

立法會
Legislative Council

LC Paper No. LS25/03-04

**Opinion on the Nature of the Chief Executive's Power of
Appointing District Council Members under the District Councils Ordinance**

Purpose

Questions have been raised on the scope of the Chief Executive's (CE) power to appoint persons as members of a District Council (DC) under the District Councils Ordinance (Cap. 547) (DCO). This paper provides a legal analysis and an opinion based on the analysis.

The CE's power

2. The CE's power of appointment is set out in section 11 of DCO -

"11. Chief Executive to appoint members and how long appointed members are to hold office

(1) The Chief Executive may appoint as members of a District Council a number of persons not exceeding the number specified in column 4 of Part I of Schedule 3 in relation to the District Council."

3. There are provisions related to this power in sections 5(2) and 8(1) of DCO -

"5. Number of members to be elected to a District Council and the number of members to be appointed to it

(2) The number specified in column 4 of Part I of Schedule 3 in relation to a District Council specified in column 2 of that Part is the maximum number of members to be appointed to that Council.";

"8. Chief Executive in Council may amend Schedule 1, 2 or 3

(1) The Chief Executive in Council may subject to the approval of the Legislative Council, by order published in the Gazette, amend Schedule 1, 2 or 3."

Schedules 1, 2 and 3 of DCO are attached.

Nature of the power

4. Section 11(1) has conferred a power on the CE. Exercise of that power is subject generally to section 39(1) of the Interpretation and General Clauses Ordinance (Cap. 1), which provides that -

"39. Exercise of powers

(1) Where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as the occasion requires."

5. In addition, the section 11(1) power is subject to the express restriction in section 5(2) of DCO, i.e. the members to be appointed to a DC cannot exceed the maximum number specified in respect of that DC in Schedule 3, which number may be amended under section 8(1) by CE in Council subject to the approval of the Legislative Council.

6. The DCO has imposed no other express restrictions on the section 11(1) power. In particular, there is no provision for a minimum number of members to be appointed to a DC, nor is there any delegated power to make subsidiary legislation for such provision, apart from section 8(1) of DCO.

7. It must however be noted that, in administrative law, all legal powers are inevitably discretionary to a greater or lesser extent and their exercise is subject to some restrictive principles which require them to be "exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empowering Act" (Wade & Forsyth, *Administrative Law* (8th Ed) p. 345).

Composition of DCs

8. Section 9(1) of DCO provides that -

"9. District Councils to consist of elected members, appointed members and ex officio members

(1) A District Council is to consist of -

(a) elected members; and

(b) appointed members; and

- (c) if it is a District Council established for a District in which there is one or more Rural Committees, subject to subsection (2) and sections 17, 18 and 19, as ex officio members, the Chairman of each such Rural Committee while holding office as the Chairman."

Status of DC

9. Questions may arise as to whether a DC must consist of all the specified categories of membership (the last category as applicable) as provided in section 9(1) of DCO for it to be validly formed or to become operative. To resolve the first question, it is important to note that section 4 of DCO provides that -

"4. Establishment of District Councils

There is established for a District specified in column 2 of Schedule 2, the body known as a District Council having the name specified opposite to it in column 3 of that Schedule, with effect from the date specified in relation to it in column 4 of that Schedule."

The date of establishment as specified in Schedule 2 for all the 18 DCs is 1 January 2000. Since the DCs have been created by statute since that date, their constitution should not affect their established status.

10. It may also be useful to note that for ex officio members, section 17(1) of DCO provides that -

"17. Ex officio members to accept office

(1) A person who is a Chairman of a Rural Committee does not become an ex officio member unless the person swears acceptance of office in Form 2 set out in Schedule 4 and lodges the form of acceptance with the Designated Officer."

There is a possibility that in a DC in the New Territories, no ex officio members may take office as a result of the provision, especially for some such DCs which may only have one Rural Committee Chairman as ex officio member.

11. Under section 13 of DCO, a person appointed as a DC member is also required to swear acceptance of office.

Vacancy in DC membership

12. Section 72 of DCO provides that -

"72. Proceedings of a District Council or a committee not affected by vacancy or defect in membership

(1) A vacancy in the membership of a District Council does not affect its power to transact business.

