

## CHAPTER 18

### CORRUPT AND ILLEGAL CONDUCT

#### PART I : GENERAL

18.1 When conducting election-related activities, candidates must be mindful of situations that may involve corrupt or illegal conduct and take appropriate precautions to avoid violating the law due to negligence.

18.2 The ICAC has compiled an information booklet titled “Clean Legislative Council Election” to help candidates and their agents understand the key provisions of the ECICO. The content of the booklet has also been uploaded onto the ICAC’s website.

18.3 The ECICO applies to all election-related conduct within and outside Hong Kong. Under no circumstances is it permissible for any person to induce an elector to not vote at an election, or to vote or not to vote for a particular candidate or particular candidates by offering advantages, food, drink or entertainment, by using force or duress against a person, or by a deception, and to wilfully obstruct or prevent an elector from voting at the election. Such acts violate the ECICO. The penalties for violating the relevant law are set out in **Part VII** of this chapter. There are occasions that the electors may require assistance from others or transportation service in accessing the polling station. However, the above acts must not be done deliberately during the process to

induce an elector to vote or not to vote for a particular candidate or particular candidates. [S 5 of the ECICO]

## **PART II : CORRUPT CONDUCT RELATING TO CANDIDATURE**

18.4 Specifically, any person who engages in or expressly or implicitly authorises another person to engage in the following acts commits corrupt conduct in an election:

(a) **Bribery of Candidates or Prospective Candidates:**

offering an advantage to another person as an inducement or reward for that person or third person to or solicit or accept an advantage to make that person or third person, to:

- (i) stand or not stand in an election; or
- (ii) withdraw a nomination; or
- (iii) not use his best endeavours to promote his election;

(b) **Force or Duress:**

using or threatening to use force or duress against another person to

induce that person, or induce that person to cause a third person to, or, for the sake of that person or third person, to:

(i) stand or not stand in an election; or

(ii) withdraw a nomination;

(c) **Deception:**

using deception to induce another person to, or induce another person to cause a third person to:

(i) stand or not stand in an election; or

(ii) withdraw a nomination;

(d) **Defacement or Destruction of Nomination Forms:**

defacing or destroying a completed or partially completed nomination form to prevent or obstruct another person from standing in an election.

For more information on upholding clean elections and examples of the above corrupt conduct, please refer to the ICAC's "Clean Legislative Council Election" booklet and "Clean Legislative Council Election" website.

[Ss 7(1), 8(1), 9(1) and 10 of the ECICO]

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

18.5 Candidates conducting electioneering activities must comply with the ECICO. Candidates and election helpers should be aware of the following illegal conduct relating to electioneering activities. The penalties for violating the relevant law are set out in **Part VII** of this chapter.

#### **False Statements by Candidates**

18.6 A person engages in illegal conduct if he publishes a false statement about a candidate, including:

- (a) publishing a statement known to be false that a person is or is no longer a candidate at an election; and
- (b) publishing materially false or misleading statements of fact about a particular candidate or particular candidates, including but not limited to statements concerning the character, qualifications or previous conduct of the candidate or candidates, for the purpose of promoting or prejudicing the election of the candidate or candidates. Any statement which calls into question the integrity of that candidate may also contravene the above provision. Therefore, before publishing a statement about a candidate or candidates, every effort should be made to ensure its accuracy.

[Ss 25 and 26 of the ECICO]

### **Claim of Support without Written Consent**

18.7 Unless with prior written consent from the relevant person or organisation, the following is not permitted:

- (a) publishing EAs containing the name, logo or pictorial representation of a person or organisation in a manner that implies or is likely to cause the electors to believe that the candidate has obtained the support of that person or organisation; or
- (b) modifying or authorising any person to modify EAs provided by a supporting person or organisation, which contain the name, logo or pictorial representation of that supporting person or organisation, or any content of EAs provided by them.

For detailed legal provisions on claim of support, see **Chapter 19**.

