

立法會 *Legislative Council*

LC Paper No. CB(2)656/2023

Ref.: CB2/BC/3/23

Report of the Bills Committee on District Councils (Amendment) Bill 2023

PURPOSE

This paper reports on the deliberations of the Bills Committee on District Councils (Amendment) Bill 2023 (“the Bills Committee”) and the Subcommittee to Study the Proposals for Improving District Governance and Related Matters (“the Subcommittee”).¹

BACKGROUND

2. The Administration announced the proposals on improving governance at the district level (“the proposals”) on 2 May 2023.² According to the Administration, since the start of the sixth-term District Councils (“DCs”) in 2020, a large number of DC members acted against and grossly beyond the functions of DCs as district advisory bodies. Many DC members undermined national security; advocated the so-called “independence” of Hong Kong; supported the black-clad violence; objected to the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region; unscrupulously interfered with and obstructed the administration of the Government; created confrontations; ignored the livelihood of people; harmed the well-being of Hong Kong residents; undermined the interest of Hong Kong, and so on and so forth. Some 300 DC members refused to take oath and hence resigned

¹ At its meeting on 5 May 2023, the House Committee decided that a subcommittee be appointed thereunder to first study the Government’s proposals for improving district governance and related matters, and that after the relevant bill was presented to the Council, the Subcommittee would become a Bills Committee which would scrutinize the bill. To facilitate the continuity of work, the membership of the Bills Committee would be the same as that of the Subcommittee.

² Details are set out in the Legislative Council Brief issued by the Home and Youth Affairs Bureau and the Constitutional and Mainland Affairs Bureau on the same day: https://www.legco.gov.hk/yr2023/english/brief/hyab20230502_20230502-e.pdf.

with various excuses, or were disqualified for making invalid oaths. Of the 479 members, only one-third, equivalent to 146 seats are still filled by serving members. According to the Administration, it is utterly unacceptable that a large number of DC members did not accept the sovereignty and the exercise of sovereignty of the People's Republic of China over Hong Kong. The Administration must restore the institution to the right track. Apart from reforming the DCs, there is also a need to fundamentally improve the district governance structure. The guiding principles and highlights of the proposals are set out in **Appendix 1**.

THE DISTRICT COUNCILS (AMENDMENT) BILL 2023

3. According to the Legislative Council Brief (File Ref: CMAB C2/22/1) issued by the Constitutional and Mainland Affairs Bureau and the Home and Youth Affairs Bureau (“HYAB”) on 30 May 2023, in order to improve and enhance the efficacy of district governance, the Chief Executive-in-Council approved the proposals at the meeting of the Executive Council on 2 May 2023, and agreed to implement the proposals by amending the relevant legislation and putting in place administrative arrangements. The Administration would amend legislation to implement the following proposals to reform DCs, including:

- (a) enhance the advisory and service functions of DCs;
- (b) designate District Officers (“DOs”) as DC Chairmen, and empower them to lead the work of DCs;
- (c) optimize the composition of DCs, set the corresponding methods of filling those seats, and introduce an eligibility review mechanism; and
- (d) introduce a performance monitoring mechanism for DC members, which includes investigating DC members whose behaviour falls short of the public expectation and imposing sanctions according to the severity of the case.

4. The District Councils (Amendment) Bill 2023 (“the Bill”) was published in the Gazette on 30 May 2023 and introduced into the Legislative Council (“LegCo”) on 31 May 2023. The object of the Bill is to amend the District Councils Ordinance (Cap. 547), its subsidiary legislation and other related legislation to:

- (a) revise the functions and composition of DCs;

- (b) establish the District Council Eligibility Review Committee (“DCERC”);
- (c) provide for the mechanism for sanctioning misconduct of DC members; and
- (d) provide for related matters, and make minor technical amendments.

THE BILLS COMMITTEE ON DISTRICT COUNCILS (AMENDMENT) BILL 2023

5. Given that the current term of DCs would expire at the end of this year and hence, very limited time available for studying the proposals and scrutinizing the relevant bill, the House Committee (“HC”) agreed at its meeting on 5 May 2023 to accept Hon CHAN Hak-kan’s proposal to appoint a subcommittee under HC to first study the proposals and that after the Bill was presented to LegCo, the Subcommittee would become a Bills Committee which would scrutinize the Bill. HC further agreed that members of the Subcommittee would automatically become members of the Bills Committee, with the Chairman and Deputy Chairman of the Subcommittee still serving as the Chairman and Deputy Chairman of the Bills Committee, to facilitate the continuity of work.

6. The Subcommittee consisted of 15 members. Hon Martin LIAO and Ir Dr Hon LO Wai-kwok were elected as the Chairman and Deputy Chairman of the Subcommittee respectively. The membership list of the Subcommittee is in **Appendix 2**. Upon the introduction of the Bill into LegCo on 31 May 2023, the Subcommittee became a Bills Committee pursuant to the aforesaid decision of HC. The membership of the Bills Committee is the same as that of the Subcommittee (in **Appendix 3**). From 12 May 2023 to 13 June 2023, the Subcommittee and the Bills Committee have held a total of 11 meetings to discuss the Bill with the Administration.

DELIBERATIONS OF THE BILLS COMMITTEE AND THE SUBCOMMITTEE

Long title and general principles of the Bill

7. Noting that in the long title of the Bill as well as the proposed amended District Councils Ordinance (Cap. 547), the words “functions” and “composition” in the expression “to revise the functions and composition of District Councils” are in the reverse order to that in the existing long title of

Cap. 547, members have asked the Administration for the reasons of such a change. Moreover, members have enquired about the reasons and justifications for the use of “functions” (職能), instead of “powers and functions” (職權) as stated in Article 98 of the Basic Law (“BL”), when referring to the functions of DCs. It is suggested that consideration be given to replacing “functions” (職能) with “powers and functions” (職權).

8. The Administration has pointed out that it was the Subcommittee’s view that given its importance, the existing section 61 of Cap. 547 on “Functions of a District Councils” should be placed at the forefront of the Ordinance. In response to this view, the Administration has proposed to amend Part II of Cap. 547 by replacing the existing section 61 with the proposed new section 4A, which will precede the new section 5 on “Composition of District Councils”. The relevant change in the long title is made to reflect such a change in the order of the provisions. The Administration has further explained that the use of the term “functions” in the Bill and other related proposed amendments follows the existing references in Cap. 547. Under section 2 of Cap. 547, the interpretation of the term “function” (職能) includes a “power” (權力) and an “authority” (權限), thus has the same legal effect as the reference in BL 98.

9. Opining that some major aspects in the reform of DCs are missing in the formulation of the long title of the Bill, such as the designation of DC Chairmen and changes to the relevant procedures, members have suggested that the Administration should consider suitably incorporating these matters in the long title. The Administration has advised that the expression “to provide for related matters” in the existing long title would have already covered in general various amendments related to matters concerning DC Chairmanship as raised by members.

Commencement (Clause 1 of Part 1 of the Bill)

10. Members are concerned that as clause 1(2) of the Bill does not specify which provisions of the Bill are to fall under the criterion set out in clause 1(2)(a), namely “for the purpose only of enabling arrangements to be made for the constitution of the seventh term of office of the District Councils”, it would be difficult for members of the public to grasp clearly which provisions of the Bill would come into operation on the day of gazettal and which ones would come into operation on 1 January 2024 under clause 1(2)(b). In addition, some members have enquired whether the proposed amendments in the Bill would apply to subsequent terms of office of DCs if clause 1(2)(a) only makes reference to the seventh-term DCs.

11. The Administration has explained that clause 1(2) of the Bill is intended to specify two commencement dates for the provisions of the Bill for the different purposes stated respectively in clause 1(2)(a) and (b), meaning that a provision serving more than one purpose can have two commencement dates. It is thus considered not appropriate to simply list out which provisions are to come into operation in accordance with clause 1(2)(a) or (b). For example, in respect of the provisions in the Bill relating to amendments to the composition of DCs, as the term of office of the seventh-term DCs will commence on 1 January 2024, the provisions would only come into operation on 1 January 2024 for the purpose of the commencement of the seventh-term DCs. That said, as it is necessary for enabling arrangements be made to prepare for the constitution of the seventh-term DCs, the same provisions can take effect on the date of gazettal for the purpose of making such preparation arrangements. It is further pointed out that the amendments in the Bill will apply to DCs after the seventh term, and the formulation of clause 1(2)(a) is only intended to allow for the making of enabling arrangements for the constitution of the seventh-term DCs.

12. It is pointed out that the meaning of the expression “the constitution of the seventh term of office of the District Councils” in the English text of clause 1(2)(a) of the Bill might be different from the expression “為使組成第七屆區議會的任期” in the Chinese text of the Bill. The English text might be construed as the constitution of the seventh-term DCs, while the Chinese text could be construed as the constitution of the term of the seventh-term DCs. Members have called on the Administration to clarify the drafting of clause 1(2)(a). Some members have suggested deleting “的任期” in the Chinese text or deleting “the constitution of” in the English text to make the meaning of the provision more complete and fluent. Having considered members’ view, the Administration will propose amendments to amend the provision by deleting “的任期” in the Chinese text and deleting “of office” in the English text. The amendment will also make the same amendments to other provisions in the Bill with reference made to “組成第七屆區議會的任期” in the Chinese text or to “the constitution of the seventh term of office of the District Councils” or “constituting the seventh term of office of the District Councils” in the English text.

Functions of District Councils

13. Some members have expressed concern that at present, the functions of DCs as expressed under section 61 of Cap. 547 are rather general. This has, in the past, enabled some DC members who were bent on opposing the Government to obstruct policy implementation through

various district issues. Members have enquired how the Administration will amend that section, so that DCs can return to their functions as stipulated in BL 97. The Administration has responded that the provision of section 61 of Cap. 547 will be amended in accordance with the principles laid down in BL 97 so that the work of DCs when being consulted by the Government on district administration and other affairs will be more specifically defined. The relevant details are set out in paragraph 15 of the Legislative Council Brief on Improving Governance at the District level issued on 2 May 2023. The Administration has further advised that as the reformed DCs will be more in tune with public sentiment and views, policies can be formulated to better respond to public aspirations and benefit the people.

14. Members have agreed that by complementing each other and performing their respective functions well, the reformed DCs, together with the District Committees (i.e. the District Fight Crime Committees (“DFCCs”), the District Fire Safety Committees (“DFSCs”) and the areas committees (“ACs”) collectively) and the District Services and Community Care Teams (“Care Teams”), will help strengthen governance at the district level and serve as good partners of the Government. However, some members have expressed concern that the original functions of DCs may be reduced, and that there may be an overlap in functions or operational incompatibility among DCs and the District Committees.

15. The Administration has advised that to provide stronger support for the Government’s work at the district level and enhance the Government’s capability to mobilize district networks, as well as to manifest executive-led governance, DCs, the District Committees and Care Teams will all be led directly by the Government to perform their respective functions to achieve a flat and efficient organization structure. The services of DFCCs and DFSCs focus on crime fighting and fire safety respectively, whereas members of ACs advise DOs on area affairs on the basis of their respective backgrounds, expertise and knowledge of the district. Care Teams support the Government’s work at the district level in areas such as assisting in the provision of support services during epidemics, typhoons, floods, etc., and organize caring activities regularly to help the needy and promote solidarity and mutual support, with a view to fostering community cohesion.

16. The Administration has also stressed that instead of having their functions reduced, the reformed DCs will be able to perform more effectively their role when being “consulted by the government of the Region on district administration and other affairs” as stipulated in BL 97. Citing the implementation of policies that will have a direct impact at the district level (such as the policy on municipal solid waste charging) as an example, the

Administration has pointed out that DCs can communicate with local residents on the policy, gain an understanding of the actual implementation of the policy, and then relay the collected views to DOs. If there is any special need in the local community for implementing the policy, DOs can also coordinate the provision of relevant support services by Care Teams. Individual DC members can also continue to perform their advisory functions by receiving public views and enquiries on the relevant policies.

17. Responding to some members' concern about the future relationship between the reformed DCs and various district sports associations or arts advancement associations, the Administration has replied that district sports associations and arts advancement associations emerged in the 1990s to promote sports, culture and arts development at the district level. As these associations have all along been making applications to the respective District Offices for funding under the Community Involvement ("CI") Programme to organize activities, their work will not be affected by the efforts to strengthen the district governance structure.

