

**Commission on Strategic Development
Task Group on Constitutional Development**

Method for Forming the Legislative Council in 2012

Introduction

At the last meeting, members discussed the method for electing the Chief Executive (“CE”) in 2012 (Paper CSD/TGCD/2/2008). This paper provides background information to facilitate members’ discussion on the method for forming the Legislative Council (“LegCo”) in 2012, on the basis that the Basic Law and the Decision adopted by the Standing Committee of the National People’s Congress (“NPCSC”) must be complied with.

2. According to the Decision, the CE may be elected by universal suffrage in 2017 and, after the CE has been elected by universal suffrage, all members of LegCo may be elected by universal suffrage in 2020.

3. Regarding the LegCo election in 2012, the Decision provides that:

“The election of the fifth term LegCo of the HKSAR in the year 2012 shall not be implemented by the method of electing all the members by universal suffrage. The half-and-half ratio between members returned by functional constituencies (“FCs”) and members returned by geographical constituencies (“GCs”) through direct elections shall remain unchanged.”

According to the Decision, appropriate amendments conforming to the principle of gradual and orderly progress may be made to the specific method for forming the fifth term LegCo in the year 2012, in accordance with the provisions of Article 68 and Article III of Annex II to the Basic Law.

4. Regarding the LegCo election in 2012, although the Decision stipulates that it shall not be implemented by the method of universal suffrage, and the half-and-half ratio between members returned by FCs and members returned by GCs through direct elections shall remain unchanged,

there is still ample room for making amendments to the electoral method to enhance its democratic elements. On the basis that the Basic Law and the Decision must be complied with, we suggest members discuss the following key issues:

- (a) the number of seats in LegCo;
- (b) the number of seats returned by GCs through direct elections;
- (c) the number of seats returned by FCs;
- (d) the delineation and size of the electorate of FCs; and
- (e) whether the arrangement that 20 percent of LegCo seats may be returned by individuals who are not of Chinese nationality or who have the right of abode in foreign countries should be adjusted.

5. To facilitate members' discussion, we have consolidated the views collected during the public consultation exercise conducted by the Constitutional Development Task Force ("the Task Force") on the method for forming the LegCo in 2008. On this basis, we have set out various options regarding the key issues mentioned in paragraph 4 above.

Current Composition of LegCo

6. In accordance with the provisions of Annex II to the Basic Law, LegCo shall be composed of 60 members in each term. Annex II prescribes the composition of LegCo in its first three terms. Regarding the composition of the third term LegCo, the number of seats returned by GCs through direct elections and by FCs is both 30.

7. As for the fourth term LegCo to be formed in 2008, according to NPCSC's Interpretation of 6 April 2004, if no amendment is made to the method for forming LegCo, the provisions relating to the method for forming the third term LegCo and the provisions relating to its procedures for voting on bills and motions in Annex II to the Basic Law will still be applicable. As the proposed package put forth by the HKSAR Government in 2005 to amend the electoral method for forming LegCo in 2008 was not endorsed by the two-thirds majority support of all LegCo Members required by the Basic Law, the electoral method for the fourth term LegCo

will remain unchanged.

8. In accordance with the provisions of Annex II to the Basic Law, the Legislative Council Ordinance (Cap. 542) specifies detailed statutory provisions on the division of GCs and the voting method for direct elections therein, the delimitation of functional sectors, their seat allocation and election methods, etc.

9. As regards direct geographical elections, the Legislative Council Ordinance stipulates that there are to be five GCs. In general, the 30 seats to be returned by GCs through direct elections are distributed among the constituencies in accordance with their population distribution. Details are as follows:

Geographical Constituency	Number of Seats¹
Hong Kong Island	6
Kowloon East	4
Kowloon West	5
New Territories East	7
New Territories West	8

10. For elections in GCs, the list voting system operating under the largest remainder formula, which is a form of proportional representation voting system, is adopted. Under this system, candidates contest the election in the form of lists. Each list may consist of any number of candidates up to the number of seats in the relevant constituency. An elector is entitled to cast one vote for a list. Seats are distributed among the lists according to the number of votes obtained by the respective lists.

11. For FC elections, the Legislative Council Ordinance provides for the establishment of 28 FCs (please refer to Annex I for details). Except for the Labour FC which returns three members, all FCs return one member each.

