

立法會
Legislative Council

LC Paper No. LS 83/00-01

Chief Executive Election Bill

Provisions of the Bill not prescribed under the Basic Law

At the Bills Committee meeting held on 28 March 2001, a member requested the Legal Service Division to prepare a paper to highlight those provisions of the Bill which are not prescribed under the Basic Law ("BL").

2. The enclosure shows the Articles of BL on the election of Chief Executive ("CE"), which correspond textually to certain provisions of the Bill.

3. By elimination, the other provisions of the Bill are not strictly prescribed under BL. Having said that there may be provisions of the Bill which do not correspond textually to certain Articles of BL but are included to reflect or implement the guiding principles under certain Articles of BL. In this respect, members may wish to seek confirmation from the Administration as to those provisions of the Bill.

4. Further, certain relevant Articles of BL are so worded that a degree of flexibility is given to the local legislature to enact electoral law on CE election. For example, paragraph 2 of BL45 provides that "[t]he method for selecting the CE shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region ("HKSAR") and in accordance with the principle of gradual and orderly progress." and paragraph 3 of Annex I to BL provides that "[t]he delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the HKSAR in accordance with the principles of democracy and openness."

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
April 2001

LS/B/30/00-01

Basic Law	Chief Executive Election Bill
<p><u>Article 44</u></p> <p>The CE of the HKSAR shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.</p>	<p><u>Clause 13</u></p> <p>Subject to section 14, a person is eligible to be nominated as a candidate at an election if—</p> <ul style="list-style-type: none"> (a) he is a permanent resident of the HKSAR; (b) he is a Chinese citizen as defined by section 2 of the HKSAR Passports Ordinance (Cap. 539); (c) he has no right of abode in any foreign country; and (d) he— <ul style="list-style-type: none"> (i) in the case of an election to fill the vacancy in the office of the CE that will arise under section 4(a), will have— <ul style="list-style-type: none"> (A) reached 40 years of age on the day on which the vacancy is due to arise; and (B) ordinarily resided in Hong Kong for a continuous period of not less than 20 years before the day on which the vacancy is due to arise; (ii) in the case of an election to fill the vacancy in the office of the CE that arises under section 4(b) or (c), will have— <ul style="list-style-type: none"> (A) reached 40 years of age on the polling date; and (B) ordinarily resided in Hong Kong for a continuous period of not less than 20 years before the polling date. <p><u>Clause 16(7)(b)</u></p> <p>A nomination of a candidate shall be accompanied by a declaration as to his nationality and as to whether he has a right of abode in any foreign country.</p>

<p><u>Article 45</u></p> <p>The CE of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government.</p> <p>The method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.</p> <p>The specific method for selecting the CE is prescribed in Annex I : "Method for the Selection of the CE of the HKSAR.</p>	<p><u>Clause 7</u></p> <p>The CE shall be elected by the Election Committee as prescribed in Annex I to the BL.</p> <p><u>Clause 8</u></p> <p>(1) There shall be constituted a committee, to be known as the Election Committee, for the purposes of this Ordinance and such other purposes as may be prescribed by any other Ordinance.</p> <p>(2) Subject to subsection (3), the Election Committee shall be constituted in accordance with the Schedule.</p> <p>(3) The Election Committee constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) shall be continued and regarded as having been constituted as the first Election Committee under this Ordinance.</p> <p>(4) The members of the Election Committee constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) shall, subject to the Schedule, be members of the first Election Committee constituted under this Ordinance.</p>
<p><u>Article 46</u></p> <p>The term of office of the CE of the HKSAR shall be five years. He or she may serve for not more than two consecutive terms.</p>	<p><u>Clause 3</u></p> <p>(1) The term of office of the CE shall—</p> <ul style="list-style-type: none">(a) be 5 years; and(b) commence on the date on which he assumes office being the date specified for this purpose by the Central People's Government in the instrument of appointment. <p>(2) No person shall hold the office of the CE for more than 2 consecutive terms.</p> <p><u>Clause 14(a)</u></p> <p>Without prejudice to section 13(1)(c) of the Electoral Affairs Commission Ordinance (Cap. 541), a person is disqualified from being nominated as a candidate if he is the CE and</p>

	holds the office of the CE for the second consecutive term.
<p><u>Article 104</u></p> <p>When assuming office, the CE, principal officials, members of the Executive Council and of the Legislative Council ("LegCo"), judges of the courts at all levels and other members of the judiciary in the HKSAR must, in accordance with law, swear to uphold the BL of HKSAR of the People's Republic of China and swear allegiance to the HKSAR of the People's Republic of China.</p>	<p><u>Clause 16(7)(a)(ii)</u></p> <p>A nomination of a candidate shall be accompanied by a declaration to the effect that he will uphold the BL and pledge allegiance to the HKSAR.</p>
<p><u>Annex I, paragraph 2</u></p> <p>The term of office of the Election Committee shall be five years.</p>	<p><u>Clause 9</u></p> <p>The term of office of the Election Committee shall be 5 years commencing on the date on which it is constituted.</p>
<p><u>Annex I, paragraph 4</u></p> <p>Candidates for the office of CE may be nominated jointly by not less than 100 members of the Election Committee. Each member may nominate only one candidate.</p>	<p><u>Clause 16(2)(a)</u></p> <p>A nomination of a candidate shall be made subject to subsections (4) and (5), by not less than 100 members of the Election Committee.</p>
<p><u>Annex I, paragraph 5</u></p> <p>The Election Committee shall, on the basis of the list of nominees, elect the CE designate by secret ballot on a one-person-one-vote basis. The specific election method shall be prescribed by the electoral law.</p>	<p><u>Clause 24(2)</u></p> <p>The votes at a poll shall be cast by secret ballot.</p>
<p><u>Annex I, paragraph 2</u></p> <p>The Election Committee shall be composed of 800 members from the following sectors:</p>	<p><u>The Schedule, section 2(1)</u></p> <p>The Election Committee is to consist of 800 members, who must be Hong Kong permanent residents.</p>

