

守法規  
重廉潔

Abide by the Rules  
Support Clean Elections

# 廉潔鄉議局議員選舉

資料冊



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## 前言

**廉**政公署負責執行的《選舉（舞弊及非法行為）條例》（第554章），旨在確保本港的各級議會及鄉事選舉之廉潔公正，並防止舞弊及非法行為的出現。

為了幫助參加鄉議局議員選舉的候選人及其助選成員進一步瞭解與選舉相關的法例，避免因誤解或一時疏忽而墮入法網，廉政公署特別編製了這份資料冊，供他們參考。

資料冊分為四部份。第一部份的「問題剖析」，乃根據過往鄉郊選舉中參選人士的提問和他們所關注的事項，歸納以問答形式帶出法例之精神及其條文的適用情況，藉以帶出在進行選舉活動時一些容易產生舞弊及非法行為的地方。為方便讀者，問答內容所涉及的名詞釋義將以註解之形式在每頁下方顯示。資料冊的第二部份為《選舉（舞弊及非法行為）條例》的簡介，以選舉流程撮要列出相關法例之條文。第三部份的選舉備忘，是以要點的形式提醒候選人等在競選活動中應留意的行為。而第四部份則臚列向廉政公署舉報及查詢的途徑。

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，除此之外，候選人及助選成員亦應細閱與選舉相關的其他法例及文件，以免違反有關法規。

\* 在此資料冊中，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。

# 第一部份

## 問題剖析



## （一）候選人的提名

**問題 1** 如果一群有意參加鄉議局特別議員選舉的人士最後達成協議，一致推舉其中三位參選，這個安排是否合法？

- 答案 1**
- 如果上述人士達成共識，一致推舉他們其中數位參選，而其過程中並不牽涉任何威迫利誘，這樣是不會觸犯《選舉（舞弊及非法行為）條例》。
  - 但如果在過程中有人藉提供利益<sup>(1)</sup>或以武力或脅迫手段，或威嚇將會利用武力或脅迫手段，令他人不參選，則屬違法。任何人因為接受利益而不參選，亦屬違法。

（相關法例條文請參閱第二部份第16-17頁）

(1) 「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選舉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（些）候選人當選或阻礙其他候選人當選，而在私人時間自願親自免費向該（等）候選人提供或就該（等）候選人而提供的任何服務。

## (二) 競選活動

### 問題 2

數位現任鄉議局議員打算去信予某區的全體選民，呼籲他們投票給一位候選人，支持他角逐該局某區特別議員的席位，他們必須留意哪些事項，才可避免觸犯《選舉（舞弊及非法行為）條例》？

### 答案 2

- 由於上述信件旨在促使有關候選人當選，該信件便屬於選舉廣告<sup>(2)</sup>印刷品。根據《選舉（舞弊及非法行為）條例》第34條規定，除刊登於註冊本地報刊的選舉廣告外，所有選舉廣告印刷品必須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，有關信件因此必須具備這些法定資料。此外，發布該信件的人士亦必須根據上述法例的規定，於發布信件後的7天屆滿前，向選舉主任提交該信件的文本兩份。
- 既然上述信件屬選舉廣告，印刷及投寄該信件所涉及的費用應屬選舉開支<sup>(3)</sup>，須在候選人的選舉申報書內作出申報。另外，發信的人士必須事先取得候選人的書面授權，才可替他招致此項與其選舉有關的開支，否則會觸犯《選舉（舞弊及非法行為）條例》第23條。
- 此外，所述信件的內容必須屬實，因為如果任何人為促使或阻礙某（些）候選人當選，而發布有關候選人的虛假或具誤導性達關鍵程度的事實陳述，會觸犯《選舉（舞弊及非法行為）條例》第26條。

（相關法例條文請參閱第二部份第18-19及22-23頁）

- (2) 「選舉廣告」指為促使或阻礙一名或多於一名候選人在選舉中當選而發布的：
- (i) 公开展示的通知；或
  - (ii) 由專人交付或用電子傳送的通知；或
  - (iii) 以無線電或電視廣播，或以錄像片或電影片作出的公告；或
  - (iv) 任何其他形式的發布。
- (3) 「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：
- (i) 為促使該候選人當選；或
  - (ii) 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。

### 問題 3

一位準備參加來屆鄉議局特別議員選舉的某區區議員，於鄉議局選舉期間<sup>(4)</sup> 以其區議員的身份印製及派發工作表現報告，交代他為該區選民所做的工作，此舉有否違法？

### 答案 3

- 該位競逐鄉議局特別議員的現任區議員，屬《選舉（舞弊及非法行為）條例》第33條所指的「在任的候選人」<sup>(5)</sup>。根據同一法例的第34(9)條規定，任何在任的候選人在選舉期間所發布的工作表現報告，均屬選舉廣告，因此該位區議員在鄉議局議員選舉期間，發布他為所屬選區作出服務的工作表現報告，均屬選舉廣告。
- 任何人發布的選舉廣告印刷品，均須備有上述條例第34條規定的有關資料；發布人亦須在該廣告發布後的7天屆滿前，向選舉主任提交該廣告的文本兩份。
- 此外，有關印製及分發該工作表現報告所招致的費用亦必須納入候選人的選舉開支內，並在其選舉申報書內清楚列明。

（相關法例條文請參閱第二部份第19頁）

(4) 「選舉期間」：就某項選舉而言，指由該項選舉提名日起，至該項選舉最後一個投票日止的期間。

(5) 「在任的候選人」是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。

#### 問題 4

候選人甲於其選舉廣告中說明某鄉事組織的主席將全力支持他參選，他需要注意哪些事宜，以免誤觸法例？該名鄉事組織的主席又可否透過書面的同意，容許候選人甲將有關組織的名稱和標識納入其選舉廣告中？如組織的一些成員反對主席支持候選人甲的決定，情況又如何？

