

CHAPTER 19

NAMEDROPPING

PART I : SUPPORT CLAIMS

19.1 Under s 27 of the ECICO, it is an offence if a candidate includes the name, logo, or pictorial representation of a person or organisation in his EA in such a way to imply, or to be likely to cause electors to believe that the candidate or associated candidate(s) have the support of that person or organisation, unless the candidate meets and complies with the following conditions and requirements:

- (a) before publishing the EA, the candidate has obtained **written consent** from the relevant person or organisation to include their name, logo, or pictorial representation in the advertisement; or
- (b) the candidate does not personally or authorise anyone to request or direct the inclusion of the name, logo, or pictorial representation of the relevant person or organisation in the advertisement (e.g. the content of the EA is provided by the supporter on his/her own initiative).

If the EA meets the conditions in (a) or (b) above and the relevant person or organisation concerned has provided any content for the advertisement, unless **written consent** of the relevant person or organisation concerned has been

obtained, the candidate must not modify or authorise any person to modify the name, logo, image, or pictorial representation or the content.

19.2 It is an offence even if the EA includes a statement to the effect that it does not imply that the person or organisation supports any candidate. [S 27(4) of the ECICO]

NOTE :

Oral consent or written consent obtained after the publication of the EA does not comply with the legal requirements. Additionally, a consent of support, regardless of the number of individual(s) it is signed by, has to be a single document and cannot be composed of multiple documents or inferred from a chain of correspondences or messages.

19.3 The EAC has prepared a sample form to facilitate candidates to seek consent of support in writing from **a person or organisation**. The form will be provided to candidates upon their submission of nomination forms for the election. Candidates may also obtain the form from offices of the REO and the relevant RO, or download it from the REO website.

19.4 If the consent of support is given by a supporter in his personal capacity and he intends to mention his office title or the name of the organisation that he belongs to, the candidate should avoid giving the impression that the whole organisation also supports the candidate. 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.

19.5 Moreover, when including personal data (which may include the name, logo or pictorial representation and/or the content) of a person in the EA, the candidate has to take all practicable steps to ensure that the personal data is correct and accurate. Otherwise, it may contravene the Data Protection Principle 2(1)⁵⁹ in Schedule 1 to the PD(P)O.

19.6 Regarding EAs published by candidates on online platforms, there may be persons or organisations showing their support to the candidate out of their own initiative by showing “like” to the EA, giving responses, or including their names, logos, or pictorial representations in the candidate’s EA. If the candidate has neither requested nor directed the relevant person or organisation to give support, obtaining prior written consent of the relevant person or organisation is not required. Yet, the candidate is not allowed to modify the relevant EA without the consent of the relevant person or organisation. Nevertheless, if the candidate invites a person to show his support by giving response to the online EA or participating in the live on-line electioneering activity, the candidate should obtain prior written consent from the person. [S 27(1) and (1A) of the ECICO]

⁵⁹ 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.

19.7 It is an offence for a person to make false claim of support. 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 the candidate or candidates. [S 27(6) of the ECICO]

Consent Forms for Support

19.8 For the avoidance of doubt, the written consent should set out clearly whether consent is given:

- (a) by a supporter providing support in his personal capacity - the supporter's title should not be mentioned in the candidate's EA or electioneering activities.
- (b) by a supporter with the mention of his office title (without mention of the name of the organisation concerned) - the consent should indicate whether the supporter consents to the mention of his office title(s) and the description of the title(s). If office title(s) is/are to be mentioned in an EA, the supporter and the candidate should ensure that usage of the information does not give a wrong impression that the organisation concerned supports the candidate.

For example, if an 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 the EA is to be posted in

the school or the building in which the person is serving, it will be desirable for the candidate to seek the relevant organisation's prior written approval;

- (c) by a supporter with mention of his office title and the name of the organisation concerned - 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. In case of doubt, the candidate or his supporter should consult the organisation concerned on the aforesaid internal rules and procedures. The candidate should avoid giving others a wrong impression that he has obtained the support of the whole organisation; and
- (d) by a supporter providing support in the name of an organisation - the consent should indicate that approval has been given by the governing body of the organisation or by a resolution passed at a general meeting. The consent must be signed by an authorised person (such as the director, chairman or chief executive, etc. of the organisation concerned). [S 27(5) of the ECICO]

19.9 A person or organisation may support more than one candidate (even candidates who are competing in the same constituency), but the above situation must be stated in the consent form.

Withdrawal of Consent for Support

19.10 Consent of support may be revoked by a person or an organisation. In order to avoid dispute, if a person or an organisation revokes the consent of support for a candidate, he should send a notice of the revocation to the candidate concerned.

