

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

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

INTRODUCTION

The Legislative Council (Amendment) Ordinance 2003 was enacted on 3 July 2003. The new Part VIA of the Ordinance provides for a Financial Assistance Scheme for candidates and lists of candidates standing in Legislative Council (“LegCo”) elections in respect of election expenses. Under the Scheme, candidates or lists of candidates who get elected or who have received 5% of valid votes or more will be given financial assistance to offset part of their election expenses as follows –

- (a) in respect of candidates in a contested geographical or functional constituency, the amount payable is the lowest of –
 - (i) the amount obtained by multiplying the total number of valid votes cast for the candidate or list of candidates by the specified rate (now \$10 per vote); or
 - (ii) 50% of the declared election expenses of the candidate or list of candidates; or
 - (iii) if the declared election expenses of the candidate or list of candidates exceed the corresponding declared election donations, the difference in amount between those expenses and donations.
- (b) in respect of uncontested geographical or functional constituencies, the amount payable is the lowest of –
 - (i) the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate; or
 - (ii) 50% of the declared election expenses of the candidate or list of candidates; or
 - (iii) if the declared election expenses of the candidate or list of candidates exceed the corresponding declared election donations, the difference in amount between those expenses and donations.

For both (a) and (b), if the declared election donations of a candidate or list of candidates equal or exceed the declared election expenses of the candidate or list of candidates, financial assistance is not payable. The Ordinance also stipulates broad

procedural and documentary requirements for making a claim, and general conditions for payment to be made.

2. The aim of the Scheme is to encourage more public-spirited candidates to participate in the LegCo elections. This will be conducive to the development of political parties and political groups in Hong Kong.

3. The new Part VIA of the amended LegCo Ordinance (Cap. 542) empowers the Electoral Affairs Commission (“EAC”) to make regulations to provide for the procedures for handling claims for financial assistance and effecting payment by the Chief Electoral Officer (“CEO”).

4. This brief outlines the essential features of the draft Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (“the Regulation”) at **Annex** made by the EAC, under the Electoral Affairs Commission Ordinance (Cap. 541). The Regulation will set out the detailed implementation procedures for the Financial Assistance Scheme.

Annex

THE REGULATION

5. The Regulation contains provisions for -

- (a) making claims and their presentations;
- (b) verification of claims;
- (c) withdrawal of claims;
- (d) payment of claims after verification; and
- (e) recovery of payment.

Making claims and their submissions

Requirements to be complied with when making claims (Section 3)

6. Section 3 requires that a claim for financial assistance must be made by a candidate or a list of candidates on a specified form. It must be signed by an eligible candidate, or (in respect of an eligible list of candidates) by all candidates on the list. The claim form must be accompanied by -

- an election return (with the account of declared election expenses and the declared election donations) defined under section 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) (Cap. 554); and

- an auditor's report which confirms that an auditor has audited the accounts of the declared election expenses and the declared election donations, and states whether the election return complies with the requirements under section 37(1) and (2)(b) of ECICO.

We have consulted the Hong Kong Society of Accountants ("HKSA") on the standard to be adopted by the auditor. Taking into account the advice by HKSA, the auditor will be required to audit the accounts of the declared election expenses and the declared election donations in accordance with the Standard on Assurance Engagements 200, High Level Assurance Engagements, issued and as amended by the Council of HKSA from time to time. The auditor's report must also state the auditor's opinion as to whether or not the election return complies with, in all material respects, the relevant sections of the ECICO governing how the election return must be prepared.

7. A set of guidance notes will be prepared by the Registration and Electoral Office with assistance by the HKSA for auditors who are engaged by candidates to perform the auditing task. These notes will be issued by the HKSA to its members prior to the LegCo elections in 2004.

Presentation of claims (Section 4)

8. Section 4 provides that the claim form, together with the accompanying documents, must be presented in person at the office of the CEO by the candidate, or (in respect of a claim by a list of candidates) one of the candidates who has signed the claim form.

Verification of claims

Verification by CEO (Section 5(1) and (2))

9. Section 5(1) and (2) stipulates that on receiving a claim, the CEO will check the eligibility for financial assistance of the candidate or the list of candidates. He will also verify that the claim conforms to the requirements set out in the Regulation.

Requirement for further information (Section 5(3), (4), (5) and (6))

10. Section 5(3), (4), (5) and (6) provides that the CEO may require the claimant, through a written request, to provide further information to verify the claim. The claimant must provide the information within 14 days or within the period provided for in ECICO for lodging an election return, whichever is the later. If the claimant fails to provide the information within the period, the CEO may stop processing the claim without any prior notice.

