

LEGISLATIVE COUNCIL BRIEF

Legislative Council Ordinance (Chapter 542) and
Elections (Corrupt and Illegal Conduct) Ordinance (Chapter 554)

**LEGISLATIVE COUNCIL ORDINANCE
(AMENDMENT OF SCHEDULE 5) ORDER 2020 AND
MAXIMUM AMOUNT OF ELECTION EXPENSES (LEGISLATIVE
COUNCIL ELECTION) (AMENDMENT) REGULATION 2020**

INTRODUCTION

At the meeting of the Executive Council on 11 February 2020, the Council ADVISED and the Chief Executive ORDERED that–

- A
- (a) the Legislative Council Ordinance (Amendment of Schedule 5) Order 2020 (“the Order”), at **Annex A**, be made in accordance with section 83A of the Legislative Council Ordinance (Cap. 542) (“LCO”) to increase the subsidy rate of the financial assistance scheme for candidates of LegCo elections on the basis of the latest estimated cumulative inflation rate from 2017 to 2020 (rounded off to the nearest dollar), i.e., from \$14 per vote to \$15 per vote, starting from the seventh term LegCo general election in 2020; and
 - (b) the Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2020 (“the Regulation”), at **Annex B**, be made under section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) to increase the EELs for geographical constituency (“GC”) and functional constituency (“FC”) elections starting from the seventh term LegCo general election in 2020 on the same basis in sub-paragraph (a) above (please refer to paragraph 10 for the adjusted EELs).
- B

JUSTIFICATIONS

Financial Assistance Scheme

2. 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. 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 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 6 for the existing EELs of each GC and FC); and
- (c) the declared election expenses of the candidate or candidate list.

3. 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.¹ The total amount of subsidy granted was around \$45.7 million.²

¹ 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.

² 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.

4. When the financial assistance scheme was introduced in the 2004 LegCo General Election, the subsidy rate was set at \$10 per vote³. Taking into account the cumulative composite consumer price index (“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

5. 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%⁴ 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). We have taken into account the actual inflation of 2019 released on 21 January 2020 when we finalise our proposal on increasing the subsidy rate.

Election Expenses Limits

6. Under the 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–

³ 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).

⁴ According to the CCPI, the actual annual inflation rates of 2017,2018 and 2019 were 1.5%, 2.4% and 2.9% respectively. 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>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

<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

7. 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 ECICO⁵.

8. 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 been adjusted twice: i.e., raised by 5% from the 2008 LegCo General Election onwards, and raised by 15.6% from the 2016 LegCo General Election onwards.

⁵ 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.

9. For the current review, we have taken the following into account—
- (a) the declared election expenses of contested candidates in the 2016 LegCo General Election⁶—
 - (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 respectively⁷;
 - (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 4 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-2020⁸.

⁶ 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 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.

⁷ 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.

⁸ 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.

10. 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 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 -	
(i) FCs with not more than 5,000 registered electors	\$213,000
(ii) FCs with 5,001 to 10,000 registered electors	\$425,000
(iii) FCs with over 10,000 registered electors	\$639,000
(h) District Council (second) FC	\$7,602,000

11. We have considered the option of maintaining the status quo, given that the EELs for the LegCo election were not adjusted for each and every general election after they were first set in 1998, and the election expenses of most of the candidates were moderately below the EELs in the 2016 LegCo General Election. However, taking into account the declared election expenses of contested candidates in the 2016 LegCo General Election and other relevant factors as discussed in paragraph 9 above, we consider it appropriate to adjust the EELs on the basis of the estimated cumulative inflation rate between 2016 and 2020.

THE SUBSIDIARY LEGISLATION

12. To give effect to the proposed increase in the subsidy rate of the financial assistance for candidates of LegCo election, an order will have to be made by the Chief Executive in Council to amend Schedule 5 to the LCO. The

A Order (at **Annex A**) amends that Schedule to increase the rate from \$14 to \$15 for elections, including by-elections, for the seventh term and subsequent terms of office of the LegCo. The subsidy rate for any by-election of the sixth term of office of the LegCo (from 1 October 2016 to 30 September 2020) remains at \$14.

