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Panel on Constitutional Affairs

**Minutes of special meeting
held on Thursday, 26 November 2009, at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present :

Hon TAM Yiu-chung, GBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon Tanya CHAN
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon WONG Yuk-man
Hon IP Kwok-him, GBS, JP

Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Members attending : Hon LEE Cheuk-yan
Dr Hon Joseph LEE Kok-long, SBS, JP

Members absent : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon WONG Yung-kan, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon CHEUNG Kwok-che

Public Officers attending : Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Joshua LAW Chi-kong
Permanent Secretary for Constitutional and Mainland Affairs

Miss Adeline WONG Ching-man
Under Secretary for Constitutional and Mainland Affairs

Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional and Mainland Affairs

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Ms Clara TAM
Assistant Legal Adviser 9

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Consultation Document on Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012

Secretary for Constitutional and Mainland Affairs (SCMA) said that the Government had published the Consultation Document on Methods for Selecting the Chief Executive (CE) and for Forming the Legislative Council (LegCo) in 2012 (the Consultation Document) to consult the public on how these two electoral methods in 2012 could be further democratised. He briefed members on the Consultation Document which put forward the directions which might be considered regarding the two electoral methods for 2012, the key elements of which included -

For the election of CE

- (a) increasing the number of members of the Election Committee (EC) to not more than 1 200;
- (b) increasing the number of members of the four sectors by the same proportion, i.e. adding 100 members for each sector;
- (c) allocating most of the newly added 100 seats for the fourth sector (i.e. LegCo, District Councils (DCs), Heung Yee Kuk, Hong Kong deputies to the National People's Congress (NPC) and Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference) to DC members;
- (d) electing representatives of DCs in EC from among elected DC members;

For the election of LegCo

- (e) increasing the number of seats from 60 to 70 with the five additional seats to be returned by geographical constituencies (GCs) through direct election and another five seats to be allocated to DC functional constituencies (FCs);
- (f) having the five new DC FC seats and the existing DC FC seat returned through election among elected DC members; and
- (g) maintaining the existing arrangement of allowing permanent residents of the Hong Kong Special Administrative Region (HKSAR) who were not of Chinese nationality or who had right of abode in foreign countries to stand in the elections for 12 FC seats.

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2. Members noted the following documents on the subject under discussion -
 - (a) Statement by the Chief Secretary for Administration (CS) on the Consultation Document at the Council meeting on 18 November 2009; and
 - (b) Background brief on "Constitutional Development" prepared by the LegCo Secretariat [LC Paper No. CB(2)349/09-10(01)].

Electoral method for CE for 2012

3. Mr Ronny TONG said that there was no dispute that EC should be transformed into the nominating committee when universal suffrage for CE was implemented in 2017. However, the Administration's proposal of enhancing the democratic elements of EC through the participation of DC members who had a public mandate was far from satisfactory, as compared with the proposal put forward by pan-democratic Members, given that the number of EC members returned through direct election would still be less than 200. He explained that pan-democratic Members proposed to include all the 405 elected DC members in EC so that the number of EC members returned through direct election would be nearly 600, i.e. almost half of its total membership. The Administration's proposal to have all DC FC seats elected from among elected DC members was merely a form of indirect election. With the proposed increase of the number of EC members for nominating candidates for the office of CE to 150, the overall effect would reduce the democratic elements of the CE election. He therefore considered the preliminary package of proposals regarding the CE election in the Consultation Document retrogressive.

4. SCMA disagreed that the preliminary package of proposals regarding the CE election in the Consultation Document were retrogressive. He recalled that when the package of proposals for the methods of selecting CE in 2007 and for forming LegCo in 2008 (the 2005 proposed package) was discussed, the proposal to include all DC members into EC had been criticised as creating imbalance of participation among different sectors of EC, resulting in unfairness. SCMA explained that the four sectors of the existing EC already had broad representation. In order to maintain the principle of balanced participation, the proportion of the four sectors of EC should remain unchanged. The number of EC members returned by direct election in the second, third and fourth sectors at present were 200, 50 and 30 respectively. According to the Administration's proposal, the number of EC members in the second sector who were elected on a "one-person-one-vote" basis would be increased to 300. The Administration considered that its proposal would enhance the representativeness of EC, which would help transform EC into the nominating committee when universal suffrage for CE was implemented in 2017.

