

**Legislative Council
Panel on Constitutional Affairs**

Review on the subsidy rate of the financial assistance for candidates and the election expenses limits for the 2016 Legislative Council election

Purpose

This paper seeks Members' views on the following proposals –

- (a) the subsidy rate of the financial assistance scheme for candidates of Legislative Council (“LegCo”) election be adjusted on the basis of the estimated cumulative inflation rate from 2013 to 2016¹ (rounded off to the nearest dollar), i.e., from \$12 to \$14 per vote; and
- (b) the election expenses limits (“EELs”) for both geographical constituency (“GC”) and functional constituency (“FC”) elections also be adjusted on the basis of the estimated cumulative inflation rate from 2013 to 2016¹ (rounded off to the nearest thousand dollars).

The proposed adjustments are meant to apply starting from the 2016 LegCo general election.

Justifications

Financial Assistance Scheme

2. Financial assistance for election candidates was first introduced in 2004 to 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 talents in Hong Kong.

3. Under the current scheme, 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 –

¹ This means the estimated cumulative rate of change in the Composite Consumer Price Index between 2012 and 2016.

- (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 EEL applicable to the constituency concerned; and
- (c) the declared election expenses of the candidate or candidate list.

4. For the 2012 LegCo general election, the Registration and Electoral Office (“REO”) received 77 applications for financial assistance from 24 candidates and 53 candidate lists. The total amount of subsidy granted was around \$38.6 million².

5. When the financial assistance scheme was introduced in 2004 to LegCo elections, the subsidy rate was set at \$10 per vote³. The subsidy rate was increased to \$11 per vote starting from the 2008 LegCo general election, and was further increased to \$12 per vote starting from the 2012 LegCo general election. On each occasion, the increase was made after taking into account the cumulative Composite Consumer Price Index (“CCPI”) movement of the relevant period.

6. For the current review, we propose that the subsidy rate be adjusted on the basis of the estimated cumulative inflation rate from 2013 to 2016⁴. According to the latest estimate, the estimated cumulative rate of increase in the CCPI between 2012 and 2016 is 15.6%⁵. If the subsidy rate is raised based on this estimate, it would increase from \$12 to \$13.87 per vote, or \$14 per vote (rounded up to the nearest dollar).

² In the 2012 LegCo election, the actual amount of subsidy received by GC candidate lists ranged from about \$203,000 to \$866,000; the actual amount of subsidy received by District Council (second) FC candidate lists ranged from about \$2,397,000 to \$3,000,000; and the actual amount of subsidy received by traditional FC candidates ranged from about \$5,000 to \$252,000.

³ The subsidy rate was set at \$10 per vote in 2004, which was 50% of the average election expense amount that a candidate list could spend on each vote received in the 2000 LegCo GC elections (derived by dividing the average EELs of the five GCs by the number of votes cast for the most popular candidate lists in that election).

⁴ This means the estimated cumulative rate of change in the CCPI between 2012 and 2016.

⁵ According to the CCPI, the actual annual inflation rates of 2013 and 2014 were 4.3% and 4.4% respectively. According to the latest forecast released on 14 August 2015, the headline inflation rate for 2015 as a whole is expected to be 3.1%. According to the Medium Range Forecast in the 2015-16 Budget, the underlying trend inflation rate from 2016 to 2019 is 3% per annum. The cumulative increase in CCPI over the relevant period, according to the latest estimate available, is therefore expected to be 15.6%.

Election Expenses Limits

7. 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 a candidate or group of candidates 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 the ECICO, the Chief Executive in Council may, by regulation, prescribe the maximum amount of election expenses that can be incurred. At present, the respective maximum amounts of election expenses that can be incurred (i.e., the EELs) for the five GCs are as follows –

<u>GCs</u>	<u>EELs</u>
(a) Hong Kong Island	\$2,100,000
(b) Kowloon East	\$1,575,000
(c) Kowloon West	\$1,575,000
(d) New Territories East	\$2,625,000
(e) New Territories West	\$2,625,000

8. The EELs for the FCs are as follows –

<u>FCs</u>	<u>EELs</u>
(a) Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$105,000
(b) FCs other than those in (a) above	
(i) FCs with not more than 5 000 registered electors	\$168,000
(ii) FCs with 5 001 to 10 000 registered electors	\$336,000
(iii) FCs with over 10 000 registered electors	\$504,000
(iv) District Council (second) FC	\$6,000,000

9. The setting of the EELs 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/a candidate list runs his/her/their 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 EELs are reviewed prior to every LegCo general election. In setting the EELs, our principle has always been that the limits must not be so low as to place unreasonable restriction on the necessary electioneering activities, or so high as to deter less well-off candidates from standing for election. For background information, after the EELs were first set in 1998 under the current electoral system, they have since been adjusted only once (i.e., raised by 5%)⁷ for the 2008 LegCo general election onwards.

11. For the current review, we have taken the following into account—

(a) the declared election expenses of contested candidates in the 2012 LegCo general election⁸ –

(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 respectively⁹;

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.

⁷ 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.

⁸ 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.

⁹ 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 5 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.

12. Taking into account the above considerations, we propose that if the subsidy rate of the financial assistance scheme is to be adjusted upwards, it is also reasonable to increase the EELs. If the EELs are to be adjusted on the basis of the estimated cumulative inflation rate from 2013 to 2016 (i.e., to adjust the EELs upwards by 15.6%), the revised EELs (rounded to the nearest thousand dollars) will be as follows—

<u>GCs</u>	<u>EELs</u>
(a) Hong Kong Island	\$2,428,000
(b) Kowloon East	\$1,821,000
(c) Kowloon West	\$1,821,000
(d) New Territories East	\$3,035,000
(e) New Territories West	\$3,035,000

<u>FCs</u>	<u>EELs</u>
(f) Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$121,000
(g) FCs other than those in (f) above	
(i) FCs with not more than 5 000 registered electors	\$194,000
(ii) FCs with 5 001 to 10 000 registered electors	\$388,000
(iii) FCs with over 10 000 registered electors	\$583,000
(iv) District Council (second) FC	\$6,936,000

13. On the other hand, as mentioned in paragraphs 10 and 11(a) above, the EELs for the LegCo election were not adjusted for each and every general election after they were first set in 1998. Besides, in the 2012 LegCo general election, the election expenses of most of the candidates were moderately below the EELs at that time. Therefore, we may also consider maintaining the status quo. We would like to listen to the views from Members on this matter.

Financial implications of the proposals

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

Views sought

15. Members are invited to express views on the above proposals on the subsidy rate of financial assistance for candidates and the EELs starting from the 2016 LegCo general election. The Government will take Members' views into consideration and decide whether and how the adjustments should be implemented (subsidiary legislation for adjustments need to be introduced to LegCo for negative vetting).

Constitutional and Mainland Affairs Bureau
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