

# **Support Clean Elections**

## **A Handbook by the ICAC**

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## **INTRODUCTION**

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap 554), which was enacted on 3 March 2000 with an aim to uphold fairness and prevent corrupt and illegal conduct in elections, also applies to the Legislative Council Election and by-elections. The Independent Commission Against Corruption (ICAC) is responsible for enforcing the ECICO. It has prepared this Handbook, which comprises a gist of the ECICO, a “questions-and-answers” section, a “Dos and Don’ts” checklist and a part showing the channels for making reports and enquiries with the ICAC. The Handbook serves to alert candidates, their election agents and helpers to corrupt conduct, illegal conduct and various requirements in elections under the ECICO so that they can take appropriate measures to avoid contravening the ECICO. Candidates, election agents and helpers, however, should note that this Handbook is for general reference only. They should refer to the original legislation and consult their legal advisers in case of doubt.

*\* Throughout this Handbook, the male pronoun is used to cover references to both the male and female. No gender preference is intended.*

## **GIST OF THE ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) ORDINANCE**

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap 554) applies to the Legislative Council Election (including by-elections) and other elections as specified in the Ordinance. The Ordinance governs all conduct concerning an election, whether it is engaged in before, during or after the election period, and whether it is engaged in within Hong Kong or elsewhere.

The following is a gist of major provisions of the ECICO which relates to the management of electioneering activities for the reference of candidates, their election agents and helpers.

To facilitate easy reference, “●” denotes an offence or elaboration of provisions under the ECICO and interpretation of terms is given under “□” in the following gist.

**(1) NOMINATION OF CANDIDATES****Bribery in Relation to Standing or Not Standing as Candidate (Sections 2, 7)**

- It is an offence if a person corruptly offers an advantage to another person as an inducement to or a reward for :
  - (1) that person's standing, not standing, or if that person has been nominated as a candidate, withdrawal of his candidature, or his not using the best endeavours to promote his election; or
  - (2) that person to get and try to get a third person to stand, not to stand, or if that third person has been nominated as a candidate, to withdraw his candidature, or not to use that third person's best endeavours to promote his election.
  
- It is also an offence if a person authorises another person, either expressly or by implication, to offer an advantage for getting any person to engage in the conduct stated in (1) or (2) above.
  
- It is also an offence if a person corruptly solicits or accepts an advantage for the conduct stated in (1) or (2) above.
  
- "Candidate" :
  - (1) means a person\* who stands nominated as a candidate at an election; and
  - (2) 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.

\*includes a person who is one of a group of candidates.
  
- "Advantage" includes (but is not limited to) any valuable consideration, gift, loan, office, employment, contract, favour or service (other than voluntary service or the provision of entertainment). However, it does not include an election donation if particulars of the donation are given in an election return that has been lodged with the Chief Electoral Officer.
  
- "Voluntary service" means any service provided free of charge to or in respect of any candidate(s) at an election by a natural person, voluntarily and personally, in the person's own time for the purpose of promoting the election of the candidate(s) or prejudicing the election of another candidate or other candidates.

**Using or Threatening to Use Force or Duress in Relation to Standing or not Standing as Candidate (Section 8)**

- It is an offence if a person uses or threatens to use force or duress against another person to induce him :
  - (1) to stand or not to stand as a candidate, or to withdraw his candidature; or
  - (2) to get a third person to stand or not to stand as a candidate, or to withdraw the third person's candidature.
- It is an offence if a person uses or threatens to use force or duress against another person because the other person or the third person stood or did not stand as a candidate, or withdrew his candidature after having been nominated as a candidate.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

**Deceptive Behaviour for Inducing Others to Run or Not to Run at an Election (Section 9)**

- It is an offence if a person, by deception, induces another person :
  - (1) to stand or not to stand as a candidate, or to withdraw his candidature; or
  - (2) to get a third person to stand or not to stand as a candidate, or to withdraw the third person's candidature.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

**Defacing or Destroying Nomination Papers (Section 10)**

- It is an offence if a person defaces or destroys a completed or partly completed nomination paper in order to prevent or obstruct another person from standing for election.

**(2) ELECTIONEERING****Publishing False Statement that a Person Is or Is Not a Candidate (Section 25)**

- It is an offence if a person knowingly publishes a false statement that:
  - (1) he or another person is a candidate at an election; or
  - (2) another person who has been nominated as a candidate is no longer a

candidate at an election.

- It is an offence if a candidate knowingly publishes a false statement that he is no longer a candidate at an election.

#### **Publishing False or Misleading Statements about a Candidate (Section 26)**

- It is an offence if a candidate or a person publishes a materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates at an election.
- Statements about a candidate or candidates include (but are not limited to) statements concerning the character, qualifications or previous conduct of the candidate or candidates.

#### **Election Advertisement with False Claim of Support (Sections 2, 27)**

- It is an offence if a candidate or a person publishes or authorises the publication of an election advertisement which includes the name or logo of or associated with a person or an organisation; or a name or logo that is substantially similar to that of a person or an organisation; or a pictorial representation of a person, in such a way that implies or is likely to cause electors to believe that the candidate or candidates have the support of the person or organisation unless prior written consent from that person or organisation has been obtained.
- It is still an offence even if such an election advertisement contains a statement to claim that such inclusion does not imply support by the person or organisation concerned.
- It is an offence if a person purports to give written consent to the inclusion in an election advertisement of the name or logo of an organisation without having been approved by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting.
- It is also an offence if a person, for the purpose of promoting or prejudicing the election of a candidate or candidates, gives information to the candidate or candidates that the person knows or ought to know is materially false or misleading.
- “Support” includes support for the policies or activities of the candidate.

