CHAPTER 7

ELECTION ADVERTISEMENTS

PART I : GENERAL

7.1 EAs refer to publicity materials which are published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election. Whether an individual statement constitutes an EA must be taken into account the overall circumstances, including the background and time of publication (e.g. whether the candidate has publicly declared his intention to stand for election or whether it happens during the election period), etc., so as to infer whether there is any intention to promote or prejudice the election of a candidate or candidates. If the statement is just for expression of views and comments based on facts without the above-mentioned intention, then the relevant statement is not regarded as an EA.

7.2 In accordance with the legislation and the requirements of the EAC, a candidate must upload an electronic copy of EA as well as the relevant information/documents to an open platform[41] 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")[42] (see **Appendix 4**), or submit a copy to the RO for public inspection **within three working days after publication of the EA** (see para. 7.40 of this chapter).

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[41] "Open platform" means an Internet platform that the public has access without having to go through an access control process.

[42] 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 the Central Platform, the law permits candidates to upload the relevant hyperlinks to the above platforms to facilitate public inspection.

7.3 It is illegal conduct to publish false statements that a person is or is not a candidate or to publish false or misleading statements of fact about a candidate (see Part III of Chapter 16). Therefore, candidates must ensure that the contents of their EAs (including any statements that involve other candidates) are based on facts[43]. The EAC particularly reminds candidates to comply with the requirements of obtaining prior written consent of support from other persons or organisations as stipulated in Chapter 17. Candidates should seek independent legal advice if they are in doubt about the statutory requirements on EAs and election expenses. (For criminal sanctions, see ss 25, 26 and 27 of the ECICO.)

7.4 Generally, any form of publication issued by a third party, except a candidate, an election expense agent or a person authorised by them, with the purpose 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 such expenses in his election expenses; otherwise, it is an offence.

7.5 At present, online platforms are widely used to publish election-related opinions. Such opinions may constitute EAs and involve election expenses. In order to prevent such publishers from committing the offence of incurring election expenses without the candidate's prior written consent, the relevant legislation stipulates that if the only expenses incurred in publishing such messages are electricity charges and/or charges for the Internet access, such publishers are exempted from the criminal liability for the offence of incurring election expenses illegally. However, **it must be noted that** the exemption does not apply to candidates or election expense agents. All expenses incurred in publishing an EA on an Internet platform by a candidate, an election expense agent or a person authorised by them, including electricity charges and charges

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[43] In the 2019 District Council ("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 the EAs was not duly elected.

for the Internet access, must be counted as the candidate's election expenses. [S 23(1) and (1A) of the ECICO]

PART II : WHAT CONSTITUTES AN ELECTION ADVERTISEMENT

7.6 An EA means:

(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,

published, in any form[44], 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]

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[44] The forms 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 and any 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 work programmes or services by referencing the name, photo, or any other forms of a candidate or candidates.

7.7 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 influence 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 regarded as having the intent of promoting the election of other candidates.

7.8 Therefore, messages published by any person (including a candidate) with the purpose of prejudicing the election of other candidates, and which contain references that enable the identification of the candidate(s) being prejudiced, will be regarded as an EA.

NOTE:

"Candidate" means a person who stands nominated as a candidate at an election; and also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election, regardless of whether he has submitted his nomination form, whether he has withdrawn his nomination after submission of the nomination form, or whether his nomination is determined invalid by the RO. Regarding what constitutes "publicly declared an intention to stand as a candidate", it depends on the overall circumstances as well as the objective facts and evidence.

"Publish" means print, display, exhibit, distribute, post up, publicly announce or make publicly known by any other means, and includes continue to publish. Therefore, for any person who intends to stand as a candidate at the election, if he continues to publish 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 publicity materials previously published before he is nominated as a candidate or publicly declares an intention to stand for election.

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

[S 2 of the ECICO, and ss 2(2), 91(1) and (2) of the EP (RRE) Reg]

7.9 Any person or organisation, during or before the election period (i.e. from the first day of the nomination period to the day on which the polling ends, or to the day on which the RO must make the relevant declaration under s 29 of the RREO or s 19 of the EP (RRE) Reg[45]), any direct or indirect appeal, by any means, to electors to vote or not to vote for certain candidates or organisations or bodies which certain candidates belong to or are affiliated with, irrespective of whether they contain the names or photos of candidates, may also be regarded as EAs depending on the overall circumstances (e.g. such messages may enable electors to reasonably identify the candidate(s) referred in the messages).

