

廉潔選舉資料冊
行政長官選舉

Clean Elections Information Booklet
Chief Executive Election

守法規 重廉潔

Abide by the Rules Support Clean Elections



目錄 Contents

前言	2
第一部份 問題剖析	3
第二部份 《選舉（舞弊及非法行為）條例》簡介	15
第三部份 選舉備忘	31
第四部份 舉報及查詢	37
Foreword	40
PART 1 Questions and Answers	41
PART 2 Gist of the Elections (Corrupt and Illegal Conduct) Ordinance	59
PART 3 Dos and Don'ts Checklist	79
PART 4 Channels for Reports and Enquiries	87

本資料冊僅供參考之用，候選人及其助選成員對個別情況如有疑問，應參照法例原文及徵詢法律顧問的意見。除此以外，候選人及助選成員亦應細閱與選舉相關的其他法例及選舉管理委員會的有關指引，以免違反有關法規。資料冊中的代名詞「他」同時包括男性及女性，並沒有任何性別歧視的含義。

Since this Information Booklet serves only as a general reference, candidates and their election helpers are advised to refer to the original legislation or seek legal advice in case of doubt. They should also study in detail the relevant legislation and the guidelines issued by the Electoral Affairs Commission to avoid contravention of the related laws and regulations. Throughout this Information Booklet, the "male" pronoun is used to cover references to both the male and female. No gender preference is intended.

前言

香港特別行政區的行政長官選舉與其他本港的公共選舉一樣，是受到《選舉（舞弊及非法行為）條例》（香港法例第554章）所監管。

《選舉（舞弊及非法行為）條例》由廉政公署負責執行，目的在於確保本港的各級公共選舉廉潔公正，並防止舞弊及非法行為的出現。為幫助候選人、其助選成員及負責選出行政長官的選舉委員會委員(以下簡稱「選舉委員」)認識有關法例，避免因誤解或一時疏忽而墮入法網，廉政公署特別印製了這份資料冊，提醒他們法例的有關規定。

本資料冊分為四部份。第一部份的「問題剖析」，乃歸納過往行政長官選舉中參選人士的提問及他們所關注的事項，透過問答形式帶出法例之精神及其條文的適用情況。第二部份的「《選舉（舞弊及非法行為）條例》簡介」，按選舉流程列出相關法例之條文。第三部份的「選舉備忘」以要點形式，提醒候選人及助選成員在競選活動中應留意的地方。而第四部份則提供向廉政公署「舉報及查詢」的途徑。

第一部份

問題剖析

問 1

一個支持某候選人的商會自費在其會訊上撰稿推介該候選人，並呼籲選民支持他，此舉會否觸犯《選舉（舞弊及非法行為）條例》？

答 1

- 法例並無限制候選人的支持者以甚麼方式宣傳候選人。不過，由於上述商會在會訊上撰稿推介個別候選人，明顯有助促使有關候選人當選，該稿件會被視作有關候選人的選舉廣告。發布該選舉廣告的費用應屬選舉開支，若有關費用由商會贊助，應視為其給予候選人的選舉捐贈，候選人必須在其選舉申報書中列明。
- 由於《選舉（舞弊及非法行為）條例》第23條規定，只有候選人和獲候選人書面授權的選舉開支代理人，才可招致選舉開支，所以上述商會的負責人必須事先取得候選人的書面授權，才可替候選人招致開支於會訊上推介他。
- 另外，發布上述會訊的商會必須遵守《選舉（舞弊及非法行為）條例》第34條的規定，於該選舉廣告印刷品以中文或英文載有印刷人的姓名或名稱及地址、印刷日期及印刷數量，並須於發布有關選舉廣告後的7天屆滿前*，向選舉主任繳存該選舉廣告的2份文本。

*《選舉程序（行政長官選舉）規例》（第541J章）第81條的規定更為嚴格，除了以電子方式展示、分發或作其他用途的選舉廣告而該選舉廣告在實際情況下不能在發送前呈交外，候選人在展示、分發或以其他方式使用任何選舉廣告之前，必須將其選舉廣告文本2份向選舉主任存案。這樣他便已同時符合《選舉（舞弊及非法行為）條例》第34(4)條的要求。候選人亦須遵守其他規管選舉廣告的法例及由選舉管理委員會所發出的相關指引。

問 2

倘若甲候選人的一名支持者發布一些針對乙候選人的負面選舉宣傳，意圖攻擊乙候選人，該名支持者會否觸犯《選舉（舞弊及非法行為）條例》？甲候選人是否需要對其支持者的行為負責？

答 2

- 《選舉（舞弊及非法行為）條例》並沒有就任何人為候選人作出的選舉宣傳形式作出限制，包括為針對其競選對手而發布的負面宣傳。惟所有涉及候選人的宣傳內容必須屬實，否則發布人士便會觸犯《選舉（舞弊及非法行為）條例》第26條。因為根據該條例，任何人包括候選人，不可為促使或阻礙某候選人當選，而發布任何與候選人有關的虛假或具誤導性達關鍵程度的事實陳述，這些陳述包括（但不限於）關於候選人的品格、資歷或以往的行為的陳述。倘若甲候選人的支持者為阻礙乙候選人當選而發布有關乙候選人的屬虛假或具誤導性的事實陳述，該名支持者便抵觸了上述法例。
- 倘若甲候選人知情並同意其支持者的上述行為，甲候選人亦同樣抵觸第26條，而發布針對乙候選人的負面宣傳所涉及的費用須計作甲候選人的選舉開支，並須在他的選舉申報書內清楚列明。
- 由於《選舉（舞弊及非法行為）條例》第23條規定，任何人士必須先獲得候選人的書面授權方可代該候選人招致選舉開支，故此上述的支持者必須事先得到甲候選人的書面授權，才可招致開支發布針對乙候選人的負面宣傳，否則他會觸犯該條例。

問 3

若候選人利用網上平台，例如網誌、社交網絡、通訊網絡等作競選宣傳，有甚麼須留意？

答 3

- 根據《選舉（舞弊及非法行為）條例》第2條，選舉開支是指候選人或代表候選人的人士，於選舉期間之前、之後或選舉期間內，為促使該候選人當選或阻礙其他候選人當選而招致的開支。因此，透過網上平台如網誌、社交網絡、通訊網絡等發放競選宣傳廣告，所牽涉的製作及營運費用包括上網費、製作網上廣告的設計費用等，必須計入候選人的選舉開支，並在其選舉申報書內清楚列明。候選人亦須遵守所有規管選舉廣告的法例及由選舉管理委員會所發出的相關指引。
- 此外，候選人須確保其透過網上平台發布關於任何候選人的宣傳內容必須屬實，否則可能會觸犯上述條例第26條。同時，若該選舉廣告收納了某人或某機構的名字、標識或圖像以示獲得有關人士或機構的支持，候選人必須依循上述條例第27條的規定，在發布該選舉廣告前取得有關人士或機構的書面同意。

問 4

某專業團體的主席給予書面同意，容許某候選人將該團體的名稱和標識納入其選舉廣告中，以示該團體對他的支持，主席這樣做會否違法？如候選人其後得悉該團體的一些成員反對支持他，他應如何處理？

答 4

- 根據《選舉（舞弊及非法行為）條例》第27(5)條，任何人未經所屬團體的管理層批准，或未經所屬團體的成員透過全體大會議決批准，而給予書面同意將該團體的名稱或標識納入選舉廣告中，則屬違法。因此，上述主席須得到所屬專業團體的批准，才可給予候選人有關的書面同意。

- 倘若該專業團體其後撤銷對上述候選人的支持，候選人必須採取合理措施，將有關的選舉廣告予以修改和把已展示或分發的廣告收回。但無論如何，製作有關選舉廣告及其後因撤回該廣告所涉及的費用，均屬選舉開支，候選人須在其選舉申報書中清楚列明。

問 5

數個商會聯合舉行晚宴招待會員，多名選舉委員亦有出席。席間，晚宴的籌委會主席邀請一名參與行政長官選舉的候選人上台發表其競選政綱，該候選人應如何應付？籌委會主席這樣做可有問題？

答 5

- 假若候選人遇到上述的情況而不拒絕邀請，亦不立即制止任何人在晚宴上作出涉及他選舉的任何宣傳，該次晚宴將被視為促使他當選的選舉聚會，一切有關的費用須計算作他的選舉開支，並須於他的選舉申報書內清楚列明。
- 如晚宴的籌委會主席未獲候選人的書面授權而代候選人招致選舉開支，該名主席便會抵觸《選舉（舞弊及非法行為）條例》第23條。
- 該名主席及候選人應該留意，《選舉（舞弊及非法行為）條例》第12條禁止任何人親自或透過他人向選民提供食物、飲料或娛樂，或支付用於提供該等食物、飲料或娛樂的全部或部份費用，以影響選民的投票決定。倘若是次晚宴是由上述主席刻意安排和贊助，意圖影響出席者投票給該候選人，該主席已觸犯了《選舉（舞弊及非法行為）條例》第12條。假若候選人是知道及同意該名主席以這目的舉辦晚宴，他亦同樣抵觸了該條例。

問 6

倘若某選舉委員，向另一些選舉委員暗示，只要他們投票予某候選人便可獲得生意，這樣會否抵觸《選舉（舞弊及非法行為）條例》？有關候選人是否也要負上法律責任？

答 6

- 根據《選舉（舞弊及非法行為）條例》第11條，任何人無合理辯解而向他人提供利益，包括饋贈、借貸、職位、受僱工作或合約等，以影響他人的投票決定，即屬違法。故此，上述選舉委員已抵觸了有關條例。
- 任何人沒有合理辯解，索取或接受利益作為在選舉中投票予某候選人的誘因或報酬，亦屬違法。
- 至於候選人是否需要負上法律責任，關鍵在於該選舉委員的行為是否在候選人知情和同意下而作出的。根據《選舉（舞弊及非法行為）條例》第11(4)條，如果有關選舉委員是獲候選人授權而提供利益的，則候選人亦屬違法。

