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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 21 January 2019**

**Legislative amendments regarding the
2020 Legislative Council General Election**

Purpose

This paper gives a brief account of the past discussion of Legislative Council ("LegCo") Members on issues relating to the 2016 and the 2020 LegCo General Elections.

Background

Existing method for forming the Legislative Council

2. According to the Amendment to Annex II¹ to the Basic Law 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**.

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

Procedures for amending the methods for selecting the Chief Executive and for forming the Legislative Council

4. The specific methods for selecting the Chief Executive ("CE") and for forming LegCo are specified in Annexes I and II to the Basic Law 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 the Basic Law; and NPCSC shall, in accordance with Article 45 of the Basic Law ("BL 45")² 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.

Consultation Document on Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016

6. 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 on Methods for Selecting CE in 2017 and for Forming LegCo in 2016, and announced the commencement of a five-month public consultation exercise.

² BL 45 provides that CE of HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. 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.

The Chief Executive's Report to the Standing Committee of the National People's Congress and constitutional development public consultation report

7. 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.

8. 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 Decision adopted by the Standing Committee of the National People's Congress on 31 August 2014

9. 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 the Basic Law 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 Constitutional Affairs ("the Panel") on the proposed necessary technical amendments for the 2016 LegCo election on 16 March 2015.

The Electoral Legislation (Miscellaneous Amendments) Bill 2015

10. The Electoral Legislation (Miscellaneous Amendments) Bill 2015 ("EL(MA)Bill 2015") was introduced into LegCo on 22 April 2015, making technical amendments concerning the electorate of FCs (e.g. updating the names of the bodies which had their names changed and removing bodies which had

ceased operation since the previous updating exercise)⁴, the name of an FC⁵, counting procedures and textual errors for the 2016 LegCo election. The EL(MA)Bill 2015 was passed on 13 July 2015.

The Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015

11. In order to improve the clarity of relevant provisions, and to align the electoral arrangements of different public elections, the Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015 ("EL(MA)(No.2)Bill 2015") was made which sought to introduce technical amendments to various pieces of electoral legislation to, among others, update the electorate of the Election Committee subsectors ("ECSSs") and their corresponding FCs.⁶ The EL(MA)(No.2)Bill 2015 was introduced into LegCo on 16 December 2015 and was passed on 2 June 2016.

Major issues raised by Members regarding the 2016 and the 2020 Legislative Council General Elections

Electorate base of functional constituencies

12. Some Members expressed concern as to whether the Government had any plan to consider expanding the electorate base of FCs to enhance the representativeness of FCs by amending LCO. When the Panel was consulted on the EL(MA)Bill 2015 at its meeting on 16 March 2015, some Members expressed grave concern that the implementation of all the proposed amendments for FCs would bring about an estimated net increase of additional electors of not more than 100 only. 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.

⁴ The Administration's proposals involved making only necessary technical amendments in updating the electorate of FCs under LCO as set out in Annex B to the LegCo Brief (File Ref: CMAB C1/30/5/4).

⁵ Renaming the Architectural, Surveying and Planning FC as the Architectural, Surveying, Planning and Landscape FC to better reflect the current composition of the FC (i.e. architects, surveyors, planners and landscape architects).

⁶ The Administration's proposals involved making only necessary technical amendments concerning the lists of persons comprising certain ECSSs and their corresponding FCs. These technical amendments included one new body, changing the names of 11 bodies, and removing seven bodies which had ceased operation since the previous updating exercise. Details were set out in Annex B to the LegCo Brief (File Ref: CMAB C1/30/5/4/1).

13. The Administration further advised that the public consultation exercise on the "Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016" conducted in 2013-2014 had also sought public views on the composition and electorate of FCs. Among the written submissions received, there was relatively little discussion regarding the electorate of FCs. Besides, many people considered that given the substantial changes introduced to the method for forming LegCo in 2012, there was no need for making major changes to the method for forming LegCo in 2016. The Administration was of the view that in the absence of clear consensus in the community, no major changes should be made to the electorate of FCs.

