

File Ref: CMAB C1/30/10

LEGISLATIVE COUNCIL BRIEF

Legislative Council Ordinance
(Chapter 542)

Elections (Corrupt and Illegal Conduct) Ordinance
(Chapter 554)

**LEGISLATIVE COUNCIL ORDINANCE
(AMENDMENT OF SCHEDULE 5) ORDER 2008**

**MAXIMUM AMOUNT OF ELECTION EXPENSES
(LEGISLATIVE COUNCIL ELECTION) REGULATION**

INTRODUCTION

At the meeting of the Executive Council on 6 May 2008, the Council ADVISED and the Chief Executive ORDERED that –

- (a) the Legislative Council Ordinance (Amendment of Schedule 5) Order 2008 (“the Order”), at **Annex A**; and
- (b) the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (“the Regulation”), at **Annex B**,

should be made.

BACKGROUND AND JUSTIFICATIONS

Financial Assistance for Election Candidates

2. Financial assistance for election candidates was first introduced in the 2004 Legislative Council (“LegCo”) Election with the aim of encouraging more public-spirited candidates to participate in the LegCo elections and of cultivating an environment to facilitate the development of political talent in Hong Kong. Under the current scheme, candidates who were elected or who received 5% of valid votes or more are eligible for financial assistance. The amount of financial assistance payable is set at a specified subsidy rate per vote, currently at \$10, capped at 50% of the declared election expenses of the candidates. In view of the 9.2% inflation from 2004 to February 2008, we propose to increase the subsidy rate by 10% from \$10 per vote to \$11 per vote.

Election Expense Limits

3. Under the Election (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”), “election expenses” means 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 of another candidate, and includes the value of election donations consisting of goods and services used for that purpose.

4. Based on the proposal that the subsidy rate for the financial assistance scheme would be increased by 10%, we should consider increasing the election expense limits as the two elements are related.

5. For the 2004 LegCo Geographical Constituency (“GC”) elections, 25 lists of candidates claimed financial assistance successfully. Two aspects are worth noting –

- (a) the amount of financial assistance received by 10 of them was capped by 50% of their actual election expenses¹. Based on the 2004 election figures, even if the subsidy rate was increased to \$11 per vote, these 10 lists would not have benefited from the increase as they would still be capped by 50% of their actual election expenses;
- (b) furthermore, if the subsidy rate was set at \$11 per vote, five more lists would have their amount of financial assistance receivable capped by 50% of their election expenses.

Therefore, if we are to increase the subsidy rate, we should also increase the election expense limits at the same time, so that candidates would have more room within their election expense limits to promote their candidacy. Furthermore, the increase of population by 6.9% since 1998 and the current inflationary trend would support an increase in the election expense limits.

6. While we propose to increase the rate of subsidy by 10%, given that the population only increased by 6.9% since 1998 when the existing election expense limits were set, we propose a modest increase of the election expense limits for GC elections by 5%. As for Functional Constituency (“FC”) elections, we also propose to increase the election expense limits by 5%. The proposed changes are set out as follows –

<u>GCs</u>	<u>Existing</u> <u>Expense Limits</u>	<u>Revised</u> <u>Expense Limits</u>
Hong Kong Island	\$2,000,000	\$2,100,000
Kowloon East	\$1,500,000	\$1,575,000
Kowloon West	\$1,500,000	\$1,575,000
New Territories East	\$2,500,000	\$2,625,000
New Territories West	\$2,500,000	\$2,625,000

¹ Amongst the other 15 lists, the amount received by 12 lists was capped by the product of their valid votes and the \$10 per vote subsidy rate. The amount received by the three remaining candidate lists was capped by the difference between their actual election expenses and the election donations they received (this formulation has ceased and will not apply in the 2008 LegCo election).

<u>FCs</u>	<u>Existing Expense Limits</u>	<u>Revised Expense Limits</u>
Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs (“the designated FCs”)	\$100,000	\$105,000
Other FCs with not more than 5,000 registered electors	\$160,000	\$168,000
Other FCs with 5,001 to 10,000 registered electors	\$320,000	\$336,000
Other FCs with over 10,000 registered electors	\$480,000	\$504,000

7. We consulted the Members of the LegCo Panel on Constitutional Affairs at its meeting on 21 April 2008 on the above proposals vide LC Paper No. CB(2)1591/07-08(01). Their views are summarised in paragraphs 14 and 15.

THE ORDER

8. The specified subsidy rate of financial assistance to candidates of LegCo elections, at \$10, is provided in Schedule 5 to the Legislative Council Ordinance (Cap. 542) (“LCO”). According to section 83A of the LCO, the Chief Executive in Council (“CE in Council”) may by order published in the Gazette amend Schedule 5. The Order seeks to revise the rate specified in Schedule 5 from \$10 to \$11. Relevant extracts from the LCO are at **Annex C**.

