

CHAPTER 17

NAMEDROPPING

PART I : GENERAL

17.1 According to the ECICO, if a candidate includes the name, logo or pictorial representation of a person or an organisation in his/her EA as an indication of support from that person or organisation, he/she has to obtain prior written consent to the inclusion. Oral or retrospective consent is not allowed. *[Added in September 2019]*

17.2 If the consent of support is given by a supporter in his/her personal capacity and he/she intends to mention his/her office title or the name of the organisation that he/she belongs to, the candidate should be careful not to give the impression that it represents the support of the whole organisation. If the EA indicates support by the relevant organisation, approval should be given by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting. *[Added in September 2019]*

17.3 When a candidate publishes EA through online platforms, a person or an organisation may show his/her/its support to the candidate out of his/her/its own volition by giving response, indicating “like” or including his/her/its name, logo or pictorial representation in the EA published by the candidate. If the candidate has neither requested or directed nor authorised any person to request or direct the person or organisation to show his/her/its support, the candidate is not required to seek prior written consent provided that he/she must not modify that EA. *[Added in September 2019]*

PART II : CLAIM OF SUPPORT

17.4 A candidate engages in illegal conduct if he/she fails to obtain **prior written consent** to the inclusion of the name, logo or pictorial representation from a person or an organisation before using such name, logo or pictorial representation of that person or organisation in any of his/her EAs as an indication of support from that person or organisation unless he/she 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/her EAs. Under the ECICO, **support** (支持), in relation to a candidate, includes support for the policies or activities of the candidate. 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/her EAs) be provided by a person or an organisation, the candidate engages in illegal conduct if he/she 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 has **consented in writing** to the inclusion of the modified name, logo, pictorial representation or content in the EA. [S 27(1), (1A), (1B) and (7) of the ECICO] Moreover, modifying the name, logo or pictorial representation or the content without the person's consent may render his/her personal data inaccurate and hence constitute a contravention of Data Protection Principle 2(1)³³ in Schedule 1 to the PD(P)O. [*Amended in September 2012 and September 2019*]

(Please also see paras. 16.12 to 16.16)

³³ Data Protection Principle 2(1): All practicable steps shall be taken to ensure that personal data is accurate having regard to the purpose (including any directly related purpose) for which the personal data is or is to be used.

17.5 It is not uncommon that a candidate publishes EAs through online platforms such as social networking or communication websites for promoting his/her candidature. There may be cases that a person shows his/her support to the candidate out of his/her own volition by giving response or indicating “like” in the EA published by the candidate, or by appearing in the live broadcast of an electioneering activity published by the candidate. The candidate is not required to seek the prior written consent of the person if the candidate has neither requested or directed nor authorised any person to request or direct the inclusion of the name, logo or pictorial representation of the person in the EA. Nevertheless, if a person is invited by the candidate to show his/her support by giving response to the online EA or by participating in the electioneering activity which is covered by the live broadcast, the candidate should obtain prior written consent from the person. [S 27(1) and (1A) of the ECICO] *[Added in September 2019]*

17.6 Oral or retrospective consent is **not** allowed. The EAC provides a sample form for seeking **consent of support** from a person or an organisation for the purpose set out in para. 17.4 above. The written consent is a requirement under the ECICO. It protects the candidates from unnecessary complaints and disputes which may arise if only oral consent is obtained. It also protects the electors from being misinformed as to whether a candidate has the support of a person or an organisation. Prior written consent is required if the inclusion of the name, logo or pictorial representation of a person or an organisation, as the case may be, implies support of the candidate concerned. What amounts to “support” will depend on the circumstances of each case. The question to consider is whether any reasonable person, as opposite to the candidate or any other person publishing or authorising the publication of the EA, who has seen the pictorial representation would have the perception that the persons appearing in the EA support the candidate. *[Amended in September 2012 and September 2019]*

17.7 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/she knows or ought to know is materially false or misleading information to a candidate or candidates for the purpose of promoting or prejudicing the election of the candidate or candidates [s 27(6) of the ECICO].

17.8 For the avoidance of doubt, it is advisable for the written consent to set out clearly whether consent is given:

- (a) by a supporter in his/her personal capacity - in which case no mention should be made of any office title which he/she may have, in the candidate's EAs and campaign activities;
- (b) by a supporter with the mention of his/her office title (bearing no reference to the name of the organisation concerned) - in which case the consent should indicate whether the supporter consents to the mention of his/her office title(s) and the description of such a title(s). Where such office title(s) is/are to be mentioned in an EA, the supporter and the candidate should take particular care to ensure that the information should not be used in such a way to misrepresent the support of the organisation(s) concerned.

For example, where the office title of "the school principal" (for example, "Chan Tai Man, the Principal") or "chairman of an owners' corporation" (for example, "Chan Tai Man, Chairman of Owners' Corporation") is to be included in an EA, and if the EA is to be posted in the school or the building in which he/she is serving, it would be desirable for the candidate to seek the relevant organisation's prior written approval;

- (c) by a supporter with the mention of his/her office title and the name of the organisation concerned - in which case the candidate should ensure that the supporter has obtained the prior written approval of the organisation, in accordance with the organisation's internal rules and procedures or any established convention (e.g. approved by the governing body of the organisation or by a resolution of that organisation passed at a general meeting), for using the name of the organisation together with his/her office title(s) by the candidate. In case of doubt, the candidate or his/her supporter should consult the organisation concerned on its internal rules and procedures. The candidate should be careful not to give the impression that it represents the support of the whole organisation; and
- (d) by an organisation - in which case the consent should indicate that approval has been given by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting [s 27(5) of the ECICO]. The consent must be signed by an authorised person such as its director, chairman or chief executive, etc.

