

立法會 *Legislative Council*

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Subcommittee on Legislative Council Ordinance (Amendment of Schedule 5) Order 2015 and Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2015

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Legislative Council Ordinance (Amendment of Schedule 5) Order 2015 (the "Order") (L.N. 225) and the Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2015 (the "Amendment Regulation") (L.N. 226). It also gives a brief account of previous discussion on the subject.

Background

Financial assistance scheme

2. Financial assistance for election candidates was first introduced in 2004 to the Legislative Council ("LegCo") elections, with the aim of encouraging more public-spirited candidates to participate in LegCo elections and cultivating an environment to facilitate the development of political talents in Hong Kong.

3. Under the current scheme, where a candidate or at least one candidate on a list of candidates ("candidate list") was elected, or received 5% or more of the valid votes cast in the constituency concerned in a LegCo election, the candidate or candidate list is eligible for financial assistance. The financial assistance payable would be the lowest of the following amounts -

- (a) the amount obtained by multiplying the subsidy rate (currently \$12) by the total number of valid votes cast for the candidate or candidate list (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 expenses ("MEEs") applicable to the constituency concerned; and

- (c) the declared election expenses of the candidate or candidate list.

MEEs

4. Under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the Chief Executive ("CE") in Council may, by regulation, prescribe MEEs that can be incurred. The respective current MEEs that can be incurred for the five geographical constituencies ("GCs") are set out in paragraph 6 below.

The Order (L.N. 225) and the Amendment Regulation (L.N. 226)

5. L.N. 225 is made by CE in Council under section 83A of the Legislative Council Ordinance (Cap. 542) ("LCO") to increase the specified rate of financial assistance in Schedule 5 to LCO from \$12 to \$14 for elections for the Sixth LegCo commencing in 2016 and any subsequent term of office. The rate for elections (including by-elections) for the Fifth LegCo remains at \$12.

6. L.N. 226 is made by CE in Council under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance to raise MEEs for a candidate or candidate list at elections for the Sixth LegCo commencing in 2016 and any subsequent term of office ("new MEEs") under the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554D) as follows -

GCs	Current MEEs	New MEEs
Hong Kong Island	\$2,100,000	\$2,428,000
Kowloon East and Kowloon West ("KW")	\$1,575,000	\$1,821,000
New Territories East and New Territories West	\$2,625,000	\$3,035,000
Functional constituencies ("FC")	Current MEEs	New MEEs
Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$105,000	\$121,000
FCs other than Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	Current MEEs	New MEEs
FCs with not more than 5 000 registered electors	\$168,000	\$194,000
FCs with 5 001 to 10 000 registered electors	\$336,000	\$388,000
FCs with over 10 000 registered electors	\$504,000	\$583,000
District Council ("DC") (second) FC	\$6,000,000	\$6,936,000

MEEs for elections (including by-elections) for the current term of office of LegCo remain unchanged.

7. According to paragraph 2 of the LegCo Brief (File Ref: CMAB C1/30/10) issued by the Constitutional and Mainland Affairs Bureau dated 11 November 2015, the adjustments in L.N. 225 and L.N. 226 are made on the basis of the estimated cumulative inflation rate between 2013 and 2016.

8. The Order and the Amendment Regulation will come into operation on 8 January 2016.

Consultation with the Panel on Constitutional Affairs ("the Panel")

9. The Administration consulted the Panel on the above proposed adjustments at its meeting on 19 October 2015. The major concerns expressed by members are summarized below -

Subsidy rate of the financial assistance scheme and MEEs

10. With the proposed increase in MEEs, Dr Hon Helena WONG considered that candidates who were financially better-off would be in an advantageous position as they could afford to spend more to canvass more votes. Taking KW as an example, Dr WONG opined that with the increase in the number of seats for KW from five to six in the 2016 LegCo election, the candidate who won the last seat in KW might obtain only about 30 000 votes. She believed that those financially better-off candidates would not care spending up to MEE (\$1,821,000) even though they knew that they would receive a subsidy of only about \$420,000 (i.e., 30 000 x \$14), whereas the less well-off candidates could only afford to spend a sum far less than \$1,821,000. She suggested that alongside the proposal of increasing MEEs for the five GCs, the Administration should also propose increasing the subsidy rate from \$12 to, say, \$20 per vote or alternatively, lowering MEEs, in order to avoid giving rise to the above unfair situation. Hon CHAN Chi-chuen, however, did not support lowering MEEs as he noted that some new candidates had a practical need to incur more election expenses to publicize themselves.

