

CHAPTER 15

ELECTION EXPENSES AND ELECTION DONATIONS

PART I : GENERAL

15.1 The law has prescribed the maximum amount of election expenses in order to ensure that all candidates compete on a level playing field and within a reasonable level of expenditures. Candidates must submit an 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 September 2019]*

15.2 “Candidate” is defined as a person who stands nominated as a candidate at an election, and this also includes a person who, at any time before the close of nomination for an election, has publicly declared an intention to stand for the election. “Election expenses” is defined as the expenses related to election campaigns which are incurred for the purpose of promoting or prejudicing the election of a candidate, without time constraint, including those 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 who is authorised by a candidate to incur election expenses on the candidate’s behalf. *[Added in September 2019]*

15.3 To ensure that election expenses will not exceed the statutory upper limit, the law stipulates that only candidates and their authorised election expense agents may incur election expenses and makes it an offence for others to do so. Persons other than the candidates and election expense agents are therefore not permitted to incur any election expenses. Non-compliance is an illegal conduct. Nevertheless, a third party (other than a candidate and his/her

election expense agents) who published an EA on the Internet is exempted 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 September 2019]

15.4 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 himself/herself must be held accountable for the expenses. However, if the election expenses are incurred by the third party under the instruction of the candidate, especially in the case where the upper limit of election expenses is exceeded, the candidate will be subject to legal liabilities.

[Added in September 2019]

15.5 If the expenses incurred by a candidate are partly related to the election and partly the general expenditures for other purposes, the candidate is required to apportion the part of the expenses that is election-related and include it in the election return. Time and usage are relevant factors in the apportionment. *[Added in September 2019]*

15.6 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 may be excluded from being counted as election expenses. Nonetheless, goods or materials given incidental to the provision of voluntary service will be counted as election donation. *[Added in September 2019]*

PART II : WHAT CONSTITUTES ELECTION EXPENSES

15.7 Provisions relating to election expenses can be found in the ECICO.

15.8 **Election expenses**, in relation to a candidate at an election, mean 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 include the value of election donations consisting of goods and services used for that purpose [s 2 of the ECICO]. The term “candidate” includes a person who **has publicly declared an intention to stand as a candidate at an election** at any time before the close of nominations for the election, regardless of whether he/she has submitted his/her nomination form, or after submission of the nomination form, he/she has withdrawn his/her nomination, or his/her nomination is ruled invalid by the RO [s 2 of the ECICO]. A prescribed person who has applied under PCBP (LC & DC) Reg to have his/her emblem registered should not, by that act alone, be treated as having publicly declared an intention to stand for election. *[Amended in September 2007]*

15.9 When considering what expenses would amount to “election expenses” under the law in different circumstances, it is considered both necessary and useful to take heed of the observations made by the CFA in a case relating to the 2008 LegCo General Election, as summarised in **Appendix L** for reference. *[Added in September 2012]*

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

- (a) any money given to or in respect of the candidate for the purpose of meeting or contributing towards meeting the election expenses of the candidate;
- (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 given incidental 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. 15.31 below).

[S 2 of the ECICO]

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

15.11 It is a question of fact in each case whether expenses incurred will or will not be counted as election expenses. For as long as an expense is incurred for the purpose either of:

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

it will be an election expense, irrespective of when it is incurred, either before, during or after the election, and regardless of the source of funding.

[Amended in September 2012]

15.12 Whether a particular item of expenditure should be regarded as an election expense is a question of fact to be answered in the circumstances of each case. Each case should be determined by reference to the purpose behind the expenses, taking account of the nature, circumstances and context of the expenditure. If an expense is incurred for more than one purpose, there is

a need for apportionment of expenses between election-related purposes and any other purposes. The candidate concerned should include relevant particulars in his/her election return. As a general principle, time and usage are relevant factors for consideration. The candidate can make reference to the examples of apportionment in the guide and video mentioned in para. 15.35 (c) below which show how the election return can be completed (see also para. 15.33 below). The candidate may seek professional advice on apportionment of expenses as necessary. Any fees incurred for such professional advice will not be regarded as his/her election expenses. *[Amended in September 2015 and September 2019]*

15.13 Use of staff and other resources which are available to a candidate in his/her official capacity or at work for the purpose of promoting his/her candidature in the election should be counted as election expenses. A list of common expenditure items to be counted towards election expenses is at **Appendix M**. The list is only illustrative and should not be considered as having precedence over the legislation. Candidates should consult their legal advisers if they have doubt as to whether an expenditure item should be counted as an election expense. Any legal fees incurred as a result will not themselves be regarded as election expenses.

