

# **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 upholding fairness and preventing corrupt and illegal conduct in elections, applies to all public elections including the Election Committee Subsector Elections and its 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 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 Election Committee Subsector Elections (including By-elections) and other elections as specified in the Ordinance. The Ordinance governs all conduct concerning an election, whether it is engaged before, during or after the election period, and whether it is engaged 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 or a reward for:
  - (1) that person's standing, not standing, or if that person has been nominated as a candidate, withdrawal of his candidature, or his not using the best endeavours to promote his election; or
  - (2) that person to get and try to get a third person to stand, not to stand, or if that third person has been nominated as a candidate, to withdraw his candidature, or not to use that third person's best endeavours to promote his election.
  
- It is also an offence if a person authorises another person, either expressly or by implication, to offer an advantage for getting any person to engage in the conduct stated in (1) or (2) above.
  
- It is also an offence if a person corruptly solicits or accepts an advantage for the conduct stated in (1) or (2) above.
  
- "Candidate"
  - (1) means a person who stands nominated as a candidate at an election; and
  - (2) also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election.
  
- "Advantage" includes (but not limited to) any valuable consideration, gift, loan, office, employment, contract, favour or service (other than voluntary service or the provision of entertainment). However, it does not include an election donation if particulars of the donation are given in an election return that has been lodged with the Chief Electoral Officer.
  
- "Voluntary service" means any service provided free of charge to or in respect of any candidate(s) at an election by a natural person, voluntarily and personally, in the person's own time for the purpose of promoting the election of the candidate(s) or prejudicing the election of another candidate or other candidates.

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

- It is an offence if a person uses or threatens to use force or duress against another person to induce him :
  - (1) to stand or not to stand as a candidate, or to withdraw his candidature; or
  - (2) to get a third person to stand or not to stand as a candidate, or to

withdraw the third person's candidature.

- It is an offence if a person uses or threatens to use force or duress against another person because the other person or the third person stood or did not stand as a candidate, or withdrew his candidature after having been nominated as a candidate.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

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

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

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

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

## **(2) ELECTIONEERING**

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

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

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

- It is an offence if a candidate or a person publishes a materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the

candidate or candidates at an election.

- Statements about a candidate or candidates include (but are not limited to) statements concerning the character, qualifications or previous conduct of the candidate or candidates.

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

- It is an offence if a candidate or a person publishes or authorises the publication of an election advertisement which includes the name or logo of or associated with a person or an organisation; or a name or logo that is substantially similar to that of a person or an organisation; or a pictorial representation of a person, in such a way that implies or is likely to cause electors to believe that the candidate or candidates have the support of the person or organisation unless prior written consent from that person or organisation has been obtained.
  - It is still an offence even if such an election advertisement contains a statement to claim that such inclusion does not imply support by the person or organisation concerned.
  - It is an offence if a person purports to give written consent to the inclusion in an election advertisement of the name or logo of an organisation without having been approved by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting.
  - It is also an offence if a person, for the purpose of promoting or prejudicing the election of a candidate or candidates, gives information to the candidate or candidates that the person knows or ought to know is materially false or misleading.
- “Support” includes support for the policies or activities of the candidate.
  - “Election advertisement” means :
    - (1) a publicly exhibited notice; or
    - (2) a notice delivered by hand or electronic transmission; or
    - (3) a public announcement made by radio or television or by video or cinematographic film; or
    - (4) any other form of publication,
 published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.

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

- It is an offence if a person publishes a printed election advertisement, with exception to those printed in a registered local newspaper, which fails to show, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed.
- The above conduct is, however, not an offence if the publisher, or a person authorised by him, has lodged with the relevant Returning Officer a statutory declaration on the required printing details not later than 7 days after the publication of the advertisement.
- A person must, not later than 7 days\* after publishing a printed election advertisement, furnish 2 copies of the advertisement to the relevant Returning Officer.

*\* It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (Election Committee) 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 authorises another person, either expressly or by implication, to engage in the above-stated conduct.
- It is also an offence if a person, without reasonable excuse, solicits or accepts an advantage in return for engaging in or getting or trying to get another person to engage in the conduct stated in (1) or (2) above.

