

Support Clean Elections

A Handbook by the ICAC

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INTRODUCTION

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap 554), enacted with an aim to uphold justice and prevent corrupt and illegal conduct at elections, applies to all public elections including the Chief Executive Election. The Independent Commission Against Corruption (ICAC) is responsible for enforcing the ECICO. It has produced this Handbook which comprises a gist of the ECICO, a “Dos and Don’ts” checklist, a “questions-and-answers” section, and channels for lodging reports and enquiries with the ICAC. Apart from helping candidates, their election agents and helpers to better understand the ECICO, this Handbook also serves to alert them to the common pitfalls in elections so that appropriate measures can be taken to avoid inadvertent infringement of the legislation. Candidates, election agents and helpers, however, should note that this Handbook is intended to be a 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 Chief Executive Election 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;
 - (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.

- "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 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 or prejudicing the election of another candidate.

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 for the purpose of promoting or prejudicing the election of the candidate at an election.
- Statements about a candidate include (but are not limited to) statements concerning the character, qualifications or previous conduct of the candidate.

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 has 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, gives information to the candidate 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 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 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 Returning Officer.
- * *It should, however, be noted that under the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J), a candidate must submit 2 copies of his election advertisement to the 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 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.
 - An “incumbent candidate” means the person being a serving member of the Legislative Council, a District Council, or the Heung Yee Kuk; or a serving Chairman, Vice-chairman or member of the Executive Committee of a Rural Committee; or a serving Village Representative, etc. who is seeking re-election to the same office or body or election to another office or body to which the ECICO applies.

(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 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 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.

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, 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, 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 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 round of voting or, in the case of an uncontested election, the polling at the election.
- 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 round of voting or, in the case of an uncontested election, the polling at the election.

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 maximum amount of election expenses which currently stands at \$9,500,000.

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 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 of 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 \$9,500,000 to a charitable institution or trust of a public character chosen by the candidate.

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 30 days after the date of publication of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 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 the 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 appeal; 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 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 accurate 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 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 5 years from being nominated as a candidate for the election of, or elected as, the Chief Executive, a member of the Legislative Council or District Council, or a Village Representative from the date of conviction; and
 - disqualified for 3 years from being nominated as a candidate 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.

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 not to use his best endeavours to promote his candidature

Using or Threatening to Use Force or Duress

- Do not use or threaten to use force or duress to induce any person to stand or not to stand as a candidate, or to withdraw his candidature.
- Do not authorise another person, either expressly or by implication, to engage in the above corrupt conduct.

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.

- Do not authorise another person, either expressly or by implication, to engage in the above corrupt conduct.

(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 Advertisement

- 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 Returning Officer not later than 7 days* after it is published.

** It should, however, be noted that under the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J), a candidate must submit 2 copies of his election advertisement to the 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.*

(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 round of voting or, in the case of an uncontested election, the polling at the election 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 ensure that the aggregate amount of election expenses will not exceed \$9,500,000.
- 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 the election expenses incurred by the candidate and his election expense agent(s) 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 \$9,500,000 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 30 days after the date of publication of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 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 is 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.

QUESTIONS AND ANSWERS

Q1. If a group of influential community leaders intend to send a letter to members of the Election Committee (EC) appealing them to vote for a particular candidate, what are the points they should take note of in order not to infringe the ECICO?

A1. ● Provided that the appeal letter serves to promote the election of the candidate, it is clearly a printed election advertisement. In complying with section 34 of the ECICO which states that all printed election advertisements, except those printed in a registered local newspaper, are required to show in English or Chinese the name and address of the printer, date of printing and the number of copies printed, the appeal letter should contain all these printing details. The community leaders who publish the letter should, as required by the same provision of the ECICO, also deposit 2 copies of the appeal letter with the Returning Officer not later than 7 days* after it has been published.

- Since the appeal letter in the circumstances described has promoted the candidate's election, the cost incurred for the printing and mailing of the appeal letter should be counted as his election expenses and be declared in the candidate's election return. Besides, the above-mentioned community leaders should have obtained the candidate's prior written authorisation before incurring these expenses on behalf of the candidate so as to avoid contravening section 23 of the ECICO.

