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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 April 2011**

**Review of various election expenses limits and
adjustments to free mailing arrangements for candidates**

Purpose

This paper provides background information on various election expenses limits and free mailing arrangements for candidates; and gives a brief account of past discussions held by relevant committees of the Legislative Council ("LegCo").

Background

Election expenses limits

2. Under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), the Chief Executive ("CE") in Council is empowered to make regulations prescribing the maximum amount of election expenses that could be incurred by or on behalf of a candidate or a group of candidates at an election. The Ordinance applies, among others, to the Election Committee ("EC") subsector elections, the CE election, the LegCo election and the District Council ("DC") election.

3. As stipulated in the Maximum Scale of Election Expenses (EC) Order, the current election expenses limits for the respective EC subsector elections are as follows -

<u>Subsector</u>	<u>Election Expenses Limits</u>
Hotel, insurance, transport, agriculture and fisheries, Chinese People's Political Consultative Conference, Heung Yee Kuk ("HYK"), Hong Kong and Kowloon DCs and New Territories DCs subsectors	\$100,000

Any of the remaining subsectors (other than the religious, National People's Congress and LegCo subsectors, members from these subsectors are not returned by elections)

- with not more than 5 000 registered voters	\$160,000
- with 5 001 to 10 000 registered voters	\$320,000
- with over 10 000 registered voters	\$480,000

4. The above election expenses limits which correspond to the same four-tier election expenses limits for the functional constituency ("FC") elections have been adopted for EC subsector elections since 2000.

5. For the CE election, the current election expenses limit that can be incurred by a candidate is \$9.5 million as stipulated in the Maximum Amount of Election Expenses (CE Election) Regulation.

6. In respect of the LegCo election, the current election expenses limits for the geographical constituency ("GC") and FC as stipulated in the Maximum Amount of Election Expenses (LegCo Election) Regulation as increased by 5% for the 2008 LegCo election are as follows –

<u>GC</u>	<u>Election Expenses Limits</u>
Hong Kong Island	\$2,100,000
Kowloon East	\$1,575,000
Kowloon West	\$1,575,000
New Territories East	\$2,625,000
New Territories West	\$2,625,000

<u>FC</u>	<u>Election Expenses Limits</u>
HYK, agriculture and fisheries, insurance and transport FCs	\$105,000
FCs with not more than 5 000 registered electors	\$168,000
FCs with 5 001 to 10 000 registered electors	\$336,000
FCs with over 10 000 registered electors	\$504,000

7. For the 2012 LegCo election, the LegCo (Amendment) Ordinance 2011 has provided that the maximum amount of election expenses that can be

incurred at a DC (second) FC election by or on behalf of all the candidates on a list is \$6 million.

8. As regards the DC election, the Maximum Amount of Election Expenses (DC Election) Regulation stipulates that a candidate may incur election expenses of no more than \$48,000. The election expenses limit is reviewed prior to every DC ordinary election. On 21 February 2011, the Administration briefed the Panel on Constitutional Affairs ("the Panel") of its proposal for increasing the election expenses limit for the DC election to be held in November 2011 from \$48,000 to \$53,000.

Free mailing arrangements for candidates

9. According to sections 43(1) and (2) of the LegCo Ordinance (Cap. 542) ("LCO"), one letter, addressed to each elector for GC or DC (second) FC or any FC for which a list of candidates/candidate is validly nominated, may be sent free of postage by or on behalf of the list of candidates/candidate. Section 43(4) of LCO specifies that the letter must relate to the election concerned and must comply with all requirements and limitations prescribed by the regulations in force under LCO and the Electoral Affairs Commission Ordinance (Cap. 541) ("EACO").

10. For the DC election, under section 37 of the DC Ordinance (Cap. 547), a candidate of a constituency who is declared to have been validly nominated in the notice of nomination published in the Gazette in accordance with regulations made under EACO is permitted to post free of postage one letter to each elector of the constituency for which he is nominated.

