



守法規重廉潔

Abide by the Rules Support Clean Elections

廉潔立法會選舉

Clean Legislative Council Election

資料冊

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

香港特別行政區的選舉制度對於推動「一國兩制」行穩致遠至關重要。完善選舉制度下的立法會產生辦法，貫徹落實「愛國者治港」原則，維護國家安全，促進特區政府良政善治，保障香港的長期繁榮穩定。

立法會換屆選舉及補選均受《選舉（舞弊及非法行為）條例》（第 554 章）監管。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、公開及誠實地進行，並防止任何操控及破壞選舉的行為出現。

廉政公署特別編製了這份資料冊，幫助參與立法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。本資料冊分為四部分：第一部分歸納過往立法會選舉中參選人士所關注的事項，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。

廉政公署設立廉潔立法會選舉專題網站，提供相關教育資源及宣傳服務詳情；亦設立廉潔選舉查詢熱線（電話：2920 7878），供查詢《選舉（舞弊及非法行為）條例》內容或其他廉潔選舉資訊。



廉潔選舉網站



第一部分

問題剖析

（一）參選

問 1

某政黨的一些成員在立法會選舉提名期前，透過政黨舉行記者會公布他們將會參加是次立法會選舉，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立法會選舉，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，並在選舉申報書中如實申報。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立法會選舉的人士提供利益，要求對方不要參選，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

一位現任區議員參加了立法會地方選區選舉，他於立法會選舉期間印製及派發宣傳單張，介紹他過去數年以區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，上述候選人在立法會選舉期間派發有關他作為區議員所做工作的宣傳單張，符合選舉廣告的定義。有關印製及分發該宣傳單張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。
- 須注意的是即使該宣傳單張在提名期開始前發布，若候選人已公開宣布有意參選，且發布宣傳單張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，該宣傳單張亦屬選舉廣告，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）（立法會）規例》（第 541D 章）第 105 條及由選舉管理委員會發出的「立法會選舉活動指引」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 2 份文本；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

某功能界別候選人獲得某專業團體主席的口頭同意後，在他的選舉廣告中刊登了他與主席的合照，並把主席的姓名連同該專業團體的名稱和標識納入廣告內，以示該主席及專業團體對他的支持，他這樣做是否合法？若候選人只在其選舉廣告中顯示了專業團體主席的姓名及職銜，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專業團體主席的口頭同意，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。
- 專業團體主席亦必須留意，如他未經該專業團體的管理層批准，或未經專業團體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專業團體的名稱和標識或跟該專業團體有關聯的名稱或標識納入候選人的選舉廣告中，則該專業團體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專業團體主席個人的事先書面同意在其選舉廣告中載有專業團體主席的姓名及職銜，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專業團體的支持。否則，候選人亦須事先得到有關專業團體的書面同意。
- 選舉管理委員會發出的「立法會選舉活動指引」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，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

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 5

- 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）（立法會）規例》第 105 條及由選舉管理委員會發出的「立法會選舉活動指引」就選舉廣告的規定，詳情請參閱問題 3。
- 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或阻礙一名或多於一名候選人當選，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 6

某商會的執行委員會一致通過支持某功能界別候選人參選立法會選舉。商會其後自費在會刊撰文推介該候選人，並透過商會網站呼籲會員支持他，商會這樣做會否觸犯《選舉（舞弊及非法行為）條例》？

答 6

- 法例並無限制候選人的支持者以甚麼方式宣傳候選人的選舉。不過，由於上述商會在會刊撰文及透過網站推介個別候選人，目的是促使有關候選人當選，該文章及網站上的相關內容會被視作有關候選人的選舉廣告，發布該些選舉廣告的費用（例如：按比例分攤印刷及郵寄會刊和設計網站的開支等）屬候選人的選舉開支。由於《選舉（舞弊及非法行為）條例》第 23(1) 條規定，任何人如非候選人亦非候選人的選舉開支代理人招致選舉開支，即屬違法。因此，上述商會的負責人必須事先取得候選人的書面授權，才可替候選人招致上述選舉開支。
- 若發布該些選舉廣告的費用由商會贊助，費用應視為其給予該候選人的選舉捐贈，候選人必須在其選舉申報書中列明。若有關選舉捐贈的價值超過 1,000 元，候選人須根據上述條例第 19 及 37(2)(b)(ii) 條的要求，向捐贈者（即該商會）發出收據，並在收據上列明捐贈者的名稱、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遞交。
- 支持者及支持團體在為候選人作競選宣傳前，宜先與候選人溝通清楚，以確保雙方都符合相關的法例要求。

問 7

候選人甲和乙競逐同一立法會地方選區選舉。候選人甲的支持者為了協助他爭取選票，自行印製一批用以抹黑候選人乙的單張，並且在地區中廣為張貼，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

同一政黨的兩名候選人甲和乙決定組成聯盟，一起作競選宣傳。候選人甲打算派發載有他和候選人乙的姓名和照片的傳單，介紹他們的政綱，並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) 條的規定，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）（立法會）規例》第 105 條及由選舉管理委員會發出的「立法會選舉活動指引」就選舉廣告的規定，詳情請參閱問題 3。

