

Our Ref.: CAB C1/1/1

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17 May 2005

Mrs Percy Ma
Clerk to LegCo Panel on Constitutional Affairs
Legislative Council
Legislative Council Building
8 Jackson Road, Hong Kong

Dear Mrs Ma,

Panel on Constitutional Affairs

Follow up to meeting on 18 April 2005

**Requirement for candidates to submit the return and
declaration of election expenses and donations**

Thank you for your letter of 19 April 2005.

Section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance, Cap 554 (“ECICO”) provides that a “candidate” -

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

Section 37 of the ECICO provides that each candidate at an election must lodge with the appropriate authority within a prescribed period an election return setting out the candidate’s election expenses at the election and all election donations received by or on behalf of the candidate in connection with the election.

It therefore follows that a person who has publicly declared an intention to stand as a candidate at the election is required to lodge an election return with the appropriate authority within a prescribed period, regardless of whether or not he has submitted his nomination form to the Returning Officer, or whether or not after the submission of the nomination form his nomination is ruled valid by the Returning Officer.

The above requirement has been in place since the enactment of the ECICO in 2000. The requirement also applies to a person who, having publicly declared his intention to stand as a candidate in an election, did not in the end submit a nomination form. This is to prevent the person concerned from deterring other prospective candidates from contesting the election by announcing his own intention to stand for election. The requirement will help ensure fairness and transparency of the electoral process.

Information kept by the Registration and Electoral Office on recent elections show that election returns had been lodged by persons –

- (a) who had publicly declared an intention to stand for election but who had not submitted any nomination forms; or
- (b) whose nominations were ruled invalid by the Returning Officer; or
- (c) who had withdrawn their nominations.

There was one such case in the 2002 Chief Executive election, eight in the 2003 District Council election, and six in the 2004 Legislative Council election.

So far, there has been no prosecution by the Independent Commission Against Corruption against persons who come under any of the three categories described in paragraph 6 above and who have allegedly failed to submit an election return.

Yours sincerely,

(Miss May Chan)
for Secretary for Constitutional Affairs