

立法會
Legislative Council

LC Paper No. CB(2)1768/03-04
(These minutes have been seen
by the Administration)

Ref : CB2/SS/4/03

**Subcommittee on subsidiary legislation
relating to 2004 Legislative Council elections**

**Minutes of fifth meeting
held on Saturday, 14 February 2004 at 9:00 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon HUI Cheung-ching, JP (Chairman)
Hon CHEUNG Man-kwong
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC , JP
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan
Hon Abraham SHEK Lai-him, JP
- Public Officers attending** : Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs
- Mr LI Wing
Chief Electoral Officer
- Miss Susanna LAI Shuk-ching
Assistant Secretary for Constitutional Affairs
- Ms Mabel CHEUNG Mee-bo
Government Counsel

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in Attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Millie WONG
Senior Council Secretary (2)4

Action

I. Meeting with the Administration

(Legislative Council Brief, the Regulation, LC Paper Nos. CB(2) 1197/03-04(01), 1221/03-04(01) and (02), and 1343/03-04(01))

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

The Subcommittee deliberated (index of proceedings attached at **Annex**). Members completed scrutiny of the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections (Application and Payment Procedure) Regulation.

Review on the Scheme

2. Under the Financial Assistance Scheme (the Scheme), the amount of financial assistance payable to a candidate had to be net of any election donation received by the candidate. Mr IP Kwok-him opined that the arrangements would discourage political parties from providing financial assistance to their candidates, and would be inconsistent with the aim of the Scheme, i.e. its implementation would be conducive to the development of political parties in Hong Kong. He therefore suggested that the Government should review the Scheme.

3. Ms Emily LAU shared Mr IP's view, and opined that donations received by candidates should not be taken into consideration in the financial assistance payable to candidates, and suggested that the Government should make reference to the arrangements adopted by other countries such as Canada and Germany.

Action

4. Mr CHEUNG Man-kwong said that the Democratic Party had no particular views on the Scheme, as its impact on the Democratic Party would not be significant, and financial assistance to candidates by the Party could be provided in other forms.

Admin

5. In response to members' views, Deputy Secretary for Constitutional Affairs (DSCA) said that the Administration would review the Scheme in the light of experience of the 2004 Legislative Council elections, and would report the outcome of the review to the Panel of Constitutional Affairs (CA Panel) in due course.

6. The Chairman stressed that the Government should promulgate clear guidelines so that all candidates were aware of the details of the Scheme.

Section 6 of the Regulation

7. Section 6 of the Regulation provided that if an auditor's report stated that only part of the election return complied with the requirements set out in section 37(1) and 2(b) of the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO), the Chief Electoral Officer (CEO) might process that part of the return that complied with those requirements and stop processing the part of the return that did not comply with those requirements. Mr Andrew WONG sought clarification on whether CEO had the discretion to process the part of the return that did not comply with those requirements.

8. DSCA advised that the auditor's opinion was not conclusive but for the reference of CEO. Under section 6 of the Regulation, CEO had the discretion to process the part of the return that complied with those requirements and not to process the part of the return that did not comply with those requirements. Under normal circumstances, CEO would not reject the whole or part of the claim, which in the auditor's opinion did not meet the relevant requirements under ECICO, without first seeking clarification or "further information" from the candidate under section 5 of the Regulation.

9. Members noted that the auditor's opinion should only be given from the auditing perspective, and should not be regarded as an opinion given from any other perspective (for example, the legal perspective).

Section 14 of the Regulation

Admin

10. Regarding the forms to be specified by the Electoral Affairs Commission for the purposes of the Regulation, Ms Emily LAU requested that the forms should be circulated to the CA Panel for comments beforehand.

Action

Proposed amendments to the Regulation

11. Members supported the Regulation subject to amendments to be proposed by the Administration to sections 4, 7 and 10 to -

- (a) provide candidates with increased flexibility and convenience by allowing agents of candidates to present claim forms, notices of withdrawal and notices of variations on behalf of the candidates; and
- (b) specify that the claim form must be presented within the period or extended period provided for in section 37 of ECICO for lodging an election return.

12. Members agreed that the wording of the proposed amendments, to be provided by the Administration on or before 17 February 2004, should be circulated to the Subcommittee for consideration. The Subcommittee would report its deliberations to the House Committee on 20 February 2004.