問 9

某機構計劃舉行選舉論壇，邀請某功能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 9

- 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「立法會選舉活動指引」。

（三）投票

問 10

如某人於網上平台呼籲選民杯葛立法會選舉，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 10

- 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 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

一位已宣布參加某功能界別選舉的專業人士，為屬於其界別的選民安排香港境外一日考察團，並資助所有相關費用。當考察團到達香港境外，如候選人向參加者介紹自己的參選理念，並呼籲參加者屆時投票支持他，此舉是否違反《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，誘使他人在選舉中投票或不投票予某（些）候選人，即屬違法。因此，上述候選人藉資助考察團費用作為利益，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考察團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考察團賄選買票，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

一名準備在來屆立法會同一地方選區選舉中競逐的現任立法會議員，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，候選人應謹慎行事及顧及公眾的觀感，盡量避免於接近選舉的期間進行有關活動。

問 14

某候選人出席地區組織的周年晚宴，地區組織主席突然於晚宴中宣布該候選人已參加立法會選舉。主席一方面鼓勵出席者屆時投票支持該候選人，另一方面又邀請該候選人即場發表其競選政綱。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

- 雖然上述周年晚宴本來並非為促使該候選人當選而安排，但地區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（些）候選人當選而舉行的聚會。）
- 如晚宴是地區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

某公司東主知道一名主要客戶角逐立法會某地方選區的席位。為了討好該客戶，公司東主多番要求旗下員工投票予該客戶，更暗示這樣做他們便可保住職位。請問公司東主此舉會否違法？候選人又會否觸犯法例？假如一些候選人的支持者以武力及恐嚇手段，甚至發放一些具誤導性的信息，阻止選民投票，他們又會否觸犯法例？

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，以誘使他人選舉中投票或不投票，或在選舉中投票或不投票予某（些）候選人，即屬違法。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，請該公司東主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

一名立法會地方選區候選人開設的公司在其參選的選區內。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。

問 17

如選民或團體選民的獲授權代表喪失在某個功能界別選舉中投票的資格而又去投票，該人士會有甚麼後果？任何人如明知某選民或某團體選民的獲授權代表已喪失在某個功能界別選舉中投票的資格，仍然促請或誘使他去投票，該人士又會有甚麼後果？

答 17

- 根據《立法會條例》（第 542 章）第 53 條，任何人如已不再有資格登記為選民或已不再有資格作為某團體選民的獲授權代表，便會喪失在某個功能界別選舉中投票的資格。任何人如明知本身無權或無資格在選舉中投票，卻在選舉中投票，便會觸犯《選舉（舞弊及非法行為）條例》第 16(1) 條。例如，任何人根據法例以某功能界別的指明團體的會員資格登記為該功能界別的選民，如該人士由於任何原因喪失其所屬指明團體的會員資格，儘管他的登記記錄可能載於該功能界別의 正式選民登記冊上及他仍可能收到由選舉事務處所發出的投票通知卡，他將會喪失在選舉中投票的資格及不再有資格在有關的功能界別選舉中投票。
- 任何人如明知某選民或某團體選民的獲授權代表無權或無資格在某個功能界別選舉中投票，仍然促請或誘使他在選舉中投票，亦會觸犯《選舉（舞弊及非法行為）條例》第 16(2) 條。
- 任何人若對其是否符合選民資格有疑問，可向選舉事務處查詢。

（四）選舉開支及選舉捐贈

問 18

一名現任立法會議員準備參加來屆立法會選舉，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，候選人應如何申報選舉開支及選舉捐贈？

答 18

- 現任議員作為候選人，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，若候選人有就該助理於辦事處工作的薪酬向立法會秘書處申領津貼，則不可申領已計算作選舉開支的部分，只可申領已扣除選舉開支的部分。
- 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。

問 19

候選人向幾名朋友免費借用他們擁有的車輛作其競選用途，他應如何申報相關的開支及捐贈？

答 19

- 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，候選人幾名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 20

數名立法會選舉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？若候選人在遞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 20

- 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 21

為節省開支，候選人在競選活動中重用在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 21

- 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該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 22

某立法會選舉候選人成功當選後，設慶功宴招待助選成員，此舉有否違法？設宴的開支是否需要計為他的選舉開支？此外，在選舉結果公布後才於區內展示的「謝票」街板，所涉及的有關費用又應否計算為選舉開支？

答 22

- 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。
- 至於若用作「謝票」的街板是在選舉結果公布後才於區內展示，而並非用作促使上述候選人當選或阻礙其他候選人當選，則有關支出無須計算為候選人的選舉開支。

（五）選舉申報書

問 23

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 23

- 候選人必須在《選舉（舞弊及非法行為）條例》第 37(1B) 及 (1C) 條規定的法定限期屆滿前（即最後一個界別／選區選舉結束 * 當日後的 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。

* 就立法會選舉而言，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 24

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 24

- 《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（立法會地方選區選舉為 30,000 元；功能界別或選舉委員會界別選舉則為 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

在一次區議會選舉中，一名人士（下稱甲）、某組織的創立人（下稱乙）及該組織的一名成員（下稱丙）串謀收受 20 萬元賄款，致使丙在區議會選舉中參選。甲並向另外五名人士提供至少共 85 萬元賄款，誘使他們本人或安排其他人士參選。

