

# 立法會

## *Legislative Council*

LC Paper No. CB(2)715/10-11(01)

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### **Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010**

#### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper gives an account of the discussions of the Panel on Constitutional Affairs ("the CA Panel") relating to the local legislation on the methods for selecting the Chief Executive ("CE") and for forming the Legislative Council ("LegCo") in 2012 ("the two electoral methods for 2012") pursuant to LegCo's endorsement of the two motions put forth by the Government to amend Annexes I and II to the Basic Law ("BL") in June 2010.

#### **Background**

##### Existing methods for selecting CE and forming LegCo

2. In accordance with the provisions of Annex I to BL, 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. The term of office of EC is five years and will commence on 1 February in the year during which the term of office of the CE is to expire. The bloc vote system is adopted for the EC election, the result of which is determined on first past the post.

3. Currently, there are 60 seats in 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 the following five GCs: Hong Kong Island to return six Members; Kowloon East to return four Members; Kowloon West to return five Members; New Territories East to return seven Members; and New Territories West to return eight Members. The list system operating under the largest remainder formula, which is a form of proportional representation voting system, is adopted.

4. For FC elections, 30 seats are returned from 28 FCs. Of these 28 FCs, the Labour FC is to return three Members and the remaining 27 FCs are to return one Member each. The preferential elimination system of voting is adopted for the election for the four special FCs which have a relatively small electorate base, i.e. Heung Yee Kuk FC, Agriculture and Fisheries FC, Insurance FC and Transport FC. The first past the post voting system is adopted for the election of the 24 ordinary FCs.

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

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5. The subsidy rate of the financial assistance scheme for candidates was increased from \$10 per vote to \$11 per vote for the 2008 LegCo election. The amount payable in respect of a list of candidates or a candidate is the lower of either the amount obtained by multiplying the total votes cast for the list of candidates or the candidate by \$11 or 50% of their declared election expenses. For the 2008 LegCo election, the election expense limits were 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 two electoral methods for 2012

6. 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 forming 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.

7. On 21 June 2010, CE announced at a press conference on constitutional reform package that the Executive Council had given its approval-in-principle to the proposal on "one-person-two-votes" for returning the five new FC seats in 2012. According to the Government's announcement, the proposal would be implemented by the following electoral arrangements under local legislation -

- (a) candidates for the five new FC seats must themselves be elected DC members who must be nominated by elected DC members and would be elected, through one-person-one-vote, by all registered voters who currently do not have a vote in FCs; the electorate base would be about 3.2 million; and
- (b) the original DC FC seat would be returned through election from among elected DC members, i.e. appointed DC members would not take part in the election.

8. On 24 June 2010, LegCo passed by a two-thirds majority the motions put forth by the Government concerning the draft amendments to the two electoral methods for 2012.

9. CE gave consent to the draft amendments on 29 June 2010 and reported to the Standing Committee of the National People's Congress ("NPCSC") on 28 July 2010. On 28 August 2010, NPCSC approved the amendment to Annex I to BL and recorded the amendment to Annex II to BL respectively.

### **Relevant discussions by the CA Panel on local legislation on the two electoral methods for 2012**

10. The Administration consulted the CA Panel on the main issues to be considered under local legislation on the two electoral methods for 2012 at its meeting on 19 July 2010. The Administration further briefed the Panel on the relevant proposed electoral arrangements at its special meeting on 30 October 2010. The major issues raised at these two meetings are as follows.

#### Method for selecting CE

##### *Nomination threshold for the CE election*

11. Some members enquired whether the nomination threshold for CE candidature in 2012 could be adjusted downwards in order to increase the pool of candidates. The Administration advised that when Members supported the

motion on the amendments to Annex I to BL regarding the method for the election of CE in 2012, it was on the understanding that the nomination threshold for the CE election would be set at 150. The Administration would adhere to the electoral arrangements which were endorsed by Members.

### *Composition of EC*

12. According to the draft amendments to the method for the selection of CE in 2012, the number of members of EC would be increased from the current 800 to 1200. The number of members for the four EC sectors would be increased by the same proportion, i.e. the number of seats for each sector would be increased by 100. The Administration proposed that the number of seats allocated to the existing 32 subsectors in the first, second and third sectors of EC would be increased by proportion according to the existing distribution of seats.

