

CHAPTER 7

ELECTION ADVERTISEMENTS

PART I : GENERAL

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

7.2 EAs account for a major portion of election expenses. Given that only candidates and their election expense agents are permitted to incur election expenses (also see Chapter 6), they are the only persons allowed to incur election expenses because of the publication of EAs. It is, therefore, necessary to set down statutory regulations for EAs.

7.3 EAs refer to any publicity materials which are published for the purpose of promoting or prejudicing the election of a candidate or candidates. As to whether an individual statement will be construed as an EA, the overall circumstances, including the background, time of publication (e.g. whether the candidate has publicly declared his/her intention to stand for election or whether the incident happens during the election period), the expenses incurred etc., must be taken into account so as to infer whether there is any intention to promote or prejudice the election of a candidate or candidates. If the statement is simply for expression of views and comments based on the facts without any intention to promote or prejudice the election of a candidate or candidates, then it is not to be treated as an EA.

7.4 A candidate is required under the law to post a copy of any EA he/she has published as well as the relevant information and documents onto an open platform²⁵ maintained by the DHA or a person authorised by the DHA (“Central Platform”) or an open platform maintained by the candidate(s) or a person authorised by the candidate(s) (“Candidate’s Platform”), or submit a copy of the EA to the RO for public inspection within 1 working day after publication of the EA (for details, please refer to para. 7.57 below). This is not to restrict the content of EAs. Rather, it keeps track of candidates’ publication of EAs for the purpose of regulating their election expenses. If any false statement is contained in EAs, it will be regulated by other provisions under the subsisting law (see para. 7.23 below).

7.5 It is an illegal conduct to publish materially false or misleading statements of fact about a candidate under s 26 of the ECICO (please see para. 16.11 of Chapter 16 for details). In this regard, candidates publishing EAs should pay extra attention to ensure that the contents in their EAs have factual basis to avoid controversies and legal proceedings. Besides, if a candidate makes reference to other candidate(s) in the EAs, he/she should ascertain the factual basis of such reference and that the reference do not constitute a false or misleading statement. In the 2019 District Council (“DC”) Ordinary Election, the CFI of the High Court ruled in the election petition (HCAL 3665/2019) that an elected candidate (i.e. the first respondent) who had published a false and misleading statement about another candidate in one of the EAs was not duly elected.

7.6 Interactive EAs published on Internet platforms can be updated constantly. The law permits candidates to upload the relevant hyperlinks onto the Candidate’s Platform or Central Platform showing the publication of the EAs concerned and allowing public inspection of the EA contents.

²⁵ An open platform means a platform operated through the Internet to which the public has access without having to go through an access control process put in place for that platform.

7.7 With the proliferation of the Internet, online platforms are widely used to publish election-related opinions. As such opinions may sometimes constitute EAs, if the publication involves the incurrence of election expenses, the publisher may have committed offences relating to election expenses if he/she is not a candidate or a candidate's election expense agent. Hence, legislative amendments have been made that where such person has published information constituting EAs, he/she will be exempted from criminal liability for incurring election expenses not in the capacity of a candidate or a candidate's election expense agent if the only expenses incurred are electricity charges and/or charges necessary for accessing the Internet. However, **it must be noted that** the exemption only applies to third parties who are neither candidates nor candidates' election expense agents (for details, please refer to para. 7.11 below).

PART II : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT

7.8 An EA, in relation to the RR election, means:

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

published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election. [S 2 of the ECICO and s 2 of the EP (RRE) Reg]

IMPORTANT :

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

“Publish” means print, display, exhibit, distribute, post up, publicly announce or make publicly known by any other means, and includes continue to publish. [S 2 of the ECICO and s 91(1) of the EP (RRE) Reg]

If any candidate has authorised the publication of an EA by another person, that EA is taken to have been published by that candidate. [S 91(2) of the EP (RRE) Reg]

7.9 An EA includes the following if it is published for the purpose of promoting or prejudicing the election of any candidate or candidates in an election:

- (a) any address, notice, bill, placard, poster, board, banner, roll-up banner, flag, standard, colour, sign, message, sound, name card, letter paper bearing the name and/or logo of the candidate, image or picture and any article, thing or material;
- (b) audio/video cassette tape or disc, diskette, electronic message (e.g. messages published through social networking platforms ,

mobile messaging apps, communication networks, etc.), website, facsimile transmission, balloon, badge, emblem, carrier bag, head-dress and clothing; or

- (c) any thing or material published by any person or any organisation, including political organisation, professional or trade organisation, owners' corporation, mutual aid committee ("MAC")²⁶, tenants' association, owners' committee, etc. (irrespective of whether or not the candidate concerned is its office-bearer or member) showing his/her or its support for any candidate or advertising the platform or services of such an organisation with reference to a candidate or candidates by name or photograph or in any other form or manner.