甲、乙和丙三人在會面後達成協議，他們串謀使乙從甲收受一筆 15 萬元至 20 萬元的款項，而令丙在該區議會選舉某個指明的選區中參選。其後甲表示該組織為丙撰寫的競選建議書做得不夠好，最終只向乙支付 3 萬 6 千元現金。

甲又分別向另外五名人士提供至少共 85 萬元賄款，誘使他們本人或安排其他人士在該區議會選舉某些指明的選區中參選，但其建議均遭對方拒絕。

經審訊後，甲、乙和丙三人被裁定違反《選舉（舞弊及非法行為）條例》（第 554 章）第 7 條，即提供利益予另一人，以誘使該另一人或令第三者在選舉中參選，及串謀接受利益作為令另一人在選舉中參選的誘因。三人最後分別被判入獄 2 年至 3 年零 3 個月。

法官指出，賄選是嚴重罪行，損害市民對選舉制度的信心。法庭必須向市民發出明確信息，賄選者必須受到嚴懲以示阻嚇。其中一名被告上訴至終審法院但被駁回上訴。終審法院裁定該名被告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，而此等行為會削弱公平、公開及誠實的選舉。

案例二

賄選買票

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，區內街坊收到以福利會名義派發的環保袋，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

提供免費服務換取選票

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競選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期，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 小時社會服務令。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

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。

案例六

「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。

案例七

煽惑他人在選舉中投無效票

在立法會選舉期間，某網民將一名已離港及正被廉署通緝的人士所發布煽惑他人在選舉中不投票的貼文，分享至九個社交媒體群組，煽惑閱覽人士在立法會選舉中不投票。

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他人不投票或投無效票的非法行為。他承認九項控罪，被判入獄 2 個月，緩刑 2 年。

裁判官判刑時指出，被告的行為會影響選舉公平，誘使他人令選舉不能有序地進行。

案例八 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，核實他在發布選舉廣告前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》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，便需負上法律責任。候選人有責任確保選舉工程符合法例要求。

案例九

提交虛假選舉申報書

某名於立法會選舉中參選的候選人，於選舉結束後的法定限期前向選舉事務處提交選舉申報書，內容涉及虛假資料企圖欺詐選舉開支。

由於受 2019 冠狀病毒病疫情影響，政府宣布該屆立法會選舉中止，並押後一年舉行。其後，政府宣布合資格人士（包括該候選人）有權從政府收取相等於申報選舉開支的款項。候選人須於指定日期之前，遞交選舉申報書並列出候選人在選舉中所有的選舉開支及選舉捐贈。

該候選人向選舉事務處遞交連同證明文件及申索表格的選舉申報書，以申請政府支付款項。該候選人在選舉申報書上作出聲明，他曾招致選舉開支合共 24,000 元以聘請三名選舉助理。廉署調查發現，上述三名被報稱為選舉助理的人士既沒有協助他競選，也沒有因而收取薪金。

該候選人其後被控違反《選舉（舞弊及非法行為）條例》第 20 條，即在選舉申報書作出明知屬虛假或具誤導性達關鍵程度的陳述。他承認控罪，被判入獄 2 個月。

案例十

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其選舉申報書，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

根據《選舉（舞弊及非法行為）條例》，任何人被裁定在選舉中作出舞弊行為，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遵從《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

立法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

1. 參選或不參選；
2. 獲提名為候選人後撤回接受提名；或
3. 不盡最大努力促使其本人當選的誘因或報酬。

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. 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；
2. 施用或威脅施用武力或脅迫手段以誘使已在選舉中獲提名為候選人的人士撤回接受提名。

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參選或不參選；
2. 以欺騙手段誘使已在選舉中獲提名為候選人的人士撤回接受提名。

提名書

✗ 不得污損或銷毀已填妥或已局部填妥的提名書，以阻止或妨礙任何人在選舉中參選。

(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，而發布關於該（些）候選人屬虛假達關鍵程度或具誤導性達關鍵程度的事實陳述，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。

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在選舉廣告內的姓名、名稱、標識或圖像或其他內容。
- ✓ 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「立法會選舉活動指引」關於選舉廣告的規定。

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、或鄉郊代表的身分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不投票，或在選舉中投票或不投票予某（些）候選人；
2. 因為任何人在選舉中投票或不投票，或在選舉中投票或不投票予某（些）候選人，而對該人施用或威脅施用武力或脅迫手段；
3. 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。
- ✗ 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。

(四) 選舉開支及選舉捐贈

選舉開支

✕ 不得招致超過下列就立法會選舉各地方選區／選舉界別所訂明的選舉開支最高限額。

地方選區／選舉界別	選舉開支最高限額
(一) 地方選區	
香港島東地方選區	\$3,310,000
香港島西地方選區	\$2,900,000
九龍東地方選區	\$3,110,000
九龍西地方選區	\$3,110,000
九龍中地方選區	\$3,110,000
新界東南地方選區	\$3,040,000
新界北地方選區	\$2,760,000
新界西北地方選區	\$3,310,000
新界西南地方選區	\$3,450,000
新界東北地方選區	\$3,110,000

