

## CHAPTER 16

### ELECTION EXPENSES AND ELECTION DONATIONS

#### PART I : GENERAL

16.1 The law has prescribed the maximum amount of election expenses in order to ensure that all candidates compete on a level playing field within a reasonable level of expenditures. Candidates must submit a return and declaration of election expenses and election donations (“election return”) to the CEO after the election, listing the election expenses incurred and the election donations received by them and their election expense agents. *[Added in January 2022]*

16.2 “Candidate” is defined as a person who stands nominated as a candidate at an election, including a person who, at any time before the close of nomination period for an election, has publicly declared an intention to stand for the election. “Election expenses” is defined as expenses incurred or to be incurred for the purpose of promoting or prejudicing the election of a candidate, without any time constraint, including the expenses incurred before, during or after the election period. Please refer to Part II of this chapter for details. “Election expense agent” refers to a person authorised by a candidate to incur election expenses at an election on the candidate’s behalf. *[Added in January 2022]*

16.3 To ensure that election expenses do not exceed the statutory maximum amount, the law stipulates that only candidates and their authorised election expense agents may incur election expenses. In other words, persons other than the candidates and their election expense agents are not permitted to incur any election expense, or else an illegal conduct is engaged. Nevertheless,

a third party (other than a candidate and a candidate's election expense agents) who publishes an EA on the Internet is exempt from the relevant criminal liability if the only election expenses incurred are either electricity charges and/or charges necessary for accessing the Internet. *[Added in January 2022]*

16.4 Election expenses incurred by a third party without the consent or knowledge of a candidate are not attributed to the candidate concerned and the third party has to bear the expenses. However, if the election expenses are incurred by the third party under the instruction of the candidate, especially when the maximum amount of election expenses is exceeded, the candidate should be held legally responsible. *[Added in January 2022]*

16.5 If the expenses incurred by a candidate are partly related to the election and are part of the recurrent expenditures for other purposes, the candidate is required to apportion the election-related expenses and include them in the election return. The apportionment can be made on a pro rata basis having regard to the time and usage involved. *[Added in January 2022]*

16.6 Voluntary service is defined as any service provided by any natural person voluntarily, personally and free of charge in his/her own time for the purpose of promoting the election of a candidate or prejudicing the election of other candidates. Voluntary service is the only service rendered free of charge which can be excluded from being counted as election expenses. Nonetheless, goods or materials incidental to the provision of voluntary service and given to the candidate will be counted as election donations; such donations will be counted as election expenses when used. *[Added in January 2022]*

## **PART II : WHAT CONSTITUTES ELECTION EXPENSES**

16.7 For the provisions relating to election expenses, please refer to the ECICO.

16.8 **“Election expenses”**, in relation to a candidate at an election, means expenses incurred or to be incurred **before, during or after the election period**, by or on behalf of the candidate for the purpose of promoting the election of the candidate, or prejudicing the election of another candidate or other candidates, and includes the value of election donations consisting of goods and services used for that purpose [s 2 of the ECICO]. “Candidate” includes a person **who has publicly declared an intention to stand as a candidate** at the CE election at any time before the close of the nominations for the election, regardless of whether he/she has submitted his/her nomination form, he/she has withdrawn his/her nomination after submission of the nomination form, or his/her nomination is ruled invalid by the CERC [s 2 of the ECICO]. Regarding what it means to “have publicly declared an intention to stand as a candidate”, it depends on the overall circumstances as well as the objective facts and evidence. As to whether a particular item of expense would amount to election expenses, candidates and the relevant persons concerned should take heed of the points made by the CFA in a case relating to the 2008 LegCo General Election (FACV 2/2012), which state that expenses are likely to qualify as “election expenses” if they meet the following five criteria<sup>19</sup>:

- (a) They have been incurred by or on behalf of a candidate (as such a person is defined under s 2(1) of the ECICO);
- (b) Having identified the activities or matters to which the relevant expenses relate, such activities or matters are referable to a specific election;

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<sup>19</sup> (a) If there is any inconsistency or ambiguity between the English version and the Chinese version of the relevant criteria and issues, the English version shall prevail.

(b) If you have doubt as to whether an election expense falls within the criteria as mentioned above or whether an expense should be regarded as an election expense, you should consult independent legal advisor, and any legal fees so incurred will not be regarded as election expenses.

