

# 立法會

## *Legislative Council*

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### **Panel on Constitutional Affairs**

#### **Background brief prepared by Legislative Council Secretariat for the meeting on 30 October 2010**

#### **Local legislation on the methods for selecting the Chief Executive and for forming the Legislative Council in 2012**

### **Purpose**

This paper gives an account of the discussions of relevant committees of the Legislative Council ("LegCo") relating to the local legislation on the methods for selecting the Chief Executive ("CE") and for forming LegCo in 2012 ("the two electoral methods for 2012"), including the recent discussions held by the Panel on Constitutional Affairs ("the CA Panel") as summarized in paragraphs 24 to 54.

### **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"), 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.

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.

The CE Election Ordinance (Cap. 569)

5. 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)

6. 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.

The Electoral Affairs Commission Ordinance (Cap. 541)

7. The Electoral Affairs Commission ("EAC") Ordinance tasks EAC with making recommendations regarding the delineation of GCs for the LegCo election and demarcation of their boundaries and regulating the printing of particulars relating to candidates on ballot papers and financial assistance for candidates. EAC is also responsible for the conduct and supervision of CE, EC subsector and LegCo elections.

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

8. 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 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

9. 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.

10. 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 seats would be returned through election from among elected DC members, i.e. appointed DC members would not take part in the election.

11. 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.

12. 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) will 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 will 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.

13. The specific allocation of seats for the fourth sector will be as follows -

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

14. 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.

15. 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. At its meeting between 23 and 28 August 2010, NPCSC approved the draft amendment to Annex I to BL and recorded the draft amendment to Annex II to BL respectively. According to the Administration, 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 two electoral methods for 2012. 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 EAC 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 former Subcommittee on Package of Proposals for the Methods for Selecting CE and for Forming LegCo in 2012**

16. The former 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 two electoral methods for 2012. A summary is as follows.

#### Election methods for returning the 117 DC seats in EC

17. 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 informed the Subcommittee that three main types of views were 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.

18. 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.

19. 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

20. 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 subsector 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.

### Delineation of constituencies and method for the election of DC FC seats

21. According to the Administration's original proposal, all six DC FC seats would be returned under the proportional representation system. 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. The Administration had also 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.

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

22. The CA Panel 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 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.

23. 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 discussions held by the CA Panel on local legislation on the two electoral methods for 2012**

24. 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. A summary is as follows.

#### Method for selecting CE

##### *Allocation of seats to the first, second and third sectors of EC*

25. According to the Administration, for the first, second and third sectors of EC, there were suggestions that the number of seats allocated to the existing 32 subsectors in these three sectors should be increased by 50%. At the same time, three other suggestions, including splitting some existing subsectors (e.g. splitting the Medical subsector so that some seats could be allocated to the dentist profession) and adding new subsectors (e.g. Small and Medium Size Enterprises, youth, women, and real estate agents) were also received.

26. Some members were of the view that to facilitate the full implementation of universal suffrage 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 advised that it had not yet formulated specific proposals at the present stage on how the additional 100 seats should be allocated among the subsectors of these three sectors of EC. However, when Members supported the motion on the method for the selection of CE in 2012, it was the understanding that there would not be substantial changes to the electorate base of EC.

##### *Composition of EC*

27. Referring to the remark made by Mr QIAO Xiaoyang, Deputy Secretary-General of NPCSC on 7 June 2010 that "*the future nominating committee for the selection of CE will nominate candidates in accordance with democratic procedures, and the method of nomination will be entirely different from that of the existing EC for the selection of CE, under which candidates are nominated jointly by*

100 members, and the two are not comparable", some members enquired whether the EC to be formed for the selection of CE in 2012 would be comparable to the nominating committee to be formed to elect CE by universal suffrage in 2017 and what would be the procedures for nominating candidates for the election of CE in 2017. They were of the view that if a screening mechanism was put in place, the election of CE was not implemented in accordance with the principles of genuine universal suffrage.

