

## **LEGISLATIVE COUNCIL BRIEF**

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

### **MAXIMUM AMOUNT OF ELECTION EXPENSES (CHIEF EXECUTIVE ELECTION) (AMENDMENT) REGULATION 2016**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 16 February 2016, the Council ADVISED and the Chief Executive ORDERED that the Maximum Amount of Election Expenses (Chief Executive Election) (Amendment) Regulation 2016 (“the Regulation”), at **Annex A**, should be made under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) to increase the Election Expenses Limit (“EEL”) for the Chief Executive (“CE”) election to \$15.7 million.

#### **JUSTIFICATIONS**

##### **Background**

2. 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 CE in Council may, by regulation, prescribe the maximum amount of election expenses that can be incurred.

3. The setting of 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 runs his/her campaign. Candidates are free to spend as much or as little as they like on each expense item, provided that their election expenses stay within the prescribed limit.

4. The EEL for the CE election was first set at \$9.5 million (at 2000 price level) in 2001, after taking into account the following five categories of expenses –

- (a) setting up an election office (estimated at \$1.2 million);
- (b) hiring campaign staff (estimated at \$2.3 million);
- (c) hiring professional services (estimated at \$1.5 million);
- (d) conducting policy research (estimated at \$1.5 million); and
- (e) publicity and promotion (estimated at \$3 million).

5. Taking into account the inflation from 2000 to 2012 and the impact of expanding the Election Committee from 800 to 1 200 members, in 2011 the Government proposed increasing the EEL for the CE election to \$13 million, which was subsequently adopted for the 2012 CE election.

### Proposals

6. For the current review, we have considered the following factors –

- (a) the change in price level between 2012 and 2017; and
- (b) the actual election expenses incurred by candidates in the 2012 CE election, as summarised below –

	<b>Total election expenses of candidate (% of EEL)</b>
<b>Candidate A</b>	\$11.20 million (86%)
<b>Candidate B</b>	\$10.97 million (84%)
<b>Candidate C</b>	\$1.29 million (10%)

As seen from the above, the majority of candidates spent a relatively higher percentage of the EEL (around 85%). If the EEL for the 2017 CE election is not increased to reflect the change in price level between 2012 and 2017, there will be a reduction in the real purchasing power of the election expenses of the candidates and hence a *de facto* reduction of the EEL.

7. We consulted the Legislative Council (“LegCo”) Panel on Constitutional Affairs (“CA Panel”) on 18 January 2016 on the proposed adjustment to the EEL for the CE election. We proposed that we should revise the EEL by applying the latest rental figures and price level forecast based on the categories of expenses in paragraph 4 above. We also remarked that, with more recent figures available, we would calculate the EEL according to the latest changes in rental and price level forecast when we introduce the amending subsidiary legislation.

8. Accordingly, we now recommend increasing the EEL to \$15.7 million, taking into account the following factors –

- (a) **election office** – to adopt the average rental for Grade A office in Central, Sheung Wan, Wan Chai and Causeway Bay as at November 2015, and assume a period of five months, arriving at an estimated rental of \$2.24 million; and
- (b) **campaign staff; professional services; policy research; publicity and promotion** – to apply a 19% price movement adjustment to the respective 2012 estimated amounts, arriving at an estimated total of \$13.41 million.

B The detailed calculations are set out at **Annex B**.

## **THE SUBSIDIARY LEGISLATION**

9. To implement the proposed increase in the EEL for the CE election, a regulation needs to be made by the CE in Council under section 45 of the ECICO to amend the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554, sub. leg. A). The amendment Regulation (at Annex A) would give effect to the adjustments as detailed in paragraph 8 above for candidate(s) at CE election(s) of which the date of the poll is on or after 26 March 2017<sup>Note</sup>. The EEL for candidate(s) at CE election(s) of which the date of the poll is before that date shall remain unchanged.

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<sup>Note</sup> According to section 10 of the Chief Executive Election Ordinance (Cap. 569), the date of the poll at a CE election shall, “where the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise-

- (a) is a Sunday, be that Sunday; or
- (b) is not a Sunday, be the Sunday immediately preceding the commencement of that period.”

By virtue of that section, the date of the poll at the election for the next term (i.e., the fifth term) of the CE office, will be on 26 March 2017.

C 10. The existing provisions being amended are at Annex C.

**LEGISLATIVE TIMETABLE**

11. The legislative timetable will be –
- |                                                                  |                  |
|------------------------------------------------------------------|------------------|
| Publication in the Gazette                                       | 19 February 2016 |
| Tabling the subsidiary legislation at LegCo for negative vetting | 24 February 2016 |

**IMPLICATIONS OF THE PROPOSAL**

12. 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 Ordinance and existing Regulation. The proposal has no financial, economic, civil service, productivity, environmental, sustainability, family or gender implications.

