

**Legislative Council Panel on Constitutional Affairs**

**Follow up on issues raised at the Panel meeting on 23 April 2014**

At the meeting of the Panel on Constitutional Affairs held on 23 April 2014, the Administration provided statistics related to the de minimus arrangements (“DMA”) introduced in 2011 under the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) (Cap. 554). This paper sets out the Administration’s response to Members’ request at the meeting for breakdown figures.

2. In the process of preparing the breakdown figures, the Registration and Electoral Office (“REO”) and the Independent Commission Against Corruption (“ICAC”) have reviewed the cases processed and granted relief under the DMA as well as those requiring follow up by ICAC, and updated the statistics set out in LC Paper No. CB(2)1361/13-14(01) as follows to reflect the latest actual situation<sup>1</sup> –

	<b>2011 District Council Election</b>	<b>2011 Election Committee Subsector Election</b>	<b>2012 Legislative Council Election</b>
No. of candidates / lists of candidates whose election returns (“ERs”) were found to contain errors or false statements <sup>2</sup> (A)+(B)	783 candidates	690 candidates	87 candidates / lists of candidates <sup>3</sup>

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<sup>1</sup> The update is mainly to rectify double counting issues in the figures provided previously.

<sup>2</sup> For this document, errors or false statements include (i) failure to include any election expense of the candidate at the election concerned or any election donation received by or on behalf of the candidate in connection with the election, (ii) incorrectness in the amount when such election expense or donation is set out, (iii) failure to submit any document required (e.g. invoices, receipts, declarations, etc.) to accompany with that ER in accordance with section 37(2)(b) of Cap. 554 and (iv) non-compliance with legal requirements in the documents accompanied with the concerned ER.

<sup>3</sup> ERs are submitted on a candidate basis for functional constituencies (except District Council (second) functional constituency), while those for geographical constituencies and District Council (second) functional constituency are submitted on a ‘list of candidates’ basis (including one-person list).

	<b>2011 District Council Election</b>	<b>2011 Election Committee Subsector Election</b>	<b>2012 Legislative Council Election</b>
No. of candidates / lists of candidates whose aggregate error value <sup>4</sup> in the ER had not exceeded the specified de minimus limit, and had been successfully processed and granted relief under DMA (A)	217 candidates <sup>5</sup>	306 candidates <sup>6</sup>	22 candidates / lists of candidates
No. of candidates / lists of candidates whose ERs were found to contain errors or false statements, and were not granted relief under DMA <sup>7</sup> (B)	566 candidates	384 candidates	65 candidates / lists of candidates <sup>8</sup>

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<sup>4</sup> According to section 37A(3) of Cap. 554, the aggregate value of errors or false statements is the sum of the following —

- (a) if the nature of the error or false statement is a failure to set out an election expense or election donation, the amount of the election expense or election donation;
- (b) if the nature of the error or false statement is incorrectness in the amount of an election expense or election donation, the extent, in monetary terms, of the adjustment required to correct the error or false statement.

<sup>5</sup> Including 49 candidates who were followed up by ICAC upon referral from REO and whose aggregate error value in the ER was subsequently found to be not exceeding the specified de minimus limit, and therefore had been successfully processed and granted relief under DMA afterwards.

<sup>6</sup> Including 4 candidates who were followed up by ICAC upon referral from REO and whose aggregate error value in the ER was subsequently found to be not exceeding the specified de minimus limit, and therefore had been successfully processed and granted relief under DMA afterwards.

<sup>7</sup> The reasons for not being granted relief include (i) the aggregate error value exceeded the specified de minimus limit, hence the candidate / list of candidates was ineligible for relief under DMA, and (ii) under DMA, the candidate / list of candidates failed to revise all the relevant errors by lodging a copy of ER in accordance with section 37A(4) of Cap. 554.

<sup>8</sup> The 65 candidates / lists of candidates involve a total of 140 candidates whose ERs were found to contain errors or false statements, and were not granted relief under DMA.

3. The aforementioned cases where the ERs were found to contain errors or false statements, and were not granted relief under DMA (i.e., item B in the table above) have been referred to ICAC for follow up. The relevant outcomes of investigation are as follows –

	<b>2011 District Council Election</b>	<b>2011 Election Committee Subsector Election</b>	<b>2012 Legislative Council Election</b>
No. of candidates / lists of candidates whose ERs were found to contain errors or false statements, and were not granted relief under DMA (B) = (B1)+(B2)+(B3)+(B4)+(B5)	566 candidates	384 candidates	140 candidates <sup>9</sup>
No. of candidates who applied for relief and were subsequently granted relief by the court (B1)	5 candidates	11 candidates	10 candidates
No. of candidates prosecuted (B2)	0	0	0
No. of candidates cautioned <sup>10</sup> (B3)	1 candidate	0	0
No. of candidates issued with warning <sup>11</sup> (B4)	304 candidates	272 candidates	113 candidates

<sup>9</sup> For 2012 Legislative Council Election, the 65 candidates / lists of candidates referred to ICAC for follow up involve 140 candidates (see footnote 8). For these referral cases, if they belonged to the same list of candidate, ICAC would investigate the cases of individual candidates who were suspected to have breached ECICO, hence the investigation figures would be listed on a candidate basis instead of 'list of candidate' basis.

<sup>10</sup> Upon legal advice, ICAC has since 1991 implemented a three-tier sanction system against offenders who have breached the provisions of ECICO. The system, which encompasses warning, caution and prosecution, allows a more flexible and pragmatic approach to handle cases of minor nature and technical breaches.

<sup>11</sup> If the alleged contravention of ECICO is technical and minor in nature, counsel in the Department of Justice would normally advise to issue a warning as opposed to

	<b>2011 District Council Election</b>	<b>2011 Election Committee Subsector Election</b>	<b>2012 Legislative Council Election</b>
No. of candidates whose allegations against whom were found to be unsubstantiated after investigation, or the Department of Justice considered the evidence insufficient and hence had not proceeded with prosecution, caution or warning (B5)	256 candidates	101 candidates	17 candidates

4. Members also asked about the number of cases which involved an aggregate value of errors only slightly exceeding the specified de minimis limit. The table below lists out, for the past three elections, the number of candidates / lists of candidates who were not granted relief under DMA (i.e., figure (B) in the table under paragraph 2), but had the specified de minimus limit been raised by 10% back then, would have been eligible for DMA –

	<b>2011 District Council Election</b>	<b>2011 Election Committee Subsector Election</b>	<b>2012 Legislative Council Election</b>
Assuming the specified de minimus limit was raised by <b>10%</b> back then, the additional no. of candidates / lists of candidates who would have been eligible for DMA	8 candidates	0	3 candidates / lists of candidates

**Constitutional and Mainland Affairs Bureau**  
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