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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 16 December 2019**

**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 provides background information on the election expenses limits ("EELs") and financial assistance scheme for candidates in Legislative Council ("LegCo") elections, and summarizes the past discussions by LegCo Members on the subjects.

Background

Election expenses limits for Legislative Council elections

2. Under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the Chief Executive in Council is empowered to prescribe the maximum amount of election expenses which may be incurred in respect of a candidate or a list of candidates running for LegCo elections.

3. The current EELs for LegCo geographical constituency ("GC") and functional constituency ("FC") as stipulated in the Maximum Amount of Election Expenses (LegCo Election) Regulation (Cap. 554D) are as follows:

<u>GC</u>	<u>EELs</u>
Hong Kong Island	\$2,428,000
Kowloon East	\$1,821,000
Kowloon West	\$1,821,000
New Territories East	\$3,035,000
New Territories West	\$3,035,000

<u>FC</u>	<u>EELs</u>
Heung Yee Kuk (HYK"), agriculture and fisheries, insurance and transport FCs	\$121,000
FCs with not more than 5 000 registered electors	\$194,000
FCs with 5 001 to 10 000 registered electors	\$388,000
FCs with over 10 000 registered electors	\$583,000
District Council ("DC") Second FC	\$6,936,000

Financial assistance scheme for Legislative Council elections

4. Financial assistance for election candidates was first introduced in the 2004 LegCo election. 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. Under the financial assistance scheme for LegCo elections, candidates or lists of candidates who get elected or who have received 5% of valid votes or more and are not disqualified will be eligible for financial assistance. In respect of a candidate or a list of candidates in a contested GC or FC, the amount payable is the lowest of the following:

- (a) the amount obtained by multiplying the total number of valid votes cast for the candidate or list of candidates by the specified rate (now at \$14 per vote);
- (b) 50% of the maximum amount of election expenses that may be incurred by or on behalf of the candidate or list of candidates; or
- (c) the declared election expenses of the candidate or list of candidates.

In respect of a candidate or a list of candidates in an uncontested GC or FC, the amount payable is the lowest of the following:

- (a) the amount obtained by multiplying 50% of the number of registered electors for the constituency by the specified rate (now at \$14 per registered elector);
- (b) 50% of the maximum amount of election expenses that may be incurred by or on behalf of the candidate or list of candidates; or
- (c) the declared election expenses of the candidate or list of candidates.

Past discussions on election expenses limits

Setting election expense limits

6. When the list system of voting was first adopted in the 1998 LegCo election, the Administration proposed that EELs for GCs should be set as below:

<u>GC</u>	<u>EELs</u>
Hong Kong Island	\$2,000,000
Kowloon East	\$1,500,000
Kowloon West	\$1,500,000
New Territories East	\$2,500,000
New Territories West	\$2,500,000

The Administration also proposed to adopt a four-tier structure of EELs which were set by reference to the number of registered electors for FC elections in 1998. The four tiers of EELs for the LegCo FC elections in 1998 are as below:

<u>FC</u>	<u>EELs</u>
HYK, agriculture and fisheries, insurance and transport FCs	\$100,000
FCs with not more than 5 000 registered electors	\$160,000
FCs with 5 001 to 10 000 registered electors	\$320,000
FCs with over 10 000 registered electors	\$480,000

7. In December 1999, the Administration proposed to the Panel on Constitutional Affairs ("the Panel") that taking into account the unchanged geographical size and the slight increase in population, the same EEL for each of the constituencies as in the 1998 GC elections be adopted for the 2000 elections. The Administration also considered that there was no need to adjust EELs for the 2000 LegCo FC elections, and that the same four-tier EELs in 1998 should be used for all FCs, including the new catering and DC FCs.

8. While some members had no strong objection to the Administration's proposal, some other members considered that EELs for GC elections should be reduced having regard to deflation at that time and the fact that candidates of the previous election had spent less than the prescribed limit. The Administration, however, held the view that the limit should not be set at a level that would restrict the way in which a candidate ran his campaign. Given that each GC had over one million population, the Administration considered that the proposed EEL which was equivalent to about \$1.50 per head was reasonable.

