



守法規 重廉潔

Abide by the Rules Support Clean Elections

廉潔區議會選舉資料冊

Clean District Council Election Information Booklet



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免責聲明

本資料冊只提供一般的指引，並不會就所有可能出現的情況作討論。本資料冊中有關法規的解釋，亦只屬一般和概括性質。候選人及其助選成員如對個別情況有疑問，應參照法例條文及徵詢獨立的法律意見。除此以外，候選人及其助選成員亦應細閱與選舉相關的法例及選舉管理委員會的有關指引，以免違反有關法規。任何人士因為本資料冊的內容而作出或放棄作出任何行動而招致損失，廉政公署將不會負上任何責任。

本資料冊列出的情境全屬虛構，只供參考用途，絕無任何影射意圖。本資料冊中的代名詞「他」同時包括男性和女性，並沒有任何性別歧視的含義。



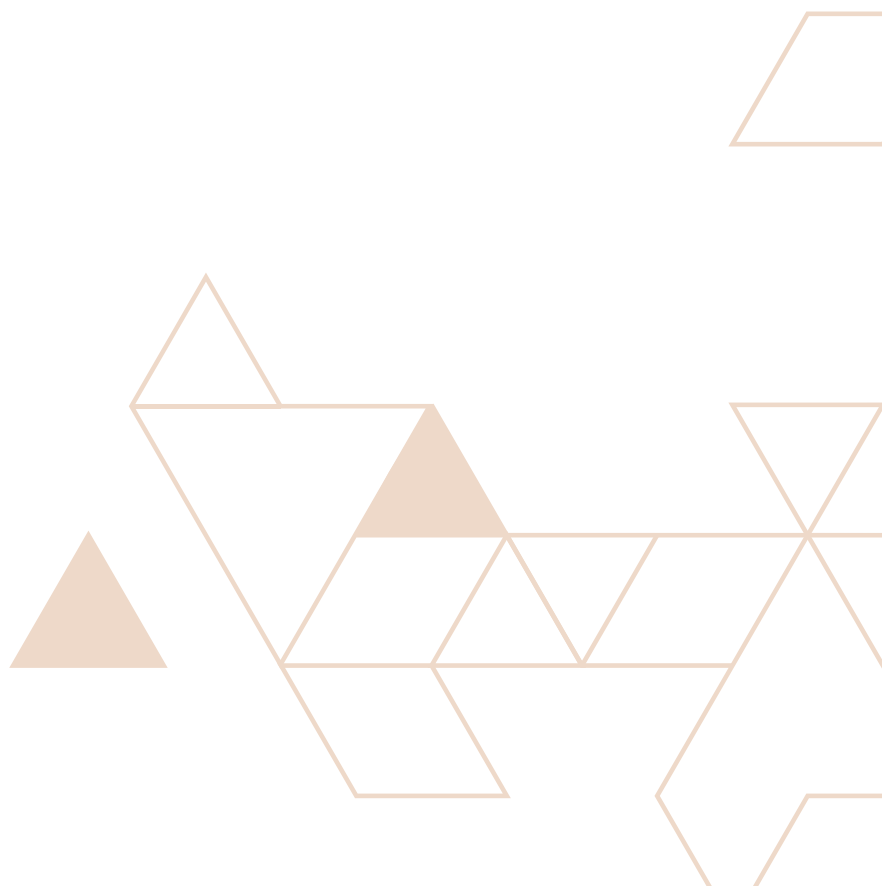
前言

區議會一般選舉及補選均受《選舉（舞弊及非法行為）條例》（第 554 章）監管。該條例由廉政公署負責執行，旨在確保香港的公共選舉得以公平、公開和誠實地進行，並防止舞弊及非法行為出現。

為幫助參與區議會選舉的候選人及其助選成員認識有關法例的條文及精神，廉政公署特別編製了這份資料冊，供他們參考。

本資料冊分為四部分。第一部分是問題剖析，歸納過往區議會選舉中參選人士的提問和他們所關注的事項，透過問答形式帶出法例的精神及其條文的適用情況。第二部分收錄部分過往選舉中有關《選舉（舞弊及非法行為）條例》的案例撮要。第三部分為選舉備忘，列出候選人及其助選成員在競選活動中應留意的重點。第四部分提供向廉政公署舉報及查詢的途徑。《選舉（舞弊及非法行為）條例》的主要條文則載於本資料冊的附錄。

市民可於廉政公署設立的「廉潔區議會選舉」網站（www.icac.org.hk/elections）瀏覽本資料冊的內容及廉政公署為區議會選舉所提供的教育及宣傳服務詳情。市民亦可致電廉潔選舉查詢熱線（電話：2920 7878）查詢《選舉（舞弊及非法行為）條例》或邀請廉政公署派員講解相關條文。





第一部分

問題剖析



(一) 參選

問 1

某政黨的一些成員在區議會選舉提名期前，透過政黨舉行記者會公布他們將會參加是次區議會選舉，並呼籲選民支持他們。由於這些黨員尚未獲正式提名，會否因此被視為「候選人」？若其中一名黨員在提名期結束前最終沒有遞交提名表格，他是否也要提交選舉申報書？

答 1

- 《選舉（舞弊及非法行為）條例》（第 554 章）第 2 條訂明，「候選人」除了指已在選舉中接受提名為候選人的人士外，亦包括那些在選舉提名期結束前的任何時間曾公開宣布有意參選的人士。由於上述黨員透過記者會公開表示有意參加是次區議會選舉，雖然尚未被提名為候選人，但根據上述條例的定義，他們已被視為該次選舉的「候選人」。
- 由於上述黨員已被視為《選舉（舞弊及非法行為）條例》定義下的「候選人」，所以他們必須遵守上述條例對「候選人」的規定。例如「候選人」須把為促使自己當選或阻礙其他候選人當選而在選舉期間前、在選舉期間內或在選舉期間後招致或將招致的開支納入選舉開支，並須在選舉申報書中清楚列明。因此，舉行上述記者會所涉及的支出須按比例計算為有關候選人的選舉開支。
- 即使其中一名曾公開宣布有意參選的黨員最終沒有遞交提名表格，但作為上述條例定義下的「候選人」，他仍須按法例的要求行事，包括於法定限期屆滿前向總選舉事務主任提交選舉申報書。

問 2

某人向一名有意參加區議會選舉的人士提供利益，要求對方不要在選舉中參選，這樣做會否觸犯《選舉（舞弊及非法行為）條例》？如果該準候選人其後受到威嚇阻止其參選，他應如何處理？

答 2

- 根據《選舉（舞弊及非法行為）條例》第 7 條，任何人舞弊地向他人提供利益，以誘使或酬謝該人士在選舉中參選或不參選、或在獲提名為候選人後撤回接受提名、或不盡最大努力促使自己當選，均屬違法。因此，上述人士藉提供利益，誘使他人任在選舉中不參選，便會觸犯上述條例。任何人舞弊地索取或接受利益作為在選舉中參選或不參選的誘因或報酬，亦會犯法。
- 此外，同一條例的第 8 及 9 條亦訂明，任何人施用或威脅施用武力或脅迫手段、或以欺騙手段誘使另一人在選舉中參選、不參選或撤回接受提名亦會觸犯上述法例。
- 候選人或準候選人如遇上述情況，應向廉政公署舉報。如遇人身威脅，更應立即報警。暴力只會破壞選舉的公信力，所有人均應摒棄暴力。

(二) 競選活動

問 3

一名現任立法會議員參加了區議會選舉，他於選舉期間印製及派發小冊子，介紹他過去以立法會議員身分所做的地區工作及服務，他有甚麼需要注意？

答 3

- 根據《選舉（舞弊及非法行為）條例》第 2(3) 條，如候選人在選舉期間（即有關選舉的提名期首日起至投票結束當日的期間）發布文件，列明他以行政長官、選舉委員會委員、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、或鄉郊代表的身分所做工作的詳細資料，則該文件屬選舉廣告。因此，上述候選人在區議會選舉期間派發有關他作為立法會議員所做工作的小冊子，符合選舉廣告的定義。有關印製及分發該小冊子所招致的費用必須納入該候選人的選舉開支內，並在其選舉申報書中清楚列明。
- 須注意的是即使該小冊子在提名期開始前發布，若候選人已公開宣布有意參選，且發布小冊子的目的是為促使有關候選人當選或阻礙其他候選人當選，則根據《選舉（舞弊及非法行為）條例》第 2(1) 條，該小冊子亦屬選舉廣告，有關開支必須納入候選人的選舉開支。
- 此外，候選人必須遵守《選舉管理委員會（選舉程序）（區議會）規例》（第 541F 章）第 106 條及由選舉管理委員會發出的「區議會選舉活動指引」就選舉廣告的規定，包括在發布任何選舉廣告後的三個工作天內把每份選舉廣告的電子文本及相關資料上載到由總選舉事務主任或獲其授權人士所維持的公開平台（「中央平台」）、或候選人或獲其授權人士所維持的公開平台（「候選人平台」），或以選舉管理委員會指明的形式向有關的選舉主任提供該選舉廣告及相關資料的文本；候選人並須在所有印刷選舉廣告上以中文或英文列明印刷人的姓名或名稱、地址、印刷日期和印刷數量（刊登在註冊本地報刊上的選舉廣告則不受此限）。

問 4

一名區議會選舉候選人獲得某大廈業主立案法團主席的口頭同意後，把主席的姓名連同法團的名稱和標識，納入他的選舉廣告內，並在廣告中刊登了他與主席的合照，以示該主席及法團對他的支持，他這樣做是否合法？若候選人只在其選舉廣告中顯示了法團主席的姓名及職銜，情況又是否不同？

答 4

- 《選舉（舞弊及非法行為）條例》第 27(1) 及 (1A) 條規定，候選人若在其選舉廣告中收納了某人或某組織的姓名、名稱、標識或圖像，以意味着或相當可能導致選民相信他已獲得有關人士或組織的支持，他必須在有關選舉廣告發布前，先取得有關人士或組織的書面同意。由於上述候選人只取得該法團主席的口頭同意，並未符合法例要求，故此他已觸犯了上述條例。
- 候選人須留意，支持者的書面同意須載於一份單一文件上，清晰表達支持者同意候選人把他的姓名、名稱、標識或圖像納入其選舉廣告。書面同意不能由多份文件組成或從一連串的通訊或信息中推斷。選舉管理委員會準備了樣本表格方便候選人以書面形式取得某人或某組織的支持同意。該樣本表格可於選舉事務處及有關選舉主任的辦事處索取，亦可從選舉事務處的網站下載。該樣本亦會在候選人遞交選舉提名表格時派發給他們。
- 該法團主席必須留意，如他未經有關法團的管理層批准，或未經法團成員在全體大會通過的決議批准，而看來給予候選人書面同意將法團的名稱和標識或跟該法團有關聯的名稱或標識納入候選人的選舉廣告中，則該法團主席亦可能會觸犯同一條例的第 27(5) 條。
- 即使候選人已經取得有關法團主席個人的事先書面同意在其選舉廣告中載有法團主席的姓名及職銜（有提及有關法團的名稱，例如是甲乙丙大廈業主立案法團主席），候選人亦應小心處理，避免該選舉廣告發布的方式意味着或相當可能導致選民相信候選人獲得整個法團的支持。否則，候選人亦須事先得到有關法團的書面同意。
- 選舉管理委員會發出的「區議會選舉活動指引」亦就只提及支持者職銜及有關組織名稱的情況，要求候選人應確保支持者已根據其所屬組織的內部守則及程序或任何既定常規，獲得支持者的組織的事先書面批准，才可在候選人的選舉廣告中一併使用支持者的職銜及組織名稱。

問 5

如某人於網上平台呼籲選民杯葛區議會選舉，包括在選舉中不投票、投白票或廢票，他會否觸犯《選舉（舞弊及非法行為）條例》？如網民將上述非法呼籲轉載到網上社交媒體及分享到即時通訊平台，情況又會否不同？

答 5

- 根據《選舉（舞弊及非法行為）條例》第 27A 條，任何人在選舉期間內藉任何公開活動煽惑另一人在選舉中不投票或投無效票，即屬非法行為。公開活動包括向公眾作出任何形式的通訊，以及向公眾分發或傳布任何材料。若上述人士於網上平台呼籲選民不要在選舉中投票、投白票或廢票，他便會觸犯上述條例。須注意的是任何人參與不法呼籲或轉載相關違法內容，同樣犯法。破壞選舉屬違法行為，任何人都不應以身試法。

問 6

若候選人利用網上平台，例如網站、社交網絡、通訊網絡等作競選宣傳，是否屬選舉廣告？候選人應如何計算有關選舉開支？若有網民就上述宣傳作出回應或在候選人網上平台表示「讚好」，候選人會否因沒有取得這些網民的事先書面同意發布這些內容而觸犯法例？若有網民在網上平台分享或轉載不同候選人的競選宣傳，有關候選人又有甚麼需要留意？

答 6

- 根據《選舉（舞弊及非法行為）條例》第 2 條，選舉廣告是指為促使或阻礙一名或多於一名候選人在選舉中當選的任何發布；而選舉開支是指候選人或代表候選人的人士，在選舉期間前、在選舉期間內或在選舉期間後，為促使該候選人當選或阻礙其他候選人當選而招致或將招致的開支。因此，上述候選人透過網上平台如網站、社交網絡、通訊網絡等發放競選宣傳屬選舉廣告，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，必須計入他的選舉開支，並在其選舉申報書內清楚列明。
- 如候選人利用網上平台發布的選舉廣告，顯示了某人或某組織對他的支持，候選人必須事前取得該人士或該組織的書面同意，以符合《選舉（舞弊及非法行為）條例》第 27(1) 及 (1A) 條的要求。但若某人出於主動在候選人於上述平台發布的選舉廣告內，作出回應或表示「讚好」，或在候選人所發布的網上直播競選活動中自發地出現，以表達對候選人的支持，而該候選人既沒有如此要求或指示，亦沒有授權任何人如此要求或指示有關人士作出上述舉動，則有關候選人無須事先取得他的書面同意。然而，候選人不得就上述人士的姓名、名稱、標識或圖像或任何由他提供的內容作出修改，除非事先取得他的書面同意，否則該候選人便違反《選舉（舞弊及非法行為）條例》第 27(1B) 條。
- 倘若候選人邀請某人就其網上的選舉廣告作出回應或參與其網上直播的競選活動，以顯示該人士對該候選人的支持，該候選人必須事先取得該人士的書面同意。
- 候選人必須遵守《選舉管理委員會（選舉程序）（區議會）規例》第 106 條及由選舉管理委員會發出的「區議會選舉活動指引」中有關發布選舉廣告的規定，詳情請參閱問題 3。

（請轉下一頁）

- 就網民在網上平台分享或轉載候選人的競選宣傳，根據《選舉（舞弊及非法行為）條例》第 23(1A) 條，任何人如非候選人亦非候選人的選舉開支代理人而在互聯網發布選舉廣告，所招致的選舉開支若只屬電費及／或連接互聯網所需的費用，該人將獲豁免《選舉（舞弊及非法行為）條例》第 23(1) 條的刑事責任。但是，假如某候選人、其選舉開支代理人、或獲候選人或選舉開支代理人授權的人士在互聯網發布該候選人的選舉廣告，而招致的選舉開支即使只屬電費及／或連接互聯網所需的費用，亦須納入該候選人的選舉開支內。如果候選人知情和同意第三者發布選舉廣告以促使自己當選或阻礙其他候選人當選，不論該候選人有沒有授權該第三者為其選舉開支代理人，候選人須將該選舉廣告視作以自己的名義發布，並將有關選舉開支在選舉申報書中清楚列明。

問 7

候選人甲、乙和丙競逐同一區議會地方選區選舉。為了協助候選人甲爭取選票，有支持者自行印製一批用以抹黑候選人乙及候選人丙的單張，然後在區內廣為派發，這樣做會否觸犯《選舉（舞弊及非法行為）條例》？

答 7

- 《選舉（舞弊及非法行為）條例》並沒有禁止為阻礙對手當選而發布的負面宣傳，惟所有涉及候選人的宣傳內容必須屬實，否則發布人士便可能觸犯上述條例第 26 條。根據該條款，任何人為促使或阻礙某候選人當選，而發布關於該候選人且屬虛假達關鍵程度或具誤導性達關鍵程度的事實陳述，均屬違法。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。
- 由於候選人甲的支持者所發布的單張，目的是為阻礙候選人乙及候選人丙當選，因此印製及派發這些單張所涉及的費用（例如印刷費和購買紙張的費用等）應計入候選人甲的選舉開支內。根據《選舉（舞弊及非法行為）條例》第 23(1) 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。因此，倘若該支持者未得候選人甲的書面授權，而為他招致選舉開支，便屬違法。

問 8

區議會選舉候選人甲和候選人乙決定組成聯盟，一起作競選宣傳。候選人甲打算派發傳單，介紹他和候選人乙的政綱，並刊登二人合照以示互相支持，藉此呼籲選民投票給他們。為免觸犯《選舉（舞弊及非法行為）條例》，候選人甲和候選人乙應留意哪些事項？

答 8

- 由於候選人甲派發的傳單是為促使聯盟中的兩位候選人當選而發布，故該傳單屬兩位候選人的聯合選舉廣告，他們須按比例將製作和派發該傳單所涉及的費用納入他們的選舉開支內，並在各人的選舉申報書中清楚列明。候選人甲亦必須按照《選舉（舞弊及非法行為）條例》第 23(1) 條，先獲得候選人乙書面授權為選舉開支代理人，方可招致有關選舉開支。
- 根據《選舉（舞弊及非法行為）條例》第 37(2) 條，若製作和發布有關聯合選舉廣告的每項選舉開支分攤後為 500 元或以上，每名候選人必須於各自提交選舉申報書時附有由貨品或服務提供者就該項開支發出的發票及收據。若候選人甲在提交選舉申報書時已附上有關發票及收據的正本，候選人乙在提交其選舉申報書時，亦應附有上述發票及收據的副本，並在聲明書中確認其為真確無誤的副本，且列明正本已由候選人甲遞交，以便有關部門核實。
- 此外，由於上述聯合選舉廣告同時收納了候選人甲和候選人乙的姓名和照片，他們兩人都必須先取得對方的書面同意，表示互相給予支持，才可發布有關選舉廣告，以符合《選舉（舞弊及非法行為）條例》第 27(1) 及 (1A) 條的規定。
- 上述候選人亦必須遵守《選舉管理委員會（選舉程序）（區議會）規例》第 106 條及由選舉管理委員會發出的「區議會選舉活動指引」中有關發布選舉廣告的規定，詳情請參閱問題 3。

問 9

一名現任區議員準備參選來屆區議會選舉，並在其競選宣傳品內聲稱曾向政府成功爭取興建公園，但事實上他只參與了公園的選址討論。他這樣做有沒有觸犯法例？

答 9

- 根據《選舉（舞弊及非法行為）條例》第 26 條，任何人包括候選人，不可為促使或阻礙某候選人當選，而發布關於該候選人且屬虛假達關鍵程度或具誤導性達關鍵程度的事實陳述。
- 若該名候選人明知自己只參與了公園選址的討論，而討論結果與政府會否興建公園完全無關，他在其競選宣傳品內的聲稱便屬虛假陳述，他有可能會因為發布了與他作為候選人有關的虛假達關鍵程度或具誤導性達關鍵程度的事實陳述而觸犯該條法例。

問 10

某機構計劃舉行區議會選舉論壇，邀請某界別的所有候選人出席，讓每名候選人均有機會向選民介紹他們的政綱。籌辦上述選舉論壇的有關支出應否計算為選舉開支？

答 10

- 根據《選舉（舞弊及非法行為）條例》第 2 條，在選舉期間前、在選舉期間內或在選舉期間後，任何為促使該候選人當選或阻礙另一候選人當選而招致或將招致的開支，均屬選舉開支。若上述機構舉行的選舉論壇，目的是讓同一界別中所有候選人均有公平及平等的機會向選民介紹他們的政綱，而非為促使或阻礙某（些）候選人當選而籌辦的，有關支出便無須計算為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發出的「區議會選舉活動指引」。

(三) 投票

問 11

候選人及其支持者於投票當日為選民提供免費車輛接送服務，接載他們到投票站投票，並游說車上選民投票給有關候選人，這樣會否觸犯法例？若免費車輛接送服務是由某長者中心提供，又會否觸犯法例？

答 11

- 免費車輛接送服務可能屬於《選舉（舞弊及非法行為）條例》第 2 條所指的「利益」。根據上述條例第 11 條，任何人不可藉提供利益，以誘使選民在選舉中投票或不投票予某（些）候選人；選民若無合理辯解而索取或接受利益作為在選舉中投票或不投票予某（些）候選人的誘因或報酬，亦可能違反上述條例第 11 條。
- 候選人及其支持者進行競選及拉票活動時，必須確保有關活動在不觸犯《選舉（舞弊及非法行為）條例》的情況下進行，同時亦應顧及公眾對有關活動的觀感，以免招致賄選或舞弊嫌疑。
- 若免費車輛接送服務並非由候選人或其支持者提供，而有關安排純粹為方便選民，當中過程既沒有促使或阻礙某（些）候選人當選，亦沒有誘使或酬謝選民在選舉中投票或不投票予某（些）候選人，《選舉（舞弊及非法行為）條例》並沒有對此施加限制。

問 12

一名候選人透過其擔任顧問的地區組織，為選民舉辦香港境外一日遊，並資助所有相關費用。當旅行團到達香港境外，該候選人便向參加者介紹自己的參選政綱，並呼籲參加者投票支持他，此舉會否違反《選舉（舞弊及非法行為）條例》？該條例有沒有地域或時間上的限制？

答 12

- 《選舉（舞弊及非法行為）條例》第 11 條規定，任何人無合理辯解向他人提供利益，誘使他人投票或不投票予某（些）候選人，即屬違法。因此，上述候選人藉資助旅遊費用作為利益，以誘使選民投自己一票，便會觸犯上述法例。選民若無合理辯解接受有關資助旅遊作為投票予該候選人的誘因，亦屬違法。
- 《選舉（舞弊及非法行為）條例》第 5 條訂明，該法例適用於一切與選舉有關的行為，不論該行為在香港境內或其他地方作出。因此，候選人藉提供免費境外旅遊賄選買票，亦受上述法例的監管。
- 根據《選舉（舞弊及非法行為）條例》第 6 條及 22 條，任何人無論是在選舉期間前、在選舉期間內或在選舉期間後作出舞弊或非法行為，均可被裁定違反該法例。

問 13

一名準備在來屆區議會選舉中競逐的現任區議員，定期為區內街坊籌辦各類社區活動，如免費健康檢查、免費法律諮詢、特價聚餐或派發日用品等。他可否在選舉期間繼續籌辦這些活動？此外，他可否在競選活動中提供娛樂表演以誘使選民投他一票？

答 13

- 《選舉（舞弊及非法行為）條例》禁止任何人藉提供利益、食物、飲料或娛樂以換取選票。倘若上述區議員提供免費健康檢查、免費法律諮詢、特價聚餐或派發日用品，或在競選活動中提供娛樂表演等，目的是誘使選民投票予他，他便會觸犯《選舉（舞弊及非法行為）條例》第 11 及 12 條。任何人收受上述利益、食物、飲料或娛樂作為投票予該候選人的誘因亦同屬犯法。
- 由於臨近選舉屬敏感時期，籌辦上述社區活動容易惹來賄選嫌疑，候選人應謹慎行事並顧及公眾的觀感，盡量避免於接近選舉的期間進行有關活動。

問 14

某候選人應邀出席居民組織的就職晚宴。晚宴期間，該居民組織的主席突然邀請該候選人即場發表其競選政綱，並呼籲出席者在有關選舉中投票支持該候選人。主席這樣做可會觸犯法例？候選人又該如何應付這種場面？

答 14

- 雖然上述就職晚宴本來並非為促使該候選人當選而安排，但居民組織主席在晚宴期間呼籲出席者支持該候選人，假若該候選人遇到上述情況而不立即制止任何人在晚宴上作出涉及他選舉的任何宣傳，該次晚宴可被視為促使他當選的選舉聚會，則一切有關的費用便須納入候選人的選舉開支內，並須於他的選舉申報書內清楚列明。（註：選舉聚會是指任何為促使或阻礙某候選人或某些候選人當選而舉行的聚會。）
- 如晚宴是居民組織主席為促使該候選人當選而安排，但他卻未獲候選人授權為其選舉開支代理人而招致了選舉開支，該主席便會抵觸《選舉（舞弊及非法行為）條例》第 23(1) 條。因為根據上述條文，除候選人或已獲候選人授權的選舉開支代理人外，其他人不得招致任何選舉開支，否則便會觸犯法例。
- 該主席及候選人應該留意，倘若是次晚宴是由主席刻意安排，藉提供食物、飲料或娛樂，誘使出席者投票予該候選人，該主席已觸犯了《選舉（舞弊及非法行為）條例》第 12 條。假若候選人知道及同意該主席以這目的舉辦晚宴，他亦同樣觸犯了該條例。（註：任何人不會僅因他在選舉聚會中供應任何種類的不含酒精飲料，而屬作出舞弊行為。）
- 當候選人在考慮或計劃參選時，他應盡快通知與他有聯繫的組織他有可能會參選，並提醒有關組織要留意《選舉（舞弊及非法行為）條例》的規定。候選人在競選期間應謹慎行事，盡量避免出席容易招致賄選嫌疑之場合。任何組織在選舉期間，舉辦與選舉無關的活動時，應避免在活動中提及與選舉有關事宜。若有參加者在活動中公開宣傳某候選人的選舉，主辦組織應立即制止，以免不慎為該候選人招致選舉開支。

問 15

一名候選人的支持者在選舉前致電一些選民，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？候選人又會否觸犯法例？此外，假如某人發放一些具誤導性的信息，意圖阻止選民投票，他又會否觸犯法例？

答 15

- 《選舉（舞弊及非法行為）條例》第 13 條訂明，任何人向他人施用武力或脅迫手段，或威脅對他人施用武力或脅迫手段，以誘使他人投票或不投票，或在選舉中投票或不投票予某（些）候選人，即屬違法。脅迫手段包括以此手段使任何人蒙受經濟損失。
- 任何具影響力的人士在為候選人拉票時必須謹慎，以免被他人視為以脅迫手段為某（些）候選人爭取選票。
- 若該候選人曾以明示或默示方式，請他的支持者以脅迫手段誘使選民在選舉中投票或不投票予某（些）候選人，亦同樣抵觸了上述條例。
- 此外，根據《選舉（舞弊及非法行為）條例》第 14 條，任何人以欺騙手段誘使另一人在選舉中投票或不投票予某（些）候選人，或在選舉中不投票，均屬違法。同一條例第 14(1A) 條亦指明，任何人故意妨礙或阻止另一人在選舉中投票，或令另一人作出上述行為，即屬違法。故此，如果有人以欺騙手段，例如發放虛假或誤導信息，或教唆他人以欺騙手段阻止選民投票，又或者以任何方法，故意妨礙或阻止選民投票，他均可能觸犯法例。
- 武力、脅迫、欺騙手段及妨礙行為均會嚴重破壞選舉的公信力。所有候選人都應呼籲其支持者摒棄上述違法行為。

問 16

一名區議會地方選區選舉候選人開設的公司位於其參選的區議會地方選區內。一些並非在上述選區居住的員工為了幫助候選人當選，在登記成為選民時均填報公司地址作為他們的居所地址，其後更在該選區投票，他們此舉是否違法？候選人又是否需要就員工的上述行為而負上法律責任？