### **Inciting Another Person Not to Vote or to Cast Invalid Vote by Activity in Public**

18.8 A person engages in illegal conduct if he carries out any activity in public during the election period that incites<sup>57</sup> another person not to vote or to

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<sup>57</sup> Although wording such as “encourage” or “advocate”, etc. has been used in the criminal legislation under some common law jurisdictions in recent years, there is no difference in the concept expressed in that of “incite” under the common law. There have been precedents pointing out that “incite” included “urge, encourage, persuade”, and the prosecution must prove that the defendant has the intention to incite others to do the incited act.

cast an invalid vote. According to s 27A(5) of the ECICO, activity in public includes any of the following activities, whether or not the person carrying out the activity is in a public place while carrying out the activity:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material;
- (b) except for (a) of this paragraph, any conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; or
- (c) distributing or disseminating any matter to the public.

[Ss 27A(1), (2), and (5) of the ECICO]

18.9 To determine whether any activity in public incites another person not to vote or to cast an invalid vote, regard may be had to the contents and intended audience of the activity, and the circumstances in which the activity is carried out. Besides, it is a defence for a person who had lawful authority or reasonable excuse for doing the act to which the charge relates. [S 27A(3) and (4) of the ECICO]

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

### **Bribing Electors**

18.10 As stated in para. 18.4 of this chapter, a person engages in corrupt conduct at an election, if he acts to affect a person's voting preference by offering, soliciting or accepting an advantage. The penalties for violating the relevant law are set out in **Part VII** of this chapter. Voting preference covers voting for a particular candidate or particular candidates, not voting at an election and not voting for a particular candidate or particular candidates. [S 11 of the ECICO]

18.11 Besides, during the election period, a person should refrain from engaging in any act which may be perceived as electoral bribery, such as attaching election leaflets of candidate(s) to leaflets of community activities on free medical check-up, free legal consultation, free classes or discounted meals, etc. for distribution.

### **Treating**

18.12 A person engages in corrupt conduct if he provides or pays all or part of the cost of providing another person with any food, drink or entertainment (e.g. singing performance) for the purpose of influencing that person's or a third person's voting preference. It is also unlawful to solicit or accept any of such treating. [S 12 of the ECICO]

### **Force or Duress**

18.13 A person engages in corrupt conduct if he uses or threatens to use force or duress against a person to induce him to vote or not to vote at an election, to vote or not to vote for a particular candidate or particular candidates or to get a third person to do so. Persons in position to exert pressure and influence on others should be careful not to breach the relevant provisions, e.g. employers over employees, school principals or teachers over students, religious advisers over believers and doctors over patients, etc. [S 13 of the ECICO]

### **Deception or Obstruction**

18.14 A person engages in corrupt conduct if he, by means of deception, induces another person (or gets another person to induce a third person) not to vote at an election, or to vote or not to vote for a particular candidate or particular candidates at an election. A person also engages in corrupt conduct if he wilfully obstructs or prevents another person (or gets another person to obstruct or prevent a third person) from voting at an election. It is also an offence to aid, abet, incite or attempt the said corrupt conduct. [Ss 14(1) and (1A) of the ECICO]

18.15 Other corrupt conduct relating to voting includes but is not limited to:

- (a) to impersonate another person to apply for a ballot paper at an election, or having voted at an election, to apply at the same election for a ballot paper in the person's own name;



- (b) to vote knowing that he is not entitled to do so;
- (c) 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;
- (d) except as expressly permitted by an electoral law:
  - (i) to vote at an election more than once in the same GC, FC or ECC;  
or
  - (ii) to vote at an election in more than one GC or FC; or
- (e) to invite or induce another person to commit (b), (c) or (d) above.

[Ss 2, 15, 16(1), and (2) of the ECICO]

18.16 For more details on other corrupt conduct, please read carefully the ECICO.

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

18.17 Candidates should be careful when handling election expenses and election donations as non-compliance with the relevant requirements will also be a corrupt or illegal conduct. For the requirements that have to be observed by candidates and the penalty for a person convicted of the relevant offence, please see **Chapter 17**.

