

## LEGISLATIVE COUNCIL BRIEF

### IMPROVING ELECTORAL SYSTEM (CONSOLIDATED AMENDMENTS) BILL 2021

#### INTRODUCTION

A At the meeting of the Executive Council (“ExCo”) on 13 April 2021, the Council ADVISED and the Chief Executive ORDERED that the Improving Electoral System (Consolidated Amendments) Bill 2021 (“the Bill”), at Annex A, should be introduced into the Legislative Council (“LegCo”).

2. The Bill mainly comprises the following areas of amendments:
  - (a) amending the election date for the 2021 LegCo General Election (“LCGE”) stipulated in the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation (Cap. 241L);
  - (b) reconstituting the Election Committee (“EC”), introduction of oath-taking requirement and related matters;
  - (c) providing for the method for selecting the Chief Executive (“CE”) and related matters;
  - (d) updating the composition and formation of the LegCo<sup>1</sup>;
  - (e) revising the arrangements of voter registration (“VR”);
  - (f) updating the eligibility of becoming candidates in CE elections, EC Subsector (“ECSS”) elections, and LegCo elections;
  - (g) setting the election expenses limits (“EELs”) for Geographical Constituencies (“GCs”), Functional Constituencies (“FCs”), and the Election Committee Constituency (“ECC”) starting from the 2021 LCGE;
  - (h) providing for the electoral arrangements for the LegCo ECC;
  - (i) making consequential amendments to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”) and its subsidiary legislation in light of the matters in (b) and (d) above;
  - (j) introducing a new offence under the ECICO to prohibit any person from inciting another person not to vote, to cast a blank or invalid vote by way of public activity during an election period, and

<sup>1</sup> The approved map mentioned in Part 4 of the Bill is at Annex H.

- providing that any person who wilfully obstructs or prevents another person from voting at an election commits a corrupt conduct;
- (k) implementing electronic poll register (“EPR”) on the polling day of public elections<sup>2</sup>;
  - (l) enhancing the inspection and compilation of the registers of electors;
  - (m) empowering the Presiding Officers (“PROs”) to set up a special queue for electors in need in public elections;
  - (n) empowering the Chief Electoral Officer (“CEO”) to require schools and non-government organisations (“NGOs”) receiving grants from the Government to make available their premises for use as polling station(s) and/or counting station(s) in public elections; and
  - (o) lifting the requirement of withholding financial assistance (“FA”) payable until disposal of election petitions (“EPs”) arising from LegCo and District Council (“DC”) elections.

## JUSTIFICATIONS

3. In recent years, Hong Kong has faced circumstances that are not conducive to the thorough and accurate implementation of “One Country, Two Systems”. This is particularly so since the onset of the disturbances arising from the opposition to the proposed legislative amendments to the Fugitive Offenders Ordinance in June 2019, and henceforth the year-long social unrest had thrown citizens into great fear. Groups advocating “Hong Kong independence”, organising resistance against the governance of the Central Authorities, and even colluding with external elements to interfere with Hong Kong’s affairs had emerged. These opposition forces and radicals entered the political structure of the Hong Kong Special Administrative Region (“HKSAR”) through elections. They paralysed the operation of the LegCo and obstructed governance by HKSAR Government in accordance with the law; supported and glorified violence outside the Council; and orchestrated plans to gain dominance in the LegCo in order to achieve “mutual destruction”, all of which seriously jeopardised Hong Kong’s constitutional order and challenged national sovereignty. These chaos have exposed the loopholes and deficiencies of Hong Kong’s electoral system, which if not rectified in time, will go directly against the principle of “patriots administering Hong Kong”; make it difficult to ensure the faithful implementation of “One Country, Two Systems”; and seriously impair Hong Kong’s prosperity and stability.

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<sup>2</sup> The elections concerned are CE elections, the ECSS elections, LegCo elections and DC elections.

4. The National People's Congress ("NPC") made the Decision on Improving the Electoral System of the Hong Kong Special Administrative Region ("the Decision") on 11 March 2021 and laid down the fundamental principles for amending Annexes I and II to the Basic Law: (i) fully and accurately upholding and implementing the principles of "One Country, Two Systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy; (ii) firmly safeguarding the constitutional order of the HKSAR as enshrined under the Constitution and the Basic Law; (iii) ensuring "patriots administering Hong Kong"; (iv) effectively enhancing the governance capability of the HKSAR; and (v) upholding HKSAR permanent residents' right to vote and the right to stand for election in accordance with law.

5. The Decision authorised the Standing Committee of the National People's Congress ("NPCSC") to amend Annexes I and II to the Basic Law in accordance with the above fundamental principles. The NPCSC on 30 March adopted the amended Annexes I and II to the Basic Law. According to Article 7 of the Decision, the HKSAR Government shall, according to the Decision and the amended Annexes I and II to the Basic Law, amend the relevant local legislation and organise and regulate the relevant electoral activities in accordance with law. According to the amended Annexes I and II to the Basic Law, the specific election or formation methods of the CE, the EC and the LegCo, including matters such as the delineation of eligible corporate electors of the relevant ECSSs or FCs, the delineation of GCs, the nomination method and the voting method, shall be prescribed by the HKSAR by means of electoral law. It is therefore incumbent upon the HKSAR Government to implement the new electoral system that accords with the actual situation in Hong Kong by way of local legislation.

6. Besides, amid the severe COVID-19 epidemic situation, the 2020 LCGE originally scheduled for 6 September 2020 was postponed for a year, and the NPCSC decided that the sixth term LegCo is to continue to discharge duties for not less than one year until the seventh term of office of the LegCo begins. There were various calls in the society requesting the Electoral Affairs Commission ("EAC") to modify and enhance the existing electoral arrangements. The EAC submitted to the CE on 9 October 2020 a report on the discontinued 2020 LCGE and made a number of recommendations. At the same time, the Constitutional and Mainland Affairs Bureau, together with the Registration and Electoral Office ("REO") and the Department of Justice ("DoJ"), have further examined the relevant electoral legislation which regulate various electoral arrangements. With reference to the recommendations as set out in the EAC's report and public opinion, the Government needs to amend the relevant electoral legislation to implement a host of measures to enhance the electoral arrangements (i.e. items (k) to (o) in paragraph 2 above).

**(A) Amending the election date for the 2021 LCGE stipulated in the Emergency (Date of General Election)(Seventh Term of the Legislative Council) Regulation**

7. Amidst the severe epidemic situation in Hong Kong, the CE announced on 31 July last year that the 2020 LCGE, originally scheduled for September, would be postponed for a year to 5 September 2021, in order to protect public safety and public health as well as ensure that the election would be conducted openly and fairly. To implement this decision, the CE in Council had invoked the Emergency Regulations Ordinance (Cap. 241) to make the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation. The Regulation specifies the new election date and has brought the original electoral process to an end.

8. The amended Annex II to the Basic Law has revised the method for the formation of the LegCo and its voting procedures. Among others, the LegCo composition will include the ECC to be returned by the EC members. Considering that the LegCo ECC will be returned by the EC formed in accordance with the amended Annex I to the Basic Law (details at paragraphs 9 to 10 below), and all candidates in LegCo elections must be subscribed by 2 to 4 members from each sector of the EC, there is a need for the 2021 Election Committee Subsector Ordinary Elections (“ECSSOE”) to be held prior to the LCGE. In this regard, we recommend that the ECSSOE be held on 19 September 2021, whilst the general election for the seventh term of LegCo (“seventh term LCGE”) will be held on 19 December this year, which is after the formation of the EC. We therefore recommend to amend the date of the 2021 LCGE set out in the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation from 5 September 2021 to 19 December 2021.

