candidate's Platform or the Central Platform in accordance with the procedures set out in **Appendix 4**;
- (iv) providing 2 hardcopies of each of the EAs (or 2 identical full colour photographs/printouts/photocopies of each EA which cannot be practically or conveniently produced in actual form) and 1 hardcopy of information/documents in relation to the EA to the RO; or
- (v) providing 2 identical copies of a CD-ROM or DVD-ROM each containing the EAs and 1 hardcopy of information/documents in relation to the EA to the RO.

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

- 8. (a) Record all election expenses incurred and all election donations received.

- (b) Keep all original invoices and receipts issued by the goods or service providers for each item of expenditure of \$500 or above.
- (c) Issue a receipt to the donor for any non-anonymous donation of more than \$1,000 and keep a copy of the receipt. (Candidates 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 the election period

9. Appointment of Election Expense Agent(s):

- (a) Lodge with the RO (or the CEO if the RO has not yet been appointed) “Authorisation to Incur Election Expenses”.
- (b) Each candidate may appoint 1 person or more as the election expense agent(s) to incur election expenses on his/her behalf (at a prescribed amount specified by the candidate). A candidate **may** also appoint his/her election agent as an election expense agent. These agents can only incur election expenses upon appointment by the candidate. It is important to note that the appointment is not effective until it has been received by the RO or the CEO (if the RO has not yet been appointed).
- (c) An election expense agent must be a person who has attained the age of 18 years.

Any time after handing in
Nomination Form

10. Appointment of 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 handle all affairs a candidate is authorised to handle under the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) for the purposes of the election, **except:**

- (i) to sign the nomination form or make any declaration required in relation to a candidate's nomination;
- (ii) to withdraw the candidate's candidature;
- (iii) to appoint an election agent;
- (iv) to appoint an election expense agent;
- (v) to incur election expenses (unless he/she has been so appointed by the candidate);
- (vi) to revoke the appointment of an election agent or election expense agent; and
- (vii) to be present at a dedicated polling station situated in a maximum security prison.

- (c) An election agent must be a 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 the Nomination Period

- 11. (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 the photograph identical to the one affixed to the grid paper with the candidate's name label affixed on the back.

(If a candidate does not submit the grid paper, the "Introduction to Candidates" will only show the name and candidate number, with the sentence "Relevant information has not been provided by the candidate" printed in the space provided for the electoral message.)

- (b) Lodge with the RO the form "Intention to Display Election Advertisements at Designated Spots".

Any time after handing in Nomination Form, but at least 7 days before the polling day

12. Make a request to the CEO for obtaining 2 sets of mailing labels in respect of the members of the Election Committee (“EC”) extracted from the relevant parts of the EC Final Register and/or a set of USB flash drives containing information of the members of the EC in the Candidate Mailing Label System (“CMLS”) (Candidates are required to sign the “Undertaking on the Use of members of the EC’s Information” when making the request.).

(Note: Relevant information will be provided to the validly nominated candidates. To protect the environment and respect the wish of the members of the EC, the CEO will not provide mailing labels in respect of the members of the EC who have provided their email addresses for receiving election mails and who have indicated that they do not wish to receive any election mails.)

13. Lodge with the CEO the “Notice of Appointment of Polling Agents for a Polling Station not Situated in a Penal Institution” by hand, by post, by electronic mail or by facsimile transmission.
14. Lodge with the RO the “Notice of Appointment of Counting Agents” by hand, by post, by electronic mail or by facsimile transmission.
15. Lodge with the CEO the “Notice of Appointment of Polling Agent for a Dedicated Polling Station Situated in a Penal Institution (other than a Maximum Security Prison) and Application for Consent to the Presence of Election Agent/Polling Agent in a Dedicated Polling Station Situated in a Penal Institution (other than a Maximum Security Prison)” to seek consent from the Commissioner of Correctional Services to the presence of an election agent or a polling agent at a dedicated polling station situated in a penal institution (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 penal institution (other than a maximum security prison) if a polling agent has been appointed for that polling station. Similarly, 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 penal institution, 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.)

As soon as practicable after the RO receives the candidate as validly nominated or not

16. 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, if any).

After the end of the Nomination Period

17. Attend the briefing for the candidate(s).
- (a) At an uncontested election, the candidate will be provided with a list of the designated spots for display of EAs allocated to him/her.
- (b) At a contested election, attend meetings held by the RO to determine the candidate numbers by drawing of lots and to allocate designated spots for display of EAs.
18. Receive from the RO the following:
- (a) location maps and layout plans of the polling and counting stations; and
- (b) name badges for the candidate(s) and his/her/their agents.
19. Receive from the RO a copy of the permission/authorisation for the display of EAs at designated spots allocated to the candidate.

- As soon as practicable after the RO receives a “Notice of Appointment of Election Agent” from other candidates
20. Receive from the RO information about the election agent appointed by other candidates, if any.
- Around 7 days after the end of the Nomination Period
21. Before the deadline specified by the REO, send the completed e-form of the text version of the “Introduction to Candidates” (available on website) by electronic mail to e-intro_to_can@reo.gov.hk for uploading onto the dedicated election website.
- (If a candidate fails to submit the electronic file by the said deadline, his/her “Introduction to Candidates” will only include his/her name and candidate number, with the sentence “Relevant information has not been provided by the candidate” printed in the appropriate space.)
- Around 14 days after the end of the Nomination Period
22. 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 checking 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 printing proof of the ballot paper will be printed without further notice.)
- 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 Penal Institution (other than a Maximum Security Prison) and Application for Consent to the Presence of Election Agent/Polling Agent in a Dedicated Polling Station Situated in a Penal Institution (other than a Maximum Security Prison)” **only if** –
- (a) during the week before the polling day, an elector imprisoned or held in custody who is entitled to vote at the aforesaid dedicated polling station situated in a penal institution is admitted or transferred to the penal institution; 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. Notify Hongkong Post of the date of posting postage-free election mail by submitting the “Notice of Posting of Election Mail” (in duplicate), and submit 3 specimens of unsealed election mail to the designated manager(s) of Hongkong Post for inspection and approval.
- Send postage-free election mail before the deadline as specified by Hongkong Post
26. Post the 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. The election mail must comply with the requirements specified in this Guidelines on Election-related Activities and “Summary on Free Postage for Election Mail”.
- (Note: Election mail sent after the deadline may fail to reach the members of the EC before the polling day.)
- Not later than 1 clear working day before the count (except the count for the 4th and subsequent rounds of voting at a contested election)
27. Receive information from the RO on when and where the counting of votes is to take place.
- Before entering the polling station or counting station
28. Complete the “Declaration of Secrecy” (a declaration of secrecy should be made by all candidate(s), his/her/their election agents, polling agents and counting agents).

