

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 Legislative Council 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. 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.

GIST OF THE ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) ORDINANCE

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap 554) applies to the Legislative Council elections and other elections as specified in the Ordinance. This 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

Bribing Candidates or Prospective Candidates (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 a third person to stand, not to stand, or if that third person has been nominated as a candidate, to withdraw the third person's candidature, or not to use the third person's best endeavours to promote the election of the third person.

- It is also an offence if a person corruptly solicits or accepts an advantage for the above conduct.

- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

- "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,
and in relation to an election to return Members for a Legislative Council geographical constituency, includes a person who is one of a group of candidates.

- "Group of candidates"
 - (1) means the persons whose names appear on a list of candidates nominated for election to return Members for a Legislative Council geographical constituency, other than persons whose names have, in accordance with section 38 of the Legislative Council Ordinance (Cap. 542), been excluded from or struck out of such a list; and
 - (2) in relation to a time before the close of nominations for such an election also means those persons who have publicly declared their intention to stand for election as candidates whose names appear on such a list, but does not include persons who have also publicly revoked their declaration of intention to stand at the election.

- "Advantage" means any valuable consideration, gift, loan, office,

employment, contract, favour or service (other than voluntary service or the provision of entertainment), etc. However, it does not include an election donation if particulars of the donation are given in an election return that has been lodged with the Chief Electoral Officer.

- “Voluntary service” means any service provided free of charge to or in respect of any candidate at an election by a natural person, voluntarily and personally, in the person’s own time for the purpose of promoting the election of the candidate or prejudicing the election of another candidate.

Using or Threatening to Use Force or Duress against Candidates or Prospective Candidates (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 Relating to Candidates and Prospective Candidates (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 of 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

Publication of 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.

Publication of 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 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 causes 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, knowingly gives materially false or misleading information to the candidate or candidates.
- “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.

Publication of Election Advertisements that Do Not Meet Certain Requirements (Sections 33, 34)

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

* It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, a candidate must submit 2 copies of his election advertisement to the relevant Returning

Officer and comply with the other statutory requirements stipulated therein before he displays, distributes or otherwise uses the election advertisement.

- A performance report published by an incumbent candidate, who is the person holding office as a serving member of the Legislative Council, a District Council, or the Heung Yee Kuk; a serving Chairman, Vice-chairman or member of the Executive Committee of a Rural Committee; or a serving Village Representative, between the period beginning with the nomination day and ending with the polling day, is taken as an election advertisement.

(3) VOTING

Bribing Electors and Others (Section 11)

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

Providing Electors and Others with Refreshments or Entertainment (Section 12)

- It is an offence if a person provides, or pays for the provision of 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 at an election; or
 - (2) to vote or not to vote 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 above conduct.
- 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 at an election; or to vote or not to vote for a particular candidate or particular candidates.
- 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 at an election, or voted or refrained from voting for a particular candidate or particular candidates.
- It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.

Deceptive Behaviour in Relation to Electors (Section 14)

- It is an offence if a person, by deception, induces another person or gets him to induce a third person not to vote at an election; or to vote or not to vote for a particular candidate or particular candidates.
- 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 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 or group of candidates for the purpose of :
 - (1) promoting the election of the candidate or group; or
 - (2) prejudicing the election of another candidate or group,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. In the list system of voting, each member of a group of candidates commits an offence if the aggregate amount of the election expenses exceeds the prescribed maximum amount of the election expenses.

- The maximum amount of election expenses for each constituency in the 2004 LegCo Election is as follows:

| Constituency | Prescribed Limit |
|---|---|
| (a) for a GC election | i. \$1,500,000 for a list in Kowloon East and Kowloon West GCs ii. \$2,000,000 for a list in Hong Kong Island GC iii. \$2,500,000 for a list in New Territories East and New Territories West GCs |
| (b) for an election for one of the following 4 special FCs, viz, Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs | \$100,000 |
| (c) for an election for an FC other than those in (b) above with not more than 5,000 registered electors | \$160,000 |
| (d) for an election for an FC with between 5,001 and 10,000 registered electors | \$320,000 |
| (e) for an election for an FC with over 10,000 registered electors | \$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.
- It is an offence for a candidate who belongs to a GC list to incur election expenses unless he has been authorised by each other candidate on the list to be their election expense agent. Similarly, an election expense agent of any candidates on the GC list must obtain the authorisation from all candidates on the list before incurring any election expenses.