(2) The validity of proceedings of a District Council are not affected by -

(a) a vacancy in the membership of the District Council;

(b) a defect in the appointment or election of a member;

(c) a defect as to the eligibility of a person to be a member.

(3) The validity of proceedings of a committee is not affected by a defect in the appointment of or eligibility of a person to be a member of the committee.

(4) For the purposes of this section -

(a) a vacancy in the membership of a District Council includes a vacancy in its membership when it first meets after an ordinary election; and

(b) a defect in the eligibility of a person to be appointed member or ex officio member includes failure to swear acceptance of office."

13. The section protects the power of a DC to transact business and the validity of its proceedings in the case of vacancies in the circumstances as defined in its provisions.

14. However, it is not specifically provided in DCO whether, if the CE appoints less than the maximum number of appointed members allowed for a DC, the shortfall constitutes vacancy for the same purposes. However, it should be noted that the definition of "vacancy" in section 72(4) is "inclusive" and not "exhaustive". Since there is no fixed number of appointed members, such shortfall may not be vacancy in the ordinary meaning of the word. However, if it were to be regarded as vacancy, then of course the provisions would apply.

15. Section 70 of DCO provides that -

"70. Quorum of a District Council

The quorum of a District Council is not less than half the members of the Council holding office for the time being."

It is clear from the section that any shortfall in appointment will not affect the quorum of a DC.

Conclusion

16. Subject to the specified maximum number of appointed members in each DC and CE's complying with those administrative law principles which govern the exercise of discretionary powers, there is no requirement in law that CE must appoint a certain minimum number of members to the DCs.

Encl.

Prepared by

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附表 1 [第 3 及 8 條]

地方行政區的數目及宣布

第 I 部

地方行政區的數目

為施行本條例而宣布的地方行政區的數目為 18 個。

第 II 部

地方行政區的宣布

項	地方行政區	地方行政區範圍的劃定
1.	中西區	在存放於指定人員的辦事處編號為 DC/2000/A 的地圖上所劃定並以灰色界線標明的地區。
2.	東區	在存放於指定人員的辦事處編號為 DC/2000/C 的地圖上所劃定並以灰色界線標明的地區。
3.	九龍城區	在存放於指定人員的辦事處編號為 DC/2000/G 的地圖上所劃定並以灰色界線標明的地區。
4.	觀塘區	在存放於指定人員的辦事處編號為 DC/2000/J 的地圖上所劃定並以灰色界線標明的地區。
5.	深水埗區	在存放於指定人員的辦事處編號為 DC/2000/F 的地圖上所劃定並以灰色界線標明的地區。
6.	南區	在存放於指定人員的辦事處編號為 DC/2000/D1 及 DC/2000/D2 的地圖上所劃定並以灰色界線標明的地區。

SCHEDULE 1 [ss. 3 & 8]

NUMBER OF AND DECLARATION OF DISTRICTS

PART I

NUMBER OF DISTRICTS

The number of Districts to be declared for the purposes of this Ordinance is 18.

PART II

DECLARATION OF DISTRICTS

Item	District	Delineation of District area
1.	Central and Western District	That area delineated and edged grey on the map numbered DC/2000/A and deposited in the office of the Designated Officer.
2.	Eastern District	That area delineated and edged grey on the map numbered DC/2000/C and deposited in the office of the Designated Officer.
3.	Kowloon City District	That area delineated and edged grey on the map numbered DC/2000/G and deposited in the office of the Designated Officer.
4.	Kwun Tong District	That area delineated and edged grey on the map numbered DC/2000/J and deposited in the office of the Designated Officer.
5.	Sham Shui Po District	That area delineated and edged grey on the map numbered DC/2000/F and deposited in the office of the Designated Officer.
6.	Southern District	That area delineated and edged grey on the maps numbered DC/2000/D1 and DC/2000/D2 and deposited in the office of the Designated Officer.

