

Legislative Council Panel on Constitutional Affairs

**Method for Selecting the Chief Executive by Universal Suffrage and
Review of the Chief Executive Election Ordinance**

Introduction

This paper provides information for Members' reference on the following discussion items proposed by the Democratic Party:

- (a) method for selecting the Chief Executive (CE) by universal suffrage; and
- (b) review of the Chief Executive Election Ordinance.

Method for selecting the CE by universal suffrage

2. Articles 45 of the Basic Law provides that “the CE of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People’s Government. The method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.” According to this provision, the selection and appointment of the CE involves three steps when universal suffrage is attained:

- (a) nomination by a broadly representative nominating committee in accordance with democratic procedures;
- (b) selection by universal suffrage following nomination; and
- (c) appointment by the Central People’s Government.

3. At its meeting in November 2005, the Committee on Governance and Political Development of the Commission on Strategic Development (CSD) explored preliminarily the possible models for selecting the CE when the ultimate aim of universal suffrage is attained. The CSD Secretariat has provided to the Legislative Council (LegCo) the

relevant discussion paper (CB(2)519/05-06(02)). The paper stated that according to Article 45 of the Basic Law, the composition of the nominating committee should be broadly representative, but that the Basic Law has not stipulated the specific composition of the nominating committee. In considering its composition, we must have regard to the principles of “meeting the interests of different sectors of society” and “facilitating the development of the capitalist economy” etc.

4. The Government has not taken a view on the specific method for forming the nominating committee. The CSD aims at concluding discussions on the design of a universal suffrage system for the CE and the LegCo by early 2007.

5. Moreover, when consulting the public on the 2007/08 electoral arrangements, the Constitutional Development Task Force (the Task Force) received some views on the composition of the nominating committee. In accordance with the Decision of the Standing Committee of the National People’s Congress (NPCSC) of April 2004, the elections in 2007/2008 shall not be by means of universal suffrage. Hence, views on the composition of the nominating committee did not fall within the scope for public consultation undertaken by the Task Force. However, to fully reflect the public views received, the Task Force had, with the consent of the concerned individuals/organizations, included the relevant submissions in the appendixes to the Reports. These views are summarized at Annex for Members’ reference.

Review of the Chief Executive Election Ordinance

6. We have introduced the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 (“the Bill”) into the LegCo on 8 March 2006 to ensure the smooth conduct of the 2007 CE election. The Bills Committee completed scrutiny of the Bill on 3 April. In the course of scrutinizing the Bill, there were Members proposing the following:

- (a) setting an upper limit on the number of subscribers for nominating a CE candidate;
- (b) broadening the electorate base of the EC subsectors; and
- (c) abolishing the requirement that the CE should not have any political affiliation.

7. We have already informed the Bills Committee that we do not agree to these proposals, and have explained the rationale in detail. The Government's stance on these proposals are restated in the following paragraphs.

Setting an upper limit on the number of subscribers for nominating a CE candidate

8. Annex I to the Basic Law stipulates that candidates for the office of the CE may be nominated jointly by not less than 100 members of the Election Committee. Annex I does not contain any provisions on upper limit on the number of subscribers a candidate may have. The Task Force had considered the issue of setting an upper limit on the number of subscribers, and recommended in its Fifth Report that we should study in detail whether setting such a limit would unduly restrain Election Committee members from exercising their right to nominate candidates. The Government has accepted the Task Force's recommendation and considers that such a limit should not be set.

Broadening the electorate base of Election Committee Subsectors

9. On the two electoral methods for 2007/08, the Task Force has, in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress, put forth in its Fifth Report a package of proposals which could most directly and substantively broaden the electorate base, and which could most possibly get the support of the majority of the public. Although the proposed package was supported by the majority of the public and more than half of the LegCo Members, it was not endorsed by the required two-thirds majority of all LegCo Members.

10. In accordance with the Interpretation of the NPCSC of 6 April 2004, the method for selecting the CE or the method for forming the LegCo specified in Annexes I and II to the Basic Law may be amended or remain unamended. If no amendment is made, the provisions relating to the two electoral methods in Annexes I and II of the Basic Law will still be applicable. In the circumstances, the election of the CE in 2007 will be held on the basis of the existing arrangements, i.e. the electorate base will remain unchanged.

11. Indeed, the proposed package put forth in the Fifth Report could have greatly broadened the electorate base, and it would not have affected

the participation and the electorate base of existing functional constituencies. Other proposals for broadening the electorate base, such as replacing corporate voting by individual voting, will bring fundamental changes to the electoral system. It is difficult to envisage that different sectors of the community can reach a consensus on such changes within a short period of time.

Abolishing the requirement that the CE should not have any political affiliation

12. The Task Force had considered the issue of whether to abolish the requirement that a CE elect must relinquish his political affiliation, and recommended in its Fifth Report that the existing requirement be maintained. According to an opinion survey on the package of proposals, the recommendation was agreed by more than 70% of the general public. The Task Force also considered that the existing requirement had not impeded effective governance.

