CHAPTER 17

NAMEDROPPING

PART I : CLAIM OF SUPPORT

17.1 It is an offence if a candidate includes a person's or an organisation's, or that is substantially similar to the name, logo or pictorial representation of or associated with that person or that organisation in his EA in a manner as to imply, or to be likely to cause electors to believe that the candidate (or anyone associated with him) has obtained 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 his/its name, logo, or pictorial representation in such advertisement; or

(b) the candidate does not personally/authorise anyone to request or direct the inclusion of the name, logo, or pictorial representation of the relevant person or organisation in that advertisement (e.g. the content of the EA is provided by the supporter on his own initiative).

If the EA meets the conditions in (a) or (b) of this paragraph, and the relevant person or organisation has provided any content of the advertisement, the candidate must not modify or authorise any person to modify the name, logo, or pictorial representation or any provided content unless **written consent** has been obtained from the relevant person or organisation.

[S 27 of the ECICO]

17.2 It is still an offence even if the EA contains a statement to the effect that it does not imply support by the person or organisation for 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 statutory requirements. Additionally, a consent of support, regardless of the number of individual(s) by whom it is signed, has to be a single document and cannot be composed of multiple documents or inferred from a chain of correspondences or messages.

17.3 The EAC has prepared a sample form to facilitate candidates to seek **consent of support** in writing from **a person or an organisation**. The sample 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 relevant ROs or download it from the RR Election website (www.had.gov.hk/rre).

17.4 If a supporter only provides the consent of support to a candidate in his personal capacity and he intends to mention his office title(s) or the name of his organisation, he should avoid giving the impression that the relevant organisation also supports the candidate. If the EA indicates support by the relevant organisation, approval given by the governing body of the organisation or a resolution passed at a general meeting is required.

17.5 Moreover, when including personal data[56] (which may include the name, logo, pictorial representation and/or the content) of the relevant person in an EA, the candidate shall take all practicable steps to ensure that the relevant personal data is correct and accurate. Otherwise, it may contravene the Data Protection Principle 2(1)[57] of Schedule 1 to the PD(P)O.

17.6 Regarding EAs published by candidates on online platforms, some persons or organisations may show their support to a candidate out of their own initiatives by giving "like" or response to the EAs published by the candidates or including their names, logos or pictorial representations in the EAs. If the candidate has not requested or directed, or authorised any person to request or direct the relevant person or organisation to give support, then the candidate is not required to seek the prior written consent from the relevant person. Yet, the candidate is not allowed to modify the relevant EA before obtaining the consent from the relevant person or organisation. Nevertheless, if the candidate invites a person to show his support by giving response to an online EA or participating in a live streaming electioneering activity, the candidate should obtain the prior written consent from the person. [S 27(1), (1A) and (1B) of the ECICO]

17.7 It is an offence for a person to make false claim of support. It is also an offence for a person to give information to a candidate or candidates which he knows or ought to know is materially false or misleading for the purpose of promoting or prejudicing the election of the candidate or candidates. [S 27(6) of the ECICO]

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[56] According to s 2(1) of the PD(P)O, 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.

[57] Data Protection Principle 2(1) of the PD(P)O: 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.

Consent of Support

17.8 For the avoidance of doubt, the Consent of Support should set out clearly in what capacity the supporter is expressing support:

(a) support given in his personal capacity - the supporter's office title(s) should not be mentioned in the candidate's EAs or electioneering activities;

(b) support where his office title(s) may be mentioned (without mention of the name of the organisation concerned) - the Consent of Support 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 the usage of the information does not give a wrong impression that the organisation(s) concerned support(s) that candidate.

For example, if an 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 the EA is to be posted in the school or the building in which the person is serving, it will be more desirable for the candidate to seek the relevant organisation's prior written approval;

(c) support where his office title(s) and the name of the organisation concerned may be mentioned - the candidate should ensure that the supporter has obtained the prior written approval of his organisation in accordance with the organisation's internal rules and procedures before using both the supporter's office title(s) and the name of the organisation. In case of doubt, the candidate or his supporter should

consult the relevant organisation regarding its internal rules and procedures. The candidate should avoid giving a wrong impression that the whole organisation supports that candidate; and

(d) support given in the capacity of an organisation - the Consent of Support 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 of Support must be signed by an authorised person of the organisation (such as the director, chairman or chief executive, etc. of that organisation). [S 27(5) of the ECICO]

17.9 A person or an organisation may support more than one candidate (even candidates who are contesting in the same Rural Area), but the above situation must be stated in the Consent of Support.

