

**LEGISLATIVE COUNCIL BRIEF**

Legislative Council Ordinance  
(Chapter 542)  
and  
Elections (Corrupt and Illegal Conduct) Ordinance  
(Chapter 554)

**LEGISLATIVE COUNCIL ORDINANCE  
(AMENDMENT OF SCHEDULE 5) ORDER 2015  
AND  
MAXIMUM AMOUNT OF ELECTION EXPENSES (LEGISLATIVE  
COUNCIL ELECTION) (AMENDMENT) REGULATION 2015**

**INTRODUCTION**

At the meeting of the Executive Council on 10 November 2015, the Council **ADVISED** and the Chief Executive **ORDERED** that–

- A
- (a) the Legislative Council Ordinance (Amendment of Schedule 5) Order 2015 (“the Order”), at **Annex A**, should be made in accordance with section 83A of the Legislative Council Ordinance (Cap. 542) (“LCO”) to increase the subsidy rate of the financial assistance for candidates of Legislative Council (“LegCo”) election; and
- (b) the Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2015 (“the Regulation”), at **Annex B**, should be made under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) to increase the election expenses limits (“EELs”) for LegCo election.

B

2. After the above pieces of subsidiary legislation have come into effect, starting from the 2016 LegCo general election, both the subsidy rate of the financial assistance for candidates and the EELs for LegCo election will be adjusted on the basis of the estimated cumulative inflation rate from

2013 to 2016<sup>1</sup>. In other words, the subsidy rate will be increased from \$12 to \$14 per vote, while the EELs will be increased to the following amounts—

<u>Geographical constituencies (“GCs”)</u>	<u>EELs</u>
(a) Hong Kong Island	\$2,428,000
(b) Kowloon East	\$1,821,000
(c) Kowloon West	\$1,821,000
(d) New Territories East	\$3,035,000
(e) New Territories West	\$3,035,000
<u>Functional constituencies (“FCs”)</u>	<u>EELs</u>
(f) Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$121,000
(g) Traditional FCs other than those in (f) above	
(i) Traditional FCs with not more than 5 000 registered electors	\$194,000
(ii) Traditional FCs with 5 001 to 10 000 registered electors	\$388,000
(iii) Traditional FCs with over 10 000 registered electors	\$583,000
(h) District Council (second) FC	\$6,936,000

## **JUSTIFICATIONS**

### **Financial Assistance Scheme**

3. Financial assistance for election candidates was first introduced in 2004 to 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.

4. 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.

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<sup>1</sup> This means the estimated cumulative rate of change in the Composite Consumer Price Index between 2012 and 2016.

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 EEL applicable to the constituency concerned; and
- (c) the declared election expenses of the candidate or candidate list.

5. For the 2012 LegCo general election, the Registration and Electoral Office (“REO”) received 77 applications for financial assistance from 24 candidates and 53 candidate lists. The total amount of subsidy granted was around \$38.6 million<sup>2</sup>.

6. When the financial assistance scheme was introduced in 2004 to LegCo elections, the subsidy rate was set at \$10 per vote<sup>3</sup>. The subsidy rate was increased to \$11 per vote starting from the 2008 LegCo general election, and was further increased to \$12 per vote starting from the 2012 LegCo general election. On each occasion, the increase was made after taking into account the cumulative Composite Consumer Price Index (“CCPI”) movement of the relevant period.

7. For the current review, we propose that the subsidy rate be adjusted on the basis of the estimated cumulative inflation rate from 2013 to 2016. According to the latest estimate, the estimated cumulative rate of increase in the CCPI between 2012 and 2016 is 15.6%<sup>4</sup>. If the subsidy rate is raised

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<sup>2</sup> In the 2012 LegCo election, the actual amount of subsidy received by GC candidate lists ranged from about \$203,000 to \$866,000; the actual amount of subsidy received by District Council (second) FC candidate lists ranged from about \$2,397,000 to \$3,000,000; and the actual amount of subsidy received by traditional FC candidates ranged from about \$5,000 to \$252,000.

