

## CHAPTER 15

### ELECTION EXPENSES AND ELECTION DONATIONS

#### PART I : GENERAL

15.1 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. Candidates must submit an election return to the CEO after the election on time and in accordance with the statutory requirements, listing the election expenses incurred and the election donations received by them and their election expense agents. *[Added in September 2019]*

15.2 “Candidate” is defined as a person who stands nominated as a candidate at an election and a person who, before the close of nominations for an election, has publicly declared an intention to stand for an election. “Election expenses” is defined as expenses incurred or to be incurred at any time (i.e. whenever before, during or after the election period) for the purpose of promoting or prejudicing the election of a candidate. See Part II of this chapter for details. “Election expense agent” refers to a person authorised by a candidate to incur election expenses at an election on the candidate’s behalf. *[Added in September 2019]*

15.3 To ensure that election expenses do not exceed the statutory maximum amount, the law stipulates that only candidates and their authorised election expense agents may incur election expenses. Therefore, persons other than the candidates and election expense agents are not permitted to incur any election expenses, or else they engage in illegal conduct at an election. Nevertheless, a third party (other than a candidate and his/her election expense

agents) who publishes an EA on the Internet is exempt from the relevant criminal liability if the only election expenses incurred are electricity charges and/or charges necessary for accessing the Internet. *[Added in September 2019]*

15.4 Election expenses incurred by a third party without the consent or knowledge of a candidate are not attributed to the candidate concerned and the third party has to bear the responsibility. However, if the election expenses are incurred by the third party under the instruction of the candidate, especially when the maximum amount of election expenses is exceeded, the candidate should be held legally responsible. *[Added in September 2019]*

15.5 If the expenses incurred by a candidate are partly related to the election and partly the recurrent expenditures for other purposes, the candidate is required to apportion the election-related expenses and include them in the election return. The apportionment can be made on a pro rata basis having regard to the time and/or usage involved. *[Added in September 2019]*

15.6 Voluntary service is defined as any service provided by any natural person voluntarily, personally and free of charge in his/her own time for the purpose of promoting the election of a candidate or prejudicing the election of other candidates. Voluntary service is the only service rendered free of charge which can be excluded from being counted as election expenses. Nonetheless, goods or materials incidental to the provision of voluntary service and given to the candidate will be counted as election donations, which will be counted as election expenses when used. *[Added in September 2019]*

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

15.7 For the provisions relating to election expenses, please refer to the ECICO.

15.8           **“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 [s 2 of the ECICO].   **“Candidate”** includes a person **who has publicly declared an intention to stand as a candidate** at an election at any time before the close of nominations for the election, regardless of whether he/she has submitted his/her nomination form, he/she has withdrawn his/her nomination after submission of the nomination form, or his/her nomination is ruled invalid by the DCERC [s 2 of the ECICO].   *[Amended in September 2023]*

15.9           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. As to whether a particular item of expense would amount to election expenses, candidates and other persons concerned should take heed of the points made by the CFA in a case relating to the 2008 LegCo General Election (FACV 2/2012), which state 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 (as defined in s 2(1) of the ECICO) or during the period when the relevant person was a candidate.

The following two issues should also be noted:

- (a) the date when the relevant expenses were incurred should be ascertained (although this is not a critical question since election expenses may be incurred before, during or after an election period); and
- (b) in relation to the relevant activities or matters of which the expenses may be incurred for more than one purpose, it should be considered whether an apportionment exercise appropriate between election expenses and non-election expenses is necessary.

If candidates have doubt as to whether an expense falls within the criteria mentioned above or whether an expense should be regarded as an election expense, they should seek independent legal advice. Any legal fees so incurred will not be regarded as election expenses.

*[Added in September 2023]*

15.10 A prescribed person who has applied under the PCBP (LC & DC) Reg to have his/her emblem registered would not, by that act alone, be treated as having publicly declared an intention to stand for election. *[Amended in September 2007]*

15.11 A candidate may receive **election donations**. “Election donation”, in relation to a candidate or candidates at an election, means any of the following donations:

- (a) any money given to or in respect of the candidate for the purpose of meeting or contributing towards meeting the election expenses;
- (b) any goods given to or in respect of the candidate for the purpose of promoting his/her election or of prejudicing the election of another candidate or other candidates, including any goods given incidental to the provision of voluntary service; or
- (c) any service, other than voluntary service, provided to or in respect of the candidate for the purpose of promoting his/her election or of prejudicing the election of another candidate or other candidates (see para. 15.31 below).