- Any time before the polling day 29. Lodge with the CEO or RO, as the case may be, the “Notice of Revocation of Appointment of Agent”, if any, by hand, by post, by electronic mail or by facsimile transmission.
- On the polling day 30. Attend and observe the poll and the count if so wishes, bringing along the “Declaration of Secrecy”.
31. If the “Notice of Appointment of Polling Agents for a Polling Station not Situated in a Penal Institution” and “Notice of Revocation of Appointment of Agent” are not submitted in manners specified in paras. 13 and 29 above respectively, candidates or their election agents should lodge such notices with the Presiding Officer (“PRO”) (except for the PROs at dedicated polling stations situated in penal institutions) in person.
32. If it is necessary to revoke the appointment of a polling agent for a dedicated polling station situated in a penal institution but the “Notices of Revocation of Appointment of Agent” is not lodged in manners specified in para. 29, the notice must be delivered to the CEO by hand, by electronic mail or by facsimile transmission.
33. If the “Notice of Appointment of Counting Agents” and “Notice of Revocation of Appointment of Agent” are not lodged in the manners specified in paras. 14 and 29 respectively, candidates or their election agents must deliver the notices to the RO in person.
- Within 3 working days after the polling day 34. Post the corrected EAs particulars onto the Candidate’s Platform or the Central Platform and place them next to the original version, together with the date of correction; or submit the “Notification of Corrected Information in relation to Election Advertisements” to the RO.
- Within 7 working days after publication of the election result 35. **For the candidate who is declared as elected:**
- (a) make a statutory declaration that he/she is not a member of any political party; and

- (b) lodge with the RO a written undertaking to the effect that he/she will not become a member of any political party or do any act that has the effect of subjecting himself/herself to the discipline of any political party during his/her term of office as the Chief Executive.
- Within 10 days after the polling day
36. Remove all EAs displayed on government land/property.
- Within 2 weeks after the polling day
37. Destroy the USB flash drives containing the CMLS, unused mailing labels (if any), and all the members of the EC's information copied (candidates are advised to use a data erasure software to erase the information completely), **and** return the reply slip on "Confirmation of Destruction of CMLS in the USB Flash Drives and the Relevant Members of the Election Committee's Information" to the REO.
- Before the statutory deadline for the submission of election returns as required under section 37 of the ECICO
38. (a) Lodge with the CEO an election return setting out all election expenses incurred by the candidate and the election expense agents on his/her behalf and all election donations received by or on behalf of the candidate.
- Candidates are required to submit an election return even if no election expenses have been incurred or no election donation has been received.*
- (The REO will issue letters to inform candidates of the deadline for lodging election returns)
- (b) As required under section 37 of the ECICO, candidates should ensure that the election return is accompanied by invoices and receipts for each election expense of \$500 or more, copies of standard receipts issued to donors for each election donation of more than \$1,000 in value, and 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 exceeding the limit of election expenses (see Chapter 16 of the Guidelines for details).

- (c) Candidates must make a declaration/supplementary declaration(s) verifying the contents of the election return before a Commissioner for Oaths (at District Offices), or a Justice of the Peace or solicitor holding a practising certificate.
- (d) Any candidate who is unable/fails to lodge the election return before the deadline may apply to the Court of First Instance (“CFI”) for an order allowing him/her to lodge the election return within an extended period as specified by the CFI.
- (e) Any candidate who has submitted an election return and wishes to make amendments to the election return before the deadline may lodge with the CEO before the deadline a supplementary declaration stating the amendments and the relevant supporting documents (e.g. receipts) as appropriate.
- (f) Any candidate who wishes to correct any error or false statement in his/her election return (including any document accompanying his/her election return) after the deadline must apply to the CFI for an order allowing him/her to do so. Nevertheless, if the aggregate value of the error or false statement in the election return does not exceed the prescribed relief limit (\$50,000) for election as stipulated in section 37A of the ECICO, the candidate may, upon receipt of notification from the CEO of the error and/or false statement in the election return, rectify the error or false statement in the election return within a specified period in accordance with the simplified relief arrangement for minor errors or false statements in section 37A of the ECICO (see paras. 16.35 to 16.40 of the Guidelines).

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

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

Note:

Most of the forms mentioned in this checklist can be downloaded from the 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 election.)

[Amended in January 2007, January 2010, November 2011, October 2016 and January 2022]

Sectors and Subsectors of the Election Committee**FIRST SECTOR**

<u>Item</u>	<u>Subsector</u>	<u>Number of members</u> ^{Note}			<u>Total</u>
		<u>Number of</u> <u>ex-officio</u> <u>members</u>	<u>Number of</u> <u>members to</u> <u>be nominated</u>	<u>Number of</u> <u>members to</u> <u>be elected</u>	
1.	Catering	0	0	16	16
2.	Commercial (first)	0	0	17	17
3.	Commercial (second)	0	0	17	17
4.	Commercial (third)	0	0	17	17
5.	Employers' Federation of Hong Kong	0	0	15	15
6.	Finance	0	0	17	17
7.	Financial services	0	0	17	17
8.	Hotel	0	0	16	16
9.	Import and export	0	0	17	17
10.	Industrial (first)	0	0	17	17
11.	Industrial (second)	0	0	17	17
12.	Insurance	0	0	17	17

^{Note} Hong Kong Special Administrative Region ("HKSAR") deputies to the National People's Congress ("NPC") and HKSAR members of the National Committee of the Chinese People's Political Consultative Conference ("CPPCC") may choose to register as an ex-officio member of a subsector (excluding the Members of the Legislative Council subsector, the religious subsector and the representatives of associations of Hong Kong residents in the Mainland subsector) other than the NPC and CPPCC subsector in accordance with section 5I(4) of the Schedule to the Chief Executive Election Ordinance (Cap 569). In such case, the number of ex-officio members of that subsector will increase while the number of members to be returned through election will reduce correspondingly. Within the same term of office of the Election Committee, the numbers of ex-officio members, members to be nominated and members to be elected of each subsector shall remain unchanged. Regarding the number of members to be elected for each subsector in the current Election Committee subsector ordinary elections, the notice published in the Gazette by the Chief Electoral Officer under section 4(3) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap 541I) shall prevail.

13.	Real estate and construction	0	0	17	17
14.	Small and medium enterprises	0	0	15	15
15.	Textiles and garment	0	0	17	17
16.	Tourism	0	0	17	17
17.	Transport	0	0	17	17
18.	Wholesale and retail	0	0	17	17
				<hr/>	
				300	

SECOND SECTOR

<u>Item</u>	<u>Subsector</u>	<u>Number of members^{Note}</u>			<u>Total</u>
		<u>Number of ex-officio members</u>	<u>Number of members to be nominated</u>	<u>Number of members to be elected</u>	
1.	Accountancy	0	15	15	30
2.	Architectural, surveying, planning and landscape	15	0	15	30
3.	Chinese medicine	0	15	15	30
4.	Education	16	0	14	30
5.	Engineering	15	0	15	30
6.	Legal	6	9	15	30
7.	Medical and health services	15	0	15	30
8.	Social welfare	15	0	15	30
9.	Sports, performing arts, culture and publication	0	15	15	30
10.	Technology and innovation	0	15	15	30
				<hr/>	
				300	

THIRD SECTOR

<u>Item</u>	<u>Subsector</u>	<u>Number of members^{Note}</u>			<u>Total</u>
		<u>Number of ex-officio members</u>	<u>Number of members to be nominated</u>	<u>Number of members to be elected</u>	
1.	Agriculture and fisheries	0	0	60	60
2.	Associations of Chinese fellow townsmen	0	0	60	60
3.	Grassroots associations	0	0	60	60
4.	Labour	0	0	60	60
5.	Religious	0	60	0	60
					300

FOURTH SECTOR

<u>Item</u>	<u>Subsector</u>	<u>Number of members^{Note}</u>			<u>Total</u>
		<u>Number of ex-officio members</u>	<u>Number of members to be nominated</u>	<u>Number of members to be elected</u>	
1.	Members of the Legislative Council	90	0	0	90
2.	Heung Yee Kuk	0	0	27	27
3.	Representatives of associations of Hong Kong residents in the Mainland	0	27	0	27

4.	Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of Hong Kong and Kowloon	0	0	76	76
5.	Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of the New Territories	0	0	80	80
				300	

FIFTH SECTOR

<u>Item</u>	<u>Subsector</u>	<u>Number of members</u>			<u>Total</u>
		<u>Number of ex-officio members</u>	<u>Number of members to be nominated</u>	<u>Number of members to be elected</u>	
1.	Hong Kong Special Administrative Region deputies to the National People's Congress and Hong Kong Special Administrative Region members of the National Committee of the Chinese People's Political Consultative Conference	190	0	0	190

2.	Representatives of Hong Kong members of relevant national organisations	0	0	110	110
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[Amended in November 2011, October 2016 and January 2022]

Legal Provisions against Pressuring Electors Not to Nominate a Particular Candidate

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

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

Bribery has always been an offence at common law liable to imprisonment or a fine.