問 7

如某總承建商要求一名身為選舉委員的分判商投票予他所支持的候選人，這樣會否違反《選舉（舞弊及非法行為）條例》？

答 7

- 《選舉（舞弊及非法行為）條例》第13條訂明，任何人向他人施用或威脅施用武力或脅迫手段，以誘使他人投票或不投票，或投票或不投票予某候選人，即屬違法。
- 要界定該名總承建商的要求是否含脅迫成分，需視乎個別事件的情況而定。不過，任何具影響力的人士應該謹慎自己的言行，以免合法的拉票行為被他人視為以脅迫的手段為某候選人爭取選票。

問 8

某選舉委員可否為其界別分組的成員安排聚會，藉此諮詢後者對他應支持哪位行政長官選舉候選人的意見？

答 8

- 《選舉（舞弊及非法行為）條例》並沒有阻止任何選舉委員就其所屬的界別分組對行政長官候選人的支持作出諮詢。不過，該選舉委員必須留意，若他所安排的聚會涉及促使或阻礙某候選人當選，該聚會將屬選舉聚會。若有關聚會涉及任何開支，該選舉委員必須事先得到有關候選人的書面授權才可為候選人招致選舉開支，否則會觸犯《選舉（舞弊及非法行為）條例》第23條。

問 9

某教育機構計劃舉辦選舉論壇，邀請所有候選人出席，讓他們介紹自己的政綱。籌辦選舉論壇的有關支出應否計算為選舉開支？

答 9

- 根據《選舉（舞弊及非法行為）條例》，任何為促使某候選人當選或阻礙其他候選人當選而招致的開支，均屬選舉開支。若上述教育機構舉行的選舉論壇，邀請所有候選人出席以介紹其政綱，而非為促使或阻礙某候選人當選而籌辦的，有關支出便無需計算作任何候選人的選舉開支。
- 任何組織如欲舉辦選舉論壇，應遵守由選舉管理委員會所發出的相關指引。

問 10

候選人可否將未有使用的選舉捐贈用於償付選舉開支以外的用途？他應否在選舉後將這些剩餘的選舉捐贈退回給捐贈者？

答 10

- 根據《選舉（舞弊及非法行為）條例》第18條，候選人或其他人如將選舉捐贈用於償付選舉開支以外，或用於促使候選人當選或阻礙其他候選人當選以外之用途，即屬違法。因此，候選人不可把這些多出的選舉捐贈用於其他用途。
- 另外，《選舉（舞弊及非法行為）條例》第19條規定，候選人必須將任何價值\$1,000以上的匿名捐贈、沒有用於償付選舉開支的捐贈、及超過候選人可使用的選舉開支限額的捐贈，於提交選舉申報書前，轉贈予候選人所選擇屬公共性質的慈善機構或慈善信託。候選人無需把這些款項退回給捐贈者。

問 11

為慶祝候選人獲選而舉行慶功宴所招致的費用，應否計算為該候選人的選舉開支？

答 11

- 如果該候選人在當選後設慶功宴，其目的純粹是為慶祝他成功當選，而與促使他當選完全無關；在這情況下，舉辦慶功宴的費用並不屬於選舉開支。
- 但是，如果設宴的目的是為了履行候選人對參加者曾許下的承諾，例如候選人曾答應於選舉後將設宴酬謝他們為其競選而奔波，該宴會便與促使他當選有關，所涉及的費用亦因此屬選舉開支，須在候選人的選舉申報書內清楚列明。

- 若候選人設宴的另一目的是為了酬謝選民曾投他一票，則授受雙方皆違反了《選舉（舞弊及非法行為）條例》第12條。

問 12

候選人於提交選舉申報書時應留意甚麼？如某甲曾公開宣布有意競逐行政長官職位，但其後又宣布放棄參選；而某乙則於公開宣布參選後，最終因得不到足夠的提名而未能參選。他們是否仍需提交選舉申報書？

答 12

- 候選人必須按《選舉（舞弊及非法行為）條例》第37條在選舉結果公布的日期後的30天屆滿之前、或根據有關的選舉法宣布選舉程序終止的日期後的30天屆滿之前、或根據有關的選舉法宣布選舉未能完成的日期後的30天屆滿之前，向總選舉事務主任提交選舉申報書，列明其所有的選舉開支及選舉捐贈，並附有每項\$100或以上支出的發票及收據，每項價值\$1,000以上的選舉捐贈的收據副本，和由候選人按《選舉（舞弊及非法行為）條例》第19條所處置的選舉捐贈的接受機構所發出的收據副本等文件。
- 根據《選舉（舞弊及非法行為）條例》第24條的規定，每位候選人的選舉開支總額均不能超逾由行政長官會同行政會議所訂下的選舉開支上限。現時行政長官選舉的開支上限為\$13,000,000*。
- 根據《選舉（舞弊及非法行為）條例》第20條，若候選人在按第37條提交的選舉申報書或按第37A條提交的經修訂選舉申報書的副本內，作出明知或理應知道屬虛假或具誤導性達關鍵程度的陳述，即屬違法。

* 根據《選舉開支最高限額(行政長官選舉)規例》（第554A章）

- 根據《選舉（舞弊及非法行為）條例》第2條，「候選人」包括任何在某項選舉中接受提名為候選人的人，及在選舉提名期結束前任何時間曾公開宣布有意參選的人。根據這定義，即使甲最終決定不參選，而乙未能取得足夠提名，他們均被視作行政長官選舉的「候選人」，必須於法例所規定的限期內向總選舉事務主任提交其選舉申報書。

問 13

某候選人或選舉助理在選舉過程中因為一時疏忽，觸犯了《選舉（舞弊及非法行為）條例》，可以怎樣作出補救？

答 13

- 候選人及其助選成員應留意及遵守有關法例及選舉管理委員會訂立的規例，並避免觸犯任何法規。
- 由於《選舉（舞弊及非法行為）條例》中所指的舞弊行為，屬嚴重的違法行為，觸犯後並沒有任何補救方法。
- 若候選人或任何人因一時疏忽，在選舉過程中觸犯了法例所指的非法行為，他可根據《選舉（舞弊及非法行為）條例》第31條向法院申請，由其作出命令寬免他需要承受的刑罰和喪失資格的懲罰。惟他必須令法庭信納有關的非法行為是由於粗心大意、意外地計算錯誤或任何合理因由，而非因申請人不真誠所致。
- 任何人發布的選舉廣告印刷品，若漏載了法定的印刷資料，或未有在選舉廣告發布後的7天屆滿前向選舉主任提交廣告文本2份，他可根據《選舉（舞弊及非法行為）條例》第35條向法院申請，寬免其因為沒有遵守上述法例的第34條而應受的刑罰。不過，申請人必須令法庭信納他未有遵守法例乃由於粗心大意、意外地計算錯誤或任何合理因由，而非因申請人不真誠所致。

- 候選人若未能於法定限期內提交選舉申報書，他可根據《選舉（舞弊及非法行為）條例》第40(1)條向法庭申請，由其作出命令容許他在法庭指明的較長限期內，向總選舉事務主任提交選舉申報書，但他必須令法庭信納此情況是由於申請人患病、不在香港；或他的代理人／僱員去世、患病、不在香港、行為不當；或某人的粗心大意、意外地計算錯誤；或任何合理因由，而非因申請人不真誠所致。
- 《選舉（舞弊及非法行為）條例》第37A條訂明，若候選人提交的選舉申報書內出現錯誤或虛假陳述(包括附於申報書的任何文件內的錯誤或虛假陳述；或沒有付交上述法例第37(2)(b)條規定須就該申報書付交的任何文件)，而該等錯誤或虛假陳述的累計總價值，不超過有關選舉訂明的限額（行政長官選舉為\$5,000）；及在計算該等錯誤或虛假陳述的累計總價值後，候選人的選舉開支總額亦不超過有關選舉訂明的最高限額（行政長官選舉為\$13,000,000*），候選人可在接獲總選舉事務主任發出的通知當日後的30天內，向總選舉事務主任提交選舉申報書的一份副本，並標示更正該項錯誤或虛假陳述所需作出的修正。如該項錯誤或虛假陳述的性質是該申報書沒有列出某項選舉開支或選舉捐贈，該副本須按上述法例第37(2)(b)條附有選舉開支的發票及收據、選舉捐贈的收據副本及書面解釋(如適用)。經修訂選舉申報書的副本亦必須附有一份採用指明表格所作的聲明書，證明該選舉申報書副本的內容屬實。
- 候選人亦可根據《選舉（舞弊及非法行為）條例》第40(3)條向法庭申請，由其作出命令使候選人可更正選舉申報書或附於該申報書的文件內的錯誤。惟他必須令法庭信納作出該錯誤是由於他的代理人或僱員行為不當；或某人粗心大意、意外地計算錯誤；或任何合理因由，而並非因申請人不真誠所致。
- 若候選人未能按規定提交發票、收據或收據副本等，他亦可根據《選舉（舞弊及非法行為）條例》第40(5)條向法庭申請，由其作出命令豁免候選人提交該些附件。惟他必須令法庭信納沒有遵從有關規定是由於他的代理人或僱員行為不當；或某人粗心大意、意外地遺失或銷毀該些附件；或任何合理因由，而並非因申請人不真誠所致。

