

**Speech by Mr Michael SUEN,
Secretary for Constitutional Affairs,
to move the Second Reading of the Chief Executive Election Bill
at the Legislation Council Meeting to be held on 14 March 2001**

Madam President,

I move that the Chief Executive (CE) Election Bill be read the second time.

2. The purpose of the CE Election Bill is to provide, through local legislation, for the election of the CE and for matters related to or consequential upon such election.

3. The CE is the head of the Hong Kong Special Administrative Region (HKSAR) who represents the Region and plays an important and unique role in our political structure. There are explicit provisions under the Basic Law (BL) stipulating the principles and the specific method for the selection of the CE. In drafting the CE Election Bill, we have relied on these BL principles and provisions.

4. In addition, in drafting the CE Election Bill, we have made reference to the rules governing the first CE election and the well-established practices in the Legislative Council (LegCo) and District Councils (DC) elections. Having regard to the unique character of the CE election, we have adjusted these practices to suit the needs of the CE election, where necessary.

5. I would like to highlight the seven major areas of the CE Election Bill in the following paragraphs.

(I) Election Committee (EC)

6. BL Annex I provides that the CE shall be elected by a broadly representative EC. BL Annex II provides that the EC responsible for electing six Members of the second term LegCo is one and the same as the EC referred to in BL Annex I. The BL provisions are clear and unambiguous. The CE Election Bill, thus, provides that the EC formed on 14 July 2000, which was responsible for electing six

Members of the second term LegCo in September 2000, is also responsible for electing the CE in 2002. Members of that EC shall be members of the first EC constituted under the CE Election Bill, except for death, resignation or ineligibility of being registered as LegCo Geographical Constituency (GC) electors.

7. In the event that any EC member has died, resigned or become ineligible to be registered as LegCo GC electors, the CE Election Bill provides that, where necessary, a by-election and, for the religious subsector, supplementary nomination, shall be held to fill the vacancies arising therefrom.

(II) Polling date

8. The CE Election Bill provides that the CE shall appoint a date within six months before the expiry of his term as the polling date. However, in the event that the office of the CE becomes vacant, the Acting CE shall appoint a polling date within six months after the vacancy arises.

(III) Eligibility criteria for being a candidate for the Chief Executive election

9. In the CE Election Bill, we have put down the requirements as provided in BL 44, which stipulates that a candidate must be a Chinese citizen of not less than 40 years of age who is a permanent resident of the HKSAR and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years. Moreover, BL 44 provides that a candidate must have no right of abode in any foreign country. The CE Election Bill, therefore, provides that a candidate for the CE election can only hold the HKSAR passport, the Certificate of Identity issued by the HKSAR or an entry permit issued by an authority in any part of the People's Republic of China. He is not allowed to hold any foreign passports or travel documents.

10. The CE Election Bill requires judicial officers and prescribed public officers to resign before running in the election. This is to maintain the independence of judicial officers and the political neutrality of public servants.

11. As regards Members of the LegCo, the CE Election Bill proposes that they can run in the election provided that they fully meet all other eligibility criteria. However, a LegCo member, if elected, is deemed to have resigned from LegCo on the date the Central People's Government (CPG) appoints him as the CE. This is based on the different responsibilities and roles of the CE and the LegCo as laid down in BL. It will undermine the checks and balances enshrined in the BL if a person is to serve as the CE and a LegCo member at the same time.

12. In addition, similar to the rules governing the LegCo and DC elections, criminals, the bankrupt, the mentally disordered and persons convicted of prescribed offences within 5 years before the election are disqualified from running in the election.

13. In the first CE election, all potential candidates were being nominated in their individual capacity. Members of political parties or political organizations had to resign from their political parties or political organizations before declaring their intention to run in the election. The CE Election Bill proposes to allow members of political parties to run in the CE election, but such candidates have to declare that they stand in their individual capacities. Only when a member of a political party is elected will he be required to resign from his political party and undertake that he will not become a member of any political party or be bound by the discipline of any political party during his term of office.

14. I wish to put it on record that we have very carefully considered the legality of this proposal. The legal advice which we have obtained confirms that the requirement is fully in compliance with the freedom of association guaranteed by the BL and the International Covenant on Civil and Political Rights (ICCPR). The requirement will be prescribed by law. It is rational and proportional since it strikes a right balance between the overall interests of the community and the individual rights of the CE. Moreover, it is necessary in the light of our current political structure. It helps promote pluralism and is conducive to the development of political parties.

15. I wish to expound further.

16. BL 43 provides that the CE shall be the head of the HKSAR and shall represent the Region. It also requires the CE to be accountable to both the HKSAR and the CPG. BL 45 provides that he shall be selected by election and appointed by the CPG.

17. The CE holds the most important position in Hong Kong and undertakes a great responsibility. BL 48 gives a detailed account of the manifold functions of the CE. He is responsible for leading the government of the Region, signing bills and promulgating laws, signing budgets and issuing executive orders. He has the power to appoint and remove judges, and report to the CPG for appointment and removal of principal officials. He can pardon persons convicted of criminal offences or commute their penalties, and on behalf of the HKSAR, conduct external affairs as authorized by the CPG.

