

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 2019 and Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2019

INTRODUCTION

At the meeting of the Executive Council on 9 April 2019, the Council **ADVISED** and the Acting Chief Executive (“CE”) **ORDERED** that –

- A
- (a) the District Councils Ordinance (Amendment of Schedule 7) Order 2019 (“the Order”), at **Annex A**, 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”) elections from \$14 per vote to \$15 per vote, starting from the 2019 DC Ordinary Election, on the basis of the latest estimated cumulative changes in the Composite Consumer Price Index (“CCPI”) from 2016 to 2019; and
 - (b) the Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2019 (“the Regulation”), at **Annex B**, be made under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to increase the election expenses limit (“EEL”) for DC elections from \$63,100 to \$68,800 starting from the 2019 DC Ordinary Election on the same basis.
- B

JUSTIFICATIONS

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 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.

3. 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 \$14) 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;
- (c) the declared election expenses of the candidate.

4. For the 2015 DC Ordinary Election, the Registration and Electoral Office (“REO”) received 856 eligible claims for financial assistance from the candidates.¹ The total amount of subsidy granted was around \$18.7 million.

¹ There were 874 candidates eligible for the claim and 856 of them submitted their claims for financial assistance by the statutory deadline (whereas 3 of them only submitted their claims after the statutory deadline and 15 of them did not make a claim).

5. When the financial assistance scheme was introduced in 2007 for DC elections, the subsidy rate was set at \$10 per vote, the same as the rate for the 2004 LegCo election.² 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 2011. Subsequently, taking into account the estimated cumulative inflation rate between 2012 and 2015, the subsidy rate was increased to \$14 per vote starting from the 2015 DC Ordinary Election.

6. For the current review, we **propose** the subsidy rate be adjusted on the basis of the estimated cumulative inflation rate from 2016 to 2019. According to the latest estimate, the CCPI is expected to increase by 9.1% on a cumulative basis from 2016 to 2019, and, as a result, the subsidy rate is to be increased from \$14 to \$15 (rounded off to the nearest dollar).³

Election Expenses Limit

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 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 Chief Executive-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

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 According to the CCPI, the actual annual inflation rates of 2016, 2017 and 2018 are 2.4%, 1.5% and 2.4 % respectively. The latest estimate of annual inflation rate of 2019 is 2.5%. The cumulative increase in CCPI between 2016 and 2019 is therefore expected to be 9.1%.

Expenses (District Council Election) Regulation (Cap. 554C) stipulates that a candidate standing for DC election may incur election expenses of no more than \$63,100.

8. 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 ECICO.⁴

9. 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 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 2011 DC Ordinary Election, and to \$63,100 starting from the 2015 DC Ordinary Election. These three revisions have reflected the cumulative inflation rate of the relevant periods.

10. For the current review, we **propose** that the EEL be adjusted to take account of the estimated cumulative inflation rate from 2016 to 2019. As set out in paragraph 6 above, the cumulative increase in CCPI from 2016 to 2019 is expected to be 9.1%, and, as a result, the EEL is to be increased from \$63,100 to \$68,800 (rounded off to the nearest hundred dollars).

11. In considering this proposal, we have also taken into account the declared election expenses of contested candidates in recent elections. For the 2015 DC Ordinary Election, the election expenses data are as follows –

⁴ 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.

- (a) the median amount of election expenses incurred by the contested candidates was about \$40,160 (i.e. about 64% of the EEL);
- (b) about 84% of the contested candidates spent less than 80% of the EEL (i.e., \$50,480);
- (c) about 10% of the contested candidates spent 80-90% of the EEL (i.e., \$50,480 - \$56,790); and
- (d) about 6% of the contested candidates spent more than 90% of the EEL (i.e., \$56,790).

12. The figures in paragraph 11 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 –

- (a) the median amount of election expenses incurred by all candidates was about \$38,830 (i.e., about 62% of the EEL);
- (b) about 85% of the candidates spent less than 80% of the EEL (i.e., \$50,480);
- (c) about 9% of the candidates spent 80-90% of the EEL (i.e., \$50,480 - \$56,790); and
- (d) about 6% of the candidates spent more than 90% of the EEL (i.e., \$56,790).

