

CHAPTER 8

ELECTION ADVERTISEMENTS

PART I : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT

8.1 EA, in relation to the LegCo election, means:

- (a) a publicly exhibited notice; or
- (b) a notice delivered by hand or electronic transmission; or
- (c) a public announcement made by radio or television or by video or cinematographic film; or
- (d) any other form of publication,

published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.

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 has submitted a nomination form [s 2 of the ECICO]. The reference of “candidate” in this chapter includes a GC list to which the list voting system of proportional representation applies.

8.2 EA includes the following if they are 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, flag, standard, colour, sign, message, sound, image or picture and any article, thing or material;
- (b) audio/video cassette tapes, discs, diskettes, electronic messages, websites (except those discussion forums on websites), facsimile transmissions, balloons, caps, badges, emblems, carrier bags, head-dress and clothing; or
- (c) any thing or material published by any person or any organisation, including political organisation, professional or trade organisation, owners corporation, mutual aid committee, tenants association, owners committee, etc (irrespective of whether or not the candidate concerned is an office bearer or member) showing his or its support for any candidate or GC list or advertising the platform or services of such an organisation with reference to a candidate or GC list by name or photograph or in any other form or manner.

8.3 EA also includes:

- (a) publicity materials containing the name or photograph of a candidate or GC list issued or displayed during the election period (ie the period beginning with the nomination day for the election and ending with the polling day for the election) even though the content of the publicity material is not, on the face of it, election related. Examples include surveys, questionnaires, posters publicising functions like vegetarian meal, tours, courses,

offer of free legal or medical or other professional service, etc;
and

(b) any performance report published or distributed **during** the election period by:

(i) a serving member of the LegCo; or

(ii) a serving member of the DC; or

(iii) a serving member of the Heung Yee Kuk; or

(iv) a serving chairman or vice-chairman or member of the Executive Committee of a Rural Committee; or

(v) a serving village representative (“VR”),

who is running as a candidate for the LegCo election. These persons are termed “incumbent candidates” under the ECICO. A performance report means a document giving details of activities organised, services rendered or work done by such an incumbent candidate. [S 33 of the ECICO.]

8.4 For the avoidance of doubt, a performance report distributed **before** the election period will also be regarded as an EA **if it is published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.** It is important to note that a performance report referred to in this paragraph and para 8.3(b) above must comply with all the requirements for an EA.

8.5 If the incumbent members distribute performance reports before they submit their nomination forms or publicly declare their intention to stand as candidates, they are not candidates at the time when their performance reports are being distributed. On such basis, the expenditure incurred in the distribution of such reports before the submission of nomination or public declaration of their intention to stand as candidates would not be counted as his election expenses.

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

Election Advertisements Prejudicing the Election of a Candidate

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

- (a) If candidate A criticises candidate B in his own EAs with a view to prejudicing B’s candidature at the election, candidate A has to include the expenditure incurred in his election expenses.
- (b) If a third party criticises candidate B in an EA and that the EA has the effect of indicating support for candidate A, that person must obtain candidate A’s prior consent for incurring the production expenses before he produces that EA. The expenditure incurred will have to be included in candidate A’s election expenses.

- (c) If the third party publishes an EA as described in (b) above without the prior consent of candidate A, he will be breaching s 23 of the ECICO as only a candidate or a person who has been duly authorised by a candidate as his election expense agent may incur election expenses. The EA should be regarded as the EA for candidate A. It would only be fair to candidate A that the third party needs to obtain candidate A's consent before publishing such EA since candidate A is ultimately responsible for his own election expenses. It would also prevent candidate A from circumventing the law by asking the third party to publish materials prejudicing candidate B without having to account for the expenses of those materials.

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

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

8.10 Subject to the maximum amount that can be incurred by a candidate for election expenses [s 24 of the ECICO], there is no restriction as to the quantity of EAs employed by him. The maximum amounts allowed for the elections of GCs and FCs are specified in the Maximum Scale of Election Expenses (Legislative Council) Order. [See para. 16.8 of Chapter 16.]

8.11 A candidate must ensure the correctness and accuracy of all factual statements in his EAs. [For criminal sanctions, see ss 25, 26 and 27 of

the ECICO.]

