

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

**Issues on the method for forming the 2012 Legislative Council raised
at the Bills Committee meeting on 10 January 2011 for follow-up**

**Electoral arrangements for existing District Council Functional
Constituency and New District Council Functional Constituency**

As requested by Members at the meeting on 10 January 2011, this paper provides information concerning the electoral arrangements for the existing District Council functional constituency (“FC”) and the new District Council FC in the 2012 Legislative Council election.

2. Details of the arrangements are set out at Annex 1 and Annex 2.

**Existing arrangements on the return of election deposit and granting
of financial assistance**

3. Regarding the existing arrangement on the return of election deposit, according to section 4(1) of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542C), whenever an election in which a geographical constituency (“GC”) or a FC candidate is declared to be duly elected as a Member (regardless of the number of valid votes the candidate received), after such declaration, the deposit lodged on behalf of the nominees on each nomination list or a candidate for that constituency shall be returned in full. Section 4(3) of the Regulation provides that the election deposit lodged will be returned if the total number of ballot papers containing valid votes in favour of a nomination list of candidate which has no successful GC candidate in respect of a GC received by such nomination list is no less than 3% of the total number of ballot papers containing valid votes received in that GC, or the total number of ballot papers containing valid first preference votes or valid votes (depending on the constituencies concerned) in favour of an unsuccessful candidate in respect of a FC received by such candidate is no less than 3% of the total number of ballot papers containing valid votes (for details, please refer to Annex 3).

4. Under section 60C of the Legislative Council Ordinance (Cap. 542), if at least one candidate on the list of candidates for a GC is elected as a Member, or a candidate for a FC is elected as a Member, the list of candidates or candidate concerned will be eligible for financial assistance regardless of the number of valid votes received in an election. In cases where no candidate on the list of candidates for a GC is elected as a Member, or a candidate for a FC is not elected as a Member, financial assistance will only be provided to the GC list/FC candidate if at least one candidate on the GC list/the FC candidate is not a disqualified candidate and the number of valid votes received by the GC list/the FC candidate in the GC or FC election concerned is at least 5% of the total number of valid votes cast (for details, please refer to Annex 4).

Constitutional and Mainland Affairs Bureau
January 2011

Electoral arrangements for the existing District Council functional constituency (DC FC) seat

(i) Nomination right

Existing arrangement	Proposal
<ul style="list-style-type: none">• Only elected and appointed DC members may nominate candidates. DC members who are also members of the Heung Yee Kuk (HYK) can only nominate candidates in the HYK FC. <p>(Sections 20ZB, 25(1)(a)(xxviii) and 25(3)(c) of the Legislative Council Ordinance (the Ordinance)(Cap.542) and section 7(2)(a) of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation)(Cap542C))</p>	<ul style="list-style-type: none">• Only elected DC members may nominate candidates. However, they may choose to nominate candidates in either the existing DC FC or the new DC FC. Appointed DC members have no nomination right.• Elected DC members who are also members of the HYK can only nominate in either the existing DC FC or the new DC FC.• Persons who are elected DC members and, at the same time, eligible to be registered for other FCs may only be registered as electors for the existing DC FC and only nominate candidates in either the existing DC FC or the new DC FC <p>(Clauses 10(3), 13(4), 13(5), 13(6) and 43 of the Bill and section 7(2)(a) of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation)(Cap542C)))</p>

Existing arrangement	Proposal
<ul style="list-style-type: none"> Ex-officio members (i.e Chairmen of the 27 Rural Committees) can only nominate candidates in the HYK FC. <p>(Section 25 (3)(c) of the Ordinance and section 7(2)(a) of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation) (Cap542C))</p>	<ul style="list-style-type: none"> No change.

(ii) Voting right

Existing arrangement	Proposal
<ul style="list-style-type: none"> Only elected and appointed DC members may be registered as electors for the existing DC FC. <p>(Sections 20ZB and 25 (1)(a)(xxviii) of the Ordinance)</p> <ul style="list-style-type: none"> Elected DC members who are also members of the HYK and ex-officio DC members may only be registered as electors for the HYK FC. <p>(Section 25(3)(c) of the Ordinance)</p> <ul style="list-style-type: none"> Elected members and appointed members who are eligible to be registered as electors for other FCs may opt to be registered for either the DC FC or other FCs in which they are eligible for registration. However, they may only be registered for one FC. <p>(Sections 25(2) and 25(3)(d) of the Ordinance)</p>	<ul style="list-style-type: none"> Only elected DC members may be registered as electors for the existing DC FC (Appointed DC members are not eligible to be registered as electors) Elected DC members who are also members of the HYK may only be registered as electors for the existing DC FC. Ex-officio DC members may only be registered for the HYK FC, as under the existing arrangement. Elected DC members may only be registered as electors for the existing DC FC but not other FCs. <p>(Clauses 10(3), 13(4), 13(5) and 13(6) of the Bill)</p>

