

**Legislative Council Bills Committee on
Legislative Council (Amendment) Bill 2003**

**Amendment to Constitution of Organisations
under Functional Constituencies**

Introduction

This paper sets out the criteria for approving an application for amendment to the constitution of a body under the Legislative Council (LegCo) Ordinance for the purpose of changing the delineation of the electorate of functional constituencies (FC) and the time constraints for such applications to be made for the 2004 LegCo elections, in response to questions raised by a Member at the Bills Committee meeting on 5 May 2003.

Delineation of FC Electorate

2. The electorate of FCs are delineated in the LegCo Ordinance. They can broadly be categorized as follows.

- a) Corporate or individual members of “umbrella organizations” entitled to vote at general meetings of such organizations

These umbrella organizations are not themselves FC electors, but their members who are entitled to vote at their general meetings are. For example, in the Commercial (First) FC, the electorate comprises members of the Hong Kong General Chamber of Commerce who are entitled to vote at general meetings of the Chamber. Another example can be found in the Tourism FC, the electorate of which includes, inter alia, members of the Travel Industry Council of Hong Kong entitled to vote at general meetings of the Council.

- b) Major organizations representative of the relevant sectors

For example, the electorate of the Labour FC comprises trade unions registered under the Trade Union Ordinance of which all

the voting members are employees.

c) Professionals registered under relevant legislation

An example would be the Social Welfare FC, the electorate of which comprises social workers registered under the Social Workers Registration Ordinance.

Statutory Requirement

3. The umbrella organizations referred to in paragraph 2(a) above are required to seek approval from the Secretary for Constitutional Affairs (SCA) before amending their constitutions for the purpose of the LegCo Ordinance.

4. Under section 3(2A) of the LegCo Ordinance, a reference to an entitlement to vote at a general meeting of a body means an entitlement to vote as provided by the constitution of the body. The provision further stipulates that the constitution concerned should either be the one in force at the commencement of the LegCo Ordinance or as subsequently amended. Insofar as the amendment relates to:

- (i) the objects of the body;
- (ii) the criteria and conditions of membership of the body; or
- (iii) the eligibility of members of the body to vote at a general meeting of the body,

the amendments have to be approved by SCA.

Criteria for Approving an Application for Amendment

5. We receive from time to time requests from umbrella organizations for approval to amend their constitutions under section 3(2A). When considering such applications, SCA gives due regard to the policy and legislative intent of the provisions relating to the relevant FCs in the LegCo Ordinance. These provisions define the nature of the

FCs and delineate the electorate. Thus, SCA will assess whether the amendments to constitution proposed by an umbrella organization will affect:

- (i) the objects of the organization;
- (ii) the criteria and conditions of membership of the organization; and
- (iii) the eligibility of members of the organization to vote at its general meetings.

If so, SCA will need to further assess whether any of these changes are likely to alter significantly the electorate or the nature of the relevant FC. Generally speaking, the proposed amendments to an umbrella organization's constitution for the propose of the LegCo Ordinance will be approved, if they do not lead to significant changes in the electorate or the nature of the relevant FC.

Time Constraints for making such Applications for the 2004 LegCo Elections

6. Any person (legal or natural) who becomes eligible for registration as an elector in a FC as a result of SCA's approval of amendments to the constitution of an umbrella organization will be entitled to vote in a LegCo FC election only if he has been registered as an elector for the constituency, as required under section 48 of the LegCo Ordinance. Subsidiary legislation made under the Electoral Affairs Commission Ordinance, Cap. 541, on the registration of FC electors provides that applications for registration in the FC provisional register for a LegCo election year must reach the Registration and Electoral Office by 16 May. In other words, for the LegCo elections in 2004, any person who has become newly eligible for voting in a FC must submit his application for voter registration on or before 16 May 2004.

7. In order for newly eligible electors to be registered in time for the LegCo elections in 2004, applications from any umbrella organizations for approval to amend their constitutions should be submitted well before 16 May 2004 to allow adequate time for consideration by SCA, including time required for examination of the proposed amendments and, if necessary, for seeking clarification from the organizations concerned as well as consultation with relevant Government bureaux or departments.

Constitutional Affairs Bureau

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