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PART VA

**FINANCIAL ASSISTANCE FOR CANDIDATES IN
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A BILL

To

Amend the District Councils Ordinance to establish a scheme to provide financial assistance in respect of election expenses incurred by candidates in District Council elections, and to make related amendments to the Legislative Council Ordinance so that the same formula is adopted for calculating the amounts of financial assistance payable to candidates in Legislative Council elections and to candidates in District Council elections, and to make consequential amendments to the Electoral Affairs Commission Ordinance; to require the Returning Officer in a District Council election to be satisfied that there is proof of death or disqualification of a candidate before taking certain actions regarding the election; and to provide for matters necessary for those purposes.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the District Councils (Amendment) Ordinance 2006.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Constitutional Affairs by notice published in the Gazette.

3. Who are validly nominated candidates

Section 36 of the District Councils Ordinance (Cap. 547) is amended—

- (a) in subsection (2), by repealing “it comes to the knowledge” and substituting “proof is given to the satisfaction”;
- (b) in subsection (4), by repealing “it comes to the knowledge” and substituting “proof is given to the satisfaction”.

4. When election proceedings are terminated or when an election fails

Section 40 is amended—

- (a) in subsection (1), by repealing “it comes to the knowledge” and substituting “proof is given to the satisfaction”;
- (b) in subsection (2), by repealing “it comes to the knowledge” and substituting “proof is given to the satisfaction”.

5. System of voting and counting of votes

Section 41(5) is amended by repealing “it comes to the knowledge” and substituting “proof is given to the satisfaction”.

6. Part VA added

The following is added—

“PART VA

FINANCIAL ASSISTANCE FOR CANDIDATES
IN RESPECT OF ELECTION EXPENSES

60A. Interpretation: Part VA

- (1) In this Part—
 - “auditor” (核數師) means a certified public accountant (practising) as defined in the Professional Accountants Ordinance (Cap. 50);
 - “Chief Electoral Officer” (總選舉事務主任) means the Chief Electoral Officer appointed under section 9 of the Electoral Affairs Commission Ordinance (Cap. 541);
 - “claim” (申索) means a claim for financial assistance payable under this Part;
 - “declared election expenses” (申報選舉開支) means, in relation to a candidate, the amount set out as election expenses incurred by the candidate in the election return lodged for the relevant election;

“disqualified candidate” (喪失資格的候選人) means a candidate in respect of whom proof is given to the satisfaction of the Returning Officer under section 40(2) that the candidate is disqualified from being elected;

“elected as an elected member” (當選為民選議員), in relation to a candidate, means—

- (a) a candidate who is declared to be duly elected in a notice published under section 46, unless he or she is determined under section 55(1) or (2) to be not duly elected;
- (b) a deceased candidate who is found to be successful at the election under section 40(3), unless proof is given to the satisfaction of the Returning Officer under section 40(2) that he or she is disqualified from being elected; or
- (c) a candidate who becomes an elected member under section 60(2);

“election return” (選舉申報書) has the meaning assigned to it by section 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

“eligible candidate” (合資格候選人) means a candidate who is eligible for financial assistance under section 60C(a) or (b);

“political party” (政黨) means—

- (a) a political body or organization operating in Hong Kong, that purports to be a political party; or
- (b) a body or organization the principal function or main object of which is to promote or prepare a candidate for election as a Member of the Legislative Council or as a member of any District Council;

“specified rate” (指明資助額) means the amount specified in Schedule 7.

(2) Subject to any determination the Court may make on the validity of a vote in the course of determining an election petition, for the purposes of this Part—

- (a) the total number of valid votes cast in any constituency is the total number of ballot papers containing valid votes received in that constituency; and
- (b) the total number of valid votes cast for a candidate for such a constituency is the total number of ballot papers containing valid votes cast for that candidate.