**(B) Reconstituting the EC, introduction of oath-taking requirement and related matters**

**Size and Composition of the EC**

9. According to the Decision, the EC should be broadly representative, suited to HKSAR’s actual situation, and representative of the overall interests of society. It is composed of 1 500 members from the following five sectors:

Sectors	Seats
First Sector: Industrial, commercial and financial sectors	300

<b>Sectors</b>	<b>Seats</b>
Second Sector: The professions	300
Third Sector: Grassroots, labour, religious and other sectors	300
Fourth Sector: Members of the Legislative Council, representatives of district organisations and other organisations	300
Fifth Sector: HKSAR deputies to the NPC, HKSAR members of the National Committee of the Chinese People’s Political Consultative Conference (“CPPCC”), and representatives of Hong Kong members of relevant national organisations	300

**B**

10. The five sectors are composed of 40 subsectors and the detailed distribution of seats is at **Annex B**. As compared to the current composition of the EC, major amendments are as follows:

- (a) The First Sector will have 18 subsectors with 15 to 17 seats each:
  - (i) the existing “Hong Kong Chinese Enterprises Association” subsector would be renamed as “Commercial (third)” subsector, and be assigned 17 seats;
  - (ii) a new subsector, viz. “small and medium enterprises” (“SME”) subsector would be created with 15 seats; and
  - (iii) the seats assigned to the remaining 16 subsectors would be reduced by one seat each.
  
- (b) The Second Sector will have ten subsectors with 30 seats each:
  - (i) the existing “Education” and “Higher Education” subsectors (each with 30 seats originally) would be merged and become the “Education” subsector;
  - (ii) the “Medical” and “Health Services” subsectors (each with 30 seats originally) would be merged and become the “Medical and Health Services” subsector with 30 seats;
  - (iii) a new subsector, viz. the “Technology and Innovation” subsector would be added to replace the “Information Technology” subsector;
  - (iv) the “Social Welfare” subsector, originally under the Third Sector (with 60 seats originally), would be added to this Sector; and
  - (v) the “Sports, Performing Arts, Culture and Publication” subsector, originally under the Third Sector (with 60 seats originally), would be added to this Sector. There will no longer be sub-subsectors under this subsector.

- (c) The Third Sector will have five subsectors with 60 seats each:
  - (i) the “Social Welfare” and “Sports, Performing Arts, Culture and Publication” would be moved to the Second Sector; and
  - (ii) two new subsectors, i.e. “Grassroots associations” and “Associations of Chinese fellow townsmen” subsectors would be created.
  
- (d) The Fourth Sector will have five subsectors:
  - (i) the “National People’s Congress” and “Chinese People’s Political Consultative Conference” subsectors would be moved to the Fifth Sector;
  - (ii) two subsectors, viz. “Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of Hong Kong Island and Kowloon” and “Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of the New Territories” subsectors would be created and assigned with 76 and 80 seats respectively, while the “Hong Kong and Kowloon District Councils” and “New Territories District Councils” subsectors would be abolished;
  - (iii) the number of seats assigned to “Heung Yee Kuk” (“HYK”) subsector would be increased by one seat to 27 seats;
  - (iv) the original “Members of the LegCo” subsector would be assigned with 90 seats; and
  - (v) a new subsector, viz. “Representatives of associations of Hong Kong residents in the Mainland” subsector would be created with 27 seats.
  
- (e) A new Fifth Sector will be created with two subsectors, viz. “HKSAR deputies to the NPC and HKSAR members of the CPPCC National Committee” subsector (“NPC and CPPCC subsector”) and “Representatives of Hong Kong members of relevant national organisations” subsector with 190 and 110 seats respectively.

### **Constitution of the EC**

- 11. EC members will be returned by the following three methods:
  - (a) ex-officio members;
  - (b) nominated by the designated bodies of the subsectors; and
  - (c) elected by eligible voters in the subsectors.

## Ex-officio members

12. There will be ex-officio members in the following subsectors:

- (a) Engineering (15 seats);
- (b) Architectural, surveying, planning and landscape (15 seats);
- (c) Legal (6 seats);
- (d) Education (16 seats);
- (e) Medical and health services (15 seats);
- (f) Social welfare (15 seats);
- (g) Members of the LegCo (90 seats); and
- (h) NPC and CPPCC (190 seats).

C

The holders of the specified offices in each subsector could be registered as the ex-officio members of the corresponding subsector. Please see Annex C for details.

*Registration of HKSAR deputies to the NPC (“NPC deputies”) and HKSAR members of the CPPCC National Committee (“CPPCC members”)*

13. All NPC deputies and CPPCC members are the ex-officio members of the EC. Their registration will be coordinated by a relevant organisation. The registration arrangement is as follows:

- (a) If an NPC deputy or CPPCC member is also a holder of specified office in another subsector (“specified subsectors”) (i.e. subsectors that are not the NPC and CPPCC subsector), he may only register as the ex-officio member of that specified subsector; if he holds more than one specified office in a non-NPC-and- CPPCC subsector, then he may choose to be the ex-officio member of one of the specified subsectors, and designate a person to be the ex-officio member of the remaining subsector (if applicable<sup>3</sup>) in accordance with the requirements; and
- (b) if the total number of NPC deputies and CPPCC members who are eligible to be registered as ex-officio members after deducting the number of members registered in specified subsectors per subparagraph (a) above exceeds the total 190 seats assigned to the NPC and CPPCC subsector, then those NPC deputies and CPPCC members may choose to register as ex-officio members in other

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<sup>3</sup> This arrangement to designate a person to be the ex-officio member does not apply to the ex-officio seats in the Legal subsector nor the Members of the LegCo subsector.

subsectors that they have substantial connection with. If there are NPC deputies or CPPCC members who choose to register in other subsectors as described in this paragraph, then the number of ex-officio seats of that subsector will increase and the number of elected seats of that subsector will decrease accordingly. After the NPC deputies and CPPCC members are registered as the EC members of the relevant subsectors, the number of ex-officio EC member, and EC members to be returned by nomination or election for each subsector should remain unchanged during that term of the EC.

### *Registration of ex-officio members*

14. All ex-officio members are required to submit registration forms to the Electoral Registration Officer (“ERO”) and the validity of their registration will be determined by the Candidate Eligibility Review Committee (“CERC”). Generally speaking, the holders of the specified offices in each of the subsector (i.e. specified persons) may register as the ex-officio members of that subsector. However, under the following circumstances, the specified persons may designate another person (i.e. designated person) who is holding an office in a relevant body to be registered as the ex-officio member of that subsector:

- (a) the specified person is ineligible to be registered as ex-officio member, including:
  - (i) he is not registered as an elector (or has not made an application to be so registered) under the Legislative Council Ordinance (Cap. 542) (“LCO”) in the existing GCs final register (“FR”) or is disqualified from being registered as an elector for a GC; or
  - (ii) he is a Principal Official or specified officers<sup>4</sup>; or any other civil servant who is holding a specified office in his or her official capacity; or
- (b) the specified person is holding more than one specified office, except for the subsector the substitution arrangement of which is already specified<sup>5</sup> in the law or non-applicable subsectors<sup>6</sup>.

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<sup>4</sup> They are Principal Officials, directorate officers, administrative officers, information officers, police officers or any other civil servant who is holding a specified office in his official capacity.

<sup>5</sup> That is the Education subsector.

<sup>6</sup> That is the Legal subsector, Members of the LegCo subsector and the NPC and CPPCC subsector.



15. An ex-officio member or a holder of the specified office may not become an EC member through nomination or election. A specified person would be deemed to have resigned from the EC if he / she no longer holds the relevant specified office. Each person may only be registered as the ex-officio member of one subsector.

EC members to be returned by nomination

16. There will be members to be returned by nomination in the following subsectors:

- (a) Technology and innovation (15 seats);
- (b) Accountancy (15 seats);
- (c) Legal (9 seats);
- (d) Sports, performing arts, culture and publication (15 seats);
- (e) Chinese medicine (15 seats);
- (f) Religious (60 seats); and
- (g) Representatives of associations of Hong Kong residents in the Mainland (27 seats).

D

Please refer to **Annex D** for the number of members to be returned by nomination and the relevant designated bodies for each subsector.

17. The method for returning EC members through nomination will be as follows:

- (a) each relevant designated body should nominate a number of persons selected by it to become its representatives in the EC. The nominee should meet the following requirements:
  - (i) he is both registered and eligible to be registered under the LCO as an elector for a GC and is not disqualified from being so registered; and
  - (ii) the person has a substantial connection with the relevant subsector.
- (b) If the number of nominees is in excess of the number of seat assigned to the designated body, the designated body should indicate which of the nominees are to be given preference in making up the assigned number or in filling the vacancy; and rank the excess nominees, if more than one, in the order of priority; if the designated body does not indicate which nominees are to be given preference, then the Returning Officer (“RO”) should determine the order of priority of those nominees by drawing lots;

- (c) the CERC is to determine the validity of the nomination of nominees in accordance with the order of priority indicated in the nomination form or as determined by the RO until the number of seats assigned to the designated body is all filled; and
- (d) the RO should announce, in accordance with the regulations, the nominees the nomination of which are determined to be valid by the CERC as the members of the EC.

