

Legislative Council Panel on Constitutional Affairs

**Arrangements regarding the Methods for
Selecting the Chief Executive and for
Forming the Legislative Council in 2012**

PURPOSE

This paper sets out the proposed arrangements regarding the methods for selecting the Chief Executive (“CE”) and for forming the Legislative Council (“LegCo”) in 2012, which will be prescribed in the local legislation to be introduced into the LegCo in the form of two Bills in the last quarter of 2010.

BACKGROUND

2. In November 2009, the Government published the “Consultation Document on the Methods for Selecting the CE and for Forming the LegCo in 2012” setting out the directions which may be considered regarding the key elements of the two electoral methods for 2012, and launched a three-month public consultation. The consultation period ended on 19 February this year. On 14 April 2010, the “Package of Proposals for the Methods for Selecting the CE and for Forming the LegCo in 2012” was published.

3. On 21 June 2010, the Government announced the acceptance of the “one-person-two-votes” proposal for returning the five new functional constituency (“FC”) seats in 2012. At that time, we stated that once the motions were passed by the LegCo, we would pursue the following electoral arrangements through local legislation after the LegCo resumed business in autumn-

- (a) candidates for the five new FC seats would be nominated by elected District Council (“DC”) members. They would be elected by all registered voters who currently did not have a right to vote in FCs, on a one-person-one-vote basis;
- (b) candidates for the new DC FC must themselves be elected DC members; and
- (c) the original DC FC seat would be returned through election from among elected DC members.

4. On 24 and 25 June 2010, the LegCo passed by a two-thirds majority the motions put forth by the Government concerning the draft amendments to the method for the selection of the CE and the method for the formation of the LegCo in 2012. On 29 June 2010, the CE gave consent to the draft amendments. On 28 August 2010, the Standing Committee of the National People's Congress ("NPCSC") approved or recorded respectively the amendments to Annexes I and II of the Basic Law concerning the two electoral methods. The Government will implement the two electoral methods for 2012 by way of local legislation.

PROPOSED ARRANGEMENTS UNDER THE LOCAL LEGISLATION

Method for selecting the CE in 2012

5. For the local legislation on the method for selecting the CE, we propose that :

Composition of the Election Committee

- (a) the number of members of the Election Committee ("EC"), which is responsible for electing the CE, will be increased from 800 to 1 200;
- (b) 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;

First, second and third sectors of the EC

- (c) the first, second and third sectors of the EC will adopt the following electoral arrangements -
 - (i) no new subsector will be added in these three sectors;
 - (ii) the number of seats allocated to the existing 32 subsectors in these three sectors will be increased by proportion according to the existing distribution of seats;

Fourth sector of the EC

- (d) the fourth sector of the EC will adopt the following electoral arrangements -
- (i) three quarters of the 100 new seats (i.e. 75 seats) will be allocated to elected DC members. As for the remaining 25 new seats, aside from the 10 seats to be allocated to LegCo Members, we propose that 10 seats be allocated to members of the Chinese People's Political Consultative Conference ("CPPCC") and five to Heung Yee Kuk ("HYK");
 - (ii) from February 2012 when the new term of the EC commences, ten "Special Member" seats will be created temporarily to make up the difference of ten seats until the number of LegCo seats increases from 60 to 70 in October 2012. We propose that four seats of "Special Member" be allocated to members of the CPPCC, two to HYK and four to DCs;
 - (iii) after the successful candidates of respective subsectors mentioned in (d) (ii) are returned, the "Special Member" seats are to be taken up by those remaining candidates who obtain the greatest number of votes in the respective subsectors;
 - (iv) after the completion of the election of the fifth term LegCo and the election of the twelfth National People's Congress, if there is any overlapping membership or vacancy in the EC subsectors concerned, we shall deal with such issues in the EC subsectors by-election;

DC subsectors under the fourth sector

- (e) the DC subsectors under the fourth sector will adopt the following electoral arrangements -
- (i) the current "bloc vote system" will be retained;
 - (ii) as regards the grouping and demarcation of the DC subsector, we should continue with the current arrangement of allocating the 117 seats between the urban area and the New Territories;

- (iii) only elected DC members are eligible to be nominated as candidates in the DC subsectors. Other DC members and persons with substantial connection to the DCs are not eligible to be nominated;
- (iv) candidates must be nominated by at least five registered voters of the DC subsectors (as set out in (v) below), whereas other DC members will not have nomination right; and
- (v) only elected DC members are eligible for registration as voters. They must only be registered in the DC subsectors and not other EC subsectors. This arrangement also applies to elected DC members who are at the same time eligible for registration as voters in the HYK subsector, i.e. they must only be registered in the DC subsectors. Other DC members are ineligible for registration.

