

## 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 DHA through the relevant RO after the election, listing the election expenses incurred and the election donations received by them and their election expense agents. *[Added in October 2022]*

15.2 “Candidate” is defined as a person who stands nominated as a candidate at an election, including a person who, at any time before the close of nomination period for an election, has publicly declared an intention to stand for election. “Election expenses” is defined as expenses incurred or to be incurred for the purpose of promoting or prejudicing the election of a candidate, without any time constraint, including the expenses incurred before, during or after the election period. Please refer to 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 October 2022]*

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. In other words, persons other than the candidates and their election expense agents are not permitted to incur any election expense, or else an illegal conduct is engaged. Nevertheless, a third party (other than a candidate and a candidate’s election

expense agents) who publishes an EA on the Internet is exempt from the relevant criminal liability if the only election expenses incurred are either electricity charges and/or charges necessary for accessing the Internet. *[Added in October 2022]*

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 expenses. 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 October 2022]*

15.5 If the expenses incurred by a candidate are partly related to the election and are part of 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 usage involved. *[Added in October 2022]*

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; such donations will be counted as election expenses when used. *[Added in October 2022]*

## 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 or other candidates, 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 the election in respect of a Rural Area at any time before the close of the 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 RO [s 2 of the ECICO]. 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 the relevant 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<sup>33</sup>:

- (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);

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<sup>33</sup> (a) If there is any inconsistency or ambiguity between the English version and the Chinese version of the relevant criteria and issues, the English version shall prevail.

(b) If you have doubt as to whether an election expense falls within the criteria as mentioned above or whether an expense should be regarded as an election expense, you should consult independent legal advisor, and any legal fees so incurred will not be regarded as election expenses.

- (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 expense 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.

*[Amended in October 2006, October 2012, October 2014, October 2018 and October 2022]*

15.9 A candidate may receive **election donations** for the purpose of meeting the costs of his/her election expenses. “Election donations”, in relation to a candidate 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 and includes any goods incidentally given 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. 15.30 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. (For details, see Part IV of this chapter.)

15.10 Whether an expense incurred should be counted as election expenses depends on the facts 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 or other candidates;

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

15.11 Whether a particular item of expenditure should be regarded as an election expense depends on the circumstances of the case. In addition to the actual use of the expenses, 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 usage are relevant factors for consideration. The candidate may refer to the examples on the apportionment of expenses shown in the guide on the completion of election return mentioned in para. 15.34(c) below (see also para. 15.32 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 October 2006, October 2012, October 2018 and October 2022]*

15.12 Staff and other resources available for use by a candidate in his/her official capacity or when discharging his/her duties for the purpose of promoting his/her candidature in the election should be counted as an election expense. A list of common expenditure items to be counted towards election expenses is at **Appendix 13**. 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. *[Amended in October 2006, October 2012 and October 2018]*

15.13 A candidate shall not use any public resources for the purpose of promoting his/her election or prejudicing the election of another candidate or other candidates at the election. However, any security, transportation, secretarial services and living quarters to which a candidate is entitled to use for private purposes by virtue of his/her post or job will not be treated as public resources in this context.

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

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

15.14 The maximum amount of election expenses for the RRE is prescribed by the Maximum Amount of Election Expenses (Rural Representative Election) Regulation (Cap. 554B) made by the CE in Council pursuant to s 45 of the ECICO. These expense limits serve to contain the scale of election campaigns and prevent candidates with ample financial resources from having an unfair advantage. *[Amended in October 2014, October 2018 and October 2022]*

15.15 The election expense limits are 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).

<b>Number of Registered Electors</b>	<b>Election Expense Limits</b>
(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>Number of Registered Electors</b>	<b>Election Expense Limits</b>
(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 (Cap. 554B)] *[Amended in October 2011, October 2014 and October 2018]*

15.16 A candidate and his/her election expense agents must not incur election expenses in excess of the maximum amount prescribed [s 24(1) of the ECICO]. *[Amended in October 2022]*

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

15.17 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 October 2012]*

15.18 Any person who is going to carry out **negative campaigning (i.e. canvassing against other candidates)** for or for the benefit of a candidate and hence incurring expenses should obtain the prior appointment by the candidate 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 EP (RRE) Reg. *[Amended in October*



*2006, October 2014 and October 2018]*

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

15.20 A candidate is responsible for the whole amount of his/her election expenses. If the total amount of 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 October 2004, October 2010 and October 2012]*

## **PART IV : ELECTION DONATIONS**

### **General Requirements**

15.21 Any person who has made clear his/her intentions to stand as a candidate in an election may receive election donations for meeting his/her election expenses only.