PART II : PERIOD AND AREA OF DISPLAY

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

8.13 Display spots are classified into two types:

- (a) **designated spots** which are spots on government land/property and sometimes even at the premises owned or occupied privately that have been made available to the Government for allocation to candidates of the 5 GCs and the 28 FCs; and
- (b) **private spots** which are spots on private land/property in respect of which written permission or authorisation for display has been obtained from the owner or occupier concerned by the candidate himself.

Government or Private Land/Property - Designated Spots

8.14 Designated spots on government land for the use of contested candidates to display their EAs will be designated by the RO for the GC in which the spots are situated. Some of the government land and property have been allocated to some public authorities, such as the Housing Authority, and are under their respective control. The RO for the GC (who in most cases will be one of the District Officers of the Districts encompassed by the GC) will

designate public spots in coordination with the said authorities and the ROs for the other constituencies. The designated spots will be allocated to candidates by reference to and on the basis of lists, as the list system of proportional representation applies to the GC election. **Each GC list** will be as far as practicable allocated **the same number of designated spots**.

8.15 There may be certain places on government or private land/property where candidates of the 24 ordinary FCs, to which the first past the post voting system applies, may wish to display their EAs, because those places are frequented by members of their electorate. These display spots will be designated by their respective ROs.

8.16 The display spots for the 4 SFCs, which have a relatively small electorate, will also be designated by their respective ROs, taking into account their particular circumstances.

8.17 Prospective candidates as well as political organisations are welcome to suggest locations of display in which they are interested. The ROs concerned will take into consideration such suggestions in drawing up the list of “**designated spots**”, with absolute discretion to decide whether to adopt the suggestions.

NOTE :

Suggestions should reach the CEO not later than **6 weeks before the polling day**.

Other Land/Property - Private Spots

8.18 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 of Cap 132]. The obtaining of written permission or authorisation from the private owner or occupier is a matter for private arrangement between the candidate and the owner or occupier, and they are therefore called “**private spots**”. A copy of the written permission or authorisation must be deposited with the RO relevant to the GC or FC before display. [Please also see para. 8.23 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 EAs forms part of his election expenses. If a commercial advertising space for rent is allowed by the private owner or occupier to be used free of charge by a candidate for display of his EAs, a reasonable market value for the use of that space will have to be accounted for by the candidate as an election donation and counted as election expenses. Such a provision is to ensure that the candidate concerned will not have unfair advantage over the others who do not have access to such facilities. If the private spot for displaying the EA is normally used for commercial purpose, the actual rent charged or the usual rent or market rent that would normally be charged should be counted as the election expenses of the candidate concerned, irrespective of whether it is owned by the candidate or whether the owner of it allows the candidate to use it free of charge (in which case it would be a donation of the rent). Where a space provided by a particular private owner or occupier for a candidate to display EAs is not used for commercial advertising, but similar space belonging to other owners or occupiers is available for commercial advertising, the market value of the space should also be accounted for. The provision of this kind of rent-free space should be regarded as donation. For details on how the estimated value should be assessed, please refer to para. 16.21 of Chapter 16. If a space is not normally used by any private owners or occupiers for commercial advertising, there is no need for the candidate to account for its value.

8.19 The EAC appeals to owners and occupiers of private premises to give all candidates and GC lists competing in the same constituency **fair and equal treatment** in the display of EAs. [For details, please see Chapter 10 : Electioneering at the Living or Working Places of Electors, Premises of Organisations to which Electors belong and Buildings which Electors Frequent.]

8.20 Candidates should note that public corporations may have their own rules for display of EAs, eg the Mass Transit Railway Corporation Limited has its own set of rules for such display in residential estates under its management.

General Principle in Allocating Designated Spots

8.21 About two-thirds of the designated spots within a GC will be for allocation to lists of candidates of that GC. The remaining one-third of the designated spots will be for allocation amongst candidates of the 24 ordinary FCs and 4 SFCs.

8.22 The RO for each constituency will allocate the designated spots, as the case may be, to candidates of the constituency either in accordance with the mutual consent of the candidates or by the drawing of lots after the close of nominations, when the number of candidates contesting in the constituency will have been ascertained. **No display of EAs will be allowed on any designated spots before the allocation.** [Also see the requirements in para. 8.28 and Part V below.] A candidate will be provided with a list of the designated spots allocated to him, together with a set of standardised map or maps to help all concerned to identify the locations.

