

## INFORMATION NOTE

### Supplementary Information on Public Subsidies for Parliamentary Election Expenses in Canada, Germany and Australia

#### 1. Background

1.1 At its meeting on 20 January 2003, the Panel on Constitutional Affairs requested the Research and Library Services Division to provide supplementary information regarding limits on election expenses and allocation of broadcasting time to candidates and political parties.

#### 2. Canada

##### Limits on election expenses

2.1 In response to the concern over the financing of political parties and election campaigns, Canada imposes limits to control election expenses of both parties and candidates, with the aim of maintaining a degree of financial equivalency among different political parties and candidates. It is hoped that such equivalency in election spending will render greater public confidence in the political and electoral process.

2.2 Sections 406 and 407 (1) to (3) of the *Canada Elections Act* (the *Act*) define an election expense as any cost incurred, or non-monetary contribution received by a registered party or a candidate, for the purpose of directly promoting or opposing a registered party, its leader or a candidate during an election period.

2.3 An election expense includes the cost incurred for, or a non-monetary contribution in relation to:

- (a) the production of advertising or promotional material and its distribution, broadcast or publication in any media or by any other means;
- (b) the payment of remuneration and expenses to or on behalf of a person of his/her services as an official agent, registered agent or in any other capacity;
- (c) securing a meeting space or the supply of light refreshments at meetings; and
- (d) any product or service provided by a government, a Crown corporation or any other public agency.

Determination of limits on election expenses

2.4 Most of the candidates in an election belong to political parties in Canada. Recognizing political parties as an integral part of the political process, Canada has developed different criteria for determining limits on election expenses for political parties and candidates.

2.5 The maximum limit allowed for election expenses of a registered party for an election is the product of:

- (a) CAN\$0.62 (HK\$3.10) multiplied by the number of names on the preliminary lists of electors for electoral districts in which the registered party has endorsed a candidate or by the number of names on the revised lists of electors for those electoral districts, whichever is greater; and
- (b) the inflation adjustment factor published by the Chief Electoral Officer<sup>1</sup> (CEO), that is, in effect on the date of the issue of the writs for the election.

2.6 The limit of a candidate's election expenses in an electoral district is determined by either one of the following factors whichever is higher:

- (a) the amount calculated on the basis of the preliminary lists of electors for the electoral district; or
- (b) the amount calculated on the basis of the revised lists of electors for the electoral district.

2.7 The amount specified in (a) and (b) of paragraph 2.6 is calculated as follows:

- (a) CAN\$2.07 (HK\$10.35) for each of the first 15 000 electors;
- (b) CAN\$1.04 (HK\$5.20) for each of the next 10 000 electors; and
- (c) CAN\$0.52 (HK\$2.60) for each of the remaining electors.

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<sup>1</sup> The Chief Electoral Officer is appointed by resolution of the House of Commons. He/She is responsible for exercising direction and supervision over the conduct of elections, ensuring that all election officers act with fairness and in compliance with the *Canada Elections Act*.

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### Adjustment of limits on election expenses

2.8 For political parties, readjustment of limits of election expenses is made by CEO before 1 April of each year. The readjustment will be in the form of an inflation adjustment factor published in the *Canada Gazette*. Such readjustment is valid for one year beginning from the date it is published.

2.9 For candidates, CEO is responsible for calculating the maximum amount for each electoral district on the basis of the lists of electors on the Register of Electors<sup>2</sup> on 15 October of each year.

2.10 Candidates running in electoral districts where there are fewer electors than the national average will be provided with a higher election expenses limit. For instance, if the number of electors per sq km of the electoral district is less than 10, a candidate's limit on election expenses will be increased by CAN\$0.31 (HK\$1.55) per sq km or 25% of the amount calculated in paragraph 2.6, whichever is less.

2.11 The *Compendium of Election Administration in Canada* states that the total cost for the election of Canada in 2000 (the most recent general election) was estimated to be CAN\$200 million (HK\$1 billion) or CAN\$9.45 (HK\$47.25) per elector.

### Limits on donations

2.12 Donations are monetary or non-monetary contributions given to political parties or candidates during an election campaign. In Canada, donations to political parties or candidates are uncapped, but all donations over CAN\$100 (HK\$500) must be reported to the relevant election authority.

### Allocation of broadcasting time to candidates and political parties

2.13 During an election campaign, party election broadcasting is restricted with respect to its date and place of origin. The *Act* prohibits election advertising<sup>3</sup> after midnight on the day before election. It is also an offence for any person to use broadcasting media outside Canada for electioneering.