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5. In response to Mr LEE Wing-tat's request for the Administration's assurance that the CE election in 2017 would be a contested one, SCMA said that in the penultimate paragraph of its "Decision on Issues Relating to the Methods for Selecting CE of HKSAR and for Forming LegCo of HKSAR in 2012 and on Issues Relating to Universal Suffrage" adopted on 29 December 2007 (the NPCSC Decision), the Standing Committee of NPC (NPCSC) provided a framework on the universal suffrage model for CE. According to the NPCSC Decision, the nominating committee could be formed with reference to the current provisions regarding EC in Annex I to the Basic Law (BL). The nominating committee should nominate in accordance with democratic procedures a certain number of candidates for the office of CE, who was to be elected through universal suffrage by all registered voters of HKSAR. Given that the NPCSC Decision had made it clear that the election of CE in 2017 would be implemented by universal suffrage under the one-person-one-vote system, members could discuss how EC for 2012 should be formed, and whether and how it should be transformed as the nominating committee in 2017. If consensus could be reached on these issues, the only outstanding issue would be the nomination procedure.

Electoral method for LegCo for 2012

The Administration's proposal to allocate five additional FC seats to DC members

6. Mrs Regina IP expressed concern about the Administration's proposal to allocate five additional FC seats to DC members. She observed that as some DC members were returned from a constituency area with a small electorate or returned uncontested, some of them would often focus on the interests of their districts only. As a result, many policies or initiatives for the overall needs of the society could not be proceeded with because of their opposition at district level. She asked how such contradiction could be resolved if their participation in LegCo business was to be enhanced. Mrs IP further enquired whether the electoral method for forming LegCo in 2016 would be further democratised in the same manner.

7. SCMA said that the concern raised by Mrs IP was not new, but he would look at the issue from two perspectives. First, the Administration strived to further democratised the two electoral methods in 2012 within the framework laid down in the NPCSC Decision. The proposal to allocate a total of six FC seats to DC members would broaden substantially the electorate base of FCs to more than three million, thereby enhancing its representativeness. Second, although some DC members were returned from a constituency area with a small electorate, the six DC members who wished to become LegCo Members would have to seek support from the 405 elected DC members who had a public mandate. The DC FC Members so elected therefore were expected to have a broader perspective. While DC members might bring district matters into LegCo, they had to pay

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regard to the well-being of Hong Kong people as a whole when dealing with territory-wide issues. The DC-cum-LegCo Members should be able to consider issues from both macroscopic and microscopic points of view. As regards the electoral method for forming LegCo in 2016, the CE returned in 2012 would have to work with the Fifth LegCo to deal with the issue.

8. Mrs Regina IP enquired about the method for elected DC members to elect among themselves the members to return as LegCo Members. SCMA responded that at present, the DC FC Member was returned by the first-past-the-post system. The Administration welcomed views from Members and the public on the method to return the six DC FC Members.

9. Mr LEE Cheuk-yan expressed dissatisfaction that the preliminary package of proposals in the Consultation Document had failed to provide a roadmap and a direction for the implementation of universal suffrage in Hong Kong. He considered the Administration's proposal to allocate the five additional FC seats to DC Members retrogressive. Mr LEE asked whether it was the intention of the Administration to turn all the 35 FC seats into DC FC seats in 2020 and denied voters of the right to elect the 35 LegCo Members directly.

10. SCMA said that he could not agree that the preliminary package of proposals in the Consultation Document in respect of the LegCo election was retrogressive. The democratic elements of LegCo as a matter of fact would be enhanced with an addition of 10 seats whose Members would be returned by GCs through direct or indirect elections. For the five additional FC seats allocated to DC members, they were returned through election from among elected DC members who had a public mandate. The NPCSC Decision had already made it clear that universal suffrage could be implemented for the CE election and LegCo election in 2017 and 2020 respectively. From the present time until 2020, there would be two LegCo elections to be held in 2012 and 2016. Incumbent Members, if returned in these two elections, would continue to be involved in the discussion and decision on the models for implementing universal suffrage for forming LegCo. The current-term Government, which was only authorised to determine the two electoral methods in 2012, had not formulated any proposals for the LegCo election in 2020.