28. The Administration advised that according to BL45, the ultimate aim was the selection of CE by universal suffrage upon nomination of a broadly representative nominating committee in accordance with democratic procedures. The 2007 NPCSC Decision also stipulated that the nominating committee could be formed with reference to the current provisions regarding EC. The current Government of the Hong Kong Special Administrative Region ("HKSAR") had not formulated any specific proposal on the democratic procedures for nominating candidates for the office of CE when universal suffrage was implemented in 2017 as it should be the task of the fourth-term CE and the Fifth LegCo. Between 2012 and 2017, LegCo would have the opportunity to scrutinize the nominating procedures to be proposed by the Administration on the basis of the principles of universality and equality.

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

29. The Administration informed the CA Panel that the number of seats allocated to LegCo Members for the fourth sector of EC would be increased from the current 60 to 70 in 2012. However, the increase would take place in September 2012 only. When the next term EC commenced its term in February 2012 and elected the new-term CE in March 2012, the number of LegCo seats would stand at 60 only. Transitional arrangements would have to be made under the CE Election (Amendment) Bill. In 2005, the Administration had proposed to address this issue by allocating the difference of 10 seats to the other subsectors under the fourth sector (i.e. the subsectors of Chinese People's Political Consultative Conference, Heung Yee Kuk or DCs) during the transitional period (i.e. the period between the commencement of the new-term EC in February 2012 and the formation of the new-term LegCo in September 2012) until the number of LegCo seats had been increased to make up the difference.

*Returning DC representatives to the fourth sector of EC*

30. According to the Administration, the existing arrangement for returning DC representatives to the fourth sector of EC was to group the various DCs into two subsectors, one for the urban area and the other for the New Territories. It was necessary to decide whether the existing arrangement should continue or, alternatively, whether the DCs should be split into more than two subsectors, and to consider how the 117 seats allocated to DCs should be distributed among these subsectors.

31. In response to members' enquiry about the election method for returning the existing 42 seats and the new 75 seats for the DC subsector in EC, the Administration



advised that currently, the voting system adopted for returning the seats for the DC subsectors in EC was the "bloc vote system". It was necessary to consider whether the existing system should continue or, alternatively, whether it should be switched to a "proportional representation system". The Administration held the view that the same voting system should be adopted to return the 117 DC representatives, but was open-minded as to how those seats should be returned.

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

#### Method for forming LegCo

##### *Candidature and nomination of the new DC FC seats*

33. 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.

34. The Administration explained that when the policy on the new DC FC election method was adopted, the Administration had made it clear that the new DC FC election would continue to be a FC election, as opposed to GC direct election. Restricting the right of nomination and the right to stand as candidates to elected DC members was a legal consideration. If the "substantial connection" provision 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.

35. Members may wish to note that the Secretary for Justice ("SJ") had explained at the press conference on constitutional reform package on 21 June 2010 the reason 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 NPCSC on 29 December 2007. SJ had also explained why the DC FC election would continue to be a FC election, not GC direct election. A copy of his speech is in **Appendix I**.

36. Some other members considered the Administration's position appropriate for restricting the nomination rights for the five new DC FC seats to elected DC members and their participation as candidates. They also expressed support for the return of the five DC FC seats to be nominated by elected DC members and elected by registered voters of the whole territory through a single constituency. Some of these members stressed that they had supported the motions to amend the two electoral methods for 2012 on the basis of the electoral framework laid down by the Administration during the press conference on 21 June 2010 and the debates on the two motions held at the Council meeting between 23 and 25 June 2010, i.e. candidature and nomination from elected DC members only in the election of the five new DC FC seats.

37. The Administration reiterated that its stance had been made clear during the press conference and the debates on the motions to amend the two electoral methods. Legally, the new DC FC seats must comply with the features of the FC system by reference to the three aspects of candidature, nomination and electorate base as outlined by SJ at the press conference on constitutional reform package on 21 June 2010. The democratic elements embedded in the "one-person-two-votes" proposal for returning the five new DC FC seats and its compliance with the FC system were important considerations which the Administration would not change lightly.

