

**Bills Committee on Chief Executive Election and
Legislative Council Election (Miscellaneous Amendments) Bill 2006**

Administration's Response to Major views / concerns of organisations / individuals

Organisations / Individuals (Legislative Council Paper Nos.)	Major views / concerns	Administration's Response
(1) Kowloon City, Kwun Tong and Wong Tai Sin Residents' Association Company Limited [LC Paper No. CB(2)1603/05-06 (01)]	(a) The Bill was supported	(a) Noted.
(2) Association of Engineering Professionals in Society [LC Paper No. CB(2)1603/05-06 (02)]	(a) The Bill was supported (b) The proposal to expand the electorate base of the functional constituencies (FCs)/ Election Committee (EC) by replacing corporate voting with individual voting was supported (c) The electorate base of the Engineering FC/EC Subsector was proposed to be expanded	(a) Noted. (b)-(c) The proposed package for the electoral methods for 2007/08 put forth by the Government in October 2005 would have greatly enhanced the democratic representation in the electoral methods for election of the Chief Executive ("the CE") and the Legislative Council ("LegCo"), and brought significant progress to Hong Kong's constitutional development. It is regrettable that the package, which was supported by the majority of the public and more than half of the LegCo Members, was not endorsed by a two-thirds majority of all LegCo Members as required in Annexes I and II to the Basic Law. In accordance with the Interpretation of the Standing Committee of the National People's Congress ("the NPCSC") of 6 April 2004, the method for selecting the CE or the method for forming the LegCo specified in Annexes I and II to the

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		<p>Basic Law may be amended or remain unamended. If no amendment is made, the provisions relating to the two electoral methods in Annexes I and II of the Basic Law will still be applicable. In the circumstances, the election of the CE in 2007 will be held on the basis of the existing arrangements, i.e. the electorate base will remain unchanged.</p> <p>Indeed, the proposed package put forth in the Fifth Report could have greatly broadened the electorate base, and it would not have affected the participation and the electorate base of existing functional constituencies. Other proposals for broadening the electorate base, such as replacing corporate voting by individual voting, will bring fundamental changes to the electoral system. It is difficult to envisage that different sectors of the community can reach a consensus on such changes within a short period of time.</p>
(3) The Democratic Party [LC Paper No. CB(2)1603/05-06 (03)]	(a) The proposal to expand the electorate base of EC was supported, e.g. by way of replacing corporate voting with individual voting	(a) See response to items (2)(b)-(c) above.

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	<p>(b) The proposal to abolish the requirement that the Chief Executive (CE) should not be a member of a political party was supported</p> <p>(c) The proposal to impose an upper limit on the number of subscribers required for nominating candidates for the office of CE was supported</p>	<p>(b) The Constitutional Development Task Force ("the Task Force") had considered the issue of whether to abolish the requirement that a CE elect must relinquish his political affiliation, and recommended in its Fifth Report that the existing requirement be maintained. According to an opinion survey on the package of proposals, the recommendation was agreed by more than 70% of the general public. The Task Force also considered that the existing requirement had not impeded effective governance.</p> <p>The Administration has accepted the Task Force's recommendation and considers that the requirement that the CE should not have any political affiliation should be maintained. At this stage of Hong Kong's political development, requiring the CE to resign from political party will ensure that the CE will act in the interests of the whole community when discharging his duties and exercising his powers in accordance with the Basic Law.</p> <p>(c) Annex I to the Basic Law stipulates that candidates for the office of the CE may be nominated jointly by not less than 100 members of the Election Committee ("EC"). Annex I does not contain any provisions on upper limit on the number of subscribers a candidate may have. The Task Force had considered the issue of setting an upper limit on the number of subscribers, and recommended in its Fifth Report that we should study in detail whether setting such a limit would unduly</p>

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	(d) The lack of an EC to select a new CE to fill any vacancy that arose between now and the date beyond which no by-election would need to be held was not addressed by the Bill	<p>restrain EC members from exercising their right to nominate candidates. The Government has accepted the Task Force's recommendation and considers that such a limit should not be set.</p> <p>(d) When the Chief Executive Election Ordinance ("CEEEO") was enacted in 2001, it had already been anticipated that a gap would arise between the term of office of the CE and that of the EC upon expiry of the term of office of the first EC.</p> <p>We propose that the term of the EC should tie in with the 5-year term for the CE and with the electoral cycle. Under the Bill, the term of office of the EC will commence on 1 February in the year during which the term of office of the CE is to expire. The term of office of the CE and that of the EC will be synchronized in future.</p>
(4) Mr FUNG Wai-kwong	<p>(a) The requirement that CE should not be a member of a political party was not stipulated in the Basic Law</p> <p>(b) The lack of an EC to select a new CE to fill any vacancy that arose between now and the date beyond which no by-election would need to be held was not addressed by the Bill</p>	<p>(a) See response to item (3)(b) above.</p> <p>(b) See response to item (3)(d) above.</p>

