

CHAPTER 16

ELECTION EXPENSES AND DONATIONS

PART I : WHAT CONSTITUTES ELECTION EXPENSES

16.1 Provisions relating to election expenses can be found in the ECICO.

16.2 **Election expenses** mean expenses incurred or to be incurred **before, during or after an election**, by a candidate or his election expense agent on his behalf for the purpose of promoting his election, or prejudicing the election of another candidate or other candidates and include the value of election donations consisting of goods and services used for that purpose [s 2 of the ECICO]. The term “candidate” relating to election expenses (and donations) therefore includes a person **who has publicly declared an intention to stand for election** in respect of a subsector at any time before the close of nominations for the election, regardless of whether he has submitted his nomination form, or after submission of the nomination form he has withdrawn his nomination or his nomination is ruled invalid by the RO [s 2 of the ECICO]. *[Amended in September 2006]*

16.3 A candidate may receive **donations** for the purpose of meeting the costs of his election expenses. 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 him for the purpose of meeting or contributing towards meeting his election expenses;
- or

- (b) any goods given to or in respect of him for the purpose of promoting his election or of prejudicing the election of another candidate or other candidates and includes any goods given incidental to the provision of voluntary service; or
- (c) any service provided to or in respect of him for the purpose of promoting his election or of prejudicing the election of another candidate or other candidates, but does not include voluntary service.

[S 2 of the ECICO.]

All such donations, whether in cash or in kind, when spent or used, are counted as election expenses. [For details, see Part III of this chapter.]

16.4 There is no defined time as to when expenses are incurred whereby they will or will not be counted as election expenses. It is a question of fact in each case. For as long as an expense is incurred either for the purpose:

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

it will be an election expense, irrespective of when it is incurred, either before, during or after the election, and regardless of the source of funding.

16.5 A list of common expenditure items which may be counted towards election expenses is at **Appendix O**. The list is only illustrative and should not be considered as having precedence over the legislation. Whether

a particular item of expenditure should be regarded as an election expense is a question of fact to be answered in the circumstances of each case. Each case should be determined by reference to the purpose behind the expenses, taking account of the nature, circumstances and context of the expenditure. Personal expenses incurred in the normal course of a candidate's daily life are not election expenses. Use of staff and other resources which are available to a candidate in his official capacity or at work for the purpose of promoting his candidature in an election should also be counted as election expenses. Candidates should consult their legal advisers if they have doubt as to whether an expenditure item should be counted as an election expense. Any legal fees incurred as a result will not themselves be counted as election expenses.

16.6 A candidate should not use any public resources for the purpose of promoting his election or prejudicing the election of another candidate at the election. However, any security, transportation, secretarial and living quarters services to which he is entitled to use for his private purposes by virtue of his post or job are not treated as public resources in this context.

PART II : WHO MAY INCUR ELECTION EXPENSES AND THEIR LIMIT

Maximum Scales of Election Expenses

16.7 The maximum scales of election expenses for the EC subsectors election are prescribed by the Maximum Scale of Election Expenses (Legislative Council) (Election Committee) Order made by the CE in Council pursuant to s 45 of the ECICO to limit the maximum amount of expenses a candidate may incur on account of the election. This limit controls the extent of election campaigns and serves to prevent candidates with ample financial

resources from having an unfair advantage.

16.8 The maximum scales of election expenses are set out in the following table. For ascertaining the number of registered voters referred to in items (b), (c) and (d), inquiry can be made with the RO for the EC subsector concerned.

(a) for an election for one of the following 8 EC subsectors, viz, Agriculture and Fisheries, Insurance, Transport, Hotel, CPPCC, Heung Yee Kuk, Hong Kong and Kowloon District Councils, and New Territories District Councils subsectors	\$100,000
(b) for an election for an EC subsector other than those in (a) above with not more than 5,000 registered voters	\$160,000
(c) for an election for an EC subsector with between 5,001 and 10,000 registered voters	\$320,000
(d) for an election for an EC subsector with over 10,000 registered voters	\$480,000

16.9 A candidate must not incur any election expenses in excess of the maximum amount prescribed [s 24 of the ECICO].

Persons Authorised to Incur Election Expenses

16.10 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 of the ECICO]. The authorisation should follow the procedures specified in Part VI of Chapter 7.

