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Panel on Constitutional Affairs

Background brief prepared by Legislative Council Secretariat for the meeting on 19 July 2010

Main issues to be considered under the local legislation of the two electoral methods for 2012

Purpose

This paper provides background information relating to the local legislation of the two electoral methods for 2012.

Background

Existing methods for selecting CE and forming LegCo

2. At present, in accordance with the provisions of Annex I to the Basic Law ("BL"), the Chief Executive ("CE") is elected by a broadly representative Election Committee ("EC") and appointed by the Central People's Government. EC is composed of 800 members from four sectors made up of 38 subsectors.

3. Currently, there are 60 seats in the Legislative Council ("LegCo"), half of them returned by geographical constituencies ("GCs") through direct elections, and the other half by functional constituencies ("FCs"). For direct elections in GCs, the 30 seats are returned from five GCs by adopting the list system operating under the largest remainder formula, which is a form of proportional representation voting system. For FC elections, 30 seats are returned from 28 FCs.

The CE Election Ordinance (Cap. 569)

4. The CE Election Ordinance provides for the election of CE in accordance with Annex I to BL. The Schedule to the Ordinance provides details on how EC is to be constituted to elect CE.

The LegCo Ordinance (Cap. 542)

5. The LegCo Ordinance provides for the constitution and membership of LegCo, establishment of constituencies, registration of electors, conduct of elections, financial assistance for candidates, election petitions and other related matters.

Subsidy rate of the financial assistance for candidates and the election expense limits for the 2008 LegCo election

6. The subsidy rate of the financial assistance scheme for candidates was increased from \$10 per vote to \$11 per vote, capped at 50% of the actual election expenses of the candidates for the 2008 LegCo election. The election expense limits was also increased by 5% as follows -

<u>GC</u>	<u>Election Expense Limit</u>
Hong Kong Island	\$2,100,000
Kowloon East	\$1,575,000
Kowloon West	\$1,575,000
New Territories East	\$2,625,000
New Territories West	\$2,625,000

<u>FC</u>	<u>Election Expense Limit</u>
Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport FCs	\$105,000
FCs with not more than 5,000 registered electors	\$168,000
FCs with 5,001 to 10,000 registered electors	\$336,000
FCs with over 10,000 registered electors	\$504,000

The constitutional reform package endorsed by LegCo

7. At the Council meeting on 14 April 2010, the Chief Secretary for Administration made a statement on a package of proposals for the methods for selecting CE and for forming LegCo in 2012 published on the same day. According to the Administration's original proposal for returning District Council ("DC") seats in LegCo, all the five new FC seats and the existing DC FC seat shall be returned through election from among elected DC members, and the six DC FC seats shall be returned under the proportional representation system.

8. On 21 June 2010, CE announced at a press conference on constitutional reform package that the Executive Council had given its approval-in-principle the Democratic Party's proposal on "one-person-two-votes" for returning the five new FC seats in 2012 and that the proposal would be implemented by local legislation. Members may wish to note that the Secretary for Justice had explained at the same press conference why the Government took the view that the new DC FC election method for the additional five seats was consistent with BL and the decision on issues relating to the methods for selecting CE and for forming LegCo in the year 2012 and on issues relating to universal suffrage made by the Standing Committee of the National People's Congress ("NPCSC") on 29 December 2007 ("the 2007 NPCSC Decision"). A copy of his speech is in **Appendix I**.

9. On 24 June 2010, LegCo passed by a two-thirds majority the motions put forth by the Government concerning the draft amendments to the methods for selecting CE and for forming LegCo in 2012.

10. Regarding the method for selecting CE in 2012, the arrangements are as follows -

- (a) the number of members of EC will be 1 200;
- (b) the number of members of each of the four sectors of EC will be 300;
- (c) 75 out of the 100 new seats in the fourth sector (i.e. the political sector) be allocated to elected DC members;
- (d) apart from the 10 seats to be allocated to LegCo, the remaining 15 new seats in the fourth sector are allocated to members of the National Committee of the Chinese People's Political Consultative Conference (10 seats) and Heung Yee Kuk (five seats);
- (e) the 117 representatives of DCs in EC be returned through election from among elected DC members;
- (f) the nomination threshold will be one-eighth of the total membership of EC (i.e. the number of subscribers required shall be not less than 150) with no upper limit to be set on the number of subscribers; and
- (g) the current requirement that CE should not have any political affiliation will be maintained.

11. Regarding the method for forming LegCo in 2012, the arrangements are as follows -

- (a) the number of LegCo seats will be 70 with 35 seats returned by GCs through direct election and 35 returned by FCs;
- (b) 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 FCs, on a one-person-one-vote basis;
- (c) the original DC FC seat will be returned through election from among elected DC members; and
- (d) the existing arrangement that permanent residents of Hong Kong who are not of Chinese nationality or who have the right of abode in foreign countries can stand in the elections for 12 FCs be maintained.