* *It should, however, be noted that under the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J), a candidate must submit 2 copies of his election advertisement to the 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 (EAC).*

Q2. Will a supporter of candidate A contravene the ECICO if he launches negative publicity against candidate B so as to discredit candidate B? Will candidate A be held accountable for this supporter's act?

A2. ● The ECICO has not laid down any restrictions on the format of election campaign arranged to promote a person's candidature, even if negative publicity is engaged in to prejudice the election of a contesting candidate. However, the person who publishes a statement about any

particular candidate has to make sure that all statements of fact published about the latter must be true. Otherwise, he will contravene section 26 of the ECICO which prohibits any person, including a candidate, from publishing a materially false or misleading statement of fact concerning (but not limited to) a candidate's character, qualifications or previous conduct for the purpose of promoting or prejudicing the election of a candidate.

- If the supporter of candidate A publishes a statement about candidate B which is materially false or misleading for the purpose of prejudicing the latter's election, the said supporter will have contravened the above-mentioned provision.
- If candidate A consents to his supporter's act as described in the preceding paragraph, candidate A has contravened section 26 of the ECICO as well. The cost incurred in connection with the publishing of the false statement will have to be counted as candidate A's election expenses and be stated clearly in his election return.
- Since section 23 of the ECICO requires any person to obtain the candidate's prior written authorisation before incurring any election expenses for the candidate, the supporter in the above-quoted situation needs to do so before launching any negative publicity against candidate B in order not to contravene the law.

Q3. *Is it lawful for the chairman of a professional body to give his written consent to candidate C for using the name and logo of the said professional body in candidate C's election advertisements? What happens if the chairman's decision of supporting candidate C is not agreeable to some of its members?*

- A3. ● The said chairman should ensure that the professional body agrees to the written consent he gave to candidate C. It will be an offence under section 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 candidate C 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, candidate C 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 candidate C's election expenses and be declared in candidate C's election return.

Q4. Is it an offence for a person, who has incurred election expenses on behalf of a candidate, to obtain the latter's authorisation in being his election expense agent after some election expenditures have been made? Will he still be caught by the ECICO if he claims that the expenses so incurred are election donations given to the candidate?

A4. ● Under section 23 of the ECICO, only the candidate or persons authorised by him in writing may incur election expenses. Such an authorisation will become effective only after a copy of it has been served on the Returning Officer. The said person has therefore committed an offence by incurring election expenses for the candidate without having the latter's prior written authorisation. No subsequent actions can remedy the contravention. Even if the items or services procured were subsequently donated to the candidate, this would not alter the fact of the commission of the offence. The expenditure so incurred should be accounted for both as election expenses and as donations to be declared in the candidate's election return.

Q5. Can a candidate keep the unspent election donations in excess of the prescribed maximum amount of election expenses and use them for purposes other than meeting his election expenses? Should he return the unspent election donations to the donors after the election?

A5. ● It is stipulated in section 18 of the ECICO that election donations should only be used for the purpose of meeting or contributing towards meeting the election expenses of a candidate.

● Section 19 of the same Ordinance requires that any donation of more than \$1,000 from an anonymous donor; any donation which has not been used to defray election expenses; and any donation which is in excess of the limit of election expenses that the candidate is allowed to expend must be donated to charitable institutions or trusts of a public character chosen by the candidate. While a candidate is not allowed to keep any unspent election donations in excess of the prescribed maximum amount, there is no need for him to return such donations to

the donor.

