

CHAPTER 16

CORRUPT AND ILLEGAL CONDUCT

PART I : GENERAL

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

16.2 Provisions relating to corrupt and illegal conduct can be found in the ECICO. To help candidates and their agents to get acquainted with the major provisions of the Ordinance, the ICAC had prepared an Information Booklet on “Clean Rural Elections” for distribution to candidates. The content of the Information Booklet has also been uploaded onto the website of the ICAC (www.icac.org.hk/elections).

16.3 A person who engages in:

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

In addition to these penalties, a convicted person will be disqualified from being nominated as a candidate in future elections. For details, please see para. 16.38 below.

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

16.5 Under no circumstances is it permissible to induce an elector 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. Electors may sometimes require assistance or transportation service from others 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.

16.6 According to s 27 of the ECICO, if a candidate includes the name, logo or pictorial representation of a person or an organisation in his/her EA as an indication of support from that person or organisation, he/she has to obtain written consent to the inclusion before the publication of the EA. Oral consent or retrospective written consent obtained after the publication of the EA does not comply with the legal requirements. For details, please refer to paras. 16.12 to 16.16 and Chapter 17.

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

Offences Relating to Candidature

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

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

[S 7(1) of the ECICO]

16.8 Similarly, a person engages in corrupt conduct if he/she uses or threatens to use force or duress against another person to affect the candidature

of that other person or a third person. The use of deception to induce another person to affect the candidature of that other person or a third person is also a corrupt conduct. [Ss 8 and 9 of the ECICO]

16.9 It is also a corrupt conduct if a person defaces or destroys a completed or partly completed nomination paper with intent to prevent or obstruct another person from standing for election. [S 10 of the ECICO]

PART III : ILLEGAL CONDUCT RELATING TO ELECTIONEERING

Publishing False Statement that a Person is or is not a Candidate

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

Publishing False or Misleading Statement about a Candidate

16.11 A person must not publish any materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates. Similarly, a candidate must not publish any materially false or misleading statement of fact about himself/herself or another candidate or other candidates for the purpose of promoting the election of himself/herself or prejudicing the election of another candidate or other candidates. Any such publication will amount to an illegal conduct. It should be noted that materially false or misleading statements about a candidate or candidates include, but are not

limited to, statements concerning the character, qualifications or previous conduct of the candidate or candidates to promote or prejudice the election of the candidate or candidates. [S 26 of the ECICO] For example, a person who makes a materially false or misleading statement of fact about a candidate, thereby calling into question the integrity and honesty of that candidate, may contravene the above provision. Any person who wishes to publish a statement about a candidate or candidates should make every effort to ensure its accuracy before its publication.

Claim of Support

(Please also see Chapter 17)

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

16.13 Oral consent or retrospective written consent obtained after the publication of the EA does **not** comply with the legal requirements. The EAC provides a sample consent form for candidates to seek **consent of support** in writing from a person or an organisation (“consent form”). A candidate is required to post the consent form relevant to the EA concerned onto the Candidate’s Platform or Central Platform or deposit a copy of the consent form with the relevant RO in the manner as set out in para. 7.57 of Chapter 7 [s 92 of the EP (RRE) Reg]. It is important to note that it still constitutes an offence even if such an EA contains a statement to the effect that it does not imply support by the person or organisation for a candidate or candidates [s 27(4) of the ECICO]. It is also an offence for a person to give information which he/she knows or ought to know is materially false or misleading to a candidate or candidates for promoting or prejudicing the election of the candidate or candidates [s 27(6) of the ECICO].

16.14 Although confusion may be caused, a person or an organisation may support 2 or more candidates who are competing in the same Rural Area and this must be indicated in the written consent. A sample form prepared by the EAC for candidates to seek **consent of support** in writing from a person or an organization will be available at the HAD and the relevant RO’s office after the gazettal of a notice specifying a period and location for submitting nomination forms for the election. The forms may also be downloaded from the HAD website. It will also be provided to a candidate upon his/her submission of a nomination form for the election. Candidates should keep in mind that it is an offence to make a false claim of support [see Chapter 17].

