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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 January 2016**

**Review on the election expenses limits for the 2016 Election Committee
subsector elections and the 2017 Chief Executive election**

Purpose

1. This paper provides background information on the election expenses limits ("EELs") for the 2016 Election Committee ("EC") subsector elections and the 2017 Chief Executive ("CE") election; and gives a brief account of past discussions held by relevant committees of the Legislative Council ("LegCo").

Background

EELs

2. Under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), CE in Council is empowered to make regulations prescribing the maximum amount of election expenses that could be incurred by or on behalf of a candidate or a group of candidates at an election. The Ordinance applies, among others, to the EC subsector elections and the CE election.

3. As stipulated in the Maximum Scale of Election Expenses (Election Committee) Order (Cap. 554I), the current EELs for the respective EC subsector elections are as follows -

Subsector

Hotel, insurance, transport, agriculture and fisheries, Chinese People's Political Consultative Conference, Heung Yee Kuk, Hong Kong and Kowloon District Councils ("DCs") and New Territories DCs subsectors

EELs

\$100,000

Subsector

EELs

Any of the remaining subsectors (other than the religious, National People's Congress and LegCo subsectors, members from these subsectors are not returned by elections)

- with not more than 5 000 registered voters \$160,000
- with 5 001 to 10 000 registered voters \$320,000
- with over 10 000 registered voters \$480,000

4. The above EELs which correspond to the same four-tier EELs for the functional constituency ("FC") elections have been adopted for EC subsector elections since 2000.

5. For the CE election, the current EEL that can be incurred by a candidate is \$13 million as stipulated in the Maximum Amount of Election Expenses (CE Election) Regulation (Cap. 554A).

Past discussions of relevant LegCo committees

EEL for the CE election

6. During the deliberations of the former Bills Committee on CE Election Bill in 2001, some members were of the view that setting an EEL would ensure a level-playing field for all candidates, and that in determining the basis for the limit, consideration should be given to the electorate size of the CE election. Some other members considered that setting such a limit was not absolutely necessary as many democratic countries had not done so.

7. When the Panel on Constitutional Affairs ("the Panel") was briefed at its meeting held on 30 October 2001 on the Administration's proposal for setting EEL for the CE election at \$9.5 million, the Administration advised that Article 45 of and Annex I to the Basic Law ("BL") provided that CE shall be elected by a broadly representative EC, and be appointed by the Central People's Government. BL 43 provided that CE shall be the head of the Hong Kong Special Administration Region ("HKSAR") and shall represent HKSAR. The functions and powers conferred on CE by BL covered a wide range of matters relating to HKSAR, and the policies introduced by CE would affect the well-being of all residents in the territory. As such, the maximum amount of election expenses for the CE election must be sufficient for candidates to publicize their election platform to all residents of HKSAR. The Administration further drew members' attention to the total election expenses limits for the five geographical constituencies ("GCs") of the LegCo elections amounting to \$10 million.

8. While some members agreed that the setting of the limit should take into account the important constitutional role of CE as the Head of the HKSAR Government and the need for candidates to carry out territory-wide election campaigns, some other members were of the view that the proposed EEL of \$9.5 million was too high. These members queried the need for candidates running for the office of CE to publicize their election platform to the public at large as CE was not elected by universal suffrage. They also did not consider it appropriate to draw any reference to EELs for the five GCs because GC elections were direct elections and had a much larger size of electorate.

9. The Administration explained that the purpose of providing for an EEL for the CE election was to allow a candidate to use as much financial resources as the candidate was entitled to use to promote his candidacy, subject to the maximum amount prescribed. A candidate had complete discretion to decide on the amount and the type of election expenses to be spent. From past election experience, candidates who could afford to spend more in elections did not necessarily gain a definite advantage over others.

10. When the former Subcommittee on subsidiary legislation relating to CE election studied the Maximum Amount of Election Expenses (CE Election) Regulation in November 2001, some members queried the basis for setting the EEL at \$9.5 million. They considered that setting an exceedingly high limit could deter people with insufficient means from standing for election and also affect the chance of a candidate getting elected. At that time, as no EEL was imposed on the election of the first-term CE and according to a press report, Mr TUNG Chee-hwa, the then CE-elect, had only spent about \$2.7 million on election expenses for that election, they were of the view that EEL should be set having regard to the election expenses incurred by the three candidates at the election of the first-term CE.

11. Some other members did not consider it appropriate to make reference to the election expenses incurred for the election of the first-term CE given that the election was held at a time when Hong Kong was still under the British rule. They stressed that it was necessary for CE candidates to conduct territory-wide election campaign.