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

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

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

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

particular candidates at an election.

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

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

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

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

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

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

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

- It is an offence if a person, without lawful authority, supplies a ballot paper to another person, or destroys or interferes with a ballot box or ballot paper in use at an election or a ballot paper that has been used at an election.

- It is an offence if a person, with intent to deceive, puts into a ballot box a paper other than a ballot paper that he is lawfully authorised to put into the box or removes a ballot paper from a polling station.

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

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

- “Election expenses” means expenses incurred or to be incurred before, during or after the election period, by or on behalf of a candidate for the purpose of :
  - (1) promoting the election of the candidate; or
  - (2) prejudicing the election of another candidate,
 and includes the value of election donations consisting of goods and services used for that purpose.
- A candidate commits an offence if the aggregate amount of the election expenses, whether incurred by or on behalf of the candidate, exceeds the prescribed maximum amount of election expenses.
- The prescribed limits of election expenses for the Election Committee Subsector Elections and By-elections are as follows:

	Subsector	Prescribed Limit
(a)	For an election for one of the following 8 Election Committee (EC) subsectors, viz, Agriculture and Fisheries, Insurance, Transport, Hotel, Chinese People’s Political Consultative Conference, Heung Yee Kuk, Hong Kong and Kowloon District Councils and New Territories District Councils subsectors.	\$100,000
(b)	For an election for an EC subsector other than those in (a) above with not more than 5,000 registered voters	\$160,000
(c)	For an election for an EC subsector with between 5,001 and 10,000 registered voters	\$320,000
(d)	For an election for an EC subsector with over 10,000 registered voters	\$480,000

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

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

- "Election donation" means :
  - (1) any money given to a candidate for the purpose of meeting the election expenses of the candidate; or
  - (2) any goods (including any goods given incidental to the provision of voluntary service) or service (excluding voluntary service) provided to a candidate for the purpose of promoting the election of the candidate or 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 the prescribed maximum amount of election expenses

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

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

- A candidate who fails to lodge an 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 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 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.
- ✘ 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.

#### **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 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.

#### **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 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 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) (Election Committee) 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.*

**(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 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 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 Election Committee subsector if not expressly permitted by the law.
- ✘ Do not destroy, deface, take or otherwise interfere with a ballot paper in use or that has been used unless being lawfully authorised.

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

**Election Expenses**

- ✘ Do not incur election expenses more than the prescribed maximum amount of the election expenses for each subsector.
- ✘ 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 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 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. Can a candidate contesting in the election of an Election Committee (EC) subsector distribute to voters a pamphlet publicising his community contribution and close association with some influential unions and prestigious clubs so as to enlist support for his election?***

**A1.** ● It is alright for a candidate to distribute pamphlets to publicise himself provided that facts included therein are genuine and true. Otherwise, the candidate may commit an offence under Section 26 of the ECICO.

● Since the pamphlet is a printed election advertisement, it has to bear, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed. Besides, the candidate has to deposit 2 copies of the printed election advertisement to the relevant Returning Officer, not later than 7 days after the publication of the printed election advertisement in accordance with Section 34 of the ECICO. The expenses incurred by the production of the pamphlet have to be counted towards the candidate's election expenses and be included in his election return.

● If the candidate publishes the name or logo of the unions and clubs in his election pamphlet in a way which implies or causes electors to believe that the candidate has the support of these organisations at the election, the candidate has to obtain prior written consent from these organisations for publishing their names or logos in his election materials. Otherwise, the candidate may commit an offence under Section 27 of the ECICO.

\* *It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (Election Committee) 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.*

**Q2. *A candidate publishes his election platform through sending e-mails to some voters of his subsector. His supporters thereafter make copies of the e-mail printout and distribute them to other voters of the same subsector. What are the points they should take note of in order not to violate the law?***

- A2. ● Election advertisement includes a publicly exhibited notice or a notice delivered by electronic transmission for the purpose of promoting or prejudicing the election of a candidate. In the scenario quoted, copies of the e-mail printout are regarded as printed election advertisements. According to Section 34 of the ECICO, such printouts must contain, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed. Also, two copies of the said printout should be deposited with the relevant Returning Officer not later than 7 days after it has been published.
- As expenses may be incurred for producing and mailing of the print-out, supporters of the candidate are required to seek prior written consent from the candidate before incurring election expenses on his behalf or else they may contravene Section 23 of the ECICO.
  - The expenses so incurred, e.g. cost of the e-mail (if design or script writing is involved) and mailing of the reproduced copies need to be counted as the candidate's election expenses and be included in the election return to be submitted by the candidate.
  - Apart from the above, the candidate and his supporters should also comply with the EAC Regulations and Guidelines and any other statutory requirements governing election advertisements in an election.