9. In December 2003, the Panel was consulted on the Administration's proposals on EELs for the 2004 LegCo General Election. The Administration proposed that the same four-tier EELs used in the 2000 FC elections should continue to apply to the 2004 FC elections. As for the GC elections, the Administration put forward three options, namely, calculating EELs on the basis of \$1.5 per head of the population, taking account of the deflationary effect in calculating the EELs, and maintaining the same EELs.

10. Members had diverse views over the various options. While some members considered that more flexibility should be allowed for candidates to conduct election activities, some other members stressed that candidates should be allowed to compete on a more equitable basis. The Administration subsequently decided that EELs in 2000 should apply to the 2004 LegCo GC elections.

11. The Panel was consulted on the Administration's proposals on EELs for the 2008 LegCo General Election at its meeting on 18 February 2008. The Administration proposed that the four-tier EELs used in the 2004 FC elections should continue to apply in the 2008 LegCo FC elections. As regards the GC elections, one option put forward by the Administration was to adjust the EELs with regard to the population change in each GC. EELs of the New Territories West and New Territories East GCs would be increased by 20% and 15% to \$3,000,000 and \$2,875,000 respectively. The other option was to adopt the same EELs in the 2004 LegCo election for the 2008 LegCo election. While some members supported the option of adjusting upward the EELs, some other members considered that the limits should be adjusted downward so as to ensure a level playing field for candidates who were less resourceful. There was also another view that EELs should remain unchanged.

12. In April 2008, the Administration consulted the Panel again on its proposals on EELs for the 2008 LegCo General Election. Based on the proposal that the subsidy rate for the financial assistance scheme would be increased by 10%, the Administration proposed that EELs should also be increased as the two elements were related. According to the Administration, given that the population had only increased by 6.9% since 1998 when EELs were set, it was proposed that the EELs for GC and FC elections should be increased by 5%. The revised EELs for GC and FC elections in 2008 were as follows:

<u>GC</u>	<u>EELs</u>
Hong Kong Island	\$2,100,000
Kowloon East	\$1,575,000
Kowloon West	\$1,575,000

<u>GC</u>	<u>EELs</u>
New Territories East	\$2,625,000
New Territories West	\$2,625,000

<u>FC</u>	<u>EELs</u>
HYP, agriculture and fisheries, insurance and transport FCs	\$105,000
FCs with not more than 5 000 registered electors	\$168,000
FCs with 5 001 to 10 000 registered electors	\$336,000
FCs with over 10 000 registered electors	\$504,000

13. The Administration consulted the Panel on EEL proposals for the 2012 LegCo election at its meetings on 19 July and 30 October 2010. The Administration advised that following a review of the election expenditure pattern of the lists of candidates standing for the GC election and candidates standing for the FC election in 2008, the Administration considered that there was no pressing need to increase EELs for the 2012 LegCo election. Members in general expressed no strong view on the Administration's proposal of maintaining the same EELs. No adjustment was made to EELs for GC and FC elections in 2012.

14. In October 2015, the Administration consulted the Panel on its proposal to increase EELs for the 2016 LegCo General Election on the basis of the estimated cumulative inflation rate from 2013 to 2016 (as set out in paragraph 3 above).¹ Some members expressed concern that with the proposed increase in EELs, candidates who were financially better-off would be in an advantageous position as they could afford to spend more to canvass more votes. The Administration, however, advised that there were cases where candidates/candidate lists had incurred a substantial amount of election expenses but still had lost in the LegCo election concerned. The Administration considered that there was no unfairness in the design of the scheme as all candidates/candidate lists competing in the same constituency would have to operate under the same EEL applicable to the constituency concerned.