7.10 As stated in para. 7.8 above, an EA is defined to include any messages published for the purpose of promoting or prejudicing the election of a candidate or candidates at an election under s 2 of the ECICO. Any publicity materials published by any person or organisation during or before the election period to appeal directly or indirectly to electors to vote or not to vote for an organisation or organisations which a candidate or certain candidates belong to or are affiliated with, irrespective of the form of publication and whether they contain any names or photographs of a candidate or candidates, may also be regarded as EAs depending on all the circumstances at the time when read in their whole context (e.g. the materials concerned may be capable of being reasonably understood by an elector as referring to certain identified candidate(s)). Materials issued through the press with the intent to promote or prejudice the election of a candidate or candidates at an election may also be regarded as EAs. The expenses incurred for the publication of such materials will be regarded as election expenses incurred by or on behalf of the candidate(s). If expenses are involved in the publication of an EA and the publisher is neither

²⁶ The Government will terminate the MAC Scheme. MACs are required to be dissolved before 1 January 2023 the latest.

a candidate nor a candidate's election expense agent, the publisher may have violated s 23(1) of the ECICO. If a candidate instructs that person or organisation to publish the EA, and such expenses are not accounted for as election expenses, the candidate will also violate the law.

7.11 In accordance with s 23(1A) of the ECICO, a person (other than candidates or their election expense agents) is exempted from the relevant criminal liability under s 23(1) of the ECICO if the person publishes an EA on the Internet, and the only election expenses incurred by the person for the purpose of publishing the EA are either one or both of electricity charges and charges necessary for accessing the Internet. However, if a candidate, a candidate's election expense agent, or a person who is authorised by a candidate or his/her election expense agent publishes an EA of the candidate on the Internet, any costs incurred, even though the costs only involve electricity charges and/or charges necessary for accessing the Internet, will still have to be included in the election expenses of the candidate. The candidate should also fully fulfill the requirements relating to publication of EAs as set out in para. 7.57 below.

7.12 Any publicity materials containing the name or photograph of a candidate issued or displayed during the election period (i.e. the period beginning on the first day of the nomination period for the election and ending on the day on which the polling for the election ends, or on the day on which the RO is required to make relevant declaration in accordance with s 29 of the RREO or s 19 of the EP (RRE) Reg) may also be regarded as EAs if they are published for the purpose of publicity with the intent to promote the election of the candidate.

7.13 Under s 91(1) of the EP (RRE) Reg, the definition of "publish" includes "continue to publish". In this regard, for any person who intends to stand as a candidate at the election (including but not limited to an incumbent member of the LegCo or a DC), if he/she continues to display any previously

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

7.14 Under s 91(4) of the EP (RRE) Reg, a document published by a candidate **during** an election period that gives details of the work done by the candidate in the capacity of:

- (a) the Chief Executive ("CE");
- (b) an Election Committee ("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) an RR,

is also regarded as an EA.

[Subject to the enactment of the relevant amendments to the EP (RRE) Reg., para. 7.14(b) above will be incorporated in the finalised guidelines.]

7.15 For the avoidance of doubt, if a person has publicly declared his/her intention to stand as a candidate at an election **before** the election period, and then publishes a document as mentioned in para. 7.14 above, the document will also be regarded as an EA as long as it is published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election. It is important to note that a document referred to in this paragraph and para. 7.14 above must comply with all the requirements for an EA and the expenses so incurred be accounted for as election expenses.

7.16 If a person publishes a document to give details of the work done by him/her in a capacity listed in para. 7.14 above without promoting or prejudicing the election of any candidate at the election before submitting the nomination form or publicly declaring an intention to stand as a candidate, the document will not be construed as an EA. On such basis, the expenses incurred in the publication of such a document would not be counted as election expenses.

7.17 A candidate in an election should put up and display EAs in accordance with all the relevant laws and regulations and the guidelines herein.

Election Advertisements Prejudicing the Election of a Candidate

7.18 There are occasions that a candidate or a third party may publish EAs for the purpose of prejudicing the election of other candidates at the election. At a contested election, the concept of “promoting” and “prejudicing” the election of someone can be relative. Any kind of publication with the intent to persuade electors not to vote for one candidate would have the effect of

improving the chances of success of other candidate(s) and could therefore be said to have the purpose of promoting the latter's election. For example:

- (a) If candidate A criticises candidate B in his/her own EAs with a view to prejudicing B's candidature at the election, candidate A has to include the expenses incurred in his/her election expenses.
- (b) If a third party criticises candidate B in an EA and the EA has the effect of indicating support for candidate A, the third party must obtain candidate A's prior written authorisation for incurring the production expenses before he/she produces that EA, and the expenses incurred will have to be included in candidate A's election expenses; or
- (c) If the third party publishes an EA as described in (b) above without the prior written authorisation of candidate A, that third party will be in breach of s 23 of the ECICO (unless exempted under s 23(1A) as mentioned in para. 7.11 above) because only a candidate or a person who has been duly authorised by a candidate as his/her election expense agent may incur election expenses. It would only be fair to candidate A that the third party needs to obtain candidate A's written authorisation before incurring such expenses. This requirement would also prevent candidate A from circumventing the law by asking the third party to publish materials prejudicing candidate B without having to account for the expenses of those materials.