12. According to the Administration, after the package of proposals have received the endorsement of LegCo, the consent of CE, and after they have been reported to

NPCSC for approval or for the record, the CE Election (Amendment) Bill and the LegCo (Amendment) Bill would be introduced into LegCo in the Autumn of 2010 to prescribe, under local legislation, the detailed arrangements regarding the methods for selecting CE and for forming LegCo. The Administration would strive to have the two Bills passed by LegCo before May 2011, so that the relevant subsidiary legislation could be amended respectively by the Executive Council and the Electoral Affairs Commission thereafter; and the EC subsector elections, the CE election and the LegCo election could be held in December 2011, March 2012 and September 2012 respectively.

Relevant discussions held by the Subcommittee on Package of Proposals for the Methods for Selecting CE and for Forming LegCo in 2012

13. The Subcommittee on Package of Proposals for the Methods for Selecting CE and for Forming LegCo in 2012 (the Subcommittee) had discussed issues relevant to local legislation pertaining to the electoral methods for selecting CE and for forming LegCo in 2012. A summary is as follows.

Election methods for returning the 117 DC seats in EC

14. Members enquired about the election methods for returning the 117 DC seats in EC and the allocation of the new seats among the subsectors in the first, second and third sectors of EC. The Administration explained that according to the 2007 NPCSC Decision, a broadly representative nominating committee should be formed in selecting CE by universal suffrage. The Decision also stipulated that the nominating committee might be formed with reference to the current provisions regarding EC. It was essential to ensure the balanced participation of different sectors in the nominating committee to ensure that the CE elected by universal suffrage would have the support of not only the 3.3 million registered voters, but also different sectors of society. The Administration's proposal of increasing the number of members in the four EC sectors in an even manner aimed at maintaining the principle of balanced participation to help transform the 2012 EC into the nominating committee in 2017. The Administration also informed the Subcommittee that there were mainly three types of views received during the relevant public consultation exercise, namely increasing proportionally the number of seats according to the existing distribution of seats; splitting the existing subsectors; and adding new subsectors. The Administration had not yet formed specific proposals at the present stage on how the additional 100 seats should be allocated among the subsectors of these three sectors of EC, and would continue to listen to views from the community and LegCo. Any such arrangements could be specified by local legislation, i.e. in the context of the CE Election (Amendment) Bill.

15. Dr Priscilla LEUNG suggested allocating some of the new EC seats to representatives of the environmental protection field, small and medium size enterprises, real estate agents, youth and ethnic minorities. Mrs Regina IP suggested that in considering the allocation of EC seats among different subsectors, account should also be taken of forward-looking criteria such as potential for economic

development and strategic importance of the trade/profession concerned. The Administration advised that there were also suggestions of splitting the dental profession from the medical subsector and adding new subsectors for small and medium enterprises and women. The Administration welcomed proposals on the allocation of new seats in the different sectors of EC.

16. Noting that the Administration had proposed to adopt the proportional representation system for returning the six DC FC seats, Mr WONG Kwok-hing considered that for the sake of consistency, the same should be adopted for returning DC representatives to EC. Mr IP Kwok-him expressed concern that the single transferable voting system (one of the possible options under the proportional representation voting system) would be too complicated for returning 117 DC members to EC through a single constituency.

Participation of ex-officio DC members

17. Ms Miriam LAU asked the Administration to clarify whether ex-officio DC members would have the right to stand as candidates and to vote in the elections of the DC sub-sector of EC and the DC FC of LegCo in 2012. The Administration explained that according to the existing requirements, the 27 ex-officio DC members could either stand for election in the DC or Heung Yee Kuk subsector and DC FC. However, they could only register as voters and vote in the Heung Yee Kuk subsector and DC FC. The Administration had taken note of the views received during the public consultation exercise on the consultation document that as ex-officio DC members were returned through village elections and have a public mandate, they should enjoy the same rights as elected DC members. The Administration would continue to listen to views on whether the existing arrangement should be maintained in 2012. The specific arrangements could be discussed in detail during the making of the local legislation and a final decision would then be made. Ms LAU, however, commented that it would be inconsistent with the Administration's objective of enhancing the representativeness of the CE and LegCo elections through the participation of elected DC members if ex-officio members could also participate in the two elections.

