

立法會 *Legislative Council*

LC Paper No. LS76/09-10

Amendments to the Administration's Motions Concerning the Amendment to the Method for the Selection of the Chief Executive and Concerning the Amendment to the Method for the Formation of the Legislative Council

The Secretary for Constitutional and Mainland Affairs has given notice to move the two motions at the LegCo meeting on 23 June 2010. At the meeting of the House Committee on 11 June 2010, a question was raised as to whether a Member may move any amendments to the motions.

2. The Rule of Procedures (RoP) are made by the Legislative Council pursuant to Article 75 of the Basic Law, which provides that the "rules of procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene this Law". Under Article 158 of the Basic Law, the Standing Committee of the National People's Congress (NPCSC) is vested with the power of interpretation of the Basic Law. On 6 April 2004, NPCSC adopted the Interpretation of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Interpretation). Paragraph 3 of the Interpretation states, among others, that "bills on the amendments to the method for selecting the Chief Executive and the method for forming the Legislative Council... and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region into the Legislative Council". The restriction would appear to be specifically applicable to any amendment to the two motions and as such would rule out any amendment by individual Members to the motions, regardless of any provision to the contrary in RoP.

3. Members may wish to refer to the extract of the minutes of the House Committee on 21 October 2005 (LC Paper No. CB(2)252/05-06) (**Appendix I**) and the paper subsequently issued to Members by the Legal Adviser (Acting) (LC Paper No. LS6/05-06) (**Appendix II**) at which those views were expressed.

4. The use of "motions" by the Administration to amend the two electoral methods instead of "bills" as referred to in the Interpretation was discussed at the meetings of House Committee (**Appendix I**) and Panel on Constitutional Affairs both held on 21 October 2005 (LC Paper No. CB(2)597/05-06) (extract at **Appendix III**) and in papers subsequently prepared by the Administration (CB(2)368/05-06(01)) (extract at **Appendix IV**) and the Legal Adviser (Acting) (**Appendix II**). The Administration was of the view that in Chinese law, "motion (議案)" included "bill (法案)" and the two terms were interchangeable.

5. As regards the President's direction made on 7 June 2010 that amendments to the two motions, if any, shall be moved by the Government only, it is noted that in 2005 when the Government moved the motions on the amendments to the two electoral methods, the then President made a similar direction in the light of the NPCSC's Interpretation.

Encls.

Prepared by

Legal Service Division
Legislative Council Secretariat
15 June 2010

(Extract)

立法會

Legislative Council

LC Paper No. CB(2) 252/05-06

Ref : CB2/H/5/04

House Committee of the Legislative Council

Minutes of the 2nd meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 21 October 2005

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VIII. Follow-up work to examine the Administration's proposal on constitutional development

(Letter dated 18 October 2005 from Hon Bernard CHAN to the Chairman of the House Committee (LC Paper No. CB(2) 103/05-06(01))

22. Mr Bernard CHAN said that the Constitutional Development Task Force had published its Fifth Report on 19 October 2005, which detailed the Administration's proposal on how the methods for selecting CE in 2007 and for forming LegCo in 2008 should be amended. Mr CHAN pointed out that according to paragraph 7.03 of the Report, the Administration would formally present to LegCo the two motions concerning the amendments to Annex I and Annex II to the Basic Law in December 2005. Mr CHAN proposed that a subcommittee should be formed under the House Committee to study the Administration's proposal immediately, given the time constraint.

23. Mr Ronny TONG said that following the publication of the Fifth Report, 26 Members had openly voiced objection to the Administration's proposal on constitutional development, while some other Members had expressed support for the proposal. Mr TONG further said that as the Administration had indicated that there was no room for revising its proposal, he did not see the point of forming a subcommittee to study it. Mr TONG added that perhaps discussions should be held between the Administration and those Members who objected to the proposal.