### EC members to be returned by election

#### *Electorate*

18. Apart from the EC seats as mentioned in paragraphs 12 and 16 above, other EC members will be returned by election by the registered voters in each subsector. The specified entities which are eligible to be registered as voters for each subsectors are at **Annex E**.

E

19. Except for certain subsectors, all EC subsectors will be elected by corporate voters. Unless specified in the electoral law, an association or enterprise may become a corporate voter for a subsector only if it has been operating for not less than three years after acquiring relevant qualifications for that subsector.

20. In addition, the following subsectors comprise individual voters. To ensure the size of electorate in each subsector, we will require persons who are eligible to register in a subsector with smaller electorate to register in that subsector as per established principle. The priority of registration is as follows:

- (a) HYK;
- (b) Representatives of Hong Kong members of relevant national organisations; and
- (c) Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of Hong Kong Island and Kowloon; or representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of the New Territories.

21. In light of the reconstitution of the EC, all existing voters on the 2020 FR for subsectors would not be included on the 2021 FR for subsectors but would be included in the subsector omissions lists (“OL”)<sup>7</sup> (except the voters registered in subsectors that are removed<sup>8</sup>). They will be required to submit registration form and/or relevant information to confirm that they remain to be eligible voters after the legislative amendment exercise so as to be included on the 2021 provisional register (“PR”) for subsectors. As regards the specified entities that have newly become eligible to register as voters, they are also required to submit registration form before the specified deadlines. For the deadlines for VR, please refer to Part (E) below.

### *Electoral arrangement of subsector elections*

22. The 2021 ECSSOE will be held on 19 September 2021. The number of seats to be returned by election in each subsector will be announced by the CEO, after deducting the number of NPC deputies and CPPCC members registered as ex-officio members in other subsectors as per paragraph 13(b) above.

### *Nomination and Voting Arrangement*

23. Each candidate of the EC shall be nominated by five voters in the respective subsector. Each voter may only nominate a number of candidates not exceeding the number of seats to be elected in the respective subsector in that election.

24. As with existing arrangement, EC members of each subsector will be elected by secret ballot in the subsector election. A voter might vote for as many candidates as the number of EC members to be elected by that subsector and no more.

### Appeals

25. To ensure the soundness and transparency of the electoral system, the existing Election Committee (Appeals) Regulation (Cap. 569A) has provided for appeal mechanisms against the election results of EC subsector elections or the registration of a nominee. The current legislative amendment exercise has expanded the scope of ex-officio members and provided for the registration eligibility and procedures. As disputes may arise during the process, we consider it necessary to provide for an appeal mechanism for the

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<sup>7</sup> The registration of these voters in FCs and GCs (if applicable) are not affected. If they remain eligible, their registrations in the FC and GC registers of electors will be retained.

<sup>8</sup> These subsectors are Information Technology, DC(first) and DC(second).

registration of ex-officio members. Appeals would need to be submitted within seven days after the publication of the interim register (or after the relevant determination regarding the registration), and the Revising Officer should make a ruling within 20 days after the relevant publication or determination.

Oath-taking requirement for EC member to uphold Basic Law and bear allegiance to the HKSAR

26. The amendment exercise will also introduce the oath-taking requirement for EC members to uphold the Basic Law and bear allegiance to the HKSAR. When the ex-officio members submit the registration forms, or the nominees (for subsectors returning EC members by nomination) / candidates (for subsectors returning members by election) submit nomination forms, there should be a declaration to the effect that the person will uphold the Basic Law and pledge allegiance to the HKSAR for the relevant form to be considered valid. After the members-elect are registered on the interim register, they would also need to sign a written oath on upholding the Basic Law and bearing allegiance to the HKSAR. Any person who does not make the oath in accordance with the requirement should not be included on the EC FR.

27. We also suggest to introduce a mechanism to deal with scenarios where an EC member breaches an oath. With reference to the existing mechanism under section 73 of the LCO or section 79 of the District Councils Ordinance (Cap. 547) (“DCO”), the Secretary for Justice (“SJ”) may commence legal proceedings in the Court of First Instance (“CFI”) on the ground that a person has been disqualified from being an EC member. Once SJ has commenced the relevant legal proceedings on the grounds of breach of oath or failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR, the functions of the EC members will be immediately suspended. The member’s name should not be added to the EC Final Register or should be removed from the register until the decision of the Court becomes final. The member concerned is, however, entitled to apply to the Court to lift such suspension.

28. With reference to the existing election petition mechanism in various public elections<sup>9</sup> (including LegCo elections and DC elections), we recommend that a leap-frog appeal mechanism should be introduced. A party

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<sup>9</sup> The leap-frog appeal mechanism is adopted for the EPs in various public elections, including CE (section 34 of the CEEO), LegCo (section 65(2) of the LCO), DC (section 53(2) of the DCO) and Rural Representatives (section 43(2) of the Rural Representative Election Ordinance (Cap. 576)) elections.

who is not satisfied with a decision made by the CFI may lodge an appeal to the Court of Final Appeal (“CFA”) direct (instead of lodging an intermediate appeal to the Court of Appeal of the High Court), subject to leave being granted by the Appeal Committee of the CFA.

29. In addition, a person is disqualified from being registered, nominated or elected as an EC member if the date of registration / nomination or polling date is within five years after the person has:

- (a) vacated an office or disqualified from entering on an office for declining or neglecting to take an oath; or
- (b) breached the oath or failed to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR.

#### The Term of the EC and the Final Register

30. According to the amended Annex I to the Basic Law, upon the commencement of term of office of the EC constituted under that Method, the term of office of the EC constituted under the Method previously in force shall terminate. The term of office of the EC shall be five years. To tie in with the preparation for the 2021 LCGE, the new term of EC will be constituted on 22 October 2021 and the term will end on 21 October 2026 as per current stipulation.

31. According to the law, an interim register of EC members should be published within seven days after the results of the subsectors elections are published. On this basis, a FR should be published on the date when the EC is constituted after incorporating the relevant amendment. For 2021, the FR of EC members will be published on the date when the EC is constituted (i.e. 22 October 2021).

32. According to section 41 of the Schedule to the Chief Executive Election Ordinance (Cap. 569) (“CEEO”), the ERO should amend the FR from time to time to reflect changes in ex-officio membership. As such, after the new term of LegCo is elected, the FR of the EC members should be updated to include the new LegCo members as ex-officio members of the EC. If any of the new members are the EC members of other subsectors returned by nomination or election, the person should be deemed to have resigned from the relevant seat.

### **(C) Providing for the method for selecting the CE and related matters**

33. A CE candidate shall be nominated by not less than 188 EC members with at least 15 members from each of the five subsectors. Each EC member may only nominate one candidate. The CE will be elected by secret ballot on a one-person-one-vote basis. A candidate shall obtain over 750 votes in the poll to be elected and the CE-elect shall be appointed by the Central People's Government.

34. In addition, we will also amend the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap. 554A) to increase the maximum amount of election expenses at a CE election from the existing \$15,700,000 to \$17,600,000 to reflect changes in the price level<sup>10</sup>.

### **(D) Updating the composition and formation of LegCo**

35. Pursuant to the amended Annex II to the Basic Law, the LegCo shall be composed of 90 members, including 40 members returned by the ECC, 30 members returned by FCs, and the remaining 20 members returned by GCs through direct elections. The new composition of the LegCo is at **Annex F**. Details are elaborated in paragraphs 36 to 42 below.

F

#### **ECC**

36. The electorate of the LegCo ECC shall be composed of 1 500 EC members who shall return 40 members of the ECC in LegCo. The FR of EC members will be published on 22 October 2021.

37. In accordance with the amended Annex II to the Basic law, the ECC will adopt the Block Vote system, i.e. each EC member shall vote for no more or no less than 40 candidates on the ballot paper. Ballot papers comprising more than or less than 40 choices will be considered invalid, and the 40 candidates who obtain the greatest number of votes shall be returned in the election.

