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**Panel on Constitutional Affairs**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 16 February 2015**

**Election expenses limit and financial assistance scheme  
for the 2015 District Council election**

**Purpose**

1. This paper provides background information on the election expenses limit ("EEL") and financial assistance scheme for candidates in District Council ("DC") elections, and summarizes the past discussions by Legislative Council ("LegCo") Members on the subjects.

**Background**

EEL for DC elections

2. Under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), the Chief Executive in Council is empowered to prescribe the maximum amount of election expenses which may be incurred by or on behalf of a candidate running for DC elections. EEL is reviewed prior to every DC ordinary election.

3. As stipulated in the Maximum Amount of Election Expenses (District Council Election) Regulation made under section 45 of ECICO, the current election expenses that can be incurred in respect of a candidate at a DC election is \$53,800.

Financial assistance scheme for DC elections

4. Financial assistance for election candidates was first introduced in the 2004 LegCo election. The scheme was extended to DC election candidates from the 2007 DC election onwards. According to the Administration, it was an initiative to encourage more candidates to participate in public elections and to facilitate the development of political talents in Hong Kong.

5. Under the DCs (Amendment) Ordinance 2007 passed by LegCo on 17 January 2007, DC election candidates who are elected or who receive 5% of valid votes or more are eligible for financial assistance. Currently, in respect of a candidate in a contested constituency, the amount payable to a candidate is the lowest of the following -

- (a) the amount obtained by multiplying the total number of valid votes cast for the candidate by the specified rate (now at \$12 per vote);
- (b) 50% of EEL; or
- (c) the declared election expenses of the candidate.

In respect of a candidate in an uncontested constituency, the amount payable is the lowest of the following -

- (a) the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate (now at \$12 per registered elector);
- (b) 50% of EEL; or
- (c) the declared election expenses of the candidate.

## **Past discussions on EEL**

### Setting EEL

6. The Panel on Constitutional Affairs ("the Panel") discussed issues relating to EEL for DC elections at its meetings on 19 April 1999, 20 January 2003, 8 February and 21 June 2007, 21 February and 18 April 2011. The relevant issues were also discussed by the subcommittee formed under the House Committee to study subsidiary legislation relating to DCs election in 1999.

7. In April 1999, the Administration proposed that EEL for the first DC election in 1999 should be set at \$45,000, the same level for the 1994 District Board election. Members supported the proposal.

8. In January 2003, the Administration proposed that EEL for the 2003 DC election should be retained at the level of \$45,000, having considered that the majority of candidates (i.e. 86%) at the 1999 DC election spent within the prescribed limit in their election campaigns. Members did not raise objection to the proposal.

9. The Panel was consulted on the Administration's proposal on EEL for the 2007 DC election in February 2007. The Administration proposed that EEL could be either maintained at the level of \$45,000, or adjusted upwards to \$48,000, taking into account the inflation since 1994 when the limit was last revised. While some Members considered that EEL should remain unchanged as the constituency areas of DCs were small and there was no substantial increase in the costs of conducting electioneering activities since the 2003 DC election, some other Members considered it appropriate to adjust EEL upwards to \$48,000 in line with inflation. The Administration subsequently adjusted the limit upwards to \$48,000, which was adopted for the 2007 DC election.

10. In February 2011, the Administration initially proposed to increase EEL for the 2011 DC election from \$48,000 to \$53,000 (i.e. 11% increase and rounded up to the nearest thousand) taking into account the forecast inflation rate of 11% from 2008 to 2011. Some Members urged the Administration to further adjust EEL upward so as to better reflect the anticipated inflation. The Administration subsequently took into account the forecast inflation rate for 2011, and proposed to increase EEL accordingly by 12% to \$53,800 (rounded up to the nearest hundred). According to the Administration, the proposed increase in EEL had taken into account the spending pattern of candidates in the 2007 DC election, in that most of the candidates (94.4%) had spent not more than 90% of EEL. Details of the election expenses declared by candidates in the 2007 DC election are in **Appendix I**.