- (c) Such activities or matters go to the conduct or management of the election, in particular to the machinery of the election;
- (d) The expenses were incurred for the purpose of promoting the election of the relevant candidate or prejudicing the election of another candidate; and
- (e) The activities or matters financed by the expenses have taken place or occurred either during the election period (as defined in s 2(1) of the ECICO) or during the period when the relevant person was a candidate.

The following two issues should also be noted:

- (a) The date when the relevant expenses were incurred should be ascertained (although this is not a critical question since election expenses may be incurred before, during or after an election period); and
- (b) In relation to the relevant activities or matters of which the expense may be incurred for more than one purpose, it should be considered whether an apportionment exercise appropriate between election expenses and non-election expenses is necessary.

*[Amended in January 2007, October 2016 and January 2022]*

16.9 A candidate may receive **election donations** for the purpose of meeting the costs of his/her election expenses. “Election donations”, in relation to a candidate at an election, means any of the following donations:

*[Amended in November 2011]*

- (a) any money given to or in respect of the candidate for the purpose of meeting or contributing towards meeting the election expenses;
- (b) any goods given to or in respect of the candidate for the purpose of promoting his/her election or of prejudicing the election of another candidate or other candidates and includes any goods incidentally given to the provision of voluntary service; or
- (c) any service provided to or in respect of the candidate for the purpose of promoting his/her election or of prejudicing the election of another candidate or other candidates, but does not include voluntary service (see para. 16.31 below).

[S 2 of the ECICO]

All such donations, whether in cash or in kind, are counted as election expenses when they are spent or used. (For details, see Part IV of this chapter.)

16.10 Whether an expense incurred should be counted as election expenses depends on the facts of each case. As long as the expense is incurred for the purpose of:

- (a) promoting the election of a candidate; or
- (b) prejudicing the election of another candidate or other candidates;

it will be counted as an election expense, irrespective of whether it is incurred before, during or after the election period, and regardless of the source of funding. *[Amended in November 2011]*

16.11 Whether a particular item of expenditure should be regarded as an election expense depends on the circumstances of the case. In addition to the actual use of the expenses, one should also take into account the nature, circumstances and context of the expenditure incurred. If an expense is used for more than one purpose, the expense should be apportioned between election-related purpose and other purposes. The candidate concerned should include relevant particulars of the expense in his/her election return. As a general principle, time and usage are relevant factors for consideration. The candidate may refer to the examples on the apportionment of expenses shown in the guide and the video on the completion of election return mentioned in para. 16.35(c) below (see also para. 16.33 below). The candidate may seek professional advice on the apportionment of expenses when necessary. Any fees incurred for such professional advice will not be regarded as election expenses. *[Amended in October 2016 and January 2022]*

16.12 Staff and other resources available for use by a candidate in his/her official capacity or when discharging his/her duties for the purpose of promoting his/her candidature in the election should be counted as an election expense. A list of common expenditure items to be counted towards election expenses is at **Appendix 14**. The list serves only as an illustration and should not be regarded as taking precedence over the legislation. Candidates should consult a legal adviser in case of doubt on whether an expenditure item should be counted as an election expense. Any legal fees so incurred will not be regarded as election expenses. *[Amended in January 2007 and October 2016]*

16.13 A candidate shall not use any public resources in election activities. However, if by virtue of his/her post or job, the candidate is entitled to the use for private purposes of any security, transportation, secretarial services and living quarters made available with public resources, and the use of such resources is unavoidably involved in his/her election activities in certain circumstances for the reason that he/she has to continue to hold the post or perform the job when standing for election, it will not be considered as use of

public resources in election activities in this context. Please see **Appendix 15** on the detailed responses given by the EAC in 2001 to an enquiry from a candidate for the 2002 CE Election about the use of public resources by an incumbent CE seeking re-election. Under Article 46 of the Basic Law, the CE may serve for not more than two consecutive terms. Therefore, an incumbent CE may seek re-election for a second term. In such case, the use of resources provided by the Government for his/her private use in electioneering may in certain circumstances become unavoidable. In this regard, if the use of such resources by an incumbent CE in electioneering is unavoidable and occasional in nature, it will not constitute a breach of the guidelines but the relevant part of the costs involved has to be accounted for as his/her election expenses. *[Amended in January 2007, October 2016 and January 2022]*

