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## **Report of the 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**

### **PURPOSE**

This paper reports on the deliberations of the 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.

### **BACKGROUND**

2. On 7 January 2004, the Chief Executive (CE) announced in his Policy Address the establishment of the Constitutional Development Task Force (the Task Force) led by the Chief Secretary for Administration. Its tasks are to examine in depth the relevant issues of principle and legislative process in the Basic Law relating to constitutional development, to consult the relevant departments of the Central Authorities, and to gather the views of the public on the relevant issues.

3. On 30 March 2004, the Task Force published the First Report on issues of legislative process in the Basic Law relating to constitutional development. On 6 April 2004, the Standing Committee of the National People's Congress (NPCSC) adopted the "Interpretation of Article 7 of Annex I and Article III of Annex II to the Basic Law" (the Interpretation) (**Appendix I**). Clause 3 of the Interpretation states that CE of the Hong Kong Special Administrative Region (HKSAR) shall make a report to NPCSC as regards whether there is a need to amend the methods for selecting the CE and for forming LegCo under Annex I and Annex II respectively (the "two methods") and its procedures for voting on bills and motions, and NPCSC shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law (BL 45 and BL 68), make a determination in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress.

4. On 15 April 2004, the Task Force published its Second Report on the issues of principle in the Basic Law relating to constitutional development. The Task Force recommended that CE should, in accordance with the NPCSC Interpretation on 6 April 2004, submit a report to NPCSC, recommending that the "two methods" be amended, and requesting NPCSC to make a determination to that effect in accordance with the relevant provisions and principles in the Basic Law. CE

endorsed the recommendations of the Task Force and submitted a report to NPCSC on 15 April 2004.

5. The NPCSC examined the report submitted by CE, and adopted the “Decision of the NPCSC on issues relating to the methods for selecting CE of the HKSAR in the year 2007 and for forming LegCo of the HKSAR in the year 2008” on 26 April 2004 (the Decision) (**Appendix II**).

6. In accordance with the relevant provisions of the Basic Law and the NPCSC Decision, the Third Report was published by the Task Force on 11 May 2004. It set out a number of areas which may be considered for amendment in respect of the “two methods”. The Fourth Report published on 15 December 2004 set out and summarised the views and proposals collected from the community on the “two methods”. The Fifth Report published on 19 October 2005 put forth a package of proposals for the “two methods” in 2007 and 2008.

## **THE FIFTH REPORT OF THE TASK FORCE**

7. On the method for selecting CE in 2007, the Administration proposes that –

- (a) the number of members of the Election Committee be increased from 800 to 1600;
- (b) the number of members of the Election Committee in the First, Second and Third Sectors be increased from 200 to 300 respectively;
- (c) the number of Election Committee members in the Fourth Sector be increased from 200 to 700, mainly by including all (appointed, ex-officio and elected) District Council (DC) members;
- (d) the threshold for nominating candidates be maintained at the ratio of one-eighth of the total membership of the Election Committee;
- (e) a new provision be introduced that election proceedings shall continue even if there is only one validly nominated candidate; and
- (f) the existing requirement that CE shall not have any political affiliation be maintained.

8. On the method for forming LegCo in 2008, the Administration proposes that –

- (a) the number of LegCo seats be increased from 60 to 70. The number of seats returned by geographical constituencies (GCs) through direct elections and that returned by functional constituencies (FCs) will respectively be increased to 35;

- (b) all the newly added FC seats be returned through election by DC members from among themselves. Accordingly, the number of seats returned by the DC FC will be increased from one to six; and
- (c) the existing provision that individuals who are not of Chinese nationality may occupy up to 12 seats be maintained.

9. To facilitate discussion by the community, the Task Force has set out in Annex B and Annex C of the Fifth Report respectively the draft motions to be put by the HKSAR Government to LegCo concerning the amendments to the “two methods”. The (Draft) Amendments to Annex I and Annex II to the Basic Law regarding the “two methods” are appended to the two draft motions.

## **THE SUBCOMMITTEE**

10. At the House Committee meeting on 21 October 2005, Members formed a subcommittee to study the Administration’s package of proposals as set out in the Fifth Report and related issues. 54 Members joined the Subcommittee, and Hon TAM Yiu-chung and Hon Howard YOUNG were elected as Chairman and Deputy Chairman of the Subcommittee respectively. The membership list of the Subcommittee is in **Appendix III**.

11. The Subcommittee has held nine meetings to discuss the proposed package, the two draft motions, and other related issues. It has also met with and received views from 37 organisations and individuals, the names of which are in **Appendix IV**.

12. The Committee on Rules of Procedure (CRoP) of LegCo has discussed whether the Rules of Procedure are adequate to deal with the motions on the proposed amendments to Annex I and Annex II to the Basic Law, and has referred a list of questions raised by its members to the Subcommittee for follow up. The Subcommittee has discussed the issues raised and the response of the Administration at one of its meetings.

## **DELIBERATIONS OF THE SUBCOMMITTEE**

### **General comments on the package of proposals**

13. Some members of the Subcommittee do not support the package of proposals for a number of reasons. First, the package is not progressive and does not get Hong Kong any nearer the ultimate aim of universal suffrage for the elections of CE and LegCo. The package seeks to re-introduce “indirect election” by returning the newly added FC seats through election by DC members from among themselves, and give all DC members, including appointed members, the power to nominate and vote in the CE election. In addition, the package does not broaden the electorate base of

the Election Committee and FCs. Second, the package lacks a timetable for, and a roadmap towards, universal suffrage. Third, LegCo is requested to endorse, in December 2005, two broad motions on the (Draft) Amendments to Annex I and Annex II to the Basic Law, without being provided with any details on the arrangements for the two elections in 2007/08 to be implemented through local legislation at a later stage.

14. Some other members of the Subcommittee consider that the proposed package adheres to the principles of “gradual and orderly progress”, “actual situation in Hong Kong” and “balanced participation and representation of the interest of different sectors”. Not only does the package expand the democratic elements in the electoral system, it also takes forward Hong Kong’s constitutional development towards the ultimate aim of universal suffrage in a gradual and orderly manner.

### **Legislative timetable**

15. In response to the request of the Subcommittee, the Administration has provided the legislative timetable for implementation of the package of proposals in the Fifth Report (**Appendix V**). In gist, the Administration has advised that there are three levels of legal procedures involved, as follows –

- (a) amending the relevant provisions of Annex I and Annex II to the Basic Law;
- (b) amending the relevant local primary legislation, i.e. the Chief Executive Election Ordinance (Cap. 569) and the Legislative Council Ordinance (Cap. 542); and
- (c) amending the relevant subsidiary legislation by the CE in Council and the Electoral Affairs Commission (EAC).

16. There are two stages regarding the procedures for amending the “two methods”. The first stage (i.e. endorsement by a two-thirds majority of all LegCo Members and consent of CE) will be undertaken in Hong Kong. The second stage (i.e. approval or acceptance for the record by NPCSC on the amendments proposed by Hong Kong) will be undertaken by the Central Authorities. Clause 3 of the NPCSC Interpretation made on 6 April 2004 makes it clear that the relevant amendments will only take effect after they have gone through the above process.

17. Under the two-stage procedures, the Administration will formally present to LegCo the motions on the (Draft) Amendments to Annex I and Annex II to the Basic Law, and endeavour to obtain LegCo’s endorsement on 21 December 2005. With the endorsement of LegCo and the consent of CE, CE will submit a report together with the (Draft) Amendments to NPCSC in late December 2005.