[S 2 of the ECICO]

All such donations, whether in cash or in kind, are counted as election expenses when they are spent or used (see Part IV of this chapter for details).

15.12 Whether an expense incurred should be counted as election expenses depends on the actual circumstances of each case. As long as the expense is incurred for the purpose of:

- (a) promoting the election of a candidate; or
- (b) prejudicing the election of another candidate;

it will be counted as an election expense, irrespective of whether it is incurred or to be incurred before, during or after the election period, and regardless of the source of funding. *[Amended in September 2012]*

15.13 Whether a particular item of expenditure should be regarded as an election expense depends on the actual use of the expenses, 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. The candidate concerned should include relevant particulars of the expense in his/her election return. As a general principle, time and/or usage are relevant factors for consideration in apportioning expenses. The candidate may refer to the examples on the apportionment of expenses shown in the guide and the video on the completion of election returns mentioned in para. 15.35 (c) below (also see para. 15.33 below). The candidate may seek professional advice on the apportionment of expenses when necessary. Any fees incurred for such professional advice will not be regarded as election expenses. *[Amended in September 2015 and September 2019]*

15.14 Staff and other resources used by a candidate in his/her official capacity or when discharging his/her duties for the purpose of promoting his/her candidature at the election should be counted as an election expense. A list of common expenditure items to be counted towards election expenses is at **Appendix 14**. The list serves only as an illustration and should not be regarded as taking precedence over the legislation. Candidates should consult a legal adviser in case of doubt on whether an expenditure item should be counted as an election expense. Any legal fees so incurred will not be regarded as election expenses.

15.15 A candidate misappropriates any public resources for election purposes may be in breach of the law. *[Amended in September 2015 and September 2023]*

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

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

15.16 The maximum amount of election expenses for the DC election is prescribed by the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap 554C). This regulation would prevent candidates with ample financial resources from having an unfair advantage. *[Amended in September 2007]*

15.17 The maximum amount of election expenses for the DCC (from the seventh term DC Ordinary Election onwards) is \$100,000 and the maximum amount of election expenses for the DCGC (from the seventh term DC Ordinary Election onwards) are set out in the following table:

| <b>District Council Geographical Constituency</b> | <b>Maximum Amount of Election Expenses</b> |
|---|--|
| Central   | \$512,400                                  |
| Western   | \$585,600                                  |
| Wan Chai  | \$951,600                                  |
| Tai Pak   | \$805,200                                  |
| Hong Wan  | \$878,400                                  |
| Chai Wan  | \$878,400                                  |

| <b>District Council Geographical Constituency</b> | <b>Maximum Amount of Election Expenses</b> |
|---|--|
| Southern District Southeast                       | \$658,800                                  |
| Southern District Northwest                       | \$585,600                                  |
| Yau Tsim Mong South                               | \$732,000                                  |
| Yau Tsim Mong North                               | \$732,000                                  |
| Sham Shui Po West                                 | \$878,400                                  |
| Sham Shui Po East                                 | \$951,600                                  |
| Kowloon City North                                | \$951,600                                  |
| Kowloon City South                                | \$878,400                                  |
| Wong Tai Sin East                                 | \$878,400                                  |
| Wong Tai Sin West                                 | \$951,600                                  |
| Kwun Tong Southeast                               | \$732,000                                  |
| Kwun Tong Central                                 | \$732,000                                  |
| Kwun Tong North                                   | \$658,800                                  |
| Kwun Tong West                                    | \$805,200                                  |
| Tsuen Wan Northwest                               | \$658,800                                  |
| Tsuen Wan Southeast                               | \$732,000                                  |
| Tuen Mun East                                     | \$732,000                                  |
| Tuen Mun West                                     | \$805,200                                  |
| Tuen Mun North                                    | \$732,000                                  |
| Yuen Long Town Centre                             | \$732,000                                  |
| Yuen Long Rural East                              | \$658,800                                  |
| Tin Shui Wai South and Ping Ha                    | \$732,000                                  |
| Tin Shui Wai North                                | \$732,000                                  |