#### **FCs**

38. The 30 seats of FCs will be returned by 28 FCs in LegCo<sup>11</sup>. The composition and electorate of some FCs will be revamped (see **Annex G** for

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<sup>10</sup> The expected cumulative underlying inflation rate is 10.28% over the period from 2017 to 2022.

<sup>11</sup> The Labour FC shall continue to return 3 Members.

details). Among others, three new FCs will be created to return one seat each, with details as follows:

- (a) Hong Kong Special Administrative Region Deputies to the National People's Congress, Hong Kong Special Administrative Region Members of the National Committee of the Chinese People's Political Consultative Conference and representatives of relevant national organisations;
- (b) Commercial (third): this constituency shall be composed of corporate members of the Hong Kong Chinese Enterprises Association entitled to vote at general meetings of the Association; and
- (c) Technology and Innovation: to reflect the importance of innovation and technology to Hong Kong, we will establish the Technology and Innovation FC in replacement of the current Information Technology FC. The electorate of the FC shall be composed of national research platforms, public organisations that are closely related to the innovation and technology development, as well as academic organisations and professional bodies that participate in the consultative process of the Government in the field of innovation and technology development.

Meanwhile, the existing DC (first)FC and District Council (second) FC ("DC(second)FC") will be abolished, and the existing Medical FC and Health Services FC will be combined to form the Medical and Health Services FC. In view of the importance of the Chinese Medicine sector to Hong Kong, the electorate of this FC shall include representatives of the Chinese Medicine sector.

39. Besides, we recommend that the electorate of the following FCs shall be composed of corporate electors only:

- (a) Real estate and construction;
- (b) Commercial (second);
- (c) Industrial (first);
- (d) Financial services;
- (e) Sports, performing arts, culture and publication;
- (f) Import and export;
- (g) Textile and garment;
- (h) Wholesale and retail; and
- (i) Catering.

At the same time, we have reviewed the composition of different FCs, and we recommend revising the composition of FCs in items (e) to (i) above, and that of the Agriculture and fisheries FC, Transport FC and Tourism FC<sup>12</sup>. Details are at **Annex G**.

## G

40. As regards the voting system, the existing voting system for the FCs largely remains unchanged:

- (a) 23 ordinary FCs (including the new FCs and the combined FC) will continue to adopt the “first past the post” voting system to select a candidate with the single-seat, single-vote method;
- (b) the Labour FC will continue to adopt the “first past the post” voting system to return three seats. Each elector may choose up to three candidates at most; and
- (c) in view of the small number of electors, four special FCs (i.e. HYK, Agriculture and fisheries, Insurance, and Transport) adopted the preferential elimination system to ensure that the elected candidate would be acceptable to at least half of the voters. In light of the experience in elections over the years, we suggest to simplify the voting method by adopting the “first past the post” voting system, so as to align the voting system with other ordinary FCs.

## **GCs**

41. According the amended Annex II to the Basic Law, the number of GCs would be increased from five to ten (the name, delineation of boundaries and the approved map mentioned in part 4 of the Bill are at **Annex H**), and two Members will be returned for each GC. GCs will adopt the simple or relative majority system (otherwise known as the “first past the post” voting system) for returning a total of 20 Members. Each voter may vote for one candidate on the ballot paper. The two candidates who obtained the greatest numbers of votes will be returned as Members of the respective GC.

## H

42. In view of the change in the number of GCs and the urgency of holding the 2021 LCGE, as far as the seventh term LCGE is concerned, we need to specify that the requirement, under section 18 of the LCO, that the relevant report of the EAC for that election must be taken into account when the CE makes an order for declaration and naming of GCs, is not applicable to

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<sup>12</sup> We have also taken the opportunity of this exercise to remove corporates which have ceased operation since the last updating exercise, and update the names of corporates that have had their names changed since the last updating exercise.



the seventh term of LegCo. In fact, the EAC has made provisional recommendations for public consultation in accordance with the statutory requirements before delineating the boundaries of the 452 constituencies for the 2019 District Council Ordinary Election (“DCOE”), and then submitted the formal recommendations for endorsement by the CE in Council. The proposed boundaries of the ten LegCo GCs are based on the constituency boundaries for the 2019 DCOE as recommended by the EAC and approved by the CE in Council. The boundaries also follow the established criteria to ensure that each GC comprises a number of contiguous whole DC constituencies and that the projected population of each GC does not deviate from the resulting number (i.e. multiplying the population quota by the number of members to be returned by that GC) by more than 15%.

43. For the avoidance of doubt, with effect from the general election for the eighth term of LegCo (i.e. starting from the 2025 LCGE), the EAC will continue to perform its statutory function of reviewing the LegCo GC boundaries in accordance with the existing requirements of the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”).

### **Restrictions on VR in FCs and ECSSs**

44. Under the existing VR arrangements, no person/body may be registered as an elector in more than 1 FCs/ECSSs. If a person/body is eligible to be registered in 2 or more FCs/ECSSs, he/she/it may choose to be registered in any one of the FCs/ECSSs unless otherwise specified. The established principle for FCs is that an elector who is eligible to be registered in a constituency with a relatively smaller electorate must so register in that constituency in order to ensure that the number of electors in each constituency can reach a certain level. In view of the new FCs and ECSSs, we recommend that the following priority of registration be adopted:

- (a) **Individuals:** if an elector is eligible to be registered in the HKSAR deputies to the NPC, HKSAR member of the National Committee of CPPCC and representatives of relevant national organisations FC and any other FC at the same time (with the exception of HYK), the elector can only be registered in the HKSAR deputies to the NPC, HKSAR member of the National Committee of CPPCC and representatives of relevant national organisations FC but not in any other FC; and
- (b) **Corporates:** if a body is eligible to be registered in the (i) Agriculture and fisheries FC, (ii) Insurance FC; (iii) Transport FC; (iv) Finance FC; (v) Sports, Performing arts, Culture and

Publication FC; and (vi) Technology and Innovation FC and any other FC at the same time, the body can only be registered in the six aforesaid FCs but not in any other FC.

45. According to the amended Annex II to the Basic Law, eligible corporate voters for functional constituencies shall be composed of institutions, organisations, associations or enterprises which are representative and specified by law. Unless specified in the electoral law of the HKSAR, an association or enterprise may become a corporate voter for a FC only if it has been operating for not less than three years after acquiring relevant qualifications for that FC.

### **Multiple voting rights**

46. Most registered electors can cast up to two votes<sup>13</sup>. All electors have one vote in GCs, and eligible electors have another vote in FCs. For the 1 500 EC members, if they are eligible to vote in both the ECC and a FC, that elector can vote in both the ECC and the FC. In other words, a EC member may cast up to three votes based on their different capacities<sup>14</sup>.

47. We suggest to amend the EACO, the LCO, and relevant electoral legislation in order to implement the aforesaid arrangements.

48. Pursuant to the amended Annex II to the Basic Law, the LegCo adopts the following procedures for voting on motions, bills or amendments: The passage of bills and motions introduced by the government shall require a simple majority vote of the Members of the LegCo present. The passage of motions, bills or amendments to government bills introduced by individual Members shall require a simple majority vote of each of the two groups of Members present:

- (a) Members returned by the ECC; and
- (b) Members returned by FCs and GCs.

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<sup>13</sup> If the individual is appointed as an authorised representative by a corporate elector of a FC, he may cast a third vote.

<sup>14</sup> If an EC member is an authorised representative of a FC corporate elector, he can cast a fourth vote.

## **(E) Revising the arrangements of VR**

### **VR procedures in 2021 and subsequent VR cycles**

#### Overview of amendments to VR procedures

49. To implement the revised composition of the ECSSs and FCs, we need to conduct a VR exercise and compile the registers of electors for use in the several upcoming public elections. As the 2021 VR cycle (which started on 3 May 2020) is now in progress, we need to formulate special arrangements for the 2021 VR cycle such as to specify a special VR deadline, revise the arrangements for claims and objections, and specify the publication dates of the different registers of electors. In view of the scheduled dates of the public elections in the future, we also need to make revisions to the regular VR process.

