

Press Releases

LC: Opening statement by CS on Package of Proposals for the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012

Following is the opening statement (English translation) by the Chief Secretary for Administration, Mr Henry Tang, on the Package of Proposals for the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012 in the Legislative Council today (April 14):

Mr President,

Later today the HKSAR Government will publish a package of proposals on the methods for selecting the Chief Executive (CE) and for forming the Legislative Council (LegCo) in 2012. We will summarise the views collected during the public consultation period and put forth detailed proposals regarding the two electoral methods for 2012.

Public consultation

The HKSAR Government launched a three-month public consultation on November 18 last year on the "Consultation Document on the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012", setting out the directions which may be considered regarding how the democratic elements of the two electoral methods for 2012 can be enhanced. The consultation period ended on February 19 this year. The consultation was carried out on the basis of the decision made by the Standing Committee of the National People's Congress (NPCSC decision) in December 2007, i.e. universal suffrage shall not be implemented in 2012, but appropriate amendments conforming to the principle of gradual and orderly progress may be made to the two electoral methods.

To ensure that the proposed package would have a broad basis of public opinion, during the three-month public consultation we consulted the community widely and systematically through a variety of channels to gauge feedback on the consultation document from the LegCo, District Councils, organisations and individuals from different sectors of society, as well as members of the public. We organised a number of open and regional forums, attended three public hearings organised by the LegCo Constitutional Affairs Panel, the special meeting of the LegCo Constitutional Affairs Panel and the meetings of 18 District Councils, so as to directly listen to the views of the public, LegCo members and District Councillors. We attended forums and meetings organised by different organisations. We also invited political parties, academics and alliances formed by different political parties/groups to meetings to listen to their views. A total of more than 70 relevant forums and meetings were held.

With regard to written submissions, we received more than 47,200 submissions and more than 1.6 million signatures.

We also monitored closely the relevant opinion polls conducted by various academic, non-governmental and media organisations as an important means to reflect public opinion.

On behalf of the Government I would like to thank the consultees for their valuable views, which provide very useful reference and basis for us to better gauge public opinions on the matter and formulate a package acceptable to the community.

The document we publish today puts on record all the opinions received during the consultation period. It also faithfully summarises and reflects the views of various

parties. In the sea of opinions a few common threads are obvious:

(1) there is a common wish to see progress in the constitutional arrangement in 2012;

(2) over 60% of respondents support the key elements about the two electoral methods for 2012 as set out in the consultation document; and

(3) over half of respondents support passage of the Government's proposed package by LegCo.

The proposed package

After carefully analysing the views received, the HKSAR Government has identified the appropriate point of balance amidst the various viewpoints expressed by the community and puts forth this package of proposals for the methods for selecting the CE and for forming the LegCo in 2012.

I will now introduce the major elements of the proposed package.

Regarding the method for selecting the CE, we propose:

(1) that the number of members of the Election Committee be increased from the current 800 to 1200;

(2) that the number of members of the four sectors of the Election Committee be increased by the same proportion, i.e. the number of seats for each sector be increased by 100;

(3) that 75 out of the 100 new seats in the fourth sector (i.e. the political sector) be allocated to elected District Council members. Together with the existing 42 seats, the District Council subsector will have a total of 117 seats, which will be returned through election from among elected District Council members, i.e. appointed District Council members will not take part in the election. As for the remaining 25 new seats, aside from the 10 seats to be allocated to the LegCo, 10 seats will be allocated to members of the CPPCC and five to Heung Yee Kuk;

(4) that the current nomination threshold (i.e. at the ratio of one-eighth of the total membership of the Election Committee) be maintained. No upper limit on the number of subscribers should be set at this stage; and

(5) that the requirement that the CE should not have any political affiliation should not be changed for the 2012 CE election, but can be reviewed in the longer term.

