

## CHAPTER 16

### CORRUPT AND ILLEGAL CONDUCT

#### PART I : GENERAL

16.1 This chapter sets out the guidelines against corrupt and illegal conduct in conducting election-related activities. It is important that candidates are aware of the common pitfalls in election activities, which may involve corrupt and illegal conduct, and take appropriate preventive measures to guard against committing offences out of oversight.

16.2 Provisions relating to corrupt and illegal conduct can be found in the ECICO. To help candidates and their agents to get acquainted with the major provisions of the Ordinance, the ICAC has prepared an Information Booklet on “Clean District Council Election” for distribution to candidates. The content of the Information Booklet has also been uploaded onto the website of the ICAC ([www.icac.org.hk/elections](http://www.icac.org.hk/elections)). *[Amended in September 2011]*

16.3 A person who engages in:

- (a) a **corrupt conduct** will be liable to a fine of \$500,000 and to imprisonment for 7 years and to pay to the court the amount or value of any valuable consideration he/she or his/her agents received in connection with the conduct or such part of the amount or value as specified by the court [s 6(1) and (3) of the ECICO]; and *[Amended in September 2015]*
- (b) an **illegal conduct** will be liable to a fine of \$200,000 and to imprisonment for 3 years [s 22(1) of the ECICO].

In addition to these penalties, a convicted person will be disqualified from being nominated as a candidate in future elections. For details, please see para. 16.35 below. *[Amended in January 2010 and September 2011]*

16.4 The ECICO applies to all conduct concerning an election, whether the conduct is engaged in within Hong Kong or elsewhere [s 5 of the ECICO]. *[Added in September 2019]*

16.5 According to the ECICO, if a candidate includes the name, logo or pictorial representation of a person or an organisation in his/her EA as an indication of support from that person or organisation, he/she has to obtain prior written consent to the inclusion. Oral or retrospective consent is not allowed. For details, please refer to paras. 16.12 to 16.16 and Chapter 17. *[Added in September 2019]*

16.6 In no circumstances can the assistance provided to the electors in accessing the polling station involve any acts of promoting or prejudicing the election of any candidate or be an inducement to the electors in voting or not to vote for any particular candidate(s). Otherwise, it will be a violation of the ECICO. *[Added in September 2019]*

## **PART II : CORRUPT CONDUCT RELATING TO NOMINATION AND WITHDRAWAL OF CANDIDATURE**

### **Offences Relating to Candidature**

16.7 Any act to affect a person's candidature by bribery, force, duress or deception is prohibited. Candidature includes standing as a candidate, not standing as a candidate, or withdrawal of nomination. It will be a corrupt conduct if a person corruptly:

- (a) offers an advantage to another person as an inducement or reward to affect his/her candidature or for not using his/her best endeavours to promote his/her election;
- (b) offers an advantage to another person as an inducement or reward to affect the candidature of a third person or get the third person not to use his/her best endeavours to promote his/her election;
- (c) solicits or accepts an advantage from another person as an inducement or reward to affect the candidature of himself/herself or for not using his/her best endeavours to promote his/her election; or
- (d) solicits or accepts an advantage from another person as an inducement or reward to affect the candidature of a third person or get the third person not to use his/her best endeavours to promote his/her election.

[S 7(1) of the ECICO]

16.8 Similarly, a person engages in corrupt conduct if he/she uses or threatens to use force or duress against another person to affect the candidature of that person or a third person. The use of deception to induce another person to affect the candidature of that person or a third person is also a corrupt conduct. [Ss 8 and 9 of the ECICO] *[Amended in September 2011]*

16.9 It will also be a corrupt conduct if a person defaces or destroys a completed or partly completed nomination paper with intent to prevent or obstruct another person from standing for election [s 10 of the ECICO]. *[Amended in September 2011]*

### **PART III : ILLEGAL CONDUCT RELATING TO ELECTIONEERING**

#### **False Statement that a Person is or is not a Candidate**

16.10 A person must not publish any statement (i) that he/she is no longer a candidate at an election if he/she is a candidate, or (ii) that another person who has been nominated as a candidate is no longer a candidate at the election, or (iii) that he/she or another person is a candidate at an election, knowing that the statement is false [s 25 of the ECICO].

