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Panel on Constitutional Affairs
Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 July 2011

Provisional recommendations on delineation of geographical constituencies
in respect of the 2012 Legislative Council election

Purpose

This paper summarizes the past discussions held by the Panel on Constitutional Affairs ("the Panel"), relevant Subcommittee and Bills Committee on delineation of geographical constituencies ("GCs") in respect of Legislative Council ("LegCo") elections.

Background

2. The Electoral Affairs Commission ("EAC") is a statutory and independent body responsible for the conduct and supervision of elections. Under section 18 of the EAC Ordinance (Cap. 541), EAC is required to make recommendations to the Chief Executive ("CE") on the delineation and the names of GCs for LegCo elections. In delineating GCs, EAC is required to follow the statutory criteria stipulated under sections 18 to 19 of the LegCo Ordinance (Cap. 542), section 20 of the EAC Ordinance and certain working principles. The statutory criteria and working principles adopted for the demarcation exercise of the last LegCo election in 2008 are in **Appendix I**.

3. Before finalizing the recommendations, EAC shall, in accordance with section 19 of the EAC Ordinance, consult the public on the provisional recommendations for a period of 30 days and submit a report containing its recommendations to CE after considering the representations received. The CE in Council must have regard to the Commission's report when making a decision, which will be effected by way of an Order published under section 18(2) of the LegCo Ordinance. The Order has to be tabled in LegCo for negative vetting.

Relevant discussions on the provisional recommendations on delineation of GCs in respect of LegCo elections

4. The provisional recommendations on delineation of GCs for the 2000 LegCo election were discussed at the Subcommittee on subsidiary legislation relating to 2000 Legislative Council election formed in 1999. The provisional recommendations on delineation of GCs for the 2004 LegCo election were discussed at the Panel meeting held on 21 July 2003 and at the Bills Committee on Legislative Council (Amendment) Bill 2003. The provisional recommendations on delineation of GCs for the 2008 LegCo election were discussed at the Panel meeting held on 16 July 2007. Members also raised concerns relating to the practice of demarcation of GCs for the 2012 LegCo election at the Panel meeting held on 30 October 2010 and at the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010. The main discussions at these meetings are summarized in the following paragraphs.

Delineation of GCs for the 2000 LegCo election

5. The Subcommittee on subsidiary legislation relating to 2000 Legislative Council election was formed in 1999 to study subsidiary legislation relating to 2000 LegCo election including the Declaration of Geographical Constituencies (Legislative Council) Order 1999 which sought to declare areas of Hong Kong as GCs for the 2000 LegCo election. In accordance with the Basic Law ("BL"), the number of GC seats for the 2000 LegCo was increased from 20 to 24. Members of the Subcommittee noted that the Administration proposed that the number of GCs for the 2000 LegCo election should be retained at five (i.e. Hong Kong Island ("HKI"), Kowloon West ("KLW"), Kowloon East ("KLE"), New Territories West ("NTW") and New Territories East ("NTE")) with each constituency having four to six seats. EAC recommended that the boundaries and names of the five GCs should be retained and one additional seat should be allocated to each GC except NTE GC as follows –

<u>Name of GC</u>	<u>No. of seats proposed</u>
HKI	5
KLW	4
KLE	4
NTW	6
NTE	5

6. Members noted that the deviation of population in each GC was within the maximum deviation of $\pm 15\%$ as prescribed in EAC Ordinance. The

Subcommittee expressed support for the Administration's proposal. EAC's recommendations on delineation of GCs for the 2000 LegCo election are in **Appendix II**.

Delineation of GCs for the 2004 LegCo election

7. According to BL, the number of GC seats was increased from 24 to 30 in respect of the 2004 LegCo elections. With regard to the demarcation of GC boundaries, the Administration proposed that there should be five GCs with the number of seats ranging from four to eight. EAC recommended no change to the delineation of boundaries of the five GCs. The proposed number of seats for the five GCs was as follows –

<u>Name of GC</u>	<u>No. of seats proposed</u>
HKI	6
KLW	4
KLE	5
NTW	8
NTE	7

8. At the Panel meeting held on 21 July 2003 and during the scrutiny of the Bills Committee on Legislative Council (Amendment) Bill 2003, some members expressed concern that in a GC with eight seats (i.e. NTW), a candidate could get elected even though he could only secure a low level of support from electors. They considered that the Administration should review the issue to ensure that the elected candidates would be representative of the constituents.

