

**立法會**  
**Legislative Council**

LC Paper No. LS 198/98-99

**Paper for the Bills Committee on  
Legislative Council (Amendment) Bill 1999**

**Background**

At recent Bills Committee meetings, members have expressed concern over whether the Election Committee for the second term of Legislative Council provided for in Annex II of the Basic Law is the same as the Election Committee established in Annex I of the Basic Law.

**Election Committee provided for in Annex I of the Basic Law**

2. The function of the Election Committee provided for in Annex I of the Basic Law is to elect the Chief Executive.

3. It consists of 800 members from the following sectors-

Industrial, commercial and financial sectors	200
The professions	200
Labour, social services, religious and other sectors	200
Members of the Legislative Council, representatives of district-based organisations, Hong Kong deputies to the NPC and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference	200

4. Its term of office is 5 years.

5. Paragraph 6 of Annex I of the Basic Law provides that the first Chief Executive shall be elected in accordance with the Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR. A decision was adopted by the 7th NPC at its 3rd Session on 4 April 1990 regarding the matter (“the Decision”). The Decision was to establish a Selection Committee to elect the first Chief Executive.

6. The Selection Committee consists of 400 members from specified sectors which are substantially the same as the specified sectors in Annex I of the Basic Law.

### **The Election Committee provided for in Annex II of the Basic Law**

7. The function of the Election Committee provided for in Annex II of the Basic Law is to elect 6 Members of the second Legislative Council.

8. Paragraph 2 of Annex II states that except in the case of the first Legislative Council, the Election Committee mentioned therein refers to the one provided for in Annex I of the Basic Law.

9. Pursuant to the Specific Method for the Formation of the First Legislative Council of the HKSAR of the PRC (adopted by the Preparatory Committee for the HKSAR of the NPC at its Ninth Plenary Session on 23 May 1997) (“the Specific Method”), the first Legislative Council shall be composed of 60 members, with 20 members returned by geographical constituencies through direct elections, 30 members returned by functional constituencies, and 10 members returned by the Election Committee. Article 7 of the Specific Method states that the Election Committee shall be composed of 800 members from the following sectors -

Industrial, commercial and financial sectors	200
The professions	200
Labour, social services and religious sectors	200
Members of the provisional legislature, representatives of district-based organisations, Hong Kong deputies to the NPC and representatives of Hong Kong members of the National Committee of the Chinese People’s Political Consultative Conference	200

10. An Election Committee, consisting of 800 members from 4 specified sectors, is established under Part IV of and Schedule 2 to the Legislative Council Ordinance (Cap. 542) in complying with the Specific Method. Details of the sectors are as follows -

#### FIRST SECTOR

Subsector Catering, Commercial (first), Commercial (second), Employers' Federation of Hong Kong, Finance, Finance, Financial Services, Hong Kong Chinese Enterprises Association, Hotel, Import and Export, Industrial (first), Industrial (second), Insurance, Real estate and construction, Textiles and garment, Tourism, Transport and Wholesale and retail. The total number of members in the sector is 200.

#### SECOND SECTOR

Subsector Accountancy, Architectural, surveying and planning, Chinese medicine, Education, Engineering, Health services, Higher education, Information technology, Legal and Medical. The total number of members in the sector is 200.

#### THIRD SECTOR

Subsector Agriculture and fisheries, Labour, Religious, Social welfare and Sports, performing arts, culture and publication. The total number of members in the sector is 200.

#### FOURTH SECTOR

Subsector Hong Kong deputies to the NPC, Members of the Provisional Legislative Council (for the purpose of the second Legislative Council, it is proposed to be amended to read as Members of the Legislative Council), Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, certain members of Heung Yee Kuk and members of the District Boards (for the purpose of the second Legislative Council, it is proposed to be amended as members of the District Councils). The total number of members in the sector is 200.

