

LEGISLATIVE COUNCIL BRIEF

District Councils Ordinance
(Chapter 547)
and
Elections (Corrupt and Illegal Conduct) Ordinance
(Chapter 554)

DISTRICT COUNCILS ORDINANCE (AMENDMENT OF SCHEDULE 7) ORDER 2015 AND MAXIMUM AMOUNT OF ELECTION EXPENSES (DISTRICT COUNCIL ELECTION) (AMENDMENT) REGULATION 2015

INTRODUCTION

At the meeting of the Executive Council on 24 February 2015, the Council **ADVISED** and the Chief Executive (“CE”) **ORDERED** that –

- A
- (a) the District Councils Ordinance (Amendment of Schedule 7) Order 2015, at **Annex A**, should be made in accordance with section 82 of the District Councils Ordinance (Cap. 547) to increase the subsidy rate of the financial assistance scheme for candidates of District Council (“DC”) election; and
- B
- (b) the Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2015, at **Annex B**, should be made under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to increase the election expenses limit (“EEL”) for DC election.

2. After the above pieces of subsidiary legislation come into effect, starting from the DC ordinary election to be held in late 2015, the subsidy rate of the financial assistance scheme for candidates of DC election would be increased from \$12 per vote to \$14 per vote, while the EEL for DC election would be increased from \$53,800 to \$63,100.

JUSTIFICATIONS

Financial Assistance Scheme

3. Financial assistance for election candidates was first introduced in 2004 to the Legislative Council (“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 talent in Hong Kong. In 2007, the financial assistance scheme was extended to DC elections.

4. Under the current scheme, a candidate who was elected or who received 5% of valid votes or more in a DC election is eligible for financial assistance, which 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 (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; and
- (c) the declared election expenses of the candidate.

5. For the 2011 DC ordinary election, the Registration and Electoral Office (“REO”) received 853 applications for financial assistance from the candidates¹. The total amount of subsidy granted was around \$13.7 million.

6. When the financial assistance scheme was introduced in 2007 for DC elections, the subsidy rate was set at \$10 per vote, same as the rate for the 2004 LegCo election². The subsidy rate was increased to \$12 per vote starting from the 2011 DC ordinary election, after taking into account the estimated cumulative inflation rate between 2008 and 2011³ and the enhanced participation of elected DC members in the CE and the LegCo elections

¹ There were 864 candidates qualified for application but 11 of them did not make an application.

² When the financial assistance scheme was first introduced to LegCo elections in 2004, the subsidy rate was set at \$10 per vote, which was 50% of the average election expense amount that a list of candidates could spend on each vote received in the 2000 LegCo geographical constituency elections (derived by dividing the average EELs of the five geographical constituencies by the number of votes cast for the most popular lists of candidates in that election). The same subsidy rate was adopted for introduction of the financial assistance scheme in 2007 for DC elections, because the LegCo geographical constituency elections and DC elections are both geographical in nature; the aggregate size of the electorate in both elections is the same; and past experience has shown that the nature and methods of electioneering activities conducted by the candidates in these two elections are similar.

³ This means the estimated cumulative rate of change in the Composite Consumer Price Index (“CCPI”) between 2007 and 2011.

pursuant to the amended electoral methods for these elections in 2012.

7. For the current review, we **propose** the subsidy rate be adjusted on the basis of the estimated cumulative inflation rate from 2012 to 2015⁴. The CCPI is expected to increase by 17.3% on a cumulative basis⁵ from 2012 to 2015. Based on this estimate, the subsidy rate would increase from \$12 per vote to \$14 per vote (rounded off to the nearest dollar).

Election Expenses Limit

8. Under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”), “election expenses” means expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate, 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 (“CE in C”) may, by regulation, prescribe the maximum amount of election expenses that can be incurred (i.e., the EEL). At present, the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C) stipulates that a candidate standing for DC election may incur election expenses of no more than \$53,800.