Revocation of Consent of Support

17.10 A consent of support given to a candidate may be revoked by a person or an organisation. In order to avoid dispute, if the consent of support to a candidate is revoked, the person or organisation should send a notice of the revocation of the consent of support to the candidate concerned.

17.11 Candidates are required to upload the written consent for the relevant EAs to 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. 7.40 of Chapter 7. Candidates are also **required to upload** the notice of revocation of the consent of support to the platforms concerned **or notify** the relevant RO that such consent of support has been revoked in the manner as set out in para. 7.40 of Chapter 7. 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 92(2) and (3) of the EP (RRE) Reg]

17.12 After a consent of support for a candidate is revoked, the candidate concerned should immediately cease to publish any EA which contains the person or organisation that has revoked the consent. Moreover, in accordance with the requirements of the Data Protection 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 relevant person is not retained for a period longer than necessary[58]. 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 the purpose for which it was used, unless any such erasure is prohibited under any law or it is in the public interest for the data not to be erased.

NOTE:

The costs incurred for the production of EAs bearing such claim of support should be regarded as the candidate's election expenses and be declared in the election return.

17.13 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:

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, that EA should not be regarded as a joint EA. The election expenses incurred should be counted towards

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[58] That is the time required for retaining the personal data for the fulfilment of the purpose (including any directly related purpose) for which the data is or is to be used.

candidate B's election expenses only. In such circumstances, candidate B has to obtain 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, the relevant EA will be regarded as a joint EA. Candidate A and candidate B should obtain prior written consent of support from each other before publishing the joint EA, and candidate B must also obtain prior written authorisation from candidate A to be the election expense agent. 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. [S 27 of the ECICO]

17.14 If a candidate uses photos in his EAs to show the activities he attended in the past and there are other persons in the photos (which may include other candidates in the same election), then publishing the EAs may imply or is likely to cause electors to believe that that candidate has obtained the support of those persons in the photos. Therefore, the candidate must obtain written consent from the relevant persons before publishing that EA; otherwise, the candidate should take effective measures to avoid making electors believe that the persons in the photos support the candidate. For instance, if an EA includes a photo of the candidate and other persons participating in an activity, the candidate may add a caption below the photo specifying the particular nature and relevant information of the activity, so as to ensure that any reasonable and neutral person would not mistakenly 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 it does not imply the support of the persons in the photo has been obtained, the candidate still has to obtain the prior written consent of support from those persons. Failure to do so is an offence. [S 27(4) of the ECICO]

17.15 The law does not stipulate a minimum age for individuals signing the 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 of Support.

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

17.17 As images may be regarded as personal data, candidates should be mindful of whether the use of a person's image is consistent with or directly related to the original purpose of collecting such image. Additionally, the Privacy Commissioner for Personal Data has published the "Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research Organisations and Members of the Public" (see **Appendix 7**), which serves as a general reference on matters that candidates need to note in respect of the collection, holding, processing and use of personal data when conducting electioneering activities.

PART II: COURT'S POWER AND PENALTY

17.18 If a candidate contravenes any requirements relating to 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 para. 7.55 of Chapter 7 and Part VI of Chapter 16). [S 31 of the ECICO]

17.19 The Court could grant an injunction to prohibit the publication of any materially false or misleading statement or claim of support. A candidate in the same Rural Area, an election agent, an elector of the Rural Area concerned and the person or body to whom or which the false information is related could apply for the injunction. [S 28 of the ECICO]

17.20 It is illegal conduct if any person makes a false claim of support, and he is liable to a fine of $200,000 and to imprisonment for 3 years. [Ss 22(1) and 27 of the ECICO]