#### 答案 4

- 候選人甲必須事先得到該名鄉事組織主席的書面同意，才可在其選舉廣告中說明該主席對他的支持，因為根據《選舉（舞弊及非法行為）條例》第27條，任何候選人若在其選舉廣告中收納某人的名字、標識或圖像，以令選民相信他已獲有關人士的支持，他必須於事前取得該人士的書面同意，否則會觸犯該法例。
- 按照上述條例，有關鄉事組織的主席容許候選人將組織的名稱和標識納入其選舉廣告的書面同意，必須經所屬組織的管理層批准，或經組織的成員透過全體大會議決批准，才算合法。根據《選舉（舞弊及非法行為）條例》第27條，該主席如未經其組織的管理層批准，或未經組織的成員透過全體大會議決批准，而看來給予候選人上述書面同意，便屬違法。
- 倘若上述主席支持候選人甲的決定其後被有關鄉事組織的其他成員循正確程序否決，他所給予候選人甲的同意書便會無效。在這情況下，候選人甲必須採取合理措施，將未派發的選舉廣告予以修改和把已張貼的廣告收回。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，仍須以候選人甲的選舉開支計，並在其選舉申報書中清楚列明。

（相關法例條文請參閱第二部份第18-19及22-23頁）

### (三) 投票

#### 問題 5

某位參加鄉議局特別議員選舉的候選人邀請選民到內地旅遊，除了支付每位參加者的團費，又向同行的每位選民提供\$5,000，作為旅遊津貼，此舉會否違法？候選人向選民提供利益，有沒有地域或時間上的限制？

#### 答案 5

- 如果候選人為誘使選民投他一票而安排上述的旅行，並支付他們的團費及向他們提供金錢利益，候選人已觸犯了《選舉（舞弊及非法行為）條例》第11條。因為該條文說明，任何人向他人提供利益以影響後者的投票決定，便屬違法。而接受或索取利益者同樣犯法。
- 根據《選舉（舞弊及非法行為）條例》第5條，該法例適用於一切與選舉有關的行為，不論該行為是在香港境內或在其他地方作出。
- 另外，《選舉（舞弊及非法行為）條例》第6條及第22條亦列明，任何人無論是在選舉期間之前、之後或選舉期間內作出的舞弊或非法行為，皆可被裁定違反該法例。
- 因此，如果上述的候選人為誘使選民投他一票而安排旅行等活動，無論該行為是否在香港境內或在何時作出，他已觸犯了《選舉（舞弊及非法行為）條例》第11條。因為向選民提供利益會否觸犯法例乃取決於提供利益的目的，而非作出有關行為的時間和地點。

（相關法例條文請參閱第二部份第20頁）

## 問題 6

我和鄉村中各人關係十分融洽，平日我經常和其他鄉郊人士包括鄉事委員會主席及副主席一起飲茶吃飯，間中我亦會作東。請問在我參加鄉議局特別議員的選舉期間，可否宴請該些人士，以獲取他們的支持？若在選舉期間湊巧家有喜事，如生日、婚嫁、兒孫滿月等，我又可否宴請該些人士？如果我只負擔宴請的部份費用，情況又是否不同？

## 答案 6

- 如果候選人是利用款待選民來爭取選票，便會觸犯《選舉（舞弊及非法行為）條例》第12條。因為該條文列明，任何人提供食物、飲料、娛樂或償付**全部或部份**用於提供該等食物、飲料、娛樂的費用，以誘使或酬謝他人在選舉中投票或不投票予某候選人，或不去投票，即屬違法。而接受或索取款待之人士亦同樣犯法。
- 如候選人設宴招待上述人士，與他參加競逐的鄉議局特別議員的選舉毫無關連，則不會觸犯法例；惟候選人應謹慎安排，避免招惹賄選的誤會。

（相關法例條文請參閱第二部份第20頁）

## 問題 7

一名候選人的支持者在鄉議局特別議員選舉前致電一些選民，強烈要求他們在選舉投票日一定要投該候選人一票，否則將面臨非常嚴重的後果。該名支持者這樣做有否觸犯法例？

## 答案 7

- 根據《選舉（舞弊及非法行為）條例》第13條，任何人向他人施用，或威脅施用武力或脅迫手段，以誘使他人在選舉中參與或不參與投票，或投票或不投票予某候選人，即屬違法。
- 該支持者如果以「後果嚴重」來威脅選民投票支持有關候選人，已經觸犯上述法例。如果候選人曾以明示或暗示方式，請支持者作出以上要求，則該候選人亦同樣觸犯法例。

（相關法例條文請參閱第二部份第21頁）

## (四) 選舉開支及選舉捐贈

### 問題 8

某成功當選為鄉議局特別議員的候選人，在當選後設宴答謝助選人士在選舉期間為他辛勞工作，並與鄉議局議員等友好人士一同慶功，此舉有否違法？設宴的開支是否要計入他的選舉開支內？如果宴會的費用由參加者自行支付，情況又是否不同？

### 答案 8

- 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，他無需擔心違法。在這情況下，由於此宴會並非為促使他當選而舉辦，所以慶功宴涉及的費用無論是否由候選人支付，亦不需計算為他的選舉開支。
- 但是，如果設宴的目的是為了履行候選人對助選成員曾許下的承諾，例如他曾答應成功當選後，設宴酬謝曾為他的競選而奔波的助選人士，該宴會便與促使他當選有關，所涉及的費用亦因此而屬選舉開支。如果這些開支由參加者支付，有關的數額應當作選舉捐贈<sup>(6)</sup>，必須在候選人的選舉申報書內清楚列明。
- 若候選人設宴的目的是為了酬謝出席人士曾投他一票，則授受雙方皆屬作出了舞弊行為，違反了《選舉（舞弊及非法行為）條例》第12條。

（相關法例條文請參閱第二部份第20及22-23頁）

(6) 「選舉捐贈」是指：

- (i) 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
- (ii) 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）。

