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Panel on Constitutional Affairs
Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 15 June 2015

Provisional recommendations on boundaries and names of geographical
constituencies for the 2016 Legislative Council General 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, including the Panel's discussion on relevant issues concerning GCs for the 2016 LegCo election in paragraphs 22 and 23 below.

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) ("LCO"), 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 2012 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 LCO. 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 LegCo 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. At the Panel meeting on 16 March 2015, members expressed views on the Administration's two GC-related proposals, namely, maintaining the existing arrangement of having five GCs and maintaining the existing upper and lower limits (i.e. five to nine) on the number of Members to be returned for each GC for the 2016 LegCo election. The discussion 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 LegCo 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.

Delineation of GCs for the 2004 LegCo election

7. According to the Basic Law ("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.

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 LCO, 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, members were briefed on EAC's 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 District Council ("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.

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.

21. According to the Administration's proposals in the LegCo (Amendment) Bill 2010, while the number of GCs was proposed to be retained at five, the Administration proposed to adjust the number of seats for each of the five GCs at not less than five nor greater than nine. 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 LCO, 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.

Delineation of GCs for the 2016 LegCo Election

22. When the Panel discussed the proposed legislative amendments for the 2016 LegCo election at its meeting on 16 March 2015, Mr IP Kwok-him stated that the population covered by certain GCs was too large. He suggested realignment of the NT GCs so as to reduce the population served by each LegCo Member returned from a NT GC. Dr CHIANG Lai-wan echoed Mr IP's concerns and asked whether consideration would be given to changing

the delineation of the existing GCs such as reducing the area of NTW GC but enlarging KLW GC, or adjusting the number of seats in individual GCs such as reallocating one seat returned by HKI GC to KLW GC. Dr Priscilla LEUNG considered that in the demarcation of GC boundaries, EAC should have full regard to the impact on the provision of district services and listen extensively to the views of LegCo Members, DC members and the public. The Administration advised that the number of seats in each GC might need to be adjusted according to population projection. The Panel would be consulted on EAC's provisional recommendations as early as practicable.

23. Ms Starry LEE also considered that the population served by a LegCo Member varied amongst the five GCs. At her request, the Administration provided the following information -

<u>GCs</u>	<u>Number of seats</u>	<u>Projected population</u> (as at mid-2012) <u>when delineation of GCs for the 2012</u> <u>LegCo election was considered</u>
HKI	7	1.3 million
KLW	5	1.1 million
KLE	5	1.1 million
NTW	9	2 million
NTE	9	1.7 million

The Administration acknowledged that the population represented by a LegCo Member returned by the NTW GC was comparatively higher than those of other GCs. The Administration advised that members' concerns would be relayed to EAC for consideration.

Latest development

24. The Administration will consult the Panel at its meeting on 15 June 2015 on the provisional recommendations of EAC on the boundaries and the names of GCs for the 2016 LegCo election.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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**Delineation of GCs
for the 2012 LegCo Election**

(I) Statutory Criteria

Criteria stipulated under the LCO

- (a) there are to be 5 GCs for the purpose of returning Members at elections for those constituencies (section 18(1));
- (b) at a general election, 35 Members are to be returned for all GCs (section 19(1)); and
- (c) the number of Members to be returned for each GC is to be a number, not less than 5 nor greater than 9 (section 19(2)).

Criteria stipulated under the EACO

- (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 (i.e. “the resulting number”) when the population quota is multiplied by the number of members to be returned to the Legislative Council by that GC pursuant to any electoral law (section 20(1)(a));
(Note: The population quota is defined in section 17(1) of the EACO as the total population of Hong Kong divided by the total number of members to be returned for all the GCs in that election, i.e. $7,180,700 \div 35 = 205,163$. The total population of Hong Kong is projected as at 30 June 2012);
- (b) where it is not practicable to comply with section 20(1)(a) 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% (section 20(1)(b));
- (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 (section 20(3));
- (d) the EAC may depart from the strict application of section 20(1)(a) and (b) only where it appears that one or more of the considerations in section 20(3) renders a departure necessary or desirable (section 20(5));
 - (e) the EAC shall ensure that each proposed GC is to be constituted by two or more contiguous whole District Council constituencies (section 20(2)); and
 - (f) the EAC shall have regard to the existing boundaries of Districts and existing boundaries of GCs (section 20(4)).

(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.

**Relevant documents on provisional recommendations
on boundaries and name of geographical constituencies
for the 2016 Legislative Council General 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	2.3.2011	Report of the Bills Committee on Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010
CA Panel	16.3.2015 (Item III)	Agenda Minutes