

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.