## 問題 9

除候選人外，有誰可招致選舉開支？招致選舉開支有甚麼要留意？

## 答案 9

- 《選舉（舞弊及非法行為）條例》第23條訂明，只有候選人和已獲候選人書面授權為其選舉開支代理人的人士方可招致選舉開支。任何選舉開支代理人所招致的選舉開支超過其授權書所指明的限額，則屬違法。
- 另外，《選舉（舞弊及非法行為）條例》第24條列明，每位候選人的選舉開支均不能超越由行政長官會同行政會議所訂下的選舉開支上限<sup>(7)</sup>，否則候選人屬作出非法行為。

（相關法例條文請參閱第二部份第22-23頁）

(7) 根據《鄉議局選舉開支令》（第554E章），鄉議局的選舉（包括特別議員選舉）的選舉開支最高限額如下：

(i) 候選人付給其選舉代理人的費用，總額不得超逾\$3,000；

(ii) 所有其他選舉開支，總額不得超逾\$10,000。

**問題 10** 候選人提交選舉申報書時應留意什麼？如果某候選人自動當選或並沒有招致任何選舉開支，他是否仍需提交選舉申報書？

- 答案 10**
- 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，向選舉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，和由接受候選人按《選舉（舞弊及非法行為）條例》第19條所處置而未有使用的選舉捐贈的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20條，若候選人在選舉申報書中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。
  - 根據法例，候選人是指在某項選舉中接受提名為候選人的人；亦指在某項選舉提名期結束前的任何時間曾公開宣布有意在該項選舉中參選的人。即使候選人自動當選或並沒有招致任何選舉開支，亦必須按法例所規定的限期內向有關當局提交其選舉申報書。

（相關法例條文請參閱第二部份第24頁）

## （五）申請寬免

**問題 11** 如果候選人或其助選成員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》，可有補救的方法？

- 答案 11**
- 候選人及其助選成員應留意及遵守與鄉議局議員選舉有關的法例及規則，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，向法庭申請，由其作出命令寬免他需要承受的刑罰或喪失資格的懲罰。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表後的7天屆滿前向選舉主任提交廣告文本兩份，他可根據《選舉（舞弊及非法行為）條例》第35條，向法庭申請，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，向選舉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（鄉議局議員選舉為\$200）；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（詳情請參閱第22頁），候選人可在接獲選舉主任發出的通知書當日後的30天內，向選舉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)條向法院申請，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。

（相關法例條文請參閱第二部份第24頁）

## （六）查詢及舉報

**問題 12** 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署舉報又會否被指為誣告？

- 答案 12**
- 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涉及違反該條例的可追查投訴展開調查，以釐清事實的真相。
  - 任何人可親身到廉署的七間分區辦事處或24小時舉報中心（香港北角渣華道303號地下）舉報；亦可致電廉署的24小時舉報熱線（電話：25 266 366）或寫信至香港郵箱1000號作出舉報。
  - 廉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署作出與罪行有關的虛假報告，或藉提供虛假資料作出虛假陳述或指控，誤導廉政公署人員，則可能會觸犯《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，歡迎致電廉署的選舉查詢熱線（電話：2920 7878），或聯絡廉署的各分區辦事處。

（廉署分區辦事處之地址及電話請參閱第四部份第37頁）

《選舉（舞弊及非法行為）條例》簡介



《選舉（舞弊及非法行為）條例》（第554章）適用於鄉議局議員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。

以下的簡介扼要地為候選人、其選舉代理人及助選成員介紹在進行競選活動時必須認識的條文。

為方便參考，以下簡介中「◆」符號表示在《選舉（舞弊及非法行為）條例》中所指的違法行為或法例條文的闡釋，而「■」符號則代表名詞釋義。

## （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收受利益，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」：
  - (1) 是指在某項選舉中接受提名為候選人的人；
  - (2) 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選舉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（些）候選人當選或阻礙其他候選人當選，而在私人時間自願親自免費向該（等）候選人提供或就該（等）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（如該人士或該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

### 發布虛假陳述指某人是或不是候選人（第25條）

- ◆ 任何人發布他明知屬虛假的陳述，指：
  - (1) 他或另一人是某項選舉的候選人；或
  - (2) 某個已在某項選舉中獲提名為候選人的人不再是候選人，即屬違法。
- ◆ 任何候選人發布他明知屬虛假的陳述，指他不再是某項選舉的候選人，即屬違法。

### 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（些）候選人當選，而發布關於該（些）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有關候選人已獲得該人士或該組織的支持，發布或授權發布選舉廣告的人士必須先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（些）候選人當選，而向該（等）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」指為促使或阻礙一名或多於一名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列明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上述漏載法定資料的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補述有關的資料，則不屬違法。
- ◆ 任何人必須在發布選舉廣告印刷品後的七天屆滿前，提交兩份文本予選舉主任。
- ◆ 在任的候選人在選舉期間（有關選舉的提名日起至投票日止）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（些）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收受利益，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份費用，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（些）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）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(些)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（些）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（些）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（些）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）

- ◆ 在選舉法並無明文准許下，任何人以他人的姓名申領選票，或在選舉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) 在同一個鄉議局議員選舉中投票多於一次。

- ◆ 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；或
  - (3) 促請或誘使另一人在同一個鄉議局議員選舉中投票多於一次。

### 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，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。
- ◆ 候選人選舉開支的總額（無論由他本人或其他人代為招致），若超過法定的最高限額，即屬違法。
- ◆ 根據《鄉議局選舉開支令》（第554E章），鄉議局的選舉（包括特別議員選舉）的選舉開支最高限額如下：
  - (1) 候選人付給其選舉代理人的費用，總額不得超逾\$3,000；
  - (2) 所有其他選舉開支，總額不得超逾\$10,000。

## 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：
  - (1) 用以償付該候選人的選舉開支以外的用途；或
  - (2) 用以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以上的選舉捐贈而沒有向捐贈者發出收據，即屬違法。
- ◆ 候選人不得將任何價值\$1,000以上的匿名選舉捐贈用以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選舉主任，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選舉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) 採用由選舉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（鄉議局議員選舉為\$200）；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（詳情請參閱第22頁），候選人可在接獲選舉主任發出的通知書當日後的30天內，向選舉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。

