

立法會 *Legislative Council*

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Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 16 March 2015

Legislative amendments regarding the 2016 Legislative Council Election

Purpose

This paper gives a brief account of the proposed amendments under the Legislative Council (Amendment) Bill 2007 ("LCB 2007") and the Legislative Council (Amendment) Bill 2010 ("LCB 2010"). This paper also summarizes the major concerns expressed by Members since the Fifth Legislative Council ("LegCo") regarding the method for forming LegCo in 2016 in paragraphs 19 to 27.

Background

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

2. The specific methods for selecting CE and for forming LegCo are specified in Annexes I and II to the Basic Law ("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 the Standing Committee of the National People's Congress ("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.

3. 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 45 and BL 68,

make a determination in the light of the actual situation in the Hong Kong Special Administrative Region ("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.

4. 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;

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

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

LCB 2007

5. On 21 December 2005, the Government put to LegCo two motions to amend Annexes I and II to BL respectively to implement the package of proposals for the methods of selecting CE in 2007 and forming LegCo in 2008. As the motions did not receive the required two-thirds majority support of LegCo Members, the proposals could not be processed further.

6. As set out in the LegCo Brief on LCB 2007, the Administration advised that in accordance with the Interpretation made by NPCSC on 6 April 2004, if no amendment is made to the methods for selecting CE and for forming the LegCo as stipulated in Annexes I and II to BL, the provisions relating to the two methods in Annexes I and II to BL will continue to apply. In the circumstances, the 2008 LegCo election would be held on the basis of the existing arrangements at that time. The Administration advised that based on this approach, the

number and composition of existing functional constituencies ("FCs") should remain unchanged for the 2008 LegCo election, and only minor technical updates would be made.

7. LCB 2007 was passed by LegCo at the Council meeting of 23 April 2008. The amendments made by the Legislative Council (Amendment) Ordinance 2008 are set out in **Appendix I**. Members may refer to the report of the above Bills Committee (LC Paper No. CB(2)1665/07-08) for details of the deliberations.

LCB 2010

8. On 24 and 25 June 2010, LegCo passed by a two-thirds majority the motions put forth by the Government concerning the draft amendments to the method for the selection of CE and the method for the formation of LegCo in 2012. On 29 June 2010, CE gave consent to the draft amendments. On 28 August 2010, NPCSC approved or recorded respectively the amendments to Annexes I and II to BL concerning the two electoral methods. The Government indicated that it would implement the two electoral methods for 2012 by way of local legislation.

9. The CE Election (Amendment) Bill 2010 ("CEEB 2010") and LCB 2010 were introduced into LegCo on 15 December 2010. The objects of LCB 2010 were to enlarge LegCo by adding five geographical constituency ("GC") seats and creating a new District Council ("DC") FC (i.e. DC (second) FC) of five seats and to make other changes related to LegCo elections.

10. LCB 2010 was passed by LegCo at the Council meeting of 5 March 2011. The amendments made by the Legislative Council (Amendment) Ordinance 2011 are set out in **Appendix II**. Members may refer to the report of the above Bills Committee (LC Paper No. CB(2)1170/10-11) for details of the deliberations.

Existing method for forming LegCo

11. According to the Amendment to Annex II to BL recorded by NPCSC on 28 August 2010, the Fifth LegCo in 2012 shall be composed of 70 Members, half of them returned by GCs through direct elections, and the other half by FCs.

12. As regards direct elections in GCs, the Legislative Council Ordinance (Cap. 542) stipulates that there should be five GCs. Besides, the list voting 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 III**.

13. As regards the voting system, the DC (Second) FC takes the entire HKSAR as a single constituency, and adopts the list voting system under the proportional representation voting system, and operates under the largest remainder formula to come up with the election results. Separately, four FCs (namely, the Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport) adopt the preferential elimination system. The remaining 24 FCs adopt the first-past-the-post voting system.

Method for forming LegCo in 2016

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

14. Following CE's announcement on 17 October 2013 of the setting up of the Task Force on Constitutional Development ("Task Force") led by the Chief Secretary for Administration ("CS"), the above Consultation Document was published on 4 December 2013. At the Council meeting of 4 December 2013, CS made a statement and announced the commencement of a five-month public consultation exercise. The consultation period ended on 3 May 2014.

