

## **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. After the election, candidates must submit a return and declaration of election expenses and election donations (“election return”) to the CEO on time in accordance with the statutory requirements. The election return must list out the election expenses incurred and the election donations received by the candidates and their election expense agents.

17.2 The law stipulates that only candidates and their authorised election expense agents may incur election expenses. Other persons will commit an offence if they incur any election expenses. Nevertheless, other persons who publish an EA on the internet is exempted from the relevant criminal liability if the only election expenses incurred are electricity charges and/or charges necessary for accessing the Internet.

17.3 Election expenses incurred by other persons without the consent or knowledge of a candidate are not attributed to the candidate concerned and the consequences should be borne by the relevant persons. However, if the election expenses are incurred by that other person under the instruction of the candidate,

the candidate should declare such expenses in the election return, otherwise he will be held legally responsible.

17.4 **Voluntary service** is defined as any service provided by any natural person voluntarily, personally and free of charge in his own time for the purpose of promoting the election of a candidate or prejudicing the election of other candidates. Voluntary service is the only free of charge service which can be excluded from being counted as election expenses. However, 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 after they are used.

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

17.5 Pursuant to s 2 of the ECICO:

- (a) **Candidate** — means a person who stands nominated as a candidate at an election, also includes a person who, at any time before the close of nominations for an election, has **publicly declared an intention to stand as a candidate** at the election, regardless of whether he has submitted his nomination form, whether he has withdrawn his nomination after submission of the nomination form, or whether his nomination is ruled invalid by the CERC. 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<sup>55</sup>;

- (b) **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, and includes the value of election donations consisting of goods and services used for that purpose;
- (c) **Election Donations** — in relation to a candidate at an election, means any of the following donations:
  - (i) any money given to or in respect of the candidate for the purpose of meeting or contributing towards meeting the election expenses;
  - (ii) any goods given to or in respect of the candidate for the purpose of promoting his election or prejudicing the election of another candidate, including any goods incidentally given to the provision of voluntary service; or
  - (iii) any service provided to or in respect of the candidate for the purpose of promoting his election or prejudicing the election of

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<sup>55</sup> A prescribed person who has applied under PCBP (LC & DC) Reg to have his emblem registered should not, by that act alone, be treated as having publicly declared an intention to stand for election.

another candidate, excluding voluntary service (see para. 17.4 of this chapter).

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.

17.6 As to whether a particular item of expense would constitute as election expenses, the CFA once in a judgement relating to the 2008 LegCo General Election (FACV 2/2012) pointed out that expenses are likely to qualify as “election expenses” if they meet the following five criteria:

- (a) they have been incurred by a candidate himself or person(s) 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;
- (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<sup>56</sup> or during the period when the relevant person was a candidate.

The person(s) concerned should also note the following two issues:

- (f) the date when the relevant expenses were incurred should be ascertained (but this is not a critical issue since election expenses may be incurred before, during or after an election period); and
- (g) in relation to the relevant activities or matters, if the expense incurred is for more than one purpose, consideration should be given to whether it is necessary to apportion the expense proportionally between election expenses and non-election expenses.

17.7 Whether a particular item of expenditure should be regarded as an election expense depends on the actual use of the expenses, taking into account of the nature, circumstances and context of the expenditure. If an expense is used for more than one purpose, the expense should be apportioned between election-related purpose and other purposes and relevant particulars of the expense should be included in the election return. As a general principle, the relevant factors that can be considered when apportioning expense include time and/or usage. The candidate may refer to the examples on the apportionment

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<sup>56</sup> In relation to an election, the election period means the period beginning with the nomination day for the election and ending with the polling day for the election (or the last polling day if there is more than one polling day).

of expenses shown in the guide and the video on the completion of election return provided by the REO. The candidate should seek independent legal advice if he has doubt as to whether an expenditure item should be counted as an election expense or how the expenses can be apportioned. Any fees incurred for such legal advice will not be regarded as his election expenses.

17.8 Staff and other resources available for use by a candidate in his official capacity or when discharging his duties for the purpose of promoting his 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 overriding the relevant legislation.