Written Permission or Authorisation

8.23 The RO will have already obtained prior approval from the relevant authorities under s 104A of Cap 132 and s 4 of Cap 28 for candidates to display their EAs at designated spots. Immediately after the allocation of designated spots is made, a copy of the necessary written permission or authorisation under the relevant legislation will be provided to the candidates by the RO of the constituency concerned [see Part III below]. For any display on private premises, written permission or authorisation of the private owner or occupier will have to be obtained by the candidates themselves. A person displaying an EA without the necessary written permission or authorisation commits an offence punishable by a fine of up to \$10,000 and, where the offence is a continuing offence, by an additional daily penalty of \$300 for each day during which it is proved to the satisfaction of the court that the offence has continued [s 104A of Cap 132]. The fines so incurred will also be treated as election expenses. **A copy of the written permission or authorisation must be deposited by the candidate with the RO before display or distribution** [s 102(10)(a) of the EAC (EP) (LC) Reg].

No-Display Areas

8.24 No EA may be displayed within the boundaries of a polling station (including the outer walls of the premises) or within any **NCZ** [see Chapter 14: Prohibition Against Canvassing Activities Outside Polling Stations], except for static displays that are authorised by the RO or the PRO of the relevant polling station. Where there are private premises situated within the NCZ, the ROs should issue a notice in advance to all the candidates in the constituencies concerned asking them to remove all of their EAs, if any, posted up at the private premises within the NCZ which can be seen by electors on their way to the polling stations on the polling day. If the candidates fail to remove the EAs as requested by the ROs, the ROs may issue a warning to them to remove the offending EAs immediately. If the candidate or GC list fails to do so, the EAC may issue a censure or reprimand. The RO for the

constituency for which a candidate/GC list stands will provide the candidate/GC list with one set of sketch maps or plans showing the boundaries of all polling stations in respect of the relevant constituency and all NCZs outside those polling stations.

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

PART III : ALLOCATION OF DESIGNATED SPOTS

8.26 The RO for a constituency will make known to each candidate/GC list of the constituency at the time of receipt of the nomination form the following information:

- (a) The general locations of the designated spots, which may include unleased government land and premises managed by the Housing Department and the Hong Kong Housing Society, and private premises available for allocation to the candidates for a particular FC. The size and number of spots for allocation will be finalised by the RO, taking into account the number of candidates in the constituency, **after** the close of nominations. In order to allow all contested candidates to display their 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 three days following the close of nominations. The RO will invite representatives from the relevant authorities relating to government land/property, save those who have already given a blanket approval, to be present to give the necessary written authorisation for the spots allocated.

8.27 The ROs for the FCs will need to know the exact number of candidates in each constituency who wish to display EAs at designated spots within a particular GC area, so that he can finalise the number of designated spots and their size for allocation. Therefore, candidates concerned must contact the relevant RO to register their interest in writing when they submit their nomination forms or before the close of nominations. Similarly, the same arrangements apply to the lists of candidates in a GC election, but on the basis of the lists.

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

8.29 A copy of all the permissions or authorisations obtained by a candidate himself, as opposed to those provided to him by the RO, must be provided by him to the relevant RO **before the display or distribution** [s 102(10)(a) of the EAC (EP) (LC) Reg].

8.30 Designated spots allocated are not transferable. Nor are they

exchangeable with other spots. Where a candidate of a particular constituency informs the RO of that constituency in writing that he no longer wishes to use one or more of such designated spots allocated to him, upon request by any other candidate of the same constituency, the RO, if he considers appropriate, will re-allocate by agreement or by the drawing of lots the designated spots amongst all candidates of the same constituency except the one first mentioned. In such a case, paras. 8.28 and 8.29 above apply.

NOTE :

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

8.31 Authorisation to display will generally not be given to a GC list of a GC in respect of spots outside the constituency in which the GC list stands, save in exceptional circumstances, as directed or decided by the CEO. The CEO may in principle agree to display outside a particular constituency generally or upon application by a GC list of candidate(s). A GC list who wishes to apply for display outside its constituency should write to the CEO to state the reasons for its application as soon as possible after its nomination paper has been handed in, so that (if the CEO agrees in principle) there may be sufficient time for the RO for the constituency to include spots outside the constituency in an allocation exercise.

