

**Legislative Council Panel on Constitutional Affairs**

**Review on the subsidy rate of the financial assistance for candidates and the election expenses limits for the 2020 Legislative Council General Election**

**PURPOSE**

This paper seeks Members' views on the following proposal –

- (a) the subsidy rate of the financial assistance scheme for candidates of Legislative Council (“LegCo”) election be adjusted on the basis of the latest estimated cumulative inflation rate from 2017 to 2020<sup>1</sup> (rounded off to the nearest dollar), i.e., from \$14 per vote to \$15 per vote;
  - (b) the election expenses limits (“EELs”) for both geographical constituency (“GC”) and functional constituency (“FC”) elections be also adjusted on the same basis in sub-paragraph (a) above; and
  - (c) lifting the requirement to withhold financial assistance payable until disposal of relevant election petitions (“EPs”).
2. The proposals are meant to apply starting from the seventh-term LegCo general election in 2020.

**JUSTIFICATIONS**

**Financial Assistance Scheme**

3. Financial assistance for election candidates was first introduced in the 2004 LegCo General Election 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.
4. 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

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<sup>1</sup> This means the estimated cumulative rate of change in the Composite Consumer Price Index (“CCPI”) between 2016 and 2020.

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 \$14) 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 (please refer to paragraphs 8 for the existing EELs of each GC and FC); and
- (c) the declared election expenses of the candidate or candidate list.

5. For the 2016 LegCo General Election, the Registration and Electoral Office (“REO”) received 74 eligible claims under the financial assistance scheme from 26 candidates and 48 candidate lists.<sup>2</sup> The total amount of subsidy granted was around \$45.7 million.<sup>3</sup>

6. When the financial assistance scheme was introduced in the 2004 LegCo General Election, the subsidy rate was set at \$10 per vote<sup>4</sup>. Taking into account the cumulative CCPI movement of the relevant period, the subsidy rate had been increased in each of the subsequent LegCo general election as follows -

<u>Election</u>	<u>Subsidy rate/vote</u>
(a) 2008 LegCo General Election	\$11
(b) 2012 LegCo General Election	\$12
(c) 2016 LegCo General Election	\$14

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<sup>2</sup> There were 104 candidates/candidate lists eligible for financial assistance and 75 of them submitted their claims by the statutory deadline. Among the 75 claims, one candidate failed to submit an auditor’s report and was thus not eligible for the claim.

<sup>3</sup> In the 2016 LegCo General Election, the actual amount of subsidy received by GC candidate lists ranged from about \$215,000 to \$1,080,000; the actual amount of subsidy received by District Council (second) FC candidate lists ranged from about \$1,679,000 to \$3,468,000; and the actual amount of subsidy received by traditional FC candidates ranged from about \$11,000 to \$292,000.

<sup>4</sup> 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).

7. For the current review, we **propose** that the subsidy rate should be adjusted on the basis of the estimated cumulative rate of change in the CCPI between 2016 and 2020. According to the latest estimate, the CCPI is expected to increase by 9.6%<sup>5</sup> on a cumulative basis between 2016 and 2020. If the subsidy rate is raised based on this estimate, it would increase from \$14 to \$15 (rounded off to the nearest dollar) per vote. Since the actual inflation rate of 2019 is expected to be released in January 2020, we will take that into account when we finalise our proposal on increasing the subsidy rate.

### **Election Expenses Limits**

8. 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 and the FCs are 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

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<sup>5</sup> According to the CCPI, the actual annual inflation rates of 2017 and 2018 were 1.5% and 2.4% respectively. According to the latest official forecast released on 15 November 2019, the headline inflation rate for 2019 as a whole is expected to be 2.9%; whereas according to the Medium Range Forecast in the 2019-20 Budget, the underlying trend inflation rate from 2020 to 2023 is 2.5% per annum. Therefore, the cumulative increase in CCPI over the relevant period, according to the latest estimate available, is expected to be 9.6%.

<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
(h) District Council (second) FC	\$6,936,000

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 ECICO<sup>6</sup>.

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 then been adjusted twice: i.e., raised by 5% from the 2008 LegCo General Election onwards, and raised by another 15.6% from the 2016 LegCo General Election onwards<sup>7</sup>.

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<sup>6</sup> 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 the ECICO, any 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.

<sup>7</sup> Factors considered at that time included the rate of increase in the subsidy rate of the financial assistance scheme for candidates as well as the change in the population in Hong Kong, etc.