答 16

- 任何人如明知或罔顧後果地向選舉事務主任提供屬虛假達關鍵程度或具誤導性達關鍵程度的資料，而其後在選舉中投票，便會觸犯《選舉（舞弊及非法行為）條例》第 16(1) 條。上述員工並非在候選人參選的地方選區居住，卻在登記為選民時，向選舉事務主任提供明知屬虛假的住址，而其後在選舉中投票，便屬違法。
- 上述候選人如果明知員工已向選舉事務主任提供虛假達關鍵程度或具誤導性達關鍵程度的資料，卻促請或誘使他們在該選舉中投票，他也會觸犯《選舉（舞弊及非法行為）條例》第 16(2) 條。
- 上述員工即使最後並沒有在選舉中投票，亦會因在申請登記成為選民或向選舉事務處更新登記住址時，明知或罔顧後果地作出在要項上是不正確的陳述而觸犯由香港警務處負責執行的《選舉管理委員會（選民登記）（立法會地方選區）（區議會地方選區）規例》（第 541A 章）第 22 條。
- 因此，任何人在申請登記成為選民或申請更改已登記的資料時，必須向選舉事務處提供真實和正確的資料，特別是其住址。選民在搬遷後，應盡快通知選舉事務處以更新登記地址。如任何人對自己是否符合選民登記資格有任何疑問，可向選舉事務處查詢。

(四) 選舉開支及選舉捐贈

問 17

一名現任區議員準備參加來屆區議會選舉，除了安排自己的議員助理協助其競選事宜外，還在選舉期間找來數名朋友義務為他助選及免費借用他們的車輛作為競選用途，候選人應如何申報選舉開支及選舉捐贈？

答 17

- 現任區議員作為候選人，如果安排自己的助理協助其競選事宜，目的是為促使自己當選，當中涉及的開支均屬選舉開支。候選人須計算議員助理用於為其處理競選事宜的工作時間，按比例把議員助理的薪金納入其選舉開支，並在其選舉申報書中清楚列明。
- 《選舉（舞弊及非法行為）條例》第 37(2)(b)(i) 條列明，候選人必須確保選舉申報書附有每項 500 元或以上的選舉開支的發票及收據。發票及收據須由貨品或服務提供者發出，文件上亦須載有開支項目詳情。因此，若議員助理處理競選事宜的有關薪金為 500 元或以上，候選人在提交選舉申報書時，便須附有由議員助理發出並列明開支詳情的發票及收據（例如：議員助理的姓名、薪金及由其簽署核實已收到有關款項）。須注意的是，現任區議員不可向區議會申領已計算作選舉開支的議員助理薪金支出，只可申領已扣除選舉開支後的薪金餘額。
- 倘若候選人的朋友在他們的私人時間，自願、親自和免費為候選人助選，他們所提供的服務便屬《選舉（舞弊及非法行為）條例》第 2(1) 條中所指的「義務服務」，不屬於選舉開支或選舉捐贈。因此，候選人無須將該項服務的費用計入其選舉開支內，或在其選舉申報書上列明。
- 候選人在安排上述朋友為他助選期間招致的其他相關開支，例如購買宣傳物品、郵寄選舉廣告的費用等，均不包括在「義務服務」的範圍內。候選人必須把這些費用納入他的選舉開支內，並在他的選舉申報書中清楚列明。

（請轉下一頁）

- 根據《選舉（舞弊及非法行為）條例》第 2(1) 條，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或服務（不包括義務服務），屬於選舉捐贈，而其價值亦屬選舉開支。因此，候選人的朋友免費借出車輛予候選人作競選用途，屬提供選舉捐贈，其價值亦須納入為候選人的選舉開支。候選人須於選舉申報書內，把有關車輛的市值租金同時列為選舉開支及選舉捐贈。若每項捐贈的價值超過 1,000 元，該候選人須根據上述法例第 19 及 37(2)(b)(ii) 條的要求，向捐贈者（即他的朋友）發出收據，並在收據上列明捐贈者的姓名、地址及有關捐贈的詳情，有關收據的副本亦須與選舉申報書一併提交。
- 候選人使用上述車輛作競選用途期間所招致的其他相關開支，例如燃料費、佈置車輛的費用等，必須納入他的選舉開支內，並在他的選舉申報書中清楚列明。若任何一項開支為 500 元或以上，則須隨選舉申報書一併提交由貨品或服務提供者（例如燃料供應商、佈置車輛所需物資的供應商等）發出的發票及收據，文件上亦須載有開支項目詳情（包括日期、貨品或服務的資料和金額、提供貨品或服務的組織或人士的資料、以及證明提供貨品或服務的組織或人士已全數收取有關款項的資料，例如收款人士的姓名及簽署，或收款組織的蓋章或其授權代表簽署）。

問 18

數名區議會選舉的候選人共同租用一間辦公室作為競選之用，他們應如何計算選舉開支？若候選人在提交選舉申報書的法定限期屆滿前，仍未收到電力公司發出的電費單，他們又可如何處理？

答 18

- 上述候選人應按比例分攤辦公室租金及其他相關的開支，例如購買文具作競選之用的費用、電費、上網費等，並於個別候選人提交的選舉申報書中清楚列明。
- 若分攤後的每項選舉開支為 500 元或以上，選舉申報書亦須附有由貨品或服務提供者（例如業主、供應商等）發出的相關發票及收據，列明各候選人如何分攤該項選舉開支。文件上亦須載有開支項目詳情（例如租用日期、貨品或服務提供者的姓名或名稱、貨品或服務的資料和金額、公司印章／貨品或服務提供者簽署及收款日期，以證明貨品或服務提供者已全數收取有關款項）。由於發票及收據的正本會由其中一位候選人提交，其餘候選人須提交有關發票及收據的副本，並於其選舉申報書中列出攤分該項開支的所有候選人的姓名，及註明發票及收據的正本由哪名候選人提交，以便有關部門核實。提交副本的候選人須在聲明書中確認發票及收據為真確無誤的副本。
- 必須注意的是，所有發票及收據應由貨品或服務提供者發出。由候選人本人、候選人的個人辦事處或任何代候選人購買人士發出的發票及收據，以及增值電子儲值卡（如八達通卡）的收據均未能符合法例要求。
- 若有關候選人於提交選舉申報書的法定限期屆滿前仍未收到電費單，亦未支付有關款項，候選人應在選舉申報書內列出預計的電費開支及擬定支付索款的時間表，承諾將依時間表支付有關款項，並在付款後 30 天內，向選舉事務處提交每項價值 500 元或以上的選舉開支的發票及收據。由於發票及收據的正本會由其中一位候選人提交，其餘候選人須提交有關發票及收據的副本。

問 19

為節省開支，候選人在競選活動中重用以往選舉中使用過的舊物資（例如街板），以及由朋友或其他團體提供的物資，他應如何計算選舉開支和選舉捐贈？候選人可否於選舉結束後把未有使用的選舉捐贈留作日後提供地區服務之用？

答 19

- 候選人若重用曾使用的舊物資促使自己當選，應該確保有關物資之估計價值（例如計算折舊後的價值）及用以重新修整舊有物資所招致的費用，均須計入其選舉開支內，並在選舉申報書中清楚分開列明估計價值及修整舊物資的費用。若重新修整該舊物資的費用為 500 元或以上，則須隨選舉申報書一併提交由貨品或服務提供者發出的發票及收據，以符合《選舉（舞弊及非法行為）條例》第 37(2)(b)(i) 條的規定。
- 由候選人的朋友或其他團體提供的物資如果是為促使該候選人當選或阻礙其他候選人當選而提供，則這些物資屬選舉捐贈，候選人須在選舉申報書中清楚列明。如選舉捐贈的價值為 1,000 元以上，根據《選舉（舞弊及非法行為）條例》第 19 及 37(2)(b)(ii) 條的規定，候選人須向捐贈者發出收據，該收據須載有捐贈者的姓名或名稱及地址，以及該項捐贈的詳情，並在選舉申報書附上有關收據的副本。由於上述候選人使用這些物資作其競選之用，他亦須把有關物資的價值計算為他的選舉開支，並在選舉申報書內清楚列明。
- 《選舉（舞弊及非法行為）條例》第 18 條亦規定，候選人或其他人如將選舉捐贈用於償付或分擔償付該候選人的選舉開支以外的用途，或用於促使該候選人當選或阻礙其他候選人當選以外之用途，即屬在選舉中作出舞弊行為。因此，若上述選舉捐贈沒有用作選舉用途，候選人須按照《選舉（舞弊及非法行為）條例》第 19 及 37(2)(b)(iii) 條的規定，於提交選舉申報書前，將有關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，並將接受機構所發出的收據副本隨選舉申報書一併提交。
- 因此，候選人不可將未有使用的選舉捐贈用於償付選舉開支以外的其他用途，包括用於日後由他提供的地區服務。

問 20

一名區議會選舉的候選人在成功當選後，設慶功宴招待助選團成員，此舉有否違法？設宴的開支是否需要計算為選舉開支？此外，在選舉結果公布後才於區內展示「謝票」的街板，所涉及的費用又應否計算為選舉開支？

答 20

- 如果該候選人在當選後設慶功宴，目的純粹是為慶祝他成功當選，而與促使他當選完全無關，有關的開支便不需要計入其選舉開支內。
- 然而，如果設宴的目的是為了履行候選人對他的助選團成員曾許下的承諾，例如他曾答應於選舉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，所涉及的費用屬於他的選舉開支，並須按法例在選舉申報書中清楚列明。
- 若候選人設宴的目的是為了酬謝選民曾投他一票，該候選人便會觸犯《選舉（舞弊及非法行為）條例》第 12 條。若選民接受款待是作為投票予該候選人的報酬，他們亦會違反上述條例。
- 至於用作「謝票」的街板是在選舉結果公布後才於區內展示，並非用作促使上述候選人當選或阻礙其他候選人當選，有關支出無須計算為候選人的選舉開支。

(五) 選舉申報書

問 21

候選人在提交選舉申報書時應留意甚麼？如某人在選舉中已獲提名為候選人，但最終撤回提名、或其提名被裁定為無效；或候選人屬自動當選、不成功當選、或並沒有招致任何選舉開支，他是否仍需提交選舉申報書？候選人若未能於法定限期內提交選舉申報書，他可怎樣補救？

答 21

• 候選人必須在《選舉（舞弊及非法行為）條例》第 37(1F) 及 (1G) 條規定的法定限期屆滿前（即最後一個界別／選區選舉結束*當日後 60 日期間屆滿前），向總選舉事務主任提交選舉申報書。選舉申報書中必須列出他在選舉中的選舉開支及收取的所有選舉捐贈。根據上述法例第 37(2)(b) 條，選舉申報書必須附有：

- (1)（就每項 500 元或以上的選舉開支而言）由貨品或服務提供者發出並載有該項支出詳情的發票及收據；
- (2)（就每項價值 1,000 元以上的選舉捐贈而言）發給捐贈者並載有捐贈者的姓名或名稱及地址，以及該項捐贈詳情的收據副本；
- (3) 由候選人把選舉捐贈（包括價值 1,000 元以上的匿名選舉捐贈、未有使用的選舉捐贈，以及超出選舉開支最高限額的選舉捐贈）給予候選人所選擇屬公共性質的慈善機構或慈善信託後，由該等機構或信託所發出的收據的副本；
- (4)（如適用）書面解釋，列明沒有按照上述第 (3) 段處置選舉捐贈的理由；及
- (5) 聲明書，以證明選舉申報書的內容屬實。

* 就區議會選舉而言，選舉結束指選舉結果於憲報公布或宣布選舉未能完成。

• 候選人應小心填寫選舉申報書，避免當中出現任何錯誤。候選人可根據其公開予公眾查閱的選舉廣告文本記錄，核對在選舉申報書中是否已包含所有相關的選舉開支項目；同時應確保每張發票及收據的金額，是否與選舉申報書中填寫的相符。

- 根據《選舉（舞弊及非法行為）條例》第 20 條，若候選人在按該條例第 37 條提交的選舉申報書內，作出該候選人明知或理應知道屬虛假或具誤導性達關鍵程度的陳述，即屬在選舉中作出舞弊行為。
- 上述法例第 2 條清楚訂明，「候選人」除了指已接受提名為候選人的人士外，亦包括那些在選舉提名期結束前的任何時間曾公開宣布有意參選的人士。即使某位獲提名為候選人的人士最終撤回提名、或其提名被裁定為無效；或候選人屬自動當選、不成功當選、或並沒有招致任何選舉開支，該人亦必須於法例所規定的限期內向總選舉事務主任提交選舉申報書。
- 候選人如不能夠或沒有在法例准許的限期屆滿前提交選舉申報書，他可根據《選舉（舞弊及非法行為）條例》第 40(1) 條向原訟法庭申請作出命令，容許他在原訟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，但他必須令原訟法庭信納不能夠或沒有按照規定提交選舉申報書一事是由於候選人患病或不在香港；或他的代理人或僱員去世、患病、不在香港或行為不當；或候選人或其他人的粗心大意或意外地計算錯誤；或任何合理因由，而非因候選人不真誠所致。必須注意，根據法庭過往有關選舉刑責寬免申請的裁決，法庭會嚴格審視申請人提出的理據，特別考慮申請人是否對遵守有關規定已經展現足夠的重視。

問 22

如果候選人提交的選舉申報書內出現輕微錯誤或虛假陳述，他可採取什麼措施作出補救？

答 22

- 《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任何錯誤或虛假陳述（包括附於該選舉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) 條規定須就該選舉申報書附有的任何文件），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（區議會選舉為 5,000 元）；及在計算該等錯誤或虛假陳述的累計價值後，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 46 至 47 頁），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選舉申報書沒有列出某項選舉開支或選舉捐贈，該份經修訂的選舉申報書副本必須按上述法例第 37(2)(b) 條附有有關文件，例如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由候選人所作的聲明書，證明該修訂選舉申報書副本的內容屬實。
- 根據《選舉（舞弊及非法行為）條例》第 20 條，若候選人在按上述條例第 37A 條提交的經修訂選舉申報書的副本內，作出該候選人明知或理應知道屬虛假或具誤導性達關鍵程度的陳述，即屬在選舉中作出舞弊行為。
- 候選人亦可根據《選舉（舞弊及非法行為）條例》第 40(3) 及 (4) 條向原訟法庭申請作出命令，使候選人可更正選舉申報書或附於該選舉申報書的任何文件內的錯誤或虛假陳述。惟他必須令原訟法庭信納作出該錯誤或虛假陳述是由於他的代理人或僱員行為不當；或候選人或其他人粗心大意或意外地計算錯誤；或任何合理因由，而並非因候選人不真誠所致。

- 若候選人未能按條例規定提交所需的發票、收據或收據副本等，他可根據《選舉（舞弊及非法行為）條例》第 40(5) 及 (6) 條向原訟法庭申請，由其作出命令豁免候選人提交該些文件，惟他必須令法庭信納沒有遵從有關規定一事是由於他的代理人或僱員行為不當；或候選人或其他人粗心大意、意外地遺失或銷毀該些文件；或任何合理因由，而並非因候選人不真誠所致。必須注意，根據法庭過往有關選舉刑責寬免申請的裁決，法庭會嚴格審視申請人提出的理據，特別考慮申請人是否對遵守有關規定已經展現足夠的重視。





第二部分

選舉案例撮要



案例一 賄賂他人參選

一名人士、某組織的創立人及該組織的一名成員串謀接受該名人士提供 15 至 20 萬元的利益作為促使該成員在一次區議會選舉中參選的誘因。該名人士並向另外五名人士提供至少共 85 萬元賄款，利誘他們本人參選或令其他人士參選。

該名人士與該組織創立人及該組織的成員會面後達成協議，即串謀促使該組織的成員在指定地區參選及向該名人士提交參選報告書，以從該名人士收受一筆 15 萬元至 20 萬元的款項。後來該名人士表示報告書太簡單，所以他只向該組織創立人支付 3 萬 6 千元現金。

該名人士又分別向另外五名人士提供至少共 85 萬元賄款，利誘他們本人或令其他人士在該選舉多個由該名人士指明的選區中參選，但其建議均遭對方拒絕。

經審訊後，三人被裁定和他人串謀，使該名人士舞弊地向他人提供利益及該組織創立人從該名人士取得利益，作為促使該組織的成員參選的誘因，違反《選舉（舞弊及非法行為）條例》（第 554 章）第 7 條。三人最後分別被判入獄 2 年至 3 年零 3 個月。

原審法官指出，賄選是十分嚴重的罪行，而法庭要嚴厲對待選舉舞弊等非法行為以維護選舉公信力。其後該名人士上訴至終審法院但被駁回上訴。終審法院裁定該名人士故意和舞弊地作出有關行為，即誘使其他共同被告人參與選舉以獲取私人利益，而此等行為傾向於削弱公平、公開及誠實的選舉。

案例二 賄選舞弊

某區議會選舉候選人及他的四名支持者在投票日前一個多月，成立福利會並以該會名義向選民提供茶點、娛樂及其他利益，以誘使選民在選舉中投票予該候選人。

該會先後斥資逾 100 萬元舉辦十多場晚宴，對象是該會會員中的選民，他們只需繳付 20 元便能參加晚宴。在候選人出席晚宴期間，該會人員重覆地舉起暗示候選人參選編號的手勢和提及與候選人參選編號相關的語句。

在選舉期間，該會差不多每天都舉辦本地一日遊，參加的會員更免費獲贈麵包和飲品。他們共安排了 38 次一日遊，一日遊連午宴的總費用超過 39 萬元。候選人及該四名支持者不但曾出現在現場與參加者打招呼，更在選舉日迎接回程的旅遊巴士。他們亦曾向區內街坊提供免費流感疫苗注射服務，並派發 100 元現金券用作繳付某醫療中心或保健中心的診金或換取食物或其他產品。在投票日前，有人以福利會名義向區內街坊派發環保袋，內載有一本保健書籍，書本上以大篇幅顯示候選人的參選編號。福利會舉辦有關活動的費用屬候選人的選舉開支，總額遠超過規例訂明的開支限額。

經審訊後，法庭裁定五人串謀觸犯《選舉（舞弊及非法行為）條例》的多項罪名，包括第 11 條在選舉中賄賂選民或其他人的舞弊行為、第 12 條在選舉中向他人提供茶點或娛樂的舞弊行為及其他有關選舉開支的條文，最終分別被判入獄 27 至 33 個月。

法庭指出，這是一宗極大規模的選舉舞弊案件。有關人士經過精心計劃及部署，長時間及利用多種不同的賄選行為，意圖影響選民的投票意向。法庭更發出明確信息，任何參與賄選行為的人士，不論其背景及社會地位，都不會獲得法庭輕判。

案例三 提供身體檢查服務換取選票

某區議會選舉候選人，在選舉期間兩次聘請多名學護在區內設置攤檔為長者進行免費身體檢查服務，包括量血壓及體重檢查。候選人在攤檔附近擺放了其競選宣傳海報。除了替居民量度血壓外，學護也向居民派送刻有該名候選人口號的原子筆及印有該名候選人名字及候選人編號的年曆卡。學護也接獲指示在派發這些贈品時，提醒居民區議會的選舉日，並邀請他們支持該名候選人。活動進行期間，候選人亦佩帶著其競選肩帶向途人拉票。

審訊後，候選人被裁定提供利益予其他人士作為換取選票的誘因，違反《選舉（舞弊及非法行為）條例》第 11 條，被判入獄 9 個星期。裁判官判刑時強調，由於案情嚴重，必須判處監禁刑罰。

候選人其後就定罪提出上訴，其中一項理據為他作為時任區議員，早於案發前一年開始定期在區內提供有關身體檢查服務。高等法院原訟法庭暫委法官考慮有種種證供顯示在該兩天所舉辦的身體檢查活動，實際上是該名候選人競選活動的一部分，他在此活動中亦提供利益誘使選民投票予他，故此駁回上訴。

案例四 茶聚宴請作拉票

某區議會選舉候選人呈交參選提名表格三日後，隨即以其擔任主席的社區服務處的名義，在酒樓舉辦午間茶聚招待選民。他向酒樓預訂點心茶聚，酒樓收費每位 30 元，他則向參加者出售入場券，每位收取 20 元，餘數由其贊助，並附有抽獎。最終候選人以 11 席宴請參加人士，有關費用合共 3,300 元。

候選人被裁定違反《選舉（舞弊及非法行為）條例》罪名，包括第 12 條，即償付用於為茶聚參加者提供食物、飲料及娛樂的全部或部分費用，以誘使他們在選舉中投票予他，被判處須履行 100 小時社會服務。

裁判官指出，雖然候選人在茶聚中並無提及選舉事宜，但席間候選人曾公開發表演說表示他參選；裁判官認為拉票行為並不一定是明顯的，而是可以用其他暗示或隱晦方式進行。

案例五 提供娛樂誘使投票

一名立法會補選候選人在選舉期間，於選區內的廣場舉辦一個兩小時的集會，並在集會開始前數小時在其社交平台專頁發布貼文，宣布一名歌手將於集會上表演。集會期間，該名歌手在台上演唱了兩首歌，並呼籲出席者在即將舉行的補選中投票予該名候選人。候選人其後在他的社交平台專頁分享該集會的錄像短片，當中包括該名歌手的表演及他向出席者作出的投票呼籲。

候選人及歌手同被控違反《選舉（舞弊及非法行為）條例》第 12 條。該條例訂明任何人為另一人提供食物、飲料或娛樂，以誘使該另一人在選舉中投票予某候選人，即屬在選舉中作出舞弊行為。候選人及歌手在庭上承認有關案情摘要，同獲裁判官頒布簽保令，以 2,000 元簽保守行為 18 個月。

案例六 以金錢賄選

某鄉事委員會選舉候選人兩次親自到訪向某選民拉票。於第二次會面離開前，候選人放下了 13 萬元現鈔以賄賂該選民在選舉中投票予他。

候選人被裁定作出舞弊行為，違反《選舉（舞弊及非法行為）條例》第 11 條，被判入獄 14 個星期。在其判刑理由中，裁判官強調法庭有責任確保選舉公正及廉潔，以維護公眾信心。

上訴法庭其後批准律政司司長就判刑提出的覆核，並同意候選人的行為公然漠視選舉制度的神聖和廉潔，法庭必須判處具阻嚇性的刑罰，以杜絕任何在選舉中出現的舞弊及非法行為。上訴法庭撤銷原判明顯不足的刑期，改以判處候選人 12 個月的監禁刑期。

案例七

接受利益投票予某候選人

一名選民於投票日前一天，應親戚邀請到餐廳晚膳。席上該親戚將4,000元現金交給她，說是要給她及其母親各2,000元，讓她們在選舉中投票給某位候選人。晚膳後該選民致電其母親告知有關事情，並在家中將2,000元轉交其母親。她們母女二人其後在該選舉中投了票。

該選民承認收受利益，作為在選舉中投票予某候選人及令其母親投票予同一候選人的誘因，違反《選舉（舞弊及非法行為）條例》第11條，被判入獄2個月，並須向法庭繳付4,000元。

裁判官判刑時指出，沒有任何東西比維護廉潔社會更重要。任何人士在選舉中作出舞弊行為必須被嚴懲，否則選舉制度將崩潰。

案例八

「種票」舞弊

在某次區議會選舉中，幾十名市民被揭發使用虛假住址（包括使用其他人的住址或非住宅物業），登記為某同一選區的選民，並於投票日前往投票；更有些人將自己的地址借給他人登記成為當區的選民。事後共40多人分別被控違反《選舉（舞弊及非法行為）條例》第16條或串謀詐騙。部分人士於法庭認罪；其餘被判處罪名成立。刑罰由執行社會服務令至監禁1年。

在不同的審訊中，多名裁判官均指「種票」為嚴重罪行，必須判處具阻嚇性刑罰。法庭要向公眾發出信息，保障廉潔及公平的選舉制度。

案例九 欠缺書面支持同意

一名區議會選舉候選人在其選舉廣告內聲稱獲得一批支持者支持，但在發布選舉廣告前，未有取得其中 50 多個人士或組織的書面同意。該名候選人其後在選舉中勝出，其中一名落敗候選人以該勝出的候選人違反了《選舉（舞弊及非法行為）條例》第 27 條，即發布假稱獲支持的選舉廣告，作其中一項理據提出選舉呈請，要求推翻選舉結果。原訟法庭在聆訊後裁定候選人並非妥為當選，須進行補選。

該候選人向原訟法庭申請命令以寬免刑罰，提出該些支持者均已口頭同意支持他，沒有遵守第 27 條的規定乃屬一時疏忽。法庭認為沒有證據顯示候選人已採取行動，在發布選舉廣告前核實已取得相關的書面同意，並且不接納候選人沒有取得書面同意屬於疏忽，故駁回他的寬免申請。

該候選人其後被起訴，承認違反《選舉（舞弊及非法行為）條例》兩項罪名，包括第 27 條，即發布選舉廣告假稱獲支持的非法行為，被判罰款 1 萬 5 千元。

裁判官在判刑時指出，候選人如只是取得支持者的口頭答應，但欠缺法例要求的書面同意，便須負上法律責任。候選人有責任確保選舉工程符合法例要求。

案例十

煽惑他人在選舉中投無效票

在立法會選舉期間，某網民在其個人社交媒體專頁展示一則貼文，並分享該貼文至六個社交媒體專頁，煽惑閱覽人士在立法會選舉中投無效票。該網民又於選舉投票日早上，在其個人社交媒體專頁展示另一則貼文，並分享該貼文至四個社交媒體專頁，煽惑閱覽人士在該立法會選舉中投無效票。

該網民其後被起訴違反《選舉（舞弊及非法行為）條例》第 27A 條，即在選舉期間內藉公開活動煽惑另一人不投票或投無效票的非法行為。他承認兩項控罪，被判入獄 2 個月，緩刑 2 年。

裁判官判刑時指出，該網民干犯與選舉有關罪行，性質嚴重。

案例十一

欠交選舉申報書

某名於區議會選舉中落敗的候選人，沒有按照《選舉（舞弊及非法行為）條例》第 37 條的規定，於選舉結果公布後的指定日期內向選舉事務處提交選舉申報書。

選舉事務處曾以電郵及電話提醒該候選人須於法定限期前提交選舉申報書，但選舉事務處於該限期結束前仍未收到他的選舉申報書。

該候選人其後被控違反《選舉（舞弊及非法行為）條例》第 38 條，即沒有提交選舉申報書。由於案件涉及重大公眾利益，候選人被判處 6 個月監禁。其後候選人不服判刑，提出上訴，高等法院原訟法庭裁定 4 個月的量刑起點為恰當的刑期。

刑罰

任何人被裁定在選舉中作出舞弊行為，根據《選舉（舞弊及非法行為）條例》可被判監禁 7 年及罰款 50 萬元。任何人如在選舉中作出非法行為或沒有按照《選舉（舞弊及非法行為）條例》第 37 條的規定，一經定罪，可被判監禁 3 年及罰款 20 萬元。

任何人被裁定作出《選舉（舞弊及非法行為）條例》中的舞弊或非法行為，將會由被裁定有罪之日起計 5 年內喪失資格，而不得獲提名為行政長官、選舉委員會界別分組、立法會、區議會或鄉郊代表選舉的候選人；或當選為行政長官、選舉委員會委員、立法會議員、區議會議員或鄉郊代表；或獲委任為區議會議員；或登記為區議會當然議員；或獲提名為選舉委員會委員；或登記為選舉委員會當然委員。



第三部分

選舉備忘



區議會選舉的候選人及其助選成員應留意下列事項：

(一) 參選

賄賂

- ✘ 不得作出下列行為，也不得以明示或默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參選或不參選；
 2. 提供利益以誘使或酬謝任何已在選舉中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。
- ✘ 不得索取或接受利益，以作為任何人在選舉中參選或不參選的誘因或報酬。
- ✘ 不得索取或接受利益，以作為任何人在選舉中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。
- ✘ 不得提供利益，以促使選民提名或不提名某人為候選人。