7.10 Besides, 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 also regarded as an EA:

(a) the Chief Executive ("CE");

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[45] According to s 19 of the EP (RRE) Reg, if the following circumstances arise after the death or disqualification of a candidate for election for a Rural Area, the RO must declare that no poll is to be held for election for the Rural Area concerned:
(a) the number of candidates remaining validly nominated is equal to the number of RRs to be returned for the Rural Area at the election;
(b) no candidate remains validly nominated; or
(c) the number of candidates remaining validly nominated is less than the number of representatives to be returned for the Rural Area at the election.

(b) a member of the Election Committee ("EC");

(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.

Therefore, candidates must comply with the requirements on EAs by including the relevant expenses into election expenses. If the relevant person has publicly declared his intention to stand as a candidate at the election before the election period and published such documents, the same requirement applies. However, if the document is published before the relevant person submits a nomination form or publicly declares his intention to stand as a candidate at the election, and the purpose of publication is not to promote or prejudice a candidate's/candidates' election, it will not be regarded as an EA. [S 91(4) of the EP (RRE) Reg]

7.11 There is no restriction on the quantity of EAs to be published by a candidate, but the relevant expenses incurred, together with other election expenses, must not exceed the prescribed maximum amount; otherwise, it is an offence. The maximum amount of election expenses for the elections for the Rural Areas is specified in s 2 of the Maximum Amount of Election Expenses (Rural Representative Election) Regulation (see Part III of Chapter 15). [S 24 of the ECICO]

7.12 If the election expenses of a candidate are in excess of the prescribed maximum amount, 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 his relevant criminal liabilities if it is satisfied that the illegal conduct caused by the election expenses of a candidate being in excess of the prescribed maximum amount 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 subject to corresponding penalties/punishments under the principle of justice (see Part VI of Chapter 16). [S 31 of the ECICO]

PART III : PERIOD AND AREA OF DISPLAY

7.13 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)]

7.14 There are two types of display spots for EAs:

(a) **designated spots** which are located on government or privately owned land/property allocated by the Government to candidates; and

(b) **private spots** which are located outside government land/property and designated spot areas in respect of which written permission or authorisation for display must be obtained from the owner or occupier concerned by the candidate himself.

7.15 If the display of the relevant EA involves carrying out of building works (including erection of any signboard) in private premises/land, the building works must comply with the relevant requirements of the Buildings

Ordinance (Application to the New Territories) Ordinance (Cap. 121), or the Buildings Ordinance (Cap. 123) and the subsidiary regulations. Therefore, candidates are advised to consult building professionals on the compliance with the requirements of relevant legislation, and to carry out minor works in accordance with the simplified requirements under the "Minor Works Control System", depending on the nature, scale, complexity and safety risks of the works, or submit prescribed building plans to the Buildings Department and commence the works after obtaining approval for the plans and written consent from the Buildings Department. Besides, the provisions of which require prior approval and consent to the commencement of works from the Buildings Department under the "Minor Works Control System" and the Buildings Ordinance do not apply to any of the exempted buildings specified in a "Certificate of Exemption". However, any building or drainage works carried out in such exempted buildings must comply with all relevant conditions of the lease. If the lease stipulates that approval and/or consent is/are required for the works, the candidate must submit an application to the relevant District Lands Officer prior to the commencement of works. [S 7(1)(a) of the Buildings Ordinance (Application to the New Territories) Ordinance]

7.16 Except for the static display of EAs authorised by the RO (e.g. EAs displayed at designated spots) on the polling day, no EA could be displayed within the area of a polling station or within the **NCZ** (see Chapter 13). Where there are buildings situated within the NCZ, the ROs should issue a notice in advance to all candidates of the relevant Rural Areas reminding them to remove all the EAs displayed at the buildings within the NCZ before the polling day. Besides, displaying EAs on vehicles (whether the vehicles are moving or parked within the NCZ), or carrying portable EAs by persons, is also regarded as a canvassing activity prohibited within the NCZ. Therefore, if a candidate has arranged to display EAs on the windows or bodywork of any public service vehicles (e.g. public light buses, taxis, etc.) and such vehicles will move or be parked within the relevant NCZ on the polling day, the candidate must arrange

for the removal of such EAs before the polling day. If the candidate fails to remove the relevant EAs as requested by the RO, the RO may issue a warning, requesting him to remove the unauthorised EAs immediately. If the candidate does not comply, the EAC may issue a **reprimand** or **censure**. The RO will provide each candidate with one set of sketch maps or plans showing the areas of all polling stations in respect of the relevant Rural Area and all NCZs outside those polling stations.

