CHAPTER 15

ELECTION EXPENSES AND ELECTION DONATIONS

PART I : GENERAL

15.1 The law has prescribed the maximum amount of election expenses aiming to ensure that all candidates can compete on a level playing field under a reasonable level of expenditures. Candidates must submit an election return to the DHA through the relevant RO on time after the election and in accordance with the statutory requirements. All election expenses incurred and the election donations received by the candidates and election expense agents must be listed out in the election returns.

15.2 The law stipulates that only candidates and their authorised election expense agents can incur election expenses. Other persons commit an offence if they incur any election expenses. Nevertheless, other persons who publish EAs on the Internet are exempted from the relevant criminal liability if the election expenses incurred are only electricity charges and/or charges for the Internet access.

15.3 Election expenses incurred by other persons without the consent or knowledge of a candidate are not attributed to the candidate concerned and the relevant consequences will be borne by the persons. However, if the election expenses are incurred by a person under the instruction of the candidate, the candidate must declare such expenses in the election return, otherwise he will be held legally responsible.

15.4 **Voluntary service** is defined as any service provided by any 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 exempted from being counted as election expenses. Nonetheless, any goods or materials given to the candidate incidental to the provision of voluntary service must be counted as election donations; such election donations must also be counted as election expenses after they are used.

PART II : WHAT CONSTITUTES ELECTION EXPENSES

15.5 Pursuant to s 2 of the ECICO:

(a) **Election Expenses —** in relation to a candidate at an election, "election expenses" 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. Election expenses include the value of election donations consisting of goods and services used for the above purposes;

(b) **Candidate —** means a person who stands nominated as a candidate at an election; and also means 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 RO. Regarding what constitutes "publicly declared an intention to stand as a candidate", it depends on the overall circumstances as well as the objective facts and evidence;

(c) **Election Donation —** in relation to a candidate at an election, election donation means any of the following donations. All such donations, whether in cash or in kind, should all be counted as election expenses after they are spent or used, see Part IV of this chapter:

(i) any money given to or in respect of the candidate for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate;

(ii) any goods given to or in respect of the candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate, and includes any goods given incidental to the provision of voluntary service; or

(iii) any service provided to or in respect of the candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate, with the exception of voluntary service (see para. 15.4 of this chapter).

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

(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;

(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[53], or during the period when the relevant person was a candidate.

The person(s) concerned must also take note of the following two issues:

(f) the date when the relevant expenses were incurred (although this is not a critical question 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 an apportionment exercise appropriate between election expenses and non-election expenses is necessary.

15.7 Whether a particular item of expenditure should be regarded as an election expense depends on the actual use of each item of expenditure, and 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 and relevant particulars should be included in the election return. As

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[53] In relation to an election, 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.

a general principle, factors that can be considered when apportioning expenses include time and usage. The candidate may refer to the examples on the apportionment of expenses shown in the "Guide to Return and Declaration of Election Expenses and Election Donations" and the video on the completion of election returns provided by the HAD. The candidate should seek independent legal advice in case of doubt on whether a particular item of expenditure should be counted as an election expense or on the apportionment of expenses. Any legal fees so incurred will not be regarded as election expenses.

15.8 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 items to be counted as election expenses is at **Appendix 11**. The list serves only as an illustration and example, and should not be regarded as taking precedence over the relevant legislation.

15.9 A candidate who misappropriates any public resources for election purposes may be in breach of the law.

PART III : WHO MAY INCUR ELECTION EXPENSES AND THE LIMIT

Maximum Amount of Election Expenses

15.10 The maximum amount of election expenses for the RRE is prescribed by the Maximum Amount of Election Expenses (Rural Representative Election) Regulation. Candidates and election expense agents must not incur election expenses in excess of that maximum amount. The relevant requirements would prevent candidates with ample financial resources from having an unfair advantage when conducting electioneering activities. [S 24(1) of the ECICO]

15.11 The maximum amount of election expenses is set out in the following table. Inquiry can be made with the relevant RO to ascertain the number of registered electors referred to in items (a) to (c).