Past discussions of relevant LegCo committees

Election expenses limit for the CE election

11. During the deliberations of the former Bills Committee on CE Election Bill in 2001, some members were of the view that setting an election expenses limit would ensure a level-playing field for all candidates, and that in determining the basis for the limit, consideration should be given to the electorate size of the CE election. Some other members considered that setting such a limit was not absolutely necessary as many democratic countries had not done so.

12. When the Panel was briefed at its meeting held on 30 October 2001 on the Administration's proposal for setting the election expenses limit for the CE election at \$9.5 million, the Administration advised that Article 45 of and

Annex I to the Basic Law ("BL") provided that CE shall be elected by a broadly representative EC, and be appointed by the Central People's Government. BL 43 provided that CE shall be the head of the Hong Kong Special Administration Region ("HKSAR") and shall represent HKSAR. The functions and powers conferred on CE by BL covered a wide range of matters relating to HKSAR, and the policies introduced by CE would affect the well-being of all residents in the territory. As such, the maximum amount of election expenses for the CE election must be sufficient for candidates to publicize their election platform to all residents of HKSAR. The Administration further drew members' attention to the total election expenses limits for the five GCs of the LegCo elections amounting to \$10 million. Details provided by the Administration regarding how the \$9.5 million was arrived at are set out in **Appendix I**.

13. While some members agreed that the setting of the limit should take into account the important constitutional role of CE as the Head of the HKSAR Government and the need for candidates to carry out territory-wide election campaigns, some other members were of the view that the proposed election expenses limit of \$9.5 million was too high. These members queried the need for candidates running for the office of CE to publicize their election platform to the public at large as CE was not elected by universal suffrage. They also did not consider it appropriate to draw any reference to the election expenses limits for the five GCs because GC elections were direct elections and had a much larger size of electorate.

14. The Administration explained that the purpose of providing for an election expenses limit for the CE election was to allow a candidate to use as much financial resources as the candidate was entitled to use to promote his candidacy, subject to the maximum amount prescribed. A candidate had complete discretion to decide on the amount and the type of election expenses to be spent. From past election experience, candidates who could afford to spend more in elections did not necessarily gain a definite advantage over others.

15. When the former Subcommittee on subsidiary legislation relating to CE election studied the Maximum Amount of Election Expenses (CE Election) Regulation in November 2001, some members queried the basis for setting the election expenses limit at \$9.5 million. They considered that setting an exceedingly high limit could deter people with insufficient means from standing for election and also affect the chance of a candidate getting elected. As no election expenses limit was imposed on the election of the first-term CE and according to a press report, Mr TUNG Chee-hwa, the CE-elect, had only spent about \$2.7 million on election expenses for that election, they were of the view that the election expenses limit should be set having regard to the election expenses incurred by the three candidates at the election of the first-term CE.

16. Some other members did not consider it appropriate to make reference to the election expenses incurred for the election of the first-term CE given that the election was held at a time when Hong Kong was still under the British rule. They stressed that it was necessary for CE candidates to conduct territory-wide election campaign.

Election expenses limits for the LegCo election

17. When the list system of voting was first adopted in the 1998 LegCo election, the Administration proposed that the election expenses limits for the GCs should be set as below –

<u>GC</u>	<u>Election Expenses Limits</u>
Hong Kong Island	\$2,000,000
Kowloon East	\$1,500,000
Kowloon West	\$1,500,000
New Territories East	\$2,500,000
New Territories West	\$2,500,000

The Administration also proposed to adopt a four-tier election expenses limits which were set by reference to the number of registered electors for the FC elections in 1998. The four tiers of election expenses limits for the LegCo FC elections in 1998 are as below –

<u>FC</u>	<u>Election Expenses Limits</u>
HYK, agriculture and fisheries, insurance and transport FCs	\$100,000
FCs with not more than 5 000 registered electors	\$160,000
FCs with 5 001 to 10 000 registered electors	\$320,000
FCs with over 10 000 registered electors	\$480,000

18. In December 1999, the Administration proposed to the Panel that taking into account the unchanged geographical size and the slight increase in population, the same election expenses limit for each of the constituencies as in the 1998 GC elections be adopted for the 2000 elections. The Administration also considered that there was no need to adjust the election expenses limits for the 2000 LegCo FC elections, and that the same four tier election expenses limits in 1998 should be used for all FCs, including the new catering and DC FCs.