15.14 A candidate should not use any public resources for the purpose of promoting his/her election or prejudicing the election of another candidate or other candidates at the election. *[Amended in September 2015]*

PART III : WHO MAY INCUR ELECTION EXPENSES AND THEIR LIMIT

Maximum Amount of Election Expenses

15.15 The maximum amount of election expenses for the DC election is prescribed by the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap 554C) made by the CE in Council pursuant to s 45 of the ECICO. This expense limit controls the extent of election campaigns and serves to prevent candidates with ample financial resources from having an unfair advantage. *[Amended in September 2007]*

15.16 The maximum amount of election expenses for the DC election is \$68,800 [s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation]. *[Amended in September 2007, September 2011, September 2015 and September 2019]*

15.17 A candidate must not incur election expenses in excess of the maximum amount prescribed [s 24(1) of the ECICO].

Persons Authorised to Incur Election Expenses

15.18 Only a candidate or a person who has been duly authorised by a candidate as the candidate's election expense agent may incur election expenses [s 23(1) of the ECICO]. The authorisation should follow the procedures specified in Part VI of Chapter 6. *[Amended in September 2011]*

15.19 Before incurring expenses in carrying out any **negative campaigning (i.e. canvassing against other candidates)** for or for the benefit of a candidate, a person will need the authorisation of the candidate to be the latter's election expense agent. Such expenses will be counted towards

election expenses of the candidate. If the negative campaign includes EAs, all the requirements of the ECICO and of the EAC (EP) (DC) Reg must also be complied with. *[Amended in September 2007]*

15.20 Candidates should advise the organisations, with which they are associated and which may incur expenses to support them, of these requirements as soon as they have any intention or plan to run for an election, to avoid any offences being committed by these organisations out of ignorance.

15.21 A candidate will be responsible for the overall amount of his/her election expenses. In the event the total amount incurred by him/her and/or on his/her behalf exceeds the limit prescribed, he/she will be liable for contravening the law, unless he/she can prove that the excess was incurred without his/her consent, or beyond his/her authorisation, and not due to any negligence on his/her part. The election expense agent, on the other hand, should not incur an amount of election expenses which exceeds the limit authorised by the candidate lest the agent will contravene s 23(4) of the ECICO. *[Ss 23 and 24 of the ECICO] [Amended in September 2007 and September 2011]*

PART IV : ELECTION DONATIONS

General Provisions

15.22 A person who has made known his/her intention to stand as a candidate in an election may receive election donations for the sole purpose of meeting his/her election expenses.

15.23 Election donations can only be used for meeting, or contributing towards meeting, a candidate's election expenses, or in the case of an election

donation consisting of goods or services, 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].

15.24 Election donations can be in cash or in kind, and include any money's worth, 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, which may be received before, during or after an election (in relation to election campaign), are counted towards the total election expenses which are subject to the maximum amount prescribed. *[Amended in September 2019]*

15.25 Any unspent or unused election donations must be given to charitable institution(s) or trust(s) of a public character chosen by the candidate. 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 of the ECICO] *[Amended in September 2011]*

15.26 Since election donations can only be lawfully spent for meeting or contributing towards meeting election expenses, donations and expenses are often corresponding to each other. For every item of election expense which is avoided or reduced by obtaining the goods supplied or services rendered free of charge or at a discount, there should normally be a corresponding item of election donation. The only exception is voluntary services obtained that are not treated as election donations (but any goods given incidental to the provision of a voluntary service will however be counted as an election donation). These points are elaborated in paras. 15.29 to 15.31 below. *[Amended in September 2011]*

15.27 On receiving an election donation, 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 obtainable from the REO and will be provided to a candidate when he/she submits the nomination form. While it is not uncommon that some donors would like to be anonymous, if a donation, in cash or in kind, is more than \$1,000 in value, then only where the donor's name and address (as supplied by the donor) are shown as required by the standard form of donation receipt can it be used for election-related purpose. Donations exceeding \$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 and 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 September 2007 and September 2019]*

15.28 Any person or organisation (including a political party) acting as an agent to solicit, receive or collect election donations for a candidate or some candidates should also comply with all the requirements under the ECICO as if the election donations are received by the candidate(s) direct. To avoid possible confusion to donors/members of the public, the agent is advised to note the points and adopt the good practice as suggested in **Appendix N**. *[Added in September 2015]*

Election Donations in Kind

15.29 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 facility is generally available to others, the interest not charged 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 assessed as the deemed rental for the premises, declared and included as an election donation and election expense in the election return.

