

立法會
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**Subcommittee to Study the Administration's Proposals
for the Methods for Selecting the Chief Executive in 2007
and for Forming the Legislative Council in 2008**

**Minutes of the ninth meeting
held on Tuesday, 29 November 2005 at 8:30 am
in the Chamber of the Legislative Council Building**

Members present :

- Hon TAM Yiu-chung, GBS, JP (Chairman)
- Hon Howard YOUNG, SBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Hon Albert HO Chun-yan
- Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
- Hon LEE Cheuk-yan
- Dr Hon David LI Kwok-po, GBS, JP
- Hon Fred LI Wah-ming, JP
- Dr Hon LUI Ming-wah, SBS, JP
- Hon Margaret NG
- Hon James TO Kun-sun
- Hon CHEUNG Man-kwong
- Hon CHAN Yuen-han, JP
- Hon Bernard CHAN, JP
- Dr Hon Philip WONG Yu-hong, GBS
- Hon WONG Yung-kan, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- Dr Hon YEUNG Sum
- Hon LAU Kong-wah, JP
- Hon Miriam LAU Kin-yea, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk, JP
- Hon Andrew CHENG Kar-foo
- Hon Timothy FOK Tsun-ting, GBS, JP
- Hon Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, JP
- Hon Tommy CHEUNG Yu-yan, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon Vincent FANG Kang, JP

Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
Hon TAM Heung-man

**Members
absent** : Hon Martin LEE Chu-ming, SC, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Frederick FUNG Kin-kee, JP
Hon Daniel LAM Wai-keung, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

**Public Officers
Attending** : Mr Stephen LAM
Secretary for Constitutional Affairs

Ms Elsie LEUNG
Member, Constitutional Development Task Force

Mr Joseph LAI
Deputy Secretary for Constitutional Affairs

Mr Raymond TAM
Principal Assistant Secretary for Constitutional Affairs

**Clerk in
attendance** : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Draft motions in Annex B and Annex C of the Fifth Report

Secretary for Constitutional Affairs (SCA) introduced the two draft motions to be put by the Hong Kong Special Administrative Region (HKSAR) Government to the Legislative Council (LegCo) concerning the amendments to the methods for the selection of the Chief Executive (CE) and for the formation of LegCo (the “two methods”) which were set out respectively in Annex B and Annex C of the Fifth Report of the Constitutional Development Task Force (the Task Force).

2. Mr Howard YOUNG said that after the two motions had the endorsement of a two-thirds majority of all the Members of LegCo and the consent of CE, they would be reported to the Standing Committee of the National People’s Congress (NPCSC) for approval or record. He asked about the procedure involved if NPCSC considered that the wording of the two motions had to be amended. For instance, NPCSC might hold the view that “before the third term” should be added after “The Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members in each term” in paragraph 1 of Article I of Annex II to the Basic Law, so as to ensure that if a consensus could not be reached by LegCo on the electoral method for forming LegCo in 2012 or thereafter, the composition of LegCo would not revert to that for the third term, i.e. 60 Members, but would follow the prevailing provisions.

3. Mr LAU Kong-wah asked whether major changes would be made to the two draft motions when they were formally presented to LegCo for endorsement.

4. SCA said that the Administration had already consulted the relevant departments of the Central Authorities on the wording of the two draft motions. It was the view of the Central Authorities that the draft motions, in their present form, were appropriate and would suffice for dealing with the electoral arrangements subsequent to 2012.

5. Mr CHEUNG Man-kwong said that when the two motions were drafted, the Administration did not know the feedback of the public on the package of proposals put forth in the Fifth Report. Now that there was clear indication that the public

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wanted a timetable for universal suffrage, he asked whether the Administration would consider revising the proposed package by including a timetable for universal suffrage before formal presentation of the two motions for LegCo's endorsement.

6. SCA said that the two motions complied with the Interpretation and Decision made by NPCSC in April 2004. The Administration was aware of the public's aspiration on universal suffrage and had conveyed it to the Central Authorities. In response to public's aspiration, the Administration had announced, on the day the Fifth Report was released, that the Commission on Strategic Development (CSD) would be tasked to study possible models to implement universal suffrage in accordance with the provisions and principles of the Basic Law and draw up a roadmap for attaining universal suffrage for the two elections. Since neither the timetable for universal suffrage had been thoroughly discussed within and outside LegCo, nor the supporting measures necessary to ensure effective implementation of universal suffrage studied or explored, the Administration had no plan to revise the proposed package at this stage.