18. After the (Draft) Amendments are approved or accepted for the record by NPCSC, the Administration will introduce the Chief Executive Election (Amendment) Bill into LegCo in January 2006 and the relevant subsidiary legislation will be made thereafter. The Administration plans to hold the Election Committee subsector elections in December 2006, and the election for a new term CE in March 2007. The Administration will also introduce the Legislative Council (Amendment) Bill into LegCo in 2007 to provide for the electoral arrangements for the fourth term LegCo. After the amendments are made, EAC will need to deal with the delineation of GCs. The relevant subsidiary legislation will also need to be amended accordingly.

19. Some members have opposed the presentation of the motions on the (Draft) Amendments to Annex I and Annex II to the Basic Law by the Administration to the Council on 21 December 2005. They have asked the Administration to consider deferring the submission of the (Draft) Amendments to NPCSC to February 2006, so as to allow more time for LegCo and the public to consider the proposed package. There is suggestion that during the interim period, the Administration should make arrangement for Members to visit Beijing for the purpose of reflecting the mainstream view of Hong Kong people to the Central Authorities, and amend the proposed package to incorporate a timetable for introducing universal suffrage.

20. The Administration has explained that if members' request is acceded to, the Chief Executive Election (Amendment) Bill scheduled for introduction into LegCo in January 2006 will have to be deferred to March 2006 or later. The time for LegCo to scrutinise the Bill will be considerably shortened as a result. The Administration has reiterated that if any part of the legislative work cannot be completed as scheduled, the work on subsequent parts will be affected.

## **Opinion polls**

### Opinion poll commissioned by the Central Policy Unit in September 2005

21. Members have noted that the Task Force had commissioned, through the Central Policy Unit (CPU), the Hong Kong Polytechnic University (PolyU) to conduct an independent opinion poll to ascertain the level of public support for and acceptance of the major elements of the package of proposals to be put forward by the Task Force during the period from 27 to 30 September 2005. The relevant results are set out in Appendix IV to the Fifth Report. According to the Administration, the results suggest that the proposed package has the support of the majority of the public. Members have requested the Administration to advise who was responsible for the design of the questionnaire for the independent opinion poll and analysing the results of the poll.

22. The Administration has advised that the Task Force and CPU were responsible for the design of the questionnaire, which must meet the four standards, i.e. logicity, objectivity, accuracy and clarity. The execution of the public opinion poll, including

sample selection, fieldwork, data analysis, etc, was carried out by PolyU, the term contractor of CPU. The Task Force and the CPU played no part in the process.

23. Some members consider that the Administration has been misleading the public about the results of the poll conducted by PolyU. As the questionnaire was not designed by an independent agency, the objectivity and independence of the poll were questionable. In addition, the public was not consulted on the issue of a timetable for universal suffrage in the questionnaire.

#### Opinion polls conducted in the community

24. In response to members' request, the Administration has provided information on different polls on constitutional development and the proposed package conducted by individual academic and media organisations, since the Task Force released its Fifth Report on 19 October 2005. While it is difficult for the Administration to compare these polls because their focus of study, methodology and sampling size vary, it has two major observations. First, the public's general response to the proposed package was positive and constructive. The proposed package has a certain level of support and acceptance among the public. Second, there is public expectation for a timetable for attaining universal suffrage.

25. Some members have pointed out that some respondents to these polls only accepted the proposed package because they felt powerless, and it is the responsibility of the Administration to respond to the public's demand for a timetable on universal suffrage. According to the poll conducted by the Chinese University of Hong Kong (CUHK) during the period from 25 to 29 October 2005 (following the release of the Fifth Report), about 70% of the respondents considered that universal suffrage should be implemented by 2012, and 65% of them considered that the Government must immediately set a timetable for attaining universal suffrage. Among those who accepted the proposed package (about 59%), 32.8% did so gladly, 36.8% without much feeling, and 27.7% with reluctance. As the opinion poll commissioned by CPU was conducted before the release of the Fifth Report, some members have suggested that CE should submit another report to the Central Authorities to reflect the public's views. Some other members have requested that the Administration should conduct another opinion poll or a referendum on the specific proposals set out in the Fifth Report and, in particular, whether universal suffrage should be implemented in 2012.

26. Some other members, however, have pointed out that although 65% of the respondents to the poll conducted by CUHK considered that a timetable for universal suffrage should be set, about 60% of the respondents also considered that the Administration's package of proposals was acceptable. The two results are not contradictory, but a reflection of the pragmatism of the public that constitutional development should be progressive.

27. The Administration has advised that the public's aspiration for progress in constitutional development has been reflected to the Central Authorities following each round of consultation conducted by the Task Force. The Administration believes that the proposed package, although it might not be perfect, has struck the right balance amidst the various views in the community. In fact, the opinion polls conducted by various organisations after the release of the Fifth Report have shown that the proposed package is on the whole supported and accepted by the public. The Administration will continue to monitor and consider the feedback from the community, including the findings of different opinion polls.

### **Timetable for universal suffrage**

28. Some members have repeatedly requested the Administration to set a timetable for universal suffrage. They have pointed out that while the Basic Law promulgated in 1990 allows for implementation of universal suffrage for the elections of CE and LegCo in 2007 and 2008 respectively, the NPCSC Decision has decided against it. Public aspirations for democracy and a timetable for universal suffrage, which are clearly reflected in opinion polls conducted after the release of the Fifth Report, should not be ignored. These members consider that since the NPCSC Decision has only decided against implementation of universal suffrage for the two elections in 2007 and 2008, it is the responsibility of the HKSAR Government and CE to pursue a timetable for universal suffrage with the Central Authorities.

29. The Administration has advised that under the Basic Law, the "two methods" in 2007 and 2008 may or may not be amended, and constitutional development should be taken forward in a gradual and orderly manner towards the ultimate aim of universal suffrage in the light of the actual situation in Hong Kong. While the Administration realises that universal suffrage is the common wish of the community, it has also noted that there are still differing views on how best to achieve universal suffrage in terms of timing, methodology and structure. There are views that universal suffrage for both the CE and LegCo elections should be introduced in 2012. There are also views that it should be introduced in 2017 or even later. On the other hand, there are still voices in the community calling for the Central Authorities to reconsider introducing universal suffrage in 2007 and 2008. Further, there are views that there is no need to set a timetable. For the political system to move forward, including any timetable to achieve universal suffrage, a consensus among the Central Authorities, CE, and LegCo is required.

30. In addition, the Administration considers that to attain universal suffrage, it must first create favourable conditions and provide the necessary supporting measures. Only when the conditions are ripe and the supporting measures ready, and the community has reached a degree of consensus on the pace of introducing universal suffrage, will a timetable for introducing universal suffrage be meaningful. The supporting measures include Government initiatives to nurture political talent and to encourage more people to become involved in politics by opening up more channels for participation in elections and for joining the Government through expanding the system of political appointment.

31. Members have asked the Administration to clarify whether setting a timetable for universal suffrage right now would contravene the Basic Law or the NPCSC Decision and whether such a timetable could be incorporated into the proposed package.

32. The Administration has explained that the Interpretation and Decision made by NPCSC on 6 and 26 April 2004 respectively have clearly set out the parameters for amending the “two methods”, i.e. the elections in 2007 and 2008 should not be by means of universal suffrage and amendments could be made to the “two methods” in 2007 and 2008. Hence, the proposed package will only focus on the electoral arrangements for 2007 and 2008, and will not include a timetable for universal suffrage. Moreover, setting a timetable for universal suffrage requires a consensus among the three parties and could not be decided by the Government of HKSAR unilaterally. It is impossible to come up with a timetable on universal suffrage within a short period of time.

33. The Administration has further advised that there is a need to have in-depth discussions on the model for the political structure after the implementation of universal suffrage. For example, it is necessary to decide on a structure for LegCo which suits the needs of Hong Kong. It is necessary to decide how the views of different sectors, currently represented by the FCs, will be addressed when LegCo attains universal suffrage. The new model must be consistent with the Basic Law, the maintenance of the capitalist system, and balanced participation of different sectors of the community.