13. Some members were of the view that to facilitate the full implementation of universal suffrage for the selection of CE in 2017, the Administration should consider broadening the electorate base of the EC subsectors in the 2012 CE election to make EC more broadly representative. The Administration, however, advised that when Members supported the motion on the method for the selection of CE in 2012, it was on the understanding that there would not be substantial changes to the electorate base of EC.

14. Some members were of the view that instead of merely increasing the number of members in the first, second and third sectors of EC in an even manner, new subsectors should be created for some major trades/professions such as the real estate agents, small and medium enterprises, and Chinese medical practitioners etc, so as to enhance the representativeness of EC.

15. The Administration explained that the existing EC subsectors which included many major trades/professions of Hong Kong were broadly representative. In view of the broad coverage of these new subsectors as proposed by members, it would be difficult to include all organizations in such subsectors. If only some of the organizations were designated as part of the electorate, other organizations might raise questions on the eligibility criteria for registration. Having considered the difficulty in and the time required for achieving a consensus on the generally accepted eligibility criteria for registration for any new subsectors, the Administration considered that it would be desirable to maintain the status quo of keeping the existing 32 subsectors.

*Transitional arrangements regarding the composition of the fourth sector of EC*

16. According to the proposed electoral arrangements for the fourth sector of EC, three quarters of the 100 new seats (i.e. 75 seats) would be allocated to elected DC members. As for the remaining 25 new seats, aside from the 10 seats to be allocated to LegCo Members, 10 seats would be allocated to members of the Chinese People's Political Consultative Conference ("CPPCC") and five to Heung Yee Kuk ("HYK"). The Administration proposed to create temporarily 10 "Special Member" seats from February 2012 when the new term of EC commenced to make up the difference of 10 seats until the number of LegCo seats increased from 60 to 70 in October 2012. The Administration further proposed to allocate four seats of "Special Member" to members of CPPCC, two to HYK and four to DCs. The "Special Member" seats were to be taken up by those remaining candidates who obtained the greatest number of votes in the respective subsectors.

17. Some members expressed dissatisfaction that despite the small electorate base of HYK, the Administration proposed to allocate two more seats to HYK to make up for the quota for LegCo Members who had a much wider public mandate. They considered that all or at least three quarters of the "Special Member" seats should be allocated to the DC subsectors to enhance the democratic elements of EC.

18. The Administration advised that allocation of three quarters of the 100 new seats to elected DC members already represented a high percentage of increase. The Administration had to ensure that there was balanced participation among the 300 members in the political sector (i.e. the fourth sector) of EC in order to comply with the requirements of Annex I to BL. Since the remaining 25 new seats would be allocated to LegCo Members, members of CPPCC and HYK, it was appropriate to allocate the "Special Member" seats among elected DC members, members of CPPCC and HYK.

*Electoral arrangements for District Council ("DC") subsectors*

19. According to the proposed electoral arrangements, the current bloc vote system would be adopted for the DC subsectors and the current arrangement of allocating the 117 seats between the urban areas and the New Territories would continue. The Administration proposed that only elected DC members were eligible for registration as voters who must be registered in the DC subsectors only and not other EC subsectors. The Administration further proposed that only elected DC members were eligible to be nominated as candidates in the DC subsectors who must be nominated by at least five registered voters of the DC subsectors.

20. Some members expressed concern that if the current bloc vote system was retained for the DC subsectors, dominant political parties among the elected DC membership could pocket all the 117 DC subsectors seats and could have an undue influence over the candidature of the CE election. These members considered that the proportional representation list system should be adopted for returning members to EC.

21. Some other members were of the view that adoption of the bloc vote system would be fair to all political parties as all candidates in the DC subsectors would be nominated by elected DC members and only elected DC members were eligible for registration as voters.