*Number of constituencies and voting system for returning the five new DC FC seats*

38. According to the Administration, it was necessary to consider whether the five seats should be returned from the whole territory as a single constituency, or whether the territory should be delineated into more than one constituency, and whether the list proportional representation system or the single transferrable voting system should be adopted for returning these seats. The Administration explained that the effect of proportional representation would be reduced if the number of Members returned from each constituency was too small. There were two major types of proportional representation voting systems, namely the "single transferrable voting system" and "list proportional representation system". Electors in Hong Kong were familiar with the list proportional representation system, which was adopted in the LegCo GC elections. As for the single transferrable voting system, electors were required to rank candidates in order of preference on the ballot paper. The result of the election was determined through a series of counts. At the first count, the total number of first preference votes for each candidate was ascertained and the quota was determined. Any candidate who received a number of first preference votes equal to or greater than the quota would be elected. In subsequent rounds of count, the value of the surplus votes of elected candidates would be transferred to the candidate ranking next on the ballot papers, and the candidate receiving votes equal to or greater than the quota would be elected. After any count, if no candidate was elected, the candidate with the lowest total votes would be eliminated and the value of the candidate's votes would be transferred to the candidates ranking next on the ballot papers. The process would continue until all vacancies were filled. However, in logistical terms, it would be very difficult to implement a "single transferrable voting system" for an electorate of 3.2 million people.

39. Some members queried why computerization could not assist in implementing a "single transferrable voting system" for an electorate of 3.2 million. They were of the view that the Administration should not rule out the option of delineating the territory into five constituencies to return the five DC FC seats at this stage. If the public considered that the "single transferable voting system" would be fairer and reduce election expenses, it should be their choice.

40. The Administration explained that under the single transferable voting system, electors were required to rank candidates in order of preference on the ballot paper. The result of the election was determined through a series of vote-counting. While computerization would assist in the counting of votes, manual counting might be needed in case of any malfunctioning of the system on the polling day. Given that the mechanism of transferring surplus votes and the calculation of values of votes transferred would involve manual counting of tens of million of votes, the Administration considered that the risk of prolonged counting should be avoided on the polling day. The Administration maintained the view that the proportional representation system to return the five DC FC seats through a single constituency was not only logical, but also practical.

41. Some members expressed concern that the "one-person-two-votes" proposal for 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. The proposal would put independent candidates and those supported by smaller political parties in a disadvantaged position. They were also concerned that as having two types of Members within LegCo, i.e. GC and FC Members, had already created tension and conflicts, the creation of another type of "super Members" would not be conducive to the operation of LegCo. 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.

42. The Administration advised that political parties and 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. In order to encourage participation in the LegCo election, the Administration would consider increasing the financial assistance for LegCo candidates and review whether a higher election expense limit should be set given the broad electorate base of DC FC.

*Registration as electors and nomination for the DC FC seats*

43. According to the Administration, persons who were eligible for registration as electors in more than one FC could choose to register in any one of the FCs. For example, a qualified person who was both a lawyer and an accountant could choose to register in the Legal FC or the Accountancy FC. It was necessary to decide whether to provide the same choice to the 225 000 electors registered in the traditional FCs, so that they could choose to register in the new DC FC.

44. The Administration advised that under the present legislation, candidates standing for FC elections needed to be nominated by 10 subscribers, while candidate lists running GC elections required nomination by 100 subscribers. It was necessary to decide on the number of subscribers required for nominating a candidate in the new DC FC. Some members expressed support for setting a low threshold for the nomination of the DC FC election.

*Election expense limit for the DC FC seats*

45. According to the Administration, the current election expense limit for the traditional FCs ranged from \$105,000 to \$504,000, whereas that for GCs was between \$1,575,000 and \$2,625,000. Even though the elections for the five new DC FC seats were not GC elections, they would have the broadest electorate base in the LegCo election. It was necessary to consider whether a higher election expense limit should be set.