18. To better reflect the positioning of DCs as district organizations which are not organs of political power as stipulated in BL 97, some members have suggested that consideration be given to renaming DCs as "District Consultative Councils" (地區諮詢議會) or reverting to the former name of "District Boards". The Administration has advised that when formulating the proposals, consideration had been given to renaming DCs in order to reflect more accurately their positioning. However, as the name has been used for a very long time and become widely recognizable, the Administration has decided after careful consideration that the name of DCs should be maintained to avoid causing a sense of anonymity among members of the public.

Functions of District Councils (Clause 6 of Part 2 of the Bill)

19. Members note that clause 6 of the Bill proposes to add section 4A to Cap. 547 to set out the functions of a DC of a District which include:

- (a) to be consulted by the Government on the district affairs affecting the livelihood and living environment in the District and the well-being of the people in the District;
- (b) to collect the views of the people in the District in respect of an issue specified by the Chairman of the DC, and to submit to the Government a summary of the views collected and the suggested corresponding measures;

- (c) to establish a regular communication mechanism with the people in the District, to meet with them and listen to their views regularly;
- (d) to support, and assist in, the promotion of laws and Government policies in the District, and assist the Government in carrying out various consultation, publicity and liaison activities, such as district forum;
- (e) to assist in the smooth delivery of cultural, recreational and environmental sanitary and other services relating to the interests of the people in the District under the coordination of the Government;
- (f) to apply for funding for projects and activities such as—
 - (i) those for the purpose of promotion of sports, arts and culture;
 - (ii) local events and celebrations events; and
 - (iii) greening and volunteer work;
- (g) to provide services for people in the District, such as consultation and case referral services;
- (h) to cooperate with other consultation and service organizations in the District under the coordination of the Government to achieve the best results in serving people in the District; and
- (i) to undertake any other matters as commissioned by the Government from time to time.

20. Members have opined that in the past, DCs all along had the power to advise the Government on district affairs on their own initiative, but according to the functions set out in the proposed new section 4A(a) of Cap. 547, DCs can only wait “to be consulted by the Government”, and such a role may be too passive. Members have thus suggested that words to the similar effect of “and to advise the Government” be added to the proposed new section 4A(a) of Cap. 547. There is also a view that apart from cultural, recreational and environmental sanitary services referred to in the proposed new section 4A(e) of Cap. 547, more service areas that are of concern to the people in the districts, such as transport and housing facilities, etc. should also be covered in the provision.

21. The Administration has pointed out that the functions of DCs, as expressed in the proposed new section 4A of Cap. 547, are meant to revert the functions of DCs to the positioning stipulated in BL 97 in respect of DCs' functions. The reference to cultural, recreational and environmental sanitary services is made to mirror the relevant functions of DCs as set out in BL 97 as the formulation of section 4A (including section 4A(e)) of Cap. 547 must be consistent with BL 97.

22. The Administration has advised that DC members can still advise the Government on various district affairs. For example, according to the proposed new section 4A(b) and (c) of Cap. 547, DCs may collect the views of the people in the districts in respect of an issue specified by the DC Chairman and submit the views collected to the Government; and establish a regular communication mechanism with the people in the Districts, meet with them and listen to their views regularly. DC members can submit papers or proposals pertaining to the well-being of the people in the Districts in accordance with the standing orders for meetings of DCs, and DC Chairmen may approve for discussion at DC meetings matters which he considers to be consistent with the functions of DCs. In addition, members of the reformed DCs are required to execute and implement the tasks and work indicators assigned by DC Chairmen (including meeting with citizens regularly, assisting in arranging district consultation forums or residents' meetings for public opinion collection, providing feedback to DC Chairmen, regularly submitting work reports, etc.), so that the views of the people in the districts can be conveyed to the Government.

23. There is an enquiry on whether, under the proposed new section 4A of Cap. 547, two DCs can jointly discuss and follow up certain cross-district issues that are of concern to local residents, such as the coordination of ancillary transport arrangements. The Administration has replied that DCs can certainly discuss cross-district issues with implications on the well-being of the people in the districts. Under the improved district governance structure, the Steering Committee on District Governance ("SCDG") will lead at the top level, with the Task Force on District Governance ("TFDG"), to be chaired by the Deputy Chief Secretary for Administration ("DCS"), taking on a coordination role, in order to better attend to cross-district affairs.

24. Some members have expressed concern about the functions of the reformed DCs in relation to the District Minor Works ("DMW") Programme or the Rural Public Works ("RPW") Programme. Members have been advised that since the Administration took back the funding authority of DCs over DMW and RPW Programmes in 2021, these programmes have been steered by DOs who would consult DCs when necessary. DMW projects

will be covered under the proposed new section 4A(a) of Cap. 547, enabling DCs to continue taking forward such programmes under the said approach.

25. Some members have pointed out that district affairs as defined in the proposed new section 4A(a) of Cap. 547 include the term “livelihood”. As the term is rarely used in other Hong Kong legislation, it may lack a generally-accepted legal definition, while its meaning may also overlap with the term “living environment” which follows immediately. On the contrary, issues of great importance to the local residents, such as district and transport facilities, have not been mentioned in the provision. Hence, they have enquired about the purpose of drafting the provision in such a way. The Administration has advised that DCs must ensure the well-being of the people in the districts, and “livelihood” is closely linked to “well-being”. On the other hand, as living environment is also an issue frequently discussed in DCs, the relevant term is included in section 4A. All in all, the Administration is of the view that the current provision is sufficiently clear in meaning and adequate in its coverage over district issues that are of concern to members.

26. Expressing concern about whether the proposed new section 4A(b) of Cap. 547, which appears to refer to a function of the DC Chairman as drafted, would overlap in meaning with the provisions in the proposed amended Part VI of Cap. 547 on the functions of a DC Chairman, members have enquired whether the reference to “the Chairman” can be deleted from section 4A(b). In response, the Administration has stressed that the reference to the DC Chairman is absolutely necessary in this section, so as to clearly provide for the new power vested with DC Chairmen under the current legislative amendment exercise to specify the relevant issues and avoid an recurrence of cases in the current-term DCs where issues inconsistent with the functions of DCs have been raised by DC members. Therefore, the reference to “the Chairman” cannot be deleted in this section.

27. Members have noted that while it is provided under the proposed new section 4A(c) of Cap. 547 that a DC of a District should establish a regular communication mechanism with the people in the District, to meet with them and listen to their views regularly, there is no mention about follow-up actions in this section. Members have suggested amending section 4A(c) by adding “and relay such views to the Government as appropriate”. The Administration has advised that DOs as DC Chairmen would make standing orders for meetings to regulate the relevant work. In addition, DC members can relay views on various district affairs to the Government, submit papers or motions for discussion by DCs, and write to government departments to follow up the relevant matters.

28. There is concern that the scope of funding under the proposed new section 4A(f) of Cap. 547 covers three types of projects and activities, and environmental sanitation services referred to in BL 97 is not one of them. According to the Administration's explanation, the three types of funding items are only examples, and applications for other types of projects and activities can also be made as long as they are consistent with the functions of DCs. In view of the Administration's response, there is a suggestion from members that consideration be given to amending section 4A(f) to read "to apply for funding for projects and activities that are consistent with the functions of the District Council" without the need of giving examples. If examples are to be provided, then words to the effect of "including but not limited to" should be included. There is also a suggestion that a fourth example be added in relation to "those for helping to promote specific government policies". Having considered members' views, the Administration will propose amendment to the provision to specify that DCs may apply for funding for projects and activities relating to the functions of DCs.

29. Members have opined that the Administration's explanation on the legislative intent of the proposed new section 4A(f) of Cap. 547 is very important and must be clearly conveyed to all DCs. In response, the Administration has advised that the relevant provisions in the standing orders for meetings to be formulated will suitably reflect the legislative intent of the section.

30. Some members have expressed the view that given the good cooperation between DCs and the Administration in the past for the implementation of DMW and RPW projects, the function of DCs in reflecting public views should not be overlooked. It is hoped that the Administration could elaborate on the future funding arrangements for these projects, including whether consideration would be given to vesting the relevant funding authority back to DCs upon their return to normalcy.

31. The Administration has advised that under BL 97, DCs, which are not organs of political power, should not have any power to approve funding. In October 2021, the Administration took back the authority to vet and approve funding for DMW Programme, RMW Programme and CI Programme, with DOs being tasked to consider, vet and approve funding applications for projects under the said Programmes. In future, the Administration will continue to be responsible for vetting and approving funding applications and consult DCs on these projects, so that public opinion can be fully reflected.

32. Members have enquired whether the reference to "undertake" in the proposed new section 4A(i) of Cap. 547 means that DCs must properly

handle those matters as commissioned by the Government, or that DCs would only be consulted on the relevant matters. While there is a view that this provision should confine “matters as commissioned by the Government” to district-related matters, there is another view that it would be appropriate to adopt more open wording for this provision such that, say, DC Chairmen would be empowered to assign different tasks to DCs. The Administration has replied that the provision is intended to enable the Government to commission DCs to deal with matters not covered by section 4A(a) to (h). The subject matter of the commissions would be based on BL 97 as the overarching principle.

Designation of District Officers as District Council Chairmen and the powers of District Council Chairmen

District Officers to be Chairmen of District Councils (Clause 57 of Part 2 of the Bill)

33. To ensure executive-led governance, the Administration has proposed that after the reform, the DC Chairmanship will be taken up by DOs, instead of being elected by members among themselves. Clause 57 of the Bill seeks to amend section 62 of Cap. 547 to provide that the DO of a District is to be the Chairman of the DC of the District. As there will not be Vice-chairman in DCs, clause 59 amends the existing sections 66 and 67 of Cap. 547 correspondingly to specify the responsibility of the DC Chairman to preside at the meetings and the Chairman’s voting rights. Clauses 61 to 64 of the Bill seek to amend the existing sections 68, 69 and 71 of Cap. 547 and add section 71A to Cap. 547 to specify the powers transferred from DCs to DC Chairmen, and provide for a new power of DC Chairmen. These include:

Powers transferred from District Councils to District Council Chairmen

- (a) to make standing orders for regulating the procedure of the DC and its committees;
- (b) to appoint a public officer to act as the secretary of the DC and determine the duties of the secretary for the purpose of carrying out the functions of the DC;
- (c) to appoint committees, appoint to the committee any person who is not a DC member, and appoint a member of the committee who is also a member of that DC, as the chairman of the committee; and

New power

- (d) to require members of the DC to collect the views of the people in the District concerned in respect of an issue specified by the Chairman.

34. The Administration has explained that these arrangements can ensure that the Government has control over consultation on district affairs, and can bring about DCs' support and assistance in promoting Government policies, to assist in handling problems and complaints in the districts, and to collaborate with the District Committees and Care Teams under the Government's lead.

35. Some members have enquired about the arrangements for discharging the duties of DC Chairman when the DO concerned is absent from work due to vacation or reasons such as sickness. In response, the Administration has pointed out that generally speaking, when the DO of a District is absent from work due to vacation or other reasons, an Assistant District Officer ("ADO") of the same District or a DO of another District will act in and perform the duties of such office. It has also been pointed out that although the proposed amended section 62 of Cap. 547 does not specify that an Acting DO can hold the office of DC Chairman of the District concerned, under section 54 of the Interpretation and General Clauses Ordinance (Cap. 1), in any Ordinance, instrument, warrant or process of any kind, any reference to a public officer, or to a person holding a public office by a term designating his office, shall include a reference to any person appointed to act in or perform the duties of such office, or any part of such duties, for the time being. As such, "the District Officer" referred to in section 62 already includes the person who acts in and performs the duties of such office. At present, the relevant acting appointments will be announced in the notices of the bureau/department. The Administration has advised that consideration will be given to informing DC members of the acting appointments of DOs through the DC Secretariats.

