

**Extract from the report of the Bills Committee on
Legislative Council (Amendment) Bill 2003**

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Proposed financial assistance scheme

Proposals in the Bill

15. The Administration has proposed 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. As a corollary to the Administration's intention to provide financial support to election candidates, the existing threshold (5%) for the return of election deposit is proposed to be lowered to 3%.

16. Under clause 39 of the Bill, a new Part VIA (new sections 60A - 60J) is introduced to LCO to provide a scheme of financial assistance in respect of election expenses incurred by candidates. Under the scheme -

- (a) candidates standing in GC and FC 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 (new section 60B(1) and (2));
- (b) 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);
- (c) 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 (new section 60D(1) and 60E(1));
- (d) 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 (new section 60D(2) and 60E(2));
- (e) the amount, however, 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 donations (where the former exceeds the latter), whichever is the lower; and

- (f) no financial assistance will be provided if the declared election donations equal or exceed the declared election expenses (new section 60D(1) and (4)), new section 60E(1) and (4)).

17. The Administration has advised the Bills Committee that it will move an amendment to clause 39 of the Bill to put beyond doubt that financial assistance is not payable to a candidate whose declared election donations equal declared election expenses.

18. Regarding the "specified rate" referred to in paragraph 16(c) and (d) above, the Bills Committee has noted that clause 50 adds a new Schedule 5 to set out the rate of financial assistance, which is \$10 per valid vote cast for the list or candidate concerned. Clause 43 adds a new section 83A to empower the Chief Executive in Council to amend Schedule 5 by order published in the Gazette. In addition, clause 53 amends section 7(1) of Electoral Affairs Commission Ordinance (EACO) to authorize EAC to make regulations to implement the financial assistance scheme.

"Specified rate" of \$10 and ceiling at 50% of actual election expenses under the proposed financial assistance scheme

19. In considering the proposal, the Bills Committee has noted that the Administration has previously explained to the Panel on Constitutional Affairs the rationale for setting the rate of subsidy at \$10 per valid vote, and the ceiling at 50% of the actual election expenses incurred by the candidate concerned.

20. According to the Administration, in setting the rate, it has taken into account the average election expense limits (\$2 million) of the five GCs in the 2000 LegCo elections, and the number of votes (approximately 100 000 votes) cast for the most popular candidate lists in that election. The average amount that a candidate could spend on each vote received was \$20 (i.e. dividing \$2 million by 100,000 votes). Given the Administration's proposal to cap the amount of financial assistance provided to each candidate at 50% of his actual election expenses, the Administration has arrived at the subsidy rate of \$10 for each valid vote.

21. Regarding the rationale for capping the amount of financial assistance provided to each candidate at 50% of his actual election expenses, the Administration considers that all parties, including the Government, political parties or political groups as well as candidates, play an important role in elections. The election expenses should therefore be collectively borne by the Government and the candidates or their political parties/groups. Hence, the Administration should at most meet half of the candidates' election expenses. In considering the proposal, the Administration has also taken into account overseas experience, for example, a candidate in Canada will be reimbursed only half of his election expenses.

Financial implications of the proposed financial assistance scheme

22. The Bills Committee has noted that in response to an enquiry made by the Panel on Constitutional Affairs, the Administration has explained the financial

implications of the proposed financial assistance scheme.

23. The Administration has advised that it cannot assess accurately at this stage the financial implications of the proposed financial assistance scheme. The financial implications will depend on a number of factors, including the number of candidates and lists of candidates, voter turnout rate, votes obtained by each candidate and list, and the actual election expenses of each candidate and list.

24. However, the Administration has taken the 2000 LegCo elections as an illustration to indicate the possible financial implications. In the 2000 LegCo elections, the expenditure involved in providing two rounds of free mailing service to candidates amounted to \$37.97 million. Only some candidates in the 2000 LegCo elections used two rounds of free mailing service. If the proposal of reducing one round of mailing service is implemented, the Administration would still have to pay \$28.95 million. This would have generated savings of about \$9.02 million. If the proposed financial assistance scheme was implemented, the Administration would need to pay reimbursement of \$9.99 million to candidates who were elected or who had secured 5% of valid votes or more (calculated on the basis of the results of the 2000 LegCo elections). Net Government expenditure would thus be increased by \$0.97 million.

Amount payable to candidates returned through contested and uncontested elections

25. Under new sections 60D and 60E, the amount payable as financial assistance to a list of candidates for a GC, or a candidate for a FC, is whichever is the lowest of the following three amounts -

- (a) in respect of contested elections, the amount obtained by multiplying the total number of valid votes cast for the list/candidate by the specified rate. In respect of uncontested elections, the amount obtained by multiplying 50% of the number of registered electors of the constituency concerned by the specified rate;
- (b) 50% of the declared election expenses of the list of candidates or candidate concerned; and
- (c) if the declared election expenses exceed the declared election donations, the difference in amount between those expenses and donations.

