

立法會 *Legislative Council*

LC Paper No. CB(2)1490/14-15(03)

Ref : CB2/BC/3/14

Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2015

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Electoral Legislation (Miscellaneous Amendments) Bill 2015 ("the Bill"). It also gives a brief account of the discussion of the Panel on Constitutional Affairs ("the Panel") on the relevant amendment proposals.

Background

Existing method for forming the Legislative Council ("LegCo")

2. According to the Amendment to Annex II¹ to the Basic Law ("BL") recorded by the Standing Committee of the National People's Congress ("NPCSC") on 28 August 2010, the Fifth LegCo in 2012 shall be composed of 70 Members, half of them returned by geographical constituencies ("GCs") through direct elections, and the other half by functional constituencies ("FCs").

3. As regards direct elections in GCs, the LegCo Ordinance ("LCO") (Cap. 542) stipulates that there should be five GCs. For direct GC elections, the list system operating under the largest remainder formula, which is a form of proportional representation voting system, is adopted. For FC elections, 35 seats are returned from 29 FCs. The respective numbers of Members returned through the five GCs and the 29 FCs are listed in **Appendix I**.

Procedures for amending the methods for selecting the Chief Executive ("CE") and for forming LegCo

4. The specific methods for selecting CE and for forming LegCo are specified

¹ The specific method for forming LegCo and its procedures for voting on bills and motions are prescribed in Annex II to BL: "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures".

in Annexes I and II to BL respectively. If there is a need to amend the method for selecting CE for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all LegCo Members and the consent of CE and be reported to NPCSC for approval. Any amendments made to the method for forming LegCo after 2007 must be made with the endorsement of a two-thirds majority of all LegCo Members and the consent of CE and be reported to NPCSC for the record.

5. On 6 April 2004, NPCSC adopted the "Interpretation of Article 7 of Annex I and Article III of Annex II to the Basic Law" ("the Interpretation"). Clause 3 of the Interpretation states that CE shall make a report to NPCSC as regards whether there is a need to amend the methods for selecting CE and for forming LegCo for the terms subsequent to the year 2007 as stipulated in Annexes I and II to BL; and NPCSC shall, in accordance with BL 45² and BL 68³, make a determination in the light of the actual situation in HKSAR and in accordance with the principle of gradual and orderly progress. After an amendment has been endorsed by LegCo and has received the consent of CE, it will still require the approval or acceptance for the record by NPCSC before it may take effect.

6. According to the Administration, in accordance with BL and the Interpretation of NPCSC in 2004, the procedures for amending the methods for the selection of CE and for the formation of LegCo (also known as "Five-Step Process of Constitutional Development") are as follows –

Step One : CE shall make a report to NPCSC as to whether there is a need to amend the method of selection/formation;

Step Two : A determination shall be made by NPCSC on whether any amendment to the method of selection/formation may be made;

Step Three : The motions on the amendments to the method for selecting CE/method for forming LegCo shall be introduced by HKSAR Government to LegCo, and be endorsed by a two-thirds majority of all Members of LegCo;

² BL 45 provides that CE of the Hong Kong Special Administrative Region ("HKSAR") shall be selected by election or through consultations held locally and be appointed by the Central People's Government ("CPG"). The method for selecting CE shall be specified in the light of the actual situation in HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

³ BL 68 provides that LegCo of HKSAR shall be constituted by election. The method for forming the LegCo shall be specified in the light of the actual situation in HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of LegCo by universal suffrage.

Step Four : Consent shall be given by CE to the motions endorsed by LegCo; and

Step Five : The relevant amendments to Annex I and Annex II to BL shall be reported by CE to NPCSC for approval or for the record.

Consultation Document on Methods for Selecting CE in 2017 and for Forming LegCo in 2016 ("Consultation Document")

7. On 17 October 2013, CE announced the setting up of the Task Force on Constitutional Development ("Task Force") to handle the public consultation on the methods for selecting CE in 2017 and for forming LegCo in 2016. On 4 December 2013, the Task Force published the Consultation Document, and announced the commencement of a five-month public consultation exercise.