**PUBLIC CONSULTATION**

13. We consulted the CA Panel on our legislative proposals on 18 January 2016. Most Members did not raise objection to revising the EEL for the CE election by taking into account the latest changes in rental and price level forecast.

**PUBLICITY**

14. The Government will issue a press release on 17 February 2016. A spokesperson will be made available to address media enquiries, if any.

**ENQUIRY**

15. Any enquiry on this brief can be addressed to Mr Ryan Chiu, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2852.

**Constitutional and Mainland Affairs Bureau  
February 2016**

Maximum Amount of Election Expenses (Chief Executive Election) (Amendment)  
Regulation 2016

Section 1

1

**Maximum Amount of Election Expenses (Chief Executive Election) (Amendment) Regulation 2016**

(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 15 April 2016.

**2. Maximum Amount of Election Expenses (Chief Executive Election) Regulation amended**

The Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554 sub. leg. A) is amended as set out in section 3.

**3. Section 2 amended (maximum amount of election expenses)**

Section 2—

**Repeal**

“\$13,000,000.”

**Substitute**

“—

- (a) if the date of the poll at the election is before 26 March 2017—\$13,000,000; or
- (b) if the date of the poll at the election is on or after 26 March 2017—\$15,700,000.”.

Maximum Amount of Election Expenses (Chief Executive Election) (Amendment)  
Regulation 2016

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Clerk to the Executive Council

COUNCIL CHAMBER

2016

Maximum Amount of Election Expenses (Chief Executive Election) (Amendment)  
Regulation 2016

Explanatory Note  
Paragraph 1

3

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**Explanatory Note**

The purpose of this Regulation is to amend the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554 sub. leg. A) to raise the election expenses limit from \$13,000,000 to \$15,700,000 for candidates at the Chief Executive elections to be held on or after 26 March 2017.

**Estimation of the Election Expenses Limit for the Chief Executive Election by Expense Items**

<b>Expenses</b>	<b>Estimation in the 2011 exercise for the CE election in 2012</b>	<b>Latest estimation for the CE election in 2017</b>	<b>Remarks</b>
1. Setting up of Election office	<p>Assuming that a Grade A office of 400m<sup>2</sup> in Central / Sheung Wan / Wan Chai / Causeway Bay is rented for a period of five months, details are as follows –</p> <p>Average rental for Grade A office in Central as at Dec 2010: \$776 / m<sup>2</sup></p> <p>Average rental for Grade A office in Sheung Wan as at Dec 2010: \$692 / m<sup>2</sup></p> <p>Average rental for Grade A office in Wan Chai / Causeway Bay as at Dec 2010: \$557 / m<sup>2</sup></p> <p>Recommended average rental level: <math>(776 + 692 + 557) / 3 = \\$675 / m^2</math></p> <p>Estimated space required: 400 m<sup>2</sup></p> <p>Estimated rental for five months: \$1.35 million</p>	<p>Assuming that a Grade A office of 400m<sup>2</sup> in Central / Sheung Wan / Wan Chai / Causeway Bay is rented for a period of five months, details are as follows –</p> <p>Average rental for Grade A office in Central as at November 2015: \$1,087 / m<sup>2</sup></p> <p>Average rental for Grade A office in Sheung Wan as at November 2015: \$591 / m<sup>2</sup></p> <p>Average rental for Grade A office in Wan Chai / Causeway Bay as at November 2015: \$725 / m<sup>2</sup></p> <p>Recommended average rental level: <math>(1,087 + 591 + 725) / 3 = \\$801 / m^2</math></p> <p>Estimated space required: 400 m<sup>2</sup></p> <p>Estimated rental for five months: \$1.602 million</p>	Average rental figures provided by Rating and Valuation Department