36. Some members have expressed concern about whether ADOs are capable enough to act up as DOs and competent enough to be DC Chairmen because many of them are relatively inexperienced. There have also been views that under the strengthened district governance structure, while DOs serving as DC Chairmen will play a significant role in concurrently taking up the responsibilities of monitoring the performance of DCs and steering Care Teams, their current ranking, pitched at the level of Administrative Officer Staff Grade C in the Administrative Officer Grade of the civil service, may not adequately reflect the importance of their work. Pointing out that Administrative Officers will undergo job rotation every few years

for posting change, some members have expressed concern about whether DOs would have enough time to build good and enduring working relationships with local personalities, so as to ensure good governance at the district level. They have further sought the Administration's view on whether consideration will be given to allowing candidates outside the civil service to fill the posts of DOs.

37. In response, the Administration has pointed out that it will continue to select suitable civil servants to serve as DOs through the existing well-established mechanism and provide them with appropriate training to enhance their capabilities. It will also continue to review various measures to enhance governance at the district level, including the ranking of DO posts. HYAB and the Home Affairs Department ("HAD") will work as a team and make concerted efforts to ensure the provision of adequate support for the work of DOs. In addition, the district governance structure will be strengthened to enhance the Government's leadership and coordination in district governance. The Administration has further advised that within the civil service system, contents and progress of the tasks performed are well documented, and handover arrangements are made in an orderly manner, thereby facilitating work continuity with enhanced reliability. That said, the Administration is aware of various suggestions in the community about the candidates for DOs, as well as HAD's manpower deployment. After implementation of the proposals for improving district governance, it will continue to review their effectiveness and make the most appropriate arrangements.

Chairman may make standing orders (Clause 61 of Part 2 of the Bill)

38. Highlighting the importance of the standing orders on regulating DC meetings, members have pointed out that the existing standing orders of DCs have been amended beyond recognition. Hence, there is a suggestion that section 68 of Cap. 547 should be further amended to provide that DC Chairmen *must* make standing orders, instead of *may* make standing orders. In response, the Administration has pointed out that the proposed amended section 68 of Cap. 547 is an enabling provision, which empowers the Chairman of a DC to make standing orders. In general, legal provisions of an empowering nature would use the word "may". While stressing that amendments must be made to the standing orders of DCs in order to give effect to various provisions of the proposed amended Cap. 547, the Administration has also explained that HYAB and HAD will formulate a set of standardized standing orders for the 18 DCs, as well as draw up the relevant guidelines, including those on the behaviour of DC members and the list of negative behaviour.

39. Members have enquired whether the Administration will add a provision to the proposed amended section 68 of Cap. 547, stipulating that the decisions of a DC Chairman are final, so as to facilitate the handling of disputes which might arise during the meetings and enable the smooth conduct of meetings. The Administration has advised that when making the standing orders, due consideration would be given to the views expressed by members, as well as the need for such a requirement. The Administration has further advised that as the behaviour of DC members during meetings will be subject to the performance monitoring mechanism to be introduced for DC members, it should help towards the smooth conduct of meetings.

40. Some members have suggested amending the heading of section 68 of Cap. 547 to read “Chairman may make and amend standing orders” to prepare for the making of necessary amendments to the standing orders in future. In response, the Administration has pointed out that the power to make an instrument already includes the power to amend the said instrument under section 46 of Cap. 1.³

41. Some members have taken the view that when making the standing orders for regulating the proceedings of DC meetings, due regard should be given to the handling of various contingencies, including the situation where the DC Chairman must withdraw from and stop presiding at the meeting due to a conflict of interest in the item under discussion. Pointing out that DC Chairmen, like other DC members, may have conflicts of interest, some members have enquired whether declaration of interest forms of DOs will be made open for public inspection.

42. The Administration has responded that in accordance with the relevant requirements of the civil service, DOs should declare their investments as well as properties under their names on an annual basis for review by the Director of Home Affairs (“DHA”). On realizing that a potential conflict of interest may arise in relation to a specific agenda item prior to a DC meeting, the DO concerned should make a declaration to DHA before the meeting. DHA will then decide whether the DO should withdraw from the meeting and an acting appointment be made. The declaration of interests and acting appointment made under such circumstances will be made public. The Administration has advised that the standing orders will specify the way of handling situations where a DC Chairman can no longer preside at the meeting and when conflicts of interest have arisen.

³ Under section 46 of Cap. 1, where any Ordinance confers power upon any person to make an instrument, such power shall include power to amend such instrument.

Committees of a District Council (Clause 63 of Part 2 of the Bill)

43. To reflect the power of DC Chairmen, some members have suggested amending section 71(5) of Cap. 547 to read “The Chairman of a District Council may delegate any functions of a District Council to a committee.” However, there is a view that as some functions of DCs are statutory functions, the Administration must carefully consider whether the Chairman of a DC or the DC as a whole is in the best position to decide on the delegation of individual functions of the DC. Views have also been expressed that it is inappropriate for an individual, and not the DC, to make such an important decision.

44. Members have pointed out that section 71 of Cap. 547 does not set out the legal basis for DCs or DC Chairmen to prescribe the terms of reference of the committees of DCs, while section 68(1) only provides that a DC Chairman may make standing orders for regulating the procedure of the DC and its committees. The Administration has advised that under the proposed amended section 71(1), a DC Chairman must appoint committees for the purpose of carrying out the functions of the DC. The existing section 71(5) also provides that a DC may delegate any of its functions to a committee.

45. Given that under section 71(2) of Cap. 547, any person who is not a DC member can be appointed to a committee of the DC, members have enquired how such members can carry out the assigned duties. The Administration has responded that under section 71(5), a DC delegates its functions to a committee, rather than members of the committee. As such, when a member of the committee who is not a DC member gives views to the committee, it does not mean that the said member has taken on the functions of a DC member.

Composition of District Councils

Composition of District Councils (Clauses 7 and 78 of Part 2 of the Bill)

46. Clauses 7 and 78 of the Bill seek to amend section 5 of and Schedule 3 to Cap. 547 to provide that the new term of DCs will comprise appointed members (maximum 179 seats), members elected in the District Committees Constituency (“DCC”) elections (176 seats) and District Council Geographical Constituency (“DCGC”) elections (88 seats), and ex officio members (27 seats). The provisions also specify the number of seats to be filled by the respective composition methods in each DC. Clause 8 of the Bill seeks to add section 5A to Cap. 547 to establish a DCC for each DC.

The DCC of a DC is composed of all members of the District Committees of the District.

47. Clause 84 of the Bill seeks to add Schedule 8 to Cap. 547 to prescribe the names and boundaries of the 44 DCGCs for the seventh-term DCs. Clause 97 of the Bill seeks to amend section 18 of the Electoral Affairs Commission Ordinance (Cap. 541) to suspend the statutory function of the Electoral Affairs Commission (“EAC”) to review the DCGC boundaries for the seventh-term DCs. Clause 99 of the Bill seeks to amend section 20 of Cap. 541 to specify the delineation criteria for future DCGC boundaries. On the basis of the composition of the seventh-term DCs, EAC should ensure that the total population in each of the DCGC of a District should not exceed or fall short of the average population of the District⁴ (instead of the population quota of Hong Kong⁵) by more than 25%. Starting from the eighth-term DCs, EAC will continue to perform its statutory function of reviewing the boundaries of DCGCs.

48. Members have generally supported the Administration’s proposed composition of DCs, under which DCs will be composed of appointed members, members returned at the DCC election and members returned at the DCGC election at a ratio of approximately 4:4:2 (“the 4:4:2 proposal”), plus 27 ex officio members. The Administration has advised that the 4:4:2 proposal is formulated after careful consideration, enabling DCs to be broadly representative and composed of representatives from different sectors of society with different expertise and district experiences. Such an arrangement can also attract capable persons of different professions and experiences to participate in district administration. This is conducive to reflecting the overall interest of each district and promoting balanced participation in DCs, thus enhancing the efficacy of governance at the district level. Upon the reformed demarcation, the existing geographical constituencies (“GCs”) of DCs will be merged into 44 larger constituencies. The DCGC members so elected will represent residents in a larger area, and hence will consider a bigger picture in discussions on district affairs and will attend to district issues at a more macro level. In addition, the introduction of appointed and DCC members should effectively rectify the problems of politicization and populism brought by DCGC members under the existing system, thereby overcoming silos of constituency interests and encouraging public policy discussions from a strategic perspective. DCs can also return to the livelihood-oriented positioning.

⁴ That is the total population of the District divided by the total number of members to be returned for all DCGCs in the District, which gives the average population per member of that District, and then times the number of members to be returned by the DCGC.

⁵ That is the total population of Hong Kong divided by the total number of members returned for all the DCGCs in Hong Kong.

49. Members have pointed out that according to some views, given the enlarged GCs, the workload of DC members will be increased substantially, thus requiring additional resources. The Administration has responded that the total number of DC seats under the 4:4:2 proposal is similar to the current level. When handling the work of DCs, DCGC members will work hand in hand with appointed members, DCC members and ex officio members, striving to serve the community with one accord. The Administration will also encourage DC members returned by different composition methods to cooperate and set up joint offices to achieve better cost-effectiveness and to provide advice on cross-constituency issues from a more comprehensive perspective.

50. Members have pointed out that there are views in the community that while in the past, the number of elected seats in DCs was increased at the expense of appointed seats to enhance the “democratic elements”, the weight of such under the 4:4:2 proposal can hardly compare with that under the existing composition of DCs. The Administration has stressed that under BL 97 and BL 98, the Hong Kong Special Administrative Region (“HKSAR”) has the greatest room to enact laws to regulate the specific powers and functions and method of formation of district organizations. The Basic Law does not stipulate that district organizations must be formed by election, meaning that it is not necessary for DCs to be formed by elections. Hence, any references to the so-called diminishing “democratic elements” of DCs as a result of the reduced number of elected seats or any claims that DCs are part of HKSAR’s democratic process is a complete misinterpretation of the original intent of the Basic Law.

51. Given that the DO of a District is to be the Chairman of the DC of the District, members have suggested adding the words “i.e. the ex officio Chairman of the District Council” towards the end of the proposed amended section 5(1)(a) of Cap. 547 to better illustrate the DO’s role. The Administration has responded that the provision is drafted in a more general sense, with reference made to the inherent arrangements of Cap. 547. In addition, the proposed amended section 62 of Cap. 547 has already specified that the DO is to be the Chairman of the DC.

52. Noting that in the proposed new Schedule 3 of Cap. 547, the “Number of appointed members” in Column 3 and the “Number of members to be returned for District Committees constituencies” in Column 4 are generally the same, except for Sha Tin DC, Kwai Tsing DC and Tuen Mun DC, members have enquired about the reasons. In response, the Administration has pointed out that as one seat in each of the aforesaid DCs will be allocated to ex officio members, the number of members to be returned for DCCs has to be adjusted accordingly.

53. Some members have asked whether the Chief Executive (“CE”) will make appointments to fill the vacancies of appointed DC members when the term of office of DCs is about to expire; and if so, whether such appointments will affect the quorum of meetings or lead to an adjustment in the total number of DC members in the district. In response, the Administration has pointed out that according to section 70 of Cap. 547, the quorum of a DC is not less than half the members of the Council holding office for the time being. In addition, according to section 72(2)(a) of Cap. 547, the validity of proceedings of a DC is not affected by a vacancy in the membership of the DC.

54. Members have asked whether persons across the political spectrum and persons of foreign nationality will be allowed to stand for DC elections. The Administration has pointed out that while according to the current legislation, a DC member must be a permanent resident of HKSAR, there is no nationality requirement, and neither is any change envisaged under the proposals in this regard. Furthermore, DCs must adhere to the principle of “patriots administering Hong Kong”. Persons across the political spectrum can stand for DC elections as long as they “are patriotic and have an affection for Hong Kong”, while being capable and dedicated to serving the community.

Consequential amendments (Clauses 11 and 99 of Part 2 of the Bill)

55. Members have enquired whether the scrutiny of LegCo is required for future amendments to Schedules 1, 2, 3 or 3A to Cap. 547 made under the proposed amended section 8(1) of the Ordinance. The Administration has advised that any future amendments to Schedules 1, 2, 3 or 3A will be presented to LegCo as proposed amendments to subsidiary legislation for scrutiny under the positive vetting procedure.