THE REGULATION

9. Currently, the election expense limits for LegCo elections are set out in sections 2(1) and 2(2) of the Maximum Scale of Election Expenses (Legislative Council) (Election Committee) Order (Cap. 288 sub. leg. I), which was made under the now repealed Corrupt and Illegal Practices Ordinance (Cap. 288) (“CIPO”). Under section 45 of the ECICO, the CE in Council may, by regulation, prescribe the maximum amount of election expenses that can be incurred. The Regulation seeks to set out the revised election expense limits set out in paragraph 6 above and make consequential and related amendments to the Cap. 288 sub. leg. I, such that the application of the latter will be confined to Election Committee subsector election (the limits for which are set out in section 2(3) and will remain unchanged until the next review). Relevant extracts from the ECICO and Cap. 288 sub. leg. I are at **Annexes D and E**.

TIMETABLE

10. The legislative timetable will be as follows –

Publication in the Gazette	16 May 2008
Tabling in LegCo	21 May 2008
Commencement of operation	18 July 2008

IMPLICATIONS OF THE PROPOSAL

11. The Order and the Regulation are in conformity with the Basic Law, including the provisions concerning human rights. The Order and the Regulation will not affect the current binding effect of the relevant legislation and have no economic, civil service, productivity, environmental or sustainability implications.

12. The proposals of increasing the rate of subsidy of the financial assistance scheme from \$10 per vote to \$11 per vote and increasing the GC and FC election expense limits by 5% may lead to an increase in the amount of election expenses incurred by the eligible lists of candidates/candidates in the 2008 LegCo Election and hence, in certain circumstances, the amount of financial assistance payable to LegCo

election candidates. As the effects of these two proposals are linked, and the financial assistance payable will depend on a number of factors, such as the number of candidates, votes obtained by each candidate and actual election expenses of candidates, we cannot assess with complete accuracy the financial implications of the proposals at this stage. Assuming that the number of candidates and the split of votes obtained by each candidate in the 2008 LegCo Election is the same as those in the 2004 LegCo Election and that the election expenses incurred by candidates increased by 5% as compared to the 2004 LegCo Election figures, the additional amount of financial assistance for eligible candidates would be about \$1 million. However, the way candidates plan and run their election campaigns in the 2008 LegCo Election may change and the above figure is for illustrative purpose only.

13. For the 2008 LegCo Election, the Registration and Electoral Office has set aside about \$15.8 million for such financial assistance. The financial implication of the proposals will be absorbed within the envelope allocation of the Secretary for Constitutional and Mainland Affairs.

PUBLIC CONSULTATION

14. We consulted the LegCo Panel on Constitutional Affairs on 21 April 2008 on the proposals to increase the specified subsidy rate of financial assistance given to candidates of LegCo elections from \$10 per vote to \$11 per vote and to increase the election expense limits for both GC and FC elections by 5%. Members in general supported an increase in the amount of financial assistance. Some Members proposed a larger increment of the subsidy rate or to increase the financial assistance through raising the existing ceiling of subsidy, which is 50% of the declared election expenses incurred by candidates. We explained to Members that the ceiling was set on the basis that both the candidates and the Administration should shoulder part of the expenses. A revision of the ceiling would also involve amendments to the LCO.

15. For election expense limits, some Members considered that the limits should be abolished, while some Members did not support an increase. We explained that, if we were to increase the subsidy rate, we should also increase the election expense limits as the two elements are related.

PUBLICITY

16. A spokesperson will be made available to answer media and public enquiries.

ENQUIRIES

17. Enquiries in relation to the Order and the Regulation should be directed to Mr Ivanhoe Chang, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2908.

Constitutional and Mainland Affairs Bureau
14 May 2008

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**LEGISLATIVE COUNCIL ORDINANCE (AMENDMENT OF
SCHEDULE 5) ORDER 2008**

(Made by the Chief Executive in Council under section 83A of the
Legislative Council Ordinance (Cap. 542))

1. Commencement

This Order shall come into operation on 18 July 2008.

2. Financial assistance: specified rate

Schedule 5 to the Legislative Council Ordinance (Cap. 542) is amended by
repealing “\$10” and substituting “\$11”.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

The purpose of this Order is to increase the specified rate of financial
assistance given to candidates in Legislative Council election from \$10 to \$11.

**MAXIMUM AMOUNT OF ELECTION EXPENSES
(LEGISLATIVE COUNCIL ELECTION)
REGULATION**

(Made by the Chief Executive in Council under section 45 of the Elections
(Corrupt and Illegal Conduct) Ordinance (Cap. 554))

1. Commencement

This Regulation shall come into operation on 18 July 2008.