<sup>3</sup> The subsidy rate was set at \$10 per vote in 2004, which was 50% of the average election expense amount that a candidate list could spend on each vote received in the 2000 LegCo GC elections (derived by dividing the average EELs of the five GCs by the number of votes cast for the most popular candidate lists in that election).

<sup>4</sup> According to the CCPI, the actual annual inflation rates of 2013 and 2014 were 4.3% and 4.4% respectively. According to the latest forecast released on 14 August 2015, the headline inflation rate for 2015 as a whole is expected to be 3.1%. According to the Medium Range Forecast in the 2015-16 Budget, the underlying trend inflation rate from 2016 to 2019 is 3% per annum. The cumulative increase in CCPI over the relevant period, according to the latest estimate available, is therefore expected to be 15.6%.

based on this estimate, it would increase from \$12 to \$13.87 per vote, or \$14 per vote (rounded up to the nearest dollar).

8. We consulted the LegCo Panel on Constitutional Affairs on 19 October 2015 regarding the above proposal. Some Members expressed that quite a number of GC candidate lists in the 2012 LegCo general election did not obtain sufficient votes that would enable them to receive financial assistance to cover at least 50% of their election expenses, and hence suggested that the subsidy rate should be adjusted upwards. Besides, some Members suggested that the existing requirement of capping the financial assistance payable to candidates / candidate lists at 50% of the EEL should be removed.

9. In response, we clarified at the Panel meeting 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 subsidised. 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. The Government made further arrangements to the financial assistance scheme starting from the 2012 LegCo general election (please refer to paragraph 4 above for the scheme after revision), so as to provide more room for candidates / candidate lists to obtain financial assistance, and that the financial assistance obtainable may exceed 50% of the declared election expenses. In response to some Members' statement that prevailing circumstances could render it difficult for a candidate list to obtain sufficient votes (e.g., keener competition in certain GCs), we explained at the meeting that it would not be appropriate to base fundamental change to the system on speculations of the election outcome in any selected GC.

10. We consider that under the existing financial assistance scheme, a proper balance has been struck between the policy objectives of encouraging more public-spirited candidates to participate in election and ensuring prudent use of public funds. We therefore consider that the current financial assistance system should be maintained, and that it is appropriate to increase the subsidy rate based on our proposal.

## **Election Expenses Limits**

11. Under the ECICO, “election expenses” means expenses incurred or to be incurred, before, during or after the election period, by or on behalf of a candidate or group of candidates for the purpose of promoting the election of the candidate or group, or prejudicing the election of another candidate or group, and includes the value of election donations consisting of goods and services used for that purpose. Under section 45 of the ECICO, the Chief Executive in Council may, by regulation, prescribe the maximum amount of election expenses that can be incurred. At present, the respective maximum amounts of election expenses that can be incurred (i.e., the EELs) for the five GCs are as follows –

	<u>GCs</u>	<u>EELs</u>
(a)	Hong Kong Island	\$2,100,000
(b)	Kowloon East	\$1,575,000
(c)	Kowloon West	\$1,575,000
(d)	New Territories East	\$2,625,000
(e)	New Territories West	\$2,625,000

12. The EELs for the FCs are as follows –

	<u>FCs</u>	<u>EELs</u>
(a)	Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$105,000
(b)	Traditional FCs other than those in (a) above	
	(i) Traditional FCs with not more than 5 000 registered electors	\$168,000
	(ii) Traditional FCs with 5 001 to 10 000 registered electors	\$336,000
	(iii) Traditional FCs with over 10 000 registered electors	\$504,000
(c)	District Council (second) FC	\$6,000,000

13. The setting of the EELs is to allow candidates to compete on a level playing field in an election. The limit does not restrict the way in which a candidate / candidate list runs his/her/their campaign. Candidates are free to spend as much or as little as they like, provided that their election expenses stay within the prescribed limit. Spending of election expenses beyond the prescribed limit is an offence under the ECICO<sup>5</sup>.