(二) 功能界別

鄉議局功能界別 漁農界功能界別 保險界功能界別 航運交通界功能界別 金融界功能界別 體育、演藝、文化及出版界功能界別 科技創新界功能界別 飲食界功能界別	\$133,000
除上述所列者以外，每個登記選民數目不超過 5,000 名的功能界別	\$213,000
除上述所列者以外，每個登記選民數目超過 5,000 名但不超過 10,000 名的功能界別	\$425,000
除上述所列者以外，每個登記選民數目超過 10,000 名的功能界別	\$639,000
(三) 選舉委員會界別	\$213,000

- ✗ 選舉開支代理人不得招致超過其授權書所指明之限額的選舉開支。
- ✗ 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任何選舉開支（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。
- ✓ 必須就任何價值 **\$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。
- ✓ 必須將任何價值 **\$1,000** 以上而未有按規定發出收據的選舉捐贈（包括匿名捐贈）、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（3）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在根據《選舉（舞弊及非法行為）條例》第 37A 條作出修訂後提交的選舉申報書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。



《選舉（舞弊及非法行為）條例》
法例條文



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，一經定罪可被判處第 4 級罰款及監禁 1 年。

查詢

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）〕。如欲了解各項廉潔選舉教育及宣傳活動詳情，可瀏覽廉潔選舉網站（www.icac.org.hk/elections）。



廉政公署分區辦事處
地址及電話



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 electoral system of the Hong Kong Special Administrative Region (SAR) is crucial to the long-term stability of “One Country, Two Systems”. The method for the formation of the Legislative Council (LegCo) under the improved electoral system not only implements the principle of “patriots administering Hong Kong”, but also safeguards national security of our country and promotes good governance of the SAR Government, protecting the prosperity of Hong Kong in the long run.

The LegCo Ordinary Election and By-elections are regulated by the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (ECICO). The ordinance, enforced by the Independent Commission Against Corruption (ICAC), aims to ensure public elections in Hong Kong are conducted fairly, openly and honestly, and to combat any conducts that may manipulate or undermine elections.

The ICAC has specially produced this Information Booklet to help candidates of the LegCo Election and their election helpers understand the spirit and relevant provisions of the ECICO. The Booklet consists of four parts. The first part summarizes the enquiries and concerns raised by candidates of previous LegCo Elections and 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 states what candidates and their election helpers should take note of in the process of running in an election. The fourth part provides the channels for making reports and enquiries to the ICAC.

The ICAC sets up the “Clean Legislative Council Election” Website to provide relevant details of its education and publicity services and operates the Clean Election Enquiry Hotline (Tel: 2920 7878) for enquiry of the ECICO and other information related to clean elections.



Clean Election Website





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 Legislative Council (LegCo) 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 LegCo 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, 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 and must truly reflect them 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 before the expiry of the statutory period.

Q 2

A person offers an advantage to another person who intends to run in the LegCo 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 District Council (DC) member, who is contesting in a geographical constituency of the LegCo Election, produces and distributes booklets during the election period to introduce his community work and services carried out in his capacity as a DC 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 DC member distributed during the election period of the LegCo Election would satisfy the definition of an election advertisement. The relevant costs incurred in producing and distributing the booklet 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 105 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) and the "Guidelines on Election-related Activities in respect of the Legislative 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 Chief Electoral Officer (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 two 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 Functional Constituency candidate, after obtaining a verbal consent from the chairman of a professional body, to include in his election advertisement the name of the chairman, the name and logo of the professional body as well as the photograph taken with the chairman as a way to show the support of the chairman and the professional body to him? Would it be different if the candidate has only included the name and office title of the chairman of the professional body 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 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 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 Electoral Affairs Commission (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 chairman of the professional body 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 professional body or associated with the professional body in the candidate's election advertisement without having been approved by the governing body of the professional body or by a resolution of the members of the professional body passed at a general meeting.

- Even if the candidate has obtained the prior written consent of the chairman concerned to include the name and office title of the chairman of the professional body 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 professional body. Otherwise, the candidate should also obtain prior written consent from the relevant professional body.
- 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 Legislative 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

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 5

- 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 not be required to seek his prior written consent if the candidate has neither requested nor 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 105 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation and the “Guidelines on Election-related Activities in respect of the Legislative 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 6

The executive committee of a trade association has passed a resolution to support a functional constituency (FC) candidate running in the LegCo Election. The trade association subsequently, at its own expenses, publishes an article in its newsletter to promote the candidate and uses its website to appeal to its members to support the candidate. Will the act of the trade association contravene the ECICO?