24. Mr Bernard CHAN responded that the implementation of the proposal was subject to a very tight timetable. Local legislation had to be enacted and the electoral arrangements put in place within 2006, if the two motions were passed by LegCo in December this year. Mr CHAN added that as not all Members had joined the Panel on Constitutional Affairs (CA Panel), a subcommittee formed under the House Committee would provide a forum for

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all interested Members to participate in the discussion of the Administration's proposal.

25. Dr KWOK Ka-ki expressed reservations about forming a subcommittee under the House Committee to study the Administration's proposal. Dr KWOK said that there were already too many committees under the Council. As 44 Members were members of the CA Panel and its meetings were open to non-Panel Members, it would be more appropriate for the CA Panel to study the Administration's proposal on constitutional development.

26. Mr LEE Wing-tat agreed with Mr Bernard CHAN that there was little time for Members to study the proposal, if the Administration was to present the two motions to LegCo in December 2005. Mr LEE said that LegCo should not be rushed in the scrutiny of the two motions, and the Administration should defer presenting the two motions to LegCo, so that Members and the public would have more time to consider the proposal in detail. Mr LEE further said that it was the practice of the House Committee to consider whether to form a subcommittee to study a motion after formal notice of the motion had been given. The House Committee should not consider forming a subcommittee to study the two motions, in anticipation that notice of the two motions would be given by the Administration. Mr LEE added that the CA Panel should study the proposal in the Fifth Report.

27. Mr Martin LEE requested Mr Bernard CHAN to clarify whether it was his own idea or the Administration's idea that a subcommittee should be formed under the House Committee to study the Administration's proposal on constitutional development. Mr Bernard CHAN responded that it was his own idea.

28. Dr YEUNG Sum said that according to the interpretation of the Standing Committee of the National People's Congress (NPCSC), any amendments to the methods for selecting CE and for forming LegCo should be introduced by the Government of the Hong Kong Special Administrative Region (HKSAR), and the Administration had already indicated that there was no room for revising its proposal. Dr YEUNG expressed doubts about the usefulness of holding discussions with the Administration.

29. Mr LEE Cheuk-yan pointed out that under the Rules of Procedure (RoP), amendments to motions were allowed. Mr LEE sought clarification on whether amendments to the electoral methods stipulated in Annexes I and II to the Basic Law should be introduced in the form of motions, and how such motions should be dealt with under RoP. Mr LEE said that the House Committee should only consider forming a subcommittee to study a motion after the Administration had given notice to move the motion at a Council meeting. Mr LEE added that the CA Panel or a subcommittee under the Panel,

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and not a subcommittee under the House Committee, should study the Administration's proposal on constitutional development.

30. Acting Legal Adviser explained that according to the interpretation of NPCSC of Article 7 of Annex I and Article III of Annex II to the Basic Law promulgated on 6 April 2004, the bills on the amendments to the electoral methods stipulated in Annexes I and II to the Basic Law, and the proposed amendments to such bills, should be introduced by the HKSAR Government. Acting Legal Adviser added that should there be inconsistency between the provisions in the Basic Law and those in RoP, the provisions in the Basic Law would prevail.

Legal Adviser

31. Acting Legal Adviser further explained that as the HKSAR Government could amend its motions, the relevant provisions in RoP on amendments to motions would be applicable. At the request of Mr LEE Cheuk-yan, Acting Legal Adviser undertook to provide a paper on whether the provisions in RoP would be applicable to motions to amend the electoral methods stipulated in the Annexes to the Basic Law.

32. Mr LAU Kong-wah said that it was regrettable that some Members had decided not to study the Administration's proposal at this early stage. Mr LAU further said that the Administration's proposal was very important, and Members belonging to the Democratic Alliance for Betterment and Progress of Hong Kong (DAB) supported forming a subcommittee under the House Committee to enable interested Members to discuss the proposal in detail. Mr LAU added that there were precedents of subcommittees being formed under the House Committee to study important matters or issues, and the Subcommittee on West Kowloon Cultural District Development was a precedent.