#### **False or Misleading Statement about a Candidate**

16.11 A person must not publish any materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates. Similarly, a candidate must not publish any materially false or misleading statement of fact about himself/herself or another candidate or other candidates for the purpose of promoting the election of himself/herself or prejudicing the election of another candidate or other candidates. Any such publication will amount to an illegal conduct. [S 26 of the ECICO] It should be noted that materially false or misleading statements about a candidate or candidates include, but are not limited to, statements concerning the character, qualifications or previous conduct of the candidate or candidates to promote or prejudice the election of the candidate or candidates, e.g. a person who makes a materially false or misleading statement of fact about a candidate, thereby calling into question the integrity and honesty of that candidate, may contravene the above provision. Any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication. *[Amended in September 2011]*

### **Claim of Support**

(Please also see Chapter 17)

16.12 A candidate engages in illegal conduct if he/she fails to obtain **prior written consent** to the inclusion of the name, logo or pictorial representation from a person or an organisation before using such name, logo or pictorial representation of that person or organisation in any of his/her EAs as an indication of support from that person or organisation unless he/she has neither requested or directed nor authorised any person to request or direct the inclusion of the aforesaid name, logo or pictorial representation in his/her EAs. Under the ECICO, **support** (支持), in relation to a candidate, includes support for the policies or activities of the candidate. Also, should any content of an EA (where either the candidate has obtained the prior written consent mentioned above or the candidate has neither requested or directed nor authorised any person to request or direct the inclusion of the name, logo or pictorial representation in his/her EAs) be provided by a person or an organisation, the candidate engages in illegal conduct if he/she modifies, or authorises any person to modify, the name, logo, or pictorial representation or the content unless **before** the modification, the person or organisation concerned has **consented in writing** to the inclusion of the modified name, logo, pictorial representation or content in the EA. [S 27(1), (1A), (1B) and (7) of the ECICO] *[Amended in September 2019]*

16.13 Oral or retrospective consent is **not** allowed. The EAC provides a sample form for seeking **consent of support** in writing from a person or an organisation (“consent form”). A candidate is required to post the consent form relevant to the EA concerned onto the Candidate’s Platform or Central Platform or deposit a copy of the consent form with the relevant RO in the manner as set out in para. 7.55 of Chapter 7 [s 106 of the EAC (EP) (DC) Reg]. It is important to note that it is still an offence even if such an EA contains a statement to the effect that it does not imply support from the person or

organisation concerned [s 27(4) of the ECICO]. It is also an offence for a person to give information which he/she knows or ought to know is materially false or misleading to a candidate or candidates for promoting or prejudicing the election of the candidate or candidates [s 27(6) of the ECICO]. *[Amended in September 2007, August 2008, September 2012 and September 2019]*

16.14 A person or an organisation may give support to one or more of the candidates, even if they are competing in the same constituency, although that may cause confusion. This should be specified in the written consent. A sample form prepared by the EAC for seeking **consent of support** in writing from a person or an organisation will be available at the REO and the relevant RO's office after the gazettal of a notice specifying a period and place for submitting nomination forms for the election and can be downloaded from the REO website. It will also be provided to a candidate upon his/her submission of a nomination form for the election. Candidates are reminded that it is an offence to make a false claim of support (see Chapter 17). *[Added in September 2019]*

16.15 Consent given can be revoked. In case of a revocation, in order to avoid dispute, it is advisable for the person or organisation who has revoked the consent to send a notice of the revocation to the candidate concerned. In such case, the candidate is required to notify the relevant RO in writing of any revocation of consent or post a copy of the revocation onto the Candidate's Platform or the Central Platform in the manner as set out in para. 7.55 of Chapter 7. The candidate concerned should cease to publish immediately any EA which contains the support of the person or organisation who has made the revocation. *[Amended in September 2012 and September 2019]*

16.16 S 28 of the ECICO provides for an injunction order by the Court to restrain the publication of any materially false or misleading statement or false claim of support. An application for such an injunction order may be

made by a candidate, his/her election agent, an elector of the constituency concerned and the person or body to whom or which the false information is related. *[Amended in September 2012]*

#### **PART IV : CORRUPT CONDUCT RELATING TO ELECTIONEERING AND VOTING**

##### **Bribery**

16.17 Any act to affect a person's voting preference by offering or soliciting or accepting an advantage is prohibited [s 11 of the ECICO]. Voting preference covers voting for a particular candidate or particular candidates, not voting at an election, or not voting for a particular candidate or particular candidates.

16.18 Candidates are advised to, during the election period, refrain from engaging in any financial dealing which may be perceived as having an influence on a person's voting preference. *[Added in September 2019]*

##### **Treating**

16.19 A person must not at any time provide or meet all or part of the cost of providing another person with any food, drink or entertainment for the purpose of influencing that person's or a third person's voting preference. Likewise, the corrupt solicitation or acceptance of any such treating is prohibited [s 12 of the ECICO].