A 6

- The law does not restrict the means engaged by the supporters of a candidate to promote the election of the candidate. However, as the article and the relevant contents of the website published by the above trade association will serve the purpose of promoting the election of the said candidate, they will be regarded as the candidate's election advertisements. The cost incurred for publishing the election advertisements (e.g. the apportioned printing and mailing costs of the newsletter, and design fee of the website, etc.) should be counted as the candidate's election expenses. It is stipulated in section 23(1) of the ECICO that it would be an offence for a person, other than a candidate or a candidate's election expense agent, to incur election expenses. Therefore, the person-in-charge of the trade association should obtain the candidate's prior written authorization before incurring the aforesaid election expenses for the candidate.
- If the trade association has sponsored the relevant cost of publishing the election advertisements, the cost should be regarded as an election donation to the said candidate who should set this out in his election return. If the value of the election donation concerned is more than \$1,000, the candidate must, pursuant to the requirements of sections 19 and 37(2)(b)(ii) of the ECICO, issue a receipt to the donor (i.e. the trade association concerned) specifying the name and address of the donor, and particulars of the donation. Copy of the relevant receipt must also be submitted together with the election return.
- Supporters and supporting organizations are advised to communicate well with the candidate in advance before conducting electioneering activities for the candidate so as to ensure compliance with the relevant legal requirements by both parties.

Q 7

Candidates A and B are contesting in the same LegCo geographical constituency election. In order to get more votes for Candidate A, a supporter has printed some leaflets by himself smearing Candidate B 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, 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

Candidates A and B who belong to the same political party decide to form an alliance to conduct electioneering. Candidate A plans to distribute leaflets which contain the names and photos of Candidates A and B to introduce their election platform, and appeal to electors to vote for them. What should Candidate A 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 of the alliance 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 fulfill the requirements of section 27(1) and 27(1A) of the ECICO.
- The above candidates should also comply with the requirements governing election advertisements under section 105 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation and the “Guidelines on Election-related Activities in respect of the Legislative Council Election” issued by the Electoral Affairs Commission (please refer to Q3 for details).

Q 9

An organization plans to organize an election forum and invite all candidates of a Functional 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 9

- 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 Legislative Council Election” issued by the Electoral Affairs Commission.

(3) VOTING

Q 10

If a person appeals to electors through the online platform to boycott the 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 10

- 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 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 to 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 professional, who has announced his candidature in a functional constituency election, organizes and fully sponsors a one-day outbound study tour for electors of his constituency. 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 study 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 study 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 LegCo member, who will be contesting in the same geographical constituency of the upcoming LegCo Election, has been organizing community activities (e.g. free medical check-up, free legal consultation, discounted meals or distribution of sundries, etc) from time to time for the residents in the district. 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 arranges 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 annual dinner organized by a district organization during which the chairman of the district organization suddenly announces that the candidate is contesting the LegCo Election. Other than encouraging the dinner participants to vote for the candidate, the chairman also invites the candidate to deliver his election platform on the occasion. Will the chairman commit an offence? How should the candidate handle this situation?

A 14

- Although the above annual dinner is not organized for promoting the election of the candidate concerned in the first place, the chairman of the district organization 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 annual dinner is arranged by the chairman of the district organization 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 his intention 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 company owner comes to know that a major client of his company will stand as a candidate in a LegCo geographical constituency election. In order to please the client, the owner repeatedly requests his employees that they should vote for that client and even hints that, by doing so, they may secure their jobs. Has the act of this company owner contravened the law? Is the candidate concerned liable for any offence? If supporters of some candidates use force and duress, and even spread misleading messages to prevent electors from voting, are they 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 the company owner 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 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 someone uses deceptive means, such as spreading false or misleading messages, or abets others to prevent electors from voting at the election by deception, or using 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 LegCo Election owns a company in the geographical constituency in which he is contesting. In order to support the election of the candidate, some 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 Registration and Electoral Office (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.

Q 17

What will happen to an elector or an authorized representative of a corporate elector if he is disqualified from voting in a FC election but votes at the election? What if a person invites or induces an elector or an authorized representative of a corporate elector to vote at the election knowing that the latter has lost his eligibility to vote in an FC election?

A 17

- A person who has ceased to be eligible to be registered as an elector or is no longer eligible to be the authorized representative of a corporate elector is disqualified from voting in an FC election pursuant to section 53 of the Legislative Council Ordinance (Cap. 542). Any person who votes at the election knowing that he is not entitled or eligible to do so will commit an offence under section 16(1) of the ECICO. For example, where a person has been registered as an elector for an FC by virtue of his membership with a specified body for the FC as stipulated under the law, if the person has for whatever reason lost his membership with the specified body, he will be disqualified from voting and is no longer eligible to vote at an election of the relevant constituency despite the fact that the person's registration particulars might still remain in the final register of electors in respect of the FC and he might still receive a poll card from the REO.
- It is also an offence under section 16(2) of the ECICO if a person invites or induces an elector or an authorized representative of a corporate elector to vote at the election knowing that the latter is not entitled or eligible to do so.
- Anyone who has questions about his eligibility to vote can make an enquiry with the REO.

(4) ELECTION EXPENSES AND ELECTION DONATIONS

Q 18

A serving LegCo member will be running in the upcoming LegCo Election. Besides assigning his assistant to handle the electioneering matters, he also asks his friends to assist in promoting his election voluntarily during the election period. How should he declare the relevant election expenses and election donations?

A 18

- Being a candidate, the serving LegCo 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 expenses, 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 LegCo member is not allowed to claim reimbursement from the LegCo secretariat 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.

Q 19

A candidate has borrowed some of his friends' vehicles for use in his electioneering activities. How should he declare the relevant expenses and donations?