**Q3. *Is it lawful for the chairman of a professional body to give his written consent to candidate X for using the name and logo of the said professional body in candidate X's election advertisements? What happens if the chairman's decision of supporting candidate X 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 X. 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 X 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 X 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 X's election expenses and be declared in candidate X's election return.

***Q4. Is it an offence if a person has incurred election expenses on behalf of a candidate without obtaining his prior written authorisation? Can the said person claim that the expenses incurred as an election donation to be given to the candidate? Will he still be caught by the ECICO if the candidate eventually agrees to accept the 'donation'?***

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 relevant Returning Officer. It is therefore an offence for the said person to have incurred election expenses without the candidate's written authorisation and no subsequent actions can remedy the offence once an election expense has been incurred. Even if the items or services purchased 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 an election expense and as a donation 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. Under Section 18 of the ECICO, election donations can only be used for the purpose of meeting a candidate's election expenses. No candidate can therefore use election donations including the surplus left after all his election expenses have been met for other purposes. The candidate must donate the unspent election donations in excess of the prescribed maximum amount to a charitable institution or trust of a public character according to Section 19 of the ECICO.

***Q6. At a dinner gathering hosted by some trade associations from the same EC subsector, the chairman of the organising committee invites a candidate of the subsector 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 for any offence under the ECICO? Will the situation be different if the candidate is invited to promote his candidature at the general meeting of the trade association and only non-alcoholic drinks are provided on the occasion?***

- A6. ● A candidate who finds himself caught in the above-mentioned situation while attending any function should decline the invitation and immediately stop any promotion of his election. Otherwise, the occasion will be regarded as an election meeting held to promote his candidature. The cost thus incurred has to be counted towards his election expenses and be declared in his election return.
- If any gathering is held as an election meeting but the chairman responsible for its organisation has not been authorised by the candidate concerned to incur election expenses on the candidate's behalf under Section 23 of the ECICO, the chairman will have contravened the law for incurring election expenses without the authorisation of the candidate.
  - If the gathering held in the format of a dinner party is deliberately organised and sponsored by the chairman with a view to influencing the participants to vote for the candidate, the chairman has committed an offence under Section 12 of the ECICO. It is stated clearly in this provision that no person shall by himself or by any other persons provide or meet all or part of the cost of providing other persons with food, drink or entertainment with a view to influencing the other persons' voting decisions. The candidate is also guilty of an offence under the same section of the ECICO if he has the knowledge of and has consented to the organisation of the dinner gathering for the above purpose.
  - Albeit the provision of non-alcoholic drinks at an election meeting does not constitute a corrupt act under Section 12 of the ECICO, the chairman responsible for organising the gathering during which the candidate has been invited to promote his candidature is still required to obtain the candidate's prior written authorisation before incurring expenses on his behalf.
  - Furthermore, the cost of the gathering has to be counted towards the candidate's election expenses and be reflected in his election return.

**Q7. During the election period, is it alright for a candidate to give a speech at the luncheon meeting organised by a professional body and attend a media interview thereafter?**

A7. ● If the candidate's speech and / or luncheon meeting serve(s) the purpose of promoting the election of the candidate at the EC Subsector Election, the occasion will be regarded as an election meeting. As such, the cost so incurred has to be counted towards the candidate's election expenses and be included in his election return.

● Any publicity materials on the luncheon meeting which can promote the election of the candidate may be regarded as his election advertisements. If these materials are printed, the relevant requirements of Section 34 of the ECICO which regulate printed election advertisements have to be followed, and the cost of production of these election advertisements has to be counted as election expenses. If the cost is incurred by the professional body, prior written authorisation from the candidate has to be obtained. In the event that the expenses are shouldered by the professional body, the amount should be included as an election donation in the candidate's election return.