* 根據《選舉開支最高限額(行政長官選舉)規例》（第554A章）

問 14

向廉政公署舉報違反《選舉（舞弊及非法行為）條例》的行為，是否一定要有確實證據？若沒有確實的證據而向廉政公署舉報又會否被指為誣告？

答 14

- 任何人如懷疑選舉中出現違反《選舉（舞弊及非法行為）條例》的行為，應立即向廉政公署作出舉報。廉政公署必定會就每一宗有關違反該條法例的可追查投訴展開調查，以釐清事實的真相。
- 市民可親身到廉政公署的七間分區辦事處或24小時舉報中心舉報，亦可致電廉政公署的24小時舉報貪污熱線（電話：25 266 366），或寫信至香港郵箱1000號作出舉報。
- 廉政公署歡迎市民就有關貪污的懷疑作出舉報。但若有人明知而向廉政公署作出與罪行有關的虛假報告；或藉提供虛假資料或作出虛假陳述或指控，誤導廉政公署人員，則會觸犯《廉政公署條例》（第204章）第13B條，最高刑罰可被判處監禁1年及罰款\$20,000。
- 任何人士對《選舉（舞弊及非法行為）條例》如有查詢，歡迎致電廉政公署選舉查詢熱線（電話：2920 7878），或聯絡廉政公署的各分區辦事處（廉政公署分區辦事處之地址及電話請參閱本資料冊第四部份）。

第二部份

《選舉（舞弊及非法行為）條例》簡介

《選舉（舞弊及非法行為）條例》（香港法例第554章）適用於行政長官選舉及其他在該法例中所列明的選舉。一切與選舉有關的行為，無論是在選舉期間之前、之後或選舉期間內在本港境內或其他地方作出，均受此條例監管。

以下的簡介扼要地介紹在進行競選活動時必須認識的條文。

（一）候選人的提名

與參選或不參選有關的賄賂行為（第2、7條）

- ◆ 任何人舞弊地提供利益予他人，藉以誘使或酬謝該人士：
 - (1) 參選或不參選、退出競選（如該人士已獲提名為候選人）或不盡最大努力促使其本人當選（如該人士已獲提名為候選人）；或
 - (2) 令或試圖令第三者參選或不參選、退出競選（如該第三者已獲提名為候選人）或不盡最大努力促使其本人當選（如該第三者已獲提名為候選人），即屬違法。

- ◆ 任何人無論以明示或暗示的方式授權他人作出上述行為，亦屬違法。

- ◆ 任何人舞弊地索取或接受利益，作為作出上述（1）或（2）的行為的誘因或報酬，亦屬違法。

「候選人」是指在某項選舉中接受提名為候選人的人；亦指在某項選舉的提名期結束前的任何時間曾公開宣布有意參選的人。

「利益」包括（但不限於）任何有值代價、饋贈、借貸、職位、受僱工作、合約、優待或服務（義務服務及提供娛樂除外）。「利益」並不包括已在呈交給總選舉事務主任的選舉申報書中所申報的各項選舉捐贈。

「義務服務」是指任何自然人為了促使某候選人當選或阻礙其他候選人當選，而在其私人時間自願親自免費向該候選人提供或就該候選人而提供的任何服務。

藉施用或威脅施用武力或脅迫手段影響他人參選或不參選（第8條）

- ◆ 任何人對他人施用或威脅施用武力或脅迫手段以誘使該人士：
 - (1) 參選或不參選、或退出競選（如該人士已獲提名為候選人）；或
 - (2) 令第三者參選或不參選、或退出競選（如該第三者已獲提名為候選人），即屬違法。
- ◆ 任何人因他人或第三者參選或不參選、或退出競選（如該人士或第三者已獲提名為候選人），而對該人士或該第三者施用或威脅施用武力或脅迫手段，即屬違法。
- ◆ 任何人無論以明示或暗示的方式授權他人作出上述行為，亦屬違法。

誘使他人參選或不參選的欺騙行為（第9條）

- ◆ 任何人以欺騙手段誘使他人：
 - (1) 參選或不參選、或退出競選（如該人士已獲提名為候選人）；或
 - (2) 令第三者參選或不參選、或退出競選（如該第三者已獲提名為候選人），即屬違法。
- ◆ 任何人無論以明示或暗示的方式授權他人作出上述行為，亦屬違法。

污損或銷毀提名書（第10條）

- ◆ 任何人污損或銷毀已填妥或局部填妥的提名書以阻止或妨礙他人參選，即屬違法。

（二）競選活動

發布有關候選人的虛假或具誤導性陳述（第26條）

- ◆ 候選人或任何人為促使或阻礙某候選人當選，而發布關於該候選人的虛假或具誤導性達關鍵程度的事實陳述，即屬違法。

有關候選人的陳述包括（但不限於）關於他的品格、資歷或以往的行為的陳述。

選舉廣告內假稱獲支持（第2、27條）

- ◆ 候選人或任何人若發布或授權發布載有某人或某組織的姓名、名稱或標識；或與某人或某組織有關連或甚為相似的姓名、名稱或標識；或某人的圖像的選舉廣告，而意味著或可能導致選民相信某候選人已獲得該人士或該組織的支持，必須在發布或授權發布該選舉廣告前獲得支持者或給予支持的組織的書面同意，否則即屬違法。
- ◆ 候選人或任何人若未獲得支持者或給予支持的組織的書面同意而發布或授權發布上述載有該人士或該組織的姓名、名稱或標識或該人士的圖像的選舉廣告，即使有關廣告上載有一項陳述，表示這並非意味著該人士或該組織支持任何候選人，仍屬違法。
- ◆ 任何人若未經有關組織的管理層批准，或未經有關組織的成員在全體大會決議批准，而看來給予書面同意將有關組織的名稱或標識納入選舉廣告中，即屬違法。
- ◆ 任何人為促使或阻礙某候選人當選，而向該候選人提供他明知或理應知道屬虛假或具誤導性達關鍵程度的資料，即屬違法。

「支持」包括對該候選人的政策或活動的支持。

「選舉廣告」指為促使或阻礙某候選人在選舉中當選而發布的：

- (1) 公開展示的通知；或
- (2) 由專人交付或用電子傳送的通知；或
- (3) 以無線電或電視廣播，或以錄像片或電影片作出的公告；或
- (4) 任何其他形式的發布。

發布不符合規定的選舉廣告（第2、33、34條）

- ◆ 任何人若沒有在所發布的選舉廣告印刷品上以中文或英文顯示印刷人的姓名或名稱及地址、印刷日期及印刷數量，即屬違法。在註冊本地報刊中刊登的選舉廣告則不受此限。
- ◆ 發布人或獲其授權人士如在發布選舉廣告印刷品後的七天屆滿前，已向選舉主任提交一份法定聲明，述明上述法定資料，則不屬違法。
- ◆ 任何人必須在發布選舉廣告印刷品後的7天屆滿前*，提交2份文本予選舉主任。

* 《選舉程序（行政長官選舉）規例》（第541J章）第81條的規定更為嚴格，除了以電子方式展示、分發或作其他用途的選舉廣告而該選舉廣告在實際情況下不能在發送前呈交外，候選人在展示、分發或以其他方式使用任何選舉廣告之前，必須將其選舉廣告文本2份向選舉主任存案。這樣他便已同時符合《選舉（舞弊及非法行為）條例》第34（4）條的要求。候選人亦須遵守其他規管選舉廣告的法例及由選舉管理委員會所發出的相關指引。

- ◆ 在任的候選人在選舉期間（有關選舉的提名日起至該項選舉最後一個投票日止）所發布的工作表現報告，均屬選舉廣告。

「在任的候選人」指正尋求連任同一職位或再度當選晉身同一團體，或正尋求當選《選舉（舞弊及非法行為）條例》適用的另一職位或晉身上述條例適用的另一團體的現任立法會議員、區議會議員、鄉議局議員、鄉事委員會主席、副主席或執行委員會委員或村代表等人士。

(三) 投票

賄賂選民或其他人（第11條）

- ◆ 任何人無合理辯解而提供利益予他人，以誘使或酬謝該人士或該人士令或試圖令第三者：
 - (1) 在選舉中不投票；或
 - (2) 在選舉中投票或不投票予某候選人，即屬違法。
- ◆ 任何人無論以明示或暗示的方式授權他人作出上述行為，亦屬違法。
- ◆ 任何人無合理辯解而索取或接受利益，作為作出或令或試圖令第三者作出上述（1）或（2）的行為的誘因或報酬，亦屬違法。

向選民或其他人提供茶點或娛樂（第12條）

- ◆ 任何人向他人提供食物、飲料或娛樂，或償付用於提供該等食物、飲料或娛樂的全部或部分費用，以誘使或酬謝他人或第三者：
 - (1) 在選舉中不投票；或
 - (2) 在選舉中投票或不投票予某候選人，即屬違法。
- ◆ 任何人索取、接受或享用食物、飲料或娛樂，作為作出上述（1）或（2）的行為的誘因或報酬，亦屬違法。
- ◆ 任何人無論以明示或暗示的方式授權他人作出上述行為，亦屬違法。
- ◆ 任何人不會僅因他在選舉聚會中提供不含酒精的飲料，而觸犯法例。

「選舉聚會」指任何為促使或阻礙某候選人當選而舉行的聚會。

對選民施用或威脅施用武力或脅迫手段（第13條）

- ◆ 任何人向他人施用或威脅施用武力或脅迫手段，以誘使該人士或該人士令第三者在選舉中投票或不投票；或在選舉中投票或不投票予某候選人，即屬違法。
- ◆ 任何人若因為他人在選舉中投票或不投票；或在選舉中投票或不投票予某候選人，而向該人士施用或威脅施用武力或脅迫手段，即屬違法。
- ◆ 任何人無論以明示或暗示的方式授權他人作出上述行為，亦屬違法。

