

# 立法會

## *Legislative Council*

LC Paper No. LS49/07-08

### **Paper for the Bills Committee on Legislative Council (Amendment) Bill 2007**

### **Comments of the Legal Service Division on Expanding the Electorate Base of Functional Constituencies**

#### **Background**

At the meeting of the Bills Committee on 4 February 2008, Members have discussed whether as a matter of law there is room for expanding the electorate base of functional constituencies (FCs) in the 2008 Legislative Council (LegCo) election in accordance with the Interpretation of the Standing Committee of the National People's Congress (NPCSC) on Article 7 of Annex I and Article III of Annex II of the Basic Law adopted on 6 April 2004 (the Interpretation) (Annex A). The Legal Service Division was asked to comment on Members' concern.

#### **The Interpretation**

2. The relevant extracts of the Interpretation are –

"2. The provisions in the two above-mentioned Annexes<sup>1</sup> that "if there is a need" to amend... the method for forming the Legislative Council ... after 2007 mean they may be amended or remain unamended.

3. ...The bills on the amendments to... the method for forming the Legislative Council... and the proposed amendments

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<sup>1</sup> Annex I and Annex II of the Basic Law.

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 forming the Legislative Council... as stipulated in the two above-mentioned Annexes, the provisions relating to... the method for forming the third term of the Legislative Council in Annex II ... will still be applicable to the method for forming the Legislative Council..."

3. Apart from the Interpretation, the Decision of NPCSC adopted on 26 April 2004 on the method for, *inter alia*, forming LegCo in the year of 2008 (the Decision) (Annex B) is also relevant. The relevant extracts of the Decision are –

"1. ...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..."

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 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 ...68 ...and Article III of Annex II to the Hong Kong Basic Law."

## Comments

4. In view of the Interpretation and the Decision –

(a) the existing provisions relating to the method forming the third term of LegCo in Annex II of the Basic Law will still be

applicable to the 2008 LegCo election unless appropriate amendments are introduced by the Government to amend the specific method;

- (b) such amendments, however, must –
  - (i) not result in the LegCo election being held by means of an election of all members by universal suffrage;
  - (ii) preserve the ratio between members returned by FCs and members returned by geographical constituencies through direct elections; and
  - (iii) conform to the principle of gradual and orderly progress.

5. The specific method for forming the LegCo is prescribed in Annex II of the Basic Law. Article I of Annex II sets out the "Method for the formation of the Legislative Council". Paragraph 2 of Article I of Annex II stipulates that matters such as division of geographical constituencies and the voting method for direct elections, the delimitation of functional sectors and corporate bodies, their seat allocation and election methods shall be specified by an electoral law introduced by the Government and passed by LegCo. It would appear therefore that any amendment to those matters, including matters relating to FCs, would be amendments to the specified method and therefore subject to the principles in paragraph 4(b) above.

6. Based on the above understanding, the Government may introduce and LegCo may pass amendments affecting the electorate base of FCs in accordance with the principles in paragraph 4(b) above provided that the amendments do not require any amendment to Annex II of the Basic Law.

Prepared by  
Legal Service Division  
Legislative Council Secretariat  
15 February 2008

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Chapter: 2107 Title: THE INTERPRETATION BY Gazette Number: L.N. 54 of 2004  
THE STANDING  
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NATIONAL PEOPLE'S  
CONGRESS OF ARTICLE 7  
OF ANNEX I AND  
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TO THE BASIC LAW OF  
THE HONG KONG  
SPECIAL  
ADMINISTRATIVE  
REGION OF THE PEOPLE'S  
REPUBLIC OF CHINA  
Heading: Version Date: 07/04/2004

Remarks:

1. This instrument was not given a chapter number in the Loose-leaf Edition of the Laws of Hong Kong. Because of the design of the BLIS, an unofficial "chapter" number is assigned to this instrument in the database for identification purposes. This will enable users to carry out a search restricted to a particular instrument represented by its "chapter" number.
2. This English translation text is prepared by the Department of Justice, Government of the Hong Kong Special Administrative Region.

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

**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**

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

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:

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.

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Chapter: 2208 Title: 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) Gazette Number:

Heading:

Version Date:

## Remarks:

1. This instrument was not given a chapter number in the Loose-leaf Edition of the Laws of Hong Kong. Because of the design of the BLIS, an unofficial "chapter" number is assigned to this instrument in the database for identification purposes. This will enable users to carry out a search restricted to a particular instrument represented by its "chapter" number.
2. This English translation text is prepared by the Department of Justice, Government of the Hong Kong Special Administrative Region.

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 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 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 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.

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