11. Dr PAN Pey-chyou expressed support for the preliminary package of proposals in the Consultation Document. However, he was concerned that DC members who wished to become DC FC Members might try to bring up more issues relating LegCo business for discussion in DCs, resulting a dilution of the functions of DCs.

12. SCMA responded that the proposal to allocate the five additional FC seats to DC members sought to provide more opportunities for political talents to participate in LegCo business, and to enhance the communication between LegCo

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and DCs. Broadening the scope for political participation would be conducive to the constitutional development of Hong Kong in the long term. As it had been the Administration's established practice to consult DCs on major policy issues, there was no question of the functions of DC being diluted as a result of the addition of five DC FC seats.

13. Dr PAN Pey-chyou asked whether a DC member could retain his DC FC seat in LegCo if he or she was disqualified from office because of misconduct. Pointing out that a DC FC Member serving the Fifth LegCo from 2012 to 2016 would cease to be a DC member in 2015 as there was a time lag between a LegCo election and a DC election, he further asked whether that DC member would be disqualified as a DC FC Member in the last year of his four-year tenure.

14. SCMA explained that whether a DC FC Member could retain his seat in LegCo when he ceased to be a DC member would depend on whether he still maintained substantial connection with the sector he represented. BL 79 provided the conditions under which a LegCo Member could be disqualified from office.

15. Mr CHEUNG Man-kwong said that if the Administration was sincere about implementing universal suffrage for forming LegCo, it should have followed the principle of gradual and orderly progress by broadening the electorate base of FCs in 2012. The Administration, however, had refused to replace corporate votes with individual votes merely on the grounds that the process would be too complicated and the interests of many different sectors and individuals would be involved. In his view, the Administration was making excuses to protect the interests of the privileged groups.

16. SCMA explained that the process of replacing corporate votes with "director's/executive's/association's/individual votes" was indeed complex. Take the proposal to replace one corporate vote with six directors' votes as an example, the proposal was likely to attract different reactions from various sectors and individuals. It would not be easy for the community to reach consensus on the matter.

17. Mr CHEUNG Man-kwong said that the proposal to allocate five additional FC seats to DC members should be further democratised. He suggested that the six DC FC Members, instead of being elected from among elected DC members themselves, should be elected by 3.3 million registered voters of the 18 DCs. The candidates running in the election for the six DC FC seats should be nominated by DC members, and the electorate of three DCs with 550 000 voters would each elect one DC FC Member. Mr CHEUNG considered that the community would have greater confidence that universal suffrage for forming LegCo would be implemented in 2020 if such proposal was adopted to broaden the electorate base of FCs as it would greatly enhance the representativeness of LegCo.

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18. SCMA said that although each constituency area of DCs had a population of only 17 000 residents, the total electorate of the 405 constituency areas was 3.3 million. The preliminary package of proposals in the Consultation Document had already enhanced the democratic elements of the LegCo election. The Administration, however, would study Mr CHEUNG's proposal along with other proposals put forward during the public consultation exercise.

19. Mr Paul TSE said that if the objective of the preliminary package of proposals in the Consultation Document was to broaden the electorate base for injecting more democratic elements, creating a FC for women not in employment should also be a viable method for the Administration to consider.

20. Ms Cyd HO said that the purpose of further democratising the two electoral methods was to enhance the accountability of the Government and LegCo to the people of Hong Kong. While the preliminary package of proposals in the Consultation Document claimed that the electorate base of DCs was 3.3 million, each DC member in fact was accountable to only 17 000 residents. In addition, the DC member who was returned to EC or to LegCo was indirectly elected. He or she would be accountable to the political party or the power organ behind which made him or her won in the election. Ms HO further said that the NPCSC Decision had not ruled out the possibility of broadening the electorate base of FCs to cover 3.3 million electors. She enquired why the Administration had not pursued that possibility.