15. During the deliberations of the Subcommittee on LegCo Ordinance (Amendment of Schedule 5) Order 2015 and Maximum Amount of Election Expenses (LegCo Election) (Amendment) Regulation 2015 ("the Subcommittee"),

¹ The estimated cumulative inflation rate from 2013 to 2016 refers to the estimated cumulative rate of change in the Composite Consumer Price Index ("CCPI") between 2012 and 2016.

some members queried why the Administration did not propose to adjust EELs on the basis of the projected population (or the number of registered electors) of the five GCs, but on the basis of the estimated cumulative inflation rate from 2013 to 2016. These members pointed out that certain major items of election expenses (e.g. sending election advertisements to electors) were linked to the number of registered electors in the GC concerned, and EELs for the traditional FCs (other than the four special FCs, viz. HYK, agriculture and fisheries, insurance and transport FCs) were also set on the basis of the number of registered electors of the FCs concerned. They urged the Administration to review the basis for calculating the adjustments to EELs.

16. The Administration explained that it had taken into account a host of factors, which included the declared election expenses of contested candidates in the 2012 LegCo General Election, the projected population of Hong Kong, the number and boundaries of GCs, and the estimated cumulative rate of increase in CCPI between 2012 and 2016, in its review of EELs for the 2016 LegCo General Election. The Administration did not see substantial variations in circumstances since the last review exercise (e.g. large changes in projected population) that warranted fundamental changes to the system of setting EELs. The Administration maintained the view that it was appropriate to adjust EELs for both GC and FC elections on the basis of the estimated cumulative inflation rate from 2013 to 2016. Nevertheless, the Administration undertook to consider members' views in its future review of EELs.

EEL for DC (second) FC

17. Some members were of the view that the maximum amount of election expenses for the DC (second) FC which was proposed by the Administration to be set at \$6 million was too high. They expressed strong dissatisfaction that it would create unfairness in the participation of election as only well-off candidates could afford to stand for the election. These members urged the Administration to provide more assistance to candidates to facilitate their arrangements in publicity work for the election in order to alleviate their financial burden.

18. Some other members expressed the view that the Administration should set a higher limit for the maximum election expenses for the DC (second) FC or remove any cap on the amount so that independent candidates from the business sector and professional sectors would be encouraged to participate in the election even though they lacked the manpower support from political parties.

19. The Administration advised that EEL for the DC (second) FC should not be set at a high level so that candidates from large or small political parties and independent candidates could participate in the election. It was considered

appropriate to set the maximum amount of election expense for the new DC FC at \$6 million. The election expenses could be shared by five candidates in a list. Independent candidates could also form a list with other parties to join the election so that the cost could be shared out. The Administration cautioned that candidates might be constrained in carrying out their election campaigns if EEL was set at a low level. After conducting an assessment concerning the EEL of the new DC FC, the Administration estimated that at least \$3 million would be spent on printed election materials for distribution to over three million electors and another \$3 million for the conduct of electioneering activities. The Administration also advised that to reduce candidates' financial burden, the Registration and Electoral Office would continue to produce a booklet to introduce candidates to voters in the 2012 LegCo election and provide one round of free postage service to candidates.

20. When the Subcommittee discussed the Administration's proposal to increase EELs for the 2016 LegCo General Election in 2015, members noted that under the proposed new EEL for DC (Second) FC (i.e. \$6,936,000), the average election expense amount that a candidate could spend on each elector was only about \$2. On the other hand, the proposed new EELs for the four special FCs and Finance FC, which consisted of an electoral size in the range of 128 to 204, were \$121,000 and \$194,000 respectively. This meant that the average election expense amount that a candidate could spend on each elector was, at most, over \$1,300. Query was raised about the justification behind the large discrepancies in the aforesaid amounts. The Administration explained that in the presence of certain fixed costs (i.e. certain items of election expenses which would be incurred regardless of the number of electors in relevant FCs), the election expenses of FC candidates might not be directly proportional to the electorate size. At the request of the Subcommittee, the Administration has provided supplementary information explaining the basis on which EELs for LegCo FC election are set (see **Appendix I**).

