

CHAPTER 8

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

PART I : GENERAL

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

- (a) at their living/working places;
- (b) in the premises of the organisations to which the electors belong;
or
- (c) in the buildings which the electors frequent.

These electioneering activities may include visits, personal contact with people, using amplifying devices to advertise in the common parts of the building, display or distribution of EAs and holding of election meetings at the places mentioned above. **Appendix 5** gives some reference as to what activity is to be regarded as an electioneering activity. This chapter explains the general guidelines to be observed by candidates in conducting electioneering activities as well as the rights of various stakeholders, and appeals to the electors, the management bodies of the organisations to which the electors belong and the management organisations of the buildings which the electors frequent to **provide fair and equal treatment** to all candidates so as to ensure that the election is conducted fairly.

8.2 Occupiers who have exclusive possession of private properties

(houses, flats, shops, offices or factories) have the right to decide whether to allow individual candidates to display EAs or conduct electioneering activities in their premises without having to treat all candidates equally.

8.3 However, management organisations (such as owners' corporations, MACs, property management companies, etc.) of the common parts of buildings should accord fair and equal treatment to all candidates. Applications of all candidates for the display of EAs or the conduct of electioneering activities in the common parts of buildings should be processed impartially, especially if the chairmen or executive committee members of the management organisations are candidates or their relatives or friends, where the principle of fair treatment must be upheld and no preferential treatment should be given.

8.4 Candidates are reminded that different organisations/buildings may have their own guidelines to allow or disallow the conduct of electioneering activities in the premises under their management. To ensure the smooth conduct of electioneering activities in public or private places, candidates should consult the relevant authorities or management organisations in advance and, if required, obtain prior permission from them for the conduct of electioneering activities in the places within their jurisdiction.

8.5 The general guidelines to be observed for conducting electioneering activities at the living and working places of electors, premises of organisations to which electors belong and buildings which electors frequent are set out in Part III below. The specific guidelines to be observed for conducting electioneering activities in the premises managed by the Housing Department and the Hong Kong Housing Society are set out in **Appendix 6**.

8.6 For the purpose of ensuring fair treatment and equal opportunity of access for all candidates in conducting electioneering activities and to avoid

causing disturbance to the public, Part IV below provides the owners/management bodies of premises and organisations with some guidelines in handling applications for conducting electioneering activities in the premises under their control.

PART II : RIGHTS OF TENANTS AND OWNERS

Tenant's Right – His/Her House, Flat, Shop, Office or Factory

8.7 The tenant who has exclusive possession of a house, flat, shop, office or factory, and not the owner, has the right to allow or deny access by anyone to the place.

Common Parts

8.8 The **common parts** of a building (those parts to which exclusive rights of use or occupation do not belong to a particular owner or tenant) are usually under the control and management of the owners of the various units in the building. Where there is an owners' corporation of the building incorporated under the former Multi-storey Buildings (Owners Incorporation) Ordinance or the present Building Management Ordinance (Cap. 344), the control and management of the common parts are exercised by the owners' corporation representing all the owners of the building.

8.9 The carrying out of the powers and duties and the acts of an owners' corporation do not affect the rights of the tenants of the individual flats, shops, offices or factories in the building except in relation to matters concerning the common parts. Candidates and tenants should note that as a **tenant** has exclusive possession of the unit that he/she occupies, he/she **has the right to invite anyone to visit his/her unit for any lawful purpose**, including

electioneering, but he/she has no right to allow the invitee to approach other tenants' units, such as knocking on other people's doors, or to do anything in the common parts of the building, except for accessing and leaving his/her unit or for the purposes allowed by the owners.

Owners' Committees

8.10 For some buildings, no owners' corporation has been established, but instead an owners' committee is formed. While an owners' committee generally operates in the same manner as an owners' corporation, its powers vis-à-vis the rights of the individual owners are not standardised and may differ from case to case.

Management Companies

8.11 Very often, the management of the common parts of a building has been delegated by the owners or owners' corporation or owners' committee to a management company. Management companies are only managing the common parts on behalf of the owners and unless specifically empowered to do so, have no independent right or power to decide whether electioneering by candidates in the common parts should or should not be allowed.

Tenants' Associations, Residents' Associations, Mutual Aid Committees

8.12 Sometimes there are tenants' associations or residents' associations or MACs representing tenants' interests in the buildings. Vis-à-vis the owners, such organisations have no right to control or manage the common parts. If they are given the authority by the owners, then they are entitled to control and manage the common parts on behalf of the owners.