[Amended in September 2015 and September 2019]

17.9 Candidates should note that the Home Affairs Department has its own guidelines for MACs and their office-bearers in respect of their giving consent of support to candidates. A copy of such guidelines can be found at **Appendix O**.

17.10 Consent can be given to 2 or more candidates of a constituency, even if they are competing in the same constituency, although that may cause confusion. A 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 of the revocation to the candidate concerned. The candidate is required to notify the relevant RO in writing of any revocation of consent or post a copy of the revocation onto the Candidate's Platform or the Central Platform in the manner as set out in para. 7.55 of Chapter 7. *[Amended in September 2015 and September 2019]*

17.11 Once consent has been revoked, the candidate concerned should be careful to cease immediately using any EA which contains the support of the person or organisation who has made the revocation. The costs incurred for the production of EAs bearing such support should still be regarded as the candidate's election expenses and be declared in the election return. In accordance with the requirements of the PD(P)O, the candidate should not retain the personal data of the person for period longer than is necessary, in particular when his/her consent of support is revoked. *[Amended in September 2015 and September 2019]*

17.12 If candidate A's name or photograph appears in an EA of candidate B to indicate support for candidate B, whether expenditure incurred for the EA will need to be borne by candidate A would depend on whether the publicity material in question has explicitly or implicitly promoted the election of candidate A. There may be 2 different scenarios in such cases:

Scenario A

If the appearance of candidate A in candidate B's EA is solely to indicate support for candidate B but not to promote the election of candidate A, the EA should not be treated as a joint EA. The election expenses incurred should be counted as candidate B's election expenses only but not as candidate A's. Candidate B has to obtain the prior written consent of support from

candidate A before using candidate A's names or photographs in his/her EAs [s 27 of the ECICO].

Scenario B

If candidate B wishes to publish the EA for promoting his/her candidature and that of candidate A as well, he/she must obtain prior written authorisation from candidate A to act as his/her election expense agent and the expenses so incurred will have to be borne by the candidates A and B in equal or proportional shares as their respective election expenses, to be calculated by the proportion of the size of the portion advertising each.

It should be noted that the EA mentioned in Scenario B above should be treated as a joint EA. To comply with the requirement stipulated in s 27 of the ECICO, both candidates A and B also have to seek written consent of support from each other before publishing the joint EA. *[Added in September 2012]*

17.13 It is not uncommon for candidates to put photographs with the appearance of other persons (which may include other candidates in the election) in their EAs to show their past activities. However, it may be possible for electors to believe that those persons appearing in the photograph support a particular candidate when they receive such EAs. To avoid misunderstanding, for instance, if an EA carries a photograph of the candidate attending an activity with other attendees, a caption specifying the particular nature of the event could be added underneath the photograph in such a way that, to any reasonable person, it will not imply, or likely to cause electors to believe, that the candidate has the support of those persons appearing in the photograph. If in the circumstances the photograph is likely to cause electors

to believe that the candidate has the support of those persons appearing in the photograph, prior written consent of support should be obtained by the candidate. *[Amended in September 2011]*

17.14 To avoid misleading the electors to believe that a candidate has obtained support from a certain person, organisation, government agency or department, which is not the case, a candidate should not attach any materials published by any such person, organisation, government agency or department together with his/her own EAs.

17.15 As advised by the PCPD, an image of an identified person³⁴ will constitute his/her personal data and its use for a purpose other than the original purpose of collection or a directly related purpose, without the consent of the person concerned, will be an infringement of his/her personal data. Therefore, candidates when using the aforesaid image should also observe the relevant data protection principles as set out in the Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public at **Appendix F**. *[Added in September 2011, amended in September 2015 and September 2019]*

Consent in writing

17.16 A sample form prepared by the EAC for seeking **consent of support** in writing **from a person or an organisation** will be available at the offices of the REO and the relevant RO after the gazettal of a notice specifying a period and place for submitting nomination forms and can be downloaded from the REO website. It will also be provided to a candidate upon his/her submission of a nomination form for the election. *[Amended in September 2011, September 2012 and September 2019]*

³⁴ “An identified person” shall refer to a person appearing in a photograph whose identity is known to members of the public either because his/her name is mentioned in the photo caption or he/she can easily be identified by virtue of his/her job, profession or business, etc.

17.17 There are occasions (as allegations and complaints were received) requiring confirmation of the compliance of the law by a candidate. Therefore, a candidate is required to post the written consent relevant to the EA concerned onto the Candidate's Platform or Central Platform or deposit a copy of the written consent with the relevant RO in the manner as set out in para. 7.55 of Chapter 7 [s 106 of the EAC (EP) (DC) Reg]. A candidate is also **required to post** onto the Candidate's Platform or Central Platform a written notice of revocation **or notify** the relevant RO of such revocation in the manner as set out in para. 7.55 of Chapter 7. Such written consent and notices of revocation received by the RO will be made available for public inspection (with the identity document numbers, if any therein, of the persons involved obliterated) at the office of the relevant RO. *[Amended in September 2012]*

Penalty

17.18 It is an illegal conduct under the ECICO for a person to make false claim of support. For details of penalty and sanction, please refer to para. 16.3(b) and Part VII of Chapter 16. *[Amended in September 2012]*