

立法會 *Legislative Council*

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Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meetings on 18 and 20 February 2006

Review of the role, functions and composition of the District Councils

Purpose

The Administration advised the Panel at its meeting on 16 January 2006 that as announced by the Chief Executive (CE) in his Policy Address on 12 October 2005, formal consultation on the review of the District Councils (DCs) would commence in the first quarter of 2006. The Administration also advised that a consultation document would be issued for the purpose of the review. Some members considered that merely expanding the role of DCs to assume responsibility for the management of some district facilities, as proposed by CE in the same Policy Address, was not sufficient (paragraph 26 below refers). The Panel requested the Administration to take into account the views of members and the public in determining the scope of the review and the content of the consultation document.

2. The Panel also decided to invite the public to give views on the role, functions and composition of DCs, to be followed by a discussion of the Panel at its next meeting on 20 February 2006.
3. This paper provides background information and past discussions of Members on the subject to facilitate the discussion of the Panel.

Existing role and functions of DCs

Historical development

4. Following public consultation on the development of local administration in the form of a Green Paper published in June 1980, the White Paper on District Administration published in January 1981 set out the establishment of 18 District Boards (DBs). The District Administration Scheme was introduced in 1982 with the establishment of a DB and a District Management Committee in each of the 18 administrative districts in Hong Kong. The aim of the Scheme was three-fold, viz,

to achieve a more effective co-ordination of the provision of services and facilities at the district level; to ensure that the Government was responsive to district needs and problems; and to promote public participation in district affairs.

5. From 1 July 1997, the two Municipal Councils (MCs) and 18 DBs elected during the British administration were replaced by provisional bodies as an interim arrangement. The 18 Provisional DBs replaced the former DBs. Their terms ended on 31 December 1999.

6. Following the review of district organizations (i.e. MCs and DBs) conducted in 1998, it was decided that the two Provisional MCs should be dissolved and the 18 Provisional DBs should be retained and renamed “District Councils” (DCs) to underline their important role in district administration. The District Councils Bill was introduced into LegCo to provide for the establishment, composition and functions of a DC and to set out the relevant electoral procedure. The Bill was passed by LegCo on 11 March 1999 and the 18 DCs replaced the corresponding Provisional DBs with effect from 1 January 2000.

Existing role and functions of DCs

7. The functions of a DC, as stipulated in section 61 of the Districts Council Ordinance (DCO) (Cap. 547), are –

- (a) to advise the Government –
 - (i) on matters affecting the well-being of the people in the District;
 - (ii) on the provision and use of public facilities and services within the District;
 - (iii) on the adequacy and priorities of Government programmes for the District; and
 - (iv) on the use of public funds allocated to the District for local public works and community activities; and
- (b) where funds are made available for the purpose, to undertake –
 - (i) environmental improvements within the District;
 - (ii) the promotion of recreational and cultural activities within the District; and
 - (iii) community activities within the District.

Apart from the addition of the function in item (b)(iii), the functions of a DC are the same as those of a DB.

Relevant provisions in the Basic Law

8. Article 97 of the Basic Law (BL 97) provides that –

“District organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation”.

BL 98 provides, among other things, that the powers and functions of the district organizations shall be prescribed by law.

2001 review of the role and functions of DCs

Background leading to the DC review

9. In moving the Second Reading of the District Councils Bill on 16 December 1998, the Secretary for Constitutional Affairs (SCA) said that –

“The future development of the District Boards constitutes an important aspect in the Review of District Organizations. Over the past year, we conducted extensive consultation with different sectors of our community and having considered their views, the Administration has decided thatthe functions of future District Councils should be enhanced, particularly in the areas of advising the Government on food and environmental hygiene services as well as promoting recreational and cultural activities at the district level, and in support of this development, the Councils would be given additional support.”

10. In response to amendments proposed by Members to expand the scope of functions of DCs in that DCs should undertake local public works and environmental improvement projects, and take over the responsibility for the provision of recreational, leisure, sports grounds and facilities in the districts, SCA responded at the resumption of the Second Reading debate on the District Councils Bill at the Council meeting on 10 March 1999 that –

“I do not consider it appropriate for District Councils to take over such responsibilities as it will drastically change district boards’ existing principal function as an advisory body and the operation of the Government. What is more, it will incur additional public expenditure and cause a dispersion of powers, resulting in reduced efficiency.”

11. In his Policy Address on 6 October 1999, CE announced plans to enhance the role of the 18 new DCs. He said that –

“The first District Councils (DCs) of the Hong Kong SAR will come into being on 1 January 2000. As I promised last year, the role of the new DCs will be enhanced. We will invite DC Chairman and the newly created Vice Chairman to join the District Management Committees. We will assist the DCs in promoting cultural, recreational and sports activities and in monitoring cultural, recreational and sports activities and in monitoring local environmental hygiene. We will appoint more DC Members to various advisory committees on livelihood matters. Moreover, we will provide additional funding for improving the local environment, promoting district activities, and increasing the accountable allowances of DC Members. Government departments will have closer co-operation and communication with the DCs and the various advisory bodies.”

12. On 28 April 1999, the Administration introduced the Provision of Municipal Services (Reorganization) Bill to provide, inter alia, for the dissolution of the Provisional MCs, and transfer of property, rights, liabilities, functions and powers of the Provisional MCs to the Government with effect from 1 January 2000. In response to comments made by some Members that more powers should be provided to DCs after abolishing MCs at the resumption of the Second Reading debate on the Bill, SCA responded during the Third Reading of the Bill at the Council meeting on 1 December 1999 that –

“.....some Members expressed support for the streamlining of the three-tier system of representative government into a two-tier structure. At the same time, they hope that the Government could strengthen the functions and representativeness of District Councils. After the commencement of the first term of District Councils of the Hong Kong Special Administrative Region next year, we will work in this direction to promote the development of district organizations, and consider ways to enhance the role of District Councils in district affairs and to strengthen their functions.”

13. The following motion moved by Professor Hon NG Ching-fai on “Enhancing the functions of District Councils” was passed by the Council on 19 January 2000 –

“That, as the two municipal councils have been dissolved and it is necessary to allow the 18 District Councils (DCs) to take on more powers and responsibilities at the district level, this Council urges the Government to ensure ha it attaches importance to the DCs’ consultative role, and to expand the DCs’ functions and provide them with additional funding and corresponding powers in deciding on the district affairs relating to community building, improvements to the local environment, provision and

management of community facilities, organization of cultural and recreational activities, etc., so as to nurture political talents, promote civic awareness and strengthen social solidarity.”

In response to the motion, the Administration made a commitment to conduct an overall review of the role of DCs after they had been in operation for some time and to complete the review in 2001.

The Review

14. To follow up the undertaking given by the Administration during the resumption of the Second Reading and Third Reading debates of the Provision of Municipal Services (Reorganization) Bill on 1 December 1999, and in response to the motion moved by Professor Hon NG Ching-fai in January 2000, the Secretary for Home Affairs agreed to review the role and functions of DCs after the new DCs had been in operation for some time. An inter-departmental Working Group on District Councils Review (the Working Group) chaired by the Home Affairs Bureau (HAB) was set up in July 2000 to consider the issues and make recommendation. The Working Group made a total of 28 main recommendations in its Report published in July 2001 for public consultation. Details of the recommendations are in the **first column of the Annex A** to the LegCo Brief entitled “District Councils Review : Outcome of Consultation and Remuneration for District Council Members” (**Appendix I**).