CE Report to NPCSC and constitutional development public consultation report

15. 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. Concurrently, the Administration published the Report on the Public Consultation on the Methods for Selecting CE in 2017 and for Forming LegCo in 2016 ("Consultation Report").

16. According to the Administration, CE, in the light of the results of the public consultation, has come to the view that the community of Hong Kong generally hopes that universal suffrage for the CE election could be implemented in 2017 first, so that over five million eligible voters in Hong Kong could elect the next CE through "one person, one vote" in 2017, thereby taking an important step forward in the constitutional development of Hong Kong. CE has concluded and 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."

17. 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 on 31 August 2014

18. After considering the CE Report, NPCSC made a decision on 31 August 2014 on issues relating to the selection of CE by universal suffrage and on the method for forming LegCo in 2016. NPCSC determined, among others, that the existing formation method and voting procedures for LegCo as prescribed in Annex II to BL would not be amended. The formation method and procedures for voting on bills and motions of the Fifth LegCo would continue to apply to the Sixth LegCo in 2016. According to the Administration, as the NPCSC Decision adopted on 31 August 2014 confirmed that Annex II to BL needed not be amended, the Administration could proceed to prescribe, under local legislation, the detailed arrangements regarding the method for forming LegCo in 2016.

Major concerns expressed by Members in the current legislative term regarding the method for forming LegCo in 2016

Retention and abolition of FCs

19. Some Members considered that FC seats should be abolished in one go in 2016 and, if not, the Administration should provide the roadmap for attaining the abolition of these seats altogether in 2020. Some other Members, however, considered that the FC system had its value and should be retained. They considered that implementing universal suffrage for LegCo elections did not necessarily mean that FC seats had to be abolished and only direct GC elections were held. They suggested that FCs could be retained provided that the principles of universality and equality were complied with in the design of how Members should be returned through FC elections.

20. The Task Force explained that according to the 2007 NPCSC Decision¹, after CE was selected by universal suffrage, the election of LegCo could be implemented by the method of electing all the Members by universal suffrage. The selection of CE by universal suffrage was accordingly a pre-condition for the election of all Members of LegCo by universal suffrage.

¹ According to the Decision of NPCSC in 2007, "the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage."

21. Some Members considered that the new DC (second) FC should be abolished, while some other Members suggested that the Administration should consult the public on the retention or abolition of this new FC. The Administration advised that it had no pre-conceived position and welcomed views and suggestions from members of the community on the way forward of the new DC (second) FC.

22. During discussion of the CE Report to NPCSC and the Consultation Report, some Members expressed dissatisfaction with the recommendation by CE in his Report to NPCSC that "Annex II to the Basic Law concerning the method for forming the LegCo in 2016 needs not be amended". These Members pointed out that the community had a strong call for the abolition of FCs in 2016 and, if not, at least amending the current half-and-half ratio of Members from FCs and GCs through direct elections by increasing the number of directly elected GC seats. These Members queried whether CE's recommendation, which meant that the method for forming LegCo would come to a standstill in 2016, might contravene BL 68 which provided that "the method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress".

23. The Task Force advised that based on the views collected, the public generally agreed that since the successful implementation of universal suffrage of the CE election in 2017 was a pre-condition for the election of all Members of LegCo by universal suffrage, efforts should be focused on the proper handling of universal suffrage for the CE election in 2017. Moreover, as relatively substantial amendments had been made to the method for forming LegCo in 2012, it was generally agreed that there was no need to amend Annex II to BL regarding the method for forming LegCo in 2016. The Task Force advised that it was clearly stipulated in BL 68 that "the actual situation in the Hong Kong Special Administrative Region" had to be taken into account as well in considering whether Annex II to BL was to be amended, and "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.

24. During discussion of the "Consultation Document on the Method for Selecting the Chief Executive by Universal Suffrage", some Members asked whether all FC seats were bound to be abolished in 2020 or just could be abolished in 2020, if universal suffrage for the CE election was implemented in 2017. They requested the Task Force to clarify whether implementation of universal suffrage for electing all LegCo Members meant the abolition of all FC seats. The Task Force advised that according to the 2007 NPCSC Decision, after CE was selected by universal suffrage, the election of LegCo could be

implemented by the method of electing all the Members by universal suffrage. The selection of CE by universal suffrage was accordingly a pre-condition for the election of all LegCo Members by universal suffrage. The specific method of electing all Members by universal suffrage would be formulated in accordance with the constitutional procedures of the "Five-Step Process". Besides, it would be for the CE who was elected by universal suffrage to deal with the universal suffrage model for LegCo.