16.15 Consent given can be revoked. In case of a revocation, in order to avoid dispute, it is advisable for the person or organisation revoking the consent to send a notice of the revocation to the candidate concerned. The candidate is required to notify the relevant RO in writing of the revocation of consent or post a copy of the revocation onto the Candidate’s Platform or the

Central Platform in the manner as set out in para. 7.57 of Chapter 7. The candidate concerned should immediately cease to publish any EA which contains the support of the person or organisation who has made the revocation.

16.16 S 28 of the ECICO provides for an injunction order by the Court to restrain the publication of any materially false or misleading statement or false claim of support. An application for such an injunction order may be made by a candidate, in the same Rural Area, his/her election agent an elector of the Rural Area concerned and the person or body to whom or which the false information is related.

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

16.17 A person engages in illegal conduct if he/she carries out any activity in public during the election period that incites³³ another person not to vote or to cast an invalid vote, and will be liable to a fine of \$200,000 and to imprisonment for 3 years. 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) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags,

³³ 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”. The prosecution must prove the relevant intent, i.e. the defendant intends to make the person being incited to do the incited act.

emblems and insignia;

- (c) the distribution or dissemination of any matter to the public.

[Ss 22(1) and 27A of the ECICO]

16.18 It should be noted that in determining whether any activity in public incites another person not to vote or to cast an invalid vote, regard may be had to the contents of the activity, the 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 of the ECICO]

PART IV : CORRUPT CONDUCT RELATING TO ELECTIONEERING AND VOTING

Bribery

16.19 A person engages in corrupt conduct at an election, if he/she acts to affect a person's voting preference by offering, soliciting or accepting an advantage [s 11 of the ECICO]. Voting preference covers voting for a particular candidate or particular candidates, not voting at an election or not voting for a particular candidate or particular candidates.

16.20 During the election period, candidates are advised to refrain from engaging in any monetary dealing which may be perceived as influencing a person's voting preference. Besides, during the election period, any person should avoid engaging in any act that 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 courses or discounted meals, etc. for distribution.

Treating

16.21 A person must not, at any time, provide or meet all or part of the cost of providing another person with any food, drink or entertainment (e.g. inclusive of singing performance) for the purpose of influencing that person's or a third person's voting preference. Likewise, it is a corrupt conduct at an election to solicit or accept any of such treating. [S 12 of the ECICO]

16.22 The mere act of serving only non-alcoholic drinks at an election meeting will not be deemed as engaging in the corrupt conduct mentioned in para. 16.21 above [s 12(5) of the ECICO]. An election meeting is any meeting held to promote or prejudice the election of a particular candidate or particular candidates. (See Chapter 9)

16.23 Where a person or an organisation hosts a banquet for a non-election-related purpose but, during the occasion, calls on the guests to vote for a particular candidate, the candidate, if present, should immediately stop any promotion of his/her election and dissociate with whatever has been said or done to promote his/her candidature. Otherwise, the occasion will be regarded as an election meeting held to promote his/her candidature and the expenses incurred will have to be counted towards his/her election expenses. At the same time, the host who uses the occasion for promoting the candidate may also be liable to prosecution for his/her failure in obtaining the candidate's prior authorisation to appoint him/her as the candidate's election expense agent for incurring election expense on behalf of the candidate. (See para. 9.2 of Chapter 9 and s 23 of the ECICO)

16.24 It is an offence under s 12 of the ECICO for any candidate or any person to offer food, drink or entertainment to affect another person's voting preference.

Force and Duress

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

16.26 Persons in position to exert pressure and influence on others should be careful not to breach the provisions under the ECICO, e.g. employers over employees, school principals or teachers over students, religious advisers over believers and doctors over patients, etc.

Deception or Obstruction

16.27 Furthermore, a person engages in corrupt conduct if he/she, 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. Besides, a person also engages in corrupt conduct if he/she wilfully obstructs or prevents another person (or gets another person to obstruct or prevent a third person) from voting at an election. Engaging in the above corrupt conduct will be liable to a fine of \$500,000 and to imprisonment for 7 years. [Ss 6(1), 14 and 14(1A) of the ECICO] It is also an offence to aid, abet, incite or attempt the said offence.