11. Some Members expressed reservations about the proposed increase in EEL, saying that it would put the less well-off candidates at a disadvantage. There was, however, another view that setting EEL would hinder democratic development and the existing restrictions on EEL should be relaxed in order to encourage candidates from the business and professional sectors to participate in elections.

12. The Administration advised that the proposed increase in EEL had taken into account the spending pattern of candidates in the 2007 DC election and of those in the six recent DC by-elections, and the forecast cumulative inflation. The Administration considered that EELs in Hong Kong were set at a reasonable rather than a high level so that electioneering activities of resourceful political parties would not overshadow those of the political parties and independent candidates with less financial resources.

#### Basis for calculation of EEL

13. Some Members asked whether the number of electors in DC constituencies and the geographical coverage of DC constituencies had been taken into account in determining EEL.

14. The Administration advised that EEL was not determined on the basis of number of electors. In delineating the constituency boundaries of DC elections, the population distribution in the districts had also been taken into account and the population differences between constituencies were not as pronounced as those of LegCo elections. The determination of the expenses limit for DC election was based on an estimation of the actual expenditure, such as expenses incurred in the printing of introductory leaflets, publicity banners and travelling, incurred by a candidate with reference to the expenditure items declared by candidates in recent DC elections. For expenditure items the quantities of which might vary with the number of electors in a constituency (e.g. handbills), the quantity was worked out on the basis of the most populated constituency. The Administration stressed that EEL sought to set a ceiling to allow candidates to compete on a level-playing field in an election. Candidates were free to spend as much or as little as they wished, provided that their election expenses stayed within the prescribed limit.

15. Some Members considered that the adoption of the same EEL across-the-board would restrict unfairly the electioneering activities of candidates of constituencies with a large population size. The Administration considered it appropriate to apply the same EEL to all DC constituencies because their size was small when compared to the LegCo geographical constituencies, and the population of most DC constituency areas varied within a  $\pm 25\%$  deviation of the population quota of 17 282 for the 2011 DC election.

### **Past discussions on financial assistance scheme**

#### Subsidy rate of the financial assistance

16. When the financial assistance scheme was first extended to DC election candidates in the 2007 DC election, the subsidy rate of the financial assistance payable to each candidate was capped at 50% of the actual election expenses under the Administration's proposal. Some Members were of the view that the subsidy rate could be increased to, e.g. 75% of the actual election expenses for DC elections, in order to encourage more contestants in the elections.

17. The Administration advised that while the purpose of the scheme was to encourage more political talents to participate in elections, the Administration held the view that candidates should shoulder a portion of the election expenses incurred. In respect of the 2003 DC election, more than 80% of the candidates spent less than \$40,000. As a first step to provide financial assistance to DC election candidates, the Administration considered it reasonable to cap the amount of subsidy rate to 50% of the actual election expenses. The subsidy rate was also comparable to that of similar schemes introduced in other places.

18. In February 2011, the Administration consulted the Panel on its proposal to increase the subsidy rate of the financial assistance scheme for candidates of the 2011 DC election from \$10 per vote to \$12 per vote. Separately, under the LegCo (Amendment) Ordinance 2011 which was passed by LegCo on 5 March 2011, the subsidy rate for the LegCo election was revised from the previous arrangement of the lower of \$11 per vote or 50% of the declared election expenses to the new arrangement of the lower of \$12 per vote or 50% of EEL, provided that the subsidy amount did not exceed the amount of the declared election expenses of the lists of candidates or candidates. In April 2011, the Administration proposed that the same revised arrangements should be adopted for the financial assistance for the 2011 DC election.

19. Some Members considered that the Administration should further increase the financial assistance for DC election candidates to encourage more political talents to participate in the election. The Administration advised that the proposed increase in the subsidy rate for DC election was in line with the subsidy rate for the LegCo election. The proposal would provide more room for candidates to obtain financial assistance.

#### Calculation of the amount payable

20. When the Panel discussed the Administration's proposal to extend the financial assistance scheme for LegCo election candidates to those in the 2007 DC election, some Members expressed the view that the amount of election donations received by candidates should not be taken into account for the purpose of calculating the amount of financial assistance payable in order not to discourage candidates from obtaining donations and sponsorship from political parties and other parties.

