

CHAPTER 9

ELECTION ADVERTISEMENTS

PART I : GENERAL

9.1 Election advertisements (“EAs”) refer to 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 and time of publication (e.g. whether the candidate has publicly declared his intention to stand for the election or whether the incident happens during the election period) 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 or comments based on facts without the above-mentioned intention, then the individual statement is not regarded as an EA.

9.2 In accordance with the requirements in the law and of the EAC, a candidate is required to post an electronic copy of any EA he has published as well as the relevant information and documents onto an open platform⁴³ maintained by the CEO (“Central Platform”) or an open platform maintained by

⁴³ 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.

the candidate(s) (“Candidate’s Platform”)⁴⁴ (see **Appendix 6**), or submit a copy of the EA to the RO for public inspection within three days after publication of the EA (see para. 9.45 of this chapter).

9.3 It is an illegal conduct to publish false or misleading statements about a candidate (see Part III of Chapter 18). In this regard, candidates must ensure that the contents of their EAs (including any statements that involve other candidates) are based on facts⁴⁵. The EAC particularly reminds candidates to comply with the requirement of obtaining prior written consent of support from other persons or organisations as stipulated in Chapter 19. Candidates should seek independent legal advice if they are in doubt about the legal requirements on EAs and election expenses. (For criminal sanctions, see ss 25, 26, and 27 of the ECICO)

9.4 Generally, except a candidate, his election expense agent or an authorised person, a third party issues any form of publication with the intention of promoting or prejudicing the election of a candidate at the election is regarded as an EA. The third party must obtain prior written authorisation from the candidate for the expenses incurred in producing the EA, and the candidate must include these expenses in his election expenses; otherwise, it constitutes an illegal offence.

⁴⁴ Interactive EAs disseminated via the Internet may have continuous updates. Where it is technically infeasible to upload each EA individually to the Candidate’s Platform or Central Platform, the law permits candidates to upload hyperlinks to the relevant EAs on these platforms to facilitate public access.

⁴⁵ In the 2019 DC Ordinary Election, the CFI of the High Court ruled in an 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.

9.5 With the proliferation of the Internet, online platforms are widely used to publish election-related opinions. Such opinions may constitute EAs and their publication may involve the incurrence of election expenses. As mentioned above, if such opinions are published without the candidate's prior consent, the publisher may have committed offences of unlawfully incurring election expenses. Hence, electoral legislation provides an exemption from criminal liability for incurring election expenses for such publishers if the only expenses incurred are electricity charges and/or charges necessary for accessing the Internet. However, **it must be noted** that this exemption does not apply to candidates or their election expense agents. If a candidate, his election expense agent, or a person authorised by him publishes an EA on an Internet platform, all expenses incurred, including electricity charges and Internet access fees, must be counted towards the candidate's election expenses. [Ss 23(1) and (1A) of the ECICO]

PART II : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT

9.6 An EA refers to any publication, in any form⁴⁶, published for the purpose of promoting or prejudicing the election of a candidate or candidates at an election, including:

- (a) a publicly exhibited notice (including leaflet, circular, bill, booklet, placard, and poster);
- (b) a notice delivered by hand or electronic transmission (including leaflet, circular, bill, booklet, placard, and poster);
- (c) a public announcement made by radio or television broadcast, or by video or cinematographic film; or
- (d) any other form of publication.

[S 2 of the ECICO and s 2 of the EAC (EP) (LC) Reg]

⁴⁶ The forms of EAs include, but are not limited to, the following:

- (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, item 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, fax transmission, balloon, badge, emblem, carrier bag, head-dress and clothing; and
- (c) any message or object published by any person or organisation to support a candidate, or to promote the organisation's platform or services by referencing the name, photo, or any other identifier of a candidate or candidates.

NOTE :

“Candidate” includes a person who has publicly declared an intention to stand for an election before the end of the nomination period for the election, whether or not he has submitted a nomination form.