14. The EELs are reviewed prior to every LegCo general election. In setting the EELs, our principle has always been that the limits must not be so low as to place unreasonable restriction on the necessary electioneering activities, or so high as to deter less well-off candidates from standing for election. For background information, after the EELs were first set in 1998 under the current electoral system, they have since been adjusted only once (i.e., raised by 5%)<sup>6</sup> for the 2008 LegCo general election onwards.

15. For the current review, we have taken the following into account—

- (a) the declared election expenses of contested candidates in the 2012 LegCo general election<sup>7</sup>—
  - (i) the median amounts of election expenses incurred by the GC candidates, District Council (second) FC candidates and contested traditional FC candidates were about 61%, 73% and 52% of the EELs respectively<sup>8</sup>;

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<sup>5</sup> Section 24 of the ECICO stipulates that a candidate engages in illegal conduct at an election if the aggregate amount of election expenses incurred at or in connection with the election by or on behalf of the candidate exceeds the EEL prescribed by law. As set out in section 22 of ECICO, a person who engages in illegal conduct at an election commits an offence and is, if tried summarily, liable on conviction to a fine at level 5 (currently \$50,000) and to imprisonment for 1 year; or, if tried on indictment, liable on conviction to a fine of \$200,000 and to imprisonment for 3 years.

<sup>6</sup> Factors considered at that time included the rate of increase in the subsidy rate of the financial assistance scheme for candidates of the 2008 LegCo election as well as the change in the population in Hong Kong since 1998, etc.

<sup>7</sup> There were no uncontested GC and District Council (second) FC candidates in the 2012 LegCo general election. For traditional FCs, if we take into account the declared election expenses of the candidates who were returned from uncontested constituencies as well, the median amount of election expenses incurred by the candidates would be about 29% of the EELs; about 92% of the candidates spent less than 80% of the EELs; about 4% of the candidates spent 80-90% of the EELs; and about 4% of the candidates spent more than 90% of the EELs.

<sup>8</sup> In the 2012 LegCo election, the election expenses incurred by the GC candidate lists as a percentage of EELs ranged from 2.3% to 92.9%; the election expenses incurred by the District Council (second) FC candidate lists as a percentage of EEL ranged from 41.7% to 82.3%; and the election expenses incurred by the contested traditional FC candidates as a percentage of EELs ranged from 0.5% to 90.2%.

- (ii) about 88%, 86% and 92% of the GC candidates, District Council (second) FC candidates and contested traditional FC candidates spent less than 80% of the EELs respectively;
  - (iii) about 9%, 14% and 5% of the GC candidates, District Council (second) FC candidates and contested traditional FC candidates spent 80-90% of the EELs respectively; and
  - (iv) about 3%, 0% and 3% of the GC candidates, District Council (second) FC candidates and contested traditional FC candidates spent more than 90% of the EELs respectively;
- (b) the estimated cumulative rate of increase in the CCPI between 2012 and 2016 is 15.6% (see footnote 4 above);
  - (c) the number and boundaries of the GCs have remained the same since 1998;
  - (d) the total population of Hong Kong is estimated to have increased by 3.02% between mid-2012 and mid-2016; and
  - (e) the EELs adopted in 2012 were broadly agreed by different political groups and had worked well.

16. Taking into account the above considerations, we propose that if the subsidy rate of the financial assistance scheme is to be adjusted upwards, it is also reasonable to increase the EELs. Therefore, we propose to adjust the EELs on the basis of the estimated cumulative inflation rate from 2013 to 2016 (i.e., to adjust the EELs upwards by 15.6%), and rounded to the nearest thousand dollars. The proposed EELs for different GCs and FCs are set out in paragraph 2 above.