26. Hon Cyd HO has requested the Administration to explain the rationale for adopting the different computation formulas in respect of contested and uncontested elections. She considers that the computation formula for candidates returned uncontested is more generous than that for those returned through contested elections. Although the chance for a list of candidates returned uncontested to be paid the amount specified in paragraph 25 above is rare, the formula is illogical and to the advantage of those returned through uncontested elections. She has proposed that the provision that "the amount obtained by multiplying 50% of the number of

registered electors for the constituency by the specified rate" in respect of uncontested election for a GC should be deleted from new section 60D(2).

27. The Administration considers that it is fair to extend the financial assistance to candidates who are returned uncontested because they, too, may have incurred election expenses. Under 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 or another candidate. As regards the formula for uncontested elections, the Administration considers that it is not unreasonable to assume that a candidate returned uncontested is able to secure significant support amongst the registered electors in the constituency concerned.

28. The Administration has further explained that under the proposal in the Bill, the Government is only required to pay whichever is the lowest of the three caps specified in paragraph 25 above in the event of uncontested elections. Removal of any one of the three caps may, in certain circumstances, result in the Government having to pay more. In addition, for consistency, any amendment proposed in respect of GC uncontested elections (new section 60D(2)) should also apply to FC uncontested elections (new section 60E(2)). In the case of FC elections, past statistics suggest that if the cap specified in paragraph 25(a) above is removed as proposed, the Government would have to pay more.

29. Hon Andrew WONG considers that the formula in paragraph 25(a) above acceptable, although using 50% of the number of registered electors as basis for calculation may be a bit on the high side. As the Bills Committee has reached no consensus on Hon Cyd HO's proposal, members have agreed that it is for individual members to consider whether any amendment should be pursued.

Failed election

30. Members note that under new section 60F, financial assistance is not payable if the proceedings of an election are terminated. This is because, in such 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. However, financial assistance will still be provided to eligible candidates in the event of a declaration by the Returning Officer that an election has failed. Members have requested the Administration to explain the meaning of "failed election", and whether the financial assistance received in the event of a failed election is subject to estate duty.

31. The Administration has explained that there are two scenarios under which an election will be declared as failed, necessitating a by-election. 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 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).

32. 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 GC election, if there are other candidates on the same list, 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 FC 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).

33. 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.

34. The Administration has further advised that 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, will be chargeable with estate duty in accordance with the Ordinance. The present threshold value of an estate to attract estate duty is of an amount exceeding \$7.5 million. 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

35. Members have requested the Administration to explain 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.

36. The Administration has advised that the receipt and disposal of election donations is regulated by ECICO. Under section 2 of 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; and
- (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."

37. Under section 37 of 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.

38. The Administration has advised that under 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.

Payment of financial assistance and recovery of payment

39. The Bills Committee has noted that under new section 60H, an amount of financial assistance paid to a recipient who is not entitled to the payment can be recovered as a civil debt. 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. Under new section 60I, a claim for financial assistance is to be presented to the Chief Electoral Officer within the period for lodging election returns and must be made according to regulations made under EACO. The election returns accompanying the claims must be audited by an auditor. Under new section 60J, a payment of financial assistance cannot be made during the period for lodging an election petition or while an election petition is pending.

Views on the proposals of introducing a financial assistance scheme and abolition of one round of mailing

Views of deputations

40. The majority view of the individuals/organizations listed in Appendix II object

to the introduction of the proposed financial assistance scheme and abolition of one round of free mailing service for candidates. They consider that the Government should not incur additional public expenses to provide financial assistance to political parties, political groups and independent candidates to run in elections, in view of its sizable budget deficit and the present financial climate. They also consider that the two rounds of free mailing should be retained for candidates to communicate with their electorate. The service is of considerable value to those candidates who have limited means or who have not stood as candidates in past elections.

Views of members of the Bills Committee

41. Members in general support the proposal to reduce one round of mailing service on the ground of environmental protection. Some members have suggested the Administration to consider, in future elections, allowing registered electors residing at the same registered address to be given a choice as to whether they would like to receive election mail addressed to them individually or collectively. In the case of the latter, the Administration should consider issuing one address label with the names of all such electors for the convenience of candidates in the constituency concerned.

42. Hon SIN Chung-kai points out that the proposed financial assistance scheme would not impose a very heavy financial burden on the Government. However, given the strong view of some deputations that the two rounds of mailing service should not be reduced, he has suggested that LegCo candidates should be given the flexibility to opt for two rounds of mailing service, or one round of mailing service plus the financial assistance scheme.

43. Hon Emily LAU has expressed the view that some members of the public are under the misconception that the Government would spend a huge amount of public funds to subsidize LegCo candidates under the proposed financial assistance scheme. While she supports any measures proposed by the Government to encourage broader participation in elections and promote the development of political parties, she considers the Administration's statement that the aim of the proposed scheme is to facilitate the development of political parties and political groups in Hong Kong exaggerated. She points out that the expenditure expected to be incurred by the Government for implementation of the scheme, using the 2000 LegCo elections as an example, is only about \$1 million.

44. Hon LEUNG Fu-wah supports the views of some deputations that the Government should not implement the proposed financial assistance scheme to subsidize LegCo candidates. He would oppose the provisions relating to the scheme under the Bill.

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