- “Election advertisement” means :
- (1) a publicly exhibited notice; or
  - (2) a notice delivered by hand or electronic transmission; or
  - (3) a public announcement made by radio or television or by video or cinematographic film; or
  - (4) any other form of publication,
- published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.

**Publishing Election Advertisements that Do Not Meet Certain Requirements (Sections 2, 33, 34)**

- It is an offence if a person publishes a printed election advertisement, with exception to those printed in a registered local newspaper, which fails to show, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed.
  - The above conduct is, however, not an offence if the publisher, or a person authorised by him, has lodged with the relevant Returning Officer a statutory declaration on the required printing details not later than 7 days after the publication of the advertisement.
  - A person must, not later than 7 days\* after publishing a printed election advertisement, furnish 2 copies of the advertisement to the relevant Returning Officer.
- \* It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, a candidate must submit 2 copies of his election advertisement to the relevant Returning Officer before he displays, distributes or otherwise uses the election advertisement. He should also comply with all other statutory requirements governing election advertisements in an election and relevant guidelines issued by the Electoral Affairs Commission.
- A performance report published by an incumbent candidate, who being the person holding an office as a serving member of the Legislative Council, a District Council, or the Heung Yee Kuk; or serving Chairman, Vice-chairman or member of the Executive Committee of a Rural Committee; or a serving Village Representative, etc. during election period (the period beginning with the nomination day and ending with the polling day of an election), is taken as an election advertisement.

**(3) VOTING****Bribing Electors and Others (Section 11)**

- It is an offence if a person, without reasonable excuse, offers an advantage to another person as an inducement to or a reward for that person or for him to get or try to get a third person :
  - (1) not to vote, or for not having voted at an election; or
  - (2) to vote or not to vote, or for having or not having voted for a particular candidate or particular candidates at an election.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above-stated conduct.
- It is also an offence if a person, without reasonable excuse, solicits or accepts an advantage in return for engaging in or getting or trying to get another person to engage in the conduct stated in (1) or (2) above.

**Refreshments or Entertainment for Electors and Others (Section 12)**

- It is an offence if a person provides, or meets all or part of the cost of providing any food, drink or entertainment for another person as an inducement to or a reward for that person or a third person :
  - (1) not to vote, or for not having voted at an election; or
  - (2) to vote or not to vote, or for having or not having voted for a particular candidate or particular candidates at an election.
- It is an offence if a person solicits, accepts or takes any food, drink or entertainment as an inducement to or a reward for the conduct stated in (1) or (2) above.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.
- However, the serving of non-alcoholic drinks at an election meeting is not an offence.
- An “election meeting” is any meeting held to promote or prejudice the election of a particular candidate or particular candidates.

**Using or Threatening to Use Force or Duress against Electors (Section 13)**

- It is an offence if a person uses or threatens to use force or duress against another person to induce that person or to get him to induce a third person to vote or not to vote; or to vote or not to vote for a particular candidate or particular candidates, at an election.
- It is an offence if a person uses or threatens to use force or duress against another person because the other person voted or refrained from voting ; or voted or refrained from voting for a particular candidate or particular candidates, at an election.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

**Deceptive Behaviour in Relation to Electors (Section 14)**

- It is an offence if a person, by deception, induces another person or gets him to induce a third person not to vote; or to vote or not to vote for a particular candidate or particular candidates at an election.
- It is an offence if a person, by deception, obstructs or prevents another person or gets him to obstruct or prevent a third person from voting at an election.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

**Impersonating Another at Election (Section 15)**

- It is an offence if a person applies for a ballot paper in another person's name, or having voted at an election, applies at the same election for a ballot paper in his own name, except as expressly permitted by an electoral law.

**Other Offences with Respect to Voting (Section 16)**

- It is an offence if a person :
  - (1) votes at an election knowing that he is not entitled to vote at that election; or
  - (2) votes at an election after having knowingly or recklessly given materially false or misleading information to an electoral officer, or knowingly omitted to give material information to an electoral officer; or
  - (3) votes more than once in the same constituency, or votes in more than one constituency except as expressly permitted by an electoral law.

- It is an offence if a person invites or induces another person :
  - (1) to vote at an election knowing that the other person is not entitled to do so; or
  - (2) to vote at an election knowing that the other person has given materially false or misleading information to an electoral officer, or has omitted to give material information to an electoral officer; or
  - (3) to vote more than once in the same constituency, or to vote in more than one constituency except as expressly permitted by an electoral law.

### **Destroying or Defacing Ballot Papers (Section 17)**

- It is an offence if a person, without lawful authority, supplies a ballot paper to another person, or destroys or interferes with a ballot box or ballot paper in use at an election or a ballot paper that has been used at an election.
- It is an offence if a person, with intent to deceive, puts into a ballot box a paper other than a ballot paper that he is lawfully authorised to put into the box or removes a ballot paper from a polling station.