33. Mr LAU further said that Mr Ronny TONG's earlier remarks that only those Members who objected to the Administration's proposal would need to hold discussions with the Administration were divisive. Mr LAU added that it was illogical for Mr LEE Wing-tat to suggest that the Administration should defer presenting the two motions to LegCo, since he did not consider it necessary for Members to discuss the Administration's proposal.

34. Mrs Selina CHOW said that it was necessary to form a subcommittee under the House Committee to examine the Administration's proposal on constitutional development, as it was an important issue of public concern. The subcommittee would provide a forum for all interested Members, and not only members of the CA Panel, to participate in the discussion. Mrs CHOW agreed with Mr LAU Kong-wah that there were precedents of subcommittees being formed under the House Committee to examine important matters and issues, and another precedent was the subcommittee formed to examine the Airport Corporation White Bill.

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35. The Chairman advised that a subcommittee was also set up under the House Committee to study the proposed accountability system for Principal Officials in April 2002.

36. Referring to Mr Ronny TONG's earlier remarks, Mr CHIM Pui-chung said that as he had not yet expressed his views on the Administration's proposal, he should not be included in the group of Members who had expressed objection. Mr CHIM further said that he did not have strong views on Mr Bernard CHAN's proposal to form a subcommittee, which should be dealt with in accordance with the practices and procedures of the House Committee. Mr CHIM added that the Legislature and the Executive should respect each other, and the Administration should listen to the views of LegCo.

37. Mr Abraham SHEK said that Members belonging to The Alliance supported Mr Bernard CHAN's request for a subcommittee to be formed under the House Committee to examine the Administration's proposal in the Fifth Report. Mr SHEK added that as the proposal was very important, Members should devote more time to study and discuss it with the Administration at meetings of the subcommittee, so that both the Administration and the public would know Members' views on the proposal.

38. Ms Margaret NG said that a subcommittee was formed under the House Committee in April 2002 to study the proposed accountability system for Principal Officials because the Administration considered it unnecessary to introduce a bill to provide the legal basis for the accountability system. As regards the Subcommittee on West Kowloon Cultural District Development, Ms NG said that the Subcommittee was formed under the House Committee because the project straddled the policy areas of several Panels.

39. Ms NG expressed concern that the subcommittee to study the Administration's proposal on constitutional development, if formed, would adopt the mode of operation of the Bills Committee on National Security (Legislative Provisions) Bill in that the subcommittee would be dominated by Members in support of the proposal and they only wanted to speed up the scrutiny process. The subcommittee would meet very frequently and its members would not have time to attend to other Council business.

40. Mr Martin LEE suggested that the House Committee should defer discussion of Mr Bernard CHAN's proposal to form a subcommittee until the Administration had given formal notice for the two motions. Mr LEE added that if the Administration considered that there was urgency in presenting the motions to LegCo, it should give formal notice of the two motions immediately.

41. Ir Dr Raymond HO said that as the Administration had not yet given formal notice for the two motions, Members would have more time to discuss

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the proposal and request for more information from the Administration. Ir Dr HO pointed out that the two motions to be presented by the Administration were not the usual types of motions presented to LegCo. Ir Dr HO considered it appropriate for the House Committee, which was one of the most important committees under the Council, to form a subcommittee to discuss the draft motions.

42. Ir Dr HO further said that many Members, including himself, had not yet expressed their views on the Administration's proposal on constitutional development. It was not certain at this stage whether the two motions could be passed by a two-thirds majority of LegCo Members, as required in the provisions in Annex II to the Basic Law. Ir Dr HO considered that as some Members had not joined the CA Panel and they could not vote at the meetings of the Panel, it would be more appropriate for the House Committee, and not the CA Panel, to consider whether a subcommittee should be formed to study the Administration's proposal on constitutional development.