Method for forming the LegCo in 2012

6. For the local legislation on the method for forming the LegCo, we propose that -

- (a) the number of LegCo Members returned by geographical constituencies (“GCs”) and by FCs will each be increased from 30 to 35;
- (b) the number of GCs will be retained at five;
- (c) the five new FC seats, commonly known as the new DC FC, will be returned through the following electoral arrangements -
 - (i) the five seats will be returned from the whole Hong Kong Special Administrative Region (“HKSAR”) as a single constituency;
 - (ii) the election of Members for the new DC FC is to be conducted in accordance with the proportional representation list system;
 - (iii) candidates must be nominated by no less than 15 elected DC members. Elected DC members may choose either

to nominate a candidate list for the election in the new DC FC or a candidate for the election in the existing DC FC;

- (iv) only elected DC members are eligible to be nominated as a candidate at an election for the new DC FC;
- (v) candidates will be elected by approximately 3.2 million registered electors (i.e. those who currently do not have the right to vote in other FCs) on a one-person-one-vote basis;
- (vi) persons registered as electors or being eligible for registration as electors in the traditional FCs will be given a choice to opt to register in the traditional FCs or the new DC FC with the following exceptions -
 - elected DC members may only register in the existing DC FC. This arrangement also applies to elected DC members who are at the same time eligible for registration as electors in the HYK FC; and
 - ex-officio DC members and persons eligible for registration as electors in the HYK FC may only register in the HYK FC. The existing requirement, under which persons eligible for registration as electors in the Agriculture and Fisheries, Insurance and Transport FCs may only register in those FCs concerned, will continue;
- (vii) the maximum amount of election expenses that can be incurred at an election by all the candidates on a list in respect of the new DC FC will be \$6 million;
- (viii) the amount payable as financial assistance in respect of a list of candidates/candidates standing for the 2012 LegCo election is the lower of either the amount obtained by multiplying the total number of valid votes cast for the list of candidates/candidates by \$12 or 50% of the declared election expenses of the list of candidates;

- (d) there will be no substantial changes to the traditional FCs. There will be changes to the existing DC FC as follows -
- (i) only elected DC members are eligible to be nominated as a candidate at an election for the existing DC FC. Other DC members and persons having a substantial connection with the DC FC are not eligible to be nominated;
 - (ii) candidates must be nominated by elected DC members. Other DC members will not have the nomination right; and
 - (iii) only elected DC members are eligible for registration as electors. This arrangement also applies to elected DC members who are at the same time eligible for registration as electors in the HYK FC, i.e. they must only be registered in the existing DC FC. Other DC members are not eligible for registration as electors in the existing DC FC.

JUSTIFICATIONS

7. The Government has taken into account the following principles in formulating the electoral arrangements of the CE and LegCo elections in 2012 -

- (a) they must be fair and reasonable so as to ensure a competitive election in which different individuals, political parties and groups may participate;
- (b) they must be consistent with the Basic Law and the relevant provisions of the NPCSC decision of 29 December 2007, and consistent with the amendments to Annexes I and II of the Basic Law concerning the two electoral methods which were approved or recorded respectively by the NPCSC on 28 August 2010; and
- (c) they can increase participation of individuals from different sectors of the community and enhance the democratic elements of the elections.

Method for Selecting the CE

Composition of the EC

8. With the increase of the number of EC members from the current 800 to 1200, we aim to provide more room for members of the community to participate in the CE election and further enhance the representativeness of the EC while meeting the requirement of gradual and orderly progress for selecting the CE as stipulated in the Basic Law. Increasing the number of members of the four sectors of the EC by the same proportion is in accordance with the principle of balanced participation.

First, second and third sectors of the EC

9. We do not propose to add any new subsector in the first, second and third sectors of the EC, as the new subsectors which may be considered (e.g. small and medium sized enterprises, youth and women) include many organizations with very diverse nature in their respective fields. In view of the broad coverage of these new subsectors, it would be difficult to include all organizations in such subsectors. If only some of the organizations are designated as part of the electorate, other organizations may 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, it would be desirable to maintain the status quo of keeping the existing 32 subsectors. These subsectors are considered as being broadly representative.