| <b>District Council Geographical Constituency</b> | <b>Maximum Amount of Election Expenses</b> |
|---|--|
| Wu Tip Shan                                       | \$658,800                                  |
| Robin's Nest                                      | \$658,800                                  |
| Tai Po South                                      | \$658,800                                  |
| Tai Po North                                      | \$732,000                                  |
| Sai Kung and Hang Hau                             | \$658,800                                  |
| Tseung Kwan O South                               | \$732,000                                  |
| Tseung Kwan O North                               | \$732,000                                  |
| Sha Tin West                                      | \$732,000                                  |
| Sha Tin East                                      | \$805,200                                  |
| Sha Tin South                                     | \$732,000                                  |
| Sha Tin North                                     | \$732,000                                  |
| Tsing Yi  | \$805,200                                  |
| Kwai Chung East                                   | \$732,000                                  |
| Kwai Chung West                                   | \$732,000                                  |
| Islands   | \$732,000                                  |

[Ss 3 and 3A of the Maximum Amount of Election Expenses (District Council Election) Regulation] *[Amended in September 2007, September 2011, September 2015, September 2019 and September 2023]*

15.18 A candidate and his/her election expense agents must not incur election expenses in excess of the maximum amount prescribed by the law [s 24(1) of the ECICO].

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

15.19 Only a candidate or a person who has been duly authorised by a candidate as the candidate's election expense agent may incur election expenses [s 23(1) of the ECICO]. The authorisation should follow the procedures specified in Part VI of Chapter 6. *[Amended in September 2011]*

15.20 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) (DC) Reg. *[Amended in September 2007]*

15.21 Candidates who have the intention or plan to run for an election should inform those organisations with which they are associated and which may incur expenses to support them of the relevant requirements as soon as possible, to prevent the organisations from committing an offence out of ignorance.

15.22 A candidate is responsible for the whole amount of his/her election expenses. If the aggregate amount of election expenses incurred by the candidate and/or the person acting on his/her behalf exceeds the prescribed limit, the candidate shall be liable for contravening the law, unless he/she can prove that the excess amount is incurred without his/her consent or authorisation and is not due to any negligence on his/her part. Besides, the election expense agent should not incur election expenses exceeding the limit authorised by the candidate, or else he/she contravenes s 23(4) of the ECICO.

[Ss 23 and 24 of the ECICO] *[Amended in September 2007 and September 2011]*

## **PART IV : ELECTION DONATIONS**

### **General Requirements**

15.23 Any person who has made clear his/her intention to stand as a candidate at an election may receive election donations, but any money received can only be used for meeting, or contributing towards meeting, a candidate's election expenses, or in the case of an election donation consisting of goods or a service, for the purpose of promoting the election of the candidate or prejudicing the election of another candidate or other candidates. [S 18 of the ECICO] *[Amended in September 2023]*

15.24 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 (in relation to the machinery of the election), are counted towards the total amount of election expenses, and are subject to the maximum amount prescribed. *[Amended in September 2019]*

15.25 Any unspent or unused election donations to a candidate must be given to charitable institutions or trusts of a public character chosen by the candidate. Any amount of election donations that exceeds the maximum amount of election expenses must also be given to such charitable institutions or trusts. The disposal must be done before the election return is lodged in

accordance with s 37 of the ECICO. [S 19(3), (4) and (5) of the ECICO]  
*[Amended in September 2011]*

15.26 Since the only lawful usage for election donations is to be spent for meeting or contributing towards meeting election expenses, donations are often regarded as election expenses. Every item of election expense which is avoided or reduced as a result of the provision of goods or services free of charge or at a discount normally involves a corresponding item of election donation. The only exception is voluntary service obtained which are not treated as election donations (however, any goods given incidental to the provision of voluntary service will be counted as an election donation). Relevant details are elaborated in paras. 15.29 to 15.31 below. *[Amended in September 2011]*

15.27 On receiving an election donation in the form of money or in kind of more than \$1,000 in value, a candidate must issue to the donor a receipt which specifies the name and address of the donor (as supplied by the donor) as well as the particulars of the donation. A standard form of donation receipt is available from the REO and will be given to a candidate when he/she submits the nomination form. Though it is common that some donors would like to make it anonymous, a donation, whether in cash or in kind, of more than \$1,000 in value must not be used for election-related purposes unless the donor's name and address (as supplied by the donor) are shown as required by the standard form of donation receipt. Donations over \$1,000 or, in the case of an election donation consisting of goods, of more than \$1,000 in value received from anonymous donors must not be used for meeting election expenses. Such a donation must be given to a charitable institution or trust of a public character chosen by the candidate. [S 19(1) and (2) of the ECICO]  
*[Amended in September 2007 and September 2019]*