15.30 For services or goods obtained free of charge, a candidate must include in the election return their estimated value as if the expenses had been incurred. Where the services or goods are furnished by a person who deals in similar services or goods with the public, their estimated value 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 the time when they are furnished.

15.31 **Voluntary service** is the only service rendered free of charge which may be excluded from being counted as election expenses. Nonetheless, goods or materials given incidental to the provision of voluntary service will be counted as election donation. In addition to being 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 counted towards election expenses at a fair estimated value. *[Amended in September 2007]*

**PART V : RETURN AND DECLARATION OF ELECTION EXPENSES
AND ELECTION DONATIONS (“ELECTION RETURN”)**

15.32 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 in a specified form before the expiry of the period of 30 days after the election is settled in relation to the constituency concerned (and in relation to all the constituencies concerned if the election is held for 2 or more constituencies) or within such extended period as may be allowed by the CFI under the relevant electoral law. An election is settled in relation to a constituency on the date on which any of the following events occurs:**

- (a) the result of the election is notified in the Gazette;**
- (b) the proceedings for the election are declared to have been terminated;**
- (c) the election is declared to have failed.**

[S 37(1), (1F), (1G) and (1N) of the ECICO] *[Amended in September 2007, September 2012 and September 2019]*

15.33 The election return must cover all the election expenses incurred by the candidate and his/her election expense agent(s). It must be submitted with supporting invoices and receipts issued by recipients of the payments for all payments each of \$100³⁰ or above [s 37(2)(b) of the ECICO]. The invoice and receipt for an election expense may be submitted in separate documents, or

³⁰ The Government introduced to the LegCo the Electoral Legislation (Miscellaneous Amendments) Bill 2019 in March 2019 to, among others, raise the amount from \$100 to \$500. When the Guidelines are published, the Bill is still subject to the passage by the LegCo. Candidates and their campaigners should pay attention to the relevant development.

may be contained in the same document. A candidate should submit invoices and receipts with the following particulars, including:

- (a) date;
- (b) details of the expense item (i.e. information and amount of the goods and services);
- (c) information of the organisation or person (other than the candidate himself/herself) providing the goods or services; and
- (d) information supporting 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 recipient, or the stamp of the organisation or signature of its authorised person).

[Amended in September 2011 and September 2019]

15.34 A candidate must also set out all election donations, whether in cash or in kind (including services or goods obtained free of charge or at a discount), received by or on behalf of him/her in connection with the election in the election return. The election return must be accompanied by the copies of receipts issued by the candidate for each election donation of more than \$1,000 in value and the copies of receipts issued by charitable institutions or trusts of a public character for the collection of any unspent election donations, anonymous donations of more than \$1,000 in value or election donations which are in excess of 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 September 2011 and September 2019]*

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

- (a) the specified form for making election return mentioned in para. 15.32 above, together with a standard form of receipt for election donations mentioned in para. 15.27 above;
- (b) the standard form for advance return of election donations (see paras. 15.42 to 15.44 below);
- (c) a guide and a video showing how the election return can be completed; and
- (d) a set of Frequently Asked Questions (“FAQs”) related to the election return.

A candidate should read the explanatory notes attached to the election return carefully before completing it, and make reference to the guide, the video and the FAQs whenever necessary. *[Amended in September 2012 and September 2019]*

Statutory Relief Mechanism for Errors and False Statements

15.36 If a candidate is unable or fails to send to the CEO the election return before the expiry of the period of 30 days 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 reasonable cause, and not due to the candidate’s bad faith, he/she can make an application to the CFI for an order to allow 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] (please see para. 15.32 above). The legal costs so incurred will not be regarded as his/her election expenses. *[Amended in September 2007, September 2011, September 2012 and September 2015]*

15.37 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 reasonable cause, and not due to the candidate's bad faith, he/she may apply to the CFI for an order to enable 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. *[Added in September 2011 and amended in September 2015]*

15.38 Notwithstanding the provision set out in para. 15.37 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 \$500³¹ [item (6) of the Schedule to the ECICO], he/she may, subject to the conditions set out in para. 15.39 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 is satisfied

³¹ The Government introduced to the LegCo the Electoral Legislation (Miscellaneous Amendments) Bill 2019 in March 2019 to, among others, raise the amount from \$500 to \$3,000. When the Guidelines are published, the Bill is still subject to the passage by the LegCo. Candidates and their campaigners should pay attention to the relevant development.

that it is 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 will 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 September 2011, amended in September 2012 and September 2019]*

15.39 A copy of the 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 *[Amended in September 2012]*
- (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 September 2011, amended in September 2015 and September 2019]*

