

CHAPTER 16

CORRUPT AND ILLEGAL CONDUCT

PART I : GENERAL

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

16.2 Provisions relating to corrupt and illegal conduct can be found in the ECICO. To help candidates and their agents to get acquainted with the major provisions of the Ordinance, the ICAC has prepared a Handbook on the Ordinance, which is at **Appendix K** for easy reference.

16.3 A person who engages in:

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

In addition to these penalties, a convicted person will be disqualified from

being nominated as a candidate in elections. For details, please see para. 16.31 below. *[Amended in January 2010]*

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

Offences Relating to Candidature

16.4 Any act to affect a person's candidature by bribery, force, duress or deception is prohibited. Candidature includes standing as a candidate, not standing as a candidate, or withdrawal of nomination. It will be a corrupt conduct if a person corruptly:

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

[S 7 of the ECICO]

16.5 Similarly, a person engages in corrupt conduct if he uses force or duress against another person to affect the candidature of that person or a third person. The use of deception to induce another person to affect the candidature of that person or a third person is also a corrupt conduct. [Ss 8 and 9 of the ECICO]

16.6 It will also be a corrupt conduct if a person defaces or destroys a nomination paper with intent to prevent or obstruct another person from standing for election [s 10 of the ECICO].

PART III : ILLEGAL CONDUCT RELATING TO ELECTIONEERING

False Statement that a Person is or is not a Candidate

16.7 A person must not publish any statement that a candidate is no longer a candidate at an election if he is a candidate, or that another person who has been nominated as a candidate is no longer a candidate at the election, or that he or another person is a candidate at an election, knowing that the statement is false [s 25 of the ECICO].

False or Misleading Statement about a Candidate

16.8 A person must not publish any materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates. Similarly, a candidate must not publish any materially false or misleading statement of fact about himself or another candidate or other candidates for the purpose of promoting the election of himself or prejudicing the election of

another candidate or other candidates. Any such publication will amount to an illegal conduct. It should be noted that materially false or misleading statements about a candidate or candidates include, but are not limited to, statements concerning the character, qualifications or previous conduct of the candidate or candidates to promote or prejudice the election of the candidate, eg a person who makes a materially false or misleading statement of fact, thereby calling into question the integrity and honesty of that candidate, may contravene the above provision. [S 26 of the ECICO]

False Claim of Support

[Please also see Chapter 17: Namedropping.]

16.9 A candidate must obtain **prior written consent** from a person or an organisation before using the name or logo of that person or organisation, or a pictorial representation of that person in any of his election advertisements or activities as an indication of support from that person or organisation. Oral consent is **not** sufficient. [S 27 of the ECICO] The EAC provides a standardised consent form for this purpose. Any indication of support in election advertisements, be it a text, a photograph or any other material, must be covered by a written consent from the person or organisation concerned. A copy of consent form must be deposited with the relevant RO **prior to display, distribution or otherwise use of the election advertisements** [s 103(9A) of the EAC (EP) (DC) Reg]. It is important to note that it is still an offence even if such an election advertisement contains a statement to the effect that it does not imply support from the person or organisation concerned [s 27(4) of the ECICO]. It is also an offence for a person to give information which he knows or ought to know is materially false or misleading to a candidate or candidates for promoting or prejudicing the election of the candidate or candidates [s 27(6) of the ECICO]. *[Amended in September 2007 and August 2008]*

16.10 Consent given can be revoked. In case of revocation, in order to avoid dispute, it is advisable for the person or organisation who has revoked the consent to send a notice or copy of the revocation to the candidate concerned and to the relevant RO. Every candidate is required to deposit a copy of the completed consent form with the relevant RO and to notify the RO in writing of any revocation of consent.

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

Requirements Relating to Printed Election Advertisements

16.12 Insofar as electioneering is concerned, it is also an offence if a candidate does not comply with the requirements relating to printed election advertisements. [For details of the requirements, please refer to Chapter 7 on Election Advertisements in particular Parts I, VI and VII thereof.]

16.13 A person must, **not later than 7 days after** publishing a printed election advertisement, deposit **2 copies** of the advertisement to the relevant RO [s 34(4) of the ECICO].

16.14 The provisions of s 103 of the EAC (EP) (DC) Reg are more stringent. **Before** a candidate displays, distributes or otherwise uses an election advertisement, he must allocate a **number in a separate series** to each type of election advertisement, and make a **declaration** in a specified form to state the quantity of each type of election advertisement he proposes to so use. For a better control over the display of unauthorised election advertisements and to facilitate the ROs in handling such complaints, the declaration and **2**

copies of the election advertisement must be deposited with the relevant RO **before** the election advertisement is displayed, distributed or otherwise used. If the relevant RO has not yet been appointed, the declaration and copies should be deposited with the CEO. By doing so, the candidate should have complied with s 34(4) of the ECICO as mentioned in para. 16.13 above.

PART IV : CORRUPT CONDUCT RELATING TO ELECTIONEERING AND VOTING

Bribery

16.15 Any act to affect a person's voting preference by offering or soliciting or accepting an advantage is prohibited [s 11 of the ECICO]. Voting preference covers voting for a particular candidate or candidates, not voting at an election, or not voting for a particular candidate or candidates.