(iii) Candidature Right

Existing arrangement	Proposal
<ul style="list-style-type: none">• Electors of the DC FC or persons having a substantial connection with the FC may be nominated as candidates. <p>(Section 37(2)(b) of the Ordinance)</p> <ul style="list-style-type: none">• A person who is eligible to stand for election in both the existing DC FC and another FC may opt to stand for election in either the existing DC FC or other FC. The principle is that a person can only be nominated as a candidate in one FC. <p>(Section 41 of the Ordinance)</p>	<ul style="list-style-type: none">• Only elected DC members may be nominated as candidates. <p>(Clauses 15 and 17 of the Bill)</p> <ul style="list-style-type: none">• As elected members may only be registered as electors for the existing DC FC under the new arrangement, if they wish to stand for election in FCs other than the existing or the new DC FC, they may only do so by having a substantial connection with that FC. <p>(Clauses 13(4) and 15 of the Bill and section 37(2)(b) of the Ordinance)</p>

Electoral arrangements for the five new DC FC seats

(i) Nomination right

- Candidates must be nominated by elected DC members (including elected DC members who are also members of the HYK¹).
- Elected DC members may choose to nominate candidates either for the existing DC FC seat or for the five new DC FC seats.

(Clause 43 of the Bill)

(ii) Candidature right

- Candidates are limited only to elected DC members.
- Appointed and ex-officio DC members are not allowed to stand for election.

(Clauses 15 and 17 of the Bill)

- Under the new arrangement, elected DC members may only be registered as electors in the existing DC FC. If the person concerned wishes to stand for election in a FC other than the new DC FC or the existing DC FC, he/she may be nominated only by having a substantial connection with that FC.

(Clauses 13(4) and 15 of the Bill and Section 37(2)(b) of the Ordinance)

(iii) Voting right

- Subject to the following three circumstances, registered electors who are not entitled and who have not opted to vote in the other FCs may vote in this FC:
 - Elected DC members (including those who are eligible for registration for the HYK FC) may only be registered for the existing DC FC;
 - Ex-officio members may only be registered for the HYK FC; and
 - Persons who are eligible for registration in the HYK, Agriculture and Fisheries, Insurance and Transport FCs may only be registered for the FCs concerned.

(Clauses 11 and 13 of the Bill)

¹ Under section 25(3)(c) of the Legislative Council Ordinance, elected DC members who are also members of the HYK can only nominate candidates for the HYK FC.

Chapter: 542C	Title:	LEGISLATIVE COUNCIL (SUBSCRIBERS AND ELECTION DEPOSIT FOR NOMINATION) REGULATION	Gazette Number:	L.N. 189 of 2003
Section: 4	Heading:	Disposal of deposit after publication of election result or declaration of failure of election	Version Date:	15/07/2004

(1) Subject to subsection (3), as regards-

- (a) an election in which a geographical constituency candidate is declared under section 46(1) of the Ordinance to be duly elected as a Member in respect of a geographical constituency;
- (b) an election in which a geographical constituency candidate is declared under section 49(13) or (15) of the Ordinance as elected as a Member in respect of a geographical constituency; or
- (c) an election for a geographical constituency which is declared under section 46A(3)(a) of the Ordinance to have failed,

after such declaration, the deposit lodged on behalf of the nominees on each nomination list for that geographical constituency, unless it shall be returned in accordance with section 3, shall be returned in accordance with this section. (L.N. 14 of 2000)

(2) Subject to subsection (3), as regards-

- (a) an election in which a candidate is declared under section 46(1) of the Ordinance to be duly elected as a Member in respect of a functional constituency;
- (b) an election in which a candidate is declared under section 50(7) or 51(7) of the Ordinance as elected as a Member in respect of a functional constituency; or
- (c) an election for a functional constituency which is declared under section 46A(3)(a) of the Ordinance to have failed,

after such declaration, the deposit lodged by or on behalf of each candidate for that functional constituency, unless it shall be returned in accordance with section 3, shall be returned in accordance with this section. (L.N. 14 of 2000)