16.14 For an incumbent CE seeking re-election for a second term, the subsisting law does not require him/her to resign or take leave before standing for the election. Therefore, as mentioned in paras. 16.12 and 16.13 above, it may well become unavoidable for an incumbent CE to, after he/she stands for election, use the security, transportation, secretarial services and living quarters an incumbent CE is entitled to use for his/her private purposes by virtue of his/her post or job. As in the past, such a situation will not be considered as use of public resources in election activities in this context. When an incumbent CE wishes to seek re-election for a second term, he/she should arrange for the resources himself/herself for his/her electioneering activities. But, if the use of the above resources are unavoidably involved in his/her election activities in certain circumstances because of the continued need to discharge his/her duties as the CE, he/she is required to apportion clearly the use of resources between the two different purposes, i.e. CE duties versus electioneering activities, and to include the relevant items in his/her election expenses and set out the items clearly in the election return. For example, if an election meeting is to be held at a venue in the CE living quarters, the electioneering team is required to keep a clear record of the time spent and assess the rental for the venue at which the meeting is to be held at a reasonable rate. The election expenses would be

calculated by apportioning the time and space used for the purpose of electioneering activity at the venue on a pro rata basis. An incumbent CE seeking re-election for a second term and his/her electioneering team should keep a clear record of the particulars, such as time and usage, relating to the use of the above resources for conducting electioneering activities, and calculate prudently the relevant cost to be accounted for as election expenses. In case of doubt, the candidate should seek professional advice on the apportionment of expenses. *[Added in January 2022]*

### **PART III : WHO MAY INCUR ELECTION EXPENSES AND THE LIMIT**

#### **Maximum Amount of Election Expenses**

16.15 The maximum amount of election expenses for the CE election (i.e. \$17,600,000) is prescribed by the Maximum Amount of Election Expenses (Chief Executive Election) Regulation made by the CE in Council pursuant to s 45 of the ECICO. This expense limit serves to control the scale of election campaigns and prevent candidates with ample financial resources from having an unfair advantage. *[Amended in November 2011, October 2016 and January 2022]*

16.16 A candidate and his/her election expense agents must not incur election expenses in excess of the maximum amount prescribed [s 24(1) of the ECICO].

#### **Persons Appointed to Incur Election Expenses**

16.17 Only a candidate or a person who has been duly appointed by a candidate as the candidate's election expense agent may incur election expenses [s 23(1) of the ECICO]. The appointment should follow the procedures

specified in Part VI of Chapter 7.

16.18 As a candidate has to declare that he/she stands at the election in an individual capacity, he/she must ensure that the campaign activities for which he/she has authorised expense are consistent with the declaration and will not lead the electors or the public to believe that he/she is representing his/her party, if any. A candidate's freedom to accept support from any organisation is subject to this condition.

16.19 Any person who is going to carry out **negative campaigning (i.e. canvassing against other candidates)** for or for the benefit of a candidate and hence incurring expenses should obtain the prior appointment by the candidate to act as the election expense agent of the candidate. The expenses will be counted towards the election expenses of the candidate. If the negative campaigning includes EAs, it should also comply with all the requirements of the ECICO and of the EP (CEE) Reg.

16.20 Candidates who have the intention or plan to run for an election should inform the organisations, with which they are associated and which may incur expenses to support them, of these requirements as soon as possible to prevent the organisations from committing an offence out of ignorance.

16.21 A candidate is responsible for the whole amount of his/her election expenses. If the total amount of expenses incurred by the candidate and/or the person acting on his/her behalf exceeds the prescribed limit, the candidate shall be liable for contravening the law, unless he/she can prove that the excess amount is incurred without his/her consent or authorisation and is not due to any negligence on his/her part. Besides, the election expense agent should not incur election expenses exceeding the limit authorised by the candidate, or else he/she contravenes s 23(4) of the ECICO. [Ss 23 and 24 of the ECICO] *[Amended in November 2011]*

## **PART IV : ELECTION DONATIONS**

### **General Requirements**

16.22 Any person who has made clear his/her intentions to stand as a candidate in an election may receive election donations for meeting his/her election expenses only.

16.23 Election donations can only be used for meeting, or contributing towards meeting, a candidate's election expenses. If an election donation consists of goods or services, it can only be used for the purpose of promoting the election of the candidate or of prejudicing the election of another candidate or other candidates [s 18 of the ECICO].