對選民作出的欺騙行為（第14條）

- ◆ 任何人以欺騙手段，誘使他人或令該人誘使第三者在選舉中不投票；或投票或不投票予某候選人，即屬違法。
- ◆ 任何人以欺騙手段，妨礙或阻止他人或令該人妨礙或阻止第三者在選舉中投票，即屬違法。
- ◆ 任何人無論以明示或暗示的方式授權他人作出上述行為，亦屬違法。

在選舉中冒充他人（第15條）

- ◆ 除非選舉法明文准許，任何人以他人的姓名申領選票，或在選舉中投票後再用本身的姓名在同一選舉中申領選票，即屬違法。

有關投票的其他違法行為（第16條）

- ◆ 任何人作出以下行為，即屬違法：
 - (1) 明知本身無權在選舉中投票，卻在該選舉中投票；或
 - (2) 明知或罔顧後果地向選舉事務主任提供屬虛假或具誤導性達關鍵程度的資料，或明知而不向選舉事務主任提供關鍵資料，而其後在選舉中投票；或
 - (3) 在選舉的同一輪投票中投票多於一次，或在無競逐選舉的投票中投票多於一次*。

- ◆ 任何人作出以下行為，即屬違法：
 - (1) 明知另一人無權在選舉中投票，卻促請或誘使該另一人在該選舉中投票；或
 - (2) 明知另一人已向選舉事務主任提供屬虛假或具誤導性達關鍵程度的資料，或不向選舉事務主任提供關鍵資料，卻促請或誘使該另一人在選舉中投票。

* 有關要求乃參考《行政長官選舉條例》(第569章)第26A及27條有關的投票制度

銷毀或污損選票（第17條）

- ◆ 任何人無合法權限而向他人提供選票，或銷毀或干擾正在選舉中使用的選票或投票箱或曾在選舉中使用的選票，即屬違法。

- ◆ 任何人意圖欺騙而將他獲合法授權放進投票箱的選票以外的其他紙張放進投票箱，或將任何選票帶離投票站，即屬違法。

(四) 選舉開支及選舉捐贈

選舉開支（第2、24條）

「選舉開支」是指候選人或代表候選人的人士，於選舉期間之前、之後或選舉期間內：

- (1) 為促使該候選人當選；或
- (2) 為阻礙其他候選人當選，

而招致或將招致的開支，並包括以貨品及服務形式而用於上述用途的選舉捐贈的價值。

- ◆ 候選人的選舉開支總額（無論由他本人或其他人代為招致），若超逾由行政長官會同行政會議所訂下的選舉開支上限，即屬違法。現時的行政長官選舉開支上限為\$13,000,000*。

* 根據《選舉開支最高限額(行政長官選舉)規例》（第554A章）

選舉開支的招致（第2、23條）

- ◆ 除候選人或其選舉開支代理人外，其他人若招致任何選舉開支，即屬違法。

「選舉開支代理人」是指獲候選人以書面授權代該候選人在選舉中招致選舉開支的人。選舉開支代理人獲授權招致的開支限額，須列明在授權書內，而此授權書的文本必須送達選舉主任方為有效。

- ◆ 候選人若沒有將他或他的選舉開支代理人所招致的選舉開支列入選舉申報書內，即屬違法。
- ◆ 選舉開支代理人所招致的選舉開支若超過其授權書所指明的限額，該選舉開支代理人已抵觸法例。

選舉捐贈的使用及處置（第2、18、19條）

「選舉捐贈」是指：

- (1) 為償付或分擔償付某候選人的選舉開支，而給予該候選人的任何金錢；或
- (2) 為促使某候選人當選或阻礙其他候選人當選，而給予該候選人的任何貨品（包括由於提供義務服務而附帶給予的貨品）或服務（不包括義務服務）。

- ◆ 候選人或其他人士若將選舉捐贈用於：
 - (1) 償付或分擔償付該候選人的選舉開支以外的用途；或
 - (2) 促使該候選人當選或阻礙其他候選人當選以外的用途，即屬違法。
- ◆ 候選人若收取某項價值\$1,000以上的選舉捐贈，必須向捐贈者發出收據。
- ◆ 候選人不得將任何價值\$1,000以上的匿名選舉捐贈用於償付或分擔償付該候選人的選舉開支，或用於促使該候選人當選或阻礙其他候選人當選。
- ◆ 候選人必須將任何價值\$1,000以上的匿名選舉捐贈、剩餘的選舉捐贈及因超出選舉開支上限而未有使用的選舉捐贈，在提交選舉申報書前，給予候選人所選擇屬公共性質的慈善機構或慈善信託，否則即屬違法。

選舉申報書（第20、36、37、37A、38條）

- ◆ 候選人如在根據第37條提交的選舉申報書或根據第37A條提交的經修訂選舉申報書的副本內，作出他明知或理應知道屬虛假或具誤導性達關鍵程度的陳述，即屬違法。

- ◆ 候選人如未能於選舉結果公布的日期後的30天屆滿之前，或根據有關的選舉法宣布選舉程序終止的日期後的30天屆滿之前、或根據有關的選舉法宣布選舉未能完成的日期後的30天屆滿之前，將選舉開支及接受選舉捐贈的申報書呈交總選舉事務主任，即屬違法。

- ◆ 申報書必須附有：
 - (1) 列明每項支出的詳情的發票及收據（\$100以下的支出除外）；及
 - (2) 簽發給每一位捐贈者並列明該捐贈者及該項捐贈詳情的收據的副本（價值\$1,000或以下的捐贈除外）；及
 - (3) 候選人已按照法例，把價值\$1,000以上的匿名選舉捐贈、剩餘的選舉捐贈及因超出選舉開支上限而未有使用的選舉捐贈給予候選人所選擇屬公共性質的慈善機構或慈善信託，由該等機構或信託所發出的收據的副本；及
 - (4) 一份書面解釋（如適用），列明沒有按照上述（3）處理選舉捐贈的理由；及
 - (5) 採用由總選舉事務主任提供或指明表格所作的聲明書，證明申報書內容屬實。

- ◆ 《選舉（舞弊及非法行為）條例》第37A條亦訂明，若候選人提交的選舉申報書內出現錯誤或虛假陳述(包括附於申報書的任何文件內的錯誤或虛假陳述；或沒有付交上述法例第37(2)(b)條規定須就該申報書付交的任何文件)，而該等錯誤或虛假陳述的累計總價值，不超過有關選舉訂明的限額（行政長官選舉為\$5,000）；及在計算該等錯誤或虛假陳述的累計總價值後，候選人的選舉開支總額亦不超過有關選舉訂明的最高限額（行政長官選舉為\$13,000,000*），候選人可在接獲總選舉事務主任發出的通知當日後的30天內，向總選舉事務主任提交選舉申報書的一份副本，並標示更正該項錯誤或虛假陳述所需作出的修正。如該項錯誤或虛假陳述的性質是該申報書沒有列出某項選舉開支或選舉捐贈，該副本須按上述法例第37(2)(b)條附有選舉開支的發票及收據、選舉捐贈的收據副本及書面解釋（如適用）。經修訂選舉申報書的副本亦必須附有一份採用指明表格所作的聲明書，證明該選舉申報書副本的內容屬實。

* 根據《選舉開支最高限額(行政長官選舉)規例》（第554A章）

(五) 選舉呈請或選舉上訴

受賄撤回選舉呈請或選舉上訴（第21條）

- ◆ 任何人向他人提供利益：
 - (1) 以誘使該人士或使該人士令第三者撤回選舉呈請或選舉上訴；或
 - (2) 以酬謝該人士已撤回或已同意撤回，或已令第三者撤回選舉呈請或選舉上訴，即屬違法。

- ◆ 任何人：
 - (1) 撤回選舉呈請或選舉上訴以換取利益；或
 - (2) 索取或接受利益，作為撤回選舉呈請或選舉上訴的誘因；或
 - (3) 索取或接受利益，作為已經撤回或已經令第三者撤回選舉呈請或選舉上訴的報酬，即屬違法。

(六) 雜項及有關條文

候選人知情和同意其他人作出舞弊或非法行為（第29條）

- ◆ 如任何舞弊或非法行為是在候選人知情和同意的情況下作出，該候選人即被視為親自作出該等違法行為。

高級人員可被裁定犯法團所犯的罪行（第42條）

- ◆ 任何法團如被裁定作出舞弊或非法行為的罪行，在該等行為作出時屬該法團的任何董事、執行幹事或涉及法團管理的人士，可被裁定犯了作出該等行為的罪行，除非該人士能證明：
 - (1) 該等行為是在他不知情的情況下作出的；或
 - (2) 該等行為雖然是在他知情的情況下作出，但他已盡力阻止該等行為的作出。

協助、教唆他人犯法等罪行（《選舉（舞弊及非法行為）條例》第43條及《刑事訴訟程序條例》（第221章）第101C條）

- ◆ 任何人煽惑、協助、教唆、慫使或促致他人作出舞弊或非法行為；或企圖作出或與他人串謀作出舞弊或非法行為，即屬違法。

（七）申請寬免

對某些非法行為的寬免（第31條）

- ◆ 任何候選人、候選人的代理人或任何其他人士如因曾作出或沒有作出某些行為而觸犯了本條例中所指的「非法行為」，可向原訟法庭申請，由其作出命令寬免申請人承受就選舉法而施加的刑罰及喪失資格的懲罰。
- ◆ 申請人必須令法庭信納該作為或不作為是因粗心大意或意外地計算錯誤或任何合理因由所致，而並非因為申請人不真誠所致。

對有關選舉廣告的違法行為的寬免（第35條）

- ◆ 任何人若未有根據第34條在選舉廣告印刷品上印載法定的資料，或未有在限期前提交選舉廣告印刷品2份文本予選舉主任，可向原訟法庭申請，由其作出命令：
 - (1) 容許該選舉廣告印刷品的發布免受有關條文所定的規限；及
 - (2) 寬免申請人原本要承受第34條施加的刑罰。