- An “election expense agent” means a person authorised in writing by a candidate or a group of candidates to incur election expenses on behalf of the candidate or the group of candidates, with the maximum amount of election expenses to be incurred by him being specified in the authorisation, a copy of which has been served on the relevant Returning Officer.
- It is an offence if a candidate does not include election expenses incurred by the candidate or the candidate’s election expense agent 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 or candidates for the purpose of meeting the election expenses of the candidate or candidates; or
 - (2) any goods (including any goods given incidental to the provision of voluntary service) or service (excluding voluntary service) provided to a candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates.
- 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, does not issue a receipt to the donor.
- It is an offence if a candidate uses an anonymous election donation of more than \$1,000 for meeting or contributing towards meeting his election expenses.
- It is also an offence if a candidate does not give an anonymous election donation of more than \$1,000 to a charitable institution or trust of a public character chosen by the candidate.
- 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 knowingly makes a materially false or misleading statement 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 60 days after the date of publication of the result of the election, or after the declaration of the termination of the election proceedings or 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);
 - (2) a copy of the receipt issued to every donor, giving particulars of the donor and the donation (except for donations of \$1,000 or below);
 - (3) a copy of the receipt of such election donation given to a charitable institution or trust of a public character by the candidate in accordance with the law;
 - (4) an explanation setting out the reason why the unused election donation was not disposed of in accordance with the law; 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 solicits or accepts an advantage:
 - (1) to withdraw or as an inducement to withdraw an election petition or election appeal; or
 - (2) 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)

- A person commits an offence if he incites, conspires with, aids, abets, counsels or procures another person or attempts to engage in a 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 to be imposed on him.
- 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 the legislation or has not furnished 2 copies of the printed election advertisement to the relevant Returning Officer may apply to the Court for an order:
 - (1) allowing the publication be excepted from the statutory requirements; and
 - (2) relieving him from penalties to be imposed on him.

- 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 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 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 enabling the candidate to correct any error or false statement in an election return, 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.

- 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 or an accidental loss or destruction of the invoice or receipt or copy of the receipt by the applicant or any other person; or
 - (5) any reasonable cause.

- * (1) and (2) are considerations only applicable to court orders granting an extended period during which a candidate may lodge an election return, but not applicable to court orders enabling a candidate to correct any error or false statement in an election return, or excepting the candidate from the requirement to send an invoice or a receipt, or a copy of a receipt.

(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 in connection with the conduct or such part 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, except that a contravention of Section 34 is not subject to the following disqualifications.

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| <p>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.</p> |
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Disqualifications

- A person convicted of an offence (except for contravention of Section 34 or 39) under the ECICO will be :
 - disqualified from being registered as an elector or voting in the Chief Executive, Legislative Council, District Council or Village Representative elections for 3 years from the date of conviction;
 - disqualified from being nominated as a candidate for the election of, or elected as the Chief Executive, a member of the Legislative Council and a District Council or a Village Representative for 5 years from the date of conviction; and
 - disqualified from being nominated as a candidate for the election of, or elected or nominated as an Election Committee member for 3 years 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

Bribing Candidates or Prospective Candidates

- * Do not offer any advantage to get any person to stand or not to stand as a candidate.
- * Do not offer any advantage to get any person having been nominated as a candidate to withdraw his candidature.
- * Do not authorise another person, either expressly or by implication, to offer advantage for getting any person to engage in the above conduct.
- * 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.

Deception

- * 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 knowingly publish any false statement that a person is or is not a candidate.
- * Do not make any materially 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 the name and address of the printer, the date of printing and the number of copies printed except those printed in a registered local newspaper.
 - * Do remember that a performance report published by an incumbent candidate between the nomination day and the polling day of the election is taken as an election advertisement.
 - * Do furnish 2 copies of the election advertisement to the relevant Returning Officer not later than 7 days after publishing a printed election advertisement.#
- # It should, however, be noted that under the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, a candidate must submit 2 copies of his election advertisement to the relevant Returning Officer and comply with the other statutory requirements stipulated therein before he displays, distributes or otherwise uses the election advertisement.