Past discussions on financial assistance scheme

Subsidy rate of the financial assistance

21. 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 GC elections (derived by dividing the average EELs of the five GCs by the number of votes cast for the most popular lists of candidates in that election).

22. In 2008, when the Panel discussed the Administration's proposals on the rate of financial assistance in respect of a list of candidates/a candidate standing

for the 2008 LegCo General Election, members generally supported an increase in financial assistance, but some members considered that the proposed subsidy rate at \$11 inadequate. Some members suggested that the ceiling of the financial assistance, which was 50% of the actual election expenses incurred by the candidates, should be raised to, say, 70%, or alternatively a ceiling of, say, \$1 million for the amount of financial assistance payable to each candidate should be imposed. The Administration explained that the subsidy rate of \$10 per vote was first adopted in the financial assistance scheme for the 2004 LegCo General Election. The subsidy rate was proposed to increase by 10% to \$11 per vote to reflect inflation since 2004.

23. In 2010, the Panel discussed the rate of financial assistance for the 2012 LegCo General Election. Some members were of the view that the financial assistance for the 2012 LegCo election should be increased from \$11 to at least \$20 per vote and that the cap on the financial assistance payable should be adjusted from 50% to 70%-80% of the declared election expenses. The Administration stressed that it had been the long-standing practice that candidates would need to meet half of their election expenses. The existing mechanism was considered reasonable and had been functioning well. Taking into account the inflation factor, the Administration proposed to raise the subsidy rate from \$11 to \$12 per vote for the 2012 LegCo election.

24. In October 2015, the Administration proposed to increase the subsidy rate of the financial assistance for candidates of the 2016 LegCo General Election from \$12 to \$14 per vote. Some members took the view that with the proposed small increase in the subsidy rate, the financial assistance payable to candidates/candidate lists by multiplying the total number of valid votes cast for the candidate or list of candidates by the specified rate would not provide much assistance to candidates in subsidizing their election expenses. There was a suggestion that the Administration should consider further increasing the subsidy rate to, say, \$20 per vote in order to enhance the provision of subsidies for candidates. The Administration explained that the subsidy rate had been increased twice since the financial assistance scheme was introduced in 2004 to LegCo elections and on each occasion, the increase was made after taking into account CCPI movement of the relevant period. The Administration considered that the existing financial assistance scheme was able to strike a proper balance between the policy objectives of encouraging more candidates to participate in election and ensuring prudent use of public funds.

Calculation of the amount payable

25. When the financial assistance scheme was first introduced to LegCo elections in 2004, under the scheme, financial support would be given to a candidate who got elected, or those who had received 5% of valid votes or more.

The rate was set at \$10 per vote but capped at 50% of the actual election expenses of the candidate concerned.

26. During the deliberations of the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and LegCo (Amendment) Bill 2010, there were suggestions to raise the subsidy rate of the financial assistance from the existing provision (i.e. \$12 per vote but capped at 50% of the declared election expenses) to \$15 per vote but capped at 70-80% of the declared election expenses. The Administration advised that the design of the scheme had taken into consideration that the provision of financial assistance should be based on the number of valid votes obtained by lists of candidates/candidates and that financial assistance should not exceed 50% of declared election expenses of lists of candidates/candidates. In line with this policy, some lists of candidates/candidates did not receive full payment amounting to 50% of the declared election expenses in view of the smaller number of valid votes they received.

27. Having regard to the views expressed by members, the Administration agreed to enhance the financial assistance scheme for the 2012 LegCo Election. The LegCo (Amendment) Ordinance 2011 provided that the subsidy rate of financial assistance for an eligible candidate or list of candidates be revised to the lowest of (i) \$12 per vote times the number of valid votes received by the candidate or the list of candidates; (ii) 50% of EELs for GC/FC elections; or (iii) the amount of the declared election expenses of the candidate or list of candidates. According to the Administration, the new formula was fair as it reflected the level of support a list of candidates/a candidate received from the public and would provide more room for candidates to obtain financial assistance.