(3) For the purposes of section 60D(2)(a), the number of registered electors for a constituency is the number of electors registered for that constituency in the final register of geographical constituencies compiled and published by the Electoral Registration Officer under section 32 of the Legislative Council Ordinance (Cap. 542) which is in force at the time the election is held.

60B. Financial assistance payable to candidates

(1) An eligible candidate is entitled to financial assistance in the form of a monetary payment, in accordance with this Part, in respect of the declared election expenses of that candidate for an election.

(2) Subject to this Part, financial assistance is payable to an eligible candidate whether or not that candidate—

(a) represents a political party or an organization that is not a political party; or

(b) is an independent candidate.

(3) An amount payable as financial assistance is payable whether or not the declared election expenses have been paid or are due for payment in whole or in part.

(4) For the avoidance of doubt, it is stated that financial assistance payable under this Part is not an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

60C. Eligibility for financial assistance

A candidate for a constituency is eligible for financial assistance only if he is—

(a) a candidate who is elected as an elected member; or

(b) a candidate who is not elected as an elected member but who—

(i) is not a disqualified candidate; and

(ii) obtains at least 5% of the total number of valid votes cast in the constituency concerned.

60D. Amount payable as financial assistance

(1) If the election for a constituency is contested, the amount payable as financial assistance to a candidate is the lower of the following amounts—

(a) the amount obtained by multiplying the total number of valid votes cast for the candidate by the specified rate;

(b) 50% of the declared election expenses of the candidate.

(2) If the election for a constituency is uncontested, the amount payable as financial assistance to a candidate is the lower of the following amounts—

- (a) the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate;
- (b) 50% of the declared election expenses of the candidate.

60E. Entitlement to financial assistance not affected by failure of election, but financial assistance not payable if election proceedings are terminated

(1) A declaration by the Returning Officer under section 40(3) that an election has failed does not affect any entitlement to financial assistance under this Part.

(2) If the proceedings for an election are terminated under section 40(1), financial assistance is not payable in respect of that election.

60F. Financial assistance to be paid out of general revenue

An amount payable as financial assistance under this Part is a charge on, and is to be met from, the general revenue.

60G. Recovery of payment of financial assistance

(1) Where a payment of financial assistance is made under this Part and the recipient is not entitled to receive the whole or part of the amount paid—

- (a) the Chief Electoral Officer shall give a written notice to the recipient requiring repayment of the whole or part, as the case may be, of the amount paid; and
- (b) the recipient must repay the whole or part, as the case may be, of the amount paid, to the Government within 3 months after the date of the notice,

in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).

(2) Any amount that is not repaid under subsection (1) may be recovered as a civil debt due to the Government.

(3) If a person from whom an amount is recoverable as a civil debt under subsection (2) dies before such recovery, the estate of that deceased person is liable to the extent of the deceased person's liability.

(4) In any proceedings for the purposes of subsection (2), a certificate signed by the Chief Electoral Officer, stating, in relation to a payment of financial assistance under this Part, the amount, the date and the recipient of the payment is admissible as evidence of the matters stated in the certificate.

60H. How financial assistance is to be claimed and paid

- (1) A claim must be—
 - (a) presented to the Chief Electoral Officer within the period or extended period provided for in section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) for lodging an election return; and
 - (b) accompanied by an election return.
- (2) A claim must be made, supported and verified also in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).
- (3) Without limiting the generality of subsection (2), the Chief Electoral Officer may appoint an auditor to assist in verifying any claim (including the auditing of the accounts in the election return accompanying the claim).
- (4) A payment of financial assistance is to be made by the Chief Electoral Officer.
- (5) The manner of payment of financial assistance must also be in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).
- (6) Where a person entitled to financial assistance dies before a claim is made, a claim may be made on behalf of the estate of the deceased person, and any payment of financial assistance in such case is to be made for the benefit of the estate.
- (7) Where a person entitled to financial assistance dies after a claim is made but before a payment of financial assistance is made or the claim is otherwise disposed of, the claim may be continued on behalf of the estate of the deceased person, and any payment of financial assistance in such case is to be made for the benefit of the estate.
- (8) Where a person entitled to financial assistance dies before or after a claim is made, his or her legal personal representative or such other person as specified in regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541) may take any action in respect of the claim that the deceased person may have taken.