- ◆ 申請人必須令法庭信納該項沒有遵從條文的事件是因粗心大意或意外地計算錯誤或任何合理因由所致，而並非因為申請人不真誠所致。

對有關選舉申報書的違法行為的寬免（第40條）

- ◆ 候選人若未能按照第37條的規定依時提交選舉申報書，或未能按同一條文的規定提交有關發票、收據或收據副本，或在其提交的選舉申報書或附於該申報書的任何文件內作出錯誤或虛假陳述，可向原訟法庭申請，由其作出命令准許候選人在法庭指明的較長限期內向總選舉事務主任提交選舉申報書、豁免候選人提交有關發票、收據或收據副本、或容許候選人就申報書、或附於該申報書的任何文件內的錯誤或虛假陳述作出更正。

- ◆ 申請人必須令法庭信納他未有依從法例規定行事是因下列情況*而非因為申請人不真誠所致：
 - (1) 申請人患病或不在香港；或
 - (2) 申請人的代理人或僱員去世、患病、不在香港；或
 - (3) 申請人的代理人或僱員行為不當；或
 - (4) 申請人或其他人粗心大意或意外地計算錯誤；或
 - (5) 申請人或其他人粗心大意或意外地遺失或銷毀有關發票、收據或收據副本；或
 - (6) 任何合理因由。

* 以上所述的第(1)、(2)、(3)、(4)及(6)點是原訟法庭就候選人申請延期提交選舉申報書的考慮因素；第(3)、(4)及(6)點則是原訟法庭就候選人申請更改在選舉申報書或附於該申報書的任何文件內的錯誤或虛假陳述的考慮因素；而第(3)、(5)及(6)點則適用於原訟法庭就候選人申請豁免交付發票、收據或收據副本的考慮因素。候選人須就其有關申請，考慮上述情況是否對其申請適用。

(八) 刑罰

舞弊行為（第6條）

- ◆ 《選舉（舞弊及非法行為）條例》列明，任何人在選舉中作出舞弊行為，即屬違法：
 - (1) 如循簡易程序審訊，一經定罪，可被判罰款\$200,000及監禁三年；或
 - (2) 如循公訴程序審訊，一經定罪，可被判罰款\$500,000及監禁七年。
- ◆ 任何人如被法庭裁定作出了舞弊行為，須按照法庭指令，繳付其本人或其代理人就所犯罪行所收取的任何有值代價的款額或價值。

非法行為（第22條）

- ◆ 《選舉（舞弊及非法行為）條例》列明，任何人在選舉中作出非法行為，即屬違法：
 - (1) 如循簡易程序審訊，一經定罪，可被判第5級罰款及監禁一年；或
 - (2) 如循公訴程序審訊，一經定罪，可被判罰款\$200,000及監禁三年。

《選舉（舞弊及非法行為）條例》中的第 7、8、9、10、11、12、13、14、15、16、17、18、19、20 及 21 條的行為為**舞弊行為**；第 23、24、25、26 及 27 條的行為為**非法行為**。

- ◆ 任何人違反《選舉（舞弊及非法行為）條例》第34及37條的規定，其罰則與作出非法行為相同。

喪失資格的懲罰

- ◆ 任何人被裁定觸犯《選舉（舞弊及非法行為）條例》中的舞弊或非法行為，將會喪失資格而不得在：
 - (1) 由被裁定有罪起計5年內，獲提名為行政長官、立法會、區議會或村代表選舉的候選人；或當選為行政長官、立法會議員、區議會議員或村代表；及
 - (2) 由被裁定有罪起計3年內，獲提名為選舉委員會界別分組選舉的候選人；或獲提名或當選為選舉委員會委員。

即時監禁的刑罰

- ◆ 根據上訴法庭發出的判刑指引，凡觸犯與選舉有關的嚴重罪行者，應被判處即時監禁，以維護香港的選舉廉潔公平。

第三部份

選舉備忘

候選人、其選舉代理人及助選成員在行政長官選舉中應留意下列事項：

(一) 候選人的提名

賄賂

- ✘ 不得作出下列舞弊行為，也不得以明示或暗示方式授權另一人作出下列行為：
 - (1) 提供利益以誘使或酬謝任何人參選或不參選。
 - (2) 提供利益以誘使或酬謝任何已獲提名的候選人撤回接受提名，或不盡最大努力促使其本人當選。
- ✘ 不得索取或接受任何利益，以作為任何人參選或不參選的誘因或報酬。
- ✘ 不得索取或接受任何利益，以作為任何人在獲提名為候選人後撤回接受提名，或不盡最大努力促使其本人當選的誘因或報酬。

施用武力或威脅施用武力或脅迫手段

- ✘ 不得施用或威脅施用武力或脅迫手段令任何人參選或不參選，或退出競選。
- ✘ 不得以明示或暗示方式授權另一人作出上述行為。

(二) 競選活動

有關候選人的陳述

- ✗ 不得發表包括（但不限於）候選人的品格、資歷或以往的行為的虛假或具誤導性的事實陳述。

選舉廣告

- ✗ 不得在未獲得對方書面同意前，在選舉廣告中使用某人或某組織的姓名、名稱或標識，或某人的圖像，藉以顯示已獲對方支持。
- ✓ 必須在所有選舉廣告印刷品上列明印刷人的姓名或名稱及地址、印刷日期及數量（刊登在註冊本地報刊上的選舉廣告則不受此限）。
- ✓ 必須緊記任何在任的候選人於選舉期間所發布的工作表現報告，均屬選舉廣告。
- ✓ 必須在發布選舉廣告印刷品後的7天屆滿前*，向選舉主任提交2份文本。

*《選舉程序（行政長官選舉）規例》（第541J章）第81條的規定更為嚴格，除了以電子方式展示、分發或作其他用途的選舉廣告而該選舉廣告在實際情況下不能在發送前呈交外，候選人在展示、分發或以其他方式使用任何選舉廣告之前，必須將其選舉廣告文本2份向選舉主任存案。這樣他便已同時符合《選舉（舞弊及非法行為）條例》第34(4)條的要求。候選人亦須遵守其他規管選舉廣告的法例及由選舉管理委員會所發出的相關指引。

(三) 投票

賄賂

- ✘ 不得作出下列舞弊行為，也不得以明示或暗示方式授權另一人作出下列行為：
 - (1) 提供利益以誘使或酬謝任何人在選舉中不投票。
 - (2) 提供利益以誘使或酬謝任何人在選舉中投票或不投票予某候選人。

提供茶點或娛樂

- ✘ 不得作出下列舞弊行為，也不得以明示或暗示方式授權另一人作出下列行為：
 - (1) 提供食物、飲料或娛樂，或償付用於提供該等食物、飲料或娛樂的全部或部份費用，以誘使或酬謝任何人在選舉中不投票。
 - (2) 提供食物、飲料或娛樂，或償付用於提供該等食物、飲料或娛樂的全部或部份費用，以誘使或酬謝任何人在選舉中投票或不投票予某候選人。

施用或威脅施用武力或脅迫手段

- ✘ 不得向任何人、或以明示或暗示方式授權另一人向任何人施用或威脅施用武力或脅迫手段，以影響他人的投票決定。

欺騙行為

- ✘ 不得作出下列舞弊行為，也不得以明示或暗示方式授權另一人作出下列行為：
 - (1) 以欺騙手段誘使任何人在選舉中不投票。
 - (2) 以欺騙手段誘使任何人在選舉中投票或不投票予某候選人。

有關投票的其他違法行為

- ✗ 不得促請或誘使沒有投票資格的人士在選舉中投票。
- ✗ 不得無合法權限而銷毀、污損、取去或以其他方式干擾正在或曾在選舉中使用的選票。

(四) 選舉開支及選舉捐贈

選舉開支

- ✗ 不得招致超過有關行政長官選舉的法定最高選舉開支(\$13,000,000)。
- ✗ 除候選人或已獲候選人授權的選舉開支代理人外，任何人不得招致任何選舉開支。
- ✗ 選舉開支代理人不得招致超過其獲授權的選舉開支限額。
- ✓ 必須將所有由候選人及其選舉開支代理人招致的選舉開支，清楚列明於選舉申報書內。

選舉捐贈

- ✗ 不得將選舉捐贈用以償付與選舉活動無關的開支。
- ✓ 必須就任何價值\$1,000以上的選舉捐贈發出收據。
- ✓ 必須將任何價值\$1,000以上的匿名選舉捐贈、剩餘的選舉捐贈及因超出選舉開支上限而未有使用的選舉捐贈，於提交選舉申報書之前，給予候選人所選擇屬公共性質的慈善機構或慈善信託。

選舉申報書

- ✓ 必須於選舉結果公布的日期後的30天屆滿之前、或根據有關的選舉法宣布選舉程序終止的日期後的30天屆滿之前、或根據有關的選舉法宣布選舉未能完成的日期後的30天屆滿之前，向總選舉事務主任呈交選舉開支及接受選舉捐贈的申報書。
- ✓ 必須在選舉申報書中附有法例規定需要呈交的發票、收據及聲明書等。
- ✗ 不得在選舉申報書或經修訂選舉申報書的副本上作出虛假或具誤導性的陳述。
- ✓ 如某人在選舉中已獲提名為候選人，但最終撤回接受提名、或其提名被裁定為無效，亦須按法例所規定的限期內，向總選舉事務主任提交選舉申報書。

(五) 選舉呈請或選舉上訴

- ✗ 不得撤回選舉呈請或選舉上訴以換取利益。
- ✗ 不得向任何人提供利益，令任何人撤回選舉呈請或選舉上訴。
- ✗ 不得索取或接受利益，以撤回選舉呈請或選舉上訴。