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

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

Dated 31 May 2005

**Submission Method, Format and Standard for Posting
Electronic Copy of Election Advertisement and Relevant Information
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 requirement on public inspection of election advertisements (“EAs”) under the electronic submission method as stipulated in s 87(2) of the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) regarding the electronic submission of EAs, a candidate must post the following EA particulars as applicable, **within 1 working day**^{Note 1} after the publication of an EA, onto either an **open platform** maintained by the Chief Electoral Officer (“CEO”) (“Central Platform”) or one maintained by the candidate himself/herself or 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 dedicated social media page) where it is technically impracticable to produce an electronic copy of the EA [for example when messages are exchanged in a real-time interactive manner through social network or communication websites on the Internet such as Instagram, Twitter, Facebook, blogs, etc. and the exchanges are of an interactive and spontaneous nature];
- (c) printing/publication information pertaining to the EA including:
 - name and address of the producer/printer;
 - date of production/printing;
 - dimension/size;
 - manner of publication;
 - date of publication;
 - number of copies published; and
 - number of copies produced/printed
 as applicable;

^{Note 1} A “working day” means any day other than a general holiday and 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 of each 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 of each document giving 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 the creation of an account to access the Central Platform before posting the EA particulars onto the platform for public inspection. Each candidate can only create one account.

4. The CEO will inform the candidate concerned upon the creation of the account and provide the candidate with a username and two sets of passwords (which can be changed subsequently by the candidate) **within 3 working days** after the application has been received. Afterwards, the candidate can access the platform by using the registered username and passwords.

5. EA particulars uploaded onto the platform at any one time by a candidate will be treated and referred to as one single submission. As long as the size of the file(s) does not exceed the limit as stated in para. 7 below, there is no restriction on the number of EAs or other documents to be attached in each submission. If subsequent correction to any submitted EA particulars is required, the candidate must 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 will be displayed alongside for public inspection. The corrected 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 uploaded will be automatically generated and displayed

on the computer screen for reference by the candidate after each successful submission. In addition, the acknowledgement of receipt will also be sent to the e-mail address and mobile phone number as specified on the application form for account creation.

File Size

7. The size of each file to be uploaded **must not exceed 50 MB (Megabyte)** or else the submission will be rejected.

8. Files attached to a submission may be compressed in the format of Zip (.zip), RAR (.rar) or GNU zip (.gz).

9. A file exceeding the above size limit will not be accepted. In such a case, the candidate may upload the EA particulars in separate files.

Format

10. Files attached to 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 should arrange to upload files (including text and video, etc.) onto the Central Platform to provide greater access for 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 the 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. The EA particulars posted onto the platform should be virus-free and should be arranged in descending order of the date of submission. The required printing/publication information should also be posted alongside the corresponding EA particulars. To maintain the consistency in design and 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 a candidate wishes to correct any uploaded EA particulars on 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. Candidates are not allowed to remove any EA particulars that have already been uploaded onto the platform, unless such removal is directed by the CEO, the EAC or the Court (as applicable) due to unlawful or non-EA related content/information. 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 inform the public about the removal of the EA and the reason for such removal. Other information/documents 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 on 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 Notes

17. EA particulars must conform to the requirements as set out above. Any electronic file containing images should have sufficient resolution to ensure that the content is both legible and readable.

18. Each candidate must be 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 hyperlinks to external websites. The CEO reserves the right to remove any of the EA particulars posted on the Central Platform containing unlawful, non-EA related or computer virus affected content/information. In the event that the EA has to be removed 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 existing legal requirements on personal data privacy when uploading information onto the aforesaid platforms for public inspection. In particular, for 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) therein (if any), of the person(s) providing such permission/authorisation and/or consent of support before uploading them onto the platforms.

20. When posting a hyperlink of an EA onto the Central Platform or Candidate's Platform, candidates 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 public inspection pursuant to s 41 of the Elections (Corrupt and Illegal Conduct)

Ordinance (Cap 554)^{Note 3} to facilitate public inspection of the EAs.

[Added in October 2016 and amended in January 2022]

^{Note 3} Pursuant to s 41 of the Elections (Corrupt and Illegal Conduct) Ordinance, the CEO must keep all the copies of the election returns available for the public inspection during ordinary business hours, until the 60th day before the first anniversary of the date of the deadline for lodging the relevant election return (regardless of any relief granted by the Court of First Instance to candidates in certain circumstances).

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 Chief Executive Election.
2. The name of the candidate concerned should be shown on the candidate's platform.
3. The candidate number should be shown on the candidate's platform once available.
4. The EA particulars (including the electronic copy, hyperlink, consent, permission or authorisation documents, etc. of the EA) should be displayed and arranged in descending order according to the date of publication.
5. The required information to be shown for each EA can be found in **Annex II**.
6. The corrected EA particulars should be placed next to or under the original version.
7. Candidates are not allowed to remove any EA particulars that have already been uploaded onto the candidate's platform, unless such removal is directed by the CEO, the EAC or the Court (as applicable) due to unlawful or non-EA related content/information. 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 inform the public about the removal of the EA and the reason for such removal. Other information/documents related to the removed EA should still be displayed at the platform for public inspection.
8. The file format and computer instruction should follow the details shown at Appendix 4 of the Guidelines on Election-related Activities in respect of the Chief Executive Election.
9. Sensitive personal data should not be posted onto the candidate's platform. For example, Hong Kong Identity Card Number(s) shown on the consent form should be masked before it is/they are uploaded onto the candidate's platform.
10. Candidates should, where applicable, provide an email address and/or a telephone number on the platform for public enquiries and offer technical assistance when necessary.

Security Measures

1. The candidate's platform should be installed with firewall and/or an Intrusion Protection System to prevent intruder attacks.
2. All files should be properly scanned by anti-virus software before they are posted onto the candidate's platform.
3. To protect against data loss of the candidate's platform, backup exercises should be conducted on a regular basis.
4. The hyper-links to external websites should be checked regularly in order to ensure that they are up-to-date.
5. For more information and resources on online information security, please visit 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 have sufficient resolution to ensure that the content is both legible and readable.
3. The platform should be available in both English and Chinese, and the text should be readable and understandable. Suitable instructions should also be provided for easy navigation of the platform.
4. The candidate's platform should be easily accessible to persons with visual impairment as far as possible.