Regarding the method for forming the LegCo, we propose:

(1) that the number of LegCo seats should be increased from 60 to 70, 35 seats returned by geographical constituencies through direct elections and 35 returned by functional constituencies (FC);

(2) that all the five new FC seats and the existing District Council FC seat be returned through election by elected District Council members from among themselves (i.e. appointed District Council members will not take part in the election);

(3) that the six District Council FC seats be returned under the "proportional representation system"; and

(4) that the existing arrangement that permanent residents of Hong Kong who are not of Chinese nationality or who have the right of abode in foreign countries can stand in the elections for 12 FC seats be maintained.

The advantage of the package is to inject new democratic

elements into the two electoral methods through the participation of elected District Council members who have a broad electorate base. In particular, for the LegCo FC elections, no more "traditional" FC seat will be created, and 41 seats (i.e. close to 60% of all seats) will be returned through direct or indirect geographical elections.

Regarding the major concerns raised by some people about enhancing the participation of elected District Council members in the CE and LegCo elections, I would like to take this opportunity to respond.

There are views that District Council members are elected by only a few to ten thousand voters, and their vision focuses only on district matters. Allocating all the new FC seats to District Council members will make the LegCo more like a District Council. We consider that District Council members should not be be-littled. District Council is the cradle for nurturing political talents. The experience of District Council members in politics and in serving the public will facilitate their work in the LegCo. Indeed, quite a number of incumbent LegCo members of different political parties and groups are also District Council members. In dealing with business in the LegCo, they have attached importance to both the overall interest of the community and local interests.

There are also views that under the Basic Law, District Councils are not organs of political power. Enhancing the participation of District Council members in the Election Committee and LegCo elections is not consistent with the Basic Law.

We should emphasise that there are already representatives of District Councils in the current Election Committee and the LegCo. The Basic Law and the District Council Ordinance have already stipulated the powers and functions of District Councils. The legal basis for the participation of District Council members in the elections of Election Committee and LegCo is provided by the Chief Executive Election Ordinance and the Legislative Council Ordinance. Enhancing the participation of District Council members in the two elections will not transform the District Councils into organs of political power, nor will it change the powers and functions of the District Councils.

District Council appointment system

During the consultation period, there were a considerable number of views within the LegCo and the District Councils that the District Council appointment system should be abolished. Our proposal that appointed District Council members will not take part in the elections of District Council seats in the Election Committee and LegCo in 2012 is a constitutional issue relating to these electoral methods. The District Council appointment system, on the other hand, should be dealt with by local legislation.

Appointed District Council members strive to serve the community with dedication. The HKSAR Government fully recognises their efforts and contribution to district administration. These members are also willing to place the overall interest of the community ahead of their own. In the hope that constitutional development in 2012 can be rolled forward, they accept and support the Government's proposal that appointed District Council members will not take part in the elections of District Council seats in the Election Committee and LegCo.

However, we understand that the issue of District Council appointment system is one of the major concerns of certain parties and members in LegCo. We also note that, as indicated by an opinion poll, more than 60% of the respondents agree that the District Council appointment system should be abolished. The HKSAR Government adopts an open and constructive attitude toward abolishing the appointment system. In order to respond to these concerns, the HKSAR Government will, after the proposed package

on the two electoral methods for 2012 has been passed by LegCo, put forth as soon as possible the respective proposals at the local legislation level for deliberation by the community.

Universal suffrage for the Chief Executive and the Legislative Council

To respond to the aspiration of some political parties and groups of the LegCo and some individuals in the community for commencing the discussion on universal suffrage models as soon as possible, we made it clear in the consultation document that we would summarise and conclude any views relating to universal suffrage received during the public consultation on the two electoral methods for 2012. These views would serve as reference for the HKSAR Government to be formed in 2012 and 2017 for dealing with the issue of universal suffrage for the CE and the LegCo.

The views received have all been put on record. They focus mainly on the following three issues:

- (1) the timetable for implementing universal suffrage for the CE and the LegCo in future;
- (2) whether the current-term HKSAR Government should put forth a roadmap for universal suffrage; and
- (3) how the FC seats should be dealt with when universal suffrage for the LegCo is implemented.