Part processing of claims (Section 6)

11. Section 6 provides that if an auditor's report states that only part of the

election return complies with the requirements set out in the relevant sections of the ECICO, the CEO shall process that part of the return that complies with those requirements and may stop processing the part of the return that does not comply with those requirements.

Withdrawal of claims (Section 7)

12. Section 7 provides that a claim may be withdrawn before a payment of financial assistance is made by presenting a notice of withdrawal in person at the office of the CEO by the candidate, or by one of the candidates in the case of a claim made by an eligible list of candidates. The notice of withdrawal must be in a specified form and signed by the candidate, or by all the candidates in the case of a claim made by a list of candidates.

Payment of claims after verification

Payment to be made by the Director of Accounting Services (Section 8)

13. Section 8 stipulates that after verifying the claim, the CEO will certify the amount of financial assistance payable on the claim and notify the Director of Accounting Services (“DAS”) of the amount payable and the person to whom it is to be paid. As soon as practicable after receiving the notification, the DAS must make the payment in accordance with the notification. In the case of an eligible list consisting of more than one candidate, the payment is to be made to the candidate who is nominated in the claim form to receive the payment on behalf of the candidates on the list.

Payment in cases of death of candidate (Sections 9 and 10)

14. Section 9 provides that if the candidate to whom a payment of financial assistance is to be made dies before payment is made, the CEO will notify DAS to make the payment to the legal personal representative of the deceased candidate. Section 10 provides that in the case of an eligible list of candidates, all the remaining candidates and the legal personal representative of the deceased candidate must nominate another candidate to receive the payment on behalf of the candidates on the list by signing a notice of variation.

15. In the unlikely event that all the candidates on the list die before the payment is made, the payment is to be made to the legal personal representative of the candidate last nominated to receive the payment on behalf of the candidates on the list.

Recovery of payment (Sections 11 and 12)

16. Sections 11 and 12 provide that where a payment of financial assistance is made and the recipient is not entitled to receive the whole or part of the amount paid, the CEO is required to send a written notice under section 60H(1)(a) of the LegCo Ordinance (Cap. 542) by registered post to the recipient requiring repayment. The

recipient may make the repayment, in person, at the office of the CEO or send the repayment by post.

LEGISLATIVE TIMETABLE

17. The Regulation is to be published in the Gazette on 19 December 2003 and tabled at the LegCo on 7 January 2004.

IMPLICATIONS OF THE REGULATION

18. The financial implication of the Financial Assistance Scheme has already been set out in the LegCo Brief prepared for the LegCo (Amendment) Bill 2003. Based on 2000 LegCo elections, we estimate that, after discounting the savings from abolishing one round of mailing service, Government expenditure would be increased by \$0.97 million net. The Regulation has no additional financial or civil service implications. The Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, environmental or sustainability implications. The Regulation will not affect the binding effect of the principal Ordinance.

PUBLIC CONSULTATION

19. The Regulation is made under the new Part VIA of the LegCo (Amendment) Ordinance 2003 to provide for the procedures for handling claims for financial assistance and effecting payment by the CEO. The LegCo Panel on Constitutional Affairs has been briefed on the Regulation at its meeting on 17 November 2003.

PUBLICITY

20. A press release will be issued to announce the publication of the Regulation in the Gazette. A spokesman will be made available to answer media enquiries.

ENQUIRIES

21. Any enquiries on this brief can be addressed to Mr. Stanley To, Deputy Chief Electoral Officer (Operations) at 2827 7047.

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

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

(Made by the Electoral Affairs Commission under section 7 of the
Electoral Affairs Commission Ordinance (Cap. 541))

1. Commencement

This Regulation shall come into operation on 15 July 2004.

2. Interpretation

(1) In this Regulation, unless the context otherwise requires –

“auditor” (核數師) means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50);

“claim” (申索) means a claim for financial assistance payable under Part VIA of the Legislative Council Ordinance (Cap. 542);

“claim form” (申索表格) means the specified form for making a claim;

“declared election donations” (申報選舉捐贈) means, in relation to –

(a) a list of candidates for a geographical constituency, the amount set out as election donations received in respect of the list, in the election return lodged for the relevant election; and

(b) a candidate for a functional constituency, the amount set out as election donations received by the candidate, in the election return lodged for the relevant election;

“declared election expenses” (申報選舉開支) means, in relation to –

(a) a list of candidates for a geographical constituency, the amount set out as election expenses incurred in respect of

the list, in the election return lodged for the relevant election; and

- (b) a candidate for a functional constituency, the amount set out as election expenses incurred by the candidate, in the election return lodged for the relevant election;

“election return” (選舉申報書) has the meaning assigned to it by section 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

“eligible candidate” (合資格候選人) means a candidate who is eligible for financial assistance under section 60C(2)(a) or (b) of the Legislative Council Ordinance (Cap. 542);

“eligible list of candidates” (合資格的候選人名單) means a list of candidates that is eligible for financial assistance under section 60C(1)(a) or (b) of the Legislative Council Ordinance (Cap. 542);

“specified form” (指明表格), in relation to any purpose under this Regulation, means the form specified for that purpose under section 14;

“Standard on Assurance Engagements 200, High Level Assurance Engagements” (《核證準則第 200 號 — 高度核證工作》) means the standard of auditing practices of that name issued by the Council of the Hong Kong Society of Accountants as amended from time to time.