15.40 The relief arrangement will not be applicable 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, which is an illegal conduct under s 24 of the ECICO. 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 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 liability under other offence provisions in the ECICO if the election return concerned has contravened any such provisions. *[S 37A of the ECICO] [Added in September 2011]*

15.41 When the candidate finds himself/herself in any of the situations set out in paras. 15.36 and 15.37 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.38, it would be wise of him/her to make the 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 September 2007 and September 2011]*

PART VI : ADVANCE RETURN OF ELECTION DONATIONS

15.42 Any candidate who is an incumbent public servant under the POBO, e.g. a serving member of the LegCo or a DC, etc., may give advance disclosure to the CEO of any election donations received. This may enable such an 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 incorporated in the election return to be submitted to the CEO before the expiry of the period, or the extended period provided for in s 37 of the ECICO for lodging an election return (see para. 15.32 above) [s 37(1), (1F), (1G) and (1N) of the ECICO]. The general provisions regarding election donations in Part IV must be observed. *[Amended in September 2007, September 2012 and September 2019]*

15.43 Any **advance return of election donations** must be made on the specified form mentioned in para. 15.35 above. *[Amended in September 2012]*

15.44 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.

PART VII : FINANCIAL ASSISTANCE

15.45 Under the Financial Assistance Scheme for candidates standing in DC elections in respect of election expenses, candidates who get elected or who have received 5% of valid votes or more and are not disqualified will be eligible for financial assistance as follows:

- (a) in respect of a candidate in a contested constituency, the amount payable is the lowest of the following:
- (i) the amount obtained by multiplying the total number of valid votes cast for the candidate by the specified rate at \$15 per vote;
 - (ii) 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate under s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation ; or
 - (iii) the declared election expenses of the candidate.
- (b) in respect of a candidate in an uncontested constituency, the amount payable is the lowest of the following:
- (i) the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate at \$15 per registered elector;
 - (ii) 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate under s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation; or
 - (iii) the declared election expenses of the candidate.

[S 60D and Schedule 7 of the DCO]

The amount of election donations received by a candidate will not affect the calculation of the amount of financial assistance payable to the candidate. As election donations will not be netted off in calculating the amount of financial assistance payable to a candidate, the amount of financial assistance payable to a candidate in some cases may be greater than the amount of his/her net election expenses³². Any such “surplus” financial assistance may be used by the candidate for his/her future political or community work, or it may be expended generally as a token recognition of his/her efforts in election. The broad procedural and documentary requirements for making a claim, and general conditions for payment to be made are provided in Part VA of the DCO. The EAC (FA) (APP) Reg sets out the detailed implementation procedures for the Scheme. *[Added in September 2007, amended in September 2011, September 2015 and September 2019]*

15.46 In the claim for financial assistance, a candidate should deduct the estimated value of the reused publicity materials (the expenses of which had been the subject of claims for financial assistance in a previous election) from calculation of the amount of financial assistance to be made payable to the candidate. *[Added in September 2012]*

Making Claims and their Submissions

Requirements to be complied with when making claims

15.47 A claim for financial assistance shall be made by a candidate in a specified form (which will be provided by the REO at the time when a candidate submits his/her nomination). It shall be signed by the candidate. The claim form shall be accompanied by an election return made under s 37 of the ECICO. *[Amended in September 2011]*

³² This may occur if the candidate secures election donations which exceed 50% of his/her total election expenses.

15.48 Candidates are not required to submit an auditor's report on the amounts of their election expenses when making their claims for financial assistance. However, for cases in respect of which the REO considers that more in-depth checking is required, the REO may appoint an auditor to assist in verifying the claims. [Ss 3 and 5 of the EAC (FA) (APP) Reg] *[Added in September 2007]*

Submission of claims

15.49 The claim form, together with the accompanying documents, shall be submitted in person at the office of the CEO during ordinary business hours by the candidate, or his/her agent, before the expiry of the period, or extended period provided for in s 37 of the ECICO for logging an election return (see para. 15.32 above) [s 37(1), (1F), (1G) and (1N) of the ECICO and s 4 of the EAC (FA) (APP) Reg]. *[Added in September 2007, amended in September 2012 and September 2019]*

Verification of Claims

Verification by the CEO

15.50 On receiving a claim, the CEO will check the eligibility for financial assistance of the candidate. He/She will also verify whether the claim conforms to the requirements set out in the EAC (FA) (APP) Reg.