15.22 Election 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 of prejudicing the election of another candidate or other candidates. [S 18 of the ECICO]

15.23 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 machinery of the election), are counted towards the total election expenses, and are subject to the maximum amount prescribed. *[Amended in October 2018]*

15.24 Any unspent or unused election donations must be given to charitable institution(s) or trust(s) of a public character chosen by the candidate(s). Any amount of election donations that exceeds the maximum amount of election expenses must also be given to such charitable institution(s) or trust(s). 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 October 2010 and October 2018]*

15.25 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 services obtained which are not treated as election donations (however, any goods incidentally given to the provision of a voluntary service will be counted as an election donation). Relevant details are elaborated in paras. 15.28 to 15.30 below. *[Amended in October 2011 and October 2012]*

15.26 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 receipt is obtainable from the RO 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, more than \$1,000 in value must not be used for election-related purpose 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. Instead, it 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 October 2006, October 2012 and October 2018]*

15.27 Any person or organisation 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 the candidate(s). 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 14**. *[Added in October 2018]*

### **Election Donations in Kind**

15.28 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 correspondingly 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. Unless the loan conditions are generally available to others, the waived interest 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.

15.29 For services or goods obtained free of charge, a candidate must include in the election return their estimated value as in the case of expenses being incurred. 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 persons who do not deal in similar services or goods with the public, their estimated value should be assessed at the lowest prevailing market retail price.

15.30 **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(s), 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 October 2022]*

## **PART V : ELECTION RETURN**

15.31 A candidate, whether elected or not, or who was returned uncontested, or who has withdrawn the candidature before the close of nominations, or has been decided by the RO as not validly nominated, or has

not incurred any election expenses, must keep an accurate account of all election expenses incurred and election donations (whether in cash or in kind) received in the form of election return for the **submission to the DHA through the relevant RO. The election return must be completed in the specified form, and lodged before the expiry of the period of 30 days after the date on which the last of the following events occurs in all RR elections in relation to the same Rural Committee to be held on the same date; or within such extended period as may be allowed by the CFI under the relevant law:**

- (a) the result of the election is published in the Gazette;**
- (b) the proceedings for the election are declared to have been terminated;**
- (c) the election is declared to have failed.**

[S 37(1), (1L), (1M) and (1N) of the ECICO] *[Amended in October 2006, October 2010, October 2012, October 2014, October 2018 and October 2022]*

15.32 The election return should set out all the election expenses incurred by the candidate and his/her election expense agent(s). For each election expense of \$500 or more, the return must be accompanied by an invoice and a receipt issued by the goods or service providers [s 37(2)(b) of the ECICO]. 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, 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/herself) providing the goods or services; and
- (d) the 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 October 2004, October 2011, October 2012, October 2018 and October 2022]*

15.33 A candidate must also set out in the election return all election donations, whether in cash or in kind (including goods and services obtained free of charge or at a discount), received by or on behalf of him/her in connection with the election. 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 and copies of receipts issued by charitable institutions or trusts of a public character for the collection of any unspent or unused election donations, anonymous donations of more than \$1,000 in value or election donations exceeding the limit of election expenses. 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 October 2004, October 2011, October 2012, October 2018 and October 2022]*

15.34 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. 15.31 above, together with a standard form of receipt for election donations mentioned in para. 15.26 above;
- (b) the standard form for advance return and declaration of election donations (see paras. 15.41 to 15.43 below);
- (c) a guide on how to complete the election return; 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 and the FAQs before completing the election return. *[Amended in October 2012, October 2018 and October 2022]*

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

15.35 If a candidate is unable or fails to send to the DHA through the RO the election return before statutory deadline (please see para. 15.31 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 other 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 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. For previous court decisions regarding applications for the relief of election-related penalties and liabilities, please see para. 7.73 of Chapter 7 for the relevant judgments. *[Amended in October 2006, October 2010, October 2011, October 2012, October 2018 and October*

2022]

15.36 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, please see para. 7.73 of Chapter 7 for the relevant judgments. *[Added in October 2010, amended in October 2011, October 2018 and October 2022]*

15.37 Notwithstanding the provision set out in para. 15.36 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 error(s) and/or false statement(s) does **not** exceed \$600 [item(9) of the Schedule to the ECICO], he/she may, subject to the conditions set out in para. 15.38 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 RO 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 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 may, within the specified period, lodge with the DHA through the RO a revised election return. The revised election return should be a copy of the original election return earlier submitted to the DHA through the relevant RO with markings of the necessary revision to the error(s) or false statement(s). 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 October 2011, amended in October 2012, October 2018 and October 2022]*