34. The Administration has assured members that it is serious and sincere in achieving the ultimate aim of universal suffrage. CE has decided that the Committee on Governance and Political Development under the Commission on Strategic Development (CSD) will study ways to implement universal suffrage in accordance with the provisions and principles of the Basic Law and draw up a roadmap for attaining universal suffrage. When there is a roadmap, the timetable for attaining universal suffrage will follow naturally. As all members of CSD will serve until 30 June 2007, it is expected that the Committee on Governance and Political Development will reach some preliminary findings before mid-2007.

35. Some members are adamant that the Administration should provide a timetable for universal suffrage right now, and have indicated that they will not support the package of proposals without a timetable. Some other members are of the view that a timetable for universal suffrage is not a prerequisite for LegCo to endorse the 2007/08 electoral package. The two issues should not be linked together and should be dealt with separately. Given that there are still divergent views within the community on the pace of introducing universal suffrage, and supporting measures on many fronts are still required, it is unrealistic to expect that a tripartite consensus among LegCo, CE and NPCSC can be reached in the near future. If different sectors of the community could work together to implement the package of proposals relating to the electoral arrangements for 2007/08, this would be an important step towards the ultimate aim of universal suffrage.



## **Electorate base of the Election Committee and FCs**

36. Some members have pointed out that although NPCSC has ruled out the implementation of universal suffrage for the two elections in 2007 and 2008, the Administration should enhance the democratic representation in the two elections, e.g. expanding the electorate base of the Election Committee to one to two million registered voters, and expanding the electorate base of FCs by replacing corporate voting with individual voting. These proposals, which can be implemented by way of local legislation, do not contravene the Basic Law as well as the Interpretation and Decision of NPCSC.

37. A few members consider that in the longer term, FCs should be phased out in a gradual and orderly manner, and GC seats could be increased correspondingly. Consideration could be given to include senior management staff, but not all employees, in the electorate of some FCs. A member has queried whether the Administration's decision not to increase "traditional" FCs contravenes the NPCSC Decision made on 26 April 2004.

38. Some members do not support the inclusion of appointed DC members in the proposed package as this represents a major retrograde step in achieving democratic progress. Moreover, this will give rise to concerns about "vote planting" and conflict of interest as the 102 DC members appointed by CE have the right to nominate and vote at a CE election. Some members have questioned whether the inclusion of appointed DC members into the Election Committee would contravene Article 3 of Annex I to the Basic Law which stipulates that the delimitation of the various sectors of the Election Committee shall be prescribed by an electoral law enacted by HKSAR in accordance with the principles of democracy and openness.

39. The Administration has explained that the proposed package, which was arrived at after 18 months of wide consultation, provides the highest possible degree of democratic elements within the framework laid down by the Interpretation and Decision made by NPCSC in April 2004. The package strikes the right balance between the views and demands of different sectors. The key feature of the package is to increase the democratic representation of the two elections by expanding the participation of DC members in the Election Committee and in LegCo. The Election Committee in 2007 would be expanded from 800 members to 1 600 members. All the 400 DC members directly elected by more than three million registered voters would be included in the Election Committee. LegCo would be expanded in 2008 from 60 Members to 70 Members. Five new Members will be returned through direct GC elections. The other five new Members would be elected from among the DC members and would likewise have an electorate base of three million voters, bringing the district-level representation in LegCo to almost 60%.

40. On the proposal to include all DC members in the Election Committee, the Administration has explained that as more than 80% of DC members are returned by

elections, they have a public mandate. In addition, DC members themselves come from different strata of the community. Of the appointed and elected DC members, around one-fourth are from the industrial and commercial sectors, around one-fifth from the professional and managerial ranks, while the remainder include teachers, social workers, representatives of trade unions, housewives, etc. The composition of DCs could be said to be a microcosm of the community at large. It epitomises the spirit of “balanced participation”, and gives full effect to the principle of “looking after the interests of different sectors of the community”. The proposal to incorporate all DC members into the Election Committee is in line with the principles of democracy and openness.

41. In the view of the Administration, all DC members, irrespective of how they are returned, are entrusted with the same functions and powers under the District Council Ordinance. Hence, both elected and appointed DC members should enjoy the same rights, and there is no reason to exclude appointed members’ participation in the Election Committee and FCs.

42. As to whether corporate voting for FCs should be replaced, the Administration has advised that there are divided views in the society. In its view, enhancing the participation of DC members is a more effective way to realize a higher level of democratic representation. The Administration has pointed out that the intention of setting up FCs is to balance the interests of different sectors and strata of the community. The Administration recognises the contribution made by FCs. If corporate voting is replaced by individual voting, and if all the employees of FCs are included in the electorate, most of the FCs would become, in practice, “employee constituencies”. This would not be consistent with the original intention of setting up FCs.

43. Some members have commented that voters who had voted in the last DC election were not aware that DC members would be given the right to vote in the CE election and to elect among themselves five LegCo Members. If the package of proposals is to be implemented, the 18 DCs should be dissolved with all its members re-elected before the next CE election. The Administration has advised that the next DC election will be held at the end of 2007, before the 2008 LegCo election. As regards the CE election, 42 Election Committee members are already returned through election by DC members from among themselves under the existing arrangement, although all DC members will be included in the Election Committee under the proposed package.

### **Subscribers for nominating candidates**

44. Some members have asked whether the number of subscribers required for nominating candidates for the office of CE should be capped, so that more potential candidates could contest in election.

45. The Administration has advised that no member of the Election Committee should be deprived of the right to nominate a candidate of his preference. With the increase in the number of Election Committee members to 1 600, it will not be more difficult for candidates to secure nominations to meet the current threshold of one-eighth of the total membership of the Election Committee, i.e. not less than 200 members.

### **The draft motions in Annex B and Annex C of the Fifth Report**

#### Use of motions to effect amendments to Annex I and Annex II to the Basic Law

46. The (Draft) Amendments to Annex I and Annex II to the Basic Law regarding the “two methods” are appended to the two draft motions set out in Annex B and Annex C of the Fifth Report.

47. The Subcommittee has discussed the question raised by CRoP about the constitutional and legal justifications for submitting the (Draft) Amendments for the Council’s endorsement by way of motions, instead of bills, in the light of clause 3 of the NPCSC Interpretation, which states that after NPCSC has made a determination on whether there is a need for change, the bills (法案) on the amendments to the “two methods” and any proposed amendments to the bills (修正案) shall be introduced by the HKSAR Government into LegCo.

48. The Administration has explained that amendments to the “two methods” are, by their nature, amendments to the provisions of Annex I and Annex II to the Basic Law. Under the two-stage procedures for amending the “two methods” (paragraph 16 above refers), the amendments do not yet have status of law, when they are passed by a two-thirds majority of all LegCo Members and have received the consent of CE. They are given legislative effect only after approval or acceptance for the record has been given or made by NPCSC, and they are not local ordinances. It is, therefore, inappropriate for them to be introduced into LegCo or promulgated by way of local bills (條例草案), because the purpose of a local bill (條例草案) is to make law by way of local ordinances. As a corollary, the normal LegCo process for scrutiny of local bills (條例草案) is not applicable to any proposed amendments to the two Annexes, since they are not local ordinances.

49. The Administration has further explained that subject to LegCo’s endorsement and CE’s consent, it will present the (Draft) Amendments to NPCSC for approval or for the record in accordance with Article 7 of Annex I and Article III of Annex II respectively. As the (Draft) Amendments are legislative proposals that require decision by the NPCSC to be given legislative effect, it is appropriate for them to be introduced into, and to be endorsed by, LegCo by way of motions.