施用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以誘使任何人在選舉中參選或不參選，或誘使已在選舉中獲提名為候選人的人士撤回接受提名。
- ✘ 不得以明示或默示方式授權另一人作出上述行為。
- ✘ 不得施用或威脅施用武力或脅迫手段，以促使選民提名或不提名某人為候選人。

欺騙行為

- ✘ 不得以欺騙手段誘使任何人在選舉中參選或不參選，或誘使已在選舉中獲提名為候選人的人士撤回接受提名。
- ✘ 不得以明示或默示方式授權另一人作出上述行為。
- ✘ 不得以欺騙手段，促使選民提名或不提名某人為候選人。

提名書

- ✘ 不得污損或銷毀已填妥或已局部填妥的提名書，以阻止或妨礙另一人在選舉中參選。

(二) 競選活動

有關候選人的陳述

- ✘ 不得發布明知屬虛假的陳述，指某人是或不再是某項選舉的候選人。
- ✘ 不得為促使或阻礙某（些）候選人當選，而發布包括（但不限於）關於該（些）候選人的品格、資歷或以往的行為且屬虛假達關鍵程度或具誤導性達關鍵程度的事實陳述。

選舉廣告

- ✘ 不得發布載有某人或某組織的姓名、名稱或標識，或某人的圖像的選舉廣告，而發布的方式意味着或相當可能導致選民相信有關候選人獲得該人士或該組織的支持，除非：
 1. 事先取得該支持人士或組織的書面同意；或
 2. 發布有關選舉廣告的候選人或人士既沒有要求或指示將該姓名、名稱、標識或圖像納入該廣告中，亦沒有授權任何其他人士如此要求或指示（例如有關選舉廣告內容是由有關支持者主動提供）。

註：任何人必須經組織的管理階層批准，或經組織的成員在全體大會通過的決議批准，才可給予書面同意將該組織的名稱或標識或跟該組織有關聯的名稱或標識納入該人的選舉廣告中。

- ✘ 除非事先取得支持人士或組織的書面同意，不得修改或授權任何人修改由該人士或組織提供，收納了他們的姓名、名稱、標識或圖像及任何選舉廣告的內容。
- ✔ 必須遵守相關的選舉管理委員會規例及由選舉管理委員會發出的「區議會選舉活動指引」就選舉廣告的規定。

註：如候選人在選舉期間（即有關選舉的提名期首日起至投票日止的期間）發布文件，列明該候選人以行政長官、選舉委員會委員、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、或鄉郊代表的身份所做工作的詳細資料，則該文件亦屬選舉廣告。

(三) 投票

賄賂

☒ 不得無合理辯解而作出下列行為，也不得以明示或默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投票或不投票予某（些）候選人；
2. 提供利益以誘使或酬謝任何人在選舉中不投票。

提供茶點或娛樂

☒ 不得作出下列行為，也不得以明示或默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分費用，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；
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分費用，以誘使或酬謝任何人在選舉中不投票。

施用或威脅施用武力或脅迫手段

☒ 不得作出下列行為，也不得以明示或默示方式授權另一人作出下列行為：

1. 向任何人施用或威脅施用武力或脅迫手段，以誘使任何人在選舉中投票，或在選舉中投票予某（些）候選人；
2. 向任何人施用或威脅施用武力或脅迫手段，以誘使任何人在選舉中不投票，或在選舉中不投票予某（些）候選人；
3. 因為任何人在選舉中投票，或在選舉中投票予某（些）候選人，所以對該人施用或威脅施用武力或脅迫手段；
4. 因為任何人在選舉中不投票，或在選舉中不投票予某（些）候選人，所以對該人施用或威脅施用武力或脅迫手段；
5. 以攔阻方式阻止選民在選舉中投票。

欺騙行為

- ✘ 不得作出下列行為，也不得以明示或默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投票或不投票予某（些）候選人；
 2. 以欺騙手段誘使任何人在選舉中不投票。

有關投票的其他違法行為

- ✘ 不得明知他人無權在選舉中投票卻促請或誘使該人在選舉中投票。
- ✘ 不得明知他人已向選舉事務主任提供屬虛假達關鍵程度或具誤導性達關鍵程度的資料，卻促請或誘使該人在選舉中投票。
- ✘ 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。
- ✘ 不得無合法權限而銷毀、移走、開啟或以其他方式干擾正在選舉中使用的投票箱。
- ✘ 不得故意妨礙或阻止他人在選舉中投票，或令另一人妨礙或阻止第三者在選舉中投票。
- ✘ 不得在選舉期間內藉公開活動，煽惑他人在選舉中不投票或投無效票。

(四) 選舉開支及選舉捐贈

選舉開支

✘ 不得招致超過下列就區議會選舉有關選區或界別所訂明的選舉開支最高限額：

選區 / 界別	選舉開支最高限額
(一) 地方選區	
中區	\$512,400
西區、南區西北	\$585,600
南區東南、觀塘北、荃灣西北、元朗鄉郊東、蝴蝶山、紅花嶺、大埔南、西貢及坑口	\$658,800
油尖旺南、油尖旺北、觀塘東南、觀塘中、荃灣東南、屯門東、屯門北、元朗市中心、天水圍南及屏廈、天水圍北、大埔北、將軍澳南、將軍澳北、沙田西、沙田南、沙田北、葵涌東、葵涌西、離島	\$732,000
太北、觀塘西、屯門西、沙田東、青衣	\$805,200
康灣、柴灣、深水埗西、九龍城南、黃大仙東	\$878,400
灣仔、深水埗東、九龍城北、黃大仙西	\$951,600

選區 / 界別	選舉開支 最高限額
(二) 地區委員會界別	
地區委員會界別	\$100,000

- ✘ 選舉開支代理人不得招致超過其授權書所指明限額的選舉開支。
- ✘ 除了為自己招致選舉開支的候選人或是已獲該候選人授權的選舉開支代理人外，任何人不得在選舉中或在與選舉有關連的情況下招致選舉開支（除非該名人士在互聯網發布選舉廣告且所招致的選舉開支僅為電費及／或連接互聯網所需的費用）。

選舉捐贈

- ✘ 不得將選舉捐贈用於：
 1. 償付候選人的選舉開支以外的用途；或
 2. 促使候選人當選或阻礙其他候選人當選以外的用途。
- ✔ 必須就價值 \$1,000 以上的選舉捐贈向捐贈者發出收據，載明捐贈者的姓名或名稱及地址，及該項選舉捐贈的詳情。
- ✔ 必須將價值 \$1,000 以上而候選人不知道捐贈者的姓名或名稱及地址的選舉捐贈、未有使用的選舉捐贈及超出選舉開支最高限額的選舉捐贈，於提交選舉申報書之前，給予候選人所選擇的屬公共性質的慈善機構或慈善信託。

選舉申報書

- ✔ 必須在《選舉（舞弊及非法行為）條例》第 37 條規定的限期屆滿之前，向總選舉事務主任提交選舉申報書，並清楚列明所有由候選人及其已獲授權的選舉開支代理人招致的選舉開支；及候選人或他人代候選人收取的所有選舉捐贈。
- ✔ 必須在選舉申報書中附有：
 1. （就每項 \$500 或以上的選舉開支而言）由貨品或服務提供者發出載有該項支出詳情的發票及收據；
 2. （就每項價值 \$1,000 以上的選舉捐贈而言）發給捐贈者並載有捐贈者的姓名或名稱及地址，以及該項捐贈詳情的收據副本；
 3. 由候選人把選舉捐贈（包括價值 \$1,000 以上的匿名選舉捐贈、未有使用的選舉捐贈，以及超出選舉開支最高限額的選舉捐贈）給予候選人所選擇屬公共性質的慈善機構或慈善信託後，由該等機構或信託所發出的收據的副本；
 4. （如適用）書面解釋，列明沒有按照上述第（3）段處置選舉捐贈的理由；及
 5. 聲明書，以證明選舉申報書的內容屬實。
- ✔ 任何人在選舉提名期結束前的任何時間曾公開宣布有意在選舉中參選，即使該人最終沒有遞交提名表格；或獲提名為候選人後撤回接受提名、或其提名被裁定為無效；或候選人屬自動當選、不成功當選、或並沒有招致任何選舉開支，該人亦必須於法例所規定的限期內向總選舉事務主任提交選舉申報書。

註：「候選人」除了指已接受提名為候選人的人士外，亦包括在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士。

- ✘ 不得在選舉申報書或經修訂選舉申報書的副本上作出候選人明知或理應知道屬虛假或具誤導性達關鍵程度的陳述。

(五) 選舉呈請 / 選舉上訴

- ✘ 不得撤回選舉呈請 / 選舉上訴以換取利益。
- ✘ 不得提供利益，以誘使或酬謝任何人撤回選舉呈請 / 選舉上訴。
- ✘ 不得索取或接受利益，作為令任何人撤回選舉呈請 / 選舉上訴的誘因或報酬。





第四部分

舉報及查詢途徑



舉報

任何人如發現或懷疑任何違反《選舉（舞弊及非法行為）條例》（第 554 章）的行為，應立即向廉政公署作出舉報。

市民可親身到廉政公署的 7 間分區辦事處或 24 小時舉報中心（地址：香港北角渣華道 303 號），亦可致電廉政公署的 24 小時舉報貪污熱線 **25 266 366**，或郵寄至香港郵政總局信箱 1000 號作出舉報。

廉政公署呼籲市民就懷疑貪污的個案作出舉報。然而，任何人明知而向廉政公署人員作出或導致他人向廉政公署人員作出有人犯任何罪行的虛假報告；或藉提供虛假資料或作出虛假陳述或指控，以誤導廉政公署人員，則可能會觸犯《廉政公署條例》（第 204 章）第 13B 條，一經定罪可被判處罰款 25,000 元及監禁 1 年。

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**廉潔選舉查詢熱線 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教育及宣傳活動詳情，可瀏覽「**廉潔區議會選舉**」網站（www.icac.org.hk/elections）。

廉政公署分區辦事處地址及電話

香港

東港島辦事處

灣仔分域街 16 號
東城大廈地下 3 號
電話：2519 6555

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

九龍

東九龍及西貢辦事處

九龍灣宏開道 8 號
其士商業中心地下 9 號
電話：2756 3300

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

新界

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

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

新界西南辦事處

荃灣青山公路荃灣段 300-350 號
荃錦中心地下 B1 號
電話：2493 7733



附錄

**《選舉（舞弊及非法行為）條例》
摘錄**

本附錄只提供在本資料冊內提及的《選舉（舞弊及非法行為）條例》（第554章）的相關部分。

第2條 釋義（只列出相關部分）

有關主管當局

- (a) 就為選出行政長官而舉行的選舉而言，指總選舉事務主任；及
- (b) 就為選出一名或多於一名立法會議員、選舉委員會委員或區議會議員而舉行的選舉而言，指總選舉事務主任；及
- (c) 就為選出鄉議局議員或鄉事委員會主席、副主席或執行委員會委員而舉行的選舉而言，指負責該項選舉的選舉主任，如未委任選舉主任，則指民政事務總署署長；及
- (d) 就為選出鄉郊代表而舉行的選舉而言，指民政事務總署署長。

利益 指

- (a) 任何有值代價、饋贈或借貸；或
- (b) 任何職位、受僱工作或合約；或
- (c) 支付、免卻、解除或了結全部或部分義務；或
- (d) 行使或不行使權利或權力；或
- (e) 履行或不履行職責；或
- (f) 任何優待，包括
 - (i) 予以維護使免受已招致或預期招致的法律責任；及
 - (ii) 予以維護使免遭已採取或可能採取的紀律、民事或刑事法律程序起訴；或
- (g) 任何其他服務（義務服務及提供娛樂除外），

但如某項選舉捐贈的詳情已在提交有關主管當局的選舉申報書內提供，則利益一詞並不包括該項選舉捐贈。

武力

- (a) 包括任何形式的暴力或約束；及
- (b) 尤其包括
 - (i) 使任何人受到傷害（不論是身體上或精神上）；及
 - (ii) 損害或銷毀任何人的財產。

候選人

- (a) 指在某項選舉中接受提名為候選人的人；
- (b) 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在該項選舉中參選的人。

脅迫手段 包括以脅迫手段使任何人蒙受經濟損失。

義務服務 指任何自然人為以下目的在其私人時間自願親自免費向某項選舉的一名或多於一名候選人提供或就某項選舉的一名或多於一名候選人而提供的任何服務

- (a) 促使該候選人或該等候選人當選；或
- (b) 阻礙另一名候選人或另一些候選人當選。

選舉捐贈 就某項選舉的一名或多於一名候選人而言，指以下任何捐贈

- (a) 為償付或分擔償付該候選人或該等候選人的選舉開支，而給予該候選人或該等候選人或就該候選人或該等候選人而給予的任何金錢；或
- (b) 為促使該候選人或該等候選人當選或阻礙另一名候選人或另一些候選人當選，而給予該候選人或該等候選人或就該候選人或該等候選人而給予的任何貨品，包括由於提供義務服務而附帶給予的貨品；
- (c) 為促使該候選人或該等候選人當選或阻礙另一名候選人或另一些候選人當選，而向該候選人或該等候選人提供或就該候選人或該等候選人而提供的任何服務，但不包括義務服務。

選舉期間 就某項選舉而言，指由該項選舉提名日起，至該項選舉投票日止的期間，如該項選舉有多於1個投票日，則指由該項選舉提名日起，至該項選舉最後1個投票日止的期間。

選舉開支 就某項選舉的候選人而言，指在選舉期間前、在選舉期間內或在選舉期間後，由該候選人或由他人代該候選人

- (a) 為促使該候選人當選；或
- (b) 為阻礙另一候選人當選，

而招致或將招致的開支，並包括包含貨品及服務而用於上述用途的選舉捐贈的價值。

選舉開支代理人 就某候選人而言，指該候選人按照第23條授權的人。

選舉廣告 就選舉而言，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

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

如候選人在選舉期間發布文件，而該文件列明該候選人以下述身分所做工作的詳細資料，則該文件就本條例而言屬選舉廣告

- (a) 行政長官；
- (ab) 選舉委員會委員；
- (b) 立法會議員；
- (c) 區議會議員；
- (d) 鄉議局議員；
- (e) 鄉事委員會主席、副主席或執行委員會委員；或
- (f) 鄉郊代表。

第4條 本條例適用的選舉

本條例適用於下列各類選舉

- (a) 為選出行政長官而舉行的選舉；
- (b) 為選出立法會議員而舉行的換屆選舉；
- (c) 為填補立法會議席空缺而舉行的補選；
- (d) 為選出選舉委員會委員而舉行的界別分組一般選舉；
- (da) 為填補選舉委員會委員席位空缺而舉行的補選；
- (e) 為選出區議會議員而舉行的一般選舉；
- (f) 為填補區議會議席空缺而舉行的補選；
- (g) 為選出鄉議局議員而舉行的選舉；
- (h) 為選出鄉事委員會主席、副主席或執行委員會委員而舉行的選舉；
- (i) 為選出鄉郊地區的鄉郊代表而舉行的鄉郊一般選舉；
- (j) 為選出鄉郊地區的鄉郊代表而舉行的鄉郊補選。

第5條 本條例適用的行為

本條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的。

第6條 可就選舉中的舞弊行為施加的刑罰

- (1) 任何人在選舉中作出舞弊行為，即屬犯罪
 - (a) 如循簡易程序審訊，一經定罪，可處罰款\$200,000及監禁3年；或
 - (b) 如循公訴程序審訊，一經定罪，可處罰款\$500,000及監禁7年。
- (2) 如任何人被裁斷在選舉期間前、在選舉期間內或在選舉期間後作出舞弊行為，則該人可被裁定犯了在選舉中作出舞弊行為的罪行。
- (3) 法庭如裁定任何人作出舞弊行為，必須命令該人向法庭繳付
 - (a) 該人或該人的代理人在與該等行為有關連的情況下所收取的任何有價代價的款額或價值；或
 - (b) 法庭在命令中指明的該有價代價的部分款額或價值。

第7條 賄賂候選人或準候選人的舞弊行為

- (1) 任何人舞弊地作出以下作為，即屬在選舉中作出舞弊行為
 - (a) 提供利益予另一人
 - (i) 作為該另一人在選舉中參選或不參選的誘因；或
 - (ii) (如該另一人已在選舉中獲提名為候選人) 作為該另一人撤回接受提名的誘因；或
 - (iii) (如該另一人已在選舉中獲提名為候選人) 作為該另一人不盡最大努力促使該另一人當選的誘因；或
 - (b) 提供利益予另一人
 - (i) 作為該另一人已在選舉中參選或不參選的報酬；或
 - (ii) (如該另一人過去在選舉中獲提名為候選人) 作為該另一人已撤回接受提名的報酬；或
 - (iii) (如該另一人已在或過去在選舉中獲提名為候選人) 作為該另一人沒有盡最大努力促使該另一人當選的報酬；或

- (c) 提供利益予另一人
 - (i) 作為該另一人令第三者或試圖令第三者在選舉中參選或不參選的誘因；或
 - (ii) (如該第三者已在選舉中獲提名為候選人) 作為該另一人令該第三者或試圖令該第三者撤回接受提名的誘因；或
 - (iii) (如該第三者已在選舉中獲提名為候選人) 作為該另一人令該第三者或試圖令該第三者不盡最大努力促使該第三者當選的誘因；或
- (d) 提供利益予另一人
 - (i) 作為該另一人已令第三者或已試圖令第三者在選舉中參選或不參選的報酬；或
 - (ii) (如該第三者過去在選舉中獲提名為候選人) 作為該另一人已令該第三者或已試圖令該第三者撤回接受提名的報酬；或
 - (iii) (如該第三者已在或過去在選舉中獲提名為候選人) 作為該另一人已令該第三者或已試圖令該第三者不盡最大努力促使該第三者當選的報酬；或
- (e) 索取或接受利益
 - (i) 作為在選舉中參選或不參選的誘因；或
 - (ii) (如該人已在選舉中獲提名為候選人) 作為撤回接受提名的誘因；或
 - (iii) (如該人已在選舉中獲提名為候選人) 作為不盡最大努力促使該人當選的誘因；或
- (f) 索取或接受利益
 - (i) 作為已在選舉中參選或不參選的報酬；或
 - (ii) (如該人過去在選舉中獲提名為候選人) 作為已撤回接受提名的報酬；或
 - (iii) (如該人已在或過去在選舉中獲提名為候選人) 作為沒有盡最大努力促使該人當選的報酬；或
- (g) 索取或接受利益
 - (i) 作為令另一人或試圖令另一人在選舉中參選或不參選的誘因；或
 - (ii) (如該另一人已在選舉中獲提名為候選人) 作為令該另一人或試圖令該另一人撤回接受提名的誘因；或
 - (iii) (如該另一人已在選舉中獲提名為候選人) 作為令該另一人或試圖令該另一人不盡最大努力促使該另一人當選的誘因；或

- (h) 索取或接受利益
 - (i) 作為已令另一人或已試圖令另一人在選舉中參選或不參選的報酬；或
 - (ii) (如該另一人過去在選舉中獲提名為候選人) 作為已令該另一人或已試圖令該另一人撤回接受提名的報酬；或
 - (iii) (如該另一人已在或過去在選舉中獲提名為候選人) 作為已令該另一人或已試圖令該另一人不盡最大努力促使該另一人當選的報酬。
- (2) 就本條而言
 - (a) 任何人授予、承諾授予或顯示願意授予另一人利益，即屬提供利益；及
 - (b) 任何人為令自己受惠或為令另一人受惠而問取利益，或顯示願意為令自己受惠或為令另一人受惠而收取利益，即屬索取利益；及
 - (c) 任何人為令自己受惠或為令另一人受惠而收取或獲得利益，或同意為令自己受惠或為令另一人受惠而收取或獲得利益，即屬接受利益。
- (3) 就本條而言，即使利益是由另一人提供，但如該另一人是獲授權而行事的，則授權的人仍視為曾提供利益。授權的方式可以是明示或默示的。

第8條 對候選人或準候選人施用武力或脅迫手段，或威脅對候選人或準候選人施用武力或脅迫手段的舞弊行為

- (1) 任何人作出以下作為，即屬在選舉中作出舞弊行為
 - (a) 對另一人施用武力或脅迫手段，或威脅對另一人施用武力或脅迫手段，以誘使該另一人
 - (i) 在選舉中參選或不參選；或
 - (ii) (如該另一人已在選舉中獲提名為候選人) 撤回接受提名；或
 - (b) 對另一人施用武力或脅迫手段，或威脅對另一人施用武力或脅迫手段，以誘使該另一人令第三者
 - (i) 在選舉中參選或不參選；或
 - (ii) (如該第三者已在選舉中獲提名為候選人) 撤回接受提名；或

- (c) 對另一人施用武力或脅迫手段，或威脅對另一人施用武力或脅迫手段，因為該另一人或第三者
 - (i) 在選舉中參選或不參選；或
 - (ii) (如該另一人或該第三者已在選舉中獲提名為候選人) 撤回接受提名。
- (2) 第(1)款所提述的任何一類舞弊行為，即使是由另一人作出，但如該另一人是獲授權而行使的，則授權的人仍視為曾作出該舞弊行為。授權的方式可以是明示或默示的。

第9條 作出某些關乎候選人或準候選人的欺騙性行為的舞弊行為

- (1) 任何人作出以下作為，即屬在選舉中作出舞弊行為
 - (a) 以欺騙手段誘使另一人
 - (i) 在選舉中參選或不參選；或
 - (ii) (如該另一人已在選舉中獲提名為候選人) 撤回接受提名；或
 - (b) 以欺騙手段誘使另一人令第三者
 - (i) 在選舉中參選或不參選；或
 - (ii) (如該第三者已在選舉中獲提名為候選人) 撤回接受提名。
- (2) 第(1)款所提述的任何一類舞弊行為，即使是由另一人作出，但如該另一人是獲授權而行使的，則授權的人仍視為曾作出該舞弊行為。授權的方式可以是明示或默示的。

第10條 污損或銷毀提名書的舞弊行為

任何人意圖阻止或妨礙另一人在選舉中參選而污損或銷毀已填妥或已局部填妥的提名書，即屬在選舉中作出舞弊行為。

第11條 在選舉中賄賂選民或其他人的舞弊行為

- (1) 任何人無合理辯解而作出以下作為，即屬在選舉中作出舞弊行為
 - (a) 提供利益予另一人，作為在選舉中投票予某候選人或某些候選人的誘因；或

- (b) 提供利益予另一人，作為已在選舉中投票予某候選人或某些候選人的報酬；或
 - (c) 提供利益予另一人，作為該另一人令第三者或試圖令第三者在選舉中投票予某候選人或某些候選人的誘因；或
 - (d) 提供利益予另一人，作為已令第三者或已試圖令第三者在選舉中投票予某候選人或某些候選人的報酬；或
 - (e) 索取或接受利益，作為在選舉中投票予某候選人或某些候選人的誘因；或
 - (f) 索取或接受利益，作為已在選舉中投票予某候選人或某些候選人的報酬；或
 - (g) 索取或接受利益，作為令另一人或試圖令另一人在選舉中投票予某候選人或某些候選人的誘因；或
 - (h) 索取或接受利益，作為已令另一人或已試圖令另一人在選舉中投票予某候選人或某些候選人的報酬。
- (2) 任何人無合理辯解而作出以下作為，亦屬在選舉中作出舞弊行為
- (a) 提供利益予另一人，作為在選舉中不投票，或在選舉中不投票予某候選人或某些候選人的誘因；或
 - (b) 提供利益予另一人，作為已在選舉中不投票，或已在選舉中不投票予某候選人或某些候選人的報酬；或
 - (c) 提供利益予另一人，作為該另一人令第三者或試圖令第三者在選舉中不投票，或在選舉中不投票予某候選人或某些候選人的誘因；或
 - (d) 提供利益予另一人，作為已令第三者或已試圖令第三者在選舉中不投票，或在選舉中不投票予某候選人或某些候選人的報酬；或
 - (e) 索取或接受利益，作為在選舉中不投票，或在選舉中不投票予某候選人或某些候選人的誘因；或
 - (f) 索取或接受利益，作為已在選舉中不投票，或已在選舉中不投票予某候選人或某些候選人的報酬；或
 - (g) 索取或接受利益，作為令另一人或試圖令另一人在選舉中不投票，或在選舉中不投票予某候選人或某些候選人的誘因；或
 - (h) 索取或接受利益，作為已令另一人或已試圖令另一人在選舉中不投票，或在選舉中不投票予某候選人或某些候選人的報酬。

- (3) 就本條而言
 - (a) 任何人授予、承諾授予或顯示願意授予另一人利益，即屬提供利益；及
 - (b) 任何人為令自己受惠或為令另一人受惠而問取利益，或顯示願意為令自己受惠或為令另一人受惠而收取利益，即屬索取利益；及
 - (c) 任何人為令自己受惠或為令另一人受惠而收取或獲得利益，或同意為令自己受惠或為令另一人受惠而收取或獲得利益，即屬接受利益。
- (4) 就本條而言，即使利益是由另一人提供，但如該另一人是獲授權而行事的，則授權的人仍視為曾提供利益。授權的方式可以是明示或默示的。
- (5) 任何候選人或其他人不會僅因提出或唆使他人提出訂立投票協議，而屬在違反本條的情況下作出舞弊行為。
- (6) 就第(5)款而言，如根據某項協議，某些人同意投票予某候選人或某些候選人或同意令他人投票予某候選人或某些候選人，以換取另一些人同意投票予另一候選人或另一些候選人或同意令他人投票予另一候選人或另一些候選人，則該項協議即屬投票協議。
- (7) 即使所提出之事涉及不同選舉，第(5)款仍然適用。
- (8) 在就本條所訂罪行而提起的檢控中，證明具有合理辯解的舉證責任，由被告人承擔。

第12條 在選舉中向他人提供茶點或娛樂的舞弊行為

- (1) 任何人為另一人提供食物、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，以誘使該另一人或第三者
 - (a) 在選舉中投票予某候選人或某些候選人；或
 - (b) 在選舉中不投票，或在選舉中不投票予某候選人或某些候選人，即屬在選舉中作出舞弊行為。
- (2) 任何人因另一人或第三者
 - (a) 已在選舉中投票予某候選人或某些候選人；或
 - (b) 已在選舉中不投票，或已在選舉中不投票予某候選人或某些候選人，而為該另一人提供食物、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，即屬在選舉中作出舞弊行為。

- (3) 任何人索取、接受或享用食物、飲料或娛樂
 - (a) 作為在選舉中投票予某候選人或某些候選人的誘因；或
 - (b) 作為在選舉中不投票，或在選舉中不投票予某候選人或某些候選人的誘因，即屬在選舉中作出舞弊行為。
- (4) 任何人索取、接受或享用食物、飲料或娛樂
 - (a) 作為已在選舉中投票予某候選人或某些候選人的報酬；或
 - (b) 作為已在選舉中不投票，或已在選舉中不投票予某候選人或某些候選人的報酬，即屬在選舉中作出舞弊行為。
- (5) 任何人不會僅因他在選舉聚會中供應任何種類的不含酒精飲料，而屬作出第(1)款所提述的任何一類舞弊行為。選舉聚會指任何為促使或阻礙某候選人或某些候選人當選而舉行的聚會。
- (6) 第(1)至(4)款所提述的任何一類舞弊行為，即使是由另一人作出，但如該另一人是獲授權而行事的，則授權的人仍視為曾作出該舞弊行為。授權的方式可以是明示或默示的。