17. At the LegCo Panel on Constitutional Affairs meeting on 19 October 2015, Members in general had no objection to our proposal. Some Members however suggested reducing the EELs if the financial assistance to be provided to candidates could not be further increased so that less resourced political parties would be less disadvantaged; however this suggestion was opposed by some other Members. In response, we reiterated that in setting the EELs, our principle had always been that the limits must not be so low as to place unreasonable restrictions on the necessary electioneering activities, or so high as to deter less well-off candidates from standing for election. Taking into account the declared election expenses of the contested candidates in the 2012 LegCo general election and Members' responses, we considered it appropriate to adjust the

EELs on the basis of the estimated cumulative inflation rate from 2013 to 2016.

## **THE SUBSIDIARY LEGISLATION**

A 18. To give effect to the proposed increase in the subsidy rate of the financial assistance for candidates of LegCo election, an order will have to be made by the Chief Executive in Council to amend Schedule 5 to the LCO. The Order (at **Annex A**) amends that Schedule to increase the rate from \$12 to \$14 for elections<sup>9</sup> for the sixth term and subsequent terms of office of the LegCo. The subsidy rate for any by-election of the fifth term of office of the LegCo (from 1 October 2012 to 30 September 2016) remains at \$12.

B 19. To give effect to the proposed increase in the EELs for LegCo elections, a regulation will have to be made by the Chief Executive in Council under section 45 of ECICO to amend the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554D). The Regulation (at **Annex B**) would serve this purpose and raise the EELs as detailed in paragraph 2 above for candidates / candidate lists at elections<sup>9</sup> for the sixth term and subsequent terms of office of the LegCo. The existing EELs for any by-election of the fifth term of office of the LegCo shall remain unchanged.

## **LEGISLATIVE TIMETABLE**

20. The legislative timetable will be:

Publication in the Gazette	13 November 2015
Tabling the subsidiary legislation at LegCo for negative vetting	18 November 2015

## **IMPLICATIONS OF THE PROPOSAL**

21. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the relevant Ordinances and existing Regulations. The proposal has no economic, civil service, productivity, environmental, sustainability, family or gender implications.

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<sup>9</sup> Including by-elections.



22. The proposed increase in the subsidy rate and the EELs will likely increase the total amount of financial assistance payable to LegCo election candidates. However, we cannot at this point of time assess the financial implications of the proposals with precision because the financial assistance payable will depend on a number of factors, such as the number of candidates / candidate lists, votes obtained by each candidate / candidate list, declared election expenses of candidates / candidate lists, etc. This notwithstanding, we will ensure that sufficient provisions are included in the draft Estimates of the REO in the relevant financial years.

## **PUBLIC CONSULTATION**

23. We consulted the LegCo Panel on Constitutional Affairs on our proposed increases in the subsidy rate and EELs on 19 October 2015. Comments from the Panel on our proposal and our responses are set out in paragraphs 8 – 10 and 17 above.

## **PUBLICITY**

24. The Government has issued a press release. A spokesperson will be made available to address media enquiries, if any.

## **ENQUIRY**

25. Any enquiry on this brief can be addressed to Miss Helen Chung, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2908.

**Constitutional and Mainland Affairs Bureau**  
**11 November 2015**

**Legislative Council Ordinance (Amendment of Schedule 5) Order 2015**

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

**1. Commencement**

This Order comes into operation on 8 January 2016.

**2. Legislative Council Ordinance amended**

The Legislative Council Ordinance (Cap. 542) is amended as set out in section 3.

**3. Schedule 5 amended (financial assistance: specified rate)**

Schedule 5—

**Repeal**

“of this Ordinance is \$12.”

**Substitute**

“is—

- (a) for an election for the fifth term of office of the Legislative Council—\$12; or
- (b) for an election for any subsequent term of office of the Legislative Council—\$14.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2015

**Explanatory Note**

Schedule 5 to the Legislative Council Ordinance (Cap. 542) specifies the rate of financial assistance paid to lists of candidates and candidates at Legislative Council elections under Part 6A of the Ordinance. The purpose of this Order is to amend that Schedule to increase the rate from \$12 to \$14 for elections for the sixth term of office of the Legislative Council commencing in 2016 and any subsequent term of office. The rate for elections for the fifth term of office of the Legislative Council (i.e. the current term of office) remains at \$12.