56. Referring to “any electoral law” stated in variable C⁶ of the formula in the proposed new section 20(1A) of Cap. 541, members have asked which exactly is that ordinance. The Administration has advised that according to the interpretation in section 2(1) of Cap. 541, “electoral law” means any law in force providing for the election of CE, LegCo Members, DC members, members of the Election Committee (“EC”) or Rural Representatives. Given that the proposed new section 20(1A) of Cap. 541 has clearly stated that the subsection is made “for the purposes of subsection (1)(c) and (d)”, and that subsection (1)(c) and (d) is related to DC

⁶ That is “the number of members to be returned by the proposed District Council constituency pursuant to any electoral law”.

constituencies, “any electoral law” hence refers to an Ordinance relating to DC elections, i.e. Cap 547.

Appointment procedures of appointed District Council members

Appointment procedures, qualifications and consequential amendments (Clause 14 of Part 2 of the Bill)

57. Clause 14 of the Bill seeks to add Division 1 of Part IV to Cap. 547 to provide for the appointment procedures for appointed DC members. Specifically, DHA may submit a proposal to appoint a person as a DC member to DCERC for it to decide whether the proposal is valid. CE may only appoint⁷ a person as a DC member if the proposal to appoint that person is decided as valid by DCERC.

58. Members have opined that many appointed DC members, on account of their professional background, can give invaluable suggestions on district affairs, while proactively helping to organize large-scale district activities and participating in district services. They can make significant contributions to the work of DCs. Members have enquired about the criteria for selecting appointed DC members, as well as the ways to ensure their delivery of due diligence. Members have suggested that consideration can be given to appointing local residents, workers in the district and representatives from micro, small and medium enterprises to DCs, so as to reflect views from different stakeholders in the districts. Some members have suggested that a certain ratio of DC seats can be allocated specifically to women, young persons and ethnic minority people in the district.

59. The Administration has advised that when appointing DC members, the most important principle is to select persons who are “patriotic and have an affection for Hong Kong”. The Administration will adhere to the principle of meritocracy and select suitable persons to serve as appointed members, having regard to the situation and the development needs of each district. Some factors for consideration will include a person’s political integrity, social representativeness and connections in the community. When appointing DC members, the Administration will tell them clearly the functions of DCs, as well as the performance requirements of DC members. If DC members accept the appointment, they will have to comply with the relevant requirements.

⁷ According to section 42(a) of Cap. 1, CE also has the power to “remove, suspend, dismiss or revoke the appointment of, and to re-appoint or reinstate, any person appointed in exercise of such power or duty”.

60. Members have enquired whether a person appointed as a DC member of a district must be a GC elector for that district. The Administration has responded that under the proposed new section 12(1)(b) of Cap. 547, a person who has registered as an elector in the existing GC register has satisfied one of the conditions for being appointed as a member and is not required to be a GC elector for that district.

61. Members have enquired whether “vacates office on 31 December” as expressed in the proposed new section 11(4) of Cap. 547 means to vacate office immediately at 00:00 on 31 December or including the whole day of 31 December until 23:59. In response, the Administration has pointed out that the term of office of DC members is up to the whole day of 31 December, meaning that they are still in office on 31 December. Members have found it confusing. Having considered members’ view, the Administration will propose amendment to the provision to improve its drafting.

62. Citing the requirement in the proposed new section 12(1)(e) of Cap. 547 where the person concerned must have ordinarily resided in Hong Kong for the three years immediately preceding the appointment, members have enquired about the relevant legal definition. The Administration has responded that this provision is in line with other provisions in Cap. 547 (such as section 20(1)(e)). “Ordinarily resident” is a legal concept commonly found in the laws of Hong Kong. In many precedent court cases, rulings have been made on this concept, with elaborations on how “ordinarily resident” should be interpreted and what the relevant factors of consideration are in different areas or contexts of law, such as having Hong Kong as one’s place of residence in principle, for conducting businesses, commercial dealings, etc. In view of the increasingly frequent exchanges between the Mainland and Hong Kong and the fact that some people may work and reside in both places, some members have called on the Administration to consider adjusting the requirement of having ordinarily resided in Hong Kong under section 12(1)(e) of Cap. 547. On the other hand, some members have indicated preference for narrowing down the “ordinarily resident” requirement to a specific number of days to avoid unnecessary disputes.

Eligibility and registration procedures of ex officio members of District Councils

Registration procedures for eligible ex officio members of District Councils (Clauses 15 and 16 of Part 2 of the Bill)

63. Clauses 15 to 19 of the Bill seek to amend Division 2 of Part IV of Cap. 547 to provide for the registration procedures for DC ex officio

members. Starting from the seventh-term DCs, the Chairmen of Rural Committees (“RC”) must submit a registration form to DHA and will only become an ex officio member of the DC after DCERC decides the registration to be valid. The Administration has pointed out that the term of office of the incumbent Chairmen of Rural Committees (“RC Chairmen”) has already commenced on 1 April 2023, while the term of office of the seventh-term DCs will commence on 1 January 2024. As the validity of registration of ex officio members of the seventh-term DCs must first be confirmed by the proposed new DCERC in accordance with the proposed new section 17B of Cap. 547, the relevant registration forms must be submitted to DHA by 1 December 2023 in accordance with the proposed new section 17A(7).

64. Members have enquired about the reasons for not specifying the deadline for RC Chairmen to submit the aforesaid registration forms after the commencement of the seventh-term DCs in the Bill. The Administration has advised that as the term of office of RC Chairmen is different from that of DCs, the proposed new section 19A of Cap. 547 has set out the circumstances under which the office of an ex officio member becomes vacant (such as for an RC Chairman who has been registered as an ex officio member, when his term of office as RC Chairman ends or when he otherwise ceases to hold office as RC Chairman, etc.). The provision also specifies that under the circumstances, the relevant person may be registered as an ex officio members in accordance with the provisions under the amended Division 2 of Part IV of Cap. 547. The Administration has explained that when drawing up the relevant registration arrangements, reference has been made to the registration arrangements for ex-officio EC members.

Establishment of the District Council Eligibility Review Committee

65. To ensure that the principle of “patriots administering Hong Kong” is fully implemented, the Administration has proposed that candidates participating in the DCC election and the DCGC election must confirm their eligibility through an eligibility review mechanism. For consistency, appointed and ex officio members will also be subject to eligibility review before taking office.

Establishment of the District Council Eligibility Review Committee (Clause 13 of Part 2 of the Bill)

66. Clause 13 of the Bill seeks to add Part IIIA to Cap. 547 to establish DCERC which is to consist of the chairperson, two to four official members, and one to three non-official members. Each member of DCERC is to be

appointed by CE by notice published in the Gazette. CE must report any appointment made to the Central People's Government for the record. DCERC is to review and confirm the eligibility of any person proposed to be appointed as a member, proposed to be registered as an ex officio member, or nominated as a candidate. Clauses 14, 16 and 119 seek to add sections 13 and 17B to Cap. 547 and amend section 16 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) to implement the relevant procedures. DCERC is to seek the opinion of the Committee for Safeguarding National Security of HKSAR ("CSNS") as to whether the person fails to meet the legal requirements and conditions on upholding Basic Law and bearing allegiance to HKSAR. If CSNS gives an opinion, DCERC must make the decision in accordance with it.

67. Some members have enquired about the reasons for the Administration's proposal to establish a new DCERC to review and confirm the eligibility of DC election candidates, instead of entrusting the duties to the Candidate Eligibility Review Committee of HKSAR ("CERC"), and the review criteria of DCERC. In reply, the Administration has pointed out that while Annexes I and II to the Basic Law state clearly that CERC shall be responsible for reviewing and confirming the eligibility of candidates for EC members, for the office of CE and for LegCo Members, CERC is not empowered to review the eligibility of candidates for DC members. Therefore, to ensure that the principle of "patriots administering Hong Kong" is fully implemented, it is proposed that DCERC be established to perform the work relating to eligibility review. With the Chief Secretary for Administration ("CS") as Chairman, DCERC will consist of two to four official members and one to three non-official members. Adopting the same review criteria as CERC, DCERC will review and confirm whether DC election candidates, appointed members and ex officio members have complied with the legal requirements and conditions of upholding the Basic Law and bearing allegiance to HKSAR, as well as other relevant statutory requirements.

68. Noting that the under the proposed new section 10A(1) of Cap. 547, "[a] District Council Eligibility Review Committee is established for the purposes of this Ordinance and such other purposes as may be prescribed by any other Ordinance", members have expressed concern about the very wide scope of the expression "such other purposes as may be prescribed by any other Ordinance". The Administration has explained that the proposed provision is drafted along the same line of the relevant provision in the Chief Executive Election Ordinance (Cap. 569) for the establishment of CERC. Section 9A(1) of Cap. 569 provides that "[a] Candidate Eligibility Review Committee is established for the purposes of Annexes I and II to the Basic Law, this Ordinance and such other purposes as may be prescribed by any other Ordinance". The Administration has pointed out that "any other

Ordinance” referred to in the proposed new section 10A(1) of Cap. 547 includes the Electoral Affairs Commission Ordinance (Cap. 541) and its regulations, which govern, inter alia, matters relating to DC elections.

69. Enquiries have been raised by some members that in case a DC candidate fails to pass the review of DCERC, whether the candidate will be informed of the reasons for the decision, and whether there are chances for remedy. The Administration has replied that if the DCERC has made the decision based on the ruling of CSNS that a candidate has not complied with the legal requirements and conditions of upholding the Basic Law and bearing allegiance to HKSAR, the candidate will be informed that DCERC has made its decision of ineligibility to stand for election on account of CSNS’ view, but the specific reasons will not be disclosed. Moreover, the said candidate will not be allowed to stand for any public elections within five years. If the candidate is ruled ineligible by DCERC due to other reasons, the relevant reasons will be specified in the nomination form concerned according to the current practice.

70. Concern has been expressed that as the eligibility review mechanism does not cover members of the District Committees, who are responsible for nominating candidates for DC members, it may pose risks to national security. In response, the Administration has advised that when appointing members of the District Committees, the Administration will conduct reviews according to the established internal procedures to ensure that all members of the District Committees so appointed are patriots with an affection for Hong Kong who uphold the Basic Law and bear allegiance to HKSAR.

Scenarios where District Council members are disqualified

71. Clauses 14, 15 and 21 of the Bill seek to add section 12 to, and amend sections 17 and 20 of, Cap. 547 to specify the eligibility to be appointed as members, registered as ex officio members and nominated as candidates in the DCC and DCGC elections. Clauses 14, 18 and 22 of the Bill seek to add section 14 to and amend sections 19 and 21 of Cap. 547 to specify when the three types of persons will be disqualified from appointment, registration and nomination. Clause 28 of the Bill seeks to add Division 4 of Part IV to Cap. 547 to set out when a DC member will be disqualified from holding office. These disqualification grounds are the same as those⁸ prescribed in Cap. 547.

⁸ Mainly include: (a) is a judicial or prescribed public officer; (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment and has not either

Disqualification from being appointed as members (Clause 14 of Part 2 of the Bill)

72. Members have enquired whether a “people’s consultative body” referred to in the proposed new section 14(1)(g) of Cap. 547 means the National Committee of the Chinese People’s Political Consultative Conference (“CPPCC”). In its written response, the Administration has clarified that the “people’s consultative body” referred to in the proposed new section 14(1)(g) includes not only CPPCC, but also other People’s Political Consultative Conferences at the provincial (including municipalities and autonomous regions), city and county levels.