11. The Administration advised that in the past, there were cases where candidates/candidate lists had incurred a substantial amount of election expenses but had lost in the LegCo election concerned. The Administration considered that there was no unfairness in the design of the scheme as all candidates/candidate lists competing in the same constituency would have to operate under the same MEE applicable to the constituency concerned.

12. Hon Emily LAU considered that the Administration was too mean to require a candidate to receive the lowest of the three amounts under the arrangements in paragraph 3(a) to (c). She queried that according to such arrangements, the Administration would not meet its policy intent to ensure that 50% of the election expenses of candidates/candidate lists would be subsidized. The Administration clarified that it had not been the Government's policy objective to ensure that 50% of the election expenses of the candidates/candidate lists would be subsidized. Instead, the original spirit of the financial assistance scheme was that the level of financial assistance given to a candidate/candidate list should reflect the level of support the concerned candidate/candidate list received from the public; and that both the candidates/candidate lists and the Government should shoulder part of the election expenses. Hence, when the financial assistance scheme was first introduced in 2004, financial assistance payable to candidates/candidate lists was calculated by multiplying the number of valid votes obtained by candidates/candidate lists by the subsidy rate, subject to not exceeding 50% of the declared election expenses of the candidates/candidate lists.

13. The Administration further advised that in 2010, having regard to Members' views, the Administration already agreed to enhance the financial assistance scheme starting from the 2012 LegCo general election, so as to provide more room for candidates/candidate lists to obtain financial assistance, and that as a result of the revision, the financial assistance obtainable might exceed 50% of the declared election expenses.

14. Some members considered that there was room for enhancing the provision of financial assistance to candidates. Members noted that in the 2012 LegCo election, all GC candidate lists which were eligible for financial assistance received subsidy based on the calculation in paragraph 3(a) above (i.e., multiplying the subsidy rate by the total number of valid votes cast for the candidate list). There were DC (second) FC candidate lists which received subsidy based on the calculation in paragraph 3(b) above (i.e., 50% of MEE applicable). Hon CHAN Chi-chuen considered that as it had already proven that few candidates/candidate lists (except DC (second) FC candidate lists) could obtain a subsidy calculated according to either paragraph 3(b) or (c) above, the Administration should consider further increasing the subsidy rate to, say, \$20 per vote, in order to enhance the financial assistance payable to candidates/candidate lists calculated according to paragraph 3(a). Hon Emily LAU suggested that the Administration should explore adopting a policy of subsidizing, at least, 50% of the declared election expenses of the candidate.

15. Hon IP Kwok-him expressed support for the Administration's proposals. He considered that a candidate should accept that he/she would have to bear a

certain amount of election expenses in taking part in the election, and what was at issue was the share of election expenses that should be borne by candidates/candidate lists and the Government respectively. To facilitate members' deliberation, he requested the Administration to provide the percentage of GC candidate lists who obtained financial assistance in the past LegCo elections under the respective arrangements in paragraph 3(a) to (c). Hon Emily LAU also requested the Administration to provide information on the subsidy received by GC candidate lists as a percentage of their declared election expenses. A supplementary information paper provided by the Administration is in **Appendix I**.