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

7.20 The **election expenses** allowed by the law to be incurred by a candidate include the expenses he/she incurs for the preparation and publication of EAs, and he/she should therefore be careful in planning how much he/she should spend in this area. (For the definition of election expenses, please see s 2 of the ECICO)

7.21 Subject to the maximum amount that can be incurred by a candidate for election expenses [s 24 of the ECICO], there is no restriction as to the quantity of EAs employed by him/her. The maximum amount allowed for an RR election is specified in the Maximum Amount of Election Expenses (Rural Representative Election) Regulation (please see para. 15.15 of Chapter 15 for details).

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

7.23 A candidate must ensure the correctness and accuracy of the factual information in his/her EAs. In particular, a candidate is reminded to comply

with the requirements for obtaining prior written consent of support from other persons or organisations, which are summarised in Chapter 17. If a candidate has any question about the legal requirements on EAs and election expenses, he/she should seek independent legal advice. (For criminal sanctions, see ss 25, 26 and 27 of the ECICO)

PART III : PERIOD AND AREA OF DISPLAY

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

7.25 Display spots are classified into 2 types:

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

Government or Private Land/Property - Designated Spots

7.26 Allocation of designated spots for the use of **contested** candidates to display their EAs will be made by the RO of the relevant Rural Area. Some

of the government land/property have been allocated to some public authorities, such as the Housing Authority, and are under their respective control. The RO for the relevant Rural Area may designate spots on such allocated land/property in coordination with the said authorities. **Each candidate (who has registered his/her interest in displaying EAs at designated spots) competing in the same Rural Area will be allocated the same number of designated spots.**

7.27 Prospective candidates and political organisations are welcome to suggest to the respective ROs the 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**”, but with absolute discretion to decide whether to adopt the suggestions.

NOTE :

Suggestions under para. 7.27 should reach the relevant RO **not later than 8 weeks before the polling day.**

Other Land/Property - Private Spots

7.28 Candidates who wish to display their EAs on land/property other than government land/property and other than the designated spots must **obtain the prior written permission or authorisation** of the owner or occupier [s 104A(1) of the PHMSO]. The obtaining of written permission or authorisation from the private owner or occupier is a matter for private arrangement between the candidate and the owner or occupier, and the spots concerned are therefore called “**private spots**”. A copy of all the permissions or authorisations obtained by a candidate himself/herself must be provided by him/her for public inspection in the manner as set out in para. 7.57 below (please see para. 7.33 below). Any consideration, fee or money incurred or agreed to be paid by or on behalf of the candidate to the owner or occupier for display of

his/her EAs forms part of his/her election expenses. If the private spot secured for displaying the EA is normally used for commercial purpose, the actual rent charged or the usual rent or market rent that would normally be charged should be counted as the election expenses of the candidate concerned, irrespective of whether that private spot is owned by the candidate or whether the owner of it allows the candidate to use it free of charge (in which case it would be a donation of the rent). Where a space provided by a particular private owner or occupier for a candidate to display EAs is not used for commercial advertising, but similar space belonging to other owners or occupiers is available for commercial advertising, the market value of the space should also be accounted for. The provision of this kind of rent-free space should be regarded as election donation and counted as election expenses. This requirement is to ensure that the candidate concerned will not have unfair advantage over the others who do not have access to such facilities. For details on how the estimated value should be assessed, please refer to para. 15.28 of Chapter 15. If a space is not the type normally used by any private owners or occupiers for commercial advertising, there is no need for the candidate to account for its value.

7.29 For the display of EAs at the common parts of private land/property (those parts for which exclusive rights of use or occupation do not belong to a particular owner or tenant), the EAC appeals to owners or occupiers of private land/property concerned to give all candidates competing in the same Rural Area **fair and equal treatment** (please refer to Chapter 8).