A 19

- 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 simultaneously set out the market rent of the relevant vehicles as an election expense and 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 vehicle decoration 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 or 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 20

Several candidates of the LegCo 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 20

- 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 21

In order to save expenses, a candidate reuses old materials (e.g. publicity boards) that had been used at previous elections, and uses 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 21

- 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 22

Will an elected candidate of a LegCo Election commit an offence for hosting a celebration dinner to treat his election helpers? 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 22

- 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 23

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 23

- Each candidate has to lodge with the Chief Electoral Officer (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(1B) and (1C) 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 LegCo 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 24

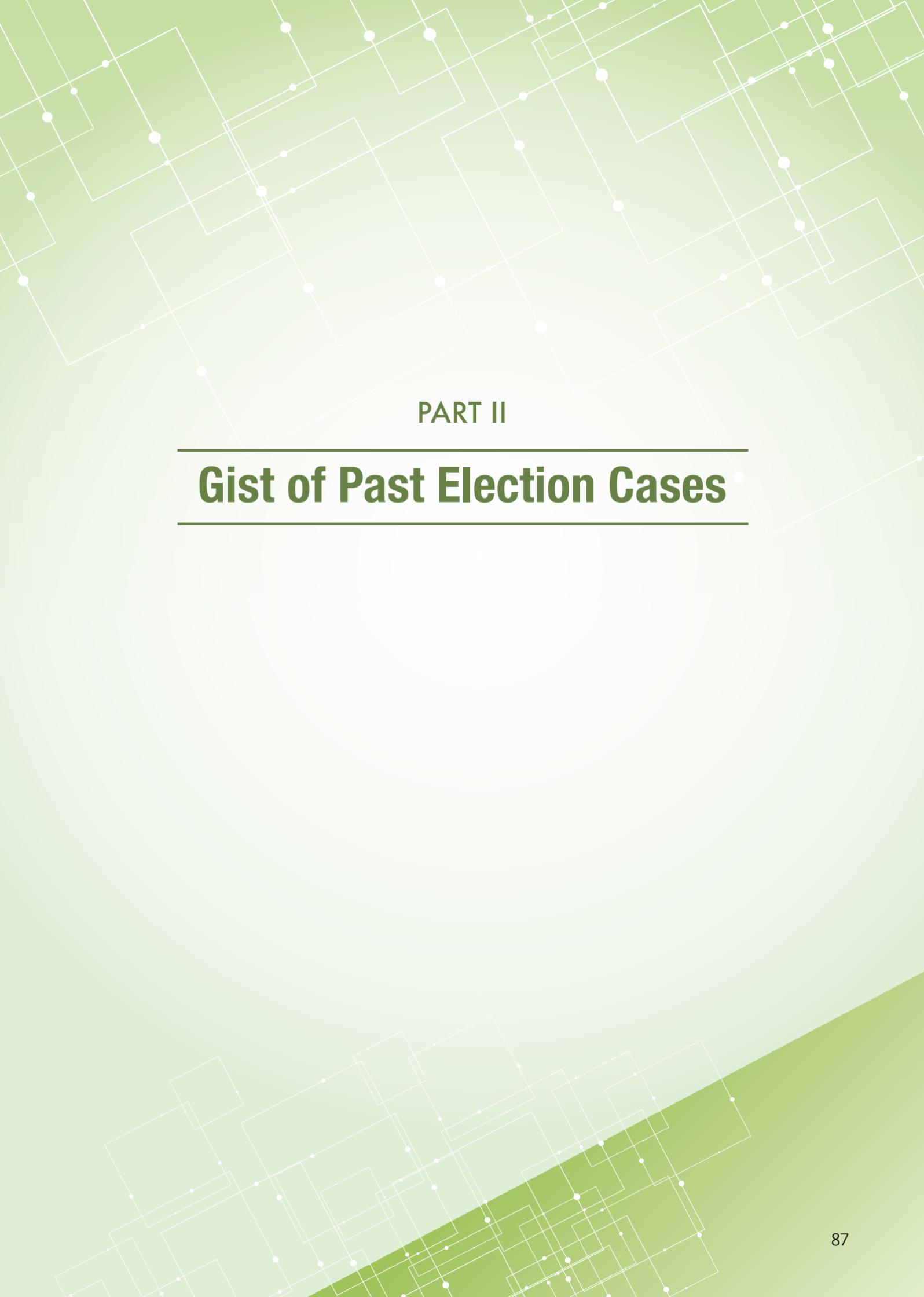
What measures can a candidate take to remedy the situation, if he has submitted an election return that contains minor errors or false statements?

A 24

- 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 Chief Electoral Officer (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 (\$30,000 for any LegCo geographical constituency elections, and \$5,000 for any LegCo functional constituency or the Election Committee constituency elections) 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.102-103). 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 by 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 of the First Instance ("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), a founder (B) and a member (C) of an organization (“the Trio”) conspired to accept a bribe of \$200,000 for getting C to stand as a candidate at a District Council Election. A also offered at least \$850,000 as bribes to five other persons to induce them to stand as candidates themselves or to get other persons to stand as candidates at the election.