Designated Spots

7.17 Designated spots are allocated by the relevant ROs for the candidates of **contested** Rural Areas to display their EAs, including the government land/property which have been allocated to public bodies (e.g. the Housing Authority) and are under their respective control. The ROs may draw up the designated spots on such land/property in coordination with those bodies. **Each candidate contesting in the same Rural Area** who has registered his interest in displaying EAs at designated spots, will be allocated **the same number of designated spots**.

7.18 Prospective candidates and political bodies are welcome to suggest to the ROs the locations for displaying EAs for 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 **not later than eight weeks before the polling day**.

7.19 **No display of EAs will be allowed at any designated spots before the allocation.** Other than EAs displayed at designated spots and in electioneering activities separately approved by the relevant authorities, the display of any 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, and a set of maps to help identify the locations for displaying EAs.

7.20 Candidates using the designated spots must 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 to the RR Election website (www.had.gov.hk/rre). To safeguard the safety of road users, candidates must ensure that EAs displayed do not distract motorists or interfere with the sight lines of motorists and pedestrians, or obscure any traffic signs or traffic light signals in a manner that obstructs the mobility of pedestrians.

7.21 The ROs will obtain prior approval from the relevant authorities for candidates to display their EAs at designated spots. After the allocation of designated spots, the ROs of the Rural Areas concerned will provide the candidates with a copy of that written permission or authorisation as required under the relevant statutory requirements immediately (see Part IV of this chapter). It is an offence for a person to display an EA without the necessary written permission or authorisation and is liable to a fine at level 4 ($25,000) and, where the offence continues, an additional daily penalty of $450 in the period during which the court believes that the offence has continued. A candidate must publish a copy of all the permissions or authorisations obtained by himself, as opposed to those provided by the ROs, for public inspection in the manner as set out in para. 7.40 of this chapter. [Ss 104A(1), (2), 150 of and Schedule 9 to the PHMSO, and s 4 of the Land (Miscellaneous Provisions) Ordinance]

Private Spots

7.22 If candidates display their EAs at places other than government land/property and designated spots, they must seek and **obtain written permission or authorisation** from the owner or occupier of those places by themselves. The relevant arrangement is solely a private arrangement between the candidate and the owner or occupier. However, copies of such permissions or authorisations must be published by the candidate for public inspection in the

manner as set out in para. 7.40 of this chapter (see para. 7.21 of this chapter). [S 104A(1) of the PHMSO]

7.23 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 normally used for commercial purposes,

the actual rent charged, or the usual rent that would generally be charged or market rent must 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).

7.24 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, under this circumstance, the provision of this kind of rent-free space should be regarded as election donation, and its market value should be counted as the candidate's election expenses. This requirement ensures that the candidate concerned will not have unfair advantage over the others who are unable to use the spot. For details on how the estimated value of the rent should be assessed, see Chapter 15.

7.25 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.

PART IV : ALLOCATION OF DESIGNATED SPOTS

7.26 When candidates submit the nomination forms, they can obtain from the ROs of the Rural Area on the general locations of the designated spots, which may include unleased government land, land and buildings managed by the Housing Bureau/Housing Department, and private land/property (if any). After the end of the nomination period, RO will, taking into account the number of candidates contested in the Rural Area, decide the number and size of designated spots available for allocation to candidates for the display of EAs. The allocation of designated spots would normally be held within five to ten working days after the end of the nomination period.

7.27 To enable the ROs of the respective Rural Areas to ascertain the number and size of designated spots available for allocation, candidates wishing to display EAs at designated spots **must register their interests in writing by lodging a completed form to the relevant ROs within the nomination period**. **Candidates who fail to submit such form by the end of the nomination period will not be allocated any designated spots. Besides, only validly nominated candidates of contested Rural Areas will be allocated with designated spots.**

7.28 Designated spots are allocated by drawing of lots, or by agreement among the candidates or their representatives of all the contested Rural Areas. Each candidate contesting in the same Rural Area will be allocated the same number and equal area of designated spots.