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

Visits to Living and Working Places of Electors

8.13 Candidates should note that electors have the right to allow or deny access by anyone, including the candidates, to their own living or working places. In other words, electors are free to invite, or accept the request from, particular candidates but not the others to visit them at their living or working places.

8.14 However, access to a private office may require the approval of the management organisations of the office building or the companies which employ the electors, and such management organisations when making a decision should have due regard to the **fair and equal treatment principle** mentioned in Part IV below. In conducting electioneering activities at the common parts of the living or working places of electors, candidates should observe the general guidelines set out in paras. 8.17 to 8.25 below.

8.15 Any government offices, which are working places of electors, will be treated in the same manner as the premises referred to in this chapter. Electioneering activities may be allowed or denied at these offices as decided by the management authorities, but such decision should comply with the fair and equal treatment principle mentioned in Part IV below.

8.16 Due to security reasons, arrangements will not be made for in-person canvassing activities in a penal institution or the premises of a law enforcement agency. No one who visits a penal institution or the premises of a law enforcement agency for a business or official purpose is allowed to canvass for votes. This is to ensure that such a visitor will not have an advantage over other persons who cannot make the visit. A person who

canvasses for votes during the aforesaid visit commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months. [S 79A of the EP (RRE) Reg]

Respect for the Decision and Privacy

8.17 After a candidate has been notified of the decision made by the management organisation relating to electioneering activities, he/she should ensure that he/she and his/her supporters comply with the decision and should not avail himself/herself of or obtain any unfair advantage over any other candidate(s).

8.18 If a decision to disallow electioneering in an organisation or a building has been made by the management organisation, the candidate or his/her supporters should conduct no electioneering activity in such places. If the candidate concerned acts against the decision of the organisation or building in whatever manner, then he/she commits trespass and the organisation or building management can simply stop him/her from doing the contravening act or carry out the decision to exclude the candidate concerned. If the candidate refuses to leave, it would be wise in such circumstances for the organisation or building management, as the case may be, to report the matter to the Police in the first instance and then make a complaint to the EAC (which may publish a **reprimand** or **censure** against the candidate concerned) or its Complaints Committee.

8.19 A candidate and his/her supporters should respect the decision of the organisation or building management, and it is unwise to enter into **arguments** with members of the organisation or the building residents who obstruct the candidate's electioneering inside the premises of the organisation or the building. Such arguments may affect the candidate's reputation or image with members of the organisation or the residents of the building. Any

dissatisfaction with the decision or act of the organisation or the building should more properly be made a subject of a complaint as soon as possible to the EAC or its Complaints Committee, which will decide whether the decision or act is fair or unfair.

8.20 **Privacy of the electors should be respected.** The Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public (“the Guidance”) at **Appendix 7**, prepared by the Office of the Privacy Commissioner for Personal Data (“PCPD”), serves as a general reference for compliance with the requirements of the PD(P)O in relation to electioneering activities that may involve the collection and use of personal data of an individual. According to the Guidance, the act of canvassing for votes is not in contravention of the PD(P)O provided that the collection and handling of personal data comply with the data protection principles in Schedule 1 to the PD(P)O. The Guidance also reminds candidates, inter alia, that:

- (a) individuals should be informed of the purpose of collection of their personal data when collecting the data directly from them for electioneering;
- (b) personal data should not be collected by deceptive means or by misrepresentation (e.g. collecting personal data in the pretext of opinion polls or assistance for citizens to apply for government welfare);
- (c) before using personal data from sources other than the extract from the FR provided by the HAD for electioneering purpose, express consent from the data subjects should be obtained unless the original purpose of collection of the data is directly related to the electioneering purpose; and

- (d) if election agents or other contractors are engaged to process personal data of electors on behalf of the candidates for electioneering purpose, necessary means (contractual or otherwise) must be adopted to prevent the personal data transferred to the election agents or other contractors from: (i) being kept longer than is necessary for the electioneering purpose; and (ii) unauthorised or accidental access, processing, erasure, loss or use.