16.24 Election donations can be made in cash or in kind, and include any money value, any valuable security or other equivalent of money and any valuable consideration. Election donations in kind include goods and services obtained free of charge or at a discount. All spent or used election donations, whether in cash or in kind, received before, during or after the election period (in relation to machinery of the election), are counted towards the total election expenses, and are subject to the maximum amount prescribed. *[Amended in October 2016]*

16.25 Any unspent or unused election donations must be given to charitable institution(s) or trust(s) of a public character chosen by the candidate(s). Any amount of election donations that exceeds the maximum amount of election expenses must also be given to such charitable institution(s) or trust(s). It must be done before the election return is lodged in accordance with s 37 of the ECICO. [S 19(3), (4) and (5) of the ECICO] *[Amended in November 2011]*

16.26 Since the only lawful usage for election donations is to be spent for meeting or contributing towards meeting election expenses, donations are often regarded as election expenses. Every item of election expense which is avoided or reduced as a result of the provision of goods or services free of charge or at a discount normally involves a corresponding item of election donation. The only exception is voluntary services obtained which are not treated as election donations (however, any goods incidentally given to the provision of a voluntary service will be counted as an election donation). Relevant details are elaborated in paras. 16.29 to 16.31 below.

16.27 On receiving an election donation in the form of money or in kind, of more than \$1,000 in value, a candidate must issue to the donor a receipt which specifies the name and address of the donor (as supplied by the donor) as well as the particulars of the donation. A standard form of receipt is made available at the REO and will be given to a candidate when he/she submits the nomination form. Though it is common that some donors would like to make it anonymous, a donation, whether in cash or in kind, more than \$1,000 in value must not be used for election-related purpose unless the donor's name and address (as supplied by the donor) are shown as required by the standard form of donation receipt. Donations over \$1,000 or, in the case of an election donation consisting of goods, of more than \$1,000 in value received from anonymous donors must not be used for meeting election expenses. Instead, it must be given to a charitable institution or trust of a public character chosen by the candidate. [S 19(1) and (2) of the ECICO] *[Amended in October 2016]*

16.28 Any person or organisation acting as an agent to solicit, receive or collect election donations for a candidate or candidates should comply with all the requirements under the ECICO as in the case of election donations received by the candidate(s) direct. To avoid causing confusion to donors/members of the public, the agent is advised to note the points and adopt the good practice suggested in **Appendix 16**. *[Added in October 2016]*

### **Election Donations in Kind**

16.29 Election donations in kind include goods and services obtained free of charge or at a discount. Unless the discount is generally available to all customers, the difference between the market/regular price and the price charged is an election donation and must be declared and included as such and correspondingly as an election expense in the election return. The same principle applies to loans obtained at no interest or at an interest rate lower than usual. Unless the loan conditions are generally available to others, the waived interest must be declared and included as an election donation and election expense in the election return. For premises provided free of charge to a candidate for his/her election campaign, a reasonable amount should be determined as the assessed rental for the premises, and should be declared and included as an election donation and election expense in the election return.  
*[Amended in October 2016]*

16.30 For services or goods obtained free of charge, a candidate must include in the election return their estimated value as in the case of expenses being incurred. Where the services or goods are furnished by a person who deals in similar services or goods with the public, the estimated value of such services or goods should be assessed at the lowest price at which the person offers his/her services or goods to the public at the time when they are furnished. Where such services or goods are furnished by persons who do not deal in similar services or goods with the public, their estimated value should be assessed at the lowest market retail price at that time.

16.31 **Voluntary service** is the only service rendered free of charge which can be excluded from being counted as election expenses. Nonetheless, goods or materials incidental to the provision of voluntary service and given to the candidate will be counted as election donations. Apart from being provided free of charge, the service must be provided by a natural person, voluntarily and personally, in his/her own time for the purpose of promoting the election of the

candidate or candidates, or of prejudicing the election of another candidate or other candidates [s 2 of the ECICO]. Otherwise, the service provided should be treated as an election donation and be counted towards election expenses at a fair estimated value. *[Amended in January 2007 and January 2022]*

## **PART V : ELECTION RETURN**

16.32 A candidate must keep an accurate account of all election expenses incurred and election donations (whether in cash or in kind) received, and **submit to the CEO an election return before the expiry of the period of 60 days after the date on which:**