17.9 A candidate may be in breach of the law if he appropriates any public resources for election purposes.

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

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

17.10 The maximum amount of election expenses for the LegCo election for the GCs, the FCs and the ECC is prescribed by the Maximum Amount of Election Expenses (Legislative Council Election) Regulation. A candidate and his election expense agents must not incur election expenses in excess of such

maximum amount. The relevant provisions serve to prevent candidates with ample financial resources from having an unfair advantage in conducting election campaigns. [S 24(1) of the ECICO]

17.11 The maximum amount of election expenses for each constituency are set out in the following table. For the number of registered FC electors referred to in items (c), (d) and (e) in the following table, inquiries can be made with the REO or visiting the website of the REO ([www.voterregistration.gov.hk/eng/statistic.html](http://www.voterregistration.gov.hk/eng/statistic.html)).

Constituencies	The Maximum Election Expense Limits
(a) for a GC election:  (i) Hong Kong Island East GC (ii) Hong Kong Island West GC (iii) Kowloon East GC (iv) Kowloon West GC (v) Kowloon Central GC (vi) New Territories South East GC (vii) New Territories North GC (viii) New Territories North West GC (ix) New Territories South West GC (x) New Territories North East GC	\$3,310,000  \$2,900,000  \$3,110,000  \$3,110,000  \$3,110,000  \$3,040,000  \$2,760,000  \$3,310,000  \$3,450,000  \$3,110,000
(b) for an election for one of the following eight FCs:	\$133,000

<b>Constituencies</b>	<b>The Maximum Election Expense Limits</b>
(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	
(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
(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 Election Expenses (Legislative Council Election) Regulation]



### **Persons Authorised to Incur Election Expenses**

17.12 Only a candidate or a person authorised by him as his election expense agent may incur election expenses. For the authorisation matters, please see Part VI of Chapter 8. [S 23(1) of the ECICO]

17.13 Any person who is going to carry out **negative campaigning (i.e. canvassing against other candidates)** for promoting the election of a candidate and hence incurring expenses should obtain the prior authorisation of the candidate who benefits from it 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.

17.14 Candidates who plan to run for an election should inform the organisation(s) which they are associated with and may support their candidature of the requirements relating to incurring election expenses as soon as possible, to prevent the organisation(s) from committing an offence by incurring election expenses without authorisations.

17.15 A candidate is responsible for the whole amount of his election expenses. If the total amount of election expenses incurred by the candidate and/or the person(s) acting on his behalf exceeds the prescribed limit, the candidate shall be criminally liable, unless he can prove that the excess amount is incurred without his consent or authorisation and is not due to his negligence. Besides, the election expense agent should not incur election expenses exceeding

the limit authorised by the candidate, or else he commits an offence. [Ss 23 and 24 of the ECICO]

## **PART IV : ELECTION DONATIONS**

### **General Requirements**

17.16 A candidate may receive election donations, but such donations should only be used to meet, or contribute to meet his 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. [S 18 of the ECICO]

17.17 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, are counted towards the total election expenses, and should not exceed the maximum amount prescribed by the law.

17.18 The candidate should give any election donations that are unspent, unused or exceed the maximum amount of election expenses to the charitable institution(s) or trust(s) of a public character he chooses. The candidate must

dispose of such donations prior to the submission of the election return. [Ss 19 and (37) of the ECICO]

17.19 On receiving an election donation of more than \$1,000 in value (whether in the form of money or in kind), a candidate must issue to the donor a receipt which specifies the name and address of the donor as well as the particulars of the donation. A standard form of receipt is made available at the REO. Anonymous donations exceeding \$1,000 must not be used for meeting election expenses. Any donations exceeding \$1,000 cannot be used for election-related purpose if the candidate fails to issue a receipt in accordance with the above requirements (including cases where a receipt cannot be issued due to anonymous donations), and such donations must be disposed of in accordance with para. 17.18 of this chapter. [Ss 19(1) and (2) of the ECICO]

17.20 Any person or organisation (including a political party) acting as an agent for one or more candidates must note that the regulations for receiving election donations on behalf of a candidate are the same as if the election donations are received by the candidate direct. They are advised to note the points and adopt the good practice suggested in **Appendix 17**.