## (五) 選舉呈請或選舉上訴

### 受賄撤回選舉呈請或選舉上訴的行為 (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、選舉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原本要承受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兩份文本予選舉主任，可向原訟法庭申請，由其作出命令：
  - (1) 容許其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）

- ◆ 候選人若未能依時提交選舉申報書，或未能按照第37條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選舉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(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

- ◆ 《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

- ◆ 《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鄉議局議員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。

### 欺騙行為

- 不得以欺騙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。

### 提名書

- 不得污損或銷毀提名書，以阻止或妨礙他人參選。

## (二) 競選活動

### 有關候選人的陳述

- 不得發布虛假陳述指某人是或不是候選人。
- 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七天屆滿之前，向選舉主任提交兩份文本。

## (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（些）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。

不得促請或誘使任何人在同一個鄉議局議員選舉中投票多於一次。

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

- 不得招致超逾有關鄉議局議員選舉的法定最高選舉開支。
- 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逾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

- 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。
- 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，向選舉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合法例規定需要呈交的發票、收據及聲明書等。
- 即使**沒有招致選舉開支**，候選人亦必須按法例所規定的限期內，向選舉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。



## 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）或任何一間廉署分區辦事處，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，可致電廉署**選舉查詢熱線 2920 7878**或親臨廉署各分區辦事處〔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）〕。

## 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



守法規  
重廉潔

Abide by the Rules  
Support Clean Elections

# Clean Heung Yee Kuk Members Election

Information Booklet

## Foreword

**T**he Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap. 554) is enforced by the Independent Commission Against Corruption (ICAC). The purpose of this Ordinance is to uphold fairness and honesty in all tiers of public and rural elections and prevent corrupt and illegal conduct at elections.

To help candidates and their election helpers in the Heung Yee Kuk Members Election better understand the relevant legislation and avoid any contravention of the ECICO due to ignorance or inadvertence, the ICAC has specially prepared this Information Booklet for their reference.

This Booklet consists of four parts. The first part contains questions and answers summarised from the enquiries and concerns raised by candidates in previous rural elections. It serves to spell out the spirit and content of the law and its application to election situations in order to remind candidates and their election helpers of the common corrupt and illegal pitfalls in conducting election activities. The interpretation of the terms referred to in this part has been included at the bottom of each page as footnotes for easy reference. 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 their 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.

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 documents 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.*



## (A) Nomination of Candidates

**Q1** Is it legal for a group of people who intend to run for the election of Special Councillors of the Heung Yee Kuk to agree to nominate amongst themselves three persons to stand as candidates?

- A1**
- There is no offence under the ECICO if no coercion or advantage<sup>(1)</sup> is involved in the above-mentioned scenario.
  - It is, however, an offence if a person offers an advantage to another person, or uses or threatens to use force or duress against another person with a view to inducing him not to stand as a candidate. Any person who accepts an advantage for not standing as a candidate will also be guilty.

(Please refer to pages 54-55 in Part 2 for the relevant provisions.)

(1) "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 Returning Officer.

"Voluntary service" means any service provided free of charge to or in respect of a candidate or candidates at an election by a natural person, voluntarily and personally, in the person's own time for the purpose of promoting the election of the candidate(s) or prejudicing the election of another candidate or other candidates.

## (B) Electioneering

**Q2** If a group of incumbent Heung Yee Kuk Councillors intend to send a letter to all electors of a district appealing them to vote for a particular candidate contesting for the seat of Special Councillor in the said district under the Kuk, what should they take note of in order not to infringe the ECICO?

- A2**
- As the appeal letter serves to promote the election of the candidate, it is clearly a printed election advertisement<sup>(2)</sup>. In complying with S.34 of the ECICO which states that all printed election advertisements, except those printed in a registered local newspaper, are required to show in English or Chinese the name and address of the printer, date of printing and the number of copies printed, the appeal letter should contain all these printing details. The Councillors who publish the letter should, as required by the same provision of the ECICO, also deposit 2 copies of the appeal letter with the Returning Officer not later than 7 days after it has been published.
  - Since the appeal letter in the circumstances described is an election advertisement, the cost incurred for the production and mailing of the appeal letter should be counted as the candidate's election expenses<sup>(3)</sup> and be declared in his election return. Besides, the above-mentioned Councillors should have obtained the candidate's prior written authorisation before incurring these expenses on behalf of the candidate so as to avoid contravening S.23 of the ECICO.
  - The content of the appeal letter must be factually correct. It is an offence under S.26 of the ECICO for a person to publish a materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates at an election.

(Please refer to pages 56, 58 & 61-62 in Part 2 for the relevant provisions.)

(2) "Election advertisement", in relation to an election, means:

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

(3) "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:

- (i) promoting the election of the candidate; or
- (ii) prejudicing the election of another candidate, and includes the value of election donations consisting of goods and services used for that purpose.

**Q3** Is it lawful for a serving District Council (DC) member who intends to run for the election of Special Councillors of the Heung Yee Kuk to publish and distribute his performance report as DC member during the election period<sup>(4)</sup> of Heung Yee Kuk to account for the services he has rendered to the voters in his constituency?

- A3**
- A serving DC member seeking election to the Heung Yee Kuk is regarded as an “incumbent candidate”<sup>(5)</sup> according to S.33 of the ECICO. S.34(9) of the same Ordinance states that a performance report published by an incumbent candidate during the election period is an election advertisement. As such, the performance report published by the said DC member during the election period of the Heung Yee Kuk Members Election should be regarded as his election advertisement.
  - Any printed election advertisement must bear the particulars as specified in S.34 of the ECICO. Two copies of the election advertisement must also be furnished to the Returning Officer not later than 7 days after its publication.
  - The candidate who publishes the performance report must include the expenses incurred in publishing and distributing the performance report as his election expenses and declare this in his election return.