73. In reply to members’ enquiries about the proposed new section 14(1)(f) of Cap. 547, the Administration has confirmed that “the government of a place outside Hong Kong” in the provision covers other provincial and municipal governments in the Mainland. Members have further asked whether the said provision covers persons such as honorary consuls or salaried expert advisers appointed by the governments of places outside Hong Kong. The Administration has explained that the above proposed provision is intended to prevent any person who acts on behalf of the government of a place outside Hong Kong from serving as a DC member. When deciding whether a person is covered by the provision, a number of factors and the actual circumstances must be taken into account. In its written response, the Administration has supplemented that the relevant factors include the nature of the position taken up by the person, whether the person has the opportunity to exercise public power on behalf of the foreign government, and the contractual arrangement (if any) between the person and the foreign government. Therefore, its application cannot be generalized based on the title of the position. Responding to members’ questions about how the Administration can ascertain whether the person concerned is caught by the proposed new section 14(1)(f), the Administration has advised that persons appointed as DC members must first be confirmed by DCERC. After assuming office, they must also declare their interests and clearly disclose the relevant information.

served the sentence or received a free pardon; (c) has been convicted of treason; (d) is convicted of specified offences, including an offence for which the person has been sentenced to imprisonment for a term exceeding three months, corrupt or illegal conduct, etc.; (e) is an undischarged bankrupt or, within the previous five years, has obtained a discharge in bankruptcy without paying the creditors in full; (f) in breach of an oath or fails to fulfill the legal requirements and conditions on upholding Basic Law and bearing allegiance to HKSAR; and (g) is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity of managing and administering his property and affairs.

74. Members have noted that under the proposed new section 12(1)(d) of Cap. 547, the eligibility for appointment as a DC member includes not being disqualified from being appointed as a member by virtue of the proposed new section 14 or any other law. There is a suggestion that when making the appointment, the person concerned should be required to make a declaration to confirm that he does not fall under with the scope of “disqualification from being appointed as a member” as stipulated under the proposed new section 14 of Cap. 547.

75. The Administration has explained that under the proposed new section 13(4) and (5) of Cap. 547, in deciding whether a proposal to appoint a person is valid, DCERC may require DHA to furnish certain information about the person and also the person to furnish any other relevant information to enable DCERC to decide whether the person meets the requirements stipulated in the proposed new section 12(1)(d).

Nomination and election methods of District Council members to be returned at election and the relevant electoral arrangements

76. In relation to the provisions concerning the DCC and DCGC elections, the Administration has proposed to retain most of the existing arrangements as provided in Cap. 547 and Cap. 541F with appropriate adjustments made to registers of electors, nomination requirement, voting and counting systems, polling station, election petition, financial assistance for candidates in respect of election expenses⁹, election deposit, sending letters free of postage by candidates, as well as regulation of elections under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

Persons eligible to vote at an election (Clause 30 of Part 2 of the Bill)

77. Members have suggested that the expression “或區議會地方選區選民的人” in the Chinese text of the proposed amended section 29(1) of Cap. 547 be replaced by “或區議會地方選區的選民”, or the following drafting be adopted: “只有屬地區委員會界別者，或區議會地方選區的選民，方有權在該界別或選區的選舉中投票。”.

⁹ Under the current financial assistance scheme, a candidate who was elected or who received 5% of valid votes or more in a DC election is eligible for financial assistance, which would be the lowest of the following amounts—(a) the amount obtained by multiplying the subsidy rate by the total number of valid votes cast for the candidate (if the election is contested) or 50% of the number of registered electors for the constituency concerned (if the election is uncontested); (b) 50% of the election expenses limits; (c) the declared election expenses of the candidate.

Having considered members' views, the Administration will propose amendment to the provision to convey more clearly its original intention.

78. Some members have expressed concern that the drafting of the proposed amended section 29(4) of Cap. 547 may give the wrong impression that an elector can only vote once in an election even if he is an elector in both DCC and DCGC. The Administration has confirmed that an elector can actually vote once in *each* of the election of the respective constituencies if he is an elector in both DCC and DCGC. The Administration has further explained that given the new DCC elections, it is necessary to amend the section accordingly, and when drafting of the provision, reference has been made to section 48(4) of the Legislative Council Ordinance (Cap. 542). Having considered members' views, the Administration will propose amendment to the provision to convey more clearly the original intention.

When an elector is disqualified from voting at an election (Clause 31 of Part 2 of the Bill)

79. Pointing out that under the current formulation of the proposed amended section 30(2) of Cap. 547, an elector of DCC who serves concurrently in District Committees of more than one districts will still be disqualified from voting at a DCC election if he has subsequently ceased to be a member of one of the said District Committees. Members have sought clarification from the Administration as to whether this understanding is correct. The Administration has advised that while there is no current express provision in this regard, the Administration has not in actual fact appointed any person to serve concurrently in District Committees of more than one districts or in more than one District Committees of the same district. According to the provisions of the Bill, a person who is a member of several District Committees will be assigned to a DCC with a lesser number of members in accordance with the rules and regulations. Thus, if a person who is a member of two District Committees has ceased to be a member of the DCC he was originally assigned to, he will be taken out of that constituency and be reassigned to another constituency.

Chief Electoral Officer to supply candidates with copy or extract of final register (Clause 134 of Part 4 of the Bill)

80. Members have enquired whether the reference made to "candidate ... nominated" in the proposed amended section 38(1A) and (1) of Cap. 541F means a prospective candidate whose nomination has been confirmed as valid by DCERC; and if so, members have enquired about the reasons for references made to "persons nominated as candidates" and "validly nominated candidates" respectively in the headings of sections 34 and 36 of Cap. 547. The Administration has replied that according to the

definition in the proposed amended section 2(1) of Cap. 541F, a candidate means "... in relation to a particular constituency, a candidate who is validly nominated to be returned as a member for that constituency at an election". Accordingly, a candidate referred to in the proposed amended section 38(1A) and (1) of Cap. 541F means a candidate whose nomination is valid.

81. Noting that clause 134(4) of the Bill seeks to delete the provision in section 38(3)(a) of Cap. 541F, which originally requires the use of the letters "M" and "F" respectively for male and female electors in entries relating to electors in the register, members have enquired about the reasons for the proposed change. The Administration has explained that under the proposed amended section 38(4) of Cap. 541F, the Chief Electoral Officer ("CEO") is empowered to include any additional particulars or information as he thinks fit in all the copies and extracts (including the final register) referred to in the section. The Administration has clarified that the proposed deletion of section 38(3)(a) is not meant to prohibit CEO from indicating, in a way as he thinks fit, the gender of an elector in the register. Instead, the intention is to provide CEO with the flexibility to include other additional particulars as he thinks fit.

District Committees constituencies register (Clause 81 of Part 2 of the Bill)

82. Members have expressed concern that under the proposed new section 31A of Cap. 547, the Electoral Registration Officer ("ERO") must compile and publish a register of electors for DCCs in accordance with the proposed new Schedule 4A to Cap. 547. However, there is no corresponding provision in Schedule 4A for the publication of the register. The Administration has advised that the proposed new section 31A of Cap. 547 is a general provision, and the word "publish" therein does not mean that the ERO shall publish the register openly. In fact, the register is not an open document, and ERO is only required to publish a notice under the proposed new section 4 of Schedule 4A and to specify in the notice that the register or its extracts will be available for inspection by specified persons. In this regard, the Administration, having further reviewed the provision, will propose an amendment to set out clearly that by publishing a notice under the proposed new section 4(1) of Schedule 4A to Cap. 547, the register will be regarded as having been published.

83. Under the proposed new section 1 of Schedule 4A to Cap. 547, ERO must compile a DCC register for an election not later than 7 days before the beginning of the nomination period for the election as determined under the relevant legislation. Some members have expressed concern that as the above time limit is rather tight, the register may contain inaccurate information such that some electors may be prevented from voting as a result. The Administration has advised that operation-wise, ERO is only

required to compile the DCC register on the basis of the membership lists of the District Committees compiled and submitted provided by HAD. As such, the chance of having inaccurate information in the register is slim. In addition, ERO is empowered under the proposed new section 8 of Schedule 4A to Cap. 547 to correct any typographical errors.

Subscribers required for nomination form (Clauses 89 and 90 of Part 3 of the Bill)

84. The Subcommittee has noted that candidates of the DCC election of DCs should be nominated by three members of each of the District Committee in the respective Districts. Some members have enquired about how the Administration can ensure that all persons intending to stand for election, including those who are not District Committee members, will have a fair chance to approach members of the District Committees for soliciting nomination. The Administration has replied that regional District Offices, as the secretariats of the District Committees of the respective Districts, can help those intending to stand for elections to relay their messages to members of the District Committees. Some members have expressed concern that under the aforesaid nomination requirement, if a person standing for DC election has secured a large number of nominations from members of the District Committees, other persons standing for election may be prevented from obtaining sufficient nominations to stand for election. The Administration has responded that to preclude the aforesaid situation, it is intended that upper and lower limits be set for the number of nominations.

85. Having considered members' views, the Administration has provided under the proposed amended section 7(1)(a) and (2)(b)(i) of the District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap. 547A) that a person seeking nomination for a DCC election or a DCGC election must respectively be subscribed by electors in the DCC in the District, or specifically, there must be not less than three but not more than six electors in each of the District Committees in the District who sign on the nomination form as subscribers.

86. Members have asked whether there is any restriction in the proposed amended Cap. 547A that a DCGC candidate cannot nominate another candidate in the same constituency, or that a DCC candidate cannot nominate another candidate in the same constituency. The Administration has advised that there is no relevant restriction.

87. Members have enquired how the Administration will deal with the situation where the number of candidates nominated by a subscriber exceeds the requirement (i.e. the specified number) under the proposed new section 8 of Cap. 547A. The Administration has advised that when nominations

forms are received by the Returning Officer (“RO”), he will immediately record the information of the subscribers. If, according to the nomination forms received subsequently, it is found that the number of nominations made by the same subscriber has exceeded the requirement under section 8, the relevant nomination(s) received beyond the specified number will be deemed invalid. Regarding members’ suggestion that a mechanism be put in place for subscribers to be informed that they have already subscribed the maximum number of nominations, the Administration has advised that the nominations made by a subscriber will only be made known after the candidates have submitted their nominations and hence, there is no way to tell exactly at a given point of time how many nomination forms have already been subscribed by the subscriber. Under the circumstances, any information released in a perfunctory manner may not only be incorrect but also potentially misleading.

88. Pointing out that persons aspiring to become DC members should have a certain degree of recognition in the respective districts, regardless of the constituencies where they will stand for election, some members have asked why only persons standing for the DCGC election have to obtain the nominations of 50 electors in the DCGCs concerned, while those standing for the DCC election are not subject to the same requirement. The Administration has explained that persons standing for the DCC election are to be elected by the District Committees. Members of the District Committees come from various sectors of society with different areas of expertise and experience, and they are the key stakeholders of the community dedicated to serving the community, familiar with district affairs, and closely in touch with the community. Therefore, the Administration has considered that it will suffice for persons standing for the DCC election to obtain nominations from members of the District Committees. On the other hand, as DCGC members will ultimately be returned by eligible DCGC electors, it is considered appropriate to set the requirement of nominations of 50 electors for the constituency concerned.

89. To prevent the scenario where the number of nominated candidates exceeds the requirement under the proposed new section 8 of Cap. 547A, a suggestion has been made that a limited number of nomination forms should be provided to each subscriber to avoid the making of nominations over the specified number, and that the Administration may consider making reference to the practice adopted for the election of Deputies of HKSAR to the 14th National People’s Congress (“Hong Kong deputies to the NPC”). At that time, 36 Hong Kong deputies to the NPC were to be elected, and 36 individually numbered nomination forms were distributed to each nominator so that the number of nominations made by each nominator would not be in excess of the number of deputies to be elected. The Administration has responded that in practice, subscribers

may request for additional nomination forms for different reasons and hence, it may not help towards resolving the problem of making nominations over the specified number or repeated submission of nomination forms.

90. The legal adviser to the Bills Committee (“LA”) has noted that as provided under the proposed new section 8(6) of Cap. 547A, “[a] person is disqualified from subscribing a nomination form as an elector for a District Council geographical constituency if the person is disqualified from being registered as such an elector or from voting at an election for that constituency”. In this connection, LA has enquired how the Administration will deal with a situation under the proposed provision where the person is disqualified from being an elector after he has signed on a nomination form. The Administration has advised that operation-wise, the Registration and Electoral Office (“REO”) will review the eligibility of a subscriber upon receipt of a nomination form, and then inform the candidate concerned of the validity of the candidate’s nomination. Hence, the relevant point of time is when REO verifies the nomination form.