16.11 **Negative campaigning (ie canvassing against other candidates).** Before incurring expenses in carrying out any negative campaigning for or for the benefit of a candidate, a person will need the authorisation of the candidate to be the election expense agent of the candidate. Such expenses will be counted towards election expenses of the candidate. If the negative campaign includes election advertisements, all the requirements of the ECICO and of the EAC (EP) (EC) Reg must also be complied with. *[Amended in September 2006]*

16.12 Candidates should advise the organisations with which they are associated and which may incur expenses to support them of these guidelines as soon as they have any intention or plan to run for the election, to avoid any offences being committed by these organisations out of ignorance.

16.13 A candidate will be responsible for the overall amount of his election expenses. In the event the total amount incurred by him and/or on his behalf exceeds the limit prescribed or the limit he has authorised his election expense agent to expend, he will be liable for contravening the law, unless he can prove that the excess was incurred without his consent, beyond his authorisation, or not due to any negligence on his part. The election expense

agent, on the other hand, should not incur an amount of election expenses which exceeds the limit authorised by the candidate, lest the agent will contravene s 23 of the ECICO. [Ss 23 and 24 of the ECICO.]

PART III : DONATIONS

General Provisions

16.14 A person who has made known his intention to stand as a candidate in the election may receive donations for the sole purpose of meeting his election expenses.

16.15 Donations 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 services, 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].

16.16 Donations can be in cash or in kind, and include any money's worth, any valuable security or other equivalent of money and any valuable consideration. All spent or used donations, whether in cash or in kind, which may be received before, during or after an election, are counted towards the total election expenses which are subject to the maximum amount prescribed.

16.17 Any unspent or unused donations must be given to charitable institution(s) or trust(s) of a public character chosen by the candidate(s). Any amount of donations that exceeds the upper limit of election expenses must also be given to such charitable institution(s) or trust(s). [S 19 of the ECICO.]

16.18 Since election donations can only be lawfully spent for meeting or contributing towards meeting election expenses, donations and expenses are often corresponding to each other. For every item of election expense which is avoided or reduced by obtaining the goods supplied or services rendered free of charge or at a discount, there should normally be a corresponding item of donation. The only exception is voluntary services obtained that are not treated as donations (any goods given incidental to the provision of a voluntary service will however be counted as an election donation). These points are elaborated in the paragraphs under Donations in Kind of this chapter.

16.19 On receiving a donation, 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). A standard form of receipt is obtainable from REO and will be provided to a candidate at the time of his submitting his nomination form. While it is not uncommon that some donors would like to be anonymous, if a donation, in cash or in kind, is more than \$1,000 in value, then only where the donor's name and address (as supplied by the donor) are shown as required by the standard form of donation receipt can it be used as election donation. Donations exceeding \$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 election expenses and must be given to a charitable institution or trust of a public character chosen by the candidate. [S 19(2) of the ECICO.] *[Amended in September 2006]*

Donations in Kind

16.20 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 a donation and must be declared and included as such and

correspondingly as an election expense in the form of return. The same principle applies to loans obtained at no interest or at an interest rate lower than usual. Unless the facility is generally available to others, the interest not charged must be declared and included as a donation and election expense in the form of return. For premises provided free of charge to a candidate for his election campaign, a reasonable amount should be assessed as the deemed rental for the premises and such be included as a donation and election expense in the form of return.

16.21 For services or goods obtained free of charge, a candidate must include in the return their estimated value as if the expenses had been incurred. Where the services or goods are furnished by a person who deals in similar services or goods with the public, their estimated value should be assessed at the lowest price at which the person offers his services or goods to the public at the time when they are furnished. 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 market retail price at the time when they are furnished.

16.22 **Voluntary service** is the only service rendered free of charge which may be excluded from being counted as election expenses. In addition to being free of charge, the service must be provided by a natural person, voluntarily and personally, in his 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 a donation and counted towards election expenses at a fair estimated value. *[Amended in September 2006]*

PART IV : RETURN AND DECLARATION OF ELECTION EXPENSES AND DONATIONS

16.23 A candidate must keep an accurate account of all election expenses incurred and donations (whether in cash or in kind) received, and submit to **the CEO a return and declaration of election expenses and donations in a specified form (which will be given to a candidate upon his submission of nomination)** not later than 30 days after the publication in the Gazette of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law [s 37 of the ECICO]. *[Amended in September 2006]*

16.24 The return must cover all the election expenses incurred by the candidate or the person(s) so authorised by him, services or goods obtained free of charge or at a discount and any unpaid claims. It must be submitted with supporting invoices and receipts for all payments each of \$100 and above. The copy of receipts issued by the candidate for any donations of more than \$1,000 and those issued by charitable institutions or trusts of a public character for the collection of any unspent or excessive donations should also be attached [s 37 of the ECICO].