13. The Administration has accepted the Task Force's recommendation and considers that the requirement that the CE should not have any political affiliation should be maintained. At this stage of Hong Kong's political development, requiring the CE to resign from political party will ensure that the CE will act in the interests of the whole community when discharging his duties and exercising his powers in accordance with the Basic Law.

Constitutional Affairs Bureau
April 2006

**Public views on composition of the nominating committee
received by the Constitutional Development Task Force
during the public consultation period**

<u>Organisations/ individuals making the submissions</u>	<u>Summary of views</u>
(1) Article 45 Concern Group	Either to convert the present Election Committee to a nomination committee whose only function is to nominate any candidate with the endorsement of say, 5% of its members, or to give power to the Legislative Council (LegCo) to nominate any candidate with the endorsement of say, 5 members. The general electorate will vote on all candidates thus nominated on a one-person-one-vote basis.
(2) Hong Kong Democratic Foundation and Power for Democracy	<ul style="list-style-type: none"><li data-bbox="671 1137 1374 1391">• Option 1: Formal candidacy for the Chief Executive (CE) requires nomination by a certain number of Election Committee members. Election of the CE by universal suffrage after nomination by the Election Committee.<li data-bbox="671 1444 1374 1697">• Option 2: A CE candidate may qualify for formal candidacy through the collection of a certain number of supporting signatures from registered voters (say, 50,000 – 100,000), followed by election by universal suffrage.
(3) SynergyNet	<ul style="list-style-type: none"><li data-bbox="671 1749 1374 1921">• Any 500 registered voters can together make a preliminary nomination of a candidate for the CE post. Each registered voter can make only one such nomination.<li data-bbox="671 1966 1374 2004">• Preliminary nominees will be scrutinized

Organisations/
individuals making the
submissions

Summary of views

by the Nomination Committee. Only those preliminary nominees who obtain the endorsement of a minimum of 100 members of the Nomination Committee will be put forward for election by universal suffrage. Each Committee member can nominate only one preliminary nominee. In practice, this means a maximum of 8 preliminary candidates to be 'screened in' by the Nomination Committee for popular election.

- The total membership of the Nomination Committee can be 800 or an enlarged number such as 1,000 - 1,200. Members of the Nomination Committee from different sectors should be elected on the basis of one-person-one-vote within the sectors to which they belong.
- 4) Eric K C Li
- First Phase: turn the 800-member Election Committee into a nomination committee and elect no more than 3 candidates for universal suffrage.
 - Second and Final Phase: full universal suffrage.
- (5) Democratic Party
- The Nominating Committee should be formed by Members of the LegCo. A CE candidate may be nominated by 5 LegCo Members (each LegCo Member may nominate only one candidate). The members of the public will vote on all candidates thus nominated on a one-person-one-vote basis.

Organisations/
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Summary of views

- (6) Rita Fan
- CE candidates could be elected by universal suffrage upon nomination by a nominating committee.
 - The Nominating Committee should comprise 1600 members from different sectors (same as those of the Election Committee) who are returned by election. Formal candidacy for the CE requires nomination by not less than 400 Committee members.
- (7) The Law Society of Hong Kong
- The nominating committee can take the form of either a separate Committee, or transformed from the Election Committee or the LegCo.
- (8) Chan Wai-yip
- A CE candidate may qualify for formal candidacy if he is able to secure nominations by not less than 5,000 registered voters, and the support of not less than 5% of the Election Committee.
 - After nomination, candidates will be elected by all electors in Hong Kong by universal suffrage. The candidate receiving the highest number of votes will become the CE. The Election Committee should validate the election result procedurally, and the candidate elected will become the CE upon validation.
- (9) Joint Committee for The Promotion of the Basic Law of Hong Kong
- To turn the Election Committee into the Nominating Committee. The method for electing members of the Nominating Committee should be the same as that for electing members of the Election Committee. The number of members

Organisations/
individuals making the
submissions

Summary of views

should be increased to 1,600. In each sector, there should be 25 members returned by universal suffrage through geographical constituencies.

- Each member of the Nominating Committee may nominate only one candidate, and each candidate must be nominated by 200 members.
- If only one candidate is selected by the Nominating Committee, that candidate will be elected *ipso facto*. If more than one candidate are selected by the Nominating Committee, election by universal suffrage shall be held.

(10) Hong Kong
University Graduates
Association Political
Reform Concern
Group

To transform the 800-member Election Committee into a 1200-member nominating committee. A CE candidate should be jointly nominated by not less than 150, but not more than 200 members of the Nominating Committee (with not less than 25 members from each sector). Each member may only nominate one candidate. Election of the CE by universal suffrage will be held after nomination.