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

Allocation of Designated Spots

7.31 The RO for each Rural Area will allocate the designated spots to

candidates of the Rural Area either in accordance with the agreement among the candidates or by the drawing of lots after the end of the nomination period, when the number of candidates contesting in the Rural Area has been ascertained. No designated spot will be provided to a candidate who is returned uncontested. **No display of EAs will be allowed on any designated spots before the allocation** (please also see the requirements in para. 7.37 and Part VII below). EAs displayed by the candidates on government land/property other than designated spots are unauthorised display and will be removed, save those EAs displayed in connection with electioneering activities conducted on government land/property with approval by the authorities concerned. A candidate will be provided with a list of the designated spots allocated to him/her, together with a set of maps to help identify the locations.

7.32 Candidates using the designated spots are required to read and comply with all the requirements and conditions stipulated in the “Conditions for Display of EAs at Designated Spots”, which will be provided to each candidate in the candidate’s folder and uploaded onto the website for the RR Elections. 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.

Written Permission or Authorisation

7.33 The RO(s) will obtain prior approval from the relevant authorities under s 104A(1) of the PHMSO and s 4 of the Land (Miscellaneous Provisions) Ordinance for candidates to display their EAs at designated spots. Immediately after the allocation of designated spots is made, a copy of that written permission or authorisation as required under the relevant legislation will be provided to the candidates by the RO of the Rural Area concerned (see Part IV below). For display of EAs on private land/property, written permission or authorisation of the private owner or occupier will have to be obtained by the candidates

themselves [s 104A(1) of the PHMSO]. A person displaying an EA without the necessary written permission or authorisation commits an offence and will be liable to a fine at level 3 (\$10,000) and, where the offence is a continuing offence, an additional daily penalty of \$300 for each day during which it is proved to the satisfaction of the court that the offence has continued [ss 104A(2) and 150 of the PHMSO]. A copy of all the permissions or authorisations obtained by a candidate himself/herself, as opposed to those provided to him/her by the RO, must be provided by him/her for public inspection in the manner as set out in para. 7.57 below. All candidates should note that if building works (including erection of signboards) in private premises or on private land are involved for the display of an EA, the relevant provisions of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) or the Buildings Ordinance (Cap. 123) (“BO”) and its subsidiary regulations must be complied with. In this regard, prior to the commencement of works, it is advisable to consult Building Professionals, Registered Contractors and, where necessary, Authorised Persons on whether the building works are in compliance with the requirement of relevant ordinances. Subject to the nature, scale, complexity and safety risks of the works project, minor works should be dealt with in accordance with the simplified requirements of the Minor Works Control System, or the work plans should be submitted to the Buildings Department for approval and consent prior to the commencement of the project.

No Canvassing Zone

7.34 No EA may be displayed within the boundaries of a polling station (including all storeys and the outer walls of the premises) or within any NCZ on the polling day (see Chapter 13), but except for static display of EAs that are authorised by the RO (e.g. EAs mounted at designated spots). Where there are premises situated within the NCZ, the ROs should issue a notice in advance to all the candidates in the Rural Areas concerned asking them to remove all of their EAs, if any, displayed at the premises within the NCZ before the polling day.

The exhibition of portable displays of EAs on vehicles (whether in motion or parked within the NCZ) or held or carried by persons is also regarded as a canvassing activity which is forbidden within an NCZ. Therefore, candidates should arrange the removal of EAs on the windows or bodywork of any public service vehicles (e.g. public light buses, taxis, etc.) before the polling day if those vehicles will pass through or be parked within the NCZ on the polling day. If a candidate fails to remove the EAs as requested by the RO, the RO may issue a warning to him/her to remove the offending EAs immediately. If the candidate does not comply, the EAC may issue a censure or reprimand. The RO for the Rural Area will provide each candidate of that Rural Area with 1 set of sketch maps or plans showing the boundaries of all polling stations and all NCZs outside those polling stations.

PART IV : ALLOCATION OF DESIGNATED SPOTS

7.35 A candidate can obtain the following information from the RO for that Rural Area at the time of submitting the nomination form:

- (a) the general locations of the designated spots, which may include unleased government land, property and buildings managed by the Housing Department, and occasionally private land/property (if any) available for allocation of designated spots to the candidates. The size and number of spots for allocation will be finalised by the RO, taking into account the number of contested candidates in the Rural Area, **after** the end of the nomination period. In order to allow all contested candidates to display their EAs at all locations (particularly popular ones), the size of each spot may vary from location to location; and

- (b) the date and time for conducting the allocation of designated spots, which would normally be held within 3 to 5 working days after the end of the nomination period. The RO will invite representatives from the relevant authorities relating to government land/property, save those that have already given a blanket approval, to be present to give the necessary written authorisation for the spots allocated.

