

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 written consent to the inclusion before the publication of the EA. Oral consent or retrospective written consent obtained after the publication of the EA does not comply with the legal requirements.

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.

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 indicating “like”, giving response 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.

PART II : CLAIM OF SUPPORT

17.4 A candidate who uses the name, logo or a pictorial representation of a person or an organisation in any of his/her EAs as an indication of support from that person or organisation engages in illegal conduct if he/she fails to obtain **written consent** to the inclusion of the name, logo or pictorial representation in the candidate's EA before the publication of the EA 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. It should be noted that there were legal proceedings over disputes concerning candidates claiming to have the support of certain individuals or organisations in their EAs. Two such cases involving a DC ordinary election were handled by the CFI of the High Court. In one of the cases, a candidate sought the court's order to relieve him from the consequences of breaching the relevant law (HCMP 1321/2012) and the trial judge referred to the legal stipulations and pointed out in the judgment that:

“The crucial issue is not whether the Applicant actually had the support of these 52 supporters, but whether he had their written consent for the inclusion of their names as his supporters in his EAs prior to their dispatch.”

The order of relief was eventually not granted. In another case involving an election petition (HCAL 247/2020), the trial judge put forward in his judgment that:

“to qualify as a written consent mentioned in section 27(1A) of the ECICO, the consent has to be a single document expressing consent to include one's name, logo or pictorial representation in the advertisement. It cannot be a composite document with more than one

document read together. It cannot be permitted to be inferred from a chain of correspondence or messages.”

Therefore, a consent of support, regardless of the number of individual(s) signing to give consent, has to be a single document rather than a composite document comprising multiple letters, documents or a chain of correspondence messages. The EAC has prepared a sample form for candidates to seek **consent of support** in writing from a person or an organisation.

17.5 Under the ECICO, **support** (支持), in relation to a candidate, includes the support for the policies or activities of the candidate. In the case that the 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) is 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 the person or organisation concerned has **consented in writing** to the inclusion of the modified name, logo, pictorial representation or content in the EA **before** such modification. [S 27(1), (1A), (1B) and (7) of the ECICO] Moreover, when including personal data³⁶ (which may include the name, logo or pictorial representation and/or the content) of a person in the EA, all practicable steps shall be taken to ensure that the personal data is correct and accurate. Otherwise, it may contravene the Data Protection Principle 2(1)(a)³⁷ in Schedule 1 to the PD(P)O.

[Please also see paras. 16.12 to 16.16 of Chapter 16.]

³⁶ S 2(1) of the PD(P)O provides that “personal data” means any data:

- (a) relating directly or indirectly to a living individual;
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- (c) in a form in which access to or processing of the data is practicable.

³⁷ Data Protection Principle 2(1)(a): 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.

17.6 It is not uncommon that a candidate publishes EAs through online platforms such as social networks or communication websites to promote 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]

17.7 Oral consent or retrospective written consent obtained after the publication of the EA does **not** comply with the legal requirements. As set out in para. 17.4 above, a 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. The EAC provides a sample form for candidates to seek **consent of support** in writing from a person or an organisation for this purpose. 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 towards 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 opposed to the candidate or any other person publishing or authorising the publication of the EA, will have the perception that the person(s) appearing in the EA support the candidate after seeing the pictorial representation.

17.8 It is important to note that it is still an offence even if such an EA contains a statement to the effect that the EA does not imply support by the person or organisation for a candidate or candidates [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 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].

17.9 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 the office title of supporters should not be mentioned 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 the title(s). If office title(s) is/are to be mentioned in an EA, the supporter and the candidate should take particular care to ensure that the usage of the information does not give a misleading impression that the candidate has obtained the support of the organisation(s) concerned. For example, if the office title of "the school principal" (e.g. "Chan Tai Man, the Principal") or "chairman of an owners' corporation" (e.g. "Chan Tai Man, Chairman of Owners' Corporation") is to be included in an EA, and that 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 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 the candidate to use both the supporter's office title(s) and the name of the organisation. In case of doubt, the candidate or his/her supporter should consult the organisation concerned on the aforesaid internal rules and procedures. The candidate should be careful not to give the impression that he/she has obtained 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 the director, chairman or CE, etc. of the organisation concerned.

17.10 Candidates should note that the HAD 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 15**.

17.11 Although confusion may arise, consent may be given to 2 or more candidates contesting in the election, even if they are competing in the same Rural Area. A consent given can be revoked. In case of a revocation, in order to avoid dispute, it is advisable for the person or organisation revoking 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. 7.57 of Chapter 7.

