

Tel No. : 3919 3202
Fax No. : 2509 9055

立法會CB(2)400/20-21(01)號文件
LC Paper No. CB(2)400/20-21(01)

MEMO

To : Clerk to Panel on Constitutional Affairs

From : Clerk to Subcommittee on Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation

Our Ref : CB2/SS/3/20

Date : 24 November 2020

Subcommittee on Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation

Referral to Panel on Constitutional Affairs

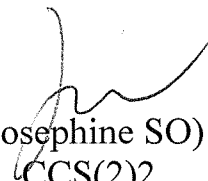
The Subcommittee on Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation ("the Regulation") has completed scrutiny and reported its deliberations to the House Committee. The Regulation came into effect on 1 August 2020.

2. Section 9 of the Regulation provides that an eligible person or eligible group is entitled to receive a payment from the Government in an amount equal to the declared election expenses,¹ and a person/group of persons is eligible for such payment if a Returning Officer at the discontinued 2020 Legislative Council General Election accepted a nomination form in respect of the person/group of persons and did not decide that the nomination form or the nomination was invalid before the discontinuation date of 1 August 2020, and the person/group of persons did not withdraw the candidature. Such payment from the Government is not an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO").

¹ "Declared election expenses" is defined under section 9(5) of the Regulation to mean the amount set out as the election expenses of an eligible person or eligible group in the election return lodged for the discontinued 2020 Legislative Council General Election.

3. During the scrutiny of the Regulation, a number of members of the Subcommittee expressed concerns about the possibility of candidates' abusing the arrangement provided for under section 9 of the Regulation and making fraudulent claims. The Subcommittee has requested the Administration to provide the Panel on Constitutional Affairs in due course with a report on the measures adopted by the Administration to prevent possible abuse of the arrangement. In the Subcommittee's view, such report should cover, among others, irregularities detected (if any) involving candidates' making of materially false or misleading statements in their election returns, and follow-up actions taken by the Administration against suspected offences under ECICO etc.

4. A relevant extract (paragraphs 22 to 25) from the report of the Subcommittee (LC Paper No. CB(2)378/20-21, which was circulated to members vide LC Paper No. CB(2)389/20-21 on 24 November 2020) is attached for your reference and follow-up.


(Josephine SO)
CCS(2)2

Encl.

**《緊急情況(換屆選舉日期)(第七屆立法會)規例》
小組委員會報告節錄本**

X X X X X X X X

申報選舉開支的相關政府付款

22. 《規例》第 9 條訂明，合資格人士或合資格組合有權從政府收取款額相等於申報選舉開支的款項，⁶如已中止的選舉的選舉主任已接受某人/某由個別人士組成的組合的提名表格，又並無在中止日期之前決定該提名表格或有關提名屬無效，而該人/該組合並非經已退出而不再是已中止的選舉的候選人，則該人/該組合有資格收取有關款項。該筆從政府收取的款項並非《選舉(舞弊及非法行為)條例》(第 554 章)所指的選舉捐贈。很多委員關注候選人可能濫用有關安排及作出欺詐申索。有委員詢問《規例》第 9 條所訂"申報選舉開支"的涵蓋範圍為何，以及有何措施防止有濫用情況。

23. 據政府當局所述，根據《規例》第 8 條，《選舉(舞弊及非法行為)條例》適用於已中止的選舉。候選人須就已中止的選舉提交選舉申報書，列出候選人在選舉中的所有選舉開支，以及候選人或其代理人收取的所有選舉捐贈。根據該條例第 2 條，"選舉開支"指在選舉期間前、在選舉期間內或在選舉期間後，為促使候選人或候選人組合當選，或為阻礙另一候選人或另一候選人組合當選而招致或將招致的開支。鑒於押後立法會換屆選舉的安排非常特殊，為向候選人支付款額相等於已在選舉中招致的選舉開支的款項，《規例》第 9 條訂明，凡候選人/候選人名單的提名表格已獲選舉主任接受，政府會向該候選人/候選人名單支付款額相等於其申報的選舉開支的款項(上文第 22 段闡述的情況則除外)。《規例》第 9(5)條進一步訂明，"申報選舉開支"指為已中止的選舉而提交的選舉申報書內所列的合資格人士/合資格組合的選舉開支。在某些情況下，這項安排或較現行選舉法下的資助計劃更為慷慨，但相對較易管理執行，更重要的是對候選人較公平。政制及內地事務局已於 2020 年 8 月 7 日就申索款項的安排發出指引，表明須以何種方式及形式作出、支持和核實款項的申索，以及該類申索須載有甚麼詳情。