7.36 The RO(s) for the Rural Area(s) will need to know the exact number of candidates who wish to display EAs at designated spots, so that he/she can finalise the number of designated spots and their size for allocation. Therefore, candidates who wish to display EAs at designated spots **must register their interest in writing by filing a completed form to the relevant RO within the nomination period. Only candidates of contested Rural Areas will be allocated with designated spots.**

7.37 The principle of allocation of designated spots is that candidates contesting in the same Rural Area should each be allocated the same number and an equal area of designated spots for mounting EAs. Designated spots are allocated by agreement among the representatives of all the contested candidates or by drawing of lots. After allocation of the spots and the necessary authorisations have been obtained from the relevant authorities [s 104A(1) of the PHMSO and s 4 of the Land (Miscellaneous Provisions) Ordinance] and after complying with the requirements set out under Part VII, the candidate may display EAs at the allocated spots.

7.38 A copy of the permissions or authorisations obtained by a candidate himself/herself, as opposed to those provided to him/her by the RO, must be provided in the manner as set out in para. 7.57 below for public inspection [s 92(2) and (3) of the EP (RRE) Reg].

7.39 Subject to para. 7.41, designated spots allocated are neither transferable nor exchangeable with other spots. Where a candidate of a particular Rural Area no longer wishes to use one or more of the designated spots allocated to him/her, he/she should inform the RO of that Rural Area in writing within 1 week after the allocation of those spots. At a contested election, upon request by any other candidate of the same Rural Area, the RO, if he/she considers appropriate, will re-allocate by agreement or by the drawing of lots the designated spots among all other candidates who are eligible to be allocated with designated spots of the same Rural Area. In such a case, the procedures mentioned in paras. 7.36 and 7.37 above apply.

7.40 In principle, candidates will not be allocated designated spots outside the Rural Areas in which they stand for election. If, for any reason, a candidate in a by-election wishes to be allocated designated spots outside the Rural Area for which he/she is standing, he/she should write to the DHA to state the reasons as soon as possible after his/her nomination form has been handed in. If such request is considered technically feasible and justified, the DHA will proceed to identify suitable designated spots for inclusion in an allocation exercise but the DHA has the final decision as to whether or not to accede to the request.

7.41 An EA advertising 2 or more candidates of the same or different Rural Areas jointly is allowed to be displayed at the designated spots allocated to the candidates. Nevertheless, it is important to ensure that, for each one of the joint candidates, the total area of all the spaces actually occupied for advertising the candidate on all his/her EAs, including the joint EAs, mounted at the designated spots (as measured by the dimension of EAs) does not exceed the total area of the designated spots allocated to each of the candidates. A joint EA is also subject to the size restrictions specified in para. 7.45 below. 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 therefore have to be borne by the candidates concerned in equal or proportional shares as their respective election expenses, to be calculated by the proportion of the size of the portion advertising each. In this connection, it is important to note that only a candidate himself/herself or his/her election expense agent may incur election expenses on his/her behalf [s 23 of the ECICO]. In order to comply with the requirement stipulated in s 27 of the ECICO, the candidates concerned also have to seek prior written consent of support from each other before publishing the joint EA. Besides, each of the candidates must make available a copy of each of his/her EAs, and the relevant information/documents for public inspection in accordance with para. 7.57 below (please also refer to paras. 6.18 to 6.21 of Chapter 6 and para. 17.13 of Chapter 17).

PART V : CONDITIONS AND LIMITATIONS ON DISPLAY

Name of the Rural Area

7.42 To avoid possible confusion to electors, EAs of all candidates of the Rural Area must bear the name of the Rural Area for which the candidate concerned is standing. Similarly, in respect of joint EAs, the name of the Rural Area should be stated clearly in relation to each of the candidates advertised. In the case of a breach for EAs displayed at designated spots, the approval for the use of the designated spots in question may be revoked.

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

Re-use of Old Publicity Boards

7.44 A candidate may re-use old publicity boards used at a previous election. However, any information in relation to the previous election, e.g. the candidate number, name of Rural Area, 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 will not only avoid confusion to electors but will also help the candidate avoid laying himself/herself open to allegations of false claim of support of persons who might not have consented to support him/her at the current election. The cost incurred in refurbishing as well as the estimated value of the old publicity boards will be counted towards the candidate's election expenses.

Size

7.45 As a general rule, EAs displayed at designated spots should not exceed 1 metre high and 2.5 metres long. In the case of designated spots at roadside railings, the promotional messages of the relevant EAs must be **printed on one side only and facing the designated direction of the spots**. Before displaying any EAs, candidates are reminded to ensure that the EAs must not distract motorists or interfere with the sight lines of motorists and pedestrians, obscure any traffic sign or traffic light signal, or obstruct the circulation of pedestrians (see para. 7.32 above). For the rules on display of joint advertisement, please refer to para. 7.41 above.