Method for returning DC FC seats

18. The Administration had briefed the Subcommittee on the possible options for the proportional representation voting system, namely the list proportional representation system and the single transferrable voting system. According to the Administration, as the list proportional representation system was currently adopted in the LegCo election for GCs, electors were in general familiar with the voting system. However, as the ranking of the candidates on the list were already predetermined by the group, electors would not be able to indicate their preference towards individual candidates on the list. If the whole territory was delineated as one single constituency, there would be a maximum of six candidates on each list. Under the single transferrable voting system, candidates were nominated as individual candidate. Each elector could cast one vote which was transferrable. Electors ranked candidates in

order of preference on the ballot paper. The Administration pointed out that as the single transferrable voting system had not been in use since the establishment of the Hong Kong Special Administrative Region, electors were unfamiliar with the voting system. The mechanism of transferring of surplus votes and the calculation of values of votes transferred was also relatively more complicated and difficult to understand. However, the system allowed electors to indicate their preference towards individual candidates and hence the choice of electors could be better reflected. If the single transferrable voting system was adopted, votes cast would not be wasted due to the mechanism of transferring of surplus votes, whereas some votes might be wasted for the list proportional representation system. The Administration further advised that it had not yet formulated its views on the nomination procedure for returning the six DC FC seats which would be dealt with in the making of the local legislation.

Delineation of constituencies for the election of DC FC seats

19. The Administration explained to the Subcommittee that given that only six Members would be returned in DC FC, the number of constituencies in DC FC should remain small in order not to affect the effect of proportional representation. Consideration could be given to returning all the six seats through a single constituency representing the whole territory, or dividing the territory into two constituencies. According to the forecast of population for 2012, the total population in the Hong Kong Island and Kowloon and that in the New Territories would be around 3.47 million and 3.75 million respectively. If the six seats were distributed among two constituencies, three seats could be allocated to a constituency consisting of the Hong Kong Island and Kowloon, and the other three seats to the other constituency comprising the New Territories. According to the Administration, the details of the voting system would be dealt with in the amendment of the local legislation.

Relevant discussion on the subsidy rate of the financial assistance for candidates and the election expense limits for the 2008 LegCo election

20. The Panel on Constitutional Affairs discussed the Administration's proposals relating to the rate of financial assistance for candidates and the election expense limits for the 2008 LegCo election at its meetings on 18 February 2008 and 21 April 2008. Members generally supported an increase in financial assistance, but some members considered the increased subsidy rate at \$11 inadequate. Some members suggested that the ceiling of the financial assistance, which was 50% of the actual election expenses incurred by the candidates, should be raised to say, 70%, or alternatively a ceiling of say \$1 million for the amount of financial assistance payable to each candidate should be imposed.

21. Members had diverse views as to whether the election expense limits should be reduced, increased or maintained at the existing levels or abolished altogether. Some members expressed concern that the proposed increase was in favour of well-off candidates. They stressed that as independent candidates and some political parties had difficulty in raising funds for election, it was important to ensure a level playing

field for those who were less resourceful. Some other members considered that as there were calls for greater political participation of the community including the business sector, it would be inappropriate to limit election expenses. They pointed out that countries such as the United States did not impose any limit on election expenses.

Relevant documents

22. A list of the relevant documents is in **Appendix II** for Members' easy reference. These papers/documents are available on LegCo's web site at <http://www.legco.gov.hk>.

Council Business Division 2
Legislative Council Secretariat
15 July 2010

Speech by SJ at press conference on constitutional reform package

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, on the new District Council Functional Constituency Election Method at the press conference on the constitutional reform package at Central Government Offices New Annexe today (June 21):

I will now further explain why, after giving the matter in-depth consideration, the Government takes the view that the new District Council Functional Constituency Election Method for the additional five seats (the new DCFC election method), i.e. the so-called adjusted method mentioned by the Chief Executive just now, is consistent with the Basic Law and the decision of the Standing Committee of the National People's Congress (NPCSC) in 2007.

NPCSC Decision in 2007

According to the NPCSC Decision in 2007, for the 2012 Legislative Council elections, the half-and-half ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections shall remain unchanged. However, subject to this and other conditions, appropriate amendments conforming to the principle of gradual and orderly progress may be made to the specific method for forming the fifth term Legislative Council of the Hong Kong Special Administrative Region in the year 2012 in accordance with the provisions of Article 68 and Article III of Annex II to the Basic Law.

The NPCSC Decision of 2007 did not prescribe any method as to how the functional constituency seats should be returned. Therefore the details relating to the specific methods for returning functional constituencies are left to local legislation in accordance with Article 68 and Annex II to the Basic Law.

All along and according to Annex II to the Basic Law, the delimitation of functional sectors, their seat allocation and election methods are matters which can be specified by an electoral law introduced by the Government of the Hong Kong Special Administrative Region and passed by the Legislative Council.

The new DCFC election method

The Chief Executive has just outlined the new DCFC election method. I would like to emphasise what the Government considers to be some salient features:

(1) First, candidates must themselves be elected District Council members.

(2) Second, candidates must be nominated by elected District Council members.

(3) Third, 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 functional constituencies. (In other words, the electorate base will be about 3.2 million, being the total 3.43 million registered electors less 230,000 electors for the other functional constituencies.)