(3) VOTING

Bribery

- * Do not offer any advantage to induce any person not to vote at an election.
- * Do not offer any advantage to induce any person to vote or not to vote for a particular candidate at an election.
- * Do not authorise another person, either expressly or by implication, to offer advantage for getting any person to engage in the above conduct.

Providing Refreshments or Entertainment

- * Do not provide or pay for the provision of any food, drink or entertainment

as an inducement to or a reward for any person's not voting at an election.

- * Do not provide or pay for the provision of 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.
- * Do not authorise another person, either expressly or by implication, to provide any food, drink or entertainment for getting any person to engage in the above conduct.

Using or Threatening to Use Force or Duress

- * Do not use or threaten to use force or duress against any person for the purpose of influencing his or any other person's voting decision.
- * 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 not to vote at an election.
- * Do not induce by deception any person to vote or not to vote for a particular candidate at an election.
- * Do not authorise another person, either expressly or by implication, to engage in the above conduct.

Other Offences in Relation to Voting

- * Do not deface or destroy any ballot paper unless lawfully authorised.
- * Do not knowingly invite or induce ineligible persons to vote.
- * Do not induce a person to vote more than once in the same constituency.

(4) ELECTION EXPENSES AND ELECTION DONATIONS

Election Expenses

- ✳ Do not incur election expenses more than the prescribed maximum amount of the election expenses for each constituency.
- ✳ Do not incur election expenses unless you are a candidate or a candidate's election expense agent with the required authorisation. In the list system of voting, all candidates on the same GC list should have authorised each other to be their respective election expense agents before incurring any election expenses for the list. Similarly, an election expense agent of any candidates on the list must obtain the authorisation from all candidates on the list before incurring any election expenses.
- ✳ Do not incur election expenses in excess of the amount authorised by the candidate or group of candidates if you are an election expense agent.
- ✳ Do include the election expenses incurred by the candidate and his election expense agents in the election return.

Election Donations

- ✳ Do not use election donations on activities unrelated to an election.
- ✳ Do issue a receipt for any election donation of more than \$1,000.
- ✳ Do send any election donation of more than \$1,000 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 not knowingly make any materially false or misleading statement in the return on election expenses and donations.
- ✳ Do submit a return on election expenses and donations to the Chief Electoral Officer not later than 60 days after the date of publication of the result of the election, or after the declaration of the termination of the election proceedings or the failure of the election under the relevant electoral law.

- * Do submit with your election return the invoices, receipts and declaration form as stipulated by the law.
- * Do lodge your election return with the Chief Electoral Officer even if **NO** election expense is incurred.

(5) ELECTION PETITION OR ELECTION APPEAL

- * Do not offer any advantage to induce 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. The professional organisation to which a candidate of a LegCo FC Election belongs will arrange an overseas field trip for its members this summer. The candidate plans to actively canvass for votes from these members during the trip. He has also prepared a travel kit containing a leaflet expounding on his election platforms for all the participants as gifts. Will he contravene the ECICO by so doing?

- A1.
- It is an offence under S.11 of the ECICO for a person to offer an advantage to another person for the latter to vote or not to vote for a particular candidate or particular candidates at the election, or not to vote at the election. An “advantage” as defined in the Ordinance refers to any item of valuable consideration. While a candidate is free to employ any tactics for promoting his candidature, he, however, will commit the above offence if he distributes items of monetary value to his electors with a view to inducing the latter to vote for him during his electioneering campaign.
 - The candidate must note that S.5 of the ECICO applies to all conduct concerning an election, whether the conduct is engaged in within Hong Kong or elsewhere. S.6 and S.22 of the ECICO also 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 S.11 of the ECICO, no matter when the act takes place and whether it is engaged within Hong Kong or elsewhere. Whether an offer of advantage to electors is an offence depends on the purpose and not the time and place of the offer.
 - He should also note that the expenses incurred for the procurement of the travel kit and the leaflet have to be counted towards his election expenses.

Q2. An incumbent LegCo member launched a personal website to update electors on his performance in the constituency at regular intervals after the 2000 LegCo Election. He will stand for the 2004 LegCo Election. Will the production and operation cost of this website be counted as his election expenses? If he creates another online forum for surfers to express their views on the forthcoming LegCo Election, should he count the cost incurred for this forum towards his election expenses?