9. The Administration advised that the last candidate to get elected in a GC was still expected to obtain about 20 000 votes, the threshold of which was considered to be reasonable. The Administration also considered that the proposed arrangements could ensure better representation of smaller parties, hence a fuller representation of different views of the overall electorate.

10. The Administration also advised that if the constituency boundaries at that time remain unchanged, the smallest GC (i.e. KLW) would have a population of around one million by 2004, and the largest GC (i.e. NTW) would have a population of around two million. Setting the lower and upper limits for the number of seats per GC at four and eight respectively would be proportional to the spread of population. The Administration considered that minimizing changes to the demarcation of GC boundaries was convenient to

voters, candidates, political parties and political groups alike. EAC's recommendations on delineation of GCs for the 2004 LegCo election are in **Appendix III**.

Delineation of GCs for the 2008 LegCo election

11. In accordance with BL, the number of Members returned from GCs for the 2008 LegCo election remained at 30. According to the LegCo Ordinance, the number of GCs for the purpose of returning LegCo Members for the 2008 LegCo election retained at five with each constituency having four to eight seats. At the Panel meeting held on 16 July 2007, EAC briefed members on its provisional recommendations on the boundaries of the GCs for the 2008 LegCo election. The proposed number of seats for the five GCs was as follows –

<u>Name of GC</u>	<u>No. of seats proposed</u>
HKI	6
KLW	5
KLE	4
NTW	8
NTE	7

12. Members raised various enquiries on whether the boundaries among KLE and KLW; KLE and NTE; NTW and KLW could be re-delineated (e.g. by merging two GCs, transferring of District Council constituency areas ("DCCAs")) so that there would be a fairer allocation of seats and the seat per population ratio would be more even.

13. Some members considered that the criteria in allocating the number of seats to the GCs were too rigid and had ignored the principle of fairness in an election. They asked whether the Administration had given instruction to the EAC that the number of GCs must be five, and the number of seats to be returned for each GC, i.e. between four and eight, must remain unchanged. They queried the purpose of conducting the public consultation if these numbers could not be changed.

14. The Administration explained that EAC chaired by a judge was an independent body free from any interference. The criteria adopted by EAC in allocating seats were based on the requirements in law. The consultation process was transparent, and follow-up actions to be taken by the EAC, if any, would take into account the statutory criteria and the views of the public.

Unless there was justification, the delineation would have regard to the boundaries of the 18 administrative districts and the boundaries of the existing five GCs would remain unchanged.

15. Regarding the suggestion of transferring certain DCCAs from NTW to KLW, the Administration considered it necessary to consult potential candidates and incumbent DC members on any changes to the boundary as this would affect the work of some potential candidates and incumbent DC members who had established a relationship with electors of their constituency for the past few years.

16. There was, however, a view that it was inappropriate to consult potential candidates on the change of boundaries as they had vested interest. As far as the LegCo election was concerned, the decision made by the Standing Committee of the National People's Congress on 26 April 2004 required an equal split of GC and functional constituencies ("FCs") seats in the LegCo. The Decision did not require that there should be five GCs and the number of seats for each GC should be limited to four and eight. In the circumstances, local legislation could be amended to take account of prevailing changes such as changes in population.

17. The Administration considered that members of the public, including potential candidates and members of political parties, had the right to give views on the provisional recommendations. The Administration was aware of the need to revise the number of seats for certain districts following a change in population. For instance, the number of DC seats had increased from the original 390 to 400 in 2003 and further to 405 in 2007. Had the Administration's package of proposals for selecting the CE in 2007 and forming of LegCo in 2008 been passed by the LegCo, the number of GC and FC seats in LegCo would have increased to 35 each. There would be a basis for adjusting the GC boundaries, increasing the number of seats in the five GCs, and revising the lower and upper limits of seats for each GC. As the package of proposals could not obtain the support of a two-thirds majority of LegCo Members, the framework of the 2008 LegCo election could only remain unchanged.

18. EAC advised that it had considered different options before drawing up the provisional recommendations. As re-delineating the existing GC boundaries was a drastic change, EAC recommended that the status quo should be maintained. EAC, however, welcomed views from Members. EAC's recommendations on delineation of GCs for the 2008 LegCo election are in **Appendix IV**.