“Publish” means print, display, exhibit, distribute, post up, publicly announce or make publicly known by any other means, and includes continue to publish.

If any person has authorised the publication of an EA, the EA is taken to have been published by that person.

[S 2 of the ECICO and ss 2(2), 104(1) and (2) of the EAC (EP) (LC) Reg]

9.7 Any person or organisation, during or before the election period (i.e. from the first day of the nomination period for the election to the day on which the polling for the election ends, or to the day on which the RO is required to make the relevant declaration under s 46 of the LCO or s 22C of the EAC (EP) (LC) Reg⁴⁷), publishes any messages 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

⁴⁷ According to s 22C of the EAC (EP) (LC) Reg, if the following circumstances arise after the death or disqualification of candidate for a constituency, the RO must declare that no poll is to be held for the constituency concerned:

- (a) the number of candidates remaining validly nominated is equal to the number of members to be returned for that constituency;
- (b) no candidate remains validly nominated; or
- (c) the number of candidates remaining validly nominated is less than the number of members to be returned for that constituency.

and whether they contain any names or photos of candidates, may also be regarded as EAs depending on the overall circumstances (e.g. the messages concerned may reasonably enable electors to identify the candidate(s) referred in the message).

9.8 Under s 104(1) of the EAC (EP) (LC) 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, if he continues to display any previously published publicity materials with an intent to promote his election, once he has been nominated as a candidate or has publicly declared an intention to stand as a candidate at the election, such materials **may** be regarded as EAs. For the sake of prudence, the person concerned should remove all the published publicity materials before he is nominated as a candidate or publicly declares an intention to run for the election.

9.9 A document published by a candidate **during** the election period that provides details of the work done by the candidate in the following capacity is regarded as an EA:

- (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.

Therefore, candidates must comply with the requirements on EAs by including the expenses so incurred into election expenses. If the relevant person has publicly declared his intention to stand as a candidate at an election before the election period and published such documents, same requirement applies. However, if the document is published before submitting a nomination form or publicly declaring an intention to stand as a candidate at an election, and the purpose of publishing the document is not to promote or prejudice a candidate's/candidates' election, it will not be regarded as an EA. [S 104(4) of the EAC (EP) (LC) Reg]

Election Advertisements Prejudicing the Election of a Candidate

9.10 In a contested election, the concepts of “promoting” and “prejudicing” a candidate's election can be relative. Any kind of publication with the intent to affect electors not to vote for a candidate would have the effect of improving the chances of success of the other candidate(s), and could therefore be said to have the purpose of promoting the latter's election.

9.11 Messages 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 messages to identify the candidate(s) being prejudiced.

9.12 There is no restriction on the quantity of EAs a candidate may publish, but the expenses incurred, together with other election expenses, must not exceed the prescribed maximum amount. Otherwise, it constitutes an offence. The maximum amounts allowed for the elections of GCs, FCs and the ECC are respectively specified in ss 3, 4, and 4A of the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (see Part III of Chapter 17). [S 24 of the ECICO]

9.13 If election expenses in excess of the prescribed maximum amount have been incurred by a candidate, he may apply to the CFI for a relief order according to the relevant legislation. The CFI may grant 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 (see Part VI of Chapter 18). [S 31 of the ECICO]

PART III : PERIOD AND AREA OF DISPLAY

9.14 With the required written **permission or authorisation**, a candidate may display EAs on government or private land/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)]

9.15 There are two types of display spots for EAs:

- (a) **designated spots** are spots on government or privately owned land/property allocated by the Government to candidates; and
- (b) **private spots** 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.

Designated Spots

9.16 Designated spots are allocated by the relevant RO for the candidates of **contested** constituencies to display their EAs, including the government land/property which have been allocated to some public authorities, such as the Housing Authority, and are under their respective control. The RO may draw up the designated spots on such allocated land/property in coordination with the said authorities. **Each candidate competing in the same constituency** (who has registered his interest in displaying EAs at designated spots) will be allocated **the same number of designated spots**.