第13條 對選民施用武力或脅迫手段，或威脅對選民施用武力或脅迫手段的舞弊行為

- (1) 任何人作出以下作為，即屬在選舉中作出舞弊行為
 - (a) 對另一人施用武力或脅迫手段，或威脅對另一人施用武力或脅迫手段，以誘使該另一人在選舉中投票，或在選舉中投票予某候選人或某些候選人；或
 - (b) 因為另一人在選舉中投票，或在選舉中投票予某候選人或某些候選人，所以對該另一人施用武力或脅迫手段，或威脅對該另一人施用武力或脅迫手段；或
 - (c) 對另一人施用武力或脅迫手段，或威脅對另一人施用武力或脅迫手段，以誘使該另一人令第三者在選舉中投票，或在選舉中投票予某候選人或某些候選人。
- (2) 任何人作出以下作為，亦屬在選舉中作出舞弊行為
 - (a) 對另一人施用武力或脅迫手段，或威脅對另一人施用武力或脅迫手段，以誘使該另一人在選舉中不投票，或在選舉中不投票予某候選人或某些候選人；或
 - (b) 因為另一人在選舉中不投票，或在選舉中不投票予某候選人或某些候選人，所以對該另一人施用武力或脅迫手段，或威脅對該另一人施用武力或脅迫手段；或

- (c) 對另一人施用武力或脅迫手段，或威脅對另一人施用武力或脅迫手段，以令該另一人誘使第三者在選舉中不投票，或在選舉中不投票予某候選人或某些候選人；或
 - (d) 以擄拐方式阻止選民在選舉中投票。
- (3) 第(1)或(2)款所提述的任何一類舞弊行為，即使是由另一人作出，但如該另一人是獲授權而行事的，則授權的人仍視為曾作出該舞弊行為。授權的方式可以是明示或默示的。
- (4) 團體選民不會僅因曾指示其獲授權代表在選舉中投票予某候選人或某些候選人或不投票予某候選人或某些候選人而違反本條。

第14條 作出某些關乎選民的欺騙或妨礙行為的舞弊行為

- (1) 任何人以欺騙手段作出以下作為，即屬在選舉中作出舞弊行為
- (a) 誘使另一人在選舉中投票予某候選人或某些候選人；或
 - (b) 誘使另一人在選舉中不投票，或在選舉中不投票予某候選人或某些候選人；或
 - (c) 令另一人誘使第三者在選舉中投票予某候選人或某些候選人；或
 - (d) 令另一人誘使第三者在選舉中不投票，或在選舉中不投票予某候選人或某些候選人。
- (1A) 任何人故意作出以下行為，即屬在選舉中作出舞弊行為
- (a) 妨礙或阻止另一人在選舉中投票；或
 - (b) 令另一人妨礙或阻止第三者在選舉中投票。
- (1B) 凡某人因作出第(1A)款所指的舞弊行為，而被控犯第6(1)條所訂罪行，則如該人證明在指稱的罪行發生時，該人在有合法權限或合理辯解的情況下作出該控罪所關乎的作為，即為免責辯護。
- (2) 第(1)或(1A)款所提述的任何一類舞弊行為，即使是由另一人作出，但如該另一人是獲授權而行事的，則授權的人仍視為曾作出該舞弊行為。授權的方式可以是明示或默示的。

第16條 關於在選舉中投票的舞弊行為

- (1) 任何人作出以下作為，即屬在選舉中作出舞弊行為
- (a) 明知他無權在選舉中投票卻在選舉中投票；或
 - (b) 已
 - (i) 向選舉事務主任提供他明知屬虛假達關鍵程度或具誤導性達關鍵程度的資料；或
 - (ii) 明知而不向選舉事務主任提供關鍵資料；或
 - (iii) 罔顧後果地向選舉事務主任提供屬虛假達關鍵程度或具誤導性達關鍵程度的資料，
而其後在選舉中投票；或
 - (c) 在選舉中
 - (i) 就第4(1)(a)條所提述的選舉而言，在該選舉中的同一輪投票中投票多於一次；
 - (ia) 就第4(1)(i)或(j)條所提述的選舉而言，在該選舉中投票多於一次；
 - (ii) 就第4(1)條任何其他段所提述的選舉而言，在該選舉中
 - (A) 在同一個選區或選舉界別投票多於一次；或
 - (B) 在多於一個選區或選舉界別投票，
但如選舉法明文准許者，則屬例外。
- (2) 任何人作出以下作為，即屬在選舉中作出舞弊行為
- (a) 明知另一人無權在選舉中投票卻促請或誘使該另一人在選舉中投票；或
 - (b) 明知另一人已
 - (i) 向選舉事務主任提供屬虛假達關鍵程度或具誤導性達關鍵程度的資料；或
 - (ii) 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
 - (c) 促請或誘使另一人在選舉法並無明文准許的情況下
 - (i) 就第4(1)(i)或(j)條所提述的選舉而言，在該選舉中投票多於一次；

- (ii) 就第4(1)條任何其他段所提述的選舉而言，在該選舉中
 - (A) 在同一個選區或選舉界別投票多於一次；或
 - (B) 在多於一個選區或選舉界別投票。
- (3) 就本條而言，任何人如申領選票以在選舉中投票，即視為已在選舉中投票。但申領並獲發給選票的人，不會僅因他
 - (a) 損壞了選票；並且
 - (b) 在遵從任何有關的選舉法關於損壞的選票的規定後使用另一張選票投票，而被視為在選舉中投票多於一次。

第17條 銷毀或污損選票的舞弊行為

- (1) 任何人
 - (a) 無合法權限而向另一人提供選票；或
 - (b) 意圖欺騙而將他獲合法授權放進投票箱的選票以外的任何紙張放進投票箱；或
 - (c) 意圖欺騙而將任何選票帶離投票站；或
 - (d) 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；或
 - (e) 無合法權限而銷毀、移走、開啟或以其他方式干擾正在選舉中使用的投票箱，即屬在選舉中作出舞弊行為。
- (2) 在就本條所訂罪行而提起的檢控中，證明具有合法權限的舉證責任，由被告人承擔。

第18條 不當運用選舉捐贈的舞弊行為

- 任何候選人或其他人
- (a) 將選舉捐贈用於償付或分擔償付該候選人的選舉開支以外的用途；或
 - (b) (如某項選舉捐贈包含貨品或服務) 將該項捐贈用於促使該候選人當選或阻礙另一名候選人或另一些候選人當選以外的用途，
- 即屬在選舉中作出舞弊行為。

第19條 候選人須如何處置某些選舉捐贈

- (1) 如某候選人收取或某些候選人共同收取的某項選舉捐贈為\$1,000以上或（如該項選舉捐贈包含貨品或服務）價值\$1,000以上，則該候選人或該等候選人必須就該項捐贈向捐贈者發出收據。該收據必須載明捐贈者提供的捐贈者的姓名或名稱及地址。
- (2) 如給予某候選人或某些候選人或就某候選人或某些候選人而給予的某項選舉捐贈為\$1,000以上或（如該項選舉捐贈包含貨品）價值\$1,000以上，而該候選人或該等候選人不知道捐贈者的姓名或名稱及地址，則該候選人或該等候選人必須確保
 - (a) 該項捐贈不會用於
 - (i) 償付或分擔償付該候選人或任何該等候選人的選舉開支；或
 - (ii)（如該項捐贈包含貨品）促使該候選人或任何該等候選人當選或阻礙另一名候選人或另一些候選人當選；及
 - (b) 將該項捐贈給予該候選人或該等候選人所選擇的屬公共性質的慈善機構或慈善信託。
- (3) 如給予某候選人或某些候選人或就某候選人或某些候選人而給予的某項選舉捐贈屬金錢或貨品，而該項捐贈
 - (a) 沒有用於
 - (i) 償付或分擔償付該候選人或該等候選人的選舉開支；或
 - (ii)（如該項捐贈包含貨品）促使該候選人或該等候選人當選或阻礙另一名候選人或另一些候選人當選；或
 - (b) 在第(2)款所提述的情況下不會用於該款(a)(i)或(ii)段所述用途，則該候選人或該等候選人必須確保將該項捐贈給予該候選人或該等候選人所選擇的屬公共性質的慈善機構或慈善信託。
- (4) 如給予某候選人或就某候選人而給予的所有選舉捐贈的總額超過根據第45條訂明的最高限額，則該候選人必須確保將超額部分（不包括屬服務性質的選舉捐贈）給予該候選人所選擇的屬公共性質的慈善機構或慈善信託。
- (5) 凡某候選人收取或某些候選人共同收取選舉捐贈，如
 - (a) 該候選人或該等候選人沒有遵從第(1)或(2)款；或
 - (b) 該候選人在按照第37條提交選舉申報書之前，或該等候選人在每名該等候選人按照第37條提交選舉申報書之前，沒有遵從本條的其他規定，
 則該候選人或每名該等候選人即屬在選舉中作出舞弊行為。
- (6) 在本條中，**屬公共性質的慈善機構或慈善信託**指根據《稅務條例》（第112章）第88條獲豁免繳稅的屬公共性質的慈善機構或慈善信託。

第20條 提交虛假或具誤導性的選舉申報書的舞弊行為

如任何候選人在根據第37條提交的選舉申報書內，或在根據第37A條提交的選舉申報書的副本內，作出該候選人明知或理應知道屬虛假或具誤導性達關鍵程度的陳述，即屬在選舉中作出舞弊行為，該陳述屬一項根據第37A條達成的更正的標的亦然。

第21條 受賄撤回選舉呈請或選舉上訴的舞弊行為

- (1) 任何人在提出選舉呈請或選舉上訴後
 - (a) 撤回該項呈請或上訴，以換取該人所索取的利益或另一人所提供的利益；或
 - (b) 索取或接受利益，作為撤回該項呈請或上訴的誘因，即屬在選舉中作出舞弊行為。
- (2) 任何人
 - (a) 提供利益予已提出選舉呈請或選舉上訴的人，作為撤回該項呈請或上訴的誘因；或
 - (b) 提供利益予另一人，以令該另一人誘使已提出選舉呈請或選舉上訴的人或試圖誘使已提出選舉呈請或選舉上訴的人撤回該項呈請或上訴，即屬在選舉中作出舞弊行為。
- (3) 任何人因
 - (a) 已撤回選舉呈請或選舉上訴；或
 - (b) 已誘使另一人撤回選舉呈請或選舉上訴，而索取或接受利益作為報酬，即屬在選舉中作出舞弊行為。
- (4) 任何人因另一人
 - (a) 已撤回或已同意撤回選舉呈請或選舉上訴；或
 - (b) 已令已提出選舉呈請或選舉上訴的人撤回該項呈請或上訴，而向該另一人提供利益作為報酬，即屬在選舉中作出舞弊行為。
- (5) 就本條而言
 - (a) 任何人為令自己受惠或為令另一人受惠而問取利益，或顯示願意為令自己受惠或為令另一人受惠而收取利益，即屬索取利益；及
 - (b) 任何人為令自己受惠或為令另一人受惠而收取或獲得利益，或同意為令自己受惠或為令另一人受惠而收取或獲得利益，即屬接受利益；及
 - (c) 任何人授予、承諾授予或顯示願意授予另一人利益，即屬提供利益。

第22條 可就選舉中的非法行為施加的刑罰

- (1) 任何人在選舉中作出非法行為，即屬犯罪
 - (a) 如循簡易程序審訊，一經定罪，可處第5級罰款及監禁1年；或
 - (b) 如循公訴程序審訊，一經定罪，可處罰款\$200,000及監禁3年。
- (2) 如任何人被裁斷在選舉期間前、在選舉期間內或在選舉期間後作出非法行為，則該人可被裁定犯了在選舉中作出非法行為的罪行。

第23條 並非候選人亦非選舉開支代理人的人招致選舉開支的非法行為

- (1) 任何人如非候選人亦非候選人的選舉開支代理人而在選舉中或在與選舉有關連的情況下招致選舉開支，即屬在選舉中作出非法行為。
- (1A) 然而，在以下情況下，第(1)款不適用
 - (a) 有關的人在互聯網發布選舉廣告；及
 - (b) 該人就發布該廣告而招致的選舉開支，只屬下述兩項或其中一項費用
 - (i) 電費；
 - (ii) 連接互聯網所需的費用。
- (2) (由2021年第14號第372條廢除)
- (3) 如任何候選人或其選舉開支代理人所招致的選舉開支沒有載入該候選人的選舉申報書中，則該候選人即屬在選舉中作出非法行為。
- (4) 如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，則該選舉開支代理人即屬在選舉中作出非法行為。
- (5) 就本條例而言，如
 - (a) 有任何人獲某候選人書面授權在選舉中或在與選舉有關連的情況下代該候選人招致選舉開支；及
 - (b) 該授權書指明該人獲授權招致的選舉開支的最高限額；及
 - (c) 該授權書文本已送達有關的選舉主任，
 則該人即為該候選人的選舉開支代理人。
- (6) (由2021年第14號第372條廢除)
- (7) 第(5)款所提述的授權書，除非在有關的選舉期間結束前被撤銷，否則該等授權書持續有效，直至有關的選舉期間結束為止。

第24條 候選人招致超過訂明限額的選舉開支的非法行為

- (1) 候選人或他人代候選人在選舉中或在與選舉有關連的情況下所招致的選舉開支總額，如超過根據第45條訂立並正有效的規例就候選人所訂明的選舉開支最高限額，該候選人即屬在選舉中作出非法行為。
- (2) (由2021年第14號第373條廢除)
- (3) 在指稱某候選人從事本條所指的非法行為的檢控中，該候選人如證明該等選舉開支是在下述情況下招致的，即可以此作為免責辯護
 - (a) 該候選人並無疏忽；及
 - (b) 該候選人並未同意，或該等開支超過在第23條所指的授權書中指明的限額。
- (4) 就本條而言，如某項選舉捐贈包含貨品或服務，而該等貨品或服務是用於促使某候選人或某些候選人當選的用途的，或是用於阻礙另一名候選人或另一些候選人當選的用途的，則該項選舉捐贈的價值即視為該候選人或該等候選人或他人代該候選人或該等候選人所招致的選舉開支。

第25條 發布虛假陳述指某人是或不是候選人的非法行為

- (1) 任何人發布他明知屬虛假的陳述，指他或另一人是某項選舉的候選人，即屬在選舉中作出非法行為。
- (2) 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，即屬在選舉中作出非法行為。
- (3) 任何人發布他明知屬虛假的陳述，指某個已在某項選舉中獲提名為候選人的人不再是該項選舉的候選人，即屬在選舉中作出非法行為。

第26條 發布關於候選人的虛假或具誤導性的陳述的非法行為

- (1) 任何人為促使或阻礙某候選人或某些候選人當選，而發布關於該候選人或該等候選人且屬虛假達關鍵程度或具誤導性達關鍵程度的事實陳述，即屬在選舉中作出非法行為。
- (2) 任何候選人
 - (a) 為促使他或跟他有關聯的候選人當選；或
 - (b) 為阻礙另一名候選人或另一些候選人當選，而發布關於他或跟他有關聯的候選人或關於該另一名候選人或該等其他候選人且屬虛假達關鍵程度或具誤導性達關鍵程度的事實陳述，即屬在選舉中作出非法行為。

- (3) 就本條而言，關於候選人的陳述，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。
- (4) 在就有人作出第(1)或(2)款所指非法行為的罪行而提起的檢控中，被告人如證明在作出有關陳述時有合理理由相信該項陳述是真確的，即可以此作為免責辯護。

第27條 發布選舉廣告假稱獲支持的非法行為

(1) 任何候選人發布或授權發布收納了以下項目的選舉廣告

- (a) 某人或某組織的姓名、名稱或標識或跟某人或某組織有關聯的姓名、名稱或標識；或
- (b) 與某人或某組織的姓名、名稱或標識或與跟某人或某組織有關聯的姓名、名稱或標識甚為相似的姓名、名稱或標識；或
- (c) 某人的圖像，

而發布的方式意味着該候選人或跟該候選人有關聯的候選人獲得該人或該組織的支持，或相當可能導致選民相信該候選人或跟該候選人有關聯的候選人獲得該人或該組織的支持，該候選人即屬在選舉中作出非法行為，但如第(1A)(a)或(b)款指明的條件獲符合，而第(1B)款指明的規定獲遵守，則屬例外。

(1A) 有關條件是

- (a) 有關人士或組織在有關選舉廣告發布前，已書面同意讓有關姓名、名稱、標識或圖像納入該廣告中；
- (b) 有關候選人既沒有要求或指示將該姓名、名稱、標識或圖像納入該廣告中，亦沒有授權任何人如此要求或指示。

(1B) 如

- (a) 有關選舉廣告是符合第(1A)(a)或(b)款指明的條件的；及
- (b) 該廣告的任何內容是由該人或組織提供的，

則該候選人不得修改該姓名、名稱、標識或圖像或該等內容，亦不得授權任何人修改該姓名、名稱、標識或圖像或該等內容，但如在該項修改作出前，該人或組織已書面同意經修改的姓名、名稱、標識或圖像或內容，則屬例外。

(2) 任何人發布或授權發布收納了以下項目的選舉廣告

- (a) 另一人或某組織的姓名、名稱或標識或跟另一人或某組織有關聯的姓名、名稱或標識；或
- (b) 與另一人或某組織的姓名、名稱或標識或與跟另一人或某組織有關聯的姓名、名稱或標識甚為相似的姓名、名稱或標識；或

(c) 另一人的圖像，

而發布的方式意味着某候選人或某些候選人獲得該另一人或該組織的支持，或相當可能導致選民相信某候選人或某些候選人獲得該另一人或該組織的支持，則首述的人即屬在選舉中作出非法行為，但如第(2A)(a)或(b)款指明的條件獲符合，而第(2B)款指明的規定獲遵守，則屬例外。

(2A) 有關條件是

(a) 有關另一人或組織在有關選舉廣告發布前，已書面同意讓有關姓名、名稱、標識或圖像納入該廣告中；

(b) 該人既沒有要求或指示將該姓名、名稱、標識或圖像納入該廣告中，亦沒有授權任何其他人士如此要求或指示。

(2B) 如

(a) 有關選舉廣告是符合第(2A)(a)或(b)款指明的條件的；及

(b) 該廣告的任何內容是由該另一人或組織提供的，

則該人不得修改該姓名、名稱、標識或圖像或該等內容，亦不得授權任何其他人士修改該姓名、名稱、標識或圖像或該等內容，但如在該項修改作出前，該另一人或組織已書面同意經修改的姓名、名稱、標識或圖像或內容，則屬例外。

(3) 就第(1A)、(1B)、(2A)及(2B)款而言，如

(a) 有關組織的高級人員給予同意；及

(b) 發布或授權發布選舉廣告的人或候選人有合理理由相信該高級人員有權給予該項同意，

則須視為已取得該組織的同意。

(4) 任何候選人或其他人如發布或授權發布第(1)或(2)款所提述的任何一類選舉廣告，則即使該選舉廣告載有一項陳述，表示將某人或某組織的姓名、名稱或標識或將跟某人或某組織有關聯的姓名、名稱或標識或將某人的圖像納入該選舉廣告中，並非意味着該人或該組織支持任何候選人，該候選人或該人仍屬作出發布或授權發布第(1)或(2)款所提述的一類選舉廣告的非法行為。

(5) 如任何人未經某組織的管理階層批准，或未經某組織的成員在全體大會所通過的決議批准，而看來給予書面同意將該組織的名稱或標識或跟該組織有關聯的名稱或標識納入選舉廣告中，則該人即屬在選舉中作出非法行為。

(6) 如任何人為促使或阻礙某候選人或某些候選人當選，向該候選人或該等候選人提供他明知或理應知道屬虛假達關鍵程度或具誤導性達關鍵程度的資料，則該人即屬在選舉中作出非法行為。

(7) 在本條中，**支持**就某候選人而言，包括對該候選人的政策或活動的支持。

第27A條 在選舉期間內藉公開活動煽惑另一人不投票或投無效票的非法行為

- (1) 任何人進行符合以下任何一項描述的公開活動，即屬在選舉中作出非法行為
 - (a) 該活動煽惑另一人在選舉中不投票；或
 - (b) 該活動煽惑在選舉中投票的另一人以下述方式處置發給該另一人的選票：任何致使該選票在選舉中根據任何選舉法被視為無效的方式。
- (2) 第(1)款只適用於在有關選舉的選舉期間內進行的公開活動。
- (3) 在決定任何公開活動是否如第(1)款所描述般煽惑另一人時，可顧及有關個案的所有情況，包括
 - (a) 該活動的內容；
 - (b) 該活動的目標對象；及
 - (c) 在何種情況下進行該活動。
- (4) 凡某人因作出第(1)款所指的非法行為，而被控犯第22(1)條所訂罪行，則如該人證明在指稱的罪行發生時，該人在有合法權限或合理辯解的情況下作出該控罪所關乎的作為，即為免責辯護。
- (5) 在本條中**公開活動**包括以下任何活動，不論進行該活動的人在進行該活動時是否在公眾地方
 - (a) 向公眾作出的任何形式的通訊，包括講話、書寫、印刷、展示通告、廣播、於屏幕放映及播放紀錄帶或其他經記錄的材料；
 - (b) 可由公眾觀察到的而不屬(a)段提述的通訊形式的任何行徑，包括動作、姿勢及手勢及穿戴或展示衣服、標誌、旗幟、標記及徽章；
 - (c) 向公眾分發或傳布任何材料。

第31條 原訟法庭可作出命令寬免候選人承受某些非法行為的後果

- (1) 任何候選人、候選人的代理人或任何其他如已作出若非因本條即屬選舉中的非法行為的作為，或沒有作出某作為而此事若非因本條即屬選舉中的非法行為，則該等候選人、代理人或其他人可向原訟法庭申請第(2)款所指的命令。
- (2) 原訟法庭在聆訊第(1)款所指的申請後，可作出命令，寬免申請人承受選舉法就該申請人的作為或不作為（若非因本條即屬選舉中的非法行為者）而施加的刑罰及喪失資格懲罰，或寬免申請人承受根據選舉法可就該等作為或不作為而施加的刑罰及喪失資格懲罰，但原訟法庭須

- (a) 信納
 - (i) 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，而非因不真誠所致；及
 - (ii) (如原訟法庭規定在香港發出申請通知) 規定發出的通知已發出；及
- (b) 相信為符合公正原則，申請人不應承受一項或多於一項該等刑罰或喪失資格懲罰，方可作出上述命令。
- (3) 如任何人根據第(1)款提出申請，則在原訟法庭處置該項申請之前，不得就該申請人的作為或不作為(若非因本條即屬選舉中的非法行為者)而對他提出或繼續進行檢控。
- (4) 如申請人的作為或不作為(若非因本條即屬選舉中的非法行為者)屬根據第(2)款作出的命令的標的，則不可就該作為或不作為而裁定該申請人在選舉中作出非法行為。

第37條 候選人向有關主管當局提交選舉申報書

- (1) 在選舉中的每名候選人必須向有關主管當局提交選舉申報書，列出
 - (a) 該候選人在該項選舉中的選舉開支；及
 - (b) 曾由該候選人或由他人代該候選人在與該項選舉有關連的情況下收取的所有選舉捐贈。
- (1F) 就為選出任何區議會的議員而舉行的選舉而言，候選人須確保申報書在以下情況出現當日後的60日期間屆滿前提交
 - (a) 如該選舉是為2個或多於2個選區或選舉界別，而就1個或多於1個區議會舉行——該選舉就所有該等選區或選舉界別而言，均已告結束；或
 - (b) 如該選舉只為1個選區或選舉界別而舉行——該選舉就該選區或選舉界別而言，已告結束。
- (1G) 為施行第(1F)款，就某選區或選舉界別而言，選舉在任何以下事件就該選區或選舉界別發生當日，即告結束
 - (a) 選舉結果於憲報公布；
 - (b) (由2023年第19號第179條廢除)
 - (c) 宣布選舉未能完成。
- (1N) 儘管有第(1A)、(1B)、(1D)、(1F)、(1H)、(1J) 及(1L)款的規定，申報書可於原訟法庭根據第40條容許的延長限期內提交。

(2) 候選人必須確保申報書

(a) (由2016年第15號第5條廢除)

(b) 附有

- (i) (就每項\$500或以上的選舉開支而言) 載有該項支出的詳情的發票及收據；及
- (ii) (就每項\$1,000以上或每項包含貨品或服務而價值\$1,000以上的選舉捐贈而言) 發給捐贈者的載有關於該捐贈者及該項捐贈的詳情的收據的副本；及
- (iii) (如由候選人或由他人代候選人在與選舉有關連的情況下收取的某項選舉捐贈或某項選舉捐贈的一部分沒有用於該用途而已按照第19條處置) 收取該等如此處置的捐贈或部分捐贈的人所發出的收據的副本；及
- (iv) (如由候選人或由他人代候選人在與選舉有關連的情況下收取的某項選舉捐贈或某項選舉捐贈的一部分沒有用於該用途，亦沒有按照第19(3)條處置) 書面解釋，列出沒有按照該條處置該項捐贈或該部分捐贈的理由；及
- (v) 採用有關主管當局提供或指明的表格或格式所作的聲明書，證明申報書內容屬實。

(3) 就第(2)款而言，選舉開支的發票及收據可包括在同一份文件內。

*[第(1A)至(1E)、(1H)至(1M)及第(4)款與區議會選舉無關。]***第37A條 對選舉申報書中的輕微錯誤等的寬免**

(1) 在第(2)款的規限下，本條適用於

- (a) 由某候選人提交的選舉申報書中的符合以下說明的任何錯誤或虛假陳述：該項錯誤或虛假陳述的性質，是沒有在該申報書中列出該候選人在有關選舉中的任何選舉開支或曾由該候選人或由他人代該候選人在與該項選舉有關連的情況下收取的任何選舉捐贈，而該項選舉開支或選舉捐贈
 - (i) 按第37條規定須列於該申報書中；及
 - (ii) 款額不超過附表中為該項選舉訂明的限額；及
- (b) 由某候選人提交的選舉申報書中的符合以下說明的任何錯誤或虛假陳述
 - (i) 該項錯誤或虛假陳述的性質，是該候選人在有關選舉中的任何選舉開支或曾由該候選人或由他人代該候選人在與該項選舉有關連的情況下收取的任何選舉捐贈的款額的不正確之處；及
 - (ii) 更正該項錯誤或虛假陳述所需作出的調整的幅度，不超過附表中為該項選舉訂明的限額。

- (2) 如
 - (a) 在選舉申報書中，有2項或多於2項錯誤或虛假陳述；而
 - (b) 該等錯誤或虛假陳述的累計總價值，超過附表中為有關選舉訂明的限額，則本條不適用於該等錯誤或虛假陳述。
- (3) 就第(2)款而言
 - (a) 如錯誤或虛假陳述的性質，是沒有列出某項選舉開支或選舉捐贈，該項錯誤或虛假陳述的價值，是該項選舉開支或選舉捐贈的款額；
 - (b) 如錯誤或虛假陳述的性質，是某項選舉開支或選舉捐贈的款額的不正確之處，該項錯誤或虛假陳述的價值，是以金額衡量的更正該項錯誤或虛假陳述所需作出的調整的幅度。
- (4) 儘管有第37條的規定，如由某候選人提交的選舉申報書中，有本條適用的錯誤或虛假陳述，則在第(5)及(6)款的規限下，該候選人可向有關主管當局提交該申報書的一份副本，而該副本標示更正該項錯誤或虛假陳述所需作出的修正。
- (5) 如某候選人或他人代該候選人在選舉中或在與選舉有關連的情況下招致的選舉開支總額，超過根據第45條訂立並正有效的規例就候選人訂明的選舉開支最高限額，該候選人不得根據第(4)款，就該項選舉提交選舉申報書的副本。
- (6) 由某候選人根據第(4)款提交的選舉申報書的副本除非符合以下規定，否則屬無效
 - (a) 有關主管當局向該候選人發出關於有關選舉申報書中的有關錯誤或虛假陳述的通知，而該候選人在接獲該通知當日後的30天內，提交該副本；
 - (b) (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) 該副本附有假使該申報書有列出該項選舉開支或選舉捐贈，便會按第37(2)(b)條規定須有的
 - (i) (就選舉開支而言) 發票及收據；或
 - (ii) (就選舉捐贈而言) 收據副本及(如適用的話) 書面解釋；及
 - (c) 該申報書副本附有一份採用有關主管當局提供或指明的表格或格式的由該候選人所作的聲明書，證明該申報書副本的內容屬實。
- (7) 為施行第(6)款，選舉開支的發票及收據可包括在同一份文件內。