● Should the luncheon meeting be organised to treat the participants with an intention of influencing their voting decisions, the candidate and the organiser of the event may have contravened Section 12 of the ECICO.

● On the question whether the candidate should attend an interview by the media after the luncheon meeting, the organiser of the event and the candidate should take into account as well as follow the "fair and equal treatment" principle as promulgated by the Electoral Affairs Commission. Any media publicity about the candidate to be engendered would be regarded by others, in particular his contestants at the election as unfair.

\* *It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (Election Committee) 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.*

**Q8. *Will it constitute an offence under the ECICO if the election agent of a candidate of an EC Subsector Election hints to voters of the same subsector that they will be awarded business if they vote for the 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 election agent above-mentioned 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 his agent. 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, unless 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.** *A candidate attending an overseas conference with some voters of his subsector offers free food and drink to the latter with a view to influencing their voting decisions and inducing them to procure votes for himself. Is he liable to any offence under the ECICO?*

- A10. ● The said candidate has contravened Section 12 of the ECICO which states that no person shall provide or meet all or part of the cost of providing other persons with food, drink or entertainment for influencing the other persons' voting decision or inducing other persons to procure votes for him. The voters accepting the dining and wining should have also committed an offence under the same provision which forbids any person to solicit, accept or take any food, drink or entertainment as an inducement to vote for a particular candidate at an election.
- Section 5 of the ECICO states clearly that all conduct concerning an election, regardless of whether the conduct is engaged in within Hong Kong or elsewhere is regulated by the ECICO.
  - Section 6 and Section 22 of the ECICO also stipulate that a person may be convicted of an offence under the Ordinance if he is found to have engaged in corrupt or illegal conduct before, during or after the election period.
  - As such, the above-mentioned candidate should have been caught by Section 12 of the ECICO, no matter when the act takes place and whether it is engaged in within Hong Kong or elsewhere. Whether an offer of advantages to electors is an offence depends on the purpose and not the time and place of the offer.

**Q11.** *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 by the celebration dinner?*

- A11. ● 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.
- 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 by 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.

- 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. Any person who uses the election donations for purposes other than the above-mentioned may be liable to commit a corrupt conduct.

**Q12. *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?***

A12. ● 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 after the declaration of the termination of the election proceedings, or 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 prescribed by the Chief Executive in Council. Please refer to the part on “Gist of the ECICO” of this Handbook for the prescribed maximum amount of election expenses for the election of the respective EC subsectors.
- 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.

**Q13. *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?*

- A13. ● Candidates and his election helpers should take heed of complying with the provisions of the ECICO and the regulations of the Electoral Affairs Commission in running an election so as to avoid any inadvertent infringement of the law and regulations.
- 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 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 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 appropriate authority 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 for 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.

***Q14. If a person knowingly provides the ICAC with false information with intent to harm or influence a certain candidate, what will the ICAC do?***

- A14. ● 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 ICAC Ordinance. The maximum penalty for the offence is a fine of \$20,000 and imprisonment for one 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, 303 Java Road, North Point, Hong Kong) or any ICAC Regional Office, or write to Hong Kong GPO Box 1000.

### **ENQUIRIES**

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

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

### **Hong Kong Island**

#### **ICAC Regional Office (Hong Kong West/Islands)**

G/F, Harbour Commercial Building  
124 Connaught Road Central, Sheung Wan  
Tel: 2543 0000

#### **ICAC Regional Office (Hong Kong East)**

G/F, Tung Wah Mansion  
201 Hennessy Road, Wanchai  
Tel: 2519 6555

### **Kowloon**

#### **ICAC Regional Office (Kowloon West)**

G/F, Nathan Commercial Building  
434-436 Nathan Road, Yau Ma Tei  
Tel: 2780 8080

ICAC Regional Office (Kowloon East/Sai Kung)  
Shop No.4, G/F, Kai Tin Building  
67 Kai Tin Road, Lam Tin  
Tel: 2756 3300

**New Territories**

ICAC Regional Office (New Territories South West)  
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]*