(2) A reference in this Regulation to an amount set out as election expenses incurred in respect of a list of candidates is to be construed, in relation to a list of candidates consisting of more than one candidate, as the amount set out as the election expenses of all the candidates on the list or, if the election expenses are declared separately by the candidates on the list, as the aggregate of the separately declared election expenses.

(3) A reference in this Regulation to an amount set out as election donations received in respect of a list of candidates is to be construed, in relation to a list of candidates consisting of more than one candidate, as the amount set out as the election donations received by all the candidates on the list or, if the

election donations are declared separately by the candidates on the list, as the aggregate of the separately declared election donations.

3. Requirements to be complied with when making claims

- (1) A claim must be made on the specified form.
- (2) If the claim is made by an eligible candidate, the claim form must be signed by that candidate.
- (3) If the claim is made in respect of an eligible list of candidates, the claim form must be signed by all the candidates on the list, or if there is only one candidate on the list, by that candidate.
- (4) The claim form must be accompanied by –
 - (a) an election return (with the accounts of the declared election expenses and the declared election donations); and
 - (b) an auditor's report.
- (5) The auditor's report must –
 - (a) confirm that the auditor has audited the accounts of the declared election expenses and the declared election donations in accordance with the Standard on Assurance Engagements 200, High Level Assurance Engagements; and
 - (b) state the auditor's opinion as to whether the election return complies with section 37(1) and (2)(b) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in all material respects.
- (6) The amount of the claim must not exceed the amount payable as financial assistance as specified –
 - (a) in the case of an eligible candidate, in section 60E of the Legislative Council Ordinance (Cap. 542); and

- (b) in the case of an eligible list of candidates, in section 60D of that Ordinance.

4. Presentation of claims

- (1) The claim form must be presented in person –
 - (a) by the candidate who has signed the claim form; or
 - (b) if the claim is in respect of a list of candidates consisting of more than one candidate, by one of the candidates who has signed the claim form.
- (2) The claim form (together with the documents referred to in section 3(4)) must be presented at the office of the Chief Electoral Officer during ordinary business hours.

5. Verification of claims (eligibility, further information, etc.)

- (1) On receiving a claim, the Chief Electoral Officer must verify whether the candidate or the list of candidates is eligible for financial assistance under section 60C of the Legislative Council Ordinance (Cap. 542).
- (2) The Chief Electoral Officer must also verify whether the claim conforms to the requirements set out in section 3.
- (3) The Chief Electoral Officer may require the candidate who makes the claim or any candidate on the list of candidates in respect of which the claim is made to provide further information as he may reasonably require to verify the claim.
- (4) A requirement for further information must be in writing and sent by registered post to whichever is applicable of the following addresses –
 - (a) if the claim is in respect of a single candidate, the address of the candidate as stated on the claim form;
 - (b) if the claim is in respect of a list of candidates consisting of more than one candidate, the address of the candidate

nominated under section 8(4)(b), as stated on the claim form;

- (c) if the candidate nominated under section 8(4)(b) has died, the address of the candidate nominated under section 10(5), as stated in the notice of variation.

(5) A candidate required to provide further information must provide that information within whichever is the later of the following periods –

- (a) within 14 days from the date of receipt of the written requirement;
- (b) within the period or extended period provided for in section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) for lodging an election return.

(6) If a candidate fails to provide further information within the period specified in subsection (5), the Chief Electoral Officer may, without any prior notice, stop processing the claim.

6. Part processing of claims

If an auditor's report presented under section 3(4) states that only part of the election return complies with the requirements set out in section 37(1) and (2)(b) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the Chief Electoral Officer may process that part of the return that complies with those requirements and stop processing the part of the return that does not comply with those requirements.

7. Withdrawal of claims

(1) A claim may be withdrawn, before a payment of financial assistance is made or the claim is otherwise disposed of, by means of a notice of withdrawal presented to the Chief Electoral Officer.