50. The Administration is of the view that it is appropriate to use the procedure for considering motions rather than bills to introduce the proposed amendments to the “two methods”. As stated in paragraph 7.02 of the Fifth Report, the (Draft)

Amendments appended to the motions are the “bills” referred to in the NPCSC Interpretation.

51. Members have cautioned that to prevent the risk of judicial review, it is important to ensure that the (Draft) Amendments are effected according to proper procedure. According to the Administration, it has exchanged views with the relevant departments of the Central Authorities on the wording of the proposed amendments to the “two methods” and the legal instrument for presenting amendments to the Council. The Administration is confident that the arrangements comply with the relevant procedures prescribed in the NPCSC Interpretation.

#### Reporting arrangements to NPCSC

52. Under Annex I and Annex II to the Basic Law, proposed amendments to the “two methods” should be reported to NPCSC for approval and for the record respectively. A member has requested the Administration to clarify why amendments to Annex II are required to be “accepted by the NPCSC for the record”, which is different from the requirement for the amendments to be “reported to NPCSC for the record” stipulated in Annex II to the Basic Law, and how this requirement is different from that of BL 17. The member has further pointed out that the original intention of Annex II to the Basic law is to provide more flexibility for the HKSAR Government to amend the method for forming LegCo, as compared to that for selecting CE which requires the “approval of NPCSC”. In his view, if the expression “reported to NPCSC for the record” is interpreted to mean “reported to and accepted by NPCSC for the record”, this is a new interpretation of the Basic Law which contravenes the legislative intent of Annex II to the Basic Law.

53. The Administration has explained that under Annex I to the Basic Law, NPCSC could refuse to give approval to the proposed amendments for reasons such as the amendments are not consistent with the interests of the country or Hong Kong. Under Annex II to the Basic Law, NPCSC could refuse to accept the proposed amendments for the record if the amendments contravene the relevant provisions of the Basic Law, e.g. BL 68. Such amendments are not local ordinances and do not have legislative effect until approval or acceptance for the record has been given or made by NPCSC. The Administration has advised that Mr QIAO Xiaoyang, Deputy Secretary General of NPCSC, had confirmed at a press conference held in Hong Kong on 6 April 2004 that the power of NPCSC under Annex II to the Basic Law was a substantive one.

54. The Administration has further advised that the requirement for reporting to NPCSC for the record in BL 17 and Annex II is different in that the former applies to local laws, whereas the latter applies to amendments to provisions in Annex II which are constitutional in nature. Under BL 17, laws enacted by LegCo must be reported to NPCSC for the record, and the reporting for record shall not affect the entry into force of such laws.

### Presentation of the two motions to LegCo

55. The Administration will present the two motions to the Council meeting on 21 December 2005 for endorsement. According to the Administration, separate votes will be taken on the two motions.

56. In response to a member's question, the Administration has advised that if one motion is passed, but not the other, it would still proceed to implement the (Draft) Amendment appended to the motion that has been passed.

### **The “two methods” after 2007/08**

57. Some members have asked whether the motions to effect amendments to the “two methods”, if given effect, would have the effect of amending the provisions in Annex I and Annex II to the Basic Law by way of repealing relevant provisions of or adding new provisions to the Annexes.

58. The Administration has explained that after the (Draft) Amendments are endorsed by a two-thirds majority of LegCo Members, have received the consent of CE, and are approved or accepted by NPCSC for the record, they will become an integral part of Annex I and Annex II to the Basic Law. There is no need to repeal any provisions in Annex I and Annex II to the Basic Law. The (Draft) Amendments, which amend the “two methods” in 2007 and 2008, would supersede some of the existing provisions in Annex I and Annex II to the Basic Law once they take effect, e.g. the provisions relating to the composition of the Election Committee for the second term CE and the composition of the third term LegCo. Other provisions will continue to be in force.

59. The Administration has also explained that if the current package of proposals for the 2007/08 elections is not endorsed, in accordance with clause 4 of the NPCSC Interpretation, the provisions in Annex I to the Basic Law relating to the method for selecting CE will still be applicable to the method for selecting 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 LegCo, until further amendment is made. On the other hand, if the current package of proposals is endorsed, and before the ultimate aim of universal suffrage is attained, CE will, before each CE election and LegCo election, submit a report to the Central Authorities in accordance with relevant provisions of the NPCSC Interpretation regarding whether there is a need to make amendment to the “two methods”. The “two methods” will not go backwards.

60. Some members have questioned why CE is required to submit a report to the Central Authorities before each CE election and LegCo election, whether the report should obtain the endorsement of LegCo before submission, and whether this new procedure implies that the Central Authorities could make amendments to the “two methods” unilaterally.

61. The Administration has explained that according to clause 3 of the Interpretation, CE shall make a report to NPCSC as regards whether there is a need to make an amendment, and NPCSC shall, in accordance with the provisions of BL 45 and 68, make a determination in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. Any proposed amendments to the “two methods” will only have legislative effect when they have gone through the two-stage procedures for amending Annex I and Annex II to the Basic Law.

62. Some members have pointed out that contrary to the Administration’s advice, and from the legal point of view, the “two methods” will go backwards if a consensus on the “two methods” in 2012 cannot be reached by the three parties, even if the 2007/08 electoral package is endorsed. The “two methods” will revert to the methods for selecting the CE in 2002 in Annex I (i.e. a 800-member Election Committee), and for forming the third term LegCo in Annex II (i.e. 60 members, including 30 returned by FCs and 30 returned by GCs through direct elections) for the following reasons –

- (a) the NPCSC Interpretation does not stipulate that the “two methods” for 2007 and 2008 is also applicable to the terms in 2012 or thereafter. It merely states that if the “two methods” in 2007 and 2008 are not amended, the existing provisions in Annex I and Annex II will be applicable;
- (b) the two motions, if passed, are only for the purpose of effecting amendments to the composition of the Election Committee to elect the third term CE in 2007 and the composition of the fourth term LegCo in 2008, and not their composition thereafter; and
- (c) given that the existing relevant provisions in Annex I and Annex II will not be repealed or replaced following the endorsement of the current package of proposals for the 2007/08 elections, these provisions should prevail if no amendment is made to the “two methods” in 2012, e.g. Article I of Annex II clearly states that LegCo “shall be composed of 60 members in each term”.

63. The Administration has assured members that if consensus cannot be reached by the three parties on the “two methods” in 2012 or thereafter, in accordance with the principle of gradual and orderly progress, the “two methods” will not go backwards and the status quo will remain. In other words, in the event that the proposed package for the 2007/08 elections is endorsed, and there is no consensus on making any amendments to the “two methods” in 2012, the prevailing provisions, i.e. the 2007/08 electoral package, will continue to apply.

64. Some members have asked whether the Central Authorities have been consulted on the Administration’s understanding. The Administration has advised

the Subcommittee that it has consulted the Legislative Affairs Commission of NPCSC around September 2005 on the drafting of the (Draft) Amendments to Annex I and Annex II to the Basic Law. The Legislative Affairs Commission confirmed that the drafting was consistent with the Basic Law, as well as the NPCSC Interpretation and Decision made in April 2004.

### **Legal issues arising from the term of office of CE**

#### Term of office of CE elected under BL 53

65. The (Draft) Amendment to Annex I to the Basic Law appended to the draft motion in Annex B of the Fifth Report provides, inter alia, that the term of office of the new CE elected by the Election Committee in the situation under BL 53(2) shall be the remainder of the term of the preceding CE, and the new CE may serve for one more term after expiry of the term.

66. Some members have requested the Administration to explain why the provision regarding the term of office of CE in BL 46 is included in the (Draft) Amendment to Annex I, which deals with the composition of the Election Committee to elect the third term CE in 2007. The proposed amendment is outside the scope of Annex I. They have also asked whether the “remainder term” provision will apply to CEs of subsequent terms.