¹ As the projected population of the Kowloon West GC exceeds that of the Kowloon East GC, the Electoral Affairs Commission has proposed that, starting from 2008, the number of GC seats for the Kowloon West GC should be increased from four to five, and that the number of GC seats for the Kowloon East GC be decreased from five to four. The number of seats in the remaining three GCs should remain unchanged. The legislation for implementing the above proposal has been passed by LegCo.

Method for Forming LegCo in 2012

12. In discussing the method for forming LegCo in 2012, we suggest that members take into account the following factors:

- (i) the provisions of NPCSC's Decision (i.e. the half-and-half ratio between members returned by FCs and members returned by GCs through direct elections shall remain unchanged) must be complied with; and
- (ii) how to further democratize the electoral method in accordance with the principle of gradual and orderly progress.

(a) Number of Seats in LegCo

13. During the public consultation on the method for forming LegCo in 2008, most of the views collected by the Task Force are that the number of seats in LegCo should be increased or should remain unchanged. Hence, we suggest members focus the discussion on the options of increasing or maintaining the existing number of seats. Members may make reference to the population-to-seat ratio of overseas legislatures (please refer to Annex II for details).

(i) Increasing the Number of Seats

14. Among the proposals received previously by the Task Force, the major reasons for increasing the number of seats include:

- (i) to enhance further the representativeness of LegCo;
- (ii) to enable more people to participate in politics, so as to nurture more political talent; and
- (iii) to meet the operational requirements of LegCo, improve the quality and efficiency of its service, and enhance its effectiveness in monitoring the performance of the government.

15. As regards the specific number of seats, among the proposals collected previously by the Task Force, there are more views that the number of seats should be increased to 70 or 80. The major reasons include

that this could enhance the representativeness of LegCo, and encourage more people to participate in the election and share out the workload of LegCo.

(ii) Maintaining the Existing Number of Seats

16. Among the proposals collected previously by the Task Force, there are also views that the number of seats should remain at 60. The major reasons include:

- (i) this could avoid incurring additional public expenditure and hampering its efficiency; and
- (ii) an overall increase in the number of seats will inevitably lead to an increase in the number of FC seats. It will be more difficult to abolish the newly-created FCs when the time comes for attaining universal suffrage in future.

(b) Number of Seats Returned by GCs through Direct Elections

17. Among the proposals received by the Task Force supporting an increase in the number of seats, there are views that the number of seats returned by GCs through direct elections should be increased to 35 for the reason that this will add one additional seat to each GC. Moreover, there are views that the five additional seats should be allocated in proportion to population.

18. There are also views that the number of seats returned by GCs should be increased to 40, so that each GC could have two additional seats. Moreover, there are views that the additional seats should be allocated in proportion to population.

(c) Number of Seats Returned by FCs

19. Among the proposals collected previously by the Task Force, some suggest that a suitable increase in the number of FC seats should be made in the light of the actual situation in Hong Kong. The major reasons include:

- (i) if sectors previously not represented could be included, this would widen public participation and enhance the representativeness and legitimacy of the LegCo;

- (ii) more opportunities could be provided for representatives of different sectors and strata to participate in politics, so that their views could be more fully reflected and their role in monitoring the performance of the government enhanced; and
- (iii) members returned through FCs could provide professional expertise to the legislature.

20. As for the specific number of seats, there are more views that the number of FC seats should be increased to 35 or 40.

21. However, there are also views that the number of seats returned by FCs should not be increased or should be reduced. The major reasons include:

- (i) increasing the number of seats returned by FCs will not be consistent with the ultimate aim of universal suffrage prescribed in the Basic Law; and
- (ii) as there is a myriad of suggestions on new FCs, the selection process itself may give rise to controversy within the community.

(d) Delineation and Size of the Electorate of FCs

22. According to the figures of the 2007 final register of voters, there are about 213,000 registered electors for the FCs, including about 15,000 bodies and about 198,000 individuals (please refer to Annex III for details).

23. Among the proposals received previously by the Task Force, there are views that the delineation and size of the electorate of FCs should remain unchanged, or certain FCs with a smaller electorate size should be abolished.

24. However, there are more views that the electorate of FCs should be broadened. The reasons include:

- (i) to enhance the representativeness of FC elections, to cover a wider range of sectors, and to take care of the interests of different strata of the community;

- (ii) to enhance the legitimacy of the elections;
- (iii) to serve as a transitional arrangement leading to universal suffrage.

25. As to how the electorate base and size of FCs should be broadened, the proposals collected previously by the Task Force cover the following four areas²:

- (i) establishing new FCs;
- (ii) increasing the number of FC seats allocated to District Councils;
- (iii) replacing corporate votes with director's or individual's votes; and
- (iv) splitting or merging certain existing FCs.