CE's Report to NPCSC and constitutional development public consultation report

8. On 15 July 2014, CE submitted to NPCSC his report on whether there is a need to amend the methods for selecting CE of HKSAR in 2017 and for forming LegCo of HKSAR in 2016. CE recommended that "there is a need to amend the method for selecting the CE in 2017 in order to attain the aim of universal suffrage. Annex II to the Basic Law concerning the method for forming the LegCo in 2016 needs not be amended." Concurrently, the Administration published the Report on the Public Consultation on the Methods for Selecting CE in 2017 and for Forming LegCo in 2016.

9. In accordance with BL 45 and 68, and the Interpretation adopted by NPCSC in 2004, CE invited NPCSC to determine whether there is a need to amend the methods for selecting CE in 2017 and for forming LegCo in 2016.

The NPCSC Decision adopted on 31 August 2014

10. After considering the CE's Report, NPCSC adopted the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 ("the Decision") on 31 August 2014. According to the Decision, the existing formation method and voting procedures for LegCo as prescribed in Annex II to BL will not be amended. The formation method and procedures for voting on bills and

motions of the Fifth LegCo will continue to apply to the Sixth LegCo in 2016. According to the Administration, the Sixth LegCo in 2016 therefore should continue to consist of 70 Members: 35 to be returned by FCs and 35 by GCs. The Administration subsequently consulted the Panel on the proposed necessary technical amendments for the 2016 LegCo election on 16 March 2015.

The Bill

11. The Bill makes technical amendments concerning the electorate of FCs, the name of an FC, counting procedures and textual errors for the 2016 LegCo election.

Consultation with the Panel

Proposed amendments for FCs

12. At the meeting on 16 March 2015, members noted that the implementation of all the currently proposed amendments for FCs would bring about an estimated net increase of additional electors of not more than 100. In response to some members' queries as to why the Administration did not put forth any proposal to broaden significantly the electorate base of FCs, the Administration explained that a large-scale expansion of the electorate of FCs would involve substantial changes. Having regard to the actual situation in HKSAR, the Administration only introduced technical amendments at the present stage.

13. Some members expressed concern about the criteria for determining which organizations could be added to certain FCs as new electors. Hon Charles Peter MOK enquired why only the Information Security and Forensics Society was proposed to be added to the Information Technology ("IT") FC as a new elector. Hon Mrs Regina IP also pointed out that some new bodies recently formed by inshore trawlers wished to be registered as Agriculture and Fisheries FC electors, and some new elderly service providers also wished to be registered as Social Welfare FC electors. The Administration explained that for an organization to be added as a new corporate elector to a FC, it should be a representative one and was active in supporting the development of the sector concerned. The advice of the relevant bureaux/departments had also been sought in consideration of whether individual organizations fulfilled such criteria.

14. Regarding the proposed improvements to the formulation of the definition of electors of the Education FC under section 20E(aa) of LCO, Hon IP Kin-yuen considered that the definition of "full-time academic staff engaged in teaching or research and administrative staff of equivalent rank in the institutions" was unclear, and different criteria might be adopted by each of the institutions

concerned. The Administration advised that the Registration and Electoral Office would seek updated information from the institutions concerned regarding their eligible staff members for registration as electors for the Education FC. The institutions concerned would decide on such matters in the light of their actual circumstances. Individual staff members who were not satisfied with the relevant decisions could lodge claims, which would be dealt with through the established channel.

15. The Administration agreed to give thought to the following concerns/suggestions made by members –

- (a) the name of the Architectural, Surveying and Planning FC should be revised to reflect the fact that its constituents included landscape architects as suggested by Hon Tony TSE; and
- (b) Hon Steven HO pointed out that for the four special FCs which adopted the preferential elimination system of voting, some electors had erroneously used the chop (provided for GC election) to stamp a 'tick' on the FC ballot paper during the 2012 LegCo Election. As a result, this had rendered their votes invalid. However, he considered that the choice of such electors might still be ascertained in the situation when there were two candidates only. He considered that the relevant arrangements should be reviewed.

Members may wish to note that the outcome of Administration's consideration of the above two issues is set out in paragraphs 7 and 15 of the LegCo Brief [File Ref: CMAB C1/30/5/4] on the Bill.