2. Interpretation

In this Regulation –

“election” (選舉) has the same meaning as in section 3(1) of the Legislative Council Ordinance (Cap. 542);

“elector” (選民) has the same meaning as in section 3(1) of the Legislative Council Ordinance (Cap. 542);

“functional constituency” (功能界別) has the same meaning as in section 3(1) of the Legislative Council Ordinance (Cap. 542);

“geographical constituency” (地方選區) has the same meaning as in section 3(1) of the Legislative Council Ordinance (Cap. 542);

“registered” (已登記) means registered in the final register compiled and published in accordance with the Legislative Council Ordinance (Cap. 542) and in force on the date of election.

3. Maximum amount of election expenses for geographical constituency

The maximum amount of election expenses that can be incurred at an election by or on behalf of all the candidates on a list within the meaning of section 49 of the Legislative Council Ordinance (Cap. 542) shall be –

- (a) in respect of the Kowloon West geographical constituency and the Kowloon East geographical constituency, \$1,575,000 for each constituency;

- (b) in respect of the Hong Kong Island geographical constituency, \$2,100,000;
- (c) in respect of the New Territories West geographical constituency and the New Territories East geographical constituency, \$2,625,000 for each constituency.

4. Maximum amount of election expenses for functional constituency

The maximum amount of election expenses that can be incurred at an election by or on behalf of a candidate shall be –

- (a) in respect of any functional constituency specified in section 20(1)(a) to (d) of the Legislative Council Ordinance (Cap. 542), \$105,000;
- (b) in respect of any functional constituency specified in section 20(1)(e) to (zb) of that Ordinance –
 - (i) where there are not more than 5 000 electors registered in that constituency, \$168,000;
 - (ii) where there are more than 5 000 but not more than 10 000 electors registered in that constituency, \$336,000;
 - (iii) where there are more than 10 000 electors registered in that constituency, \$504,000.

**CONSEQUENTIAL AND RELATED AMENDMENTS
TO THE MAXIMUM SCALE OF ELECTION
EXPENSES (LEGISLATIVE COUNCIL)
(ELECTION COMMITTEE) ORDER**

5. Title amended

The title of the Maximum Scale of Election Expenses (Legislative Council) (Election Committee) Order (Cap. 288 sub. leg. I) is amended by repealing “(LEGISLATIVE COUNCIL)”.

6. Interpretation

Section 1 is amended –

- (a) in the definition of “election”, by repealing paragraph (a);
- (b) by repealing the definitions of “functional constituency” and “geographical constituency”;
- (c) in the definition of “registered”, by repealing paragraph (a).

7. Maximum scale of election expenses

- (1) Section 2(1) and (2) is repealed.
- (2) Section 2(3) is amended by repealing “section 13(1) of the Ordinance” and substituting “section 45(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)”.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

This Regulation increases the maximum amount of election expenses in a Legislative Council general election or by-election that can be incurred –

- (a) by or on behalf of all the candidates on a list for different geographical constituencies; and
- (b) by or on behalf of a candidate for different functional constituencies,

by 5% and prescribes the new maximum amount of election expenses.

2. As a result of the prescription of the new maximum amount of election expenses by virtue of section 45(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the Regulation also –

- (a) amends the title of the Maximum Scale of Election Expenses (Legislative Council) (Election Committee) Order (Cap. 288 sub. leg. I) (the “Order”);
- (b) amends the definitions of “election” and “registered” and repeals the definitions of “functional constituency” and “geographical constituency” under the Order; and
- (c) repeals the existing maximum scale of election expenses for Legislative Council election set under section 2(1) and (2) of the Order,

so that the Order would be applicable to Election Committee subsector election only.

3. The maximum scale of election expenses set under the Order would continue to be applicable to all Legislative Council election candidates until the new maximum amount of election expenses prescribed under the Regulation takes effect from 18 July 2008.



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Chapter: 542 Title: LEGISLATIVE COUNCIL Gazette Number:L.N. 189 of
ORDINANCE 2003
Section: 83A Heading: **Chief Executive in Council** Version Date: 15/07/2004
may amend Schedule 5

The Chief Executive in Council may by order published in the Gazette amend Schedule 5.
(Added 25 of 2003 s. 42)

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			ORDINANCE		2003
Schedule:	5	Heading:	FINANCIAL	Version Date:	15/07/2004
			ASSISTANCE: SPECIFIED RATE		

[sections 60A & 83A]

The rate of financial assistance for the purposes of Part VIA of this Ordinance is \$10.
(Schedule 5 added 25 of 2003 s. 49)

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Chapter: 554 Title: ELECTIONS (CORRUPT AND ILLEGAL
CONDUCT) ORDINANCE Gazette Number: 2 of 2003
Section: 45 Heading: **Chief Executive in Council** Version Date: 14/02/2003
may make regulations

(1) The Chief Executive in Council may make regulations prescribing the maximum amount of election expenses that can be incurred-

- (a) by or on behalf of a candidate at an election; or
- (b) where the list system of voting is used at an election, by or on behalf of a group of candidates.

