

L.N. 80 of 2007**ELECTORAL AFFAIRS COMMISSION (FINANCIAL ASSISTANCE FOR LEGISLATIVE COUNCIL ELECTIONS) (APPLICATION AND PAYMENT PROCEDURE) (AMENDMENT) REGULATION 2007****CONTENTS**

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ELECTORAL AFFAIRS COMMISSION (FINANCIAL ASSISTANCE FOR LEGISLATIVE COUNCIL ELECTIONS) (APPLICATION AND PAYMENT PROCEDURE) (AMENDMENT) REGULATION 2007

(Made by the Electoral Affairs Commission under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541))

1. Commencement

This Regulation shall come into operation on 1 September 2007.

2. Title amended

The title to the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (Cap. 541 sub. leg. N) is amended by adding “**AND DISTRICT COUNCIL ELECTIONS**” after “**LEGISLATIVE COUNCIL ELECTIONS**”.

3. Interpretation

(1) Section 2(1) is amended—

(a) by repealing the definition of “claim” and substituting—

““claim” (申索) means, in relation to—

- (a) a list of LC candidates, a claim made in respect of the list for financial assistance payable under Part VIA of the Legislative Council Ordinance (Cap. 542);
- (b) an LC candidate, a claim made by that candidate for financial assistance payable under Part VIA of the Legislative Council Ordinance (Cap. 542); or
- (c) a DC candidate, a claim made by that candidate for financial assistance payable under Part VA of the District Councils Ordinance (Cap. 547);”;

(b) by repealing the definition of “declared election donations”;

(c) in the definition of “declared election expenses”—

(i) in paragraph (a)—

(A) by repealing “a list of candidates for a geographical constituency” and substituting “a list of LC candidates”;

(B) by repealing “and” at the end;

- (ii) in paragraph (b)—
 - (A) by repealing “a candidate for a functional constituency” and substituting “an LC candidate”;
 - (B) by adding “or” at the end;
- (iii) by adding—
 - “(c) a DC candidate, the amount set out as election expenses incurred by the candidate, in the election return lodged for the relevant election;”;
- (d) by repealing the definition of “eligible candidate” and substituting—
 - ““eligible LC candidate” (合資格的立法會選舉候選人) means an LC candidate who is eligible for financial assistance under section 60C(2)(a) or (b) of the Legislative Council Ordinance (Cap. 542);”;
- (e) by repealing the definition of “eligible list of candidates” and substituting—
 - ““eligible list of LC candidates” (合資格的立法會選舉候選人名單) means a list of LC candidates that is eligible for financial assistance under section 60C(1)(a) or (b) of the Legislative Council Ordinance (Cap. 542);”;
- (f) in the English text, in the definition of “specified form”, by repealing “;” and substituting “.”;
- (g) by repealing the definition of “Standard on Assurance Engagements 200, High Level Assurance Engagements” and substituting—
 - ““Hong Kong Standards on Assurance Engagements” (《香港核證準則》) means the standards of auditing and assurance practices of that name issued by the Council of the Hong Kong Institute of Certified Public Accountants, as amended from time to time;”;
- (h) in the Chinese text, in the definition of “選舉申報書”, by repealing “。” and substituting “;”;
- (i) by adding—
 - ““DC candidate” (區議會選舉候選人) means a candidate nominated for election for a District Council constituency;
 - “election expenses” (選舉開支) has the meaning assigned to it by section 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);
 - “eligible DC candidate” (合資格的區議會選舉候選人) means a DC candidate who is eligible for financial assistance under section 60C of the District Councils Ordinance (Cap. 547);

“LC candidate” (立法會選舉候選人) means a candidate nominated for election for a functional constituency within the meaning of section 3(1) of the Legislative Council Ordinance (Cap. 542);

“list of LC candidates” (立法會選舉候選人名單) means a list of candidates nominated for election for a geographical constituency within the meaning of section 3(1) of the Legislative Council Ordinance (Cap. 542);”.

(2) Section 2(2) is amended by repealing “candidates is to be construed, in relation to a list of candidates” and substituting “LC candidates is to be construed, in relation to a list of LC candidates”.

(3) Section 2(3) is repealed.

4. Requirements to be complied with when making claims

(1) Section 3(2) is amended by repealing everything after “made by” and substituting “an LC candidate or a DC candidate, the claim form must be signed by the candidate who makes the claim.”.

(2) Section 3(3) is amended by repealing “an eligible list of candidates” and substituting “a list of LC candidates”.

(3) Section 3 is amended by adding—

“(3A) If the claim is made in respect of a list of LC candidates consisting of more than one candidate, one of the candidates on the list must be nominated in the claim form to receive the payment of financial assistance on behalf of all the candidates on the list.”.

(4) Section 3(4) is repealed and the following substituted—

“(4) The claim form must be accompanied by—

(a) if the claim is made by an LC candidate or made in respect of a list of LC candidates, an election return and an auditor’s report; or

(b) if the claim is made by a DC candidate, an election return.”.