GCs

16. Members noted that the Administration proposed to maintain the number of GCs at five and that the existing upper and lower limits on the number of Members to be returned for each GC (i.e. five to nine) as laid down in LCO should remain unchanged. Some members including Hon IP Kwok-him and Dr Hon CHIANG Lai-wan, however, considered that the population covered by certain GCs was too large and suggested realignment of the New Territories ("NT") GCs so as to reduce the population served by each LegCo Member returned from those GCs. Dr Hon CHIANG Lai-wan suggested reducing the area of NT West GC but enlarging Kowloon West GC, or adjusting the number of seats in individual GCs such as, reallocating one seat returned by Hong Kong Island GC to Kowloon West GC.

17. The Administration advised that for the LegCo election in 2016, the number of seats in each GC might need to be adjusted according to population

projection, which would be available later in 2015. The Electoral Affairs Commission ("EAC") was responsible for making recommendations on the delineation of GCs in accordance with the criteria laid down in the statute. The Administration advised that the Panel would be consulted on EAC's provisional recommendations as early as practicable.

Article 68 of the Basic Law

18. Some members including Hon Emily LAU, Hon LEE Cheuk-yan and Hon Albert HO considered that the "principle of gradual and orderly progress" in BL 68 was contravened, if the half-and-half ratio between Members returned by FCs and Members returned by GCs was to remain unchanged and no measure would be introduced to enhance the democratic element of the electoral method. They recalled that the HKSAR's report submitted to the relevant United Nations ("UN") Committee under the International Covenant on Civil and Political Rights in 1999 had made it clear that the FC system was only a transitional arrangement, as BL provided that all LegCo Members would ultimately be returned by universal suffrage. They considered that according to the principle of gradual and orderly progress, and to materialize what the Administration had told the UN Committee in 1999 (i.e. the FC system was only a transitional arrangement), the number of GC seats should be gradually increased while the number of FC seats be gradually reduced with a view to attaining abolition of all FC seats.

19. The Administration explained that according to the Decision, the existing formation method for LegCo as prescribed in Annex II to BL would not be amended; and the formation method of the Fifth LegCo would continue to apply to the Sixth LegCo in 2016. The Administration explained that the principle of gradual and orderly progress did not mean that substantial changes had to be made to the method for forming LegCo in each of its terms, as it was stipulated in BL 68 that "the actual situation in the Hong Kong Special Administrative Region" also had to be taken into account in considering whether Annex II to BL was to be amended.

Relevant papers

20. A list of relevant papers which are available on the LegCo website is in **Appendix II**.

2012 Legislative Council Election
No. of Members Returned from 5 Geographical Constituencies
and 29 Functional Constituencies

Geographical Constituencies

<u>Item</u>	<u>Name of GC</u>	<u>Number of members to be returned</u>
1.	Hong Kong Island	7
2.	Kowloon West	5
3.	Kowloon East	5
4.	New Territories West	9
5.	New Territories East	9

Functional Constituencies

<u>Item</u>	<u>Name of FC</u>	<u>Number of members to be returned</u>
1.	Heung Yee Kuk	1
2.	Agriculture and Fisheries	1
3.	Insurance	1
4.	Transport	1
5.	Education	1
6.	Legal	1
7.	Accountancy	1
8.	Medical	1
9.	Health Services	1
10.	Engineering	1
11.	Architectural, Surveying and Planning	1
12.	Labour	3

<u>Item</u>	<u>Name of FC</u>	<u>Number of members to be returned</u>
13.	Social Welfare	1
14.	Real Estate and Construction	1
15.	Tourism	1
16.	Commercial (first)	1
17.	Commercial (second)	1
18.	Industrial (first)	1
19.	Industrial (second)	1
20.	Finance	1
21.	Financial Services	1
22.	Sports, Performing Arts, Culture and Publication	1
23.	Import and Export	1
24.	Textiles and Garment	1
25.	Wholesale and Retail	1
26.	Information Technology	1
27.	Catering	1
28.	District Council (first)	1
29	District Council (second)	5

Appendix II

Relevant documents

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	16 March 2015 (Item III)	Agenda Minutes

Council Business Division 2
Legislative Council Secretariat
14 May 2015