60I. Financial assistance not to be paid until disposal of election petition

(1) The Chief Electoral Officer must not make any payment of financial assistance during the period specified in section 53 for lodging an election petition, but may receive or process a claim during that period.

(2) If an election petition relating to an election for a constituency is lodged, the Chief Electoral Officer must not make any payment of financial assistance to any candidate for that constituency until the determination, abandonment or termination of the petition under Division 4 of Part V.

(3) In this section, a reference to the abandonment of an election petition includes a reference to withdrawing or ceasing to prosecute an election petition.”.

7. Chief Executive in Council may amend Schedule 4 or 5

Section 82 is amended—

- (a) in the heading, by repealing “or 5” and substituting “, 5 or 7”;
- (b) by repealing “or 5.” and substituting “, 5 or 7.”.

8. Schedule 7 added

The following is added—

“SCHEDULE 7

[ss. 60A & 82]

FINANCIAL ASSISTANCE: SPECIFIED RATE

The rate of financial assistance for the purposes of Part VA of this Ordinance is \$10.”.

Consequential and Related Amendments

Electoral Affairs Commission Ordinance

9. Long title amended

The long title to the Electoral Affairs Commission Ordinance (Cap. 541) is amended by adding “and under the District Councils Ordinance” after “Legislative Council Ordinance”.

10. Regulations

Section 7(1) is amended by adding—

- “(hc) the procedure to implement the scheme for the payment of financial assistance set out in Part VA of the District Councils Ordinance (Cap. 547), including, in particular, the procedure for—
- (i) making or withdrawing claims for financial assistance;
 - (ii) repaying to the Government amounts or parts of amounts paid as financial assistance;
 - (iii) supporting and verifying claims for financial assistance;
 - (iv) making a payment of financial assistance to a candidate; and
 - (v) making a claim for financial assistance in respect of the estate of a deceased person, the payment of financial assistance on such a claim, and the taking of any action for those purposes by a legal personal representative of a deceased person or by such other person as specified in the regulations;”.

Legislative Council Ordinance

11. Interpretation: Part VIA

Section 60A of the Legislative Council Ordinance (Cap. 542) is amended—

- (a) in subsection (1), by repealing the definition of “declared election donations”;
- (b) by repealing subsection (3).

12. Financial assistance payable to list of candidates and candidates for functional constituencies

Section 60B is amended by adding—

“(4) For the avoidance of doubt, it is stated that financial assistance payable under this Part is not an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).”.

13. Amount payable as financial assistance: list of candidates

Section 60D is amended—

- (a) in subsection (1)—

- (i) by repealing “Subject to subsections (3)(a) and (4), if” and substituting “If”;
 - (ii) by repealing “lowest” and substituting “lower”;
 - (iii) in paragraph (b), by repealing the semicolon and substituting a full stop;
 - (iv) by repealing paragraph (c);
- (b) in subsection (2)—
- (i) by repealing “Subject to subsections (3)(b) and (4), if” and substituting “If”;
 - (ii) by repealing “lowest” and substituting “lower”;
 - (iii) in paragraph (b), by repealing the semicolon and substituting a full stop;
 - (iv) by repealing paragraph (c);
- (c) by repealing subsections (3) and (4).

14. Amount payable as financial assistance: candidates for functional constituencies

Section 60E is amended—

- (a) in subsection (1)—
- (i) by repealing “Subject to subsections (3)(a) and (4), if” and substituting “If”;
 - (ii) by repealing “is the lowest” and substituting “to a candidate is the lower”;
 - (iii) in paragraph (a), in the English text, by repealing “concerned”;
 - (iv) in paragraph (b), by repealing the semicolon and substituting a full stop;
 - (v) by repealing paragraph (c);
- (b) in subsection (2)—
- (i) by repealing “Subject to subsections (3)(b) and (4), if” and substituting “If”;
 - (ii) by repealing “is the lowest” and substituting “to a candidate is the lower”;
 - (iii) in paragraph (b), by repealing “concerned;” and substituting a full stop;
 - (iv) by repealing paragraph (c);
- (c) by repealing subsections (3) and (4).