Delineation of GCs for the 2012 LegCo election

19. According to the amendment made to Annex II to BL following the passage by LegCo of the motions put forth by the Hong Kong Special Administrative Region Government concerning the draft amendments to the methods for selecting the CE and for forming LegCo in 2012 on 24 and 25 June 2010 respectively, the number of LegCo seats for the fifth LegCo in 2012 would be increased from 60 to 70 with five new seats to be returned by GCs through direct election and another five returned by FCs.

20. When the Panel discussed the proposed local legislation regarding the methods for selecting CE and for forming LegCo in 2012 at its meeting on 30 October 2010, members noted with concern that as the number of GC seats in NTW GC would be increased to nine or even 10 seats in the 2012 LegCo election, a successful candidate might only need to secure a small number of valid votes cast for that GC. Mr LEE Wing-tat pointed out that in an extreme case, a successful candidate might have his election deposit forfeited because the number of votes obtained by the candidate was below 3% of the total number of valid votes cast at the election. The Administration assured the Panel that it would take into account members' concern when drawing up the relevant legislative proposal.

21. During the scrutiny of the LegCo (Amendment) Bill 2010, the Administration explained to the relevant Bills Committee that according to the population projections, the population of NTW would reach two million in 2012. Hence, consideration could have been given to allocating 10 seats to the NTW GC. However, such an allocation would only require candidates to obtain 10% of the valid votes cast to win a seat. Furthermore, according to past experience with the proportional representation list-voting system, the last seat might be won by a candidate who had obtained 5% (or even less than 5%) of the valid votes cast for the constituency. The Administration pointed out that under section 60C of the LegCo Ordinance, a candidate who was not elected or a list of candidates for which no candidate was elected and who had obtained less than 5% of valid votes cast for the constituency would not be entitled to the financial assistance. Under section 4(3) of the LegCo (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542C), a candidate who was not elected or a list of candidates for which no candidate was elected and who had obtained less than 3% of valid votes would have the election deposit forfeited. Although a candidate/list of candidates would be eligible for financial assistance and refund of election deposit if the candidate/at least one candidate on the list was elected as a Member, regardless of the number of valid votes received by the candidate/list of candidates, allowing a candidate who had obtained 5% or less than 5% of the valid votes to win a seat

was not considered as an appropriate design for the election arrangement in Hong Kong. Accordingly, the Administration proposed that the ceiling for the number of seats to be allocated to a GC should be set at nine instead of 10.

22. Some members including Mr LAU Kong-wah and Mr IP Kwok-him considered the Administration's proposal for allocating five to nine seats for each GC appropriate. They, however, pointed out that it was important to ensure the representativeness and legitimacy of elected LegCo Members. If there were too many seats in a GC, it might result in cases where a Member could be elected with very few votes. With the increase in population and in the number of GC directly elected seats, the Administration should, in the long run, consider increasing the number of GCs, say from five to six, with a view to reducing the disparity in the number of seats among GCs.

23. Some other members including Mr Albert HO, Ms Emily LAU and Ms Audrey EU, however, were of the view that it was undesirable to retain the number of GCs at five after the total number of GC seats had been increased to 35. They pointed out that for the NTW GC which was expected to have as many as nine seats, a large number of candidates/lists of candidates would compete for the seats, making it difficult for electors to get well-informed of the platform of the candidates. Mr HO considered it absurd if a candidate could win a seat with less than 5% of the total number of valid votes cast for the constituency. These members suggested that the number of GCs be increased so that each GC would have only five or six seats, for example, the NTW GC and the NTE GC could be divided into two GCs each. Alternatively, the Administration should consider allocating the 35 GC seats evenly among the five GCs to prevent a GC from having as many as nine seats.

24. The Administration advised that it had considered the proposal put forward by some political parties (including the Democratic Alliance for the Betterment and Progress of Hong Kong and the Democratic Party) for increasing the number of GCs to six. The Administration's view was that the implication of re-delineating the existing GC boundaries on the work of incumbent Members and electioneering activities should be duly considered in determining the number of GCs to be demarcated and the range of seats to be returned from each GC. Its proposal for increasing the upper and lower limits of the number of seats for each GC had taken into account the increase in population and the need to provide adequate room for EAC to allocate the increased number of seats among the five GCs. The Administration would take into account the experience of the 2012 LegCo election and consider Members' views in any future review.