What is to happen if insufficient candidates are nominated (Clause 39 of Part 2 of the Bill)

91. Opining that the Chinese text of the proposed amended section 39 of Cap. 547 is difficult to read, members have suggested amending section 39(2) to make the provision clearer. There is another suggestion that “no more than” (不多於) in the proposed amended section 39(1) of Cap. 547 should be changed to “equal to or no more than” (等於或不多於) to net in all situations. In response, the Administration has pointed out that the expression “no more than” (不多於) already covers the situation of “equal to” (等於) or “less than” (少於). Having considered members’ views, the Administration will propose amendment to amend section 39 of Cap. 547.

92. Members have considered that the proposed amended section 40(3)(b) of Cap. 547, as drafted, is ambiguous such that it is unclear whether “the election ... to have failed” means that the election has failed because there is an insufficient number of candidates or the result of the election is invalid. According to the Administration, the effect of the provision is that while an election has failed to the extent of the unfilled seat(s) (i.e. “範圍” referred to in the Chinese text), the election will be deemed completed if candidates have been duly elected for the other constituencies. Having considered members’ views, the Administration will propose amendment to the provision to improve its drafting.

Returning Officer to publish a notice for the purposes of section 39(1) of the District Councils Ordinance (Section 125 of Part 4 of the Bill)

93. Citing the term “不超逾” in the Chinese text of the proposed amended section 23(1) of Cap. 541F, members have expressed the view that such a term is rarely used and inconsistent with other provisions. They thus have suggested that the wording be amended as “不多於”. The Administration has responded that while there is no difference between “不超逾” and “不多於”, it agrees to propose an amendment to amend the provision, having regard to members’ views.

Procedure for voting (Clause 141 of Part 4 of the Bill)

94. Pointing out that the different ways of folding ballot papers described in the proposed amended section 57(2A) of Cap. 541F may cause confusion to electors, members have enquired whether the way of folding ballot papers is a matter to be decided by EAC or RO. The Administration has advised that the way of folding ballot papers for different constituencies will be decided by EAC. As it is the Administration’s current plan to designate separate polling stations for the DCC election and the DCGC election respectively, electors will in general not be required to cast two different types of votes at the same polling station. On the election day, staff will also be deployed at the polling stations to stand beside the ballot boxes and remind electors to handle their marked ballot papers correctly and then instruct them to put the ballot papers in the appropriate box.

95. Some members have suggested that reference be made to the LegCo election so that electors for both DCC and DCGC can cast their votes for the two constituencies at the same polling station to minimize the inconvenience for them to cast votes at two different polling stations. The Administration has responded that while appreciating members’ concerns, it has decided, on balance of different views, that different polling stations be designated for the two constituencies to facilitate the candidates’ canvassing activities and reduce the time needed to transport the ballot papers to the central counting station, so that the votes can be counted immediately after the election.

How District Committee constituency ballot papers are to be marked and counting of votes for District Committees constituencies (Clauses 142 and 146 of Part 4 of the Bill)

96. Members have enquired whether the ballot papers in a by-election will be counted electronically and if so, whether it is necessary to amend the proposed new section 75B of Cap. 541F. The Administration has

responded that section 75B(5) is an empowering provision such that the Presiding Officer may use an approved programme and a computer to count the ballot papers. Thus, under the circumstances, the Presiding Officer can also choose to count the votes manually if appropriate.

97. Members have enquired whether DCC electors will vote in the same polling station as in the previous arrangement made for the LegCo Election Committee Constituency (“ECC”). The Administration has responded that its preliminary plan now is to set up one polling station in each of the 18 districts for the DCC election.

Chief Electoral Officer to assign polling stations for constituencies and to allocate polling stations to electors (Clause 130 of Part 4 of the Bill)

98. Pointing out that section 33(3)(b) of Cap. 541F only provides for the arrangement for electors serving a sentence of imprisonment to vote at a dedicated polling station, members have enquired whether the relevant voting arrangements will also be made for electors who are temporarily detained by the Police and those who are subject to an isolation order or quarantine order issued by the Administration. The Administration has advised that under section 33(4) of Cap. 541F, CEO may, if the circumstances require, allocate to an elector an alternative polling station, in addition to or in substitution of the polling station allocated under subsection (2), to cast the vote he is entitled to cast at the election. An elector in a government quarantine centre will be assigned to vote at a special polling station, while an elector in police custody will be assigned to vote at a dedicated polling station, which is a long-established arrangement. Votes cast at a special polling station or a dedicated polling station will be transported to the main counting station designated under section 31(1D) of Cap. 541F for counting.

Who may lodge election petition and who may be made respondent to election petition (Clause 44 of Part 2 of the Bill)

99. Members have noted that under the proposed new section 50(1)(b) and (2)(b) of Cap. 547, election petitions may be lodged by persons “claiming” to have been candidates in the constituency. Members have enquired about who those persons are. The Administration has explained that apart from the candidates concerned, the persons referred to in the above provisions also include those who have been ruled by DCERC to be ineligible as candidates. These persons can also lodge election petitions under the law.

100. Regarding the Administration’s proposal to maintain the election petition threshold (i.e. at least 10 electors) for the constituency concerned in

respect of the DCGC election, members have asked whether the Administration will consider raising the above threshold to 50 to 100 electors in view of the approximately 10-fold increase in the size of DC constituencies upon the reformed demarcation. The Administration has advised that the relevant arrangement must strike a reasonable balance between protecting a person's right to lodge an election petition and preventing abuse. The threshold is considered appropriate as abuse of the election petition mechanism was uncommon in the past. The Administration has also pointed out that the number of electors in GCs for the LegCo election is much higher than that of DCGC elections, but the threshold for lodging such an election petition is still at least 10 electors for the constituency concerned.

Limit prescribed for election concerned for purposes of section 37A of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (Clause 179 of Part 4 of the Bill)

101. Members have noted that under the proposed amended Schedule to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the maximum limit allowed for a candidate of a DC election to have the minor errors or omissions in his election return corrected is increased from a flat amount of \$3,000 to a flat amount of \$5,000 ("the maximum limit for minor errors"). Expressing concern that DCGC elections involve far more election expenses than DCC elections, members have enquired whether it is appropriate to set a uniform maximum limit for minor errors. Pointing out that the existing maximum limit for minor errors for the LegCo GC and functional constituencies ("FC")/ECC elections are \$30,000 and \$5,000 respectively, some members have enquired whether the Administration will make reference to the above arrangement and consider setting different maximum limits for minor errors for DCGC and DCC elections in accordance with the ratio of the number of electors and the election expenses limit. Some other members have expressed support for the introduction of a uniform maximum limit for minor errors for DC elections. In their views, such an arrangement will help facilitate the administrative work of election returns.

102. The Administration has explained that as the election expenses limits for the LegCo GC and FC/ECC elections are \$2,760,000 to \$3,450,000 and \$213,000 to \$639,000 respectively, different maximum limits for minor errors have been set for these constituencies. Under the proposed arrangement, the median election expense limit for DCGC elections will be similar to that for the LegCo FC elections. Moreover, by having a uniform maximum limit for minor errors for DC elections, candidates and their election agents will be better able to grasp the relevant requirements. All

in all, the proposed uniform maximum limit of \$5,000 for minor errors for DC elections is considered appropriate.

Performance monitoring mechanism for District Council member

Misconduct and sanctions (Clause 66 of Part 2 of the Bill)

103. Members have noted that clause 66 of the Bill seeks to add Part VIA to Cap. 547 to provide for the mechanism for sanctioning misconduct of DC members as follows:

- (a) empower the Secretary for Home and Youth Affairs (“SHYA”) to formulate guidelines¹⁰ to set out the standard of performance required of DC members, while the relevant guidelines will also set out a list of negative behaviour, which may constitute grounds for investigation and lead to sanctions;¹¹

¹⁰ According to the Administration, the relevant guidelines should include but are not limited to: (a) actively performing the functions of DCs; (b) executing and implementing the tasks and work indicators assigned by DC Chairmen (such as attending meetings according to schedule, meeting with citizens regularly, assisting in arranging district consultation forums or residents’ meetings for public opinion collection, providing feedback to DC Chairmen, regularly submitting work reports, etc.); and (c) abiding by standing orders for meetings of DCs, etc. DC Chairmen will monitor the implementation situation of relevant tasks and work indicators, and can initiate investigation in case of persistent non-compliance with the standards.

¹¹ The relevant behaviour includes, but not limited to: (a) failing to perform the tasks and achieve the work indicators assigned by DC Chairman without reasonable excuses; (b) repeated absence from meetings without reasonable excuses (even if the criteria for disqualification due to absence from three consecutive meetings under Cap. 547 is not met); (c) grossly disorderly conduct; (d) violating the laws of Hong Kong, and being convicted by a court and sentenced to imprisonment, including suspended sentence (even if the penalty does not meet the criteria for disqualification under Cap. 547); (e) abusing the resources of DCs or the identity of a DC member for personal gains, commercial activities, or conducting publicity that is inconsistent with the functions of DCs; (f) obstructing other DC members or officials from attending or leaving the meeting; (g) making insulting remarks or performing nuisance behaviour towards attendees, including DC members and officials, at the meeting; (h) disrupting the order of meetings; (i) using foul language at meetings and failing to rectify the behaviour upon advice or warnings; (j) disobeying the standing order for meetings (for example: speaking without the Chairman’s consent, interrupting, digressing, repeating, conducting live broadcasts at meetings, etc.) and failing to rectify the behaviour upon advice and warnings; and (k) failing to make the necessary declaration of interests according to the standing order for meetings.

- (b) an investigation on the alleged misconduct of a DC member may be initiated by (i) the DC Chairman and three or more members of the DC; or (ii) a motion put forth by a DC member at a DC meeting and supported by more than half of the members present at the meeting by voting, and the case will be referred to a supervisory committee (“the Supervisory Committee”) appointed by SHYA for investigation. The Supervisory Committee will comprise a person who is not a member of any DC and four DC members (from DCs other than the DC that the concerned member belongs to). Upon completion of the relevant investigation, the Supervisory Committee must submit a written report to SHYA and recommend whether sanctions are required and the appropriate sanctions;
- (c) SHYA may, taking into account the investigation results and the recommendations, decide whether sanctions should be imposed. If affirmative, SHYA may, according to the severity of the case, issue a letter of persuasion to the relevant member or impose the following sanctions, including (i) warning; (ii) financial penalty; or (iii) suspension of duties; and
- (d) if the DC member concerned is aggrieved by the decision of SHYA to impose sanctions, he may appeal to CS within 14 days. However, the appeal does not suspend the decision unless CS decides otherwise. CS may confirm, vary or reverse the decision.

Proposed new section 72B of Cap. 547: Secretary may issue guidelines on performance of members

104. Members have noted that under the proposed new section 72B(1) of Cap. 547, SHYA may issue guidelines on performance of DC members. Breaching the standard of performance required of a DC member or committing the misconduct as set out in the guidelines may constitute a ground for SHYA to impose sanction. Some members have pointed out that according to item (d) of the list of negative behaviour, even if the penalty does not meet the criteria for disqualification under Cap. 547, this may sufficiently constitute grounds for investigation of DC members. They have expressed concern whether the requirement is too stringent for those DC members who have committed a minor offence. In response, the Administration has pointed out that item (d) is indeed meant to deal with the situation where the DC member concerned may still have failed to meet the public expectation even if the penalty of imprisonment sentence he received

for violating the laws does not meet the criteria for disqualification under Cap. 547.

105. Members have expressed concern about how the Government can deal with the situation in future if misconduct not covered by the guidelines has arisen. The Administration has explained that apart from setting out the list of negative behaviour, the relevant guidelines will also specify clearly the standard of performance required of a DC member. If the behaviour of an individual member is deemed not that “required of a DC member” by the DC Chairman and DC members, they may still take action under the proposed new section 72C(1)(a) or (b)¹² even if such misconduct is not on the list of negative behaviour, and refer the case to the Supervisory Committee appointed by SHYA under the proposed new section 72C(2) for an investigation on the DC member concerned. In addition, the proposed new section 72B(4) empowers SHYA to amend the guidelines, including amending the list of negative behaviour to include behaviour yet to be covered.