15. The role and functions of DCs were discussed at a number of meetings held respectively or jointly by the Panel on Constitutional Affairs (CA Panel) and the Panel on Home Affairs (HA Panel) both before and after the release of the Report of the Working Group in July 2001. The major views and concerns of members are summarised below –

- (a) since the establishment of 18 DBs in 1982, there had been discussions on the question of giving decision-making powers to DBs in district affairs. However, DCs still remained as advisory bodies after 20 years, despite the dissolution of the two MCs;
- (b) the Administration’s undertaking to transfer part of the functions and powers of the former Provisional MCs to DCs had not been honoured;
- (c) given that DCs were district organizations referred to in BL 97, they should be responsible for taking up the duties of MCs in providing services in areas such as culture, recreation and environmental sanitation as stated in the latter part of BL 97. The Administration should delegate concrete powers to DC members within the framework of the Basic Law with a view to enhancing their accountability; and

- (d) the 2001 DC review was not comprehensive and the role of DCs should be defined in the entire constitutional framework before reviewing the functions and responsibilities of DCs.

16. The Administration explained that since the new DCs had only been established for less than two years, it was not appropriate to introduce drastic changes, such as giving DCs the power to make executive decisions on district affairs. The recommendations of the Working Group were in line with the undertaking given by SCA during the Third Reading of the Provision of Municipal Services (Reorganization) Bill in December 1999.

17. The Administration advised that adopting the operational mode of MCs for DCs, or devolution of specific executive functions to 18 district administrative regions in a compact city like Hong Kong would run the risk of fragmenting responsibilities and diminishing efficiency.

18. The Administration also stressed that the role and functions of DCs should not exceed the parameter of BL 97. Under BL 97, district organizations could be established to perform two functions i.e. either to be consulted on district administration, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation. BL 97, when read together with BL 98, provided flexibility for the Hong Kong Special Administrative Region (HKSAR) to determine whether or not to establish district organizations, and if so, whether they should perform both or either one of the two functions set out in BL 97. Provided that they operated within the framework laid down in BL 97, the powers and functions of the district organizations were matters for policy decision, and according to BL 98 such policy decisions must be prescribed by law. The legal advice on the interpretation of BL 97 provided by the Administration is in **Appendix II**.

19. The Executive Council agreed at its meeting on 20 November 2001 that, subject to the provision of the necessary funds by the Finance Committee, the following proposals should be implemented –

- (a) the final recommendations of the Working Group to enhance the role and functions of DCs; and
- (b) the recommendations of the Independent Commission on Remuneration for Members of the District Councils of the HKSAR on the remuneration package for DC members.

Details of the recommendations of the Working Group and the Administration's amendments to the recommendations are in the LegCo Brief entitled "District Councils Review : Outcome of Consultation and Remuneration for District Council Members" (**Appendix I**).

20. At the meeting on 7 December 2001, the Finance Committee approved the package of remuneration and allowances for DC members.

2006 review of DCs

21. Following the record high voter turnout rate of the DC elections on 23 November 2003, there were calls for the Administration to abolish appointed DC seats. The Administration announced on 30 November 2003 that it would conduct a review of the role, functions and composition of DCs including the question of appointed seats.

22. Since the announcement, CE and SCA had on different occasions spoken on the timetable and scope of the DC review as detailed in paragraphs 23 – 26 below.

23. In his 2004 Policy Address delivered on 7 January 2004, CE stated that the Government would review the function and composition of DCs at a suitable time.

24. In reply to a written question raised by Hon LAU Wong-fat concerning the timetable, scope and mode of consultation of the DC review at the Council meeting on 1 December 2004, SCA advised that –

“The Government is currently concentrating on the work relating to the amendments to the methods for electing the Chief Executive and the Legislative Council in 2007-08. When work on that front has reached a more mature stage, the Government will proceed with conducting the review.....The review will cover the roles, functions and composition of DCs, and other relevant issues. In conducting the review, we will have regard to the relevant legal provisions, the original rationale for introducing the district administration scheme, the recommendations put forth by the Government in the Report of the Working Group on District Councils Review published in 2001, and the experience of the operation of the second term DCs since January 2004.....During the review, we will issue a consultation document and listen to the views of different parties, including the Legislative Council, DCs and the public.”

25. In his Policy Address delivered on 12 January 2005, CE said that –

“This year, we will review the functions and other aspects of District Councils and enhance our support for them. We will attach importance to how the 18 District Officers may better play their role. We will help them resolve community problems in a practical manner, referring them if necessary to higher levels for expeditious resolution. I have asked the Principal Officials to fully support the District Officers to enable them to function more effectively. We will deliver on the “people-based” service culture, pay constant attention to public aspirations and respond actively.”

26. In the Policy Address delivered by the new CE on 12 October 2005, he stated that –

“The role of the District Councils will be expanded. The Government will allow each District Council to assume responsibility for the management of some district facilities, such as libraries, community halls, leisure grounds, sports venues and swimming pools. The executive departments will follow the decisions of the District Council in managing such facilities, within the limits of their existing statutory powers and resources available. I have asked the working party under the Home Affairs Bureau and the Constitutional Affairs Bureau to work out an implementation plan for this proposal in the context of the on-going review of the functions and structure of the District Councils. The working party will seek the views of District Council members in making its recommendations. The formal public consultation on the review will commence in the first quarter of next year.”

Composition of DBs/DCs

Historical development

27. A table summarising the composition of DBs/DCs since 1982 is in **Appendix III**. Some of the main developments are –

- (a) the first DB elections were held in 1982. Of the 490 seats, about one-third were official members, one-third were appointed unofficials, and the remainder were elected unofficials;
- (b) in 1985, all official members on DBs were withdrawn. The Chairman of each DB was elected from among its members. The overall ratio of elected to appointed members was approximately 2:1;
- (c) for the term 1988-91, the total seats were 432, comprising 141 appointed members, 264 elected members and 27 ex-officio members who were Rural Committee Chairmen. With the introduction of representation of DBs on Urban Councils, the 30 ex-officio members who were Urban Councillors ceased to be urban DB members after April 1989;
- (d) in 1994, all appointed seats in DBs were abolished. Of 373 DB members, 346 were elected by geographical constituencies, and 27 were Rural Committee Chairmen who retained their ex-officio seats in the New Territories;
- (e) on 1 July 1997, the 18 Provisional DBs replaced the corresponding DBs, with a total of 468 members appointed by CE. They included

all those members serving before 1 July 1997 and their term of office ended on 31 December 1999;

- (f) for the first term DCs i.e. 2000-03, there were a total of 519 members, consisting of 102 appointed members, 390 elected members, and 27 ex-officio members; and
- (g) for the second term DCs i.e. 2004-07, the number of elected seats has been increased by 10 from 390 to 400. The number of appointed and ex-officio seats remain unchanged.

Relevant statutory provisions

28. Section 9 of DCO provides that the composition of DCs is to consist of elected members, appointed members; and (in respect of districts in New Territories) ex-officio members who are Chairmen of the relevant Rural Committees. Section 11 of DCO further provides that CE may appoint as members of a DC "a number of persons not exceeding the number specified in column 4 of Part I of Schedule 3". According to Schedule 3, there are a total of 400 elected members, a maximum of 102 appointed members, and 27 ex-officio members for the second term DC. Section 12 of DCO set out the eligibility criteria for appointing a person as a member of DC.

Factors in determining the composition of DCs

29. According to the Administration, the following guiding principles have been used in determining the number of elected, appointed and ex-officio members for the second term DC –

- (a) the number of elected members should be based on the ratio of one to every 17,635 population (which was the territory-wide average population per constituency in 2002);
- (b) the number of appointed members on average should be about one-fifth of the total number of members in a DC; and
- (c) the number of ex-officio members should be based on the number of Rural Committees established under the Heung Yee Kuk Ordinance (Cap. 1097), of which there are 27 at present, spreading over nine Districts in the New Territories.