- (a) the result of the election is published in the Gazette; or**
- (b) the proceedings for the election are declared to have been terminated;**

**or within such extended period as may be allowed by the CFI under the relevant law. The election return must be completed in the specified form.** [S 37(1), (1A) and (1N) of the ECICO] *[Amended in January 2007, October 2016 and January 2022]*

16.33 The election return should set out all the election expenses incurred by the candidate and his/her election expense agent(s). For each election expense of \$500 or more, the return must be accompanied by an invoice and a receipt issued by the goods or service providers [s 37(2)(b) of the ECICO]. The invoice and receipt for an election expense may be submitted in separate documents, or may be included in the same document. Invoices and receipts submitted by a candidate should contain the following particulars, including:

- (a) date;
- (b) details of the expenditure item (i.e. information and amount of the goods or services);
- (c) information of the organisation or person (other than the candidate himself/herself) providing the goods or services; and
- (d) the information which proves that the organisation or person (other than the candidate himself/herself) providing the goods or services has received the relevant payment in full (e.g. name and signature of the payee or stamp of the organisation or signature of its authorised representative).

*[Amended in November 2011, October 2016 and January 2022]*

16.34 A candidate must also set out in the election return all election donations, whether in cash or in kind (including goods and services obtained free of charge or at a discount), received by or on behalf of him/her in connection with the election. The election return must be accompanied by copies of receipts issued by the candidate for each election donation of more than \$1,000 in value and copies of receipts issued by charitable institutions or trusts of a public character for the collection of any unspent or unused election donations, anonymous donations of more than \$1,000 in value or election donations exceeding the limit of election expenses. A declaration verifying the contents of the election return must also be submitted together with the election return. [S 37 of the ECICO] *[Amended in November 2011, October 2016 and January 2022]*

16.35 At the time when a candidate submits his/her nomination form, he/she will be given:

- (a) the specified form for election return mentioned in para. 16.32 above, together with a standard form of receipt for election donations mentioned in para. 16.27 above;
- (b) the standard form for advance return and declaration of election donations (see paras. 16.42 to 16.44 below); *[Amended in January 2010, November 2011 and October 2016]*
- (c) a guide and a video on how to complete the election return; and
- (d) a full set of Frequently Asked Questions (“FAQs”) relating to the election return.

Candidates should read the explanatory notes attached to the election return carefully, and refer to the guide, the video and the FAQs before completing the election return. *[Amended in October 2016 and January 2022]*

### **Statutory Relief Mechanism for Errors and False Statements**

16.36 If a candidate is unable or fails to send to the CEO the election return before the statutory deadline (please see para. 16.32 above) due to his/her own illness or absence from Hong Kong, or the death, illness, absence from Hong Kong or misconduct of any agent or employee of the candidate, or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any other reasonable cause, and was not due to the candidate’s bad faith, he/she can make an application to the CFI for an order allowing him/her to send in the election return within a further period as specified by the CFI [s 40(1) and (2) of the ECICO]. The legal costs so incurred will not be regarded as his/her election expenses. For previous court’s decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 8.68 of Chapter 8 for the relevant judgments. *[Amended in November 2011, October 2016 and January 2022]*

16.37 If a candidate makes an error or a false statement in the election return due to misconduct of any agent or employee of the candidate, or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any other reasonable cause, and was not due to the candidate's bad faith, he/she may apply to the CFI for an order allowing him/her to correct any error or false statement in the election return or in any document accompanying the election return [s 40(3) and (4) of the ECICO]. The legal costs so incurred will not be regarded as his/her election expenses. For previous court's decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 8.68 of Chapter 8 for the relevant judgments. *[Added in November 2011 and amended in October 2016 and January 2022]*

16.38 Notwithstanding the provision set out in para. 16.37 above, if a candidate makes any error and/or false statement in the election return, the nature of which is either a failure to set out in the election return any election expense of the candidate at the election or any election donation received by or on behalf of the candidate in connection with the election, or incorrectness in the amount of any election expense or any election donation, **and** the aggregate value of the error(s) and/or false statement(s) does **not** exceed \$50,000 [item (1) of the Schedule to the ECICO], he/she may, subject to the conditions set out in para. 16.39 below, seek to have the error and/or false statement rectified in accordance with a simplified relief arrangement for minor errors or false statements as provided under s 37A of the ECICO. Under the arrangement, the candidate may write to notify the CEO of his/her request for lodging a revised election return to rectify the error and/or false statement and provide the necessary details for consideration of the request. If the CEO deems it appropriate to allow the candidate to lodge a revised election return under the simplified relief arrangement, the CEO would issue a notice to the candidate. Upon receipt of the notice, the candidate may, within the specified period, lodge with the CEO a revised election return, which should be a copy of the original election return earlier submitted to the CEO marked with the necessary revision to have the error(s) or false statement(s) in question corrected. An error or false statement