(i) Establishing New FCs

26. There are views that new FCs should be established to take up the increase in the number of seats returned by FCs. If members agree that consideration could be given to establishing new FCs, we suggest that the following factors should be taken into account:

- (i) whether the option can tie in with the development of society and respond to public aspiration;
- (ii) whether the overall composition of LegCo can comply with the principle of "meeting the interests of different sectors of society";
- (iii) whether the option is practicable and will not give rise to very serious dispute within the community; and
- (iv) the importance and representativeness of the sectors concerned within the community.

² Recently, there have been views that the composition and electorate base of certain FCs should be reviewed. This is related to the detailed electoral arrangements, which can be further examined in future.

27. The Task Force received previously various proposals relating to establishment of new FCs, with the following examples:

- (i) Employer FC – this could allow both employers and employees to have their own representatives in the legislature;
- (ii) Chinese medicine practitioners and the Chinese medicine industry FC – this would reflect the importance of the sector and recognize its professional status;
- (iii) Women FC – this could allow women to reflect their views in the legislature;
- (iv) Small and Medium Enterprises FC – this would recognize their contribution to the Hong Kong economy; and
- (v) Auxiliary profession FC – this would recognize their contribution and allow them to reflect their views in the legislature.

(ii) Increasing the Number of FC Seats allocated to District Councils

28. Among the proposals received previously by the Task Force, there are views that consideration should be given to increasing the number of FC seats allocated to the District Councils, so as to enhance the representativeness of FCs through the District Councils.

29. However, there are also views that the District Council FC should be abolished, because it is not consistent with the concept of defining FCs by occupational nature.

(iii) Replacing corporate votes with director's or individual's votes

30. Among the proposals received previously by the Task Force, there are views that consideration should be given to replacing corporate votes with individual votes in the FC election. The major reasons include:

- (i) such new electors in the FCs to be included will represent more widely the views of the relevant industries or sectors. This will broaden the electorate base of the FCs, and

enhance overall participation as well as the legitimacy of the election; and

- (ii) with the change to individual voting, owners of corporations and responsible persons of organizations could continue to be electors of the relevant sectors.

31. We have not received many concrete proposals as to how the above could be implemented. There are views that voting rights should be given to the directors of companies or responsible persons of corporate bodies. There are also views that they should be given to employees or trade practitioners.

32. However, there are also views that corporate votes should not be replaced with individual votes, because this will not be consistent with the original intention of setting up the FCs.

(iv) Splitting or merging the Existing Sectors

33. Among the proposals received previously by the Task Force, there are views that some of the existing FCs should be split, with the following examples.

- (i) Real Estate and Construction FC – there are great differences in the policies and the mode of supervision and monitoring, etc between the real estate and the construction industry. Hence, there is a need to split the two.
- (ii) Sports, Performing Arts, Culture and Publication FC – the coverage of the existing FC is too broad. Splitting the FC could allow the views of the different sectors to be fully reflected.

34. In addition, there are views that certain FCs should be merged or reorganized, for example, merging the Finance FC and the Financial Services FC.

(e) Whether the arrangement that 20 percent of LegCo seats may be returned by individuals who are not of Chinese nationality or who have the right of abode in foreign countries should be adjusted

35. According to Article 67 of the Basic Law, permanent residents of

the HKSAR who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of LegCo, provided that the proportion of such members does not exceed 20 percent of the total membership of the Council³. Regarding the composition of LegCo formed in 2012, members may consider whether the relevant arrangement should be adjusted.

36. Among the proposal collected previously by the Task Force, there are views that the current arrangement should be maintained. The reasons are that this would help maintain the image of Hong Kong as an international city, which would be conducive to attracting talents. Also, the current proportion is considered reasonable.

37. However, there are also views that the number and proportion of seats which may be returned by individuals who are not of Chinese nationality or who have the right of abode in foreign countries should be gradually reduced and eventually eliminated. This would ensure the allegiance of LegCo Members and their commitment to Hong Kong, and would be conducive to the implementation of “Hong Kong people ruling Hong Kong”.

