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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 23 April 2014**

**False claim of support under the
Elections (Corrupt and Illegal Conduct) Ordinance**

Purpose

This paper provides background information on false claim of support under section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO"), Cap. 554. It also gives a brief account of the discussion by the former Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2012 on the legislative amendments proposed by the Administration in 2011 on consent of support in election advertisements ("EAs").

Background

Definition of EA

2. EA is defined in section 2 of ECICO. It covers notices, public announcement or any other form of publication (including printed advertisements and those distributed by electronic transmission) published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election.

Consent of support

3. At present, sections 27(1), (1A) and (1B) of ECICO provide that a candidate engages in illegal conduct if he fails to obtain prior written consent from a person or an organization before using the name or logo of that person or organization, or a pictorial representation of that person in any of his EAs as an indication of support from that person or organization, unless he has neither requested or directed nor authorized any person to request or direct the inclusion of the aforesaid name, logo or pictorial representation in his EAs. Also, should any content of an EA (where either the candidate has obtained the

prior written consent mentioned above or the candidate has neither requested or directed nor authorized any person to request or direct the inclusion of the name, logo or pictorial representation in his EAs) be provided by a person or an organization, the candidate engages in illegal conduct if he modifies, or authorizes any person to modify, the name, logo, or pictorial representation or the content, unless before the modification, the person or organization concerned consented in writing to the name, logo, pictorial representation or content as modified. Oral consent is not sufficient.

4. An extract from the Guidelines on Election-related Activities in respect of the Legislative Council ("LegCo") Election published by the Electoral Affairs Commission ("EAC") in June 2012 on false claim of support is in **Appendix I**.

Proposed amendments to the regulation on EAs in 2011

5. After a review of the arrangements of declaration and submission of EAs to prepare for the 2012 LegCo election, the Administration proposed in November 2011 amendments to the regulation on EAs to facilitate candidates to conduct electioneering activities in new media and simplify the procedures for handling EAs. According to the Administration, one of the problems encountered concerning the consent of support in EAs was that on social networking and communication websites on the Internet, it was not uncommon that people indicated support to a candidate in relation to his/her policies or activities by inserting a "Like" sign or posting supportive comments on the candidate's webpage. Such a sign or comment could amount to an indication of support under ECICO. It would be difficult, if not impossible, for the candidate to obtain prior written consent of support from people indicating such spontaneous support.

6. In November 2011, the Administration proposed amendments to the regulation on EAs, which included, among others, the following to tackle the above problem -

- (a) a candidate or a person is not required to obtain prior written consent from those who provide support in the EAs published by him if such support is provided by the supporters themselves out of their own volition; and
- (b) if a candidate or a person publishes or continues to publish the EAs with the support mentioned in (a) above without any modification of the content or description of the support, the candidate or the person is not required to obtain prior written consent from those

who provide support in such EAs. Otherwise, prior written consent must be obtained before publishing such EAs.

7. The proposed revised arrangement in paragraph 6(a) sought to relieve the candidate or the person from the burden of seeking consent in circumstances in which this was not practicable, such as when people put a "Like" sign or post supportive comments on the webpage of the candidate or the person. Under the proposed revised arrangement in paragraph 6(b), for situations involving only the change of platforms in showing the EAs with the support (such as from his Facebook to the website), the candidate would not need to obtain the consent of support.

8. In February 2012, the Administration introduced the Electoral Legislation (Miscellaneous Amendments) Bill 2012 ("the Bill") into LegCo to take forward proposed amendments (including those mentioned in paragraph 6 above) to EAC Regulations on EAs and electoral procedures.

Discussion by the Bills Committees on consent of support in EAs

9. The Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2012 noted that clause 3 of the Bill sought to amend section 27 of ECICO to provide the above arrangements in paragraph 6(a) and (b). As explained by the Administration, to satisfy the requirement in clause 3, the candidate would need to ascertain that he had neither requested/directed nor authorized any person to request or direct the inclusion of the name, logo or pictorial representation of any person or organization in his EAs. The candidate would not be required to ascertain the identity of those who provided support in his EAs out of their own volition. Under the proposed arrangement, if the relevant authorities received a complaint concerning the consent of support in an EA, investigation would be conducted to collect evidence for determination whether it was appropriate to take any enforcement action.

10. Some members expressed concern as to whether prior written consent of support would have to be obtained from those persons appeared in photographs published in a candidate's EAs which mentioned and displayed past activities organized by the candidate and those persons were participants of the activities, and whether prior written consent had to be obtained if the photographs included in EAs published by a candidate were provided by the candidate's supporters out of their own volition.

11. According to the Administration, under section 27 of ECICO, a candidate was required to obtain consent of support if the name, logo or pictorial representation of any person or organization was included in an EA in such a

way as to imply, or to be likely to cause electors to believe, that the candidate had the support of the person or organization concerned. Under this provision, a candidate was not required to obtain consent of support if the photographs did not imply or likely cause electors to believe that the candidate had the support of the persons or organizations in the photographs. If the photographs included in an EA had the effect of implying, or causing electors to believe, that the candidate had the support of the persons or organizations in the photographs, the candidate was required to obtain consent of support.

