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Bills Committee on District Councils (Amendment) Bill 2013

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper sets out the background to the District Councils (Amendment) Bill 2013 ("the Bill"), and gives an account of the major views and concerns expressed by Legislative Council ("LegCo") Members on the subject.

Background

Composition of District Council ("DCs")

2. The District Councils Ordinance ("DCO") (Cap. 547) provides for the number, composition and functions of DCs. Section 9(1) of DCO stipulates that a DC is to consist of (a) elected members; (b) appointed members; and (c) ex-officio members, if it is a DC established for a District in which there is one or more Rural Committees ("RC"), with the Chairman of each RC serving as ex-officio member(s) of the DC while holding office as Chairman of RC.

3. The numbers of elected, appointed and ex-officio members on each DC are specified in Schedule 3 to DCO. Section 11 of DCO provides that the Chief Executive ("CE") may appoint as members of a DC "a number of persons not exceeding the number specified in column 4 of Part I of Schedule 3". Subject to section 13, an appointed member holds office from the date specified in the letter of appointment and vacates office on 31 December of the year in which an ordinary election is next held after the appointment. Section 12 of DCO further stipulates that a person is eligible for appointment as a member of a DC only if the person –

- (a) has reached 21 years of age; and
- (b) is an elector; and
- (c) is not disqualified from voting at an election; and

- (d) is not disqualified from being an appointed member by virtue of section 14 or any other law; and
- (e) has ordinarily resided in Hong Kong for the three years immediately preceding the appointment.

Historical development of DC composition

4. The composition of DCs has reflected the development of district organizations over the years. In 1982, 18 District Boards ("DBs") were established with the introduction of the District Administration Scheme. The 18 DBs elected during the British administration were later replaced by Provisional DBs from 1 July 1997 to 31 December 1999. Following the review of district organizations conducted in 1998, it was decided that the former 18 Provisional DBs should be replaced by 18 DCs with effect from 1 January 2000. A table summarizing the composition of DBs/DCs since 1982 and some of the main developments are in **Appendix I** for members' reference.

Past developments and discussions on DC appointment system

Abolition and restoration of appointed seats

5. In 1994, all appointed seats in the former DBs were abolished. The proposal to abolish all appointed DB seats was given legislative effect by way of the Electoral Provisions (Miscellaneous Amendments) (No. 2) Bill 1993.

6. The appointed DC seats were restored on 1 July 1997 when the 18 Provisional DBs replaced the corresponding DBs as an interim arrangement, pending elections to be held. The Provisional DBs included all those members serving before 1 July 1997 as well as additional appointees.

7. The District Councils Bill, which proposed that each DC should be composed of three categories of members, namely, elected members, ex-officio members and appointed members, was passed by LegCo on 11 March 1999.

Appointment of DC members after the 2003 DC elections

8. During the Review of the Roles and Functions of DCs in 2001, there were calls for the Administration to abolish appointed DC seats. When the Panel on Constitutional Affairs ("the CA Panel") and the Panel on Home Affairs ("the HA Panel") discussed the composition of the second term DCs at the joint meetings held on 4 June and 27 September 2002 respectively, some members expressed dissatisfaction that the Administration had ignored the requests for removing all the appointed seats and increasing the number of elected seats of DCs. Some

members, on the other hand, supported the continuation of appointed membership for DCs. They suggested that the number of appointed members should be reduced gradually. The Administration considered that there was a general consensus among the 18 DCs that the number of appointed and ex-officio seats for the second term DCs should remain unchanged. It undertook to conduct a comprehensive review of the composition of DCs after the DC elections in 2003.

9. Following the DC elections on 23 November 2003, the CA Panel and the HA Panel held another joint meeting on 8 December 2003 to discuss the appointed membership of DCs. Some members considered that CE should appoint the least number of DC members in accordance with the law and respect the choices made by more than one million voters who cast their votes in the DC elections, as the appointment of DC members by CE would be tantamount to changing the results of voting by the public. Some other members supported retaining the DC appointed membership having regard to the contributions of appointed members to the work of DC.

10. The Administration advised that the appointed membership of DCs was intended to provide a channel for individuals with the ability and interest to serve the community. The proportion of appointed membership was decided by the Government after thorough consultation and deliberation in 1998. In addition to the criteria for appointment provided in section 12 of DCO, the Government would take into account the individuals' ability, experience, professional qualifications and background, commitment to serve the public, integrity and public service record. Appointed members could help reflect the views of different sectors in the districts. All DC members, irrespective of whether they were appointed or elected, had roles to play in making contributions to the diversified nature of the work of DCs.

