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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 17 December 2018**

**Election expenses limit and financial assistance scheme
for the 2019 District Council Ordinary Election**

Purpose

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

Election expenses limit for District Council 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 \$63,100.

Financial assistance scheme for District Council 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. Part VA of the District Councils Ordinance (Cap. 547) provides for a financial assistance scheme for candidates at a DC election. Under the current scheme, a candidate who is elected, or who has obtained at least 5% of the total number of valid votes, 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 specified rate (now at \$14 per vote) 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 EEL; or
- (c) the declared election expenses of the candidate.

Past discussions on election expenses limit

Setting the election expenses limit

6. 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.

7. 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.

8. The Panel on Constitutional Affairs ("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.

9. 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.

10. 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. 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.

11. In February 2015, the Administration proposed to increase EEL for the 2015 DC election from \$53,800 to \$63,100 taking into account the estimated cumulative inflation rate from 2012 to 2015.¹ Some Members considered that the proposed adjustment was just minimal and queried whether it was still appropriate to adjust EEL by taking into account the estimated Composite Consumer Price Index ("CCPI") movements in the relevant period. These Members pointed out that while publicity (e.g. production of banners) and printing costs mainly accounted for the election expenses, the estimated increases in such costs between 2012 and 2015 would be larger than the cumulative increase in CCPI during the same period. The Administration explained that CCPI was an objective index to use. Nonetheless, any specific suggestions of alternative objective indices from Members would be considered in future reviews. The Administration further advised that EELs in Hong Kong should be 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 the election expenses limit

12. 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.

¹ This means the estimated cumulative rate of change in the Composite Consumer Price Index between 2011 and 2015.

13. 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.

14. 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 only within a $\pm 25\%$ deviation of the population quota of about 17 000.

Past discussions on financial assistance scheme

Subsidy rate of the financial assistance

15. 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.

16. 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.

17. 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.

18. In February 2015, the Administration proposed to increase the subsidy rate of the financial assistance scheme for candidates of the 2015 DC election from \$12 per vote to \$14 per vote. Some Members considered that the proposed increase was merely an adjustment on the basis of inflation, which might not be enough. They opined that the provision of subsidies to candidates should be enhanced and requested the Administration to review the calculation method of the amount of financial assistance payable to each eligible candidate. For example, consideration might be given to allowing the eligible candidates to receive the highest, instead of the lowest, of the three amounts (see paragraph 5(a) to (c) above) so as to increase the subsidies for candidates and encourage more candidates to take part in the elections. These Members considered that the current method for calculating the amount of financial assistance only allowed a candidate to receive an amount of subsidies which was relatively very small when compared with the amount of election expenses actually incurred by the candidate. There was also a suggestion that subsidy could be granted in accordance with the total number of valid votes obtained by the candidate without imposing any other limits.

19. Some other Members considered that the current method for calculating the amount of financial assistance had the effect of capping the financial assistance payable to eligible candidates at an amount not exceeding 50% of the maximum amount of election expenses that could be incurred by or on behalf of the candidate (i.e. 50% of \$63,100 under the current proposal). In these Members' view, a candidate should accept that he/she would have to bear a certain amount of election expenses in taking part in the election.

20. The Administration explained that it was necessary to strike a reasonable balance between encouraging candidates to take part in the elections and ensuring prudent use of public funds. Given that a candidate was only required to obtain at least 5% of the total number of valid votes cast in the constituency concerned in order to be eligible for the financial assistance, under the proposal of granting the highest of the three amounts, a candidate for a

small contested constituency (say, with 3 000 valid votes cast in a DC election) would receive at least \$31,550 (i.e. 50% of \$63,100 under the current proposal) as long as he/she obtained only 150 valid votes (i.e. 5% of 3 000). The Administration pointed out that the proposal might not be conducive to the principle of prudent use of public funds.

21. The Administration stressed that the principle of prudent use of public funds had to be observed. In addition, the system had evolved from no financial assistance at all to extension of financial assistance to DC elections in 2007, and the level had gradually been increased taking into account CCPI movements.

Other forms of assistance to candidates

22. 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.

23. 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

24. The Administration will consult the Panel on its proposals on the subsidy rate of the financial assistance for candidates and EEL for the sixth-term DC

election to be held in November 2019 at the next meeting on 17 December 2018.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant documents on election expenses limit and financial assistance scheme for the 2019 District Council Ordinary Election

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	19.4.1999 (Item III)	Agenda Minutes
House Committee	28.5.1999	Report of the Subcommittee on subsidiary legislation relating to District Councils election
CA Panel	20.1.2003 (Item V)	Agenda Minutes
	8.2.2007 (Item IV)	Agenda Minutes
	21.6.2007 (Item IV)	Agenda Minutes
	21.2.2011 (Item III)	Agenda Minutes
	18.4.2011 (Item III)	Agenda Minutes
	16.2.2015 (Item III)	Agenda Minutes
House Committee	24.4.2015	Report of the Subcommittee on District Councils Ordinance (Amendment of Schedule 7) Order 2015 and Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2015