

CHAPTER 17

ELECTION EXPENSES AND ELECTION DONATIONS

PART I : GENERAL

17.1 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 June 2020]*

17.2 “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 June 2020]*

17.3 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 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 June 2020]*

17.4 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 June 2020]*

17.5 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 June 2020]*

17.6 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 incidentally given to the provision of voluntary service will be counted as election donations; such donations will be counted as election expenses when used. *[Added in June 2020]*

PART II : WHAT CONSTITUTES ELECTION EXPENSES

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

17.8 **“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]. The term “candidate” includes a person **who has publicly declared an intention to stand as a candidate** at an election in respect of a GC/FC or the ECC at any time before the close of nominations for the election, regardless of whether he/she has submitted his/her nomination form, whether he/she has withdrawn his/her nomination after submission of the nomination form, or whether 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 criteria⁶¹:

- (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;

⁶¹ (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 October 2007, June 2012, June 2020 and October 2021]

17.9 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 October 2007, June 2012, June 2020 and October 2021]*

17.10 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:

- (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. 17.31 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)
[Amended in June 2012 and October 2021]

17.11 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 June 2012]*

17.12 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. 17.35(c) below (see also para. 17.33 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 June 2016, June 2020 and October 2021]*

17.13 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 16**. 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.

17.14 A candidate shall 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 June 2016]*

PART III : WHO MAY INCUR ELECTION EXPENSES AND THE LIMIT

Maximum Amount of Election Expenses

17.15 The maximum amount of election expenses for the LegCo election for the different constituencies is prescribed by the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap 554D) made by the CE in Council pursuant to s 45 of the ECICO. These expense limits serve to control the scale of election campaigns and prevent candidates with ample financial resources from having an unfair advantage. *[Amended in October 2007, July 2008, June 2012, June 2016 and October 2021]*

17.16 The election expense limits (from the seventh term LegCo general election onwards) are set out in the following table. For the determination of the number of registered FC electors referred to in items (c), (d) and (e), inquiries can be made with the REO. Relevant information is also available at the website of the REO.

Constituencies	Election Expense Limits
(a) for a GC election:	
(i) Hong Kong Island East GC	\$3,310,000
(ii) Hong Kong Island West GC	\$2,900,000
(iii) Kowloon East GC	\$3,110,000
(iv) Kowloon West GC	\$3,110,000
(v) Kowloon Central GC	\$3,110,000
(vi) New Territories South East GC	\$3,040,000

Constituencies	Election Expense Limits
(vii) New Territories North GC	\$2,760,000
(viii) New Territories North West GC	\$3,310,000
(ix) New Territories South West GC	\$3,450,000
(x) New Territories North East GC	\$3,110,000
(b) for an election for one of the following 8 FCs: (i) Heung Yee Kuk FC (ii) Agriculture and Fisheries FC (iii) Insurance FC (iv) Transport FC (v) Finance FC (vi) Sports, Performing Arts, Culture and Publication FC (vii) Technology and Innovation FC (viii) Catering FC	\$133,000
(c) for an election for an FC (other than those in (b) above) with not more than 5 000 registered electors	\$213,000
(d) for an election for an FC (other than those in (b) above) with more than 5 000 but not more than 10 000 registered electors	\$425,000

Constituencies	Election Expense Limits
(e) for an election for an FC (other than those in (b) above) with more than 10 000 registered electors	\$639,000
(f) for an ECC election	\$213,000

[Ss 3, 4 and 4A of the Maximum Amount of the Election Expenses (Legislative Council Election) Regulation] *[Amended in July 2008, June 2012, June 2016, June 2020 and October 2021]*

17.17 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]. *[Amended in June 2012, June 2016 and October 2021]*

Persons Authorised to Incur Election Expenses

17.18 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 8. *[Amended in June 2012 and October 2021]*

17.19 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 authorisation of 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 EAC (EP) (LC) Reg. *[Amended in October 2007, June 2012 and October 2021]*

17.20 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.

17.21 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 June 2012]*

PART IV : ELECTION DONATIONS

General Requirements

17.22 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.

17.23 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].