11. Some members further queried whether there was any requirement in law for CE to have to appoint a certain minimum number of members to DCs. The Administration advised that DCO provided that CE could appoint a maximum of 102 members but did not specify a minimum number. It was, however, the clear policy intention of DCO for DCs to be composed of the three types of membership of elected, appointed and ex-officio members.

12. Dr Hon YEUNG Sum moved a motion without legislative effect on "Appointing least number of DC members" at the Council meeting of 3 December 2003. The motion was negatived.

The Administration's proposal on phased abolition of appointed DC seats in 2005

13. The Administration put forward in 2005 a package of proposals for the methods of selecting CE in 2007 and for forming LegCo in 2008 ("the 2005 proposed package") which was proposed to be effected by way of two motions to amend Annexes I and II to the Basic Law ("BL"). Some members of the Subcommittee formed to study the 2005 proposed package did not support the inclusion of appointed DC members in the proposed package.

14. The Administration subsequently briefed the CA Panel at its meeting on 19 December 2005 on the following adjustments which would be made to the 2005 proposed package on the condition that the two motions were endorsed by LegCo –

- (a) the maximum number of appointed DC seats be reduced from the then existing 102 to 68 when the new term of DC commenced in January 2008; and
- (b) the Government would decide before the end of 2011 whether the maximum number of appointed DC seats should be further reduced to zero in January 2012, or to 34 in January 2012 and then to zero in January 2016.

15. Some members considered the proposed adjustments retrogressive and unacceptable, and requested the Administration to put forth a revised proposal to include the abolition of all appointed DC seats. Some other members supported the proposal to abolish appointed DC seats by phases.

16. As the two motions to amend Annexes I and II to BL were negated at the Council meeting of 21 December 2005, the Administration's proposal on phased abolition of DC appointed seats had not been proceeded with.

Review on the Role, Functions and Composition of DCs in 2006

17. In the 2004 Policy Address, CE undertook to further strengthen the cooperation between the Administration and DCs and to review the functions and composition of DCs at a suitable time. A working group was set up jointly by the Home Affairs Bureau and the then Constitutional Affairs Bureau in January 2005 to make preparations for the review. In the Consultation Document on "Review on the Role, Functions and Composition of DCs" ("the Consultation Document") released on 27 April 2006 by the working group, it was the Administration's position that appointed DC members had made important contributions to the work of DCs and it was desirable to retain appointed seats for the third term DCs to ensure smooth delivery of district services.

18. When the CA Panel discussed the Consultation Document at its meetings on 27 April, 15 May and 11 July 2006 respectively, some members expressed the view that the appointed membership of DCs should be abolished and urged the Administration to reconsider its position on retaining the appointed membership of DCs. Some other members maintained the view that the appointment system would not affect democratic development.

19. The Administration advised that in considering the enhancement of the role of DCs, it was necessary to ensure that the composition of DCs would continue to represent the views of different sectors. The Administration proposed in the Consultation Document to allow DCs to have greater involvement in the management of certain district facilities. To ensure the continuation of smooth delivery of district services, the Administration considered it prudent to retain appointed seats for the third term DCs in 2008 when the roles and functions of DCs would be enhanced.

Recent developments and discussions on DC appointment system

The Administration's proposal of abolishing the DC appointment system in 2010

20. When the package of proposals for the methods for selecting CE and for forming LegCo in 2012 was released, the Administration undertook to put forth as soon as possible after the proposed package had been passed by LegCo, the proposal of abolishing the DC appointment system at the local legislation level for consideration by the public and LegCo.

21. At the Council meeting of 24 June 2010, LegCo passed by a two-thirds majority the two motions put forth by the Government to amend Annexes I and II to BL concerning the methods for selecting CE and for forming LegCo in 2012.

22. When the CA Panel discussed the main issues to be considered under the local legislation of the two electoral methods for 2012 and the review of the number of elected seats for the fourth term DCs at its meeting held on 19 July 2010, the issue of DC appointment system was raised. Some members reiterated their strong view that the DC appointment system should be abolished in one go in 2011. Some other members considered that the DC appointed membership should be abolished in phases. These members opined that given the contributions made by appointed DC members to the work of DCs, the Administration should be cautious in its plan to abolish the DC appointment system.