Procedures for voting on bills and motions in LegCo

25. During discussion of the Consultation Document, some Members considered that the issue of split voting procedure under Annex II of BL should have been discussed in the Consultation Document with reference to various scenarios on possible changes to the composition of LegCo. For example, if the proportion of seats returned by direct GC elections was adjusted upward by reducing the number of FC seats, the retention of the split voting procedure could hardly be justified. These Members also expressed concern as to how universal suffrage of LegCo could be achieved in 2020, if no adjustment was made to the number of FC seats and the split voting procedure in 2016.

26. The Task Force advised that issues relating to the method for forming LegCo in 2016 were set out in chapter 4 of the Consultation Document to facilitate the public to formulate views and proposals. The Task Force pointed out that in line with the established practice, the current term Government would only handle the electoral methods of CE and LegCo of the following term. For the universal suffrage model for LegCo in 2020, it would be for the fifth term Government to deal with it.

27. During discussions on the CE Report to NPCSC and the Consultation Report, some Members pointed out that since the Reunification in 1997, the pan-democratic camp had been in strong demand for the abolition of the split voting procedure. Moreover, in accordance with the Decision of NPCSC in 2007, the procedures for voting on bills and motions in LegCo only had to remain unchanged for the Fifth LegCo. These Members queried why CE had made the recommendation not to amend Annex II to BL. The Task Force advised that the recommendation was based on the views collected during the five-month public consultation period.

Latest development

28. The Administration will consult the Panel on Constitutional Affairs at its meeting on 16 March 2015 on the proposed amendments regarding the 2016 LegCo election.

Relevant papers

29. A list of the relevant papers available on the LegCo website is in **Appendix IV**.

Council Business Division 2
Legislative Council Secretariat
12 March 2015

Amendments made by the Legislative Council (Amendment) Ordinance 2008 ("Amendment Ordinance 2008")

The Amendment Ordinance 2008 sought to amend the Legislative Council Ordinance ("LCO") and make consequential amendments to the Schedule to the Chief Executive Election Ordinance, in relation to certain functional constituencies, to -

- (a) update the names of certain bodies (*see Note 1*) –
 - (i) which are, or are eligible to be registered as, electors or voters; and
 - (ii) certain members of which are, or are eligible to be registered as, electors or voters;
- (b) remove the name of any body (*see Note 2*) that ceases to be eligible for registration as an elector or voter;
- (c) amend the description of the members of the bodies referred to in section 20Z(1)(a) and (f) of LCO;
- (d) include the Hong Kong Sports Institute Limited in the composition of the sports, performing arts, culture and publication functional constituency and the relevant Election Committee subsector; and
- (e) include members that are entitled to vote at general meetings of the Tobacco Association of Hong Kong Limited in the composition of the wholesale and retail functional constituency and the relevant Election Committee subsector,

and to make a minor clerical amendment to LCO.

Note 1 :

Composition of the education functional constituency

- (a) Section 20E(b)(xii) of LCO was amended to reflect the change of name of the Hong Kong Shue Yan University pursuant to its change of status to a university.

Composition of the import and export functional constituency

- (b) Section 20W(e)(v) of LCO was amended to change the English name of the body to The Hong Kong Exporters' Association.

Composition of the information technology functional constituency

- (c) Section 20Z(1)(f) of LCO was amended to change the name of the body to The Institution of Engineering and Technology Hong Kong pursuant to its change of name.
- (d) Section 20Z(1)(k)(iv) of LCO was amended to change the name of the body to Communications Association of Hong Kong Limited.
- (e) Section 20Z(1)(k)(vi) of LCO was amended by adding the Chinese name of the body, that is, 香港對外通訊服務聯會有限公司, to the Chinese text.

Composition of the Agriculture and Fisheries Functional Constituency

- (f) Item 71 of Schedule 1 was amended by changing the English name of the body to The Hong Kong Branch of the World's Poultry Science Association.