12. In April 2011, the Panel was consulted on the Administration's proposals for increasing EEL for the 2012 CE election from \$9.5 million¹ to \$13 million. According to the Administration, it had considered the following factors in reviewing EEL for the CE election in 2012 -

¹ This EEL was used in the 2002, 2005 (by-election) and 2007 CE elections.

- (a) the inflation² from 2000 to 2012;
- (b) the impact on the mode of canvassing as a result of the expansion of EC and the revised voting system of the CE election; and
- (c) the need for additional expense items in light of the experience in previous CE elections.

13. Some members expressed support for the Administration's proposal for increasing EEL for the CE election from \$9.5 million to \$13 million. They were of the view that EEL had not been revised in the last 10 years and the amount must be sufficient for candidates to publicize their election platform to the public at large. Some other members expressed reservations about the proposal. Given that the CE election had a small size of electorate (1 200 EC members), the election expenses incurred for the last CE-elect was \$8.36 million and the increase in CCPI from 2000 to 2012 was only 12.8%, these members considered that the scale of the proposed increase was too large. They pointed out that a candidate could spend an average of \$10,000 for each member of EC in the 2012 CE election. They expressed concern that based on this calculation, EEL for electing CE in future by universal suffrage would be unreasonably high.

14. The Administration advised that the proposed increase of EEL would provide sufficient resources to enable the CE candidates not only to solicit support from members of EC, but also to publicize and explain their election platform to the public at large and to conduct the necessary canvassing activities both territory-wide and at district level. Estimation of EEL included expenses for setting up an election office, employing campaign staff, hiring professional services, conducting policy research and publicity and promotion. The detailed calculations and estimates as provided by the Administration are set out in **Appendix I**. The Administration further explained that the CE Election (Amendment) Ordinance 2011 had amended the voting system for the CE election to the effect that a candidate shall only be elected if he or she obtained more than 600 valid votes, instead of the previous provision of half of the total number of valid votes cast. Hence, CE candidates would have to enhance their canvassing activities.

15. Some members were of the view that the Administration should not single out financial resources for regulation by setting EEL, otherwise it would

² The composite consumer price index ("CCPI") for 2000 was 107.4. The CCPI for 2012 was estimated to be 121.2, based on the forecast inflation rate of 4.5% for 2011 and the assumed trend inflation rate of 3.5% for 2012 as set out in the 2011-2012 Budget. It was forecast that the CCPI in 2012 would have risen by 12.8% over 2000.

be unfair to those candidates who had the financial resources but inadequate time to carry out electioneering work by themselves. The Administration explained that the purpose of providing for an EEL for the CE election was to allow a candidate to use as much financial resources as the candidate was entitled to use to promote his candidacy. A candidate had complete discretion to decide on the amount of election expenses to be spent. According to the Administration, EEL did not restrict the way in which a candidate ran his/her campaign. Candidates were free to spend as much or as little as they wished on each expense item, provided that their overall election expenses stayed within the prescribed limit.

16. The Electoral Legislation (Miscellaneous Amendments) Bill 2011, which sought to, among others, amend Cap. 554A to adjust EEL for the CE election from \$9.5 million to \$13 million, was passed by LegCo on 6 July 2011.

EEL for the EC subsector elections

17. In April 2011, the Panel was consulted on the Administration's proposal on EELs for the 2011 EC subsector elections. According to the Administration, in reviewing the need for adjusting EELs, the Administration had considered the average election expense per candidate in the 2006 EC subsector elections which was far lower than the relevant EEL of respective subsectors. The relevant figures are set out at **Appendix II**. For example, in the subsector which had the highest average election expense per candidate as a percentage of the relevant EEL (i.e. the Textile and Garment Subsector), the average election expense only amounted to 26.3% of EEL of that subsector. Having considered that there were no substantial changes to the subsector electorates and the average election expense pattern in the 2006 EC subsector elections, the Administration advised that there was no need to adjust the EELs for the 2011 EC subsector elections. The Administration also took into consideration that the expansion of EC from 800 to 1 200 members would increase the chance for candidates to be elected. Members in general expressed no strong view on the Administration's proposal of maintaining the same EELs. No adjustment was made to EELs for the 2011 EC subsector elections.

Latest development

18. The Administration will consult the Panel on its proposals on EELs for the 2016 EC subsector elections and the 2017 CE election at the next meeting on 18 January 2016.