11. For the current review, we have taken the following into account—
- (a) the declared election expenses of contested candidates in the 2016 LegCo General Election<sup>8</sup> –
    - (i) the median amounts of election expenses incurred by GC, contested traditional FC and District Council (second) FC candidates were about 53%, 52% and 59% of the EELs respectively<sup>9</sup>;
    - (ii) about 92% and 84% of GC and contested traditional FC candidates spent less than 80% of the EELs respectively, while all of the District Council (second) FC candidates did the same;
    - (iii) about 8% and 14% of GC and contested traditional FC candidates spent 80-90% of the EELs respectively, and none of the District Council (second) FC candidates spent 80-90% of the EELs; and
    - (iv) none of GC candidates and District Council (second) FC candidates and 2% of contested traditional FC candidates spent more than 90% of the EELs respectively.
  - (b) the estimated cumulative rate of increase in the CCPI between 2016 and 2020 is 9.6% (see footnote 5 above)
  - (c) the number and boundaries of the GCs have remained the same since the first LegCo general election in 1998; and
  - (d) the total population of Hong Kong is estimated to have increased by 3.02% between mid-2016 and mid-2020<sup>10</sup>.

12. Taking into account the above considerations, we **propose** that similar to the increase in subsidy rate of the financial assistance scheme, the EELs should also be adjusted on the basis of the estimated cumulative rate of change in the

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<sup>8</sup> There were no uncontested GC and District Council (second) FC candidates in the 2016 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 39% of the EELs; about 87% of the candidates spent less than 80% of the EELs; about 11% of the candidates spent 80-90% of the EELs; and about 2% of the candidates spent more than 90% of the EELs.

<sup>9</sup> In the 2016 LegCo General Election, the election expenses incurred by the GC candidate, District Council (second) FC candidates, and contested traditional FC candidates as a percentage of EELs ranged from 0.6% to 89%, 7% to 76%, and 9% to 92% respectively.

<sup>10</sup> According to population figures released by the Census and Statistics Department, the total population in Hong Kong as of mid-2016 was 7,336,600, and it is projected to rise to 7,558,100 as of mid-2020.

CCPI between 2016 and 2020, i.e., 9.6%. In this connection, we propose that the revised EELs (rounded to the nearest thousand dollars) should be as follows—

<u>GCS</u>	<u>EELs</u>
(a) Hong Kong Island	\$2,661,000
(b) Kowloon East	\$1,996,000
(c) Kowloon West	\$1,996,000
(d) New Territories East	\$3,326,000
(e) New Territories West	\$3,326,000
<u>FCs</u>	<u>EELs</u>
(f) Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$133,000
(g) FCs other than those in (f) above	
(iv) FCs with not more than 5,000 registered electors	\$213,000
(v) FCs with 5,001 to 10,000 registered electors	\$425,000
(vi) FCs with over 10,000 registered electors	\$639,000
(h) District Council (second) FC	\$7,602,000

13. On the other hand, as mentioned in paragraph 10 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 2016 LegCo General Election, the election expenses of most of the candidates were moderately below the EELs at that time. Therefore, maintaining the status quo is also an option. We would like to seek Members' views on this matter.

### **Lifting the requirement to withhold financial assistance payable until disposal of relevant EPs**

14. Currently, section 60J of the Legislative Council Ordinance (Cap. 542) and section 60I of the District Council Ordinance (Cap. 547) provide that the Chief Electoral Officer is prohibited from releasing the financial assistance to any candidates/list of candidates for a constituency before the deadline for lodging an EP, or the disposal of the EPs lodged (if any) in LegCo and District Council elections. At the meeting of this Panel on 17 December 2018, Members

expressed their views that payment of financial assistance should be made to the candidates concerned as soon as possible after the elections, regardless of the outcome of the EPs. A motion was also passed urging the Government to expeditiously introduce legislative amendments, so that the financial assistance payable to candidates, the payment of which has been delayed, can be paid as early as possible, and if another ruling is made by the court in future, controversies concerning the amount of financial assistance can be dealt with in accordance with the law.

15. As a result of EPs lodged against the results of three GCs in the 2016 LegCo General Election, 27 out of the 74 valid claims for financial assistance (or 36% of all the claims) involving a total of \$17 million were withheld by the REO. Similar situation was also observed in the subsequent 2018 LegCo By-election held in March, and the 2018 LegCo Kowloon West GC By-election held in November.

16. In order to strike balance between the prudent use of public money and the policy intent of the FA scheme, we **propose** to introduce legislative amendments to effect the proposal. Indeed, section 60H(1) of the Legislative Council Ordinance and section 60G(1) of the District Council Ordinance have provided that a recipient of financial assistance must repay any unentitled financial assistance to the Chief Electoral Officer, and such amount may be recovered as a civil debt due to the Government.

## **FINANCIAL IMPLICATIONS**

17. The proposed increase in the subsidy rate of financial assistance 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. We will ensure that sufficient provisions are included in the draft Estimates of the REO in the relevant financial years.

## **VIEWS SOUGHT**

18. 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

seventh-term LegCo general election in 2020. The Government will take into consideration Members' views and decide whether and how the adjustments (to be effected through introducing subsidiary legislation to LegCo for negative vetting) should be implemented.

19. As for our proposal to lift the requirement of releasing the financial assistance after disposal of relevant election petitions, subject to any comments Members may have, we plan to introduce the required legislative amendments in LegCo in early 2020, so that the proposal can be implemented before the 2020 LegCo General Election to be held in the third quarter of 2020.

**Constitutional and Mainland Affairs Bureau**  
**December 2019**