17.24 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 June 2016]*

17.25 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 June 2012]*

17.26 Since it is only lawful for election donations 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. 17.29 to 17.31 below. *[Amended in June 2012]*

17.27 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 2007, June 2012, June 2016 and October 2021]*

17.28 Any person or organisation (including a political party) 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 17**. *[Added in June 2016]*

Election Donations in Kind

17.29 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.

17.30 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.

17.31 **Voluntary service** is the only service rendered free of charge which can be excluded from being counted as election expenses. Nonetheless, goods or materials incidentally given to the provision of voluntary service 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 October 2007]*

PART V : ELECTION RETURN

17.32 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 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 the extended period as permitted by the CFI under the relevant electoral law. The election return must be completed in the specified form. 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 election is declared to have failed.**

[S 37(1), (1B), (1C) and (1N) of the ECICO] *[Amended in October 2007, June 2012, June 2016, June 2020 and October 2021]*

17.33 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 June 2012, June 2016, June 2020 and October 2021]

17.34 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 June 2012, June 2016 and June 2020]*

17.35 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. 17.32 above, together with a standard form of receipt for election donations mentioned in para. 17.27 above;
- (b) the standard form for advance return and declaration of election donations (see paras. 17.42 to 17.44 below);
- (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 June 2016, June 2020 and October 2021]*

Statutory Relief Mechanism for Errors and False Statements

17.36 If a candidate is unable or fails to send to the CEO the election return before the statutory deadline (please see para. 17.32 above) due to his/her 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. 9.75 of Chapter 9 for the relevant judgments. *[Amended in June 2012, June 2016 and October 2021]*

17.37 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. 9.75 of Chapter 9 for the relevant judgments. *[Added in June 2012, amended in June 2016 and October 2021]*

17.38 Notwithstanding the provision set out in para. 17.37 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, as the case may be:

- (a) \$30,000 for a GC election;
- (b) \$5,000 for an FC election;
- (c) \$5,000 for an ECC election,

[items (3) (4) and (4A) of the Schedule to the ECICO]

he/she may, subject to the conditions set out in para. 17.39 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 June 2012, amended in June 2016, June 2020 and October 2021]*

17.39 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 June 2012, amended in June 2016 and June 2020]*

17.40 **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 June 2012]*

17.41 If the candidate finds himself/herself in any of the situations set out in paras. 17.36 and 17.37 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 17.38, 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 October 2007 and June 2012]*

PART VI : ADVANCE RETURN OF ELECTION DONATIONS

17.42 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. 17.32 above) [s 37(1), (1B), (1C) and (1N) of the ECICO]. Candidates must also observe the general provisions regarding election donations in Part IV. *[Amended in October 2007, June 2012 and June 2016]*

17.43 Any **advance return of election donations** must be made on the standard form mentioned in para. 17.35 above. *[Amended in June 2012]*

17.44 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

17.45 Under the Financial Assistance Scheme for candidates standing in LegCo 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 (from the seventh term LegCo general election onwards); *[Amended in July 2008, June 2012, June 2016, June 2020 and October 2021]*
 - (ii) 50% of the maximum amount of election expenses that may be incurred by or on behalf of the candidate as set out in ss 3, 4 or 4A of the Maximum Amount of Election Expenses (Legislative Council Election) Regulation; or *[Added in June 2012 and amended in October 2021]*
 - (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) for a GC or FC, the amount obtained by multiplying 50% of the number of registered electors by the specified rate at \$15 per registered elector (from the seventh term LegCo general election onwards); *[Amended in July 2008, June 2012, June 2016 and June 2020]*
 - (ii) for the ECC, the amount obtained by multiplying 50% of the number of EC members by the specified rate at \$15 per EC member; *[Added in October 2021]*
 - (iii) 50% of the maximum amount of election expenses that may be incurred by or on behalf of the candidate as set out in ss 3, 4 or 4A of the Maximum Amount of Election Expenses (Legislative Council Election) Regulation; or *[Added in June 2012 and amended in October 2021]*
 - (iv) the declared election expenses of the candidate.