項	地方行政區	地方行政區範圍的劃定
7.	灣仔區	在存放於指定人員的辦事處編號為 DC/2000/B 的地圖上所劃定並以灰色界線標明的地區。
8.	黃大仙區	在存放於指定人員的辦事處編號為 DC/2000/H 的地圖上所劃定並以灰色界線標明的地區。
9.	油尖旺區	在存放於指定人員的辦事處編號為 DC/2000/E 的地圖上所劃定並以灰色界線標明的地區。
10.	離島區	在存放於指定人員的辦事處編號為 DC/2000/T 的地圖上所劃定並以灰色界線標明的地區。
11.	葵青區	在存放於指定人員的辦事處編號為 DC/2000/S 的地圖上所劃定並以灰色界線標明的地區。
12.	北區	在存放於指定人員的辦事處編號為 DC/2000/N1 及 DC/2000/N2 的地圖上所劃定並以灰色界線標明的地區。
13.	西貢區	在存放於指定人員的辦事處編號為 DC/2000/Q1 及 DC/2000/Q2 的地圖上所劃定並以灰色界線標明的地區。
14.	沙田區	在存放於指定人員的辦事處編號為 DC/2000/R 的地圖上所劃定並以灰色界線標明的地區。
15.	大埔區	在存放於指定人員的辦事處編號為 DC/2000/P1 及 DC/2000/P2 的地圖上所劃定並以灰色界線標明的地區。
16.	荃灣區	在存放於指定人員的辦事處編號為 DC/2000/K 的地圖上所劃定並以灰色界線標明的地區。
17.	屯門區	在存放於指定人員的辦事處編號為 DC/2000/L 的地圖上所劃定並以灰色界線標明的地區。
18.	元朗區	在存放於指定人員的辦事處編號為 DC/2000/M 的地圖上所劃定並以灰色界線標明的地區。

Item	District	Delineation of District area
7.	Wan Chai District	That area delineated and edged grey on the map numbered DC/2000/B and deposited in the office of the Designated Officer.
8.	Wong Tai Sin District	That area delineated and edged grey on the map numbered DC/2000/H and deposited in the office of the Designated Officer.
9.	Yau Tsim Mong District	That area delineated and edged grey on the map numbered DC/2000/E and deposited in the office of the Designated Officer.
10.	Islands District	That area delineated and edged grey on the map numbered DC/2000/T and deposited in the office of the Designated Officer.
11.	Kwai Tsing District	That area delineated and edged grey on the map numbered DC/2000/S and deposited in the office of the Designated Officer.
12.	North District	That area delineated and edged grey on the maps numbered DC/2000/N1 and DC/2000/N2 and deposited in the office of the Designated Officer.
13.	Sai Kung District	That area delineated and edged grey on the maps numbered DC/2000/Q1 and DC/2000/Q2 and deposited in the office of the Designated Officer.
14.	Sha Tin District	That area delineated and edged grey on the map numbered DC/2000/R and deposited in the office of the Designated Officer.
15.	Tai Po District	That area delineated and edged grey on the maps numbered DC/2000/P1 and DC/2000/P2 and deposited in the office of the Designated Officer.
16.	Tsuen Wan District	That area delineated and edged grey on the map numbered DC/2000/K and deposited in the office of the Designated Officer.
17.	Tuen Mun District	That area delineated and edged grey on the map numbered DC/2000/L and deposited in the office of the Designated Officer.
18.	Yuen Long District	That area delineated and edged grey on the map numbered DC/2000/M and deposited in the office of the Designated Officer.

附表 2 [第 4 及 8 條]

區議會的設立

項	地方行政區名稱	區議會名稱	設立日期
1.	中西區	中西區區議會	2000 年 1 月 1 日
2.	東區	東區區議會	2000 年 1 月 1 日
3.	九龍城區	九龍城區議會	2000 年 1 月 1 日
4.	觀塘區	觀塘區議會	2000 年 1 月 1 日
5.	深水埗區	深水埗區議會	2000 年 1 月 1 日
6.	南區	南區區議會	2000 年 1 月 1 日
7.	灣仔區	灣仔區議會	2000 年 1 月 1 日
8.	黃大仙區	黃大仙區議會	2000 年 1 月 1 日
9.	油尖旺區	油尖旺區議會	2000 年 1 月 1 日
10.	離島區	離島區議會	2000 年 1 月 1 日
11.	葵青區	葵青區議會	2000 年 1 月 1 日
12.	北區	北區區議會	2000 年 1 月 1 日
13.	西貢區	西貢區議會	2000 年 1 月 1 日
14.	沙田區	沙田區議會	2000 年 1 月 1 日
15.	大埔區	大埔區議會	2000 年 1 月 1 日
16.	荃灣區	荃灣區議會	2000 年 1 月 1 日
17.	屯門區	屯門區議會	2000 年 1 月 1 日
18.	元朗區	元朗區議會	2000 年 1 月 1 日