## **(4) ELECTION EXPENSES AND ELECTION DONATIONS**

### **Election Expenses (Sections 2, 24)**

- “Election expenses” means expenses incurred or to be incurred before, during or after the election period, by or on behalf of a candidate for the purpose of :
  - (1) promoting the election of the candidate; or
  - (2) prejudicing the election of another candidate,
 and includes the value of election donations consisting of goods and services used for that purpose.
- A candidate commits an offence if the aggregate amount of the election expenses, whether incurred by or on behalf of the candidate, exceeds the prescribed election expense limits.
- The election expense limits are prescribed by the Maximum Amount of Election Expenses (Legislative Council Election) Regulation. The election expense limits for each constituency in the Legislative Council Election are as follows:

<b>Constituencies</b>	<b>Election Expense Limits*</b>
(a) for a GC election	
(i) for a list in Hong Kong Island GC	\$2,100,000
(ii) for a list in Kowloon East and Kowloon West GCs	\$1,575,000
(iii) for a list in New Territories East and New Territories West GCs	\$2,625,000
(b) for an election for one of the following 4 special FCs, viz, Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$105,000
(c) for an election for an FC other than those in (b) above with not more than 5,000 registered electors	\$168,000
(d) for an election for an FC with between 5,001 and 10,000 registered electors	\$336,000
(e) for an election for an FC with over 10,000 registered electors	\$504,000

\* These election expense limits will take effect upon the commencement of operation of the Maximum Amount of Election Expenses (Legislative Council Election) Regulation on 18 July 2008.

### **Use of Election Expenses (Sections 2, 23)**

- It is an offence if a person, other than a candidate or a candidate's election expense agent, incurs any election expenses.
- An "election expense agent" means a person authorised in writing by a candidate to incur election expenses on behalf of the candidate. The maximum amount of election expenses to be incurred by him has to be specified in the authorisation, a copy of which has to be served on the relevant Returning Officer in order to effect his authorisation.

- It is an offence if a candidate does not include election expenses incurred by the candidate or the candidate's election expense agent(s) in the candidate's election return.
- It is an offence for an election expense agent to incur election expenses that exceed the amount specified in his authorisation.

### **Use and Disposal of Election Donations (Sections 2, 18, 19)**

- "Election donation" means :
  - (1) any money given to a candidate for the purpose of meeting the election expenses of the candidate; or
  - (2) any goods (including any goods given incidental to the provision of voluntary service) or service (excluding voluntary service) provided to a candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate.
- It is an offence if a candidate or other person uses election donations for a purpose other than :
  - (1) meeting the candidate's election expenses; or
  - (2) promoting the election of the candidate or prejudicing the election of another candidate.
- It is an offence if a candidate, on receiving an election donation of more than \$1,000 in value, does not issue a receipt to the donor.
- Any anonymous election donation of more than \$1,000 in value must not be used for meeting or contributing towards meeting his election expenses or for promoting the election of the candidate or prejudicing the election of another candidate or other candidates and must be given to a charitable institution or trust of a public character chosen by the candidate. A candidate engages in corrupt conduct if he fails to observe the above.
- It is an offence if a candidate does not give the unused election donations or donations that exceed the prescribed maximum amount of election expenses to a charitable institution or trust of a public character he chooses.

### **Election Returns (Sections 20, 36, 37, 38)**

- It is an offence if a candidate makes a statement that he knows or ought to know is materially false or misleading in his election return.
- It is an offence if a candidate fails to lodge with the Chief Electoral Officer

an election return of his election expenses and all election donations not later than 60 days after the date of publication of the result of the election, or not later than 60 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 60 days after the declaration of the failure of the election under the relevant electoral law.

- The return must be accompanied by:
  - (1) an invoice and a receipt of each election expense, giving particulars of the expenditure (except for sums under \$100); and
  - (2) a copy of the receipt issued to every donor, giving particulars of the donor and the election donation (except for donations of \$1,000 in value or below); and
  - (3) a copy of the receipt of such election donation given to a charitable institution or trust of a public character chosen by the candidate in accordance with the law; and
  - (4) an explanation setting out the reason why an unused election donation was not disposed of in accordance with the requirement of giving the same to charitable institutions or trusts of a public character; and
  - (5) a declaration in a form provided or specified by the Chief Electoral Officer verifying the contents of the return.

## **(5) ELECTION PETITION OR ELECTION APPEAL**

### **Bribery in Relation to Election Petition or Election Appeal (Section 21)**

- It is an offence if a person offers an advantage to another person:
  - (1) as an inducement for that person, or for him to get a third person, to withdraw an election petition or election appeal; or
  - (2) as a reward for that person for his having withdrawn or agreed to withdraw; or for his having got a third person to withdraw an election petition or election appeal.
- It is an offence if a person:
  - (1) withdraws his election petition or election appeal in return for an advantage; or
  - (2) solicits or accepts an advantage as an inducement to withdraw an election petition or election appeals; or
  - (3) solicits or accepts an advantage as a reward for his having withdrawn or his having got a third person to withdraw an election petition or election appeal.

**(6) MISCELLANEOUS AND RELATED PROVISIONS****Corrupt or Illegal Conduct Engaged in with the Knowledge and Consent of a Candidate (Section 29)**

- A candidate is to be regarded as having personally engaged in corrupt or illegal conduct if the conduct was engaged in with the knowledge and consent of the candidate.