The Trio reached an agreement after a meeting. They conspired to make B accept from A a sum of \$150,000 to \$200,000 for getting C to stand as a candidate at a specified constituency of the election. Later, A claimed that the election proposal prepared by the organization for C was not good enough, and eventually, he only paid \$36,000 in cash to B.

On the other hand, A offered at least \$850,000 as bribes to five other persons to induce them to stand as candidates themselves or to get other persons to stand as candidates at various specified constituencies of the election, 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 (ECICO) (Cap. 554), by offering an advantage to induce another person to stand as a candidate or get a third person to stand as a candidate in the election, and conspiracy to accept an advantage as an inducement to getting a third person to stand as a candidate in the election.

The judge said bribery at elections was a serious offence and undermined the credibility of the electoral system. The court had to send out a clear message to members of the public that any offenders would be severely punished so as to serve as a deterrent. One of the defendants later appealed to the Court of Final Appeal but the appeal was dismissed. The court held that the defendant had intentionally and corruptly offered an advantage to other co-defendants as an inducement for them to stand at the election for their own personal gain. The act had undermined 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, reusable bags were distributed 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, including 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.

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 free 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 election 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 a lucky draw. Eventually the candidate arranged 11 tables to serve the participants and \$3,300 was incurred in total.

The candidate was found guilty of 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

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 6

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 7**Inciting others to cast invalid votes at an election**

During the election period of a Legislative Council Election, a netizen shared a post published by a person who had left Hong Kong and was currently wanted by the ICAC to nine social media groups to incite viewers not to vote at the election.

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

In sentencing, the magistrate remarked that the defendant's acts would affect the fairness of an election and induce others to cause an election not being able to proceed in an orderly manner.

CASE 8**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 a 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.

The candidate who was subsequently charged with section 27 of the ECICO, i.e. illegal conduct to publish election advertisement that included false claim of support, pleaded guilty and was fined \$15,000.

In sentencing, the magistrate remarked that if a candidate obtained only verbal consent but lacked written consent as 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 9

Lodging false election return

A candidate of a Legislative Council Election, after the election is settled, had lodged with the Registration and Electoral Office (REO) a false election return before the statutory deadline, with an attempt to defraud the REO of election expenses.

Due to the COVID-19 pandemic, the Government announced the discontinuation of the election and postponed the election by one year. Eligible candidates, including the defendant, were entitled to receive a payment from the Government equivalent to their declared election expenses. Candidates were required to submit an election return by a specified deadline setting out all election expenses and election donations incurred for the election.

The defendant then submitted to the REO an election return together with supporting documents and a claim form to apply for the Government payment. He declared in the election return that he had incurred election expenses totaling \$24,000 for engaging three election assistants. The ICAC investigation revealed that the three purported election assistants had neither assisted in the electioneering of the defendant nor received any salary for that purpose.

The candidate was later charged with section 20 of the ECICO for making a statement that the candidate knew was materially false or misleading in an election return. The candidate pleaded guilty to the charge, and was sentenced to 2 months' imprisonment.

CASE 10

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.

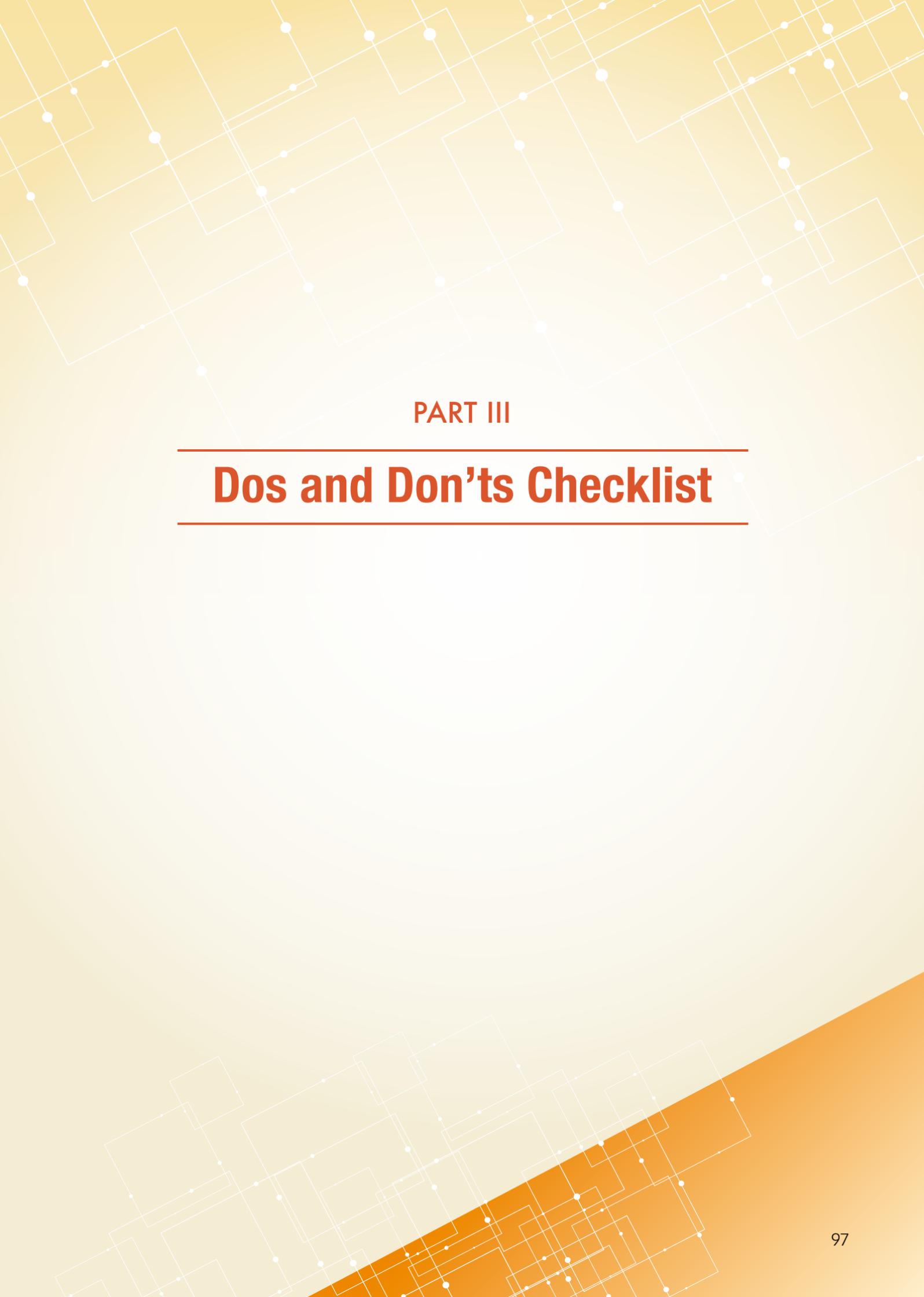
The candidate was later charged with section 38 of the ECICO for failing to lodge an election return. Having considered the significant public interest involved, the candidate was sentenced to 6 months' imprisonment. Later, the candidate appealed against the sentence. The Court of First Instance ruled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