23. In anticipation of the reduction in the number of appointed DC seats, Hon IP Kwok-him expressed concern that DCs with a small elected membership such as the Wan Chai DC might face operational problem after the number of appointed seats had been reduced. He enquired whether the Administration would consider increasing the number of elected seats correspondingly for these DCs when the number of their appointed seats was reduced. Hon Emily LAU suggested that the Administration should devise appropriate post-office arrangement for appointed DC members so that they could continue to contribute at district level.

24. The Administration advised that while there were views that appointed DC members should be abolished in one go, there were also views that they should be abolished in phases. The Administration was working on the proposal on the abolition of the DC appointment system and would put forth proposals for members' consideration in the autumn of 2010. However, the issues of appointed DC seats and elected DC seats had to be dealt with separately. The number of elected seats for each DC was largely determined by the population size of the District concerned. The Administration would welcome suggestions from Members on the post-office arrangements for DC appointed members.

25. At the CA Panel meeting held on 18 October 2010, some members further urged the Administration to expedite the abolition of the DC appointment system. The Administration advised that it would submit the proposal concerning the abolition of the DC appointment system after legislating on the two electoral methods for 2012 and the DC elected seats for the fourth term DCs.

26. On 14 September 2011, the Administration indicated its intention to reduce by one-third the number of members to be appointed in the fourth term of DCs in 2012, i.e., appointing only 68 members instead of 102. After the DC election in November 2011, the Administration would embark on public discussions as to how this issue should be dealt with, including the duration of the transitional period, how the relevant legal provisions should be dealt with, etc.

27. On 22 December 2011, the Government announced that 68 persons were appointed as members of the fourth term DCs starting from 1 January 2012. The composition of the fourth term of 18 DCs after the reduction is in **Appendix II**.

Consultation Paper published in 2012

28. The Administration published the "Consultation Paper on the District Council Appointment System" ("the Consultation Paper") on 20 February 2012. The CA Panel discussed the Consultation Paper with the Administration and

received public views at its meetings on 20 February and 19 March 2012 respectively. While some members reiterated their strong view that the DC appointment system should be abolished in one go, some other members supported the abolition of DC appointment system in phases given that appointed DC members had made significant contributions to the community. Moreover, the appointed DC members could only participate in the daily operation of DCs but were not eligible to nominate or be nominated as candidates for the DC (second) functional constituency seats in the LegCo election and to vote in the CE election.

29. The Administration advised that its clear inclination was to abolish the remaining 68 seats over one term by 1 January 2016 having regard to the constitutional development of Hong Kong and the changes to the role of the appointed DC members in LegCo elections and CE Election Committee Subsector elections. Nevertheless, the Administration would gauge views during the public consultation on whether the remaining appointed seats should be abolished in one go in 2016 or over two terms in 2020 for the next term CE to decide on the way forward.

30. Some members suggested that the existing 412 DC constituency area ("DCCAs") should be merged into bigger DCCAs with its members to be returned from 18 DCs by the proportional representation system. The Administration advised that there were concerns that a candidate would have to spend more resources for running an election campaign for a bigger DCCA. In response to some members' concerns about whether the number of elected seats should be correspondingly increased after the abolition of the appointed seats in DCs, the Administration advised that the number of elected seats was based on a population quota (i.e. 17 282). The Administration considered that rapidly increasing the number of elected seats would mean a drastic decrease in the population to seat ratio and deviate from the well-established arrangement.

31. Some members queried the legal basis for allowing RC Chairmen to become ex-officio members of DCs and urged the Administration to abolish the ex-officio seats as well. The Administration explained that the 27 ex-officio members in various New Territories DCs were RC Chairmen who had individually gone through an election procedure to become ex-officio members under the relevant ordinance. The handling of ex-officio seats could therefore be different from the appointed seats. The Administration would collate the relevant views for the consideration by the fourth-term Government.

32. The public consultation exercise ended on 20 April 2012. The Consultation Report was issued on 26 June 2012. It was recommended that the fourth-term Government should consider abolishing the remaining 68 appointed

seats over one term (i.e., there will be no appointed seats starting from the fifth term of DCs which will commence operation on 1 January 2016) and amending DCO to implement the abolition accordingly at an early opportunity.

