

EAC reminds persons who wish to run for election to comply with legislative requirements

The following is issued on behalf of the Electoral Affairs Commission:

The nomination period of the 2020 Legislative Council General Election is approaching. The Electoral Affairs Commission (EAC) has noticed recent reports on various election-related activities held by individuals or organisations. A spokesman for the EAC today (July 8) reminded those who wish to run for an election and other stakeholders that they must understand and comply with the legislative requirements so as to avoid committing any criminal offence inadvertently. The requirements include:

The Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap. 554) prohibits corrupt conduct and illegal conduct at elections, regulates election advertising and election expenses, imposes requirements with respect to the receipt of donations and the expenditure of money at or in connection with elections, and provides for related matters. According to Section 2 of the ECICO:

1. "candidate" means a person who stands nominated as a candidate at an election, and also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election; and
2. "election expenses", in relation to a candidate or group of candidates at an election, means expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate or group for the purpose of (a) promoting the election of the candidate or group, or (b) prejudicing the election of another candidate or group, and includes election donations.

"In accordance with Section 37 of the ECICO, all candidates must lodge with the appropriate authority an election return setting out the candidate's election expenses and all election donations received. Therefore, if the definition of 'candidate' is met, regardless of whether he or she has submitted his or her nomination form to run for the 2020 Legislative Council General Election, he or she must declare all election expenses involved. Section 23 of the ECICO stipulates that only candidates and authorised election expense agents shall incur election expenses or else an illegal conduct is engaged. However, if a third party publishes an election advertisement on the Internet, and the only election expenses incurred by the person for the purpose of publishing the election advertisement are either or both of electricity charges and charges necessary for accessing the Internet, the person is exempted from the relevant criminal liability. When considering what expenses would amount to 'election expenses', it is considered both

necessary and useful to take heed of the points made by the Court of Final Appeal in a case relating to the 2008 Legislative Council General Election which touched on election expenses (FACV No. 2 of 2012) and independent legal advice should be sought," the spokesman said.

In addition, the spokesman said that according to Section 42 of the Legislative Council Ordinance, a candidate who has submitted a nomination form may withdraw his or her candidature only before the end of the nomination period. Under the subsisting law, candidates are not allowed to withdraw their candidature after the end of the nomination period and there is no such mechanism of so-called "abandonment of election". According to Sections 7 to 9 of the ECICO, it will be a corrupt conduct if a person corruptly affects a person to stand or not to stand as a candidate by bribery, force, duress or deception. The person who commits an offence is liable on conviction to a fine of \$500,000 and to imprisonment for seven years.

Members of the public, including candidates and other relevant persons, should make a report to the Independent Commission Against Corruption if anyone is suspected to have violated the ECICO. The EAC will handle any relevant complaint received in a serious manner and refer to law enforcement agencies for follow-up.