8.32 An EA advertising two or more lists of candidates of different GCs jointly publishing it is, however, allowed to be displayed on the designated spots in the respective GCs allocated to such lists. Similarly, an EA advertising two or more FC candidates or both FC candidates and GC lists

jointly publishing it is allowed to be displayed on the designated spots allocated to the candidates/lists concerned. Nevertheless, it is important to ensure that the total number of spots as well as the total area of all the spaces actually occupied for joint advertisements and for advertising each one of the joined candidates/lists of candidates (ie measured by the dimension of EAs) do not exceed the total number of spots as well as the total area of the designated spots allocated to each of the candidates/lists of candidates. Through joint advertisement, the candidates concerned promote themselves at the election, and so each of the candidates would benefit from the joint advertisement. The expenses incurred for the joint EAs will therefore have to be borne by the candidates concerned in equal or unequal shares as their respective election expenses, to be calculated by the proportion of the size of the portion advertising each [see also para. 18.9 of Chapter 18 : Namedropping]. In this connection, it is important to note that only a candidate himself or his election expense agent may incur election expenses on his behalf [s 23 of the ECICO]. **Joint EAs should not, however, be displayed in the common parts of private premises**, in order to prevent confusing electors or causing them to make mistakes as to the identity of the candidates running for the constituency concerned, or to prevent dilution of the principle of fair and equal treatment of candidates.

PART IV : CONDITIONS AND LIMITATIONS ON DISPLAY

Name of the Constituency

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

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

Re-use of Old Publicity Boards

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

Size

8.36 EAs displayed at railings and fences must not exceed the height and length of these structures, and in no circumstances be more than 1 metre high and 2.5 metres long.

Mounting and Installation

8.37 The mounting and display of EAs must not cause any risk to life or property.

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

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

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

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

8.42 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

8.43 All candidates should remove all their EAs displayed on government land/property **within 10 days** following an election. Failure to do so may result in prosecution being brought against the offending candidate and such advertisements removed and seized by the relevant authority. The **cost of removal** will be recovered from the candidate concerned and will be construed as **election expenses**. Relevant authorities will issue demand notes for the removal costs to the candidates concerned within 21 days after the election results have been published in the Gazette (normally the immediate Friday after the polling day). This is to allow sufficient time for the candidates to include all these costs in their election returns which must be submitted not later than 60 days after gazettal of the election results [s 37 of the ECICO].

PART V : SERIAL NUMBERING, DECLARATIONS AND COPIES

Serial Numbering

8.44 Save where the exemption applies, all copies of each type of all EAs intended to be displayed or distributed by a candidate must be marked distinctly and legibly on the face with **consecutive serial numbers** starting from “1” [s 102(1) and (2) of the EAC (EP) (LC) Reg]. Printed materials are exempted from the requirement of serial numbering if each of them:

- (a) is of or smaller than A4 size, i.e. 30 cm x 21 cm;
- (b) is contained in a single sheet of paper; and

- (c) bears upon it the printer's name and address, number of copies printed and date of printing.

Examples of the above may include handbills, leaflets and simulated ballot papers. EAs printed in a registered local newspaper/magazine or sent to electors through the free postage service [see Part IX below] or transmitted by electronic means (eg facsimile, electronic mail, computer network, electronic display boards) and balloons, badges and carrier bags, head-dress and clothing are exempted from the requirement of serial numbering [s 102(15A) of the EAC (EP) (LC) Reg].

8.45 The size of the number marked on each type of EAs which are not larger than 60 cm x 42 cm (A2 size) must not be smaller than 2 cm in diameter, and the size of the number marked on those which are larger must not be smaller than 4 cm in diameter.

Declarations

8.46 **Before display, distribution or otherwise use of any EA**, a candidate must make a **declaration in a specified form** to the RO for his constituency (or to the CEO, if the RO has not yet been appointed) declaring the **quantity**, with the **serial numbers** (save those covered by the exemption referred to in para. 8.44 above), of each type of all EAs intended to be displayed and **the date of printing/publication**. Such declaration should also show all the **intended places** of display (designated spots or private spots) which may be identified by reference to the permissions or authorisations obtained by the candidate. [S 102(3), (4) and (5) of the EAC (EP) (LC) Reg.] A candidate can submit as many declarations as circumstances may from time to time require. A candidate must ensure the correctness and accuracy of all the details contained in his declarations.