Eligibility for financial assistance

16. Hon WONG Yuk-man and Hon SIN Chung-kai considered it inappropriate to impose across-the-board the same threshold (i.e. able to receive 5% or more of the valid votes cast in the constituency concerned) regardless of the variations in population size and number of seats of different GCs. Mr WONG envisaged that it might happen in future that a candidate would win a seat by obtaining even less than 5% (say, 4.5%) of the valid votes, whereas another candidate who lost but still obtained 4.4% of the valid votes cast in the same constituency. However, according to the existing eligibility criteria, the former would be eligible for financial assistance but not the latter, even though both had obtained less than 5% of the valid votes and the difference in the number of votes obtained was also very small. Mr SIN considered that the Administration should also allow candidates who lost in the election and obtained less than 5% of the valid votes cast in the constituency concerned, but that the actual number of votes received by him/her was relatively not small, to be also eligible for financial assistance.

17. The Administration explained that before the conduct of each election, no one could predict the number of candidates/candidate lists who would participate in the election and the number of votes they would obtain. It would not be appropriate to consider making a fundamental change to the system based on speculations of the election outcome in any selected GC.

Relevant papers

18. A list of relevant papers which are available on the LegCo website is in **Appendix II**.

Panel on Constitutional Affairs

Follow up on issues raised at the meeting held on 19 October 2015

At the meeting of the Panel on Constitutional Affairs held on 19 October 2015, Members discussed the review on the subsidy rate of the financial assistance for candidates and the election expenses limits (“EELs”) for the 2016 Legislative Council (“LegCo”) election, and requested the Government to provide supplementary information on the subsidy received by candidates in the past LegCo elections. This paper sets out the relevant information for Members’ reference.

2. Under the current financial assistance scheme, the subsidy payable to a candidate or a list of candidates (“candidate list”) of LegCo election eligible for financial assistance would be the lowest of the following three amounts—

- (a) the amount obtained by multiplying the subsidy rate (currently \$12) by the total number of valid votes cast for the candidate or candidate list (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 EEL applicable to the constituency concerned; and
- (c) the declared election expenses of the candidate or candidate list.

3. A Member asked about the percentage of geographical constituency (“GC”) lists of candidates who obtained financial assistance in the past LegCo elections under the respective categories in paragraph 2(a), (b) or (c) above. The arrangement for calculating the amount of subsidy payable set out in paragraph 2 above has been implemented starting from the 2012 LegCo general election¹. In the 2012 LegCo GC election, all candidate lists which were eligible for financial assistance received subsidy based on the calculation in paragraph 2(a) above (i.e., multiplying the subsidy rate by the total number of valid votes cast for the candidate list).

¹ When the financial assistance scheme was first introduced in 2004, financial assistance payable to candidates or candidate lists was calculated by multiplying the number of valid votes obtained by candidates or candidate lists by the subsidy rate, subject to not exceeding 50% of the declared election expenses of the candidates or candidate lists.

4. Besides, a Member requested the Government to provide information on the subsidy received by GC candidate lists as a percentage of their declared election expenses in the 2012 LegCo general election. The relevant information is set out at **Annex**.

Constitutional and Mainland Affairs Bureau
November 2015

Annex

2012 Legislative Council General Election
Subsidy received by geographical constituency lists of candidates
as a percentage of their declared election expenses

Subsidy received by lists of candidates as a percentage of their declared election expenses	Number of lists of candidates eligible for financial assistance	Percentage of total number of lists of candidates eligible for financial assistance
<=10%	0	0%
>10% but <=20%	8	17.39%
>20% but <=30%	10	21.74%
>30% but <=40%	11	23.91%
>40% but <=50%	12	26.09%
>50% but <=60%	4	8.70%
>60% but <=70%	1	2.17%
>70% but <=80%	0	0%
>80% but <=90%	0	0%
>90% but <=100%	0	0%

**Relevant documents on Legislative Council Ordinance
(Amendment of Schedule 5) Order 2015 and
Maximum Amount of Election Expenses (Legislative Council Election)
(Amendment) Regulation 2015**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	19.10.2015 (Item III)	Agenda

Council Business Division 2
Legislative Council Secretariat
4 December 2015