

立法會
Legislative Council

LC Paper No. CB(2)475/15-16

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Paper for the House Committee meeting on 18 December 2015

**Report of the Subcommittee on Legislative Council Ordinance
(Amendment of Schedule 5) Order 2015 and
Maximum Amount of Election Expenses (Legislative Council Election)
(Amendment) Regulation 2015**

Purpose

This paper reports the deliberations of the Subcommittee on Legislative Council Ordinance (Amendment of Schedule 5) Order 2015 and Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2015 ("the Subcommittee").

Background

Financial Assistance Scheme

2. Financial assistance for election candidates was first introduced in 2004 to the Legislative Council ("LegCo") elections, with the aim of encouraging more aspiring candidates to participate in LegCo elections and cultivating an environment to facilitate the development of political talents in Hong Kong.

3. Under the current Financial Assistance Scheme provided in the Legislative Council Ordinance (Cap. 542) ("LCO"), where a candidate (or at least one candidate on a list of candidates ("candidate list")) was elected, or received 5% or more of the valid votes cast in the constituency concerned in a LegCo election, the candidate or candidate list is eligible for financial assistance. The financial assistance payable 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 or candidate list (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 maximum amount of election expenses ("MEEs") applicable to the constituency concerned; and

- (c) the declared election expenses of the candidate or candidate list.

MEEs

4. Under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO), "election expenses" means, in relation to a candidate or group of candidates at an election, expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate or group 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 ECICO, the Chief Executive ("CE") in Council may, by regulation, prescribe the MEEs that can be incurred by or on behalf of a candidate or a group of candidates running for LegCo elections. The existing five geographical constituencies¹ ("GCs") and the respective current MEEs that can be incurred by or on behalf of all the candidates on a candidate list running for an election under the five GCs are set out in paragraph 6 below.

L.N. 225 and L.N. 226

The Legislative Council Ordinance (Amendment of Schedule 5) Order 2015 ("the Order") (L.N. 225)

5. L.N. 225 is made by CE in Council under section 83A of LCO to increase the specified rate of financial assistance in Schedule 5 to LCO from \$12 to \$14 for elections for the sixth term of office of LegCo commencing in 2016 and any subsequent term of office. The rate for elections (including by-elections) for the fifth term of office of LegCo remains at \$12.

The Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2015 ("the Amendment Regulation") (L.N. 226)

6. L.N. 226 is made by CE in Council under section 45 of ECICO to raise the MEEs for a candidate or candidate list at elections for the sixth term of office of LegCo commencing in 2016 and any subsequent term of office ("new MEEs") under the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554D) as follows -

GCs	Current MEEs	New MEEs
Hong Kong Island ("HKI")	\$2,100,000	\$2,428,000
Kowloon East ("KE") and Kowloon West ("KW")	\$1,575,000	\$1,821,000

¹ According to the Declaration of Geographical Constituencies (Legislative Council) Order 2015, the delineation and the names of GCs for the 2016 LegCo General Election would remain unchanged.

New Territories East ("NTE") and New Territories West ("NTW")	\$2,625,000	\$3,035,000
Functional constituencies ("FC")	Current MEEs	New MEEs
Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs ("the four special FCs")	\$105,000	\$121,000
Traditional FCs other than the four special FCs	Current MEEs	New MEEs
Traditional FCs with not more than 5 000 registered electors	\$168,000	\$194,000
Traditional FCs with 5 001 to 10 000 registered electors	\$336,000	\$388,000
Traditional FCs with over 10 000 registered electors	\$504,000	\$583,000
District Council ("DC") (second) FC	\$6,000,000	\$6,936,000

The MEEs for elections (including by-elections) for the current term of office of LegCo remain unchanged.

7. According to paragraph 2 of the LegCo Brief (File Ref: CMAB C1/30/10) issued by the Constitutional and Mainland Affairs Bureau on 11 November 2015, the adjustments in L.N. 225 and L.N. 226 are made on the basis of the estimated cumulative inflation rate between 2013 and 2016² (i.e., to adjust MEEs upwards by 15.6%).

Scrutiny period and commencement of the Order and the Amendment Regulation

8. The Order and the Amendment Regulation were gazetted on 13 November 2015 and tabled at LegCo on 18 November 2015. The scrutiny period was extended from the Council meeting of 16 December 2015 to that of 6 January 2016 by resolution of the Council passed at its meeting of 2 December 2015.

9. The Order and the Amendment Regulation will come into operation on 8 January 2016.

The Subcommittee

10. At the House Committee meeting on 20 November 2015, Members

² This means the estimated cumulative rate of change in the Composite Consumer Price Index ("CCPI") between 2012 and 2016.

agreed to form a subcommittee to study the Order and the Amendment Regulation. The membership list of the Subcommittee is at **Appendix I**.