[Added in October 2016 and amended in January 2022]

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

選舉 Election: 20XX 年行政長官選舉
20XX Chief Executive Election

候選人編號 Candidate No.: 1

候選人姓名 Name of Candidate: 陳大文 Chan Tai Man

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

項目 Item	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)	發布的方式 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	15-1-20XX	A4	100	100	17-2-20XX	街頭派發 Distributed on street	AA 印刷公司 AA Printing Company	地址 Address	File1.jpg	-	-
2	-	橫額 Banners	11-1-20XX	1 米 x 2.5 米 1m x 2.5m	20	20	17-2-20XX	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 Note	18-2-20XX	-	-	-	-	-	-	-	-	-	File2 (Revised).jpg	-	-
3	-	電子海報 Electronic posters	10-1-20XX	10Mb	1501	3	17-2-20XX	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：只顯示曾被修正的資料。 Note: 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 20-2-20XX 撤銷 Consent revoked on 20-2-20XX

[Added in October 2016 and amended in January 2022]

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

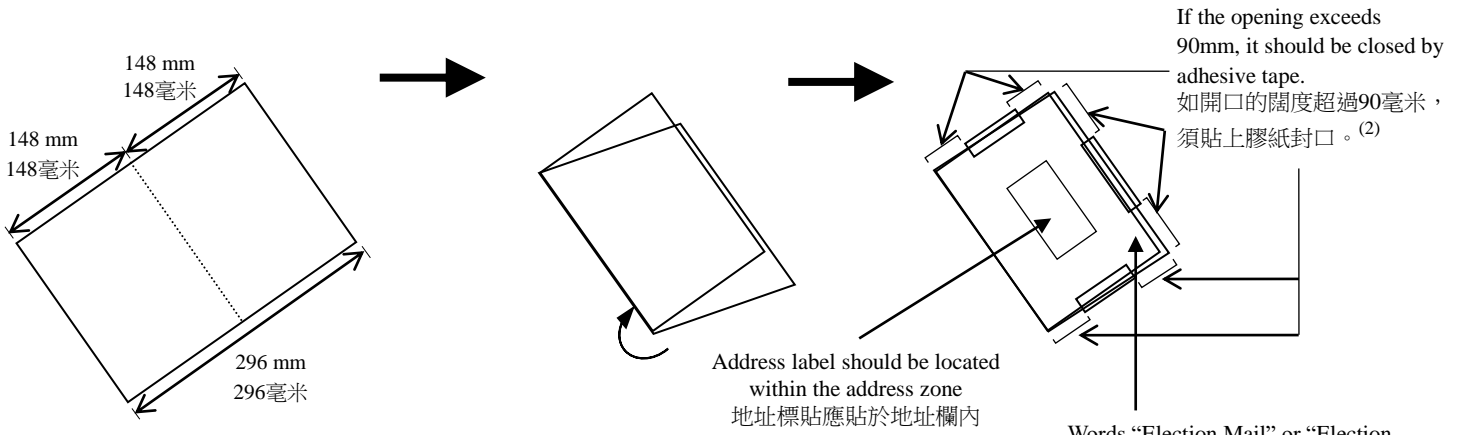


Figure 2 : Folder of A4 (296mm) size with 2 folds
圖示二：兩摺的A4（296毫米）尺寸紙張

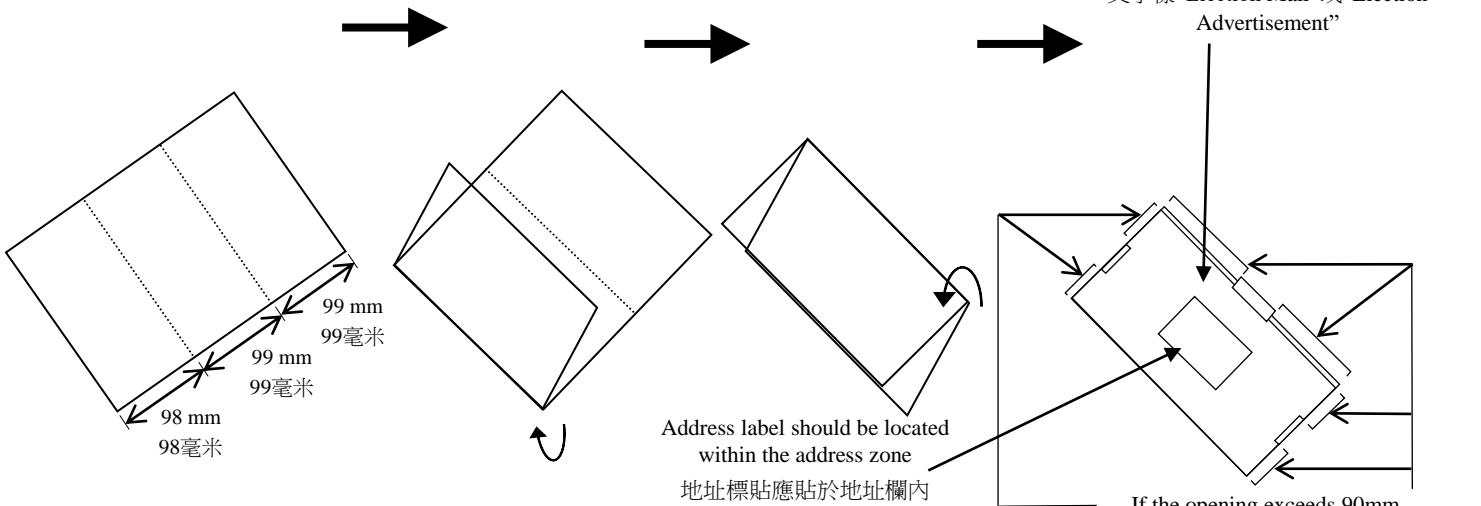
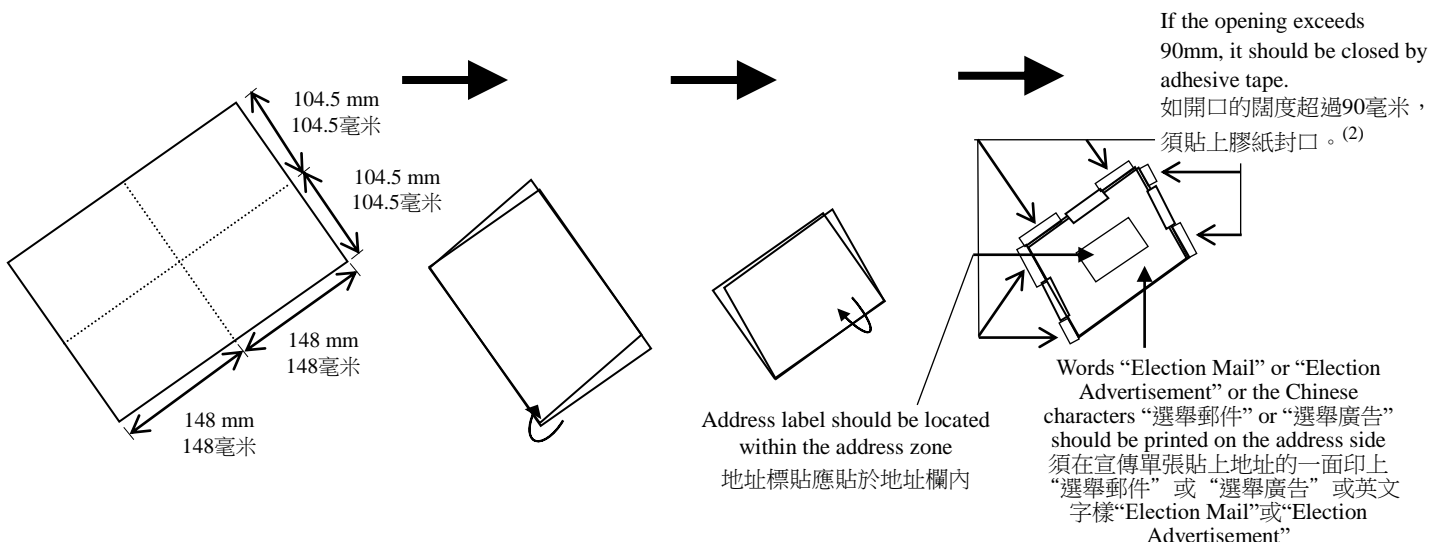