67. The Administration has explained that according to the Interpretation of paragraph 2 of BL 53 adopted by NPCSC on 27 April 2005, when CE is selected by an Election Committee with a five-year term of office, the term of office of a new CE elected in a situation pursuant to BL 53(2) shall be the remainder of the previous CE. As the (five-year) term of office of the Election Committee is stipulated in Annex I to the Basic Law, it is, therefore, appropriate to place the provision regarding the “remainder term” alongside the provision on the term of office of the Election Committee in the (Draft) Amendment to Annex I.

68. Since the term of office of the Election Committee to elect the third term CE in 2007 shall remain to be five years, the “remainder term” provision will 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 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.

#### By-election of CE

69. Some members have raised concern whether the Administration’s proposal not to hold a by-election if a vacancy arises within six months before the expiry of the term of CE is consistent with BL 53(2).

70. The Administration has advised that although BL 53(2) provides that a new CE should be selected within six months in accordance with BL 45, the requirement does not apply to a vacancy arising within the last six months of a five-year term. This is because a new term CE would have been elected within six months to fill the vacancy in compliance with BL 53(2). The Administration has therefore proposed that if an election for a new term CE would be held within six months after a vacancy in the office of CE has 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 takes up his office. The proposals would be implemented through amending local legislation, as the by-election arrangements for CE were specified in the Chief Executive Election Ordinance.

71. Having noted the Administration's explanations (in paragraphs 67 and 70 above), these members consider it inappropriate and against 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 is to amend the relevant articles of the Basic Law using the mechanism provided in BL 159.

#### Remainder term

72. In accordance with the Interpretation of paragraph 2 of BL 53 made by NPCSC on 27 April 2005, a new CE elected in accordance with BL 53(2) shall serve the remainder term of the preceding CE. As the legislative intent of BL 46 is that CE may only serve for not more than two consecutive terms and may not serve for more than 10 years, the Administration takes the view that the term of office of a new CE elected in the situation under a BL 53(2) may only serve for one further term after the expiry of the remainder term, and the remainder term is counted as "a term".

73. A member points out that it is very clear that under BL 46, a CE may serve for either a term of five years or two terms of 10 years. However, the NPCSC Interpretation on 27 April 2005 has introduced the "remainder term" arrangement. The member considers that whether the remainder term is counted as "a term" should be determined by the length of the remainder term. In his view, a remainder term should only be counted as "a term" if it lasts for 2½ years or more.

#### **BL 50 regarding "important bill"**

74. Members have sought clarification whether the draft motions concerning the "two methods" could possibly fall under the category of "important bill" referred to in BL 50. The Administration has explained that proposed amendments to the "two methods" are not local legislation. As such, BL 50 is not applicable.

75. Members have further enquired whether the local legislation to be introduced to effect changes to the methods for selecting CE and forming LegCo, e.g. the Chief Executive Election (Amendment) Bill, would fall under the category of "important



bill” and if so, when and how the Administration would determine that such local legislation is an “important bill”.

76. The Administration has pointed out that the issue has previously been discussed by the Panel on Constitutional Affairs. It is the prerogative of CE to decide whether a particular bill is important. Some members have previously suggested that there should be objective criteria to determine whether a bill is “important”. The Administration, however, considers it inappropriate to add further requirements or restrictions on the term “important bill” beyond the current provision of the Basic Law. In determining whether a bill is an “important bill”, it is expected that CE would consider the circumstances of each case and the overall interests of Hong Kong. CE would not take a decision to classify a bill as an “important bill” lightly. If CE considers that a bill is so “important” that BL 50 might be invoked, it is expected that CE would consult the Executive Council. If CE determines that a bill is an “important bill”, or that a bill has become an “important bill” after certain clauses have been amended, LegCo will be advised of the Administration’s position in the first instance.

### **Detailed arrangements for the two elections**

77. Some members have expressed concern whether the package of proposals put forth in the Fifth Report would be implemented following endorsement of the two motions by LegCo, e.g. whether the amendments to be introduced in the context of local legislation would indeed provide for five additional seats of DC FC, and not five “traditional” FC seats. They consider that the Administration should provide detailed arrangements for the two elections to facilitate Members’ consideration of the two motions. A member has also asked whether the Administration would introduce a white bill in this respect.

78. The Administration has explained that any changes to the electoral arrangements for the two elections would be effected by amending the relevant local legislation, the details of which will be scrutinised and approved by LegCo. As far as the formation of the fourth term LegCo is concerned, the Administration has already made public its decision not to increase the number of “traditional” FC seats, and it must honour its word. Given the tight legislative timetable, there is no time for the Administration to introduce a white bill. Nevertheless, in view of the concerns expressed by members, the Administration has consulted members on certain practical issues that need to be dealt with in local legislation in respect of the two elections. Members’ views on some of the issues discussed are summarised below.

### **CE election in 2007**

79. The Administration has consulted members on the following issues which need to be dealt with in local legislation in respect of the electoral arrangements for the CE election in 2007 –

- (a) as the number of members of the First, Second and Third Sectors of the Election Committee are to be increased, respectively, from 200 to 300, the number of members to be allocated to the subsectors under each of the three Sectors;
- (b) the number of members of the Fourth Sector are to be increased from 200 to 700, of whom 70 are to be allocated to LegCo Members. Given that the number of LegCo seats will only be increased in 2008, the transitional arrangements which should be in place before the fourth term LegCo election in 2008; and
- (c) the arrangement for the continuation of the election proceedings in the situation where there is only one validly nominated candidate.

80. Some members consider that the number of members to be allocated to the four Sectors is not even, hence inconsistent with the principle of “balanced participation”. There is also a view that the additional seats should be allocated to new subsectors, and not existing subsectors, under the four Sectors, so as to enhance representation of the Election Committee.

81. Under the proposed package, the LegCo seats will be increased from 60 to 70 for the fourth term LegCo in 2008. Members have noted the Administration’s proposal that during the period from the formation of the Election Committee in February 2007 to the formation of the fourth term LegCo in 2008 when the LegCo seats will remain at 60, the difference of 10 seats be allocated to the Chinese People’s Political Consultative Conference (CPPCC) Subsector or the Heung Yee Kuk (HYK) Subsector (both under the Fourth Sector). A few members have criticised the proposed arrangement as odd and disrespectful to those CPPCC or HYK members asked to fill the gap during the interim period.

82. On the Administration’s proposal that the election proceedings should continue in the situation where there is only one validly nominated candidate, some members are of the view that if the candidate cannot obtain more than half of the total number of valid votes cast in the first round of voting, the election proceedings should be terminated and a new election should be arranged. In addition, as the only candidate shall be returned when obtaining more than half of the total number of valid votes cast, and the voting in the case of a single candidate is equivalent to a “vote of confidence”, unmarked ballot papers in so far that they reflect the voters’ preference, should also be regarded as valid votes for the purpose of determining the result.

#### LegCo election in 2008

83. The Administration has consulted members on the following issues which need to be dealt with in local legislation in respect of the electoral arrangements for the LegCo election in 2008 –

- (a) with the number of seats returned by GCs through direct elections to be increased from 30 to 35, the arrangement for the delineation of the constituencies; and
- (b) with the number of FC seats to be increased from 30 to 35 and the number of seats to be returned by the DC FC to be increased from one to six, the electoral method to be adopted in the DC FC.

84. A few members consider that with the increase in the number of GC seats from 30 to 35, the number of GCs should not remain at five and should be increased, and the number of Members to be returned for each GC should be a smaller number than at present.

85. As regards the electoral method to be adopted for the DC FC, a member has suggested re-delineating Hong Kong into three constituencies for the purpose of returning two DC FC Members from each constituency under the proportional representation system. Another member has suggested adopting the block vote system for the DC FC. A third member has suggested that the Administration should study and compare the pros and cons of the different voting systems.