- (2) The notice of withdrawal must be signed –

- (a) if the claim is in respect of a single candidate, by the candidate; and
 - (b) if the claim is in respect of a list of candidates consisting of more than one candidate, by all the candidates on the list.
- (3) The notice of withdrawal must be in the specified form.
- (4) The notice of withdrawal must be presented in person –
 - (a) by the candidate who has signed the notice; or
 - (b) if the claim is in respect of a list of candidates consisting of more than one candidate, by one of the candidates who has signed the notice.
- (5) The notice of withdrawal must be presented at the office of the Chief Electoral Officer during ordinary business hours.

8. Payment of claims after verification

- (1) Subject to section 60J of the Legislative Council Ordinance (Cap. 542), the Chief Electoral Officer is to effect a payment of financial assistance according to this section.
- (2) After verifying the claim, the Chief Electoral Officer must certify the amount of financial assistance payable on the claim and notify the Director of Accounting Services of the amount and the person to whom it is to be paid.
- (3) As soon as practicable after receiving the notification, the Director of Accounting Services must make the payment in accordance with the notification.
- (4) The payment under subsection (1) is to be made –
 - (a) to the candidate who has signed the claim form; or
 - (b) in the case of an eligible list of candidates consisting of more than one candidate, to the candidate nominated in the claim form to receive the payment on behalf of the candidates on the list.

**9. Payment in cases of death of candidate
(single candidate)**

(1) If the candidate to whom a payment of financial assistance is to be made under section 8(4)(a) dies before the payment is made, the payment is to be made to the legal personal representative of the deceased candidate and the Chief Electoral Officer must notify the Director of Accounting Services accordingly.

(2) The Director of Accounting Services must make the payment in accordance with the notification.

**10. Payment in cases of death of candidate
(multi-candidate list)**

(1) If the candidate to whom a payment of financial assistance is to be made under subsection (5) or section 8(4)(b) dies before the payment is made, all the candidates on the eligible list of candidates and the legal personal representative of the deceased candidate must nominate another candidate to receive the payment on behalf of the candidates on the list, by signing a notice of variation.

(2) The notice of variation must be in the specified form.

(3) The notice of variation must be presented in person at the office of the Chief Electoral Officer during ordinary business hours by one of the candidates who has signed the claim form.

(4) On receiving the notice of variation, the Chief Electoral Officer must notify the Director of Accounting Services of the person to whom the payment is to be made and the Director of Accounting Services must make the payment in accordance with the notification.

(5) The payment under subsection (4) is to be made to the candidate nominated in the notice of variation to receive the payment on behalf of the candidates on the list.

(6) If all the candidates on the eligible list of candidates die before the payment is made, the payment is to be made to the legal personal representative

of the candidate last nominated to receive the payment on behalf of the candidates on the list.

11. Mode of service of notice requiring repayment of financial assistance

The written notice required to be given by the Chief Electoral Officer under section 60H of the Legislative Council Ordinance (Cap. 542) must be sent by registered post.

12. Mode of repayment of financial assistance to Government

(1) Any amount paid as financial assistance that is required to be repaid to the Government under section 60H of the Legislative Council Ordinance (Cap. 542) may be repaid as follows -

- (a) in person (by the recipient or the agent of the recipient), at the office of the Chief Electoral Officer; or
- (b) if payment is by cheque, draft or cashier order, by sending the cheque, draft or cashier order by post, to the office of the Chief Electoral Officer.

(2) As soon as practicable after receiving any amount under subsection (1), the Chief Electoral Officer must pay the amount to the Director of Accounting Services.

13. Making claims on behalf of deceased candidates

(1) If an eligible candidate or candidate on an eligible list of candidates dies before a claim is made or before a payment is made on a claim, anything that a deceased candidate may do or is required to do by or under this Regulation may be done by the legal personal representative of the deceased candidate.

(2) If there is no legal personal representative or the legal personal representative is unwilling to act, anything that a legal personal representative may do under subsection (1) may be done by the next of kin of the deceased candidate.

14. Commission to specify forms

(1) The Commission may specify forms for the purposes of this Regulation.

(2) The specified forms must be made available by the Chief Electoral Officer free of charge during ordinary business hours at his office.

Made this 15th day of December 2003.

WOO Kwok-hing, J.A.
Chairman,
Electoral Affairs Commission

Norman LEUNG Nai-pang
Member,
Electoral Affairs Commission

Elizabeth S. C. SHING
Member,
Electoral Affairs Commission

Explanatory Note

The object of this Regulation is to provide the procedure for –

- (a) making or withdrawing claims for financial assistance payable under Part VIA of the Legislative Council Ordinance (Cap. 542);
- (b) supporting and verifying claims for financial assistance;
- (c) making a payment of financial assistance to a candidate or in respect of a list of candidates;
- (d) payment of financial assistance in respect of a deceased candidate;
- (e) sending a notice requiring repayment of financial assistance; and
- (f) repayment of financial assistance to the Government.