<b>VR deadlines</b>	<b>Existing VR deadlines (non-DC election year)</b>	<b>Regular deadlines from 2022 and onwards</b>
(1) Change of Particulars	2 April	2 June
(2) New Registration	2 May	2 June
(3) Electors to reply to inquiry letters to maintain their VR status	2 May	2 June
(4) Publication of Provisional Register and Omission List	1 June	1 August
(5) Claims and Objection Period	1 to 25 June	1 to 25 August
(6) Publication of Final Register	25 July	25 September

#### Special VR arrangements for 2021

50. Due to the major changes in composition of ECSSs and FCs, we need to make special arrangements to allow newly eligible and affected voters/electors to handle their VR matters. We will specify 5 July 2021 as a special VR deadline, allowing individuals and bodies who are eligible to register in the ECSSs and FCs which are newly created or whose registration eligibilities have been revised, as well as the voters/electors who are no longer eligible to register in and omitted from their original ECSSs/FCs, but eligible to register in other ECSSs/FCs, to submit VR applications.

51. The individuals and bodies who are eligible to submit VR applications by the special VR deadline of 5 July 2021 are set out in the table below:

<b>Category</b>	<b>Individuals and bodies eligible to submit VR applications by the special VR deadline</b>
(a) EC ex-officio members	All individuals who are eligible to register as EC ex-officio members should submit application forms.
(b) ECSS	Since the composition of the EC will be re-constituted, individuals and bodies who meet the registration eligibilities for ECSS (whether they are existing voters or not) should submit VR applications, and/or relevant documentation and proof, before they will be included in the 2021 ECSS PR.
(c) FC	<p>(i) All existing electors who are no longer eligible to register in and omitted from their original FCs may apply to register in other FCs they are eligible for (if applicable);</p> <p>(ii) All individuals and bodies who are eligible to register in the three newly created FCs<sup>15</sup> (whether they are existing electors or not); and</p> <p>(iii) All individuals and bodies eligible to register in six FCs with revised registration eligibilities<sup>16</sup> (whether they are existing electors or not).</p>
(d) GC	<p>In general, the special VR deadline does not apply to VR applications for GC, except for the following who may submit such VR applications:</p> <p>(i) Individuals eligible to register as EC ex-officio</p>

<sup>15</sup> The three newly created FCs are –

- (i) Commercial (third) FC (*Body electors only*);
- (ii) Technology and Innovation FC (*Body electors only*); and
- (iii) HKSAR deputies to the NPC, HKSAR members of the National Committee of the CPPCC, and representatives of relevant national organisations FC (*Individual electors only*).

<sup>16</sup> The six FCs are –

- (i) Agriculture and fisheries FC (*Body electors only*);
- (ii) Transport FC (*Body electors only*);
- (iii) Tourism FC (*Body electors only*);
- (iv) Catering FC (*Body electors only*);
- (v) Sports, Performing Arts, Culture and Publication FC (*Body electors only*); and
- (vi) Medical and Health Services FC (*Individual electors only*).

Category	Individuals and bodies eligible to submit VR applications by the special VR deadline
	members; (ii) Individuals eligible to register as ECSS voters <sup>17</sup> ; (iii) Individuals eligible to register in FCs which are newly created or whose registration eligibilities have been revised (see items (c)(ii) and (iii) above); and (iv) Individuals appointed by eligible body voters/electors as their authorized representatives.

Arrangement to omit existing electors who are no longer eligible in 2021

52. Apart from including the voters and electors who meet the new registration eligibilities, we also need to make special arrangements to omit the existing electors and voters who are no longer eligible, so as to compile the registers of electors afresh. The said arrangements are summarised below:

Category	Arrangement in 2021
(a) Existing FC electors who are no longer eligible <i>[Except those in category (c) below]</i>	As per established procedures, these FC electors would be included in the inquiry process. If they meet other registration eligibilities, these electors may submit VR applications and/or relevant documentation and proof. Otherwise, they will be included in the OL.
(b) All existing ECSS voters <i>[Except those in category (c) below]</i>	As the ECSS has been reconstituted, individuals and bodies who are eligible to register as ECSS voters should submit VR applications and/or relevant documentation and proof. As a special arrangement, all of the existing voters will be included directly into the OL without going through the process of issuing inquiry letters.
(c) Existing	Since the ECSSs/FCs concerned will be deleted, as

<sup>17</sup> Four ECSSs will comprise individual voters:

- (i) HYK subsector in the Fourth Sector;
- (ii) Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of Hong Kong Island and Kowloon subsector in the Fourth Sector;
- (iii) Representatives of members of Area Committees, District Fight Crime Committees, and District Fire Safety Committees of the New Territories subsector in the Fourth Sector; and
- (iv) Representatives of Hong Kong members of relevant national organisations subsector in the Fifth Sector.

Category	Arrangement in 2021
voters/electors registered in ECSSs/FCs to be deleted <sup>18</sup>	a special arrangement, the relevant existing electors and voters will be directly removed from the registers of electors without going through the process of issuing inquiry letters. They will be included into neither the OL nor the PR.

### Timing of publication of the registers of electors in 2021

53. Given the heavy workload and time constraints in conducting the VR work, taking into account the operational concerns, the ECSS and GC/FC registers of electors will be published separately. The ECSS PR, OL and FR will be published in July to August 2021, while the relevant registers of electors for GC/FC will be published in September to October 2021.

### Arrangement for claims and objections

54. After compiling the PR and OL, in accordance with established procedures, we will provide for a claims and objections period so that electors may lodge claims and objections with regard to the PR, which would then be reflected in the FR after being considered and approved by the Revising Officer. Similar to the other items above, special arrangements would also be made for the claims and objections period. In addition, all claims and objections relating to the ECSS, FC and GC in 2021 will be considered by the Revising Officer on the basis of written submissions only. No hearings will be arranged.

### The regular VR cycle from 2022 and onwards

55. At present, two sets of VR procedures and deadlines applicable to DC election years and non-DC election years are prescribed in the electoral laws. The relevant arrangements were originally intended to ensure that the registers of electors in the years concerned were published closer to the DC Ordinary Election usually held in November and the LCGE usually held in September, such that the relevant VR particulars would be more accurate and up-to-date.

56. After the improvements to the electoral system are implemented, the three public elections, namely the ECSS, LegCo and DC elections, will all

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<sup>18</sup> The three ECSSs to be deleted are (i) HK & Kowloon DCs, (ii) NT DCs and (iii) Information Technology, while the three FCs to be deleted are (i) DC(first), (ii) DC(second), and (ii) Information Technology.

be held in the vicinity of November and December. As such, there is no need to specify two sets of VR procedures and deadline. Instead, we may adopt the existing arrangement for DC election years as the regular VR procedures and deadlines to be implemented from 2022 and onwards. It is worth noting that, instead of the existing arrangement in specifying two different deadlines for new registration and change of particulars applications, in the newly specified regular VR procedures, the two will come under the same deadline. See Part (L) for further elaboration on the reason.

### **The three-year operation requirement for relevant body electors**

57. To ensure that the relevant body voters/electors possess bona fide and substantial connections with the relevant trades of their ECSS and FC, and to prevent acts of vote-rigging, in accordance with the amended Annexes I and II to the Basic Law, unless specified in the electoral law of the HKSAR, an association or enterprise may become a corporate voter for a ECSS / corporate elector for a FC only if it has been operating for not less than three years after acquiring relevant qualifications for that ECSS/FC. In other words, body applicants must both be in possession of the relevant registration eligibilities and be operating for three years, or both be a member of the umbrella organisation concerned and be operating for three years, before the body is eligible to register as a ECSS voter or a FC elector.

58. The said requirement will apply to both applications for new registration and existing ECSS voters and FC electors already registered in the 2020 FR (if such bodies still meet the revised registration eligibilities). To determine whether a body complies with the three-year operation requirement, the special VR deadline in 2021 (i.e. 5 July 2021) will be used as a basis of assessment and calculation. To implement this requirement, we will amend the relevant provisions in section 25 of the LCO and section 12 of the Schedule to the CEEO.

### **(F) Updating the eligibility of becoming candidates in CE elections, ECSS elections, and LegCo elections**

59. Based on the existing arrangements in LegCo elections, a person is eligible for nomination as a candidate at an election if he/she satisfies the following: be aged 21 or above, be a registered GC elector, has ordinarily resided in Hong Kong for the three years immediately preceding the date of the nomination, be a Chinese citizen who is a Hong Kong permanent resident with no right of abode in a foreign country. As regards FCs, a candidate must be a registered GC elector, and must be a registered elector for, or have a

substantial connection with, the relevant FC. In addition, section 37(3) of the LCO provides that with the exception of 12 FCs<sup>19</sup>, a FC candidate must be a Chinese citizen who is a Hong Kong permanent resident with no right of abode in a foreign country. For the newly established ECC, persons nominated as candidates must be registered GC electors, and other requirements in relation to eligibility are largely the same as those in GC elections.