The aim of the HKSAR Government is to roll forward Hong Kong's democratic development in 2012 by injecting new democratic elements into the two electoral methods, so as to pave the way for implementing universal suffrage for the CE and the LegCo in 2017 and 2020 respectively. Both the Central Authorities and the HKSAR Government fully appreciate the public's aspiration for universal suffrage. In this connection, the HKSAR Government makes it clear that the universal suffrage timetable stipulated in the NPCSC decision of 2007 is solemn and bears constitutional and legal effect.

At an appropriate time prior to 2017, the package for implementing universal suffrage for the CE to be put forth by the HKSAR Government will include that a broadly representative "nominating committee" (which shall be formed with reference to the composition of the "Election Committee" in accordance with Basic Law) shall in accordance with democratic procedures nominate a certain number of candidates for the office of the CE, who is to be elected through universal suffrage by all registered electors of the HKSAR.

As to how the FCs should be dealt with when universal suffrage for the LegCo is implemented, different sectors of the community, as well as various political parties/groups and members of the LegCo, still have extremely diverse views. For example, when asked in various opinion polls whether all the FCs should ultimately be abolished, 36% to half of the respondents were affirmative while roughly 40% considered otherwise. So at this stage the community has yet to reach general consensus on this major and critical constitutional issue, and the debate is far from conclusive. More time is needed to discuss the issue thoroughly and forge consensus. Since the current-term HKSAR Government has only been authorised by the NPCSC to deal with the two electoral methods in 2012, we have already put on record the different proposals put forth recently within the community, and recommend the next-term HKSAR Government to follow up actively and consider the relevant proposals seriously.

Legislative timetable

We have been racing against the clock in the past two months to consolidate the views received and formulate the proposed package. We would like to announce the proposed package as soon

as possible, so as to allow ample time for the public and LegCo to discuss the proposals. Our aim is to introduce into LegCo the two motions regarding the amendments to the electoral methods for the CE and LegCo and put them to vote before the LegCo recess starting mid-July this year. This is to allow sufficient time to complete the reporting to NPCSC for approval or record, and to deal with the relevant local legislation between autumn this year and the second quarter of 2011, as well as to put in place the detailed implementing arrangements before end 2011. As for the specific timing of voting on the two motions, this will depend on the progress of LegCo scrutiny of the proposals.

Interpretation of "total membership of LegCo"

In accordance with Annexes I and II to the Basic Law, amendments to the two electoral methods for 2012 require the endorsement of a two-thirds majority of all the members of the LegCo. To address the constitutional issue arising from the vacancies in LegCo due to the resignation of five LegCo members, the Department of Justice has considered carefully the basis for calculating "the two-thirds majority of all the members of LegCo".

On this issue, we have made reference to the relevant Basic Law provisions, the purpose of setting a quorum requirement, and the relevant case law in overseas jurisdictions. Overall speaking, the relevant information supports the interpretation of "total membership of the Council" as the entire authorised membership of the LegCo, i.e. the requirement that the LegCo shall be composed of 60 members under Article 1(1) of Annex II to the Basic Law. If the basis for calculation of all the members of the LegCo does not include the number of vacant seats, under an extreme situation, for example, the number of members is reduced to only a few, these members may still exercise all powers of the LegCo, including passage of bills, etc. This will not be reasonable and will not be consistent with one of the important purposes for setting a quorum requirement, that is, to avoid the situation where a decision supported by only a few members loses the necessary and appropriate respect.

In the Basic Law, references to "total membership of the Council" appear in various articles, and should be construed consistently. For example, Article 67 provides that permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the LegCo, provided that the proportion of such members does not exceed 20 percent of the total membership of the Council. If the "total membership of the Council" is calculated on a basis which excludes the vacant seats, when vacancies do arise, then the number of seats to be taken up by permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries may exceed 20%. Some of the remaining LegCo members may need to cease duties so as to comply with the Basic Law provision. This unusual situation reflects that "total membership of the Council" in Article 67 should be construed to mean the entire authorised membership of the LegCo.

