CHAPTER 19

COMPLAINTS PROCEDURES

PART I : GENERAL

19.1 The EAC is responsible for handling election-related complaints. This chapter sets out the procedures for making complaints regarding **any breach of or non-compliance with the provisions of the electoral legislation and the guidelines or the spirit of them**, and the arrangements for the EAC to handle such complaints. The EAC may set up a **Complaints Committee** to handle complaints, members of which consist of current EAC members and one or more independent and politically impartial professionals.

19.2 The EAC ensures that the complaints-handling process complies with the principle of procedural justice and is based on factual evidence. The party concerned shall be given the opportunity to defend himself, and the established procedures will not be circumvented or compressed because of time constraints.

19.3 If a complaint is substantiated, the EAC may, depending on the circumstances, issue a public **reprimand** or **censure** against the party involved to enable the public to be informed of the major occurrences during the election. The EAC may also, if necessary, issue press releases on matters of principle which have attracted widespread public concern in order to set the record straight.

19.4 Any complaint involving criminal, corrupt, or illegal activities may be lodged directly to HKPF or ICAC. The EAC will also refer complaints possibly involving such activities to HKPF or ICAC for handling[59].

---

[59] Under s 58(2) of the PD(P)O, personal data is exempt from the provisions of Data Protection Principle 3 in any case in which the use of the data is for any of the purposes referred to in subsection (1), including the prevention or detection of crime, and the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct or dishonesty or malpractice, by persons.

PART II : COMPLAINT CHANNELS

19.5 Without restricting the right of a citizen to lodge a complaint to HKPF, ICAC, or other authorities, an election-related complaint can be lodged to one of the following bodies or persons:

(a) the EAC or its Complaints Committee;

(b) the RO of the relevant Rural Area appointed by the EAC; or

(c) the PRO (on the polling day).

NOTE:

If the complaint is against the conduct, behaviour or actions of the staff of the HAD and DO, the staff of the EAC Secretariat, or the RO, it must be submitted directly to the EAC or its Complaints Committee.

PART III : DEADLINE AND PROCEDURES FOR LODGING COMPLAINTS

19.6 **Complaints must be lodged within the complaints-handling period[60] of the election concerned.** This is to ensure that remedial measures can be taken timely, and proper investigations and follow-up actions can be carried out by the bodies or persons responsible for handling complaints while the evidence is still available.

---

[60] Generally, the complaints-handling period of an election begins from the start of the nomination period and ends on the 45th day after the polling day.

19.7 A complaint can be lodged either orally or in writing. Complainant who wishes to make an oral complaint can lodge it by calling the EAC Complaints Hotline. A written complaint can be submitted by post, email, or fax. In order to handle complaints more effectively, the EAC recommends the complainant to use the designated complaint form available on the EAC website (www.eac.hk).

19.8 The complainant should identify himself and provide his correspondence address, email address, phone number, or other means of communication. Failure to do so may make the EAC unable to notify the complainant of the investigation outcomes. The EAC will record oral complaints in writing and the complainant must confirm the written record afterwards to enable the EAC to further follow up on the complaint. Complainants' personal data will be handled in accordance with the PD(P)O.

PART IV : COMPLAINTS INSIDE POLLING STATIONS

19.9 To lodge a complaint about matters happened inside a polling station, the complainant should follow the following procedures:

(a) lodge the complaint immediately to the PRO, the Deputy PRO, or an Assistant PRO;

(b) if the complainant considers the complaint matter is not resolved, or still feels aggrieved at the outcome of the complaint, or if the complainees are the PRO, the Deputy PRO or an Assistant PRO, the complainant may lodge the complaint to the RO of the relevant Rural Area of the polling station. The phone numbers of the ROs are listed in the guide on procedures for handling complaints displayed inside the polling station; and

(c) if the complainant considers the complaint matter is still not resolved by the RO, he should without any delay call the EAC Complaints Hotline. The complainant should provide as much relevant evidence as possible in order to substantiate the complaint. As the complainant is not allowed to talk to or communicate with any elector inside the polling station, the complainant may need to leave the polling station to gather necessary evidence. The EAC Complaints Hotline number is listed in the guide on procedures for handling complaints displayed inside the polling station.