60. At present, the RO is required to determine whether a candidate is validly nominated in accordance with the law. The RO would take into account all relevant information in considering the validity of nomination, and the RO must endorse on the nomination form the decision and the reasons for it. Pursuant to the amended Annexes I and II to the Basic Law, the eligibility of candidates standing for CE elections, ECSS elections and LegCo elections will be reviewed and confirmed by the newly established CERC. The chairman and members of the CERC will be appointed by the CE by notice in the gazette. Only principal officials appointed pursuant to a nomination under Article 48(5) of the Basic Law are eligible for appointment.

61. In accordance with the amended Annexes I and II to the Basic Law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee for Safeguarding National Security of the HKSAR (“CSNS”).

62. In light of the aforesaid amendments, we shall rationalise the relevant administrative arrangements while it is unnecessary to mention in local legislation the workflow of the CERC. Specifically, the CERC shall take into account the opinions of the ROs and the CSNS in determining whether the nomination of a candidate is valid. Among them, the RO is responsible for deciding whether a candidate has satisfied the general requirements of standing for elections (such as nationality, age, Hong Kong permanent resident status, criminal and bankruptcy records, etc.), and the CSNS will, on the basis of the review of the National Security Department of the Police Force of the HKSAR, determine whether a candidate meets the

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<sup>19</sup> Article 67 of the Basic Law provides that the LegCo shall be composed of Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. However, permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the LegCo of the Region, provided that the proportion of such members does not exceed 20% of the total membership of the Council. Currently, section 37(3) of the LCO sets out that the candidature of 12 FCs is open to Hong Kong permanent residents who are not Chinese nationals or who have the right of abode in a foreign country, i.e. legal; accountancy; engineering; architectural, surveying, planning and landscape; real estate and construction; tourism; commercial (first); industrial (first); finance; financial services; import and export; and insurance.



legal requirement and conditions of “upholding the Basic Law and swearing allegiance to the HKSAR”, and issue an opinion to the CERC in respect of a candidate who fails to meet such legal requirements and conditions. The procedure for determining the validity of nominations is at **Annex I**.

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63. Besides, pursuant to the amended Annex II to the Basic Law, the requirement on the number of valid subscriptions for the LegCo ECC, FCs and GCs are as follows:

- (a) **ECC**: each candidate shall be nominated by no less than 10, but no more than 20, members of the EC, including no less than 2 but no more than 4 members from each of the five sectors of the EC;
- (b) **FCs**: each candidate shall be nominated by no less than 10, but no more than 20 electors of the respective FC, and no less than 2 but no more than 4 members from each of the five sectors of the EC; and
- (c) **GCs**: each candidate shall be nominated by at least 100 but no more than 200 electors of the respective GC, and no less than 2 but no more than 4 members from each of the five sectors of the EC.

Each EC member can nominate one candidate each for the LegCo ECC, FCs and GCs.

64. We suggest to amend the CEEO, the LCO, and relevant electoral legislation in order to implement the aforesaid arrangements.

### **(G) Setting the EELs for GCs, FCs, and the ECC starting from the 2021 LCGE**

65. In view of the new composition of LegCo, we need to determine the EELs for the ECC, FCs and GCs elections in the seventh term LCGE. In relation to the ECC and new FCs, the level of EELs will be based on the prevailing principle, i.e. having regard to the number of registered electors in the FR of the relevant constituency. As for GCs, we recommend that the level of EELs be set with reference to the number of District Council Constituency Areas (“DCCAs”) in the GC. On this, we recommend that the corresponding EEL for each DCCA should be set at \$69,000<sup>20</sup>. Our detailed proposal for the EELs is set out at **Annex J**. We recommend revising the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap. 554D) (“MAEE(LCE)Reg”) to implement the aforesaid recommendations.

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<sup>20</sup> The EELs for each DCCA in the 2019 DCOE is \$68,800. Taking into account the inflation level in 2020 (0.3%), we propose that the EEL for each DCCA be set at \$69,000.

## **(H) Providing for the electoral arrangements for the LegCo ECC**

66. 40 seats in LegCo are to be returned by the EC. We need to provide for the relevant electoral arrangements. We recommend that electors must use the pen provided to fill the ovals next to the names of the candidates of the elector's choice, and must vote for no more or no less than 40 candidates. As we envisage that there will be a much larger number of candidates in the ECC as compared to FCs and GCs, only the names of candidates will be displayed on the ballot papers.

67. Considering that the EAC and REO will need to map out the practical arrangements for the ECC elections after the passage of the Bill, we recommend to provide flexibility with regard to the detailed polling and counting procedures in the Bill, e.g. arranging ECC voters to vote in one polling station, the votes of the ECC can be counted by computer or manually, etc..

68. We suggest amending the LCO and related electoral legislation in order to implement the above proposals.

## **(I) Making consequential amendments to the ECICO and its subsidiary legislation in light of the matters mentioned in parts (B) and (D)**

69. Following the amendments to the Annex II to the Basic Law, the DC(second)FC of the LegCo would be abolished and the ECC would be introduced. We need to amend the ECICO accordingly to remove the elements relating to the DC(second)FC and to add those relating to the ECC. In addition, we need to amend the MAEE(LCE)Reg in accordance with the new GC boundaries and to remove the part relating to the DC(second)FC. On the other hand, we also need to amend the Maximum Scale of Election Expenses (Election Committee) Order (Cap. 554I) to reflect the changes to the ECSS.

**(J) Introducing a new offence under the ECICO to prohibit any person from inciting another person not to vote, to cast a blank or invalid vote by way of public activity during an election period, and providing that any person who wilfully obstructs or prevents another person from voting at an election commits a corrupt conduct**

70. The Decision stipulated that the HKSAR should effectively organise and regulate relevant electoral activities in accordance with law, with a view to implementing a new electoral system that accords with the actual situation in Hong Kong. The amended Annexes I and II to the Basic Law also provided that the HKSAR should take measures in accordance with the law to regulate acts that manipulate or sabotage elections. In recent years, anti-China forces and radical local separatists openly advocated ideas such as “Hong Kong independence”, carried out anti-China activities through various election platforms, planned and implemented actions interfering with the normal operation of the Government which included affecting the normal and orderly conduct of elections. Voting is not only a right but a civic duty. Although Hong Kong does not have a compulsory voting system as in some jurisdictions, the HKSAR Government has a responsibility to take measures to encourage eligible voters to exercise their right to vote and to combat improper conduct that may affect the exercise of the right to vote by voters. If someone openly incites voters not to vote, to cast blank or invalid votes during an election period, it may create undue pressure on voters and affect their freedom to choose whether to exercise their right to vote. Such a conduct is one of the acts that can sabotage an election, and the HKSAR Government is therefore obliged to regulate it in accordance with the Decision and the amended Annexes I and II to the Basic Law. It may also constitute other offences if it is done for the purpose of overthrowing the administrative organs of the HKSAR or interfering with, obstructing or undermining the performance of the functions of the administrative organs of the HKSAR. In view of this, it is necessary to amend the legislation to prevent and mitigate the relevant risks. We recommend adding a provision to the ECICO to introduce a new illegal conduct so as to prohibit any person from inciting others not to vote, to cast blank or invalid votes by means of public activity during an election period<sup>21</sup>. The new offence does not prevent a person from appealing to electors not to vote for a particular candidate, subject to compliance with the requirements of other electoral legislation, in particular those relating to election advertisements and election expenses.

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<sup>21</sup> According to the definition under the ECICO, in relation to an election, election period means the period beginning with the nomination day for the election and ending with the polling day for the election.

