

The Elections (Corrupt and Illegal Conduct) Ordinance (Cap.554) (“the Ordinance”), enforced by the ICAC, aims to uphold clean and fair elections.

According to the Ordinance

- 1** A candidate has to lodge with the appropriate authority an election return setting out the election expenses and all election donations received at the election by the statutory deadline as required.
- 2** A candidate has to lodge the election return with:
 - (a) in the case of each election expense of \$500 or more, an invoice and a receipt issued by the goods or service provider;
 - (b) in the case of each election donation of more than \$1,000 in value, a copy of the receipt issued to the donor specifying the name and address of the donor and the particulars of the donation;
 - (c) a copy of the receipt given by a charitable institution or trust of a public character of the candidate's choice to which the candidate has given his election donations (including anonymous election donations of more than \$1,000 in value, unused election donations and election donations that exceed the prescribed maximum amount of election expenses);
 - (d) if applicable, a written explanation setting out the reason why an election donation was not disposed of in accordance with (c) above; and
 - (e) a declaration verifying the contents of the election return.
- 3** A “candidate” is defined not only as a person who stands nominated as a candidate at an election, but also a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election. A person has to submit his election return to the appropriate authority within the period as required by the ECICO even if, after being nominated as a candidate at the election, he has withdrawn his nomination or his nomination has been ruled invalid; or he is returned uncontested, or not elected, or has not incurred any election expenses.
- 4** A candidate must not make any materially false or misleading statement in the election return or copy of the revised election return.

Explanations of the legal requirements offered in this leaflet are general and in summary form. Candidates and their election helpers are advised to refer to the text of the legislation and seek independent legal advice in case of doubt. Throughout this leaflet, the “male” pronoun is used to cover references to both the male and female. No gender preference is intended.



Clean Election Website

www.icac.org.hk/icac/elect/2023re/en

24-hour Report Corruption Hotline **25 266 366**

Clean Election Enquiry Hotline **2920 7878**

*Abide by the Rules
Support Clean Elections*



Rural Elections

Reminder to Candidates on Election Return



Q 1 In order to save expenses, a candidate reused old materials (e.g. publicity boards) that had been used at previous elections in his electioneering activities. Should the costs of these materials be regarded as election expenses? If the candidate has borrowed some of his friends' vehicles for use in his electioneering activities, how should he declare the relevant expenses and donations?

A 1

- A candidate should make sure that if the old materials are reused for the purpose of promoting his candidature, the cost incurred in refurbishing as well as the estimated value of the old materials (e.g. the value after depreciation) have to be counted towards the candidate's election expenses. The estimated value of the old materials and the cost incurred in refurbishing the materials should be listed separately and set out clearly in the election return. If the cost incurred for refurbishing the old materials is \$500 or above, the relevant invoices and receipts issued by the goods or service providers should be submitted with the election return so as to comply with the requirements of section 37(2)(b)(i) of the ECICO.

- According to section 2 of the ECICO, any goods or service (excluding voluntary service) provided to a candidate for the purpose of promoting the election of the candidate or prejudicing the election of other candidates is an election donation. Its value is also an election expense. Therefore, the candidate's loan of vehicles from his friends for promoting his election is an election donation and its value is also an election expense. The candidate should set out the market rent of the relevant vehicles as an election expense as well as an election donation in his election return. If the value of each donation is more than \$1,000, the candidate concerned must, pursuant to the requirements of sections 19 and 37(2)(b)(ii) of the ECICO, issue a receipt to each of the donors (i.e. the friends concerned) specifying the name and address of the donor and particulars of the donation. Copies of the relevant receipt must also be submitted with the election return.

- The other relevant expenses incurred while the candidate has used the above vehicles for his electioneering, such as gasoline fees and decoration of vehicle costs, should be counted as his election expenses and clearly set out in his election return. Section 37(2)(b)(i) of the ECICO states that a candidate must ensure that the election return is accompanied by an invoice and a receipt of each election expense of \$500 or more. The invoices and receipts should be issued by the goods or service providers (e.g. gasoline supplier, supplier of decoration materials for vehicles, etc.) giving particulars of the expense (including date; information and amount of the goods or services; information of the organization or person providing the goods or services; and information supporting that the organization or person providing the goods or services has received the relevant payment in full, such as name and signature of the recipient, or the stamp of the receiving organization or signature of its authorized person).

- It is important to note that relevant invoices and receipts should be issued by the goods or service providers. Invoices and receipts issued by the candidate himself, the personal office of the candidate or any person purchasing the expense item on behalf of the candidate, and the receipt for value top-up of electronic stored value cards (e.g. Octopus Cards) do not meet the statutory requirements.

