

# **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 District Council Election and by-elections. 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 a part showing the channels for lodging reports and enquiries with the ICAC. The Handbook serves to alert candidates, their election agents and helpers to the common pitfalls in elections so that they can take appropriate measures to avoid inadvertent infringement of the ECICO. 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 District 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 authorizes 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.
  
- "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 authorizes another person, either expressly or by implication, to engage in the above-stated 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 authorizes another person, either expressly or by implication, to engage in the above-stated 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 authorizes the publication of an election advertisement which includes the name or logo of or associated with a person or an organization; or a name or logo that is substantially similar to that of a person or an organization; 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 organization unless prior written consent from that person or organization 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 organization 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 organization without having been approved by the governing body of the organization or by a resolution of the members of the organization 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 authorized 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) (District Councils) 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 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 or particular candidates at an election.
- It is also an offence if a person authorizes 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 authorizes 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 authorizes 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 authorizes 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.

- 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.

### **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 authorized 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 maximum amount of election expenses. The maximum amount of election expenses for the District Council Election is \$48,000.

### **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 authorized 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 authorization, a copy of which has to be served on the relevant Returning Officer in order to effect his authorization.
- 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 authorization.

### **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 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 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 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 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 “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 his 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 his 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 exempting 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 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.

## **“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 authorize 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 organization; 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 organization.
- ✓ 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) (District Councils) 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 authorize 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 authorize 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 authorize 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 authorize 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.
- ✘ Do not destroy, deface, take or otherwise interfere with a ballot paper in use or that has been used unless being lawfully authorized.

**(4) ELECTION EXPENSES AND ELECTION DONATIONS****Election Expenses**

- ✘ Do not incur election expenses more than \$48,000.
- ✘ Do not incur election expenses unless you are a candidate or a candidate's election expense agent with the required authorization.
- ✘ Do not incur election expenses in excess of the amount authorized by the candidate if you are an election expense agent.
- ✓ Do include all 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 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 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 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.

## QUESTIONS AND ANSWERS

The following questions and answers are summarized from the enquiries and concerns raised by candidates, etc. in the previous District Council (DC) 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 the candidates and their election helpers to the common corrupt and illegal pitfalls in conducting electioneering activities.

**Q1. During a press interview conducted six months before the nomination period of a DC Election, the chairman of a district organization has revealed that he will be running for a seat thereof. Can he start to distribute publicity leaflets for promoting his election after the interview?**

- A1.
- According to S.2 of the ECICO, a “candidate” is defined not only as a person who stands nominated as a candidate at any election, but also 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. Although the chairman of the district organization has not yet been nominated, he is regarded as a “candidate” of the DC Election under the above definition when his intention to run in the said Election is made known to the public through the press interview.
  - In publicizing his election therefrom, the chairman has to abide by the provisions of the ECICO. For example, he has to make sure that his publicity leaflets which are published before the nomination period of the DC Election must contain all the printing particulars as required of any printed election advertisements by S.34 of the ECICO. He should also include the production cost incurred in respect of the said publicity leaflets and any other expenses incurred for promoting his election in his election expenses and reflect these clearly in his election return.

**Q2. A candidate, who is an incumbent DC member, claims in his election advertisement that he has successfully persuaded the government to build a park in the district. In fact, he has only been involved in discussing the selection of the site. Has he contravened the law in making such a statement?**