43. Mr LEUNG Yiu-chung requested Mr Bernard CHAN to clarify the objectives and scope of work of the proposed subcommittee. Mr LEUNG said that if the motions could not be amended, there was no point in setting up a subcommittee. Mr LEUNG pointed out that Members could still express their views on the Administration's proposal at meetings of the CA Panel, even if they were not members. Mr LEUNG added that as Panel meetings were open meetings, the public would be able to know what was discussed at the meetings.

44. Mr Albert CHAN said that he did not understand the purpose of the proposed subcommittee. He doubted if Mr Bernard CHAN had acted on the direction of ExCo. Mr Albert CHAN further said that as the motions to be presented by the Administration would have to be endorsed by a two-thirds majority of LegCo Members, Mr Bernard CHAN's proposal of forming a subcommittee under the House Committee should also be subject to the same voting requirement. Mr Albert CHAN suggested that two subcommittees, one for Members supporting the Administration's proposal and the other for Members opposing the proposal, should be formed under the House Committee. Mr CHAN added that these two subcommittees could consult public views and study the two motions in parallel.

45. Mr Fred LI said that Mr Bernard CHAN had not explained why a subcommittee should be formed under the House Committee and not under the CA Panel. Mr LI further said that if a subject matter was clearly within the policy area of a Panel, it should be followed up by that Panel. Mr LI pointed out that the CA Panel had been following up the subject matter of constitutional development for a long time. Mr LI added that although non-Panel Members did not have voting rights, he failed to see the need to take a vote on any matter, if the CA Panel was to study the proposal.

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46. Mr LEUNG Kwok-hung said that it was a waste of time for Members to consider forming a subcommittee under the House Committee, as the Administration had not yet given notice to present the two motions to LegCo.

47. Mr Jeffrey LAM and Mr Patrick LAU said that an appropriate forum should be provided for Members and the public to participate in the discussion of the Administration's proposal, and a subcommittee formed under the House Committee was such a forum. They further said that those Members who did not consider it necessary to discuss the Administration's proposal should not prevent other Members from forming a subcommittee to discuss it.

48. Mr Patrick LAU pointed out that he had not yet taken a stance on the Administration's proposal, and the media reports did not accurately reflect his views on the matter.

49. Mr James TIEN said that there was not much time for LegCo to study the Administration's proposal, if the Administration was to present the two motions in December 2005. Mr TIEN further said that although there was little room to revise the proposal, it would not be appropriate for Members to take a decision on the two motions without first discussing them in detail. Mr TIEN added that Members belonging to the Liberal Party supported forming a subcommittee under the House Committee to study the Administration's proposal.

50. Mr Ronny TONG said that he had no intention of preventing other Members from discussing the Administration's proposal. He only wished to point out that as the Administration had indicated that it would not amend the two motions, holding discussions with the Administration would not serve any useful purpose. Mr TONG added that the 25 pan-democratic Members had demanded that universal suffrage be introduced as soon as possible. The issue had been discussed for a long time in LegCo but little progress had been made.

51. Dr YEUNG Sum said that Members who objected to the Administration's proposal had no intention of preventing the Administration from presenting the two motions, or preventing other Members from expressing their views. However, as NPCSC had decided that amendments to the Basic Law could only be introduced by the HKSAR Government, and the Administration had already indicated that it would not revise its proposal, there was little Members could achieve in holding discussions with the Administration. Dr YEUNG further said that a subcommittee should only be formed under the House Committee if the subject matter in question straddled the policy areas of more than one Panel. Dr YEUNG added that the Chairman should rule whether the House Committee should consider Mr Bernard CHAN's proposal, as the subject matter of constitutional development was already within the ambit of the CA Panel.

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52. The Chairman advised that under Rule 75(12) of RoP, the House Committee could set up subcommittees for the purpose of assisting it in considering items relating to the business of the Council. The Chairman added that it was for the House Committee, and not the Chairman, to decide whether Members' requests for forming subcommittees should be acceded to.