Q6. *At a dinner party hosted by some trade associations for members of the EC, the chairman of the organising committee invites a candidate to present his election platform. How should the candidate handle such a situation? Will the chairman run into trouble by so doing? Will the candidate and the chairman be liable to any offence under the ECICO?*

- A6. ● If a candidate who finds himself caught in the above-mentioned situation does not decline the invitation and immediately stop any promotion of his election at the dinner party, the occasion will be regarded as an election meeting held to promote his candidature and the expenses incurred by the said party will have to be counted towards the candidate's election expenses and be declared in his election return.
- If the dinner party is solely an arrangement of the chairman who has not been authorised by the candidate to incur election expenses on his behalf, the chairman contravenes section 23 of the ECICO for incurring election expenses without the candidate's authorisation.
- Both the chairman and the candidate should note that section 12 of the ECICO prohibits any person, whether by himself or through any other persons, to provide or meet all or part of the cost of providing electors with food, drink or entertainment with a view to influencing the latter's voting decisions.
- If the dinner party is deliberately organised by the chairman with a view to inducing votes for the candidate, the chairman has committed an offence under section 12 of the ECICO. The candidate is also guilty of the same offence if he has the knowledge of and has consented to the organisation of the dinner party for the above purpose.

Q7. *Will it be different if the above candidate is invited to promote his candidature at the general meeting of a trade association and if only non-alcoholic drinks are provided on the occasion?*

- A7. ● The general meeting during which a candidate is invited to promote his candidature is regarded as an election meeting. Although the provision of non-alcoholic drinks at an election meeting does not constitute a corrupt act under the ECICO, the expenses so incurred are still counted as the candidate's election expenses and be declared in his election return.

- In the scenario quoted, it is necessary for the trade association to obtain the candidate's prior written authorisation for incurring election expenses on his behalf before the arrangement of the said general meeting lest it will contravene section 23 of the ECICO. It is advisable, however, for the said trade association to invite all the candidates to present their election platforms at the said meeting as all candidates should be treated fairly and equally and no unfair advantage should be accorded to or obtained by any candidate over others regarding election campaigning.
- If all the candidates are invited to the said general meeting which is not held for the promotion of a particular candidate, the cost so incurred needs not be counted towards the election expenses of individual candidates. Under the circumstances, it is unnecessary for the said trade association to obtain prior written authorisation from the candidates for incurring the expenses.

Q8. Will it constitute an offence under the ECICO if an EC member hints to some other EC members that they will be awarded business if they cast their votes for a particular candidate? Will the candidate be liable to any offence under the ECICO?

- A8. ● It is an offence under section 11 of the ECICO for a person, without reasonable excuse, to offer an advantage including gift, loan, office, employment, contract, etc. to another person to influence the latter's voting decision. The above-mentioned EC member should have contravened section 11 in this context.
- Along the same line, it is an offence if a person, without reasonable excuse, solicits or accepts an advantage in return for his voting at an election for a particular candidate.
 - Whether the candidate is liable to the same offence depends on whether he is aware of and agrees to the act of the said EC member. According to section 29 of the ECICO, a candidate is to be regarded as having engaged in corrupt and illegal conduct if the said conduct is engaged in with his knowledge and consent. The candidate will not be so regarded if he can satisfy the Court that the conduct is engaged in without his knowledge, consent or connivance.

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. ● Section 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. Should the expenses incurred for a dinner held to celebrate the election of a candidate be counted as election expenses of the candidate? Can the candidate use the election donations he received to meet the expenses incurred for the celebration dinner?

- A10. ● If the dinner is hosted for the sole purpose of celebrating the election of a candidate and is in no way related to the promotion of his election, the expenses incurred need not be counted towards his election expenses.
- However, if the dinner is hosted to honour the candidate's promise made previously to the participants that they would be rewarded with a dinner for their assistance given to the candidate's election campaign upon the candidate's successful election, the hosting of the dinner is related to the purpose of promoting his election. In this connection, expenses incurred for the dinner should be counted towards his election expenses and be included in his election return.
- If the dinner is hosted as a reward for the electors' having voted for the candidate, both the host and the participants would have contravened section 12 of the ECICO.
- Since it is stipulated in section 18 of the ECICO that election donations can only be used to meet, or contribute towards meeting the election expenses of a candidate, the candidate would have contravened the law if he uses his election donations to pay for the cost of the celebration dinner which is not related to the promotion of his candidature.

Q11. Is it a must that all candidates have to submit an election return before the deadline specified by the ECICO? Which are the points a candidate should take note of while submitting his election return?