19. While some members had no strong objection to the Administration's proposal, some other members considered that the election expenses limits for GC elections should be reduced having regard to deflation at that time and the fact that candidates of the last election spent less than the prescribed limit. The Administration, however, held the view that the limit should not be set at a level that would restrict the way in which a candidate ran his campaign. Given that each GC had over one million population, the Administration considered that the proposed election expenses limit which was equivalent to about \$1.50 per head was reasonable.

20. In December 2003, the Panel was consulted on the Administration's proposals on the election expenses limits for the 2004 LegCo election. The Administration proposed that the same four-tier election expenses limits used in the 2000 FC elections should continue to apply to the 2004 FC elections. As for the GC elections, the Administration put forward three options, namely, calculating the election expenses limits on the basis of \$1.5 per head of the population, taking account of the deflationary effect in calculating the election expenses limits, and maintaining the same election expenses limits.

21. Members had diverse views over the various options. While some members considered that more flexibility should be allowed for candidates to conduct election activities, and some other members stressed that candidates should be allowed to compete on a more equitable basis. The Administration subsequently decided that the election expenses limits in 2000 should apply to the 2004 LegCo GC elections.

22. The Panel was consulted on the Administration's proposals on the election expenses limits for the 2008 LegCo election in February 2008. The Administration proposed that the four-tier election expenses limits used in the 2004 FC elections should continue to apply in the 2008 LegCo FC elections. As regards the GC elections, one option put forward by the Administration was to adjust the election expenses limits with regard to the population change in each GC. The election expenses limits of the New Territories West and New Territories East GCs would be increased by 20% and 15%, to \$3,000,000 and \$2,875,000 respectively. The other option was to adopt the same election expenses limits in the 2004 LegCo election for the 2008 LegCo election.

23. While some members supported the option of adjusting upward the election expenses limits, some other members considered that the limits should be adjusted downward so as to ensure a level playing field for candidates who were less resourceful. There was also another view that the election expenses limits should remain unchanged.

24. In April 2008, the Administration consulted the Panel again on its proposals on the election expenses limits for the 2008 LegCo election. Based on the proposal that the subsidy rate for the financial assistance scheme would be increased by 10%, the Administration proposed that the election expenses limits should also be increased as the two elements were related. Some members reiterated their view that the election expenses limits should be abolished. Some other members did not support any increase in the limits. According to the Administration, given that the population only increased by 6.9% since 1998 when the election expenses limits were set, it was proposed that the election expenses limits for GC and FC elections should be increased by 5% (as set out in paragraph 6 above).

Election expenses limit for the DC election

25. In April 1999, the Administration proposed that the election expenses limit for the first DC election in 1999 should be set at \$45,000, the same level for the 1994 District Board election. Members supported the proposal, given that the election expenses incurred by the candidates for the 1994 District Board election were mainly in the range of \$20,000 to \$40,000, and the proposed limit of \$45,000 posed no difficulties for candidates.

26. In January 2003, the Administration proposed that the election expenses limit for the 2003 DC election should be retained at the level of \$45,000, having considered that the majority of candidates (i.e. 86%) at the 1999 DC election spent within the prescribed limit in their election campaigns. Members did not raise objection to the proposal.

