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Paper for the House Committee meeting on 24 April 2015

**Report of the Subcommittee on District Councils Ordinance
(Amendment of Schedule 7) Order 2015 and
Maximum Amount of Election Expenses (District Council Election)
(Amendment) Regulation 2015**

Purpose

This paper reports on the deliberations of the Subcommittee on District Councils Ordinance (Amendment of Schedule 7) Order 2015 and Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2015 ("the Subcommittee").

Background

2. Part VA of the District Councils Ordinance (Cap. 547) provides for a financial assistance scheme for candidates at a District Council ("DC") election. Under the current scheme, a candidate who was elected, or who obtained at least 5% of the total number of valid votes, in a DC election is eligible for financial assistance, which would be the lowest of the following amounts –

- (a) the amount obtained by multiplying the specified rate by the total number of valid votes cast for the candidate (if the election is contested) or 50% of the number of registered electors for the constituency concerned (if the election is uncontested);
- (b) 50% of the maximum amount of election expenses¹ that can be incurred by or on behalf of the candidate under section 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C); and

¹ Under section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), election expenses, in relation to a candidate or group of candidates at an election, means expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate or group for the purpose of (a) promoting the election of the candidate or group; or (b) prejudicing the election of another candidate or group, and includes the value of election donations consisting of goods and services used for that purpose.

(c) the declared election expenses of the candidate.

3. The current rate of financial assistance specified in Schedule 7 to Cap. 547 for the purposes of Part VA of Cap. 547 is \$12. Under section 82 of Cap. 547, the Chief Executive in Council ("CE in Council") may, by order published in the Gazette, amend Schedule 7.

4. Section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) provides that CE in Council may make regulations prescribing the maximum amount of election expenses that can be incurred by or on behalf of a candidate at a DC election. The maximum amount of election expenses prescribed in section 3 of Cap. 554C is \$53,800.

L.N. 49 and L.N. 50

District Councils Ordinance (Amendment of Schedule 7) Order 2015 (the "Order") (L.N. 49)

5. L.N. 49 is made by CE in Council under section 82 of Cap. 547 to amend Schedule 7 to Cap. 547 to provide that the rate of financial assistance for the purposes of Part VA thereof –

- (a) remains to be \$12 for an election of a member for the term of office of a DC ending on 31 December 2015; and
- (b) will be increased from \$12 to \$14 for an election of a member for any subsequent term of office of a DC.

Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2015 (the "Amendment Regulation") (L.N. 50)

6. L.N. 50 is made by CE in Council under section 45 of Cap. 554 to amend section 3 of Cap. 554C to provide that the maximum amount of election expenses –

- (a) remains to be \$53,800 for an election of a member for the term of office of a DC ending on 31 December 2015; and
- (b) will be increased from \$53,800 to \$63,100 for an election of a member for any subsequent term of office of a DC.

7. According to paragraphs 7 and 11 of the LegCo Brief (File Ref: CMAB C2/8) issued by the Constitutional and Mainland Affairs Bureau on 4 March 2015, the adjustments are made taking into account the cumulative increase in the Composite Consumer Price Index ("CCPI") from 2012 to 2015 which is expected to be 17.3%². The rate of financial assistance and the maximum amount of election expenses were last revised in 2011 (paragraphs 6 and 10 of the LegCo Brief).

Scrutiny period and commencement of the Order and the Amendment Regulation

8. The Order and the Amendment Regulation were gazetted on 6 March 2015 and tabled at the Legislative Council ("LegCo") on 18 March 2015. The scrutiny period was extended from the Council meeting of 15 April 2015 to that of 6 May 2015 by resolution of the Council passed at its meeting of 25 March 2015.

9. The Order and the Amendment Regulation will come into operation on 8 May 2015.

The Subcommittee

10. At the House Committee meeting on 13 March 2015, Members agreed to form a subcommittee to study the Order and the Amendment Regulation. The membership list of the Subcommittee is in **Appendix**.

11. Under the chairmanship of Hon IP Kwok-him, the Subcommittee held a meeting with the Administration and received views from the public on 9 April 2015.

Deliberations of the Subcommittee

Proposed adjustments to the subsidy rate of financial assistance and the maximum amount of election expenses

12. Hon Emily LAU has expressed concern that the proposed adjustment to the rate of financial assistance from \$12 to \$14 is merely an adjustment on the basis of inflation and there is no substantive increase. She has queried why the Administration does not propose a higher rate so as to enhance the provision of

² As set out in the above LegCo Brief, according to CCPI, the actual annual inflation rates of 2012, 2013 and 2014 are 4.1%, 4.3% and 4.4% respectively. According to the forecast in the 2015-2016 Budget, the headline inflation rate for 2015 as a whole will be 3.5%. The cumulative increase in CCPI over the relevant period is therefore expected to be 17.3%.

subsidies to candidates. The Administration has explained that before 2007, DC election candidates received no financial assistance from the Government. Financial assistance for election candidates was first introduced in the 2004 LegCo election. In 2007, the financial assistance scheme was extended to DC elections, and the subsidy rate was set at \$10 per vote, same as the rate for the 2004 LegCo election. Starting from the 2011 DC ordinary election, the subsidy rate was increased to \$12 per vote, after taking into account the estimated cumulative inflation rate between 2008 and 2011³ and the enhanced participation of elected DC members in the CE and the LegCo elections pursuant to the amended electoral methods for these elections in 2012. For the current review, the Administration considers that it is appropriate to adjust the subsidy rate on the basis of the estimated cumulative inflation rate from 2012 to 2015⁴.