Rural Areas	Maximum Amount of Election Expenses
(a) for an election in respect of a Rural Area where the number of registered electors is not more than 1 000	$18,000
(b) for an election in respect of a Rural Area where the number of registered electors is between 1 001 and 5 000	$28,000
(c) for an election in respect of a Rural Area where the number of registered electors is over 5 000	$38,000

[S 2 of the Maximum Amount of Election Expenses (Rural Representative Election) Regulation]

Persons Authorised to Incur Election Expenses

15.12 Only a candidate or a person who is authorised by the candidate to act as the election expense agent may incur election expenses. For the authorisation matters, see Part VI of Chapter 6. [S 23(1) of the ECICO]

15.13 Any person who is going to carry out **negative campaigning (i.e. publicity activities to prejudice the election of other candidates)** against other candidates for promoting the election of a candidate and hence incurring expenses must obtain the prior authorisation of the candidate who benefits from it to act as the election expense agent. The expenses must be counted as the election expenses of the candidate. If the negative campaigning includes EAs, it must comply with the relevant requirements of the ECICO and of the EP (RRE) Reg.

15.14 Prospective candidates who have the plan to stand for election should inform the organisations which they are associated with and may support their standing for election of the requirements relating to incurring election expenses as soon as possible, to prevent the relevant organisations from breaching the law by incurring election expenses without authorisations.

15.15 A candidate is responsible for the whole amount of his election expenses. If the aggregate amount of election expenses incurred by the candidate and/or the person acting on his behalf exceeds the maximum amount prescribed by the law, the candidate is subject to criminal liability, 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 agents must not incur election expenses exceeding the maximum amount authorised by the candidate, or else they commit an offence. [Ss 23 and 24 of the ECICO]

PART IV : ELECTION DONATIONS

General Requirements

15.16 A candidate may accept election donations, but the 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 prejudicing the election of other candidates. [S 18 of the ECICO]

15.17 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, must be counted as the aggregate amount of election expenses, and must not exceed the maximum amount prescribed by law.

15.18 Any election donations that are unspent, unused or exceed the maximum amount of election expense must be given to charitable institution(s) or trust(s) of a public character chosen by the candidate. The candidate must dispose of the above election donations before the election return is lodged. [Ss 19 and 37 of the ECICO]

15.19 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 donation receipt is made available from the ROs for candidates to obtain. Anonymous donations of more than $1,000 in value must not be used for meeting election expenses. If the candidate fails to issue a receipt according to the above requirements for election donations of more than $1,000 in value (including cases where a receipt cannot be issued due to anonymous donations), such donations cannot be used for election-related purpose and must be disposed of in accordance with para. 15.18 of this chapter. [S 19(1) and (2) of the ECICO]

15.20 Any person or organisation (including a political party) acting as an agent for one or more candidates must pay attention to the fact that the requirements for receiving election donations by an agent on behalf of a candidate are the same as those when the election donations are received by the candidate(s) direct. They should also note the points and adopt the good practice suggested in **Appendix 12**.

Election Donations in Kind

15.21 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
Goods or services obtained **free of charge** (including loans obtained at no interest[Note], premises provided free of charge for the conduct of electioneering activities)	(i) if the donor also offers similar goods or services to the public for a fee, the declared value shall be assessed based on the price charged by the donor to the public at that time; or (ii) if the donor does not offer similar goods or services to the public, the declared value shall be assessed based on the fair market price of similar goods or services provided by others.
Goods or services **obtained at a discount not available to general customers** (including loans obtained at an interest rate lower than usual[Note], premises rented at below-market rates for the conduct of electioneering activities)	The declared value shall be assessed based on the differences between the market/regular price of the relevant goods or services and the price paid by the candidate.

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

15.22 **Voluntary service** is the only free-of-charge service which can be exempted from being counted as election expenses. Nonetheless, any goods or materials given to the candidate incidental to the provision of voluntary service must be counted as election donations. In case the free service so provided is not offered by the supplier voluntarily and personally in his own time, the

relevant service should be treated as an election donation and must be counted as election expenses at a fair estimated value. [S 2 of the ECICO]

PART V : RETURN AND DECLARATION OF ELECTION EXPENSES AND ELECTION DONATIONS

15.23 A candidate must keep an accurate account of all election expenses incurred and election donations received (whether in cash or in kind), and must submit an election return to the DHA through the relevant RO before the expiry of the period of 30 days after the election is settled. **An election is settled on the date on which any of the following events occurs:**

(a) the result of the election is notified in the Gazette;

(b) the proceedings for the election are declared to have been terminated;

(c) the election is declared to have failed.