21. SCMA said that the 405 elected DC members were accountable to 3.3 million voters. Any corrupt and illegal conduct during elections would be subject to the regulation by the Independent Commission Against Corruption. As regards Ms HO's proposal to broaden the electorate base of the 28 FCs to 3.3 million in 2012, SCMA pointed out that it was tantamount to implementing universal suffrage for forming LegCo in 2012 which was not consistent with the NPCSC Decision.

22. Ms Audrey EU asked whether amendments to Annex II to BL would be required if the electorate base of FCs was broadened by allowing the existing 226 000 FC electors to cast one vote each to return 30 FC Members; if not, whether the relevant legislative proposal would only require a majority support rather than a two-thirds majority support in LegCo.

23. SCMA responded that theoretically, the proposal put forth by Ms EU would only require amendments to the relevant local legislation and the majority support of all LegCo Members. Different sectors of the community, however, would have views on the proposal and would need to be consulted for consensus to be formed.

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24. Mr LAU Kong-wah said that the public had conveyed two messages after learning lessons from the 2005 proposed package. First, constitutional development should move forward rather than being stalled. Second, the ambition to democratise the two electoral methods in one go could stall development. He urged the Administration to take proactive action to explain in detail to the public the preliminary package of proposals in the Consultation Document and the importance to take a step forward. Mr LAU considered that the comments about the preliminary package of proposals in the Consultation Document being retrogressive unfounded. In his view, the preliminary package of proposals in the Consultation Document was an improvement over the 2005 proposed package in that a timetable for universal suffrage had already been secured and appointed DC members were excluded from returning all DC seats in EC and LegCo. As a former DC member, he could speak from experience that engaging in district matters was a first step to his political career. He had accumulated useful experience at district level which helped him deal with LegCo business. He held the view that the calibre of DC members was not necessarily lower than that of LegCo Members.

Retention or abolition of FCs

25. Dr Margaret NG considered that it was not meaningful to discuss the preliminary package of proposals in the Consultation Document as it was merely a rehash of the 2005 proposed package. It was obvious that the Administration had no intention to abolish the FC system or to further democratise the electoral system in Hong Kong. Dr NG said that she did not ask for abolition of FCs in 2012. If the Administration was willing to make a firm statement in principle that the FC system would be abolished for implementing universal suffrage for LegCo in 2020, the controversy would have been resolved. She expressed dissatisfaction that while CS had admitted that the existing FC system did not comply with the principles of universality and equality, the Administration had suggested in the Consultation Document adding five new FC seats, which would only pose further hurdles for consensus to be reached for the ultimate abolition of all FC seats.

26. Dr Margaret NG further pointed out that while the NPCSC Decision stipulated that the 50:50 ratio for Members returned by FCs and GCs shall remain unchanged for 2012, it had not stated that the number of FCs could not be reduced. In order to avoid the pace of Hong Kong's constitutional development being held back, some academics had suggested various possible means to enhance the democratic elements in the two electoral methods for 2012 within the frame work laid down in the NPCSC Decision, such as setting up a bicameral legislature, abolishing "corporate votes" and broadening the electorate base of FCs. The Administration, however, did not take heed of these suggestions. Dr NG remarked that the preliminary package of proposals in the Consultation Document was a deception, and one would get nowhere trying to compromise with the Administration.

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27. SCMA responded that the preliminary package of proposals in the Consultation Document would inject new democratic elements into the two electoral methods for 2012. Increasing the number of LegCo seats from 60 to 70 would broaden the scope of political participation and adding five FC seats to be returned through election among elected DC members would broaden the electorate base of FCs to cover 3.3 million voters. The NPCSC Decision had made it clear that FC seats would not be abolished in 2012. There was ample time between the present time and 2020 for the community to discuss the specific model for implementing universal suffrage for LegCo in accordance with the principles of universality and equality.

28. Mr LEE Wing-tat said that the preliminary package of proposals in the Consultation Document was retrogressive as it had failed to address a number of issues including abolishing appointed DC seats, broadening the electorate base of FCs, and conflicting roles to be played by DC FC Members. Mr LEE said that the Administration's position that the current-term Government would not deal with the CE election in 2017 and the LegCo election in 2020 was not appropriate. As a leader with political foresight, apart from assuring the people of Hong Kong that the CE election in 2017 would be a contested one, CE should give an undertaking on behalf of the current-term Government that all FC seats would be abolished for the implementation of universal suffrage for forming LegCo in 2020.