10. With an increase in the number of seats of the 32 subsectors by proportion according to the existing distribution of seats, there will be more opportunities for members of the industrial, commercial, financial, professional, labour, social services, religious and other sectors to participate in the election. Moreover, such arrangement is in line with the principle of balanced participation.

Fourth sector of the EC

11. To enhance the democratic elements of the CE election, it is proposed to allocate 75 new seats to the elected DC members to increase public participation in the EC because these members will be returned by 3.43 million voters. Elected DC members represent different strata of the community. They have made contributions to district administration and kept a close monitor on public opinions. Their participation can

help meet the interests of different sectors of society and facilitate balanced participation.

12. As for the remaining 25 new seats for the fourth sector, aside from the 10 seats to be allocated to LegCo Members, we recommend that the other 15 seats be allocated to members of the CPPCC and HYK based on their existing proportion of number of members, i.e. 10 seats be allocated to members of the CPPCC and five to HYK.

13. The number of LegCo Members will only be increased from the current 60 to 70 in October 2012. When the new term EC commences in February 2012, the number of LegCo seats, however, remains at 60. To make up the difference of the 10 seats, we propose to create ten “Special Member” seats which will be allocated to the CPPCC, HYK and DCs temporarily according to their current distribution of seats under the fourth sector, i.e. four seats be allocated to members of the CPPCC, two to HYK and four to DCs.¹

DC subsectors under the fourth sector

14. We propose that the current “bloc vote system” should be retained for DC subsectors as this system has been in use for many years and has been adopted by other subsectors.

15. For the grouping and demarcation of DCs, political parties and voters are familiar with the existing arrangement of grouping the various DCs into two subsectors, one for the urban area and the other for the New Territories.

16. We propose that only elected DC members can register as voters, nominate candidates and be nominated as candidates in the DC subsectors. Other DC members will not enjoy such rights. For elected DC members who are at the same time eligible for registration as electors in the HYK subsector, they are only eligible for registration as voters in the DC subsector. This proposal can enhance the democratic elements of the EC more effectively. Moreover, ex-officio DC members who are Chairmen of the 27 Rural Committees² can continue to take part in the HYK subsector election.

¹ After the completion of the election of the fifth term LegCo and the election of the twelfth National People’s Congress, if there is any overlapping membership or vacancy in the EC subsectors concerned, we shall deal with such issues in the EC subsectors by-election.

² According to section 9(1)(c) of the District Councils Ordinance (Cap. 547), the Chairman of each Rural Committee while holding office is an ex-officio member of the DC.

17. The next DC election is expected to be held in November 2011. We need to put in place a mechanism by which the newly elected DC members could be automatically registered as voters for the DC subsectors. Moreover, since it is possible that some of the newly elected DC members would have already been registered as voters in other subsectors, it would be desirable for those elected DC members to be automatically registered in the DC subsectors. This will avoid the situation of having a narrow electorate base in the DC subsectors. Automatic registration of elected DC members in the relevant DC subsectors can enable the voters for the DC subsectors to reflect more accurately the relative strength between different political parties or bodies among the elected DC members. In addition, as the next DC election is expected to be held just a few months prior to the CE election, this arrangement will enable the election for the DC subsectors to be held as quickly as possible to tie in with the CE election concerned.

Method for Forming the LegCo

Number of LegCo Members

18. The number of LegCo seats will be increased from 60 to 70 with five new LegCo Members returned by GCs and five returned by FCs. This increase is consistent with the decision of NPCSC of 29 December 2007 that the half-and-half ratio between LegCo Members returned by FCs and LegCo Members returned by GCs through direct election shall remain unchanged. This arrangement can provide more room for members of the public to participate in elections, and allow more LegCo Members to share the increasing workload of the LegCo.

Geographical Constituencies

19. The division of the whole territory into five GCs has been in place since the establishment of the HKSAR. If any new proposal (e.g. consolidate five GCs to four GCs or increase five GCs to six GCs) was adopted, electors would find it difficult to adjust to the new arrangement. Hence, we propose to retain five GCs for the purpose of returning the 35 GC members. The number of seats for different GCs will be allocated according to the distribution of population and in accordance with the relevant legislation.

New DC FC

20. While the number of Members returned from the existing 28 FCs will remain unchanged, the five new FC seats will be returned from

the new DC FC. The new DC FC is a FC. Unlike the GC direct elections where all registered electors in the GC electoral registers can vote, in the new DC FC elections, only those registered electors who are not entitled and who have not opted to vote in the other FCs can vote.