第四部份

舉報及查詢

舉報

任何人如發現或懷疑選舉中出現違反《選舉（舞弊及非法行為）條例》的行為，可致電廉政公署 24 小時舉報貪污熱線 25 266 366、或前往廉署 24 小時舉報中心（香港北角渣華道303號地下）或任何一間分區辦事處、或寫信至香港郵箱1000號作出舉報。

查詢

任何人如對《選舉（舞弊及非法行為）條例》有任何疑問，可致電廉政公署選舉查詢熱線 2920 7878 或親臨廉政公署各分區辦事處查詢〔辦公時間：星期一至星期五上午九時至下午七時(星期六、日及公眾假期休息)〕。

任何人如欲查詢各項廉潔選舉活動詳情，可瀏覽廉政公署選舉專題網站：
www.icac.org.hk/elections

廉政公署分區辦事處地址及電話

香港

廉政公署西港島及離島辦事處

上環干諾道中124號海港商業大廈地下

電話：2543 0000

廉政公署東港島辦事處

灣仔軒尼詩道201號東華大廈地下

電話：2519 6555

九龍

廉政公署西九龍辦事處

油麻地彌敦道434-436號彌敦商務大廈地下

電話：2780 8080

廉政公署東九龍及西貢辦事處

藍田啟田道67號啟田大廈地下4號

電話：2756 3300

新界

廉政公署新界西南辦事處

荃灣青山公路300-350號荃錦中心地下B1號

電話：2493 7733

廉政公署新界西北辦事處

元朗青山公路元朗段230號富興大廈地下

電話：2459 0459

廉政公署新界東辦事處

沙田上禾輦路1號沙田政府合署地下G06-G13室

電話：2606 1144

FOREWORD

Similar to other public elections, the Chief Executive (CE) Election of the Hong Kong Special Administrative Region is governed by the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap. 554).

The ECICO, enforced by the Independent Commission Against Corruption (ICAC), aims to uphold fair and clean public elections as well as prevent corrupt and illegal conduct at elections. To help candidates, their election helpers and members of the Election Committee (EC), who would elect the CE, better understand the legislation and avoid any contravention of the ECICO due to misunderstanding or inadvertence, the ICAC has specially produced this Information Booklet for their reference.

The Information Booklet consists of four parts. The first part contains questions and answers summarised from the enquiries and concerns raised by candidates in previous CE elections. It serves to spell out the spirit and content of the law and its application to election situations. The second part is a gist of the major provisions of the ECICO applicable to each electioneering process. A checklist has been included in the third part as a quick reminder on what candidates and election helpers should and should not do in the process of running an election. The channels for making reports and enquiries to the ICAC can be found in the fourth part.

PART 1

QUESTIONS AND ANSWERS

Q1

A trade association in support of a particular candidate publishes an article on its newsletter at its own expenses to encourage electors to support the candidate. Will such act contravene the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) ?

A1

- There is no restriction as to the means engaged for promoting the election of a candidate by his supporters. As the above-mentioned article will definitely help to promote the said candidate's election, it will be regarded as his election advertisement. The cost incurred for publishing the election advertisement should be counted as his election expenses. If the trade association has paid for the cost involved, the amount should be regarded as election donation to the said candidate who should include this in his election return.
- It is stipulated in Section 23 of the ECICO that it would be an offence for a person other than a candidate or a candidate's election expense agent to incur election expenses. Therefore, the responsible person of the trade association should have obtained the candidate's prior written authorisation before incurring expenses for the candidate by publishing the article on the newsletter.

- Besides, the said trade association has to abide by Section 34 of the ECICO to show, in English or Chinese, the name and address of the printer, the date of printing and the number of copies printed on the printed election advertisement. Two copies of the election advertisement should be deposited with the Returning Officer not later than 7 days* after it has been published.

* It should, however, be noted that the requirement under Section 81 of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) is more stringent. A candidate must deposit 2 copies of his election advertisement with the Returning Officer before he displays, distributes or otherwise uses any election advertisement, except for election advertisements that are to be displayed, distributed or otherwise used by electronic means and where it is not practicable for such advertisements to be submitted before they are distributed. By doing so, he would have complied with Section 34(4) of the ECICO. A candidate should also comply with all other statutory requirements governing election advertisements in an election and relevant guidelines issued by the Electoral Affairs Commission.

Q2

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

A2

- The ECICO has not laid down any restrictions on the format of election campaign arranged to promote a person's candidature, even if negative publicity is engaged to prejudice the election of a contesting candidate. However, all statements of fact published about a candidate must be true. Otherwise, the person who publishes such statements will contravene Section 26 of the ECICO which prohibits any person, including a candidate, from publishing a materially false or misleading statement of fact concerning (but not limited to) a candidate's character, qualifications or previous conduct for the purpose of promoting or prejudicing the election of any candidate. If the supporter of candidate A publishes

(Please turn overleaf)

a materially false or misleading statement of fact about candidate B for the purpose of prejudicing candidate B's election, the said supporter will contravene the above-mentioned provision.

- If candidate A has the knowledge of and consents to his supporter's act as described in the preceding paragraph, candidate A will contravene Section 26 of the ECICO as well. The cost incurred in connection with the negative publicity against candidate B will have to be counted as candidate A's election expenses and be stated clearly in his election return.
- Since Section 23 of the ECICO requires any person to obtain the candidate's prior written authorisation before incurring any election expenses for the candidate, the supporter in the above-quoted situation needs to do so before incurring any expenses for launching negative publicity against candidate B in order not to contravene the law.

Q3

What should a candidate take heed of if he publicises his election campaign through on-line platforms such as blogs, social networking or communication websites ?

A3

- According to Section 2 of the ECICO, election expenses means expenses incurred before, during or after the election period, by or on behalf of a candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate. As such, the relevant production and operating costs of any election-related publicity materials published through on-line platforms such as blogs, social networking or communication websites, e.g. internet services fees, advertisement design fees, etc. should be counted towards the candidate's election expenses and be declared in his election return. The candidate should also comply with all other statutory requirements governing election advertisements and relevant guidelines issued by the Electoral Affairs Commission (EAC).
- On the other hand, the candidate should ensure all statements about a particular candidate published through the on-line platforms must be true so as to comply with Section 26 of the ECICO. Moreover, the candidate is required, under Section 27 of the above law, to obtain prior written consent for including in his election advertisement the name, logo or pictorial representation of a person or an organisation in such a way as to imply or to be likely to cause electors to believe the candidate has the support of that person or organisation.

Q4

Is it lawful for the chairman of a professional body to give his written consent to a candidate for using the name and logo of the said professional body in the candidate's election advertisements as a way to show the support of the professional body to the election of the candidate ? What should the candidate do if he comes to know that some members of the professional body subsequently indicate objection to the support ?

A4

- It will be an offence under Section 27(5) of the ECICO if a person purports to give written consent to the inclusion of the name or logo of the organisation in an election advertisement without having been approved by the governing body or by a resolution of the members of the organisation passed at a general meeting. Therefore, the above-mentioned chairman should obtain the approval from the professional body before giving the relevant written consent to the candidate.
- If the professional body eventually repudiates its support to the candidate, the candidate must take reasonable measures to make alterations to the election advertisements and to retrieve the election advertisements already displayed or distributed. In any event, the cost incurred for the production and subsequent removal of the said advertisements should still be counted as the candidate's election expenses and be declared in his election return.

Q5

At a dinner gathering hosted by several trade associations for members, including some EC members, the chairman of the organising committee invites a candidate of the Chief Executive (CE) Election to present his election platform. How should the candidate handle such a situation ? Will the chairman run into trouble by so doing ?

A5

- If a candidate who finds himself caught in the above-mentioned situation does not decline the invitation and immediately stop any promotion of his election at the dinner gathering, the occasion will be regarded as an election meeting held to promote his candidature and the expenses incurred will have to be counted towards his election expenses and be declared in his election return.
- If the chairman of the organising committee has not been authorised in writing by the candidate to incur election expenses on his behalf, the chairman will contravene Section 23 of the ECICO.
- Both the chairman and the candidate should note that Section 12 of the ECICO prohibits any person, whether by himself or through any other persons, from providing or meeting all or part of the cost of providing electors with food, drink or entertainment with a view to influencing the latter's voting decisions. If the dinner gathering is deliberately organised and sponsored by the chairman with a view to inducing votes for the candidate, the chairman will commit an offence under Section 12 of the ECICO. The candidate is also guilty of the same offence if he has the knowledge of and has consented to the organisation of the dinner gathering for the above purpose.

Q6

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

A6

- It is an offence under Section 11 of the ECICO for a person, without reasonable excuse, to offer an advantage including gift, loan, office, employment, contract, etc. to another person to influence the latter's voting decision. The above-mentioned EC member will have contravened Section 11 in this context.
- Along the same line, it is also an offence if a person, without reasonable excuse, solicits or accepts an advantage as an inducement to or a reward for voting at an election for a particular candidate.
- Whether the candidate is liable for the same offence depends on whether he is aware of and consents to the act of the EC member. According to Section 11(4) of the ECICO, if the EC member is acting with the candidate's authority, the candidate will also be liable to an offence.

Q7

Is it against the ECICO for a main contractor to request one of his sub-contractors, who is an EC member, to vote for the candidate whom he supports ?

A7

- 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 the latter to vote or not to vote, or to vote or not to vote for a particular candidate, at an election.
- Whether such a request by the main contractor will amount to duress will depend on the circumstances of each case. Persons who are in a position of influence should be prudent 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.

Q8

Can an EC member arrange a meeting to gauge the views of constituents of his subsector on which candidate he should support in the forthcoming CE Election ?