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<sup>2</sup> The Register of Electors refers to a register of Canadians who are qualified as electors. The register contains personal information of electors, such as name, sex, date of birth and address.

<sup>3</sup> Election advertising means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated.

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2.14 It is a prime concern in Canada to ensure prime broadcasting time<sup>4</sup> not to be monopolized by certain political parties and communication of ideas not to be totally dependent on financial resources during elections. The *Act* provides criteria for allocating both paid and free broadcasting time to political parties during an election.

2.15 Although individual candidates are not eligible to take part in free broadcasting time allocation, as indicated in the *Broadcasting Guidelines*<sup>5</sup> issued by the Broadcasting Arbitrator<sup>6</sup> (BA), they may purchase broadcasting time for electioneering and are not subject to the time limit described in paragraph 2.17.

2.16 The allocation of both paid and free broadcasting time has focused primarily on political parties since historically, only political parties have had the finances to buy broadcasting time for electioneering. In addition, individual candidates do not have national reach as they only run in particular ridings. As a result, the national public broadcaster only provides free time to political parties instead of individual candidates.

2.17 In Canada, there is no legal limitation on the amount of prime broadcasting time that a registered political party may purchase, other than the general limits on election expenses imposed by the *Act*. Each broadcaster has the obligation to make available, for the purchase by registered political parties, 390 minutes of prime broadcasting time beginning on the issue of the writs for a general election and ending at midnight on the day before polling day at that election. The BA is responsible for allocating the time among political parties, and resolving any disputes arisen. The *Act* also provides that the allocation of this time among political parties is to be made by agreement among them, or failing such agreement, by the decision of the BA.

2.18 Statutory factors set out in Section 338 of the *Act* form the basis for calculating the allocation of paid broadcasting time. The calculation of this statutory approach is as follows:

- (a) equal weight is given to the percentage of seats in the House of Commons and the percentage of popular votes garnered at the previous election by each of the registered political parties;
- (b) half the weight given to the two factors referred to in (a) is given to the number of candidates endorsed by each of the registered parties as a proportion of all candidates so endorsed; and
- (c) the resulting ratio is then applied to the total of 390 minutes and the results for each political party are rounded to the nearest half-minute.

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<sup>4</sup> Prime broadcasting time for radio broadcast is defined as the time intervals from 6am to 9am, noon to 2pm and 4pm to 7pm; while that for television is from 6pm to midnight.

<sup>5</sup> The *Broadcasting Guidelines* are guidelines concerning the allocation of broadcasting time to political parties during elections.

<sup>6</sup> The Broadcasting Arbitrator is an official appointed by the Chief Electoral Officer.

2.19 Under the approach as described in paragraph 2.18, for instance, if a political party gets 25% of seats in the House of Commons, 15% of popular votes and 30% of seats contested, the formula for the allocation of paid broadcasting time will be  $(100 \times 0.25 + 100 \times 0.15 + 50 \times 0.3)/250 \times 390$  minutes = 85.8 minutes.

2.20 The BA has varied the application of the above approach in his allocation decisions since 1992 for the benefits of smaller and newly emerging political parties. Based on this so-called "One-third Modified Approach", two-thirds of the 390 minutes is allocated by the statutory approach, while the remaining one-third is allocated equally to all parties eligible to participate in the allocation.

2.21 According to the BA, only certain radio and television networks are obliged to provide free time. The provision of free time based on the *Broadcasting Guidelines* published in 2000 is:

- (a) 214 minutes for CBC-TV English;
- (b) 214 minutes for SRC-TV French;
- (c) 214 minutes for CTV;
- (d) 120 minutes for CBC Radio One;
- (e) 120 minutes for SRC Première chaîne;
- (f) 62 minutes for Radio-Média;
- (g) 62 minutes for TVA; and
- (h) 62 minutes for TQS.

2.22 A network operator is to make available of free broadcasting time, which is no less than the amount of time made available by it at the last general election. Two minutes of free broadcasting time are allocated to every political party, which indicates in writing to the BA of its intention to participate into paid broadcasting time allocation. The amount of time is deducted from the pool of free time made available by each network operator.

2.23 The remainder is allocated to all political parties, which have been allocated paid broadcasting time. The calculation is in the proportion that the allocated paid broadcasting time bears to the total paid broadcasting time made available for allocation.