**Officers Liable for Offences Committed by Corporation (Section 42)**

- If a corporation is found guilty of having engaged in a corrupt or illegal conduct, the director, executive officer or any person who is concerned in the management of the corporation during the material time will be liable for the conduct unless the person proves that:
  - (1) he has no knowledge of the conduct; or
  - (2) he has exercised reasonable diligence to prevent the conduct, if it was done with his knowledge.

**Aiding, Abetting, etc. to Commit an Offence (Section 43 of the ECICO and Section 101C of the Criminal Procedure Ordinance(Cap. 221))**

- A person commits an offence if he incites, conspires with, aids, abets, counsels or procures another person to engage in corrupt or illegal conduct at an election or attempts to engage in corrupt or illegal conduct.

**(7) APPLICATION FOR RELIEF****Relief for Certain Illegal Conduct (Section 31)**

- A candidate, agent or any other person who has done or omitted to do an act that would be an “illegal conduct” under the ECICO may apply to the Court for an order relieving him from penalties and disqualifications that are imposed on him by an electoral law.
- The applicant has to satisfy the Court that such act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.

**Relief for Offences in Relation to Election Advertisements (Section 35)**

- Any person who has published a printed election advertisement without the

printing details required by Section 34 or has not furnished 2 copies of the printed election advertisement to the relevant Returning Officer in accordance with Section 34 may apply to the Court for an order:

- (1) allowing the publication be excepted from the statutory requirements; and
  - (2) relieving him from penalties imposed on him by Section 34.
- The applicant has to satisfy the Court that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.

#### **Relief for Offences in Relation to Election Returns (Section 40)**

- A candidate who fails to lodge an election return as required by Section 37 before the end of the permitted period, or fails to send an invoice or a receipt, or a copy of a receipt, as required by the law or has lodged an election return or any document accompanying the return, which contains any error or false statement may apply to the Court for an order allowing the candidate to lodge with the Chief Electoral Officer an election return within such further period as the Court specifies, or an order excepting the candidate from the requirement to send an invoice or a receipt, or a copy of a receipt, as required by the law, or an order enabling the candidate to correct any error or false statement in an election return or in any document accompanying the return.
- The candidate has to satisfy the Court that the failure to comply with the requirement was attributable to the following reasons and was not due to his bad faith:
  - (1) the applicant's illness or absence from Hong Kong; or
  - (2) the death, illness, absence from Hong Kong of an agent or employee of the applicant; or
  - (3) misconduct of an agent or employee of the applicant; or
  - (4) inadvertence or an accidental miscalculation by the applicant or any other person; or
  - (5) an accidental loss or destruction of the invoice or receipt or copy of the receipt by the applicant or any other person; or
  - (6) any reasonable cause.

(1), (2), (3), (4) and (6) are reasons for the Court to consider an application whether an extended period for lodging an election return should be granted; (3), (4) and (6) are reasons for the Court to consider an application which enables the candidate to correct any error or false statement in an election return or in any document accompanying the return while (3), (5) and (6) are reasons for considering whether an order for excepting the candidate from the requirement to

send an invoice, or a receipt, or a copy of a receipt should be allowed. Depending on the circumstances of different cases, candidates should check whether the above reasons are applicable to their applications concerned.

## **(8) PENALTY**

### **Corrupt Conduct**

- As stipulated in the ECICO, a person who engages in corrupt conduct at an election commits an offence and is liable on conviction to:
  - (1) a fine of \$200,000 and imprisonment for 3 years, if tried summarily; or
  - (2) a fine of \$500,000 and imprisonment for 7 years, if tried on indictment.
- A person who is convicted of having engaged in corrupt conduct has to pay to the Court the amount or value of any valuable consideration received by the person or his agents in connection with the conduct or such part of the amount or value as specified by the Court.

### **Illegal Conduct**

- As stipulated in the ECICO, a person who engages in illegal conduct at an election commits an offence and is liable on conviction to:
  - (1) a fine at level 5 and imprisonment for 1 year, if tried summarily; or
  - (2) a fine of \$200,000 and imprisonment for 3 years, if tried on indictment.
- A person who has contravened the provisions of Section 34 or 37 of the ECICO is liable on conviction to the same penalty as illegal conduct.

**Corrupt conduct refers to that mentioned in Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the ECICO as listed in this Handbook, whereas illegal conduct in Sections 23, 24, 25, 26 and 27.**

### **Disqualifications**

- A person convicted of having engaged in corrupt conduct or illegal conduct under the ECICO will be :
  - disqualified for 3 years from voting in the Chief Executive, Election Committee subsector, Legislative Council, District Councils or Village Representative elections from the date of conviction;
  - disqualified for 5 years from being nominated as a candidate for the election of, or elected as, the Chief Executive, a member of the Legislative Council and District Council or a Village Representative

- from the date of conviction; and
- disqualified for 3 years from being nominated as a nominee for the election of, or from being nominated or elected as, an Election Committee member from the date of conviction.

**Immediate Custodial Sentence**

- According to the sentencing guideline set by the Court of Appeal on 27 November 1997, any person convicted of a serious election-related offence shall receive an immediate custodial sentence in order to uphold clean and fair elections in Hong Kong.