9. The setting of the EEL 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, provided that their election expenses stay within the prescribed limit. Spending of election expenses beyond the prescribed limit is an offence under the ECICO⁶.

10. The EEL is reviewed prior to every DC ordinary election. In setting the EEL, our principle has always been that the limit must not be so low as to place unreasonable restriction on necessary electioneering activities, or so high as to deter less well-off candidates from standing for election. By way of background, the EEL was set at \$45,000 for the 1994 District Board election

⁴ This means the estimated cumulative rate of change in the CCPI between 2011 and 2015.

⁵ According to the CCPI, the actual annual inflation rates of 2012, 2013 and 2014 are 4.1%, 4.3% and 4.4% respectively. According to the forecast in the 2015-16 Budget, the headline inflation rate for 2015 as a whole will be 3.5%. The cumulative increase in CCPI over the relevant period is therefore expected to be 17.3%.

⁶ 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.

and remained at that level until it was raised to \$48,000 starting from the 2007 DC ordinary election, and it was further raised to \$53,800 starting from the DC ordinary election in 2011. These two revisions have taken into account the cumulative CCPI movements of the relevant periods.

11. For the current review, similar to the consideration as the financial assistance scheme, we **propose** that the EEL be adjusted to take account of the estimated cumulative inflation rate from 2012 to 2015. As explained in paragraph 7 above, the cumulative increase in CCPI from 2012 to 2015 is expected to be 17.3%. The EEL adjusted according to this estimate would be increased from \$53,800 to \$63,100 (rounded to the nearest hundred dollars).

12. In considering this proposal, we have also taken into account the declared election expenses of contested candidates in recent elections. For the 2011 DC ordinary election⁷, the election expenses data are as follows –

- (a) the median amount of election expenses incurred by the contested candidates was about \$35,000 (i.e. 65% of the EEL);
- (b) slightly over 80% of the contested candidates spent less than 80% of the EEL (i.e., \$43,040);
- (c) 13% of the contested candidates spent 80-90% of the EEL (i.e., \$43,040 - \$48,420); and
- (d) 6% of the contested candidates spent more than 90% of the EEL (i.e., \$48,420).

13. For the eight DC by-elections⁸ held after the 2011 DC ordinary election, the election expenses data are as follows –

- (a) the median amount of election expenses incurred by candidates was about \$42,000 (i.e. 78% of the EEL);
- (b) 50% of the candidates spent less than 80% of the EEL;

⁷ The figures in paragraph 12 represent the declared election expenses of candidates in the contested constituencies only. 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 \$34,000; 82% of the candidates spent less than 80% of the EEL; 12% of the candidates spent 80-90% of the EEL; and 5% of the candidates spent more than 90% of the EEL (the percentages do not add up to 100% due to rounding).

⁸ All these by-elections were contested.

(c) 27% of the candidates spent 80-90% of the EEL; and

(d) 23% of the candidates spent more than 90% of the EEL.

14. Although the statistics in paragraphs 12 and 13 above indicate that the election expenses were below the prevailing EEL, one needs to bear in mind that candidates are required by law not to spend election expenses beyond the prescribed EEL (see footnote 6 above).

THE SUBSIDIARY LEGISLATION

15. To give effect to the proposed increase in the subsidy rate of the financial assistance scheme for candidates of DC election, an order has to be made by the CE in C to amend Schedule 7 to the District Councils Ordinance (Cap. 547). The District Councils Ordinance (Amendment of Schedule 7) Order 2015 (at **Annex A**) amends that Schedule to increase the rate from \$12 to \$14 for elections⁹ for the fifth term (from 1 January 2016 to 31 December 2019) and subsequent terms of office of the DCs. The subsidy rate for elections⁹ for the fourth term of office of the DCs (from 1 January 2012 to 31 December 2015) remains at \$12.