22. The Administration explained that the bloc vote system was also adopted in the elections of other EC subsectors. Under the proposed electoral arrangements, only elected DC members would be eligible for participating in the EC subsector elections, the existing DC FC election and the new DC FC election. As LegCo Members were EC members, the Administration believed that both the pro-establishment and pan-democratic camps would be able to secure the required 150 nominations among 1 200 EC members to field a candidate for the 2012 CE election.

#### Method for forming LegCo

#### *Candidature and nomination of the new DC FC under the "one-person-two-votes" proposal*

23. Some members expressed support for the "one-person-two-votes" proposal for returning the five new DC FC seats in 2012 by which the constitutional development of Hong Kong had been taken a step forward. Some other members expressed disagreement with the "one-person-two-votes" proposal as they considered that there was inequality among the right to vote, the right to nominate and the right to stand for election under the proposal. They took the view that the issue should be addressed so that the new DC FC election would at least be more akin to GC election.

24. The Administration stressed that under the "one-person-two-votes" proposal for returning the new DC FC seats in 2012, only elected DC members would be eligible to nominate and be nominated as a candidate and the candidates would be elected by a large electorate base of over 3.2 million registered electors. To maintain the 50:50 ratio for Members returned by FCs and Members returned by GCs as stipulated in the decision of NPCSC in 2007, there was a need to return the additional five DC FC seats through FC election.

The Administration considered that democratic elements of the FC system would be enhanced through the implementation of the proposal.

25. Some members were of the view that as electors who had a substantial connection with the 28 traditional FCs at present were allowed to stand as candidates in the respective FC elections, persons who had a substantial connection with DC FC should also be allowed to stand as candidates for the five new DC FC seats so as to increase the pool of candidates.

26. The Administration explained that the Administration had made it clear that the election for the five new DC FC seats would be FC election, as opposed to GC direct election. If the "substantial connection" provision was applied to the new DC FC election, each of the 3.2 million registered electors could be nominated as a candidate and could be a subscriber to a nomination for a candidate of DC FC, which would depart from the characteristics of the FC system.

27. Some other members considered the Administration's position of restricting the nomination rights and candidature of the five new DC FC seats to elected DC members appropriate.

28. Some members were of the view that the nomination threshold for the new DC FC should be adjusted to 10 instead of 15 as proposed by the Administration. Some other members considered that while a low nomination threshold for DC FC should be set, it was appropriate to set the nomination threshold within 10 to 15 or 20.

29. On the rationale and basis for setting the nomination threshold at 15, the Administration explained that the proposals put forward by various political parties ranged from 10 to 20 subscribers. Under the proposed electoral arrangements, elected DC members could nominate a list of candidates (up to five candidates) for any of the five new DC FC seats. For a list of five candidates, each candidate on average only needed to have three nominations. This was significantly below the current nomination threshold of 10 nominations for a candidate to join any particular FC election including the existing DC FC. With the proposed nomination threshold, it was envisaged that the 412 elected members of the fourth term DC could nominate up to 20 candidates/lists of candidates and this would ensure competition in the new DC FC election. The Administration considered the proposed number of nominations required for DC FC appropriate as it would enable different political parties and also independent candidates to take part in the election.

30. On the registration mechanism for elected DC members, the Administration informed the CA Panel that as elected DC members would have to nominate candidates and participate in the existing DC FC and the new DC FC elections, the Administration proposed that elected DC members should only be registered as electors in the existing DC FC to avoid the FC having a narrow electorate base. Under the proposed arrangements, registered electors in traditional FCs would be de-registered automatically once being elected DC members and they would be automatically registered as electors for the DC FC. Some members pointed out that persons registered as electors or being eligible for registration as electors in the traditional FCs currently would be given a choice to opt for registration with the traditional FCs or the existing DC FC. They expressed disagreement with the proposed arrangements.

31. Some members expressed concern that the proposed nomination requirement for the new DC FC by no less than 15 subscribers without capping the number of subscribers obtained by a candidate would put independent candidates and those supported by small political parties at a disadvantage as most nominations would very likely be taken up by large political parties.

32. The Administration advised that it did not recommend setting a cap on the number of subscribers because candidates might wish to take the chance to strengthen their liaison with communities in order to secure the necessary support among elected DC members.