- A2.
- Any incumbent LegCo member can create his own website to report to his constituents his work and services. He, however, should note that if the website is also used for promoting his candidature in the forthcoming LegCo Election, it will be regarded as his election advertisement (EA). The cost required for creating and operating the website will have to be counted as his election expenses.
 - Performance report issued by an incumbent candidate during the election period is regarded as an EA under S.34 (9) of the ECICO. As such, the above website will be an EA once the LegCo member becomes a candidate of the next LegCo Election, no matter whether the website has promoted his forthcoming election or not. The operation cost of the website incurred from this moment onwards should be counted towards his election expenses.
 - If the said online forum is created solely for providing a discussion forum for surfers to express their views on the coming LegCo Election without promoting the election of any candidate at all, the cost for creating and running the platform will not be counted as election expenses.

Q3. Several candidates on a GC list intend to introduce their election platforms and aspirations to electors through a letter and an electronic mail (email) in their joint names for enlisting support. What should they take note of in order not to breach the ECICO?

- A3.
- Under the ECICO, any form of notice including a letter or an email which serves the purpose of promoting or prejudicing the election of a candidate is an election advertisement (EA). Any person publishing a printed EA such as the above-mentioned letter is required to abide by S.34 of the ECICO. He has to include in the printed EA, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed. He should also furnish two copies of the printed EA to the appropriate Returning Officer not later than seven days after publishing it. In addition, the publisher should also take heed of the requirements for EAs as stipulated in the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (EAC (EP) (LC) Reg) and the Guidelines on Election-related Activities in respect of the LegCo Elections issued by the EAC. For example, the EAC (EP) (LC) Reg requests a candidate to deposit two copies of all EAs with the relevant Returning Officer before the EAs are published.

- Since both the letter and email are joint EAs of the candidates on a GC list, the expenses incurred for publishing them including the cost of paper, envelopes, postages and internet charges, etc. should be shared by the candidates concerned. All candidates on the same GC list, on the other hand, should have authorised each other to be their respective election expense agents before incurring any election expense for the group in accordance with S.23 (2) of the ECICO.

Q4. Candidate A of a LegCo GC Election wishes to include in his election advertisement (EA) a photograph he took with another Candidate B of a LegCo FC Election to show the latter's support to him. Is it necessary for Candidate B to share the election expenses incurred for the said EA? What should Candidate A do if the information about Candidate B appearing in his EA is subsequently found to be incorrect?

- A4.
- Whether Candidate B is required to bear the election expenses incurred for the said EA depends on different circumstances.
 - As defined in the ECICO, an EA is any publicity material published for the purpose of promoting or prejudicing the election of a candidate. If the EA in question serves to promote the elections of both candidates (A and B), it will be regarded as their joint EA, and in this connection, they will be required to share the election expenses involved.
 - If the EA simply shows Candidate B's support to Candidate A, there will be no need for Candidate B to share the expenses incurred for producing the EA. Candidate A, however, should have obtained Candidate B's prior written consent as required by S.27 of the ECICO before he publishes the EA.
 - Candidate A should take immediate action to amend any mistakes/omissions found in his EA. If the EA has been released, he should try his best to withdraw it. Candidate A should also include all the expenses for the production and subsequent correction, etc. in his election expenses.

Q5. Two candidates who are in keen competition within the same constituency intend to organise negative publicity against each other. Which provisions of the ECICO should they abide by? If an election banner used by a candidate for prejudicing the election of his opponent is defaced, should the cost for repairing or reproducing a new banner be counted as his election expenses?

- A5.
- The ECICO has not laid down any restrictions on the format of election campaign arranged by a candidate. That includes any negative publicity for a candidate to prejudice the election of another candidate. He, however, should make sure that all statements of fact published about a particular candidate must be true. Otherwise, he will breach S.26 of the ECICO which prohibits any person, including a candidate, from publishing a materially false or misleading statement of fact concerning (but not limited to) a candidate's character, qualifications or previous conduct for the purpose of promoting or prejudicing the election of a candidate.
 - Since it is obvious that the negative publicity carried out by a candidate is to promote his election and prejudice that of his opponent, the cost for the negative publicity should be counted towards the candidate's election expenses.
 - The cost incurred for repairing, recreating or reproducing the defaced banner used for prejudicing the election of his opponent should also be included in the election expenses of the candidate concerned.

Q6. 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 are election donations to be given to the candidate? Will he still be caught by the ECICO if the candidate eventually agrees to accept the "donations"?