A8

- The ECICO does not restrict any EC member from gathering views from members of his subsector for a decision on whom should be supported at the CE Election. The EC member, however, has to be aware that if the meeting he would call for serves to promote or prejudice the election of a particular candidate, it will become an election meeting. If any expense will be incurred at the meeting, the EC member should have obtained prior written authorisation from the candidate concerned for incurring election expenses in order not to contravene Section 23 of the ECICO.

Q9

An academic institution plans to organise an election forum by inviting all candidates to attend and introduce their platforms. Should the cost to be incurred for this election forum be regarded as election expenses ?

A9

- According to the ECICO, any expenses incurred for promoting the election of a particular candidate or prejudicing the election of another candidate are regarded as election expenses. If the said academic institution invites all candidates to introduce their platforms at the election forum, which is not organised for promoting or prejudicing the election of a particular candidate, it is not necessary for any one of the candidates to count the expenses incurred as his election expenses.
- Any organisation which would like to arrange an election forum should comply with the relevant guidelines issued by the EAC.

Q10

Can a candidate use the unspent election donations for purposes other than meeting his election expenses ? Should he return the unspent election donations to the donors after the election ?

A10

- Section 18 of the ECICO makes it an offence for a candidate or other persons to use election donations for a purpose other than meeting the candidate's election expenses; or a purpose other than promoting the election of the candidate or prejudicing the election of another candidate. Therefore, any unspent election donations should not be used for other purposes.
- It is also stipulated in Section 19 of the ECICO that any donation of more than \$1,000 in value from an anonymous donor; any donation which has not been used to defray election expenses; and any donation which is in excess of the limit of election expenses that the candidate is allowed to expend must be donated to charitable institutions or trusts of a public character chosen by the candidate before he lodges the election return. It is not necessary for the candidate to return the unspent election donations to the donors.

Q11

Should the expenses incurred for a dinner held to celebrate the successful election of a candidate be counted as election expenses of the candidate ?

A11

- If the dinner is hosted for the sole purpose of celebrating the successful election of a candidate and is in no way related to the promotion of his election, the cost incurred will not be regarded as election expense.

(Please turn overleaf)

- However, if the dinner is hosted to honour the candidate's promise made previously to the participants that they would be rewarded with a dinner for their electioneering assistance after the election, the hosting of the dinner is related to the purpose of promoting his election. In this connection, expenses incurred for the dinner should be counted towards his election expenses and be included in his election return.
- If the dinner is hosted as a reward for the electors' having voted for the candidate, both the host and the participants will contravene Section 12 of the ECICO.

Q12

What are the points a candidate should take heed of while submitting his election return ? If A and B have publicly announced their intention to contest in the CE Election, but eventually A has decided not to run in the election while B's nomination has been invalidated due to the lack of sufficient number of subscribers, are they still required to submit election returns ?

A12

- Each candidate has to lodge with the Chief Electoral Officer an election return setting out his election expenses and 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 in accordance with Section 37 of the ECICO. The election return must be accompanied by an invoice and a receipt of each election expense of \$100 or above, a copy of the receipt issued to the donor of each election donation of more than \$1,000 in value and a copy of the receipt given by each recipient to whom the candidate has given his 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. The prescribed maximum amount of election expenses for CE Election currently stands at \$13,000,000*.
- A candidate who makes a statement that he knows or ought to know is materially false or misleading in the election return lodged under Section 37 or a copy of the revised election return lodged under Section 37A commits an offence under Section 20 of the ECICO.
- According to Section 2 of the ECICO, a “candidate” means a person who stands nominated as a candidate at an election; and 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. Although A eventually has not run in the election and B has failed to be validly nominated, both are regarded as “candidates” of the CE Election according to the above definition. They have to submit their election returns to the Chief Electoral Officer within the period as required by the law.

* According to the *Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A)*

Q13

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

A13

- Candidates and their election helpers should take heed of and comply with the relevant laws and the regulations made by the EAC while running in an election so as to avoid any contravention of the laws and regulations.
- Candidates should note that engaging in corrupt conduct referred to in the ECICO is a serious offence. Nothing can be done to redress the situation once an offence is committed.
- A candidate or any other person who has done or omitted to do an act which is classified as an illegal conduct under the ECICO may, according to Section 31 of the ECICO, apply to the Court for an order to be made for relieving him from the penalties and disqualification to be imposed on him. He, however, has to satisfy the Court that such an act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to the applicant's bad faith.
- Any person who has published a printed election advertisement without the printing details required by the law or has failed to furnish 2 copies of the printed election advertisement to the 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 to be made for 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 has failed 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 to be made for allowing him to lodge the election return with the Chief Electoral Officer within such further period as the Court specifies. The candidate, however, has to satisfy the Court that the failure to comply with the requirement was attributable to the applicant's illness or absence from Hong Kong; or the death, illness, absence from Hong Kong or misconduct of an agent or employee of the applicant; or due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to the applicant's bad faith.
- It is stipulated in Section 37A of the ECICO that if there is any error or false statement in a candidate's election return, including an error or false statement in any document accompanying the election return; or a failure to send any document required by Section 37(2)(b) in relation to the election return, the candidate may lodge with the Chief Electoral Officer a copy of the election return which is marked with the necessary revision to have the error or false statement corrected within 30 days after the date on which the candidate receives a notice from the Chief Electoral Officer, provided that the aggregate value of errors or false statements does not exceed the prescribed limit (\$5,000 for CE Election) and after adding such aggregate value, the total amount of the candidate's election expenses does not exceed the prescribed maximum amount of election expenses for that particular election (\$13,000,000* for CE Election). If the nature of the error or false statement is a failure to set out an election expense or election donation in the election return, the revised election return should be accompanied by the relevant documents as required under Section 37(2)(b) of the ECICO, e.g. invoice and receipt of an election expense, copy of receipt of an election donation, and an explanation (if applicable). In addition, a declaration in a specified form verifying the contents of the copy of the revised election return is also required to be submitted.

* According to the *Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A)*

- A candidate may also, according to Section 40(3) of the ECICO, apply to the Court for an order enabling him to correct any error or false statement in an election return or in any document accompanying the return. The candidate, however, has to satisfy the Court that the error or false statement was due to the misconduct of an agent or employee of the applicant; inadvertence or an accidental miscalculation by the applicant or any other person or any reasonable cause and was not due to the applicant's bad faith.
- A candidate who has failed to send in the required invoices, receipts or copies of receipts may also, according to Section 40(5) of the ECICO, apply to the Court for an order to be made for excepting him from submitting the said documents. He, however, has to satisfy the Court that the non-compliance was attributable to the misconduct of his agent or employee; inadvertence or an accidental loss or destruction of the documents concerned or any reasonable cause and was not due to the applicant's bad faith.

Q14

Is it necessary for a complainant to produce evidence to the ICAC while reporting a conduct in contravention of the ECICO ? Would the complainant be accused of having made a malicious report in the event that the report is not substantiated ?

A14

- Any person who suspects any conduct in contravention of the ECICO is welcome to make a report to the ICAC. The ICAC will investigate each pursuable complaint to ascertain whether such an offence exists.
- Any person who wishes to make a report in person to the ICAC can contact one of the seven ICAC Regional Offices or its 24-hour Report Centre direct. He can also lodge the complaint by calling its 24-hour 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 to an ICAC officer a false report of any offence, or misleads an ICAC officer by giving false information or making false statements or accusations, he will commit an offence under Section 13B of the ICAC Ordinance (Cap. 204) and will be liable to a maximum penalty of 1 year's imprisonment and a fine of \$20,000.
- Any person who wishes to make an enquiry on the ECICO may call the ICAC Election Enquiry Hotline (Tel: 2920 7878), or approach any ICAC Regional Office (please refer to part 4 of this Booklet for the addresses and telephone numbers of the ICAC Regional Offices).

PART 2

GIST OF THE ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) ORDINANCE

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

The following is a gist of major provisions of the ECICO which relates to the management of electioneering activities.

(1) NOMINATION OF CANDIDATES

Bribery in relation to Standing or Not Standing as Candidate (Sections 2, 7)

- ◆ It is an offence if a person corruptly offers an advantage to another person as an inducement to or a reward for:
 - (1) that person's standing or not standing as a candidate, 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 or try to get a third person to stand or not to stand as a candidate, or if the third person has been nominated as a candidate, to withdraw his candidature or not to use the 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 engage in the above conduct.

- ◆ It is also an offence if a person corruptly solicits or accepts an advantage as an inducement to or a reward for engaging in the conduct stated in (1) or (2) above.

“Candidate” means a person who stands nominated as a candidate at an election; and also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election.

“Advantage” includes (but is not limited to) any valuable consideration, gift, loan, office, employment, contract, favour or service (other than voluntary service or the provision of entertainment). However, it does not include an election donation if particulars of the donation are given in an election return that has been lodged with the Chief Electoral Officer.

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

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

- ◆ It is an offence if a person uses or threatens to use force or duress against another person to induce him:
 - (1) to stand or not to stand as a candidate, or if that person has been nominated as a candidate, to withdraw his candidature; or
 - (2) to get a third person to stand or not to stand as a candidate, or if the third person has been nominated as a candidate, 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 if the other person has been nominated as a candidate, to withdraw his candidature; or
 - (2) to get a third person to stand or not to stand as a candidate, or if the third person has been nominated as a candidate, 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 or Misleading Statements about a Candidate (Section 26)

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

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

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

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

“Support” includes support for the policies or activities of the candidate.