7. Mr Ronny TONG asked whether the Administration would pursue other options to enhance democratic representation in the two elections in the event that the two motions were not endorsed by LegCo, e.g. by amending local legislation to broaden the electorate base of the Election Committee (EC) and functional constituencies (FCs) to cover all registered voters. This option would not contravene the Basic Law as well as the Interpretation and Decision of NPCSC. Ms Emily LAU echoed his view.

8. SCA responded that the package of proposals was a viable and practical proposal to enhance democratic representation in the two elections. He pointed out that there were divided views among Members as to how the electorates of FCs and EC subsectors should be expanded. While there was a view that corporate voting should be replaced by individual voting, there was an opposite view that corporate voting should be retained. There was also a view that the electorate of some FCs should include senior management staff, but not all employees. At the same time, some Members considered that FCs should be abolished and some considered that they should be retained. Some other Members considered that FCs should be phased out in a gradual and orderly manner. It was a political reality that a consensus was unlikely to be reached on any revised package of proposals within a short time. He reiterated that the package of proposals, although it might not be perfect, had struck the right balance amidst the various views in the community. He urged members to support the two motions which would be presented to the Council at its meeting on 21 December 2005.

9. Ms Miriam LAU asked about the voting procedure for the two motions. SCA explained that separate votes would be taken on the two motions. If one motion was passed, but not the other, the Administration would still proceed to implement the amendment appended to the motion that had been passed.

II. Legal issues arising from the term of office of the Chief Executive (Item IV of the List of Areas for Study)

Chapter 6 and Annex A of the Fifth Report of the Constitutional Development Task Force)

Term of office of CE elected under Article 53 of the Basic Law (BL 53)

10. Members noted that the (Draft) Amendment to Annex I to the Basic Law (the “(Draft) Amendment”) appended to the draft motion in Annex B of the Fifth Report provided, inter alia, that the term of office of the new CE elected by the EC in the situation under BL 53(2) should be the remainder of the term of the preceding CE, and the new CE could serve for one more term after expiry of the term.

11. Mr Ronny TONG and Ms Margaret NG queried why the provision regarding the term of office of CE in BL 46 was included in the (Draft) Amendment, which dealt with the composition of EC to elect the third term CE in 2007. They cautioned that it was inappropriate for the Administration to improve clarity of the main provision of the Basic Law by way of amending provisions in annexes to the Basic Law. The proper procedure was to amend the relevant articles of the Basic Law using the mechanism provided in BL 159. In addition, the proposed amendment was outside the scope of Annex I to the Basic Law.

12. Ms Elsie LEUNG, member of the Task Force, recapped that in the course of examining the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill, Members had requested the Administration to clarify whether the term of a new CE elected in a BL 53(2) situation constituted a “term” for the purpose of BL 46, e.g. whether the new CE elected on 10 July 2005 would serve a maximum of seven years (i.e. the remainder of Mr TUNG Chee-hwa’s term plus a five-year term) or 12 years (i.e. the remainder of Mr TUNG’s term plus two consecutive five-year terms). The Administration had then undertaken to address the issue in the context of the review of constitutional development and had now clarified the issue in the Fifth Report.

13. Ms LEUNG said that as the (Draft) Amendment did not seek to amend any provision in the Basic Law, it was not necessary to invoke the mechanism provided in BL 159. She explained that the Interpretation of NPCSC made on 27 April 2005 provided that when CE was selected by an EC with a five-year term of office, the term of office of a new CE elected in a situation pursuant to BL 53(2) should be the remainder of the previous CE. BL 46 stipulated that the term of CE should be five years and he could serve for not more than two consecutive terms. In this connection, the (Draft) Amendment merely reflected the requirements set out in the NPCSC Interpretation made on 27 April 2005 and the Basic Law. As the term of office of EC was stipulated in Annex I to the Basic Law, it was, therefore, appropriate to place the “remainder term” provision alongside the provision on the term of office of EC in the (Draft) Amendment.

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14. Mr Ronny TONG said that while he had due respect for Ms LEUNG, he doubted whether it was constitutionally appropriate for Ms LEUNG to answer the question. In his view, constitutional issues should be answered by the Secretary for Justice. Ms Margaret NG asked about the capacity in which Ms LEUNG was answering the question.

15. SCA clarified that Ms LEUNG was attending the Subcommittee meeting in the capacity of a public servant. Ms LEUNG had been appointed as a member of the Task Force after she resigned from the post of Secretary for Justice.