## **QUESTIONS AND ANSWERS**

The following questions and answers are summarised from the enquiries and concerns raised by candidates, etc. in the previous Legislative Council (LegCo) Elections. The scenarios quoted serve to highlight the spirit of the law and its application on various processes of an election, viz the nomination of candidates, electioneering, voting, and handling of election expenses and donations, etc. and alert candidates and their election helpers to the common corrupt and illegal pitfalls in conducting electioneering activities.

**Q1. Will it be an offence for a candidate running for the LegCo Election to organise and sponsor an overseas trip for electors of his constituency before the election period? Is there any restriction on the time and place for the candidate to offer advantages to the electors?**

- A1.
- It is an offence under S 11 of the ECICO for any person including a candidate to offer an advantage to another person for inducing the latter to vote or not to vote for a particular candidate or particular candidates, or not to vote at the election.
  - The candidate as mentioned in the question should have contravened this provision if the overseas trip is sponsored for inducing votes for his election. Electors accepting the trip are also liable to an offence under the same provision.
  - He must note that S 5 of the ECICO applies to all conduct concerning an election, whether the conduct is engaged in within Hong Kong or elsewhere.
  - S 6 and S 22 of the ECICO also state that a person may be convicted of an offence under the Ordinance if he is found to have engaged in corrupt or illegal conduct before, during or after the election period.
  - Whether the offer of advantages to electors is an offence depends on the purpose and not the time and place of the offer.

**Q2. A candidate of the LegCo Election wishes to set up a personal website / blog to introduce his election platform to his electors. Will the production and operation cost of his website / blog be counted as his election expenses? Which are the areas that he should pay attention to in order not to contravene the law inadvertently? If he creates another online forum for surfers to express their views on the forthcoming**

**LegCo Election, should he count the cost incurred for this e-forum towards his election expenses?**

- A2.
- Election advertisement includes a publicly exhibited notice or a notice delivered by electronic transmission for the purpose of promoting or prejudicing the election of a candidate. As such, the above-mentioned website / blog will be regarded as an election advertisement. The cost incurred by the production and its operation should hence be counted towards the candidate's election expenses and be declared in his election return.
  - As required by the Electoral Affairs Commission, the candidate has to furnish two copies of the electioneering messages sent through the above-mentioned website / blog to the relevant Returning Officer before display or publication.
  - If the said online forum is created solely for providing a discussion platform for surfers to express their views on the coming LegCo Election without promoting the election of any candidate at all, the cost for creating and running the online forum will not be counted as election expenses.

**Q3. Is it lawful for a serving District Council (DC) member who intends to run in the LegCo Election to publish and distribute a performance report to account for the services he has rendered, in the capacity of a DC member, for his constituency?**

- A3.
- A serving DC member who contests the LegCo Election is regarded as 'an incumbent candidate' according to S 33 of the ECICO. S 34(9) of the same Ordinance states that a performance report published by an incumbent candidate during the election period is an 'election advertisement'. As such, the performance report published by the said DC member during the election period of a LegCo election should be regarded as his election advertisement.
  - S 34 of the ECICO requires that any person who published a printed election advertisement must ensure that it shows in Chinese or English the name and address of the printer, the date of printing and the number of copies printed. The publisher must also furnish 2 copies of the

election advertisement to the Returning Officer not later than 7 days after publishing the printed election advertisement. Apart from complying with S 34 of the ECICO, the DC member who publishes the performance report must include the expenses incurred in publishing and distributing the performance report as his election expenses and declare this in his election return. He must also comply with all other statutory requirements governing election advertisements in an election and guidelines issued by the Electoral Affairs Commission.

- Any statement of facts in the performance report concerning the said DC member as a candidate in the LegCo Election must be materially correct. Otherwise, he may commit an offence under S 26 of the ECICO.

**Q4. Is it lawful for the chairman of a professional body to give his written consent to a candidate of a LegCo Functional Constituency (FC) Election for using the name and logo of the said professional body in this candidate's election advertisements? What happens if the chairman's decision of supporting the candidate is not agreeable to some of its members?**

- A4.
- The said chairman should ensure that the professional body agrees to the written consent he gave to this candidate. It will be an offence under S 27 of the ECICO if a person of an organisation purports to give written consent to a candidate to the inclusion of the name or logo of the organisation in the candidate's election advertisements without having been approved by the governing body or by a resolution of the members of the said organisation passed at a general meeting.
  - If the chairman's decision of supporting the candidate is eventually repudiated by the professional body through proper procedures by those members who object to the decision, the consent of support given by the chairman will become invalid. In this situation, the candidate must take reasonable measures, e.g. to make alterations to the publicity materials not yet distributed and to retrieve the publicity materials already displayed. In any event, the cost incurred by the production and subsequent removal of the said advertisements should still be counted as the candidate's election expenses and be declared in the candidate's election return.