13. For the two DC by-elections held after the 2015 DC Ordinary Election, the election expenses data are as follows⁵ –

- (a) the median amount of election expenses incurred by the candidates was about \$48,440 (i.e. about 77% of the EEL);
- (b) 62.5% of the candidates spent less than 80% of the EEL;
- (c) 25% of the candidates spent 80-90% of the EEL; and

⁵ All these by-elections were contested.

(d) 12.5% of the candidates spent more than 90% of the EEL.

14. Although the statistics in paragraphs 11 to 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 4 above).

THE SUBSIDIARY LEGISLATION

A 15. To give effect to the proposed increase in the subsidy rate of the financial assistance scheme for candidates of DC elections, 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 2019 (at **Annex A**) amends that Schedule to increase the rate from \$14 to \$15 for elections for the sixth term (from 1 January 2020 to 31 December 2023) and subsequent terms of office of the DCs.⁶ The subsidy rate for elections for the fifth term of office of the DCs (from 1 January 2016 to 31 December 2019) remains at \$14.⁷

B 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 section 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C). The Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2019 (at **Annex B**) amends that section to raise the EEL from \$63,100 to \$68,800 for candidates at elections for the sixth term (from 1 January 2020 to 31 December 2023) and subsequent terms of office of the DCs.⁸ The limit for candidates at elections for the fifth term of office of the DCs (from 1 January 2016 to 31 December 2019) remains at \$63,100.⁹

⁶ Including by-elections.

⁷ Including by-elections.

⁸ Including by-elections.

⁹ Including by-elections.

LEGISLATIVE TIMETABLE

17. The legislative timetable will be as follows –

Publication in the Gazette	3 May 2019
Tabling the subsidiary legislation at LegCo for negative vetting	8 May 2019

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 civil service, economic, productivity, environmental, sustainability, or family implications.

19. Article 7 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women requires that "State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and in particular, shall ensure to women, on equal terms with men, the right: a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies..." In the electoral system of Hong Kong, as safeguarded by the Basic Law, women have equal rights as men to vote and to stand for election in accordance with law. In this context, this proposal does not have gender implications.

20. 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 stage 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, sufficient provisions have been/ will be included in the draft Estimates of the REO in the relevant financial years.

PUBLIC CONSULTATION

21. The LegCo Panel on Constitutional Affairs was consulted at its meeting on 17 December 2018, and supported our proposals in general.

PUBLICITY

22. We issued a press release on 30 April 2019. A spokesperson will be made available for addressing media enquiries, if any.

ENQUIRIES

23. For enquiries on this brief, please contact Ms Cherie YEUNG, Principal Assistant Secretary for Constitutional and Mainland Affairs (Tel: 2810 2908).

Constitutional and Mainland Affairs Bureau
30 April 2019

District Councils Ordinance (Amendment of Schedule 7) Order 2019

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

1. Commencement

This Order comes into operation on 28 June 2019.

2. District Councils Ordinance amended

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

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

(1) Schedule 7, paragraph (a)—

Repeal

“2015”

Substitute

“2019”.

(2) Schedule 7, paragraph (a)—

Repeal

“\$12”

Substitute

“\$14”.

(3) Schedule 7, paragraph (b)—

Repeal

“\$14”

Substitute

“\$15”.

Clerk to the Executive Council

COUNCIL CHAMBER

2019

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 \$14 to \$15 for elections for the sixth term (from 1 January 2020 to 31 December 2023) and subsequent terms of office of the District Councils. The rate for elections for the fifth term of office of the District Councils (from 1 January 2016 to 31 December 2019) remains at \$14.

Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2019

“\$63,100”

Substitute

“\$68,800”.

(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 28 June 2019.

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.

Clerk to the Executive Council

COUNCIL CHAMBER

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

2019

(1) Section 3(a)—

Repeal

“2015”

Substitute

“2019”.

(2) Section 3(a)—

Repeal

“\$53,800”

Substitute

“\$63,100”.

(3) Section 3(b)—

Repeal

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 \$63,100 to \$68,800 for candidates at elections for the sixth term (from 1 January 2020 to 31 December 2023) and subsequent terms of office of the District Councils. The limit for candidates at elections for the fifth term of office of the District Councils (from 1 January 2016 to 31 December 2019) remains at \$63,100.