“Election advertisement” means:

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

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

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

* *It should, however, be noted that the requirement under Section 81 of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) is more stringent. A candidate must deposit 2 copies of his election advertisement with the Returning Officer before he displays, distributes or otherwise uses any election advertisement, except for election advertisements that are to be displayed, distributed or otherwise used by electronic means and where it is not practicable for such advertisements to be submitted before they are distributed. By doing so, he would have complied with Section 34(4) of the ECICO. A candidate 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 an election period (the period beginning with the nomination day and ending with the last polling day of an election), is 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 for a particular candidate, or for having or not having voted for a particular candidate at an election.
- ◆ It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.
- ◆ It is also an offence if a person, without reasonable excuse, solicits or accepts an advantage as an inducement to or a reward 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 for a particular candidate, or for having or not having voted for a particular candidate at an election.

- ◆ It is an offence if a person solicits, accepts or takes any food, drink or entertainment as an inducement to or a reward for engaging in 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, a person does not commit an offence only because he has served non-alcoholic drinks at an election meeting.

An “election meeting” is any meeting held to promote or prejudice the election of a particular candidate.

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

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

Deceptive Behaviour in relation to Electors (Section 14)

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

Impersonating Another at Election (Section 15)

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

Other Offences with respect to Voting (Section 16)

- ◆ It is an offence if a person :
 - (1) votes at an election knowing that he is not entitled to vote at that election; or
 - (2) votes at an election after having knowingly or recklessly given materially false or misleading information to an electoral officer, or knowingly omitted to give material information to an electoral officer; or
 - (3) votes more than once in the same round of voting or, in the case of an uncontested election, the polling at the election*.

- ◆ It is an offence if a person invites or induces another person:
 - (1) to vote at an election knowing that the other person is not entitled to vote at that election; 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.

* Reference has been made to the system of voting stipulated in Sections 26A and 27 of the Chief Executive Election Ordinance (Cap. 569).

Destroying or Defacing Ballot Papers (Section 17)

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

(4) ELECTION EXPENSES AND ELECTION DONATIONS

Election Expenses (Sections 2, 24)

“Election expenses” means expenses incurred or to be incurred before, during or after the election period, by or on behalf of a candidate for the purpose of:

- (1) promoting the election of the candidate; or
- (2) prejudicing the election of another candidate,

and includes the value of election donations consisting of goods and services used for that purpose.

- ◆ A candidate commits an offence if the aggregate amount of the election expenses (whether incurred by or on behalf of the candidate) exceeds the maximum amount of election expenses prescribed by the CE in Council. The prescribed maximum amount of election expenses for the CE Election is \$13,000,000*.

* According to the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A)

Incurring Election Expenses (Sections 2, 23)

- ◆ It is an offence if a person, other than a candidate or a candidate's election expense agent, incurs any election expenses.

An "election expense agent" means a person authorised in writing by a candidate to incur election expenses on behalf of the candidate. The maximum amount of election expenses to be incurred by him has to be specified in the authorisation, a copy of which has to be served on the Returning Officer in order to effect his authorisation.

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

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

"Election donation" means:

- (1) any money given to a candidate for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate; or
- (2) any goods (including any goods given incidental to the provision of voluntary service) or service (excluding voluntary service) provided to a candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate.

- ◆ It is an offence if a candidate or other person uses election donations for a purpose other than:
 - (1) meeting or contributing towards meeting the candidate's election expenses; or
 - (2) promoting the election of the candidate or prejudicing the election of another candidate.

- ◆ A candidate must, on receiving an election donation of more than \$1,000 in value, 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 the candidate's election expenses or for promoting the election of the candidate or prejudicing the election of another candidate.

- ◆ It is an offence if a candidate, before lodging his election return, does not give the anonymous election donations of more than \$1,000 in value, the unused election donations and 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, 37A, 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 he lodged under Section 37 or a copy of the revised election return he lodged under Section 37A.

- ◆ 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 the anonymous election donations of more than \$1,000 in value, the unused election donations and donations that exceed the prescribed maximum amount of election expenses given to a charitable institution or trust of a public character chosen by the candidate in accordance with the law; and
 - (4) an explanation (if applicable) setting out the reason why the election donation was not disposed of in accordance with (3) above; and
 - (5) a declaration in a form provided or specified by the Chief Electoral Officer verifying the contents of the return.

- ◆ It is also stipulated in Section 37A of the ECICO that if there is any error or false statement in a candidate's election return, including an error or false statement in any document accompanying the election return; or a failure to send any document required by Section 37(2)(b) in relation to the election return, the candidate may lodge with the Chief Electoral Officer a copy of the election return which is marked with the necessary revision to have the error or false statement corrected within 30 days after the date on which the candidate receives a notice from the Chief Electoral Officer, provided that the aggregate value of errors or false statements does not exceed the prescribed limit (\$5,000 for CE Election) and

after adding such aggregate value, the total amount of the candidate's election expenses does not exceed the prescribed maximum amount of election expenses for that particular election (\$13,000,000* for CE Election). If the nature of the error or false statement is a failure to set out an election expense or election donation in the election return, the revised election return should be accompanied by the relevant documents as required under Section 37(2)(b) of the ECICO, e.g. invoice and receipt of an election expense, copy of receipt of an election donation, and an explanation (if applicable). In addition, a declaration in a specified form verifying the contents of the copy of the revised election return is also required to be submitted.

* According to the *Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A)*

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

Relief for Offences in relation to Election Returns (Section 40)

- ◆ A candidate who has failed to lodge an election return as required by Section 37 before the end of the permitted period, or has failed to send an invoice or a receipt, or a copy of a receipt, as required by the same section 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 applicant has to satisfy the Court that the failure to comply with the requirement was attributable to the following reasons* and was not due to his bad faith:
 - (1) the applicant's illness or absence from Hong Kong; or
 - (2) the death, illness, or 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) inadvertence, or an accidental loss or destruction of the invoice or receipt, or copy of the receipt, by the applicant or any other person; or
 - (6) any reasonable cause.

** (1), (2), (3), (4) and (6) are reasons for the Court to consider an application whether an extended period for lodging an election return should be granted; (3), (4) and (6) are reasons for the Court to consider an application which enables the candidate to correct any error or false statement in an election return or in any document accompanying the return while (3), (5) and (6) are reasons for considering whether an order for excepting the candidate from the requirement to send an invoice, or a receipt, or a copy of a receipt should be allowed. Depending on the circumstances of different cases, candidates should check whether the above reasons are applicable to their applications concerned.*

(8) PENALTY

Corrupt Conduct (Section 6)

- ◆ 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 (Section 22)

- ◆ 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.

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, whereas **illegal conduct** in Sections 23, 24, 25, 26 and 27.

- ◆ 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.

Disqualifications

- ◆ A person convicted of having engaged in corrupt conduct or illegal conduct under the ECICO will be:
 - (1) disqualified for 5 years from being nominated as a candidate for the election of, or from being elected as, the Chief Executive, a member of the Legislative Council or District Council or a Village Representative from the date of conviction; and
 - (2) disqualified for 3 years from being nominated as a candidate for the EC Subsector Elections, or from being nominated or elected as an EC member from the date of conviction.

Immediate Custodial Sentence

- ◆ According to the sentencing guideline set by the Court of Appeal, 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.

PART 3

DOS AND DON'TS CHECKLIST

Candidates, their election agents and helpers should note the following in the Chief Executive 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 as an inducement to or a reward for any person's standing or not standing as a candidate.
 - (2) offer any advantage as an inducement to or a reward for any person having been nominated as a candidate to withdraw his nomination or not to use his best endeavours to promote his election.

- ✘ Do not solicit or accept any advantage as an inducement to or a reward for any person's standing or not standing as a candidate.

- ✘ Do not solicit or accept any advantage as an inducement to or a reward for any person having been nominated as a candidate to withdraw his nomination or not to use his best endeavours to promote his election.

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.

(2) ELECTIONEERING

Statements about 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.

Election Advertisements

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

** It should, however, be noted that the requirement under Section 81 of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) is more stringent. A candidate must deposit 2 copies of his election advertisement with the Returning Officer before he displays, distributes or otherwise uses any election advertisement, except for election advertisements that are to be displayed, distributed or otherwise used by electronic means and where it is not practicable for such advertisements to be submitted before they are distributed. By doing so, he would have complied with Section 34(4) of the ECICO. A candidate 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 cost 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 cost of providing any food, drink or entertainment as an inducement to or a reward for any person's voting or not voting for a particular candidate at an election.

Using or Threatening to Use Force or Duress

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

Engaging in Deceptive Behaviour

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

Other Offences in Relation to Voting

- ✘ Do not invite or induce ineligible persons to vote.
- ✘ Do not 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 for the Chief Executive Election (\$13,000,000).
- ✘ Do not incur election expenses unless you are a candidate or a candidate's election expense agent with the required authorisation.
- ✘ Do not incur election expenses in excess of the amount authorised by the candidate if you are an election expense agent.

- ✓ Do include the election expenses incurred by the candidate and his election expense agent(s) in the election return.

Election Donations

- ✗ Do not use election donations for meeting the costs of activities unrelated to a candidate's election.
- ✓ Do issue a receipt for any election donation of more than \$1,000 in value.
- ✓ Do send the anonymous election donations of more than \$1,000 in value, the unused election donations and donations that exceed the prescribed maximum amount of election expenses to a charitable institution or trust of a public character chosen by the candidate before lodging the election return.

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 the election return with the invoices, receipts and declaration form etc, as stipulated by the law.
- ✗ Do not make any false or misleading statement in the election return or copy of the revised election return.

- ✓ Do lodge the election return with the Chief Electoral Officer within the period as required by the law even if a person has withdrawn his candidature after being nominated as a candidate at the election or his nomination is ruled invalid.

(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.

PART 4

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 Corruption 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 Saturdays, Sundays and public holidays).

Any person who wishes to obtain details of the clean elections programmes may browse the ICAC's **Dedicated Website** : **www.icac.org.hk/elections**.

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