<p>Industrial, commercial and financial sectors</p>	<p>200</p>	<p><u>The Schedule, section 2(3)</u></p>																																																																														
<p>The professions</p>	<p>200</p>	<p>The members of the Election Committee are to be representative of 4 sectors, with each sector being represented by 200 members.</p>																																																																														
<p>Labour, social services, religious and other sectors</p>	<p>200</p>	<p><u>Tables 1, 2, 3 and 4 of section 2</u></p>																																																																														
<p>Members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference</p>	<p>200</p>	<p style="text-align: center;">Table 1 First Sector</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Item</th> <th style="text-align: left;">Subsector</th> <th style="text-align: right;">Number of members</th> </tr> </thead> <tbody> <tr><td>1.</td><td>Catering</td><td style="text-align: right;">11</td></tr> <tr><td>2.</td><td>Commercial (first)</td><td style="text-align: right;">12</td></tr> <tr><td>3.</td><td>Commercial (second)</td><td style="text-align: right;">12</td></tr> <tr><td>4.</td><td>Employers' Federation of Hong Kong</td><td style="text-align: right;">11</td></tr> <tr><td>5.</td><td>Finance</td><td style="text-align: right;">12</td></tr> <tr><td>6.</td><td>Financial services</td><td style="text-align: right;">12</td></tr> <tr><td>7.</td><td>Hong Kong Chinese Enterprises Association</td><td style="text-align: right;">11</td></tr> <tr><td>8.</td><td>Hotel</td><td style="text-align: right;">11</td></tr> <tr><td>9.</td><td>Import and export</td><td style="text-align: right;">12</td></tr> <tr><td>10.</td><td>Industrial (first)</td><td style="text-align: right;">12</td></tr> <tr><td>11.</td><td>Industrial (second)</td><td style="text-align: right;">12</td></tr> <tr><td>12.</td><td>Insurance</td><td style="text-align: right;">12</td></tr> <tr><td>13.</td><td>Real estate and construction</td><td style="text-align: right;">12</td></tr> <tr><td>14.</td><td>Textiles and garment</td><td style="text-align: right;">12</td></tr> <tr><td>15.</td><td>Tourism</td><td style="text-align: right;">12</td></tr> <tr><td>16.</td><td>Transport</td><td style="text-align: right;">12</td></tr> <tr><td>17.</td><td>wholesale and retail</td><td style="text-align: right;">12</td></tr> </tbody> </table> <p style="text-align: center;">Table 2 Second Sector</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Item</th> <th style="text-align: left;">Subsector</th> <th style="text-align: right;">Number of members</th> </tr> </thead> <tbody> <tr><td>1.</td><td>Accountancy</td><td style="text-align: right;">20</td></tr> <tr><td>2.</td><td>Architectural, surveying and planning</td><td style="text-align: right;">20</td></tr> <tr><td>3.</td><td>Chinese medicine</td><td style="text-align: right;">20</td></tr> <tr><td>4.</td><td>Education</td><td style="text-align: right;">20</td></tr> <tr><td>5.</td><td>Engineering</td><td style="text-align: right;">20</td></tr> <tr><td>6.</td><td>Health services</td><td style="text-align: right;">20</td></tr> <tr><td>7.</td><td>Higher education</td><td style="text-align: right;">20</td></tr> </tbody> </table>	Item	Subsector	Number of members	1.	Catering	11	2.	Commercial (first)	12	3.	Commercial (second)	12	4.	Employers' Federation of Hong Kong	11	5.	Finance	12	6.	Financial services	12	7.	Hong Kong Chinese Enterprises Association	11	8.	Hotel	11	9.	Import and export	12	10.	Industrial (first)	12	11.	Industrial (second)	12	12.	Insurance	12	13.	Real estate and construction	12	14.	Textiles and garment	12	15.	Tourism	12	16.	Transport	12	17.	wholesale and retail	12	Item	Subsector	Number of members	1.	Accountancy	20	2.	Architectural, surveying and planning	20	3.	Chinese medicine	20	4.	Education	20	5.	Engineering	20	6.	Health services	20	7.	Higher education	20
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8.	Information technology	20
9.	Legal	20
10.	Medical	20

**Table 3
Third Sector**

Item	Subsector	Number of members
1.	Agriculture and fisheries	40
2.	Labour	40
3.	Religious	40
4.	Social welfare	40
5.	Sports, performing arts, culture and publication	40

**Table 4
Third Sector**

Item	Subsector	Constituents	No. of members
1.	National People's Congress ("NPC")	Hong Kong deputies to the NPC.	36
2.	LegCo	Members of the LegCo.	60
3.	Chinese People's Political Consultative Conference ("CPPCC")	Hong Kong members of the National Committee of the CPPCC.	41
4.	Heung Yee Kuk	Chairman and Vice-Chairman of the Heung Yee Kuk and the Ex-Officio, Special and Co-opted Councillors of the Full Council of the Heung Yee Kuk.	21
5.	Hong Kong and Kowloon District Councils	Members of the Hong Kong and Kowloon District Council.	21

	<p>6. New Territories District Councils</p> <p>Members of the New Territories District Councils.</p> <p>Provisions in the Schedule relevant to the subsector and sub-subsector elections.</p>
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