13. To give effect to the proposed increase in the EELs for LegCo elections, a regulation will have to be made by the Chief Executive in Council under section 45 of ECICO to amend the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554D). The Regulation (at **Annex B**) would serve this purpose and raise the EELs as detailed in paragraph 10 above for candidates/candidate lists at elections (including by-elections) for the seventh term and subsequent terms of office of the LegCo. The existing EELs for any by-election of the sixth term of office of the LegCo shall remain unchanged.

LEGISLATIVE TIMETABLE

14. The legislative timetable will be as follows -

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|---|------------------|
| (a) Publication in the Gazette | 21 February 2020 |
| (b) Tabling at LegCo for negative vetting | 26 February 2020 |

IMPLICATIONS OF THE PROPOSALS

15. 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. The proposal has no civil service, economic, productivity, environmental, sustainability or family implications.

16. 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. That being said, sufficient provisions for the scheme will be included in the draft Estimates of the REO in the relevant financial years.

GENDER IMPLICATION

17. 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. Given that the proposal is on technical electoral arrangements which are not gender-specific, this proposal does not have gender implications.

PUBLIC CONSULTATION

18. The LegCo Panel on Constitutional Affairs was consulted at its meeting on 16 December 2019. Members in general had no objection to our proposal, though some LegCo Members had pushed for a change in the existing mechanism of the financial assistance in different ways to increase the maximum amount payable. We explained that while the financial assistance scheme aimed to encourage candidates to participate in elections, candidates should also contribute certain amount of election expenses in taking part elections.

PUBLICITY

19. The Government has issued a press release. A spokesperson will be made available to address media enquiries, if any.

ENQUIRY

20. Any enquiry on this brief can be addressed to Ms Cherie Yeung, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2908.

Constitutional and Mainland Affairs Bureau
February 2020

Legislative Council Ordinance (Amendment of Schedule 5) Order 2020

(Made by the Chief Executive in Council under section 83A of the Legislative Council Ordinance (Cap. 542))

1. Commencement

This Order comes into operation on 1 May 2020.

2. Legislative Council Ordinance amended

The Legislative Council Ordinance (Cap. 542) is amended as set out in section 3.

3. Schedule 5 amended (financial assistance: specified rate)

Schedule 5—

Repeal

everything after “Part 6A”

Substitute

“is—

- (a) for an election for the sixth term of office of the Legislative Council that commenced on 1 October 2016—\$14; or
- (b) for an election for any subsequent term of office of the Legislative Council—\$15.”

Clerk to the Executive Council

COUNCIL CHAMBER

2020

Explanatory Note

Schedule 5 to the Legislative Council Ordinance (Cap. 542) specifies the rate of financial assistance paid to candidates and lists of candidates at Legislative Council elections under Part 6A of the Ordinance. The purpose of this Order is to amend that Schedule to increase the rate from \$14 (for each valid vote gained) to \$15 for elections for the seventh term (i.e. the next term) of office of the Legislative Council and any subsequent term of office. The rate for elections for the sixth term of office of the Legislative Council (i.e. the current term of office) remains at \$14.

Maximum Amount of Election Expenses (Legislative Council Election) (Amendment)
Regulation 2020

Section 1

1

Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2020

(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 1 May 2020.
2. **Maximum Amount of Election Expenses (Legislative Council Election) Regulation amended**
The Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554 sub. leg. D) is amended as set out in sections 3, 4 and 5.
3. **Section 3 amended (maximum amount of election expenses for geographical constituency)**
 - (1) Section 3(a)—
Repeal
“fifth term of office of the Legislative Council”
Substitute
“sixth term of office of the Legislative Council that commenced on 1 October 2016”.
 - (2) Section 3(a)(i)—
Repeal
“\$1,575,000”
Substitute
“\$1,821,000”.