(Please refer to page 58 in Part 2 for the relevant provisions.)

(4) “Election period” means the period beginning with the nomination day for the election and ending with the last polling day for the election.

(5) 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.

**Q4** Candidate A wishes to state in his election advertisements that the chairman of a rural organisation fully supports his election. What should Candidate A take heed of for not contravening the law? Is it lawful for the said chairman to consent to Candidate A's using the name and logo of the organisation concerned in Candidate A's election advertisements? What happens if the chairman's decision of supporting Candidate A is not agreeable to some members of the rural organisation?

- A4**
- Candidate A should have obtained the said chairman's written consent before claiming the latter's support in his election advertisements. It is an offence under S.27 of the ECICO for any candidate to include in his election advertisements the name or pictorial representation of a person, in such a way as to cause electors to believe that he has the support of the person, unless he has obtained prior written consent from the person concerned.
  - According to the said S.27, the written consent given by the chairman to the inclusion of the name or logo of the rural organisation in the candidate's election advertisements is legally acceptable only if it has been approved by the organisation's governing body or by a resolution of its members passed at a general meeting. The chairman would commit an offence under S.27 of the ECICO if he purports to give the candidate such a consent which has not been approved by the organisation's governing body or by a resolution of its members passed at a general meeting.
  - If the chairman's decision of supporting Candidate A is subsequently repudiated by the rural organisation through proper procedures by those members who object to the decision, the consent of support given by the chairman will become invalid. In this situation, Candidate A must take reasonable measures to make alterations to the publicity materials not yet distributed and to retrieve the publicity materials already displayed. In any event, the cost incurred by the production and subsequent removal of the said advertisements should still be counted as Candidate A's election expenses and be declared in the election return.

(Please refer to pages 57 & 61-62 in Part 2 for the relevant provisions.)

## (C) Voting

**q5** A candidate who runs for the election of Special Councillors of the Heung Yee Kuk invites electors to join a trip to Mainland China. Apart from paying the traveling expenses of the participants, the candidate also offers to each of them an allowance of \$5,000. Will the candidate contravene the law? Is there any restriction on the time and place for the candidate to offer advantages to the electors?

- A5**
- If the candidate pays for the trip and offers monetary advantages to the electors for inducing votes for himself, he has contravened S.11 of the ECICO. According to this provision, it is an offence if a person offers an advantage to another person for influencing the latter's voting preference. Those soliciting/accepting an advantage will also commit an offence.
  - It is stipulated in S.5 of the ECICO that all conduct concerning an election, regardless of whether the conduct is engaged in within Hong Kong or elsewhere, is regulated by the ECICO.
  - S.6 and S.22 of the ECICO also state 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 in within Hong Kong or elsewhere. Whether an offer of advantages to electors is an offence depends on the purpose but not the time and place of the offer.

(Please refer to pages 58-59 in Part 2 for the relevant provisions.)

**Q6** In maintaining a harmonious relationship, I wine and dine with other rural personalities including the Chairmen and Vice-chairmen of Rural Committees, hosting meals for them now and then. Is it an offence if I treat them to meals for soliciting their support when I stand as a candidate in the forthcoming election for Special Councillors of the Kuk? If it so happens that some special events such as birthday or wedding celebrations of my family members fall within the election period, can I host meals for the the above-said persons? Would the case be different if I only met part of the cost of the meal?

- A6**
- Treating electors so as to gain their votes is an offence under S.12 of the ECICO. The provision makes it clear that if a person provides or meets **all or part** of the cost for the provision of any food, drink or entertainment to another person as an inducement to or a reward for that person to vote or not to vote for a particular candidate, or not to vote at an election, he will be guilty of an offence. In the above circumstances, both the person offering the entertainment and those soliciting/accepting it will commit an offence.
  - Nonetheless, a candidate will not contravene the law if the meal hosted by him for the above-said persons is not related to his electioneering for the Heung Yee Kuk Members Election. The candidate, however, must act prudently to avoid causing any suspicion of corruption.

(Please refer to page 59 in Part 2 for the relevant provisions.)

**Q7** A candidate's supporter calls some electors before the polling day of the Heung Yee Kuk Members Election, demanding them to vote for the particular candidate on the due day lest they may have to face certain undesirable consequences. Will the supporter be guilty of an offence?

- 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 the latter to vote or not to vote for a particular candidate or to vote or not to vote at an election.
  - The candidate's supporter has contravened S.13 of the ECICO if he threatens that the electors will have to face "undesirable consequences" if they do not vote for the candidate. The candidate will also be guilty of the same offence if he has, expressly or by implication, requested his supporter to do so.

(Please refer to page 59 in Part 2 for the relevant provisions.)

## (D) Election Expenses and Election Donations

**Q8** Will an elected Special Councillor of the Heung Yee Kuk contravene the law if he hosts a dinner party to thank his election helpers for their hard work and to celebrate his success in the election with the other Heung Yee Kuk Councillors? Should the expenses incurred by the dinner party be counted towards his election expenses? Will it make any difference if the expenses of the dinner party are borne by the participants?

- A8**
- The candidate has nothing to worry about if the dinner party is hosted for the purpose of celebrating his success in the election. Since the purpose of hosting the said dinner reception is not for promoting his election, the expenses incurred in the circumstances, whether they are borne by the candidate or not, need not be counted towards his election expenses.
  - If the dinner party is hosted to honour the candidate's promise made previously to his election helpers that they would be rewarded with a dinner party for their electioneering assistance upon the candidate's successful election, the hosting of this dinner reception 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<sup>(6)</sup> to the candidate and be reflected in his election return.
  - If the dinner party is hosted as a reward for the participants' having voted for the candidate, both the host and the participants have contravened S.12 of the ECICO.

(Please refer to pages 59 & 61-62 in Part 2 for the relevant provisions.)

(6) "Election donation" means:

- (i) any money given to a candidate for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate; or
- (ii) 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 that candidate or prejudicing the election of another candidate or other candidates.