17.12 After a revocation of consent is made, the candidate should handle with care and immediately cease to use any EA which contains the support of the person or organisation who/which has made the revocation. In accordance with the requirements of the Data Protection Principle 2(2) in Schedule 1 to the PD(P)O, the candidate should not retain the personal data of the person for a period that is longer than necessary³⁸, particularly if his/her consent of support has been revoked. The costs incurred for the production of EAs bearing such support should still be regarded as the candidate's election expenses and be clearly listed in the election return.

17.13 If candidate A's name or photograph appears in an EA of candidate B to indicate support for candidate B, the issue of whether the expenditure incurred for the EA should be borne by candidate A will 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 the name and photograph 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].

³⁸ Personal data should not be kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is used.

Scenario B

If candidate B wishes to publish the EAs 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 candidates A and B in equal or proportional shares as their respective election expenses, to be calculated by the respective proportion of the size of the advertisement.

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 candidate A and candidate B should seek written consent of support from each other before publishing the joint EA.

17.14 It is not uncommon for candidates to put photographs with the appearance of other persons (who may include other candidates standing for the same election) in their EAs to show their past activities. Candidates should exercise due care in handling photographs in their EAs. If a candidate includes such a photograph in his/her EA and the publication of that EA implies or is very likely to cause electors to believe that the candidate has obtained the support of the persons appearing in the photograph, prior written consent from the persons concerned must be obtained by the candidate **before** the publication of the EA. Otherwise, the candidate should take effective measures to avoid implying or causing electors to believe that he/she has obtained the support of the persons appearing in the photograph. For instance, if an EA carries a photograph of the candidate attending an activity with other attendees, the candidate may add a caption specifying the particular nature and relevant information of the event underneath the photograph in such a way that, to any reasonable and neutral person (as opposed to the candidate or any other person publishing or authorising the publication of the EA), it will not imply or will

not be likely to cause the beholder to believe that the candidate has obtained the support of those persons appearing in the photograph. However, if the photograph concerned is still likely to cause electors to believe that the candidate has obtained the support of those persons appearing in the photograph, it is still an offence even if such an EA contains a statement to the effect that the EA does not imply that support of those persons has been obtained [s 27(4) of the ECICO]. In such circumstances, prior written consent of support from those persons must be obtained by the candidate.

17.15 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.

17.16 According to the PD(P)O, any data (including images) relating to a living individual and from which it is practicable to ascertain the identity of the individual³⁹, constitute personal data of the individual. The use of such image(s) without the consent of the person concerned for a purpose other than the original purpose of data collection, or for a purpose that is not directly related to the original purpose of data collection, constitutes infringement of personal data. Therefore, when using such image(s), candidates should observe the relevant data protection principle as set out in the “Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public” at **Appendix 7**.

³⁹ As advised by the PCPD, an example of such data can be an image with a caption, from which it is practicable for the identity of the individual in the image to be directly ascertained; or it can be an image with no caption and additional information, but it is practicable for the identity of the individual in the image to be indirectly ascertained (the individual in the image is generally recognised by the public).

Written Consent

17.17 As stated in para. 17.4 above, a written consent cannot consist of several documents, nor can it be inferred from a chain of correspondence or messages. The EAC has prepared a sample form for candidates to seek **consent of support** in writing **from a person or an organisation**. After the publication in the Gazette of the notice specifying the period and place for the submission of nomination forms, the form of written consent will be available at the offices of the relevant RO and for download from the HAD website. The form will also be provided to candidates upon their submission of nomination forms for the election. It should be noted that the form is designed to cover a specific Rural Area in a particular RR election. A candidate who subsequently switches to another Rural Area should seek afresh the consent from the person or organisation concerned.

17.18 Among the allegations and complaints received in the past, there were cases where the compliance of the law by a candidate had to be ascertained. Therefore, candidates are required to post the written consent for EAs onto the Candidate's Platform or Central Platform, or deposit with the relevant RO a copy of the written consent in the manner as set out in para. 7.57 of Chapter 7 [s 92 of the EP (RRE) Reg]. If consent has been revoked, candidates are 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. 7.57 of Chapter 7. Copies of the written consent and notice 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 a specified location.

Powers of the Court to Grant Relief

17.19 Under 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/her from the criminal liability (for details please refer to Part VI of Chapter 16). For previous court's decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 7.73 of Chapter 7 for the relevant judgments.

Penalty

17.20 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.