Relevant papers

19. A list of relevant papers available on the LegCo website is in **Appendix III**.

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Detailed Estimation of the Election Expenses Limit for the Chief Executive Election

Expenses	Estimated amount (\$ million as at November 2001) (as a % of the total limit)	Estimation in 2001	Latest estimation
1. Expenses for setting up an election office	1.2 (13%)	<p>Assuming that a Grade A office of 400 m² in Central is rented for a period of five months. Details are as follows -</p> <p>Average rental for Grade A office in Central in 2000 : \$415 / m²</p> <p>Estimated space required : 400 m²</p> <p>Estimated rental for five months : \$830,000</p> <p>Overhead expenses (e.g. management fee and charges for water and electricity)(estimated to be 20% of the rental) : \$166,000</p> <p>One-off expenses for setting up and winding down the election office (e.g. decoration)(estimated to be 20% of rental) : \$166,000</p> <p>Total : \$1,162,000 (say \$1.2 million)</p>	<p>Assuming that a Grade A office of 400 m² in Central / Sheung Wan / Wan Chai / Causeway Bay is rented for a period of five months. Details are as follows -</p> <p>As at December 2010, average rental for Grade A office in Central : \$776 m²</p> <p>As at December 2010, average rental for Grade A office in Sheung Wan : \$692 m²</p> <p>As at December 2010, average rental for Grade A office in Wan Chai/Causeway Bay : \$557 m²</p> <p>Recommended average rental level : $(776 + 692 + 557) / 3 = \\675 m^2</p> <p>Estimated space required : 400 m²</p> <p>Estimated rental for five months : \$1.35 million</p> <p>Overhead expenses (e.g. management fee and charges for water and electricity)(estimated to be 20% of the rental) : \$270,000</p> <p>One-off expenses for setting up and winding down the election office (e.g. decoration)(estimated to be 20% of rental) : \$270,000</p> <p>Total : \$1.89 million</p>

Expenses	Estimated amount (\$ million as at November 2001) (as a % of the total limit)	Estimation in 2001	Latest estimation
2. Campaign staff	2.3 (24%)	<p>Assuming that a total of 15 staff are required. Details are as follows -</p> <p>Salary for the campaign manager (1) : \$70,000 / month</p> <p>Salary for each senior staff (4 in total): \$50,000 / month</p> <p>Salary for each supporting staff (10 in total) : \$8,000 / month</p> <p>Salary expenses for five months : \$1,750,000</p> <p>Contract gratuity and fringe benefits (estimated to be 30% of salary) : \$525,000</p> <p>Total : \$2,275,000 (say \$2.3 million)</p>	<p>Taking into account the expansion of the Election Committee and the need for conducting publicity at the district level, one more senior staff and four more supporting staff are needed. Details are as follows -</p> <p>Salary for the campaign manager (1) : \$70,000 / month</p> <p>Salary for each senior staff (5 in total) : \$50,000 / month</p> <p>Salary for each supporting staff (14 in total) : \$8,000 / month</p> <p>Salary expenses for five months : \$2,160,000</p> <p>Contract gratuity and fringe benefits (estimated to be 30% of salary) : \$648,000</p> <p>Cumulative rate of change in CCPI in 2012 over 2000 : + 12.8%</p> <p>Total : 3,167,424 (say \$3.17 million)</p>

Expenses	Estimated amount (\$ million as at November 2001) (as a % of the total limit)	Estimation in 2001	Latest estimation
3. Professional services	1.5 (16%)	Assuming that \$1.5 million is required for engaging PR consultancy and seeking legal opinion.	To raise the estimate by \$150,000 in addition to the original estimate of \$1.5 million required, in order to enable the CE candidates to hire PR consultancy and to seek legal opinion for the conduct of publicity in all the 18 districts. Cumulative rate of change in CCPI in 2012 over 2000 : + 12.8% Total : \$1,861,200 (say \$1.86 million)
4. Policy research	1.5 (16%)	Including conducting opinion surveys and holding focus group discussions. Details are as follows - Estimated expenses for a single-subject research : \$0.3 million Estimated number of research : 5 Total : \$1.5 million	To raise the estimate by \$150,000 in additional to the original estimate of \$1.5 million required, in order to enable the CE candidates to conduct opinion surveys and hold focus group discussions to analyse Government policies and election platform from the perspective of districts, as well as to deploy canvassing resources on publicity at district level. Cumulative rate of change in CCPI in 2012 over 2000 : + 12.8% Total : \$1,861,200 (say \$1.86 million)

