CHAPTER 16

CORRUPT AND ILLEGAL CONDUCT

PART I : GENERAL

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

16.2 The ICAC has compiled an information booklet titled "Clean Rural Elections" to help candidates and their agents to familiarise themselves with the key provisions of the ECICO. The content of the information booklet has also been uploaded to the ICAC website.

16.3 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 vote or not to vote for a particular candidate or particular candidates, or not to vote at an election by offering an advantage, food, drink or entertainment, or by using force or duress, or by a deception, and to wilfully obstruct or prevent an elector from voting. Such acts violate the ECICO. For the penalties of violating the relevant legislation, see Part VII of this chapter. Electors may sometimes require assistance from others or transportation services in accessing a polling station. However, the persons concerned must not deliberately use the above-mentioned means 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 CANDIDATES TO STAND FOR ELECTION OR NOT

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

(a) <u>Bribing Candidates or Prospective Candidates</u>:

offering an advantage to another person as an inducement or reward for that person or a third person to, or soliciting or accepting an advantage to get that person or another person to:

(i) stand or not stand as a candidate at the election;

(ii) withdraw a nomination; or

(iii) not to use his best endeavours to promote the election;

(b) <u>Force or Duress</u>:

using or threatening to use force or duress against another person, to induce that person to, or to induce that person to get a third person to, or because the other person or a third person:

(i) stand or not stand/stood or did not stand (as the case may be) as a candidate at the election; or

(ii) withdraw/withdrew (as the case may be) a nomination (if the other person or the third person has been nominated as a candidate at the election);

(c) <u>Deceptive Behaviour</u>:

by a deception, inducing another person to, or inducing another person to get a third person to:

(i) stand or not stand as a candidate at the election; or

(ii) withdraw a nomination (if the other person or the third person has been nominated as a candidate at the election);

(d) <u>Defacing or Destroying Nomination Papers</u>:

defacing or destroying a completed or partly completed nomination paper in order to prevent or obstruct another person from standing for election.

For more information on upholding clean elections and examples of the above corrupt conduct in relation to election, see the "Clean Rural Elections Information Booklet" and the Clean Rural Elections Website of the ICAC.

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

PART III : ILLEGAL CONDUCT RELATING TO ELECTIONEERING ACTIVITIES

16.5 Candidates conducting electioneering activities must comply with the ECICO. Candidates and campaign helpers should note the following illegal conduct relating to electioneering activities. For the penalties for violating the relevant legislation, see Part VII of this chapter.

False Statement relating to a Candidate

16.6 A person engages in illegal conduct at an election if the person publishes a false statement relating to a candidate, including:

(a) publishing a statement, knowing it to be false, that a person is or is no longer a candidate at the election; and

(b) publishing a materially false or misleading statement of fact relating to a particular candidate or particular candidates, including but not limited to a statement 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 the candidate or candidates may also contravene the above-mentioned requirements. Therefore, before publishing a statement of fact about a candidate or candidates, every effort should be made to ensure the accuracy of the statement.

[Ss 25 and 26 of the ECICO]

Claim of Support

16.7 Unless with prior written consent from the relevant person or organisation, any person is not permitted to:

(a) publish EAs containing that person's or that organisation's, or that is substantially similar to the name, logo or pictorial representation of or associated with that person or that 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) modify and authorise any person to modify EAs provided by a supporter or organisation, which contain the name, logo or pictorial representation of that supporter or organisation, and any content of the EAs provided by them.

For the detailed statutory requirements relating to claim of support, see Chapter 17.

[S 27 of the ECICO]

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

16.8 A person engages in illegal conduct at an election if the person incites[54] another person not to vote or to cast an invalid vote by activity in public during the election period. Activity in public includes the following activities, whether or not the persons concerned are in a public place while carrying out such activity:

(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded materials;

(b) except for (a) of this paragraph, any other conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; or

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

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

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[54] 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.

16.9 To determine whether an activity in public incites another person not to vote or to cast an invalid vote, considerations may be given 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 if he 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

16.10 As stated in para. 16.4 of this chapter, a person engages in corrupt conduct at an election if the person affects a person's voting preference by offering, soliciting or accepting an advantage. For the penalties for violating the relevant legislation, see Part VII of this chapter. Voting preference covers voting for a particular candidate or particular candidates, not voting at the election, or not voting for a particular candidate or particular candidates. [S 11 of the ECICO]

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

Treating

16.12 A person engages in corrupt conduct at an election if the person provides another person with food, drink or entertainment (e.g. singing performance) or pays all or part of the cost of providing such treating for the purpose of affecting that person's or a third person's voting preference. It is

also unlawful to solicit or accept any of such improper treating. However, the mere act of serving only non-alcoholic drinks at an election meeting will not be deemed as corrupt conduct, unless the purpose of such treat is to influence the electors' voting preferences. [S 12 of the ECICO]