19.10 The PRO or his Deputy PRO or Assistant PRO will record complaints mentioned in para. 19.9(a) and (b) of this chapter.

PART V : HANDLING OF COMPLAINTS

19.11 The EAC or its Complaints Committee, the ROs of the relevant Rural Area and the PROs will handle complaints as soon as practicable.

19.12 The DHA, ROs and PROs are obliged to report irregularities in elections, polling, or counting to the EAC or its Complaints Committee. They must also report all complaints received by them to the EAC or its Complaints Committee. Except where a complaint is of a minor nature or the RO has been delegated with the authority to deal with it, all complaints received by the RO or the EAC Secretariat will be forwarded to the EAC or its Complaints Committee with comments and the relevant information. The EAC or its Complaints Committee may seek further information or views from the relevant RO or the HAD, if necessary. [S 87 of the EP (RRE) Reg]

19.13 The EAC or its Complaints Committee, or the RO may seek further information on the complaint from the complainant or may arrange interviews with the complainant in order to seek clarification or evidence. The

complainant may be required to make a statutory declaration for the truth and correctness of his complaint or statement. If the complainant is unable to provide further information as required or refuses to be interviewed or make the statutory declaration, the EAC or its Complaints Committee or the RO may not be able to take further action on the complaint.

19.14 If a complaint is substantiated, appropriate action(s) will be taken, including one or more of the following:

(a) take remedial measures in response to the complaint matter, such as the removal of EAs in breach of the relevant guidelines;

(b) after making reasonable attempts to contact the relevant person(s) and giving the relevant person(s) an opportunity to make representations, issue a warning to the relevant person(s) regarding the matter under complaint and, where necessary, require the relevant person(s) to take immediate rectification action;

(c) after making a reasonable effort to contact the relevant person(s) and giving the relevant person(s) a reasonable opportunity to make representations, issue a public **reprimand** or **censure** against the acts or omissions and the relevant person(s) complained of; and

(d) with or without comments, refer the complaint to the ICAC, the Department of Justice or the HKPF for follow up such as prosecution of the suspected person.

[Ss 5(e) and 6(4) of the EACO]

19.15 The EAC or its Complaints Committee will notify the complainant in writing of its decision, and provide explanation for unsubstantiated complaints. As each complaint must be examined in details, the EAC and/or other authorities need(s) some time to handle all complaints.

PART VI : ELECTORAL AFFAIRS COMMISSION'S REPORT ON COMPLAINTS RECEIVED

19.16 Unless otherwise required by law, the EAC is required to report to the CE on any complaint made to it in connection with an election within three months of the conclusion of the election. [S 8(1) and (2) of the EACO]

PART VII : SANCTION FOR FALSE COMPLAINTS

19.17 Any person who knowingly makes a false complaint and provides false information to the EAC or its Complaints Committee or the RO, knowing that such complaint and information will be referred to the ICAC or HKPF, commits an offence. If a person knowingly and wilfully makes a false statement on a particular material matter in a statutory declaration submitted to the EAC or its Complaints Committee or the RO, the person concerned also commits an offence and is liable to a fine and to imprisonment for 2 years. [S 36 of the Crimes Ordinance]

19.18 Any person who knowingly makes or causes to be made to an ICAC officer a false report of the commission of any offence or misleads such an officer by providing false information or by making false statements or accusations commits an offence and is liable to a fine at level 4 ($25,000) and to imprisonment for 1 year. Similarly, any person who knowingly makes or causes to be made to any police officer a false report of the commission of any offence, or misleads any police officer by giving false information or by making false statements or accusations, commits an offence and is liable to a fine at level 1 ($2,000) and to imprisonment for 6 months. [S 13B of the Independent Commission Against Corruption Ordinance (Cap. 204) and s 64 of the Police Force Ordinance (Cap. 232)]