Mounting and Installation

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

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

7.48 “Tie-on” posters (rather than “stick-on” posters or metallic wires) should be used to facilitate subsequent removal.

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

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

7.51 Do not install into or erect any structure on public pavements, e.g. nailing boards to the ground. Do not use any tree or plant as anchor point for EAs.

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

Dismounting

7.53 All candidates should remove all their EAs displayed on government land/property **within 10 days** following an election. If building works (including removal of signboards) in private premises or on private land are involved for the removal of an EA, the relevant provisions of the Buildings Ordinance (Application to the New Territories) Ordinance or the BO and its subsidiary regulations should be complied with. Failure to remove all EAs within the specified period may result in prosecution being brought against the offending candidate and such EAs removed and seized by the relevant authority.

Relevant authorities will issue demand notes for the removal costs to the candidates concerned within 21 days after the publication of the election result in the Gazette (normally the first Friday after the polling day). The **cost of removal** will be construed as **election expenses** and the candidates must include all these costs as election expenses in their election returns.

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

7.54 For temporary occupation of government land including any public street, pavement, footbridge, public escalator system and pedestrian tunnel for holding electioneering activities (such as setting up a manned street counter and displaying EAs which may include banners, roll-up banners and vertical flying posters or bunting), candidates are required to submit applications specifying the scheduled date, time, location/spot and brief description of the proposed set-up to the relevant District Lands Office (“DLO”) of Lands Department for consideration. DLOs will only consider applications from validly nominated candidates and 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. Where necessary, the respective DLO may adjust the location of the government site to be occupied in light of the physical setting and actual situation. The decision of the DLO concerned shall prevail.

7.55 The Lands Department will issue detailed guidelines for candidates to apply for temporary occupation of government land at public places for holding electioneering activities during the election period. The deadlines for submission of applications will be specified in the guidelines.

Applications should be submitted to the relevant DLO according to the designated deadlines. Applications for occupying government land on the polling day should be submitted to the relevant DLO by the deadline as specified in the guidelines. The DLO will arrange drawing of lots to determine the allocation if necessary. On the polling day, the approval will be deemed to have been revoked if and when the allocated spot falls within the NCZ.

7.56 The DLOs will not consider applications for holding electioneering activities on government land outside the designated periods. No fee is required for the applications above. The display of EAs will not be permitted for a street counter not manned by staff.

PART VII : REQUIREMENTS RELATING TO PUBLICATION OF ELECTION ADVERTISEMENTS

Copies for Public Inspection

7.57 In accordance with the requirements of s 92(2) and (3) of the EP (RRE) Reg and the EAC, a candidate must make available a copy of each of his/her EAs, and the relevant information/documents (see **Appendix 4**) including the publication information, permission or consent in relation to the EAs for public inspection **within 1 working day** (i.e. any day other than a general holiday and Saturday) **after the publication of the EAs** by the following means:

- (a) posting an electronic copy of each of his/her EAs and relevant information/documents onto the Central Platform in accordance with the procedures set out in **Appendix 4**;

- (b) posting an electronic copy of each of his/her EAs and relevant information/documents onto the Candidate's Platform and provide the **electronic address** of the platform to the RO **at least 3 working days before the publication of the first EA (for details, please see Appendix 4)**;
- (c) if it is technically impracticable to comply with (a) or (b) above for EAs published through an open platform on the internet (for example, when messages are exchanged on social networking or communication websites on the Internet, such as Instagram, Twitter, Facebook or blogs, in a real-time interactive manner), a hyperlink of the open platform and the information/documents relevant to the EAs should be posted onto the Candidate's Platform or the Central Platform in accordance with the procedures set out in **Appendix 4**. In this case, if the hyperlink of the EA has already been posted onto the Candidate's Platform or the Central Platform, there is no need for the candidate to upload each and every comment separately;
- (d) providing 2 hard copies of each EA (or 2 identical full colour photographs/printouts/photocopies of each EA which cannot be practically or conveniently produced in specie) and a hardcopy of information/documents in relation to the EA to the RO; or
- (e) providing 2 identical copies of a CD-ROM or DVD-ROM each containing the EAs and a hardcopy of information/documents in relations to the EAs to the RO.

As an interim arrangement, pending the appointment of the RO and the establishment of the Central Platform, the candidates should deposit their EAs

and the related information/documents with the DHA in the same manner as stated in (d) or (e) above.

IMPORTANT :

According to s 92(9) of the EP (RRE) Reg, candidates who fail to comply with the above requirement commit an offence and shall be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months.