7.29 Subject to para. 7.31 of this chapter, designated spots allocated are neither transferable nor exchangeable among candidates. Where a candidate of a particular Rural Area no longer wishes to use any designated spots allocated to him, he should inform the RO concerned in writing within one week after the allocation of those spots. Upon the request by other candidates filed in

accordance with the procedures as set out in para. 7.27 of this chapter, the RO, if he considers appropriate, will re-allocate the designated spots by drawing of lots or by agreement to other candidates of the same Rural Area.

7.30 As a matter of principle, the designated spots allocated to a candidate will not be located outside the Rural Area in which he stands 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 Rural Area, the DHA may include designated spots outside the Rural Area of the by-election to ensure that a reasonable number of designated spots can be made available for allocation to the candidates concerned.

7.31 An EA advertising two or more candidates (whether from the same or different Rural Areas) jointly is allowed to be displayed separately at the designated spots allocated to the relevant candidates. Nevertheless, it is important to ensure that, for the relevant candidates, the total areas of all the spaces actually occupied for displaying all their EAs (including the joint EAs) at the designated spots (as measured by the dimension of EAs) should not exceed the total areas of the designated spots allocated to the candidates. A joint EA should not exceed the size restrictions specified in para. 7.33 of this chapter. As relevant candidates would all receive publicity benefits 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 advertisement occupied. Each candidate or election expense agent must have been mutually authorised by each other. Candidates must seek prior written consent of support from each other before publishing the joint EA (see Part I of Chapter 17). Besides, each of the candidates must make available a copy of the EAs, the written consent of support, and other relevant information/documents for public inspection in accordance with para. 7.40 of this chapter. [S 27 of the ECICO]

PART V : CONDITIONS AND LIMITATIONS ON DISPLAY OF ELECTION ADVERTISEMENTS

Name of the Rural Area

7.32 To avoid confusion to electors, all candidates of a Rural Area must state in the EAs (including joint EAs) the name of the Rural Area in which they contest. If EAs are illegally displayed at designated spots, the approval for the use of the relevant spots may be revoked.

Size

7.33 EAs at designated spots should not exceed 1 metre high and 2.5 metres long. If designated spots of the EAs are at roadside railings, the promotional messages printed on the relevant EAs must be **single-sided** and **facing the designated direction in display**.

Posting-up and Installation to Display Advertisements

7.34 The EAs must be separately and firmly fastened, posted up or displayed in such a way that they do not cause injury or death to any person or damage to any property. See the "Conditions for Display of Election Advertisements at Designated Spots" provided in the candidate's folder and uploaded to the RR Election website (www.had.gov.hk/rre).

7.35 When processing candidates' 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 of posters and banners;

(c) after the end of the nomination period, make enquiries to the ROs regarding the number of candidates contesting in the Rural Area;

(d) divide available spots equally to the number of candidates based on factors such as pedestrian flow, location and quantity, on the principle of fairness as far as practicable;

(e) when one of the candidates of the relevant Rural Area applies to display EAs, allocate the display spots by drawing lots or by agreement; and

(f) approve joint EAs if two or more candidates wish to display joint EAs, provided that the areas occupied do not exceed the size limits in (b) of this paragraph and the joint EAs are displayed only within the allocated spots.

7.36 Owners or occupiers of a property including a government body may specify the way in which EAs are displayed, and have the right to claim for an indemnity against any damage arising from the display of such EAs.

Re-use of Previous Publicity Boards

7.37 A candidate may re-use publicity boards used at a previous election. However, the candidate must ensure that the information on the publicity boards is accurate and applicable to the current election, and does not cause confusion to electors or breach any law due to failure in obtaining written consent of support from relevant parties. The cost incurred in refurbishing as well as the estimated value of such publicity boards must be counted as the candidate's election expenses.

Removal of Election Advertisements

Government Land/Property

7.38 Candidates must remove all their EAs displayed on government land/property **within ten days** following an election. Failure to do so within a specified period may result in prosecution against the candidates. Relevant authorities also have the rights to remove such EAs and 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 relevant **cost of removal of EAs** will be regarded as **election expenses**.