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

18.18 S 31 of the ECICO provides a mechanism for a candidate to apply to the CFI for an order to relieve himself of criminal responsibility if he contravenes the illegal conduct provisions due to inadvertence, accidental miscalculation or any reasonable cause, and not due to bad faith. No prosecution against him may be instituted or carried on until the application for the relief of penalties and liabilities is disposed of by the CFI. The candidate will not be held liable by the CFI to be convicted of an offence if the illegal conduct is covered by an exemption order made by the court under s 31(2) of the ECICO.

18.19 A candidate who is unable or has failed to send to the CEO the election return before the expiry of the statutory deadline (see Part V of Chapter 17) due to the following reasons, and not due to the candidate's bad faith:

- (a) the candidate's own illness or absence from Hong Kong;

- (b) the death, illness, absence from Hong Kong or misconduct of any agent or employee of the candidate;
- (c) by reason of inadvertence or accidental miscalculation by the candidate or any other person; or
- (d) any reasonable cause (not due to the candidate's bad faith),

the candidate can make an application to the CFI for an order to allow him to send to the CEO the election return within a further period as specified by the CFI. [Ss 40(1) and (2) of the ECICO]

18.20 If, after the statutory deadline, a candidate spots 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 may apply to the CFI for an order to enable 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]

18.21 When the candidate finds himself in any of the situations set out in paras. 18.19 and 18.20 of this chapter, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 17.31 of Chapter 17, it would be wise of him to make the application to the CFI and inform the REO as soon as possible.

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

18.22 A person who commits:

- (a) **corrupt conduct** at an election is liable to a fine of \$500,000 and imprisonment for 7 years, and must pay to the court the amount or value of any valuable consideration received by the person or the person's agents in connection with the conduct, or such part of the amount or value as that court specifies [S 6(1) and (3) of the ECICO]; and
- (b) **illegal conduct** at an election is liable to a fine of \$200,000 and imprisonment for 3 years [S 22(1) of the ECICO].

18.23 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. 18.22 of this chapter, be disqualified:

- (a) from being nominated as a candidate for the election(s) of the CE, LegCo, DC, EC Subsector or an RR, or from being elected as the CE, a member of the LegCo, DC or EC, or an RR, if the election is held within five years after the date of conviction [Ss 14 and 20 of the CEEO, s 39 of the LCO, s 21 of the District Council Ordinance (Cap.547) ("DCO"), s 18 of the Schedule to the CEEO, and s 23 of the Rural Representative Election Ordinance (Cap. 576)]; and

- (b) from being appointed as a member of the DC or nominated as a nominee for EC subsector and from being registered as an ex-officio member of the EC or DC within five years after the date of conviction [Ss 5M and 9 of the Schedule to the CEEO and ss 14 and 19 of the DCO].

18.24 Election-related offences and contravention of the ECICO are 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. The District Court also reaffirmed this position in May 2022 when it concluded a case of engaging in illegal conduct at an election by incurring election expense<sup>58</sup>, with the following reasons for sentence:

“A clean election is essential for ensuring fair and just elections. It is also an important foundation for experiencing, practising and developing democracy and a prerequisite for maintaining the credibility of elections. The courts must take a serious view of all corrupt and illegal conduct in elections. *[Quoted from Secretary for Justice v. LEE YORK FAI and four others (CAAR 3/2011)]*

Corrupt and illegal practices in an election would ruin the integrity of the election. ...The court has the responsibility to convey to the public a clear and important message: that is, any person who has committed

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<sup>58</sup> *HKSAR v. Tai Yiu Ting* (DCCC 683/2021)

corrupt or illegal practices in any election will no longer receive lenient sentences as in the past and will be punished harshly. If lenient sentences continue to be imposed, this would lead to the breakdown of the whole election system. *[Quoted from Secretary for Justice v. LAI WAI CHEONG ([1998] 1 HKLRD 52)]*”