附表 3 [第 5、8、9 及 11 條]

第 I 部

民選議員及委任議員的數目

項	區議會	民選議員的數目	委任議員的數目
1.	中西區區議會	15	4
2.	東區區議會	37	9
3.	九龍城區議會	22	5
4.	觀塘區議會	34	8
5.	深水埗區議會	21	5

SCHEDULE 2 [ss. 4 & 8]

ESTABLISHMENT OF DISTRICT COUNCILS

Item	Name of District	Name of District Council	Date of establishment
1.	Central and Western District	Central and Western District Council	1 January 2000
2.	Eastern District	Eastern District Council	1 January 2000
3.	Kowloon City District	Kowloon City District Council	1 January 2000
4.	Kwun Tong District	Kwun Tong District Council	1 January 2000
5.	Sham Shui Po District	Sham Shui Po District Council	1 January 2000
6.	Southern District	Southern District Council	1 January 2000
7.	Wan Chai District	Wan Chai District Council	1 January 2000
8.	Wong Tai Sin District	Wong Tai Sin District Council	1 January 2000
9.	Yau Tsim Mong District	Yau Tsim Mong District Council	1 January 2000
10.	Islands District	Islands District Council	1 January 2000
11.	Kwai Tsing District	Kwai Tsing District Council	1 January 2000
12.	North District	North District Council	1 January 2000
13.	Sai Kung District	Sai Kung District Council	1 January 2000
14.	Sha Tin District	Sha Tin District Council	1 January 2000
15.	Tai Po District	Tai Po District Council	1 January 2000
16.	Tsuen Wan District	Tsuen Wan District Council	1 January 2000
17.	Tuen Mun District	Tuen Mun District Council	1 January 2000
18.	Yuen Long District	Yuen Long District Council	1 January 2000

SCHEDULE 3 [ss. 5, 8, 9 & 11]

PART I

NUMBER OF ELECTED MEMBERS AND APPOINTED MEMBERS

Item	District Council	Number of elected members	Number of appointed members
1.	Central and Western District Council	15	4
2.	Eastern District Council	37	9
3.	Kowloon City District Council	22	5
4.	Kwun Tong District Council	34	8
5.	Sham Shui Po District Council	21	5

項	區議會	民選議員 的數目	委任議員 的數目
6.	南區區議會	17	4
7.	灣仔區議會	11	3
8.	黃大仙區議會	25	6
9.	油尖旺區議會	16	4
10.	離島區議會	7 [8]*	4
11.	葵青區議會	28	7
12.	北區區議會	16	5
13.	西貢區議會	17 [20]*	5
14.	沙田區議會	36	9
15.	大埔區議會	19	5
16.	荃灣區議會	17	5
17.	屯門區議會	29	7
18.	元朗區議會	23 [29]*	7

(由 2002 年第 33 號第 10 條修訂)

第 II 部

地方行政區內的鄉事委員會

項	地方行政區	區議會	鄉事委員會數目	鄉事委員會名稱
1.	離島區	離島區議會	8	長洲鄉事委員會 南丫島北段鄉事委員會 南丫島南段鄉事委員會 梅窩鄉事委員會 坪洲鄉事委員會 大嶼山南區鄉事委員會 大澳鄉事委員會 東涌鄉事委員會
2.	葵青區	葵青區議會	1	青衣鄉事委員會

*按照《2002 年選舉條文(雜項修訂) 條例》(2002 年第 33 號) 第 10 條，本附表現予修訂，在第 I 部中——

- (a) 在第 10 項的第 3 欄中，廢除“7”而代以“8”；
 (b) 在第 13 項的第 3 欄中，廢除“17”而代以“20”；
 (c) 在第 18 項的第 3 欄中，廢除“23”而代以“29”。

上述修訂——

- (i) 除在與使於 2003 年舉行的區議會一般選舉的安排得以作出的目的有關的範圍之外，自 2004 年 1 月 1 日起實施；及
 (ii) 僅在與上述目的有關的範圍之內，自 2002 年 12 月 27 日起實施。