### **3. Germany**

#### Limits on election expenses

3.1 Germany does not impose any limits on election expenses. Enquiries requesting information on the rationale of the absence of limits on election expenses have been sent to the Federal Returning Officer of Germany. We have not received any reply as of the publication date of this note.

#### Limits on donations

3.2 Information on limits on donations in Germany is unavailable.

#### Allocation of broadcasting time to candidates and political parties

3.3 According to the German Embassy of Washington DC, political parties in Germany cannot purchase radio or television time on public broadcasters to advertise their positions or candidates, although they may buy advertisements on private broadcasters. However, political parties are provided with free radio and television time on public broadcasters during campaigns. Bound by the constitutional principle of neutrality, public broadcasters are required to allocate free time to all political parties in proportion to their electoral strength and provide opportunities for rebuttals. Information is not available regarding the arrangement for independent candidates.

### **4. Australia**

#### Limits on election expenses

4.1 The *Commonwealth Electoral Act 1918* specified a scheme for the limitation of electoral expenses by candidates in a Federal election, which had been in effect up to 1980. Limits on the amount of election expenditure were traditionally placed on candidates instead of political parties. The *Act* provided that a candidate for the House of Representatives could spend no more than AUS\$500 (HK\$2,250) and a candidate for the Senate could spend no more than AUS\$1,000 (HK\$4,500) in respect of any candidature. The primary aims of expenditure limits were to:

- (a) create a level of financial equality among candidates in an election;
- (b) reduce the level of election finance needed and therefore contain overall election costs; and
- (c) reduce the reliance on donations and the concomitant problem of the use of donations to influence candidates' or parties' policies.

4.2 It was acknowledged in Parliament that no successful campaign could be managed through observance of the unrealistically low limits on election expenses. Instead of practising a rigid implementation of the limits, a parliamentary convention was developed to sanction non-compliance with the statutory declarations. However, there were fears that this convention could lead to challenges to election results once the successful candidates' election expenditure was contested. Consequently, the provisions of Part XVI of the *Commonwealth Electoral Act 1918* dealing with the limitation of electoral expenses were repealed through the passing of the *Commonwealth Electoral Amendment Bill 1980*.

### Background for removal of limits on election expenses

4.3 The growth of the modern political party system in the 1970s meant that political parties had much more abundant financial resources to support their electoral expenditure than individual candidates. There was a consensus that candidates should be provided with resources so that they could be free to campaign in whatever way they see fit, subject to laws relating to bribery and corruption. In addition, it was difficult to determine a realistic limit on election expenses and its enforcement was also problematic. In order to maintain a realistic limit, it was necessary to have constant revisions to cope with inflation, changing electioneering practices and the innovative abuse of loopholes.

4.4 Although Australia abandoned the practice of setting limits on election expenses in 1980, candidates are required to disclose their election expenses to the relevant electoral authority during the disclosure period<sup>7</sup>. While political parties are not subject to disclosure of election expenses, it is necessary for them to provide information about expenditure (which includes election expenditure) in an annual return. Under Federal legislation, returns are required to be filed within 15 weeks after the polling day.

### Limits on donations

4.5 Donations (or gifts as they are generally referred to in the legislation of Australia) are usually made in the form of money. Gifts are broadly defined to capture most forms of benefits that can be conferred on a candidate or political party for the purpose of promoting election success.

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<sup>7</sup> The period for disclosure differs among jurisdictions, for example, in New South Wales the disclosure period for candidates contesting in the general election, commences on the day following the polling day of the election and ends on the 30<sup>th</sup> day.

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4.6 There are no limits on the amount of money that can be donated to any election participant and foreign donations are not banned in Australia. Candidates are obliged to make full disclosure of money and gifts received within the disclosure period. Under Federal legislation, it is the onus of political parties to lodge annual returns disclosing their donations received by 30 October of each year. Donations of AUS\$200 (HK\$900) or more to a candidate at an election or AUS\$1,500 (HK\$6,750) or more to a political party in a financial year must be disclosed separately.

4.7 According to the Australian Election Commission<sup>8</sup> (AEC), the expenditure on the 2001 federal election was AUS\$67 million (HK\$303 million), excluding AUS\$39 million (HK\$174 million) for public funding. The cost per elector was AUS\$5.32 (HK\$23.94) when goods and services tax were included while public funding was excluded, or AUS\$8.37 (HK\$37.67) when both public funding and goods and services tax were included.