**Q5. Several candidates on a Geographical Constituency (GC) list intend to introduce their election platforms and aspirations to electors via a letter and an electronic mail (e-mail) in their joint names for enlisting support. What should they take note of in order not to breach the ECICO?**

- A5.
- Under S 2 of the ECICO, any form of notice which serves the purpose of promoting or prejudicing the election of a candidate is an election advertisement (EA). Any person publishing a printed EA such as the letter above-mentioned is required to abide by S 34 of the ECICO. He has to include in the printed EA, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed. He should also furnish 2 copies of the printed EA to the appropriate Returning Officer not later than 7 days after publishing. Further, he should comply with all other statutory requirements governing election advertisements in an election and guidelines issued by the Electoral Affairs Commission.
  - Since both the letter and e-mail are joint EAs of the candidates on a GC list, the expenses incurred for publishing them such as the cost of paper, envelopes, postages and internet charges, etc. should be shared by the candidates concerned. As the said expenses were incurred by all candidates on the same GC list, such candidates should have authorised each other to be their respective election expense agents in accordance with S 23(2) of the ECICO before incurring any election expense for the group.

**Q6. Candidate A of a LegCo GC Election wishes to include in his EA a photograph he took with Candidate B who runs for the FC Election in the same LegCo Election to show the latter's support to him. Is it necessary for Candidate B to share the election expenses incurred for the said EA? What should Candidate A do if the information about Candidate B appearing in his EA is subsequently found to be incorrect?**

- A6.
- Whether Candidate B is required to bear the election expenses incurred for the said EA depends on different circumstances.
  - As defined in S 2 of the ECICO, an EA is any publicity material published for the purpose of promoting or prejudicing the election of a candidate. If the EA in question serves to promote the elections of both candidates (A and B), it will be regarded as their joint EA, and in this connection, they will be required to share the election expenses involved.

- If the EA simply shows Candidate B's support to Candidate A, there will be no need for Candidate B to share the expenses incurred for producing the EA. Candidate A, however, should have obtained Candidate B's prior written consent as required by S 27 of the ECICO before he publishes the EA.
- Candidate A should take immediate action to amend any mistakes / omissions found in his EA. If the EA has been released, he should try his best to withdraw it. Any cost incurred for the production and subsequent correction, etc. should be included in Candidate A's election expenses and be stated clearly in his election return.

**Q7. Two candidates who are in keen competition within the same constituency intend to organise negative publicity against each other. Which provisions of the ECICO should they abide by? If an election banner used by a candidate for prejudicing the election of his opponent is defaced, should the cost for repairing or reproducing a new banner be counted as his election expenses?**

- A7.
- The ECICO has not laid down any restrictions on the format of election campaign arranged by a candidate, including any campaign which would prejudice the election of another candidate. Each candidate, however, should make sure that all statements of facts published about a particular candidate must be true. Otherwise, he will breach S 26 of the ECICO which prohibits any person from publishing a materially false or misleading statement of fact (including statement concerning [but not limited to] a candidate's character, qualifications or previous conduct) for the purpose of promoting or prejudicing the candidate's election.
  - Given that the negative publicity campaign carried out by a candidate is to promote his election and prejudice that of his opponent, the cost for such campaign should be counted towards the candidate's election expenses and be declared in his election return.
  - The cost incurred for repairing, recreating or reproducing the defaced banner used for prejudicing the election of his opponent should also be included in the election expenses of the candidate concerned.

**Q8. Is it an offence if a person has incurred election expenses on behalf of a candidate without obtaining his written authorisation? Can the said person claim that the expenses incurred are election donations to be given to the candidate?**

- A8.
- Under S 23 of the ECICO, only the candidate or person authorised by him as his election expense agent in writing may incur election expenses. Such an authorisation will become effective only after a copy of it has been served on the relevant Returning Officer.
  - The person concerned should have committed an offence if he incurred election expenses without the candidate's written authorisation as above stated and no subsequent actions can remedy the offence once an election expense has been incurred. Whether or not the items purchased or services rendered would subsequently be donated to the candidate would not alter the fact that the offence has been committed.
  - The expenditure so incurred should be accounted for both as an election expense and as an election donation and be stated clearly in the candidate's election return.

**Q9. Is it against the ECICO for a main contractor to request a sub-contractor of his firm to vote for the candidate he supports?**

- A9.
- S 13 of the ECICO makes it an offence for a person to use or threaten to use force or duress against another person with a view to inducing or compelling the latter to vote for a particular candidate at an election.
  - Although it is difficult to define whether such a request will amount to duress as it will depend on the circumstances of each case, persons who are in positions of influence should be wary of their conduct which may cross the line between legitimate lobbying in support of a candidate and effecting a duress against others to vote for a particular candidate.

**Q10. Is it an offence for a candidate to arrange free transportation service for taking electors to the polling station for voting on the election day? Can he publicise the above-mentioned service and include details such as location of the pick-up point(s) and the service schedule in his election advertisements? What if the free transportation service is arranged by some supporters of the candidate?**

- A10.
- The provision of transportation service can be interpreted as “any other service” under the definition of “advantage” in S 2 of the ECICO. Whether it is an offence to provide this kind of free transportation service to electors will depend on the circumstances whereby such service is provided.
  - There should be no offence under the ECICO if the free transportation service is provided by any person, including a candidate, solely to facilitate electors to go to the polling stations for voting and no activities whether to promote or prejudice any particular candidate or candidates are carried out in the vehicle engaged.
  - However, if a candidate conducts canvassing activities, such as putting up posters and / or arranging the presence of his helpers who wear clothings / accessories making reference to the said candidate’s election in the vehicle, the free transportation service may be regarded as an “advantage” offered by the candidate to induce electors to vote for him. Hence, it is likely that he would have contravened S 11 of the ECICO.
  - A candidate who publicises the offer of free transportation service with related details in his election advertisements is likely to give electors an impression that he is offering such a service to induce votes.
  - Supporters of the candidate who provide free transportation service under the above-quoted circumstances should have breached S 11 of the ECICO. Electors who accept the said transportation service should have also committed an offence under the same provision.