9.17 Prospective candidates as well as political organisations are welcome to suggest to the ROs or the CEO (if RO has yet been appointed) the locations for displaying EAs to facilitate the ROs' consideration when drawing up the list of “**designated spots**”, but the ROs have the absolute discretion to decide whether to adopt the suggestions. Such suggestions should reach the ROs or the CEO not later than eight weeks before the polling day.

Private Spots

9.18 If candidates display their EAs on land/property other than government land/property and designated spots, they must **obtain prior written permission or authorisation** from the owner or occupier by themselves. This is a private arrangement between the candidate and the owner or occupier. Copies of such permissions or authorisations must be published by the candidate for public inspection in the manner as set out in para. 9.43 of this chapter (see para. 9.24).
[S 104A(1) of the PHMSO]

9.19 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 the private spot secured for displaying the EA:

- (a) is normally used for commercial purposes; or
- (b) is not used for commercial advertising but similar spots held by other owners or occupiers are typically used for such purposes,

the actual rent charged or the usual rent or market rent that would normally be charged shall 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).

9.20 If a private owner or occupier provides a non-commercial advertising spot for a candidate to display EAs, but similar spots belonging to other owners or occupiers are used for commercial advertising, the provision of this kind of rent-free spot should be regarded as election donation, and its market value should be counted as the candidate's election expenses. This requirement ensures that the concerned candidate will not have unfair advantage over the others who are unable to use the position. For details on how the estimated value should be assessed, please see Chapter 17.

9.21 If a spot is not the type normally used by its private owners or occupiers for commercial advertising, the candidate is not required to account for its rental value.

Allocation of Designated Spots

9.22 In principle, available designated spots are allocated among the different constituencies in the following manner:

<u>Constituency</u>	<u>Percentage of Total</u>
GCs	60
FCs	10
ECC	30

Designated spots will be allocated to candidates who are validly nominated (see Part IV of this chapter). **No display of EAs will be allowed at any designated spots before the allocation.** Other than designated spots, and those displayed in electioneering activities authorised by the relevant authorities, the display of EAs by candidates on other government land/property, will be regarded as unauthorised display and subject to removal. Candidates will be provided with a list of the designated spots allocated to them, together with a set of maps to help identify the locations.

9.23 Candidates using the designated spots are required to read in detail and comply with the “Conditions for Display of Election Advertisements at Designated Spots”, which will be included 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, or obstruct the circulation of pedestrians.

Written Permission or Authorisation

9.24 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. After the allocation of designated spots, the RO of the constituency concerned will provide the candidates with a copy of that written permission or authorisation as required under the relevant legislation (see Part IV of this chapter). 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. 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 for public inspection in the manner as set out in para. 9.43 of this chapter. If the display of an EA involves carrying out of building works (including erection of any signboard) in private premises/land, the building works should comply with the relevant provisions of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) or the Buildings Ordinance (Cap. 123) and the subsidiary regulations. In this regard, the candidates are advised to consult building professionals, registered contractors and, where necessary, authorised persons on the compliance with the regulations, and to make submission in accordance with the simplified requirements under the Minor Works Control System, depending on the nature, scale, complexity and safety risks of the construction or submit building plans, formal application for approval and

consent from the Buildings Department as appropriate before the carrying out of such works. [Ss 104A(1), (2) and 150 of the PHMSO]

No Canvassing Zone

9.25 No EA may be displayed within the boundaries of a polling station or within the **NCZ** on the polling day (see Chapter 15), 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 ROs should issue a notice in advance to all the candidates for the constituencies concerned asking them to remove all of 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, if a candidate has arranged to display EAs on the windows or the bodywork of any public service vehicles (e.g. public light buses, taxis, etc.) and those vehicles will pass through or be parked within the NCZ on the polling day, the candidate should arrange the removal of the EAs before the polling day. If the candidate fails to remove the EAs as requested by the RO, the RO may issue a warning to him, requesting him to remove the offending EAs immediately. If the candidate does not comply, the EAC may issue a **reprimand** or **censure**. The RO for the relevant constituency will provide each candidate of that constituency 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.