71. In addition, prior to the polling day of the 2019 DCOE, there was an online appeal to take away the identity cards of elderly voters to prevent them from voting on the polling day. Although this act involved obstructing or preventing electors from voting at the election, there was insufficient evidence to prove that the person concerned had committed an offence under section 14 of the ECICO, i.e. a corrupt conduct to engage in certain deceptive behaviour in relation to electors. This is because the act of calling on others to engage in certain conduct through social media posts does not necessarily involve an element of “deception” and therefore may not be an offence under section 14 of the ECICO. In view of the community’s grave concern about irresponsible conduct on the Internet inciting others to prejudice the conduct of the 2019 DCOE, we recommend, after consultation with the EAC, the REO and the DoJ, introducing a new offence under section 14 of the ECICO to prevent any person from wilfully obstructing or preventing another person to vote at an election. Any person who incites another person or commits in conspiracy the new offence under section 14, including calling on others to take away the identity cards of elderly electors to prevent them from voting, has also committed the offence.

### **(K) Implementing EPR on the polling day of public elections**

72. In accordance with the current electoral laws, the FR in printed form is used for verifying the identity of electors in the ballot paper issuing desks in polling stations, and for recording that the elector has been issued with the ballot papers he is entitled to. To enhance efficiency and accuracy in the ballot paper issuance process, we have sought the approval of the ExCo to introduce the EPR in public elections (including CE, ECSS, LegCo and DC elections) starting from 2021.

73. To provide the legal basis for implementing the EPR in public elections, we propose to amend four pieces of subsidiary legislation<sup>22</sup> under the EACO to cater for the LegCo, DC, ECSS, and CE elections respectively. The relevant amendments are as follows:

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<sup>22</sup> These four pieces of subsidiary legislation are:

- (i) Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) (“EAC(EP)(LegCo)Reg”);
- (ii) Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) (“EAC(EP)(DC)Reg”);
- (iii) Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) (“EAC(EP)(EC)Reg”); and
- (iv) Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J).

- (a) specify the manner of making a record on the EFR upon issuance of ballot paper(s) to an elector so as to accommodate the use of EPR;
- (b) require that the FR in printed form (if used) should be sealed in packets at the close of the poll, and that the FR (whether in printed or electronic form) should be retained for six months after a poll before destruction; and
- (c) create new provisions to enable the implementation of the EPR for the purpose of the relevant ballot paper issuance process, stipulate the permitted use of the EPR, grant the EAC with the authority to allow access to the EPR for specific purpose (such as for technical maintenance and for use in the ballot paper issuance process), and provide for the offence and penalty of accessing the EPR without legal authority, damaging the information and data contained in the EPR, or tampering with the EPR, the penalty for which will be up to two years' imprisonment without a corresponding fine.

**(L) Enhancing the inspection and compilation of the registers of electors**

74. In the judgment of the judicial review case lodged by the Junior Police Officers' Association<sup>23</sup>, the Court of Appeal ("CA") held that an unrestricted public access to the full names and principal residential addresses of registered electors ("the Linked Information") on the registers of electors constituted a disproportionate interference with the electors' rights to privacy, family and home (Article 14 of the Hong Kong Bill of Rights) and their right to vote (Article 26 of the Basic Law). Currently, we have put in place interim measures to make the registers of electors available for inspection only by the press, political parties and candidates, so as to protect the personal data of electors. We have also conducted a full review of the inspection and compilation arrangement for the registers of electors, and propose the following enhancements.

75. In formulating the relevant enhancement proposals, our fundamental principle is to strike a balance between the two aims of ensuring a transparent mechanism for inspecting the registers of electors to detect vote-rigging and irregularities in VR ("the Transparent Election Aim"), and protecting the personal particulars of electors from being misused for

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<sup>23</sup> *Junior Police Officers' Association of the Hong Kong Police Force and Another v Electoral Affairs Commission and Others* [2020] HKCA 352

malicious purpose via inspection (“the Privacy Protection Aim”). The proposed enhancement measures and their corresponding justifications are as follows:

- (a) ***Limiting inspection to the press, candidates and political parties only*** – We propose limiting inspection of Registers with Linked Information to the press subscribed to the Government News and Media Information System maintained by the Director of Information Services, validly nominated candidates and political parties only, while parts of the Registers containing only body electors will be unaffected and still be made available for public inspection. Such limited inspection will help prevent mala fide persons from misusing the electors’ particulars on the Registers, thus advancing the Privacy Protection Aim. It is also in accordance with the CA’s Judgment, which specifically noted the roles played by the press and the political parties in advancing the Transparent Election Aim.
- (b) ***Partially redact all electors’ particulars on the registers of electors*** – To better achieve the Privacy Protection Aim, we also propose to partially redact all of the individual electors’ particulars on the registers of electors to be provided for inspection by specified persons. We have carefully balanced the manner of redaction<sup>24</sup> to ensure that the Transparent Election Aim could still be advanced by the inspection of the registers of electors by the three specified parties.
- (c) ***Extending the address proof to all new VR applications*** - To counter-balance against the limitations arising from the measures in (a) and (b) above, we propose to extend the requirement to submit address proof from currently applicable to change of particulars applications to covering all new VR applications. This measure would enable REO to reliably verify all of the electors’ addresses before entering them into the register of electors, thereby effectively contributing to the Transparent Election Aim. Making reference to the previous arrangement made when introducing the address proof requirement for change of registered address in 1 February 2018, after the current proposal is implemented, the

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<sup>24</sup> We propose to show only the first character/word of an elector’s name (whether in Chinese or English) and his registered residential address in full. This would still allow persons scrutinising the registers of electors to use the common method of identifying suspicious VR cases by spotting multiple surnames / large number of electors in the same address, thereby contributing to the Transparent Election Aim.

statutory deadline for new VR applications will be advanced by one month, such that REO would have sufficient time to vet the address proofs in new VR applications received for compiling the PR. In other words, save for the special VR arrangement in 2021, from the 2022 VR cycle and onwards, the statutory deadline for new VR applications and change of particulars will be aligned on the same date of 2 June.

76. The enhanced arrangement of inspection and compilation of the registers of electors as set out at (a) to (c) above will be implemented in the 2022 VR cycle and onwards.

### **(M) Empowering the PROs to set up a special queue for electors in need in public elections**

77. Under the current arrangement, all electors must cast their vote on a first come, first served basis, but PROs at individual polling stations can exercise discretion to allow people waiting in line to sit down inside the venue while waiting for their turn to vote. The arrangement is undesirable amid the Coronavirus Disease 2019 (“COVID-19”) as we would expose a large number of electors who are more vulnerable to the disease, namely more than 600 000 electors who are 70-year-old or above as well as pregnant women, to higher risks if they need to queue up for a long period of time to cast their vote.

78. With the ExCo’s agreement on 6 October 2020 to the proposal of setting up a special queue for electors in need in LegCo and DC elections, we propose that a new provision be added in the EAC(EP)(LegCo)Reg to empower PRO to set up a special queue for electors in need, namely electors whose age is 70 or above, pregnant women, and persons who are likely to suffer from severe physical pain or suffering when queuing to vote due to illness, injury or disability. In actual operation, these electors will be assigned to a priority queue for receiving the ballot papers. We also propose that the new provision be added in the EAC(EP)(DC)Reg and the EAC(EP)(EC)Reg to align the arrangements across different public elections. For the avoidance of doubt, as an administrative measure, electoral staff (i.e. the ones working in polling stations) who are going to cast their vote could also join the priority queue upon presentation of a staff badge. In so doing, they would be able to vote as soon as possible and return to the station where they are assigned to discharge electoral duties thereafter.

**(N) Empowering the CEO to require schools and NGOs receiving grants from the Government to make available their premises for use as polling station(s) and/or counting station(s) in public elections**

79. Owing to the rising trend in VR and voter turnout, more than 600 polling stations were/would be set up for LCGEs and DCOEs. Securing sufficient polling stations for these two public elections has been a long-standing problem. To ensure that we can secure the use of venues that are most convenient to electors, we recommended and the ExCo agreed to empower CEO to require schools and NGOs receiving grants from the Government to make available their premises for use as polling station(s) and/or counting station(s) in public elections. Specifically, we propose to introduce legislative amendments to the EACO, the EAC(EP)(LegCo)Reg, the EAC(EP)(DC)Reg and the EAC(EP)(EC)Reg so as to:

- (a) enable CEO to require the owner or occupier of schools and buildings occupied by NGOs receiving grants from the Government to make available their premises as a polling station and/or a counting station in LegCo, DC and ECSS elections. As a matter of administrative arrangement, exceptions will be made of hospitals, clinics and places of worship;
- (b) allow persons authorised by CEO to conduct site visits, carry out preparatory work and store materials in the premises;
- (c) require CEO to pay the relevant owner or occupier a user fee for the period during which the premises are used as a polling station and/or a counting station; and
- (d) impose a financial penalty of \$10,000 (which will be recoverable as a civil debt due to the Government) against non-compliance.