After careful deliberations from different angles, we consider that the entire authorised membership of the LegCo (i.e. 60 members), rather than the members of the LegCo in office, should be taken as the basis for calculating the two-thirds majority of all the members of the LegCo.

In other words, the passage of the proposed package put forth by the HKSAR Government must, in accordance with Annexes I and II to the Basic Law, obtain the support of at least 40 members.

Conclusion

Mr President, the Central Authorities and the HKSAR Government have been promoting the development of democracy in Hong Kong with utmost sincerity. Shortly after its establishment

in July 2007, the third-term HKSAR Government issued the Green Paper on Constitutional Development to consult the public on the models, roadmap and timetable for implementing universal suffrage for the CE and the LegCo.

In December 2007, the CE submitted a report to the NPCSC, reflecting to the Central Authorities faithfully the views received during the public consultation. Having considered the report submitted by the CE, the NPCSC adopted the decision in late December 2007 making clear that universal suffrage may be implemented for electing the CE and all the members of the LegCo in 2017 and 2020 respectively. The universal suffrage timetable lays a solid foundation and provides the authoritative direction and basis for our pursuit of democracy.

The transitional electoral methods for the two elections in 2012 represent an important step in implementing the NPCSC decision to attain universal suffrage. There is a general consensus within the community that there should be progress in constitutional arrangements in 2012 so as pave way for universal suffrages for CE and LegCo in 2017 and 2020. Hence, after consulting the public extensively, we have put forth this proposed package. For such a complex and controversial issue, it would be impossible to formulate a package that presents a perfect scenario for every one. But we hope that people will recognise that the HKSAR Government has already responded to the aspiration of those LegCo members who vetoed the proposed package in 2005 by attaining a clear universal suffrage timetable and proposing that only elected District Council members will participate in the election of District Council seats in the Election Committee and LegCo. We have also responded positively to the aspirations raised during the recent consultation by some sectors of the community and political parties/groups in LegCo.

Under the framework of the NPCSC decision, we have already strived for maximum latitude to enhance the democratic elements of the two elections in 2012 and to pave the way for implementing universal suffrage. We believe that the proposed package stands the best possible chance of being accepted by the majority of the public, the LegCo, the CE and the Central Authorities, which can allow Hong Kong's constitutional development to be rolled forward.

We understand the concerns of the community about the final design for universal suffrage. In this regard, the proposed package can also determine the directions for attaining universal suffrage, including that no traditional FC will be created for LegCo, and that the democratic elements of the LegCo will be further enhanced with all registered voters as the electorate base.

Once we have put forth the proposed package, our priority task would be to strive to gain the support of the community and the LegCo, and to endeavour to obtain the LegCo's endorsement of the relevant amendments to Annexes I and II to the Basic Law. By its very nature, constitutional development is an issue which attracts controversy. In the coming few months, our readiness to accept different views and our ability to seek common ground and accommodate differences will be put to test. We certainly would not underestimate the difficulty of forging consensus on the two electoral methods for 2012, but the HKSAR Government and LegCo members have a shared responsibility to deal with the issue of constitutional development in a constructive manner.

It is indeed encouraging to see that, against the noisy background some people deliberately create, recent discussions on constitutional development within the community has become more pragmatic and rational, which will be conducive to the positive interaction within society and further democratisation in Hong Kong. I sincerely hope that members can set aside differences, place the overall interest of the community ahead of personal interests and support our proposed package which will take forward our democratic development. We firmly believe that, if we

are willing to exercise our collective wisdom and endeavour, Hong Kong will be able to reach consensus on democratic development and take the HKSAR towards attaining universal suffrage according to the principles of universality and equality.

Rome was not built in one day. By endorsing the 2012 package, we are building together our road to Rome.

Thank you, Mr President.

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