A11. ● Every candidate has to lodge with the Chief Electoral Officer an election return of his election expenses and election donations, whether or not election expenses have ever been incurred or election donations received, not later than 30 days after the result of the election is gazetted, or not later than 30 days after the declaration of the termination of the election proceedings, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law in accordance with section 37 of the ECICO. The election return must be accompanied with a declaration form signed by the candidate verifying the contents of the return.

- Apart from giving a full account of the election expenses incurred and donations (including money, goods, etc.) received by him, the candidate has to make sure that his election return must be accompanied also by an invoice and a receipt of each and every election expense item costing \$100 or above, a copy of the receipt issued to the donor of each election donation of more than \$1,000, and a copy of the receipt given by the recipient to whom the candidate has given his unspent election donation in accordance with section 19 of the ECICO.

- According to section 24 of the ECICO, it will be an offence if the aggregate amount of election expenses incurred by or on behalf of a candidate exceeds the maximum amount of election expenses which currently stands at \$9,500,000.

- A candidate has to ensure that the information provided in his election return must be true and accurate as any candidate who makes a statement that he knows or ought to know is materially false or misleading in the election return will commit an offence under section 20 of the ECICO.

Q12. A candidate / an election agent, who has been too busy with electioneering activities, has inadvertently contravened the provisions of the ECICO. Is there anything he can do to redress the situation?

A12. ● Candidates and his election helpers should take heed of complying with the provisions of the ECICO and all other applicable laws and guidelines in running an election.

- They should note that a “corrupt conduct” referred to in the ECICO is a serious offence. Nothing can be done to redress the situation once an offence is committed.
- A candidate or any other person who has done or omitted to do an act which is classified as an “illegal conduct” under the ECICO may, according to section 31 of the ECICO, apply to the Court for an order relieving him from the penalties and disqualifications to be imposed on him. He, however, has to satisfy the Court that such an act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.
- Any person who has published a printed election advertisement without the printing details required by the law or has failed to furnish 2 copies of the printed election advertisement to the Returning Officer within 7 days after the said advertisement has been published may, according to section 35 of the ECICO, apply to the Court for an order relieving him from the penalties to be imposed on him for his non-compliance with section 34 of the ECICO. He, however, has to satisfy the Court that such non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.
- A candidate who fails to lodge an election return before the end of the permitted period as required by the law may, according to section 40(1) of the ECICO, apply to the Court for an order allowing him to lodge the election return with the Chief Electoral Officer within such further period as the Court specifies. The candidate, however, has to satisfy the Court that the failure to comply with the requirement was attributable to the applicant’s illness or absence from Hong Kong; or the death, illness, absence from Hong Kong or misconduct of an agent or employee of the applicant; or due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.
- On the other hand, a candidate who fails to lodge an accurate election return or send in the required documents may, according to section 40(3) and section 40(5) of the ECICO, apply to the Court for an order of relief. He, however, has to satisfy the Court that the act was attributable to the misconduct of his agent or employee; inadvertence or accidental miscalculation; an accidental loss or destruction of the documents concerned or any reasonable cause and was not due to bad faith.

Q13. If a person knowingly provides the ICAC with false information with intent to harm or influence a certain candidate, what will the ICAC do?

- A13. ● Any person who makes or causes to be made to an ICAC officer a false report of the commission of any offence, or misleads an ICAC officer by giving false information or by making false statements or accusations commits an offence under section 13B of the Independence Commission Against Corruption Ordinance (Cap. 204). The maximum penalty for the offence is a fine of \$20,000 and imprisonment for 1 year.
- Any person who suspects any conduct in contravention of the ECICO is encouraged to make a report to the ICAC by visiting / calling its 24-hour Report Centre or any of the seven ICAC Regional Offices (addresses and telephone numbers can be found in the segment on “Channels for Reports and Enquiries” of this Handbook), or by writing to Hong Kong GPO Box 1000.
 - The ICAC will investigate each pursuable complaint so as to ascertain whether such a malpractice exists.

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**, or make a report in person to the 24-hour ICAC Report Centre (G/F, ICAC, 303 Java Road, North Point) 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)**

Shop B1, G/F, Tsuen Kam Centre

300-350 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

[Amended in January 2010]