Figure 3 : Folder of A4 (296mm) size with 2 folds
圖示三：兩摺的A4（296毫米）尺寸紙張



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

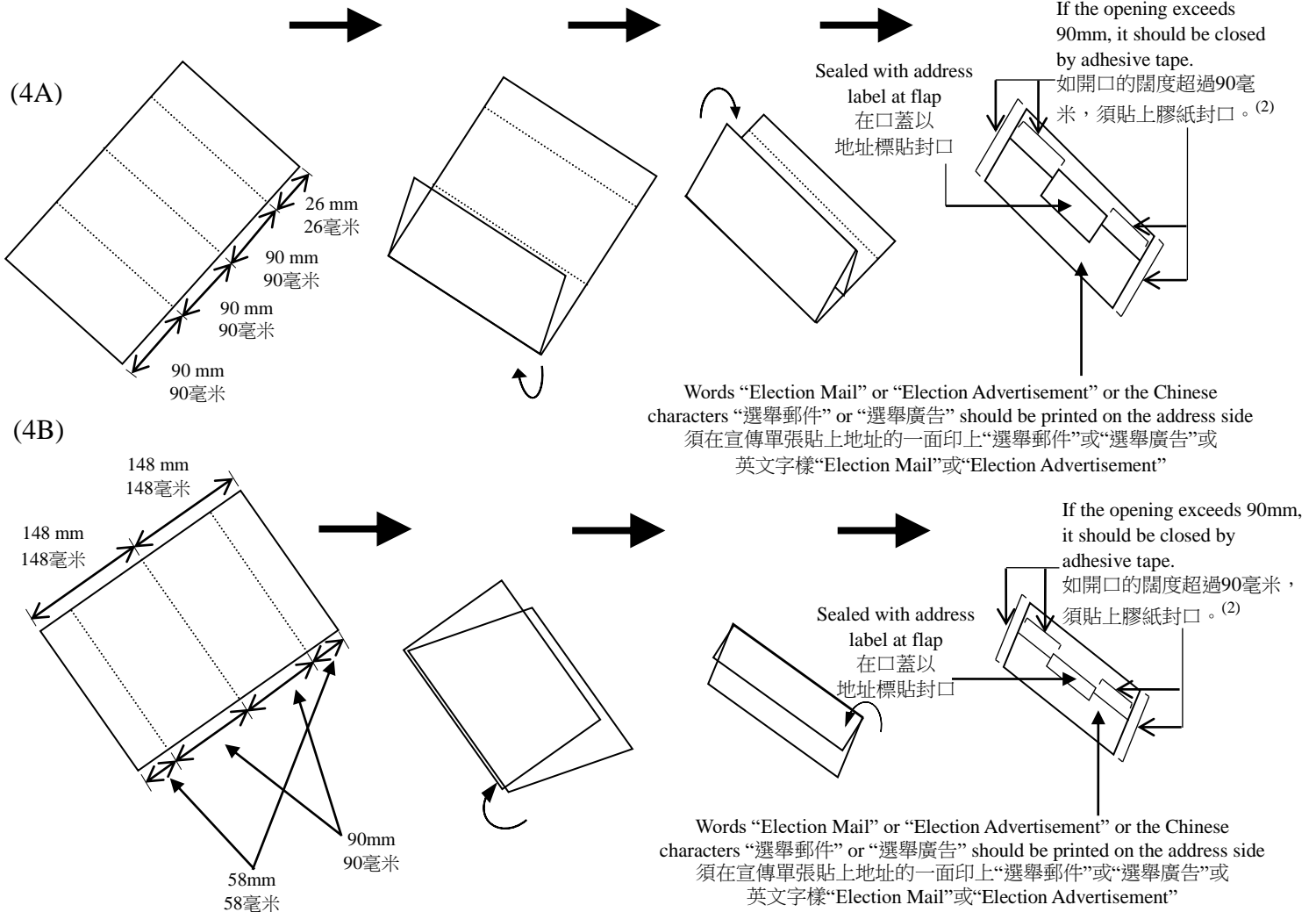
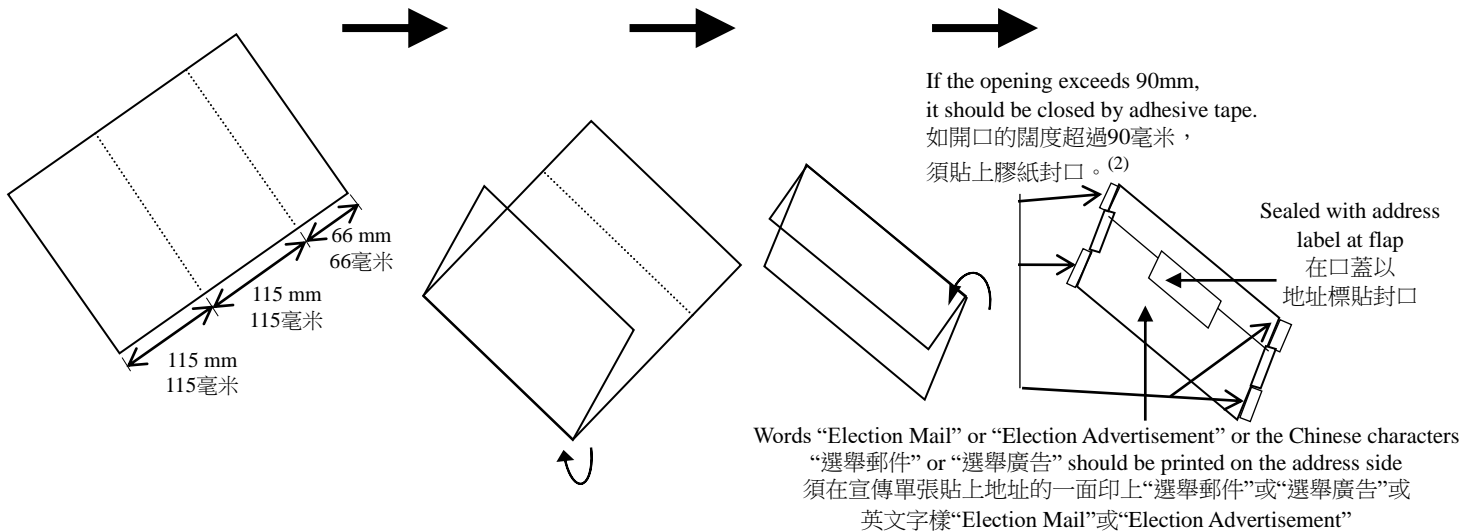


Figure 5 : Folder of A4 (296mm) size sealed with address label
圖示五：以地址標貼封口的A4（296毫米）尺寸紙張



(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 : This list is by no means an exhaustive list of the canvassing activities which are prohibited within a no canvassing zone. It only serves to illustrate some of the common forms of canvassing activities.)

- (1) Unauthorised static display of election advertisements (“EAs”) on walls (including the outer walls of the polling station), windows, railings, fences, etc.
- (2) Exhibition of portable displays on vehicles (whether in motion or parked within the area), or held or carried by persons.
- (3) Displaying any promotional material relating to any candidate or the election of the CE, except for static display of EAs mounted at designated spots approved by the Returning Officer.
- (4) Distribution of EAs.
- (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 recordings appealing or inducing 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 or induces electors to vote or not to vote.

- (8) Candidates wilfully staying or loitering in the NCZ and showing goodwill to electors, which constitutes canvassing for votes.