made in an election return also includes an error or false statement in any document accompanying the election return; or a failure to send any document required by s 37(2)(b) of the ECICO in relation to the election return [s 37A(12) of the ECICO]. *[Added in November 2011, amended in October 2016 and January 2022]*

16.39 A revised election return lodged by a candidate is of no effect unless it is:

- (a) lodged within 30 days after the date on which the candidate receives a notice from the CEO relating to the error(s) and/or false statement(s) in the election return;
- (b) accompanied by all relevant documents as required under s 37(2)(b) of the ECICO (e.g. invoice and/or receipt) and, if applicable, an explanation; and
- (c) accompanied by a declaration to be made by the candidate in a specified form verifying the contents of the revised election return.

[S 37A(6) of the ECICO]

A copy of the revised election return made under the relief arrangement cannot be withdrawn or further amended after it has been lodged with the CEO. If the candidate fails to correct the error(s) or false statement(s) within the specified period, the election return will be subject to the normal checking and investigation under the ECICO. *[Added in November 2011 and amended in October 2016]*

16.40 **If, after including the cumulative amount of errors or false statements, the aggregate amount of election expenses incurred at or in connection with the election, exceeds the maximum amount of election**

**expenses prescribed for a candidate, the candidate engages in an illegal conduct under s 24 of the ECICO. In such case, the relief arrangement will not be applicable.** If the ICAC has received complaints or information indicating that a candidate may have made a statement that he/she knows or ought to know is materially false or misleading (an act which amounts to corrupt conduct under s 20 of the ECICO), the ICAC will conduct investigation into the case despite the relief arrangement set out above. The rectifications of the election return under the relief arrangement will not exempt the candidate from being investigated or subsequently prosecuted under the ECICO in such circumstances. Moreover, this relief arrangement will not relieve the candidate from liabilities for other offences provided under the ECICO if the election return concerned is in breach of any such provisions. [S 37A of the ECICO] *[Added in November 2011]*

16.41 If the candidate finds himself/herself in any of the situations set out in paras. 16.36 and 16.37 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 16.38, it is advisable for him/her to make an application to the CFI and inform the REO as soon as possible. The legal costs so incurred will not be regarded as his/her election expenses. It is a corrupt conduct if a candidate who, in an election return lodged under s 37 of the ECICO or a copy of an election return lodged under s 37A of the ECICO, makes a statement that he/she knows or ought to know is materially false or misleading [s 20 of the ECICO]. *[Amended in November 2011]*

## **PART VI : ADVANCE RETURN OF ELECTION DONATIONS**

16.42 Any candidate who is an incumbent public servant under the POBO, e.g. a serving member of the LegCo or a DC, etc., may disclose to the CEO in advance any election donations received. This may enable the incumbent member to avoid any inadvertent contravention of the provisions of the POBO relating to the acceptance of “advantages”. The election donations

so disclosed must also be set out in the election return to be submitted to the CEO before the expiry of the period, or the extended period provided under s 37 of the ECICO for lodging an election return (see para. 16.32 above) [s 37(1) and (1A) of the ECICO]. Candidates must also observe the general provisions regarding election donations in Part IV. *[Amended in October 2016]*

16.43 Any **advance return of election donations** must be made on the standard form mentioned in para. 16.35 above. *[Amended in January 2010 and November 2011]*

16.44 Depending on the time and the number of election donations received, a candidate may submit any number of advance returns of election donations to the CEO. *[Amended in January 2010 and November 2011]*

## **PART VII : ENFORCEMENT AND PENALTY**

### **Enforcement**

16.45 The election returns will be made available at the REO for public inspection up to the 60<sup>th</sup> day before the first anniversary of the date of the deadline for lodging the relevant election return (disregarding any order made by the CFI under s 40 of the ECICO allowing a candidate to lodge an election return within a further period as specified by the CFI) (please see para. 16.32 above). Copies of the election returns will be furnished to any person upon request subject to the payment of a copying fee at a fixed rate. [S 41 of the ECICO] *[Amended in October 2016 and January 2022]*

16.46 Any complaint or report of breach of the relevant legislation may be made to the RO, the REO, the EAC or its Complaints Committee direct. The EAC or its Complaints Committee may, after consideration, refer the cases to the relevant authorities for investigation and prosecution.