11. Under the chairmanship of Hon Paul TSE, the Subcommittee held a meeting with the Administration and received views from the public on 7 December 2015. A list of the organizations and individuals which/who have given views to the Subcommittee is at **Appendix II**.

Deliberations of the Subcommittee

MEEs for GCs

12. Some members including Hon Paul TSE, Hon Cyd HO, Hon Alan LEONG and Hon CHAN Yuen-han have queried why the Administration does not propose to adjust MEEs on the basis of the projected population of the five GCs, but on the basis of the estimated cumulative inflation rate from 2013 to 2016. Hon Cyd HO has pointed out that under the Administration's current proposal, the MEEs for KE and KW are the same and so are the MEEs for NTE and NTW. However, there is, in fact, a gap between the projected population of KE and that of KW, and between the projected population of NTE and that of NTW. In particular, the projected population of NTE and NTW differ considerably by about 200 000. She has argued that the expenses on sending election advertisements to electors, which form a substantial part of the election expenses to be incurred by a candidate, are linked to the number of registered electors in the GC concerned. As such, the MEEs for KE and KW should not be the same, and neither should the MEEs for NTE and NTW. She considers that the MEE for each GC should be adjusted on the basis of the projected population (or the number of registered electors) of the GC concerned. She has also highlighted that even for the traditional FCs (other than the four special FCs), the relevant MEEs are also set on the basis of the number of registered electors of the FCs concerned (see table in paragraph 6).

13. Hon Alan LEONG has pointed out that the Administration earlier proposed to add one more LegCo seat to KW (i.e. from five to six seats) and to maintain the number of LegCo seats for KE at five also on the ground of the projected increase in population of KW³. He considers that there is no logic in proposing now to adopt the same level of MEEs for these two GCs without due regard to the difference in their projected population.

14. The Administration has advised that for the current review, the Administration has taken into account a host of factors as set out in paragraph

³ According to the Declaration of Geographical Constituencies (Legislative Council) Order 2015, the number of Members to be returned in HKI is to be changed from seven to six whereas the number of Members to be returned in KW is to be changed from five to six for the 2016 LegCo General Election.

15 of the LegCo Brief (File Ref: CMAB C1/30/10) (see **Appendix III**), which include the declared election expenses of contested candidates in the 2012 LegCo General Election, the projected population of Hong Kong, the number and boundaries of GCs, and the estimated cumulative rate of increase in CCPI. The Administration has explained that taking into account the fact that the MEEs adopted in 2012 were broadly agreed by different political groups and had worked well, it has proposed to use the MEEs adopted in 2012 as the base for the current review exercise, and to adjust them on the basis of the estimated cumulative inflation rate from 2013 to 2016. The Administration has also advised that, whilst the number of seats in HKI and KW will be adjusted having regard to the projected population, when compared with 2012, changes in the projected population of each GC as at mid-2016 are actually not significant. The three tiers of MEEs for the GCs are still roughly in line with the projected population in the GCs in the sense that the projected population and MEE in KW and KE are lower than those in HKI, which in turn are lower than those in NTW and NTE.

15. Hon Paul TSE and Hon Cyd HO have argued that the election expenses of a large majority of the contested candidates in the 2012 LegCo General Election staying well below the prescribed limit did not mean that the MEEs adopted in 2012 were broadly agreed by different political groups. They consider that it was just because candidates were mindful of the stipulation that spending of election expenses beyond MEE was an offence under ECICO. Besides, less resourced political parties could not afford to spend at such a high level that was close to the prescribed limit. Hon Cyd HO considers that members belonging to different political parties in general have strong views on the proposed MEEs.

16. Hon CHAN Yuen-han has requested the Administration to review the basis for calculating the adjustments to MEEs in the light of members' concerns. The Administration has explained that it does not see substantial variations in circumstances since the last review exercise (e.g. large changes in projected population) that warrant fundamental changes to the system of setting MEEs. The Administration has maintained the view that it is appropriate to adjust the MEEs for both GC and FC elections on the basis of the estimated cumulative inflation rate from 2013 to 2016. Besides, the Administration is of the view that there is insufficient time left prior to the 2016 LegCo General Election to conduct a major review of the system. Nevertheless, the Administration has undertaken to consider members' views in its future review of MEEs.

MEEs for FCs

17. Hon Cyd HO has expressed concern that while the four special FCs and the Finance FC consist of an electorate size in the range of 128 to 204, the proposed new MEEs for the four special FCs and the Finance FC are \$121,000

and \$194,000 respectively (see table in paragraph 6), which means that the average election expense amount that a candidate can spend on each elector is, at most, over \$1,300. On the other hand, for some other FCs, such as the Education FC with an electorate size of nearly 100 000, the proposed new MEE is \$583,000. This means that the average election expense amount that a candidate can spend on each elector is only \$5.8. For DC (second) FC, the proposed new MEE is \$6,936,000, which means that the average election expense amount that a candidate can spend on each elector is only about \$2. Hon Cyd HO has queried the justification behind the large discrepancies in the aforementioned amounts.