[Amended in January 2007, November 2011, October 2016 and January 2022]

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

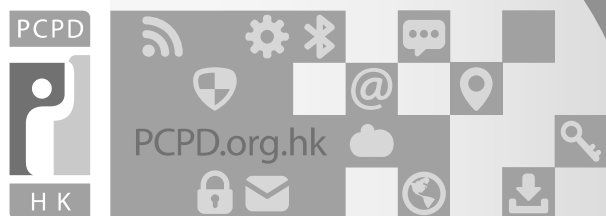
Validly nominated candidates must obtain **prior approval**^{Note} from an estate manager or officer-in-charge before conducting any electioneering activity or election meeting within a housing estate, in addition to compliance with regulations and conditions imposed by other relevant authorities. An **application** for approval **should be made at least 2 clear working days (excluding Saturday, Sunday or public holiday) before the date of the proposed election meeting/electioneering activity**, and the applicant will be notified as soon as practicable after a decision is arrived at. To avoid any conflict that may arise from allowing 2 or more candidates and their supporters to hold election meetings/electioneering 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 election meeting/electioneering 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 office;
- (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

^{Note} The Housing Department and the Hong Kong Housing Society stipulate that only validly nominated candidates who submit relevant documentation may apply for holding an election meeting/ electioneering activity inside a housing estate. The Housing Department and the Hong Kong Housing Society will allow validly nominated candidates to commence electioneering activities in the vicinity of a housing estate after receiving approval, the earliest being on the day after the RO conducts the lots drawing for the candidates.

- (d) the relevant estate office should send a copy of the letter of approval to the Returning Officer for record and for public inspection.

[Added in January 2007 and amended in January 2022]



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.

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 1

A candidate of the District Council election collected feedback from members of the public on community affairs by distributing flyers. In the flyer, members of the public were requested to provide their names and contact details. However, there was no PICS in the questionnaire and some members of the public were worried about how their personal data would be used.

When the candidate solicited personal data directly from individuals (such as by distributing a flyer for filling in personal data), the candidate should have provided a PICS to the individuals so that they could decide whether their personal data should be provided.

Case 3

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".

Case 2

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.

Case 4

The complainant had been a member of a trade union for years. In a recent election, the complainant received a telephone call from the trade union canvassing votes for a candidate. The complainant stated that the trade union had never informed him that his personal data would be used for election purposes when he joined the union.

Upon the PCPD's enquiry, it was found that the latest version of the PICS in the membership application form had stated that the trade union would use the members' personal data for election purposes. However, the trade union did not provide the latest version of the PICS to those members who had their membership renewed. The PCPD thus requested the trade union to provide the latest version of the PICS to the members when they renewed their membership in future.

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

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.

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 5

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.

Case 6

The PCPD has received complaints against councillors for not respecting the residents' privacy, for example, by uploading photos or videos which contained close-up facial images of individuals involved in disputes in the neighbourhood, or by disclosing the full addresses of patients confirmed of having contracted epidemic diseases.

The PCPD understands that councillors or political bodies may from time to time report on the local affairs in the community through social media, upload photos to reflect actual situations, or provide information to residents for combatting pandemic. However, if the information contains an individual's facial image, full address or any other personal data, councillors should take into account the data subject's wish and feeling. Individual's privacy right should be respected when sharing information on topical affairs and incidents on the social media.

Disclosing personal data on social media

- 3.7 Social networks are rapidly evolving and developing. It is becoming common for political bodies, district councillors and community officers to provide information relating to the district to the residents and to stay connected with them through social media. Political bodies and district councillors must ensure that the personal data privacy of the residents is protected when sharing information that involves personal data.

Registers of Electors

- 3.8 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 (the prevailing amount is HK\$5,000) and to imprisonment for 6 months.
- 3.9 Besides, the PCPD noted that the Court of Appeal handed down a judgment on 21 May 2020 and a decision on 27 May 2020 regarding an appeal⁷ regarding the dismissal of an application for judicial review on whether the requirement of showing the names of the registered electors together with their principal residential addresses ("Linked Information") in the electoral registers for public inspection or provision to candidates is constitutional⁸. The Court of Appeal held, amongst others, that displaying the Linked Information of

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.

⁷ Junior Police Officers' Association of the Hong Kong Police Force and Anor (as the applicants) v Electoral Affairs Commission, Chief Electoral Officer, Electoral Registration Officer (as the respondents) Hong Kong Journalists Association (as the intervener) (CACV 73/2020, Date of Judgment: 21 May 2020).

⁸ In this appeal, the applicants challenged the constitutionality of section 20(3) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap.541A) and Section 38(1) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap.541F) (together as "Impugned Provisions"). Under the Impugned Provisions, the Linked Information of a registered elector as recorded in the Final Register would be available (1) to the public for inspection at place(s) specified by the Electoral Registration Officer and (2) to the candidate(s) for the constituency to which the elector belongs.

electors in the electoral registers to an individual's right to privacy and is thus protected generally under Article 14 of section 8 in Part II of the Hong Kong Bill of Rights Ordinance⁹ (c.f. from Article 17(1) of the International Covenant on Civil and Political Rights). Hence, the requirement of displaying publicly the names and residential addresses of some individuals (for example victims of stalking or family violence) may cause a real risk of harm to them. As the ultimate guardian of the law, the Court of Appeal is obliged to consider if a proportionate balance is struck between the right of privacy and the right to vote (particularly the measures adopted in the current electoral system to achieve the transparent election aim)¹⁰. Nevertheless, the Court of Appeal also ruled that it is not its function to formulate electoral policy or to devise a particular electoral system. The PCPD suggests the candidates and stakeholders pay attention to the relevant election policy and amendment in law (if applicable) published by the Registration and Electoral Office in future¹¹.

Personal Data in Other Public Domains

3.10 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 expectation¹² of the data subjects.

Option to Decline

3.11 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"

3.12 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

3.13 When conducting election activities, candidates and their Agents should take all practicable steps to protect personal data of electors against accidental or unauthorised access¹³. 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 7

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).

⁹ Article 14 of section 8 in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383): (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.

¹⁰ See paragraphs 95-96 of the judgment.

¹¹ This paragraph is updated as of 10 June 2020.

¹² 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).

¹³ 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.

Data Disposal

3.14 Personal data collected for election purposes should not be retained for a period beyond completion of all the election activities¹⁴. 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 processors¹⁵ 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 purposes¹⁶; and (ii) unauthorised or accidental access, processing, erasure, loss or use¹⁷.

Distributing or Providing Assistance in Purchasing Supplies

3.15 Political bodies and councillors may from time to time distribute supplies to the residents and they may collect the residents' personal data for identification purposes. Political bodies and councillors should respect the residents' privacy and comply with the Ordinance when collecting, using and retaining the residents' personal data.

Case 8

Political bodies, councillors and community officers provided assistance in purchasing anti-epidemic items through the internet or distributed anti-epidemic items to members of the public at roadside booths. This aroused a number of privacy concerns:

Case 8 (continued)

- 1) Even if there is a practical need for the organiser to collect personal data, for instance for the purposes of registration, compiling a waiting list, and collection or delivery of products, the organiser should collect the minimum amount of personal data in a lawful and fair manner¹⁸. As in the circumstances of shopping in the supermarket, providers of goods and services should not collect personal data that is unrelated to the transactions. Hence, the organiser should not collect data that is unrelated to and unnecessary for the transactions or delivery (for example, date of birth, income, family status, family members' personal data and identity card copy).
- 2) No matter whether the organiser collects personal data through paper or electronic form, the organiser should inform members of the public of the purpose of collection, the classes of transferees and whether it is obligatory or voluntary to supply the data¹⁹. The good practice is to provide a PICS to them.
- 3) The organiser should not use the personal data collected for other purposes without the data subjects' consent²⁰ (for example, for purposes other than the directly related purposes for which the data was collected, including marketing of commercial products or to advance political publicity)²¹. If the organiser intends to use the personal data collected for other purposes, the organiser should explain clearly to the data subject and seek the data subject's consent. The consent given by the data subject must be express and voluntary.