15. How financial assistance is to be claimed and paid

Section 60I(1)(b) is amended by repealing “and the declared election donations”.

16. Financial assistance not to be paid until disposal of election petition

Section 60J is amended by adding—

“(4) In this section, a reference to the abandonment of an election petition includes a reference to withdrawing or ceasing to prosecute an election petition.”.

Explanatory Memorandum

The main object of this Bill is to amend the District Councils Ordinance (Cap. 547) (“DCO”) to establish a scheme to provide financial assistance to candidates at a District Council election, who meet the criteria prescribed in the Bill, at a rate specified in the Bill, in respect of election expenses incurred by them.

2. A new Part (Part VA) of the DCO is introduced by clause 6 to provide a scheme for financial assistance in respect of election expenses incurred by candidates at a District Council election.

3. Under this scheme, a candidate (irrespective of whether the candidate represents a political party operating in Hong Kong or an organization that is not such a political party, or whether he is an independent candidate) is eligible for financial assistance in respect of election expenses incurred by the candidate, if the candidate meets the eligibility criteria in the Bill (the proposed sections 60B and 60C in clause 6).

4. The amount of financial assistance is to be computed according to the proposed section 60D in clause 6, and is not to exceed 50% of the election expenses declared under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”).

5. The payments of financial assistance are to be made from the general revenue (the proposed section 60F in clause 6).

6. An amount paid to a recipient who is not entitled to the payment of financial assistance can be recovered as a civil debt (the proposed section 60G in clause 6).

7. The claim for financial assistance is to be presented to the Chief Electoral Officer within the period or extended period for lodging election returns as specified in the ECICO and must be made according to regulations made under the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”). In making a claim for financial assistance, the accounts in the election return accompanying the claim are not required to be audited by an auditor, but the claim will be verified in accordance with regulations made under the EACO and the Chief Electoral Officer may appoint an auditor to assist in verifying the claim (the proposed section 60H in clause 6).
8. A payment of financial assistance cannot be made during the period for lodging an election petition or while an election petition is pending (the proposed section 60I in clause 6).
9. Under the proposed section 60E in clause 6, an entitlement to financial assistance will not be affected if an election fails, but financial assistance is not payable if election proceedings are terminated.
10. Clause 8 adds a new Schedule 7 to the DCO to set out the rate of financial assistance, which is \$10 per valid vote.
11. Clause 7 makes an amendment to empower the Chief Executive in Council to amend the new Schedule 7 by order published in the Gazette.
12. Clause 10 consequentially amends section 7(1) of the EACO to authorize the Electoral Affairs Commission to make regulations to implement the scheme to provide financial assistance to candidates at a District Council election, and clause 9 enlarges the long title of the EACO in view of the amendments made to that section 7(1).
13. The Bill also makes related amendments to the LCO so that the same formula is adopted for calculating the amount of financial assistance payable to a candidate or a list of candidates in the Legislative Council election, which means the difference in amount between the candidate’s election expenses and the election donations received by him will not be taken into account (clauses 11 to 16).
14. Besides, the Bill also makes amendments to the DCO to require the Returning Officer to take certain actions in relation to the nomination of candidates for a District Council election and the conduct of the election (including, in particular, the declaration of the failure of the election or the termination of the election proceedings) only when proof is given to his satisfaction of the death or disqualification of the candidate. At present, the Returning Officer will take those actions if the death or disqualification of the candidate comes to his knowledge. The amendments made by clauses 3, 4 and 5 will bring the relevant provisions of the DCO in line with those in the LCO.