- (8) 凡選舉申報書的副本標示第(4)款所描述的任何修正，有關主管當局一旦根據該款接獲該副本
 - (a) 該項修正除就第20條而言外，即當作在有關的選舉申報書提交之前，已在該申報書內中作出；而
 - (b) 附於該副本的發票、收據、收據副本或書面解釋（如有的話）除就第20條而言外，即當作在該申報書提交之時，附於該申報書。
- (9) 每名候選人只可以就一項選舉根據第(4)款提交一份選舉申報書的副本。
- (10) 選舉申報書的副本一經根據第(4)款提交後，即不得撤回或修訂。
- (11) 行政長官會同行政會議可藉命令修訂附表。
- (12) 在本條中，提述選舉申報書內的錯誤或虛假陳述，包括
 - (a) 附於該申報書的任何文件內的錯誤或虛假陳述；或
 - (b) 沒有付交第37(2)(b)條規定須就該申報書付交的任何文件。

第38條 沒有提交選舉申報書的罪行

- (1) 候選人如沒有按照第37條的規定提交選舉申報書，即屬犯罪
 - (a) 如循簡易程序審訊，一經定罪，可處第5級罰款及監禁1年；或
 - (b) 如循公訴程序審訊，一經定罪，可處罰款\$200,000及監禁3年。
- (2) 如候選人根據第40條提出申請，則在原訟法庭處置該項申請之前，不得就該候選人沒有按照第37條的規定提交選舉申報書而對他提出或繼續進行檢控。
- (3) 候選人如沒有按照第37條的規定提交選舉申報書，而
 - (a) 沒有提交選舉申報書一事屬根據第40條作出的任何命令的標的；及
 - (b) 該命令所指明的較長限期仍未屆滿，則候選人不得被裁定犯第(1)款所訂罪行。
- (4) 被裁定犯第(1)款所訂罪行的候選人所須承受的喪失資格懲罰，與被裁定作出非法行為的人所須承受的一樣。

第40條 原訟法庭可在某些情況下給予候選人寬免

- (1) 候選人如不能夠或沒有在准許的限期屆滿之前按照第37條的規定提交選舉申報書，可向原訟法庭申請作出命令，容許該候選人在原訟法庭指明的較長限期內，向有關主管當局提交選舉申報書。
- (2) 原訟法庭在聆訊根據第(1)款提出的申請後，必須信納不能夠或沒有按照第37條的規定提交選舉申報書一事是可歸因於下述情況而非因申請人不真誠所致，方可作出所尋求的命令
 - (a) 申請人患病或不在香港；或
 - (b) 申請人的代理人或僱員去世、患病、不在香港或行為不當；或
 - (c) 申請人或其他人粗心大意或意外地計算錯誤；或
 - (d) 任何合理因由。
- (3) 候選人亦可向原訟法庭申請作出命令，使該候選人可更正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。
- (4) 原訟法庭在聆訊根據第(3)款提出的申請後，必須信納該等錯誤或虛假陳述是因下述情況而非因申請人不真誠所致，方可作出所尋求的命令
 - (a) 申請人的代理人或僱員的行為不當；或
 - (b) 申請人或其他人粗心大意或意外地計算錯誤；或
 - (c) 任何合理因由。
- (5) 候選人如沒有遵從第37(2)(b)(i)、(ii)或(iii)條，亦可向原訟法庭申請作出命令，豁免該候選人按照該條的規定付交發票、收據或收據副本。
- (6) 原訟法庭在聆訊根據第(5)款提出的申請後，必須信納該項沒有遵從條文事件是因下述情況而非因申請人不真誠所致，方可作出所尋求的命令
 - (a) 申請人的代理人或僱員的行為不當；或
 - (b) 申請人或其他人粗心大意或意外地遺失或銷毀該發票、收據或收據副本；或
 - (c) 任何合理因由。
- (7) 原訟法庭在根據本條作出命令時，可施加其認為為達致本條例的目的而屬適當的條件。

- (8) 任何人沒有遵從根據本條作出的命令所施加的條件，即屬犯罪
 - (a) 如循簡易程序審訊，可處第5級罰款及監禁1年；或
 - (b) 如循公訴程序審訊，可處罰款\$200,000及監禁3年。

- (9) 被裁定犯第(8)款所訂罪行的候選人所須承受的喪失資格懲罰，與被裁定作出非法行為的人所須承受的一樣。

Disclaimer

This Information Booklet provides general guidance only and does not cover all possible scenarios. Explanations of the legal requirements offered in this Information Booklet are broad and often in summary form. Candidates and their election helpers are advised to refer to the text of the legislation and seek independent legal advice in case of doubt. They should also study in detail the relevant legislations and the guidelines issued by the Electoral Affairs Commission to avoid contravention of the related laws and regulations. The Independent Commission Against Corruption will accept no liability or responsibility for any loss caused to any person acting or refraining from acting in any way as a result of any material contained in this Information Booklet.

The scenarios given in this Information Booklet are for illustration and reference only. No relation to any real person or entity is intended or should be inferred. Throughout this Information Booklet, the male pronoun is used to cover references to both the male and female. No gender preference is intended.



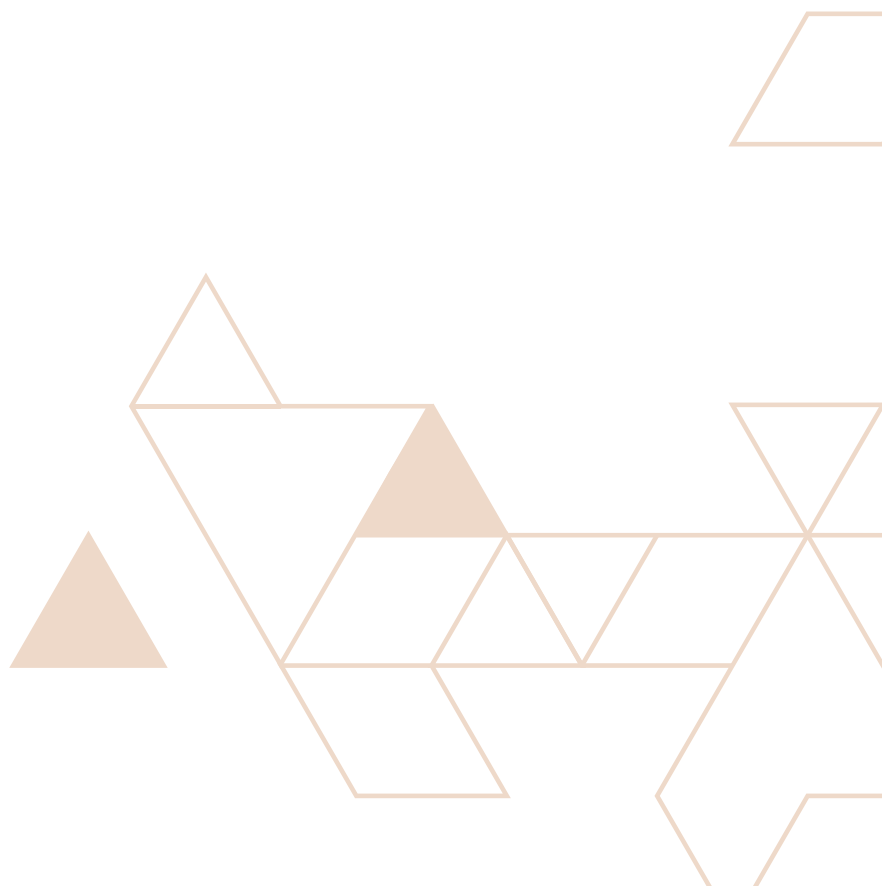
Foreword

The District Council (“DC”) Ordinary Election and By-elections are regulated by the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”). This ordinance, enforced by the Independent Commission Against Corruption (“ICAC”), aims to ensure public elections in Hong Kong are conducted fairly, openly and honestly, and are free from corrupt and illegal conduct.

To help candidates and their election helpers participating in the DC Election understand the relevant provisions and the spirit, 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 summarized from the enquiries and concerns raised by candidates of previous DC elections. It serves to spell out the spirit of the law and application of the provisions. The second part features the gist of some ECICO cases in past elections. The third part is a checklist stating what candidates and their election helpers should take note of in the process of running an election. The fourth part provides the channels for making reports and enquiries to the ICAC. The major provisions of the ECICO can be found in the Appendix of this Information Booklet.

Members of the public can browse the contents of this Information Booklet as well as details about the education and publicity services provided by the ICAC for the DC Election at the “Clean District Council Election” Website (www.icac.org.hk/elections) launched by the ICAC. They may also call the Clean Election Enquiry Hotline (Tel: 2920 7878) to learn more about the ECICO or invite an ICAC representative to explain the law.





PART I
Questions and Answers



(1) STANDING AS CANDIDATES

Q 1

Some members of a political party have announced that they would be running in the District Council (“DC”) Election at a press conference organized through their political party before the nomination period and appealed for support from the electors. Since these party members have not yet been nominated as candidates, would they be regarded as “candidates”? If one of the party members eventually did not submit the nomination form before the close of nominations, would he still be required to lodge the election return?

A 1

- According to section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”), a “candidate” is defined not only as a person who stands nominated as a candidate at an election, but also a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election. Although the above party members have not yet been nominated as candidates, they are regarded as “candidates” of the DC Election according to the definition of the ECICO when their intention to run in the said election is made known to the public through the press conference.
- Since the above party members are regarded as “candidates” as stipulated in the ECICO, therefore they have to abide by the relevant provisions of the ECICO governing “candidates”. For example, a “candidate” must count the expenses incurred or to be incurred, before, during or after the election period for the purpose of promoting his election or prejudicing the election of other candidates as election expenses which must be clearly set out in the election return. Therefore, the expenses incurred in relation to the above press conference should be counted as election expenses of the candidates concerned on a pro rata basis.
- Being a “candidate” as defined in the ECICO, the party member who has publicly announced his candidature but does not submit the nomination form in the end should still fulfil the statutory requirements, including lodging the election return with the Chief Electoral Officer (“CEO”) before the expiry of the statutory period.

Q 2

A person offers an advantage to another person who intends to run in the District Council Election and asks the latter not to stand as a candidate at the election. Is it an offence under the ECICO? What should the prospective candidate do if he is subsequently threatened to refrain from standing for the election?

A 2

- According to section 7 of the ECICO, it is an offence for any person to corruptly offer an advantage to another person as an inducement to or a reward for that person to stand or not to stand as a candidate at an election, or to withdraw his nomination after having been nominated as a candidate, or not to use his best endeavours to promote his election. Hence, the above person will contravene the ECICO for offering an advantage as an inducement for the other person not to stand as a candidate at the election. Any person who corruptly solicits or accepts an advantage as an inducement to or a reward for standing or not standing as a candidate at the election will also commit an offence.
- Besides, sections 8 and 9 of the ECICO also make it an offence for any person to use or threaten to use force or duress against another person, or engage in deceptive behaviour, with a view to inducing the other person to stand or not to stand as a candidate, or to withdraw his nomination at the election.
- Candidates or prospective candidates should report to the ICAC if they encounter the above situation. In case of personal threats, assistance from the police should be sought immediately. Violence undermines the credibility of elections and all should desist from it.

(2) ELECTIONEERING

Q 3

A serving Legislative Council (“LegCo”) member, who is contesting the District Council (“DC”) Election, produces and distributes booklets during the election period to introduce his community work and services carried out in his capacity as a LegCo member. What does he need to take heed of?

A 3

- Section 2(3) of the ECICO states that a document published by a candidate during an election period (i.e. the period begins on the first day of the nomination period and ends on the polling day for the election) that gives details of the work done by the candidate in the capacity as the Chief Executive, a member of the Election Committee, a member of the LegCo, a member of a DC, a member of the Heung Yee Kuk, the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee, or a Rural Representative, is an election advertisement. As such, the booklet giving details of the work done by the above candidate in his capacity as a LegCo member distributed during the election period of the DC Election would satisfy the definition of an election advertisement. The relevant costs incurred in producing and distributing the booklets should be counted as the candidate’s election expenses and be clearly set out in his election return.
- It is important to note that even if the above booklet is published before the beginning of the nomination period, according to section 2(1) of the ECICO, it will also be regarded as an election advertisement as long as the candidate has publicly declared his intention to stand as a candidate and the booklet is published for the purpose of promoting the election of the candidate or prejudicing the election of other candidates. The relevant expenses should be counted as the candidate’s election expenses.
- The candidate should also comply with the requirements governing election advertisements under section 106 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) and the “Guidelines on Election-related Activities in respect of the District Council Election” issued by the Electoral Affairs Commission (“EAC”), including posting an electronic copy of each election advertisement and relevant information onto an open platform maintained by the CEO or a person authorized by the CEO (“Central Platform”) or an open platform maintained by the candidate or a person authorized by the candidate (“Candidate’s Platform”), or providing copies of the election advertisement and relevant information in the manner specified by the EAC to the relevant Returning Officer within 3 working days after publication of any election advertisement. A candidate must also 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 in either Chinese or English language.

Q 4

Is it legal for a candidate of the District Council Election, after obtaining a verbal consent from the chairman of an owners' corporation ("OC"), to include the name of the chairman, the name and logo of the OC as well as the photograph taken with the chairman in his election advertisement as a way to show the support of the chairman and the OC to him? Would it be different if the candidate has only included the name and office title of the OC chairman in his election advertisement?

A 4

- According to section 27(1) and (1A) of the ECICO, if a candidate includes in his election advertisement the name, logo or pictorial representation of a person or an organization in such a way that implies or is likely to cause electors to believe that the he has the support of the person or organization concerned, he must obtain written consent from the relevant person or organization before the publication of the election advertisement. The above candidate has committed an offence under the ECICO because he has only obtained the verbal consent of the chairman of the OC which does not meet the legal requirements.
- A candidate should note that a supporter's written consent has to be shown in a single document clearly expressing the supporter's consent to include his name, logo or pictorial representation in the election advertisement of the candidate. The written consent cannot be shown in a composite document with more than one document reading together, nor can it be inferred from a chain of correspondence or messages. A sample form prepared by the EAC for assisting candidates to seek consent of support in writing from a person or an organization is available at the Registration and Electoral Office ("REO") and the office of the relevant Returning Officer, and can be downloaded from the REO website. It will also be provided to candidates upon their submission of nomination forms for the election.
- The OC chairman should note that he may also commit an offence under section 27(5) of the ECICO if he purports to give a written consent to the inclusion of the name and logo of the OC or associated with the OC in the candidate's election advertisement without having been approved by the governing body of the OC or by a resolution of the members of the OC passed at a general meeting.

(Please turn to the next page)

- Even if the candidate has obtained the prior written consent of the OC chairman concerned to include the name and office title of the OC chairman (with reference to the name of the OC concerned, e.g. “Chairman of ABC Building OC”) in his election advertisement, the candidate must also be prudent in avoiding publishing the election advertisement in such a way that may imply or is likely to cause electors to believe the candidate has the support of the entire OC. Otherwise, the candidate should also obtain prior written consent from the relevant OC.
- Regarding situations in which only the supporter’s office title and the name of the organization concerned are mentioned, the “Guidelines on Election-related Activities in respect of the District Council Election” issued by the EAC also require a candidate to ensure that his supporter has obtained the prior written approval of the supporter’s organization in accordance with the organization’s internal rules and procedures or any established convention, for using the supporter's office title together with the name of the organization in the candidate's election advertisement.

Q 5

If a person appeals to electors through the online platform to boycott the District Council Election, including not to vote or to cast an invalid vote at the election, will he contravene the ECICO? Would it be different if a web surfer reposts the above illegal appeals to his online social media and shares them through instant messaging platforms?

A 5

- According to section 27A of the ECICO, a person engages in illegal conduct if he incites another person not to vote or to cast an invalid vote at an election by carrying out any activity in public during the election period. An activity in public includes any form of communication to the public, and the distribution or dissemination of any matter to the public. If the aforesaid person appeals to electors through the online platform not to vote or to cast an invalid vote at the election, he may breach the ECICO. It is important to note that a person who engages in illegal appeals or reposts unlawful contents would also commit the offence. It is illegal to undermine elections, and no one should act against the law.

Q 6

Is an election campaign published by a candidate through online platforms such as websites, social networking or communication websites an election advertisement? How should the candidate calculate the relevant election expenses incurred? If some web surfers give responses to the above campaign or indicate “like” on the candidate’s online platforms, will the candidate breach the law for publishing such contents without prior written consent from the said web surfers? If web surfers share or forward different candidates’ election campaigns through online platforms, what should the candidate concerned take heed of?

A 6

- According to section 2 of the ECICO, election advertisement means any form of publication published for the purpose of promoting or prejudicing the election of a candidate or candidates at an election; and election expenses mean expenses incurred or to be 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 other candidates. As such, the election campaign published by the above candidate through online platforms such as websites, social networking or communication websites is regarded as an election advertisement and the relevant production and operating costs including Internet service fees, fees for design of online advertisement, etc. should be counted towards the candidate’s election expenses and be clearly set out in his election return.
- If the election advertisement published by the candidate through the online platforms shows the support of a person or an organization, the candidate must obtain prior written consent from the person or organization concerned in order to comply with section 27(1) and (1A) of the ECICO. If, however, any person shows support to the candidate out of his own volition by giving responses or indicating “like” in the election advertisement published by the candidate through the said online platforms, or by appearing in the live broadcast of his own accord of an electioneering activity published by the candidate, the candidate will then not be required to seek his prior written consent if the candidate has neither requested or directed nor authorized the person to do the above acts. However, the candidate must not modify the name, logo or pictorial representation of, or any content given by the above person concerned, unless prior written consent on the modification has been obtained from that person. Otherwise, the candidate will commit an offence under section 27(1B) of the ECICO.
- If a person is invited by the candidate to show his support by giving response to the candidate’s online election advertisement or by participating in the electioneering

activity which is covered by the live broadcast, the candidate must obtain prior written consent from the person.

- The candidate should also comply with the requirements governing election advertisements under section 106 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation and the “Guidelines on Election-related Activities in respect of the District Council Election” issued by the EAC (please refer to Q3 for details).
- In regard to the sharing or forwarding of the candidate’s election campaigns through online platforms by web surfers, according to section 23(1A) of the ECICO, if a person (other than a candidate or a candidate’s election expense agent) incurs election expenses including only the electricity charges and/or charges necessary for accessing the Internet, for the purpose of publishing an election advertisement on the Internet, the person will be exempted from the criminal liability under section 23(1) of the ECICO. However, if a candidate, his election expense agent or any other person authorized by the candidate or his election expense agent, publishes an election advertisement of the candidate on the Internet incurs election expenses being electricity charges and/or charges necessary for accessing the Internet only, the costs incurred still have to be included in the candidate’s election expenses. If a third party publishes an election advertisement to promote or prejudice the election of a candidate or candidates with the knowledge and consent of the candidate, no matter whether the candidate has authorized the third party as his election expense agent or not, the candidate should treat the election advertisement as if the same is published by him and should clearly set out the relevant election expenses in the election return.

Q 7

Candidates A, B and C are contesting in the same District Council geographical constituency election. In order to get more votes for Candidate A, a supporter has printed some leaflets by himself smearing Candidate B and Candidate C and distributed them extensively in the district. Will such acts contravene the ECICO?

A 7

- The ECICO does not prohibit the publication of negative campaigns for the purpose of prejudicing the election of rival candidates. However, all contents published about a candidate must be true. Otherwise, the person who publishes such statements may violate section 26 of the ECICO, which states that it is an offence for any person to publish a materially false or misleading statement of fact, including (but not limited to) a statement concerning the character, qualifications or previous conduct about a candidate for the purpose of promoting or prejudicing the candidate's election.
- Besides, given that the leaflets published by the supporter of Candidate A are to prejudice the election of Candidate B and Candidate C, the expenses for producing and distributing such leaflets (e.g. costs of printing and paper, etc.) should be counted towards Candidate A's election expenses. According to section 23(1) of the ECICO, only a candidate or a person authorized in writing by the candidate as his election expense agent can incur election expenses. As such, the aforesaid supporter will breach the law if he incurs election expenses on behalf of Candidate A without the latter's prior written authorization.

Q 8

Candidate A and Candidate B of the District Council Election decide to form an alliance to conduct electioneering. Candidate A plans to distribute leaflets which contain the photos of Candidates A and B to introduce their election platform, show their mutual support and appeal to electors to vote for them. What should Candidates A and B take heed of in order not to breach the ECICO?

A 8

- Since the leaflets distributed by Candidate A are published for the purpose of promoting the two candidates of the alliance, they are regarded as joint election advertisements of the candidates concerned. The candidates have to count the costs involved in the production and distribution of the leaflets on a pro rata basis as their election expenses and clearly set out such expenses in their respective election returns. In accordance with section 23(1) of the ECICO, Candidate A must obtain written authorization from Candidate B to act as his election expense agent before incurring the relevant election expenses.
- According to section 37(2) of the ECICO, if each of the election expense items in producing and publishing the relevant joint election advertisements after apportionment is \$500 or above, each candidate must submit his election return accompanied by the relevant invoices and receipts of the expense issued by the goods or service providers. If the original invoices and receipts have been submitted and attached by Candidate A in his election return, Candidate B should provide copies of the said invoices and receipts when submitting his election return, and confirm in the form of declaration that those copies are true and correct, and also state that Candidate A has submitted the original documents so as to facilitate checking by relevant departments.
- In addition, since the above joint election advertisements include the names and photos of Candidates A and B, each of them is required to seek written consent from each other as an indication of mutual support before publishing the election advertisements so as to fulfil the requirements of section 27(1) and (1A) of the ECICO.
- The above candidates should also comply with the requirements governing election advertisements under section 106 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation and the “Guidelines on Election-related Activities in respect of the District Council Election” issued by the EAC (please refer to Q3 for details).

Q 9

A serving District Council member, who would be contesting the District Council Election, claims in his election advertisement that he has successfully persuaded the government to build a park in the district. In fact, he has only been involved in discussing the selection of the site. Has he contravened the law in making such a statement?

A 9

- It is stipulated in section 26 of the ECICO that no person, including a candidate, is allowed to publish a materially false or misleading statement of fact about a candidate for the purpose of promoting or prejudicing the candidate's election.
- If the candidate knows clearly that he has only taken part in discussing the selection of the site of the park, and this does not have any bearing on the government's decision to build the park, what he claims in his election advertisement is an untrue statement. He may have contravened the ECICO for having published a materially false or misleading statement of fact about himself as a candidate in his election advertisement.

Q 10

An organization plans to organize a District Council Election forum and invite all candidates of a constituency to take part in it. Each candidate will be given the opportunity to present his platform to electors. Should the cost of organizing the said election forum be regarded as election expenses?

A 10

- According to section 2 of the ECICO, any expenses incurred or to be incurred, before, during or after the election period, for promoting the election of the candidate or prejudicing the election of another candidate are regarded as election expenses. If the election forum is organized by the said organization for the purpose of providing a fair and equal opportunity for all candidates of the same constituency to present their election platforms instead of promoting or prejudicing the election of a particular candidate or particular candidates, it is not necessary for any candidate to count the expenses as his election expenses.
- Any organization which would like to organize an election forum should comply with the "Guidelines on Election-related Activities in respect of the District Council Election" issued by the EAC.

(3) VOTING

Q 11

Is it an offence for a candidate and his supporters to provide free transportation service for taking electors to the polling station to vote on the polling day and persuade the electors aboard to vote for the candidate concerned? What if the free transportation service is provided by an elderly centre, will such act contravene the law?

A 11

- The provision of free transportation service may come under the definition of “advantage” under section 2 of the ECICO. According to section 11 of the ECICO, it is an offence for a person to offer an advantage to electors for inducing them to vote or not to vote for a particular candidate or particular candidates at an election. The electors who, without reasonable excuse, solicit or accept the advantage as an inducement or a reward for his voting or not voting for a particular candidate or particular candidates at an election will also violate section 11 of the ECICO.
- When conducting electioneering and canvassing activities, candidates and their supporters should ensure such activities are conducted without breaching the ECICO. They should also be mindful of the public perception of such activities to avoid causing suspicion of election bribery or corrupt conduct.
- If the free transportation service is not provided by the candidate or his supporters, and the arrangement is merely for the purpose of providing convenience to electors, such an act is not restricted by the ECICO so long as the process does not involve promoting or prejudicing the election of any candidate(s) or inducing or rewarding electors to vote or not to vote for any particular candidate(s) at an election.

Q 12

A candidate organizes and sponsors a one-day outbound tour for electors through a district organization in which he serves as an adviser. Will this candidate contravene the ECICO if he introduces his election platform and appeals to the participants to vote for him when they are outside Hong Kong? Are there any boundary or time constraints for the ECICO?

A 12

- Section 11 of the ECICO makes it an offence for any person, without reasonable excuse, to offer an advantage to other persons for inducing the latter to vote or not to vote at the election for a particular candidate or particular candidates. The aforesaid candidate has therefore committed an offence under the provision mentioned as he has offered advantages to electors by sponsoring their outbound tour with a view to inducing the electors to vote for him. The electors who, without reasonable excuse, accept the sponsored tour as an inducement to vote for the candidate have also committed an offence under the ECICO.
- It is stipulated in section 5 of the ECICO that all conduct concerning an election, whether it is engaged in within Hong Kong or elsewhere, is regulated by the ECICO. Therefore, the candidate's corrupt conduct to bribe electors by offering a free outbound tour also falls within the purview of the said legislation.
- Under sections 6 and 22 of the ECICO, a person can be convicted of an offence under the ECICO if he is found to have engaged in corrupt or illegal conduct before, during or after the election period.

Q 13

A serving District Council (“DC”) member, who will be contesting the upcoming DC Election, has been organizing community activities from time to time for the residents in the district, e.g. free medical check-up, free legal consultation, discounted meals or distribution of sundries, etc. Can he continue to organize such activities during the election period? Moreover, can he provide entertainment or performance to electors during his electioneering activities to induce electors to vote for him?

A 13

- The ECICO forbids any person to offer advantages, food, drink or entertainment to exchange for votes. If the above candidate organizes free medical check-up, free legal consultation, discounted meals or distribution of sundries, or provides entertainment or performance during the electioneering activities, etc. with a view to inducing electors to vote for him, he will breach sections 11 and 12 of the ECICO. Any person who accepts the above advantages, food, drink or entertainment as an inducement to vote for the candidate will also be liable for such an offence.
- It is easy to induce suspicion of vote-buying for a candidate to organize the above community activities when it comes close to the election. Candidates should act prudently and be mindful of public perception and are advised to avoid conducting such activities as far as possible during the period close to the election.

Q 14

A candidate attends an inauguration dinner party organized by a residents' association upon invitation. During the dinner, the chairman of the residents' association suddenly invites the candidate to deliver his election platform and encourages the participants there to vote for the candidate at the relevant election. Will the chairman commit an offence? How should the candidate handle this situation?

A 14

- Although the above inauguration dinner party is not organized for promoting the election of the candidate concerned in the first place, the chairman of the residents' association has appealed for support from participants to the candidate during the dinner. If the candidate, who finds himself caught in the above situation, does not immediately stop any promotion of his election at the dinner, that occasion may be regarded as an election meeting held to promote his candidature and, in that case, all the expenses incurred for the said dinner will have to be counted towards the candidate's election expenses and be clearly set out in his election return. (Remark: An election meeting is any meeting held to promote or prejudice the election of a particular candidate or particular candidates.)
- If the dinner party is arranged by the chairman of the residents' association for promoting the election of the candidate and the chairman incurs election expenses without being authorized by the candidate as his election expense agent, the chairman will contravene section 23(1) of the ECICO, which stipulates that it is an offence for any person other than the candidate or his authorized election expense agent to incur election expenses.
- Both the chairman and the candidate should note that if the dinner is deliberately organized by the chairman to provide food, drink or entertainment with a view to inducing the participants to vote for the candidate, the chairman has committed an offence under section 12 of the ECICO. The candidate is also liable for the same offence if he has the knowledge of and has consented to organizing the dinner for the above purpose. (Remark: A person does not engage in corrupt conduct only because he has served non-alcoholic drinks of any kind at an election meeting.)
- When a candidate considers running or plans to run in an election, he should, as soon as possible, inform organizations to which he is connected that he may declare to stand for the election and remind these organizations to observe the ECICO. Candidates should act prudently while conducting their electioneering. They should avoid attending any functions which might easily cause suspicion of bribery. Any organizations, which organize non-election-related activities during the election period, should avoid mentioning election-related matters on the occasions. In case any participant of an activity has openly promoted the election of a particular candidate, the organizer of the activity should promptly stop him in order to avoid incurring election expenses for the candidate inadvertently.

Q 15

A candidate's supporter calls some electors before the election, demanding them to vote for the candidate on the polling day. Otherwise, they may have to face certain undesirable consequences. Will the supporter be guilty of an offence? Will the candidate concerned be liable for any offence? Besides, if a person spreads misleading messages to prevent electors from voting, will he be liable for any offence?

A 15

- Section 13 of the ECICO makes it an offence for a person to use force or duress, or threaten to use force or duress against another person, with a view to inducing the latter to vote or not to vote at the election, or to vote or not to vote for a particular candidate or particular candidates at the election. Duress includes causing financial loss to a person by duress.
- Persons who are in positions of influence should be prudent of their conduct when canvassing votes for a candidate to avoid giving an impression of effecting duress against others to vote for a particular candidate or particular candidates.
- The candidate has also contravened the ECICO if he has, expressly or by implication, requested his supporters to use duress against the voters for inducing them to vote or not to vote for a particular candidate or particular candidates at the election.
- In addition, under section 14 of the ECICO, it is an offence for a person to induce another person by a deception to vote or not to vote at the election for a particular candidate or particular candidates, or not to vote at the election. Section 14(1A) of the ECICO also states that it is an offence for a person to wilfully obstruct or prevent another person from voting at the election, or get another person to perform the aforesaid act. Therefore, if a person uses deceptive means, such as spreading false or misleading messages, or abets others to prevent electors from voting at the election by a deception, or uses any ways to wilfully obstruct or prevent electors from voting, he may contravene the law.
- Force, duress, deceptive and obstructive behaviour seriously undermines the credibility of elections. All candidates should call on their supporters to desist from the aforesaid violations.

Q 16

A candidate of the District Council geographical constituency election owns a company in the constituency in which he is contesting. In order to support the election of the candidate, a group of his employees use the company address in their applications for registration as electors even though they are not living in the abovementioned constituency and later vote at the election in the said constituency. Are the employees liable for an offence? Will the candidate be legally liable for the act of his employees?

A 16

- A person who knowingly or recklessly gives materially false or misleading information to the electoral officer and subsequently votes at an election will breach section 16(1) of the ECICO. The above employees, who are not living in the geographical constituency where the candidate contests, will contravene the ECICO as they knowingly provide false residential addresses to the electoral officer in their applications for registration as electors and subsequently vote at the election.
- The above candidate will also contravene section 16(2) of the ECICO if he invites or induces his employees to vote at the said election knowing that they have given materially false or misleading information to the electoral officer.
- Even if the above employees have not voted at the election in the end, they will still violate section 22 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Geographical Constituencies) Regulation (Cap. 541A) which is enforced by the Hong Kong Police Force, for knowingly or recklessly making a statement which is incorrect in a material particular when applying for registration as electors or updating changes of residential addresses with the REO.
- Any person who applies for registration as an elector or changes in the registered particulars must provide the REO with true and correct information, particularly his residential address. When an elector has moved, he should notify the REO as soon as possible so as to update the registered address. If a person has any questions about his eligibility to be registered as an elector, please enquire with the REO.

(4) ELECTION EXPENSES AND ELECTION DONATIONS

Q 17

A serving District Council (“DC”) member will be running in the upcoming DC Election. Besides assigning his assistant to handle the electioneering matters, he also asked his friends to assist in promoting his election voluntarily and borrowed their vehicles for free in his electioneering activities during the election period. How should he declare the relevant election expenses and election donations?

A 17

- Being a candidate, the serving DC member should count the expenses incurred for assigning his assistant to handle his electioneering matters towards his election expenses if the abovementioned expenses are incurred for the purpose of promoting his election. Hence, the candidate should calculate the working time spent by his assistant in handling the electioneering matters and include the salary of his assistant on a pro rata basis in his election expense, and clearly set it out in his election return.
- Section 37(2)(b)(i) of the ECICO states that a candidate must ensure that the election return is accompanied by an invoice and a receipt of each election expense of \$500 or more. They should be issued by the goods or service providers giving particulars of the expense. Therefore, if the apportioned salary of the assistant for handling the electioneering matters is \$500 or above, the candidate has to make sure that his election return is accompanied by an invoice and a receipt issued by the assistant giving particulars of the expenditure (e.g. name and salary of the assistant, and signature of the assistant to certify receipt of the relevant payment). It is important to note that the DC member is not allowed to claim reimbursement from the DC for the proportion of the assistant’s salary that has been counted as an election expense. He can only claim the remaining portion of the salary after deduction of the election expense.
- If his friends assist in promoting the candidate’s election in their own time, voluntarily, personally and free of charge, the service they rendered is regarded as “voluntary service” according to section 2(1) of the ECICO, which is not regarded as an election expense or an election donation. Therefore, the candidate is not required to include such service cost as his election expense or to set it out in his election return.
- The candidate has to include other relevant costs incurred incidental to the electioneering activities so arranged by his friends mentioned above, such as costs of buying publicity materials, postage of mailing election advertisements, etc. in his election expenses and clearly set out such costs, which do not fall within the definition of “voluntary service”, in his election return.

(Please turn to the next page)

- According to section 2(1) of the ECICO, any goods or service (excluding voluntary service) provided to a candidate for the purpose of promoting the election of the candidate or prejudicing the election of other candidates is an election donation. Its value is also an election expense. Therefore, the candidate's free rental of vehicles from his friends for promoting his election is an election donation and its value is also an election expense. The candidate should set out the market rent of the relevant vehicles as an election expense as well as an election donation in his election return. If the value of each donation is more than \$1,000, the candidate concerned must, pursuant to the requirements of sections 19 and 37(2)(b)(ii) of the ECICO, issue a receipt to each of the donors (i.e. the friends concerned) specifying the name and address of the donor and particulars of the donation. Copies of the relevant receipt must also be submitted with the election return.
- The other relevant expenses incurred while the candidate has used the above vehicles for his electioneering, such as gasoline fees and decoration of vehicle costs, should be counted as his election expenses and clearly set out in his election return. If the expense of any item is \$500 or above, the election return must be accompanied by an invoice and a receipt issued by the goods or service providers (e.g. gasoline supplier, supplier of decoration materials for vehicles, etc.) giving particulars of the expense (including date, information and amount of the goods or services, information of the organization or person providing the goods or services, and information supporting that the organization or person providing the goods or services has received the relevant payment in full, such as name and signature of the recipient, or the stamp of the receiving organization or signature of its authorized person).

Q 18

Several candidates of the District Council Election rent an office for shared use of electioneering. How should they calculate the election expenses? What should the candidates do if they have not received the electricity bill before the statutory deadline for lodging the election returns?

A 18

- The above candidates should apportion the office rental and other expenses, such as the cost for purchasing stationery for electioneering, electricity expense, Internet service fees, etc. on a pro rata basis and clearly set out the expenses in the election return of individual candidate.
- If the election expense of each item after apportionment is \$500 or above, the election return must be accompanied by relevant invoice and receipt issued by the goods or service provider (e.g. property owner, suppliers, etc.), stating clearly how the election expense of each item is apportioned. The invoices and receipts should also show the particulars of the expenditure (e.g. date of rental, name of the goods or service provider, details of goods or services, payment amount as well as the company chop/signature of the goods or service provider and the date of payment so as to certify that the said payment has been received in full by the goods or service provider). Since the original invoices and receipts would have been submitted by one of the candidates, the other candidates should provide the copies of the relevant invoices and receipts, set out the names of all the candidates concerned who have shared the expenses in their election returns, and state the name of the candidate who has submitted the original invoices and receipts, so as to facilitate checking by relevant departments. The candidates who submit the copies should confirm in the form of declaration that the copies of invoices and receipts are true and correct.
- It is important to note that the relevant invoices and receipts should be issued by the goods or service providers. Invoices and receipts issued by the candidate himself, the personal office of the candidate or any person purchasing the expense item on behalf of the candidate, and the receipts for topping up the value of the electronic stored value card (e.g. Octopus Card) do not meet the statutory requirements.
- If the candidates have neither received nor paid the electricity bill before the deadline of lodging election returns as specified by the law, they should state the expected amount of electricity expense, scheduled date of payment of the outstanding claim in the election returns and undertake to settle the relevant claim according to the scheduled date. They should also submit the relevant invoice and receipt for an election expense of \$500 or above to the REO within 30 days from the payment date. Since the original invoice and receipt will be submitted by one of the candidates, the other candidates should provide copies of the relevant invoice and receipt.

Q 19

In order to save expenses, a candidate reused old materials (e.g. publicity boards) that had been used at previous elections, and used materials provided by his friends or other organizations in his electioneering activities. How should he count the relevant election expenses and election donations? After the election, can the unused amount of election donations be appropriated by the candidate for providing community services in the future?

A 19

- A candidate should make sure that if the old materials are reused for the purpose of promoting his election, the costs incurred in refurbishing as well as the estimated value of the old materials (e.g. the value after depreciation) have to be counted towards the candidate's election expenses. The above estimated value and the cost incurred should be listed separately and set out clearly in the election return. If the cost incurred for refurbishing the old materials is \$500 or above, the relevant invoices and receipts issued by the goods or service providers should be submitted with the election return so as to comply with the requirements of section 37(2)(b)(i) of the ECICO.
- If the materials provided by the candidate's friends or other organizations are given for the purpose of promoting the election of the candidate or prejudicing the election of other candidates, they are regarded as election donations. The same should be clearly set out by the candidate in the election return. If the value of an election donation is more than \$1,000, according to sections 19 and 37(2)(b)(ii) of the ECICO, a candidate is required to issue a receipt to the donor specifying the name and address of the donor and particulars of the donation. A copy of the receipt must also be submitted with the election return. As the aforesaid candidate has used the said materials for his electioneering, he is also required to include the values of the materials in his election expenses and set out clearly such expenses in his election return.
- Section 18 of the ECICO provides that if a candidate or other person uses election donations for a purpose other than meeting, or contributing towards meeting, the candidate's election expenses, or for a purpose other than promoting the election of the candidate or prejudicing the election of another candidate, he engages in corrupt conduct at an election. If the election donations have not been used for election purpose, the candidate must, pursuant to the requirements of sections 19 and 37(2)(b)(iii) of the ECICO, ensure that the relevant election donations are given to a charitable institution or trust of a public character chosen by the candidate before the submission of his election return. He is also required to submit a copy of the receipt issued by the recipient organization together with his election return.
- Hence, the candidate must not use his unused election donations for a purpose other than meeting election expenses, such as for the purpose of providing community services in the future.

Q 20

Will a candidate of a District Council Election commit an offence for hosting a celebration dinner to treat his election helpers after getting elected? Should the expenses incurred for the dinner be counted towards his election expenses? On the other hand, should the relevant costs for displaying the publicity boards containing “thank you” messages in the district after the announcement of the election result be counted as election expenses?

A 20

- If the dinner is hosted solely for the purpose of celebrating the election of a candidate after he is elected and is in no way related to the promotion of his election, the relevant expenses incurred need not be counted towards his election expenses.
- However, if the dinner is hosted to honour the candidate’s promise made previously to his election helpers, for instance, 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 and the expenses of the dinner should be counted towards his election expenses and be clearly set out in his election return in accordance with the law.
- If the dinner is hosted as a reward for the electors’ having voted for the candidate, the candidate will contravene section 12 of the ECICO. If the electors accept the dinner as a reward for having voted for the candidate, they will also violate the ECICO.
- Since the publicity boards containing “thank you” messages are displayed in the district after the announcement of the election result and do not serve the purpose of promoting the election of the above candidate or prejudicing the election of other candidates, the relevant costs are not required to be counted towards the candidate’s election expenses.

(5) ELECTION RETURNS

Q 21

What are the points a candidate should take heed of while submitting his election return? Is a person required to submit an election return if, after being nominated as a candidate at the election, he has withdrawn his nomination or his nomination has been ruled invalid, or the candidate is returned uncontested, or not elected or has not incurred any election expenses? What remedial actions can a candidate take if he fails to lodge the election return within the period as required by the law?

A 21

- Each candidate has to lodge with the CEO an election return setting out his election expenses and all election donations received at the election before the expiry of the statutory period as required under section 37(1F) and (1G) of the ECICO (i.e. before the expiry of the period of 60 days after the election of the last constituency is settled*). According to section 37(2)(b) of the same legislation, the election return must be accompanied by:
 - (1) in the case of each election expense of \$500 or more, an invoice and a receipt giving particulars of the expenditure issued by the goods or service provider;
 - (2) in the case of each election donation of more than \$1,000 in value, a copy of the receipt issued to the donor specifying the name and address of the donor and the particulars of the donation;
 - (3) a copy of the receipt given by a charitable institution or trust of a public character to which the candidate has chosen to give his election donations (including anonymous election donations of more than \$1,000 in value, unused election donations and election donations that exceed the prescribed maximum amount of election expenses);
 - (4) (if applicable) a written explanation setting out the reason why an election donation was not disposed of in accordance with paragraph (3) above; and
 - (5) a declaration verifying the contents of the election return.

* For District Council Election, an election is settled when the result of the election is notified in the Gazette or the election is declared to have failed.

- A candidate should complete the election return carefully so as to avoid any errors. He is advised to cross check the election expense items provided in the election return with the record of his election advertisements made available for public inspection and ensure the amount shown on the invoices and receipts are the same as those filled in the election return.
- A candidate who makes a statement that the candidate knows or ought to know is materially false or misleading in an election return lodged under section 37 of the ECICO engages in corrupt conduct at an election under section 20 of the ECICO.
- According to section 2 of the ECICO, a “candidate” is defined not only as a person who stands nominated as a candidate at an election, but also a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at an election. A person has to submit his election return to the CEO within the period as required by the ECICO even if, after being nominated as a candidate at the election, he has withdrawn his nomination or his nomination has been ruled invalid, or the candidate is returned uncontested, or not elected or has not incurred any election expenses.
- A candidate who is unable or has failed to lodge an election return before the end of the permitted period as required by the ECICO can, according to section 40(1) of the ECICO, apply to the Court of First Instance (“the Court”) for an order allowing him to lodge the election return with the CEO within such further period as the Court specifies. The candidate, however, has to satisfy the Court that the inability or failure to comply with the requirement to lodge an election return was attributable to the candidate’s illness or absence from Hong Kong; or the death, illness, absence from Hong Kong or misconduct of his agent or employee; or inadvertence or an accidental miscalculation by the candidate or any other person; or any reasonable cause, and was not due to the candidate’s bad faith. It should be noted that, according to previous Court judgements regarding applications for relieving election-related penalties and liabilities, the Court will critically review the justifications put forward by the applicant, with emphasis on whether the applicant has placed enough significance on complying with the relevant obligation.

Q 22

What measures can a candidate take to remedy the situation, if he has submitted an election return that contains minor errors or false statements?

A 22

- 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 submit any document required by section 37(2)(b) of the ECICO in relation to the election return), the candidate may lodge with the CEO 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 CEO, provided that the aggregate value of those errors or false statements does not exceed the prescribed limit (\$5,000 for District Council Election) and after including such value of errors or false statements, the aggregate amount of the candidate's election expenses does not exceed the maximum amount of election expenses prescribed for that particular election (please refer to p.128-129). 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 copy of the revised election return must 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, the copy of the revised election return must be accompanied with a declaration by the candidate in a specified form verifying the contents of the copy of the revised election return to be true.
- According to section 20 of the ECICO, if a candidate, in a copy of the revised election return lodged under section 37A of the ECICO, makes a statement that the candidate knows or ought to know is materially false or misleading, he engages in corrupt conduct at an election.
- A candidate can, according to section 40(3) and (4) of the ECICO, apply to the Court for 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, however, has to satisfy the Court that the error or false statement was due to the misconduct of his agent or employee; inadvertence or an accidental miscalculation by the candidate or any other person; or any reasonable cause, and was not due to the candidate's bad faith.

- A candidate who fails to submit the required invoices, receipts or copies of receipts can, according to section 40(5) and (6) of the ECICO, apply to the Court for an order excepting the candidate from submitting the said documents. The candidate, however, has to satisfy the Court that the non-compliance was due to the misconduct of his agent or employee; inadvertence or an accidental loss or destruction of the documents concerned by the candidate or any other person; or any reasonable cause, and was not due to the candidate's bad faith. It should be noted that, according to previous Court judgments regarding applications for relieving election-related penalties and liabilities, the Court will critically review the justifications put forward by the applicant, with emphasis on whether the applicant has placed enough significance on complying with the relevant obligation.





PART II
Gist of Past Election Cases



CASE 1

Bribing persons to stand as candidates at an election

A person, a founder and a member of an organization conspired to accept an advantage of \$150,000 to \$200,000 offered by the person as an inducement to procure the member to stand as a candidate at a District Council Election. The person also offered at least \$850,000 in total as bribes to five other persons to induce them to stand as a candidate themselves or to get another person to stand as a candidate.

The person, the founder and the member of the organization reached an agreement after a meeting to conspire to procure the member to stand as a candidate in a specified constituency and to submit a candidacy report to the person in return for accepting \$150,000 to \$200,000. Later the person claimed that the report was too simple, so he only paid \$36,000 in cash to the founder.

On the other hand, the person offered at least \$850,000 in total as bribes to five other persons to induce them to stand as a candidate themselves or to get another person to stand as a candidate at the election in various constituencies specified by the person, but the requests were all turned down.

After trial, the trio were sentenced to imprisonment for 2 years to 3 years and 3 months after being found guilty of section 7 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”), by conspiring with another person for the person to corruptly offer an advantage to other persons and the founder to obtain an advantage from the person as an inducement to get the member to stand as a candidate at the election.

The trial judge said that bribery at elections was a very serious offence and the courts had to take a serious view of illegal acts such as corrupt conduct at elections in order to maintain the credibility of elections. The person later appealed to the Court of Final Appeal but the appeal was dismissed. The Court of Final Appeal held that the person intentionally engaged in the specified acts corruptly to induce his co-defendants to stand for election for personal gain, in a way tended to undermine a fair, open and honest election.

CASE 2 Election bribery

A candidate of a District Council Election and his four supporters formed a welfare association about one month before the election and provided refreshments, entertainment and other advantages to electors in the name of the association to induce them to vote for the candidate at the election.

The association organized more than 10 dinner banquets costing over \$1,000,000 for the electors amongst its members, who only had to pay \$20 to join the banquets. When the candidate showed up at the banquets, officers of the association repeatedly made gestures implying the candidate number of the candidate and mentioned slogans relating to the candidate number.

During the election period, the association offered one-day local tours almost every day and the members who joined were given bread and drinks for free. They organized a total of 38 tours and the total cost including that of lunch banquets was more than \$390,000. The candidate and the four supporters did not only show up constantly to greet the participants, but also welcomed the coaches on the return trip on the polling day. They also provided flu vaccination services to residents in the district for free, and distributed \$100 cash coupons for paying medical expenses or exchanging for food or other products at a private clinic or a health centre. Before the polling day, someone distributed reusable bags to the residents in the district in the name of the welfare association, containing a health book which clearly showed the candidate number. The costs of the welfare association in organizing the relevant activities were the candidate's election expenses, which vastly exceeded the prescribed level of expenditure.

After trial, the five were sentenced to 27 to 33 months' imprisonment after being found guilty of various charges of conspiracy to commit offences under the ECICO, namely section 11 (corrupt conduct to bribe electors and others at elections), section 12 (corrupt conduct to provide others with refreshments and entertainment at elections), and other sections relating to election expenses, etc.

The court said that it was a very large scale of election corruption case. The relevant persons carefully planned and orchestrated various corrupt acts spanning over a long period of time, intending to influence electors' voting preference. The court also delivered a clear message that any persons taking part in election bribery, irrespective of their background and social status, would not be given lenient sentences by the court.

CASE 3

Bribing electors with health checking services

A candidate of a District Council Election employed some student nurses to set up a booth in the district twice during the election period to provide the elderly with free health check services, including blood pressure checks and body weight measurements. The candidate placed his campaign publicity posters near the booth. Apart from checking blood pressure for the residents, the student nurses also gave out ball pens bearing the candidate's slogan and calendar cards having the candidate's name and candidate number printed on them. The student nurses were also instructed that when they were giving out the free gifts, they should remind the residents of the polling day and invite them to support the candidate. In the course of these activities, the candidate, who was wearing his election sash, also canvassed votes from passers-by.

After trial, the candidate was sentenced to 9 weeks' imprisonment after being found guilty of offering advantages to other persons in return for their votes, contrary to section 11 of the ECICO. In passing the sentence, the magistrate stated that a custodial sentence had to be meted out in view of the seriousness of the offences.

The candidate later appealed against his convictions, claiming, amongst others, that he, as a then District Councillor, had been providing such health check services regularly in the district one year before the material time. However, the Deputy Judge of the High Court dismissed the appeal considering all such evidence which showed that the health check activities held on the two days were in fact part of the candidate's election campaign and he did provide advantages therein to induce electors to vote for him.

CASE 4 Providing “dim-sum” to canvass votes

Three days after a District Council Election candidate submitted his nomination form, he organized a tea gathering for electors at a restaurant in the name of a community service centre of which he was the chairman. He made a reservation with the restaurant for a dim-sum tea gathering. The restaurant charged \$30 per head while he sponsored the remaining amount after selling admission tickets to the participants at \$20 each and also held lucky draw. Eventually the candidate arranged 11 tables to serve the participants and \$3,300 were incurred in total.

The candidate was found guilty of the ECICO offences, including section 12 to meet all or part of the cost of providing food, drink and entertainment for the participants of the tea gathering for the purpose of inducing them to vote at the election for him. He was ordered to perform 100 hours of community service.

The magistrate pointed out that although the candidate did not mention any election matters in the tea gathering, he did publicly make some remarks indicating that he was a candidate. The magistrate opined that vote canvassing might not necessarily be done in an explicit way, but could be subtly done or implied.

CASE 5

Providing entertainment to induce votes

A candidate of a Legislative Council by-election organized a two-hour rally in a public square in the constituency during the election period. A few hours before the rally, the candidate published a post on his social media page announcing that a singer would perform at the rally. At the rally, the singer performed two songs on stage and appealed to the participants to vote for the candidate at the upcoming by-election. The candidate later shared a video of the rally on his social media page, including the singer's performance and his appeal to the participants for votes.

The candidate and the singer were jointly charged under section 12 of the ECICO. The provision states that a person engages in corrupt conduct at an election if the person provides food, drink or entertainment for another person for the purpose of inducing the other person to vote at the election for a particular candidate. The magistrate imposed an 18-month bind over order in the sum of \$2,000 each on the candidate and the singer after they admitted in court the brief facts of the case.

CASE 6

Piles of cash for vote

A Rural Committee Election candidate visited an elector twice in person to ask the latter to vote for him at the election. Before the candidate left in the second meeting, the candidate had left \$130,000 in cash to bribe the elector to vote for him at the election.

The candidate was sentenced to 14 weeks' imprisonment after being found guilty of engaging in corrupt conduct at an election, contrary to section 11 of the ECICO. In his reasons for sentence, the magistrate emphasized that the court had the duty to ensure that elections were clean and fair in order to maintain the confidence of the public.

The Court of Appeal later granted the Secretary for Justice's application for a review of the sentence and agreed that the candidate had acted in flagrant disregard of the sanctity and integrity of the electoral system, adding that the court was duty bound to impose deterrent sentences to stop any corrupt and illegal practices at elections. The Court of Appeal quashed the original sentence which was considered manifestly inadequate and in substitution imposed a sentence of 12 months' imprisonment on the candidate.

CASE 7 Accepting advantage for voting

A registered elector, on the day before the polling day, attended a dinner at a restaurant upon a relative's invitation. During the dinner, the relative gave her \$4,000 in cash and said that she and her mother were each given \$2,000 for them to vote for a particular candidate at the election. After the dinner, the elector called to tell her mother about the matter and transferred \$2,000 to her mother at home. Both the elector and her mother later voted at the election.

The elector pleaded guilty to the charge of accepting an advantage as an inducement to vote at the election for a particular candidate and to get her mother to vote at the election for that particular candidate, contrary to section 11 of the ECICO. She was sentenced to 2 months' imprisonment and ordered to make a payment of \$4,000 to the court.

In passing the sentence, the magistrate stressed that nothing was more important than upholding a clean society. Any offender who engaged in corrupt conduct at an election must be severely punished, otherwise the electoral system would collapse.

CASE 8 Vote-rigging

In a District Council Election, a large number of persons were found to have used false residential addresses (including using residential addresses of other persons or non-residential buildings) for registration as electors of the same constituency and voted on the polling day. Some persons provided their addresses for others to register as electors of that constituency. More than 40 persons were charged with section 16 of the ECICO or conspiracy to defraud. Some pleaded guilty while others were convicted by the court. Sentences ranged from community service order to 1 year's imprisonment.

In separate trials, different magistrates remarked that "vote-rigging" was a serious offence, thus warranting imposition of a deterrent sentence. The court had to convey a message to the public to safeguard a clean and fair electoral system.

CASE 9

Lack of written consent of support

A candidate of a District Council Election claimed to have obtained support from a group of supporters in his election advertisement, but failed to obtain written consent from some 50 people or organizations amongst the supporters before publication. The candidate was later elected at the election and one of the defeated candidates filed an election petition challenging the result of the election, with one of the grounds being that the elected candidate had breached section 27 of the ECICO for publishing election advertisement that included false claim of support. After hearing, the Court of First Instance ruled that the candidate was not duly elected at the election and a by-election should be held.

The candidate made an application to the Court of First Instance for an order to relieve him from penalties, claiming that all supporters had given verbal consent and that his non-compliance with section 27 was due to his inadvertence. The court considered that the evidence did not explain what steps were taken by the candidate to verify that the relevant written consents had been obtained before publishing the election advertisements and did not regard the omission as inadvertent, and refused to grant him a relief order.

When later being prosecuted, the candidate pleaded guilty of two charges under the ECICO, including section 27, i.e. illegal conduct to publish election advertisement that included false claim of support, and was fined \$15,000.

In sentencing, the magistrate remarked that if a candidate obtained only verbal consent but lacked written consent required by the legislation, the candidate had to shoulder legal responsibility. The candidate should be responsible for ensuring that his electioneering complied with the requirements of the legislation.

CASE 10

Inciting others to cast invalid votes at an election

During the election period of a Legislative Council Election, a netizen displayed a post on his social media page and shared it to six social media pages to incite viewers to cast invalid votes at the election. On the morning of the polling day, the netizen displayed another post on his social media page and shared it to four social media pages to incite viewers to cast invalid votes at the election.

