

**Bills Committee on Legislative Council (Amendment) Bill 2003**

**Proposed new Part VIA of the  
Legislative Council Ordinance on the financial assistance scheme**

**Introduction**

At the meeting of the Bills Committee held on 5 June 2003, the Administration was requested to respond in writing to the following issues in relation to the new financial assistance scheme proposed vide the Legislative Council (Amendment) Bill 2003 (“the Bill”) –

- (a) the rationale for the different method of calculation of the amount payable as financial assistance in respect of contested and uncontested elections (*proposed new sections 60D and 60E*);
- (b) the meaning of “failure of election” and whether the financial assistance received in the event of a failed election is subject to estate duty (*proposed new section 60F*);
- (c) whether loans made to a candidate from a political party could be regarded as election donations made to the candidate, and whether political parties should be required to declare the sources of the donations they receive; and
- (d) the number of candidates who used only one round of free mailing service in the 2000 Legislative Council (LegCo) elections.

## **The amount payable as financial assistance in respect of contested and uncontested elections**

2. Under our proposal, an eligible candidate<sup>(Note 1)</sup> will receive financial assistance from the Government, irrespective of whether the election is contested or not. For an eligible candidate standing in a contested election, the amount payable is obtained by multiplying the number of valid votes cast for the candidate by the specified rate of \$10 per vote. For a candidate returned through an uncontested election, the amount payable is obtained by multiplying 50% of the number of registered electors of the constituency concerned by the above specified rate. In both cases, the amount of financial assistance receivable will be capped at 50% of the declared election expenses of the candidate concerned, or the difference between the declared election expenses and the declared election donations (if any), whichever is the lower.

3. We believe that it is fair to extend the financial assistance scheme to candidates who are returned uncontested. This is because they, too, may have incurred election expenses. (According to the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO), “election expenses” is defined as expenses incurred or to be incurred, **before, during or after the election period**, by or on behalf of a candidate for the purpose of promoting the election of the candidate, or prejudicing the election of another candidate.) For the purpose of determining the amount of financial assistance payable to these candidates, we propose to adopt, as a basis for calculation, 50% of the number of registered electors of the constituencies concerned. This formula is not unreasonable, since arguably a candidate who is returned uncontested should have significant support of the electors. It will not result in excessive financial assistance to the uncontested candidate because the actual amount payable will be capped at 50% of his declared election expenses, or the difference between his declared election expenses and declared election donations (if any), whichever is the lower.

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<sup>(Note 1)</sup> 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 (*proposed new section 60C*). Candidates standing in geographical constituency elections and functional constituency elections alike are eligible for the assistance, 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 (*proposed new section 60B(1) and (2)*).

## **Failed election**

4. There are two scenarios under which an election will be declared as having failed, necessitating a by-election.

5. The first scenario arises when no candidate is validly nominated for an election, or when the number of candidates validly nominated is less than the number of LegCo Members to be returned for the constituency concerned (section 46(2) of Legislative Council Ordinance (“LCO”). Under such circumstances, the validly nominated candidate, if any, will be declared elected (section 46(1) of LCO). A by-election will be held to fill the vacancy (section 36(1)(c) of LCO).

6. The second scenario relates to the death or the disqualification of a validly nominated candidate after the close of polling but before the declaration of the election result. Under such circumstances, the counting of votes will proceed as normal. If the deceased or disqualified candidate is found to be successful at the election and –

- (a) in the case of a geographical constituency election, if there are other candidates on the same list as the candidate concerned, one of these other candidates will be returned in place of the deceased or disqualified candidate in accordance with the order of priority on the list. Alternatively, if there is no other candidate on the list who can be returned in place of the deceased or disqualified candidate, the Returning Officer will declare, under section 46A(3), that the election has failed, and a by-election will be held to fill the vacancy (section 36(1)(cb) of LCO); or
- (b) in the case of a functional constituency election, the Returning Officer will declare, under section 46A(3), that the election has failed, and a by-election will be held to fill the vacancy (section 36(1)(cb) of LCO).

7. Under the proposed financial assistance scheme, in the event of a failed election, financial assistance will still be provided to all eligible candidates (including a deceased candidate), because votes will have been cast and election expenses will have been incurred.

## Estate duty

8. Under section 5 of the Estate Duty Ordinance, estate duty is levied on the principal value of all property passing on death of a person. Financial assistance received by a deceased candidate which remains unspent at the time of his death will form part of his estate and thus, subject to the value of such estate<sup>(Note 2)</sup>, will be chargeable with estate duty in accordance with the Ordinance. By virtue of section 13 of the Ordinance, in determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses, debts and incumbrances which shall be deducted from the value of the property liable.

## Loans and donations

9. The receipt and disposal of election donations is regulated by the ECICO. Under section 2 of the ECICO, an election donation is defined as follows –

*“election donation”, in relation to a candidate or candidates at an election, means any of the following donations –*

- (a) any money given to or in respect of the candidate or candidates for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate or candidates;*
- (b) any goods given to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, and includes any goods given incidental to the provision of voluntary service;*

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<sup>(Note 2)</sup> According to Schedule 1 to the Estate Duty Ordinance, the present threshold value of an estate to attract estate duty is of an amount exceeding \$7.5 million.

(c) *any service provided to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, but does not include voluntary service.”*

10. Under section 37 of the ECICO, a candidate must declare in his election return any election donation he has received, and (in the case of each donation of more than \$1,000) the particulars of the donor. However, there is no statutory requirement to disclose the donor's financial sources. The law does not make a distinction between a donor which is a political party or organization, a non-political organization, and an individual.

11. Under the ECICO, a loan will not be regarded as an election donation. However, any interest foregone in respect of an interest-free loan will be treated as a donation.

### **Number of candidates who used one round of free mailing service**

12. In the 2000 geographical constituency elections, 20 out of 36 candidate lists used up to one round of free mailing service. For the functional constituency elections, the corresponding figure is 19 out of 57 candidates.

Constitutional Affairs Bureau  
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