¹⁴ 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.

¹⁵ "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. Reference can be made to the information leaflet *Outsourcing the Processing of Personal Data to Data Processors* issued by the PCPD.

¹⁶ 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.

¹⁷ 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.

¹⁸ See footnote 2 and footnote 5.

¹⁹ See footnote 3.

²⁰ See footnote 6.

²¹ Except for those scenarios that are exempted under Part 8 of the Ordinance.

Case 8 (continued)

- 4) For the retention period of personal data, notwithstanding that the Ordinance does not require data users to inform data subjects of the retention period of personal data, data users are required to erase personal data that is no longer needed for the purpose for which the data is used²². Hence, the organiser should erase the personal data collected after distributing the supplies or providing the services (in other words, after fulfilling the purpose for which the data is used), in order to avoid potential data security problem.

4. Guidance for the Relevant Government Departments

Security Measures

- 4.1 In campaigns launched by government departments for the purpose of promoting elector registration or updating electors' particulars, such activities 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 parties²³. 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). The data should be returned to the office or delivered to a safe place for proper storage as soon as possible upon completion of the activities.
- 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 use²⁴. 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 volume of 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 commensurate with the quantity and sensitivity of the data should be adopted 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)²⁵.

- 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

²² See footnote 14.

²³ See footnote 13.

²⁴ See footnote 13.

²⁵ Reference can be made to the *Guidance on the Use of Portable Storage Devices* issued by the PCPD.

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.

- 4.5 The multiple transfers and storage venues for the election documents increased the risk and harm of losing the documents. For the purposes of monitoring and reviewing the implantation of the security measures, government departments should set up procedures in respect of proper recording of movements of electoral documents, retrieval systems and dossier reviews.

Case 9

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 names 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 (Privacy Commissioner) 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)²⁶ of the Ordinance. An enforcement notice was served on the government department to remedy and prevent recurrence of the contravention²⁷.

Case 10

A government department lost a marked final register of electors after an election. The register contained the unique and sensitive information about electors' identity card numbers and their polling statuses.

The Privacy Commissioner found that there were no specific guidelines or standing procedures as security standards for managing the marked final register. Its inventory and movements were not properly and adequately documented. There were no dossier reviews, and retrieval systems for storerooms were not put in place.

In addition, human errors in handling physical and tangible records of personal data could have been caused by overly long work hours, scarce resources, inexperienced or under-trained staff, etc. The Privacy Commissioner served an Enforcement Notice to direct the government department to remedy and prevent any recurrence of the contraventions.

- 4.6 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 3²⁸. In making such a determination, the exemptions provided in Part 8 of the Ordinance²⁹ 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 Ordinance³⁰.

²⁶ See footnote 13.

²⁷ The investigation report (R17-6249) is available on the PCPD website.

²⁸ See footnote 6.

²⁹ 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.

³⁰ See footnote 3.

5.2 For the purpose of gauging public views on candidates' approval ratings and the electors' voting preferences, public opinion research organisations need only the overall results of the survey and some macro parameters (for example, gender, age group, occupation categories, area of residence and income group). Hence, it is generally not necessary for the public opinion research organisations to indiscriminately collect the respondents' personal data (such as names, identity card numbers, telephone numbers and addresses). If data subjects are asked to provide these kinds of personal data for research purpose, they must check clearly the purpose of collection before considering to disclose such data, and should do so only on a well-informed and voluntary basis.

Case 11

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 was 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 was to be used, whether it was obligatory or voluntary for participants to provide the data, the classes of person to whom the data might be transferred, and their right to request access to a copy of their personal data and to request correction of the data.

Lawful and Fair Collection

5.3 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 data³¹.

Case 12

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; it 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.

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 Security

5.4 If collection of personal data is involved, organisers of opinion or mock polls should still safeguard personal data collected against accidental or unauthorised access by unrelated parties.³² When employing the

³¹ See footnote 5.

³² See footnote 13.

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.

Data Disposal

- 5.5 Organisers should not retain personal data collected in opinion or mock polls after completion of these activities³³. 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 3.14 above).

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 Ordinance³⁴. In case of doubts, enquiries should be made to the organisers.

- 6.7 If personal data is collected by political bodies in their activities such as distribution of or providing assistance in making purchases of supplies, the participants should ascertain whether the data collected will be used in subsequent elections. If the participants do not consent to such use, they should not provide their personal data.
- 6.8 Members of the public should not give up their personal data for small gains. Personal data belongs to the data subjects themselves. They are advised to be vigilant about protecting their own personal data. Before providing personal information through whatever channels, they should first read the PICS and the privacy policy, and get to know the other party's identity and background, as well as their purposes of collection, the classes of transferees and whether the other party is collecting excessive personal data, etc.
- 6.9 If members of the public believe that their personal data have been collected or used improperly, they can consider raising their queries and negotiating with the individuals or organisations concerned. If they are dissatisfied with the individuals' or organisations' response, they can complain to the PCPD.

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 notifications³⁵. In the unfortunate event of a data breach, data users should consider issuing notifications to lessen the harm caused by the breach.

The PCPD 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.

³³ See footnote 14.

³⁴ footnote 3.

³⁵ Reference can be made to the *Guidance on Data Breach Handling and the Giving of Breach Notifications* issued by the PCPD.



PCPD website
pcpd.org.hk

Enquiry Hotline : (852) 2827 2827
Fax : (852) 2877 7026
Address : Room 1303, 13/F, Sunlight Tower, 248 Queen's Road East, Wanchai, Hong Kong
Email : enquiry@pcpd.org.hk



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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 10 Part III of the ‘Guidelines on Election-related Activities in respect of the Chief Executive 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 11 Part III of the ‘Guidelines on Election-related Activities in respect of the Chief Executive 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 of Electors

6. Chapter 9 of the ‘Guidelines on Election-related Activities in respect of the Chief Executive 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 owner’s corporation which have 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 conduct of the activity.

[Amended in October 2016]

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

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

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

Name in Chinese (if any) : _____

2. Hong Kong Identity Card Number : _____

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

3. Address : _____

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

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>	_____	_____
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<u>Treasurer/Accountant</u>	_____	_____
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iv) Date the organisation was formed : _____

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

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

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

i) Name of organisation (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.

July 2016

Statement of Purpose

Purpose of Collection

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

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

Classes of Transferees

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

Access to personal data

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

Enquiries

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

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

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

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 Section 4(17) of SOO, Cap 228.

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

5. 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.gov.hk>).

July 2016

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

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

[Added in November 2011]

Fair and Equal Treatment of Candidates by the Print Media

1. Fairness and equality will in each case be viewed by the Electoral Affairs Commission with reference to the surrounding circumstances.
2. Practical problems that may be experienced by publishers like limitation of column space and staff resources, and situations such as some candidates who have extensive arguments and opinions on issues of public relevance and those who have none, candidates who have made newsworthy statements or speeches as opposed to those who have not uttered a word, and the difference in status and standing of candidates as public figures, etc., are examples of circumstances against which the criteria of fairness and equality are to be judged.
3. What is important is that practical problems, in general terms without specifics, should not be allowed to be used as pretexts for not giving fair and equal treatment and coverage to all candidates. Merely saying that practical problems gave rise to the selective reporting will be viewed as a lame excuse, but if the other candidates had been approached and they refused to offer any interview, and this fact is made known in the same article, there can hardly be any suspicion or complaint that the guidelines have been breached.
4. Equal treatment and coverage are not necessarily equal space and equal number of words written on each candidate. It is an idea that has to be examined in all the circumstances of each individual case. Where a candidate says more on a topic and another candidate says less, that can be truthfully and faithfully reported, and no reasonable-minded person will say that that is unequal reporting. Fairness and equality here are in the sense of **equal opportunity** being given to all candidates alike, so as to help electors make informed choices.
5. If there is fair and equal treatment of all candidates in a publication, its editorial line or the personal opinions of the writer on each of the candidates can be freely expressed, insofar as they are fair comments and based on true facts. Any newspaper is at full liberty to express its support for or disapproval of a candidate. The guidelines do not seek to impose any shackle on the expression of such ideas.