The netizen was subsequently charged with illegal conduct to incite another person not to vote or to cast invalid vote by activity in public during the election period, contrary to section 27A of the ECICO. The netizen pleaded guilty to the two charges, and was sentenced to 2 months' imprisonment which was suspended for 2 years.

In sentencing, the magistrate remarked that the offences committed by the netizen were election-related and serious in nature.

CASE 11 **Failure to submit election return**

A defeated candidate in a District Council Election did not lodge with the Registration and Electoral Office (“REO”) his election return by the specified date after the election results were published, as required under section 37 of the ECICO.

The REO had reminded the candidate by emails and a phone call to lodge his election return by the statutory deadline. However, the REO did not receive his election return by the deadline.

The candidate was later charged with section 38 of the ECICO for failing to lodge election return. Having considered the significant public interest involved, the candidate was sentenced to 6 months’ imprisonment. Later, the candidate appealed against the sentence. The Court of First Instance ruled that a starting point of 4 months’ imprisonment would be appropriate.

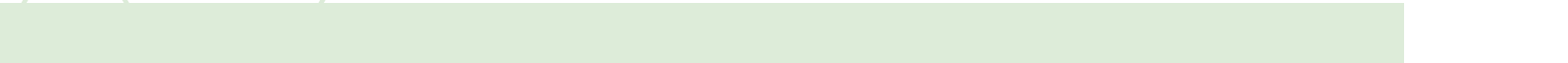
Penalties

Any person convicted of engaging in corrupt conduct at an election is liable on conviction to a fine of \$500,000 and to imprisonment for 7 years under the ECICO. Any person convicted of engaging in illegal conduct at an election and failed to comply with section 37 of the ECICO is liable on conviction to a fine of \$200,000 and to imprisonment for 3 years.

A person convicted of having engaged in corrupt or illegal conduct under the ECICO will be disqualified from being nominated as a candidate for the election of, or from being elected as, the Chief Executive, a member of the Election Committee or Legislative Council or District Council, or a Rural Representative, or from being appointed as a District Council member, or from registering as an ex-officio member of a District Council, or from being nominated as an Election Committee member, or from registering as an ex-officio member in the Election Committee, for 5 years from the date of conviction.



PART III
Dos and Don'ts Checklist



Candidates and election helpers of the District Council Election should note the following:

(1) STANDING AS CANDIDATES

Bribery

- ✘ Do not engage in, or authorize another person either expressly or by implication to engage in, any of the following conduct:
 1. offering an advantage as an inducement to or a reward for any person's standing or not standing as a candidate at the election;
 2. offering an advantage as an inducement to or a reward for any person having been nominated as a candidate at the election to withdraw his nomination or not to use his best endeavours to promote his election.
- ✘ Do not solicit or accept an advantage as an inducement to or a reward for any person's standing or not standing as a candidate at the election.
- ✘ Do not solicit or accept an advantage as an inducement to or a reward for any person having been nominated as a candidate at the election to withdraw his nomination or not to use his best endeavours to promote his election.
- ✘ Do not offer an advantage to procure an elector to subscribe or not to subscribe a nomination.

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 at the election, or to induce any person having been nominated as a candidate at the election to withdraw his nomination.
- ✘ Do not authorize another person, either expressly or by implication, to engage in the above conduct.
- ✘ Do not use or threaten to use force or duress to procure an elector to subscribe or not to subscribe a nomination.

Engaging in Deceptive Behaviour

- ✘ Do not, by a deception, induce any person to stand or not to stand as a candidate at the election, or induce any person having been nominated as a candidate at the election to withdraw his nomination.
- ✘ Do not authorize another person, either expressly or by implication, to engage in the above conduct.
- ✘ Do not, by a deception, procure an elector to subscribe or not to subscribe a nomination.

Nomination Paper

- ✘ Do not deface or destroy a completed or partly completed nomination paper to prevent or obstruct another person from standing for an election.

(2) ELECTIONEERING

Statements about a Candidate

- ✘ Do not publish a statement, knowing it to be false, that a person is or is no longer a candidate at the election.
- ✘ Do not publish any materially false or misleading statement of fact, including (but not limited to) a statement concerning the character, qualifications or previous conduct of a candidate or candidates for the purpose of promoting or prejudicing the election of the candidate(s).

Election Advertisements

- ✘ Do not publish an election advertisement that includes the name or logo of a person or an organization; or the pictorial representation of any person in such a way as to imply, or to be likely to cause electors to believe, that the candidate concerned has the support of the person or organization, unless:
 1. prior written consent from the supporting person or organization has been obtained; or
 2. the candidate or the person who publishes the election advertisement has neither requested or directed nor authorized any other person to request or direct the inclusion of such name, logo or pictorial representation in the advertisement (e.g. the contents of the election advertisement have been provided by the supporters themselves out of their own volition).

Remark: A person must obtain approval from the governing body of the organization or by a resolution of the members of the organization passed at a general meeting before giving a consent in writing to the inclusion in an election advertisement of the name or logo of or associated with the organization.

- ✘ Do not modify, or authorize another person to modify, the name, logo or pictorial representation or any other content of an election advertisement provided by a supporting person or organization unless prior written consent has been obtained from the supporting person or organization.
- ✔ Do comply with the requirements applicable to election advertisements under the relevant Electoral Affairs Commission (“EAC”) Regulation and the “Guidelines on Election-related Activities in respect of the District Council Election” issued by the EAC.

Remark: A document published by a candidate during an election period (i.e. the period which begins on the first day of the nomination period and ends on the polling day for the election) that gives details of the work done by the candidate in the capacity of the Chief Executive, a member of the Election Committee, a member of the Legislative Council, a member of a District Council, a member of the Heung Yee Kuk, the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee, or a Rural Representative, is also an election advertisement.

(3) VOTING

Bribery

- ✘ Do not without reasonable excuse engage in, or authorize another person either expressly or by implication to engage in, any of the following conduct:
 1. offering an advantage as an inducement to or a reward for any person's voting or not voting for a particular candidate or particular candidates at an election;
 2. offering an advantage as an inducement to or a reward for any person's not voting at an election.

Providing Refreshments or Entertainment

- ✘ Do not engage in, or authorize another person either expressly or by implication to engage in, any of the following conduct:
 1. providing or meeting 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 or particular candidates at an election;
 2. providing or meeting 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.

Using or Threatening to Use Force or Duress

- ✘ Do not engage in, or authorize another person either expressly or by implication to engage in, any of the following conduct:
 1. using or threatening to use force or duress against any person to induce the person to vote at an election, or to vote for a particular candidate or particular candidates at an election;
 2. using or threatening to use force or duress against any person to induce the person not to vote at an election, or not to vote for a particular candidate or particular candidates at an election;
 3. using or threatening to use force or duress against any person because the person voted at an election, or voted for a particular candidate or particular candidates at an election;
 4. using or threatening to use force or duress against any person because the person refrained from voting at an election, or refrained from voting for a particular candidate or particular candidates at an election;
 5. preventing an elector from voting at an election by abduction.

Engaging in Deceptive Behaviour

- ✘ Do not engage in, or authorize another person either expressly or by implication to engage in, any of the following conduct:
 1. inducing any person by a deception to vote or not to vote for a particular candidate or particular candidates at an election;
 2. inducing any person by a deception not to vote at an election.

Other Offences in relation to Voting

- ✘ Do not invite or induce any person to vote at an election knowing that the person is not entitled to do so.
- ✘ Do not invite or induce any person to vote at an election knowing that the person has given materially false or misleading information to an electoral officer.
- ✘ Do not destroy, deface, take or otherwise interfere with a ballot paper in use or that has been used at an election, without lawful authority.
- ✘ Do not destroy, remove, open or otherwise interfere with a ballot box in use at an election, without lawful authority.
- ✘ Do not wilfully obstruct or prevent any person from voting at the election or get another person to obstruct or prevent a third person from voting at the election.
- ✘ Do not incite another person not to vote or to cast invalid vote at the election by carrying out any activity in public during the election period.

(4) ELECTION EXPENSES AND ELECTION DONATIONS

Election Expenses

- ✘ Do not incur election expenses more than the prescribed maximum amount for the constituency concerned for the District Council Election.

Constituencies	Maximum Amount of Election Expenses
(A) Geographical Constituency	
Central	\$512,400
Western, Southern District Northwest	\$585,600
Southern District Southeast, Kwun Tong North, Tsuen Wan Northwest, Yuen Long Rural East, Wu Tip Shan, Robin's Nest, Tai Po South, Sai Kung and Hang Hau	\$658,800
Yau Tsim Mong South, Yau Tsim Mong North, Kwun Tong Southeast, Kwun Tong Central, Tsuen Wan Southeast, Tuen Mun East, Tuen Mun North, Yuen Long Town Centre, Tin Shui Wai South and Ping Ha, Tin Shui Wai North, Tai Po North, Tseung Kwan O South, Tseung Kwan O North, Sha Tin West, Sha Tin South, Sha Tin North, Kwai Chung East, Kwai Chung West, Islands	\$732,000
Tai Pak, Kwun Tong West, Tuen Mun West, Sha Tin East, Tsing Yi	\$805,200
Hong Wan, Chai Wan, Sham Shui Po West, Kowloon City South, Wong Tai Sin East	\$878,400
Wan Chai, Sham Shui Po East, Kowloon City North, Wong Tai Sin West	\$951,600

Constituencies	Maximum Amount of Election Expenses
(B) District Committees Constituency	
District Committees Constituency	\$100,000

- Do not incur election expenses in excess of the amount specified in the authorization if you are an election expense agent.
- Do not incur election expenses at or in connection with an election unless you are a candidate incurring election expenses solely for yourself or you are a candidate's authorized election expense agent (except that person publishes an election advertisement on the Internet; and the only election expenses incurred by that person for the purpose of publishing the advertisement are the electricity charges and/or charges necessary for accessing the Internet).

Election Donations

- Do not use election donations for a purpose:
 1. other than that of meeting a candidate's election expenses; or
 2. other than that of promoting a candidate's election or prejudicing the election of another candidate or other candidates.
- Do issue to the donor a receipt for election donations of more than \$1,000 in value, specifying the name and address of the donor and particulars of the election donation.
- Do give election donations of more than \$1,000 in value received by a candidate who does not know the name and address of the donor, the unused election donations and election 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 lodge an election return clearly setting out all election expenses incurred by a candidate and his authorized election expense agent(s); and all election donations received by or on behalf of the candidate with the Chief Electoral Officer (“CEO”) by the statutory deadline as required under section 37 of the ECICO.
- ✔ Do lodge the election return with:
 1. in the case of each election expense of \$500 or more, an invoice and a receipt giving particulars of the expenditure issued by the goods or service provider;
 2. in the case of each election donation of more than \$1,000 in value, a copy of the receipt issued to the donor specifying the name and address of the donor and the particulars of the donation;
 3. a copy of the receipt given by a charitable institution or trust of a public character to which the candidate has chosen to give his election donations (including anonymous election donations of more than \$1,000 in value, unused election donations and election donations that exceed the prescribed maximum amount of election expenses);
 4. (if applicable) a written explanation setting out the reason why an election donation was not disposed of in accordance with paragraph (3) above; and
 5. a declaration verifying the contents of the election return.
- ✔ Do lodge the election return with the CEO within the period as required by the law if a person, at any time before the close of nominations for the election, has publicly declared an intention to stand as a candidate at the election; even if, he does not submit the nomination form in the end; or after being nominated as a candidate at the election, he has withdrawn his nomination or his nomination has been ruled invalid; or he is returned uncontested, or not elected, or has not incurred any election expense.

Remark: A “candidate” is defined not only as a person who stands nominated as a candidate, but also a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election.

- ✘ Do not make any statement that the candidate knows or ought to know is materially false or misleading in the election return or the revised copy of the election return.

(5) ELECTION PETITION / ELECTION APPEAL

- ✘ Do not withdraw an election petition/election appeal for an advantage.
- ✘ Do not offer an advantage as an inducement to or a reward for any person's withdrawal of an election petition/election appeal.
- ✘ Do not solicit or accept an advantage as an inducement to or a reward for any person's withdrawal of an election petition/election appeal.





PART IV

Channels for Reports and Enquiries



REPORTS

Any person who discovers or suspects any conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) should make a report to the Independent Commission Against Corruption (“ICAC”) without delay.

Members of the public may contact one of the 7 ICAC Regional Offices or the 24-hour Report Centre (Address: 303 Java Road, North Point, Hong Kong), call the 24-hour ICAC **Report Corruption Hotline 25 266 366** or write to Hong Kong GPO Box 1000 to make a report to the ICAC.

The ICAC appeals to members of the public to report on suspected corruption. However, any person who knowingly makes or causes to be made to an ICAC officer a false report of the commission of any offence, or misleads an ICAC officer by giving false information or by making false statements or accusations may contravene section 13B of the Independent Commission Against Corruption Ordinance (Cap. 204) and may be liable on conviction to a fine of \$25,000 and to imprisonment for 1 year.

ENQUIRIES

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

Any person who wishes to obtain details about the clean election education and publicity programmes may browse the “**Clean District Council Election**” Website (www.icac.org.hk/elections).

Addresses and Telephone Numbers of ICAC Regional Offices

Hong Kong Island

Hong Kong East

Unit 3, G/F, East Town Building
16 Fenwick Street
Wan Chai
Tel: 2519 6555

Hong Kong West/Islands

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

New Territories

New Territories East

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

New Territories North West

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

Kowloon

Kowloon East/Sai Kung

Shop No.9, G/F
Chevalier Commercial Centre
8 Wang Hoi Road
Kowloon Bay
Tel: 2756 3300

Kowloon West

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

New Territories South West

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



APPENDIX

**Extracts from
the Elections (Corrupt and Illegal Conduct) Ordinance**

This Appendix only includes the parts of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) which are mentioned in this Information Booklet.

Section 2 Interpretation (Only the relevant parts are listed out)

Advantage means

- (a) any valuable consideration, gift or loan; or
- (b) any office, employment or contract; or
- (c) the full or partial payment, release, discharge or liquidation of an obligation; or
- (d) the exercise of or forbearance from exercising a right or power; or
- (e) the performance of or forbearance from performing a duty; or
- (f) any favour, including
 - (i) giving protection from a liability incurred or anticipated; and
 - (ii) giving protection from proceedings or possible proceedings of a disciplinary, civil or criminal nature; or
- (g) any other service (other than voluntary service or the provision of entertainment),

but does not include an election donation if particulars of the donation are given in an election return that has been lodged with the appropriate authority.

Appropriate authority means

- (a) in the case of an election to elect the Chief Executive, the Chief Electoral Officer; and
- (b) in the case of an election to elect a member or members of the Legislative Council, the Election Committee or a District Council, the Chief Electoral Officer; and
- (c) in the case of an election to elect members of the Heung Yee Kuk or to elect the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee, the returning officer for the election or, if the returning officer for the election has not been appointed, the Director of Home Affairs; and
- (d) in the case of an election to elect a Rural Representative, the Director of Home Affairs.

Candidate

- (a) means a person who stands nominated as a candidate at an election; and
- (b) 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.

Duress includes causing financial loss to a person by duress.

Election advertisement, in relation to an election, means

- (a) a publicly exhibited notice; or
- (b) a notice delivered by hand or electronic transmission; or
- (c) a public announcement made by radio or television or by video or cinematographic film; or
- (d) any other form of publication,

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

Election donation, in relation to a candidate or candidates at an election, means any of the following donations

- (a) any money given to or in respect of the candidate or candidates for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate or candidates;
- (b) any goods given to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, and includes any goods given incidental to the provision of voluntary service;
- (c) any service provided to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, but does not include voluntary service.

Election expense agent, in relation to a candidate, means a person authorized by the candidate in accordance with section 23.

Election expenses, in relation to a candidate at an election, means expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate for the purpose of

- (a) promoting the election of the candidate; or
- (b) prejudicing the election of another candidate,

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

Election period, in relation to an election, means the period beginning with the nomination day for the election and ending with the polling day for the election (or the last polling day if there is more than one polling day).

Force

- (a) includes any form of violence or restraint; and
- (b) in particular, includes
 - (i) inflicting harm on a person (whether physical or mental); and
 - (ii) causing damage to, or destruction of, a person's property.

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

- (a) promoting the election of the candidate or candidates; or
- (b) prejudicing the election of another candidate or other candidates.

For the purposes of this Ordinance, a document published by a candidate during an election period that gives details of the work done by the candidate in the capacity of

- (a) the Chief Executive;
- (ab) a member of the Election Committee;
- (b) a member of the Legislative Council;
- (c) a member of a District Council;
- (d) a member of the Heung Yee Kuk;
- (e) the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee; or
- (f) a Rural Representative,

is an election advertisement.

Section 4 What elections do this Ordinance apply to

This Ordinance applies to the following kinds of elections

- (a) an election to elect the Chief Executive;
- (b) a general election to elect the Members of the Legislative Council;
- (c) a by-election to fill a vacancy in the membership of the Legislative Council;
- (d) a subsector ordinary election to elect members of the Election Committee;
- (da) a by-election to fill a vacancy in the membership of the Election Committee;
- (e) an ordinary election to elect members of a District Council;
- (f) a by-election to fill a vacancy in the membership of a District Council;
- (g) an election to elect members of the Heung Yee Kuk;
- (h) an election to elect a person as the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee;
- (i) a rural ordinary election to elect a Rural Representative for a Rural Area;
- (j) a rural by-election to elect a Rural Representative for a Rural Area.

Section 5 What conduct does this Ordinance apply to

This Ordinance applies to all conduct concerning an election, whether the conduct is engaged in within Hong Kong or elsewhere.

Section 6 What penalties can be imposed for corrupt conduct at elections

- (1) A person who engages in corrupt conduct at an election commits an offence and is
 - (a) if tried summarily, liable on conviction to a fine of \$200,000 and to imprisonment for 3 years; or
 - (b) if tried on indictment, liable on conviction to a fine of \$500,000 and to imprisonment for 7 years.
- (2) A person may be convicted of an offence of having engaged in corrupt conduct at an election if the person is found to have engaged in the conduct before, during or after the election period.
- (3) A court that convicts a person of having engaged in corrupt conduct must order the person to pay to the court
 - (a) the amount or value of any valuable consideration received by the person or the person's agents in connection with the conduct; or
 - (b) such part of the amount or value as that court specifies in the order.

Section 7 Corrupt conduct to bribe candidates or prospective candidates

- (1) A person engages in corrupt conduct at an election if the person corruptly
 - (a) offers an advantage to another person as an inducement for the other person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the other person has been nominated as a candidate at the election, to withdraw the nomination; or
 - (iii) if the other person has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person; or
 - (b) offers an advantage to another person as a reward
 - (i) for having stood, or not stood, as a candidate at the election; or
 - (ii) if the other person was nominated as a candidate at the election, for having withdrawn the nomination; or
 - (iii) if the other person was or has been nominated as a candidate at the election, for not having used the other person's best endeavours to promote the election of the other person; or

- (c) offers an advantage to another person as an inducement for the other person to get, or try to get, a third person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the third person has been nominated as a candidate at the election, to withdraw the nomination; or
 - (iii) if the third person has been nominated as a candidate at the election, not to use the third person's best endeavours to promote the election of the third person; or
- (d) offers an advantage to another person as a reward for having got, or having tried to get, a third person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the third person was nominated as a candidate at the election, to withdraw the nomination; or
 - (iii) if the third person was or has been nominated as a candidate at the election, not to use the third person's best endeavours to promote the election of the third person; or
- (e) solicits or accepts an advantage as an inducement
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the person has been nominated as a candidate at the election, to withdraw the nomination; or
 - (iii) if the person has been nominated as a candidate at the election, not to use the person's best endeavours to promote the election of the person; or
- (f) solicits or accepts an advantage as a reward
 - (i) for having stood, or not stood, as a candidate at the election; or
 - (ii) if the person was nominated as a candidate at the election, for having withdrawn the nomination; or
 - (iii) if the person was or has been nominated as a candidate at the election, for not having used the person's best endeavours to promote the election of the person; or
- (g) solicits or accepts an advantage as an inducement to get, or try to get, another person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the other person has been nominated as a candidate at the election, to withdraw the nomination; or

- (iii) if the other person has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person; or
 - (h) solicits or accepts an advantage as a reward for having got, or having tried to get, another person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the other person was nominated as a candidate at the election, to withdraw the nomination; or
 - (iii) if the other person was or has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person.
- (2) For the purposes of this section
 - (a) a person offers an advantage if the person confers, undertakes to confer or shows a willingness to confer, an advantage on another person; and
 - (b) a person solicits an advantage if the person asks for, or shows a willingness to receive, an advantage, either for the person's own benefit or for the benefit of another person; and
 - (c) a person accepts an advantage if the person receives or obtains an advantage, or agrees to receive or obtain an advantage, either for the person's own benefit or for the benefit of another person.
- (3) For the purposes of this section, a person is taken to have offered an advantage even though the offer was made by another person, but only if the other person was acting with the person's authority. That authority may be conferred expressly or by implication.

Section 8 Corrupt conduct to use or threaten to use force or duress against candidates or prospective candidates

- (1) A person engages in corrupt conduct at an election if the person
 - (a) uses force or duress, or threatens to use force or duress, against another person to induce the other person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the other person has been nominated as a candidate at the election, to withdraw the nomination; or

- (b) uses force or duress, or threatens to use force or duress, against another person to induce the other person to get a third person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the third person has been nominated as a candidate at the election, to withdraw the nomination; or
 - (c) uses force or duress, or threatens to use force or duress, against another person because the other person or a third person
 - (i) stood, or did not stand, as a candidate at the election; or
 - (ii) if the other person or the third person has been nominated as a candidate at the election, withdrew the nomination.
- (2) A person is taken to have engaged in corrupt conduct of a kind referred to in subsection (1) even though the conduct was engaged in by another person, but only if the other person was acting with the person's authority. That authority may be conferred expressly or by implication.

Section 9

Corrupt conduct to engage in certain deceptive behaviour in relation to candidates and prospective candidates

- (1) A person engages in corrupt conduct at an election if the person
- (a) by a deception, induces another person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the other person has been nominated as a candidate at the election, to withdraw the nomination; or
 - (b) by a deception, induces another person to get a third person
 - (i) to stand, or not to stand, as a candidate at the election; or
 - (ii) if the third person has been nominated as a candidate at the election, to withdraw the nomination.
- (2) A person is taken to have engaged in corrupt conduct of a kind referred to in subsection (1) even though the conduct was engaged in by another person, but only if the other person was acting with the person's authority. That authority may be conferred expressly or by implication.

Section 10 Corrupt conduct to deface or destroy nomination papers

A person engages in corrupt conduct at an election if the person, with intent to prevent or obstruct another person from standing for election, defaces or destroys a completed or partly completed nomination paper.

Section 11 Corrupt conduct to bribe electors and others at elections

- (1) A person engages in corrupt conduct at an election if the person, without reasonable excuse
 - (a) offers an advantage to another person as an inducement to vote at the election for a particular candidate or particular candidates; or
 - (b) offers an advantage to another person as a reward for having voted at the election for a particular candidate or particular candidates; or
 - (c) offers an advantage to another person as an inducement to get, or try to get, a third person to vote at the election for a particular candidate or particular candidates; or
 - (d) offers an advantage to another person as a reward for having got, or having tried to get, a third person to vote at the election for a particular candidate or particular candidates; or
 - (e) solicits or accepts an advantage as an inducement to vote at the election for a particular candidate or particular candidates; or
 - (f) solicits or accepts an advantage as a reward for having voted at the election for a particular candidate or particular candidates; or
 - (g) solicits or accepts an advantage as an inducement to get, or try to get, another person to vote at the election for a particular candidate or particular candidates; or
 - (h) solicits or accepts an advantage as a reward for having got, or having tried to get, another person to vote at the election for a particular candidate or particular candidates.
- (2) A person also engages in corrupt conduct at an election if the person, without reasonable excuse
 - (a) offers an advantage to another person as an inducement not to vote at the election, or not to vote at the election for a particular candidate or particular candidates; or
 - (b) offers an advantage to another person as a reward for not voting at the election, or for not voting at the election for a particular candidate or particular candidates; or

- (c) offers an advantage to another person as an inducement to get, or try to get, a third person not to vote at the election, or not to vote at the election for a particular candidate or particular candidates; or
 - (d) offers an advantage to another person as a reward for having got, or having tried to get, a third person not to vote at the election, or not to vote at the election for a particular candidate or particular candidates; or
 - (e) solicits or accepts an advantage as an inducement not to vote at the election, or not to vote at the election for a particular candidate or particular candidates; or
 - (f) solicits or accepts an advantage as a reward for not voting at the election, or for not voting at the election for a particular candidate or particular candidates; or
 - (g) solicits or accepts an advantage as an inducement to get, or try to get, another person not to vote at the election, or not to vote at the election for a particular candidate or particular candidates; or
 - (h) solicits or accepts an advantage as a reward for having got, or having tried to get, another person not to vote at the election, or not to vote at the election for a particular candidate or particular candidates.
- (3) For the purposes of this section
- (a) a person offers an advantage if the person confers, undertakes to confer or shows a willingness to confer, an advantage on another person; and
 - (b) a person solicits an advantage if the person asks for, or shows a willingness to receive, an advantage, either for the person's own benefit or for the benefit of another person; and
 - (c) a person accepts an advantage if the person receives or obtains an advantage, or agrees to receive or obtain an advantage, either for the person's own benefit or for the benefit of another person.
- (4) For the purposes of this section, a person is taken to have offered an advantage even though the offer was made by another person, but only if the other person was acting with the person's authority. That authority may be conferred expressly or by implication.
- (5) A candidate or other person does not engage in corrupt conduct in contravention of this section only because the candidate or person has offered or solicited an offer to enter into a voting arrangement.

- (6) For the purposes of subsection (5), a voting arrangement is an arrangement under which persons agree to vote for, or get others to vote for, a candidate or candidates in return for other persons agreeing to vote for, or get others to vote for, another candidate or other candidates.
- (7) Subsection (5) applies even when the offers relate to different elections.
- (8) In a prosecution for an offence against this section, the onus of proving a reasonable excuse lies on the defendant.

Section 12 Corrupt conduct to provide others with refreshments and entertainment at election

- (1) A person engages in corrupt conduct at an election if the person provides, or meets all or part of the cost of providing, food, drink or entertainment for another person for the purpose of inducing the other person or a third person
 - (a) to vote at the election for a particular candidate or particular candidates; or
 - (b) not to vote at the election, or not to vote at the election for a particular candidate or particular candidates.
- (2) A person engages in corrupt conduct at an election if the person provides, or meets all or part of the cost of providing, food, drink or entertainment for another person because the other person or a third person
 - (a) has voted at the election for a particular candidate or particular candidates; or
 - (b) has not voted at the election, or has not voted at the election for a particular candidate or particular candidates.
- (3) A person engages in corrupt conduct at an election if the person solicits, accepts or takes food, drink or entertainment
 - (a) as an inducement to vote at the election for a particular candidate or particular candidates; or
 - (b) as an inducement not to vote at the election, or not to vote at the election for a particular candidate or particular candidates.

- (4) A person engages in corrupt conduct at an election if the person solicits, accepts or takes food, drink or entertainment
 - (a) as a reward for having voted at the election for a particular candidate or particular candidates; or
 - (b) as a reward for not having voted at the election, or not having voted at the election for a particular candidate or particular candidates.
- (5) A person does not engage in corrupt conduct of a kind referred to in subsection (1) only because the person has, at an election meeting, served non-alcoholic drinks of any kind. An election meeting is any meeting held to promote or prejudice the election of a particular candidate or particular candidates.
- (6) A person is taken to have engaged in corrupt conduct of a kind referred to in subsections (1) to (4) even though the conduct was engaged in by another person, but only if the other person was acting with the person's authority. That authority may be conferred expressly or by implication.

Section 13 Corrupt conduct to use or threaten to use force or duress against electors

- (1) A person engages in corrupt conduct at an election if the person
 - (a) uses force or duress, or threatens to use force or duress, against another person to induce the other person to vote at the election, or to vote at the election for a particular candidate or particular candidates; or
 - (b) uses force or duress, or threatens to use force or duress, against another person because the other person voted at the election, or voted at the election for a particular candidate or particular candidates; or
 - (c) uses force or duress, or threatens to use force or duress, against another person to induce the other person to get a third person to vote at the election, or to vote at the election for a particular candidate or particular candidates.
- (2) A person also engages in corrupt conduct at an election if the person
 - (a) uses force or duress, or threatens to use force or duress, against another person to induce the other person not to vote at the election, or not to vote at the election for a particular candidate or particular candidates; or

- (b) uses force or duress, or threatens to use force or duress, against another person because the other person refrained from voting at the election, or refrained from voting at the election for a particular candidate or particular candidates; or
 - (c) uses force or duress, or threatens to use force or duress, against another person to get the other person to induce a third person not to vote at the election, or not to vote at the election for a particular candidate or particular candidates; or
 - (d) by abduction, prevents an elector from voting at the election.
- (3) A person is taken to have engaged in corrupt conduct of a kind referred to in subsection (1) or (2) even though the conduct was engaged in by another person, but only if the other person was acting with the person's authority. That authority may be conferred expressly or by implication.
- (4) A corporate elector does not contravene this section only because it has instructed its authorized representative to cast its vote, or not to cast its vote, at an election for a particular candidate or particular candidates.

Section 14 Corrupt conduct to engage in certain deceptive or obstructive behaviour in relation to electors

- (1) A person engages in corrupt conduct at an election if the person, by a deception
- (a) induces another person to vote at the election for a particular candidate or particular candidates; or
 - (b) induces another person not to vote at the election, or not to vote at the election for a particular candidate or particular candidates; or
 - (c) gets another person to induce a third person to vote at the election for a particular candidate or particular candidates; or
 - (d) gets another person to induce a third person not to vote at the election, or not to vote at the election for a particular candidate or particular candidates.

- (1A) A person engages in corrupt conduct at an election if the person wilfully
- (a) obstructs or prevents another person from voting at the election; or
 - (b) gets another person to obstruct or prevent a third person from voting at the election.
- (1B) It is a defence for a person charged with an offence under section 6(1) for having engaged in the corrupt conduct under subsection (1A) to prove that, at the time of the alleged offence, the person had lawful authority or reasonable excuse for doing the act to which the charge relates.
- (2) A person is taken to have engaged in corrupt conduct of a kind referred to in subsection (1) or (1A) even though the conduct was engaged in by another person, but only if the other person was acting with the person's authority. That authority may be conferred expressly or by implication.

Section 16 Corrupt conduct with respect to voting at elections

- (1) A person engages in corrupt conduct at an election if the person
- (a) votes at the election knowing that the person is not entitled to do so; or
 - (b) votes at the election after having
 - (i) given to an electoral officer information that the person knew to be materially false or misleading; or
 - (ii) knowingly omitted to give material information to an electoral officer; or
 - (iii) recklessly given to an electoral officer information that was materially false or misleading; or
 - (c) except as expressly permitted by an electoral law
 - (i) in the case of an election referred to in section 4(1)(a), votes at the election more than once in the same round of voting;
 - (ia) in the case of an election referred to in section 4(1)(i) or (j), votes at the election more than once;

- (ii) in the case of an election referred to in any other paragraph of section 4(1)
 - (A) votes at the election more than once in the same constituency; or
 - (B) votes at the election in more than one constituency.
- (2) A person engages in corrupt conduct at an election if the person invites or induces another person
 - (a) to vote at the election knowing that the other person is not entitled to do so; or
 - (b) to vote at the election knowing that the other person has
 - (i) given to an electoral officer information that was materially false or misleading; or
 - (ii) omitted to give material information to an electoral officer; or
 - (c) except as expressly permitted by an electoral law
 - (i) in the case of an election referred to in section 4(1)(i) or (j), to vote at the election more than once;
 - (ii) in the case of an election referred to in any other paragraph of section 4(1)
 - (A) to vote at the election more than once in the same constituency; or
 - (B) to vote at the election in more than one constituency.
- (3) For the purposes of this section, a person who has applied for a ballot paper for the purpose of voting at an election is taken to have voted at the election. However, a person who has applied for, and been given, a ballot paper is not to be regarded as having voted more than once at an election only because the person
 - (a) has spoilt the ballot paper; and
 - (b) after complying with the requirements of any relevant electoral law with respect to spoilt ballot papers, has voted, using another ballot paper.

Section 17 **Corrupt conduct to destroy or deface ballot papers**

- (1) A person engages in corrupt conduct at an election if the person
 - (a) without lawful authority, supplies a ballot paper to another person; or
 - (b) with intent to deceive, puts into a ballot box a paper other than a ballot paper that the person is lawfully authorized to put into the box; or
 - (c) with intent to deceive, removes a ballot paper from a polling station; or
 - (d) without lawful authority, destroys, defaces, takes or otherwise interferes with a ballot paper in use, or that has been used, at the election; or
 - (e) without lawful authority, destroys, removes, opens or otherwise interferes with a ballot box in use at the election.
- (2) In a prosecution for an offence against this section, the onus of proving lawful authority lies on the defendant.

Section 18 **Corrupt conduct to make improper use of election donations**

- A candidate or other person who uses election donations for a purpose
- (a) other than that of meeting, or contributing towards meeting, the election expenses of the candidate; or
 - (b) in the case of an election donation consisting of goods or a service, other than that of promoting the election of the candidate or that of prejudicing the election of another candidate or other candidates,
- engages in corrupt conduct at an election.

Section 19 **How candidate must dispose of certain election donations**

- (1) A candidate or candidates must, on receiving an election donation of more than \$1,000 or, in the case of an election donation consisting of goods or a service, of more than \$1,000 in value, issue to the donor a receipt for the donation. The receipt must specify the name and address of the donor as supplied by the donor.

- (2) If an election donation of more than \$1,000 or, in the case of an election donation consisting of goods, of more than \$1,000 in value, is given to or for a candidate or candidates and the candidate or candidates do not know the name and address of the donor, the candidate or candidates must ensure that the donation
 - (a) is not used
 - (i) for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate or any of the candidates; or
 - (ii) in the case of an election donation consisting of goods, for the purpose of promoting the election of the candidate or any of the candidates or of prejudicing the election of another candidate or other candidates; and
 - (b) is given to a charitable institution or trust of a public character chosen by the candidate or candidates.
- (3) If an election donation of money or goods has been given to or for a candidate or candidates and the donation
 - (a) has not been used
 - (i) for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate or candidates; or
 - (ii) in the case of an election donation consisting of goods, for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates; or
 - (b) is not used in the case referred to in subsection (2),
the candidate or candidates must ensure that the donation is given to a charitable institution or trust of a public character chosen by the candidate or candidates.
- (4) If the aggregate of all election donations given to or for a particular candidate exceeds the maximum amount prescribed under section 45, the candidate must ensure that the excess (not including election donations of services) is given to a charitable institution or trust of a public character chosen by the candidate.

- (5) If an election donation is received by a candidate or candidates, the candidate or each of the candidates engages in corrupt conduct at an election if
 - (a) the candidate or candidates fail to comply with subsection (1) or (2); or
 - (b) the candidate or candidates fail to comply with any other requirement of this section before the time when the candidate's or each candidate's election return for the election is lodged in accordance with section 37.
- (6) In this section, **charitable institution or trust of a public character** means a charitable institution or trust of a public character that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112).

Section 20 **Corrupt conduct to lodge false or misleading election return**

A candidate engages in corrupt conduct at an election if the candidate, in an election return lodged under section 37 or a copy of an election return lodged under section 37A, makes a statement that the candidate knows or ought to know is materially false or misleading whether or not the statement is the subject of a correction effected under section 37A.

Section 21 **Corrupt conduct to withdraw election petition or election appeal for a bribe**

- (1) A person engages in corrupt conduct at an election if the person, having lodged an election petition or an election appeal
 - (a) withdraws the petition or appeal in return for an advantage solicited by the person or offered by another person; or
 - (b) solicits or accepts an advantage as an inducement to withdraw the petition or appeal.
- (2) A person engages in corrupt conduct at an election if the person
 - (a) offers an advantage to a person who has lodged an election petition or an election appeal as an inducement to withdraw the petition or appeal; or
 - (b) offers an advantage to another person to get the other person to induce or try to induce a person who has lodged an election petition or an election appeal to withdraw the petition or appeal.

- (3) A person engages in corrupt conduct at an election if the person solicits or accepts an advantage as a reward for
 - (a) having withdrawn an election petition or an election appeal; or
 - (b) having induced another person to withdraw such a petition or appeal.
- (4) A person engages in corrupt conduct at an election if the person
 - (a) offers an advantage to another person as a reward for having withdrawn or agreed to withdraw an election petition or an election appeal; or
 - (b) offers an advantage to another person as a reward for having got a person who has lodged an election petition or an election appeal to withdraw the petition or appeal.
- (5) For the purposes of this section
 - (a) a person solicits an advantage if the person asks for, or shows a willingness to receive, an advantage, either for the person's own benefit or for the benefit of another person; and
 - (b) a person accepts an advantage if the person receives or obtains an advantage, or agrees to receive or obtain an advantage, either for the person's own benefit or for the benefit of another person; and
 - (c) a person offers an advantage if the person confers, undertakes to confer or shows a willingness to confer, an advantage on another person.

Section 22 What penalties can be imposed for illegal conduct at elections

- (1) Any person who engages in illegal conduct at an election commits an offence and is
 - (a) if tried summarily, liable on conviction to a fine at level 5 and to imprisonment for 1 year; or
 - (b) if tried on indictment, liable on conviction to a fine of \$200,000 and to imprisonment for 3 years.
- (2) A person may be convicted of an offence of having engaged in illegal conduct at an election if the person is found to have engaged in the conduct before, during or after the election period.

Section 23 **Illegal conduct for persons other than candidates and election expense agents to incur election expenses**

- (1) A person, other than a candidate or a candidate's election expense agent, engages in illegal conduct at an election if the person incurs election expenses at or in connection with the election.
- (1A) However, subsection (1) does not apply if
 - (a) the person publishes an election advertisement on the Internet; and
 - (b) the only election expenses incurred by the person for the purpose of publishing the advertisement are either or both of the following charges
 - (i) electricity charges;
 - (ii) charges necessary for accessing the Internet.
- (2) (Repealed 14 of 2021 s. 372)
- (3) A candidate engages in illegal conduct at an election if election expenses incurred by the candidate or by the candidate's election expense agent are not included in the candidate's election return.
- (4) An election expense agent engages in illegal conduct at an election if the agent incurs election expenses that exceed the amount specified in the agent's authorization.
- (5) For the purposes of this Ordinance, a person is an election expense agent of a candidate if
 - (a) the person is authorized in writing by the candidate to incur election expenses at or in connection with the election on behalf of the candidate; and
 - (b) the maximum amount of election expenses that the person is authorized to incur is specified in the authorization; and
 - (c) a copy of the authorization has been served on the appropriate returning officer.
- (6) (Repealed 14 of 2021 s. 372)
- (7) An authorization referred to in subsection (5) remains in force until the end of the relevant election period unless it is revoked earlier.

Section 24 **Illegal conduct for candidate to incur election expenses exceeding prescribed amount**

- (1) A candidate engages in illegal conduct at an election if the aggregate amount of election expenses incurred at or in connection with the election by or on behalf of the candidate exceeds the maximum amount of election expenses prescribed for a candidate by regulations in force under section 45.
- (2) (Repealed 14 of 2021 s. 373)
- (3) In a prosecution alleging illegal conduct under this section by a candidate, it is a defence for the candidate to prove that the election expenses were incurred
 - (a) without negligence by the candidate; and
 - (b) either without the candidate's consent or in excess of an amount specified in an authorization under section 23.
- (4) For the purposes of this section, the value of an election donation consisting of goods or services is taken to be an amount of election expense incurred by or on behalf of a particular candidate or particular candidates if the goods or services are used for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates.

Section 25 **Illegal conduct to publish false statement that a person is or is not a candidate**

- (1) A person engages in illegal conduct at an election if the person publishes a statement, knowing it to be false, that the person or another person is a candidate at the election.
- (2) A candidate engages in illegal conduct at an election if the candidate publishes a statement, knowing it to be false, that the candidate is no longer a candidate at the election.
- (3) A person engages in illegal conduct at an election if the person publishes a statement, knowing it to be false, that another person who has been nominated as a candidate is no longer a candidate at the election.

Section 26 **Illegal conduct to publish false or misleading statements about a candidate**

- (1) A person engages in illegal conduct at an election if the 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.
- (2) A candidate engages in illegal conduct at an election if the candidate publishes a materially false or misleading statement of fact about the candidate or candidates with whom the candidate is associated, or about another candidate or other candidates, for the purpose of
 - (a) promoting the election of the candidate or candidates with whom the candidate is associated; or
 - (b) prejudicing the election of the other candidate or candidates.
- (3) For the purposes of this section, 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.
- (4) In a prosecution for an offence of having engaged in illegal conduct under subsection (1) or (2), it is a defence to prove that the defendant believed on reasonable grounds that the statement was true at the time when it was made.

Section 27 **Illegal conduct to publish election advertisement that includes false claim of support**

(1) A candidate engages in illegal conduct at an election if the candidate publishes, or authorizes the publication of, an election advertisement that includes

- (a) the name or logo of or associated with a person or an organization; or
- (b) a name or logo that is substantially similar to the name or logo of or associated with a person or an organization; or
- (c) a pictorial representation of a person,

in such a way as to imply, or to be likely to cause electors to believe, that the candidate or candidates with whom the candidate is associated have the support of the person or organization unless the condition specified in subsection (1A)(a) or (b) is met and the requirement specified in subsection (1B) is complied with.

(1A) The conditions are

- (a) before the publication of the election advertisement, the person or organization consented in writing to the inclusion of the name, logo or pictorial representation in the advertisement;
- (b) the candidate has neither requested or directed nor authorized any person to request or direct the inclusion of the name, logo or pictorial representation in the advertisement.

(1B) If

- (a) the election advertisement meets the condition specified in subsection (1A)(a) or (b); and
- (b) any content of the advertisement is provided by the person or organization,

the candidate must not modify, or authorize any person to modify, the name, logo or pictorial representation or the content unless before the modification, the person or organization consented in writing to the name, logo, pictorial representation or content as modified.

(2) A person engages in illegal conduct at an election if the person publishes, or authorizes the publication of, an election advertisement that includes

- (a) the name or logo of or associated with another person or an organization; or
- (b) a name or logo that is substantially similar to the name or logo of or associated with another person or an organization; or
- (c) a pictorial representation of another person,

in such a way as to imply, or to be likely to cause electors to believe, that a particular candidate or particular candidates have the support of the other person or organization unless the condition specified in subsection (2A)(a) or (b) is met and the requirement specified in subsection (2B) is complied with.

(2A) The conditions are

- (a) before the publication of the election advertisement, the other person or organization consented in writing to the inclusion of the name, logo or pictorial representation in the advertisement;
- (b) the person has neither requested or directed nor authorized any other person to request or direct the inclusion of the name, logo or pictorial representation in the advertisement.

(2B) If

- (a) the election advertisement meets the condition specified in subsection (2A)(a) or (b); and
- (b) any content of the advertisement is provided by the other person or organization,

the person must not modify, or authorize any person to modify, the name, logo or pictorial representation or the content unless before the modification, the other person or organization consented in writing to the name, logo, pictorial representation or content as modified.

- (3) For the purposes of subsections (1A), (1B), (2A) and (2B), the consent of an organization is taken to have been obtained if
 - (a) the consent was given by an officer of the organization; and
 - (b) the candidate or person who publishes, or authorizes the publication of, the election advertisement believed on reasonable grounds that the officer had authority to give the consent.
- (4) A candidate or other person engages in illegal conduct for having published or authorized the publication of an election advertisement of a kind referred to in subsection (1) or (2) despite the fact that the advertisement contains a statement to the effect that the inclusion in the advertisement of a name or logo of or associated with a person or an organization, or a pictorial representation of a person, does not imply support by the person or organization for a candidate or candidates.
- (5) A person engages in illegal conduct at an election if the person purports to give consent in writing to the inclusion in an election advertisement of the name or logo of or associated with an organization without having been approved by the governing body of the organization or by a resolution of the members of the organization passed at a general meeting.
- (6) A person engages in illegal conduct at an election if the 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.
- (7) In this section, **support**, in relation to a candidate, includes support for the policies or activities of the candidate.

Section 27A **Illegal conduct to incite another person not to vote, or to cast invalid vote, by activity in public during election period**

- (1) A person engages in illegal conduct at an election if the person carries out any activity in public that
 - (a) incites another person not to vote at the election; or
 - (b) incites another person voting at the election to deal with a ballot paper issued to the person in any way that would render the ballot paper invalid at the election under any electoral law.
- (2) Subsection (1) applies only to an activity in public carried out during the election period of the election concerned.
- (3) In determining whether any activity in public incites another person as described in subsection (1), regard may be had to all circumstances of the case, including
 - (a) the contents of the activity;
 - (b) the intended audience of the activity; and
 - (c) the circumstances in which the activity is carried out.
- (4) It is a defence for a person charged with an offence under section 22(1) for having engaged in the illegal conduct under subsection (1) to prove that, at the time of the alleged offence, the person had lawful authority or reasonable excuse for doing the act to which the charge relates.
- (5) In this section **activity in public** includes any of the following activities, whether or not the person carrying out the activity is in a public place while carrying out the activity
 - (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material;
 - (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia;
 - (c) the distribution or dissemination of any matter to the public.

Section 31 Court may make orders relieving candidates from consequences of certain illegal conduct

- (1) A candidate, candidate's agent or any other person who has done or omitted to do an act that, but for this section, would be illegal conduct at an election may apply to the Court for an order under subsection (2).
- (2) On the hearing of an application under subsection (1), the Court may make an order relieving the applicant from penalties and disqualifications that are imposed by, or could be imposed under, an electoral law for any act or omission of the applicant that, but for this section, would be illegal conduct at an election, but only if the Court
 - (a) is satisfied that
 - (i) the act or omission was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith; and
 - (ii) where the Court requires notice of the application to be given in Hong Kong, the notice has been given; and
 - (b) believes it to be just that the applicant should not be subjected to one or more of those penalties and disqualifications.
- (3) If an application is made under subsection (1), no prosecution against the applicant for having done or omitted to do an act that, but for this section, would be illegal conduct at an election may be instituted or carried on until the application is disposed of by the Court.
- (4) An applicant is not liable to be convicted of an offence of having engaged in illegal conduct at an election if the act or omission of the applicant that, but for this section, would be illegal conduct at the election is the subject of an order made under subsection (2).

Section 37 Candidate to lodge election return with appropriate authority

- (1) Each candidate at an election must lodge with the appropriate authority an election return setting out
 - (a) the candidate's election expenses at the election; and
 - (b) all election donations received by or on behalf of the candidate in connection with the election.

- (1F) For an election to membership of any District Council, the candidate must ensure that the return is lodged before the expiry of the period of 60 days after
 - (a) if the election is held for 2 or more constituencies in relation to 1 or more District Councils—the date on which the election becomes settled in relation to all of the constituencies; or
 - (b) if the election is held for only 1 constituency—the date on which the election becomes settled in relation to the constituency.

- (1G) For the purposes of subsection (1F), an election is settled in relation to a constituency on the date on which any of the following events occurs in relation to the constituency—
 - (a) the result of the election is notified in the Gazette;
 - (b) (Repealed 19 of 2023 s.179)
 - (c) the election is declared to have failed.

- (1N) Despite subsections (1A), (1B), (1D), (1F), (1H), (1J) and (1L), the return may be lodged within any extended period allowed by the Court under section 40.

- (2) The candidate must ensure that the return
 - (a) (Repealed 15 of 2016 s. 5)
 - (b) is accompanied
 - (i) in the case of each election expense of \$500 or more, by an invoice and a receipt giving particulars of the expenditure; and
 - (ii) in the case of each election donation of more than \$1,000 or, in the case of an election donation consisting of goods or a service, of more than \$1,000 in value, by a copy of the receipt issued to the donor giving particulars of the donor and the donation; and
 - (iii) where an election donation or part of an election donation that was received by or on behalf of the candidate in connection with the election was not used for that purpose was disposed of in accordance with section 19, by a copy of the receipt given by the recipient of the donation or part; and
 - (iv) where an election donation or part of an election donation that was received by or on behalf of the candidate in connection with the election was not used for that purpose was not disposed of in accordance with section 19(3), by an explanation setting out the reason why it was not disposed of in accordance with that section; and
 - (v) by a declaration in a form provided or specified by the appropriate authority verifying the contents of the return.
- (3) For the purposes of subsection (2), an invoice and a receipt for an election expense may be included in the same document.

[Subsections (1A) to (1E), (1H) to (1M) and (4) are irrelevant to District Council Election.]

Section 37A Relief for minor errors etc. in election return

- (1) Subject to subsection (2), this section applies to
 - (a) any error or false statement in an election return lodged by a candidate the nature of which is a failure to set out in the election return any election expense of the candidate at the election concerned or any election donation received by or on behalf of the candidate in connection with the election
 - (i) that is required under section 37 to be set out in the election return; and
 - (ii) that does not exceed the limit prescribed in the Schedule for the election; and
 - (b) any error or false statement in an election return lodged by a candidate
 - (i) the nature of which is incorrectness in the amount of any election expense of the candidate at the election concerned or any election donation received by or on behalf of the candidate in connection with the election; and
 - (ii) the correction of which requires an adjustment not exceeding the limit prescribed in the Schedule for the election in that amount.
- (2) If
 - (a) there are 2 or more errors or false statements in an election return; and
 - (b) the aggregate value of those errors or false statements exceeds the limit prescribed in the Schedule for the election concerned,this section does not apply to the errors or false statements.
- (3) For the purposes of subsection (2), the value of an error or false statement is
 - (a) if the nature of the error or false statement is a failure to set out an election expense or election donation, the amount of the election expense or election donation;
 - (b) if the nature of the error or false statement is incorrectness in the amount of an election expense or election donation, the extent, in monetary terms, of the adjustment required to correct the error or false statement.
- (4) Despite section 37, if this section applies to any error or false statement in an election return lodged by a candidate, the candidate may lodge, subject to subsections (5) and (6), with the appropriate authority a copy of the election return which is marked with the necessary revision to have the error or false statement corrected.

- (5) A candidate may not lodge a copy of an election return in relation to an election under subsection (4) if the aggregate amount of election expenses incurred at or in connection with the election by or on behalf of the candidate exceeds the maximum amount of election expenses prescribed for a candidate by regulations in force under section 45.
- (6) A copy of an election return lodged under subsection (4) by a candidate is of no effect unless
 - (a) it is lodged within 30 days after the date on which the candidate receives a notice from the appropriate authority relating to the error or false statement in the election return;
 - (b) 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, it is accompanied by
 - (i) (in the case of an election expense) an invoice and a receipt; or
 - (ii) (in the case of an election donation) a copy of a receipt and, if applicable, an explanation,
required under section 37(2)(b) had the election expense or election donation been set out in the election return; and
 - (c) it is accompanied by a declaration by the candidate in a form provided or specified by the appropriate authority verifying the contents of the copy of the election return.
- (7) For the purposes of subsection (6), an invoice and a receipt for an election expense may be included in the same document.
- (8) On the receipt under subsection (4) by an appropriate authority of a copy of an election return which is marked with any revision described in that subsection
 - (a) the revision is deemed, except for the purposes of section 20, to have been made in the election return before the election return was lodged; and
 - (b) an invoice, a receipt, a copy of a receipt or an explanation (if any) accompanying the copy is deemed, except for the purposes of section 20, to have accompanied the election return when the election return was lodged

- (9) A candidate may only lodge one copy of an election return under subsection (4) in respect of an election.
- (10) A copy of an election return may not be withdrawn or amended after it has been lodged under subsection (4).
- (11) The Chief Executive in Council may by order amend the Schedule.
- (12) In this section, a reference to an error or false statement in an election return includes
 - (a) an error or false statement in any document accompanying the election return; or
 - (b) a failure to send any document required by section 37(2)(b) in relation to the election return.

Section 38 Offence to fail to lodge election return

- (1) A candidate who fails to lodge an election return as required by section 37 commits an offence and is
 - (a) if tried summarily, liable on conviction to a fine at level 5 and to imprisonment for 1 year; or
 - (b) if tried on indictment, liable on conviction to a fine of \$200,000 and to imprisonment for 3 years.
- (2) If a candidate has made an application under section 40, no prosecution against the candidate for failing to have lodged an election return as required by section 37 may be instituted or carried on until the application is disposed of by the Court.
- (3) A candidate is not liable to be convicted of an offence under subsection (1) for failing to have lodged an election return as required by section 37 if
 - (a) the failure is the subject of an order made under section 40; and
 - (b) the further period specified in the order has not yet expired.
- (4) A candidate who is convicted of an offence under subsection (1) is subject to the same disqualifications as a person convicted of having engaged in illegal conduct.

Section 40 Court may grant relief to candidate in certain circumstances

- (1) A candidate who is unable or has failed to lodge an election return as required by section 37 before the end of the permitted period can apply to the Court for an order allowing the candidate to lodge with the appropriate authority an election return within such further period as the Court specifies.
- (2) On the hearing of an application made under subsection (1), the Court may make the order sought, but only if it is satisfied that the inability or failure to lodge an election return as required by section 37 was attributable to
 - (a) the applicant's illness or absence from Hong Kong; or
 - (b) the death, illness, absence from Hong Kong or misconduct of an agent or employee of the applicant; or
 - (c) inadvertence or an accidental miscalculation by the applicant or any other person; or
 - (d) any reasonable cause,and was not due to the applicant's bad faith.
- (3) A candidate can also apply to the Court for an order enabling the candidate to correct any error or false statement in an election return or in any document accompanying the return.
- (4) On the hearing of an application made under subsection (3), the Court may make the order sought, but only if it is satisfied that the error or false statement was due to
 - (a) misconduct of an agent or employee of the applicant; or
 - (b) inadvertence or an accidental miscalculation by the applicant or any other person; or
 - (c) any reasonable cause,and was not due to the applicant's bad faith.
- (5) A candidate who has not complied with section 37(2)(b)(i), (ii) or (iii) can also apply to the Court for an order excepting the candidate from the requirement to send an invoice or a receipt, or a copy of a receipt, as required by that section.

- (6) On the hearing of an application made under subsection (5), the Court may make the order sought, but only if it is satisfied that the non-compliance was due to
 - (a) misconduct of an agent or employee of the applicant; or
 - (b) 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
 - (c) any reasonable cause,and was not due to the applicant's bad faith.
- (7) In making an order under this section, the Court may impose such conditions as it considers to be appropriate for carrying into effect the objects of this Ordinance.
- (8) A person who fails to comply with a condition imposed in an order made under this section commits an offence and is
 - (a) if tried summarily, liable to a fine at level 5 and to imprisonment for 1 year; or
 - (b) if tried on indictment, liable on conviction to a fine of \$200,000 and to imprisonment for 3 years.
- (9) A candidate who is convicted of an offence under subsection (8) is subject to the same disqualifications as a person convicted of having engaged in illegal conduct.

守法規重廉潔

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