**Q9 Who can incur election expenses other than the candidate? What are the points to note when incurring election expenses?**

- A9**
- S.23 of the ECICO states that only the candidate and those who have been authorised in writing by the candidate as election expense agents can incur election expenses. An election expense agent breaches the law if he incurs election expenses that exceed the amount specified in the agent's authorisation.
  - It is stipulated in S.24 of the ECICO that the election expenses for each candidate cannot exceed the maximum amount<sup>(7)</sup> prescribed by order by the Chief Executive in Council, lest the candidate will commit an illegal conduct.

(Please refer to pages 61-62 in Part 2 for the relevant provisions.)

**Q10 What are the points a candidate should take note of while submitting his election return? Is he required to submit an election return even if he is elected uncontested or no election expenses have been incurred?**

- A10**
- Each candidate has to lodge with the Returning 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 S.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 unspent election donation in accordance with S.19 of the ECICO.

(7) According to the Heung Yee Kuk Election Expenses Order (Cap.554E), the maximum amount of election expenses for the elections in Heung Yee Kuk (including that of the Special Councillors) is:

- (i) in respect of any fee or fees paid by a candidate to his election agent, an amount not exceeding \$3,000 in the aggregate;
- (ii) in respect of all other election expenses, an amount not exceeding \$10,000 in the aggregate.

- A candidate who makes a statement that he knows or ought to know is materially false or misleading in the election return commits an offence under S.20 of the ECICO.
- Under 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. A candidate has to submit his election return within the period as required by the law even if he is elected uncontested or has incurred no election expenses in running an election.

(Please refer to pages 63-64 in Part 2 for the relevant provisions.)

## (E) Application for Relief

**Q11** What measures can a candidate or his election helper, who has contravened the ECICO out of inadvertence, take to redress the situation?

- A11**
- Candidates and his election helpers should take heed of complying with the provisions of the ECICO and the relevant regulations while running in the Heung Yee Kuk Members Election so as to avoid any inadvertent infringement of the law and regulations.
  - Candidates should note that engaging in corrupt conduct referred to in the ECICO is a serious offence. Nothing can be done to redress the situation once an offence is committed.
  - A candidate or any other person who has done or omitted to do an act which is classified as illegal conduct under the ECICO may, according to S.31 of the ECICO, apply to the Court for an order to be made for relieving him from the penalties and disqualification to be imposed on him. He, however, has to satisfy the Court that such an act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to the applicant's bad faith.
  - Any person who has published a printed election advertisement without the printing details required by the law or has failed to furnish 2 copies of the printed election advertisement to the Returning Officer within 7 days after the said advertisement has been published may, according to S.35 of the ECICO, apply to the Court for an order to be made for relieving

him from the penalties to be imposed on him for his non-compliance with S.34 of the ECICO. He, however, has to satisfy the Court that such non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.

- A candidate who fails to lodge an election return before the end of the permitted period as required by the law may, according to S.40(1) of the ECICO, apply to the Court for an order to be made for allowing him to lodge the election return with the Returning 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 Returning 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 Returning Officer, provided that the aggregate value of errors or false statements does not exceed the prescribed limit (\$200 for Heung Yee Kuk Members 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 (please refer to page 61). 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.
- 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.

(Please refer to pages 65-66 in Part 2 for the relevant provisions.)

## (F) Enquiries and Reports

**Q12** Is it necessary for a complainant to produce evidence to the ICAC while lodging a complaint against any conduct in contravention of the ECICO? Would the complainant be accused of having made a malicious report in the event that the report is not substantiated?

- A12**
- Any person who suspects any conduct in contravention of the ECICO is welcome to make a report to the ICAC. We will investigate each pursuable complaint to ascertain whether such a malpractice exists.
  - Any person who wishes to make a report to the ICAC can contact one of the seven ICAC Regional Offices or its 24-hour Report Centre (G/F, 303 Java Road, North Point, Hong Kong) direct. He can also lodge the complaint by calling on its 24-hour Report Corruption Hotline (Tel.: 25 266 366) or writing to Hong Kong GPO Box 1000.
  - The ICAC welcomes reports on suspected corruption from the public. However, if a person knowingly furnishes false report of any offences, gives false information or makes false statements or accusations to mislead ICAC officers, he will commit an offence under S.13B of the ICAC Ordinance (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 enquiries on the ECICO may call the ICAC Election Enquiry Hotline (Tel: 2920 7878), or approach any ICAC Regional Office.

(Please refer to page 77 in Part 4 for the addresses and telephone numbers of the ICAC Regional Offices.)



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

The following is a gist of major provisions of the ECICO which relates to the management of electioneering activities for the reference of candidates, their election agents and helpers.

To facilitate easy reference, “◆” denotes an offence or elaboration of provisions under the ECICO and interpretation of terms is given under “■” in the following gist.

## (1) NOMINATION OF CANDIDATES

### **Bribery in Relation to Standing or Not Standing as Candidate (Sections 2, 7)**

- ◆ It is an offence if a person corruptly offers an advantage to another person as an inducement to or a reward for :
  - (1) that person's standing, not standing, or if that person has been nominated as a candidate, withdrawal of his candidature, or his not using the best endeavours to promote his election; or
  - (2) that person to get and try to get a third person to stand, not to stand or if that third person has been nominated as a candidate, to withdraw his candidature, or not to use that third person's best endeavours to promote his election.
- ◆ It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above-stated conduct.
- ◆ It is also an offence if a person corruptly solicits or accepts an advantage as an inducement to or a reward for the conduct stated in (1) or (2) above.
- “Candidate” :
  - (1) *means a person who stands nominated as a candidate at an election; and*

(2) *also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election.*

- *“Advantage” includes (but is not limited to) any valuable consideration, gift, loan, office, employment, contract, favour or service (other than voluntary service or the provision of entertainment). However, it does not include an election donation if particulars of the donation are given in an election return that has been lodged with the Returning Officer.*
- *“Voluntary service” means any service provided free of charge to or in respect of a candidate or candidates at an election by a natural person, voluntarily and personally, in the person’s own time for the purpose of promoting the election of the candidate(s) or prejudicing the election of another candidate and other candidates.*