[Amended in January 2022]

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
(Contact telephone : 3842 5729
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.

[Amended in November 2011, October 2016 and January 2022]

**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 election 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 Chief Executive 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 the 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 promoting the election of a candidate or candidates or prejudicing the election of another candidate or candidates.

(Note: Costs incurred for publicity materials used to express gratitude for electors' support after the election will not be counted as election expenses.)

- (4) Costs incurred for the 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 government departments should also be included.
- (5) Costs incurred by the relevant authorities for the removal of EAs displayed without authorisation.
- (6) Costs incurred for renting space used in connection with the election campaign.
- (7) Costs of stationery used in connection with the election campaign.
- (8) Operation/miscellaneous costs in connection with the election campaign, e.g. photocopying, hire of telephone line and fax line.
- (9) Postage for the mailing of publicity materials.
- (10) Costs incurred for the hire of transport in connection with the election.
- (11) Costs of deploying vehicles for publicity. (Remarks: If a vehicle is lent to the candidate by any person(s) free of charge, the candidate should, apart from reporting the free goods or service as an election donation, declare the estimated market value of rental of similar vehicles in his/her election return .)
- (12) Costs of advertisements by means of the media, taxis or other public transport.
- (13) Costs for organising election meetings, including venue charges.
- (14) Costs of T-shirts, armbands, caps and other identification materials for election agents and assistants.
- (15) Costs incurred for refurbishing old publicity boards and the estimated value of the 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 22 of the Chief Executive Election Ordinance (Cap 569); 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 Election Committee;
 - (c) a member of the Legislative Council, a District Council or the Heung Yee Kuk;
 - (d) the Chairman, Vice-chairman or a member of the Executive Committee of a Rural Committee; or
 - (e) a Rural Representative.
- (17) Costs incurred by the organisation of the candidate in promoting his/her election. [Note: Costs of meeting where the platform of the organisation is publicised without specific reference to the candidate will not be counted as election expenses.]
- (18) Costs for obtaining legal/professional advice incurred in respect of the conduct of an election (e.g. (a) where a candidate hires a lawyer to vet an election publicity pamphlet to make sure that there is no libellous content in the text; and (b) where a candidate engages a building professional to advise on or carry out building works for the 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 election campaign of a candidate. (For an interest-free loan, the interest waived should be declared as an election donation and should be correspondingly counted as election expenses. A reasonable amount should be

determined after assessment with reference to the market interest rate.]

- (20) Allowance for organising activities to promote one's candidature is a form of election donation which should be counted as election expenses (e.g. (a) an allowance paid to workers in the activities organised by an organisation for promoting the election of 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 work or goods supplied and labour or services rendered (except voluntary services), the difference between the reasonable sum estimated for relevant charges, and any allowance or discount generally available to customers, is in itself an election expense (which should be correspondingly counted as an election donation made by these people).
- (22) Goods incidentally given to the provision of a voluntary service.
- (23) Costs for charitable activities organised to promote one's candidature.
- (24) Costs for any negative publicity launched against one's rival candidates.

[Amended in November 2011, October 2016 and January 2022]

**Guidelines on Election-related Activities
in respect of the Chief Executive Election
Elaboration of Paragraph 16.13 of Chapter 16**

A candidate for the 2002 Chief Executive Election through his lawyers has raised questions about the ambit of paragraph 15.6 of the Guidelines on Election-related Activities in respect of the 2002 Chief Executive Election (“the Guidelines”) [i.e. paragraph 16.13 of the present Guidelines], whether the use of incumbent Chief Executive’s office at the Central Government Offices will be considered to be use of public resources and whether the expenses involved will be counted as election expenses.

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

The four examples given in paragraph 15.6 of the Guidelines [i.e. paragraph 16.13 of the present Guidelines], namely, security, transportation, secretarial services and living quarters, that are not considered to be public resources, are intended to be illustrative rather than exhaustive.

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

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

Dated 24 December 2001

Collection of Election Donations

Any person or organisation^{Note} acting as an agent for a candidate or candidates to solicit, receive or collect election donations is advised to:

1. have the prior consent/authorisation of the candidate(s);
2. set up a dedicated ledger account for receiving and handling election donations;
3. state the apportionment of 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 in the case of donations received by the candidate(s) direct. For example, for donation of more than \$1,000, a receipt should be issued to the donor by the candidate concerned instead of the agent;
5. ensure that donors are clearly advised of the purpose(s)/use of their donations; and
6. apply for permission from the Secretary for Home Affairs if the donations are collected through fund-raising activities in a public place for non-charitable purposes.

2. On the other hand, though there is no prohibition against the solicitation of donations by a candidate on the behalf of a political party or any other organisation, he/she must make sure that the message conveyed is clear enough so that members of the public are well advised of the purpose and nature of the donation and that in no circumstances would they be misled to believe that the donation is solicited and used for the election of the candidates.

[Added in October 2016 and amended in January 2022]

^{Note} In this context, all costs incurred by the person or organisation in the course of rendering service to the candidate(s) should be counted towards election expenses, and are therefore subject to the relevant requirements governing authorisation of election expenses agents as set out in Chapter 7. If the person renders his/her service to the candidate free of charge, voluntarily, personally 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 the costs of such service in his/her election expenses (this exemption does not apply to service(s) rendered by an organisation).

**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 that certain mail items which, if possessed by electors in the custody of the Correctional Services Department (“CSD”), may cause security hazards to penal institutions, and hence will be rejected. The list of items set out below is by no means exhaustive.)

For security reasons and to maintain good order and discipline in penal institutions, any election advertisement (“EA”) mailed to registered electors in the custody of the CSD will be subject to security check; an EA and will be rejected if it falls within any of the following categories:-

Materials

- (a) metal or plastic materials;
- (b) laminated materials;
- (c) sharp objects; or
- (d) materials coated with powder-like substance.

Content/Information

- (a) on how to manufacture arms, ammunition, weapon, explosives, harmful or deleterious substance, intoxicating liquor, or any dangerous drugs within the meaning of the Dangerous Drugs Ordinance (Cap 134);
- (b) that depicts, describes or encourages violence in the penal institutions, or the escape by any inmate/prisoner from the penal institutions;
- (c) that encourages gambling in the penal institutions, or adversely affects the rehabilitation of electors in the custody of the CSD;
- (d) that abets or induces electors in the custody of the CSD to commit offences enumerated in the Prison Rules (Cap 234A) or any other criminal offences;
- (e) that poses threat to any individual’s personal safety or to the security, good order and discipline of the penal institutions; or
- (f) that is obscene/indecent.

Size & volume

- (a) items larger than A4 size; or
- (b) oversized items.

Remarks: For enquiries, please contact the Principal Officer (Penal Operations)3 of the CSD at 2582 4023.

Correctional Services Department
January 2015

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