21. The Administration took on board the views and subsequently excluded election donations from the formula for calculating the amount of financial assistance. Similar changes had also been made to the formula for calculating the amount of financial assistance payable to candidates standing for LegCo elections.

22. In response to Members' enquiry on whether any unspent or unused donations could be used by successful candidates to cover their future expenses in district work, the Administration explained that if a candidate had received \$50,000 donations and had spent up to the prescribed EEL of \$48,000, he was required to give the unspent or unused donation (\$2,000) to charitable institutions. If a candidate had received \$48,000 donations, used it up during election and had successfully claimed \$24,000 under the financial assistance scheme, he was allowed to keep the financial assistance of \$24,000 for use in his future district work.

### Other forms of assistance to candidates

23. At the Panel meetings in February and April 2011, some Members suggested that, as an alternative financial assistance to candidates, the Government should consider buying airtime for use by candidates for electioneering purpose. The Administration considered that the existing financial assistance provided to candidates was adequate. If the Government subsidized candidates in electioneering on the electronic media, it would be difficult to prevent resourceful political parties or individual candidates from arranging more political/election advertisements, putting the less well-off candidates at a greater disadvantage. To ensure elections were conducted in an open, fair and clean manner, the Administration advised at that time that it would not allow election advertisements in the electronic media.

24. There was a suggestion that the Administration should provide an allowance to candidates in the form of a voucher in lieu of free postage to provide financial incentive and more flexibility to candidates in distributing their election-related materials. It was also suggested that the Administration could consider adding the amount of expenses spent in sending promotional letters free of postage to EEL of a candidate, or rebating the same amount of assistance to a candidate who had chosen not to send such letters to each elector in the constituency. The Administration advised that the amount of financial assistance received by a candidate was determined by the number of votes he or she obtained. It would not be feasible to provide financial assistance to candidates in payment in cash in lieu of free postage. The Administration would consider the suggestion on the provision of an allowance to candidates in the form of a voucher for future elections.

### **Latest developments**

25. The Administration has proposed to consult the Panel on its proposals on the subsidy rate of the financial assistance for candidates and EEL for the fifth-term DC election to be held in November 2015 at the next meeting on 16 February 2015.

### **Relevant papers**

26. A list of relevant papers and minutes of meetings which are available on the LegCo website is in **Appendix II**.

## Appendix I

### Election Expenses Declared by Candidates in the 2007 District Council Election

<b>% of Election Expenses Declared out of the Election Expenses Limit</b>	<b>% of Candidates</b>
10% or below [\$4,800 or below]	2.6% (24)
More than 10% - 20% [\$4,801 - \$9,600]	2.1% (19)
More than 20% - 30% [\$9,601 - \$14,400]	4.4% (40)
More than 30% - 40% [\$14,401 - \$19,200]	5.1% (46)
More than 40% - 50% [\$19,201 - \$24,000]	9.7% (88)
More than 50% - 60% [\$24,001 - \$28,800]	15.1% (137)
More than 60% - 70% [\$28,801 - \$33,600]	22.6% (205)
More than 70% - 80% [\$33,601 - \$38,400]	19.2% (175)
More than 80% - 90% [\$38,401 - \$43,200]	13.6% (124)
More than 90% - 100% [\$43,201 - \$48,000]	5.6% (51)
Lowest election expenses declared	\$55
Median	\$31,561
Highest election expenses declared	\$47,881
Total no. of candidates	909

Note: The election expenses limit for the 2007 District Council Election is \$48,000. The figures in brackets are the number of candidates.

## Appendix II

### Relevant documents on election expenses limit and financial assistance scheme for the 2015 District Council Election

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	19.4.1999 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Subcommittee on subsidiary legislation relating to District Councils election	24.5.1999	<a href="#">Agenda</a> <a href="#">Minutes</a>
House Committee	28.5.1999	<a href="#">Report of the Subcommittee on subsidiary legislation relating to District Councils election</a>
CA Panel	20.1.2003 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	8.2.2007 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	21.6.2007 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	21.2.2011 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	18.4.2011 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>