15.28 Any person or organisation (including a political party) acting as an agent to solicit, receive or collect election donations for a candidate or candidates should comply with all the requirements under the ECICO as in the case of election donations directly received by candidates. To avoid causing confusion to donors/members of the public, the agent is advised to note the points and adopt the good practice suggested in **Appendix 15**. *[Added in September 2015]*

### **Election Donations in Kind**

15.29 Election donations in kind include goods and services obtained free of charge or at a discount. Unless the discount is generally available to all customers, the difference between the market/regular price and the price charged is an election donation and must be declared and included as such and accordingly as an election expense in the election return. The same principle applies to loans obtained at no interest or at an interest rate lower than usual, or goods rented free of charge or at a discount. Unless the loan conditions or the rental of such goods are generally available to others, the waived or discounted interest or rental must be declared and included as an election donation and election expense in the election return. For premises provided free of charge to a candidate for his/her election campaign, a reasonable amount should be determined as the assessed rental for the premises, and should be declared and included as an election donation and election expense in the election return. *[Amended in September 2023]*

15.30 For services or goods obtained free of charge, a candidate must declare them as election donations and declare in the election return their estimated value accordingly as election expenses. Where the services or goods are furnished by a person who deals in similar services or goods with the public, the estimated value of such services or goods should be assessed at the lowest prevailing price charged to the public. Where such services or goods

are furnished by a person who does not deal in similar services or goods with the public, their estimated value should be assessed at the lowest market price of such services or goods furnished by other persons.

15.31 **Voluntary service** is the only service rendered free of charge which can be excluded from being counted as election expenses. Nonetheless, goods or materials incidental to the provision of voluntary service and given to the candidate will be counted as election donations. Apart from being provided free of charge, the service must be provided by a natural person, voluntarily and personally, in his/her own time for the purpose of promoting the election of the candidate or candidates, or of prejudicing the election of another candidate or other candidates [s 2 of the ECICO]. Otherwise, the service provided should be treated as an election donation and be counted towards election expenses at a fair estimated value. *[Amended in September 2007]*

## **PART V : ELECTION RETURN**

15.32 A candidate must keep an accurate account of all election expenses incurred and election donations (whether in cash or in kind) received, and **submit to the CEO 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 published in the Gazette; or**

**(b) the election is declared to have failed.**

[S 37(1), (1F), (1G) and (1N) of the ECICO] [*Amended in September 2007, September 2012, September 2019 and September 2023*]

15.33 The election return should set out all the election expenses incurred by the candidate and his/her election expense agents. For each paid expense of \$500 or more, the election return must be accompanied by an invoice and a receipt issued by the goods or service providers [s 37(2)(b) of the ECICO]. 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 according to 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 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/herself) providing the goods or services; and
- (d) information which proves that the organisation or person (other than the candidate himself/herself) 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 or signature of its authorised representative).

*[Amended in September 2011, September 2019 and September 2023]*

15.34 A candidate must also set out in the election return all election donations received by him/her or his/her representatives, whether in cash or in kind (including goods and services obtained free of charge or at a discount). 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 or unused election donations, anonymous donations of more than \$1,000 in value or election donations exceeding the limit of election expenses, the election return must also be accompanied by copies of receipts issued by the charitable institutions or trusts of a public character for the receipt of relevant election donations. A declaration verifying the contents of the election return must also be submitted together with the election return. [S 37 of the ECICO] *[Amended in September 2011 and September 2019]*

15.35 At the time when a candidate submits his/her nomination form, he/she will be given:

- (a) the specified form for election return mentioned in para. 15.32 above, together with a standard form of receipt for election donations mentioned in para. 15.27 above;
- (b) the standard form for advance return of election donations (see paras. 15.42 to 15.43 below);
- (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. *[Amended in September 2012 and September 2019]*

### **Statutory Relief Mechanism for Errors and False Statements**

15.36 If a candidate is unable or fails to send to the CEO the election return before the statutory deadline (see para. 15.32 above) 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 inadvertence or accidental miscalculation by the candidate or any other person, or any reasonable cause, and was not due to the candidate's bad faith, he/she can make an application to the CFI for an order allowing him/her to send in the election return to the CEO within a further period as specified by the CFI [s 40(1) and (2) of the ECICO]. The legal costs so incurred will not be regarded as his/her election expenses. *[Amended in September 2007, September 2011, September 2012 and September 2015]*