(5) Section 3(5) is amended by adding “referred to in subsection (4)(a)” after “auditor’s report”.

(6) Section 3(5)(a) is repealed and the following substituted—

“(a) state that the auditor has audited the account of the declared election expenses by conducting a reasonable assurance engagement in accordance with the Hong Kong Standards on Assurance Engagements; and”.

- (7) Section 3(5)(b) is amended by repealing “section 37(1) and (2)(b)” and substituting “section 37(1)(a) and (2)(b)(i) and (v)”.
- (8) Section 3(6)(a) is amended—
- (a) by repealing “an eligible candidate” and substituting “an LC candidate”;
 - (b) by repealing “and” at the end.
- (9) Section 3(6)(b) is repealed and the following substituted—
- “(b) in the case of a list of LC candidates, in section 60D of the Legislative Council Ordinance (Cap. 542); or”.
- (10) Section 3(6) is amended by adding—
- “(c) in the case of a DC candidate, in section 60D of the District Councils Ordinance (Cap. 547).”.

5. Presentation of claims

- (1) Section 4(1)(a) is amended by adding “if the claim is made by an LC candidate or a DC candidate or made in respect of a list of LC candidates consisting of only one candidate,” before “by the candidate”.
- (2) Section 4(1)(b) is amended by repealing “in respect of a list of candidates” and substituting “made in respect of a list of LC candidates”.

6. Verification of claims (eligibility, further information, etc.)

- (1) Section 5(1) is amended by repealing everything after “Chief Electoral Officer must” and substituting—
- “verify—
- (a) if the claim is made by an LC candidate, whether the candidate is eligible for financial assistance under section 60C(2) of the Legislative Council Ordinance (Cap. 542);
 - (b) if the claim is made in respect of a list of LC candidates, whether the list of candidates is eligible for financial assistance under section 60C(1) of the Legislative Council Ordinance (Cap. 542); or
 - (c) if the claim is made by a DC candidate, whether the candidate is eligible for financial assistance under section 60C of the District Councils Ordinance (Cap. 547).”.
- (2) Section 5(3) is amended by adding “LC” after “any candidate on the list of”.

(3) Section 5 is amended by adding—

“(3A) The Chief Electoral Officer may also, in relation to a claim made by a DC candidate, appoint an auditor to assist in verifying the claim (including the auditing of the accounts in the election return accompanying the claim).

(3B) An auditor appointed under subsection (3A) must, after he has assisted in verifying the claim, provide an auditor’s report to the Chief Electoral Officer.

(3C) The auditor’s report provided under subsection (3B) must—

- (a) state that the auditor has audited the account of the declared election expenses by conducting a reasonable assurance engagement in accordance with the Hong Kong Standards on Assurance Engagements; and
- (b) state the auditor’s opinion as to whether the election return complies with section 37(1)(a) and (2)(b)(i) and (v) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in all material respects.”.

(4) Section 5(4) is amended by adding “made under subsection (3)” after “further information”.

(5) Section 5(4)(a) is amended by repealing “in respect of a single candidate” and substituting “made by an LC candidate or a DC candidate or made in respect of a list of LC candidates consisting of only one candidate”.

(6) Section 5(4)(b) is amended—

- (a) by repealing “in respect of a list of candidates” and substituting “made in respect of a list of LC candidates”;
- (b) by repealing “section 8(4)(b)” and substituting “section 3(3A)”.

(7) Section 5(4)(c) is amended—

- (a) by repealing “section 8(4)(b)” and substituting “section 3(3A)”;
- (b) in the Chinese text, by repealing “獲提名” where it twice appears and substituting “獲指定”.

7. Section substituted

Section 6 is repealed and the following substituted—

“6. Part processing of claims

If an auditor’s report provided under section 3(4)(a) or 5(3B) states that the election return only partially complies with the requirements set out in section 37(1)(a) and (2)(b)(i) and (v) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the Chief Electoral Officer may—

- (a) process the part of the return that complies with those requirements; and
- (b) stop processing the part of the return that does not comply with those requirements.”.

8. Withdrawal of claims

(1) Section 7(2)(a) is amended by repealing “in respect of a single candidate” and substituting “made by an LC candidate or a DC candidate or made in respect of a list of LC candidates consisting of only one candidate”.

(2) Section 7(2)(b) is amended by repealing “in respect of a list of candidates” and substituting “made in respect of a list of LC candidates”.

(3) Section 7(4)(a) is amended by adding “if the claim is made by an LC candidate or a DC candidate or made in respect of a list of LC candidates consisting of only one candidate,” before “by the candidate”.

(4) Section 7(4)(b) is amended by repealing “in respect of a list of candidates” and substituting “made in respect of a list of LC candidates”.

9. Payment of claims after verification

(1) Section 8(1) is amended by repealing everything before “Chief” and substituting—

“(1) Subject to—

(a) (in the case of a claim made by an eligible LC candidate or made in respect of an eligible list of LC candidates) section 60J of the Legislative Council Ordinance (Cap. 542); or

(b) (in the case of a claim made by an eligible DC candidate) section 60I of the District Councils Ordinance (Cap. 547),

the”.