Private Land/Property

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

PART VI : REQUIREMENTS RELATING TO PUBLICATION OF ELECTION ADVERTISEMENTS

Copies for Public Inspection

7.40 A candidate must make available a copy of each EA and the relevant information/documents, including the publication information, permission or Consent of Support, for public inspection in a way as stipulated in **Appendix 4 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 the relevant information/documents to the Central Platform or the Candidate's Platform in accordance with the procedures set out in **Appendix 4**. If the candidate uses the Candidate's Platform, he must provide the **hyperlink** of the Candidate's Platform to the RO **at least three working days before the publication of the first EA** (see **Appendix 4**);

(b) provide the RO or the DHA (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 or conveniently produced in specie) and one hard copy of the information/documents related to the EA; or

(c) provide the RO or the DHA (if RO has yet been appointed) with two copies of a CD-ROM or DVD-ROM, each containing the same EAs and one hard copy of the information/documents related to the EAs.

NOTE:

Candidates who fail to comply with the above requirements commit an offence, and are liable to a fine at level 2 ($5,000) and to imprisonment for 6 months.

[S 92(2), (3) and (9) of the EP (RRE) Reg]

Publication Details

7.41 When submitting the information of EAs, candidates should provide information related to the printing/publication (i.e. the name and address of the printer, date of printing/publication and number of copies printed), see para. 1(c) of **Appendix 4**. Candidates must ensure that all the information provided is accurate. [S 92(4) and (6) of the EP (RRE) Reg]

7.42 If the information of EAs submitted contains any mistake, the candidate should submit the relevant amended information in the manner as set out in para. 7.40 of this chapter for public inspection. All the amended information must be uploaded to the relevant platform or deposited with the relevant RO **within three working days at the latest after the polling day**. The relevant amended information will be used as the basis for checking the candidate's election return and for removing unauthorised display of EAs. For the avoidance of doubt, any amendment to the content of an EA will be regarded as the publication of a new EA, candidates must comply with the requirements mentioned in Part VI of this chapter. If only a candidate number is added to a published EA, only the copy of the EA bearing the newly added content and the relevant amended information shall be made available for public inspection in accordance with this paragraph.

7.43 Speeches orally delivered by a candidate during election meetings or ad hoc visits will not be regarded as EAs, but speeches 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 applicable for publishing EAs.

7.44 In the case where multiple candidates use identical copies of an EA, each of the candidates should, in accordance with the relevant requirements, submit the relevant copies and information/documents of that EA in a manner as specified in para. 7.40 of this chapter for public inspection. [S 92(2) and (3) of the EP (RRE) Reg]

NOTE:

A candidate who chooses to adopt the method set out in para. 7.40(a) of this chapter for submitting the copies and information/documents of EAs must ensure that his Candidate's Platform can operate properly

and retains electronic copies of all EAs until the end of the public inspection period[46], see **Appendix 4** (including the important notes in paras. 16 to 19). [S 41(6) of the ECICO and s 92(2)(b) and (7) of the EP (RRE) Reg]

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

7.45 For temporary occupation of government land (including any public street, pavement, footbridge, public escalator system and pedestrian tunnel) for holding electioneering activities (e.g. 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 the relevant District Lands Office of the Lands Department for consideration. Applications from uncontested candidates will not be considered. The site approved for free occupation must not exceed 2 m^2 (i.e. 1 m x 2 m) in area and 2 m in height. The respective District Lands Office will consult other government departments in considering the applications, and adjust the approved location in light of the onsite physical setting and actual situation, and its decision shall be final.

7.46 The Lands Department will issue detailed guidelines to candidates, setting out the arrangements for applications to temporarily occupy government land for electioneering activities during the election period. Candidates must observe the specified deadlines to submit applications. If necessary, the District

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[46] The public inspection period ends on the 30th day before the first anniversary of the date of the deadline for lodging election returns.

Lands Office will allocate spots by drawing lots. If an allocated spot falls within the NCZ on the polling day, the approval is deemed to have been revoked.