Maximum Amount of Election Expenses (Legislative Council Election) (Amendment)  
Regulation 2015

Section 1

1

**Maximum Amount of Election Expenses (Legislative  
Council Election) (Amendment) Regulation 2015**

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

**1. Commencement**

This Regulation comes into operation on 8 January 2016.

**2. Maximum Amount of Election Expenses (Legislative Council  
Election) Regulation amended**

The Maximum Amount of Election Expenses (Legislative Council  
Election) Regulation (Cap. 554 sub. leg. D) is amended as set out in  
sections 3, 4 and 5.

**3. Section 3 amended (maximum amount of election expenses for  
geographical constituency)**

Section 3—

**Repeal**

everything after “(Cap. 542)”

**Substitute**

“is—

- (a) for an election for the fifth term of office of the  
Legislative Council—
- (i) in respect of the Kowloon West geographical  
constituency and the Kowloon East  
geographical constituency—\$1,575,000 for  
each constituency;

Maximum Amount of Election Expenses (Legislative Council Election) (Amendment)  
Regulation 2015

Section 4

2

- (ii) in respect of the Hong Kong Island  
geographical constituency—\$2,100,000;
- (iii) in respect of the New Territories West  
geographical constituency and the New  
Territories East geographical constituency—  
\$2,625,000 for each constituency; or

(b) for an election for any subsequent term of office of  
the Legislative Council—

- (i) in respect of the Kowloon West geographical  
constituency and the Kowloon East  
geographical constituency—\$1,821,000 for  
each constituency;
- (ii) in respect of the Hong Kong Island  
geographical constituency—\$2,428,000;
- (iii) in respect of the New Territories West  
geographical constituency and the New  
Territories East geographical constituency—  
\$3,035,000 for each constituency.”.

**4. Section 3A amended (maximum amount of election expenses  
for District Council (second) functional constituency)**

Section 3A—

**Repeal**

“\$6,000,000.”

**Substitute**

“—

- (a) for an election for the fifth term of office of the  
Legislative Council—\$6,000,000; or

- (b) for an election for any subsequent term of office of the Legislative Council—\$6,936,000.”.

5. **Section 4 amended (maximum amount of election expenses for functional constituency other than District Council (second functional constituency))**

Section 4—

**Repeal**

everything after “a candidate”

**Substitute**

“is—

- (a) for an election for the fifth term of office of the Legislative Council—
- (i) in respect of any functional constituency specified in section 20(1)(a) to (d) of the Legislative Council Ordinance (Cap. 542)—\$105,000;
- (ii) in respect of any functional constituency specified in section 20(1)(e) to (zb) of that Ordinance—
- (A) where there are not more than 5 000 electors registered for that constituency—\$168,000;
- (B) where there are more than 5 000 but not more than 10 000 electors registered for that constituency—\$336,000;
- (C) where there are more than 10 000 electors registered for that constituency—\$504,000; or

- (b) for an election for any subsequent term of office of the Legislative Council—
- (i) in respect of any functional constituency specified in section 20(1)(a) to (d) of the Legislative Council Ordinance (Cap. 542)—\$121,000;
- (ii) in respect of any functional constituency specified in section 20(1)(e) to (zb) of that Ordinance—
- (A) where there are not more than 5 000 electors registered for that constituency—\$194,000;
- (B) where there are more than 5 000 but not more than 10 000 electors registered for that constituency—\$388,000;
- (C) where there are more than 10 000 electors registered for that constituency—\$583,000.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2015

**Explanatory Note**

The purpose of this Regulation is to amend the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554 sub. leg. D) to raise the election expenses limits for lists of candidates and candidates at elections for the sixth term of office of the Legislative Council commencing in 2016 and any subsequent term of office. The limits for lists of candidates and candidates at elections for the fifth term of office of the Legislative Council (i.e. the current term of office) remain unchanged.