(2A) (Repealed L.N. 206 of 2001)

(3) Where-

(a) the total number of ballot papers containing valid votes in favour of a nomination list which has no successful geographical constituency candidate in respect of a geographical constituency received by such nomination list is less than 3% of the total number of ballot papers containing valid votes received in that geographical constituency; or

(b) (i) the total number of ballot papers containing valid first preference votes in favour of an unsuccessful candidate in respect of a functional constituency specified in section 20(1)(a) to (d) of the Ordinance received by such candidate is less than 3% of the total number of ballot papers containing valid first preference votes received in that constituency; or

(ii) the total number of ballot papers containing valid votes in favour of an unsuccessful candidate in respect of a functional constituency other than a functional constituency referred to in subparagraph (i) received by such candidate is less than 3% of the total number of ballot papers containing valid votes received in that functional constituency,

(c) (Repealed 25 of 2003 s. 50)

(d) (Repealed L.N. 206 of 2001)

as determined by a counting of the votes and any re-count, the deposit lodged in respect of his or their nomination shall be forfeited to the general revenue, in accordance with this section. (L.N. 49 of 1998)

(4) Subject to subsection (6), the Returning Officer for the geographical constituency or functional constituency concerned shall, in the case of- (L.N. 206 of 2001; 25 of 2003 s. 50)

(a) an election referred to in subsection (1)(a) or (2)(a), as soon as practicable after the publication under the appropriate regulations of a notice declaring that the geographical constituency candidate or the candidate, as the case may be, is duly elected in respect of that geographical constituency or functional constituency;

(b) an election referred to in subsection (1)(b) or (2)(b), as soon as practicable after the publication under the appropriate regulations of a notice of the result of the election in respect of that geographical constituency or functional constituency;

(c) an election referred to in subsection (1)(c) or (2)(c), as soon as practicable after the publication under the appropriate regulations of a notice declaring that the election has failed,

notify the Director of Accounting Services in writing that the deposit lodged on behalf of the nominees on each nomination list for that geographical constituency, or by or on behalf of each candidate for that functional constituency, as the case may be, is returnable to the person who lodges the deposit on behalf of those nominees or to such candidate or to the person who lodges the deposit on behalf of such candidate, as the case may be. (L.N. 14 of 2000; L.N. 206 of 2001)

(5) The Director of Accounting Services shall, as soon as practicable after the receipt of a notification under subsection (4), return the amount of the deposit to the person who lodges the deposit on behalf of the nominees on the nomination list or to the candidate or to the person who lodges the deposit on behalf of such candidate, as the case may be, specified in the notification.

(6) The Returning Officer shall, as soon as practicable after the publication of the notice referred to in subsection (4)(b) or (c), notify the Director of Accounting Services in writing, as regards any nomination list which has no successful geographical constituency candidate or any unsuccessful candidate, as the case may be, referred to in subsection (3), that the deposit lodged in respect of his or their nomination for that geographical constituency or functional constituency at the relevant election is to be forfeited to the general revenue. (L.N. 206 of 2001)

(L.N. 14 of 2000; L.N. 119 of 2003; 25 of 2003 s. 50)

Chapter: 542	Title:	LEGISLATIVE COUNCIL ORDINANCE	Gazette Number:	L.N. 189 of 2003
Section: 60C	Heading:	Eligibility for financial assistance: list of candidates and candidates for functional constituencies	Version Date:	15/07/2004

(1) A list of candidates for a geographical constituency is eligible for financial assistance only in the following circumstances—

- (a) if at least one candidate on the list is elected as a Member; or
- (b) if no candidate on the list is elected as a Member, if—
 - (i) at least one candidate on the list is not a disqualified candidate; and
 - (ii) the total number of valid votes cast for the list is equal to or exceeds 5% of the total number of valid votes cast in the geographical constituency concerned.

(2) Only the following candidates for a functional constituency are eligible for financial assistance—

- (a) a candidate who is elected as a Member; or
- (b) a candidate who is not elected as a Member but who—
 - (i) is not a disqualified candidate; and
 - (ii) obtains at least 5% of the total number of valid votes cast in the constituency concerned.

(Part VIA added 25 of 2003 s. 38)