21. For the new DC FC elections, we propose to adopt the list voting system to implement the proportional representation system. The proportional representation system is recommended because it ensures balanced participation by making the number of seats which a list of candidates gains to correspond with their electoral strength. Furthermore, electors in Hong Kong are familiar with the list proportional representation system, which is adopted in the LegCo GC elections.

22. We have explored the option of adopting the single transferable voting system for the new DC FC elections. However, given the complexity of the counting arrangement, in logistical terms, it will be very difficult to implement such a system with an electorate size of 3.2 million.

23. To enhance the democratic elements through the new DC FC seats, the Government proposes that candidates for the new DC FC must themselves be elected DC members. Other DC members cannot stand for the new DC FC elections. As elected DC members are elected by all registered electors coming from the respective DC constituency areas, they represent the widest possible electorate base in the territory and represent the views of the electorate for the current term. This is consistent with the objective of enhancing the democratic elements of our electoral system.

24. To allow more candidates to participate in the elections, some political parties propose to adopt the approach whereby electors with a “substantial connection” with the new DC FC may stand for the new DC FC elections. This suggestion is not appropriate, as in FCs, all electors registered in that constituency are regarded to have a substantial connection. This would mean that all 3.2 million electors are eligible to stand for election on the basis of a “substantial connection” and this would almost turn this into a GC direct election. If a “substantial connection” provision is retained, then other DC members will also have a claim to candidacy. The present approach is consistent with the principle set out in the statement made by the Secretary for Justice on 21 June 2010 that the new DC FC election is not GC direct elections. The new DC FC members are not returned by GCs through direct elections. This is because not all the 3.43 million registered electors in the GC 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 FCs.

25. There are also proposals suggesting that persons with a clearly defined “substantial connection” with the DCs could stand for the new DC FC elections. The defined “substantial connection” includes ex-elected DC members, ex-LegCo Members and formerly elected DC members. Ex-elected DC members are persons who were elected as DC members in the term immediately preceding the current one but are no longer elected in the current term. This may be a failure to win the election for the current term, a decision not to stand for the election for the current term or disqualification from holding office for reasons set out in section 24 of the District Councils Ordinance (Cap. 547). Formerly elected DC members are persons who were elected as DC members in the term other than the current term and the one immediately preceding the current term. As stated in paragraph 23, the principle of allowing only elected DC members to stand for the new DC FC elections is to enhance democratic elements to the electoral system as elected DC members represent a broad electorate base and the views of the electorate for the current term, i.e. not the views of electors in previous terms. It would go against this principle, if ex-elected DC members or formerly elected DC members were allowed to become candidates of the new DC FC elections. As for ex-LegCo Members, similar considerations apply. They were not directly involved in the work of DCs and are considered inappropriate to stand as candidates for this FC.

26. As regards the nomination right of the new DC FC, candidates must be nominated by elected DC members. Elected DC members may only exercise the nomination right in the DC FC; they may nominate a candidate either for the existing DC FC seat or a list of candidates for any of the 5 new DC FC seats.

27. Under the existing arrangement, a candidate standing for an election in the existing DC FC shall be subscribed by no less than ten persons. The new DC FC has five seats, which are more than the one seat in the existing DC FC. We, therefore, propose to set the number of subscribers required at 15 for the new DC FC.

28. All registered electors other than those entitled and opted to vote in other FCs are eligible for registration as electors in the new DC FC. Persons registered as electors or being eligible for registration as electors in the traditional FCs will be given a choice to opt to register in the traditional FCs or the new DC FC except for the following -

(a) Elected DC members

There will be 412³ elected DC members. As the existing DC FC seat will be elected amongst the elected DC members (see paragraph 33 below), in view of the small electorate of the existing DC FC, we recommend that elected DC members may only register as electors in the existing DC FC. This arrangement also applies to elected DC members who are at the same time eligible for registration as electors in the HYK FC.

(b) Persons eligible for registration as electors in the HYK, Agriculture and Fisheries, Insurance and Transport FCs

At present, persons who are eligible for registration as electors in the above four FCs with a small electorate may only register in the FCs concerned but not in other FCs. This practice will continue to apply.

(c) Ex-officio DC members who may only register as electors in the HYK FC

In light of (b) above, ex-officio DC members may only register as electors in the HYK FC which is one of the FCs with a small electorate.