Treating

16.16 A person must not at any time provide or meet all or part of the cost of providing another person with any food, drink or entertainment for the purpose of influencing that person's or a third person's voting preference. Likewise, the corrupt solicitation or acceptance of any such treating is prohibited. [S 12 of the ECICO]

16.17 The serving of non-alcoholic drinks only at an election meeting will not be deemed corrupt for the above purposes. [S 12(5) of the ECICO] An election meeting is any meeting held to promote or prejudice the election of a particular candidate or particular candidates. [See Chapter 9: Election Meetings for details.]

16.18 Treating arises in daily situations. If it is used (by a candidate or another person) for promoting or prejudicing the election of a candidate, it is an offence. For example, a person or an organisation may host a banquet for a non-election-related purpose but, during the occasion, innocently calls on the guests to vote for a particular candidate. In such an event, the candidate concerned should immediately disown or dissociate with whatever has been said or done to promote his candidature. Otherwise, he would be liable to being charged with an offence under s 12 of the ECICO and the expenses so incurred would be counted towards his election expenses.

16.19 If a banquet, albeit apparently not related to any election, is used to treat guests corruptly for the purpose of promoting a candidate or prejudicing other candidates, then both the host and the candidate will be guilty of a corrupt conduct. Moreover, the host will commit an **offence** under s 23 of the ECICO if he has not yet been authorised in writing by the candidate to incur election expenses at or in connection with an election.

Force and Duress

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

16.21 Persons in position to exert pressure and influence on others should be careful not to breach the provisions under the ECICO, eg employers over employees, school principals or teachers over students, religious advisers over believers and doctors over patients, etc. [*Amended in September 2007*]

Voting Offences

- 16.22 It is a corrupt conduct for any person:
- (a) to vote at an election knowing that he is not entitled to vote at that election;
 - (b) to vote at an election after having knowingly or recklessly given materially false or misleading information to an electoral officer, or to vote at an election after having knowingly omitted to give material information to an electoral officer;
 - (c) to vote at an election more than once in the same constituency or to vote at an election in more than one constituency; or
 - (d) to invite or induce another person to commit (a), (b) or (c) above.

[S 16 of the ECICO]

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

16.23 Candidates should be careful when handling election expenses and donations as non-compliance with the relevant requirements will be a corrupt or illegal conduct. For details of the requirements that have to be observed, please refer to Chapter 15: Election Expenses and Donations.

PART VI : POWER OF COURT TO EXCUSE INNOCENT ACTS

16.24 S 31 of the ECICO provides a mechanism for a candidate to apply for a Court order to relieve himself of criminal responsibility if he contravenes the illegal conduct provisions due to inadvertence, accidental miscalculation or any reasonable cause and was not due to bad faith. No prosecution against him may be instituted or carried on until the application is disposed of by the Court. He will not be liable to be convicted of an offence if the illegal conduct is the subject of a Court order.

16.25 A candidate who fails to provide the printing details or deposit copies of election advertisements with the RO commits an offence. However, he may apply to the court for an order allowing the publication of the above election advertisements be excepted from the relevant requirements and relieving him from the penalties, provided that the court is satisfied that the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith [s 35 of the ECICO].

16.26 A candidate who is unable or has failed to send to the CEO the return and declaration of all election expenses and donations before the end of the permitted period or omits an item in it or makes a mistake in it, and such inability, failure, omission or error was due to his own illness or absence from Hong Kong or of the absence from Hong Kong, death, illness or misconduct of any agent or employee of the candidate or by reason of inadvertence or accidental miscalculation or any reasonable cause (but not by reason of want of good faith of the candidate), has the right to make an application to the Court of First Instance for an order to send in the return and declaration late, or to correct the omission or mistake [s 40 of the ECICO]. When the candidate finds himself in such a situation, it would be wise of him to make the application to the Court and inform the REO as soon as possible. *[Amended*

in September 2007]

PART VII : NON-COMPLIANCE WITH THE LAW AND SANCTION

16.27 Any complaint or report of breach of these guidelines may be made to the relevant RO, the REO or the EAC direct. The EAC may, after consideration, refer the cases to the relevant authorities for investigation and prosecution.

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

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

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

16.31 A person convicted of a corrupt conduct or illegal conduct within the meaning of the ECICO will, in addition to the penalties set out in this chapter, be disqualified:

- (a) for 5 years from being nominated as a candidate for the election of, or elected as, the CE, a member of the LegCo or DC, or a VR from the date of conviction [ss 14 and 20 of the CEEO, s 39 of the LCO, s 21 of the DCO and s 23 of the VREO]; and

- (b) for 3 years from being nominated as a candidate for the election of, or from being nominated or elected as, an EC member from the date of conviction [ss 9 and 18 of the Schedule to the CEEO].

[Amended in September 2007 and January 2010]

16.32 It is worthy to note that the Courts of Hong Kong view election-related offences and contravention of the ECICO being serious crimes. On 27 November 1997, the Court of Appeal laid down sentencing guidelines that a person found guilty of any serious election-related offence should be punished by an immediate custodial sentence.