*Voting system for returning the five new DC FC seats*

33. Some members expressed support for the Administration's proposal of returning the five new DC FC seats from the whole territory through a single constituency in accordance with the proportional representation list system.

34. Some other members expressed concern that returning the five new DC FC seats through a single constituency representing the whole territory would mean that only well-off candidates would be able to afford the cost to run an election campaign of such a scale. As a result, independent candidates and those supported by smaller political parties would be put in a disadvantaged position in the election. These members considered that dividing the territory into five constituencies could pave way for the five DC FC seats to be converted into five GC seats when universal suffrage was implemented for forming LegCo, and reduce the difficulty in abolishing the FC system. It was also suggested that the five new seats should be allocated to the existing five GCs to be returned under the "single seat single vote" system which was more akin to the implementation of universal suffrage.



35. The Administration advised that political parties and the academia had in the past suggested that reference should be made to the electoral systems adopted by overseas countries and the Administration found that many countries, including Japan and New Zealand, had adopted the proportional representation system with a large constituency in their general elections. The Administration had made known its stance during the debates on the motions to amend the two electoral methods for 2012 held between 23 and 25 June 2010 that it was inclined to adopt the proportional representation system with one single constituency to return the five DC FC seats on the ground that the number of constituencies in DC FC election should remain small in order not to affect the effect of proportional representation. It was based on this understanding that Members had voted in favour of the motions.

*Election expense limit for the DC FC seats*

36. Some members were of the view that the maximum amount of election expense limit for the new DC FC which was proposed by the Administration to be set at \$6 million was too high. They expressed strong dissatisfaction that it would create unfairness in the participation of election as only well-off candidates could afford to stand for the election. These members urged the Administration to provide more assistance to candidates to facilitate their arrangements in publicity work for the election in order to alleviate their financial burden. It was suggested that the five DC FC seats should be returned from five constituencies instead of one single constituency covering the whole territory so that the election expenses could be adjusted downward to alleviate the financial burden of the candidates.

37. Some other members expressed the view that the Administration should set a higher limit for the maximum election expenses for the new DC FC or remove any cap on the amount so that independent candidates from the business sector and professional sectors would be encouraged to participate in the election even though they lacked the manpower support from political parties.

38. The Administration advised that it had considered the proposals put forward by various political parties ranging from \$4 million to \$8 million. The Administration maintained the view that the election expense limit for the new DC FC should not be set at a high level so that candidates from large or small political parties and independent candidates could participate in the election. It was considered appropriate to set the maximum amount of election expense for the new DC FC at \$6 million. The election expenses could be shared by five candidates in a list. Independent candidates could also form a list with other parties to join the election so that the cost could be shared out. The Administration cautioned that candidates might be constrained in carrying out

their election campaigns if the election expense limit was set at a low level. After having conducted an assessment concerning the election expense limit of the new DC FC, the Administration estimated that at least \$3 million would be spent on printed election materials for distribution to over three million electors and another \$3 million for the conduct of electioneering activities. The Administration also advised that to reduce candidates' financial burden, the Registration and Electoral Office would continue to produce a booklet to introduce candidates to voters in the 2012 LegCo election and provide one round of free postage service to candidates.

39. Some members considered the maximum election expense limit proposed by the Administration for the new DC FC appropriate. They took the view that while a high election expense limit would put less well-off candidates at a disadvantage, a low election expense limit would pose limitations to the candidates in running their election campaigns.

*Financial assistance scheme for the 2012 LegCo election*

40. Some members were of the view that the financial assistance in respect of a list of candidates/candidates standing for the 2012 LegCo election should be increased from \$11 to at least \$20 per vote and that the cap on the financial assistance payable should be adjusted from 50% to 70%-80% of the declared election expenses. Having regard to the broad electorate base of the new DC FC, they also urged the Administration to enhance the financial assistance to the candidates in that election.

41. The Administration stressed that it had been the long-standing practice that candidates would need to meet half of their election expenses. The existing mechanism was considered reasonable and had been functioning well. Taking into account the inflation factor, the subsidy rate per vote would be increased from \$11 to \$12 for the 2012 LegCo election.