16.20 The serving of non-alcoholic drinks only at an election meeting, without more, will not be deemed corrupt for the above purposes [s 12(5) of the ECICO]. An election meeting is any meeting held to promote or prejudice the

election of a particular candidate or particular candidates. (See Chapter 9)  
*[Amended in September 2019]*

16.21 If a person or an organisation hosts a banquet for a non-election-related purpose but, during the occasion, calls on the guests to vote for a particular candidate and if the candidate is present, the candidate concerned should immediately stop any promotion of his/her election and disown or dissociate with whatever has been said or done to promote his/her candidature. Otherwise, the occasion will be regarded as an election meeting held to promote his/her candidature and the expenses incurred will have to be counted towards his/her election expenses. At the same time, the host who uses the meeting for promoting the candidate may also be liable for prosecution for his/her failure in obtaining the candidate's prior authorisation to appoint him/her as the candidate's election expense agent for incurring election expense on behalf of the candidate. (See paras. 9.2 to 9.3 above and s 23 of the ECICO) *[Amended in September 2011 and September 2012]*

16.22 If a candidate or another person offers food, drink or entertainment to affect a person's voting preference, it is an offence under s 12 of the ECICO. *[Amended in September 2011, September 2012 and September 2019]*

### **Force and Duress**

16.23 The use of or the threat to use force or duress against a person to induce him/her to vote or not to vote at an election, or to vote or not to vote for a particular candidate or particular candidates or to get a third person to do so is a corrupt conduct [s 13 of the ECICO]. *[Amended in September 2011]*

16.24 Persons in position to exert pressure and influence on others should be careful not to breach the provisions under the ECICO, e.g. employers



over employees, school principals or teachers over students, religious advisers over believers and doctors over patients, etc. *[Amended in September 2007]*

### **Voting Offences**

16.25 It is a corrupt conduct for any person:

- (a) to vote at an election knowing that he/she is not entitled to vote at that election;
- (b) to vote at an election after having knowingly or recklessly given materially false or misleading information to an electoral officer, or to vote at an election after having knowingly omitted to give material information to an electoral officer;
- (c) to vote at an election more than once in the same constituency or to vote at an election in more than one constituency except as expressly permitted by an electoral law; or
- (d) to invite or induce another person to commit (a), (b) or (c) above.

[S 16 (1) and (2) of the ECICO]

Candidates must note that all their electioneering and canvassing activities must be conducted within the statutory confines of the ECICO. While candidates may engage in activities to promote themselves or to assist or facilitate electors to vote in an election, they must be extremely careful to ensure that these activities are not in breach of the provisions of the ECICO all the time. *[Amended in September 2019]*

## **PART V : CORRUPT AND ILLEGAL CONDUCT RELATING TO ELECTION EXPENSES AND ELECTION DONATIONS**

16.26 Candidates should be careful when handling election expenses and election donations as non-compliance with the relevant requirements will be a corrupt or illegal conduct. For details of the requirements that have to be observed, please refer to Chapter 15.

## **PART VI : POWER OF COURT TO EXCUSE INNOCENT ACTS**

16.27 S 31 of the ECICO provides a mechanism for a candidate to apply to the CFI for an order to relieve himself/herself of criminal responsibility if he/she contravenes the illegal conduct provisions due to inadvertence, accidental miscalculation or any reasonable cause, and not due to bad faith. No prosecution against him/her may be instituted or carried on until the application is disposed of by the CFI. He/She will not be liable to be convicted of an offence if the illegal conduct is the subject of the court order.

16.28 A candidate who is unable or has failed 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, 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). *[Amended in September 2007, September 2011 and September 2012]*

16.29 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]. *[Added in September 2011]*

16.30 When the candidate finds himself/herself in any of the situations set out in paras. 16.28 and 16.29 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.38 of Chapter 15, it would be wise of him/her to make the application to the CFI and inform the REO as soon as possible. *[Amended in September 2007 and September 2011]*

## **PART VII : NON-COMPLIANCE WITH THE LAW AND SANCTION**

16.31 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 2015]*

16.32 The ICAC may, subject to the decision of the Secretary for Justice, prosecute, issue a warning or caution to candidates and any other persons in appropriate cases concerning any breach of the electoral law or regulation, especially the ECICO.

16.33 The Director of Public Prosecutions has informed the EAC that the Department of Justice will not hesitate to prosecute appropriate cases of electoral offences.

16.34 The EAC may also issue public statements in such manner as it deems fit to reprimand or censure any non-compliance with these guidelines.

16.35 A person convicted of a **corrupt or illegal conduct** within the meaning of the ECICO will, in addition to the penalties set out in para. 16.3 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 CEEO, s 39 of the LCO, s 21 of the DCO and s 23 of the RREO]; and
- (b) from being nominated as a candidate at 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 CEEO].

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

16.36 It is worth noting that the Courts of Hong Kong consider election-related offences and contravention of the ECICO as serious crimes. On 27 November 1997, the Court of Appeal laid down sentencing guidelines that a person found guilty of any serious election-related offence should be punished by an immediate custodial sentence.