Conclusion

38. Regarding the LegCo election in 2012, the HKSAR Government does not have any established position on the issues set out in paragraphs 12-37 above. We suggest that members focus the discussion on:

- (a) whether the number of seats in LegCo, including the number of seats returned by GCs through direct elections and FCs, should be maintained or increased;
- (b) whether (and if so, how) the electorate base of FCs should be broadened, including :

³ According to the Legislative Council Ordinance, individuals who are not of Chinese nationality or who have the right of abode in foreign countries may join LegCo election through the following 12 FCs (equivalent to 20percent of LegCo seats): (1) Insurance, (2) Legal, (3) Accountancy, (4) Engineering, (5) Architectural, Surveying and Planning, (6) Real Estate and Construction , (7) Tourism, (8) Commercial (first), (9) Industrial (first), (10) Finance, (11) Finance Services ; and (12) Import and Export.

- (i) whether (and if so, how) new FCs should be established;
 - (ii) whether the number of FC seats allocated to District Councils should be increased;
 - (iii) whether corporate votes should be replaced with director's or individual's votes; and
 - (iv) whether certain existing FCs should be split or merged;
- (c) whether (and if so, how) the arrangement that 20 percent of LegCo seats may be returned by individuals who are not of Chinese nationality or who have the right of abode in foreign countries should be adjusted.

39. We welcome members' views on these issues.

Constitutional and Mainland Affairs Bureau
March 2008

**The 28 Functional Constituencies Established under the Provisions of
the Legislative Council Ordinance**

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| (1) Heung Yee Kuk | (15) Tourism |
| (2) Agriculture and Fisheries | (16) Commercial (first) |
| (3) Insurance | (17) Commercial (second) |
| (4) Transport | (18) Industrial (first) |
| (5) Education | (19) Industrial (second) |
| (6) Legal | (20) Finance |
| (7) Accountancy | (21) Finance Services |
| (8) Medical | (22) Sports, Performing Arts,
Culture and Publication |
| (9) Health Services | (23) Import and Export |
| (10) Engineering | (24) Textiles and Garment |
| (11) Architectural, Surveying and
Planning | (25) Wholesale and Retail |
| (12) Labour | (26) Information Technology |
| (13) Social Welfare | (27) Catering |
| (14) Real Estate and
Construction | (28) District Council |

Population-to-Seat Ratio of Overseas Legislature

Country	Population ¹	Statutory Number of Seats ² of the Legislature	Population-to-Seat Ratio
Sweden	9,119,000	349	26,129
Finland	5,276,900	200	26,385
Norway	4,698,100	169	27,799
Denmark	5,442,100	179	30,403
New Zealand	4,178,500	120 ³	34,821
Portugal	10,623,000	230	46,187
Singapore	4,436,300	96 ⁴	46,211
Israel	6,927,700	120	57,731
Hong Kong	6,963,100	60	116,052
South Korea	48,223,900	299	161,284

¹ The population figures are extracted from the United Nations Statistic Division (<http://unstats.un.org/unsd/demographic/products/socind/population.htm>) and the Census and Statistics Department of HKSAR Government (<http://www.censtatd.gov.hk/home/index.jsp>).

² Source of information: PARLINE database (<http://www.ipu.org/parline-e/parlinesearch.asp>).

³ There are 121 members in the current term Parliament.

⁴ There are 94 members in the current term Parliament.

**The Electors for Functional Constituencies
(Number of 2007 Final Register)**

Name		Number of Electors Registered		
		Bodies	Individuals	Total
1.	Heung Yee Kuk		151	151
2.	Agriculture and Fisheries	160		160
3.	Insurance	141		141
4.	Transport	180		180
5.	Education		84,639	84,639
6.	Legal		5,483	5,483
7.	Accountancy		20,329	20,329
8.	Medical		9,954	9,954
9.	Health Services		35,391	35,391
10.	Engineering		7,688	7,688
11.	Architectural, Surveying and Planning		5,559	5,559
12.	Labour	556		556
13.	Social Welfare		11,329	11,329
14.	Real Estate and Construction	432	313	745
15.	Tourism	976		976

16.	Commercial (first)	1,053		1,053
17.	Commercial (second)	737	1,015	1,752
18.	Industrial (first)	761	0	761
19.	Industrial (second)	527		527
20.	Finance	134		134
21.	Finance Services	569		569
22.	Sports, Performing Arts, Culture and Publication	1,814	80	1,894
23.	Import and Export	793	596	1,389
24.	Textiles and Garment	3,724	88	3,812
25.	Wholesale and Retail	1,736	2,486	4,222
26.	Information Technology	264	4,712	4,976
27.	Catering	478	7,535	8,013
28.	District Council		442	442
	Total	15,035	197,790	212,825