4.8 As at 17 June 2002, there were no major prosecutions against the offence provisions of the *Act*, although there were a few investigations in progress.

#### Allocation of broadcasting time to candidates and political parties

4.9 According to AEC, there is no legislation governing the allocation of broadcasting time to political parties or candidates in Australian elections. Nevertheless, the *Broadcasting Services Act 1992* states that if a broadcaster<sup>9</sup> broadcasts election matter<sup>10</sup> during an election period, the broadcaster is required to give reasonable opportunities for the broadcasting of election matters to all candidates and political parties in elections. Nonetheless, there is no requirement that such broadcast is free of charge. The Australian Broadcasting Authority<sup>11</sup> is obliged to monitor the operation of the *Act*, but generally acts only on receipt of a complaint.

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<sup>8</sup> The Australian Electoral Commission is a statutory authority established in 1984, conducting federal elections and referendums and maintaining the Commonwealth Electoral Roll.

<sup>9</sup> A broadcaster refers to a commercial television broadcasting licensee, a commercial radio broadcasting licensee, a community broadcasting licensee, a subscription television broadcasting licensee, or a person providing broadcasting services under a class licence.

<sup>10</sup> An election matter refers to a matter commenting on or soliciting votes for a candidate or a political party at an election.

<sup>11</sup> The Australian Broadcasting Authority is an independent statutory authority responsible through the Minister for Communications, Information Technology and the Arts to the Parliament.



4.10 For more than 30 years, political parties have been provided with free air time segments on the public broadcasting channel allocated in a roughly proportional way based on their share of votes in the previous parliamentary election. Meanwhile, there are no limits on the total amount, frequency, length and content of paid political advertising in private and commercial networks. In any event, no election matter is permitted to be broadcast during the "Blackout Period", which commences at midnight on the Wednesday night prior to the election day (a Saturday) until the close of polling on the election day.

4.11 For individual candidates, they have the freedom to purchase air time for their electioneering but will not be allocated free time as enjoyed by political parties.

4.12 According to AEC, broadcasting advertisements for political parties or candidates at no charge or at a rate below what would have applied on purely commercial grounds is considered to be a political donation.

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## Appendix

Comparison of Various Attributes of Selected Issues<sup>12</sup>

	Australia	Canada	Germany	Hong Kong
<b>Limits on Election Expenses</b>				
Existence of limits on election expenses	• No.	• Yes.	• No.	• Yes.
Rationale for the existence or absence of limits on election expenses	<ul style="list-style-type: none"> <li>• Political parties had much more abundant financial resources to support their electoral expenditure than individual candidates;</li> <li>• Candidates should be free to campaign in whatever way they see fit;</li> <li>• Realistic limit is difficult to determine and so is its enforcement; and</li> <li>• Constant revisions of such limit are necessary to cope with inflation, changing electioneering practices and innovative abuse of loopholes.</li> </ul>	<ul style="list-style-type: none"> <li>• In response to a growing concern over the financing of political parties and election campaigns;</li> <li>• To maintain a degree of financial equivalency among different political parties and candidates; and</li> <li>• To boost public confidence in the political and electoral process.</li> </ul>	• Not available.	<ul style="list-style-type: none"> <li>• To control the extent of election campaigns; and</li> <li>• To prevent candidates with ample financial resources from having an unfair advantage<sup>13</sup>.</li> </ul>

<sup>12</sup> Items related to the subsidy scheme in Hong Kong are proposed by the Constitutional Affairs Bureau.

<sup>13</sup> *Guidelines on Election-related Activities in Respect of the 2000 Legislative Council Elections.*

## Appendix (cont'd)

## Comparison of Various Attributes of Selected Issues

	Australia	Canada	Germany	Hong Kong
Determination of limits on election expenses	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>Number of names on the preliminary lists of electors for electoral districts or number of names on the revised lists of electors for electoral districts, whichever is greater.</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>Geographical size of the given geographical constituencies;</li> <li>Increase in population; and</li> <li>Experience in previous elections<sup>14</sup>.</li> </ul>
Availability of adjustment mechanism for limits on election expenses	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>
Limits on Donations	<ul style="list-style-type: none"> <li>No.</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>	<ul style="list-style-type: none"> <li>No information.</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>
<b>Allocation of Broadcasting Time to Candidates and Political Parties</b>				
Availability of broadcasting time allocation	<ul style="list-style-type: none"> <li>Yes.</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>	<ul style="list-style-type: none"> <li>No, but the "Equal Time Principle"<sup>15</sup> requires that all political parties or candidates should be invited and given equal time to take part in a current affairs or any other programmes.</li> </ul>

<sup>14</sup> Information provided by the Constitutional Affairs Bureau.