86. Some members are disappointed that the Administration has failed to put forth concrete legislative proposals regarding the electoral arrangements for the two elections in 2007 and 2008 for members' consideration and yet expect Members to support the two broad motions concerning amendments to the "two methods" under Annex I and Annex II to the Basic Law. The Administration has advised that when the (Draft) Amendments to the two Annexes to the Basic Law are given effect, it will introduce the local legislation into LegCo to firm up the various arrangements. The views given by Members at this stage on issues relating to local legislation will provide useful reference in dealing with the next stage of work.

## **CONSULTATION WITH THE HOUSE COMMITTEE**

87. The Subcommittee reported its deliberations to the House Committee on 9 December 2005. The House Committee noted that the Administration had given notice to move the two motions on the amendments to the "two methods" at the Council meeting on 21 December 2005.

B430 2004 年第 54 號法律公告

2004 年第 5 期憲報號外第二號法律副刊

L. S. NO. 2 TO GAZETTE EXT. NO. 5/2004

L.N. 54 of 2004 B431

2004 年第 54 號法律公告

L.N. 54 of 2004

現刊登以下解釋，以廣週知——

This is an English translation of the original instrument in Chinese, and is published for information—

**全國人民代表大會常務委員會  
關於《中華人民共和國香港特別行政區基本法》  
附件一第七條和附件二第三條的解釋**

**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**

(2004 年 4 月 6 日第十屆全國人民代表大會  
常務委員會第八次會議通過)

(Adopted by the Standing Committee of the Tenth National People's  
Congress at its Eighth Session on 6 April 2004)

第十屆全國人民代表大會常務委員會第八次會議審議了委員長會議關於提請審議《全國人民代表大會常務委員會關於〈中華人民共和國香港特別行政區基本法〉附件一第七條和附件二第三條的解釋(草案)》的議案。經徵詢全國人民代表大會常務委員會香港特別行政區基本法委員會的意見，全國人民代表大會常務委員會決定，根據《中華人民共和國憲法》第六十七條第四項和《中華人民共和國香港特別行政區基本法》第一百五十八條第一款的規定，對《中華人民共和國香港特別行政區基本法》附件一《香港特別行政區行政長官的產生辦法》第七條“二〇〇七年以後各任行政長官的產生辦法如需修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會批准”的規定和附件二《香港特別行政區立法會的產生辦法和表決程序》第三條“二〇〇七年以後香港特別行政區立法會的產生辦法和法案、議案的表決程序，如需對本附件的規定進行修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會備案”的規定，作如下解釋：

The Standing Committee of the Tenth National People's Congress examined at its Eighth Session the motion regarding the request for examination of “The Draft Interpretation 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” submitted by the Council of Chairmen. Having consulted the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, the Standing Committee of the National People's Congress has decided to make, under the provisions of Article 67(4) of the Constitution of the People's Republic of China and Article 158(1) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, an interpretation of the provisions of Article 7 of Annex I “Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region” to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China regarding “If there is a need to amend the method for selecting the Chief Executives 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 Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval” and the provisions of Article III of Annex II “Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures” regarding “With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region 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 Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record” as follows:

一、上述兩個附件中規定的“二〇〇七年以後”，含二〇〇七年。

二、上述兩個附件中規定的二〇〇七年以後各任行政長官的產生辦法、立法會的產生辦法和法案、議案的表決程序“如需”修改，是指可以進行修改，也可以不進行修改。

三、上述兩個附件中規定的須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會批准或者備案，是指行政長官的產生辦法和立法會的產生辦法及立法會法案、議案的表決程序修改時必經的法律程序。只有經過上述程序，包括最後全國人民代表大會常務委員會依法批准或者備案，該修改方可生效。是否需要進行修改，香港特別行政區行政長官應向全國人民代表大會常務委員會提出報告，由全國人民代表大會常務委員會依照《中華人民共和國香港特別行政區基本法》第四十五條和第六十八條規定，根據香港特別行政區的實際情況和循序漸進的原則確定。修改行政長官產生辦法和立法會產生辦法及立法會法案、議案表決程序的法案及其修正案，應由香港特別行政區政府向立法會提出。

四、上述兩個附件中規定的行政長官的產生辦法、立法會的產生辦法和法案、議案的表決程序如果不作修改，行政長官的產生辦法仍適用附件一關於行政長官產生辦法的規定；立法會的產生辦法和法案、議案的表決程序仍適用附件二關於第三屆立法會產生辦法的規定和附件二關於法案、議案的表決程序的規定。

現予公告。

1. The phrases “subsequent to the year 2007” and “after 2007” stipulated in the two above-mentioned Annexes include the year 2007.

2. The provisions in the two above-mentioned Annexes that “if there is a need” to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007 or the method for forming the Legislative Council and its procedures for voting on bills and motions after 2007 mean they may be amended or remain unamended.

3. The provisions in the two above-mentioned Annexes that any amendment must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive and shall be reported to the Standing Committee of the National People's Congress for approval or for the record mean the requisite legislative process through which the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions are amended. Such an amendment may take effect only if it has gone through the said process, including the approval or recording ultimately given or made by the Standing Committee of the National People's Congress in accordance with law. The Chief Executive of the Hong Kong Special Administrative Region shall make a report to the Standing Committee of the National People's Congress as regards whether there is a need to make an amendment; and the Standing Committee of the National People's Congress shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, make a determination in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The bills on the amendments to the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region into the Legislative Council.

4. If no amendment is made to the method for selecting the Chief Executive, the method for forming the Legislative Council and its procedures for voting on bills and motions as stipulated in the two above-mentioned Annexes, the provisions relating to the method for selecting the Chief Executive in Annex I will still be applicable to the method for selecting the Chief Executive, and the provisions relating to the method for forming the third term of the Legislative Council in Annex II and the provisions relating to its procedures for voting on bills and motions in Annex II will still be applicable to the method for forming the Legislative Council and its procedures for voting on bills and motions.

This Interpretation is hereby proclaimed.

現刊登以下決定，以廣週知——

**全國人民代表大會常務委員會關於  
香港特別行政區 2007 年行政長官和 2008 年立法會  
產生辦法有關問題的決定**

2004 年 4 月 26 日第十屆全國人民代表大會  
常務委員會第九次會議通過

第十屆全國人民代表大會常務委員會第九次會議審議了香港特別行政區行政長官董建華 2004 年 4 月 15 日提交的《關於香港特別行政區 2007 年行政長官和 2008 年立法會產生辦法是否需要修改的報告》，並在會前徵詢了香港特別行政區全國人大代表、全國政協委員和香港各界人士、全國人大常委會香港特別行政區基本法委員會香港委員、香港特別行政區政府政制發展專責小組的意見，同時徵求了國務院港澳事務辦公室的意見。全國人大常委會在審議中充分注意到近期香港社會對 2007 年以後行政長官和立法會的產生辦法的關注，其中包括一些團體和人士希望 2007 年行政長官和 2008 年立法會全部議員由普選產生的意見。

會議認為，《中華人民共和國香港特別行政區基本法》（以下簡稱香港基本法）第四十五條和第六十八條已明確規定，香港特別行政區行政長官和立法會的產生辦法應根

This is an English translation of the original instrument in Chinese and is published for information—

**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**

Adopted by the Standing Committee of the  
Tenth National People's Congress at its  
Ninth Session on 26 April 2004

The Standing Committee of the Tenth National People's Congress examined at its Ninth Session the "Report on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008" submitted by Tung Chee-hwa, the Chief Executive of the Hong Kong Special Administrative Region, on 15 April 2004 and, before the Session, had consulted the Hong Kong deputies to the National People's Congress, the Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, different sectors of Hong Kong, the Hong Kong members of the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, and the Constitutional Development Task Force of the Government of the Hong Kong Special Administrative Region, and had also sought the views of the Hong Kong and Macao Affairs Office of the State Council. The Standing Committee of the National People's Congress was, in the course of the examination, fully aware of the recent concerns of the Hong Kong society about the methods for selecting the Chief Executive and for forming the Legislative Council after the year 2007, including the views of some bodies and people that they wish to see the selection of the Chief Executive by universal suffrage in the year 2007 and the election of all the members of the Legislative Council by universal suffrage in the year 2008.