In addition, in order to facilitate better understanding of the privacy concerns of the electors and compliance with the requirements of the PD(P)O, the PCPD has provided relevant complaint cases in the Guidance for illustration purpose. **Candidates and their election agents are strongly advised to strictly follow the Guidance provided by the PCPD when conducting electioneering activities.**

8.21 Validly nominated candidates are supplied by the HAD with an **extract of the FR** in respect of their respective Rural Areas which contains the names and residential addresses of the electors of the relevant Rural Area and their email addresses (if the electors concerned have provided such email addresses to the HAD for the purpose of receiving election mails from candidates), but **not their telephone numbers**. As a general rule, candidates should respect the privacy of electors when using their contact information for canvassing. In particular, for mass distribution of election mails by email, candidates are reminded to use the “bcc” function of email or other proven means to ensure that the email addresses of individual electors would not be inadvertently disclosed to other recipients. To prevent an email containing an election mail from being mistakenly-detected as a spam email and blocked by the email system, candidates are advised to understand the sending limit adopted by the relevant email service provider before arranging the sending of election mails to their electors through email in bulk. If necessary, candidates

may consider first applying to their email service providers for raising the daily sending limit of their email accounts.

8.22 Besides, candidates should note that some members of the public do not like or detest being called over the telephone or the entrance intercom system and some do not like their names being called out aloud. Many electors also consider canvassing messages sent to them through **electronic devices** annoying. Their disapproval may be reflected in their choice of candidates on the polling day. It is therefore unwise to call or send messages through electronic devices to electors who find such approaches objectionable or to act in any other way that may antagonise them. As a matter of good practice, candidates and their supporters should maintain a list of electors that they know finding such electioneering telephone calls or messages or visits objectionable and avoid approaching these electors through these means again. On the other hand, electors who receive the objectionable telephone calls or messages can just disconnect them or block the sender. If the caller or sender does not desist from calling or sending messages and causes a nuisance, the elector should report the matter as soon as possible to the **Police**, which may take action against the caller or sender.

IMPORTANT :

Information relating to a person contained in any register of electors or in any extract of any register of electors can only be used for election-related purposes under the electoral legislation. Any abuse or misuse of such information is an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [s 32(3) of the EAC (ROE) (RRE) Reg].

In accordance with Data Protection Principle 3 of Schedule 1 to the PD(P)O, personal data relating to a person (as a data subject)

contained in any register of electors or in any extract of any register of electors shall not, without the prescribed consent of the data subject²⁸, or if the exemption under Part 8 of the PD(P)O is not applicable, be used for a “new purpose”²⁹. Moreover, according to s 64(3A) of the PD(P)O, if a person (as a discloser) discloses any personal data relating to a person (as a data subject) contained in any register of electors or in any extract of any register of electors without the relevant consent of the data subject with an intent to cause any specified harm³⁰ to or being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject, the discloser commits an offence and will be liable on conviction to a fine of \$100,000 and to imprisonment for 2 years. According to s 64(3C) of the PD(P)O, if the disclosure causes any specified harm to the data subject or any family member of the data subject, the discloser will be liable on conviction to a fine of \$1,000,000 and to imprisonment for 5 years.

8.23 Some candidates or their supporters may use **loud-hailers** to assist their campaign. They should exercise restraint in the use of loud-hailers so as not to create a nuisance to the persons in the vicinity, including those who live in the buildings nearby and visually impaired persons. They should be mindful that some people working shift hours need to take rest during the daytime and the noise generated from the use of loudspeakers for electioneering activities may affect their daily life. In order to reduce the nuisance caused to members of the public, candidates are required **not** to use

²⁸ In accordance with s 2(3) of the PD(P)O, “prescribed consent” (a) means the express consent of the person given voluntarily, (b) does not include any consent which has been withdrawn by notice in writing served on the person to whom the consent has been given (but without prejudice to so much of that act that has been done pursuant to the consent at any time before the notice is so served).

²⁹ In accordance with Data Protection Principle 3(4) of Schedule 1 to the PD(P)O, “new purpose”, in relation to the use of personal data, means any purpose other than the purpose for which the data was to be used at the time of the collection of the data or a purpose directly related to that purpose.

³⁰ In accordance with s 64(6) of the PD(P)O, “specified harm”, in relation to a person, means (a) harassment, molestation, pestering, threat or intimidation to the person; (b) bodily harm or psychological harm to the person; (c) harm causing the person reasonably to be concerned for the person’s safety or well-being; or (d) damage to the property of the person.

loudspeakers in electioneering **between 9 pm and 9 am**. If the EAC comes to know that a candidate has breached the time restriction, it may make a reprimand or censure against the candidate. Moreover, visually impaired persons rely upon sound to perceive their surroundings, hence the need of audible signaling facilities for their daily travel. Candidates and their supporters should take such needs into account and, when using loudspeakers, stay away from locations with audible signaling devices, such as pedestrian crossings and escalators, as much as possible so as not to cause interference with the audible signals generated by barrier-free facilities and undermine the travel safety of the visually impaired. Excessive noise will amount to an offence and the Police may be called. Anyway, it is unwise to create a nuisance through the use of loud-hailers, for the annoyance of the electors will obviously be reflected in their choice of candidate. (See also Chapter 11)

8.24 Canvassing through the use of the **entrance intercom system** by candidates and their supporters in a building is prohibited unless it is expressly allowed by the building management organisation.