Maximum Amount of Election Expenses (Legislative Council Election) (Amendment)
Regulation 2020

Section 3

2

- (3) Section 3(a)(ii)—
Repeal
“\$2,100,000”
Substitute
“\$2,428,000”.
- (4) Section 3(a)(iii)—
Repeal
“\$2,625,000”
Substitute
“\$3,035,000”.
- (5) Section 3(b)(i)—
Repeal
“\$1,821,000”
Substitute
“\$1,996,000”.
- (6) Section 3(b)(ii)—
Repeal
“\$2,428,000”
Substitute
“\$2,661,000”.
- (7) Section 3(b)(iii)—
Repeal
“\$3,035,000”
Substitute
“\$3,326,000”.

4. **Section 3A amended (maximum amount of election expenses for District Council (second) functional constituency)**

(1) Section 3A(a)—

Repeal

“fifth term of office of the Legislative Council—\$6,000,000”

Substitute

“sixth term of office of the Legislative Council that commenced on 1 October 2016—\$6,936,000”.

(2) Section 3A(b)—

Repeal

“\$6,936,000”

Substitute

“\$7,602,000”.

5. **Section 4 amended (maximum amount of election expenses for functional constituency other than District Council (second) functional constituency)**

(1) Section 4(a)—

Repeal

“fifth term of office of the Legislative Council”

Substitute

“sixth term of office of the Legislative Council that commenced on 1 October 2016”.

(2) Section 4(a)(i)—

Repeal

“\$105,000”

Substitute

“\$121,000”.

(3) Section 4(a)(ii)(A)—

Repeal

“\$168,000”

Substitute

“\$194,000”.

(4) Section 4(a)(ii)(B)—

Repeal

“\$336,000”

Substitute

“\$388,000”.

(5) Section 4(a)(ii)(C)—

Repeal

“\$504,000”

Substitute

“\$583,000”.

(6) Section 4(b)(i)—

Repeal

“\$121,000”

Substitute

“\$133,000”.

(7) Section 4(b)(ii)(A)—

Repeal

“\$194,000”

Substitute

“\$213,000”.

(8) Section 4(b)(ii)(B)—

Repeal

“\$388,000”

Substitute

“\$425,000”.

(9) Section 4(b)(ii)(C)—

Repeal

“\$583,000”

Substitute

“\$639,000”.

Clerk to the Executive Council

COUNCIL CHAMBER

2020

Explanatory Note

The Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554 sub. leg. D) (*principal Regulation*) provides for the election expenses limits for candidates and lists of candidates for the Legislative Council elections. The purpose of this Regulation is to amend the principal Regulation to raise the limits for the seventh term (i.e. the next term) of office of the Legislative Council and any subsequent term of office. The revised limits are—

- (a) for the Kowloon West geographical constituency—\$1,996,000;
- (b) for the Kowloon East geographical constituency—\$1,996,000;
- (c) for the Hong Kong Island geographical constituency—\$2,661,000;
- (d) for the New Territories West geographical constituency—\$3,326,000;
- (e) for the New Territories East geographical constituency—\$3,326,000;
- (f) for the District Council (second) functional constituency—\$7,602,000;
- (g) for the Heung Yee Kuk, the agriculture and fisheries, the insurance and the transport functional constituencies—\$133,000 for each functional constituency; and
- (h) for any other functional constituency—
 - (i) if the functional constituency has not more than 5 000 registered electors—\$213,000;

Maximum Amount of Election Expenses (Legislative Council Election) (Amendment)
Regulation 2020

Explanatory Note
Paragraph 2

7

- (ii) if the functional constituency has more than 5 000 but not more than 10 000 registered electors—\$425,000; and
 - (iii) if the functional constituency has more than 10 000 registered electors—\$639,000.
2. The limits for candidates and lists of candidates at elections for the sixth term of office of the Legislative Council (i.e. the current term of office) remain unchanged.