27. The Panel was consulted on the Administration's proposal on the election expenses limit for the 2007 DC election in February 2007. The Administration proposed that the election expenses limit could be either maintained at the level of \$45,000 or be adjusted upwards to \$48,000 taking into account the inflation since 1994 when the limit was last revised. While some members considered that the election expenses limit should remain unchanged as the constituency areas of DCs were small and there was no substantial increase in the costs of conducting electioneering activities since the 2003 DC election, some other members considered it appropriate to adjust the election expenses limit upwards to \$48,000 in line with inflation. The Administration subsequently adjusted the limit upwards to \$48,000 which had been adopted since the 2007 DC election.

28. At the meeting on 21 February 2011, the Panel was consulted on the Administration's proposal for increasing the election expenses limit for the 2011 DC election from \$48,000 to \$53,000. The Administration advised that the

proposed increase had taken into account the spending pattern of candidates in the 2007 DC election and of those in the six recent DC by-elections, and the forecast cumulative inflation. While some members considered that the election expenses limit should be adjusted upward so as to better reflect the anticipated inflation, some other members expressed reservations about the proposed increase of the limit. Some members took the view that setting election expenses limit would hinder democratic development. They suggested that the Administration should relax the existing restrictions on the election expenses limit to encourage candidates from the business sector and professional sectors to participate in elections.

29. The Administration advised that while it respected members' diverse views on setting election expenses limits, it considered that there should be a set of electoral arrangements in place to prevent unfairness in an election. The Administration considered that the election expenses limits in Hong Kong were set at a reasonable rather than a high level so that electioneering activities of resourceful political parties would not overshadow those of the smaller political parties and independent candidates. The Administration stressed that candidates were free to spend as much or as little as they wished.

Free mailing arrangements for candidates

30. During the deliberations of the former Bills Committee on CE Election (Amendment) Bill 2010 and LegCo (Amendment) Bill 2010 ("Bills Committee"), members in general were of the view that the Administration should introduce measures to facilitate candidates to adopt more environmental-friendly means to distribute their election-related materials, and if necessary, introduce legislative amendments required to implement such measures. They made various suggestions relating to free mailing arrangements for candidates including allowing a list of candidates/candidate to print in the same leaflet materials relating to the candidature of the lists of candidates or candidates from different GCs or FCs and send the letter free of postage, requiring electors to choose the means through which to receive election-related materials so as to facilitate a list of candidates/candidate to send out one letter to electors with the same registered address, and providing an allowance to candidates (e.g. in the form of an election publicity voucher) in lieu of free postage so as to provide financial incentive and more flexibility to candidates in distributing their election-related materials by environmental-friendly means.

31. The Administration advised the Bills Committee that there was no mandatory requirement in sections 43(1) and (2) of LCO that the list of candidates/candidate must send one letter to each and every elector of the relevant constituency. In case a list of candidates/candidate chose to ask the

Registration and Electoral Office ("REO") to provide address labels of several electors residing in the same address, and to send out one letter to these electors, in principle, there was no need to amend sections 43(1) and (2) of LCO. The Administration assured the Bills Committee that it would examine members' suggestions when formulating the practical arrangements for the elections and revert to the Panel accordingly.

Latest position

32. When the Panel discussed the Administration's review on the subsidy rate of the financial assistance for candidates for the 2011 DC election at its meeting on 21 February 2011, members urged the Administration to consider their suggestions made during the deliberations of the Bills Committee. The Administration advised that it would not take on board the suggestion of providing for an allowance to candidates in the form of a voucher in lieu of free postage in the upcoming elections. However, the Administration would consider actively the suggestion of allowing a list of candidates/candidate to print in the same leaflet materials relating to the candidature of the lists of candidates or candidates from different GCs or FCs and send the letter free of postage. The Administration further advised that REO was studying the practical and legal arrangements relating to provisions of the address labels of electors who had indicated their preference for receiving election-related materials through emails to candidates.

33. The Administration is scheduled to consult the Panel on its proposals on various election expenses limits and adjustments to free mailing arrangements for candidates at the upcoming meeting on 18 April 2011.