Identification of Canvassers

8.25 For security reasons and for prevention of abuse, the EAC advises that each candidate should provide some forms of identification to his/her canvassers for them to enter the premises of an organisation or a building for electioneering purposes. The EAC suggests that the candidate should devise an authenticated identification document containing the name and photograph of his/her canvasser, who should then produce this identification document together with his/her identity card for inspection when seeking entry into the premises of an organisation or a building. Candidates should note that the production costs of this kind of identification documents will be counted as election expenses.

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

**Electioneering at Premises of Organisations to which Electors Belong and
Buildings which Electors Frequent**

8.26 The premises of the organisations to which the electors belong and the buildings which electors frequent usually do not belong to a particular elector or group of electors. They are usually under the control of the management bodies of the organisations or buildings concerned.

8.27 On the polling day or even quite some time before, candidates and their supporters may wish to carry out canvassing or electioneering activities at the premises mentioned above. Such activities mainly consist of the following:

- (a) distribution of election leaflets or advertisements by delivering them to the flats in person, or putting them into mail boxes of the flats, or placing them in the common parts of the building for collection, or handing them out to residents or people in the common parts of the building (excluding distribution of publicity materials by post, which is not subject to the control of the management organisations of the private premises);
- (b) display of posters, banners, placards, boards and any other EAs, etc. at any of the places within the common parts of the building;

NOTE :

Candidates who are allowed to display or distribute EAs at the premises mentioned above must comply with the guidelines set out in Chapter 7.

- (c) personal contact with people or using amplifying devices to advertise in the common parts of the building; and
- (d) household or home visits to occupiers of flats.

8.28 **A tenant's right to invite lawful visitors to his/her flat or shop or office or factory cannot be lawfully restrained by any decision made by the owners or owners' corporation.** If the tenant invites a candidate and the candidate's supporters into his/her premises, the owners or owners' corporation have no right to stop or obstruct it.

Decision to be Made at a Tenants' Meeting

8.29 During election time, there may be tenants wishing to entertain the approaches by candidates and their supporters. As different tenants may invite different candidates to their units, arguments may arise as to which candidates should be allowed to electioneer in the building. It is therefore advisable for owners or owners' corporations to resolve such arguments by, having regard to the interests of all parties, making a decision on whether to allow candidates and their supporters to conduct electioneering activities in the building. It is also advisable for owners or owners' corporations to invite all the tenants to attend the meeting held for discussing this matter so that tenants' views will be heard before any decision to allow or deny electioneering activities in the building is taken.

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

8.31 Candidates in an election see electioneering as a form of freedom of expression whereby they present to electors their platforms, and the electors have a corresponding right to receive such information. Electors can only make a proper choice when casting their votes if they know the platforms of each of the contesting candidates.

8.32 If a decision is made to allow electioneering by all candidates, the decision can also set out the hours of access and other conditions, such as not causing annoyance to occupiers and the maximum number of persons allowed for home visits, for the candidates to comply with (see also **Appendix 8**).

Decision Must Provide Fair and Equal Treatment

8.33 The EAC appeals to all management bodies of the organisations or buildings concerned to provide **equal opportunity** to all candidates competing in the same Rural Area for the purposes of electioneering. However, if it is decided **not** to allow a particular candidate to conduct electioneering activities in the premises of the organisation or in the common parts of the building, no other candidate in the same Rural Area should be allowed to do so, for **it is important to provide fair and equal treatment to**

all candidates so as to ensure that the election is conducted fairly. Discriminatory treatment of candidates may also lead to unequal treatment of tenants/occupiers, and have the undesirable effect of giving rise to dissatisfaction and discord amongst neighbours.