The Session is of the view that Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "Hong Kong Basic Law") already expressly provide that the methods for selecting the Chief Executive of the Hong Kong Special

據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至行政長官由一個有廣泛代表性的提名委員會按民主程序提名後普選產生，立法會全部議員由普選產生的目標。香港特別行政區行政長官和立法會的產生辦法應符合香港基本法的上述原則和規定。有關香港特別行政區行政長官和立法會產生辦法的任何改變，都應遵循與香港社會、經濟、政治的發展相協調，有利於社會各階層、各界別、各方面的均衡參與，有利於行政主導體制的有效運行，有利於保持香港的長期繁榮穩定等原則。

會議認為，香港特別行政區成立以來，香港居民所享有的民主權利是前所未有的。第一任行政長官由 400 人組成的推選委員會選舉產生，第二任行政長官由 800 人組成的選舉委員會選舉產生；立法會 60 名議員中分區直選產生的議員已由第一屆立法會的 20 名增加到第二屆立法會的 24 名，今年 9 月產生的第三屆立法會將達至 30 名。香港實行民主選舉的歷史不長，香港居民行使參與推選特別行政區行政長官的民主權利，至今不到 7 年。香港回歸祖國以來，立法會中分區直選議員的數量已有相當幅度的增加，在達至分區直選議員和功能團體選舉的議員各佔一半的格局後，對香港社會整體運作的影響，尤其是對行政主導體制的影響尚有待實踐檢驗。加之目前香港社會各界對於 2007 年以後行政長官和立法會的產生辦法如何確定仍存在較大分歧，尚未形成廣泛共識。在此情況下，實現香港基本法第四十五條規定的行政長官由一個

Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress, and that the ultimate aims are the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures and the election of all the members of the Legislative Council by universal suffrage. The methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to the above principles and provisions of the Hong Kong Basic Law. Any change relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong.

The Session is of the view that since the establishment of the Hong Kong Special Administrative Region, Hong Kong residents have enjoyed democratic rights that they have never had before. The first Chief Executive was elected by the Selection Committee, which was composed of 400 members. The second Chief Executive was elected by the Election Committee, which was composed of 800 members. Out of the 60 members of the Legislative Council, the number of members returned by geographical constituencies through direct elections increased from 20 in the Legislative Council in the first term to 24 in the Legislative Council in the second term and will reach 30 in the Legislative Council in the third term to be formed this September. Hong Kong does not have a long history of practising democratic elections. Until now, Hong Kong residents have exercised the democratic right to participate in the selection of the Chief Executive of the Special Administrative Region for less than 7 years. Since the reunification of Hong Kong with the motherland, the number of members of the Legislative Council returned by geographical constituencies through direct elections has already substantially increased. When the set-up is such that half of the members are returned by geographical constituencies through direct elections and half of the members are returned by functional constituencies, the impact on the operation of the Hong Kong society as a whole, especially the impact on the executive-led system, remains to be examined through practice. Further, at present, different sectors of the Hong Kong society still have considerable differences on how to determine the methods for selecting the Chief Executive and for forming the Legislative

有廣泛代表性的提名委員會按民主程序提名後普選產生和香港基本法第六十八條規定的立法會全部議員由普選產生的條件還不具備。

鑑此，全國人大常委會依據香港基本法的有關規定和《全國人民代表大會常務委員會關於〈中華人民共和國香港特別行政區基本法〉附件一第七條和附件二第三條的解釋》，對香港特別行政區 2007 年行政長官和 2008 年立法會的產生辦法決定如下：

一、2007 年香港特別行政區第三任行政長官的選舉，不實行由普選產生的辦法。2008 年香港特別行政區第四屆立法會的選舉，不實行全部議員由普選產生的辦法，功能團體和分區直選產生的議員各佔半數的比例維持不變，立法會對法案、議案的表決程序維持不變。

二、在不違反本決定第一條的前提下，2007 年香港特別行政區第三任行政長官的具體產生辦法和 2008 年香港特別行政區第四屆立法會的具體產生辦法，可按照香港基本法第四十五條、第六十八條的規定和附件一第七條、附件二第三條的規定作出符合循序漸進原則的適當修改。

會議認為，按照香港基本法的規定，在香港特別行政區根據實際情況，循序漸進地發展民主，是中央堅定不移的一貫立場。隨着香港社會各方面的發展和進步，經過香港特別行政區政府和香港居民的共同努力，香港特別行政區的民主制度一定能夠不

Council after the year 2007 and have not come to a broad consensus. In the circumstances, conditions do not exist for the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures as provided for in Article 45 of the Hong Kong Basic Law and the election of all the members of the Legislative Council by universal suffrage as provided for in Article 68 of the Hong Kong Basic Law.

In the light of the above and pursuant to the relevant provisions of the Hong Kong Basic Law and “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 Standing Committee of the National People’s Congress makes the following decision on 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:

1. 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.

2. Subject to Article 1 of this Decision not being contravened, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the specific method for selecting the third Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and the specific method for forming the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 according to the provisions of Articles 45 and 68 of the Hong Kong Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Hong Kong Basic Law.

The Session is of the view that developing democracy in the Hong Kong Special Administrative Region in the light of the actual situation and in a gradual and orderly manner according to the provisions of the Hong Kong Basic Law has all along been the resolute and firm stance of the Central Authorities. With the development and progress in all aspects of the Hong Kong society and through the joint endeavours of the Government of the Hong Kong Special Administrative Region and Hong Kong residents, the



斷地向前發展，最終達至香港基本法規定的行政長官由一個有廣泛代表性的提名委員會按民主程序提名後普選產生和立法會全部議員由普選產生的目標。

democratic system of the Hong Kong Special Administrative Region will certainly be able to progress forward incessantly, and ultimately attain the aims of selecting the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures and electing all the members of the Legislative Council by universal suffrage provided for in the Hong Kong Basic Law.

**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**

**Membership list**

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**Deputy Chairman** Hon Howard YOUNG, SBS, JP

**Members**

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Hon KWONG Chi-kin  
Hon TAM Heung-man

Total: 54 Members

**Clerk** Mrs Percy MA

**Legal Adviser** Mr Jimmy MA

**Date** 27 October 2005

研究政府當局就2007年行政長官及  
2008年立法會產生辦法提出的建議小組委員會  
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

曾向委員會表達意見的團體/個別人士名單  
List of organizations/individuals who have  
submitted views to the Subcommittee

<u>團體/個別人士名稱</u>	<u>Names of organizations and individuals</u>
* 1. 九龍社團聯會	Kowloon Federation of Associations
* 2. 工程界社促會	Association of Engineering Professionals in Society
* 3. 民主建港協進聯盟	Democratic Alliance for Betterment and Progress of Hong Kong
* 4. 民主黨	The Democratic Party
* 5. 民間人權陣線	Civil Human Rights Front
6. 西貢區議會	Sai Kung District Council
* 7. 沙田專上學生同盟	Shatin Tertiary Students' Association
* 8. 青年行動 21	Youth Action 21
* 9. 香港人權監察	Hong Kong Human Rights Monitor
10. 香港工業總會	Federation of Hong Kong Industries
* 11. 香港中華出入口商會	The Hong Kong Chinese Importers' & Exporters' Association
* 12. 香港民主發展網絡	Hong Kong Democratic Development Network
* 13. 香港皮鞋業鞋材業商會有限公司	Hong Kong Leather Shoe and Shoe Material Merchants Association Ltd
* 14. 香港行政管理文職人員協會	Hong Kong Executive, Administrative & Clerical Staff Association