Expenses	Estimated amount (\$ million as at November 2001) (as a % of the total limit)	Estimation in 2001	Latest estimation
5. Publicity and Promotion	3 (31%)	<p>Details are as follows -</p> <p>Sending publicity materials to each household/unit under the Hong Kong Post Circular Service (including postage and printing cost) : \$2.5 million</p> <p>Posters, banners, hand bills etc (including production and printing costs) : \$250,000</p> <p>Election advertisements (e.g. through newspaper) : \$250,000</p> <p>Total : \$3 million</p>	<p>Details are as follows -</p> <p>Incorporating the cumulative rate of change in CCPI in 2012 over 2000 (12.8%) into the original \$2.5 million for sending publicity materials to each household/unit under the Hong Kong Post Circular Service (including postage and printing cost) : \$2.82 million</p> <p>Incorporating the cumulative rate of change in CCPI in 2012 over 2000 (12.8%) into the original \$250,000 for posters, banners, hand bills etc (including production and printing cost) : \$282,000 (say \$280,000)</p> <p>Incorporating the cumulative rate of change in CCPI in 2012 over 2000 (12.8%) into the original \$250,000 for election advertisements (e.g. through newspaper) : \$282,000 (say \$280,000)</p> <p>To conduct territory-wide election meetings (e.g. electioneering functions or launching ceremony of the election campaign) and to conduct district-level election meetings (e.g. bus parades, forums) : \$1 million</p> <p>Total : \$4.38 million</p>
Total		\$9.5 million	13.16 million

**Average Spending per Candidate for Each Subsector in the
2006 Election Committee Subsector Elections**

Subsector		Average Spending	As Percentage of Election Expenses Limit
1	Catering (Uncontested)	\$10,247	3.2%
2	Commercial (First) (Uncontested)	\$1,321	0.8%
3	Commercial (Second) (Uncontested)	\$0	0.0%
4	Employers' Federation of Hong Kong (Uncontested)	\$0	0.0%
5	Finance (Uncontested)	\$818	0.5%
6	Financial Services	\$5,370	3.4%
7	Hong Kong Chinese Enterprises Association (Uncontested)	\$0	0.0%
8	Hotel	\$609	0.6%
9	Import and Export (Uncontested)	\$0	0.0%
10	Industrial (First) (Uncontested)	\$441	0.3%
11	Industrial (Second) (Uncontested)	\$1	0.0%
12	Insurance	\$8,060	8.1%
13	Real Estate and Construction	\$6,390	4.0%
14	Textiles and Garment	\$42,036	26.3%
15	Tourism	\$13,957	8.7%
16	Transport	\$1,443	1.4%
17	Wholesale and Retail	\$26,385	16.5%
18	Accountancy	\$37,977	7.9%
19	Architectural, Surveying and Planning	\$12,952	4.0%
20	Chinese Medicine	\$6,197	3.9%
21	Education	\$29,289	6.1%
22	Engineering	\$20,825	6.5%
23	Health Services	\$5,741	1.2%
24	Higher Education	\$7,121	2.2%
25	Information Technology	\$41,234	12.9%
26	Legal	\$20,411	6.4%
27	Medical	\$14,371	3.0%
28	Agriculture and Fisheries (Uncontested)	\$0	0.0%
29	Labour	\$467	0.3%
30	Social Welfare	\$4,081	0.9%
31	Sports (sub-subsector) (Uncontested)	\$408	0.3%
32	Performing Arts (sub-subsector) (Uncontested)	\$10	0.0%
33	Culture (sub-subsector)	\$5,185	3.2%
34	Publication (sub-subsector) (Uncontested)	\$0	0.0%
35	Chinese People's Political Consultative Conference (Uncontested)	\$6	0.0%
36	Heung Yee Kuk (Uncontested)	\$6	0.0%
37	Hong Kong and Kowloon District Councils	\$3,650	3.7%
38	New Territories District Councils	\$882	0.9%

Appendix III

Relevant papers on review on the election expenses limits for the 2016 Election Committee subsector elections and the 2017 Chief Executive election

Committee	Date of meeting	Paper
Bills Committee on Chief Executive Election Bill	31.5.2001	Minutes
Legislative Council	11.7.2001	Report of the Bills Committee on Chief Executive Election Bill
Panel on Constitutional Affairs ("CA Panel")	30.10.2001 (Item III)	Agenda Minutes
House Committee	30.11.2001	Third report of the Subcommittee on subsidiary legislation relating to Chief Executive election
CA Panel	18.4.2011 (Item III)	Agenda Minutes
Legislative Council	6.7.2011	Report of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011

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