8.34 For all types of building organisations be it an owners' corporation, owners' committee, MAC, tenants' association, residents' association, management company or managers of the building, the decision that it makes relating to electioneering activities of candidates in the common parts of the building (including the office premises of the organisation and all private streets, etc.) **must comply with the fair and equal treatment principle.**

IMPORTANT :

The office bearers of building organisations must not abuse their positions in the organisations to give unfair treatment to any candidate in the conduct of electioneering or canvassing activities in the buildings concerned. This is particularly the case when the office bearers themselves or their close relatives are candidates in the election. Furthermore, it would be the responsibility of the building organisations to ensure that the fair and equal treatment principle is strictly complied with in all circumstances and no candidates will be given unfair advantage in the election.

8.35 The organisation concerned should make a decision that applies equally and fairly to all candidates of each Rural Area instead of dealing with each application from them separately. This will avoid having to convene a meeting to deal with each application upon its receipt, which may sometimes cause delay in processing some applications. The EAC may treat such delay

as a device to avoid compliance with the fair and equal treatment principle and may issue a reprimand or censure.

Notification of Decision

8.36 The management bodies of organisations and buildings are urged to notify the relevant RO in writing as soon as possible of their decision on electioneering by candidates, so that the RO could provide the correct information to the candidates/public upon their enquiries. A **form** of the notification to the RO can be obtained from the HAD. Candidates having enquiries may contact the DO or sub-offices of the District in which the building is located. Nevertheless, candidates are advised to note that some buildings may not be able to make a decision on electioneering by candidates and therefore have not given the notification to the RO as required. When candidates come across these buildings, they should respect the interim decision of these buildings not to allow electioneering.

Display of Election Advertisements

8.37 The management bodies of the organisations or buildings concerned should avoid handling applications by candidates for display of EAs on a first-come-first-served basis as this may create unfairness. For example, if one candidate knows the decision and applies to put up posters and banners on all available spots in the common parts of the building, no space will be left for other candidates who apply after him/her. To ensure fairness, a management body/organisation is advised to:

- (a) ascertain all the available spots in the premises for candidates to display posters and banners;
- (b) decide on the maximum size of posters and banners to be

allowed;

- (c) after the close of nominations of candidature, find out from the RO how many candidates are contesting in the Rural Area concerned;
- (d) divide all the available spaces according to quality and quantity to ensure equality as far as possible into portions equivalent to the number of candidates;
- (e) when one of the candidates of the Rural Area concerned applies for display of EAs, allow him/her to draw lots to obtain a portion of the spots still available at the time of his/her application; and
- (f) where 2 or more candidates wish to display their joint EAs, they should be allowed to do so but the joint EAs should occupy no more than the total of all the portions of the spots allocated to them in accordance with the size restriction under (b) and the drawing of lots under (e) mentioned above.

8.38 If any spaces in the common parts of the building can be made available through any arrangement including rental for candidates to display EAs or conduct other electioneering activity, the management organisation shall ensure that such spaces are **equally available** to all the candidates contesting in the same Rural Area, and give reasonable notice to all such candidates accordingly. Providing a space to only one of the candidates but not the others will be considered to be offering an unfair advantage to that candidate and operating unfairly towards the other candidates. Candidates should not accept any such unfair advantage.

8.39 When a decision has been made by the management organisation,

a notice of its contents together with the conditions should be posted up at the entrance of the building so that candidates or their agents will be able to know. This openness will help prevent misunderstanding and complaint.

8.40 The EAC will not interfere with a decision made by the management organisation, insofar as the decision does not breach the fair and equal treatment principle regarding electioneering activities of all candidates of the same Rural Area and such decision is not carried out unfairly towards any of the candidates.

8.41 An owners' corporation or other organisation or person should be very careful not to incur any election expenses when promoting a candidate, such as putting up a banner to show support for a candidate, because it is illegal conduct for anyone other than a candidate or a candidate's election expense agent to incur election expenses at or in connection with the election. [S 23(1) of the ECICO]

8.42 Any person who displays any publicity materials, including those seemingly not election-related, before or during the nomination period in private premises should declare to the management organisation concerned in writing whether he/she is a candidate or intends to stand as a candidate in the election. This is to prevent prospective candidates from making use of such materials to promote himself/herself. The management organisation is also advised to exercise its own judgement on whether the publicity materials are serving electioneering purposes and then make a decision according to the fair and equal treatment principle.

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

8.43 The specific guidelines to be observed by candidates and their agents in the conduct of electioneering activities in premises under the management of the Housing Department and the Hong Kong Housing Society are set out in **Appendix 6**.

PART VI : SANCTION

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

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