29. SCMA said that since the introduction of the 2005 proposed package, the Administration had made progress in a number of areas. Apart from securing a timetable for implementing universal suffrage from NPCSC, the Administration had strived for maximum room to enhance the democratic elements in the two electoral methods in 2012 by putting forward the preliminary package of proposals in the Consultation Document. On the electoral method for forming LegCo by universal suffrage, SCMA said that any proposal to abolish FCs would require support from incumbent FC Members. He considered it very difficult to reach consensus on the matter at this stage.

30. Mr LEUNG Kwok-hung said that there was no political system in the world where half of its legislators were returned by small circle election. He considered that the FC system did not have any use and should be abolished.

31. Mr Paul TSE, however, remarked that the brand-new concept of "One Country, Two Systems" had been implemented in Hong Kong for more than a decade and no one had doubted its value. By the same logic, non-existence of the FC system in other jurisdictions did not necessarily mean that the system per se had no value for Hong Kong given the unique situation in the territory.

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32. Ir Dr Raymond HO queried why the retention of FCs and the implementation of universal suffrage should be mutually exclusive. He pointed out that BL was silent on the future of FCs when universal suffrage was implemented. He also queried whether the creation of 5 DC FC seats in LegCo was inconsistent with the principle of balanced participation, given that DC FC Members would account for one-sixth of FC Members. Ir Dr HO requested the Administration to provide a paper on the Administration's views on FCs.

33. SCMA said that the Administration had not formed any view on the future of FCs when universal suffrage for LegCo was implemented in 2020. There were views among the community that FCs should be abolished, but there were also views that FCs should be retained. Although one-sixth of FC seats would be taken by DC members under the preliminary package of proposals in the Consultation Document, broadening the electorate base would pave the way for the implementation of universal suffrage. SCMA added that the Commission on Strategic Development had issued discussion papers relating to FCs and he would re-submit these papers for members' information if necessary.

34. Mr Jeffrey LAM said that the constitution of LegCo by GC and FC seats was developed after careful consideration and he wondered why some Members perceived the FC system as a weirdo. He expressed dissatisfaction about the conspiracy theory raised by some members that some power organs had manipulated the election behind the scene. Mr LAM considered that such remarks would only divide the community and would not be conducive to constitutional development. As members of the public recognised the contribution of FC Members and the merits of balanced participation, he considered that the FC system should be retained, albeit in some other form with changes to its electoral method, when universal suffrage was implemented for forming LegCo.

35. Professor Patrick LAU said that Members' views on the future of FCs remained divided. Some Members advocated its retention but some Members advocated its abolition. As the Administration had only three months to conduct the consultation exercise, he doubted whether consensus could be reached within such a short timeframe.

36. SCMA responded that some pan-democratic Members held the view that if FCs would be retained in 2012, its electorate base must be broadened. Some Members had suggested broadening the electorate of FCs to 3.3 million which, in the Administration's view, would change the nature of FCs. To strike a balance, the Administration suggested retaining the 28 FCs and stopped adding traditional FC seats. It proposed to add more LegCo seats to broaden the scope of political participation while maintaining the half-and-half ratio between Members returned by FCs and Members returned by GCs through direct election in accordance with the NPCSC Decision. According to the Administration's proposal to allocate the

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five additional seats to elected DC members, the composition of directly elected seats would increase from 50% to 58.5% with the addition of five DC FC Members. It had set the direction to further democratise the electoral system before the implementation of universal suffrage for forming LegCo in 2020.

37. Mr Jeffrey LAM enquired how Hong Kong could maintain the principle of balanced participation in the CE and LegCo elections.

38. SCMA explained that balanced participation meant that the interests of different sectors of the community would be represented in LegCo. In the CE election in 2012, the proposal to expand the membership of EC and to maintain the proportion of members of the four sectors would be able to achieve balanced participation. Balanced participation would be maintained if the nominating committee would be transformed from EC in the CE election in 2017. In the LegCo election in 2012, the NPCSC Decision stipulated that the half-and-half ratio between Members returned by FCs and GCs through direct election should remain unchanged. As to whether balanced participation could be maintained in the 2020 LegCo election when universal suffrage was implemented, it would require the concerted effort of the relevant parties concerned.