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

- ◆ It is an offence if a person uses or threatens to use force or duress against another person to induce him:
  - (1) to stand or not to stand as a candidate, or 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 Statement that a Person Is or Is Not a Candidate (Section 25)**

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

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

- ◆ It is an offence if a candidate or a person publishes a materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates at an election.
- *Statements about a candidate or candidates include (but are not limited to) statements concerning the character, qualifications or previous conduct of the candidate or candidates.*

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

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

*published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.*

### **Publishing of 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.
- ◆ A performance report published by an incumbent candidate during election period (the period beginning with the nomination day and ending with the polling day of an election), is an election advertisement.
- *An “incumbent candidate” means the person being a serving member of the Legislative Council, a District Council, or the Heung Yee Kuk; or a serving Chairman, Vice-chairman or member of the Executive Committee of a Rural Committee; or a serving Village Representative, etc. who is seeking re-election to the same office or body or election to another office or body to which the ECICO applies.*

## **(3) VOTING**

### **Bribing Electors and Others (Section 11)**

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

- ◆ It is also an offence if a person, without reasonable excuse, solicits or accepts an advantage 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, or for having or not having voted for a particular candidate or particular candidates at an election.
- ◆ It is an offence if a person solicits, accepts or takes any food, drink or entertainment as an inducement to or a reward for the conduct stated in (1) or (2) above.
- ◆ It is also an offence if a person authorises another person, either expressly or by implication, to engage in the above conduct.
- ◆ However, 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 or particular candidates.*

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

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

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

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

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

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

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

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

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

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

## (4) ELECTION EXPENSES AND ELECTION DONATIONS

### Election Expenses (Sections 2, 24)

- *"Election expenses" means expenses incurred or to be incurred before, during or after the election period, by or on behalf of a candidate for the purpose of:*
  - (1) *promoting the election of the candidate; or*
  - (2) *prejudicing the election of another candidate,**and includes the value of election donations consisting of goods and services used for that purpose.*
- ◆ A candidate commits an offence if the aggregate amount of the election expenses, whether incurred by or on behalf of the candidate, exceeds the prescribed maximum amount of election expenses.
- ◆ According to the Heung Yee Kuk Election Expenses Order (Cap.554E), the maximum amount of election expenses for the elections in Heung Yee Kuk (including that of the Special Councillors) is:
  - (1) in respect of any fee or fees paid by a candidate to his election agent, an amount not exceeding \$3,000 in the aggregate;
  - (2) in respect of all other election expenses, an amount not exceeding \$10,000 in the aggregate.

## Use of Election Expenses (Sections 2, 23)

- ◆ It is an offence if a person, other than a candidate or a candidate's election expense agent, incurs any election expenses.
- *An “election expense agent” means a person authorised in writing by a candidate to incur election expenses on behalf of the candidate. The maximum amount of election expenses to be incurred by him has to be specified in the authorisation, a copy of which has to be served on the Returning Officer in order to effect his authorisation.*
- ◆ It is an offence if a candidate does not include election expenses incurred by the candidate or the candidate's election expense agent(s) in the candidate's election return.
- ◆ It is an offence for an election expense agent to incur election expenses that exceed the amount specified in his authorisation.

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

- *“Election donation” means :*
  - (1) *any money given to a candidate for the purpose of meeting, 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 or other candidates.*
- ◆ 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 or other candidates.
- ◆ It is an offence if a candidate, on receiving an election donation of more than \$1,000 in value, does not issue a receipt to the donor.

- ◆ Any anonymous election donation of more than \$1,000 in value must not be used for meeting or contributing towards meeting his election expenses or for promoting the election of the candidate or prejudicing the election of another candidate or other candidates.
- ◆ 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 lodges under Section 37 or a copy of the revised election return he lodges under Section 37A.
- ◆ It is an offence if a candidate fails to lodge with the Returning 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 unused election donation was not disposed of in accordance with (3) above; and
  - (5) a declaration in a form provided or specified by the Returning 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 Returning 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 Returning Officer, provided that the aggregate value of errors or false statement does not exceed the prescribed limit (\$200 for Heung Yee Kuk Members 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 (please refer to page 61). 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.

## (5) ELECTION PETITION OR ELECTION APPEAL

### **Bribery in Relation to Election Petition or Election Appeal (Section 21)**

- ◆ It is an offence if a person offers an advantage to another person:
  - (1) as an inducement for that person, or for him to get a third person, to withdraw an election petition or election appeal; or
  - (2) as a reward for that person for his having withdrawn or agreed to withdraw; or for his having got a third person to withdraw an election petition or election appeal.
- ◆ It is an offence if a person:
  - (1) withdraws his election petition or election appeal in return for an advantage; or
  - (2) solicits or accepts an advantage as an inducement to withdraw an election petition or election appeal; or
  - (3) solicits or accepts an advantage as a reward for his having withdrawn or his having got a third person to withdraw an election petition or election appeal.

## (6) MISCELLANEOUS AND RELATED

### **Corrupt or Illegal Conduct Engaged in with the Knowledge and Consent of a Candidate (Section 29)**

- ◆ A candidate is to be regarded as having personally engaged in corrupt or illegal conduct if the conduct was engaged in with the knowledge and consent of the candidate.

### **Officers Liable for Offences Committed by Corporation (Section 42)**

- ◆ If a corporation is found guilty of having engaged in a corrupt or illegal conduct, the director, executive officer or any person who is concerned in the management of the corporation during the material time will be liable for the conduct unless the person proves that:
  - (1) he has no knowledge of the conduct; or
  - (2) he has exercised reasonable diligence to prevent the conduct, if it was done with his knowledge.