15.37 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 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/she may apply to the CFI for an order allowing 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]. The legal costs so incurred will not be regarded as his/her election expenses. For previous court decisions regarding applications for the relief of election-related penalties and liabilities, see the relevant judgments in para. 7.70 of Chapter 7. *[Added in September 2011, amended in September 2015 and September 2023]*

15.38 Notwithstanding the provision set out in para. 15.37 above, if a candidate makes any error and/or false statement in the election return, the nature of which is either a failure to set out in the election return any election expense of the candidate at the election or any election donation received by or on behalf of the candidate in connection with the election, or incorrectness in the amount of any election expense or any election donation, **and** the aggregate value of the errors and/or false statements does **not** exceed \$5,000 [item (6) of the Schedule to the ECICO], he/she may, subject to the conditions set out in para. 15.39 below, seek to have the error and/or false statement rectified in accordance with a simplified relief arrangement for minor errors or false statements as provided under s 37A of the ECICO. Under the arrangement, the candidate may write to notify the CEO of his/her request for lodging a revised election return to rectify the error and/or false statement and provide the necessary details for consideration of the request. If it is deemed appropriate to allow the candidate to lodge a revised election return under the simplified relief arrangement, the CEO would issue a notice to the candidate. Upon receipt of the notice, the candidate may, within the specified period, lodge with the CEO a revised election return. The revised election return should be a copy of the original election return earlier submitted to the CEO with markings of the necessary revision to the errors or false statements. 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 failure to send any document required by s 37(2)(b) of the ECICO in relation to the election return [s 37A(12) of the ECICO]. *[Added in September 2011, amended in September 2012, September 2019 and September 2023]*

15.39 A copy of the revised election return lodged by a candidate is of no effect unless it is:

- (a) lodged 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 as required under s 37(2)(b) of the ECICO (e.g. invoices and/or receipts) and, if applicable, an explanation; and *[Amended in September 2012]*
- (c) accompanied by a declaration to be made by the candidate in a specified form verifying the contents of the revised election return.

[S 37A(6) of the ECICO]

A copy of the revised election return made under the relief arrangement cannot be withdrawn or further amended after it has been lodged with the CEO. If the candidate does not correct the errors or false statements within the specified period, the original election return will be subject to the normal checking and investigation under the ECICO. *[Added in September 2011, amended in September 2015 and September 2019]*

**15.40 It is an illegal conduct under s 24 of the ECICO if, after including the cumulative amount of the errors or false statements, the aggregate amount of election expenses incurred at or in connection with the election exceeds the maximum amount of election expenses prescribed for a particular election. In such case, the relief arrangement will not be applicable.** If the ICAC receives any complaint or information indicating that a candidate may have made a statement that he/she knows or ought to know is materially false or misleading (an act which amounts to corrupt conduct under s 20 of the ECICO), the ICAC will conduct an investigation into the case. The rectifications of the election return under the relief arrangement will not exempt the candidate from being investigated or subsequently prosecuted under the ECICO in such circumstances. Moreover, this relief

arrangement will not relieve the candidate from liabilities for other offences provided under the ECICO if the election return concerned is in breach of any such provisions. [S 37A of the ECICO] *[Added in September 2011]*

15.41 If the candidate finds himself/herself in any of the situations set out in paras. 15.36 and 15.37 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.38 above, it is advisable for him/her to make an application to the CFI and inform the REO as soon as possible. The legal costs so incurred will not be regarded as his/her election expenses. It is corrupt conduct if a candidate makes, in an election return lodged under s 37 of the ECICO or a copy of an election return lodged under s 37A of the ECICO, a statement that he/she knows or ought to know is materially false or misleading [s 20 of the ECICO]. *[Amended in September 2007 and September 2011]*

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

15.42 Any candidate who is an incumbent public servant under the POBO, such as a serving member of the LegCo or a DC, may disclose to the CEO in advance any election donations received. This helps the incumbent member to avoid being suspected of any contravention of the provisions of the POBO relating to the acceptance of “advantages”<sup>48</sup>. Even though the above

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<sup>48</sup> Under s 2 of the POBO, “**advantage**” means –

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e).