13. Hon Emily LAU has further requested the Administration to review the calculation method of the amount of financial assistance payable to each eligible candidate. For example, consideration might be given to allowing the eligible candidates to receive the highest, instead of the lowest, of the three amounts (see paragraph 2 above), so as to increase the subsidies for candidates and encourage more candidates to take part in the elections. She has expressed concern that the current method for calculating the amount of financial assistance only allows a candidate to receive an amount of subsidies which is relatively very small when compared with the amount of election expenses actually incurred by the candidate.

14. The Administration has explained that it is necessary to strike a reasonable balance between encouraging candidates to take part in the elections and ensuring prudent use of public funds. Given that a candidate is only required to obtain at least 5% of the total number of valid votes cast in the constituency concerned in order to be eligible for the financial assistance, under the proposal of granting the highest of the three amounts, a candidate for a small contested constituency (say, with 3 000 valid votes cast in a DC election) would receive at least \$31,550 (i.e. 50% of \$63,100 under the current proposal) as long as he/she obtains 150 valid votes (i.e. 5% of 3 000). The Administration has pointed out that the proposal may not be conducive to the principle of prudent use of public funds.

15. Hon Emily LAU has also suggested that the Administration may consider granting subsidy in accordance with the total number of valid votes obtained by the candidate without imposing any other limits. The Administration has reiterated that the principle of prudent use of public funds has to be observed; in addition, the system has evolved from no financial assistance at all to extension

³ This means the estimated cumulative rate of change in CCPI between 2007 and 2011.

⁴ This means the estimated cumulative rate of change in CCPI between 2011 and 2015.

of financial assistance to DC elections in 2007, and the level of assistance has gradually been increased taking into account CCPI movements.

16. Hon IP Kwok-him considers that the current method for calculating the amount of financial assistance has the effect of capping the financial assistance payable to eligible candidates at an amount not exceeding 50% of the maximum amount of election expenses that can be incurred by or on behalf of the candidate (i.e. 50% of \$63,100 under the current proposal). He has also expressed the view that a candidate should accept that he/she would have to bear a certain amount of election expenses in taking part in the election.

17. Hon Christopher CHUNG considers that the proposed adjustments to the rate of financial assistance and the maximum amount of election expenses are minimal, and suggests that a review should be conducted to see whether it is still appropriate to adjust the two by taking into account the estimated CCPI movements of the relevant period. He has pointed out that publicity (e.g. production of banners) and printing costs mainly account for the election expenses. He considers that the estimated increases in such costs between 2012 and 2015 would be larger than the cumulative increase in CCPI during the same period. The Administration has explained that CCPI is an objective index to use, but nonetheless invited specific suggestions of alternative objective indices from Members for consideration in future reviews. The Administration has also advised that the maximum amount of election expenses has to be set at a reasonable rather than a high level, so that electioneering activities of resourceful political parties would not overshadow those of the political parties and independent candidates with less financial resources.

Other election-related issues

18. Regarding the existing arrangement that a candidate/a list of candidates is entitled to post free of postage one letter to each elector in the constituency for which the candidate/the list is nominated, Hon Paul TSE has requested the Administration to consider rebating the candidate concerned if he/she chooses not to utilize the free postage provided by the Government. He considers that the provision of cash rebates in lieu of free postage would provide financial incentive to encourage candidates in sending election advertisements ("EAs") to electors by more environmental-friendly means instead of by post. The Administration has advised that many candidates/electors, in fact, favour sending/receiving hardcopies of EAs, and therefore the free postage will continue to be provided. Notwithstanding that, candidates are free to choose under the present arrangements whether or not they would like to send EAs by post or by any other environmental-friendly means.

Drafting issue

19. The legal adviser to the Subcommittee has pointed out that reference is made to "term of office of a District Council" in L.N. 49 and L.N. 50. However, no such reference is used in Cap. 547. Instead, reference is made to "term of office of the elected members" in Cap. 547. The legal adviser to the Subcommittee has written to the Administration to seek clarification as to whether it is appropriate to refer to "term of office of a District Council" in L.N. 49 and L.N. 50. The Administration has replied that the formulation adopted is appropriate and it would not give rise to ambiguities. The legal adviser to the Subcommittee considers that the use of the phrase "term of office of a District Council" would not give rise to difficulties in interpretation. Members have noted the issue and raised no objection to the use of the phrase in L.N. 49 and L.N. 50.

Recommendation

20. The Subcommittee does not object to the Order and the Amendment Regulation. The Subcommittee and the Administration will not propose any amendment.

Advice sought

21. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
23 April 2015

**Subcommittee on District Councils Ordinance
(Amendment of Schedule 7) Order 2015 and
Maximum Amount of Election Expenses
(District Council Election) (Amendment) Regulation 2015**

Membership list

Chairman	Hon IP Kwok-him, GBS, JP
Members	Hon Emily LAU Wai-hing, JP Hon Cyd HO Sau-lan, JP Hon Starry LEE Wai-king, JP Hon Paul TSE Wai-chun, JP Hon Alan LEONG Kah-kit, SC Hon MA Fung-kwok, SBS, JP Hon CHAN Chi-chuen Hon CHAN Han-pan, JP Hon LEUNG Che-cheung, BBS, MH, JP Hon SIN Chung-kai, SBS, JP Dr Hon Elizabeth QUAT, JP Hon Martin LIAO Cheung-kong, SBS, JP Hon Christopher CHUNG Shu-kun, BBS, MH, JP Total : 14 Members
Clerk	Ms Joanne MAK
Legal Adviser	Ms Vanessa CHENG
Date	20 March 2015