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(5) Dr CHAN Ka-lok, Kenneth	(a) The Bill was not a progressive step towards democracy	(a) The proposed package for the electoral methods for 2007/08 put forth by the Government in October 2005 would have greatly enhanced the democratic representation in the electoral methods for election of the CE and the LegCo, and brought significant progress to Hong Kong's constitutional development. It is regrettable that the package, which was supported by the majority of the public and more than half of the LegCo Members, was not endorsed by a two-thirds majority of all LegCo Members as required in Annexes I and II to the Basic Law. In accordance with NPCSC's Interpretation of 6 April 2004, the method for selecting the CE or the method for forming the LegCo specified in Annexes I and II to the Basic Law may be amended or remain unamended. If no amendment is made, the provisions relating to the two electoral methods in Annexes I and II of the Basic Law will still be applicable. In the circumstances, the election of the CE in 2007 will be held on the basis of the existing arrangements, i.e. the electorate base will remain unchanged. That said, the Government is committed to promoting constitutional development in accordance with the Basic Law, with a view to achieving the ultimate aim of universal suffrage.

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	<p>(b) The proposal to continue the election proceedings if there was only one CE candidate validly nominated did not address the problem that in the event of a large number of invalid votes, a candidate could be elected even if he had obtained very few valid votes</p> <p>(c) The Bill should impose an upper limit on the number of subscribers required for nominating candidates for the office of CE</p> <p>(d) A finality arrangement should be provided in the electoral process in the event that only one CE candidate was validly nominated</p>	<p>(b) We propose that if only one CE candidate is validly nominated, election proceedings shall continue. Under the proposed electoral arrangements, EC members may indicate in the ballot papers either to "support" or "not support" the sole candidate when voting.</p> <p>As EC members who do not support the sole candidate may indicate their preference in the ballot paper, it is highly unlikely that there will be a large number of invalid votes.</p> <p>(c) See response to item (3)(c) above.</p> <p>(d) We have examined whether arrangements to ensure finality to the electoral process will be necessary. After detailed consideration, we consider that it will not be appropriate to provide for arrangements to ensure finality to the electoral process. The Administration's policy is that if only one candidate is validly nominated, election proceedings shall continue. A proposal to allow a sole candidate to be returned <i>ipso facto</i> after the first (or subsequent) round of election will not be consistent with the Administration's policy.</p>

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	<p>(e) The Bill failed to encourage political party development, e.g. the requirement that CE should not be a member of a political party was maintained</p>	<p>A "finality" provision should, in any case, not be necessary. With Hong Kong's open and transparent electoral system, if a sole candidate fails to obtain sufficient number of support votes in the first round of polling, it would be reasonable to expect that other aspiring candidates will come forward after the nomination process is re-opened. The chance that there is still only one candidate after the first round of election, or that a sole candidate fails to obtain the required support in the EC in the polling process on successive occasions, should be slim. Hence, we should allow the election to run its course and return a CE through a voting process.</p> <p>(e) The Task Force had considered the issue of whether to abolish the requirement that a CE elect must relinquish his political affiliation, and recommended in its Fifth Report that the existing requirement be maintained. According to an opinion survey on the package of proposals, the recommendation was agreed by more than 70% of the general public. The Task Force also considered that the existing requirement had not impeded effective governance.</p> <p>The Administration has accepted the Task Force's recommendation and considers that the requirement that the CE should not have any political affiliation should be maintained. At this stage of Hong Kong's political development, requiring the CE to resign from political party will ensure that the CE will act in the</p>

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		<p>interests of the whole community when discharging his duties and exercising his powers in accordance with the Basic Law.</p> <p>That said, the Government is committed to facilitating development of political parties. For example, we introduced the accountability system in 2002, under which individuals with political party background could be appointed Principal Officials. Members of political parties have also been appointed to the Executive Council. We are considering further developing the political appointment system to provide a channel for people with political aspirations to join the Government.</p> <p>Moreover, we introduced a financial assistance scheme for candidates in the 2004 LegCo election to encourage participation of aspiring candidates, including those from political parties. We have proposed to extend the scheme to candidates in District Council elections.</p>
(6) Mr CHUNG Yam-cheung, Member of Central & Western District Council [LC Paper No. CB(2)1603/05-06 (04)]	<p>(a) The proposal to impose an upper limit on the number of subscribers required for nominating candidates for the office of CE was not supported</p> <p>(b) The proposal to abolish the requirement that</p>	(a)-(b) Noted.