election donations have disclosed in advance, they must still be set out in the election return (see para. 15.32 above) [s 37(1), (1F), (1G) and (1N) of the ECICO]. Candidates must also observe the general provisions regarding election donations in Part IV of this chapter. *[Amended in September 2007, September 2012, September 2019 and September 2023]*

15.43 Any **advance return of election donations** must be made on the standard form mentioned in para. 15.35 above. There is no restrictions on the number of advance return. *[Amended in September 2012 and September 2023]*

## **PART VII : FINANCIAL ASSISTANCE**

15.44 Under the Financial Assistance Scheme for candidates standing in DC elections in respect of election expenses, 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 the specified rate at \$16 per vote (from the seventh term DC Ordinary Election onwards);
  - (ii) 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate under s 3 of the Maximum Amount of Election Expenses (District 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) the amount obtained by multiplying 50% of the number of electors for the constituency by the specified rate at \$16 per elector (from the seventh term DC Ordinary Election onwards);
  - (ii) 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate under s 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation; or
  - (iii) the declared election expenses of the candidate.

[Ss 60C, 60D and Schedule 7 of the DCO]

The amount of election donations received by a candidate will not affect the calculation of 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, the amount of financial assistance payable to a candidate in some cases may be greater than the amount of his/her net election expenses. Any such “surplus” financial assistance may be used by the candidates for their future political or community work, or it may be expended generally as a token recognition of their efforts in election. The broad procedural and documentary requirements for making a claim, and general conditions for payment to be made are provided in Part VA of the DCO. The EAC (FA) (APP) Reg sets out the detailed implementation procedures for the Scheme. *[Added in September 2007, amended in September 2011,*

*September 2015, September 2019 and September 2023]*

15.45 In the claim for financial assistance, a candidate should deduct the estimated value of the reused publicity materials (if the expenses of the materials had been the subject of claims for financial assistance in a previous election) from calculation of the amount of financial assistance to be made payable to the candidate. *[Added in September 2012]*

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

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

15.46 A claim for financial assistance shall be made by a candidate in a specified form (which will be provided by the REO at the time when candidates submit their nominations). It shall be signed by the candidate. The claim form shall be accompanied by an election return made under s 37 of the ECICO. *[Amended in September 2011]*

15.47 Candidates are not required to submit an auditor's report on the amounts of their election expenses when making their claims for financial assistance. However, for cases in respect of which the REO considers that more in-depth checking is required, the REO may appoint an auditor to assist in verifying the claims. [Ss 3 and 5 of the EAC (FA) (APP) Reg] *[Added in September 2007]*

#### Submission of claims

15.48 If a candidate makes a claim for financial assistance, the claim form, together with the supporting documents, shall be submitted in person at the office of the CEO during ordinary business hours by the candidate or his/her agent before the expiry of the period or extended period provided for in

s 37 of the ECICO for lodging an election return (see para. 15.32 above). [S 37(1), (1F), (1G) and (1N) of the ECICO and s 4 of the EAC (FA) (APP) Reg] *[Added in September 2007, amended in September 2012 and September 2019]*

### **Verification of Claims**

#### **Verification by the CEO**

15.49 On receiving a claim, the CEO will check the eligibility for financial assistance of the candidate. He/She will also verify whether the claim conforms to the requirements set out in the EAC (FA) (APP) Reg.

#### **Requirement for further information**

15.50 The CEO may, through a written request, require the claimant to provide further information to verify the claim. The claimant must provide the information within 14 days from the date of receipt of the written request or within the period or extended period provided for in s 37 of the ECICO for lodging an election return, whichever is the later. If the claimant fails to provide the information within the period, the CEO may stop processing the claim without any prior notice. [S 5(3), (5) and (6) of the EAC (FA) (APP) Reg] *[Added in September 2007 and amended in September 2011]*

### **Withdrawal of Claims**

15.51 A claim may be withdrawn before a payment of financial assistance is made by submitting a notice of withdrawal at the office of the CEO during the ordinary business hours. The notice of withdrawal has to be served in person by the candidate or his/her agent. It must be in a specified form and signed by the candidate. [S 7 of the EAC (FA) (APP) Reg] *[Added*



*in September 2007, amended in September 2011 and September 2012]*

### **Payment of Claim after Verification**

#### **Payment to be made by the Director of Accounting Services**

15.52 After verifying the claim, the CEO will certify the amount of financial assistance and notify the Director of Accounting Services (“DAS”) of the amount payable and the person to whom it is to be paid. As soon as practicable after receiving the notification, the DAS must make the payment in accordance with the notification. [S 8 of the EAC (FA) (APP) Reg] *[Added in September 2007]*