25. The Legislative Council (Amendment) Bill 2010 was passed on 5 March 2011. Members noted that recommendations on allocating the 35 seats to five GCs would be made by EAC in accordance with relevant legislation and up-to-date population projections available around the first quarter of 2011.

Relevant papers

26. A list of the relevant papers available on the LegCo website is in **Appendix V**.

Council Business Division 2
Legislative Council Secretariat
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**Demarcation of Geographical Constituencies
for the 2008 Legislative Council Election**

(I) Statutory Criteria

***Criteria stipulated under the Legislative Council Ordinance
(Cap.542)***

- (a) there are to be 5 geographical constituencies for the purpose of returning Members at elections for those constituencies;
- (b) at a general election, 30 members are to be returned for all GCs; and
- (c) the number of Members to be returned for each geographical constituency is to be a number, not less than 4 nor greater than 8, specified in the order declaring the area of the constituency.

***Criteria stipulated under the Electoral Affairs Commission
Ordinance (Cap.541)***

- (a) the EAC shall ensure that the extent of each proposed GC is such that the population in that constituency is as near as practicable to the number which results (ie “the resulting number”), when the population quota is multiplied by the number of members to be returned to the LegCo by that GC pursuant to any electoral law
(Note : The population quota is defined as the total population of Hong Kong divided by the total number of members to be returned for all the GCs in that election, ie $6,975,100 \div 30 = 232,503$. The total population of Hong Kong is projected as at 30 June 2008, which is close to the date of the Election.);
- (b) where it is not practicable to comply with (a) above in respect of a proposed GC, the EAC shall ensure that the extent of the constituency is such that the population in that constituency does not exceed or fall short of the resulting number applicable to that constituency, by more than 15%;
- (c) the EAC shall have regard to the community identities, the preservation of local ties and physical features such as size, shape, accessibility and development of the relevant area or any part thereof;

- (d) the EAC may depart from the strict application of (a) & (b) above only where it appears that one or more of the considerations in (c) above renders a departure necessary or desirable;
- (e) the EAC shall ensure that each proposed GC is to be constituted by two or more contiguous District Council constituencies; and
- (f) the EAC shall have regard to the existing boundaries of Districts and the existing boundaries of GCs.

(II) Working Principles

- (a) the boundaries of the existing 5 GCs should form the basis of consideration in the current demarcation exercise;
- (b) for those existing GCs where the population falls within the permissible range of the population quota requirement, their boundaries would be adopted as far as possible to form new GCs;
- (c) Hong Kong Island, Kowloon and the New Territories are to be treated separately, as these areas have been regarded as distinct from one another;
- (d) splitting of Districts by District Council Constituency Areas should be avoided unless there are very strong reasons. Where splitting is necessary, it should affect the least number of Districts; and
- (e) factors with political implications will not be taken into consideration.

**The Electoral Affairs Commission's Recommendations on
Delineation of Geographical Constituencies for the 2000 LegCo
Election**

<u>Name of GC</u>	<u>Projected Population as at 31.3.2000</u>	<u>Seats* Entitled</u>	<u>Seats Proposed</u>	<u>Population Deviation</u>
Hong Kong Island	1,343,400	4.786	5	-4.28%
Kowloon West	1,029,000	3.666	4	-8.36%
Kowloon East	1,016,100	3.620	4	-9.50
New Territories West	1,804,900	6.430	6	+7.17%
New Territories East	1,543,500	5.499	5	+9.97%
Total	6,736,900	-	24	-

- * Seats entitled for each GC is calculated based on :
- seats entitled = projected population in a GC ÷ population quota
 - population quota = 6,736,900 ÷ 24 = 280,704

分配議席的方法

圖表一：標準人口基數的計算方法

全港人口總數 = 6,957,700 (2004年6月30日預測人口)

地方選區議席 = 30

$$\begin{aligned} \text{標準人口基數} &= \text{全港人口總數} \div \text{地方選區議席} \\ &= 6,957,700 \div 30 \\ &= 231,923 \end{aligned}$$