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	CE should not be a member of a political party was not supported	
(7) Joint Committee of Hong Kong Fishermen's Organizations [LC Paper No. CB(2)1633/05-06 (02)]	<p>(a) The proposal to expand the electorate base of EC by giving voting rights to not more than six directors from each corporation was not supported</p> <p>(b) The proposal to impose an upper limit on the number of subscribers required for nominating candidates for the office of CE was not supported</p>	(a)-(b) Noted.
(8) The Hong Kong Federation of Trade Unions, Central & Western District, Wan Chai District Service Office [LC Paper No. CB(2)1603/05-06 (05)]	<p>(a) The election proceedings should continue if only one CE candidate was validly nominated</p> <p>(b) The requirement that CE should not be a member of a political party should be maintained</p> <p>(c) Any proposals to amend the method for selecting CE or expand the</p>	(a)-(e) Noted.

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	<p>electorate base of EC were not supported</p> <p>(d) The proposal to expand the electorate base of EC by giving voting rights to not more than six directors from each corporation was not supported</p> <p>(e) The proposal to impose an upper limit on the number of subscribers required for nominating candidates for the office of CE was not supported</p>	
(9) The Hong Kong Federation of Trade Unions, Yuen Long District Service Office	<p>(a) Any proposals to amend the method for selecting CE or expand the electorate base of EC were not supported</p> <p>(b) The proposal to abolish the requirement that CE should not be a member of a political party was not supported</p>	(a)-(b) Noted.

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<p>(10) Mr LEUNG Siu-tong, Member of Islands District Council [LC Paper No. CB(2)1633/05-06 (03)]</p>	<p>(a) It was not necessary to hold a by-election if a vacancy in the office of CE had arisen during 9-12 months (instead of six months) before an election for a new term CE was held</p> <p>(b) The policy that the term of EC should tie in with the 5-year term for CE and the electoral cycle was supported</p> <p>(c) The proposal in the Bill that the remaining term was counted as a term was supported. However, only a remaining term of at least nine months should be regarded as a term</p>	<p>(a) Paragraph 2 of Article 53 of the Basic Law provides that in the event that the office of the CE becomes vacant, a new CE shall be selected within six months in accordance with the provisions of Article 45 of the Basic Law. The proposal in the Bill can ensure that the requirement under Article 53 of the Basic Law is fulfilled, and at the same time, avoid holding two CE elections within a short period of time.</p> <p>(b) Noted.</p> <p>(c) Article 46 of the Basic Law provides that “[t]he term of office of the CE of the HKSAR shall be five years. He or she may serve for not more than two consecutive terms”. If a remainder term of less than nine months is not regarded as a term under Article 46 of the Basic Law, then the term of office of a new CE may be more than 10 years in total. This could not have been intended by the Basic Law which has clearly restricted the number of consecutive years to two i.e. a CE may be in office for 10 years at most.</p> <p>Thus, we consider that a new CE returned in a by-election may only serve for one more term after expiry of the remainder term, and the remaining term is counted as “a term”, regardless of the duration of the remainder term.</p>

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	(d) The lack of finality in the electoral process in the event that only one CE candidate was validly nominated warranted further consideration by Members	(d) See response to item (5)(d) above.
(11) The Frontier [LC Paper No. CB(2)1603/05-06 (07)]	(a) The Bill contravened the spirit of the International Covenant on Civil and Political Rights (ICCPR) (b) The Government had not made the best endeavour to fight for the rights of the people of Hong Kong in achieving universal suffrage	(a) When the ICCPR was applied to Hong Kong in 1976, a reservation was made not to apply Article 25(b) in so far as it might require the establishment of an elected Executive or Legislative Council in Hong Kong. This reservation continues to apply. It allows Hong Kong to decide the method for forming the LegCo in the light of the actual situation and the principle of gradual and orderly progress. Hong Kong's electoral system shall be determined in accordance with the Basic Law. Our electoral system is appropriate to Hong Kong's circumstances and gives rise to no incompatibility with any of the provisions of the Covenant as applied to the HKSAR. (b) The Government is fully alive to the public's aspirations for universal suffrage. In November 2005, CE initiated the discussion on formulating a roadmap for universal suffrage through the Commission on Strategic Development. The Commission aims to draw conclusions on the discussions by early 2007 and hopes that this will