“區議會一般選舉”指為填補因區議會議員任期屆滿而出現的空缺而舉行的選舉(見 2002 年第 33 號第 1 條)。

Item	District Council	Number of elected members	Number of appointed members
6.	Southern District Council	17	4
7.	Wan Chai District Council	11	3
8.	Wong Tai Sin District Council	25	6
9.	Yau Tsim Mong District Council	16	4
10.	Islands District Council	7 [8]*	4
11.	Kwai Tsing District Council	28	7
12.	North District Council	16	5
13.	Sai Kung District Council	17 [20]*	5
14.	Sha Tin District Council	36	9
15.	Tai Po District Council	19	5
16.	Tsuen Wan District Council	17	5
17.	Tuen Mun District Council	29	7
18.	Yuen Long District Council	23 [29]*	7

(Amended 33 of 2002 s. 10)

PART II

RURAL COMMITTEES IN DISTRICTS

Item	District	District Council	Number of Rural Committees	Names of Rural Committees
1.	Islands District	Islands District Council	8	Cheung Chau Rural Committee Lamma Island (North) Rural Committee Lamma Island (South) Rural Committee Mui Wo Rural Committee Peng Chau Rural Committee South Lantau Rural Committee Tai O Rural Committee Tung Chung Rural Committee
2.	Kwai Tsing District	Kwai Tsing District	1	Tsing Yi Rural Committee

*According to section 10 of the Electoral Provisions (Miscellaneous Amendments) Ordinance 2002 (33 of 2002), this Schedule is amended, in Part I—

- (a) in item 10, in column 3, by repealing “7” and substituting “8”;
 (b) in item 13, in column 3, by repealing “17” and substituting “20”;
 (c) in item 18, in column 3, by repealing “23” and substituting “29”.

These amendments shall come into operation—

- (i) on 1 January 2004 except in so far as they relate to the purpose of enabling arrangements to be made for the holding of the District Council ordinary election in 2003; and
 (ii) on 27 December 2002 only in so far as they relate to that purpose.

“District Council ordinary election” means elections to elect persons to fill the vacancies caused by the expiration of the term of office of the elected members of District Councils (see 33 of 2002 s. 1).

項	地方行政區	區議會	鄉事委員會數目	鄉事委員會名稱
3.	北區	北區區議會	4	粉嶺區鄉事委員會 沙頭角區鄉事委員會 上水區鄉事委員會 打鼓嶺區鄉事委員會
4.	西貢區	西貢區議會	2	坑口鄉事委員會 西貢鄉事委員會
5.	沙田區	沙田區議會	1	沙田鄉事委員會
6.	大埔區	大埔區議會	2	西貢北鄉事委員會 大埔鄉事委員會
7.	荃灣區	荃灣區議會	2	馬灣鄉事委員會 荃灣鄉事委員會
8.	屯門區	屯門區議會	1	屯門鄉事委員會
9.	元朗區	元朗區議會	6	• 村鄉鄉事委員會 錦田鄉事委員會 八鄉鄉事委員會 屏山鄉鄉事委員會 新田鄉鄉事委員會 十八鄉鄉事委員會

Item	District	District Council	Number of Rural Committees	Names of Rural Committees
3.	North District	North District Council	4	Fanling District Rural Committee Sha Tau Kok District Rural Committee Sheung Shui District Rural Committee Ta Kwu Ling District Rural Committee
4.	Sai Kung District	Sai Kung District Council	2	Hang Hau Rural Committee Sai Kung Rural Committee
5.	Sha Tin District	Sha Tin District Council	1	Sha Tin Rural Committee
6.	Tai Po District	Tai Po District Council	2	Sai Kung North Rural Committee Tai Po Rural Committee
7.	Tsuen Wan District	Tsuen Wan District Council	2	Ma Wan Rural Committee Tsuen Wan Rural Committee
8.	Tuen Mun District	Tuen Mun District Council	1	Tuen Mun Rural Committee
9.	Yuen Long District	Yuen Long District Council	6	Ha Tsuen Rural Committee Kam Tin Rural Committee Pat Heung Rural Committee Ping Shan Rural Committee San Tin Rural Committee Shap Pat Heung Rural Committee