PART IV : ALLOCATION OF DESIGNATED SPOTS

9.26 When candidates submit the nomination forms, they can obtain information from the RO of the constituency on the general locations of the designated spots, which may include unleased government land, properties and buildings managed by the Housing Department, and private land/property (if any). **After** the end of the nomination period, RO will, taking into account the number of contested candidates in the constituency, decide the number and size of spots for allocated to the candidates. The allocation would normally be held within 5 to 10 working days after the end of the nomination period.

9.27 To enable the ROs of the respective constituencies to ascertain the number and size of designated spots available for allocation, candidates wishing to display EAs at designated spots **must register their interest in writing by filing a completed form to the relevant RO within the nomination period. Candidates who fail to submit this form by the end of the nomination period will not be allocated any designated spots. Only candidates of contested constituencies will be allocated with designated spots.**

9.28 Designated spots are allocated by drawing lots, or by agreement among the candidates or their representatives of all the contested constituency. Each candidate contesting in a constituency will be allocated the same number of designated spots and an equal area of space.

9.29 Subject to para. 9.31, designated spots allocated are neither transferable nor exchangeable with other spots. Where a candidate of a

particular constituency no longer wishes to use one or more designated spots allocated to him, he should inform the concerned RO in writing within one week after the allocation of those spots. At a contested election, upon the written request by other candidates filed in accordance with the procedures as set out in para. 9.27 of this chapter, the RO, if he considers appropriate, will re-allocate by agreement or by the drawing of lots the designated spots among all other candidates of the same constituency.

9.30 In all elections, as a matter of principle, the designated spots allocated to a GC candidate will not be located outside the constituency in which they stand for election. However, in the case of a by-election, as the spots available for use may be used for other purposes in the relevant constituency, the RO may include designated spots outside the constituency of the by-election to ensure that a reasonable number of designed spots can be made available for allocation to the candidates concerned.

9.31 An EA advertising two or more candidates (whether from the same or different constituencies) jointly is allowed to be displayed at the designated spots allocated to the candidates. Nevertheless, it is important to ensure that, for each one of the joint candidates, the total area of all the spaces actually occupied for advertising the candidate on all his EAs, including the joint EAs, mounted at the designated spots (as measured by the dimension of EAs) does not exceed the total area of the designated spots allocated to the candidate. A joint EA is also subject to the size restrictions specified in para. 9.34 of this chapter. As candidates using a joint advertisement to promote themselves at the election would all benefit from the joint advertisement, the expenses incurred for the joint

EA will in general have to be borne by the candidates concerned in proportional shares as their respective election expenses, to be calculated by the proportion of the size of the portion advertising each. Each candidate or their election expense agents must be mutually authorised. In order to comply with the requirement stipulated in s 27 of the ECICO, the candidates concerned also have to seek prior written consent of support from each other before publishing the joint EA (see Part I of Chapter 19). Besides, each of the candidates must make available a copy of each of his EAs, and the relevant information/documents for public inspection in accordance with para. 9.43 of this chapter.

PART V : CONDITIONS AND LIMITATIONS ON DISPLAY

Name of the Constituency

9.32 To avoid possible confusion to electors, EAs (including joint EAs) of all candidates of the GCs, FCs and ECC must bear the name of the constituency the candidate is contesting. Candidates may choose to use either the full name or the abbreviated name of the constituency, as advised by the RO. In the case of a breach for EAs displayed at designated spots, the approval for the use of the designated spots in question may be revoked.

Re-use of Old Publicity Boards

9.33 A candidate may re-use old publicity boards used at a previous election. However, the candidate must ensure that the information is accurate and

applicable to the current election, and avoid confusion to electors or breaches of law due to failure in obtaining a written consent of support. The cost incurred in refurbishing as well as the estimated value of the old publicity boards must be counted towards the candidate's election expenses.

