

Our Ref.: C1/30/10
Your Ref.: CB2/SS/4/03

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5 February 2004
(Urgent by fax: 2509 9055)

Mrs Percy Ma
Clerk to Subcommittee
Legislative Council
3/F, Citibank Tower
3 Garden Road, Central
Hong Kong

Dear Mrs Ma,

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

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

Thank you for your letter of 31 January 2004 summarizing the issues raised by Members of the Subcommittee at the meeting on 30 January 2004. Our response is set out below.

Loans made to candidates

Point (1)(a)

If a candidate obtains a loan with interest payable to finance his campaigning activities, the amount of interest incurred should be declared as part of the election expense. Whether a loan is obtained from a financial institution or a family member or a friend is irrelevant, as the law makes no distinction between different sources of a loan.

Point (1)(b)

The question was raised as to whether a loan from a political organization on the condition that a candidate would only be required to make repayment if elected should be declared as an election expense or a donation. The answer to this question would depend on whether the candidate is elected or not. If he is elected and required to repay the loan with interest, the amount of interest incurred should be declared as an election expense. If the loan is interest-free, the amount of interest waived should be declared as a donation and correspondingly as an election expense. On the other hand, if he is not elected and therefore no repayment needs to be made, the amount of “loan” should be declared as a donation.

If a loan is provided on the condition that the candidate, if elected, would not be required to make any repayment but would be required to enter into other financial arrangements, the amount of “loan” should be declared as a donation as no repayment is necessary.

Point (1)(c)

If an interest-free loan is obtained, the interest waived should be declared as a donation and correspondingly as an election expense. Whether a loan is obtained from a family member is irrelevant, as the law makes no distinction between different sources of a loan.

Calculation of interest

Point 2(a) – Interest-free loans

In case of an interest-free loan, the interest waived should be declared as a donation and correspondingly as an election expense. A reasonable amount should be assessed by reference to the market interest rate.

A comment was made by a Member at the Subcommittee meeting that an interest-free loan from family member should be regarded as a form of “voluntary service”, thus the amount of interest waived should not be regarded as a donation. We do not think that this argument is compatible with existing legislative provision. According to section 2 of the Election (Corrupt and Illegal Conduct) Ordinance (Cap. 554),¹ the term “voluntary service” only refers to services provided by a natural person. Thus, interest-

¹ Section 2 of the Election (Corrupt and Illegal Conduct) Ordinance (Cap. 554) provides that, “voluntary service” means any service provide free of charge to or in respect of a candidate or candidates at an election by a natural person, voluntarily and personally, in the person’s own time for the purpose of (a) promoting the election of the candidate or candidates; or (b) prejudicing the election of another candidate or other candidates”.

free loan, which is in the form of money rather than service, should not be regarded as a “voluntary service”.

Point 2(b) – Loans with interest

As far as we are aware, there is no precedent case on how the amount of interest for the purpose of compiling an election return should be calculated if only part of the loan is used for the election. Our view is that it is not unreasonable to say that only that part of the loan actually spent should attract interest, since the unused part would not be counted as election expenses. However, this will be a matter for the court to rule on as and when an actual case comes before it.

Point 3

Members asked whether the Registration and Electoral Office (REO) had received any election return declaring the amount of interest waived, in respect of an interest-free loan, as a donation in the past LegCo elections. We are not in a position to answer this question, as the statutory period for the keeping of election returns for 2000 LegCo elections has expired, and the REO has since destroyed the relevant returns.

However, we have looked into the records of election returns filed in connection with the 2003 DC election. There is one case where a candidate has obtained an interest-free loan, and the amount of interest waived has been declared in the election return as a donation and correspondingly as an election expense.

Auditor’s report

It was suggested at the meeting that Members should be provided with an estimation of the likely auditing fee. Accordingly, we have contacted the Hong Kong Society of Accountants. We are advised by the Society that a small-to-medium-sized accounting firm may charge a fee of \$20,000 to \$30,000 for auditing an election return of a list of candidates which has incurred election expenses of \$2.5 million. As to auditing an election return of a functional constituency candidate, the fee may range from \$10,000 to \$20,000. Separately, we have also informally sounded out three small-sized accounting firms. Their preliminary rough estimate was that the auditing fees for an election return filed in connection with a geographical constituency election may be in the region of \$10,000 or less.

As shown in the above paragraph, the estimated fee varies. The exact fee charged will depend on the complexity of individual election returns, the pricing policy of individual accounting firms, and negotiation between the parties concerned.

Proposed amendments

As explained by the Chief Electoral Officer at the Subcommittee meeting, we will propose amendments to sections 2, 4, 7 and 10 of the Regulation. The purpose is to provide candidates with increased flexibility and convenience by allowing their election agents to present claim forms, notices of withdrawal and notices of variations on behalf of the candidates. The proposed Resolution is attached for members' consideration.

We would be grateful for your assistance in circulating this letter and the proposed Resolution to members of the Subcommittee.

Yours sincerely,

(Joseph Y T LAI)
for Secretary for Constitutional Affairs

b.c.c. DoJ (Attn : Mr James O'Neil,	Fax : 2536 8063
Ms Dorothy Cheung,	Fax : 2536 8026
Ms Mabel Cheung)	Fax : 2845 2215
REO (Attn: Mr Li Wing,	Fax : 2507 5810
Mr Stanley To)	Fax : 2507 5810

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation
and General Clauses Ordinance (Cap. 1))

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

RESOLVED that the Electoral Affairs Commission

(Financial Assistance for Legislative Council
Elections)(Application and Payment Procedure)
Regulation, published in the Gazette as Legal
Notice No. 269 of 2003 and laid on the table of
the Legislative Council on 7 January 2004, be
amended -

(a) in section 2(1), by adding -

"election agent" (選舉代理人) has the
meaning assigned to it by
section 2(1) of the Electoral
Affairs Commission (Electoral
Procedure)(Legislative Council)

Regulation (Cap. 541 sub. leg.

D);";

(b) in section 4(1) -

(i) in paragraph (a), by adding "or
his election agent" after "form";

(ii) in paragraph (b), by adding "or
the election agent of the list"
after "form";

(c) in section 7(4) -

(i) in paragraph (a), by adding "or
his election agent" after
"notice";

(ii) in paragraph (b), by adding "or
the election agent of the list"
after "notice";

(d) in section 10(3), by repealing "who has
signed the claim form" and substituting
"on the list or the election agent of the
list".