(2) A regulation under this section may prescribe different maximum amounts for different kinds of elections and for different constituencies and for different Villages and for different bodies to which this Ordinance applies. (Amended 2 of 2003 s. 68)

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Chapter:	288I	Title:	MAXIMUM SCALE OF ELECTION EXPENSES (LEGISLATIVE COUNCIL) (ELECTION COMMITTEE) ORDER	Gazette Number:L.N. 187 of 2001
Section:	1	Heading:	Interpretation	Version Date: 21/09/2001

In this Order-

"election" (選舉) means-

- (a) an election or a by-election held to elect a Member of the Legislative Council in respect of a geographical constituency, a functional constituency or the Election Committee; or
- (b) a subsector election within the meaning of section 1 of the Schedule to the Chief Executive Election Ordinance (Cap 569); (21 of 2001 s. 51)

"Election Committee" (選舉委員會) has the same meaning as in section 2(1) of the Chief Executive Election Ordinance (Cap 569); (21 of 2001 s. 51)

"functional constituency" (功能界別) has the same meaning as in section 3(1) of the Legislative Council Ordinance (Cap 542);

"geographical constituency" (地方選區) has the same meaning as in section 3(1) of the Legislative Council Ordinance (Cap 542);

"registered" (已登記)-

- (a) in relation to any election to the Legislative Council in respect of a geographical constituency or a functional constituency, means registered in the final register compiled and published under the Legislative Council Ordinance (Cap 542) and in force on the date of election;
- (b) in relation to any election to the Election Committee, means registered in the subsector final register within the meaning of section 11(1) of the Schedule to the Chief Executive Election Ordinance (Cap 569) and in force on the date of election; (21 of 2001 s. 51)

"sub-subsectors" (小組) means the 4 sub-subsectors referred to in section 2(9)(a) of the Schedule to the Chief Executive Election Ordinance (Cap 569); (21 of 2001 s. 51)

"subsector" (界別分組) has the same meaning as in section 1(1) of the Schedule to the Chief

Executive Election Ordinance (Cap 569). (21 of 2001 s. 51)

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	Section:	2	Heading:	Maximum scale of election expenses	Version Date: 21/09/2001

(1) For the purposes of section 13(1) of the Ordinance, the maximum scale of election expenses that may be incurred by or on behalf of all the candidates on a list referred to in section 49 of the Legislative Council Ordinance (Cap 542) for election to the Legislative Council shall be-

- (a) in respect of the Kowloon West geographical constituency and the Kowloon East geographical constituency, \$1500000;
- (b) in respect of the Hong Kong Island geographical constituency, \$2000000;
- (c) in respect of the New Territories West geographical constituency and the New Territories East geographical constituency, \$2500000.

(2) For the purposes of section 13(1) of the Ordinance, the maximum scale of election expenses that may be incurred by or on behalf of a candidate for election to the Legislative Council shall be-

- (a) in respect of any functional constituency specified in section 20(1)(a) to (d) of the Legislative Council Ordinance (Cap 542), \$100000;
- (b) in respect of any functional constituency specified in section 20(1)(e) to (zb) of that Ordinance-
 - (i) where there are not more than 5000 electors registered in that constituency, \$160000;
 - (ii) where there are over 5000 but not more than 10000 electors registered in that constituency, \$320000;
 - (iii) where there are over 10000 electors registered in that constituency, \$480000;
- (c) in respect of the Election Committee, \$160000.

(3) For the purposes of section 13(1) of the Ordinance, the maximum scale of election expenses that may be incurred by or on behalf of a candidate for election to the Election Committee shall be-

- (a) in respect of the hotel subsector, the insurance subsector, the transport subsector, the agriculture and fisheries subsector, the Chinese People's Political

Consultative Conference subsector, the Heung Yee Kuk subsector, the Hong Kong and Kowloon District Councils subsector and the New Territories District Councils subsector, \$100000;

(b) in respect of any of the remaining subsectors, other than the religious subsector, the National People's Congress subsector and the Legislative Council subsector-

(i) where there are not more than 5000 registered voters, \$160000;

(ii) where there are over 5000 but not more than 10000 registered voters, \$320000;

(iii) where there are over 10000 registered voters, \$480000;

(c) in respect of any of the sub-subsectors-

(i) where there are not more than 5000 registered voters, \$160000;

(ii) where there are over 5000 but not more than 10000 registered voters, \$320000;

(iii) where there are over 10000 registered voters, \$480000.

(L.N. 16 of 2000)

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