- A6.
- Under S.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 prior written authorisation or before the authorisation has been served on the relevant Returning Officer. Even if the items purchased or services rendered 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.

Q7. Is it against the ECICO for a main contractor to request a sub-contractor of his firm to vote for a LegCo FC Election candidate he supports?

- A7.
- S.13 of the ECICO makes it an offence for a person to use or threaten to use force or duress against another person with a view to inducing or compelling the latter to vote for a particular candidate at an election.
 - Although it is difficult to define whether such a request will amount to “force” or “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 in a particular way.

Q8. Is it legal for a candidate to arrange free bus transportation to take electors to the polling station?

- A8.
- Provision of free bus transportation service falls within the definition of “advantage” as stipulated in S.2 of the ECICO. Whether the provision of such a service free of charge will contravene the ECICO depends on the circumstances under which the service is provided.
 - There should be no offence under the ECICO if the bus transportation service is provided by any person, including a candidate solely to facilitate electors to go to the polling stations for voting with no canvassing activities whether to promote or prejudice any particular candidate or candidates being carried out in the vehicle engaged for providing the bus transportation service mentioned.
 - The situation, however, will be different if canvassing activities are carried out in the vehicle for promoting any particular candidate. The display of election posters or advertisements or the presence of his agents wearing clothing or accessories making reference to a particular candidate or candidates in the vehicle, etc. obviously are canvassing activities. Expenses incurred in this connection should therefore be counted towards the election expenses of the candidate(s) concerned. The free

transportation service provided may, under the circumstances, be regarded as an advantage offered to induce electors to vote for the candidate. Hence, those who provide the bus transportation service are likely to have contravened S.11 of the ECICO.

- According to the said provision, a person who, without reasonable excuse, offers an advantage to another person as an inducement to or a reward for that person not to vote at an election, or to vote or not to vote for a particular candidate or particular candidates, will be guilty of an offence. Along the same line, a person will commit an offence if he accepts an advantage for the above purposes.

Q9. Will an elected candidate of a LegCo Election be liable to an offence if he hosts a dinner party for and sends thank-you letters to election helpers who have supported his election? Should the expenses incurred for the dinner party and letter be counted towards his election expenses? Will it make any difference if the above expenses are not borne by the candidate himself?

- A9.
- The candidate has nothing to worry about if the dinner party and the thank-you letters are arranged for the purpose of marking the inauguration of his term as a LegCo member since the purpose of hosting the said dinner party and sending the letters is not for promoting his election. In the circumstances, the expenses incurred, whether they are borne by the candidate himself or not, need not be counted towards his election expenses.
 - In the case of the dinner party, if it 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 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. Is it necessary for a complainant to produce evidence to the ICAC while lodging a complaint against any conduct in contravention of the ECICO? Will the complainant be accused of making a malicious report in the event that the report is not substantiated?

- A10.
- Any person who suspects any conduct in contravention of the ECICO is welcome to make a report to the ICAC. We will act according to the law and keep all the related information in strict confidence.
 - Any person who wishes to make a report to the ICAC can contact any of the eight ICAC Regional Offices or its 24-hour Report Centre direct. He can also lodge the complaint by calling the ICAC Report 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 makes a false report of the commission of any offence or misleads an ICAC officer by furnishing false information or making a false accusation, 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 candidate or member of the public who wishes to make enquiries on the ECICO may call the 24-hour ICAC Election Enquiry Hotline (Tel: 2920 6530), or approach any ICAC Regional Office.

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 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 24-hour ICAC Election Enquiry Hotline 2920 6530, or approach any ICAC Regional Office from 9:00 a.m. to 6:00 p.m. Monday to Friday and 9:00 a.m. to 1:00 p.m. on Saturday (except 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 Central)

G/F, 21E Nga Tsin Wai Road

Kowloon City

Tel: 2382 2922

ICAC Regional Office (Kowloon East/Sai Kung)

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

67 Kai Tin Road, Lam Tin

Tel: 2756 3300

NEW TERRITORIES

ICAC Regional Office (New Territories South West)

G/F, Foo Yue Building

271-275 Castle Peak Road, Tsuen Wan

Tel: 2493 7733

ICAC Regional Office (New Territories North West)

G/F, No. 4-5, North Wing Trend Plaza

Tuen Shun Street, Tuen Mun

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