18. The Administration has explained that in the presence of certain fixed costs (i.e., certain items of election expenses which will be incurred regardless of the number of electors in relevant FCs), the election expenses of FC candidates may not be directly proportional to the electorate size. At the request of the Subcommittee, the Administration has provided a supplementary information paper to explain the basis on which the MEEs for traditional FC election are set [LC Paper No. CB(2)457/15-16(01)].

Subsidy rate

19. Hon Emily LAU has expressed the view that if the subsidy rate under the financial assistance scheme is raised from \$12 to only \$14 per vote as currently proposed by the Administration, the financial assistance payable to candidates/candidate lists (calculated according to paragraph 3(a) above) would not provide much assistance to candidates in subsidizing their election expenses. Hon CHAN Yuen-han has, however, expressed the view that she does not object to the proposed subsidy rate.

Recommendation

20. The Subcommittee and the Administration will not propose any amendment to the Order and the Amendment Regulation.

Advice sought

21. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on Legislative Council Ordinance
(Amendment of Schedule 5) Order 2015 and Maximum Amount of Election
Expenses (Legislative Council Election) (Amendment) Regulation 2015**

Membership list

Chairman Hon Paul TSE Wai-chun, JP

Members Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon CHAN Yuen-han, SBS, JP
Hon IP Kin-yuen

Total : 11 Members

Clerk Ms Joanne MAK

Legal Adviser Miss Evelyn LEE

Date 27 November 2015

《2015年立法會條例(修訂附表5)令》及
《2015年選舉開支最高限額(立法會選舉)(修訂)規例》小組委員會
Subcommittee on Legislative Council Ordinance
(Amendment of Schedule 5) Order 2015 and Maximum Amount of Election
Expenses (Legislative Council Election) (Amendment) Regulation 2015

曾向小組委員會表達意見的團體/個別人士名單

List of organizations/individuals which/who have
submitted views to the Subcommittee

名稱

Name

- | | |
|-----------|-------------------------------------|
| 1. 活力離島 | Dynamic Island |
| 2. 郭仲文先生 | Mr KWOK Chung-man |
| 3. 智經研究中心 | Bauhinia Foundation Research Centre |

LEGISLATIVE COUNCIL BRIEF

Legislative Council Ordinance
(Chapter 542)
and
Elections (Corrupt and Illegal Conduct) Ordinance
(Chapter 554)

(Extract)

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15. For the current review, we have taken the following into account—
- (a) the declared election expenses of contested candidates in the 2012 LegCo general election⁷—
- (i) the median amounts of election expenses incurred by the GC candidates, District Council (second) FC candidates and contested traditional FC candidates were about 61%, 73% and 52% of the EELs respectively⁸;

⁵ 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.

⁶ Factors considered at that time included the rate of increase in the subsidy rate of the financial assistance scheme for candidates of the 2008 LegCo election as well as the change in the population in Hong Kong since 1998, etc.

⁷ There were no uncontested GC and District Council (second) FC candidates in the 2012 LegCo general election. For traditional FCs, 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 29% of the EELs; about 92% of the candidates spent less than 80% of the EELs; about 4% of the candidates spent 80-90% of the EELs; and about 4% of the candidates spent more than 90% of the EELs.

⁸ In the 2012 LegCo election, the election expenses incurred by the GC candidate lists as a percentage of EELs ranged from 2.3% to 92.9%; the election expenses incurred by the District Council (second) FC candidate lists as a percentage of EEL ranged from 41.7% to 82.3%; and the election expenses incurred by the contested traditional FC candidates as a percentage of EELs ranged from 0.5% to 90.2%.

- (ii) about 88%, 86% and 92% of the GC candidates, District Council (second) FC candidates and contested traditional FC candidates spent less than 80% of the EELs respectively;
 - (iii) about 9%, 14% and 5% of the GC candidates, District Council (second) FC candidates and contested traditional FC candidates spent 80-90% of the EELs respectively; and
 - (iv) about 3%, 0% and 3% of the GC candidates, District Council (second) FC candidates and contested traditional FC candidates spent more than 90% of the EELs respectively;
- (b) the estimated cumulative rate of increase in the CCPI between 2012 and 2016 is 15.6% (see footnote 4 above);
 - (c) the number and boundaries of the GCs have remained the same since 1998;
 - (d) the total population of Hong Kong is estimated to have increased by 3.02% between mid-2012 and mid-2016; and
 - (e) the EELs adopted in 2012 were broadly agreed by different political groups and had worked well.

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