15.38 A 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 RO 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. invoice and receipt) and, if applicable, an explanation; and
- (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 RO. If the candidate fails to correct the error(s) or false statement(s) within the specified

period, the election return will be subject to the normal checking and investigation under the ECICO. *[Added in October 2011, amended in October 2018 and October 2022]*

**15.39 It is an illegal conduct under s 24 of the ECICO if, after including the cumulative amount of the error(s) or false statement(s), 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 has received complaints 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 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 October 2011 and amended in October 2018]*

**15.40** If the candidate finds himself/herself in any of the situations set out in paras. 15.35 and 15.36 above, other than the situations where correction of errors or false statements is allowed under the relief arrangement in para. 15.37, it is advisable for him/her to make an application to the CFI and inform the RO as soon as possible. The legal costs so incurred will not be regarded as his/her election expenses. It is a corrupt conduct if a candidate who, 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, makes a statement that he/she knows or ought to know is materially false or misleading [s 20 of the ECICO]. *[Amended in October 2006, October 2010 and October 2011]*

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

15.41 Any candidate who is an incumbent public servant under the POBO, e.g. a serving member of the LegCo or a DC, etc., may disclose to the RO in advance any election donations received. This may enable the incumbent member to avoid any inadvertent contravention of the provisions of the POBO relating to the acceptance of “advantages”. The election donations so disclosed must also be set out in the election return to be submitted to the DHA through the relevant RO before the expiry of the period, or the extended period provided under s 37 of the ECICO for lodging an election return (see para. 15.31 above) [s 37(1), (1L), (1M) and (1N) of the ECICO]. Candidates must also observe the general provisions regarding election donations in Part IV. *[Amended in October 2006, October 2011, October 2012, October 2014 and October 2018]*

15.42 Any **advance return of election donations** must be made on the standard form mentioned in para. 15.34 above. *[Amended in October 2012]*

15.43 Depending on the time and the number of election donations received, a candidate may submit any number of advance returns of election donations to the DHA through the relevant RO. *[Amended in October 2011 and October 2012]*

## **PART VII : ENFORCEMENT AND PENALTY**

### **Enforcement**

15.44 The election returns will be made available at the office of the relevant RO for public inspection up to the 30<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) (please see para. 15.31 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 October 2004 and October 2018]*

15.45 Any complaint or report of breach of the relevant legislation may be made directly to the relevant RO, the Registration and Electoral Office, 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 October 2004 and October 2014]*

15.46 The RO will check all election returns. Irregularities detected will be reported to the relevant authorities for investigation. *[Amended in October 2012]*

### **Penalties**

15.47 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. It is also an illegal conduct for a person, other than a candidate or a candidate's election expense agent, to incur election expenses. In these cases, the 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 an 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 October 2004 and October 2022]*

15.48 A candidate who uses any election donation for any purpose other than for 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] *[Amended in October 2004]*

15.49 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 recipient(s) of the payments, 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 October 2011 and October 2012]*

15.50 A candidate who knowingly makes a materially false or misleading statement 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 October 2011 and October 2018]*

15.51 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/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 as an RR in contravention of s 37 of the ECICO. [S 39(1) and (2) of the ECICO] *[Amended in October 2014 and October 2018]*

15.52 A person convicted of a **corrupt or illegal conduct** within the meaning of the ECICO will, in addition to the penalties set out in paras. 15.47 to 15.51 above, be disqualified:

- (a) from being nominated as a candidate for the election of, or from being elected as, the CE, a member of the LegCo or DC, or an RR, if the election is held within 5 years after the date of conviction [ss 14 and 20 of the Chief Executive Election Ordinance (Cap. 569) (“CEEEO”), s 39 of the Legislative Council Ordinance (Cap. 542) (“LCO”), s 21 of the District Councils Ordinance (Cap. 547) (“DCO”) and s 23 of the 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 5 years after the date of conviction, or from being nominated as an EC member for 5 years from the date of conviction, or from being registered as an ex-officio member of the EC within 5 years after the date of conviction [ss 5M, 9 and 18 of the Schedule to the CEEEO].

*[Amended in October 2006, December 2009, October 2010, October 2011, October 2014, October 2018 and October 2022]*

15.53 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. 15.49 above, he/she will also be subject to the same disqualifications as a person convicted of having engaged in illegal conduct (see para. 15.52 above). [S 38(4) of the ECICO] *[Added in October 2022]*