**Q11. Will an elected candidate of a LegCo Election be liable to an offence if he hosts a dinner party to celebrate his success in the election for district personalities and election helpers who have supported his election? Should the expenses incurred for the dinner party be counted towards his election expenses? Will it make any difference if the expenses of the dinner party are borne by the participants?**

- A11.
- The candidate has nothing to worry about if the dinner party is hosted solely for the purpose of celebrating his success in the election. Since the dinner party is held after the election and such an the arrangement has in no way served to promote the candidate’s election, the expenses thus incurred, whether being borne by the participants or not, need not be counted towards his election expenses.

- If the dinner party is hosted to honour the candidate's promise made previously to the participants that they would be rewarded with a dinner party for their electioneering assistance upon the candidate's successful election, the hosting of this dinner party is related to the purpose of promoting his election and the expenses of the dinner party should be counted towards the candidate's election expenses. If the expenses of the dinner party are borne by the participants, the amount should be regarded as election donations to the candidate and be included in his election return.
- If the dinner party is also hosted as a reward for the participants' having voted for the candidate, both the candidate and the participants have contravened S 12 of the ECICO.
- According to S 12 of the ECICO, no person shall by himself or by any other persons provide or meet all or part of the cost of providing food, drink or entertainment to another person for the purpose of inducing or rewarding the latter to vote or not to vote for a particular candidate or particular candidates at the election, or not to vote at the election.

**Q12. Is it necessary for a complainant to produce evidence to the ICAC while lodging a complaint against any conduct in contravention of the ECICO? Would the complainant be accused of having made a malicious report in the event that his complaint is not substantiated?**

- A12.
- Any person who suspects any conduct in contravention of the ECICO is welcome to make a report to the ICAC. We will investigate each pursuable complaint to ascertain whether such a malpractice exists.
  - Any person who wishes to make a report to the ICAC can contact one of the seven ICAC Regional Offices or its 24-hour Report Centre direct. He can also lodge the complaint by calling on its hotline (Tel: 25 266 366) or writing to Hong Kong GPO Box 1000.
  - The ICAC welcomes reports on suspected corruption from the public. However, if a person knowingly furnishes false report of any offences, gives false information or makes false statements or accusations to mislead ICAC officers, he will commit an offence under S 13B of the

Independent Commission Against Corruption Ordinance (Cap. 204) and will be liable to a maximum penalty of 1 year's imprisonment and a fine of \$20,000.

- Any person who wishes to make enquiries on the ECICO may call the ICAC Election Enquiry Hotline (Tel: 2920 7878), or approach any ICAC Regional Offices.

## **DOS AND DON'TS CHECKLIST**

Candidates, their election agents and helpers should note the following in an election:

### **(1) NOMINATION OF CANDIDATES**

#### **Bribery**

- Do not engage in, or authorise another person either expressly or by implication, to engage in, any of the following corrupt conduct:
  1. offer any advantage to get any person to stand or not to stand as a candidate.
  2. offer any advantage to get any person having been nominated as a candidate to withdraw his candidature.
  3. offer any advantage to get any candidate not to use his best endeavours to promote his candidature.
- Do not solicit or accept any advantage for any person's standing or not standing as a candidate.
- Do not solicit or accept any advantage for any person's withdrawal of his candidature.
- Do not solicit or accept any advantage for any candidate's not using his best endeavours to promote his election.

#### **Engaging in Deceptive Behaviour**

- Do not induce by deception, any person to stand or not to stand as a candidate, or to withdraw his candidature.

#### **Nomination Paper**

- Do not deface or destroy any nomination paper to prevent or obstruct another person from standing for an election.

**(2) ELECTIONEERING****Statements about a Candidate**

- Do not publish any false statement that a person is or is not a candidate.
- Do not make any false or misleading statement of fact including (but not limited to) the character, qualifications or previous conduct of a candidate or candidates.

**Election Advertisements**

- Do not use, without obtaining prior written consent, the name or logo of a person or an organisation; or the pictorial representation of any person in an election advertisement in such a way as to infer that the candidate concerned has the support of the named person or organisation.
- Do include in all printed election advertisements, except those printed in a registered local newspaper, the name and address of the printer, the date of printing and the number of copies printed.
- Do remember that a performance report published by an incumbent candidate during the election period is an election advertisement.
- Do furnish 2 copies of any printed election advertisement to the relevant Returning Officer not later than 7 days# after it is published.

# It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, a candidate must submit 2 copies of his election advertisement to the relevant Returning Officer before he displays, distributes or otherwise uses the election advertisement and comply with all other statutory requirements governing election advertisements in an election and relevant guidelines issued by the Electoral Affairs Commission.

### **(3) VOTING**

#### **Bribery**

- ☒ Do not engage in, or authorise another person either expressly or by implication, to engage in, any of the following corrupt conduct:
  1. offer any advantage as an inducement to or a reward for any person's not voting at an election.
  2. offer any advantage as an inducement to or a reward for any person's voting or not voting for a particular candidate at an election.