The new DCFC election is not Geographical Constituency direct elections

Firstly, I would like to point out that the new DCFC election is not direct election. The candidates are limited to elected District Council members nominated by elected District Council members, not any of the Chinese nationals among the 3.43 million registered electors in the geographical constituency electoral registers.

Secondly, the new DCFC election is not geographical constituency direct elections. The new DCFC members are not returned by geographical

constituencies through direct elections. This is because not all the 3.43 million registered electors in the geographical constituency electoral registers are entitled to vote, but the right to vote is confined to the registered electors other than those already entitled to vote in the other functional constituencies.

District Council: a functional constituency

District Council has always been a "functional constituency" for the purpose of the Legislative Council election. For the existing Legislative Council, one out of the 30 functional constituency seats comes from the District Council.

District Council is a functional constituency under section 20(1)(zb) of the Legislative Council Ordinance Cap.542.

The District Council has the functions of giving advice to the Government regarding district administration and promoting district development. A specific function can be readily identified, which is different from the case of members returned by geographical constituency direct elections.

The expansion of the electorate base for the District Council functional constituency members does not alter the functional nature of the District Council.

The five LegCo members returned by this new District Council FC election still represent the District Council

Each of the five LegCo members returned through the new DCFC election method is a Legislative Council member returned by a functional constituency. He or she will still be the representative of the District Council in LegCo.

Further, if one were to further analyse the new DCFC election method by reference to the three aspects

of candidature, nomination and electorate base, that it becomes even clearer that the new DCFC election remains a functional constituency election as opposed to geographical constituency direct election.

Candidature

First of all on candidature, unlike geographical constituency direct elections where any of the Chinese nationals among the registered electors can be nominated as a candidate, the new DCFC candidates must be an elected member of the District Council.

Nomination

Secondly, nomination. Unlike geographical constituency direct elections where any registered elector can be a subscriber to a nomination for a candidate, in the new DCFC election, only elected District Council members can be a subscriber to a nomination for a new DCFC candidate.

Electorate base

Thirdly, electorate base. Unlike geographical constituency direct elections where all registered electors with the geographical constituency electoral registers can vote, in the new DCFC election, only those registered electors who do not have the right to vote in the other functional constituencies can vote.

All can be effected by local legislation

The necessary changes to implement the new DCFC election are matters relating to the delimitation of functional sectors, their seat allocation and election methods, which can be achieved by way of local legislation.

Progress towards universal suffrage

Further, the new DCFC election is consistent with the principle of gradual and orderly progress. The electoral system is not static. We are moving towards the ultimate aim of universal suffrage. Plainly, the enlargement of the electorate base is an important facet of this progress.

The new DCFC election is consistent with the Basic Law and the 2007 NPCSC decision. It provides a useful means to effect gradual and orderly progress towards universal suffrage. I appeal to all LegCo members to support it and to give Hong Kong the opportunity to move forward on constitutional development. Thank you.

Ends/Monday, June 21, 2010

**Relevant documents on main issues to be considered
under the local legislation of the two electoral methods for 2012**

Meeting	Date of meeting	Paper
Legislative Council	21 December 2005	<p>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"</p> <p>[Hansard] http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm1221ti-translate-e.pdf</p>
Panel on Constitutional Affairs	18 February 2008	<p>Background Brief on "Election expense limits for Legislative Council elections" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)1054/07-08(02)] http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca0218cb2-1054-2-e.pdf</p> <p>Administration's paper on "Election expense limits for the 2008 Legislative Council election" [LC Paper No. CB(2)1054/07-08(03)] http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca0218cb2-1054-3-e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(2)1908/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ca/minutes/ca080218.pdf</p>
	21 April 2008	<p>Administration's paper on "Subsidy Rate of the Financial Assistance for Candidates and the Election Expense Limits for the 2008 Legislative Council Election" [LC Paper No. CB(2)1591/07-08(01)] http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca0421cb2-1591-1-e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(2)2675/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ca/minutes/ca080421.pdf</p>

Meeting	Date of meeting	Paper
Legislative Council	14 April 2010	Statement made by the Chief Secretary for Administration on the "Package of Proposals for the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012" [Hansard] http://www.legco.gov.hk/yr09-10/english/counmtg/hansard/cm0414-translate-e.pdf
House Committee	11 June 2010	Report of the Subcommittee on Package of Proposals for the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012 [LC Paper No. CB(2)1753/09-10] http://www.legco.gov.hk/yr09-10/english/hc/papers/hc0611cb2-1753-e.pdf
Legislative Council	24 June 2010	Motions moved by the Secretary for Constitutional and Mainland Affairs on "The Amendment to the Method for the Selection of the Chief Executive and for Forming the Legislative Council in 2012" [Hansard] http://www.legco.gov.hk/yr09-10/chinese/counmtg/floor/cm0624-confirm-ec.pdf

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