28. When the Panel was consulted on the Administration's proposal to increase the rate of financial assistance from \$12 to \$14 per vote for the 2016 LegCo General Election, some members considered that as it had already proven that few candidates/candidate lists (except DC (second) FC candidate lists) could obtain a subsidy calculated according to paragraph 27(ii) and (iii) above, the Administration should review the arrangement for calculating the amount of subsidy payable. The Administration was also requested to consider further increasing the subsidy rate to enable an eligible candidate/candidate list to recover at least 50% of the candidate/candidate list's declared election expenses. The Administration explained that the financial assistance scheme had been enhanced and it could be reviewed in the light of the experience gained from the 2016 LegCo General Election. At the request of the Panel, the Administration has provided supplementary information on the subsidy received by GC lists of candidates in the 2012 LegCo General Election (see **Appendix II**).

Other forms of assistance to candidates

29. During the deliberations of the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and LegCo (Amendment) Bill 2010, members in general were of the view that the Administration should introduce measures to facilitate candidates to adopt more environmental-friendly means to distribute their election-related materials. Having regard to members' views, the Panel was consulted in April 2011 on a new arrangement for candidates to post joint promotional letters using the free-of-postage facility arrangement. This new measure was introduced by enactment of the Electoral Legislation (Miscellaneous Amendments) Ordinance 2011, which provides that candidates/lists of candidates of different constituencies and candidates of FC or Election Committee ("EC") subsectors with multiple seats are allowed to send their promotional letters to the same elector/voter free of postage. The arrangements will only apply to a list of candidates in a GC and a list of candidates in the DC (second) FC; candidates in the Labour FC which has three seats; and candidates standing for election in the same EC subsector, which has multiple number of seats (ranging from 16 seats to 60 seats).

Latest development

30. The Administration will consult the Panel on its proposals on the subsidy rate of the financial assistance for candidates and EELs for the 2020 LegCo General Election at the next meeting on 16 December 2019.

Relevant papers

31. A list of relevant papers and minutes of meetings which are available on the LegCo website is in **Appendix III**.

**Subcommittee on
Legislative Council Ordinance (Amendment of Schedule 5) Order 2015 and
Maximum Amount of Election Expenses (Legislative Council Election)
(Amendment) Regulation 2015**

**Follow-up on issues raised
at the Subcommittee Meeting on 7 December 2015**

At the Subcommittee meeting on 7 December 2015, a Member requested the Government to provide supplementary information on the basis on which the election expenses limits (“EELs”) for the Legislative Council (“LegCo”) functional constituency (“FC”) election were set. This paper provides the relevant information for reference.

2. The election for the first term of the LegCo of the Hong Kong Special Administrative Region was held in 1998. The EELs for the 1998 LegCo FC election that were passed by the Provisional LegCo back then are set out below –

- (a) Designated FCs¹ : \$100,000
- (b) FCs other than those in (a) above –
 - (i) FCs with not more than 5 000 registered electors: \$160,000
 - (ii) FCs with 5 001 to 10 000 registered electors: \$320,000
 - (iii) FCs with over 10 000 registered electors: \$480,000

3. The above system for setting the EELs in the 1998 LegCo FC election is similar to the four-tier system adopted in the 1995 LegCo FC election. When the EELs for the 1998 LegCo FC election were set, some adjustments were made to the differentiation of electorate size between individual tiers. The dollar value of the EEL in respect of each tier has been set to reflect the difference in electorate size, to allow for a more varied and more sophisticated electioneering activities by candidates, and to take into account inflation.

4. After the EELs were set in 1998, they have been adjusted (i.e., raised by 5%) once for the 2008 LegCo general election and have since been in use to date. For the current review, we have taken into account the declared election expenses of contested traditional FC candidates in the 2012 LegCo general election, and noted that the median amount of election expenses incurred was about 52% of the EELs; about 92% of the candidates spent less than 80% of the

¹ Including the Urban Council, Regional Council, Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs.