106. Some members have suggested amending the proposed new section 72B(3) of Cap. 547 to specify that the relevant guidelines are subsidiary legislation, thereby enabling LegCo’s scrutiny on any amendments thereto. The Administration has explained that by making the guidelines not items of subsidiary legislation, SHYA will have greater flexibility to amend the guidelines promptly to cater for the latest situation, so that any problems can be handled in a timely manner. In light of members’ suggestion, the Administration has agreed to consider publishing the guidelines in the Gazette.

107. Members have noted that under the proposed new section 72B(4), SHYA may amend or revoke any guidelines issued thereby. As the guidelines are not subsidiary legislation and thus, not subject to scrutiny by LegCo, members have enquired whether SHYA will consider undertaking to consult the relevant LegCo Panel on issues relating to future amendments to or revocation of the guidelines. The Administration has undertaken to report to the relevant LegCo Panel in due course on the implementation of various mechanisms under the proposals for improving governance at the district level, including SHYA’s initiatives in amending/revoking the relevant administrative guidelines.

108. Members have noted that under the proposed new section 72B(5) of Cap. 547, “[a] person does not incur any civil or criminal liability only because the person has contravened any of the guidelines”. Members have expressed concern that a DC member may be subject to the sanction of

¹² Details are set out in paragraph 103(b) above.

suspension of duties as imposed by SHYA under the proposed new section 72D and hence, become a litigant in civil proceedings initiated by the authorities for the recovery of advanced payments of operating expenses allowance. Members have enquired whether the DC member concerned can invoke the proposed new section 72B(5) as a defence and use it as the legal basis for refusing to return the said payments of allowances. In this connection, the Bills Committee has also sought an explanation from the Administration on the legal status of the guidelines under section 72B(1).

109. Insofar as the legal status of the guidelines is concerned, the Administration has explained that section 72B(5) clearly sets out that a person does not incur any civil or criminal liability only because the person has contravened any of the guidelines. Based on that subsection, contravening the guidelines in itself will not create a cause of action or offence. In its written response, the Administration has further explained that in other words, the conduct which contravened the guidelines may still form the factual basis for a cause of action or offence under the statutory provisions and principles of civil or criminal law. But if legal proceedings are to be commenced, a cause of action or offence must be established in accordance with the relevant civil or criminal law statutory provisions and principles (but not the guidelines referred in section 72B(1)). As to whether section 72B(5) can constitute a defence, since the legal effect of section 72B(5) is that a breach of the guidelines does not in itself give rise to a cause of action or a criminal offence, the said subsection does not constitute a defence in civil or criminal proceedings.

110. The Administration has also pointed out that the proposed new section 72B(6) provides for the evidential effect of the guidelines in any legal proceedings. That is, if a court is satisfied that a provision of the guidelines is relevant to the determination of a matter that is in issue in the proceedings, the court may admit the guidelines as evidence (section 72B(6)(a)) and any party to the proceedings may rely on whether a person has contravened the guidelines' provision as proof to establish or negate the matter that is in issue (section 72B(6)(b)).

Proposed new section 72C of Cap. 547: Investigation on misconduct of members

111. While noting that the Supervisory Committee is empowered under the proposed new section 72C(3) to conduct an investigation, members have expressed concern that none of the proposed new provisions on sanctioning the misconduct of DC members has provided for the powers of the Supervisory Committee (e.g. power to request information) or the rights of the persons under investigation (e.g. right to make oral or written representations). Supplementing on the issue, LA has invited members to

note that generally speaking, the powers to investigate and the rights of the persons under investigation will be provided for in the provisions on disciplinary sanction procedures (e.g. the relevant provisions in the Accounting and Financial Reporting Council Ordinance (Cap. 588) and the Social Workers Registration Ordinance (Cap. 505)). The Administration has advised that the powers of the Supervisory Committee to request information, the rights of the persons under investigation to make representations and the related procedures will be prescribed in the administrative guidelines. The Administration has added that the procedures for disciplinary investigations on civil servants are likewise set out in administrative guidelines rather than legal provisions. In its written response, the Administration has further advised that the policy intention is to lay down the implementation procedures for the performance monitoring mechanism through administrative arrangements so as to provide more flexibility for future adjustments as appropriate. In accordance with the policy intention, the administrative details will therefore be set out in the relevant guidelines.

112. The Administration has further explained that the Supervisory Committee neither has the power to summon witnesses nor mandate the provision of information by any persons. If the person involved refuses to provide information, the Supervisory Committee can compile a report on the basis of information already obtained. Moreover, the guidelines to be issued by SHYA under the proposed new section 72B(1) will also specify that the DC member concerned must provide information to assist the Supervisory Committee's investigation. Hopefully, people who initiate the investigation and the DC member concerned will be willing to provide evidence. In addition, an appeal mechanism is also set out in the proposed new Part VIA, under which the DC member concerned may appeal to CS against the sanction decision of SHYA. CS' decision is also subject to judicial review. The Administration has also confirmed that a copy of the Supervisory Committee's report submitted to SHYA after conclusion of investigation will be sent to the DC member concerned.

113. On members' concern about whether Cap. 547 has sufficient enabling provisions for SHYA to issue guidelines on the operation of the Supervisory Committee, the Administration will propose amendment to section 72B(1) of Cap. 547 by adding a clause to empower SHYA to issue guidelines for the purposes of Part VIA (Misconduct and Sanctions) of Cap. 547 (including sections 72C to 72E).

Proposed new section 72D of Cap. 547: Secretary may impose sanctions etc.

114. Members have noted that under the proposed new section 72D(3)(a), a DC member must not act as a member during the period of

suspension of his functions and duties, while under the proposed new section 72D(4), a DC member under suspension is still entitled to be reimbursed the operating expenses incurred during the period of suspension although he cannot enjoy any corresponding entitlement. Members have asked whether a DC member who has been suspended is tantamount to having been disqualified as a DC member, and whether his ward office can continue to operate and make claims for the relevant operating expenses during suspension period.

115. The Administration has explained that a DC member under suspension has not been disqualified as a DC member. Drawing reference from the relevant practices of LegCo, the Administration has proposed that during the suspension period, a DC member can neither attend DC meetings nor act as a member. That said, his ward office can still maintain basic operation, with reimbursement of the relevant accountable operating expenses.

116. Members have expressed concern about whether the above arrangements are contrary to the requirement that a DC member must not act as a member during the suspension period. Some members have taken the view that as the assistants of a DC member and his ward office are meant to assist the member in discharging his duties, the ward office should in theory also cease operation if the member has been suspended. Members have also enquired whether a DC member under suspension can call himself a DC member, distribute name cards, provide referral services to the residents or write to government departments to follow up on district issues during the suspension period. The Administration has advised that the policy intention is not to affect the services available to the residents in the district as a result of the suspension of a DC member. According to the Administration, even if a DC member has been suspended, his assistants will still need to inform local residents of the suspension, as well as the related follow-up arrangements. Such an arrangement is similar to the mechanism in place for LegCo. The Administration has further pointed out that as the suspension may only be temporary, suspension of the operation of ward office(s) under the DC member concerned is considered not necessary. The Administration has also advised that as the sanction of suspension is different from disqualification from being a DC member, the DC member concerned can still distribute name cards and meet with residents. That said, he must clearly state that he is under suspension and cannot act as a DC member.

117. The Administration has supplemented in its written response that according to the proposed performance monitoring mechanism, the DC member concerned still holds office during the suspension period. Under the proposed new section 72D(4), “the person is entitled to be reimbursed the operating expenses incurred by the person during the period of

suspension.” Even if the DC member is suspended from his functions and duties, he is still entitled to be reimbursed the operating expenses. This arrangement is made under the consideration of the temporary nature of the suspension, during which the DC member still needs to continue to pay for office rentals, utility expenses, staff salary, etc.

118. Members have held different views on whether a member’s ward office should be allowed to continue operation during the period of the member’s suspension. Some members have expressed concern that when a DC member is under suspension on account of his misconduct, such member may, in extreme cases, continue to cause chaos during the suspension period through his ward office and staff, etc. which are still in operation. He may even act in such a way as to tarnish the reputation of the DC concerned. Such members have concurred that the relevant ward office should also cease operation during the period of the DC member’s suspension. Some other members have suggested that the Administration should set out in the guidelines that SHYA can be empowered to suspend the operation of the ward office of the DC member under suspension. The Administration has advised that it will consider members’ views.

119. LA has pointed out in the letter to the Administration on 7 June 2023 that the existing sections 72(1)(b) and 72(2)(ab) of Cap. 547 respectively provide that the suspension of a person’s functions and duties as a DC member under section 79(2A) of Cap. 547 does not affect the power of a DC to transact business and the validity of proceedings of a DC. Given that under the proposed new mechanism for sanctioning misconduct of DC members, suspension of the relevant DC member’s functions and duties as a DC member is one of the sanctions that SHYA may impose on the DC member concerned, LA has sought clarification from the Administration whether section 72(1)(b) and 72(2)(ab) of Cap. 547 should be amended to cover the suspension under the proposed new section 72D(1)(c) of Cap. 547.

120. In its written response, the Administration has advised that it will proposed amendment to refer to section 72D(1)(c) in section 72(1)(b) and 72(2)(ab) of Cap. 547, in order to reflect the policy intention that the suspension of the DC members’ functions and duties under the proposed new section 72D(1)(c) does not affect the power of a DC to transact business and the validity of proceedings of a DC.

121. In the letter dated 7 June 2023 to the Administration, LA has pointed out that the proposed new section 72D(1) of Cap. 547 provides that SHYA may, after considering the report of the Supervisory Committee on a DC member, issue a letter of persuasion to, or impose a sanction on, the member as the Secretary considers appropriate. Under the proposed new section 72D(6) of Cap. 547, the Secretary must, as soon as practicable after

imposing a sanction on a member under the proposed new section 72D(1), inform the member in writing. In this regard, LA has sought clarification from the Administration whether it is intended that SHYA will first impose a sanction before informing the DC member concerned in writing.

122. The Administration has pointed out in its written response that before SHYA decides whether sanctions should be imposed pursuant to the proposed new section 72D(1) of Cap. 547, the DC member concerned can make representation. The Administration will clearly set out the arrangements to make representation in the relevant administrative guidelines. Under the proposed new section 72D(6), after SHYA has decided to impose sanction on the relevant DC member, the DC member concerned will be informed as soon as practicable in writing with the reasons for the decision. The sanction may take effect immediately (e.g. in the case of a warning letter) or at a later time (e.g. in the case where financial penalty is to be deducted from the remuneration).

Proposed new section 72E of Cap. 547: Appeal against sanctions

123. Referring to the proposed new 72D(6) of Cap. 547, LA has enquired whether SHYA will provide the reasons at the same time when informing the DC member concerned in writing of the sanction to be imposed, considering that the member may require such information to decide whether an appeal will be made; and if so, whether consideration will be given to amending the proposed new section 72D(6) to reflect the same. On the proposed new section 72E of Cap. 547 which provides for appeal against sanctions, LA has enquired whether SHYA's decision to issue a letter of persuasion is also subject to the appeal mechanism under that section; and whether the relevant procedures in relation to the appeal (e.g. whether the appeal shall be made in writing and with the grounds of appeal) should be set out in the proposed new section 72E of Cap. 547. LA has further enquired whether the notice of decision of CS would be given with reasons; and if so, whether such requirement should be specified in the proposed new section 72E of Cap. 547.

124. The Administration has advised in its written response that since the DC member concerned can appeal to CS against SHYA's decision (including the issuance of letters of persuasion), and the decision of CS is also subject to judicial review, SHYA and CS therefore must state the reasons for their decisions so that the aggrieved DC member may appeal against SHYA's decision or commence legal proceedings against CS' decision as appropriate. The Administration has considered it unnecessary to specify in the proposed new subsections that reasons have to be provided for the relevant decisions.

125. In relation to the appeal mechanism, LA has further enquired that if CS makes a decision to vary SHYA's original decision, whether the decision of CS should be within the scope of the proposed new section 72D(1) of Cap. 547, and if so, whether the Administration will consider if such limit should be specified in the proposed new section 72E. On the other hand, LA has also asked whether it is necessary to specify in the proposed new section 72E of Cap. 547 the period within which CS should issue his notice of decision.