Penalties

According to the ECICO, 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. 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 Legislative 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

1. any person's standing or not standing as a candidate at the election;
2. any person having been nominated as a candidate at the election to withdraw his nomination; or
3. any person not to use his best endeavours to promote his 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 to induce any person to stand or not to stand as a candidate at the election;
2. using or threatening to use force or duress to induce any person having been nominated as a candidate at the election to withdraw his nomination.

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 deception, to stand or not to stand as a candidate at the election;
2. inducing any person, by deception, having been nominated as a candidate at the election to withdraw his nomination.

Nomination Paper

✗ Do not deface or destroy a completed or partly completed nomination paper to prevent or obstruct any 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 EAC Regulation and the Guidelines on Election-related Activities in respect of the Legislative 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 or not to vote at an election, or to vote or not to vote for a particular candidate or particular candidates at an election;
 2. using or threatening to use force or duress against any person because the person voted or refrained from voting at an election, or voted or refrained from voting for a particular candidate or particular candidates at an election;
 3. 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 deception to vote or not to vote for a particular candidate or particular candidates at an election;
 2. inducing any person by deception not to vote at an election.

Other Offences in relation to Voting

- ✘ 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.
- ✘ 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.

(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 Legislative Council Election.

Constituencies	Maximum Amount of Election Expenses
(A) Geographical Constituency (GC)	
Hong Kong Island East GC	\$3,310,000
Hong Kong Island West GC	\$2,900,000
Kowloon East GC	\$3,110,000
Kowloon West GC	\$3,110,000
Kowloon Central GC	\$3,110,000
New Territories South East GC	\$3,040,000
New Territories North GC	\$2,760,000
New Territories North West GC	\$3,310,000
New Territories South West GC	\$3,450,000
New Territories North East GC	\$3,110,000

(B) Functional Constituency (FC)	
Heung Yee Kuk FC Agriculture and Fisheries FC Insurance FC Transport FC Finance FC Sports, Performing Arts, Culture and Publication FC Technology and Innovation FC Catering FC	\$133,000
for an election for an FC (other than listed above) with not more than 5,000 registered electors	\$213,000
for an election for an FC (other than listed above) with more than 5,000 but not more than 10,000 registered electors	\$425,000
for an election for an FC (other than listed above) with more than 10,000 registered electors	\$639,000
(C) Election Committee Constituency	\$213,000

- ✗ 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 any election donation 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 without issuance of receipts as required (including anonymous donations), 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 with the Chief Electoral Officer ("CEO") 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 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 (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 lodged under section 37A of the ECICO.

(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.



Elections (Corrupt and Illegal
Conduct) Ordinance





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 (ECICO) (Cap. 554) 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 at level 4 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 Mondays to Fridays (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 Election Website**” (www.icac.org.hk/elections).



**Addresses and telephone
numbers of the ICAC
Regional Offices**



守法規重廉潔

Abide by the Rules Support Clean Elections



廉政公署網站 ICAC Website www.icac.org.hk

24小時舉報貪污熱線 24-hour Report Corruption Hotline **25 266 366**

廉潔選舉查詢熱線 Clean Election Enquiry Hotline **2920 7878**