#### **Providing Refreshments or Entertainment**

- ☒ Do not engage in, or authorise another person either expressly or by implication, to engage in, any of the following corrupt conduct:
  1. provide or meet all or part of the costs of providing any food, drink or entertainment as an inducement to or a reward for any person's not voting at an election.
  2. provide or meet all or part of the costs of providing any food, drink or entertainment as an inducement to or a reward for any person's voting or not voting for a particular candidate at an election.

#### **Using or Threatening to Use Force or Duress**

- ☒ Do not use or threaten to use, or authorise another person, either expressly or by implication, to use or threaten to use, force or duress against any person for the purpose of influencing his or any other person's voting decision.

#### **Engaging in Deceptive Behaviour**

- ☒ Do not engage in, or authorise another person either expressly or by implication, to engage in, any of the following corrupt conduct:
  1. induce by deception any person not to vote at an election.
  2. induce by deception any person to vote or not to vote for a particular candidate at an election.

#### **Other Offences in Relation to Voting**

- ☒ Do not invite or induce ineligible persons to vote.
- ☒ Do not invite or induce a person to vote more than once in the same constituency, or to vote in more than one constituency except as expressly

permitted by an electoral law.

- Do not destroy, deface, take or otherwise interfere with a ballot paper in use or that has been used unless being lawfully authorised.

#### **(4) ELECTION EXPENSES AND ELECTION DONATIONS**

##### **Election Expenses**

- Do not incur election expenses more than the prescribed maximum amount of the election expenses for each constituency.
- Do not incur election expenses unless you are a candidate or a candidate's election expense agent with the required authorisation.
- Do not incur election expenses in excess of the amount authorised by the candidate if you are an election expense agent.
- Do include all election expenses incurred by the candidate and any person on his behalf in the election return.

##### **Election Donations**

- Do not use election donations for meeting the costs of activities unrelated to a candidate's election.
- Do issue a receipt for any election donation of more than \$1,000 in value.
- Do send any election donation of more than \$1,000 in value received from an anonymous donor to a charitable institution or trust of a public character chosen by the candidate.
- Do send any unused election donations and donations in excess of the statutory limit of election expenses to a charitable institution or trust of a public character chosen by the candidate.

##### **Election Returns**

- Do submit a return on election expenses and donations to the Chief Electoral Officer not later than 60 days after the date of publication of the result of the election, or not later than 60 days after the declaration of the termination of

the election proceedings under the relevant electoral law, or not later than 60 days after the declaration of the failure of the election under the relevant electoral law.

- Do submit with your election return the invoices, receipts and declaration form, etc. as stipulated by the law.
- Do not make any false or misleading statement in the return on election expenses and donations.
- Do lodge your election return with the Chief Electoral Officer within the period as required by the law even if **NO** election expense has been incurred.

**(5) ELECTION PETITION OR ELECTION APPEAL**

- Do not withdraw an election petition or election appeal for an advantage.
- Do not offer any advantage to get any person to withdraw an election petition or election appeal.
- Do not solicit or accept any advantage to withdraw an election petition or election appeal.

## **CHANNELS FOR REPORTS AND ENQUIRIES**

### **REPORTS**

Any person who discovers or suspects any conduct in contravention of the ECICO may call the 24-hour ICAC **Report Hotline 25 266 366**, make a report in person to the 24-hour ICAC Report Centre (G/F, 303 Java Road, North Point, Hong Kong) or any ICAC Regional Office, or write to Hong Kong GPO Box 1000.

### **ENQUIRIES**

Any person who wishes to make enquiries on the ECICO may call the ICAC **Election Enquiry Hotline 2920 7878**, or approach any ICAC Regional Office from 9:00 a.m. to 7:00 p.m. on Monday to Friday (closed on Saturday, Sunday and public holidays).

## **ADDRESSES AND TELEPHONE NUMBERS OF ICAC REGIONAL OFFICES**

### **HONG KONG ISLAND**

ICAC Regional Office (Hong Kong West/Islands)  
G/F, Harbour Commercial Building  
124 Connaught Road Central, Sheung Wan  
Tel: 2543 0000

ICAC Regional Office (Hong Kong East)  
G/F, Tung Wah Mansion  
201 Hennessy Road, Wanchai  
Tel: 2519 6555

### **KOWLOON**

ICAC Regional Office (Kowloon West)  
G/F, Nathan Commercial Building  
434-436 Nathan Road, Yau Ma Tei  
Tel: 2780 8080

**ICAC Regional Office (Kowloon East/Sai Kung)**

Shop No.4, G/F, Kai Tin Building

67 Kai Tin Road, Lam Tin

Tel: 2756 3300

**NEW TERRITORIES****ICAC Regional Office (New Territories South West)**

G/F, Foo Yue Building

271-275 Castle Peak Road, Tsuen Wan

Tel: 2493 7733

**ICAC Regional Office (New Territories North West)**

G/F, Fu Hing Building

230 Castle Peak Road, Yuen Long

Tel: 2459 0459

**ICAC Regional Office (New Territories East)**

G06-G13, G/F, Shatin Government Offices

1 Sheung Wo Che Road, Shatin

Tel: 2606 1144