8.47 Where an EA is to be distributed by facsimile transmission and where the exemption referred to in para. 8.44 applies (which includes EAs sent to electors through the free postage service detailed in Part IX below or transmitted by electronic means), it will not be necessary to state the serial numbers in the declaration. Only the quantity of the EA is to be stated in the declaration.

8.48 A candidate must ensure that every time the contents of his website are changed or updated, he must make a new declaration to the RO and deposit 2 copies of the modified pages with the RO accordingly [see also para. 8.49(a)(iii) below].

Copies

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

- (a) in respect of election advertisements
 - (i) 2 copies of all printed advertisements bearing in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed (“printing details”),
 - (ii) 2 identical copies of any video/audio tapes or discs or diskettes containing EAs,
 - (iii) 2 copies of any electioneering message sent by electronic means (including 2 copies of any modified webpages if the contents of the website are changed or updated), and

- (iv) 2 identical postcard sized colour photographs of each type of EAs which cannot be practically or conveniently photocopied;

[s 102(6), (7) and (9) of the EAC (EP) (LC) Reg]

- (b) in respect of permissions or authorisations for display

a copy of all permissions or authorisations for display given or obtained for the purposes of s 104A of Cap 132 [s 102(10)(a) of the EAC (EP) (LC) Reg]; and

- (c) in respect of consent of support

a copy of all consents of support referred to in s 27(1) or (2) of the ECICO, as the case may be [s 102(10)(b) of the EAC (EP) (LC) Reg].

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

8.51 Where a Declaration of EAs under s 102 of the EAC (EP) (LC) Reg made by a candidate and deposited with the relevant RO contains a mistake or where the candidate's declared intention as to the number of any type of EAs to be displayed or the location of display, etc has changed, the candidate should make a corrective declaration to correct the mistake or record the change. All such corrective declarations must be deposited with the relevant RO at the **latest by 12 noon on the day preceding the polling day**. If no corrective declaration has been so deposited, then the declaration of EAs

will be used as one of the bases for examining and checking the candidate's return and declaration of election expenses and donations, and as the basis for removal of unauthorised or offending displays.

8.52 No EAs shall be displayed apart from those referred to in the declarations made by the candidate and as shown by the copies or on the photographs.

8.53 A candidate must not display his EAs other than at the places set out in his declaration.

8.54 The RO for each constituency will make available a copy of the declarations, EAs, photographs, permissions or authorisations and consents at a specified address for inspection by the public as soon as practicable after such documents and photographs have been furnished until the expiration of the same period as declarations of election returns lodged by candidates are available for inspection under s 41 of the ECICO, ie until the first anniversary of the date on which the result of the relevant election is published [s 102(11) of the EAC (EP) (LC) Reg].

PART VI : REQUIREMENTS RELATING TO PRINTED ELECTION MATERIALS

Printing Details

8.55 S 34 of the ECICO requires all printed EAs, with the exception of those printed in a registered local newspaper/magazine to bear printing details, ie they must bear, in Chinese or English, the name and address of the printer together with the date of printing and the number of copies printed ("printing

details”). It applies to all materials reproduced by any method of multiplying copies (eg printing machines, duplicators or photocopiers). The following are some suggested formats:

- (a) Printed by ABC Printing Works,
XX XZY Street, HK
On (date) in (number) copies

or

- (b) Printed by own office machine
XX XZY Street, HK
On (date) in (number) copies

Election Advertisements Placed in Print Media

8.56 Where an EA is placed in the print media and takes the form of a news report or any other form which does not clearly show that it is an EA, the words “**Election Advertisement**” or “**選舉廣告**” must be stated in the advertisement, to avoid misunderstanding by readers that it is not an EA.

PART VII : NON-COMPLIANCE AND CONSEQUENCES

Inadvertent Omission of Printing Details

8.57 A candidate who has inadvertently omitted the printing details from his printed EAs can make a statutory declaration giving the omitted details, and deposit such declaration with the relevant RO **not later than 7 days after** the publication of the offending EA [s 34(3) of the ECICO].

Having taken this remedial step, he will not be prosecuted for contravention of s 34(1) of the ECICO. The statutory declaration will be retained by the relevant RO for 6 months after the result of the election is published [s 34(7) of the ECICO].