7.47 The District Lands Offices 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 VIII : PRINTED ELECTION ADVERTISEMENTS

Printing Details

7.48 All printed EAs, with the exception of those printed in registered local newspapers, 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. This requirement applies to all EAs reproduced by any method of making copies (e.g. using printing machines, duplicators or photocopiers). The following are some suggested formats for the printing details:

(a) Printed by ABC Printing Works
[Full address]
Date: _____
Number of copies: _____

or

(b) Printed by the machine in candidate's office
[Full address]
Date: _____
Number of copies: _____

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

Election Advertisements Published through Print Media

7.49 Where an EA is published through 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

7.50 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 relevant EA. Candidates who take this remedial step will not be prosecuted for contravention of s 92(4) of the EP (RRE) Reg. Such statutory declaration will be made available for public inspection by the relevant ROs till the end of the period in which copies of election returns are available for inspection as stipulated under s 41(6) of the ECICO. [S 92(7) of the EP (RRE) Reg]

PART IX : VIOLATION OF THE LAW AND CONSEQUENCES

Enforcement and Penalty

7.51 A candidate who fails to comply with the requirements set out in Parts VI and VIII of this chapter 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]

7.52 Any person who discovers any illegal display of EAs violating the relevant provisions should report 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 agent may be prosecuted, and if convicted, may

be liable to a fine and to imprisonment. The cost of removal, being a civil debt, must be declared as the candidate's election expenses. The seized articles may be kept as evidence and will be disposed of or returned upon application in accordance with the procedures of the responsible authority. [Ss 92(9) and 94 of the EP (RRE) Reg, s 104C of the PHMSO, and s 24 of the Housing Ordinance (Cap. 283)]

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

7.54 The EAC may also issue a public statement regarding such complaints, **reprimand** or **censure** any non-compliance with the Guidelines and/or refer the matter to relevant departments for follow-up.

Relief for Election Advertisements

7.55 Candidates and their agents are responsible for understanding and complying with the requirements of the relevant legislation and the Guidelines. Any person who publishes an EA without complying with the requirements as set out in paras. 7.40 (except for the written permission/authorisation obtained as required under s 104A(1) of the PHMSO), 7.41, 7.42 and 7.48 of this chapter may apply to the CFI for an order allowing him to be excepted from the relevant requirements and relieving him from the relevant penalties. The CFI may grant an order of relief 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 judgment of precedent court decisions [47]

[47] *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).

regarding applications for the relief of election-related criminal liabilities is 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 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 93 of the EP (RRE) Reg]

PART X : POSTING ELECTION ADVERTISEMENTS

7.56 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.

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

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

7.58 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 XI : ELECTION ADVERTISEMENTS POSTED TO REGISTERED ELECTORS IN CUSTODY

7.59 If registered electors in the custody of the penal institutions have provided the addresses of the penal institutions for receiving EAs, candidates may send EAs to them according to the guidelines laid down by the CSD (see **Appendix 13**).

7.60 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.

PART XII : COMMERCIAL ADVERTISEMENTS RELATING TO CANDIDATES

7.61 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 the possibility of gaining unfair publicity, candidates should make their best efforts to request the relevant persons or organisations to cease displaying such advertisements after they have declared an intention to stand for election or during the election period.

PART XIII : PROMOTION ADVERTISEMENTS OF POLITICAL BODIES, PROFESSIONAL BODIES, CHAMBERS OF COMMERCE OR OTHER ORGANISATIONS

7.62 Any form of publication published by any political body, professional body or chamber of commerce, owners' corporation, tenants' association, or 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 before** the **election period** by name or photograph or other information, with the intention to promote the election of the candidate at the election may be regarded as an EA published by, or on behalf of the candidate. If the advertisement has been authorised by the candidate or his agent, the expenses incurred will form part of the election expenses; otherwise, the organisation will be regarded as having incurred election expense illegally. A candidate should inform affiliated organisations or bodies of the guidelines above as soon as he intends or plans to stand for election. However, if the message published by the organisation or body (as opposed to the candidate himself) advertises only a particular activity which:

(a) is organised from time to time as part of the organisation's or body'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,

then even if the organisation or body publish the message with the name and/or photo of a candidate who is involved in organising the activity, the message will not be regarded as an EA.

7.63 To conclude the above points, if any organisation (including a political body) publishes an EA to promote a candidate, it should note 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 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 relevant written permission/authorisation.