Consultation with CA Panel on the legislative proposal on abolition of the DC appointed seats

33. At its meeting on 21 January 2013, the CA Panel was consulted on the Administration's plan to amend the DCO to provide for the abolition of DC appointed seats with effect from the fifth-term DCs. While members in general expressed support for the proposal, some members considered that the Administration should also abolish the ex-officio seats in DCs in tandem with the appointed membership in one go. Some members also urged the Administration to review the number of elected seats and the demarcation of the constituency boundaries for the fifth-term DCs as early as possible. The Administration explained that in view of the fact that ex-officio members in various New Territories DCs were RC Chairmen who were elected in accordance with the respective RC election procedures to become DC ex-officio members, and that the public had not reached a general consensus on the issue of DC ex-officio members during the public consultation in 2012, the Administration considered that DC appointed seats should be dealt with first.

Latest developments

34. The Bill which seeks to abolish the system of appointing members to DCs by CE with effect from 1 January 2016 (i.e. the commencement date of the fifth-term DCs) was introduced into the Council on 20 February 2013. The House Committee decided on 22 February 2013 to form a bills committee to scrutinize the Bill.

Relevant papers

35. A list of relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix III**.

Appendix I

Composition of District Boards/District Councils since 1982

	<u>1982 - 31.3.1985</u>	<u>1985 - 1988</u>	<u>1988 - 1991</u>	<u>1991 - 30.9.1994</u>	<u>1.10.1994 - 30.6.1997</u>	<u>1.7.1997 - 31.12.1999</u>	<u>1.1.2000 - 31.12.2003</u>	<u>1.1.2004 - 31.12.2007</u>	<u>1.1.2008 - 31.12.2011</u>	<u>1.1.2012 - 31.12.2015</u>
Official members	166	--	--	--	--	--	--	--	--	--
Appointed members	135	132	141	140	--	468	102	102	102	68
Elected members	132	237	264	274	346	--	390	400	405	412
Ex-officio members	57	57	27*	27	27	--	27	27	27	27
Total	490	426	432	441	373	468	519	529	534	507

* excluding the 30 Urban Councillors who ceased to be members of the urban DBs after April 1989.

Some of the main developments are –

- (a) the first DB elections were held in 1982. Of the 490 seats, about one-third were official members, one-third were appointed unofficials, and the remainder were elected unofficials;
- (b) in 1985, all official members on DBs were withdrawn. The Chairman of each DB was elected from among its members. The overall ratio of elected to appointed members was approximately 2:1;
- (c) for the term 1988-91, the total seats were 432, comprising 141 appointed members, 264 elected members and 27 ex-officio members who were Rural Committee Chairmen. With the introduction of representation of DBs on Urban Councils, the 30 ex-officio members who were Urban Councillors ceased to be urban DB members after April 1989;
- (d) in 1994, all appointed seats in DBs were abolished. Of 373 DB members, 346 were elected by geographical constituencies, and 27 were Rural Committee Chairmen who retained their ex-officio seats in the New Territories;
- (e) on 1 July 1997, the 18 Provisional DBs replaced the corresponding DBs, with a total of 468 members appointed by CE. They included all those members serving before 1 July 1997 and their term of office ended on 31 December 1999;
- (f) for the first term DCs i.e. 2000-03, there were a total of 519 members, consisting of 102 appointed members, 390 elected members, and 27 ex-officio members;
- (g) for the second term DCs i.e.2004-07, the number of elected seats has been increased by 10 from 390 to 400. The number of appointed and ex-officio seats remain unchanged;
- (h) for the third term DCs i.e.2008-11, the number of elected seats has been increased by 5 from 400 to 405. The number of appointed and ex-officio seats remain unchanged; and
- (i) for the fourth term DCs i.e.2012-15, the number of elected seats has been increased by 7 from 405 to 412. The number of appointed seats has reduced to 68 and the number of ex-officio seats remain unchanged.