- A2. ● It is stipulated in S.26 of the ECICO that no person, including a candidate, is allowed to publish a materially false or misleading statement of fact concerning (but not limited to) the candidate's character, qualifications or previous conduct for the purpose of promoting the candidate's election.
- If the candidate knows clearly that he has only taken part in discussing the selection of the site of the park, and this does not have any bearing on the government's decision to build the park, what he claims in his election advertisement is untrue. He may have contravened S.26 of the ECICO for having published a false statement of fact about himself as a candidate in his election advertisement.
- Q3. Is it legal for a candidate, after having obtained a verbal agreement from the chairman of an owners' corporation (OC), to include the name and logo of the OC, as well as a photograph which he took with executive committee members of the same OC in his election advertisement as a way to show the OC's support to his election? What should be done if the candidate comes to know that some OC members have objected to the chairman's decision to support him after he has distributed the said election advertisement?**
- A3. ● The candidate should have complied with S.27 of the ECICO and obtained a written consent from the OC and all the people appearing in the photograph before including the name and logo of the OC and the photograph in his election advertisement. According to this provision, if a candidate includes in his election advertisement the name or logo of a person or an organization, or the 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 organization concerned, the candidate should have obtained prior written consent from the person or organization.
- The candidate referred to in this question has committed an offence because he only has the verbal agreement from the chairman. This, however, does not meet the legal requirements as stipulated in S.27 mentioned above.
- The said chairman has to ensure that the OC agrees to the written consent he has given to the candidate. It will be an offence under S.27 of the ECICO if he purports to give a written consent to a candidate to the inclusion of the name or logo of the OC in the candidate's election advertisements without having been approved by the governing body or by a resolution of the members of the OC passed at a general meeting.

- If the chairman's decision to support the candidate is eventually repudiated by the OC through proper procedures by those members who object to the chairman's decision, the candidate should take appropriate measures by withdrawing immediately the election advertisements already distributed. In any event, he is also required to count the costs incurred for the production and subsequent removal of the election advertisements towards his election expenses and reflect such costs in his election return.

**Q4. A serving DC member and an incumbent candidate of the forthcoming DC Elections organizes a one-day tour to Shenzhen for electors of his constituency. With his sponsorship, the participants are able to enjoy a snake feast, visits to scenic spots and free transportation. Will this candidate contravene the law if he publicizes his election platform and calls for the participants to vote for him once the latter arrive in Shenzhen?**

- A4.
- S.11 of the ECICO makes it an offence for any person to offer an advantage to another person for inducing the latter to vote for a particular candidate. The said candidate has committed an offence under the provision mentioned if the purpose of his sponsoring the tour to Shenzhen is to induce the participants to vote for him.
  - Since it is stipulated clearly in S.5 of the ECICO that any conduct concerning an election, no matter whether it is engaged in within Hong Kong or elsewhere, is regulated by the ECICO, the candidate's act of offering electors a free trip outside Hong Kong for inducing votes also falls within the purview of the said legislation.

**Q5. The chairman of a residents' association, at a dinner party held to commemorate the inauguration of his tenure, announces that the honorary adviser of the association has stood as a candidate in a DC Election. Other than encouraging the participants thereat to vote for the candidate, he also invites the candidate to deliver his election platform. How should the candidate handle such a situation?**

- A5.
- 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 authorized by the candidate as the latter's election expense agent to incur election expenses in connection with the dinner arrangement, the chairman will contravene S.23 of the ECICO, which stipulates, amongst others, that it is an offence for any person other than the candidate or his election expense agent to incur election expenses.

- Both the chairman and the candidate should note that S.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 food, drink or entertainment with a view to influencing the other people's voting decision.
- If the dinner party is deliberately organized by the chairman with a view to inducing votes for the candidate, the chairman has committed an offence under S.12 of the ECICO. The candidate is also guilty of the same offence if he has the knowledge of and has consented to the organization of the dinner party for the above purpose.

**Q6. A company owner comes to know that a major client of his company has decided to stand as a candidate in the DC Election of a certain district. In order to please the client and promote his candidature, the owner repeatedly hints to his employees living in the district that they should vote for the client so as to secure their employment. Has this company owner contravened the law?**

- A6.
- S.13 of the ECICO forbids any person to use or threaten to use force or duress against another person to induce that person to vote for a particular candidate at an election. The company owner has contravened the law if he induces his employees to vote for the candidate by threatening that it is a way to secure their employment.
  - The candidate has also contravened the law if he has, expressly or by implication, requested the company owner to do so.