14. During the scrutiny of the EL(MA)(No.2)Bill 2015, some Members gave notice to move amendments to the Bill to expand the electorates of the Financial Services FC, the Information Technology FC, the Insurance FC and the Finance FC. The Administration objected to these amendments on the grounds that they were not technical in nature and went far beyond the scope of the Bill. The proposed amendments were ruled inadmissible by the President of LegCo.

Article 68 of the Basic Law

15. Some Members expressed the view that the "principle of gradual and orderly progress" in BL 68 would be 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 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 the Basic Law provided that all LegCo Members would ultimately be returned by universal suffrage. They considered that 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.

16. The Administration explained that according to the Decision, the existing formation method for LegCo as prescribed in Annex II to the Basic Law 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 the Basic Law was to be amended.

Geographical Constituencies

17. The Declaration of Geographical Constituencies (Legislative Council) Order 2015 was made in October 2015 proposing to change the numbers of Members to be returned in two GCs for the Sixth LegCo without changing the delineation and names of the existing five GCs.⁷ Members were concerned that given the extremely large area of New Territories West ("NTW"), Members returned by that GC would face immense difficulties in servicing their constituents. There was a suggestion that consideration should be given to increasing the number of GCs to six, and re-delineating the New Territories ("NT") GCs into three GCs in such a way that the 18 seats (i.e. the total number of Members to be returned for New Territories East and NTW) would be evenly distributed among the three NT GCs, with each getting six seats. There was also a suggestion that consideration might be given to amending LCO to adjust the maximum number of Members to be returned for each GC so that more seats could be allocated to NTW.⁸

18. The Administration explained that the number of GCs was among the issues covered in the Consultation Document on the Methods for Selecting CE in 2017 and for Forming LegCo in 2016. However, the Administration did not receive many views from the public on the issue, whereas LegCo Members had expressed diverse views. Against this background, the Administration considered it appropriate to maintain the existing number of GCs for the 2016 LegCo General Election. Moreover, there would not be enough time at the present stage to introduce changes by amending LCO. Nevertheless, the Administration advised that it was open to any suggestion of adjustments to be made in the long run and would be pleased to explore any suggestion put forward by LegCo and the public.

Polling hours

19. When the Panel discussed the Consultation Report on Review of Electoral

⁷ The details of the Order are set out in the table below-

Name of GC	Number of Members	Change to the number of Members returned for each GC for the Fifth LegCo
Hong Kong Island	Six	Decreased by one
Kowloon West	Six	Increased by one
Kowloon East	Five	Unchanged
New Territories West	Nine	Unchanged
New Territories East	Nine	Unchanged

⁸ LCO stipulates that each GC has to return at least five and no more than nine Members.

Arrangements at its meeting on 21 May 2018, some Members considered that Hong Kong's polling hours were the longest as compared to other countries and regions and that the polling hours should be slightly shortened.⁹ On the other hand, some other Members opposed shortening the polling hours and supported maintaining the status quo.

20. The Administration reverted to the Panel that the present polling hours of LegCo and District Council elections should be maintained for the time being. Nevertheless, the Administration undertook to study a host of issues related to polling hours, including the feasibility of extending the time of procurement of venues for setting up as polling and counting stations, use of information technology in the counting process, and formulating alternative arrangements for electors who were unable to go to polling stations in person on the polling day to vote due to the shortening of polling hours, etc. The Administration advised that it would critically examine the various operational details and legal issues involved, with an aim to ensuring that elections were conducted in a fair, open and honest manner. The Administration undertook to proactively study and follow up on these issues, with a view to realizing some of the measures as early as in the 2020 LegCo General Election.

Recent development

21. The Administration will consult the Panel on the proposed legislative amendments regarding the 2020 LegCo General Election at the next meeting on 21 January 2019.

Relevant papers

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

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⁹ The Government launched a public consultation exercise from 13 November to 29 December 2017 to gauge the views of the public on three issues related to electoral arrangements, namely, the regulation of election advertisements published through the Internet (including social media), the regulation of election surveys, as well as the polling hours.

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 on legislative amendments regarding the 2020 Legislative Council General Election

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	16 March 2015 (Item III)	Agenda Minutes
House Committee	13 November 2015	Report of the Subcommittee on Declaration of Geographical Constituencies (Legislative Council) Order 2015
CA Panel	21 May 2018 (Item IV)	Agenda Minutes

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