*Delineation of constituencies for GCs*

42. Some members considered the Administration's proposal of retaining five GCs for returning the 35 GC members acceptable. In anticipation of the increase in the number of GC seats in New Territories West GC to nine or even 10 seats in the 2012 LegCo election, they expressed concern that a candidate would only need to secure 25 000 votes or around 3% of the total valid votes cast for the constituency to win the last seat in the election. In an extreme case, a successful candidate might have his election deposit forfeited because the number of the valid votes obtained by the candidate was less than 3% of the valid votes.

43. The Administration advised that the number of GCs would be retained at five as the public was used to the existing electoral arrangement. The established practice of demarcating constituency areas according to the distribution of population was also considered appropriate. The Administration, however, would take into account members' views when drawing up the relevant legislative proposal.

*Electorate base of traditional FCs*

44. According to the Administration, the general understanding was that there should be no substantial changes to the electorate base of traditional FCs when Members supported the two motions to amend the two electoral methods. Some members, however, suggested that the electorate base of traditional FCs should be broadened so as to enhance their representativeness. They suggested that the right to vote should be extended to all companies in the FC elections particularly the Transport FC and the right could be further extended to individuals in some FCs such as the Tourism FC.

45. The Administration explained that in line with the established practice, some technical adjustments would be made to the electorate of FCs to reflect the latest circumstances in the relevant constituencies prior to the next general election to be held in 2012. The technical adjustments which included, among others, changes in the names of the eligible organizations, removal of organizations which had ceased to exist in the relevant FC, and adding new eligible organizations, could be proposed by the relevant FC sectors or the Administration. The Administration undertook to follow up with the Transport and Housing Bureau on the suggestion concerning the electorate base of the Transport FC.

**Relevant documents**

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

## Appendix

### Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010

#### Relevant documents

Meeting	Date of meeting	Paper
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 ("LegCo")" <a href="#">[Hansard]</a>
	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 LegCo in 2012" <a href="#">[Hansard]</a>
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 LegCo in 2012 <a href="#">[LC Paper No. CB(2)1753/09-10]</a>
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 LegCo in 2012" <a href="#">[Hansard]</a>

<b>Meeting</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	19 July 2010	<p>Letter dated 21 June 2010 from the Secretary for Constitutional and Mainland Affairs enclosing the statements made by the Chief Executive and the Secretary for Justice at the press conference on Constitutional reform package <a href="#">[LC Paper No. CB(2)1872/09-10(01)]</a></p> <p>Administration's paper on "The methods for selecting the Chief Executive and electing the LegCo in 2012 : Main issues to be considered under local legislation" <a href="#">[LC Paper No. CB(2)2071/09-10(01)]</a></p> <p>Background brief on "Main issues to be considered under the local legislation of the two electoral methods for 2012" prepared by the LegCo Secretariat <a href="#">[LC Paper No. CB(2)2071/09-10(02)]</a></p> <p>Minutes of meeting <a href="#">[LC Paper No. CB(2)528/10-11]</a></p>
	--	<p>Letter dated 16 August 2010 from the Secretary for Constitutional and Mainland Affairs enclosing the reports submitted to the Standing Committee of the National People's Congress by the Chief Executive concerning the draft amendments to the methods for selecting the Chief Executive and for forming the LegCo and the explanations on the two draft amendments <a href="#">[LC Paper No. CB(2)2183/09-10(01)]</a></p>

<b>Meeting</b>	<b>Date of meeting</b>	<b>Paper</b>
	30 October 2010	<p>Administration's paper on "Arrangements regarding the Methods for Selecting the Chief Executive and for Forming the LegCo in 2012" [LC Paper No. CB(2)150/10-11(01)]</p> <p>Background brief on "Local legislation on the methods for selecting the Chief Executive and for forming the LegCo in 2012" prepared by the LegCo Secretariat [LC Paper No. CB(2)150/10-11(02)]</p>

Council Business Division 2  
Legislative Council Secretariat  
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