Force or Duress

16.13 A person engages in corrupt conduct at an election if the person uses force or duress, or threatens to use force or duress to induce another person 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. Persons in a position which they can exert pressure and influence on others, such as employers over employees, school principals or teachers over students, religious advisers over believers and doctors over patients, etc., should be careful not to breach the relevant requirements. [S 13 of the ECICO]

Deception or Obstruction

16.14 A person engages in corrupt conduct at an election if the person, 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. A person also engages in corrupt conduct at an election if the person 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 to commit the above corrupt conduct. [S 14(1) and (1A) of the ECICO]

16.15 Other corrupt conduct relating to voting includes (but is not limited to):

(a) 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) vote knowing that he is not entitled to do so;

(c) 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) of this paragraph.

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

16.16 For more details on other corrupt conduct, see the ECICO.

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

16.17 Candidates should be careful when handling election expenses and election donations as violation of the relevant requirements will also be corrupt or illegal conduct. For the requirements that have to be observed by candidates and the penalties for conviction because of the relevant acts, see Chapter 15.

PART VI : POWER OF COURT TO EXEMPT UNWILFUL ACTS

16.18 A candidate, agent or other person may apply to the CFI for an order to relieve himself from criminal liability if he violates the requirements relating

to illegal conduct due to inadvertence, an accidental miscalculation or any reasonable cause (but not due to bad faith). No prosecution against him may be instituted or carried on by relevant law enforcement agency, until the application for the relief of penalties and liabilities is disposed of by the CFI. The candidate, agent or other person will not be convicted of violation of law by the court if the relevant illegal conduct has been exempted by an order made by the court under s 31(2) of the ECICO. [S 31 of the ECICO]

16.19 If a candidate is unable or has failed to send to the relevant RO the election return before the expiry of the statutory deadline (see Part V of Chapter 15) due to the following reasons, but not due to the applicant's bad faith:

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

(b) the death, illness, absence from Hong Kong or misconduct of an agent or employee of the candidate; or

(c) inadvertence or an accidental miscalculation by the candidate or any other person; or

(d) any reasonable cause (but not due to bad faith),

the candidate can apply to the CFI for an order to allow him to send the election return to the relevant RO within a further period as specified by the CFI. [S 40(1) and (2) of the ECICO]

16.20 If, after the statutory deadline, a candidate spots an error or a false statement in the election return due to misconduct of an agent or employee of the candidate, or by reason of inadvertence or an accidental miscalculation by the candidate or any other person, or any reasonable cause (but not due to 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. [S 40(3) and (4) of the ECICO]

16.21 When the candidate finds himself in any of the situations set out in paras. 16.19 and 16.20 of this chapter, other than the situations where correction of errors or false statements is allowed under the simplified relief arrangement in para. 15.27 of Chapter 15, he should apply to the CFI and inform the relevant RO as soon as possible.

PART VII : VIOLATION OF THE LAW AND SANCTION

16.22 A person who engages in:

(a) **corrupt conduct** at an election is liable to a fine of $500,000 and to imprisonment for 7 years, and must pay to the court the amount or value of the money or anything worth money 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 to imprisonment for 3 years [s 22(1) of the ECICO].

16.23 A person convicted of **corrupt or illegal conduct** within the meaning of the ECICO will, in addition to the penalties set out in para. 16.22 of this chapter, be disqualified:

(a) if the election is held within five years after the date of conviction, from:

(i) being nominated as a candidate for the election(s) of the CE, LegCo, DC, EC Subsector or an RR; or

(ii) being elected as the CE, a member of the LegCo, DC or EC, or an RR; and

[Ss 14 and 20 of the Chief Executive Election Ordinance (Cap. 569) ("CEEO") and s 18 of the Schedule to the CEEO, s 39 of the LCO, s 21 of the District Council Ordinance (Cap. 547) ("DCO"), and s 23 of the RREO]

(b) within five years after the date of the person's conviction, from:

(i) being appointed as a member of the DC;

(ii) being nominated as a nominee for the EC subsector; or

(iii) being registered as an ex-officio member of the EC or DC.

[Ss 5M and 9 of the Schedule to the CEEO, and ss 14 and 19 of the DCO]

16.24 Election-related offences and violation of the ECICO are serious crimes. On 27 November 1997, the Court of Appeal laid down sentencing guidelines stating that a person who is convicted of any serious election-related offence should be sentenced to immediate imprisonment. In addition, the District Court also reaffirmed the relevant position in May 2022 when it concluded a case of engaging in illegal conduct at an election by incurring election expense[55]. The reasons for sentence are extracted below:

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[55] *HKSAR v. Tai Yiu Ting* (DCCC 683/2021).

"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 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)]*"