Election expenses limit for the new DC FC

29. Various political parties have suggested that the election expenses limit for the new DC FC should be set at \$4 million to \$8 million. We have considered their proposals and propose that a limit at \$6 million is appropriate. We anticipate that the proposed election expenses limit would enable candidates to introduce their election manifestoes to registered electors.

Election expenses limit for GCs and FCs

30. We have reviewed the election expenditure pattern of the lists of candidates standing for the GC election and candidates standing for the FC election in 2008. We consider that there is no pressing need to increase the election expenses limits. However, we will examine

³ The Government has proposed to increase the elected DC seats from 405 to 412. The proposal will need to be approved by the LegCo.

whether there is any need to revise the limits in the fourth quarter of 2011, when the latest inflation and population figures are available.

Financial assistance

31. Currently, candidates standing for LegCo GC or FC elections who are elected or who have received 5% of valid votes or more cast in the constituency concerned are eligible for financial assistance. The amount payable as financial assistance in respect of a list of candidates or a candidate is the lower of either the amount obtained by multiplying the total number of valid votes cast for the list of candidates or the candidate by \$11 or 50% of their declared election expenses. The scheme has been functioning well and has been welcomed and supported by candidates and the community at large.

32. Taking into account the cumulative inflation between 2009 and 2012 which is forecast to be 9.1%, we propose to raise the subsidy rate accordingly by about 9% from \$11 to \$12 per vote. However, the cap of the election expenses limit will be maintained at 50% as we consider it reasonable for candidates to meet half of their election expenses. The enhancement will be applicable to the 2012 LegCo election (including the new DC FC).

Existing DC FC

33. The arrangements for existing DC FC (including candidature, nomination and voting) will be revised slightly with a view to enhancing its democratic elements. We propose that only elected DC members will be eligible to be nominated as candidates in the existing DC FC. Other DC members and persons with a substantial connection with the DC FC will not be eligible to be nominated as candidates. Candidates must be nominated by elected DC members. This is consistent with the objective to enhance the democratic elements of our electoral system.

Traditional FCs

34. The overall approach for the electoral method for the LegCo in 2012 is that there should be no substantial changes for the traditional FCs.

LEGISLATIVE TIMETABLE

35. We plan to introduce into the LegCo the CE election (Amendment) Bill and the LegCo (Amendment) Bill a few weeks later. It is our hope that the Bills can be passed by the LegCo as soon as possible next year to provide sufficient time for preparing the 2011 EC subsector elections and the arrangement for the subsequent elections.

Other Issues

36. We will put forth proposals concerning the abolition of the DC appointment system later separately for consultation with the LegCo and the public.

37. We also note that there are views in the community which consider that restrictions should be imposed on LegCo Members who resign from their office and then stand for the by-elections. We are continuing to study the issue. We will put forth proposals later separately to plug the loophole, so that LegCo Members in office would not be able to resign at will and trigger a by-election. However, consideration should be given as to whether these proposals comply with the Basic Law. Our aim is to propose legislative amendments within the 2010/2011 legislative session and complete the legislative work as soon as possible.

IMPLICATIONS OF THE PROPOSALS

38. The legislative proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, sustainability, environmental or productivity implications.

39. Arising from the proposal to increase the number of LegCo Members from 60 to 70 in 2012, the Government has to allocate \$26.59 million per annum to pay for the remuneration, medical allowance and operating expenses reimbursement for the additional ten Members starting from the fifth term LegCo, save for any annual price adjustments to be made. An additional \$8.86 million will also be required for other expenses (including setting up allowance, information technology and communication equipment allowance, winding up allowance and end of service gratuity) for the additional ten Members for each term⁴. The

⁴ These figures are subject to a review to be conducted in 2011 by an Independent Commission appointed by the CE.

proposed expansion of the EC from 800 to 1200 members, the increase in the number of LegCo Members and the creation of the new DC FC will also have implications for the expenses for the conduct of the 2011 EC subsector election, the 2012 CE election and the 2012 LegCo election. Additional provisions will be required for the Registration and Electoral Office (“REO”) in the areas including recruitment of electoral staff, financial assistance for candidates, free mailing service for candidates and printing of election-related documents. Additional provisions will be sought to meet the expenditure in accordance with the established funding mechanism. While REO sees a need for engaging some non-civil service staff for the preparation and conduct of the three elections, it would endeavour to cope with the additional workload within its existing civil service establishment as far as possible.

ADVICE SOUGHT

40. Members are invited to comment on the issues set out in paragraphs 5 to 34 of this paper.

Constitutional and Mainland Affairs Bureau
October 2010