11. The Election Committee referred to in the preceding paragraph has elected 10 Members for the first Legislative Council and will elect 6 Members for the second Legislative Council. The composition of the first sector complies with the industrial, commercial and financial sectors of the Election Committee provided for in the Specific Method and similar to the corresponding sector of the Election Committee provided for in Annex I of the Basic Law. The composition of the second sector complies with the sector of professions of the Election Committee provided for in the Specific Method and similar to the corresponding sector of the Election Committee provided for in Annex I of the Basic Law. The composition of the third sector complies with the labour, social services and religious sectors of the Election Committee provided for in the Specific Method and is similar to the corresponding sector of the Election Committee in Annex I of the Basic Law. In this respect, it is worth mentioning that there was debate during the scrutiny of the Legislative Council Bill by the Provisional Legislative Council about a member's proposed amendment to include certain associations whose aims were to promote the co-ordination and improvement of social services, etc. in the subsector of social welfare which consisted of corporate members of the Hong Kong Council of Social Service and registered social workers as originally proposed by the Administration. Eventually, the member's amendment was carried. The composition of the fourth sector complies with the composition of the sector consisting of members of the provisional legislature (as far as the first Legislative Council is concerned), representatives of district-based organisations, Hong Kong deputies to the NPC and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference and is similar to the corresponding sector of the Election Committee provided for in Annex I of the Basic Law.

**Are the Election Committees provided for in Annex I and Annex II of the Basic Law intended to be the same body?**

12. The composition of the Election Committee which has elected 10 Members for the first Legislative Council is similar to that of the Selection Committee, though their respective size of membership differs. There is no overlapping function of the 2 Committees. The reason for this is because the Election Committee for the first Legislative Council was established pursuant to the Specific Method whereas the Selection Committee is provided for in the Decision.

13. The composition of the Election Committee is also similar to that of the Election Committee provided for in Annex I of the Basic Law and their respective size of membership is the same. The observation is that there are striking similarities between the composition and size of membership of the 2 Committees under existing arrangement. It is understandable that such

similarities are attributable to the requirements in the Specific Method regarding the first Legislative Council. But if the Administration sees fit to continue with the arrangement for the composition of the Election Committee for the second Legislative Council, the argument is that the Election Committee for the second Legislative Council is intended to be the one as provided for in Annex I of the Basic Law, or else amendments may be introduced to amend its composition because it will not be governed by any constitutional document other than the Legislative Council Ordinance.

14. In accordance with paragraph 2 of Annex II of the Basic Law, except in the case of the first Legislative Council and the election of the first Chief Executive which is provided for in the Decision, the Election Committee provided for in Annex II refers to the one provided for in Annex I of the Basic Law. Therefore, it seems clear from the plain meaning of the words in paragraph 2 of Annex II, the Election Committee which returns 6 Members for the second Legislative Council is intended to be the same as the Election Committee electing the Chief Executive. This view may be further reinforced by the existing arrangement regarding the composition and size of membership of the 2 Committees.

### **The ensuing problems**

15. On the premise that the Election Committee to elect Members for the second Legislative Council is the same as the Election Committee to elect the Chief Executive, there are certain ensuing legal and practical problems which have not yet been addressed by the Administration. They are set out below.

16. The term of office of the Election Committee to return 6 Members of the second Legislative Council is, in accordance with paragraph 2 of Annex I of the Basic Law, 5 years. There is no provision in the Legislative Council (Amendment) Bill 1999 providing for this. Does membership of the Election Committee acquired as at September 2000 for the second Legislative Council election remain unchanged throughout its term of office? The functions anticipated for the Election Committee are to return 6 Members for the second Legislative Council, elect Member in by-election to fill vacancy in the Election Committee membership of the Legislative Council, elect the second Chief Executive in 2002 and elect a new Chief Executive in the event that the office of Chief Executive becomes vacant before 2005 (assuming that the term of office of the Election Committee is 5 years). During the period between 2000 and 2005, membership of the Election Committee may change resulting from events, such as Members of the third Legislative Council taking office following a general election.

17. Another legal problem is that membership of Members elected by the Election Committee, as well as, the membership of the Election Committee may change. At present, there is no legal mechanism for by-election of members of the Election Committee. In this respect, paragraph 2 of Annex I of the Basic Law says that the Election Committee shall be composed of 800 members from specified sectors. But it does not say whether membership can fall short of 800.

18. Members of the Bills Committee have already pointed out, from a practical point of view, that the functions of the Election Committee will affect a person's decision on running or not running the candidature for being an elector on it.

### **Conclusion**

19. In reading the plain meaning of the words in paragraph 2 of Annex II of the Basic Law and taking into account the proposed function and constitution of the Election Committee for the second Legislative Council election, we are of the opinion, subject to other views forthcoming from the Administration, that the Election Committee provided for in Annex II is the one provided for in Annex I of the Basic Law. In the interest of certainty in the law and in the light of current discussion, the issue of whether the Election Committee proposed to be established for the second Legislative Council is the same Election Committee for electing the Chief Executive by virtue of Annexes I and II of the Basic Law should be resolved before the Bill is enacted.

Legal Service Division  
29 May 1999