39. Dr Philip WONG enquired how the principle of balanced participation would be realised when universal suffrage was implemented for the LegCo election.

40. SCMA said that over the years, there were diverse views within the community on the model for forming LegCo by universal suffrage. There were views that the FC seats should be abolished in one go and replaced by district-based seats returned by universal suffrage, i.e. the "one-person-one-vote" model. There were also views that the FC seats should be retained, but the electoral model should be changed, for example, by allowing FCs to nominate candidates for election by all voters of Hong Kong, i.e. the "one-person-two-votes" model whereby each voter could cast one vote in the GC election, and the other in the FC election. For the "one-person-31-votes" model, each voter could cast one vote in the GC election, and 30 votes in the FC election. However, there was concern as to whether the FC system on the basis of one-person-multi-votes would comply with the principles of universality and equality if there was restriction on the right to be nominated, i.e. the candidates must come from a particular sector. SCMA said that these issues were open to discussion.

41. Mr Abraham SHEK raised the following questions -

- (a) which BL provision stated that the existing FC system did not comply with the principles of universality and equality;

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- (b) whether the principle of balanced participation was inconsistent with the principles of universality and equality and, if so, why the NPCSC Decision stated that FCs should be retained; and
- (c) whether the principle of balanced participation would be rendered ineffective in certain stage of constitutional development.

42. SCMA responded that -

- (a) while BL 45 and BL 68 stipulated clearly that Hong Kong shall attain the ultimate aim of selecting CE and forming LegCo by universal suffrage, the provisions had not elaborated on the principles of universality and equality;
- (b) the Green Paper on Constitutional Development published by the Administration in July 2007 (the Green Paper) had covered the concepts and principles of universal suffrage. The concept of "universal suffrage", as generally understood internationally, should include the principles of universality and equality. As far as individual jurisdiction was concerned, while conforming to the general international understanding of universal suffrage, it could also develop its electoral system having regard to the particular needs and aspiration of its people, the uniqueness of its socio-economic situation, and its historical realities;
- (c) the ultimate aim of universal suffrage for Hong Kong's constitutional development originated from BL, not the International Covenant on Civil and Political Rights (ICCPR). Article 25(b) of ICCPR stipulated that "Every citizen shall have the right and opportunity to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." Upon the ratification of ICCPR in 1976, a reservation had been made not to apply Article 25(b) to Hong Kong. After the establishment of HKSAR, in accordance with the notification of the Central People's Government (CPG) to the United Nations Secretary-General in June 1997 and BL 39, the reservation continued to apply to HKSAR;
- (d) in the process of attaining the ultimate aim of universal suffrage and in designing a model for implementing universal suffrage, the following principles on constitutional development under BL had to be adhered to -
 - (i) balanced participation of different sectors of society;

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- (ii) facilitating the development of the capitalist economy;
 - (iii) gradual and orderly progress;
 - (iv) appropriate to the actual situation in HKSAR; and
- (e) the NPCSC Decision provided a timetable for implementing universal suffrage for the CE and LegCo elections. It had also stipulated that the half-and-half ratio between Members returned by FCs and GCs through direct election should remain unchanged for the LegCo election in 2012.

43. Mr LEE Cheuk-yan expressed regret at Mr Abraham SHEK's remarks on universal suffrage. He considered that Mr SHEK's query on the international principles of universality and equality indicated that he and those he represented were holding on the vested interests brought about by the FC system.

44. Ms Audrey EU asked about the Administration's view on the remarks made by Miss Maria TAM, member of the HKSAR Basic Law Committee, that the principle of universal suffrage was subject to the interpretation of NPCSC. SCMA responded that he was not in a position to comment on the remarks made by Miss TAM. In order to amend the two electoral methods, it was necessary to go through the "five-step mechanism" as stated in paragraph 1.03 of the Consultation Document. In this connection, consensus within Hong Kong and consensus of NPCSC would be required in order to take forward constitutional development.