16.25 At the time of his submitting his nomination form, a candidate will be given:

- (a) the specified form for making the return and declaration of election expenses and donations mentioned in para. 16.23 above, together with a standard form of receipt for donations mentioned in para. 16.19 above;

- (b) the specified form for advance return of donations (see para. 16.28 below);
- (c) a specimen of the specified form with examples showing how the return and declaration can be completed; and
- (d) explanatory notes on how to complete the returns.

A candidate should read the explanatory notes carefully in completing the return, and make reference to the specimen whenever necessary.

Omissions and Mistakes

16.26 If a candidate is unable or fails to send to the CEO the return and declaration of election expenses 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), he 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. The legal costs so incurred will not be regarded as his election expenses. It is a corrupt conduct if a candidate who, in an election return lodged under s 37 of the ECICO, makes a statement that he knows or ought to know is materially false or misleading [s 20 of the ECICO].
[Amended in September 2006]

PART V : ADVANCE RETURN OF DONATIONS

16.27 Any candidate who is an incumbent public servant under the POBO eg a serving member of the LegCo or a DC, etc, may give advance disclosure to the CEO of any donations received. This may enable such incumbent member to avoid any inadvertent contravention of the provisions of the POBO relating to the acceptance of “advantages”. The donations so disclosed must also be incorporated in the return and declaration of election expenses and donations to be submitted to the CEO not later than 30 days after the publication in the Gazette of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law [see s 37 of the ECICO]. The general provisions regarding donations in Part III must be observed.
[Amended in September 2006]

16.28 Any **advance return of donations** must be made on the specified form mentioned in para. 16.25 above.

16.29 Depending on the time and the number of donations received, a candidate may submit any number of advance returns of donations to the CEO.

PART VI : ENFORCEMENT AND PENALTY

Enforcement

16.30 The returns will be made available at the REO for public inspection up to the first anniversary of the date on which the result of an

election is published. Copies of the returns will be furnished to any person upon request subject to payment of a copying fee at a fixed rate. [S 41 of the ECICO.]

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

16.32 The REO will check all returns of election expenses and donations. Irregularities detected will be reported to the relevant authorities for investigation.

Penalties

16.33 It is an illegal conduct for a candidate to incur election expenses in excess of the maximum amount prescribed. It is also an illegal conduct for a person, other than a candidate or a candidate's election expense agent, to incur election expenses. An election expense agent engages in illegal conduct if he incurs election expenses in excess of the amount authorised. Such illegal conduct is punishable by a fine of up to \$200,000 and imprisonment for up to 3 years. [Ss 22, 23 and 24 of the ECICO.]

16.34 A candidate who uses any donation for any purpose other than for meeting his election expenses, or fails to dispose of excess donations in accordance with s 19 of the ECICO commits a corrupt conduct punishable by a fine of up to \$500,000 and imprisonment for up to 7 years. [Ss 6, 18 and 19 of the ECICO.]

16.35 A candidate who fails to submit the return and declaration of election expenses and donations by the prescribed date or who fails to provide

an accurate account of all expenses incurred and all donations received with the required supporting receipted vouchers and donation receipts commits an offence, punishable by a fine of up to \$200,000 and imprisonment for up to 3 years. [S 38 of the ECICO.]

16.36 A candidate who knowingly makes a materially false or misleading statement in his return and declaration of election expenses and donations or any advance return of donations commits a corrupt conduct punishable by a fine of up to \$500,000 and imprisonment for up to 7 years. [Ss 6 and 20 of the ECICO.]

16.37 A candidate, who having been elected to the EC, acts in the office or participates in the affairs of the EC without filing the return and declaration of election expenses and donations before the end of the permitted period commits an offence, punishable by a fine of \$5,000 for every day after such expiration on which he so sits or votes in such body. [S 39 of the ECICO.]

16.38 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 paras. 16.33 – 16.37 of this chapter, be disqualified:

- (a) for 3 years from voting in the CE, EC subsector, LegCo, DC or VR election from the date of the conviction [s 26(d) of the CEEO, s 30 of the Schedule to the CEEO, s 53 of the LCO, s 30 of the District Councils Ordinance (Cap 547) (“DCO”) and s 14 of the Village Representative Election Ordinance (Cap 576) (“VREO”)];
- (b) 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 the 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

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

[Amended in September 2006]