* 15. 香港青年聯會	Hong Kong United Youth Association
* 16. 香港島各界聯合會	The Hong Kong Island Federation Limited
* 17. 香港浸會大學學生會	Hong Kong Baptist University Student Union
* 18. 香港基督徒學會	Hong Kong Christian Institute
* 19. 香港專上學生聯會	Hong Kong Federation of Students
* 20. 香港教育專業人員協會	Hong Kong Professional Teachers' Union
* 21. 香港理工大學學生會	Student Union, Polytechnic University
* 22. 香港樹仁學院學生會	Hong Kong Shue Yan College Student Union
* 23. 陳東、曾淵滄、郭振華、李漢雄、 陳鏡秋聯合議員辦事處	Joint Office of CHAN T., CHAN Y. C., KWOK C. W., LI H. H., CHAN K. C
* 24. 陳家洛先生	Mr CHAN Ka-lok
* 25. 港九百貨業商會	The Hong Kong & Kowloon General Merchandise Merchants' Association Ltd
* 26. 新界西居民聯會	Territories West Residents Association
* 27. 新界社團聯會	New Territories Association of Societies
* 28. 新婦女協進會	Association for the Advancement of Feminism
* 29. 潘建明先生	Mr PAN Jian-ming
* 30. 盧偉明先生	Mr LO Wai-ming
* 31. 嶺南大學學生會	Lingnan University Student Union
* 32. 離島區議會議員容詠嫦小姐	Miss Amy YUNG Wing-sheung, Member of Islands District Council
* 33. 觀塘區議會議員呂東孩先生	Mr LUI Tung-hai, Member of Kwun Tong District Council
34.	Mr Gerald HENG
35.	Mr Kenneth YOUNG

36. Ms Lily CHEUNG

37. Mr Philip HO

\* 曾向小組委員會口頭申述意見的團體代表

Deputations who have made oral representations to the Subcommittee

## **Legislative Timetable**

<b><u>Date/Period</u></b>	<b><u>Action</u></b>
<b><u>Stage I : Amending the provisions of Annexes I and II to the Basic Law concerning the two electoral methods</u></b>	
19 October 2005	Publication of the Fifth Report to put forth the Government's proposed package and the draft motions concerning the amendments to the methods for selecting the Chief Executive ("CE") and for forming the Legislative Council ("LegCo")
19 October to late November <sup>Note 1</sup>	Consultation with LegCo on the Government's proposed package and the draft motions concerning the amendments to the methods for selecting the CE and for forming the LegCo
21 October	The House Committee of LegCo formed a Subcommittee to Study the Administration's Proposals on the Methods for Selecting the CE in 2007 and for Forming the LegCo in 2008
late November/early December	The Subcommittee to Study the Administration's Proposals on the Methods for selecting the CE in 2007 and for Forming the LegCo in 2008 to submit a report to the House Committee
6 December	Deadline for the Government to give notice of the motions concerning the amendments to the methods for selecting the CE and for forming the LegCo <sup>Note2</sup>
21 December [tentative]	The Government to present to the Council the motions concerning the amendments to the methods for selecting the CE and for forming the LegCo
22 - 23 December	If the motions are endorsed by LegCo, the CE to give consent to the (Draft) Amendments regarding the methods for selecting the CE and for forming the LegCo, and to report to the Standing Committee of the National People's Congress ("NPCSC")

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<sup>Note 1</sup> At the LegCo meeting on 19 October 2005, the Chief Secretary for Administration made a statement on the Fifth Report of the Constitutional Development Task Force. According to the schedule of meetings of the Subcommittee to Study the Administration's Proposals on the Methods for Selecting the CE in 2007 and for Forming the LegCo in 2008, established under the House Committee of LegCo, its last meeting will be on 28 November.

<sup>Note2</sup> According to Rule 29(1) of the LegCo Rules of Procedures, notice of motions shall be given not less than 12 clear days before the day on which the motion is to be considered by the Council or a committee of the whole Council. The Government, at this stage, intends to present the relevant motions to LegCo on 21 December 2005.

<u>Date/Period</u>	<u>Action</u>
late December	The NPCSC to scrutinize the (Draft) Amendments for approval (in the case of the amendments to Annex I) or for acceptance for the record (in case of the amendments to Annex II)

## **Stage II : Amendments to Local Legislation : Chief Executive Election Ordinance**

January 2006	To introduce into LegCo the Chief Executive Election (Amendment) Bill (“the Bill”) (First Reading and Commencement of Second Reading Debate) <sup>Note 3</sup>
January to April	Bills Committee of LegCo to scrutinize the Bill <sup>Note 4</sup>
early May	LegCo to resume the Second Reading Debate and to proceed with the Third Reading and the passage of the Bill

## **Third Stage : Amendments to the Relevant Subsidiary Legislation**

mid May	CE in Council and the Electoral Affairs Commission (“EAC”) to amend the relevant subsidiary legislation respectively <sup>Note 5</sup>
mid May to July	LegCo to vet the subsidiary legislation <sup>Note 6</sup>

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<sup>Note 3</sup> After the NPCSC’s approval of the Amendments to Annex I and its acceptance for the record of the Amendment to Annex II, the Government will introduce the Bill into LegCo in January 2006.

<sup>Note 4</sup> The main content of the Chief Executive Election (Amendment) Bill has been set out in the Fifth Report of the Constitutional Development Task Force.

<sup>Note 5</sup> As the legislative procedures of the Bill will not be completed until May 2006, we propose to extend accordingly the deadline for the registration of voters for 2006. According to the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voter for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B), the original deadline for application for registration as a voter is 16 May 2006 (sections 19(1)(a) and 19(4)). The deadline for the Electoral Registration Officer to publish a provisional register is 15 June 2006 (section 29(1)(a)), and that for the publication of a final register is 25 July 2006 (section 38(1)). The Government will propose to amend the subsidiary legislation by extending the respective deadlines so that eligible voters can be registered as voters before the Election Committee subsector elections to be held in end 2006. The EAC and the Government may amend other parts of the relevant subsidiary legislation in the light of the content of the Bill.

<sup>Note 6</sup> According to section 34 of the Interpretation and General Clauses Ordinance (Chapter 1), the scrutiny work normally takes 4 to 7 weeks. The last meeting of LegCo for the current legislative session is scheduled on 12 July 2006. Thus, relevant subsidiary legislation should be laid before LegCo no later than 17 May 2006.



<u>Date/Period</u>	<u>Action</u>
<b><u>Other Related Arrangements</u></b> <sup>Note 7</sup>	
July to August 2006	Voter Registration Drive for the Election Committee subsectors
mid September	Publication of the provisional registers for the Election Committee subsectors
end October	Publication of the final registers for the Election Committee subsectors
late October to November	Nomination period for the subsector elections
December	Polling day for the subsector elections
January 2007	If necessary, handle appeals relating to the Election Committee subsector elections
1 February 2007	Commencement of the term of office of the Election Committee
25 March 2007 <sup>Note 8</sup>	Election of the Chief Executive

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<sup>Note 7</sup> After amendments are made to Annex II to the Basic Law, the Government will introduce the Legislative Council (Amendment) Bill into LegCo in 2007 to provide for the election of the fourth term LegCo in 2008.

<sup>Note 8</sup> According to S.10(1) of the Chief Executive Election Ordinance (Cap. 569), the polling date for the CE election shall be the first Sunday which is at least 95 days before the expiry of the previous term of the CE. Hence, the polling will take place on 25 March 2007 (Sunday).