

Bills Committee on Legislative Council (Amendment) Bill 2003

Arrangements for Implementing the Financial Assistance Scheme for the Legislative Council Elections

Introduction

To facilitate Members' consideration of the Legislative Council ("LegCo") (Amendment) Bill 2003 ("the Bill"), this paper has been prepared to explain the provisions in the Bill which relate to a proposed financial assistance scheme for candidates standing in LegCo elections.

Background

2. The Administration proposes to provide financial assistance for candidates standing in the 2004 LegCo elections. The aim of the proposal is to encourage more public-spirited candidates to participate in LegCo elections, thereby facilitating the development of political parties and political groups in Hong Kong. The proposal is supported by the LegCo Panel on Constitutional Affairs. The Bill proposes a new Part VIA to the LegCo Ordinance to provide a legal framework for the scheme.

Eligibility and amount of financial assistance payable

3. Under the proposed scheme, a list of candidates or a candidate is eligible for financial assistance in respect of election expenses incurred by the list of candidates or the candidate, as long as the list or candidate is able to secure at least one seat in LegCo, or has received 5% or more of valid votes cast in the constituency concerned (*new section 60C*). The amount payable is obtained by multiplying the number of valid votes cast for the list of candidates or the candidate concerned by the specified rate of \$10 per vote^(Note 1) (*new section 60D(1) and 60E(1)*). It will be capped at 50% of the declared election expenses of the list of candidates or the candidate concerned, or the difference in amount between the declared election expenses and the declared election

^(Note 1) For candidates returned through uncontested elections, the amount payable is obtained by multiplying 50% of the number of registered electors of the constituency concerned by the specified rate of \$10 per vote (*new section 60D(2) and 60E(2)*).

donations (where the former exceeds the latter), whichever is the lower. No financial assistance will be provided if the declared election donations exceed the declared election expenses (*new section 60D(1) and (4), new section 60E(1) and (4)*). Also, we will move a Committee Stage Amendment to clause 39 of the Bill to put it beyond doubt that financial assistance is not payable to a candidate whose declared election donations equal declared election expenses.

4. Candidates standing in geographical constituency elections and functional constituency elections alike are eligible for the assistance. The eligibility is irrespective of whether the list or the candidate represents a political party operating in Hong Kong or a non-political organization, or is an independent list or candidate (*new section 60B(1) and (2)*).

5. An amount payable as financial assistance under the scheme is payable whether or not the declared election expenses have been paid or are due for payment in whole or in part (*new section 60B(3)*). Furthermore, there is no restriction on the way in which the financial assistance may be used. Thus, for example, a candidate may use his financial assistance received to meet his election expenses, or to repay loans which have been lawfully extended for election purposes.

Submission of Claim

6. A claim for financial assistance is to be made by completing and filing a form specified by the Electoral Affairs Commission.

7. Each claim should be accompanied by –

- (a) an election return required under the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”); and
- (b) an auditor’s report certifying that the accounts of the declared election expenses and donations comply with the relevant provisions of the ECICO and truly reflect the election expenses incurred and election donations received by the list of candidates or the candidate concerned (*new section 60I*). The audit should be conducted in accordance with the standards of auditing practices specified or issued by the Hong Kong Society of Accountants.

8. The claimant should also indicate whether he belongs to a political party, or to a non-political organization, or whether he is an independent candidate.

9. The claim form needs to be signed by the candidate(s). In the case of a list of candidates, the claim form should include the signatures of all candidates. Candidate(s) is/are also required to indicate in the form the name of candidate to which payment should be made.

10. The claim form should be presented to the Chief Electoral Officer (“CEO”) not later than 60 days after the date of publication of the election results. Under the present provisions of the ECICO, the deadline for lodging an election return is 30 days after the date of publication of the election results. To allow sufficient time for candidates to prepare their election returns and to have them audited, the deadline concerned in respect of LegCo elections will be extended to 60 days (*clause 56 of the Bill*), in line with the deadline for submitting claims for financial assistance.