Requirement for further information

15.51 The CEO may, through a written request, require the claimant to provide further information to verify the claim. The claimant must provide the information within 14 days from the date of receipt of the written request or within the period or extended period provided for in s 37 of the ECICO for

lodging an election return, whichever is the later. If the claimant fails to provide the information within the period, the CEO may stop processing the claim without any prior notice. [S 5(3), (5) and (6) of the EAC (FA) (APP) Reg] *[Added in September 2007 and amended in September 2011]*

Withdrawal of Claims

15.52 A claim may be withdrawn before a payment of financial assistance is made by submitting a notice of withdrawal at the office of the CEO during the ordinary business hours. The notice of withdrawal has to be served in person by the candidate or his/her agent. It must be in a specified form and signed by the candidate. [S 7 of the EAC (FA) (APP) Reg] *[Added in September 2007, amended in September 2011 and September 2012]*

Payment of Claim after Verification

Payment to be made by the Director of Accounting Services

15.53 After verifying the claim, the CEO will certify the amount of financial assistance and notify the Director of Accounting Services (“DAS”) of the amount payable and the person to whom it is to be paid. As soon as practicable after receiving the notification, the DAS must make the payment in accordance with the notification. [S 8 of the EAC (FA) (APP) Reg] *[Added in September 2007]*

Recovery of Payment

15.54 Where a payment of financial assistance is made and the recipient is not entitled to receive the whole or part of the amount paid, the CEO is required to send a written notice under s 60G(1) of the DCO by registered post to the recipient requiring repayment within 3 months after the date of the

notice. The recipient may make the repayment, in person, at the office of the CEO or send the repayment by post [s 12 of the EAC (FA) (APP) Reg].
[Added in September 2007 and amended in September 2011]

PART VIII : ENFORCEMENT AND PENALTY

Enforcement

15.55 The election returns will be made available at the REO for public inspection up to the 30th 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. 15.32 above). Copies of the election returns will be furnished to any person upon request subject to payment of a copying fee at a fixed rate. [S 41 of the ECICO] *[Amended in September 2019]*

15.56 Any complaint or report of breach of the relevant legislation may be made to the relevant 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.
[Amended in September 2012]

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

Penalties

15.58 It is an illegal conduct for a candidate to incur election expenses in excess of the maximum amount prescribed. An election expense agent engages in illegal conduct if he/she incurs 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. Such an illegal conduct as mentioned above 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 candidates or election expense agents) is exempted 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 the purpose of publishing the EA are either or both of electricity charges and charges necessary for accessing the Internet. However, if a candidate, a candidate's election expense agent, or a person who is authorised by a candidate or his/her election expense agent publishes an EA of the candidate on the Internet, any costs incurred, even though the costs only involve electricity charges and charges necessary for accessing the Internet, will have to be included in the election expenses of the candidate. *[Amended in September 2019]*

15.59 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 commits a corrupt conduct and will be liable to a fine of \$500,000 and to imprisonment for 7 years [ss 6, 18 and 19 of the ECICO].

15.60 A candidate who fails to submit the election return by the prescribed date or who 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 recipients of the payments commits an offence and will be liable to a fine of \$200,000 and to imprisonment for 3 years [s 38 of the ECICO]. *[Amended in September 2011]*

15.61 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, commits a corrupt conduct and will be liable to a fine of \$500,000 and to imprisonment for 7 years [ss 6 and 20 of the ECICO]. *[Amended in September 2011 and September 2015]*

15.62 A candidate who, having been elected to a DC, acts in the office or participates in the affairs of the DC, without filing the election return before the end of the permitted period commits an offence and will be liable to a fine of \$5,000 for each day on which a candidate acts in the office or participates in the affairs of the DC as a member without having complied with s 37 of the ECICO [s 39(1) and (2) of the ECICO]. *[Amended in September 2015]*

15.63 A person convicted of a **corrupt or illegal conduct** within the meaning of the ECICO will, in addition to the penalties as set out in paras. 15.58 to 15.62 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 an RR, if the election is held within 5 years after the date of conviction [ss 14 and 20 of the Chief Executive Election Ordinance (Cap 569) (“CEEEO”), s 39 of the LCO, s 21 of the DCO and s 23 of the Rural Representative Election Ordinance (Cap 576) (“RREO”)]; and
- (b) from being nominated as a candidate at the Election Committee (“EC”) Subsector Elections, and from being elected as a member of the EC if the election is held within 3 years after the date of conviction, or from being nominated as an EC member by the religious subsector for 3 years from the date of conviction [ss 9 and 18 of the Schedule to the CEEEO].

[Amended in September 2007, January 2010, September 2011, September 2015 and September 2019]