53. Mr SIN Chung-kai said that a subcommittee was previously formed to study the proposed resolution on the implementation of the accountability system because it involved the transfer of statutory functions between the Principal Officials.

54. Assistant Secretary General 1 (ASG1) said that there were precedents of subcommittees being formed under the House Committee to study draft subsidiary legislation, and the subcommittee formed to study the draft regulations under the Securities and Futures Ordinance was a precedent.

55. Referring to the precedent cited by ASG1, Ms Margaret NG said that the regulations in question were complex and Members had requested the Administration to provide the draft texts of the regulations for early study. Ms NG further said that Members should only consider whether to form a subcommittee to study the Administration's proposal, if the Administration would agree to provide, at this stage, the draft text of the bill to be introduced if the two motions were passed.

56. Mr LEE Cheuk-yan asked whether another subcommittee would be formed after the Administration had given notice for the two motions, if a subcommittee had already been formed to study the draft motions.

57. Assistant Secretary General 2 (ASG2) explained that a subcommittee was set up under the House Committee to examine the proposed accountability system for Principal Officials and the draft motion on the transfer of statutory functions. When the Administration gave formal notice for the motion, the House Committee considered the Legal Service Division report on the motion and decided that the subcommittee should study the motion, without the need to form another subcommittee. ASG2 added that it would be for the House Committee to decide how the two motions to amend the electoral methods prescribed in Annex I and Annex II to the Basic Law should be dealt with, after the Administration had given formal notice to present the motions to LegCo.

58. Mr Martin LEE said that the subject of constitutional development clearly fell within the ambit of the CA Panel. Members should respect the Panel and allow the Panel to follow up the Administration's proposal, unless Dr LUI Ming-wah, the Chairman of the CA Panel, indicated that he did not have confidence in chairing meetings to discuss the Administration's proposal.

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59. Dr LUI Ming-wah said that the suggestion of forming a subcommittee under the House Committee to follow up the Administration's proposal had nothing to do with the ability of the Chairman of the CA Panel.

60. Ir Dr Raymond HO said that Mr Bernard CHAN's request aimed to enable all Members, and not just the members of the CA Panel, to decide whether a subcommittee should be formed to discuss the Administration's proposal. Ir Dr HO added that Members belonging to The Alliance had no intention of contesting for the chairmanship or deputy chairmanship of the subcommittee, if formed.

61. Ms Margaret NG sought clarification on whether the two motions to be presented by the Administration should be regarded as "bills". Ms NG said that if these motions were "bills" as described in Chapter Seven of the Fifth Report, such "bills" should first be discussed by the CA Panel, in accordance with the existing practice.

62. Acting Legal Adviser explained that in accordance with Rule 75(12) of RoP, the House Committee could set up subcommittees for the purpose of assisting the committee in performing its functions under Rule 75(10) and 75(11). The subcommittees formed under Rule 75(10) were for studying subsidiary legislation which was subject to the provisions of sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1), while those formed under Rule 75(11) were for studying other issues relating to the business of the Council.

63. Acting Legal Adviser further explained that the procedure on bills stipulated in RoP did not apply to the two motions proposed by the Administration. Rule 75(10) of RoP also did not apply as the two motions were not subsidiary legislation subject to the provisions of sections 34 and 35 of Cap. 1. Acting Legal Adviser added that the two motions could be regarded as motions that had legal effect.

64. Ms Margaret NG suggested that the Legal Adviser should be given adequate time to provide a considered view on the issues involved. Ms NG added that the CA Panel should study the Administration's proposal.

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Legislative Council

LC Paper No. LS6/05-06

Ref. : LS/M/2/05-06

Tel. : 2869 9283

Date : 28 October 2005

From : Legal Adviser (Acting)

To : Members of the House Committee

A Note on the Status of the Draft Motions attached to the Fifth Report of the Constitutional Development Task Force

At the meeting of the House Committee on 21 October 2005, members enquired about the status of the two draft motions attached as Annex B and Annex C to the Fifth Report of the Constitutional Development Task Force in terms of the Rules of Procedure (RoP). Since the motions are only in draft form, it would appear that the assumption is that if and when the motions are in fact introduced to LegCo, they would be in the same or substantially the same form as their present draft versions.