[S 92(2) and (3) of the EP (RRE) Reg]

Publication Details

7.58 A candidate should provide information related to the printing/publication of his/her EAs (i.e. the name and address of the printer, date of printing and number of copies printed) when posting the EAs onto the Candidate's Platform or Central Platform or submitting relevant information in a specified form to the RO **within 1 working day after the publication of the EAs** (see **Appendix 4**) [s 92(4) and (6) of the EP (RRE) Reg]. A candidate must ensure the accuracy of all the information provided.

7.59 If the information uploaded onto the Candidate's Platform or Central Platform or provided to the RO as set out in para. 7.58 above contains a mistake, the candidate should post the amended information onto the Candidate's Platform or Central Platform or submit the amended information in a specified form to the RO for public inspection. All the amended information must be posted onto the Candidate's Platform or Central Platform or deposited with the relevant RO **within 2 working days at the latest after the polling day**. The information will be used as the basis for checking the candidate's election return and for removing unauthorised or offending EAs on display. For the avoidance of doubt, any amendment to the content of an EA will be regarded as the

publication of a new EA and hence subject to the requirements stated in paras. 7.57 and 7.58 above. However, for the addition of a candidate number allocated to the candidate at the Candidates' Briefing onto a published EA (in a contested election), in which case a copy of the EA bearing the newly added and amended information must be made available for public inspection in accordance with this paragraph.

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

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

7.62 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be treated as EAs, but the copies of the speech provided to the audience or media will be regarded as printed EAs. Given that the copies of speeches provided to the audience are regarded as printed EAs, the candidates concerned are required to comply with the requirements in this chapter regarding the distribution of copies of an EA and those on making available the copies for public inspection.

7.63 In the circumstances where candidates contesting in different Rural Areas use identical copies of an EA, each of the candidates concerned should post an electronic copy of the EA and the relevant information/documents onto his/her Candidate's Platform or the Central Platform or deposit 2 copies of the EA and a copy of the relevant information/documents with the RO(s) concerned. [S 92(2) and (3) of the EP (RRE) Reg]

7.64 All copies of the EAs and the relevant information/documents must be made available for public inspection till the end of the period in which copies

of election returns are available for inspection under s 41 of the ECICO, i.e. the period ending with the 30th day before the first anniversary of the date of the deadline for lodging the relevant election return [s 41(6) of the ECICO and s 92(7) of the EP (RRE) Reg]. A candidate electing to comply with para. 7.57(b) above must ensure that the Candidate's Platform is maintained till the end of the aforesaid inspection period to facilitate public inspection of the EAs [s 92(2)(b) of the EP (RRE) Reg]. The DHA will also make public the Central Platform and the electronic address of the Candidate's Platform to facilitate public inspection of the EAs. For a candidate electing to comply with para. 7.57(d) or (e) above, the RO concerned will make available a copy of the EAs and the relevant information/documents for public inspection at a specified address as soon as practicable after copies of such EAs and information/documents have been furnished till the end of the aforesaid public inspection period [s 92(7) of the EP (RRE) Reg].

PART VIII : REQUIREMENTS RELATING TO PRINTED ELECTION MATERIALS

Printing Details

7.65 All printed EAs, with the exception of those printed in a registered local newspaper, should bear the printing details in Chinese or English stating the name and address of the printer, the date of printing and the number of copies printed. It applies to all materials reproduced by any method of making copies (e.g. using printing machines, duplicators or photocopiers). The following are some suggested formats:

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

or

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

[S 92(4) and (5) of the EP (RRE) Reg]

Election Advertisements Placed in Print Media

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

Inadvertent Omission of Printing Details

7.67 A candidate who has inadvertently omitted the printing details from his/her printed EAs can make a statutory declaration to give the omitted details, and deposit such declaration with the relevant RO within **7 days after the publication** of the offending EA [s 92(6) of the EP (RRE) Reg]. Candidates who have taken this remedial step will not be prosecuted for contravention of s 92(4) of the EP (RRE) 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 return are available for inspection under s 41(6) of the ECICO [s 92(7) of the EP (RRE) Reg].

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

Enforcement and Penalties

7.68 A candidate who fails to comply with the requirements set out in Parts VII and VIII above commits an offence and is liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months. [S 92(9) of the EP (RRE) Reg]

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

7.70 Any unauthorised or offending EAs displayed may be seized, disposed of, destroyed, obliterated or covered by the RO or any person authorised by him/her [s 94 of the EP (RRE) Reg]. The candidate or his/her election agent responsible for the matter may also be prosecuted and if convicted, may be liable to a fine and to imprisonment [s 92(9) of the EP (RRE) Reg]. The cost of removal, being a civil debt, will be counted as election expenses and must be reported in the candidate's election return. The seized articles may be kept as evidence and will be disposed of or returned upon application in accordance with the PHMSO or the Housing Ordinance (Cap. 283), as the case may be, and the procedures of the relevant authority. [S 104C of the PHMSO and s 24 of the Housing Ordinance]

7.71 Each candidate must observe and comply with the conditions agreed between him/her and the owner or occupier of the private land or property

concerned for the display of EAs, and any additional charges or damages payable by a candidate to the owner or occupier may be construed as election expenses.