Relevant papers

34. A list of the relevant papers and minutes of meetings which are available on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
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Election Expense Limit for the CE Election

Expenses	Estimated amount (\$ million)	Remarks
Expenses for setting up an election office	1.2 (13%)	<p>Assuming that a Grade A office of 400 square metres in Central is rented for a period of five months. Details are as follows –</p> <p>Average rental for Grade A office in central in 2000 : \$415/ m²</p> <p>Estimated space required : 400 m²</p> <p>Estimated rental for five months : \$830,000</p> <p>Overhead expenses : \$166,000 (e.g. management fee and charges for water and electricity) (estimated to be 20% of rental)</p> <p>One-off expenses for setting up and winding down the election office (e.g. decoration)(estimated to be 20% of rental)</p> <p>Total : \$1,162,000 (say \$1.2 million)</p>
Campaign staff	2.3 (24%)	<p>Assuming that a total of 15 staff are required. Details are as follows –</p> <p>Salary for the campaign manager (1) : \$70,000/month</p> <p>Salary for each senior staff : \$50,000/month (4 in total)</p> <p>Salary for each supporting staff (10 in total) : \$8,000/month</p> <p>Salary expenses for five months : \$1,750,000</p> <p>Contract gratuity and fringe benefits (estimated to be 30% of salary) : \$525,000</p> <p>Total : \$2,275,000 (say, \$2.3 million)</p>

Expenses	Estimated amount (\$ million)	Remarks
Professional services	1.5 (16%)	Assuming that \$1.5 million is required for engaging PR consultancy and seeking legal opinion.
Policy researches	1.5 (16%)	<p>Including conducting opinion surveys and holding focus group discussions. Details are as follows –</p> <p>Estimated expenses for a single-subject research : \$0.3 million</p> <p>Estimated number of researches : 5</p> <p>Total : \$1.5 million</p>
Publicity and promotion	3 (31%)	<p>Details are as follows –</p> <p>Sending publicity materials to each household/unit under the Hong Kong Post Circular Service (<i>including postage and printing cost</i>) : \$2.5 million</p> <p>Posters, banners, hand bills and etc (<i>including production and printing costs</i>) : \$0.25 million</p> <p>Election advertisements : \$0.25 million (<i>e.g. through newspapers</i>)</p> <p>Total : \$ 3 million</p>
Grand total	9.5	

Source : Administration's paper on "Election expense limit for the Chief Executive Election for the Panel on Constitutional Affairs meeting on 30 October 2001 [LC Paper No. CB(2)177/01-02(01)]

Appendix II

Relevant papers on review of various election expenses limits and adjustments to free mailing arrangements for candidates

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	25.11.1997 (Item I)	Agenda Minutes
	19.4.1999 (Item III)	Agenda Minutes
Subcommittee on subsidiary legislation relating to District Councils election	24.5.1999	Minutes
House Committee	28.5.1999	Report of the Subcommittee on subsidiary legislation relating to District Councils election
CA Panel	20.12.1999 (Item VII)	Agenda Minutes
House Committee	18.2.2000	Fourth report of the Subcommittee on subsidiary legislation relating to 2000 Legislative Council election
Bills Committee on Chief Executive Election Bill	31.5.2001	Minutes
Legislative Council	11.7.2001	Report of the Bills Committee on Chief Executive Election Bill
CA Panel	30.10.2001 (Item III)	Agenda Minutes

Committee	Date of meeting	Paper
House Committee	30.11.2001	<u>Third report of the Subcommittee on subsidiary legislation relating to Chief Executive election</u>
CA Panel	20.1.2003 (Item V)	<u>Agenda Minutes</u>
	15.12.2003 (Item IV)	<u>Agenda Minutes</u>
	8.2.2007 (Item IV)	<u>Agenda Minutes</u>
	21.6.2007 (Item III)	<u>Agenda Minutes</u>
	18.2.2008 (Item IV)	<u>Agenda Minutes</u>
	21.4.2008 (Item VI)	<u>Agenda Minutes</u>
	21.2.2011 (Item III)	<u>Agenda</u>

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