Size

9.34 As a general rule, EA displayed at designated spots should not exceed 1 metre high and 2.5 metres long. If designated spots of the EA is at roadside railings, the promotional messages of the relevant EAs must be **single-sided** and **face the designated direction of the spots**.

Mounting and Installation

9.35 The EAs must be separately and firmly fastened, posted or displayed in such a way that they do not cause injury or death to any person or damage to any property. Please refer to the "Conditions for Display of Election Advertisements at Designated Spots" provided in the candidate's folder and uploaded on the EAC website.

9.36 When processing the applications for displaying EAs, building management organisations should:

- (a) identify all the available locations within the building for candidates to display posters and banners;

- (b) determine the maximum size allowable for posters and banners;
- (c) after the nomination period, confirm with the RO the number of candidates in the constituency;
- (d) allocate available spots equally among candidates based on quality and quantity to ensure fairness;
- (e) allow one of the candidates of the constituency applying to display EAs to draw lots for the allocation of the spots; and
- (f) approve joint EAs if two or more candidates wish to display joint EAs, provided the area occupied does not exceed the size limits in (b) of this paragraph and the joint EAs are displayed only within the allocated spots.

9.37 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 EAs.

Dismounting

Government Land/Property

9.38 All candidates should remove all their EAs displayed on government land/property **within 10 days** following an election. Failure to do so within a

specified period may result in prosecution being brought against the offending candidate and such EAs may be removed and seized by the relevant authorities. Relevant authorities will issue demand notes for the removal costs to the candidates concerned within 21 days after the publication of the election results in the Gazette. The **cost of removal** will be construed as **election expenses** of the concerned candidates.

Private Land/Property

9.39 Candidates should notify the owners or occupiers of private land/property and the owners or operators of public service vehicle to arrange prompt removal of EAs after the election to avoid misunderstandings or inviting complaints from the public due to outdated EAs.

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

9.40 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), validly nominated candidates are required to submit applications specifying the scheduled date, time, location/spot and brief description of the proposed set-up to relevant District Lands Office (“DLO”) of

the Lands Department for consideration. Applications from uncontested candidates will not be considered. 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, and may adjust the location in light of the actual onsite situation, and its decision shall be final.

9.41 The Lands Department will issue detailed guidelines for candidates to apply for temporary occupation of government land for electioneering activities during election period. Applications must be submitted by specified deadlines. If necessary, the DLO will allocate spots by drawing lots. If an allocated spot falls within an NCZ on polling day, the approval is deemed to have been revoked.

9.42 The DLOs will not consider applications for holding electioneering activities on government land outside the designated periods. Display of EAs will not be permitted for a street counter not manned by staff.

PART VII : REQUIREMENTS RELATING TO PUBLICATION OF ELECTION ADVERTISEMENTS

Copies for Public Inspection

9.43 In accordance with the legislative requirements and the requirements of the EAC, a candidate must make available a copy each of his EAs and related information/documents, including the publication information, permission or

consent in relation to the EAs for public inspection as per **Appendix 6 within three working days** (i.e., any day other than a general holiday or Saturday) after **the publication of the EAs**. The candidate must:

- (a) upload an electronic copy of each EA and relevant information/documents onto the Central Platform or the Candidate's Platform in accordance with the procedures set out in **Appendix 6**. If the candidate uses the Candidate's Platform, he must provide the **electronic address** of the Candidate's Platform to the CEO **at least three working days before the publication of the first EA** (see **Appendix 6**); or
- (b) provide the RO or the CEO (if RO has yet been appointed) with two hard copies of each EA (or two identical full-colour photos/printouts/photocopies if the EA cannot be practically produced in specie) and one hard copy of the information/documents related to the EAs; or
- (c) provide the RO or CEO (if RO has yet been appointed) with two identical copies of a CD-ROM or DVD-ROM, each containing the same EAs and one hard copy of information/documents related to the EAs.

