

**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**

Follow up to meeting on 15 November 2005

Questions raised by Members

Some members have pointed out that the two draft motions in Annexes B and C of the Fifth Report of the Constitutional Development Task Force only seek to amend the composition of the Election Committee to elect the third term Chief Executive (CE) in 2007, and the composition of the fourth term Legislative Council (LegCo) in 2008. The Administration is requested to provide a written response to explain –

- (a) what will be the composition of the Election Committee and LegCo thereafter, if no further amendments are made; and
- (b) whether the “remainder of the term” arrangement proposed in the draft motion in Annex B will only apply to the third term CE elected in 2007 and not to a CE of subsequent term.

The Administration's response

(a)

According to Article 7 of Annex I to the Basic Law, if there is a need to amend the method for selecting the CE for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the LegCo and the consent of the CE, and they shall be reported to the Standing Committee of the National People's Congress (“the NPCSC”) for approval. According to Article III of Annex II to the Basic Law, with regard to the method for forming the LegCo of the HKSAR and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this

Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the LegCo and the consent of the CE, and they shall be reported to the NPCSC for the record.

2. According to “The Interpretation by the Standing Committee of the National People’s Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China” (“the Interpretation”) adopted by the NPCSC on 6 April 2004, the CE shall make a report to the NPCSC as regards whether there is a need to make an amendment to the methods for selecting the CE and for forming the LegCo after 2007; and the NPCSC shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law, make a determination in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress.

3. In accordance with the provisions of the above Interpretation, the CE submitted a report to the NPCSC on 15 April 2004 and proposed that the methods for selecting the CE in 2007 and for forming the LegCo in 2008 should be amended, so as to enable Hong Kong’s constitutional development to move forward. The NPCSC adopted the “Decision of the Standing Committee of the National People’s Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008” (“the Decision”) on 26 April 2004. According to the Decision, subject to Article 1 of the Decision not being contravened^{Note}, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the specific method for selecting the third CE of the HKSAR in the year 2007 and the specific method for

^{Note} Article 1 of the Decision provides that the election of the third Chief Executive of the Hong Kong Special Administrative Region to be held in the year 2007 shall not be by means of universal suffrage. The election of the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 shall not be by means of an election of all the members by universal suffrage. The ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged. The procedures for voting on bills and motions in the Legislative Council are to remain unchanged.

forming the fourth term of the LegCo of the HKSAR in the year 2008 according to the provisions of Articles 45 and 68 of the Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Basic Law. Pursuant to the Decision, the Constitutional Development Task Force put forth in the Fifth Report a package of proposals on amending the methods for selecting the CE in 2007 and for forming the LegCo in 2008.

4. As to whether there is a need to make amendment and, if so, how the amendment should be made, in respect of the methods for selecting the CE for forming the LegCo for the terms subsequent to 2012, these shall continue to be determined in accordance with the provisions of Articles 45 and 68 of the Basic Law, the provisions of Article 7 of Annex I and Article III of Annex II to the Basic Law, and the relevant provisions in the Interpretation adopted by the NPCSC on 6 April 2004.

5. In accordance with the principle of gradual and orderly progress, even if consensus cannot be reached by LegCo, the CE and the NPCSC on the methods for selecting the CE and for forming the LegCo in 2012 and thereafter, the two methods will not go backwards. Hence, if the current package of proposals for the 2007/2008 elections put forward by the Government is not endorsed, in accordance with Article 4 of the above Interpretation, the provisions in Annex I to the Basic Law relating to the method for selecting the CE will still be applicable to the method for selecting the CE, and the provisions in Annex II of the Basic Law relating to the method for forming the third term of LegCo will still be applicable to the method for forming the LegCo, until further amendment is made. On the other hand, if the current package of proposals put forward by the Government is endorsed, and before the ultimate aim of universal suffrage is attained, the CE will, before each CE election and LegCo election, submit a report to the Central Authorities in accordance with the relevant provisions of the above Interpretation regarding whether there is a need to make amendment to the electoral methods. The relevant decision to be made by the NPCSC in response to the report will address the question of the relevant provision to be followed in the two electoral methods in the event that there is no consensus. The election methods will not go backwards.

(b)

6. In accordance with the “Interpretation of Paragraph 2, Article 53 of the Basic Law of the HKSAR of the People’s Republic of China by the Standing Committee of the National People’s Congress” (“the Interpretation”) adopted by the NPCSC on 27 April 2005, when the CE is selected by the Election Committee with a five-year term of office, in the event that the office of the CE becomes vacant as he (she) fails to serve the full term, the term of office of the new CE shall be the remainder of the previous CE. Since the term of office of the Election Committee to elect the third term CE in 2007 shall remain to be five years, the relevant provisions on the remainder term continue to apply. As to the term of office of the CEs for the terms subsequent to 2007, in accordance with the Interpretation adopted by the NPCSC on 27 April 2005, the method for selecting the CEs could be amended, and should the office of the CE then become vacant, the term of office of the new CE shall be determined in accordance with the amended method for the selection of the CE.

Constitutional Affairs Bureau
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