80. The EAC had suggested directly acquiring the premises for use as polling and/or counting stations. However, having regard to the fact that the requisition of private properties is not a common practice and may be considered to be detrimental to private property rights, and also considering that very few schools were unable to make available their premises for use as polling and/or counting stations for the discontinued 2020 LGCE after the Education Bureau's designation of the day following the polling day as a school holiday, we are of the view that the above proposal would suffice to help the REO identify a sufficient number of polling and/or counting stations, as well as to strike a balance between the property rights of the schools or NGOs concerned.



## **(O) Lifting the requirement of withholding FA payable until disposal of EPs arising from LegCo and DC elections**

81. We proposed and the ExCo agreed to strike a balance between the prudent use of public money and the policy intent of the FA scheme which is to encourage public-spirited candidates to take part in LegCo and DC elections and cultivate an environment to facilitate the development of potential talents in Hong Kong for both LegCo and DC elections, to lift the requirement to withhold FA payable until disposal of EPs. We therefore propose to amend the LCO and the DCO to give effect to this proposal.

## **OTHER OPTIONS**

82. The proposed improvements have to be effected by legislative means. There is no alternative option.

## **THE BILL**

83. The main provisions of the Bill are summarised as follows:

- (a) **Division 1 of Part 4** amends the LCO to:
  - (i) revise the constitution of the LegCo starting from the seventh term of LegCo, including to establish the ECC as a third type of constituency in addition to the existing two types (i.e. GCs and FCs);
  - (ii) revise the electorates and eligibilities for registration as an elector for some existing FCs, and provide for these matters for the ECC, starting from the seventh term of LegCo;
  - (iii) revise the procedures for determining the validity of the nomination of a person as a candidate for any constituency at a LegCo election, which will apply to the ECC as well, and provide for the eligibility for being nominated as a candidate for the ECC, starting from the seventh term of LegCo;
  - (iv) revise the systems of voting for the GCs and some FCs, and provide for the system of voting for the ECC, starting from the seventh term of LegCo;
  - (v) provide for the boundaries of the GCs for the seventh term of LegCo; and
  - (vi) make miscellaneous amendments, including to remove the requirement to withhold the FA payable to a candidate at a

LegCo election until all EPs in relation to the election are disposed of.

- (b) **Division 1 of Part 6** amends the ECICO to introduce offences for the following conduct:
  - (i) wilfully obstructing or preventing another person from voting at an election; or
  - (ii) inciting by any public activity another person not to vote, or to cast an invalid vote, at an election.
  
- (c) **Division 1 of Part 7** amends the CEEO to:
  - (i) provide for the establishment of a CERC;
  - (ii) revise the method of selecting the CE;
  - (iii) revise the constitution and method of forming the EC, including:
    - (A) to provide that the holder of specified offices may register as ex-officio members of the EC;
    - (B) to provide that designated bodies may nominate members of the EC; and
    - (C) to specify the entities entitled to vote at a subsector election;
  - (iv) revise the procedures for determining the validity of:
    - (A) the registration of a person as an ex-officio member of the EC;
    - (B) the nomination of a person as a nominee;
    - (C) the nomination of a person as a candidate at a subsector election; or
    - (D) the nomination of a person as a candidate at a CE election;
  - (v) introduce the requirement for persons applying to be registered as ex-officio members of the EC, nominated as nominees and nominated as candidates at a subsector election to sign a statutory declaration to the effect that the person upholds the Basic Law and pledges allegiance to the HKSAR;
  - (vi) introduce the requirement for a member-elect to sign a written oath before the member-elect may be registered as a member of the EC; and
  - (vii) provide that proceedings may be brought by the SJ against a person on the ground of disqualification from being a member of the EC and provide for suspension of functions of such a member.

- (d) the other parts of the Bill make related amendments to the relevant legislation, including the EACO and its subsidiary legislation, and subsidiary legislation under the LCO, the ECICO and the CEEO, to provide for the above matters.

K 84. The existing provisions being amended are at **Annex K**.

## **LEGISLATIVE TIMETABLE**

85. The legislative timetable is as follows –

Gazettal of the Bill	13 April 2021
First Reading and commencement of Second Reading debate	14 April 2021
Resumption of Second Reading debate, Committee Stage and Third Reading	Late May 2021; to be notified

## **IMPLICATIONS OF THE PROPOSAL**

86. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has no economic, productivity, environmental, sustainability or family implications. Implementation of the relevant proposal will not affect the current binding effect of the Ordinances and subsidiary legislation.

87. Additional manpower resources have been earmarked for organising the various elections in 2021 and 2022, as well as for taking forward the various new improvement measures. Funding has been sought and secured through established mechanism, and the relevant provisions will be included in the draft Estimates of the REO in the relevant financial years.

## **GENDER IMPLICATION**

88. The United Nations Convention on the Elimination of All Forms of Discrimination against Women's Article 7 requires that “State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and in particular, shall ensure to women, on equal terms with men, the right: a) To vote in all elections and

public referenda and to be eligible for election to all publicly elected bodies...”. In the electoral system of Hong Kong, as protected by the Basic Law, women have equal rights as men to vote and to stand for election in accordance with law. In this context, the proposal does not have gender implication.

## **PUBLIC CONSULTATION**

89. Following the NPC’s passage of the Decision on 11 March, the Legislative Affairs Committee of the NPCSC, together with the Hong Kong and Macao Affairs Office of the State Council and the Liaison Office of the Central People’s Government in the HKSAR, organised more than 60 seminars and conducted visits and interviews in Hong Kong on the implementation of the NPC’s Decision on the improvement of the electoral system of the HKSAR between 15 and 17 March. They have gauged extensively the views of the HKSAR Government and representatives from various sectors of the Hong Kong society.

90. Following the NPCSC’s endorsement of the amended Annexes I and II to the Basic Law at its 27<sup>th</sup> session, the HKSAR Government launched a comprehensive public explanation campaign. Principal Officials of the HKSAR Government hosted over 100 seminars to explain to stakeholders from different sectors the importance, necessity and legality of the decision of improving the electoral system of the HKSAR, and to solicit full support from the trades and the public. Among them, the Secretary for Constitutional and Mainland Affairs met with the EAC on 1 April. The EAC expressed its support and respect for the NPCSC’s adoption of the amended Annexes I and II to the Basic Law so as to improve the electoral system of Hong Kong. The EAC indicated its full support to the HKSAR Government in the preparations for the upcoming three elections. In addition, the HKSAR Government will conduct explanatory work in the LegCo Bills Committee and listen to the views of LegCo Members.

## **PUBLICITY**

91. We issued a press release on 13 April 2021. A spokesperson will be made available to address enquiries.

92. The HKSAR Government will spare no effort in explaining to the society the necessity and urgency of improving the electoral system, as well as the solid constitutional basis of the Decision. Since 15 March, the

Government has been conveying to the community through different publicity means the message that improving the electoral system can ensure Hong Kong stay true to the original aspiration in implementing the principle of “One Country, Two Systems” and get Hong Kong back on the right track. It is only by putting in place institutional safeguards to ensure "patriots administering Hong Kong" that the principle of "One Country, Two Systems" can be fully and faithfully applied in the HKSAR which is conducive to the long term prosperity and stability of the city. In addition to the publication of a large number of booklets explaining the background and justifications of improving the electoral system, and the content of the Annexes I and II to the Basic Law, the HKSAR Government has launched a website on improving the electoral system, which will be updated on an ongoing basis to keep the society informed of the progress of this very important task. Other publicity measures include television Announcement of Public Interests, banners and various media advertisements. Principal Officials of the HKSAR Government have also been explaining to the public through interviews in various media.

## **ENQUIRY**

93. Any enquiry on this brief can be addressed to Ms Cherie Yeung, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2908, or Ms Carmen Kong, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2852.

**Constitutional and Mainland Affairs Bureau**  
**13 April 2021**