NOTE :

Under s 105(9) of the EAC (EP) (LC) Reg, candidates who fail to comply with the above requirements commit an offence, and are liable to a fine at level 2 (\$5,000) and imprisonment for 6 months.

[Ss 105(2), (3) and (9) of the EAC (EP) (LC) Reg]

Publication Details

9.44 When submitting the information of EAs, candidates should provide information related to the printing/publication, as specified in para. 1(c) of **Appendix 6**. A candidate must ensure that all information provided is accurate.

[Ss 105(1)(a), (4) and (6) of the EAC (EP) (LC) Reg]

9.45 If the information of EAs provided contains a mistake, the candidate should submit the amended information in the manner as set out in para. 9.43 of this chapter for public inspection. All the amended information must be uploaded onto the relevant platform or deposited with the relevant RO **within three working days at the latest after the polling day**. The relevant amendment 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 will be subject to the requirements outlined in Part VII of this chapter. If only a candidate number or letter of alphabet allocated to the candidate are added to a published EA, only the copy of the EA

bearing the newly added and the relevant amended information shall be made available for public inspection as per this paragraph.

9.46 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as EAs, but speech published in any form, such as distribution of copies of speeches to the audience or the media, will be regarded as EAs. The candidates concerned must comply with the requirements of publishing EAs.

9.47 In the case where multiple candidates use identical copies of an EA, each of the candidates concerned should submit the EA and related information/documents as specified in para. 9.43 for public inspection. [Ss 105(2) and (3) of the EAC (EP) (LC) Reg]

NOTE :

A candidate chooses to adopt the method set out in para. 9.43(a) of this chapter must ensure that their Candidate's Platform is functional and retains electronic copies of all EAs until the end of the public inspection period⁴⁸. For details, please refer to the guidelines in **Appendix 6** (including the important notes in paras. 16 to 19) and comply with the requirements concerned for public inspection of the EAs. [S 41(6) of the ECICO and ss 105(2) and (7) of the EAC (EP) (LC) Reg]

⁴⁸ The public inspection period ends on the day 60 days before the first anniversary of the deadline for lodging election returns.

PART VIII : REQUIREMENTS RELATING TO PRINTED ELECTION MATERIALS

Printing Details

9.48 All printed EAs, with the exception of those printed in a registered local newspaper, must 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

[Full address]

XX XZY Street, Hong Kong

Date: _____

Number of copies: _____

or

- (b) Printed by own office machine

[Full address]

XX XZY Street, Hong Kong

Date: _____

Number of copies: _____

[Ss 105(4), (5) and (6) of the EAC (EP) (LC) Reg]

Election Advertisements Placed in Print Media

9.49 Where an EA is placed in the print media, 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

9.50 A candidate who has inadvertently omitted the printing details from his printed EAs can make a statutory declaration to give the omitted details, and deposit such declaration with the RO **within seven days after** the publication of the offending EA. Candidates who take this remedial step will not be prosecuted for contravention of s 105(4) of the EAC (EP) (LC) Reg. The statutory declaration will be made available for public inspection by the relevant RO till the end of the period in which copies of election returns are available for inspection under s 41(6) of the ECICO. [Ss 105(6) and (7) of the EAC (EP) (LC) Reg]

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

Enforcement and Penalties

9.51 A candidate who fails to comply with the requirements set out in Parts VII and VIII in this chapter commits an offence and is liable to a fine at level two (\$5,000) and to imprisonment for 6 months. [S 105(9) of the EAC (EP) (LC) Reg]

9.52 Any unauthorised or offending EAs should be reported to the RO, and such EAs may be seized, disposed of, destroyed, obliterated, or covered by the RO or any person authorised by him. The candidate or his election agent may be prosecuted, and if convicted, may be liable to a fine and imprisonment. 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 procedures of the relevant authority. [Ss 105(9) and 107 of the EAC (EP) (LC) Reg, s 104C of the PHMSO, and s 24 of the Housing Ordinance (Cap. 283)]

9.53 Additional costs or compensations incurred by a candidate due to breaching agreements with private land/property owners or occupiers for the display of EAs, or for other reasons, may be construed as election expenses.