<sup>15</sup> The Electoral Affairs Commission set out the "Equal Time Principle" in the *Guidelines on Election-Related Activities in Respect of the 2000 Legislative Council Elections*. Although the principle was not governed by statutory regulation, broadcasters followed the principle in inviting political parties and candidates to take part in their programmes during the LegCo elections.

## Appendix (cont'd)

## Comparison of Various Attributes of Selected Issues

	Australia	Canada	Germany	Hong Kong
Regulation governing the allocation	<ul style="list-style-type: none"> <li>No.</li> </ul>	<ul style="list-style-type: none"> <li>The <i>Broadcasting Guidelines</i>.</li> </ul>	<ul style="list-style-type: none"> <li>No information.</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>
Governing authority	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>The Broadcasting Arbitrator.</li> </ul>	<ul style="list-style-type: none"> <li>No information.</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>
Access to broadcasting time by political parties	<ul style="list-style-type: none"> <li>No restriction in paid time purchase; and</li> <li>Eligible for free time allocation.</li> </ul>	<ul style="list-style-type: none"> <li>No restriction in paid time purchase; and</li> <li>Eligible for free time allocation.</li> </ul>	<ul style="list-style-type: none"> <li>Prohibition of paid time purchase on public television and radio;</li> <li>No restriction in paid time purchase on private television and radio; and</li> <li>Eligible for free time allocation.</li> </ul>	<ul style="list-style-type: none"> <li>Political advertisements on television and radio are prohibited; and</li> <li>Political parties may take part freely in current affairs and other programmes on television and radio, which are not election advertisements.</li> </ul>

## Appendix (cont'd)

## Comparison of Various Attributes of Selected Issues

	Australia	Canada	Germany	Hong Kong
Mechanism for allocating paid broadcasting time to political parties	<ul style="list-style-type: none"> <li>No mechanism. There are no limits on paid political advertising except during the "Blackout Period".</li> </ul>	<ul style="list-style-type: none"> <li>Equal weight is given to the percentage of seats in the House of Commons and the percentage of popular votes garnered by political parties;</li> <li>Half weight is given to the number of candidates endorsed by political parties as a proportion of all candidates; and</li> <li>The resulting ratio is then applied to the total of 390 minutes and the results for each political party are rounded to the nearest half-minute.</li> </ul>	<ul style="list-style-type: none"> <li>No information.</li> </ul>	<ul style="list-style-type: none"> <li>Political advertisements on television and radio are prohibited.</li> </ul>

## Appendix (cont'd)

## Comparison of Various Attributes of Selected Issues

	Australia	Canada	Germany	Hong Kong
Mechanism for allocating free broadcasting time to political parties	<ul style="list-style-type: none"> <li>Roughly proportional to the share of votes of political parties at the last parliamentary election.</li> </ul>	<ul style="list-style-type: none"> <li>Two minutes are allocated to every political party and the amount of time is deducted from the pool of free time made available by each network operator;</li> <li>The remainder is allocated to all political parties, which have been allocated paid time; and</li> <li>The calculation is in the proportion that the allocated paid time bears to the total paid time made available for allocation.</li> </ul>	<ul style="list-style-type: none"> <li>Public broadcasters are required to allocate free time to all political parties in proportion to their electoral strength and provide opportunities for rebuttals.</li> </ul>	<ul style="list-style-type: none"> <li>No allocation formula except the "Equal Time Principle"; and</li> <li>Political parties may take part freely in current affairs and other programmes on television and radio, which are not election advertisements.</li> </ul>
Access to broadcasting time by individual candidates	<ul style="list-style-type: none"> <li>No restriction in broadcasting time purchase but not eligible for free time allocation.</li> </ul>	<ul style="list-style-type: none"> <li>No restriction in broadcasting time purchase but not eligible for free time allocation.</li> </ul>	<ul style="list-style-type: none"> <li>No information.</li> </ul>	<ul style="list-style-type: none"> <li>No allocation formula except the "Equal Time Principle"; and</li> <li>Candidates may take part freely in current affairs and other programmes on television and radio, which are not election advertisements.</li> </ul>

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