Past discussions on appointed and ex-officio membership of DCs

Abolition of appointed seats in 1994

30. In 1994, all appointed seats in DBs were abolished. The proposal to

abolish all appointed DB seats was given legislative effect by way of the Electoral Provisions (Miscellaneous Amendments) (No. 2) Bill 1993. The Bill sought to put in place electoral arrangements in 1994 and 1995 for the three tiers of representative bodies. In moving the Second Reading of the Bill at the Council meeting on 15 December 1993, SCA said that –

“.....the Bill provides for the abolition of appointed seats in both the district boards and municipal councils as from the next round of elections. This will be a logical step in the gradual evolution of the municipal councils and the district boards over many years. The appointed seats in these bodies have stayed at about one-third of their membership since the latter half of the 1980s. As the Legislative Council will become fully elected in 1995, it will be the appropriate time for the municipal councils and district boards to become fully elected bodies as well. With a fully elected membership, they will be able to reflect better the views of the community which they serve.”

31. During the resumption of the Second Reading debate on the Bill at the Council meeting on 23 February 1994, SCA said that –

“There are concerns that after the appointed members have gone their expertise cannot be readily replaced. It is recognized, and one can hardly overemphasize this, that over the years appointed members have made significant contributions. But at the same time one must equally recognize the need of our system of representative institutions evolving to meet the aspirations of the community. In any case, there are already legal provisions for the municipal councils and the district boards to co-opt experts onto their committees if such a need arises.”

Restoration of appointed and ex-officio seats

32. The appointed DC seats were restored on 1 July 1997 when the 18 Provisional DBs replaced the corresponding DBs as an interim arrangement, pending elections to be held. The Provisional DBs included all those members serving before 1 July 1997 as well as additional appointees. There were a total of 468 appointed members and their term of office ended on 31 December 1999.

33. The District Councils Bill, introduced into LegCo on 16 December 1998, provided for the establishment, composition and functions of DCs. The Bill proposed that each DC should be composed of three categories of members, namely, elected members, ex-officio members and appointed members. For the first term DC commencing on 1 January 2000, there would be a total of 519 members, comprising 390 elected members, 102 appointed members and 27 ex-officio members.

34. In moving the Second Reading of the District Councils Bill, SCA said that –

“With regard to appointed members, I appreciate that individual members may have different views and consideration. During our consultation on the Review of District Organizations, we have gathered from the community different opinion about appointed membership. Many indicated their preference to retain appointed members in order to attract some individuals who are enthusiastic and interested in district affairs and are capable and experienced but have no intention to serve the community through the channel of election to join the District Councils. Such will help not only to reflect the interest of different sectors within a District but also to enhance the quality of District Councils in deliberating business. And this will certainly be beneficial to the operation of District Councils and the people in the District particularly when many issues affecting the well-being of the people (such as advising on food and environmental hygiene service) will fall within the purview of District Councils in future. In the past, appointed members represent about one third of the total number of District Boards members. Since we propose now to retain appointed members at the proportion of about one fifth of the total number of members in a District Council, it should be reasonable and acceptable.”

35. During the resumption of the Second Reading debate on the District Councils Bill on 10 March 1999, Members expressed divergent views on the appointed and ex-officio membership of DCs. Some Members were strongly opposed to the restoration of appointed and ex-officio membership, and considered it a retrograde step in democratic development as all members of DBs, except the ex-officio members, were already returned by direct election in 1994. They also considered that the provision for appointed seats in the Bill was in contravention to Article 25 of the International Covenant on Civil and Political Rights (ICCPR). Some other Members did not have strong views regarding appointed membership and agreed with the Administration that appointed members could enhance the representativeness of DCs as advisory bodies. A Member moved amendments to abolish all appointed and ex-officio seats from the Bill and the amendments were negated. The Bill was passed by LegCo on 10 March 1999.

36. SCA had explained that the introduction of appointed seats was not in breach of ICCPR as follows –

“.....legal advice to us has confirmed that the right to vote, as referred to in Article 25 of the ICCPR, is obviously applicable only to the election of the legislature. The essence of Article 25 is that the institutions which exercise legal and real powers must be formed by means of election. As District Councils are not institutions of such a nature, the provision for appointed seats as proposed in the Bill does not contravene Article 25 of the ICCPR.”

Appointment of DC members after the 2003 DC elections

37. Following the DC elections on 23 November 2003, the CA Panel and HA

Panel held a joint meeting to discuss appointed membership of DCs. Some members considered that CE should appoint the least number of DC members in accordance with the law and respect the choices made by more than one million voters who cast their votes in the DC elections, as the appointment of DC members by CE would be tantamount to changing the results of voting by the public. Some members supported appointed membership of DCs because of their contribution to the work of DC.

38. The Administration advised that appointed membership was intended to provide a channel for individuals with the ability and interest to serve the community. The proportion of appointed membership was decided by the Government after thorough consultation and deliberation in 1998. In addition to the criteria for appointment provided in section 12 of DCO, the Government would take into account the individuals' ability, experience, professional qualifications and background, commitment to serve the public, integrity and public service record. Appointed members could help reflect the views of different sectors in the districts. All DC members, irrespective of whether they were appointed or elected members, had roles to play in making contributions to the diversified nature of the work of DCs.

39. The Administration also advised that DCO provided that CE might appoint a maximum of 102 members but did not specify a minimum number. It was the policy intention for DCs to be composed of three types of membership, namely, elected, appointed and ex-officio members.

40. Dr Hon YEUNG Sum moved a motion on “Appointing least number of DC members” for debate by the Council on 3 December 2003. The motion was negated. In reply to the motion, SCA said that –

“As for the way forward of the system of appointed membership in the long term, the SAR Government has made an undertaking to conduct a review of the composition, role and functions of DCs after the election this year. During the review, we will study the system of appointed membership.”

The Administration’s proposal on phased abolition of appointed DC seats

41. On 7 January 2004, CE announced the establishment of the Constitutional Development Task Force. Its tasks were to examine in depth the relevant issues of principle and legislative process in the Basic law relating to constitutional development, to consult the relevant departments of the Central Authorities, and to gather views of the public on the relevant issues. The Fifth Report of the Task Force published on 19 October 2005 put forth a package of proposals for the methods for selecting CE in 2007 and for forming LegCo in 2008.

42. On the two methods for selecting CE in 2007 and for forming LegCo in 2008, the Administration proposed that –

- (a) the number of members of the Election Committee be increased from 800 to 1600. All (appointed, ex-officio and elected) DC members be included in the Fourth Sector of the Election Committee;
- (b) the number of LegCo seats be increased from 60 to 70. The number of seats returned by geographical constituencies and functional constituencies (FCs) would respectively be increased to 35; and
- (c) all the newly added FC seats be returned through election by DC members from among themselves. The number of seats returned by the DC FC would be increased from one to six.

43. The Administration had explained that the key feature of the proposed package was to increase the democratic representation of the two elections by expanding the participation of DC members in the Election Committee and in LegCo. All the 400 DC members directly elected by more than three million registered voters would be included in the Election Committee, and the five new Members to be elected from among the DC members would likewise had an electoral base of three million voters, bringing the district-level representation in LegCo to almost 60%. The package provided the highest possible degree of democratic elements within the framework laid down by the Interpretation and Decision made by the Standing Committee of the National People's Congress in April 2004.

44. Some members of the Subcommittee to Study the Administration's Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008 did not support the inclusion of appointed DC members in the proposed package as this represented a major retrograde step in achieving democratic development. Some members pointed out that the proposal would give rise to concerns about "vote planting" and conflict of interest as the 102 DC members appointed by CE had the right to nominate and vote at a CE election. Some members considered that voters who had voted in the 2003 DC elections were not aware that DC members would be given the right to vote in the CE election and to elect among themselves five LegCo Members. If the package of proposals was to be implemented, the 18 DCs should be dissolved with all its members re-elected before the next CE election.