If more than one of the above events occurs in relation to the election, that election shall be deemed concluded on the date on which the last of those events occurred. If RR elections in relation to the same Rural Committee to be held on the same date settled on different dates, the 30-day period shall be counted from the last settling date. A candidate may also submit an election return within the extended period as permitted by the CFI under the relevant law. The election return must be completed in the specified form.

[S 37(1), (1L), (1M) and (1N) of the ECICO]

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

(a) the specified form for election return and a standard form of receipt for election donations (see paras. 15.19 and 15.23 of this chapter);

(b) the standard form for advance return of election donations (see Part VI of this chapter);

(c) the "Guide to Return and Declaration of Election Expenses and Election Donations" on how to complete the election return (accompanied by the relevant video link); and

(d) frequently asked questions 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 frequently asked questions before completing the election return. In addition, **Appendix 14** provides the frequently asked questions and answers concerning issues which candidates in the past found relatively confusing when completing the election returns for reference.

15.25 When completing the election return, the candidate must set out all the election expenses incurred by him and the election expense agents, and must be accompanied by an invoice and a receipt issued by the goods or service suppliers for each paid expenditure of $500 or more. 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 submit within 30 days from the payment date the invoice and receipt for each election expense of $500 or more after settlement of the claim(s) with the relevant suppliers on the scheduled date(s). 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 must 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) providing the goods or services; and

(d) information which proves that the organisation or person (other than the candidate himself) 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 receiving payment or signature of representative).

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

15.26 Furthermore, a candidate must also set out in the election return all election donations received by him, the election agent and other person(s) on the candidate's behalf, whether in cash or in kind, and must be accompanied by copies of receipts issued by the candidate for each election donation of more than $1,000 in value. For any election donations which remain unspent, unused, or for which a receipt has not been issued in accordance with the above requirements (including those of more than $1,000 in value but for which receipts cannot be issued due to anonymous donations), or election donations exceeding the maximum amount of election expenses, the candidate must also attach to the election return copies of receipts issued by the charitable institutions or trusts of a public character for the receipt of the election donations. The candidate must also submit, together with the election return, a declaration verifying the contents of the election return. [S 37 of the ECICO]

Simplified Relief Arrangement

15.27 If a candidate makes any error and/or false statement in the election return (for example, failing to declare one or more items of election expense or election donation, by mistake stating the amount of election expense or election donation, or failing to submit any relevant documents for the election expense or election donation as required), and the aggregate amount of value involved does **not** exceed $600, he 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 RO deems the simplified relief arrangement applicable, the RO, acting on behalf of the DHA as the authority to administer the arrangement, would issue a notice to the candidate. Upon receipt of the notice, the candidate must, within the specified period (see para. 15.28(a) of this chapter), lodge with the DHA through the RO a revised election return. In such revised election return, the necessary revision to the error(s) or false statement(s) should be marked on a copy of the originally submitted election return. An error or false statement made in an election return 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 and item 9 of the Schedule to the ECICO]

15.28 A revised election return lodged by a candidate must comply with the following requirements, otherwise it is of no effect:

(a) it must be lodged within 30 days after the date of receiving notice from the RO relating to the error(s) and/or false statement(s) in the election return;

(b) it is accompanied by all relevant documents (e.g. invoice and/or receipt) and an explanation (if applicable); and

(c) it is 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 candidate may only lodge one revised election return under the simplified relief arrangement, and the revised election return cannot be withdrawn or further amended once lodged with the RO. 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.

15.29 If, **after including the cumulative amount of errors and false statements, the aggregate amount of election expenses incurred by a candidate exceeds the maximum amount of election expenses prescribed for a particular election, the candidate engages in illegal conduct at an 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 the submitted election return or 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 prosecuted. Moreover, the simplified relief arrangement will not relieve the candidate from the liabilities for committing the relevant offences if the election return of the candidate violates other statutory requirements. [Ss 20, 24 and 37A of the ECICO]

<u>Statutory Relief Mechanism</u>

15.30 If a candidate fails to send to the DHA through the relevant RO the election return before the statutory deadline (see para. 15.23 of this chapter), he commits an offence (see para. 15.40 of this chapter for the relevant penalties). However, 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 inadvertence or accidental miscalculation by the candidate or any other person, or any other reasonable causes (but not due to the candidate's bad faith), he may make an application to the CFI for an order allowing him to send the election return to the DHA through the relevant RO within a further period as specified by the CFI. [S 40(1) and (2) of the ECICO]

15.31 If a candidate notices an error or a false statement in the election return after the expiration of the statutory deadline, and it is due to misconduct of any agent or employee of the candidate, or inadvertence or accidental miscalculation by the candidate or any other person, or any other reasonable causes (but 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. [S 40(3) and (4) of the ECICO]

15.32 The legal fees incurred for applying to the CFI for the aforementioned order will not be counted as election expenses.