**Q7. A candidate in a DC Election owns a company and provides staff quarters in the constituency in which he is contesting. In order to support the election of the incumbent candidate, a group of his employees use the address of the staff quarters of the company to register as electors even though they are not living therein and then vote at the election in the constituency at which the said quarters are located. Are the employees guilty of an offence? Is the candidate liable to committing an offence for the act of his employees?**

- A7.
- A person will be caught by S.16 of the ECICO if he votes at an election knowing that he is not entitled to vote at that election; or votes at an

election after having knowingly or recklessly given materially false or misleading information to an electoral officer.

- Under the relevant legislation on the eligibility of a person to be registered as an elector, an applicant when submitting his application needs to satisfy the electoral officer that the residential address notified in his application is his only or principal residence in Hong Kong. In the scenario quoted, the above-mentioned employees have given materially false residential address to the electoral officer because they are in fact not living in the quarters of the company. They would commit an offence under S.16 of the ECICO if they vote at the election in the constituency at which the quarters are located.
- The company owner, i.e. the candidate, has contravened the same provision if he invites or induces his employees to vote at the election even though he knows that they have given materially false information to the electoral officer.

**Q8. Can a candidate accept free design and production service offered to him by a graphic designer in producing his election advertisements?**

- A8.
- There is no restriction as to the kind of services to be accepted by the candidate under the law. Consideration should, however, be given to whether the cost so incurred needs to be included in the candidate's election expenses. If the said designer renders free service in designing and producing election advertisements for the candidate voluntarily, personally and in his own time, the service is regarded as "voluntary service" as referred to in S.2 of the ECICO. Because of this, the candidate is not required to include the designer's service in his election expenses.
  - On the other hand, the candidate has to include the costs in respect of the raw materials purchased, printing and transportation services, etc. engaged in the process of producing the said election advertisements in his election expenses and reflect such costs, which do not fall within the definition of "voluntary service", in his election return.

**Q9. Will an elected candidate of a DC 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?**

- A9.
- 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 its organization 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.

**Q10. What measures can a candidate or his election helper, who has contravened the ECICO out of inadvertence, take to redress the situation?**

- A10.
- Candidates and their election helpers should take heed of complying with the provisions of the ECICO and the regulations of the Electoral Affairs Commission while running in an election so as to avoid any inadvertent infringement of the law and regulations.
  - Candidates should note that engaging in 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 illegal conduct under the ECICO may, according to S.31 of the ECICO, apply to the Court for an order to be made for relieving him from the penalties and disqualification 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 the applicant's 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 relevant Returning Officer within 7 days after the said advertisement has been published may, according to S.35 of the ECICO, apply to the Court for an order to be made for relieving him from the penalties to be imposed on him for his non-compliance with S.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 the applicant's 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 S.40(1) of the ECICO, apply to the Court for an order to be made for 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 the applicant's 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 S.40(3) and S.40(5) of the ECICO, apply to the Court for an order enabling him to correct any error or excepting him from submitting documents which should be attached to the candidate's election return, etc. He, however, has to satisfy the Court that the error or non-compliance 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 the applicant's bad faith.

**Q11. What is the penalty imposed on a person who has committed an offence under the ECICO? Would this affect his standing as a candidate and / or his voting eligibility in the District Council Elections and other public elections in future?**

- A11.
- The maximum penalty for a person who has been convicted of a corrupt conduct under the ECICO is a fine of \$500,000 and imprisonment of 7 years whereas that for an illegal conduct is a fine of \$200,000 and imprisonment of 3 years.
  - A person who has committed a corrupt 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 a Legislative Council or District Council, or a Village Representative from the date of conviction; and 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.

**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 ICAC Ordinance and will be liable to a maximum penalty of 1 year's imprisonment and a fine of \$20,000.
  - Any persons who wish to make enquiries on the ECICO may call the ICAC Election Enquiry Hotline (Tel: 2920 7878), or approach any ICAC Regional Offices.

## **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, Wan Chai  
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, Sha Tin  
Tel: 2606 1144