Recent development

12. In the light of a court judgment recently handed down in a case involving a former District Council election candidate's failure to file the written consent of his supporters before publishing their names in an EA, a member expressed the view that ECICO should be reviewed. At the last meeting on 17 March 2014, the Panel agreed to discuss conduct in contravention of ECICO at the next meeting on 23 April 2014.

Relevant papers

13. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

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~~that he or another person is a candidate at an election, knowing that the statement is false [s 25 of the ECICO].~~

False or Misleading Statement about a Candidate

17.9 A person must not publish any materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates. Similarly, a candidate must not publish any materially false or misleading statement of fact about himself or another candidate or other candidates for the purpose of promoting the election of himself or prejudicing the election of another candidate or other candidates. Any such publication will amount to an illegal conduct. It should be noted that materially false or misleading statements about a candidate or candidates include, but are not limited to, statements concerning the character, qualifications or previous conduct of the candidate or candidates to promote or prejudice the election of the candidate, eg a person who makes a materially false or misleading statement of fact, thereby calling into question the integrity and honesty of that candidate, may contravene the above provision [s 26 of the ECICO]. Any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication. ~~[Amended in June 2012]~~

False Claim of Support

[Please also see Chapter 18: Namedropping.]

17.10 A candidate engages in illegal conduct if he fails to obtain **prior written consent** from a person or an organisation before using the name or logo of that person or organisation, or a pictorial representation of that person in any of his EAs as an indication of support from that person or organisation unless he has neither requested or directed nor authorised any person to request or direct the inclusion of the aforesaid name, logo or pictorial representation in his EAs. Also, should any content of an EA (where either the candidate has

obtained the prior written consent mentioned above or the candidate has neither requested or directed nor authorised any person to request or direct the inclusion of the name, logo or pictorial representation in his EAs) be provided by a person or an organisation, the candidate engages in illegal conduct if he modifies, or authorises any person to modify, the name, logo, or pictorial representation or the content unless **before** the modification, the person or organisation concerned **consented in writing** to the name, logo, pictorial representation or content as modified. Oral consent is **not** sufficient. [S 27(1), (1A) and (1B) of the ECICO.] The EAC provides a sample consent form for this purpose. Any indication of support in EAs, be it a text, a photograph or any other material, must be covered by a written consent from the person or organisation concerned. A candidate is required to post a copy of the consent form relevant to the EA concerned onto the Candidate's Platform or Central Platform or deposit a copy of the consent form with the relevant RO in the manner as set out in para. 8.43 of Chapter 8 [s 105 of the EAC (EP) (LC) Reg]. It is important to note that it is still an offence even if such an EA contains a statement to the effect that it does not imply support from the person or organisation concerned [s 27(4) of the ECICO]. It is also an offence for a person to give information which he knows or ought to know is materially false or misleading to a candidate or candidates for promoting or prejudicing the election of a candidate or candidates [s 27(6) of the ECICO]. *[Amended in October 2007, July 2008 and June 2012]*

17.11 A person or an organisation may give support to a list of candidates, to one or more of the candidates on a list of candidates, or to a single candidate on a list. Support can be also given to 2 or more candidates or 2 or more lists of candidates, even if they are competing in the same constituency, although that may cause confusion. This should be specified in the written consent. A sample form on seeking “**Consent of Support**” prepared by the EAC will be provided to a candidate upon his submission of a nomination form for the election or can be downloaded from the REO website. Candidates should take care to ensure that their EAs make clear where support

is claimed whether it is for the whole list of candidates or for individual candidate(s) on a list of candidates. Candidates are reminded that it is an offence to make a false claim of support [see Chapter 18 : Namedropping].
[Amended in June 2012]

17.12 Candidates on a list of candidates must be very careful in their EAs to describe **precisely** the support obtained by them or only one of them from supporters (as evidenced by a completed form of consent of support) to ensure that there is no false claim of support [see also para. 16.13 of Chapter 16]. *[Amended in June 2012]*

17.13 Consent given can be revoked. In case of a revocation, in order to avoid dispute, it is advisable for the person or organisation who has revoked the consent to send a notice or copy of the revocation to the candidate concerned and to the relevant RO. In such case, the candidate is required to notify the relevant RO in writing of any revocation of consent or post a notice or copy of the revocation onto the Candidate's Platform or the Central Platform in the manner as set out in para. 8.43 of Chapter 8. *[Amended in June 2012]*

17.14 S 28 of the ECICO provides for an injunction order by the Court to restrain the publication of any materially false or misleading statement or false claim of support. An application for such an injunction order may be made by a candidate in the same constituency, his election agent, an elector in the same constituency and the person or body to whom or which the false information is related.

Appendix II

Relevant documents on false claim of support under the Elections (Corrupt and Illegal Conduct) Ordinance

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	21 November 2011 (Item IV)	Agenda Minutes
Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2012	2 March 2012	Agenda Minutes
	19 March 2012	Agenda Minutes
	29 March 2012	Agenda Minutes
	13 April 2012	Agenda Minutes
CA Panel	16 April 2012 (Item IV)	Agenda Minutes
House Committee	20 April 2012	Report of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2012

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