Enforcement and Penalties

8.58 A candidate who fails to provide the printing details or deposit copies of printed EAs with the relevant RO commits an offence punishable by a fine of up to \$200,000 and imprisonment for up to 3 years [s 34(6) of the ECICO]. However, he may apply to the court for an order allowing the publication of the above EAs be excepted from the relevant requirements and relieving him from the penalties, provided that the court is satisfied that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith [s 35 of the ECICO]. Non-compliance with the requirements of s 102 of EAC (EP) (LC) Reg is punishable with a fine at level 2 (up to \$5,000) and imprisonment for up to 6 months.

8.59 Each candidate must observe and comply with the conditions imposed by the permissions or authorisations for the display of EAs. Any EAs displayed in contravention of these guidelines may be removed or seized. Candidates and their supporters should report any non-compliance to the RO and should not take removal action themselves.

8.60 Any unauthorised or offending EAs displayed may be seized, disposed of, destroyed, covered or obliterated by the relevant authorities as they think fit [s 102(15) of the EAC (EP) (LC) Reg]. The candidate or his election agent responsible may also be prosecuted and if convicted, may be liable to a fine or imprisonment. The cost of removal, being a civil debt, will be counted as election expenses. Such civil debt must be reported to the

relevant RO in the candidate's return and declaration of election expenses. The seized articles may be kept as evidence and will be disposed of or returned upon application, in accordance with Cap 132 or the Housing Ordinance (Cap 283), as the case may be, and the procedures of the relevant authority. [S 104C of Cap 132 and s 6 of Cap 28.]

8.61 Each candidate must observe and comply with the conditions agreed between him and the owner or occupier of private land or property for the display of EAs, and any additional charges or damages that a candidate is liable to pay to the owner or occupier may be construed as election expenses.

8.62 Complaints should be made to the relevant RO. Upon complaints being received, the EAC may also issue public statements in such manner as it deems fit to censure or denounce any non-compliance with these guidelines. Although a censure may be a further detriment to the candidate in addition to his liability for removal expenses and criminal liability, the EAC will not hesitate to publish one in an appropriate case.

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

8.63 Any thing or material published by any organisation, including political organisation, professional or trade organisation, owners corporation, mutual aid committee, tenants association, owners committee, etc (irrespective of whether or not the candidate concerned is its officer or member) which advertises its platform or services during or **even before the election period with reference to the candidate** by name or photograph or otherwise may be treated as EA put up by, or on behalf of, or on account of the candidate. The expenses for doing so may be construed as election expenses incurred by or on

behalf of the candidate. It is therefore a prudent step for the relevant organisations to suspend their advertising activities. However, if the material published by the organisation concerned, as opposed to the candidate himself, advertises only a particular activity, which:

- (a) is organised from time to time either as part of the organisation's normal functions, and/or according to the local tradition;
- (b) is not related to the election; and
- (c) does not explicitly or implicitly promote or prejudice the election of a candidate in the election,

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

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

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

8.66 To sum up the important points, where any organisation, including a political organisation, publishes an EA promoting a candidate:

- (a) the expenses incurred will be treated as the candidate's own election expenses;

- (b) the officer-in-charge of the organisation needs to be authorised by the candidate to be the candidate's election expense agent, or else it or the responsible person commits an offence under s 23 of the ECICO;
- (c) such advertisement must comply with the requirements of s 34 of the ECICO and s 102 of the EAC (EP) (LC) Reg; and
- (d) such advertisement can only be displayed at the spots authorised to the candidate.

PART IX : FREE POSTAGE FOR ELECTION ADVERTISEMENTS

Conditions for Free Postage

8.67 A list of candidates for a GC or any FC who is validly nominated in the notice of nomination published in the Gazette in accordance with regulations made under the EACO is permitted to post free of postage **one** letter to each elector in the constituency for which it/he is nominated [s 43 of the LCO]. However, before the publication of the notice of nomination, a candidate wishing to exercise his right to free postage may be required to furnish the Postmaster General with a security for the payment of postage in the event that his name is not subsequently shown in the notice [Regulation 6(2)(a) of the Post Office Regulations].

8.68 The purpose of the free postage is to enable the candidate to mail EAs to promote or advertise himself and in relation to that election to electors in the constituency. The free postage, which is the candidate's own privilege,

cannot and should not be used for any other purpose or any other election or for promoting or advertising any other person.