126. The Administration has advised at the meeting and in its written response that the proposed new section 72E(4) of Cap. 547 does not empower CS to make decisions outside the scope as stipulated in section 72D(1) or substitute SHYA's decision with other decisions, and hence the decision made by CS on the appeal must fall within the scope of section 72D(1). In addition, the Administration has further advised in its written response that it considers it appropriate to set out the above and other relevant procedures in the administrative guidelines. The time required by CS to consider the appeal would vary depending on the nature and complexity of the case concerned and hence, the time period should not be stipulated in section 72E. Furthermore, section 70 of Cap. 1 stipulates that "where no time is prescribed or allowed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises." Hence, CS will issue his notice of decision without unreasonable delay.

Remuneration package for District Council members

127. The Administration has proposed to continue to provide remuneration package for members of the coming term DCs at a level similar to the current level, so as to support DC members to perform the aforesaid district duties. The Administration will also encourage DC members to set up joint offices to achieve better cost-effectiveness and to provide advice on cross-constituency and long-term development issues from a more holistic and comprehensive perspective. That said, the Government will continue to collect views and suggestions, and to consult stakeholders (such as current DC members) for the consideration of the Independent Commission on Remuneration for Members of the District Councils of HKSAR ("ICDC") for consideration. The Administration has suggested that the remuneration package for the members of the next DC term be based on the level of the current DC term. Apart from removing some remuneration items which are no longer applicable (such as the remuneration for DC Chairmen and Vice-chairmen, and Entertainment Expenses Reimbursement for DC Chairmen), only annual adjustment according to the existing mechanism will be made. The Administration has also suggested initiating a regular review in 2025 to

allow ICDC to make a more appropriate review with reference to the actual operational experience of the seventh-term DCs and the relevant data.

128. Members have pointed out that the rate of accountable Operating Expenses Reimbursement for DC members is on the low side. As such, even if several DC members may jointly fund the setting up of joint offices, it will still be quite difficult for DCGC members to set up enough number of ward offices, given the enlarged GCs. Members have called on the Administration to review the relevant arrangements in a timely manner. In response, the Administration has advised that it is a well-established arrangement for DC members to collaborate and set up joint offices. It will depend on the concerted efforts of DC members to provide adequate district service points for the public. As DC members in the reformed DCs will no longer serve a small area, they should focus on the interests of the entire district as a whole. DC members from different sectors can join forces to provide more appropriate district services, thereby achieving the goal of improving district governance.

Strengthening the district governance structure

129. The Administration has advised that in addition to reforming DCs, it is also imperative for the Administration to have a better grip on district governance, enhance leadership and coordination, and make good use of the resources of various departments to meet the public needs, so as to enhance governance efficacy at the district level and strengthen the capacity to provide district services. The Administration will strengthen the leadership and work structures as follows:

- (a) establishing SCDG which will be chaired by CS to take a leading role on the overall strategies, policies and measures of district governance;
- (b) repositioning TFDG which will be chaired by DCS to coordinate and steer the district work of various policy bureaux and departments; and
- (c) HYAB and HAD will support the work of the above two high-level set-ups.

130. The Administration has advised that the newly established SCDG will be chaired by CS to lead the work of relevant policy bureaux and departments. Under the senior leadership and supervision, SCDG will ensure that the policies and measures formulated by the various parties in the district governance structure are well coordinated and complementary with

each other to achieve the desired results and address the demand of the citizens in a timely manner. SCDG will regularly report to CE on the effectiveness and progress of its work.

131. TFDG will be chaired by DCS to coordinate and supervise the departments in following up with and resolving district issues. TFDG can effectively address issues that cannot be resolved at the district level due to the different modes or pace of operation among the departments, and special issues which require interdepartmental/cross-district handling or flexible and discretionary arrangements. TFDG will review the reports written by HYAB/HAD summarizing the work of DCs and District Management Committees (“DMCs”) as prepared by DOs. TFDG can directly request the relevant departments to conduct research or propose specific policies/measures, and will also discuss and resolve district management issues referred by DOs and DMCs. TFDG will replace the existing Steering Committee on District Administration and District Matters Coordination Task Force to better facilitate the coordination and complement district work among departments. TFDG will consider various district problems from a more holistic and broader perspective, so as to devise appropriate corresponding measures promptly.

132. The Administration has advised that TFDG will comprise representatives of government departments relevant to district work (e.g. DOs, representatives of the Food and Environmental Hygiene Department and the Leisure and Cultural Services Department), with HAD serving as its secretariat. If the Government finds the need to take forward policies involving all 18 districts across the territory, SCDG will first formulate the relevant policies, and then TFDG will discuss how these policies should be implemented in the 18 districts. Subsequently, DOs will conduct consultations and take forward the relevant work in various districts.

133. Expressing support for the Administration’s proposal to strengthen the district governance structure, members have opined that while the strengthening of the district governance structure and merging of constituencies will help DC members approach their district work with regard to the overall picture, the Administration should also understand that each district has its own characteristics (e.g. in terms of demographic structure, geographical setting). Thus, there is a need for striking a proper balance between the overall interests of society and the situation and needs of individual districts in the promotion of governance at the district level.

134. The Administration has advised that the objective of strengthening the district governance structure and reforming DCs is indeed to ensure that both the needs of Hong Kong and those of the districts will be taken into account. In future, DC Chairmen will pay full regard to the local conditions

and characteristics of their districts when setting work tasks or guidelines for DCs.

PROPOSED AMENDMENTS TO THE BILL

135. Members in general have expressed support for the Administration's proposed amendments. Apart from the amendments as elaborated in paragraphs 12, 28, 61, 77, 78, 82, 91, 92, 93, 113 and 120, LA has pointed out in her letter dated 7 June 2023 to the Administration that according to the proposed new section 36(2A) and (4A) of Cap. 547, if a notice stating which persons are validly nominated as candidates has been published by DCERC under the proposed new section 36(1A) of Cap. 547, RO or DCERC (as the case may be) must make the relevant declaration in accordance with regulations in force under Cap. 541. In this connection, LA has invited the Administration to consider whether the existing section 24(2) and the proposed section 25(2) of Cap. 541F should be amended correspondingly to provide that RO or DCERC (as the case may be) must make the relevant declaration as soon as practicable "if a notice stating which persons are validly nominated as candidates has been published by DCERC under section 36(1A) of Cap. 547". In its written reply, the Administration has agreed to take on board LA's suggestion. It will propose amendment to amend sections 24(2) and 25(5) of Cap. 541F for consistency with section 36(2A) and (4A) of Cap. 547.

136. Moreover, the Administration will propose various textual and technical amendments to the Bill, including those in response to concerns raised by members and LA. The Bills Committee will not propose any amendment to the Bill.

RESUMPTION OF SECOND READING DEBATE

137. The Bills Committee has completed scrutiny of the Bill. Subject to the moving of the proposed amendments by the Administration referred to above, the Bills Committee supports the resumption of the Second Reading debate on the Bill.

138. The Bills Committee notes that the Administration has given notice to resume the Second Reading debate on the Bill at the Council meeting of 5 July 2023.

SUBMISSIONS

139. In the course of their scrutiny process, the Bills Committee and the Subcommittee have received 42 submissions from members of the public and organizations. All the submissions received have been referred to the Administration for written responses. These submissions and the Administration's written responses have been uploaded onto the [LegCo website](#).

CONSULTATION WITH THE HOUSE COMMITTEE

140. The Bills Committee reported its deliberation to the House Committee on 16 June 2023.

Council Business Division 2
Legislative Council Secretariat
28 June 2023

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3. The Government announced the proposals on improving governance at the district level at a press conference on 2 May 2023, and issued a Legislative Council (“LegCo”) brief¹ (hereafter referred to as the “**Brief**”) on the same day. The LegCo Panel on Home Affairs, Culture and Sports and Panel on Constitutional Affairs held a joint meeting on 4 May to discuss the proposals. On 5 May, the LegCo House Committee agreed to form a special committee to discuss the proposals in detail, with a view to facilitating the subsequent scrutiny by the relevant Bills Committee.

The Proposals

Guiding principles

4. The proposals on improving governance at district level adhere to three guiding principles: first, according top priority to national security. We must fully, faithfully and steadfastly implement the principle of “One Country, Two Systems”, as well as ensure the effective and sustained implementation of the systems prescribed by the Constitution and the Basic Law, including the district advisory bodies which are not organs of political power formed in accordance with Article 97 of the Basic Law; second, fully implementing the principle of “patriots administering Hong Kong”; third, fully practising executive-led governance.

Highlights of the proposals

5. The proposals comprise **two main elements**:
- (1) Reform the DCs, enhance their functions and reform their composition and selection methods with a view to restoring the institution back to the positioning under Article 97 of the Basic Law as district advisory bodies which provide services and are not organs of political power; and
 - (2) Strengthen the district governance structure with coordination strengthened at the central level, thereby raising the capability and strengthening the efficacy in district governance.

¹ See: https://www.legco.gov.hk/yr2023/english/brief/hyab20230502_20230502-e.pdf.

6. There are **six key points** in the proposals:
- (1) **Functions of the DCs:** Improve DCs’ advisory and services functions. DCs should be depoliticised and restored to their positioning as district advisory bodies which are not organs of political power in accordance with Article 97 of the Basic Law, thereby fully manifesting executive-led governance (see paragraphs 15 to 17 of the **Brief**);
 - (2) **Composition of the DCs:** The total number of members in the seventh-term DCs will be 470, which is comparable to 479 seats in the current sixth-term DCs. DCs will be composed of appointed members, members returned at the District Committees Constituency (“DCC”) election and members returned at the District Council Geographical Constituency (“DCGC”) election at a ratio of 4:4:2, plus 27 ex-officio members. The requirement of nomination by “the three district committees”² (“three committees”) will be introduced to DCC and DCGC elections. DCGC candidates should also obtain the nomination from 50 electors in the relevant constituency (see paragraphs 20 to 23, 25 to 32 of the **Brief**);
 - (3) **Eligibility review mechanism:** To safeguard national security and fully implement the principle of “patriots administering Hong Kong”, an eligibility review mechanism will be introduced to the DCs. To become a DC member through any of the above channels, a person’s eligibility must be confirmed through the eligibility review mechanism (see paragraph 24 of the **Brief**);
 - (4) **Remuneration package for DC members:** To support DC members to perform various district duties, DC members will receive a remuneration package comparable to the current level (see paragraphs 33 to 36 of the **Brief**);
 - (5) **Performance monitoring mechanism for DC members:** To ensure that DC members have duly discharged their duties, a monitoring mechanism for DC members’ performance would be introduced to conduct investigations on DC members whose behavior has allegedly failed to meet the public expectation and

² They are the District Fight Crime Committees, the District Fire Safety Committees and the Area Committees.

the case will be handled as appropriate according to the severity (see paragraphs 37 to 42 of the **Brief**); and

- (6) **Strengthening the District Governance Structure:** To enhance the Government’s senior leadership and coordination efforts at district governance. There are two measures: first, establishing a “Steering Committee on District Governance” (“SCDG”) which will be chaired by the Chief Secretary for Administration to take a leading role on the overall strategies, policies and measures of district governance; second, repositioning the “District Matters Co-ordination Task Force” chaired by the Deputy Chief Secretary for Administration and renaming it as “Task Force on District Governance” (“TFDG”) to coordinate and steer district work of various policy bureaux and departments, in place of the existing “Steering Committee on District Administration” (see paragraphs 44 to 50 of the **Brief**).

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Extracted from paper provided by the Administration in May 2023
(LC Paper No. CB(2)425/2023(01))

**Subcommittee to Study the Proposals for Improving District Governance
and Related Matters**

Membership list

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Deputy Chairman Ir Dr Hon LO Wai-kwok, GBS, MH, JP

Members Hon Tommy CHEUNG Yu-yan, GBM, GBS, JP
Hon CHAN Hak-kan, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon KWOK Wai-keung, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon CHAN Chun-ying, JP
Dr Hon Hoey Simon LEE, MH, JP
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Hon LAI Tung-kwok, GBS, IDSM, JP
Dr Hon NGAN Man-yu

(Total : 15 members)

Clerks Ms Joanne MAK
Mr Lemuel WOO

Legal Advisers Miss Rachel DAI
Miss Emily MOK

Bills Committee on District Councils (Amendment) Bill 2023

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