EELs; about 5% of the candidates spent 80-90% of the EELs; and about 3% of the candidates spent more than 90% of the EELs. Having regard to the above considerations and other relevant factors, we proposed to adjust the EELs on the basis of the estimated cumulative inflation rate from 2013 to 2016 (i.e., to adjust the EELs upwards by 15.6%), and rounded to the nearest thousand dollars.

**Constitutional and Mainland Affairs Bureau
December 2015**

Panel on Constitutional Affairs**Follow up on issues raised at the meeting held on 19 October 2015**

At the meeting of the Panel on Constitutional Affairs held on 19 October 2015, Members discussed the review on the subsidy rate of the financial assistance for candidates and the election expenses limits (“EELs”) for the 2016 Legislative Council (“LegCo”) election, and requested the Government to provide supplementary information on the subsidy received by candidates in the past LegCo elections. This paper sets out the relevant information for Members’ reference.

2. Under the current financial assistance scheme, the subsidy payable to a candidate or a list of candidates (“candidate list”) of LegCo election eligible for financial assistance would be the lowest of the following three amounts—

- (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.

3. A Member asked about the percentage of geographical constituency (“GC”) lists of candidates who obtained financial assistance in the past LegCo elections under the respective categories in paragraph 2(a), (b) or (c) above. The arrangement for calculating the amount of subsidy payable set out in paragraph 2 above has been implemented starting from the 2012 LegCo general election¹. In the 2012 LegCo GC election, all candidate lists which were eligible for financial assistance received subsidy based on the calculation in paragraph 2(a) above (i.e., multiplying the subsidy rate by the total number of valid votes cast for the candidate list).

¹ When the financial assistance scheme was first introduced in 2004, financial assistance payable to candidates or candidate lists was calculated by multiplying the number of valid votes obtained by candidates or candidate lists by the subsidy rate, subject to not exceeding 50% of the declared election expenses of the candidates or candidate lists.

4. Besides, a Member requested the Government to provide information on the subsidy received by GC candidate lists as a percentage of their declared election expenses in the 2012 LegCo general election. The relevant information is set out at **Annex**.

Constitutional and Mainland Affairs Bureau
November 2015

Annex

2012 Legislative Council General Election
Subsidy received by geographical constituency lists of candidates
as a percentage of their declared election expenses

Subsidy received by lists of candidates as a percentage of their declared election expenses	Number of lists of candidates eligible for financial assistance	Percentage of total number of lists of candidates eligible for financial assistance
<=10%	0	0%
>10% but <=20%	8	17.39%
>20% but <=30%	10	21.74%
>30% but <=40%	11	23.91%
>40% but <=50%	12	26.09%
>50% but <=60%	4	8.70%
>60% but <=70%	1	2.17%
>70% but <=80%	0	0%
>80% but <=90%	0	0%
>90% but <=100%	0	0%

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

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	25.11.1997 (Item I)	Agenda Minutes
	20.12.1999 (Item VII)	Agenda Minutes
House Committee	18.2.2000	Fourth report of the Subcommittee on subsidiary legislation relating to 2000 Legislative Council election
CA Panel	20.1.2003 (Item VI)	Agenda Minutes
	15.12.2003 (Item IV)	Agenda Minutes
	18.2.2008 (Item IV)	Agenda Minutes
	21.4.2008 (Item VI)	Agenda Minutes
	19.7.2010 (Item II)	Agenda Minutes
	30.10.2010 (Item I)	Agenda Minutes
Legislative Council	2.3.2011	Report of the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010
	6.7.2011	Report of the Bills Committee Electoral Legislation (Miscellaneous Amendments) Bill 2011
CA Panel	19.10.2015	Agenda Minutes

Committee	Date of meeting	Paper
House Committee	18.12.2015	<u>Report of the Subcommittee on Legislative Council Ordinance (Amendment of Schedule 5) Order 2015 and Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2015</u>

Council Business Division 2
Legislative Council Secretariat
12 December 2019