2. The RoP are made by LegCo in pursuance of Article 75 of the Basic Law, which provides that the “rules of procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene this Law”. An obvious example of Basic Law provisions which affect LegCo’s power to make its own rules of procedure is Article II of Annex II “Method for the Formation of the Legislative Council of the Hong Kong Administrative Region and its Voting Procedures”. The Article provides for the different operation of a simple majority rule in respect of the passage of government bills and bills introduced by individual members of LegCo. Those provisions are reflected in Rule 46 of RoP.

3. In the RoP, motions provide the procedural mechanism by means of which decisions (whether on procedural, legislative or other matters) are made by the Council. Rules are therefore made to provide for, among other things, the giving of notice, making of amendment and passage of motions generally. However, the RoP have also made special provisions for some motions dealing with specific matters, for example -


- (a) no amendment to be moved to the standard form motions under Article 79(6) and (7) of the Basic Law and their passage to require a two-thirds majority vote of Members present (Rule 49B);
- (b) notice of motion for second reading of a bill not required (Rule 53(3)); and
- (c) special arrangements for motions in relation to the reconsideration of a returned bill (Rule 66).

4. It is clear that the two draft motions are not bills to which Part K of the RoP applies, nor are they motions for which special provisions have been made. As Government motions, they would (if and when they are formally introduced to LegCo) be subject therefore to the same rules in the RoP which now apply generally to Government motions (other than those which seek to amend local subsidiary legislation for which the notice period is different). However, two exceptions have to be considered in view of The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Interpretation) adopted by the Standing Committee of the Tenth National People's Congress at its Eighth Session on 6 April 2004.

5. Paragraph 3 of the Interpretation states that 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 mean the requisite legislative process through which the method for selecting the Chief Executive and the method for forming the Legislative Council are amended. Such an amendment may take effect only if it has gone through the said process". In view of this interpretation, it would appear that the two Government draft motions, if allowed to be passed by LegCo with the usual majority vote of the Members present under Rule 46(1) of the RoP, might not be regarded as fulfilling the 'said process' if the actual majority is less than two-thirds of all the Members of LegCo. Members may wish to consider whether the apparent incompatibility should be resolved by applying directly the majority rule in the Interpretation specifically to the two draft motions or by other appropriate means.

6. Paragraph 3 of the Interpretation states further that the "bills on the amendments to the method for selecting the Chief Executive and the method for forming the Legislative Council and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region into the Legislative Council". This restriction would appear to be specifically applicable to any amendment to the two draft motions and as such would rule out any amendment by individual Members to the motions. At present, there is no such restriction on an ordinary Government motion, such as the two draft motions, in the RoP (e.g. Rule 31). In order to facilitate the compliance of the two draft motions during its passage in LegCo with Article 7 of Annex I and Article III of Annex II to the Basic Law as interpreted by the Interpretation, Members may also wish to consider whether the incompatibility should be resolved by applying directly the restriction in the Interpretation specifically to the two draft motions or by other appropriate means.

7. A query has also been raised about the use by the Administration of motions instead of "bills" as referred to in paragraph 3 of the Interpretation. The Administration has made a preliminary response at the Special Constitutional Affairs Panel meeting on 21 October 2005, which will be followed up by a written response with details. Members may wish to discuss the issue further at a later stage.