45. After consideration, the Administration proposed to phase out appointed DC seats over a period of time as follows –

- (a) the maximum number of appointed DC seats be reduced from the existing 102 to 68 when the new term of DCs commenced in January 2008; and
- (b) the Administration would decide in the light of the prevailing situation, which would mainly be the reaction of the community and

the operation of DCs following the reduction in the appointed seats, before the end of 2011 whether the maximum number of appointed DC seats should be further reduced to zero in January 2012, or to 34 in January 2012 and then to zero in January 2016.

46. However, the Administration emphasized that the above proposal formed part of the overall package for the 2007/08 electoral arrangements. If the two Government motions concerning amendments to the methods for selecting CE and for forming LegCo in Annexes I and II to the Basic Law respectively were rejected by LegCo, the Administration would not proceed with the changes to the DC appointed seats. The two motions were negated at the Council meeting on 21 December 2005.

Relevant papers

47. A list of the relevant papers which are available on the LegCo website is in the **Appendix IV**.

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LEGISLATIVE COUNCIL BRIEF

DISTRICT COUNCILS REVIEW: OUTCOME OF CONSULTATION AND REMUNERATION FOR DISTRICT COUNCIL MEMBERS

INTRODUCTION

At the meeting of the Executive Council on 20 November 2001, the Council ADVISED and the Chief Executive ORDERED that, subject to the provision of the necessary funds by the Finance Committee (FC) of the Legislative Council (LegCo), the following proposals should be implemented -

- (a) the final recommendations to enhance the roles and functions of the District Councils (DCs) as set out in Annex A; and
- (b) the recommendations of the Independent Commission on Remuneration for Members of the District Councils of the HKSAR (the Commission) on the remuneration package for DC members as set out in Annex B.

BACKGROUND AND ARGUMENT

General Background

2. During the Resumption of the Second Reading debate of the Provision of Municipal Services (Reorganisation) Bill on 2 December 1999, the Administration undertook to consider the scope for strengthening the roles and functions of the DCs. An inter-departmental Working Group on DC Review, chaired by Home Affairs Bureau (HAB), was set up in July 2000 and completed the review in June 2001.

3. The DC Review report, containing 28 recommendations in five major areas, was released for public consultation on 9 July 2001. The consultation period ended on 10 September 2001. We have consulted the 18 DCs individually and received a total of 27 submissions from the public.

4. An Independent Commission was appointed on 6 July 2001 to conduct periodic reviews of the remuneration package for DC members. The Commission was chaired by Mr Wong Po-yan and comprises four members, including two of the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the HKSAR. The Commission has completed its review and submitted a package of recommendations to strengthen support for DC members.

The Proposals

DC Review : Outcome of Consultation

5. While the majority of the recommendations in the DC Review report are welcomed or accepted by the DCs, there are two areas of concerns. First, the Government has not devolved the powers previously vested in the Provisional Municipal Councils (PMCs) to the DCs. Secondly, the proposal to set up a consultative committee in each district to advise on the usage and management of district leisure and cultural facilities would undermine the role and status of the DCs. In addition, some DC members have put forward other proposals and suggested modifications to some of the recommendations. Their comments are summarized in **Annex A**.

(a) Devolution of Executive Power to DCs

6. Many LegCo and DC members considered that the Government should gradually devolve to the DCs some of the functions for providing cultural, recreational and environmental hygiene services. They nonetheless agreed that it might not be desirable or feasible to turn the 18 DCs into 18 mini-Municipal Councils as this would result in fragmenting responsibilities and diminishing efficiency. Some considered that the problem could be resolved by reducing the number of DCs to, say, four or five, so that each of the Councils could be given executive powers similar to those of the two PMCs.

7. The last major review of the district organisations (including the two PMCs and DCs) was held in 1998. The Administration has no plan to conduct another review concerning the number and composition of DCs at this stage. We will consider the need for such a review at an appropriate time and, in the meantime, continue to explore ways to further enhance DCs' influence over the work and decisions of departments at the district level as well as their participation in local environmental improvement works and community building activities.

(b) District Consultative Committee

8. There were reservations about the proposal to set up a district consultative committee to advise on the usage and management of district-based leisure and cultural facilities, despite that the original proposal came from some DC members and that the arrangement was in line with those for community halls and markets. DC members were concerned that the proposed consultative committee would undermine the role and influence of the DCs in district affairs.

9. Instead of pursuing the original proposal, we would invite one of the DC's committees (e.g. Cultural, Recreation and Sports Committee) to advise the Leisure and Cultural Services Department (LCSD) on the usage and management of district leisure and culture facilities (e.g. opening hours and booking policies). To enable the DC committee to take into account the users' needs in their deliberations, they would be encouraged to invite the interested parties or user groups to sit in its meetings when usage and management of a particular facility is discussed. In addition, LCSD would report to the DC committee the views of the Customers Liaison Groups (CLGs), which are set up by the Department on a venue basis and comprise users of the facility. LCSD would take on board the DCs' views so long as they are in line with the territory-wide policies and are broadly within the prescribed budgets.

(c) Independent DC Secretariat

10. A number of DC and LegCo members have suggested that, apart from providing more resources to the DC secretariats, the secretariats should be made independent from the Government and be accountable to the DCs. They argued that an independent secretariat, like the one for LegCo, would be more responsive to DCs' demands and provide more neutral advice. The Administration considers that the current set-up of the DC secretariats under the District Offices ensures the smooth and efficient operation of the secretariats and effective communication between DC members and Government departments. Moreover, in view of the far-reaching implications of the proposal and the dissenting views expressed by Members during the LegCo motion debate on 31 October 2001, we do not propose to pursue the suggestion at this stage. Additional resources will be provided to the DC Secretariats to strengthen their support for the DCs.

(d) Other Issues

11. Apart from the above-mentioned issues, DC members had also raised a number of points on the other recommendations. Our response is set out in **Annex A**. We have made changes to three of the 28 recommendations, namely, items 3 (district consultative committee), 5 (consequential changes necessitated by changes to item 3) and 13 (attendance of chairmen of DC committees at District Management Committee meetings).

12. In response to DC members' request, the Administration will expand the Precedence List to include DC Vice-Chairmen and members (as separate categories), in addition to DC Chairmen who are already on the List.

Review of the Remuneration for DC Members

13. In considering the remuneration package for DC members, the Commission adopted the following guiding principles –

- (a) DC membership is a form of service to the public and the honorarium should not be treated as a salary;
- (b) DC members should be reasonably and adequately remunerated to ensure that they would not suffer from pecuniary embarrassment due to the time spent on providing community service. The honorarium is also meant to cover travel, out-of-pocket and related expenses incurred in connection with their DC duties;
- (c) DC members should be provided with an Accountable Allowance (AA) to pay for staff costs, office rental and related expenses arising from the operation of their ward offices; and
- (d) DC members should be personally accountable for all their claims, which should be credible and reasonable. Their accounts should be properly documented and all their claims, including supporting documents and declarations, should be made available for public inspection.

14. The Commission's recommendations are summarized at **Annex B**. The main recommendations include:

- (a) to maintain the monthly honorarium for DC members at the current rate of \$17,950 and the existing annual adjustment mechanism (i.e. in accordance with the movement of Consumer Price Index (A) (CPI(A)));
- (b) to increase the monthly AA from \$10,000 to \$17,000, allowing about \$7,000 for office rental, \$8,000 for salary and related expenses for employing personal assistants and \$2,000 for other expenses arising from the operation of the ward office. Since the new rates of AA reflect the current market situation and the actual needs of DC members, they are net of the adjustments arising from the movement of the CPI(A) in 2000 and 2001. In other words, the next annual adjustment will be due in January 2003;
- (c) to expand the ambit of the AA to cover a wider range of office expenditure and expenses on publicity materials promoting the member's ward offices for the purpose of conducting DC business;
- (d) to merge the monthly AA into an annual provision to provide greater flexibility for DC members; and
- (e) to provide a one-off reimbursable grant of \$10,000 for each member to strengthen the information technology (IT) and other support for them during the current term. The provision of a full-fledged setting up grant would be revisited when the Commission conducts its next review in 2003, one year before the start of the next DC term.

The Administration has considered and accepted the recommendations of the Independent Commission at Annex B .

15. The Administration has considered carefully the proposed increase in AA and the provision of an IT and other support grant in the current economic climate. We agree that the package reflects the basic and necessary expenses arising from the operation of DC members' ward offices and the current market situation, and that the enhanced support will in turn improve the communication between DC members and the public as well as the quality of community services provided by them.

Legislative Amendments

16. No legislative amendments are required to give effect to the proposed package of measures to enhance the roles and functions of DCs and support for DC members.

PUBLIC CONSULTATION

17. We have consulted the public, including the DCs individually, on the recommendations in the DC Review report in July-September 2001. The LegCo Panels on Home Affairs and Constitutional Affairs held a joint meeting on 4 October 2001 to discuss the report. In addition, the Hon Ip Kwok-him moved a motion at LegCo on 31 October 2001 urging the Government to revise the recommendations in the Review report having regard to the views gathered and to gradually devolve to DCs some of the functions for providing cultural, leisure and environmental hygiene services. The motion was carried but the amendment proposed by the Hon Andrew Cheng urging the Government to, inter alia, study the proposal of making the DC Secretariats independent from the Government and introduce an annual debate mechanism for DCs, was defeated.

18. Many DC members have expressed views on the remuneration package prior to and during the public consultation exercise. The Commission has given due regard to these views and those made by the general public in making recommendations.

BASIC LAW IMPLICATIONS

19. The recommendations in Annexes A and B are consistent with the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

20. The package of measures, including the recommendations on the remuneration package, require the allocation of an additional \$101.6 million per annum to the DCs and a one-off non-works capital expenditure of \$5.19 million. These include –

- (a) \$31 million for DCs to organise and sponsor additional community involvement, cultural and recreational activities;

- (b) \$10 million for DCs to implement additional Minor Environmental Improvement (MEI) projects;
- (c) \$43.6 million for the increase in AA for DC members on the basis that the proposed rate of \$17,000 is net of the adjustments arising from the movement of CPI(A) in 2000 and 2001 (see para. 14(b) above);
- (d) \$12 million for Director of Home Affairs (DHA)/DCs to employ 48 additional staff to strengthen support for the DC secretariats and to implement additional community involvement and MEI projects;
- (e) \$5 million for DHA to organise DC-related activities including visits, briefings and training courses for DC members and their assistants, training for civil servants who have frequent dealings with DCs, District Administration seminars, etc, and to provide other support services for DCs; and
- (f) a capital item of \$5.19 million (up to end 2003) for the one-off reimbursable grant to DC members to strengthen their IT and other support.

21. The 2001-02 Budget has set aside \$100 million of recurrent expenditure for implementing the recommendations arising from the DC Review. For the current (2001-02) financial year, we would seek FC's approval that the DCs be allocated the full-year provision in respect of items (a) and (b) in paragraph 20 above (i.e. \$41 million), and four months' provision for items (c), (d) and (e). DCs have all along considered the funds given to them to carry out community involvement activities and MEI projects insufficient. It would be advisable to give the DCs the full-year provision so that they could implement as many projects as possible at the district level. This will in turn create more job and business opportunities within a relatively short time span. We are confident that the DCs could spend the additional allocation of \$41 million in the current financial year.

ENVIRONMENTAL IMPLICATIONS

22. The proposals to increase the funding for the DCs to undertake more MEI projects and to promote public awareness in, inter alia, clean Hong Kong and environmental protection will bring environmental benefits to the society.

PUBLICITY

23. We will conduct a special briefing for the DC Chairmen and Vice-Chairmen on 21 November and write to DC members informing them of the recommendations in paragraph 1 above. A press release will also be issued on the same day. A spokesman will be available to handle media and public enquiries. The LegCo Panels on Home Affairs and Constitutional Affairs will be consulted before a submission is made to the FC in December.

ENQUIRY

24. Enquiries on this Legislative Council brief may be directed to Mr Kevin Yeung, Principal Assistant Secretary for Home Affairs at telephone number 2835 1375.

Home Affairs Bureau
November 2001

**Government’s Response to the Views Expressed
on the Recommendations in the DC Review Report**

Recommendations of the Working Group on DC Review	Summary of major views by DCs, political parties and the general public	Amendments to the recommendations and the Administration's Views
A. <u>Enhancing the roles and functions of DCs and providing additional funding for them</u>		
(1) To allocate to the DCs an additional \$31 million per annum for organizing community involvement (CI) projects starting from 2001-02. Together with the \$25.4 million transferred from the Leisure & Cultural Services Department (LCSD), the DC funds for organising CI projects in 2001-02 will have increased by 46% over that for 2000-01.	Increase in funding was supported though some considered the proposed increase not sufficient Allocation of the additional funding should take into account the population, distribution and characteristics of each district.	Requests for additional funding noted and will be considered in future. No changes proposed. Actual distribution of the funding will be drawn up by HAD in consultation with DCs
(2) To provide the DCs' with an additional \$10 million per annum for implementing Minor Environmental Improvement (MEI) projects starting from 2001-02, representing a 50% over that allocated by DCs in 2000-01.	Increase in funding was supported though some considered the proposed increase not sufficient Allocation of the additional funding should take into account the population, distribution and characteristics of each district.	Requests for additional funding noted and will be considered in future. No changes proposed. Actual distribution of the funding will be drawn up by HAD in consultation with DCs
* (3) To set up a consultative committee in each district to advise on the usage and management of district-based cultural and leisure facilities such as indoor games halls, parks, swimming pools, beaches, local libraries; and to appoint DC members to the committee as members.	Objected by most DC members. They considered that consultation on the usage and management of district-based cultural and leisure facilities should be done through a DC committee. Some considered that the DCs should be allowed to manage the municipal facilities.	To revise the recommendation along the line of recommendation (4) to read – “To consult DC or its committee on the usage and management of district-based cultural and leisure facilities such as indoor games halls, parks, swimming pools, beaches, local libraries. LCSD would take on board the DCs’ views so long as they do not depart from the territory-wide policies and are broadly within the prescribed budget.”

* Changes to the original recommendations proposed.

<p>Recommendations of the Working Group on DC Review</p>	<p>Summary of major views by DCs, political parties and the general public</p>	<p>Amendments to the recommendations and the Administration's Views</p>
<p>(4) To strengthen DCs’ ability in monitoring the provision and delivery of district-based <u>municipal</u> facilities and services by institutionalizing a mechanism to ensure that the departments concerned will:</p> <ul style="list-style-type: none"> (i) consult the DCs in advance on their proposed initiatives, measures and projects and their priority; (ii) take on board the DCs’ views on the design and layout of district-based municipal facilities which have secured funding approval, provided their recommendations do not depart from the territory-wide policies and are broadly within the prescribed budget; (iii) submit to the DCs a district annual plan and half-yearly progress reports on the work of the department; and (iv) invite the DCs to comment on the performance and standards of the municipal services provided by private contractors in the districts and to take account of their views and other relevant factors in deciding whether the contracts should be renewed. 	<p>Supported.</p> <p>Some considered that the DCs should be empowered to provide municipal services.</p>	<p>The Administration will consider the need for another review of the DCs at an appropriate juncture. Meanwhile, we will continue to explore ways to further enhance DCs’ influence over the work and decisions of the departments at the district level as well as their participation in local environmental improvement works and community building activities.</p>

Recommendations of the Working Group on DC Review	Summary of major views by DCs, political parties and the general public	Amendments to the recommendations and the Administration's Views
<p>* (5) To improve communication between the two municipal departments and the DCs, Director of Leisure and Cultural Services (DLCS) and Director of Food and Environmental Hygiene (DFEH) undertake to hold regular liaison meetings with the chairmen and vice-chairmen of the relevant DC committees to collect views on the work of the departments. Similar meetings between DLCS and the chairmen of the management consultative committees proposed in (3) above can be arranged.</p>	<p>Supported. Some suggested that DFEH and DLCS should also meet the relevant DC Committees regularly if possible.</p>	<p>In view of the proposed changes to recommendation (3), the last sentence of this recommendation will be deleted. Will convey to the Heads of Department concerned DC members' suggestion.</p>
<p>(6) To enhance the role of DCs in the planning and implementation of <u>other</u> district-based services and facilities (e.g. transport, territory development), the core departments will:</p> <p>(i) submit to the DCs their annual district plans and incorporate their views into the work plans as far as practicable;</p> <p>(ii) seek and take on board the DCs' views on the priority, location and design of local projects and facilities within the purview of the core departments, provided that they are broadly within the prescribed budget and do not depart from the territory-wide policies; and</p>	<p>Supported.</p>	<p>No changes proposed</p>

Recommendations of the Working Group on DC Review	Summary of major views by DCs, political parties and the general public	Amendments to the recommendations and the Administration's Views
(iii) in exceptional cases where the DCs' views cannot be taken on board, explain the reasons clearly to them.		
(7) Policy bureaux and departments to invite DCs to comment on major policy issues and capital works projects affecting the well-being of the people in the district, and to report their views in the bureaux/departments' submissions to the approving authority.	Supported. DC members hoped the bureaux would discuss with them major policy initiatives at the initial stage of their formulation.	No changes proposed. Will convey to the Bureaux/Departments DC members' suggestion.
(8) To involve DCs in drawing up the priority of major culture and leisure works projects in the respective districts before LCSD puts forward a consolidated Five-Year Plan for such projects for consideration within the Administration. The Plan would give the DCs an indication as to whether and when a particular project will proceed.	Supported. But many DC members considered the progress made on the ex-PMC projects unsatisfactory and urged the Government to expedite the implementation of the projects.	LCSD has announced the Five-Year Plan and will inform DCs of the outcome. The exercise will be repeated on a roll-over basis. Meanwhile, LCSD will consider ways to further accelerate the progress of the work projects.
(9) To increase DCs' involvement in the implementation of local minor works projects by devolving to DC chairmen/members the chairmanship of the two Steering Committees on Rural Public Works (RPW) and Urban Minor Works (UMW) Programmes as well as the 18 District Working Groups.	Supported. However, some DC members suggested that the Administration should consult the relevant DC Committees on these projects instead of setting up the Steering Committees/Working Groups.	The proposal is a first step in the direction of devolution. HAB/HAD will look into the possibility of further enhancing DCs' involvement in minor works projects.
(10) To take into account DCs' views as far as practicable in considering planning applications and requests for land use changes.	Supported. Some DCs considered that consultation with DCs on the planning and rezoning proposals should be made mandatory.	HAB/HAD will discuss with Planning and Lands Bureau and Planning Department on how to increase DCs' involvement in the informal consultation process, pending the enactment of the amendments to the Town

Recommendations of the Working Group on DC Review	Summary of major views by DCs, political parties and the general public	Amendments to the recommendations and the Administration's Views
		Planning Ordinance.
(11) To invite DCs to consider the specific suggestions made by departments at Appendix II to increase DCs' involvement in their work.	Supported. DCs might also help promote environment protection, HK's traditions and heritage conservation.	Will invite the relevant departments to consult DCs on these issues.
(12) To devolve chairmanship of certain district committees to DC members and to invite them to take part in more district committees.	Supported. Some DC members requested that most if not all of these committees should be put under DCs. These include the District Fight Crime Committee, District Fire Safety Committee, District Clean Hong Kong Committee, etc.	<p>The proposal is the first step in the direction of devolution of chairmanship. Nonetheless, HAB/HAD will consider requests for putting district advisory bodies under the DCs on a case-by-case basis having regard to the nature and specific needs of individual bodies. Not in favour of making the proposal an across-the-board arrangement because:</p> <ul style="list-style-type: none"> (a) it would prevent the government from tapping valuable expertise and resources from the wider community; and (b) DC members, who are limited in number, may have difficulties in taking on the work of the many district advisory bodies set up to pursue various policy objectives and initiatives.
* (13) To invite chairmen of DC committees to attend District Management Committee (DMC) meetings as and when items concerning their committees are discussed.	Supported. However, many DCs suggested that the chairmen of the DC committees should be invited to attend DMC meetings regularly. Some further suggested that the respective DC members should also be invited to attend DMC meetings when an item concerning their constituents was discussed.	The former proposal is acceptable but the latter is not feasible and would turn the DMC meeting into a de facto DC meeting. To revise the recommendation to read – “To invite chairmen of DC Committees to attend District Management Committee meetings to assist discussions”.

Recommendations of the Working Group on DC Review	Summary of major views by DCs, political parties and the general public	Amendments to the recommendations and the Administration's Views
B. Enhancing communication between DCs and the Administration		
(14) To enable effective dialogue between the DCs and the Policy Secretaries/Heads of Department (HoDs) who oversee matters affecting people's livelihood, the latter would meet DC members as necessary and at least once within the four-year term of DCs.	Supported. But many DC members requested more frequent meetings with the Policy Secretaries/Heads of Department.	We would convey to the Policy Secretaries/Heads of Department DC members' requests. One alternative is for their Deputies to meet with the DCs between the visits by the Policy Secretaries/Heads of Department. Different format of organising briefings for DCs (e.g. regional forum) may be considered.
(15) To stipulate clearly the level of representation of the core departments at DC meetings and to require a directorate officer of the bureau and department which cannot attend a DC meeting to give a written or oral explanation to the DC secretariat in advance.	Supported.	No changes proposed.
(16) Departments having dealings with DCs to assign a suitable officer to provide "one-stop" services for DC members including the handling of complaints.	Supported. Some considered that the officers should be pitched at the Assistant Director level.	No changes proposed. The most appropriate officer will be appointed, who may or may not be an Assistant Director.
(17) To develop a feedback mechanism for collecting DC members' feedback to the work of the core departments. The feedback collected from DCs will be conveyed to the Heads of Department concerned for reference and necessary follow-up action.	Supported.	No changes proposed.

Recommendations of the Working Group on DC Review	Summary of major views by DCs, political parties and the general public	Amendments to the recommendations and the Administration's Views
(18) To keep DCs abreast of new policy proposals, policy bureaux will send electronic copies of LegCo briefs (especially those containing information of interest to the general public) to the DC secretariats for dissemination to DC members.	Supported.	No changes proposed.
(19) To provide training for civil servants who have frequent dealings with DCs on the future enhanced roles and functions of the DCs with a view to improving their communication with DC members and cultivating among them a more forthcoming attitude towards the DCs.	Supported.	No changes proposed.
C. Enhancing DC members' participation in the policy-making process		
(20) The Government to take proactive measures with a view to appointing more DC members to advisory and statutory bodies, especially those which are concerned with people's livelihood. The Home Affairs Bureau and Home Affairs Department will keep track of the progress made (2.41).	Most DC members supported the proposal but some suggested that DCs should be allowed to nominate representatives to these committees.	The proposal of allowing DCs to nominate members to district advisory bodies will be further examined by HAB/HAD in consultation with the relevant bureaux/departments.