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	(c) The Bill did not serve any meaningful purpose in terms of constitutional development as only minor amendments were introduced	provide a basis to commence the next phase of work. (c) See response to item 5(a) above.
(12) Hong Kong Human Rights Monitor [LC Paper No. CB(2)1633/05-06 (04)]	(a) The Bill failed to propose any meaningful amendments to defend the rights of Hong Kong people as enshrined in Article 25 of ICCPR (b) The selection of CE by the Election Committee and the subsector elections were inconsistent with Articles 2, 3, 25 and 26 of ICCPR. The open nomination procedure violated the principle of protecting the secrecy of voters' preference	(a) See response to item (11)(a) above. (b) Article 25(b) of the ICCPR provides for the right to vote and to be elected at genuine periodic elections. Article 25(b) is silent as to which organs are to be filled by election. The decision is left to each jurisdiction to make, within the scope of its respective governmental model. There is no general requirement that executive organs must be elected. The system for selecting the CE as set out in the Basic Law is consistent with the ICCPR as applied to HK. That said, the Government is fully committed to promoting constitutional development in accordance with the Basic Law, with a view to achieving the ultimate aim

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	<p>(c) The proposal to address the practical difficulties in implementing the "substantial connection" provision in relation to the District Council, the Chinese People's Political Consultative Conference and the Heung Yee Kuk subsectors was welcomed</p>	<p>of selecting the CE by universal suffrage.</p> <p>Regarding the issue of open nomination for CE election, under the CEEO, the votes at a poll shall be cast by secret ballot. There is no question of violation of the principle of protecting the secrecy of votes.</p> <p>The arrangement of open nomination can ensure fairness and enhance transparency of the election. Under section 32 of the CEEO, an election may be questioned by an election petition because material irregularity occurred in relation to the election. Issues relating to the nomination list of the person elected as CE could be a ground for election petition. In fact, LegCo and District Council elections also adopt the same arrangement, which is widely accepted within the community.</p> <p>(c) Noted.</p>

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	<p>(d) The lack of finality in the electoral process in the event that only one CE candidate was validly nominated was a matter of concern</p> <p>(e) The functional constituency system and the Election Committee subsector elections did not meet the requirement in ICCPR</p>	<p>(d) See response to item (5)(d) above.</p> <p>(e) See response to items (11)(a) and (12)(b) above.</p>
(13) Civil Human Rights Front [LC Paper No. CB(2)1603/05-06 (06)]	<p>(a) The Bill should address public's aspiration for universal suffrage</p> <p>(b) A referendum should be conducted on the electoral system of Hong Kong</p>	<p>(a) See response to item 11(b) above.</p> <p>(b) According to the Basic Law, any proposed amendments to the methods for selecting the CE and for forming the LegCo required the support of three parties, i.e. a two-thirds majority of all the members of the LegCo, the CE and the NPCSC. The Basic Law has not provided for a referendum mechanism. Any suggested means to deal with the electoral methods which depart from the Basic Law and the NPCSC Decision of 26 April 2004, especially by way of a referendum, is inappropriate and indeed unconstitutional.</p>

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(14) Democratic Alliance for the Betterment and Progress of Hong Kong [LC Paper No. CB(2)1603/05-06 (08)]	(a) The Bill was supported	(a) Noted.
(15) Hong Kong Christian Institute [LC Paper No. CB(2)1603/05-06 (09)]	(a) The Bill, which did not seek to implement universal suffrage in 2007 and 2008, was not supported	(a) The purpose of the Bill is to ensure smooth conduct of the 2007 CE election. In accordance with NPCSC's Decision of 26 April 2004, the election of the third CE to be held in the year 2007 shall not be by means of universal suffrage. A bill seeking to implement universal suffrage in 2007 will not be consistent with the NPCSC Decision.
(16) Justice & Peace commission of the Hong Kong Catholic Diocese [LC Paper No. CB(2)1633/05-06 (01)]	(a) No comment on the Bill as it did not address public's aspiration for universal suffrage	(a) See response to item (11)(b) above.