Number of elected, appointed and ex officio members for the fourth term of the DCs

District Council	No. of Seats (2012-2015)		
	Elected	Appointed	Ex-officio
1. Central and Western	15	3	-
2. Eastern	37	6	-
3. Kowloon City	22	3	-
4. Kwun Tong	35	5	-
5. Sham Shui Po	21	3	-
6. Southern	17	3	-
7. Wan Chai	11	2	-
8. Wong Tai Sin	25	4	-
9. Yau Tsim Mong	17	3	-
10. Islands	10	3	8
11. Kwai Tsing	29	5	1
12. North	17	3	4
13. Sai Kung	24	3	2
14. Sha Tin	36	6	1
15. Tai Po	19	3	2
16. Tsuen Wan	17	3	2
17. Tuen Mun	29	5	1
18. Yuen Long	31	5	6
	412	68	27

Appendix III

Relevant papers on Bills Committee on District Councils (Amendment) Bill 2013

Committee	Date of meeting	Paper
Legislative Council	15 December 1993	Official Record of Proceedings Pages 59 – 61 (Second Reading of Electoral Provisions (Miscellaneous Amendments) (No. 2) Bill 1993)
	23 February 1994	Official Record of Proceedings Pages 44 – 134 (Resumption of Second Reading debate on Electoral Provisions (Miscellaneous Amendments) (No. 2) Bill 1993)
	16 December 1998	Official Record of Proceedings Second Reading of District Councils Bill
House Committee	26 February 1999	Report of the Bills Committee on District Councils Bill
Legislative Council	10 March 1999	Official Record of Proceedings Resumption of Second Reading debate on the District Councils Bill
	1 and 2 December 1999	Official Record of Proceedings Pages 112 – 217 Pages 6 - 20 (Resumption of Second Reading debate and Third Reading of Provision of Municipal Services (Reorganization) Bill)
Panel on Constitutional Affairs ("CA Panel")	15 January 2001 (Item V)	Agenda Minutes
Panel on Home Affairs ("HA Panel")	16 July 2001 (Item I)	Agenda Minutes

Committee	Date of meeting	Paper
Joint Panels on CA and HA	4 October 2001 (Item II)	Agenda Minutes
Legislative Council	31 October 2001	Official Record of Proceedings Pages 183 - 236 (Motion)
HA Panel	27 November 2001 (Item I)	Agenda Minutes
Joint Panels on CA and HA	4 June 2002 (Item II)	Agenda Minutes
	27 September 2002 (Item II)	Agenda Minutes
Legislative Council	3 December 2003	Official Record of Proceedings Pages 184 - 266 (Motion)
Joint Panels on CA and HA	8 December 2003 (Item II)	Agenda Minutes [LC Paper No. CB(2)694/03-04(01)]
Legislative Council	7 January 2004	Official Record of Proceedings Pages 25 – 26 (Policy Address)
	12 January 2005	Official Record of Proceedings Page 15 (Policy Address)
Legislative Council	12 October 2005	Official Record of Proceedings Page 17 (Policy Address)
House Committee	9 December 2005	Report of the Subcommittee to Study the Administration's Proposals for the Methods of Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008
CA Panel	19 December 2005 (Item IV)	Agenda Minutes

Committee	Date of meeting	Paper
Legislative Council	21 December 2005	Official Record of Proceedings Pages 91 – 337 (Motion)
CA Panel	18 February 2006 (Item I)	Agenda Minutes
	20 February 2006 (Item V)	Agenda Minutes
	27 April 2006 (Item I)	Agenda Minutes
	15 May 2006 (Item IV)	Agenda Minutes
	11 July 2006 (Item I)	Agenda Minutes
Legislative Council	22 February 2006	Official Record of Proceedings Pages 48 - 50 (Written question)
	21 May 2008	Official Record of Proceedings Pages 102 – 103 (Written question)
	11 February 2009	Official Record of Proceedings Pages 27 – 38 (Oral question)
	14 July 2010	Official Record of Proceedings Pages 79 - 90 (Oral question)
CA Panel	19 July 2010 (Item III)	Agenda Minutes
	18 October 2010 (Item II)	Agenda Minutes
Legislative Council	13 April 2011	Official Record of Proceedings Pages 33 - 34 (Written question)

Committee	Date of meeting	Paper
Legislative Council	15 June 2011	Official Record of Proceedings Pages 37 - 46 (Oral question)
	19 October 2011	Official Record of Proceedings Pages 28 - 40 (Oral question)
CA Panel	20 February 2012 (Item III)	Agenda Minutes
Legislative Council	29 February 2012	Official Record of Proceedings Pages 151-153 (Written question)
CA Panel	19 March 2012 (Item VI)	Agenda Minutes
	19 November 2012 (Item IV)	Agenda Minutes
	21 January 2013 (Item III)	Agenda

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