Verification by the Chief Electoral Officer

11. Upon receipt of a claim, the CEO will ascertain the eligibility of the claimant for financial assistance and check whether :

- (a) the claim form is duly completed and signed;
- (b) the claim is accompanied by an election return;
- (c) the claim is accompanied by an auditor’s report (*see paragraph 7(b) above*); and
- (d) the amount claimed is within the ceiling stated in paragraph 3 above.

If the information provided is incomplete, the CEO may ask the claimant to provide supplementary information.

Payment Procedures

12. After the claim has been verified, the CEO will notify the Director of Accounting Services (“DAS”) the correct amount of financial assistance payable to the list of candidates or the candidate concerned.

To ensure that there is no election petition which may affect a claimant's eligibility to financial assistance, the CEO will only notify the DAS to pay the amount after the two month period for election petition has expired (*new section 60J*).

13. Upon receipt of the notification, DAS will, as soon as practicable, pay the appropriate sum to the candidate or the person nominated by the list of candidates.

Exceptional Arrangements

Terminated election^(Note 2) (*New section 60F(2)*)

14. Financial assistance will not be provided in case an election is terminated. This is because, in the circumstances, it would not be possible to determine, for the purpose of calculating the amount of financial assistance payable, the number of votes each candidate receives.

Failed election^(Note 3) (*New section 60F(1)*)

15. Financial assistance will still be provided to eligible candidates in the event of a declaration that an election has failed.

^(Note 2) If, on the date of an election but before the close of polling for the election, a validly nominated candidate has died or is disqualified from being elected, the Returning Officer must publicly declare, under section 46A(1), that the proceedings for the election are terminated.

^(Note 3) If, after the close of polling for an election but before declaring the result of the election, a validly nominated candidate has died or is disqualified from being elected, the proceedings for the election will not be terminated at that stage. The counting of votes will take place as normal. However, if the candidate concerned is found to be successful at the election after the counting of votes is finished –

- (a) in the case of a GC election, if there is another candidate on the same list as the deceased or disqualified candidate who has not been returned for the election, such another candidate will be returned in place of the deceased or disqualified candidate. If there are more than one such another candidate, the replacement will be determined in accordance with the order of priority on the list. If there is no such another candidate on the list who can be returned as replacement, the Returning Officer will publicly declare, under section 46A(3), that the election has failed, or has failed to the extent that the number of candidates returned was less than the number of Members to be returned for the constituency concerned; or
- (b) in the case of a FC election, the Returning Officer will publicly declare, under section 46A(3), that the election has failed, or has failed to the extent that the number of candidates returned was less than the number of Members to be returned for the constituency concerned.

Claim and payment in case of death (New section 60I)

16. In the event that a candidate who is entitled to financial assistance dies before a claim is made, his legal personal representative may make a claim on behalf of his estate. If a candidate dies after submitting the claim but before payment is made, the payment procedure will be the same except that the DAS will effect payment to his estate in accordance with the relevant legal procedures.

Election petition (New section 60J)

17. In case an election petition is lodged, the CEO will not ask the DAS to make payment until the petition is determined, abandoned or terminated.

Withdrawal of claim

18. After submission of a claim but before payment of financial assistance, a claimant may withdraw the claim by giving a notice of withdrawal in specified form to the CEO. In case the claimant dies, his legal personal representative may withdraw the claim on behalf of the estate.

Recovery of financial assistance (New section 60H)

19. In case payment of financial assistance is made but the recipient is not entitled to receive the whole or part of the amount paid, the CEO will recover the overpaid amount as soon as practicable by way of a written notice. The amount should be repaid within three months after the date of notice. Any amount not repaid within the specified period may be recovered as a civil debt due to the Government. If the person from whom such an amount is recoverable dies before the recovery, his estate is liable to the extent of the deceased's liability.

Constitutional Affairs Bureau
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