⁶ 根據《規例》第 9(5)條所作的定義，"申報選舉開支"指為已中止的選舉而提交的選舉申報書內所列的合資格人士或合資格組合的選舉開支。

24. 政府當局進一步表示，《選舉(舞弊及非法行為)條例》旨在禁止舞弊及非法行為、規管選舉廣告宣傳，以及就在香港公開選舉中支出款項和收取捐贈方面訂立申報規定。該條例所訂的罪行條文涉及多種罪行，包括與選舉申報書有關的罪行。政府當局亦重申，該條例就選舉開支和收取捐贈訂定的申報規定維持不變，並適用於已中止的 2020 年立法會換屆選舉。選舉事務處收到候選人的選舉申報書後，會仔細查核該等選舉申報書，以確定是否所有選舉開支及捐贈均已妥為申報。倘若選舉申報表不完整或有錯誤，選舉事務處會請候選人再作澄清或提供進一步資料，以供核實，並會把涉及與選舉申報書有關的罪行的懷疑個案和投訴轉介廉政公署調查。就已中止的 2020 年立法會換屆選舉而言，選舉事務處會謹慎審查候選人的選舉申報書，確保他們的選舉申報書及當中申報的選舉開支均無問題，政府才會向他們發放款項。

25. 對於在《規例》第 9 條所訂的安排下，合資格人士或組合有權就申報選舉開支向政府申索款項，委員關注該項安排可能被濫用，並要求政府當局在適當時候向政制事務委員會提交報告，說明政府當局採取了甚麼措施防止濫用情況(正如上文第 22 至 24 段所闡述)。該份報告涵蓋的事項應包括涉及候選人在其選舉申報書中作出屬虛假或具誤導性達關鍵程度的陳述的不當情況(如有)，以及政府當局就涉嫌觸犯《選舉(舞弊及非法行為)條例》所訂罪行的個案採取的跟進行動等。

X X X X X X X X

立法會秘書處
議會事務部 2

2020 年 11 月 24 日

**Extract from the report of
the Subcommittee on Emergency (Date of General Election)
(Seventh Term of the Legislative Council) Regulation**

X X X X X X X X

Government's payment in respect of declared election expenses

22. Section 9 of the Regulation provides that an eligible person or eligible group is entitled to receive a payment from the Government in an amount equal to the declared election expenses,⁶ and a person/group of persons is eligible for payment if a Returning Officer ("RO") at the discontinued election accepted a nomination form in respect of the person/group of persons and did not decide that the nomination form or the nomination was invalid before the discontinuation date, and the person/group of persons did not withdraw the candidature. Such payment from the Government is not an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"). Many members have expressed concerns about the possibility of candidates' abusing the arrangement and making fraudulent claims. Queries have been raised on the scope of coverage for "declared election expenses" as provided for in section 9 of the Regulation and the measures to prevent abuse.

23. According to the Administration, pursuant to section 8 of the Regulation, ECICO applies to the discontinued election. Candidates are required to submit election returns in relation to the discontinued election to set out all the election expenses incurred by the candidates at the election and all the election donations received by the candidates or their agents. Under section 2 of ECICO, "election expenses" means expenses incurred or to be incurred, before, during or after the election period, for the purpose of promoting the election of the candidate or group, or prejudicing the election of another candidate or group. Given the highly exceptional nature of the postponement of the LegCo General Election, in order to pay candidates an amount equivalent to the election expenses that have already been incurred at the election, section 9 of the Regulation provides that the Government will make a payment equivalent to the amount of election expenses declared to a candidate/list of candidate whose nomination form was accepted by RO (except for the circumstances as elaborated in paragraph 22 above). Section 9(5) of the Regulation further provides that "declared election expenses" means the amount set out as the eligible person's or eligible group's election expenses in the election return lodged for the discontinued election. This

⁶ "Declared election expenses" is defined under section 9(5) of the Regulation to mean the amount set out as the election expenses of an eligible person or eligible group in the election return lodged for the discontinued election.

arrangement may, in some cases, be more generous than that in the financial assistance scheme under the existing electoral law, but is relatively easy to administer and, more importantly, fair to the candidates. CMAB has issued on 7 August 2020 guidelines on the payment arrangements, indicating the manner and form in which a claim for a payment must be made, supported and verified; and the particulars that such a claim must contain.

24. The Administration has further advised that ECICO aims at prohibiting corrupt and illegal conducts, regulating election advertisements and imposing reporting requirements with respect to expenditure and receipt of donations at the public elections in Hong Kong. The offence provisions under ECICO include, among others, offences relating to election returns. The Administration has also reiterated that the reporting requirements regarding election expenses and receipt of donations under ECICO remain unchanged and are applicable to the discontinued 2020 LegCo General Election. After REO has received the election returns from candidates, it would carefully check the election returns to ascertain whether all the election expense and donations received have been properly declared. If the election returns are incomplete or contain mistakes, REO would invite candidates to provide further clarifications or information for the purpose of verification, and suspected cases and complaints involving offences in relation to election returns will be referred to the Independent Commission Against Corruption for investigation. For the discontinued 2020 LegCo General Election, REO will be vigilant in vetting election returns, to ensure that Government's payments will only be released to candidates whose election returns and the election expenses declared therein are in order.

25. Given members' concerns over possible abuse of the arrangement provided for under section 9 of the Regulation where eligible persons and groups are entitled to make claims for Government's payment in respect of declared election expenses, the Administration has been requested to provide the Panel on Constitutional Affairs in due course with a report on the measures adopted by the Administration to prevent such abuse (as elaborated in paragraphs 22 to 24 above). Such report should cover, among others, irregularities detected (if any) involving candidates' making of materially false or misleading statements in their election returns, and follow-up actions taken by the Administration against suspected offences under ECICO etc.

X X X X X X X X