Q 2 A candidate has asked his friends to assist in his electioneering matters voluntarily and used the materials provided by them and other organizations. How should he count the relevant expenses and donations? Can the unused amount of these donations be appropriated for community services by the candidate in the future?

A 2

- If the candidate's friends handle the electioneering matters for the candidate in their own time, voluntarily, personally and free of charge, the service they rendered is regarded as "voluntary service" according to section 2 of the ECICO, which is not regarded as an election expense and an election donation. Therefore, the candidate is not required to include such service cost as his election expense or to set it out in his election return.

- The candidate has to include other relevant costs incurred incidental to the electioneering service so arranged by his friends mentioned above, such as costs of buying publicity materials, postage of mailing election advertisements, etc. in his election expenses and clearly set out such costs, which do not fall within the definition of "voluntary service", in his election return. Section 37(2)(b)(i) of the ECICO states that a candidate must ensure that the election return is accompanied by an invoice and a receipt of each election expense of \$500 or more. They should be issued by the goods or service providers (e.g. supplier of publicity materials, supplier of postage service, etc.) giving particulars of the expense (including date; information and amount of the goods or services; information of the organization or person providing the goods or services; and information supporting that the organization or person providing the goods or services has received the relevant payment in full, such as name and signature of the recipient, or the stamp of the receiving organization or signature of its authorized person).

- If the materials provided by the candidate's friends or other organizations are given for the purpose of promoting the election of the candidate or prejudicing the election of other candidates, they are regarded as election donations. The same should be clearly set out by the candidate in the election return. If the value of an election donation is more than \$1,000, according to sections 19 and 37(2)(b)(ii) of the ECICO, a candidate is required to issue a receipt to the donor specifying the name and address of the donor and particulars of the donation. A copy of the receipt must also be submitted with the election return. As the aforesaid candidate has used the said materials for his electioneering, he is also required to include the values of the materials in his election expenses and set out clearly such expenses in his election return.

- Section 18 of the ECICO provides that if a candidate or other person uses election donations for a purpose other than meeting, or contributing towards meeting, the candidate's election expenses, or for a purpose other than promoting the election of the candidate or prejudicing the election of another candidate, he engages in corrupt conduct at an election.

- If the election donations have not been used for election purpose, the candidate must, pursuant to the requirements of sections 19 and 37(2)(b)(iii) of the ECICO, ensure that the relevant election donations are given to a charitable institution or trust of a public character chosen by the candidate before the submission of his election return. He is also required to submit a copy of the receipt issued by the recipient organization together with his election return.

- Hence, the candidate must not use his unused election donations for meeting expenses other than election expenses, such as those incurred for community services to be provided by him in the future.

Q 3 What measures can a candidate take to remedy the situation, if he has submitted an election return that contains minor errors or false statements?

A 3

- It is stipulated in section 37A of the ECICO that if there is any error or false statement in a candidate's election return (including an error or false statement in any document accompanying the election return; or a failure to submit any document required by section 37(2)(b) of the ECICO in relation to the election return), the candidate may lodge with the appropriate authority a copy of the election return which is marked with the necessary revision to have the error or false statement corrected within 30 days after the date on which the candidate receives a notice from the appropriate authority, provided that the aggregate value of those errors or false statements does not exceed the prescribed limit for the election concerned (\$600 for a Rural Representative Election, an election to elect the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee, or an election to elect a member or members of the Heung Yee Kuk) and after including such value of errors or false statements, the aggregate amount of the candidate's election expenses does not exceed the maximum amount of election expenses prescribed for that particular election.

- If the nature of the error or false statement is a failure to set out an election expense or election donation in the election return, the copy of the revised election return must be accompanied by the relevant documents as required under section 37(2)(b) of the ECICO, e.g. invoice and receipt of an election expense, copy of receipt of an election donation, and, if applicable, an explanation. In addition, the copy of the revised election return must be accompanied with a declaration by the candidate in a specified form verifying the contents of the copy of the revised election return.

- According to section 20 of the ECICO, if a candidate, in a copy of the revised election return lodged under section 37A of the ECICO, makes a statement that the candidate knows or ought to know is materially false or misleading, he engages in corrupt conduct at an election.

Remark: "Appropriate authority" refers to the Director of Home Affairs in the case of a Rural Representative Election, or the Returning Officer for the election in the case of an election to elect members of the Heung Yee Kuk or to elect the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee.