

Legislative Council Panel on Constitutional Affairs

**The methods for selecting the Chief Executive and electing the
Legislative Council in 2012 :
Main issues to be considered under local legislation**

Purpose

This paper sets out the main issues to be considered under the local legislation regarding the methods for selecting the Chief Executive (øCEö) and electing the Legislative Council (øLegCoö) in 2012.

Background

2. On 24 and 25 June 2010, the Legislative Council (øLegCoö) passed by a two-thirds majority the motions put forth by the HKSAR Government concerning the draft amendments to the methods for the selection of the CE and for the formation of the LegCo in 2012. The CE signed on 29 June instruments of consent to give consent to the draft amendments. The CE will report the relevant draft amendments to the Standing Committee of the National People's Congress for approval or for the record.

3. According to the draft amendments to the method for the selection of the CE in 2012, the number of members of the Election Committee (øECö), which is responsible for electing the CE, will be increased from the current 800 to 1200. The number of members of the four sectors of the EC will be increased by the same proportion, i.e. the number of seats for each sector will be increased by 100.

4. According to the document on the proposed package published by the Government in April 2010, it is proposed that, for the fourth sector of the EC, three quarters of the 100 new seats (i.e. 75 seats) will be allocated to elected District Council (øDCö) members. Together with the existing 42 seats, the DC subsector(s) will have a total of 117 seats, which will be returned through election from among elected DC members, i.e. appointed DC members will not take part in the election. The specific allocation of seats for the fourth sector will be as follows (please see paragraph 4.08 of the document on the proposed package) :

Subsectors	Current number of seats	Number of seats in the 2012 EC
Legislative Council	60	70
National People's Congress	36	36
District Councils	42	117
Chinese People's Political Consultative Conference	41	51
Heung Yee Kuk	21	26
Total :	200	300

5. According to the draft amendments to the method for the election of the LegCo in 2012, the numbers of members returned in the geographical constituency (øGCö) and functional constituency (øFCö) elections will each be increased from 30 to 35.

6. The Government announced on 21 June 2010 the acceptance of the øone-person-two-votesö proposal for returning the five new functional constituency seats in 2012. It also stated that once the motions are passed, we shall pursue the following electoral arrangements through local legislation:

- (a) candidates for the five new FC seats will be nominated by elected DC members. They will be elected by all registered voters who currently do not have a right to vote in functional constituencies, on a one-person-one-vote basis; and
- (b) the original DC FC seat will be returned through election from among elected DC members, i.e. appointed DC members will not take part in the election.

Main issues to be considered under the local legislation

Method for selecting the CE

7. For the local legislation on the method for selecting the CE, we need to consider the following main issues :

- (a) For the first, second and third sectors of the EC, there are suggestions that the number of seats allocated to the existing 32 subsectors in these three sectors should be increased by 50% respectively. At the same time, we have also received other

suggestions, including splitting some existing subsectors (e.g. splitting the Medical subsector so that some seats could be allocated to the dentist profession) and adding new subsectors (e.g. Small and Medium Size Enterprises, youth, women, and real estate agents).

- (b) For the fourth sector of the EC, the number of seats allocated to LegCo Members will be increased from the current 60 to 70. However, the number of LegCo seats will be increased in September 2012 only. When the new-term EC commences its term in February 2012 and elects the new-term CE in March 2012, the number of LegCo seats will remain 60 only. Transitional arrangements will have to be made under the Chief Executive Election (Amendment) Bill. The proposal put forth by the Government in 2005 to address this issue was that we might consider allocating the difference of 10 seats to the other subsectors under the fourth sector (i.e. the subsectors of Chinese People's Political Consultative Conference, Heung Yee Kuk or DCs) during the transitional period¹, until the number of LegCo seats has been increased to make up the difference.
- (c) For the fourth sector the EC, we need to consider the following issues in respect of the seats returned through election from among elected DC members :
 - (i) The existing arrangement is to group the various DCs into two subsectors, one for the urban area and the other for the New Territories. We need to decide whether the existing arrangement should continue or, alternatively, whether the DCs should be split into more than two subsectors. In any case, we would need to consider how the 117 seats allocated to the DCs should be distributed among these subsectors.
 - (ii) Currently, the voting system adopted for returning the seats for the DC subsectors in the EC is the bloc vote system. We would welcome views on whether the existing system

¹ The transitional period refers to the period between the commencement of the new-term EC in February 2012 and the formation of the new-term LegCo in September 2012.

should continue or, alternatively, whether it should be switched to a *proportional representation system*.

- (iii) The next DC election is expected to be held in November 2011. We would need to put in place a mechanism by which the newly elected DC members could be automatically registered as voters for the DC subsector(s) so that they can elect as quickly as possible the 117 representatives into the EC. Moreover, since it is possible that some of the newly elected DC members would have already been registered as voters in other subsectors (e.g. those with the relevant professional background might have already been registered in the Legal or Medical subsectors etc), we would also need to consider whether and how the above-mentioned mechanism should be applied to them.