[S 60E and Schedule 5 of the LCO]

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 expenses⁶². Any such ‘surplus’ financial assistance may be used by the candidates for their future political or community work, or it may be expended

⁶² This may occur if the candidate secures election donations which exceed 50% of his/her/their total election expenses.

generally as a token recognition of their 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 6A of the LCO. The EAC (FA) (APP) Reg sets out the detailed implementation procedures for the Scheme. *[Amended in October 2007, July 2008, June 2012, June 2016 and October 2021]*

17.46 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 June 2012, amended in June 2016 and October 2021]*

Making Claims and their Submissions

Requirements to be complied with when making claims

17.47 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 candidates submit their nominations). It shall be signed by the candidate. The claim form shall be accompanied by:

- (a) an election return made under s 37 of the ECICO; and
- (b) an auditor's report which confirms that an auditor has audited the account of the declared election expenses by conducting a reasonable assurance engagement in accordance with the Hong Kong Standards on Assurance Engagements, and states the auditor's opinion as to whether the election return complies with s 37(1)(a) and (2)(b)(i) and (v) of the ECICO in all material respects.

[S 3 of the EAC (FA) (APP) Reg] *[Amended in October 2007 and October 2021]*

17.48 A set of guidance notes will be prepared by the REO with assistance by the Hong Kong Institute of Certified Public Accountants (“HKICPA”) for auditors who are engaged by candidates to perform the auditing task. These notes will be issued by the HKICPA to its members prior to the LegCo election and will also be distributed with the candidate’s folder.

17.49 Since the auditing fee is not incurred for the purpose of promoting candidature or prejudicing another candidate, it should not be regarded as an election expense. Accordingly, an elected candidate could accept an advantage to meet the auditing fee incurred and he/she would not be required to report the acceptance in his/her election return. If an elected candidate decides to accept such an advantage, he/she should ensure that the acceptance is not in breach of the relevant provisions in s 4 of the POBO.

Submission of claims

17.50 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 who has signed the claim form, or his/her agent, before expiry of the period, or extended period provided for in s 37 of the ECICO for lodging an election return (see para. 17.32 above) [s 37(1), (1B), (1C) and (1N) of the ECICO and s 4 of the EAC (FA) (APP) Reg]. *[Amended in October 2007, June 2012, June 2016 and October 2021]*

Verification of Claims

Verification by the CEO

17.51 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. *[Amended in October 2021]*

Requirement for further information

17.52 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 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 EAC (FA) (APP) Reg] *[Amended in June 2012]*

Part processing of claims

17.53 If an auditor's report states that only part of the election return complies with the requirements set out in the relevant sections of the ECICO, the CEO may process that part of the return that complies with those requirements and may stop processing the part of the return that does not comply with those requirements [s 6 of the EAC (FA) (APP) Reg]. *[Amended in October 2007]*

Withdrawal of Claims

17.54 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] *[Amended in October 2007, June 2016 and October 2021]*

Payment of Claim after Verification

Payment to be made by the Director of Accounting Services

17.55 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] *[Amended in October 2021]*

Recovery of Payment

17.56 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 60H(1)(a) of the LCO 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 or by his/her agent(s), at the office of the CEO or send the repayment by post. Any amount that is not repaid may be recovered as a civil debt due to the Government. [S 60H(1) and (2) of the LCO and s 12(1) of the EAC (FA) (APP) Reg] *[Amended in June 2012 and October 2021]*

PART VIII : ENFORCEMENT AND PENALTY

Enforcement

17.57 The election returns will be made available at the REO for public inspection up to the 60th 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. 17.32 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 June 2016]*

17.58 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.

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

Penalties

17.60 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 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 that purpose 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 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 June 2020]*

17.61 A candidate who uses any election donation for any purpose other than 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]

17.62 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 June 2012]*

17.63 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 June 2012 and June 2016]*

17.64 If a candidate, who, having been elected to the LegCo, acts in the office or participates in the affairs of the LegCo, 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 or participating in the affairs of the LegCo as a member, in contravention of s 37 of the ECICO [s 39(1) and (2) of the ECICO]. *[Amended in June 2016]*

17.65 A person convicted of a **corrupt or illegal conduct** of the ECICO will, in addition to the penalties set out in paras. 17.60 to 17.64 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 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 October 2007, January 2010, June 2012, June 2016 and October 2021]

17.66 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. 17.62 above, he/she will also be subject to the same disqualifications as a person convicted of having engaged in illegal conduct (see para. 17.65 above). [S 38(4) of the ECICO] *[Added in October 2021]*