45. Referring to Annex V to the Consultation Document which demonstrated clearly that the voting right of each voter was unequal, Ms Audrey EU enquired how the voting right of each voter would be made equal in accordance with the principles of universality and equality under the "one-person-two-votes" model.

46. SCMA responded that the Administration had not formed any view on the model for the election of LegCo Members by universal suffrage. The "one-person-two-votes" model was one of the proposals put forward to the Administration. There were views that changes could be introduced to make the FC electoral method consistent with the principles of universality and equality.

Consultation and legislative timetable

47. Mr WONG Kwok-hing enquired about the working timetable for the public consultation and legislative process for the two electoral methods in 2012.

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48. SCMA responded that -

- (a) the public consultation would end on 19 February 2010 following which the Administration would summarise all the views received. The time required for summarising the views would depend on the number of submissions and the diversity of views received from the public;
- (b) after summarising the views received, the Administration would formulate a proposed package for the two electoral methods. The proposed package and the draft motions concerning the amendments to Annexes I and II to BL would be presented to LegCo for consideration; and
- (c) if the above two steps could be completed before the summer of 2010, drafting of the relevant amendments bills would commence in the fourth quarter of 2010.

49. Mr Albert HO said that according to the opinion surveys conducted by the Government and tertiary institutions, the community by and large supported the implementation of dual universal suffrage in 2012. If that could not be achieved, the public would settle for the timeframe set out in the NPCSC Decision provided that the method for electing CE by universal suffrage would not include a screening process and the electoral method for forming LegCo by universal suffrage would not include the FC system. Mr HO expressed disappointment that the Consultation Document had not reflected the aspiration of the community in this regard. He was also disappointed that the Government only intended to summarise and conclude any views relating to universal suffrage received during the public consultation exercise for reference by the fourth term CE and the Fifth LegCo. Mr HO urged the Administration to reflect faithfully to CPG the aspiration of the community for universal suffrage in the coming two years, instead of simply forwarding the documents for NPCSC for the record.

50. SCMA said that the Administration had all along kept CPG informed of the developments in Hong Kong in respect of constitutional development. The following documents had been forwarded to CPG since 2004: the five reports published by the Constitutional Development Task Force together with submissions received, the Green Paper, and the "Report on the Public Consultation on Constitutional Development and on whether there is a need to amend the methods for selecting CE of HKSAR and for forming LegCo of HKSAR in 2012" together with the submissions received, etc. In accordance with BL and "The Interpretation by NPCSC of Article 7 of Annex I and Article III of Annex II to BL of HKSAR of the People's Republic of China" promulgated on 6 April 2004, it was necessary to go through the "five-step mechanism" for amending the two electoral methods, including reporting the relevant bill by CE to NPCSC for

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approval or for the record, as set out in paragraph 1.03 of the Consultation Document. According to the NPCSC Decision, the current-term Government was only authorised to deal with the two electoral methods in 2012. Noting that some political parties and groups in LegCo and some individuals and organisations in the community would like to discuss universal suffrage models as soon as possible, the Government therefore would summarise and conclude any views relating to universal suffrage received during the public consultation exercise. 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 LegCo elections.

51. Ms Emily LAU said that she had attended a forum on constitutional development organised by the Hong Kong Polytechnic University and the City University of Hong Kong. University students had expressed dissatisfaction at the forum that government officials had refused to attend. Students also enquired why the "three-step mechanism" for amending the two electoral methods as prescribed in BL had become the "five-step mechanism" referred to in paragraph 1.03 of the Consultation Document. Ms LAU said that those students supported the implementation of dual universal suffrage in 2012 and urged the Administration to have a dialogue with them.

52. SCMA said that the Administration welcomed views on the Consultation Document from any organisations. He said that the "five-step mechanism" for amending the two electoral methods was based on the NPCSC Interpretation made on 6 April 2004. In accordance with the Constitution of the People's Republic of China, NPC enacted BL, prescribing the systems to be practised in HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong. As NPCSC was empowered to interpret BL under BL 158, the "five-step mechanism" was legally binding.