18. BL 47 provides that the CE must be a person of integrity, dedicated to his or her duties. The CE must be impartial and always acts in the overall interests of Hong Kong. When the CE makes policy decisions and implements them, he should look after the interests of all strata of the community, protecting the rights and freedom of over six millions citizens in Hong Kong. The candidates of the CE election are required to declare that they stand in their individual capacities. If elected, a person must resign from his political party and undertake that he will not become a member of any political party or be bound by the discipline of any political party during his term of office. This is to ensure that the CE, when discharging his duties, will take into account the overall interests of the HKSAR instead of the interests of the political party to which he belongs. This is a legitimate aim and accords with the community's expectation of the CE and tallies with the actual situation of the political system of the HKSAR.

19. Members of political parties were required to resign from their parties before they could run in the first CE election. The requirements stipulated in the CE Election Bill, which are different from that of the first CE election, reflects the principle of "gradual and orderly progress" and "actual situation" as prescribed in BL 45. We consider that this restriction is rational and proportional to its purpose, and that it strikes a right balance between the overall interests of the community and the individual rights of the CE.

20. We have also taken into account the development of political parties in Hong Kong. Nowadays, political parties are actively participating in the LegCo and DC elections. Through the considerable number of seats acquired in these councils, political parties have extensively participated in matters relating to all aspects of Hong Kong. The Government often seeks the views of political parties and tries to strengthen the co-operation with them and enlist their support in the process of policy making and implementation. In spite of this, we

consider that under the current political system of the HKSAR, the CE must be independent of political parties so that political parties may develop gradually and orderly on a level playing field so as to ensure pluralism in Hong Kong. It is necessary in a democratic society and it has a positive effect on the overall political development of Hong Kong. At this stage of political development, we consider that this requirement will help promote rather than retard the development of political parties.

21. BL 45 states that the specific method for selecting the CE is prescribed in BL Annex I. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

22. We need to review the political system of the HKSAR in future having regard to the actual situation of Hong Kong at the time and in accordance with the principle of gradual and orderly progress. In the long run, when we review the issue concerning the method of electing the CE, we will at the same time examine the eligibility criteria for being a candidate for the CE election to ensure that they conform to the prevailing method for electing the CE.

(IV) Nomination

23. The nomination for the CE election should be made by at least 100 EC members and a candidate must declare on his nomination form that he will uphold the BL and will pledge allegiance to the HKSAR. These requirements are respectively proposed having regard to BL Annex I and BL 104.

24. Within seven days after the close of nomination, the Returning Officer shall declare by notice in the Gazette the names of the validly nominated candidates and, for each of these candidates, the names of the EC members subscribing to his nomination form. It has been a well-established feature of our local elections that the names of the subscribers to candidates are made available for public inspection. In view of the need to maintain transparency and the importance of the CE election, it is proposed that, in addition to public inspection, the Returning Officer should also publish the subscribers' names in the Gazette.

(V) Withdrawal of candidature

25. A candidate may withdraw from the election on or before the working day immediately before the polling date so that candidates can consider withdrawing from the election when facing unforeseen circumstances. The CE election will continue despite the withdrawal of candidates.

(VI) Voting method

26. If there are two or more validly nominated candidates, the CE Election Bill provides for the following voting method. At any one round of the election, if a candidate obtains an absolute majority of validly cast votes, he will be elected. Otherwise, all candidates will be eliminated except those who obtain the highest and the second highest votes. These candidates will proceed to the next round of voting. The process will continue until one candidate obtains an absolute majority of votes to win.

27. If there is only one candidate, he will be elected ipso facto, in the same way as LegCo and DC elections.

(VII) Election petitions and judicial review

28. There will be a dedicated legal avenue for election petitions. This is similar to the arrangement for LegCo and DC elections. As time is critical for the CE election, all election petitions must be lodged within seven working days after the declaration of the election result. While election petitions will first be heard by the Court of First Instance, appeal may be made against its ruling to the Court of Final Appeal direct, subject to the granting of leave by the Appeal Committee of the Court of Final Appeal.

29. In addition, judicial review which puts in issue whether the CE elect is duly elected must be lodged within 30 days after the publication of the election result. This is to ensure the legality of the CE when assuming office. It would give rise to grave constitutional and legal problems if legal challenges were not settled expeditiously after the CE election.

30. Before introducing the CE Election Bill into LegCo, we have consulted the LegCo Panel on Constitutional Affairs on the preliminary legislative proposals. On several occasions, in view of the importance of the CE election, Members of the Panel urged the Administration to expedite the drafting of the CE Election Bill and introduce it into LegCo as soon as possible. In response to Members' request, we have completed the drafting work expeditiously and introduce the CE Election Bill into LegCo today. We look forward to Members' assistance and co-operation in forming a Bills Committee to scrutinise the Bill expeditiously. We hope that Members will be able to complete the scrutiny as soon as possible so as to allow sufficient time for us to prepare subsidiary legislation in relation to the CE election.

31. Thank you.

Constitutional Affairs Bureau
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