

Legislative Council Panel on Constitutional Affairs

Electoral Affairs Commission (Financial Assistance for Legislative Council Elections)(Application and Payment Procedures) Regulation

Introduction

The Legislative Council (Amendment) Ordinance 2003 was enacted on 3 July 2003. The new Part VIA of the Ordinance provides for a Financial Assistance Scheme for candidates and lists of candidates standing in Legislative Council (“LegCo”) elections in respect of election expenses. Under the Scheme, candidates or lists of candidates who get elected or who have received 5% of valid votes or more will be given financial assistance as follows –

- (a) in respect of candidates in a contested geographical or functional constituency, the amount payable is the lowest of –
 - (i) the amount obtained by multiplying the total number of valid votes cast for the candidate or list of candidates by the specified rate (now at \$10 per vote); or
 - (ii) 50% of the declared election expenses of the candidate or list of candidates; or
 - (iii) if the declared election expenses of the candidate or list of candidates exceed the declared election donations of the list, the difference in amount between those expenses and donations.
- (b) in respect of uncontested geographical or functional constituencies, the amount payable is the lowest of –
 - (i) the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate; or
 - (ii) 50% of the declared election expenses of the candidate or list of candidates; or

- (iii) if the declared election expenses of the candidate or list of candidates exceed the declared election donations of the list, the difference in amount between those expenses and donations.

For both (a) and (b), if the declared election donations of a candidate or list of candidates equal or exceed the declared election expenses of the candidate or list of candidates, financial assistance is not payable. The Ordinance also stipulates broad procedural and documentary requirements for making a claim, and general conditions for payment to be made.

2. This paper outlines the essential features of the draft Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedures) Regulation (“the Regulation”) to be made by the Electoral Affairs Commission (“EAC”), under the Electoral Affairs Commission Ordinance (Cap. 541). The draft Regulation will set out the detailed implementation procedures for the Financial Assistance Scheme.

The Regulation

3. The Regulation is being drafted at present, and contains provisions for -

- (a) making claims and their submissions;
- (b) verification of claims;
- (c) withdrawal of claims;
- (d) payment of claims after verification; and
- (e) recovery of payment.

Making claims and their submissions

Requirements to be complied with when making claims

4. A claim for financial assistance must be made by a candidate or a list of candidates on a specified form. It must be signed by an eligible candidate, or (in respect of an eligible list of candidates) by all candidates on the list. The claim form must be accompanied by-

- an election return made under section 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) (Cap. 554); and
- an auditor’s report which confirms that an auditor has audited the election return, and also the accounts of the declared election expenses and the declared election donations.

We have consulted the Hong Kong Society of Accountants (“HKSA”) on the standard to be adopted by the auditor. Taking into account the advice by HKSA, the auditor will be required to audit the election return, and also the accounts of the declared election expenses and the declared election donations in accordance with the Standard on Assurance Engagements 200, High Level Assurance Engagements, issued and as amended by the Council of HKSA from time to time. The auditor’s report must also state the auditor’s opinion as to whether or not the election return complies with, in all material respects, the relevant sections of the ECICO governing how the election return must be prepared.

5. A set of guidance notes will be prepared by REO with assistance by the HKSA for auditors who are engaged by candidates to perform the auditing task. These notes will be issued by the HKSA to its members prior to the LegCo elections in 2004.

Submission of claims

6. The claim form, together with the accompanying documents, must be submitted in person at the office of the Chief Electoral Officer (“CEO”) by the candidate, or (in respect of a claim by a list of candidates) one of the candidates who has signed the claim form.

Verification of claims

Verification by CEO

7. On receiving a claim, the CEO will check the eligibility for financial assistance of the candidate or the list of candidates. He will also verify that the claim conforms to the requirements set out in the Regulation.

Requirement for further information

8. The CEO may require the claimant, through a written request, to provide further information to verify the claim. The claimant must provide the information within 14 days or within the period provided for in 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.

Part process of claims

9. If an auditor's report states that only part of the election return complies with the requirements set out in the relevant sections of the ECICO, the CEO shall process that part of the return that complies with those requirements and may stop processing the part of the return that does not comply with those requirements.

Withdrawal of claims

10. A claim may be withdrawn before a payment of financial assistance is made by submitting a notice of withdrawal in person at the office of the CEO by the candidate, or by one of the candidates in the case of a claim made by an eligible list of candidates. The notice of withdrawal must be in a specified form and signed by the candidate, or by all the candidates in the case of a claim made by a list of candidates.

Payment of claim after verification

Payment to be made by the Director of Accounting Services

11. After verifying the claim, the CEO will certify the amount of financial assistance payable on the claim 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. In the case of an eligible list of more than one candidate, the payment is to be made to the candidate who is nominated in the claim form to receive the payment on behalf of the candidates on the list.

Payment in cases of death of candidate

12. If the candidate to whom a payment of financial assistance is to be made dies before payment is made, the CEO will notify DAS to make the payment to the legal personal representative of the deceased candidate. In the case of an eligible list of candidates, all the remaining candidates and the legal personal representative of the deceased candidate must nominate another candidate to receive the payment on behalf of the candidates on the list by signing a notice of variation.

13. In the unlikely event that all the candidates on the list die before the payment is made, the payment is to be made to the legal personal representative of the last candidate who is nominated to receive the payment.

Recovery of payment

14. 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 section 60H(1)(a) of the Legislative Council Ordinance (Cap. 542) by registered post to the recipient requiring repayment. The recipient may make the repayment, in person, at the office of the CEO or send the repayment by post.

Miscellaneous provisions

15. For the avoidance of doubt, the legal personal representative or the next of kin of a deceased candidate may do anything that a deceased candidate may do or is required to do by or under the Regulation if the candidate dies before a claim is made or before a payment is made on a claim.

16. The EAC may specify forms for the purposes of the Regulation. The forms must be made available by the CEO free of charge from 9:00 am to 5:00 pm from Monday to Friday, and 9:00 am to 12:00 pm on Saturday.

Way Forward

17. Members are invited to give views on the essential features of the draft Regulation.

18. Subject to Members' views, the EAC will finalise and make the Regulation. The Regulation will be subject to negative vetting by LegCo. A proposed timetable is at **Annex**.

Background

19. Upon the enactment of the LegCo (Amendment) Bill 2003, a new scheme was introduced to provide financial assistance to candidates to offset part of their election expenses. The aim of the scheme is to encourage more public-spirited candidates to participate in the LegCo elections. This will be conducive to the development of political parties and political groups in Hong Kong.

20. The new Part VIA of the amended LegCo Ordinance (Cap. 542) empowers the EAC to make regulations to provide for the procedures for handling claims for financial assistance and effecting payment by the CEO.

Registration and Electoral Office
17 November 2003

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**EAC (Financial Assistance for LegCo Elections)
(Application and Payment Procedures) Regulation**

Timetable

Item	Task	Timeframe
1.	Consultation with LegCo CA Panel	17 November 2003
2.	Consideration by EAC	December 2003
3.	Gazettal of the Regulation	Early January 2004
4.	Negative Vetting	Mid January 2004 – March 2004 <i>(28-day initial vetting plus 21-day extended vetting, if necessary)</i>
5.	Submission of claims	September – November 2004
6.	Processing of claims and payment	September – December 2004