### **Election Donations in Kind**

17.21 Election donations in kind include goods and services obtained free of charge or at a discount. Candidates must declare according to the following principles:

Election donations in kind	Declaration Principle
<p>Goods or services obtained <b>free of charge</b> (including loans obtained at no interest<sup>Note</sup>, premises provided free of charge for the election campaign)</p>	<p>(i) if the donor also provides similar goods or services to the public for a fee, the declared value shall be estimated based on the price charged by the donor to the public at the relevant time; or</p> <p>(ii) if the donor does not offer similar goods or services to the public, the declared value shall be estimated based on the fair market price of similar goods or services provided by other suppliers.</p>
<p>Goods or services <b>obtained at a discount not available to general customers</b> (including loans obtained at an interest rate lower than usual<sup>Note</sup>, premises rented at below-market rates for the election campaign )</p>	<p>The declared value should be estimated base on the differences between the market/regular price of the goods or services concerned and the price paid by the candidate.</p>

Note: Interest waived/reduced must be declared as an election donation and election expense in the election return.

17.22 **Voluntary service** is the only free of charge service 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 the provider, voluntarily and personally, in his own time. Otherwise, the service provided should be treated as an election donation and be counted towards election expenses at a fair estimated value. [S 2 of the ECICO]

## **PART V : ELECTION RETURN**

17.23 A candidate must keep an accurate account of all election expenses incurred and election donations (whether in cash or in kind) received, and **submit 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; or**
- (b) the election is declared to have failed.**

[Ss 37(1), (1B), (1C) and (1N) of the ECICO]

17.24 The election return should set out all the election expenses incurred by the candidate and his election expense agents. For each paid expense of \$500 or more, the candidate must attach to the election return an invoice and a receipt issued by the goods or service providers. In addition, the candidate must also set out the details of all the outstanding claim(s) and draw up the schedule for settlement of such claim(s) in the election return, and, after settlement of the claim(s) with the relevant supplier(s) according to the scheduled date(s), submit within 30 days from the payment date the invoice and receipt for each election expense of \$500 or more. 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:

- (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) provided the goods or services; and
- (d) information which proves that the organisation or person (other than the candidate himself) provided 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).

[S 37(2)(b) of the ECICO]

17.25 A candidate must also set out in the election return all election donations received by him or his representatives, whether in cash or in kind. 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. For any unspent, unused election donations (including those of more than \$1,000 in value but receipts could not be issued due to anonymous donations), or election donations exceeding the limit of election expenses, a candidate must also attach to the election return the copies of receipts issued by the charitable institutions or trust of a public character for the receipt of relevant election donations. A candidate must also submit, together with the election return, a declaration verifying the contents of the election return. [S 37 of the ECICO]

17.26 At the time when a candidate submits his nomination form, he will be given:

- (a) the specified form for the election return and a standard form of receipt for election donations (see paras. 17.19 and 17.23 of this chapter);
- (b) the standard form for advance return of election donations (see Part VI of this chapter);
- (c) a guide on how to complete the election return (accompanied by the link of the relevant video); 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. In addition, **Appendix 18** provides questions and answers concerning issues which candidates found relatively confusing when completing election returns in the past for reference.

### **Statutory Relief Mechanism**

17.27 If a candidate fails to send to the CEO the election return before the statutory deadline (see para. 17.23 of this chapter), he commits an offence (see para. 17.50 of this chapter for the relevant penalties). If a candidate fails to submit the election return before the deadline due to his 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 can make an application to the CFI for an order allowing him to send in the election return to the CEO within a longer period as specified by the CFI. [Ss 40(1) and (2) of the ECICO]

17.28 If after the expiry of statutory deadline, a candidate discovers 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 not due to the candidate's bad faith), he may apply to the CFI for an order allowing him to correct any error or false statement in the election return



or in any document accompanying the election return. [Ss 40(3) and (4) of the ECICO]

17.29 The legal costs incurred for applying to the CFI for an order will not be regarded as election expenses.

17.30 If a candidate makes any error and/or false statement in the election return (for example, a failure to set out in the election return one or more than one items of election expense or election donation, or incorrectness in the amount of any election expense or any election donation, or a failure to submit any relevant documents for the election expense or election donation as required), 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 an GC election;
- (b) \$5,000 for an FC election;
- (c) \$5,000 for an ECC election,

[Items (3), (4), and (4A) of the Schedule of the ECICO]

the candidate may seek to have the error(s) and/or false statement(s) rectified in accordance with a simplified relief arrangement for minor errors or false statements as provided under the electoral law. If the CEO deems the simplified relief arrangement applicable, the CEO would issue a notice to the

candidate. Upon receipt of the notice, the candidate may, within the specified period (see para. 17.31(a) of this chapter), lodge with the CEO a revised election return, which should mark on a copy of the original election return submitted to the CEO earlier 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 of the ECICO]

17.31 A revised election return submitted by a candidate is of no effect unless it is:

- (a) submitted 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 (e.g. invoice and/or receipt) and, if applicable, a written explanation; and
- (c) accompanied by a declaration made by the candidate in a specified form verifying the contents of the revised election return.

[Ss 37(2)(b) and 37A(6) of the ECICO]

A copy of the revised election return made under the simplified 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) and/or false statement(s) within the specified period, the election return will be subject to the normal checking and investigation under the ECICO.

**17.32 A candidate engages in illegal conduct at an election if, after including the cumulative amount of error(s) and false statement(s), the aggregate amount of election expenses incurred at an election exceeds the maximum amount of election expenses prescribed for a particular election. In such case, the aforesaid simplified relief arrangement will not be applicable.** Additionally, a candidate engages in corrupt conduct at an election if he makes a statement in an election return or a revised election return that he knows or ought to know is materially false or misleading. The rectifications of the election return under the simplified relief arrangement will not exempt the candidate from being investigated or subsequently prosecuted. Furthermore, if the election return of a candidate violates other statutory requirements, the simplified relief arrangement will not relieve the candidate from the penalties and liabilities for contravening such requirements. [Ss 20, 24 and 37A of the ECICO]

**17.33** When the candidate finds himself in any of the situations set out in paras. 17.27 and 17.28 of this chapter, unless the simplified relief arrangement mentioned in para. 17.30 is applicable, it would be wise of him to make an application to the CFI and inform the REO as soon as possible. For previous court's decisions regarding applications for the relief of election-related penalties and liabilities, please see Part IX of Chapter 9 for the relevant judgments.

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

17.34 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. However, even though the above election donations have been disclosed in advance, candidates must also observe the general provisions regarding election donations in Part IV and Part V of this chapter and set out such election donations in the election return. [S 37(1) of the ECICO]

17.35 Any **advance return of election donations** must be made on the standard form mentioned in para. 17.26(b) of this chapter. A candidate may submit more than one advance returns of election donations as required.

## **PART VII : FINANCIAL ASSISTANCE**

17.36 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 a specified rate (the specified rate is at \$15 per vote);

- (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
  - (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 an GC or FC, the amount obtained by multiplying 50% of the number of registered electors by a specified rate (the specified rate is at \$15 per registered elector);
  - (ii) for the ECC, the amount obtained by multiplying 50% of the number of EC members by a specified rate, which is \$15 per EC member;
  - (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
  - (iv) the declared election expenses of the candidate.

The amount of election donations received by a candidate will not affect 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, thus in some cases, the amount of financial assistance payable to a candidate may be greater than the amount of his net election expenses, resulting in the “surplus” financial assistance. Any such “surplus” financial assistance may be used by the candidates for their future political or community work, or can be used for general expenses as a token recognition of their efforts in election.

### **Making Claims and their Submissions**

#### **Requirements to be complied with when making claims**

17.37 Candidates shall make a claim for financial assistance in a specified form (which will be provided by the REO at the time when candidates submit their nominations). On submission, the specified form shall be accompanied by:

- (a) the election return; and
- (b) an auditor’s report. The report must confirm 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 ss 37(1)(a) and (2)(b)(i) and (v) of the ECICO in all material respects.

[S 3 of the EAC (FA) (APP) Reg]

17.38 A set of guidance notes will be prepared by the REO for auditors who are engaged by candidates to perform the auditing task and will be distributed through the Hong Kong Institute of Certified Public Accountants to its members prior to the LegCo election. It will also be distributed along with the candidate's folder.

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

#### Procedures for submission of claims

17.40 The claim form, together with the election return and the accompanying documents, shall be submitted in person to the CEO by the candidate or his agent before expiry of the period, or extended period provided for in s 37 of the ECICO for submitting an election return (see para. 17.23 of this chapter). The general procedural and documentary requirements for making a

claim by the candidate, and the detailed implementation procedures for the Financial Assistance Scheme are provided in Part 6A of the LCO and the EAC (FA) (APP) Reg respectively. [Ss 37(1), (1B), (1C) and (IN) of the ECICO and s 4 of the EAC (FA) (APP) Reg]

### **Verification of Claims**

17.41 When verifying a candidate's claim for financial assistance, the CEO may request additional information from the claimant. The claimant must provide the information within the specified period, or the CEO may stop processing the claim without any prior notice. [S 37 of the ECICO and ss 5(3), (5) and (6) of the EAC (FA) (APP) Reg]

17.42 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]

### **Withdrawal of Claims**

17.43 A claim may be withdrawn before a payment of financial assistance is made. The notice of withdrawal must be made in a specified form, signed by the candidate, and should be submitted to the CEO in person by the candidate or his agent. [S 7 of the EAC (FA) (APP) Reg]



## **Payment of Financial Assistance and Recovery of Payment of Financial Assistance**

17.44 After verifying a claim, the CEO will notify the Director of Accounting Services to make the payment as soon as possible. Where a payment of financial assistance is made and the recipient is not entitled to receiving the whole or part of the amount paid, the CEO would send a written notice by registered post to the recipient, requesting the recipient to repay the relevant amount within three months. Any amount that is not repaid may be recovered as a civil debt due to the Government. [Ss 60H(1) and (2) of the LCO and s 12(1) of the EAC (FA) (APP) Reg]

## **PART VIII : ENFORCEMENT AND PENALTIES**

### **Enforcement**

17.45 The election returns will be made available at the REO for public inspection up to the 60<sup>th</sup> day before the first anniversary of the date of the deadline for submitting the relevant election return (excluding any order made by the CFI allowing an extension of the deadline). Copies of the election returns will be furnished to any person upon request subject to payment of copying fee at a fixed rate. [S 41 of the ECICO]

17.46 The REO will check all election returns. Irregularities discovered will be reported to the relevant government departments/authorities for investigation.

### **Penalties**

17.47 Other than the exemption mentioned in para. 17.48 of this chapter, it is an illegal conduct for a person other than a candidate or a candidate's election expense agent to incur election expenses. In addition, 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. An offender is liable to a fine of \$200,000 and to imprisonment for 3 years. [Ss 22, 23 and 24 of the ECICO]

17.48 Any person other than a candidate or a candidate's election expense agent is exempted from the relevant criminal liability if the person publishes an EA on the Internet and the only election expenses incurred by the person for that purpose are electricity charges and/or charges necessary for accessing the Internet. However, if a person authorised by a candidate or his 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 if the costs involved are only electricity charges and/or charges necessary for accessing the Internet.

**NOTE :**

If a candidate or his election expense agent publishes an EA on the Internet, any costs incurred should be included in the election expenses of the candidate even if the costs involved are only electricity charges and/or charges necessary for accessing the Internet.

[S 23(1A) of the ECICO]

17.49 A candidate or other person who uses any election donation for any purpose other than for meeting or contributing towards meeting his 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]

17.50 If a candidate fails to submit the election return by the prescribed date or fails to provide an accurate account of all election expenses incurred and all election donations received with the required supporting invoices and receipts issued by the goods or service providers, he 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]

17.51 A candidate who makes a statement that he knows or ought to know is materially false or misleading in an election return or a copy of the revised election return submitted by him, 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]

17.52 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 commits an offence and shall be liable to a fine of \$5,000 for each day. [Ss 39(1) and (2) of the ECICO]

17.53 If a candidate is convicted of an offence under s 38(1) of the ECICO (i.e. having failed to submit an election return as required by s 37), apart from facing the penalties set out in para. 17.50 of this chapter, he will also be subject to the same disqualifications from elections as a person convicted of having engaged in illegal conduct (i.e. disqualification from being nominated as a candidate or elected as a member in an election, see Part VII of Chapter 18). [S 38(4) of the ECICO]

17.54 Any complaint or report of breach of the relevant legislation may be lodged to the EAC or its Complaints Committee, the RO and the REO. The cases may be referred to the relevant authorities for investigation.