(Arthur CHEUNG)
Legal Adviser (Acting)

c.c. Clerk to the House Committee

(Extract)

立法會
Legislative Council

LC Paper No. CB(2)597/05-06
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Minutes of special meeting
held on Friday, 21 October 2005 at 4:30 pm
in the Chamber of the Legislative Council Building**

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**I. Constitutional development after 2007 – Briefing by the
Constitutional Development Task Force on the Fifth Report of the
Task Force**

Legislative timetable and legal issues

29. On paragraph 28(a) above, Ms Elsie LEUNG responded with the following –

- (a) According to clause 3 of the NPCSC Interpretation on 6 April 2004, bills(法案)on the amendments to the “two methods” should be introduced by the Government of HKSAR into LegCo. However, in Chinese law, “motion (議案)” included “bill (法案)” and the two terms were interchangeable; and
- (b) There were two stages regarding the procedures for amending the provisions of Annex I and Annex II to the Basic Law. The first stage (i.e. endorsement of a two-thirds majority of all the LegCo Members and the consent of CE) would take place in Hong Kong. The second stage (i.e. NPCSC approving or acceptance for the record the amendments proposed by Hong Kong) would take place in the Mainland. The amendments did not yet have legal effect when they were passed by a two-thirds majority of LegCo Members and had received the consent of CE. They would be given legislative effect only after approval or acceptance for the

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record had been given or made by NPCSC. It was, therefore, inappropriate for them to be introduced into LegCo or promulgated by way of local bills, because the purpose of a local bill was to codify or change the legal position in local legislation. As a corollary, the normal LegCo process for scrutiny of local bills was not applicable to any proposed amendments to the two Annexes, since they were not local legislation. It was appropriate for them to be introduced into, and to be endorsed by, LegCo by way of motions.

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Council Business Division 2
Legislative Council Secretariat
6 December 2005

(Extract)

LC Paper No. CB(2)368/05-06(01)

**The Administration's Response
to the Questions referred from the Committee of Rules of Procedure
to 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**

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- (a) *What are the constitutional and legal justifications for submitting the proposals concerning amendments to the method for the selection of the Chief Executive and the method for the formation of the Legislative Council for the Council's endorsement by way of motions, instead of bills, as indicated in paragraph 7.02 and Annexes B and C of the Fifth Report of the Constitutional Development Task Force, in the light of clause 3 of 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 which states: "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"?*

3. Amendments to the methods for selecting the CE and for forming the LegCo are, by their nature, amendments to the provisions of Annex I and Annex II to the Basic Law. After the amendments have been reported to the NPCSC for approval (in the case of amendments to Annex I) or for the record (in the case of amendments to Annex II), they will become, respectively, an integral part of Annex I and Annex II to the Basic Law. They are not local legislation.

4. There are two stages regarding the procedures for amending the provisions of Annex I and Annex II to the Basic Law. The first stage (i.e. endorsement of a two-thirds majority of all the Members of the LegCo and consent of the CE) will be undertaken in Hong Kong. The second stage (i.e. NPCSC approving or acceptance for the record the amendments proposed by Hong Kong) will be undertaken by the Central Authorities. Indeed, Clause 3 of the Interpretation makes it clear that the amendments may take effect only after they have gone through the above process.

5. Thus, it is clear that the amendments do not yet have legal effect, when they are passed by a two-thirds majority of all the Members of the LegCo and have received the consent of the CE. They are given legislative effect only after approval or acceptance for the record has been given or made by the NPCSC. It is, therefore, inappropriate for them to be introduced into the LegCo or

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promulgated by way of local bills (條例草案), because the purpose of a local bill (條例草案) is to codify or change the legal position in local legislation. 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 legislation.

6. The Appendix to Annex B and the Appendix to Annex C of the Fifth Report are the (Draft) Amendments which (subject to LegCo's endorsement and CE's consent) the SAR Government intends to present to NPCSC for approval or for the record in accordance with Article 7 of Annex I and Article III of Annex II respectively. These (Draft) Amendments are legislative proposals that require decision by the NPCSC to be given legislative effect. Hence, it is appropriate for them to be introduced into, and to be endorsed by, LegCo by way of motions.

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Constitutional Affairs Bureau
November 2005