13. The meeting ended at 11.35 am.

Council Business Division 2
Legislative Council Secretariat
18 March 2004

Annex

**Proceedings of the fifth meeting of the Subcommittee on
subsidiary legislation relating to 2004 Legislative Council elections
on Saturday, 14 February 2004 at 9:00 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action Required
000100 - 001347	Chairman Admin	Briefing on Administration's response to issues raised by members at the last meeting.	
001348 - 002034	Mr IP Kwok-him Admin Chairman Ms Emily LAU	Current arrangements under the Financial Assistance Scheme not conducive to development of political parties in Hong Kong.	Administration to review the Financial Assistance Scheme after 2004 LegCo elections and to report to CA Panel.
002035 - 002222	Chairman Ms Emily LAU Mr Ip Kwok-him Admin	Government to promulgate specific guidelines on the operation of the Scheme. Draft guidelines on election-related activities relating to 2004 LegCo elections to be issued in mid-March 2004.	
002223 - 003735	Mr Andrew WONG Mr CHEUNG Man-kwong Mr SIN Chung-kai Mr IP Kwok-him Ms Emily LAU Admin Chairman	Financial support from political parties vis-à-vis financial assistance received from Government.	
003736 - 023449	Chairman Admin Ms Emily LAU Mr Andrew WONG Mr Cheung Man-kwong SALA2 Mr IP Kwok-him	Detailed scrutiny of the Regulation.	

Time Marker	Speaker(s)	Subject(s)	Action Required
003837 - 004435	Chairman Admin Ms Emily LAU Mr Andrew WONG	Section 1 - Regulation to be published in March 2004 upon passing of the Regulation.	
004436 - 010905	Admin Chairman Mr Andrew WONG Mr Cheung Man-kwong SALA2 Mr IP Kwok-him Ms Emily LAU	Section 4 - Submission of claims by election agents on behalf of candidates.	
010906 - 011535	Chairman Ms Emily LAU Admin SALA2	Section 5 - Verification of claims by EAC and rectification of claims by candidates.	
011536 - 012744	Ms Emily LAU Admin Mr CHEUNG Man-kwong SALA2	Section 5 - Ensuring delivery of request for further information to candidates and receipt of candidates' replies by EAC.	
012745 - 014947	Ms Emily LAU Admin Mr CHEUNG Man-kwong Chairman SALA2	Section 6 - Compliance with requirements set out in section 37(1) and (2)(b) of ECICO, processing part of the election return that complies with the requirements, and possibility of self-incrimination on the part of candidates.	
014948 - 022449 (020642 - 021404 (break))	Mr Andrew WONG Admin Ms Emily LAU SALA2 Chairman	Section 6 - Processing part of the election return that complied with the ECICO requirements, and/or part of the return that did not comply with the ECICO requirements.	
022450 - 022604	Chairman Admin Ms Emily LAU	Section 7 - Submission of notices of withdrawal of claims by election agents on behalf of candidates.	
022605 - 023017	Chairman Admin Ms Emily LAU	Section 8 - Payment of claims to candidates.	

Time Marker	Speaker(s)	Subject(s)	Action Required
023018 - 023049	Chairman Admin	Section 9 - Payment in cases of death of candidate (single candidate).	
023050 - 023100	Chairman Admin	Section 10 - Payment in cases of death of candidate (Multi-candidate list).	
023101 - 023225	Chairman Admin Ms Emily LAU	Section 11 - Notice requiring repayment of financial assistance.	
023226 - 023300	Chairman Admin	Section 12 - Repayment of financial assistance to Government.	
023301 - 023335	Chairman Admin	Section 13 - Making claims on behalf of deceased candidates.	
023336 - 023449	Chairman Admin Ms Emily LAU	Section 14 - Forms to be specified for the purposes of the Regulation.	Administration to provide forms to the Panel for comments beforehand.
023450 - 023639	Chairman Ms Emily LAU Admin	Report to be submitted to House Committee by 20 February 2004. Deadline for giving notice of amendments on 18 February 2004.	Administration to provide draft amendments by 17 February 2004 for circulation to members for comments.

Council Business Division 2
Legislative Council Secretariat
 18 March 2004