46. Some members expressed the view that the upper limit of election expenses should be kept at a low level in order not to put candidates who were not well-off in a disadvantaged position. The Administration advised that it would ensure that candidates from large or small political parties and independent candidates could participate in the DC FC election and would welcome views from Members.

*Financial assistance scheme for the 2012 LegCo election*

47. According to the Administration, under the financial assistance scheme for LegCo election candidates, candidates or lists of candidate who got elected or who had received 5% of the valid votes or more were eligible for financial assistance at \$11 per vote obtained, subject to 50% of the declared election expenses\*. It was necessary to review the arrangement for the 2012 LegCo election.

48. Some members were of the view that the Administration should increase the financial assistance of \$11 per vote to encourage participation in the LegCo election. They considered that the same amount of financial assistance should also be provided to candidates running for the DC FC seats. However, the Administration should

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

consider providing special assistance to relieve the financial burden of candidates in the election of the five new DC FC seats if one single constituency was to be used.

49. The Administration advised that it intended to adhere to the existing system while considering whether the rate of financial assistance of \$11 per vote and the 50% threshold should be adjusted in order to encourage political participation. The financial assistance scheme, after revision, would apply to all candidates across the board.

#### *Delineation of constituencies for GCs*

50. According to the Administration, the territory at present was delineated into five GCs, each with four to eight seats. With the creation of five new seats in GCs, it was necessary to consider the number of GCs to be demarcated in the territory, and the range of seats to be returned from each GC.

51. Some members pointed out that three or four new GC seats were expected to be allocated to the GCs in the New Territories because of the population growth there. They asked whether EAC would consider retaining the number of GCs, or increasing the number from five to six so as to avoid a particular GC being allocated too many seats.

52. The Administration explained that as re-delineating the existing GC boundaries would have wide implications on the work of incumbent Members and electioneering activities, it was expected that EAC would be inclined to maintain the status quo. However, there was an increasing concern that if a particular GC was allocated too many seats, a candidate receiving a small number of votes could win a seat in the election. The Administration welcomed views from Members on the number of GCs to be demarcated and the range of seats to be returned from each GC.

#### *Electorate base of traditional FCs*

53. According to the Administration, the basic principle of the electoral method for the LegCo in 2012 was to enhance the democratic elements through the new DC FC seats. For the traditional FCs, the general understanding was that there should be no substantial changes 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.

54. 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. It was also necessary to consider whether the electorate of some FCs with particularly small electorate, such as the Transport FC, should also be reviewed.

**Relevant documents**

55. 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  
27 October 2010

**Speech by SJ at press conference on constitutional reform package**

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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**

<b>Meeting</b>	<b>Date of meeting</b>	<b>Paper</b>
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> ]
Panel on Constitutional Affairs	18 February 2008	Background Brief on "Election expense limits for LegCo elections" prepared by the LegCo Secretariat [ <a href="#">LC Paper No. CB(2)1054/07-08(02)</a> ]  Administration's paper on "Election expense limits for the 2008 LegCo election" [ <a href="#">LC Paper No. CB(2)1054/07-08(03)</a> ]  Minutes of meeting [ <a href="#">LC Paper No. CB(2)1908/07-08</a> ]
	21 April 2008	Administration's paper on "Subsidy Rate of the Financial Assistance for Candidates and the Election Expense Limits for the 2008 LegCo Election" [ <a href="#">LC Paper No. CB(2)1591/07-08(01)</a> ]  Minutes of meeting [ <a href="#">LC Paper No. CB(2)2675/07-08</a> ]
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 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

<b>Meeting</b>	<b>Date of meeting</b>	<b>Paper</b>
		the LegCo in 2012" [ <a href="#">Hansard</a> ]
Panel on Constitutional Affairs	19 July 2010	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> ]  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> ]

Council Business Division 2  
Legislative Council Secretariat  
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