9.54 Complaints concerning the display of EAs, if any, should be lodged to the RO. Upon receiving a complaint, the EAC may also issue a public statement to **reprimand** or **censure** any non-compliance with the guidelines and/or refer the matter to relevant departments for follow-up.

Relief for Election Advertisements

9.55 Candidates and their agents are responsible for understanding and complying with the requirements of the relevant legislation and this guidelines. Any person who publishes an EA without complying with the requirements as set out in paras. 9.43 (except that related to the submission of permission/authorisation document under s 104A(1) of the PHMSO), 9.44, 9.45, and 9.48 of this chapter 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 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. The judgments of precedent court decisions⁴⁹ 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

⁴⁹ *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).

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.”

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

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

9.56 Any thing or material published by any organisation, including a political body, professional body or trade organisation, owners’ corporation, tenants’ association, owners’ committee, etc., which advertises its platform or services **with reference to a candidate** (irrespective of whether the candidate concerned is its office-bearer or member) **during or even before the election period** by name or photo 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. If the advertisement has been authorised by the candidate or his agent, the expense incurred will form part of the election expenses; otherwise, the organisation will be regarded as having incurred election expense unlawfully. Candidates should inform affiliated organisations of the guidelines above as soon

as they intend or plan to run for election. However, if the message 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 of the name and/or photo of a candidate who is involved in organising the activity in the published message will not be regarded as an EA.

9.57 In short, if any organisation, including a political body, publishes an EA to promote a candidate, it should be reminded that:

- (a) the expenses incurred in the publication of EAs will be treated as the candidate's election expenses;
- (b) the officer-in-charge of the organisation should be authorised 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 105 of the EAC (EP) (LC) Reg; and
- (d) such advertisement can only be displayed at the locations with relevant written permission or authorisation.

PART XI : FREE POSTAGE FOR ELECTION ADVERTISEMENTS

Conditions for Free Postage

9.58 In accordance with regulations made under the EACO, a candidate of a constituency who has been published validly nominated in the Gazette is permitted to send **one** letter free of postage to each elector of the constituency for which he contests for. Before the publication of the notice of valid nominations in the Gazette, a candidate wishing to use the free postage service 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 he is not subsequently validly nominated. In the case of joint election mail, a candidate whose letters contain the information on any other candidate(s) is liable for payment of postage for the whole batch of letters if any of such candidate(s) is/are not subsequently validly nominated. Under such circumstances, the security payment made by the candidate will not be refunded and the relevant joint election mail will not be regarded as postage-free election

mail of the candidate. [Ss 43(1), (2), (3A) and (4) of the LCO and s 6(2)(a) of the Post Office Regulations (Cap. 98A)]

9.59 The purpose of the free postage is to enable candidates to promote or advertise himself to electors concerned. Candidates must not abuse the free postage arrangement or used it for any other purpose or any other election, or for promoting or advertising any other person. **EAs with unlawful content must not be sent through free postage.**

9.60 A candidate, who is validly nominated for a GC, the Labour FC or the ECC, may choose to send joint election mail to electors for free, of which the details are as follows:

- (a) an election mail sent by a candidate who is validly nominated for a certain GC may contain information on another candidate who is also validly nominated for that constituency; and
- (b) an election mail sent by a candidate who is validly nominated for the Labour FC or the ECC may contain information on any other candidate who is also validly nominated for that constituency.