19.11 Candidates are required to post the consent form of the relevant EAs 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. 9.43 of Chapter 9. Candidates are also **required to post** the written notice of revocation onto the platforms concerned **or notify** the relevant RO of such revocation in the manner as set out in para. 9.43 of Chapter 9. Copies of the written consent and notice of revocation received by the RO will be made available for public inspection at a specified location. [S 105(2) and (3) of the EAC (EP) (LC) Reg]

19.12 After a revocation of consent is made, the candidate should immediately cease to publish any EA which contains the person or organisation that has made the revocation. Moreover, in accordance with the requirements of Principle 2(2) of Schedule 1 to the PD(P)O, the candidate should take all practicable steps to ensure that the personal data of the person is retained for a period not longer than necessary⁶⁰. S 26 of the PD(P)O also requires candidates to take all practicable steps to erase personal data that is no longer required for

⁶⁰ Personal data should not be kept longer than is necessary for the fulfillment of the purpose for which the data is used (including any directly related purpose).

the purpose for which it is used, unless any such erasure is prohibited under any law or not in the public interest.

NOTE :

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.

19.13 If the name or photo of candidate A appears in candidate B's EA to show support for candidate B, whether the expenditure incurred for the EA should be borne by candidate A will be subject to whether the publicity material in question has explicitly or implicitly promoted candidate A. There may be two different scenarios in such cases:

Scenario 1

If the appearance of the name and photo of candidate A in candidate B's EA is solely to show support for candidate B but not to promote the election of candidate A, the EA should not be regarded as a joint EA. The election expenses incurred should be counted towards candidate B's election expenses only. Candidate B has to obtain the prior written consent of support from candidate A before using candidate A's name or photo in his EAs. [S 27 of the ECICO]

Scenario 2

If the EA published by candidate B is for promoting not only himself but also candidate A's candidature, it will be regarded as a joint EA. To comply with the requirement stipulated in S 27 of the ECICO, candidate A and candidate B must obtain prior written consent of support from each other before publishing the joint EA, and candidate B must also obtain written authorisation from candidate A to be his election expense agent in advance. The costs of the joint EA are generally shared by candidate A and candidate B in proportion to the size of the advertisement each occupies and counted towards their respective election expenses.

19.14 If a candidate uses photos in their EAs to show the activities they had participated in the past and there were other persons in the photos (which may include other candidates in the same election), publishing the advertisement may imply or is likely to cause electors to believe that the candidate has the support of those persons in the photos. Therefore, the candidate must obtain prior written consent from the relevant persons before publishing the EA. Otherwise, the candidate should take effective measures to avoid making electors believe that he has obtained the support of the persons in the photos. For instance, if there is a photo showing the candidate and other persons participating in an activity in an EA, the candidate may add a caption below the photo specifying the nature and relevant information of the event in such a way that, for any reasonable and neutral person, the photo does not imply or will not be likely to cause him to believe that the candidate has obtained the support of those persons

in the photo. However, if the photo concerned is still likely to cause electors to believe that the candidate has obtained the support of the persons in the photo, even if the EA contains a statement to the effect that the EA does not imply the support of the persons in the photo, the candidate still has to obtain prior written consent of respective persons to give support. Failure to do so is an offence. [S 27(4) of the ECICO]

19.15 The law does not stipulate a minimum age for signing consent of support. However, if a supporter is under the age of 18, for prudence's sake, the candidate may arrange the parent or guardian of the supporter to co-sign the consent form.

19.16 Unless a candidate has obtained written consent from a person, organisation, government agency or department, he should not attach any materials published by any such person, organisation, government agency or department to his EA to avoid causing electors to believe that the candidate has the support of the relevant person or organisation.

19.17 As images may be regarded as personal data⁶¹, candidates should be mindful of whether the use of a person's image is consistent with or directly related to the original purpose of data collection. Additionally, the PCPD has published the "Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public"

⁶¹ Under S 2(1) of the PD(P)O, "personal data" means any data: (1) relating directly or indirectly to a living individual; (2) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and (3) in a form in which access to or processing of the data is practicable.

(see **Appendix XI**), which serves as a general reference on matters that candidates need to note when conducting electioneering activities, involving collection, holding, processing and use of personal data.

PART II: COURT'S POWERS AND PENALTIES

19.18 Pursuant to s 31 of the ECICO, if a candidate breaches any offences of illegal conduct due to inadvertence, an accidental miscalculation or any reasonable cause (and not due to bad faith), the candidate may apply to the CFI for an order exempting him from the criminal liability (see Part VI of Chapter 18 and para. 9.55 of Chapter 9).

19.19 S 28 of the ECICO stipulates that the Court could issue an injunction order to restrain publication of any materially false or misleading statement or false claim of support. A candidate in the same GC/FC, his election agent, an elector of the GC/FC concerned and the person or body to whom or which the false information is related could apply for the injunction order.

19.20 Pursuant to Ss 22(1) and 27 of the ECICO, a person commits an illegal conduct if he makes false claim of support, and is liable to a fine of \$200,000 and imprisonment for 3 years.