Expenses	Estimation in the 2011 exercise for the CE election in 2012	Latest estimation for the CE election in 2017	Remarks
	<p>Overhead expenses (e.g., management fee and charges for water and electricity) (estimated to be 20% of the rental): \$270,000</p> <p>One-off expenses for setting up and winding down the election office (e.g., decoration)(estimated to be 20% of rental): \$270,000</p> <p>Total: <b>\$1.89 million</b></p>	<p>Overhead expenses (e.g., management fee and charges for water and electricity) (estimated to be 20% of the rental): \$320,400</p> <p>One-off expenses for setting up and winding down the election office (e.g., decoration)(estimated to be 20% of rental): \$320,400</p> <p>Total: \$2,242,800 (say <b>\$2.24 million</b>)</p>	
2. Campaign staff	As the EC was expanded from 800 to 1200 and taking into account the need for conducting publicity at the district level, one more senior staff and four more supporting staff to form a team of 20 members are needed, i.e., 1 campaign manager, 5 senior staff, 14 supporting staff. Details are as follows –	As the size of EC and electoral method for the CE election will not change in 2017, the same staff requirement as in 2012 is assumed.	According to the Composite Consumer Price Index (CCPI), the actual annual inflation rates for 2013 and 2014 were 4.3% and 4.4% respectively. According to the forecast released on 13 November 2015, the headline inflation rate for 2015 as a whole is expected to be 3.0%. According to the Medium Range Forecast in the



Expenses	Estimation in the 2011 exercise for the CE election in 2012	Latest estimation for the CE election in 2017	Remarks
	<p>Salary for the campaign manager (1) : \$78,960* / month</p> <p>Salary for each senior staff (5 in total) : \$56,400* / month</p> <p>Salary for each supporting staff (14 in total) : \$9,024* / month</p> <p>Salary expenses for five months : \$2,436,480</p> <p>Contract gratuity and fringe benefits (estimated to be 30% of salary) : \$730,944</p> <p>(* Adjusted in the 2011 review exercise from the original estimate, taking into account the cumulative rate of change in CCPI in 2012 over 2000: +12.8%)</p> <p>Total (including salary for five months, gratuity and fringe benefits): \$3,167,424 (say <b>\$3.17 million</b>)</p>	<p>(Cumulative rate of change in CCPI in 2017 over 2012: +19.0%)</p> <p>Total (including salary for five months, gratuity and fringe benefits): \$3,167,424 x 1.19 = \$3,769,235 (say <b>\$3.77 million</b>)</p>	<p>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 around 19.0%</p>
<p>3. Professional services</p>	<p>Including engaging PR consultancy, seeking legal opinion, etc.</p>	<p>As the electoral method for the CE election in 2017 would be the same as the CE election in 2012, the same requirement for</p>	

Expenses	Estimation in the 2011 exercise for the CE election in 2012	Latest estimation for the CE election in 2017	Remarks
	Total: \$1,861,200 (say <b>\$1.86 million</b> )	professional services is assumed.  (Cumulative rate of change in CCPI in 2017 over 2012: +19.0%)  Total: \$1,861,200 x 1.19 = \$2,214,828 (say <b>\$2.215 million</b> )	
4. Policy research	Including conducting opinion surveys, holding focus group discussions to analyse Government policies and election platform from the perspective of districts, as well as to deploy canvassing resources on publicity at district level.  Total: \$1,861,200 (say <b>\$1.86 million</b> )	As the electoral method for the CE election in 2017 would be the same as the CE election in 2012, the same requirement for policy research is assumed.  (Cumulative rate of change in CCPI in 2017 over 2012: +19.0%)  Total: \$1,861,200 x 1.19 = \$2,214,828 (say <b>\$2.215 million</b> )	
5. Publicity and promotion	Production and distribution of publicity materials, including posters, banners, hand bills, etc. (including production, printing, and postage cost); production and placing of election advertisements (e.g., through newspaper); conducting	Including publicity items such as production and distribution of posters, handbills, banners, placing of election advertisements, website design and maintenance, etc.; as well as conducting election meetings and electioneering functions.	

<b>Expenses</b>	<b>Estimation in the 2011 exercise for the CE election in 2012</b>	<b>Latest estimation for the CE election in 2017</b>	<b>Remarks</b>
	territory-wide election meetings (e.g., electioneering functions or launching ceremony of the election campaign); and to conduct district-level election meetings (e.g., bus parades, forums).  Total: <b>\$4.38 million</b>	(Cumulative rate of change in CCPI in 2017 over 2012: +19.0%)  Total: \$4,380,000 x 1.19 = \$5,212,200 (say <b>\$5.21 million</b> )	
Total:	\$13.16 million	\$15.65 million	
<b>EEL Recommended:</b>	<b>\$13 million</b>	<b>\$15.7 million</b>	

**Annex C**

Chapter:	554A	MAXIMUM AMOUNT OF ELECTION EXPENSES (CHIEF EXECUTIVE ELECTION) REGULATION	Gazette Number	Version Date
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Section:	2	Maximum amount of election expenses	18 of 2011	25/09/2011
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The maximum amount of election expenses that can be incurred by or on behalf of a candidate at an election held under section 6 of the Chief Executive Election Ordinance (Cap 569) is \$13000000.

(18 of 2011 s. 42)