[S 101A of the EAC (EP) (LC) Reg and ss 43(4A), (4B) and (4C) of the LCO]

9.61 The joint election mail as described in para. 9.60 of this chapter will not be regarded as the election mail sent by the other candidate(s). This means

that the other candidate(s) is/are still entitled to the free postage of one letter addressed to each elector of the constituency concerned. [S 43(4D) of the LCO]

9.62 Specifically, the postage-free election mail must:

- (a) only be posted and delivered to an address in Hong Kong;
- (b) only contain messages solely related to the candidature of the candidate/candidates in the election, or in relation to the joint election mail mentioned in para. 9.60 of this chapter, may also contain materials related to the candidature of other candidates of the same constituency in the election;
- (c) not exceed 50 grams in weight;
- (d) be not larger than 165 mm × 245 mm and not smaller than 90 mm × 140 mm in size;
- (e) not exceed 5 mm in thickness;
- (f) not contain any obscene, immoral, indecent, offensive, or libelous writing, picture, or other thing; and

- (g) comply with other requirements of the Post Office Ordinance in respect of prohibited articles, including not posting, tendering for posting or sending by post anything the publication of which would constitute an offence endangering national security.

[S 101A(1) of the EAC (EP) (LC) Reg and ss 32(1)(f) and (h) of the Post Office Ordinance (Cap. 98)]

NOTE :

Under s 101A(3)(a) of the EAC (EP) (LC) Reg, a candidate sending postage-free mail items to electors in bulk is liable for payment of postage for all items in that bulk if any item therein does not meet the requirements in items (a) to (e) above. Besides, according to s 32(1)(f) and (h) of the Post Office Ordinance, items (f) and (g) above refer to prohibited articles.

In the case of joint election mail, the candidates concerned should comply with the following requirements : (i) the obtaining of prior written authorisation to act as election expense agents for one another; (ii) the sharing of expenditure in respect of the joint election mail among the candidates concerned for the submission of election return; and (iii) the obtaining of written consent of support from the other candidate(s) before sending the joint election mail (see PART I of Chapter 19).

Postal Requirements

9.63 Detailed requirements for election mail are specified in the “Notes on Free Postage for Election Mail” issued by the Hongkong Post, which is available for downloading on the dedicated election website. For methods of folding of election mail, please see **Appendix 7**.

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

NOTE :

For the purpose of posting election mail, candidates may request the REO to provide one set of mailing labels in respect of the electors of the relevant constituencies and/or USB flash drives containing the “Candidate Mailing Label System” (CMLS). To protect the environment and respect the wishes of electors, candidates will not be provided with mailing labels in respect of electors who have provided their e-mail addresses for receiving EAs or who have indicated that they do not wish to receive any EA.

9.65 Candidates who wish to post joint election mail should indicate their intention in the “Notice of Posting of Election Mail”, which should be signed jointly by the candidates/election agents concerned. The specimens of joint election mail should also be submitted to the designated manager(s) of Hongkong Post for approval.

9.66 The Government reserves the right to charge a candidate postage if any of the requirements under s 101A(3) of the EAC (EP) (LC) 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 therefore must be included in his election return to be sent to the CEO. The EAC may also issue public statements in such a manner as it deems fit to **reprimand** or **censure** any abuse of the free postage arrangements.

Enquiries

9.67 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

Tel: 2921 2190 / 2921 2307

Fax: 2501 5930

PART XII : ELECTION ADVERTISEMENTS FOR REGISTERED ELECTORS AND AUTHORISED REPRESENTATIVES IN THE CUSTODY OF CORRECTIONAL SERVICES DEPARTMENT AND OTHER LAW ENFORCEMENT AGENCIES

9.68 If registered electors/ARs in the custody of the CSD have provided the addresses of the penal institutions concerned as their correspondence addresses for receiving EAs, candidates may send EAs to them according to the guidelines laid down by the CSD at **Appendix 8**.

9.69 Registered electors/ARs imprisoned or held in custody by law enforcement agencies may have access to election-related information through the mass media in accordance with the existing policies of the law enforcement agencies.

PART XIII : COMMERCIAL ADVERTISEMENTS RELATING TO CANDIDATES

9.70 Any commercial advertisement 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, to avoid unfair publicity, candidates should make their best efforts to request the person(s)-in-charge to cease displaying such advertisements after declaring their intention to stand for the election or during the election period.