Recommendations of the Working Group on DC Review	Summary of major views by DCs, political parties and the general public	Amendments to the recommendations and the Administration's Views
D. Strengthening support for DC Members		
(21) The Independent Commission on Remuneration for DC Members to review the remuneration package for DC members and to come up with recommendations in Autumn, so that it can take into account the future enhanced roles and functions of the DCs in finalizing recommendations.	Supported, with the following specific suggestions: <ul style="list-style-type: none"> – A substantial increase in the accountable allowance (e.g. to \$20,000); – A one-off grant for setting up the ward office; and – Retirement benefits or gratuity for DC members. 	The Commission has considered the views collected during the public consultation in making recommendations on the remuneration package for DC members.
(22) To organise more familiarisation visits, seminars, briefings, etc. for DC members and, where necessary and appropriate, their assistants.	Supported. Induction training should be provided to new DC members.	No changes proposed.
(23) To earmark \$12 million for providing additional resources for the DC secretariats and the works section of HAD to enable them to take on the new tasks arising from the enhanced functions of the DCs and to strengthen support for the DCs.	Supported. Some DC and LegCo Members suggested that the DC secretariats should be made independent from the Government.	Will not pursue the proposal at this stage in view of its far reaching implications and the dissenting views of DC and LegCo Members.
(24) To provide more IT support, both hardware and software, for DCs and DC members .	Supported.	The Independent Commission has taken into account DC members' needs in considering the financial support to be given to them; and has proposed a one-off reimbursable grant of \$10,000 for each DC member to strengthen their IT and other support.

Recommendations of the Working Group on DC Review	Summary of major views by DCs, political parties and the general public	Amendments to the recommendations and the Administration's Views
E. Enhancing DCs' accountability and efficiency		
(25) To facilitate public scrutiny of DC's work, each DC to consider publishing an annual report covering, among others, its achievements in the past year, deployment of public funds and outstanding issues to be further pursued.	Supported.	No changes proposed.
(26) To strengthen the safeguards against conflict of interest by DC members by tightening the DC Standing Orders, taking into account the advice of the ICAC and rules and procedures adopted by other related organisations.	Supported.	No changes proposed. HAD is devising a revised sample Standing Order for consideration by the DCs.
(27) DCs to consider whether a self-regulatory code to govern the conduct of members should be developed.	Supported.	No changes proposed. HAD will invite DCs to consider whether a sample self-regulatory code of conduct should be developed for DC members.
(28) To provide more detailed guidelines in the DC Standing Order governing the conduct of DC meetings so as to improve the efficiency and effectiveness of such meetings and to ensure clear and prompt responses will be provided to departments on matters being consulted.	Supported.	No changes proposed. HAD is devising a revised sample Standing Order for consideration by the DCs.

**The Independent Commission on
Remuneration for Members of the District Councils of the HKSAR**

Summary of the Recommendations on Remuneration

Present Position

The existing remuneration package of District Council (DCs) members covers the following:

- (a) a monthly honorarium of \$17,950 (the honoraria for DC Chairmen and Vice Chairmen are twice and 150% of the rate of a DC member respectively); and
- (b) a monthly Accountable Allowance (AA) of \$10,000 to cover expenses on employment of assistant(s), office rental and basic expenditure such as electricity and fixed telephone/internet service charges. Expenses on purchase and maintenance of office equipment and other telecommunication services are not covered.

Recommendations

Honorarium

- The monthly honorarium should remain at the current rate of \$17,950;
- The current arrangement of different rates for DC members, Vice Chairmen and Chairmen at the ratio of 1 : 1.5 : 2 should be maintained;
- Annual adjustment should continue to be made according to the movement of Consumer Price Index (A) (CPI(A))¹;
- Reduction (by one-third of the rate of the honorarium) for members with multiple membership at LegCo/ExCo should continue to apply;

¹ The next annual adjustment of the honorarium will be made in January 2002 in accordance with the movement of CPI(A) in 2001.

and

- Retirement benefits and medical/dental benefits should not be provided to DC members as there does not exist an employer-employee relationship between the Government and DC members.

Accountable Allowance (AA)

- The reimbursable monthly allowance should be revised from \$10,000 to \$17,000 (allowing about \$7,000 for office rental, \$8,000 for salary and related expenses for employing personal assistant(s) and \$2,000 for other office expenses);
- The monthly provisions under the AA should be merged into an annual provision, i.e. \$204,000 per annum for each DC member, and control over the claims could be achieved through this annual ceiling. This will allow greater flexibility to DC members and is in line with the arrangement for LegCo Members;
- The ambit of the AA should be expanded to include items listed at Appendix I. Travelling and entertainment expenses incurred by DC members should not be reimbursable under the AA and should be covered by the honorarium.
- To provide DC members with more flexibility in using the AA, they should be eligible for reimbursement of their expenses for employing assistant(s) and other purposes in discharging their DC duties regardless of whether they have set up ward offices;
- The existing mechanism for making annual adjustments according to CPI(A) and deferring any downward adjustment in a deflation year to a subsequent inflation year, which was approved by the Finance Committee in January 2001, should continue²; and

² Since the new rates of AA proposed by the Commission reflect the market situation and the actual needs of DC members, they are net of the adjustments arising from the movement of CPI(A) in 2000 and 2001. The next annual adjustment will be due in January 2003.

- The existing arrangements on reduction of allowances for members with multiple membership should be maintained. (Under the existing mechanism, the AA would be reduced by one-third if members operate a single ward office for duties relating to their multiple membership and/or employing assistant(s) for these duties, provided that the expenses being claimed have not already been claimed in their other capacities.)
- The proposal to establish an advance payment mechanism for DC members, as with the one for LegCo Members, is not supported partly because the existing reimbursable arrangements are readily acceptable by DC members; and partly because an advance payment scheme, together with the necessary control and monitoring mechanisms, for a large number of DC members (519) would increase administrative costs considerably.

New Components

- As over 82% of the DC members have already set up their ward offices, there is no urgent need for a full-fledged setting up grant during the current DC term. The proposal to provide setting up and winding up grants will be further examined when the Commission conducts the next review one year before the start of the next DC term in 2004.
- Instead, a one-off reimbursable grant of \$10,000 should be provided to individual DC members during their current DC term to strengthen the IT and other support for them and/or other facilities for use in their ward offices (Appendix II). DC members who cease office should be required to return to the DC Secretariats any items costing \$1,000 or more and with a life span of over one year (excluding software and fixture) procured with the one-off grant. Alternatively, DC members could buy the items in question at market value (or purchase price discounted by depreciation) to be determined by HAD. This is in line with the practice for LegCo Members.

(Appendices I and II to Annex B not attached)

Article 97 of the Basic Law

BL97

BL97 provides that “[d]istrict organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.”

Analysis of BL97

2. BL97 is an empowering provision. It is permissive in the sense that it permits the HKSAR to establish district organizations. But it does not impose any constitutional obligation on the HKSAR to establish district organizations. It is prescriptive in that district organizations shall not be organs of political power.

BL98

3. BL98 provides that “[t]he powers and functions of the district organizations and the method for their formation shall be prescribed by law.”

Powers and functions of district organizations

4. BL97, when read together with BL98, provides flexibility for the HKSAR to determine whether or not to establish district organizations, and if so, whether they should perform both or either one of the two functions set out in BL97. Provided that they operate within the framework laid down in BL97, the powers and functions of the district organizations are matters for policy decision, and according to BL98 such policy decisions must be prescribed by law.