圖表二：各地方選區人口

地方選區	人口 (2004年6月30日預測人口)
香港島 (LC1)	1,274,600
九龍西 (LC2)	999,600
九龍東 (LC3)	1,034,300
新界西 (LC4)	2,004,300
新界東 (LC5)	1,644,900
總人口：	6,957,700

圖表三：各地方選區應得議席

應得議席數目 = 選區人口 ÷ 標準人口基數

地方選區	應得議席數目
香港島 (LC1)	5.496
九龍西 (LC2)	4.310
九龍東 (LC3)	4.460
新界西 (LC4)	8.642
新界東 (LC5)	7.092

圖表四：各地方選區獲分配議席數目

地方選區	議席數目
香港島 (LC1)	6
九龍西 (LC2)	4
九龍東 (LC3)	5
新界西 (LC4)	8
新界東 (LC5)	7
總數	30

圖表五：偏差率

$$\text{偏差率} = \frac{\text{選區人口} - \text{所得數目}}{\text{所得數目} (\text{選區議席} \times \text{標準人口基數})} \times 100\%$$

地方選區	直選議席	偏差率
香港島 (LC1)	6	-8.40%
九龍西 (LC2)	4	+7.75%
九龍東 (LC3)	5	-10.81%
新界西 (LC4)	8	+8.03%
新界東 (LC5)	7	+1.32%
總數	30	

註：選管會條例容許的偏差率為 ± 15%

**Provisional recommendations
on the delineation of geographical constituencies
for the 2008 Legislative Council election**

Chart 1 : Calculation of Population Quota

Total population in HK = 6,975,100 (estimated as at 30 June 2008)

No. of geographical constituency (GC) seats = 30

Population Quota = Total population in HK ÷ No. of GC seats
 = 6,975,100 ÷ 30
 = 232,503

Chart 2 : Population of the GCs

GC	Population (estimated as at 30 June 2008)
HK Island (LC1)	1,267,900
Kowloon West (LC2)	1,030,000
Kowloon East (LC3)	1,018,700
NT West (LC4)	2,030,300
NT East (LC5)	1,628,200
Total Population :	6,975,100

Chart 3 : No. of Seats to be Allocated to the GCs

No. of seats to be allocated = Population in GC ÷ Population Quota

GC	No. of Seats to be Allocated
HK Island (LC1)	<u>5</u> .453
Kowloon West (LC2)	<u>4</u> .430
Kowloon East (LC3)	<u>4</u> .381
NT West (LC4)	<u>8</u> .732
NT East (LC5)	<u>7</u> .003

Chart 4 : Proposed Allocation of GC Seats

GC	Proposed No. of Seats
HK Island (LC1)	6
Kowloon West (LC2)	5
Kowloon East (LC3)	4
NT West (LC4)	8 ¹
NT East (LC5)	7
Total	30

Note 1 : Legislative Council Ordinance provides that 4 to 8 Members shall be returned for each GC

Chart 5 : Deviation

$$\text{Deviation} = \frac{\text{Population in GC} - (\text{No. of seats} \times \text{Population quota})}{\text{No. of seats} \times \text{Population Quota}} \times 100$$

GC	No. of Seats	Deviation ²
HK Island (LC1)	6	-9.11%
Kowloon West (LC2)	5	-11.40%
Kowloon East (LC3)	4	+9.54%
NT West (LC4)	8	+9.15%
NT East (LC5)	7	+0.04%
Total	30	

Note 2 : The deviation allowed in the Electoral Affairs Commission Ordinance is $\pm 15\%$

**Relevant documents on provisional recommendations
on delineation of geographical constituencies
in respect of the 2012 Legislative Council election**

Committee	Date of meeting	Paper
Subcommittee on subsidiary legislation relating to 2000 Legislative Council election	7.12.1999	Minutes
House Committee	17.12.1999	Report of the Subcommittee on subsidiary legislation relating to 2000 Legislative Council election
Panel on Constitutional Affairs ("CA Panel")	21.7.2003 (Item III)	Agenda Minutes
Legislative Council	2.7.2003	Report of the Bills Committee on Legislative Council (Amendment) Bill 2003
CA Panel	16.7.2007 (Item III)	Agenda Minutes
	30.10.2010 (Item I)	Minutes
Legislative Council	02.03.2011	Report of the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010