15.33 If the candidate finds himself in any of the situations set out in paras. 15.30 and 15.31 of this chapter, unless the simplified relief arrangement mentioned in para. 15.27 is applicable, he should make an application to the CFI and inform the relevant RO as soon as possible. For previous court rulings on applications for the relief of election-related liabilities, relevant judgements are set out in Part IX of Chapter 7.

PART VI : ADVANCE RETURN OF ELECTION DONATIONS

15.34 Any candidate who is an incumbent public servant under the POBO, such as a serving member of the LegCo or a DC, etc., may disclose to the RO in advance any election donations received. However, even though the above election donations have been disclosed in advance, candidates must still observe the general requirements regarding election donations in Part IV and Part V of this chapter and set out the relevant information in the election return. [S 37(1) of the ECICO]

15.35 Any **advance return of election donations** must be made on the standard form mentioned in para. 15.24(b) of this chapter. A candidate may submit multiple advance returns of election donations as needed.

PART VII : ENFORCEMENT AND PENALTY

Enforcement

15.36 The election returns will be made available at the office of the relevant RO for public inspection up to the 30th day before the first anniversary of the date of the deadline for lodging the election return (any order made by the CFI allowing an extension of the deadline will not be counted). Copies of the election returns will be furnished to any person upon request during the above period, subject to the payment of a copying fee at a fixed rate. [S 41 of the ECICO]

15.37 The RO will check all election returns. Irregularities detected will be reported to the relevant government departments/authorities for investigation.

Penalty

15.38 Except the exemption mentioned in para. 15.39 of this chapter, it is illegal conduct for a person other than a candidate or an election expense agent to incur election expenses. Besides, it is also illegal conduct for a candidate to incur election expenses in excess of the maximum amount prescribed, or 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]

15.39 Any person other than a candidate or an election expense agent is exempted from the relevant criminal liability if the person publishes an EA on Internet, and the only election expenses incurred are electricity charges and/or charges for the Internet access. However, if a person who is authorised by a candidate or an election expense agent publishes an EA of the candidate on Internet platforms, even though the only election expenses incurred are electricity charges and/or charges for the Internet access, such expenses must still be included in the election expenses of the candidate.

NOTE:

If a candidate or an election expense agent publishes an EA on Internet platforms, even though the only election expenses are electricity charges and/or charges for the Internet access, such expenses must still be included in the election expenses of the candidate.

[S 23(1A) of the ECICO]

15.40 If a candidate fails to submit the election return before the statutory deadline or fails to provide an accurate account of all election expenses incurred and all election donations received, or fails to provide the supporting invoices

and receipts issued by the goods or service suppliers, he commits an offence and is liable to a fine of $200,000 and to imprisonment for 3 years. Moreover, the candidate will also be subject to the same disqualifications from elections (for example, disqualification from being nominated as a candidate or elected at an election) as a person convicted of having engaged in illegal conduct (see Part VII of Chapter 16). [S 38(1) and (4) of the ECICO]

15.41 If a candidate, who, having been elected as an RR, acts in the office or participates in the affairs as an RR without lodging an election return before the statutory deadline, he commits an offence and is liable to a fine of $5,000 for each day. [S 39(1) and (2) of the ECICO]

15.42 A candidate or other person who uses election donation for a purpose other than meeting or contributing towards meeting the election expenses, or fails to dispose of unspent or exceeded amount of election donations in accordance with s 19 of the ECICO engages in corrupt conduct at an election and is liable to a fine of $500,000 and to imprisonment for 7 years. [Ss 6, 18 and 19 of the ECICO]

15.43 If a candidate makes a statement that he knows or ought to know is materially false or misleading in his lodged election return or a copy of a revised election return, he engages in corrupt conduct at an election and is liable to a fine of $500,000 and to imprisonment for 7 years. [Ss 6 and 20 of the ECICO]

15.44 Any complaint or report of a breach of the relevant legislation may be made to the EAC or its Complaints Committee and the RO. The relevant cases may be referred to the relevant authorities for investigation.