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

Relief for Election Advertisements

7.73 A person, who publishes an EA without complying with the requirements as set out in paras. 7.57 (except that related to the submission of permission/authorisation document under s 104A(1) of the PHMSO), 7.58, 7.59 and 7.65 above may apply to the CFI for an order allowing the publication of the above EAs to be excepted from the relevant requirements and relieving him/her from the penalties. The CFI may make such an order provided that the CFI is satisfied that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith [s 93 of the EP (RRE) Reg]. The judgments of precedent court decisions²⁷ regarding applications for the relief of election-related penalties and liabilities are as follows:

“if an applicant did not place enough significance on the obligation to file an election return, the court would require some good reason before it should exercise its discretion to grant relief. Section 40(2) gives the court a discretion. I think it is important that the discretion should be exercised in a manner which is

²⁷ *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).

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.”

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

7.74 Any thing or material published by any organisation, including a political body, professional body or trade organisation, owners’ corporation, MAC, tenants’ association, owners’ committee, etc., which advertises its platform or services **with reference to a candidate** (irrespective of whether or not the candidate concerned is its office-bearer or member) **during or even before the election period** by name or photograph or otherwise with the intent to promote the election of the candidate may be treated as an EA put up by, or on behalf of, or on account of, the candidate. The expenses of such EA may be construed as election expenses incurred by or on behalf of the candidate. A candidate should be responsible for election expenses incurred by himself/herself or his/her authorised election expense agents, excluding those incurred without his/her knowledge and consent. It is therefore a prudent step for the relevant organisations to suspend such advertising activities. However, if the material published by the organisation concerned, as opposed to the candidate himself/herself, advertises only a particular activity, which:

- (a) is organised from time to time either as part of the organisation’s normal functions, and/or according to the local tradition;
- (b) is not related to the election; and

- (c) does not explicitly or implicitly promote or prejudice the election of a candidate in the election,

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

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

7.76 To protect their own interest, candidates should advise their political bodies or their organisations of these guidelines as soon as they have any intention or plan to run for an election.

7.77 In short, if any organisation, including a political body, publishes an EA promoting a candidate, then:

- (a) the expenses incurred will be treated as the candidate's own election expenses;
- (b) the officer-in-charge of the organisation must 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 92 of the EP (RRE) Reg; and
- (d) such advertisement can only be displayed at the locations with the relevant written permission or authorisation.

PART XI : POSTING ELECTION ADVERTISEMENTS

7.78 A candidate sending EAs to electors by post must pay postage. Please refer to the “Postage Rates and Services” leaflet of Hongkong Post (Pos 15) for the details on postage and types of services.

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

Name of addressee

Floor and flat number and name of building

Street number, name of street

Name of district

7.80 The name of the candidate and other publicity slogans, including photographs, should appear on the back of the mail item or on the front left-hand side of the mail item. The front right-hand side is reserved exclusively for the recipient’s address.

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

7.81 Candidates may send EAs to registered electors in the custody of the CSD if the electors have provided the addresses of the penal institutions concerned as their correspondence addresses for receiving EAs. For security reasons, candidates should adhere to the guidelines laid down by the CSD at **Appendix 16** when sending EAs to these electors.

7.82 Candidates may note that registered electors 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 on access to the mass media.

PART XIII : COMMERCIAL ADVERTISEMENTS RELATING TO CANDIDATES

7.83 Any commercial advertisement in physical form showing the portrait and/or name of a candidate (e.g. commercial advertisements displayed on the bodywork of buses or the exterior walls of buildings) will not be regarded as an EA if it is merely for business promotion without any intention to promote or prejudice the election of any candidate. However, such a commercial advertisement may give extra publicity to the candidate concerned even though it is not an EA. In order to avoid such unfair publicity, the candidate should make his/her best endeavours to request the person(s)-in-charge not to display the advertisement after his/her declaration of intention to stand for election or during the election period. The EAC appeals to the aforesaid person(s)-in-charge to accede to such a request as far as practicable in order to avoid giving unfair publicity to the person concerned. If any complaint about unfair publicity of a candidate is received, the EAC will handle it according to established procedures. Nevertheless, if the display of the advertisement cannot be suspended due to contractual obligation, and the candidate has made best endeavours to request the person(s)-in-charge concerned not to display the advertisement, the candidate will not be subject to any liability. (For commercial advertisements broadcast on television/radio or in cinemas, please refer to paras. 10.30 to 10.31 of Chapter 10.)