Composition of the Transport Functional Constituency

- (g) Item 1 of Schedule 1A was amended by changing the name of the body to Parking Management and Consultancy Services Limited.
- (h) Item 19 of Schedule 1A was amended by changing the English name of the body to Driving Instructors Merchants Association, Limited.
- (i) Item 134 of Schedule 1A was amended by changing the name of the body to Taxi Association Limited.
- (j) Item 135 of Schedule 1A was amended by changing the English name of the body to Tate's Cairn Tunnel Company Limited.
- (k) Item 141 of Schedule 1A was amended by changing the name of the body to Transport Infrastructure Management Limited.
- (l) Item 191 of Schedule 1A was amended by changing the Chinese name of the body to 香港快運航空有限公司.

Composition of the Sports, Performing Arts, Culture and Publication Functional Constituency

- (m) Item 5 of Part 1 of Schedule 1B was amended by changing the name of the body to Kowloon City District Recreation and Sports Council Limited.
- (n) Item 6 of Part 1 of Schedule 1B was amended by changing the name of the body to Kwai Tsing District Sports Association Limited.
- (o) Item 5 of Part 3 of Schedule 1B was amended by changing the Chinese name of the body to 香港作曲家及作詞家協會有限公司.
- (p) Item 27 of Part 3 of Schedule 1B was amended by changing the name of the body to The Hong Kong Intellectual Property Society Limited.

Composition of the Wholesale and Retail Functional Constituency

- (q) Item 8 of Schedule 1C was amended by changing the Chinese name of the body to 東區鮮魚業商會.
- (r) Item 49 of Schedule 1C was amended by changing the name of the body to The Federation of Hong Kong Footwear Limited.
- (s) Item 74 of Schedule 1C was amended by changing the name of the body to Kowloon Cheung Sha Wan Wholesale Vegetable Market (Importers) Recreation Club Limited.
- (t) Item 80 of Schedule 1C was amended by changing the Chinese name of the body to 海外入口菓菜頭盤欄商聯會有限公司.

Note 2 :

Item 82 of Schedule 1A was repealed (i.e. Kowloon-Canton Railway Corporation) to reflect the position of corporation's cessation of transport operation pursuant to the Rail Merger Ordinance (11 of 2007).

Amendments made by the Legislative Council (Amendment) Ordinance 2011 ("Amendment Ordinance 2011")

The Amendment Ordinance 2011 sought to -

- (a) amend the Legislative Council Ordinance ("LCO") –
 - (i) to add 10 seats to the Legislative Council, five of which are to be returned from the existing geographical constituencies and five from a new District Council functional constituency to be added to the existing functional constituencies;
 - (ii) to make provision for the filling of the seats of such constituencies;
 - (iii) to provide that only elected District Council members may be registered as electors for the existing District Council functional constituency (to be renamed as the District Council (first) functional constituency) and that such electors may not be registered as electors for any other functional constituency;
 - (iv) to amend the lists of persons of whom functional constituencies are composed;
 - (v) to disqualify consular posts and certain international organizations from being registered as corporate electors¹;
 - (vi) to increase the financial assistance² to candidates in a Legislative Council election;
- (b) make consequential and incidental amendments to the subsidiary legislation made under LCO; and

¹ The relevant amendments provide that consular posts (including those headed by career consular officers and honorary consular officers) specified in the Consular Relations Ordinance (Cap. 557) and the international organizations under the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) and the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) are no longer eligible to be registered as an elector.

² The relevant amendments provide that the rate of financial assistance to eligible candidates of the Legislative Council election will be increased from \$11 to \$12.

- (c) amend the Maximum Amount of Election Expenses (Legislative Council Election) Regulation to prescribe the maximum amount of election expenses³ for the new District Council functional constituency and make consequential and incidental amendments.

³ The relevant amendments provide that the maximum amount of election expenses that can be incurred by or on behalf of a candidate list in the District Council (second) functional constituency in a election is \$6 million.

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

**Relevant documents on
Legislative amendments regarding the 2016 Legislative Council Election**

Committee	Date of meeting	Paper
Legislative Council	23 April 2008	Report of the Bills Committee on Legislative Council (Amendment) Bill 2007
	2 March 2011	Report of the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010
Panel on Constitutional Affairs ("CA Panel")	9 December 2013 (Item I)	Agenda Minutes
	11 January 2014 (Item I)	Agenda Minutes
	18 January 2014 (Item I)	Agenda Minutes
House Committee	15 July 2014	Agenda Verbatim record of the proceedings
CA Panel	21 July 2014 (Item II)	Agenda Minutes
	19 January 2015 (Item III)	Agenda Minutes