Voting Offences

16.28 It is a corrupt conduct for any person:

- (a) to impersonate another person to apply for a ballot paper at an election or, having voted at an election, to apply again at the same

election for a ballot paper in the person's own name;

- (b) to vote at an election knowing that he/she is not entitled to vote at that election;
- (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, to vote more than once in the same ReR Election, IIR Election or KFR Election; or
- (e) to invite or induce another person to commit (b), (c) or (d) above.

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

Candidates must note that all their electioneering and canvassing activities must be conducted within the confines of the ECICO. While candidates may engage in activities to promote themselves or to provide assistance or facilitation for electors to vote in an election, they must be extremely careful to ensure that these activities are not in breach of the provisions of the ECICO at any time.

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

16.29 Candidates should be careful when handling election expenses and election donations as non-compliance with the relevant requirements will

be a corrupt or illegal conduct. For details of the requirements that have to be observed, please refer to Chapter 15.

PART VI : POWER OF COURT TO EXCUSE INNOCENT ACTS

16.30 S 31 of the ECICO provides a mechanism for a candidate to apply to the CFI for an order to relieve himself/herself of criminal responsibility if he/she contravenes the illegal conduct provisions due to inadvertence, accidental miscalculation or any reasonable cause, and not due to bad faith. For previous court's decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 7.73 of Chapter 7 for the relevant judgments. No prosecution against him/her may be instituted or carried on until the application is disposed of by the CFI. He/She will not be liable to be convicted of an offence if the illegal conduct is the subject of the court order.

16.31 A candidate who is unable or has failed to send to the RO the election return before the expiry of the statutory deadline (see para. 15.31 of Chapter 15) due to his/her own illness or absence from Hong Kong, or the death, illness, absence from Hong Kong or misconduct of any agent or employee of the candidate, or by reason of inadvertence or accidental miscalculation by the candidate or any other person or any reasonable cause, and not due to the candidate's bad faith, can make an application to the CFI for an order to allow him/her to send to the RO the election return within a further period as specified by the CFI. [S 40(1) and (2) of the ECICO]

16.32 If a candidate makes an error or a false statement in the election return due to misconduct of any agent or employee of the candidate, or by reason of inadvertence or accidental miscalculation by the candidate or any other person, or any reasonable cause, and not due to the candidate's bad faith,

he/she may apply to the CFI for an order to allow 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]

16.33 When the candidate finds himself/herself in any of the situations set out in paras. 16.31 and 16.32 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.37, it would be wise of him/her to make the application to the CFI and inform the RO as soon as possible.

PART VII : NON-COMPLIANCE WITH THE LAW AND SANCTION

16.34 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.

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

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

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

16.38 A person convicted of a **corrupt or illegal conduct** within the meaning of the ECICO will, in addition to the penalties set out in para. 16.3 above, be disqualified:

- (a) from being nominated as a candidate for the election of, or from being elected as, the CE, a member of the LegCo or DC or an RR, if the election is held within 5 years after the date of conviction [ss 14 and 20 of the CEEO, s 39 of the LCO, s 21 of the DCO and s 23 of the RREO]; and
- (b) from being nominated as a candidate at EC Subsector Elections or from being elected as a member of the EC if the election is held within 5 years after the date of conviction, and from being nominated as a member of the EC or from being registered as an ex-officio member of the EC for 5 years from the date of conviction [ss 5M, 9 and 18 of the Schedule to the CEEO].

16.39 It is worth noting that the Courts of Hong Kong consider election-related offences and contravention of the ECICO as serious crimes. On 27 November 1997, the Court of Appeal laid down sentencing guidelines that a person found guilty of any serious election-related offence should be punished by an immediate custodial sentence. 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 expense³⁴, 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.

³⁴ *HKSAR v. Tai Yiu Ting* (DCCC 683/2021)

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 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)]*³⁵

³⁵ Chinese source text: 「廉正的選舉是確保選舉公平公正的要素，亦是體驗、實踐和發展民主的重要基石，更是維護選舉公信力的必需條件，對選舉舞弊和非法行為，法庭需嚴厲對待。... 選舉發生舞弊及非法行為，會破壞該選舉的完整性...法庭有責任向大眾傳達一個明確及重要的訊息：就是任何觸犯選舉舞弊或非法行為的人，將不會再受到如以往般寬大對待，必須加以嚴懲。假如繼續給予輕判，必會使整個選舉制度崩潰。」(DCCC 683/2021) [13 及 14 段]