16. To give effect to the proposed increase in the EEL for DC elections, a regulation has to be made by the CE in C under section 45 of ECICO to amend the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C). The Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2015 (at **Annex B**) would serve this purpose and raise the EEL from \$53,800 to \$63,100 for candidates at elections⁹ for the fifth term (from 1 January 2016 to 31 December 2019) and subsequent terms of office of the DCs. The EEL for candidates at elections⁹ for the fourth term of office of the DCs (from 1 January 2012 to 31 December 2015) remains at \$53,800.

LEGISLATIVE TIMETABLE

17. The legislative timetable will be as follows –

Publication in the Gazette	6 March 2015
Tabling the subsidiary legislation at LegCo for negative vetting	18 March 2015

⁹ Including by-elections.

IMPLICATIONS OF THE PROPOSAL

18. 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. It has no economic, civil service, productivity, environmental, sustainability or family implications.

19. The aforementioned proposed increase in the subsidy rate of financial assistance and the EEL will likely increase the total amount of financial assistance payable to DC 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, votes obtained by each candidate, declared election expenses of candidates, etc. This notwithstanding, we will ensure that sufficient provisions are/would be included in the draft Estimates of the REO in the relevant financial years.

PUBLIC CONSULTATION

20. The LegCo Panel on Constitutional Affairs was consulted on 16 February 2015 and Members raised no objection to the proposals. Some Members requested the Government to review the calculation of the amount of financial assistance payable to each eligible candidate so that the eligible candidates can receive the highest, instead of the lowest, of the three amounts (see paragraph 4 above), to encourage more candidates to take part in the elections. However, as amendments to the calculation method were only passed by LegCo and implemented in 2011, and the method has been able to strike a reasonable balance between encouraging candidates to take part in the elections and ensuring prudent use of public funds, currently we do not plan to alter the arrangements.

PUBLICITY

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

ENQUIRIES

22. For enquiries on this brief, please contact Miss Helen CHUNG, Principal Assistant Secretary for Constitutional and Mainland Affairs (Tel: 2810 2908).

Constitutional and Mainland Affairs Bureau
4 March 2015

District Councils Ordinance (Amendment of Schedule 7) Order 2015

(Made by the Chief Executive in Council under section 82 of the District Councils Ordinance (Cap. 547))

Clerk to the Executive Council

1. Commencement

This Order comes into operation on 8 May 2015.

COUNCIL CHAMBER

2. District Councils Ordinance amended

The District Councils Ordinance (Cap. 547) is amended as set out in section 3.

2015

3. Schedule 7 amended (financial assistance: specified rate)

Schedule 7—

Repeal

“The rate of financial assistance for the purposes of Part VA of this Ordinance is \$12.”

Substitute

“The rate of financial assistance for the purposes of Part VA is—

- (a) for an election of a member for the term of office of a District Council ending on 31 December 2015—\$12; or
- (b) for an election of a member for any subsequent term of office of a District Council—\$14.”.

Explanatory Note

Schedule 7 to the District Councils Ordinance (Cap. 547) specifies the rate of financial assistance paid to candidates at District Council elections under Part VA 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 fifth term (from 1 January 2016 to 31 December 2019) and subsequent terms of office of the District Councils. The rate for elections for the fourth term of office of the District Councils (from 1 January 2012 to 31 December 2015) remains at \$12.

Maximum Amount of Election Expenses (District 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 May 2015.

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

The Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554 sub. leg. C) is amended as set out in section 3.

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

Section 3—

Repeal

“\$53,800.”

Substitute

“—

- (a) for an election of a member for the term of office of a District Council ending on 31 December 2015—\$53,800; or
- (b) for an election of a member for any subsequent term of office of a District Council—\$63,100.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2015

Explanatory Note

The purpose of this Regulation is to amend the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554 sub. leg. C) to raise the election expenses limit from \$53,800 to \$63,100 for candidates at elections for the fifth term (from 1 January 2016 to 31 December 2019) and subsequent terms of office of the District Councils. The limit for candidates at elections for the fourth term of office of the District Councils (from 1 January 2012 to 31 December 2015) remains at \$53,800.