Method for electing the LegCo

8. In the Government's announcement on 21 June 2012, the following salient features relating to the return of the five new DC FC seats were also put forward:

- (a) candidates must themselves be elected DC members;
- (b) candidates must be nominated by elected DC members; and
- (c) candidates will be elected, through one-person-one-vote, by the registered electors in Hong Kong less those electors who currently have the right to vote in other FCs. (In other words, the electorate base will be about 3.2 million, being the total 3.43 million registered electors less 225 000 electors for the other FCs.)

9. For the local legislation for implementing the electoral method for the LegCo in 2012, we need to consider the main issues set out below.

- (a) For the five new DC FC seat, we need to consider the following:

- (i) We need to consider whether the five seats should be returned from the whole SAR as a single constituency, or whether the SAR should be delineated into more than one constituency. It is noteworthy that the effect of proportional representation will be reduced if the number of Members returned from each constituency is too small.
- (ii) There are two major types of proportional representation voting systems, namely the "single transferrable voting system" or "list proportional representation system".

Electors in Hong Kong are familiar with the list proportional representation system, which is adopted in the LegCo GC elections.

As for the single transferrable voting system, electors are required to rank candidates in order of preference on the ballot paper. The result of the election is determined through a series of counts. At the first count, the total number of first preference votes for each candidate is ascertained and the quota is determined. Any candidate who receives a number of first preference votes equal to or greater than the quota will be elected. In subsequent rounds of count, the value of the surplus votes of elected candidates will be transferred to the candidate ranking next on the ballot papers, and the candidate receiving votes equal to or greater than the quota will be elected. After any count, if no candidate is elected, the candidate with the lowest total votes is eliminated and the value of the candidate's votes will be transferred to the candidates ranking next on the ballot papers. The process will continue until all vacancies are filled. However, in logistical terms, it will be very difficult to implement a "single transferrable voting system" for an electorate of 3.2 million people.

We need to consider whether to adopt the list proportional representation system or the single transferrable voting system.

- (iii) At present, persons who are eligible for registration as electors in more than one FC may choose to register in any one of the FCs². For example, a qualified person who is both a lawyer and an accountant may choose to register in the Legal FC or the Accountancy FC. We need to decide whether to provide the same choice to the 225 000 electors registered in the traditional FCs, so that they could choose to register in the new DC FC.
- (iv) Under the present legislation, candidates standing for FC elections need to be nominated by ten subscribers, while candidate lists running GC elections require nomination by 100 subscribers. We need to decide on the number of subscribers required for nominating a candidate in the new DC FC.
- (v) The current election expense limit for the traditional FCs ranges from \$105,000³ to \$504,000⁴, whereas that for the GCs is between \$1,575,000⁵ and \$2,625,000⁶. Even though the elections for the five new DC FC seats are not GC elections, they will have the broadest electorate base in the LegCo election. We, therefore, need to consider whether a higher election expense limit should be set.
- (vi) Under the financial assistance scheme for LegCo election candidates, candidates or lists of candidate who get elected or who have received 5% of the valid votes or more are eligible for financial assistance at \$11 per vote obtained, subject to 50% of the declared election expenses⁷. We need to review the arrangement for the 2012 LegCo Election.

² This is except for persons who are eligible for registration as electors in the Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport FCs (the special FCs) who may only register in the special FC concerned but not in other FCs.

³ For the Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport FCs.

⁴ For FCs with more than 10,000 electors.

⁵ For the Kowloon East and West GCs.

⁶ For the New Territories East and West GCs.

⁷ In respect of a candidate or a list of candidates in an uncontested election, the amount of financial assistance is \$11 multiplied by 50% of the number of registered electors for the constituency, subject to 50% of the declared election expenses.

- (b) At present, the SAR is delineated into five GCs, each with four to eight seats. After five new seats are created in the GCs, we need to consider the number of GCs to be demarcated in the SAR, and the range of seats to be returned from each GC.
- (c) The basic principle of the electoral method for the LegCo in 2012 is to enhance the democratic elements through the new DC FC seats. For the traditional FCs, the general understanding is that there should be no substantial changes. However, in line with the established practice, some technical adjustments would be made to the electorate of the FCs to reflect the latest circumstances in the relevant constituencies prior to the next general election to be held in 2012. We will also consider whether the electorate of some FCs with particularly small electorate, such as the Transport FC, should also be reviewed.

Abolition of the DC Appointment System

10. We will put forth proposals on the abolition of the DC appointment system for consultation with the LegCo and the public. However, it does not fall within the scope of the Chief Executive Election Ordinance and the Legislative Council Ordinance and will be dealt with separately.

Advice Sought

11. Members are invited to comment on the issues set out in paragraphs 7 and 9 of this paper.

Constitutional and Mainland Affairs Bureau
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