

Observations made by the Court of Final Appeal
in a case touching upon Election Expenses
(FACV No. 2 of 2012)

1. Expenses are likely to qualify as “election expenses” if they meet the following five criteria:

- (a) They have been incurred by or on behalf of a candidate (as such a person is defined under s 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”)).
- (b) Having identified the activities or matters to which the relevant expenses relate, such activities or matters are referable to a specific election.
- (c) Such activities or matters go to the conduct or management of the election, in particular the election campaign.
- (d) The expenses were incurred for the purpose of promoting the election of the relevant candidate or prejudicing the election of another candidate.
- (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.

2. There are two further inquiries as well:

- (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).
- (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 September 2012]

Notes:

1. If there is any inconsistency or ambiguity between the English version and the Chinese version of this Appendix, the English version shall prevail.
2. 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.