8.69 Specifically, the letter must:

- (a) be posted in Hong Kong;
- (b) contain materials relating only to the candidature of the candidate at the election concerned;
- (c) not exceed 50 grams in weight; and
- (d) be not larger than 175 mm x 245 mm and not smaller than 90 mm x 140 mm in size.

It is important to note that under s 101A(3)(a) of the EAC (EP) (LC) Reg, a candidate sending letters to electors in bulk is liable for payment of postage for all letters in that bulk if any letter in the bulk does not meet requirement (a), (b), (c) or (d) above.

Make-up

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

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

8.72 When a wrapper is used, it must extend over the full length of the item which it encloses. Envelopes must not be fastened with staples or with

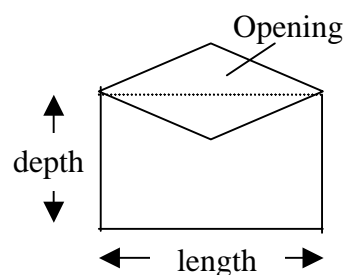
paper fasteners with sharp edges or points, but they may be closed by means of an adhesive flap or tape.

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

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

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

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



8.74 Folders of A4 size with openings should be closed by means of adhesive flap or tape so as to avoid entrapping smaller letters. For details, please refer to the illustration in **Appendix E**.

8.75 **The characters “選舉廣告” or words “Election Advertisement” must be printed on the address (front) side of the envelope, or the address side of the folder (unenvveloped advertisement).**

Addressing

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

Name of addressee
Floor and flat number and name of building
Street number, name of street
Name of district

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

8.78 The name of the candidate and other propaganda slogans, including photographs, should appear on the back of the item or on the left-hand half of the address side reserving the right-hand half of the front exclusively for the address.

8.79 No postage-free EA bearing an address outside Hong Kong will be accepted.

Posting Arrangements

8.80 In order to allow adequate time for the Post Office to process the extremely large volume of election mail during the election period, candidates are advised to make their postage-free EA postings **14 working days before the polling day** at a post office located within their delivery district as specified in **Appendix F**. Candidates and their agents are therefore **warned** that **postings made after the above deadline may fail to reach the addressees before the polling day**.

8.81 At least **2 clear working days' notice** must be given to the respective Manager (Retail Business) listed at **Appendix F** before the postings are made. Candidates should present two unsealed specimens of their EAs, together with a notice of posting of election mail (which will be provided by

the REO at the time of candidates submitting their nominations), for inspection 2 clear working days before the postings are made.

8.82 When handing in the specimens, the candidates may indicate any one of the posting offices listed in **Appendix F** where they intend to make their postings. In this connection, the Manager (Retail Business) concerned will arrange and confirm the requests after approving the specimens.

8.83 The postings should be made up, preferably in bundles of 50 or 100 for easy counting. All letters should face the same direction. To facilitate handling of the huge volume of postings within a tight time schedule, **candidates of GCs** are required to segregate letters by way of the districts specified in **Appendix G** when presenting their postings.

8.84 With each posting, the candidate or his representative must present a signed declaration **in duplicate** (original to be kept by the Post Office and the duplicate copy duly signed by the Post Office official and kept by the candidate or his representative as acknowledgement of the posting):

- (a) stating the quantity of packets in the posting and the name of the candidate;
- (b) declaring that the posting is his postage-free communication;
- (c) declaring that each packet contains material relating to the election only; is identical to the unsealed specimen submitted by the candidate or his representative for inspection and retention by the Post Office; and is addressed by name to a duly registered elector in respect of the constituency for which the candidate has been nominated; and

- (d) declaring that not more than one postage-free communication has been or will be sent to any of the electors.

The declaration form will be provided to the candidates by the REO at the time of their submission of nominations. It is important to note that under s 101A(3)(b) of the EAC (EP) (LC) Reg, a candidate sending letters to electors in bulk is liable for payment of postage for all the letters in that bulk if the declaration made by him or his representative is false in any particular.

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

8.86 Government reserves the right to charge a candidate postage where any of the above requirements is not met or the free postage arrangements are abused in any way [s 101A(3) of the EAC (EP) (LC) Reg]. The charge counts towards the candidate's election expenses and must be included in his return and declaration of election expenses and donations to be sent to the relevant RO. The EAC may also issue public statements in such manner as it seems fit to denounce any abuse of the free postage arrangements.

Enquiries

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

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

Telephone: 2926 1484

Fax: 2312 1455