

L.N. 269 of 2003**ELECTORAL AFFAIRS COMMISSION (FINANCIAL ASSISTANCE
FOR LEGISLATIVE COUNCIL ELECTIONS) (APPLICATION
AND PAYMENT PROCEDURE) REGULATION****CONTENTS**

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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.