### **Aiding, Abetting, etc. to Commit an Offence (Section 43 of the ECICO and Section 101C of the Criminal Procedure Ordinance (Cap.221))**

- ◆ A person commits an offence if he incites, conspires with, aids, abets, counsels or procures another person to engage in corrupt or illegal conduct at an election or attempts to engage in corrupt or illegal conduct.

## (7) APPLICATION FOR RELIEF

### **Relief for Certain Illegal Conduct (Section 31)**

- ◆ A candidate, agent or any other person who has done or omitted to do an act that would be an “illegal conduct” under the ECICO may apply to the Court for an order relieving him from penalties and disqualifications that are imposed on him.
- ◆ The applicant has to satisfy the Court that such act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.

### **Relief for Offences in Relation to Election Advertisements (Section 35)**

- ◆ Any person who has published a printed election advertisement without the printing details required by Section 34 or has not

furnished 2 copies of the printed election advertisement to the Returning Officer in accordance with Section 34 may apply to the Court for an order:

- (1) allowing the publication be excepted from the statutory requirements; and
  - (2) relieving him from penalties imposed on him by Section 34.
- ◆ The applicant has to satisfy the Court that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith.

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

- ◆ A candidate who fails to lodge an election return as required by Section 37 before the end of the permitted period, or fails to send an invoice or a receipt, or a copy of a receipt, as required by the law or has lodged an election return or any document accompanying the return, which contains any error or false statement, may apply to the Court for an order allowing the candidate to lodge with the approving authority an election return within such further period as the Court specifies, or an order excepting the candidate from the requirement to send an invoice or a receipt, or a copy of a receipt, as required by the law, or an order enabling the candidate to correct any error or false statement in an election return or in any document accompanying the return.
- ◆ The candidate has to satisfy the Court that the failure to comply with the requirement was attributable to the following reasons and was not due to his bad faith:
  - (1) the applicant's illness or absence from Hong Kong; or
  - (2) the death, illness, absence from Hong Kong of an agent or employee of the applicant; or
  - (3) misconduct of an agent or employee of the applicant; or
  - (4) inadvertence or an accidental miscalculation by the applicant or any other person; or
  - (5) inadvertence, an accidental loss or destruction of the invoice or receipt or copy of the receipt by the applicant or any other person; or
  - (6) any reasonable cause.

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

## (8) PENALTY

### Corrupt Conduct

- ◆ As stipulated in the ECICO, a person who engages in corrupt conduct at an election commits an offence and is liable on conviction to:
  - (1) a fine of \$200,000 and imprisonment for 3 years if tried summarily; or
  - (2) a fine of \$500,000 and imprisonment for 7 years if tried on indictment.
  
- ◆ A person who is convicted of having engaged in corrupt conduct has to pay to the Court the amount or value of any valuable consideration received by the person or his agents in connection with the conduct or such part of the amount or value as specified by the Court.

### Illegal Conduct

- ◆ As stipulated in the ECICO, a person who engages in illegal conduct at an election commits an offence and is liable on conviction to:
  - (1) a fine at level 5 and imprisonment for 1 year if tried summarily; or
  - (2) a fine of \$200,000 and imprisonment for 3 years if tried on indictment.

**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 Information Booklet, 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 Election Committee Subsector Elections, or from being nominated or elected as, an Election Committee member from the date of conviction.

## Immediate Custodial Sentence

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



**Candidates, their election agents and helpers should note the following in the Heung Yee Kuk Members 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.

### **Engaging in Deceptive Behaviour**

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

## Nomination Paper

- Do not deface or destroy any nomination paper to prevent or obstruct another person from standing for an election.

## (2) ELECTIONEERING

### Statements about a Candidate

- Do not publish any false statement that a person is or is not a candidate.
- Do not make any false or misleading statement of fact including (but not limited to) the character, qualifications or previous conduct of a candidate or candidates.

### Election Advertisements

- Do not use, without obtaining prior written consent, the name or logo of a person or an 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.

## (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 invite or induce a person to vote more than once in the same Heung Yee Kuk Members Election.
- 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 Heung Yee Kuk Members Election.
- 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 the time of lodging election return.

## Election Returns

- Do not make any false or misleading statement in the election return or copy of the revised election return.
- Do submit a return on election expenses and donations to the Returning Officer not later than 30 days after the date of publication of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law.
- Do submit with your election return the invoices, receipts and declaration form, etc. as stipulated by the law.
- Do lodge your election return with the Returning Officer within the period as required by the law even if **NO election expense has been incurred**.

## (5) ELECTION PETITION OR ELECTION APPEAL

- Do not withdraw an election petition or election appeal for an advantage.
- Do not offer any advantage to get any person to withdraw an election petition or election appeal.
- Do not solicit or accept any advantage to withdraw an election petition or election appeal.



## Reports

Any person who discovers or suspects any conduct in contravention of the ECICO may call the 24-hour ICAC **Report Hotline 25 266 366**, make a report in person to the 24-hour ICAC Report Centre (G/F, 303 Java Road, North Point, Hong Kong) or any ICAC Regional Office, or write to Hong Kong GPO Box 1000.

## Enquiries

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

## *Addresses and Telephone Numbers of ICAC Regional Offices*

### **Hong Kong Island**

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

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

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

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

### **Kowloon**

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

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

#### **ICAC Regional Office (Kowloon East/Sai Kung)**

Shop No. 4, G/F, Kai Tin Building  
67 Kai Tin Road, Lam Tin  
Tel: 2756 3300

### **New Territories**

#### **ICAC Regional Office (New Territories South West)**

Shop B1, G/F, Tsuen Kam Centre  
300-350 Castle Peak Road, Tsuen Wan  
Tel: 2493 7733

#### **ICAC Regional Office (New Territories North West)**

G/F, Fu Hing Building  
230 Castle Peak Road, Yuen Long  
Tel: 2459 0459

#### **ICAC Regional Office (New Territories East)**

G06-G13, G/F, Shatin Government Offices  
1 Sheung Wo Che Road, Shatin  
Tel: 2606 1144

守法規  
重廉潔

Abide by the Rules  
Support Clean Elections