16. The Chairman informed members that the Director of Administration had advised LegCo in writing that CE had designated, under BL 62(6), Ms Elsie LEUNG, member of the Task Force, to attend meetings of the committees and subcommittees of LegCo and to speak thereat on behalf of the Government. The designation had taken effect on 20 October 2005 and should continue in force until 31 December 2005 inclusive.

17. Mr Ronny TONG maintained the view that it was inappropriate to amend Annex I to the Basic Law to provide for the “remainder term” provision. He asked the Administration to consider deleting the proposed provision from the (Draft) Amendment appended to the draft motion in Annex B of the Fifth Report. He also asked whether the “remainder term” provision would apply to CEs of subsequent terms.

18. SCA responded that since the term of office of EC to elect the third term CE in 2007 should remain to be five years, the “remainder term” provision would continue to apply. As to the term of office of CEs for the terms subsequent to 2007, the method for selecting CEs could be amended as indicated in the NPCSC Interpretation adopted on 27 April 2005, and should the office of CE then became vacant, the term of office of the new CE should be determined in accordance with the amended method for the selection of CE.

By-election of CE

19. Mr Ronny TONG was concerned whether the Administration’s proposal not to hold a by-election if an election for a new term CE would be held within six months after a vacancy in the office of CE had arisen was consistent with BL 53(2). He also asked about the electoral arrangement in the event that a vacancy in the office of CE had arisen six months and one day before the election of the next term CE was held.

20. SCA advised that although BL 53(2) provided that a new CE should be selected within six months in accordance with BL 45, the requirement would not apply to a vacancy arising within the last six months of a five-year term because a new term CE would have been elected within six months to fill the vacancy in compliance with BL 53(2). The Administration therefore proposed that if an election for a new term CE

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would be held within six months after a vacancy in the office of CE had arisen, it would not be necessary to hold a by-election, and the Acting CE would assume the duties of CE before the new term CE took up his office. As to how a situation whereby a vacancy arose more than six months before the expiry of the term should be dealt with, the fundamental principle was to ensure that the requirement under BL 53 was fulfilled. The proposals would be implemented through amending local legislation, as the by-election arrangements for CE were specified in the Chief Executive Election Ordinance (CEEEO).

21. Mr Ronny TONG and Ms Margaret NG considered it inappropriate and a violation of legal principles for the Administration to try to clarify the meaning of certain articles of the Basic Law by amending Annexes to the Basic Law or local legislation. The proper procedure was to amend the relevant articles of the Basic Law using the mechanism provided in BL 159.

Term of office of EC

22. Ms Margaret NG pointed out that there was no EC to deal with a by-election of CE, if necessary, between now and the election of the third term CE. She questioned whether the policy that the term of office of EC should be five years should be maintained. She pointed out that the membership of EC, irrespective of whether it was 800 under the existing arrangement or 1 600 under the package of proposals, was too small. If an EC had a standard term of office of five years, a CE candidate could have ample time to make arrangements for “vote planting”. However, the situation would be addressed if an EC was only formed on a need basis, i.e. before the election of a new term CE or a by-election of CE.

23. Ms Elsie LEUNG responded that the Administration had no intention to change the term of office of EC. As regards the concerns about corruption and illegal conduct such as vote planting in a CE election, SCA assured members that there were stringent electoral laws and prevention of bribery provisions to ensure integrity of an election.

24. SCA further said that it was the intention of the Administration that the term of EC should tie in with the five-year term for CE and with the electoral cycle. In future, the term of EC would commence on 1 February in the year in which the term of office of CE was to expire. There would not be any time lag between the expiry of the current term EC and the commencement of the next term EC. If a by-election was required because a vacancy arose during the term of CE, this should be dealt with by the current EC. The new five-year term CE would be elected by a new EC.

III. Any other business

Arrangements for the CE election in 2007

25. Mr Ronny TONG said that the Task Force had proposed in paragraph 5.15 of the Fifth Report that if at the close of nomination only one candidate was validly nominated, election proceedings should continue. He queried why the Administration had proposed to give effect to the above proposal by amending CEEO, and not Annex I to the Basic Law.

26. SCA explained that Article 5 of Annex I to the Basic Law stipulated that EC should elect CE by secret ballot on a one-person-one-vote basis and the specific method should be prescribed by the electoral law. Section 23 of CEEO stipulated that if at the close of nomination only one candidate was validly nominated, that candidate should be declared elected *ipso facto* as CE. It was therefore necessary to amend section 23 to give effect to the proposed arrangement.

