

Our Ref.: CAB in C1/1/1 & C2/19

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12 December 2003
(By fax: 2509 9055)

Mrs Percy Ma
Clerk to LegCo Panel on Constitutional Affairs
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mrs Ma,

**Panels on Constitutional Affairs and Home Affairs
Follow up to special meeting on 8 December 2003**

Appointed membership of District Councils

At the special panel meeting held on 8 December 2003, Members requested the Administration to provide a response to paragraphs 9 and 16 of the paper prepared by the LegCo Legal Service Division on “Opinion on the Nature of the Chief Executive’s Power of Appointing District Council Members under the District Councils Ordinance” (LC Paper No. LS25/03-04). I set out below our response as requested.

Section 9 of the District Councils Ordinance, Cap. 547, provides that a District Council is to consist of –

- (a) elected members;
- (b) appointed members; and
- (c) (in respect of New Territories districts) ex officio members who are Chairmen of the relevant Rural Committees.

Section 11 of the Ordinance further gives the Chief Executive a discretionary power to appoint as members of a District Council a number of persons not exceeding the number specified in Schedule 3 of the Ordinance.

The manner in which this discretionary power is to be exercised is governed by well-established principles of administrative law. In exercising his discretion, the Chief Executive must not act in a way that frustrates the policy of the legislation.

The clear policy intention of the Ordinance is that each District Council will be composed of elected, appointed and (in the case of New Territories districts) ex officio members as provided for in section 9 of the Ordinance. This is not inconsistent with the conclusion in paragraph 16 of LC Paper No. LS25/03-04.

Under the provisions of the Ordinance, the Chief Executive may appoint a maximum of 102 members which is about one fifth of the total number of members of the District Councils.

Regarding paragraph 9 of the paper, section 4 of the District Councils Ordinance merely provides for the establishment of the 18 District Councils on 1 January 2000 as specified in Schedule 2 of the Ordinance. It creates the District Councils as statutory bodies. However, this provision should not be looked at in isolation but should be read in the context of the whole ordinance. Once the District Councils are established, their composition must be consistent with the provisions under section 9, i.e. that they are to consist of elected, appointed and (in the case of New Territories districts) ex officio members.

The other points raised in your letter of 9 December 2003 will be addressed by the Home Affairs Bureau.

I should be grateful if you could convey our response to Members for reference.

Yours sincerely,

(Ms Eva Yam)
for Secretary for Constitutional Affairs