16.47 The REO will check all election returns. Irregularities detected will be reported to the relevant authorities for investigation.

### **Penalties**

16.48 It is an illegal conduct for a candidate to incur election expenses in excess of the maximum amount prescribed and for an election expense agent to incur election expenses in excess of the amount authorised. It is also an illegal conduct for a person, other than a candidate or a candidate's election expense agent, to incur election expenses. In these cases, the offender is liable to a fine of \$200,000 and to imprisonment for 3 years [ss 22, 23 and 24 of the ECICO]. In accordance with s 23(1A) of the ECICO, a person (other than a candidate or an election expense agent) is exempt from the relevant criminal liability under s 23(1) of the ECICO if the person publishes an EA on the Internet, and the only election expenses incurred by the person for that purpose are electricity charges and charges necessary for accessing the Internet, other either one of them. However, if a candidate, a candidate's election expense agent or a person authorised by a candidate or his/her election expense agent publishes an EA of the candidate on the Internet, any costs incurred should be included in the election expenses of the candidate even though the costs only involve electricity charges and/or charges necessary for accessing the Internet. *[Amended in January 2022]*

16.49 A candidate who uses any election donation for any purpose other than for meeting his/her election expenses, or fails to dispose of unspent or excessive election donations in accordance with s 19 of the ECICO engages in corrupt conduct and shall be liable to a fine of \$500,000 and to imprisonment for 7 years [ss 6, 18 and 19 of the ECICO].

16.50 If a candidate fails to submit the election return by the prescribed date or fails to provide an accurate account of all election expenses incurred and all election donations received with the required supporting invoices and receipts

issued by the recipient(s) of the payments, he/she commits an offence and shall be liable to a fine of \$200,000 and to imprisonment for 3 years [s 38(1) of the ECICO]. *[Amended in November 2011 and October 2016]*

16.51 A candidate who knowingly makes a materially false or misleading statement in his/her election return lodged under s 37 of the ECICO or a copy of an election return lodged under s 37A of the ECICO, engages in corrupt conduct and shall be liable to a fine of \$500,000 and to imprisonment for 7 years [ss 6 and 20 of the ECICO]. *[Amended in January 2010, November 2011 and October 2016]*

16.52 If a candidate, who, having been elected to the office of the CE, acts in the office without filing an election return before the statutory deadline, he/she commits an offence and shall be liable to a fine of \$5,000 for each day for acting in the office of the CE in contravention of s 37 of the ECICO [s 39(1) and (2) of the ECICO]. *[Amended in October 2016]*

16.53 A person convicted of a **corrupt or illegal conduct** of the ECICO will, in addition to the penalties set out in paras. 16.48 to 16.52 above, be disqualified:

- (a) from being nominated as a candidate for the election of, or from being elected as, the CE, a member of the LegCo or DC or a RR, if the election is held within 5 years after the date of conviction [ss 14 and 20 of the CEEO, s 39 of the Legislative Council Ordinance (Cap 542) (“LCO”), s 21 of the District Councils Ordinance (Cap 547) (“DCO”) and s 23 of the Rural Representative Election Ordinance (Cap 576) (“RREO”)]; and
- (b) from being nominated as a candidate at the EC Subsector Elections, and from being elected as a member of the EC if the election is held within 5 years after the date of conviction, or from being nominated as an EC member for 5 years from the date of

conviction, or from being registered as an ex-officio member of the EC within 5 years after the date of conviction [ss 5M, 9 and 18 of the Schedule to the CEEO].

*[Amended in January 2007, January 2010, November 2011, October 2016 and January 2022]*

16.54           If a candidate is convicted of the offence under s 38(1) of the ECICO (i.e. having failed to lodge an election return as required by s 37), apart from facing the penalties set out in para. 16.50 above, he/she will also be subject to the same disqualifications as a person convicted of having engaged in illegal conduct (see para. 16.53 above). [S 38(4) of the ECICO] *[Added in October 2016]*