(2) Section 8(4)(a) is amended by adding “in the case of a claim made by an eligible LC candidate or eligible DC candidate or made in respect of an eligible list of LC candidates consisting of only one candidate,” before “to the candidate”.

(3) Section 8(4)(b) is amended—

(a) by repealing “an eligible list of candidates” and substituting “a claim made in respect of an eligible list of LC candidates”;

(b) by repealing “in the claim form” and substituting “under section 3(3A)”.

**10. Payment in cases of death of candidate
(multi-candidate list)**

- (1) Section 10(1) is amended by adding “LC” after “eligible list of”.
- (2) Section 10(6) is amended by adding “LC” after “eligible list of”.

**11. Mode of service of notice requiring
repayment of financial assistance**

Section 11 is amended by adding “or section 60G of the District Councils Ordinance (Cap. 547)” after “Legislative Council Ordinance (Cap. 542)”.

**12. Mode of repayment of financial
assistance to Government**

Section 12(1) is amended by adding “or section 60G of the District Councils Ordinance (Cap. 547)” after “Legislative Council Ordinance (Cap. 542)”.

13. Making claims on behalf of deceased candidates

Section 13(1) is amended by repealing “eligible candidate or candidate on an eligible list of candidates” and substituting “eligible LC candidate or eligible DC candidate or a candidate on an eligible list of LC candidates”.

Made this 7th day of May 2007.

The Hon. Mr. Justice PANG Kin-kee
Chairman,
Electoral Affairs Commission

Lawrence LOK Ying-kam
Member,
Electoral Affairs Commission

Andrew CHAN Chi-fai
Member,
Electoral Affairs Commission

Explanatory Note

Under the amendments introduced by the District Councils (Amendment) Ordinance 2007 (1 of 2007), a scheme is implemented to provide financial assistance to candidates at a District Council election who are elected or receive at least 5% of the total number of valid votes (“the DC scheme”).

2. This Regulation amends the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (Cap. 541 sub. leg. N) (“the principal Regulation”) to include provisions dealing with the detailed operational procedures of the DC scheme. Basically, the provisions dealing with the DC scheme are modeled on those dealing with the existing financial assistance scheme implemented for Legislative Council elections (“the LC scheme”) as provided for in the principal Regulation.

3. Section 2 amends the title to the principal Regulation to reflect the inclusion in the principal Regulation of the provisions dealing with the DC scheme.

4. Section 3 deals with definitions.

5. Section 4 amends section 3 of the principal Regulation to make the requirements that need to be complied with in making a claim under the LC scheme also applicable to a claim made under the DC scheme. Nevertheless, a claim form submitted under the DC scheme does not need to be accompanied by an auditor’s report. Opportunity is also taken to specify more clearly that if the claim under the LC scheme is made in respect of a list of candidates consisting of more than one candidate, one of the candidates on the list must be nominated in the claim form to receive the payment of financial assistance on behalf of all the candidates.

6. Section 5 extends section 4 of the principal Regulation (which provides for the way for presentation of a claim for financial assistance made under the LC scheme) to cover a claim made under the DC scheme.

7. Section 6 amends section 5 of the principal Regulation to provide that the Chief Electoral Officer has to determine the eligibility of a candidate for financial assistance under the DC scheme in accordance with section 60C of the District Councils Ordinance (Cap. 547). He may appoint an auditor to assist him in verifying a claim made under the DC scheme.

8. Section 7 is technical in nature as it replaces section 6 of the principal Regulation (which empowers the Chief Electoral Officer to process only part of the election return lodged by a candidate in support of a claim in case of partial compliance of the requirements set out in the Elections (Corrupt and

Illegal Conduct) Ordinance (Cap. 554)) by a new section which makes new cross references consequential upon the amendments made under other provisions of this Regulation.

9. Section 8 extends section 7 of the principal Regulation to cover the withdrawal of claims made under the DC scheme.

10. Section 9 amends section 8 of the principal Regulation to provide for how payment of financial assistance in respect of claims under the DC scheme is to be made.

11. Section 10 makes technical amendments to section 10 of the principal Regulation.

12. Section 11 amends section 11 of the principal Regulation so that the mode of service of notice by the Chief Electoral Officer requiring repayment of financial assistance paid under the LC scheme also applies to the requirement for repayment of financial assistance paid under the DC scheme.

13. Section 12 amends section 12 of the principal Regulation so that the mode of repayment of financial assistance paid under the LC scheme to the Government also applies to repayment of financial assistance paid under the DC scheme.

14. Section 13 amends section 13 of the principal Regulation so that the arrangement for the legal personal representative or the next of kin of a deceased candidate to make a claim for financial assistance on behalf of the deceased applies not only to the LC scheme but also to the DC scheme.

15. This Regulation also makes a number of technical amendments to the principal Regulation.