### **Recovery of Payment**

15.53 Where a payment of financial assistance is made and the recipient is not entitled to receive the whole or part of the amount paid, the CEO is required to send a written notice under s 60G(1) of the DCO by registered post to the recipient requiring repayment within three months after the date of the notice. The recipient may make the repayment, in person or by any of his/her agents, at the office of the CEO or send the repayment by post. Any amount that is not repaid may be recovered as a civil debt due to the Government. [S 60G(1) and (2) of the DCO and s 12(1) of the EAC (FA) (APP) Reg] *[Added in September 2007, amended in September 2011 and September 2023]*

## **PART VIII : ENFORCEMENT AND PENALTY**

### **Enforcement**

15.54 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 lodging the relevant election return (disregarding any order made by the CFI under s 40 of the ECICO allowing a candidate to lodge an election return within a further period as specified by the CFI) (see para. 15.32 above). Copies of the election returns will be furnished to any person upon request subject to the payment of a copying fee at a fixed rate. [S 41 of the ECICO] *[Amended in September 2019 and September 2023]*

15.55 Any complaint or report of breach of the relevant legislation may be made directly to the relevant RO, the REO, the EAC or its Complaints Committee. The EAC or its Complaints Committee may, after consideration, refer the cases to the relevant authorities for investigation and prosecution. *[Amended in September 2012]*

15.56 The REO will check all election returns. Irregularities detected will be reported to the relevant authorities for investigation.

### **Penalties**

15.57 Other than the exemption mentioned in para. 15.3 above, it is an illegal conduct for a person other than a candidate or a candidate's election expense agent to incur election expenses. 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. The exemption mentioned in para. 15.3 above is not applicable to the candidate or his/her election expense agent. An offender is liable to a fine of \$200,000 and to imprisonment for 3 years. [Ss 22, 23 and 24 of the ECICO] In accordance with s 23(1A) of the ECICO, a person (other than a candidate or a candidate's election expense agent) is exempt from the relevant criminal liability under s 23(1) of the ECICO 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 candidate, a candidate's election expense agent or a person authorised by a candidate or his/her 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. *[Amended in September 2019 and September 2023]*

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

15.59 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/she 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] *[Amended in September 2011]*

15.60 A candidate who makes a statement that he/she knows or ought to know is materially false or misleading in his/her election return lodged under s 37 of the ECICO or a copy of an election return lodged under s 37A 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 and 20 of the ECICO] *[Amended in September 2011 and September 2015]*

15.61 If a candidate, having been elected to a DC, acts in the office or participates in the affairs of the DC as a member without lodging an election

return before the statutory deadline, he/she commits an offence and shall be liable to a fine of \$5,000 for each day for acting in the office or participating in the affairs of the DC as a member in contravention of s 37 of the ECICO. [S 39(1) and (2) of the ECICO] *[Amended in September 2015]*

15.62 A person convicted of **corrupt or illegal conduct** within the meaning of the ECICO will, in addition to the penalties set out in paras. 15.57 to 15.61 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 five years after the date of conviction, or from being appointed as a member of the DC or being registered as an ex officio member of the DC within five years after the date of conviction [ss 14 and 20 of the Chief Executive Election Ordinance (Cap 569) (“CEEEO”), s 39 of the LCO, ss 14, 19 and 21 of the DCO and s 23 of the Rural Representative Election Ordinance (Cap 576) (“RREO”)]; and
- (b) from being nominated as a candidate at the EC Subsector Elections, and from being elected as a member of the EC if the election is held within five years after the date of conviction, or from being nominated as a member of the EC for five years from the date of conviction, or from being registered as an ex officio member of the EC within five years after the date of conviction [ss 5M, 9 and 18 of the Schedule to the CEEEO].

*[Amended in September 2007, January 2010, September 2011, September 2015, September 2019 and September 2023]*

15.63 If a candidate is convicted of the offence under s 38(1) of the ECICO (i.e. having failed to lodge an election return as required by s 37), apart from facing the penalties set out in para. 15.59 above, he/she will also be subject to the same disqualifications as a person convicted of having engaged

in illegal conduct (see para. 15.62 above). [S 38(4) of the ECICO] [*Added in September 2023*]