27. Mr Ronny TONG asked whether under the proposal, a sole candidate who received very few valid votes would still be declared elected in a CE election. SCA explained that a sole candidate would be returned at an election if the votes he obtained constituted more than half of the valid votes cast.

28. Mr Albert HO noted that if a sole candidate failed to obtain the sufficient number of votes at the first round of election, the nomination procedure would be re-opened. He expressed concern that if, at the close of the second (or subsequent) round of nominations, there was still only one validly nominated candidate who also failed to obtain the requisite number of votes, the election proceedings would continue. Given the small electorate of EC and the requirement for the names of the subscribers to be made public, it was very difficult for potential candidates to contest the election when the leaders of the Central People's Government had given tacit support to a candidate. In his view, it would be better to impose an upper limit on the number of subscribers required for nominating candidates for the office of CE to encourage competition in an election, although he personally did not support this type of "small circle" election.

29. Mr LEE Wing-tat considered that requiring candidates to secure nominations from not less than 100 EC members, i.e. a threshold of 12.5% of the electorate size, was very high by world standard. He supported that an upper limit should be imposed on the number of subscribers for nominating candidates in a CE election. Given that unmarked ballot papers were regarded as invalid votes under the existing arrangement, he proposed that the ballot paper should be designed in such a way that EC members were required to choose to either "support" or "not support" the sole candidate when voting.

30. Ms Emily LAU said that she opposed the existing method for selecting CE which was a "small circle" election. She supported that an upper limit should be

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imposed on the number of subscribers for nominating candidates in a CE election. In addition, as the sole candidate could only be returned when obtaining more than half of the total valid votes cast, and the voting in the case of a sole candidate was equivalent to a “vote of confidence”, unmarked ballot papers in so far that they reflected the voters’ preference, should be regarded as valid votes for the purpose of determining the result.

31. On the proposal to impose an upper limit on the number of subscribers required for nominating candidates for the office of CE, SCA said that the Administration considered that setting such a limit would unduly restrain EC members in exercising their right to nominate candidates. With the EC membership proposed to be increased from 800 to 1 600, there should be more room for a contested election. As regards the finality arrangement in the electoral process, SCA said that the major policy consideration was whether election proceedings should continue if only one candidate was validly nominated. He took note of Mr LEE Wing-tat and Ms Emily LAU’s views on unmarked ballot papers. The detailed electoral arrangements would be provided for in the amendments to be made to CEEO.

32. Miss CHOY So-yuk noted that some sectors, such as the toy industry, were not represented in both FCs and EC. She asked whether the Administration would consider allocating the newly added EC seats to these sectors, instead of to the existing EC subsectors.

33. SCA responded that the FC system had been operating for over 10 years and almost all FCs had their representation in EC. It was for historical reason that a few sectors were represented in EC but not in LegCo, e.g. Chinese medical practitioners. Under the package of proposals, the newly added EC seats would be allocated to the existing EC subsectors. The first three EC sectors would have their membership proportionally increased by 50% each, i.e. from 200 to 300. In other words, more opportunities would be provided for members of the industrial, commercial, financial, professional, labour, social services, religious and other sectors to participate in the political process. The Administration was prepared to listen to views from different sectors of the community and would firm up the detailed electoral arrangements when it introduced amendments to CEEO.

Arrangements for the LegCo election in 2008

34. Miss CHOY So-yuk asked whether an amendment would be made to reduce the number of LegCo Members who were not of Chinese nationality.

35. SCA responded that BL 67 stipulated that the proportion of LegCo Members who were not of Chinese nationality or who had the right of abode in foreign countries should not exceed 20% of the total membership of LegCo. The Task Force considered that the existing arrangement would enable individuals who were not of Chinese nationality to continue to contribute to Hong Kong. It would also help maintain the image of Hong Kong as an international city. The Task Force therefore recommended that the existing arrangement be maintained.

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Work of the Subcommittee

36. As the Subcommittee had completed its deliberations, the Chairman suggested that the next meeting originally scheduled for 2 December 2005 should be cancelled. Members agreed. Members also agreed that the Subcommittee would report its deliberations to the House Committee at the meeting on 9 December 2005. Members noted that the Administration would give notice to move the two motions at the Council meeting on 21 December 2005 and it was for the House Committee to decide whether or not to form a subcommittee to study the two motions, despite the fact that this Subcommittee had already studied the two draft motions in advance.

37. The meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
16 June 2006