Relevant court case

5. It is relevant to take note of the ruling handed down by the Court of First Instance in *Chan Shu Ying v The Chief Executive of the HKSAR*¹ (a case in which the constitutionality of the *Provision of Municipal Services (Reorganisation) Ordinance (Cap. 552)* was upheld). Hartmann J held that -

“Clearly, Article 97 is no more than an empowering provision. It is permissive in the sense that it permits the establishment of district organizations but does not create a constitutional obligation to establish them.

But the matter goes further. For in my view, it is equally plain that if Government and the Legislature do decide to establish district organizations, they may do so either to act as consultative bodies on matters of district administration and related affairs or to be responsible for providing local services. No obligation exists therefore to create district organizations which possess executive or administrative powers.”²

Constitutional Affairs Bureau
August 2001

¹ [2001]1 HKLRD 405.

² Ibid, at 424 B – D.

Appendix III

Composition of District Boards/District Councils since 1982

	<u>1982 - 31.3.1985</u>	<u>1985 - 1988</u>	<u>1988 - 1991</u>	<u>1991 - 30.9.1994</u>	<u>1.10.1994 - 30.6.1997</u>	<u>1.7.1997 - 31.12.1999</u>	<u>1.1.2000 - 31.12.2003</u>	<u>1.1.2004 - 31.12.2007</u>
Official members	166	--	--	--	--	--	--	--
Appointed members	135	132	141	140	--	468	102	102
Elected members	132	237	264	274	346	--	390	400
Ex-officio members	57	57	27*	27	27	--	27	27
Total	490	426	432	441	373	468	519	529

* excluding the 30 Urban Councillors who ceased to be members of the urban DBs after April 1989

Appendix IV

Review of the role, functions and composition of the District Councils

List of relevant papers

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
Legislative Council	15 December 1993	Second Reading of Electoral Provisions (Miscellaneous Amendments) (No. 2) Bill 1993 [Hansard]
Legislative Council	23 February 1994	Resumption of Second Reading debate on Electoral Provisions (Miscellaneous Amendments) (No. 2) Bill 1993 [Hansard]
Legislative Council	16 December 1998	Second Reading of District Councils Bill [Hansard]
House Committee	26 February 1999	Report of the Bills Committee on District Councils Bill [LC Paper No. CB(2)1326/98-99]
Legislative Council	10 March 1999	Resumption of Second Reading debate on the District Councils Bill [Hansard]
Legislative Council	6 October 1999	Policy Address [Hansard]
Legislative Council	1 December 1999	Resumption of Second Reading debate and Third Reading of Provision of Municipal Services (Reorganization) Bill [Hansard]
Legislative Council	19 January 2000	Motion moved by Hon NG Ching-fai on "Enhancing the functions of District Councils" [Hansard]
Panel on Home Affairs	14 November 2000	Paper provided by the Administration on "Enhancement of the Role and Functions of District Councils and Government Support for District Council Members" [LC Paper No. CB(2)207/00-01(04)]

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
		Minutes of meeting [LC Paper No. CB(2)440/00-01]
Panel on Constitutional Affairs	15 January 2001	Paper provided by the Administration on "Enhancing the Role and Functions of District Councils" [LC Paper No. CB(2)270/00-01(03)] Minutes of meeting [LC Paper No. CB(2)1033/00-01]
Panel on Home Affairs	16 July 2001	Legislative Council Brief issued by the Home Affairs Bureau on "Review of Roles and Functions of District Councils" [S/F(6) in HAB/CR 3/21/7 Pt.5] Minutes of meeting [LC Paper No. CB(2)175/01-02]
Joint Panels on Constitutional Affairs and Home Affairs	4 October 2001	Background paper prepared by the Legislative Council Secretariat on "Roles and functions of District Councils" [LC Paper No. CB(2)2350/00-01(01)] Minutes of meeting [LC Paper No. CB(2)313/01-02]
Legislative Council	31 October 2001	Motion moved by Hon IP Kwok-him on "Report of the Working Group on District Councils Review" [Hansard]
Panel on Home Affairs	27 November 2001	Legislative Council Brief issued by the Home Affairs Bureau on "District Council Review : Outcome of Consultation and Remuneration of District Council Members" [S/F(6) in HAB/CR 3/21/7 Pt. 8] Minutes of meeting [LC Paper No. CB(2)846/01-02]

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
Finance Committee	7 December 2001	Financial proposal for implementing the recommendations of the Working Group on District Councils Review [FCR(2001-02)47] Minutes of meeting [LC Paper No. FC19/01-02]
Joint Panels on Constitutional Affairs and Home Affairs	4 June 2002	Paper prepared by the Administration on "Composition of the Second Term District Councils" [LC Paper No. CB(2)2086/01-02(01)] Minutes of meeting [LC Paper No. CB(2)2638/01-02]
Joint Panels on Constitutional Affairs and Home Affairs	27 September 2002	Information provided by the Administration on the average population size per constituency in the 18 districts in the 1999 District Council elections [LC Paper No. CB(2)2518/01-02(01)] Transcript of a stand-up briefing by the Secretary for Constitutional Affairs on 3 September 2002 [LC Paper No. CB(2)2825/01-02(01)] Paper entitled "Composition of the Second Term District Councils : Increase of Elected Seats for New Towns" provided by the Administration [LC Paper No. CB(2)2842/01-02(01)] Minutes of meeting [LC Paper No. CB(2)246/02-03]
Legislative Council	3 December 2003	Motion moved by Dr Hon YEUNG Sum on "Appointing least number of DC Members" [Hansard]
Joint Panels on Constitutional Affairs	8 December 2003	Background brief prepared by the Legislative Council Secretariat on

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
and Home Affairs		<p>"Appointed membership of District Councils" [LC Paper No. CB(2)550/03-04(01)]</p> <p>Paper provided by the Administration on "Appointed membership of District Councils" [LC Paper No. CB(2)568/03-04(01)]</p> <p>Paper prepared by the Legal Service Division on "Opinion on the nature of the Chief Executive's power of appointing District Council members under the District Councils Ordinance" [LS25/03-04]</p> <p>Administration's response to paragraphs 9 and 16 of the paper prepared by the Legal Service Division on "Opinion on the nature of the Chief Executive's power of appointing District Council members under the District Councils Ordinance" [LC Paper No. CB(2)694/03-04(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1077/03-04]</p>
Legislative Council	7 January 2004	Policy Address [Hansard]
Legislative Council	4 February 2004	Question raised by Hon Emily LAU on "Second Term District Council Members" [Hansard]
Legislative Council	1 December 2004	Question raised by Hon LAU Wong-fat on "Review of Function and Composition of District Councils" [Hansard]
Legislative Council	12 January 2005	Policy Address [Hansard]

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
Legislative Council	11 May 2005	Question raised by Hon Emily LAU on "District-based Advisory Committees" [Hansard]
Legislative Council	12 October 2005	Policy Address [Hansard]
Legislative Council	2 November 2005	Question raised by Hon Frederick FUNG Kin-kee on "Poverty Alleviation Initiatives" [Hansard]
Legislative Council	23 November 2005	Question raised by Hon LAU Wong-tat on "District Councils Promoting Poverty Alleviation Work at District Level" [Hansard]
House Committee	9 December 2005	Report of the Subcommittee to Study the Administration's Proposals for the Methods of Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008 [LC Paper No. CB(2)600/05-06]
Panel on Constitutional Affairs	19 December 2005	Legislative Council Brief on "Phased Abolition of Appointed District Council Seats" [LC Paper No. CB(2)741/05-06(01)]
Legislative Council	21 December 2005	Motions moved by the Secretary for Constitutional Affairs on "The Amendment to the Method for the Selection of the Chief Executive" and "The Amendment to the Method for the Formation of the Legislative Council" [Hansard]