53. Mr Paul TSE expressed the view that universal suffrage was just an indicator of and should not be the ultimate goal for constitutional development. He pointed out that a number of key issues were raised in the Consultation Document which had far-reaching implications on the constitutional development of Hong Kong which should not be brushed aside. For instance, whether CE should be prohibited from having any political affiliation would impact on the development of political parties in Hong Kong. Mr TSE remarked that the requirement of two-thirds majority support for passing important motions was adopted world-wide, not only in BL. Not passing a motion relating to constitutional development was therefore the norm rather than the exception.

54. SCMA responded that the Administration was fully aware of the difficulties in gaining a two-thirds majority support and it would make the best endeavour to reach consensus with Members on the two electoral methods in 2012. However, it would take the concerted effort of the Executive, the Legislature and the public

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to make real progress. If the Executive and Legislature could go through the mechanism for amending the electoral methods provided in Annexes I and II to BL this time round, it would lay a solid basis for amending the electoral methods when the two electoral methods would be further democratised in the future.

55. Mr Paul TSE enquired when the "five-step mechanism" would be triggered again for amending the electoral method for the LegCo in 2016 and the CE in 2017. SCMA replied that it would be decided by the CE elected in 2012.

Resignation en masse of Members returned from five GCs

56. Mr WONG Kwok-hing expressed concern about the impact of the plan of some pan-democratic Members to bring about a so-called "de facto referendum" to demand for dual universal suffrage in 2012 through resignation of five GC Members (the resignation plan) on the consultation exercise and constitutional reform.

57. SCMA responded that the Administration would not take advantage of the fact that if the resignation plan was to be implemented, the total number of pan-democratic Members before the holding of the by-elections would not be adequate to veto the motions concerning the amendments to the two electoral methods in 2012. While the Administration would not take advantage of the situation, it would also not stall the consultation exercise and would table the two motions to LegCo for voting when it was ready to do so. In other words, the Administration would deal with the issue of by-elections, if arose, and the motions to amend the two electoral methods in 2012 in separate tracks.

58. Mr WONG Kwok-hing enquired about the estimated expenditure for arranging by-elections and whether it would require the funding approval of LegCo. The Chairman enquired about the time required to prepare for holding the by-elections if required.

59. SCMA responded that according to electoral law, the date to hold by-elections would be appointed by the Electoral Affairs Commission. Based on the experience in the 2007 Hong Kong Island GC by-election, it was held four months after the Clerk to LegCo made the declaration as to the existence of a vacancy in the membership of LegCo. Since the resignation plan would involve five GCs, preparation for the by-elections could take longer than four months, at a cost of \$150 million. He added that the Administration would account to LegCo the funding arrangements for the by-election.

60. Mr WONG Kwok-kin expressed concern whether the resignation plan would give rise to constitutional crisis, if LegCo Members had, in accordance with the aspiration of the community, voted down the funding proposal for conducting the by-elections.

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61. SCMA responded that in serving the people of Hong Kong, the Administration had the constitutional responsibility to hold by-elections when vacancies arose in the membership of LegCo. Similarly, LegCo Members had the constitutional duty to reflect the views of the public and monitor the work of the Government, including taking forward the necessary amendments to the two electoral methods in 2012. The demand for dual universal suffrage in 2012, which was the theme of the resignation plan, had been thoroughly discussed following the promulgation of the NPCSC Decision. As regards the two motions to amend the two electoral methods in 2012, Members had the discretion to support or veto them when they were put forth to LegCo. The Administration hoped that Members would adopt a pragmatic approach and roll forward democracy by supporting the motions to amend electoral methods in 2012 to be put forth by the Administration. If Members chose otherwise, there was still the opportunity to pursue universal suffrage for the CE election in 2017 and the LegCo election in 2020. If pan-democratic Members, having considered all the aforementioned factors, decided to go ahead with the resignation plan, the Administration was duty bound to arrange by-elections in accordance with the requirements of BL and the LegCo Ordinance (Cap. 542) (LCO).

62. Dr Priscilla LEUNG said that many DC members had reflected to her that they supported the preliminary package of proposals in the Consultation Document. She expressed concern that if a Member resigned because of his or her political stance which was different from that of the Government, or because of the intention to attract media coverage, the Government would have no choice but to hold a by-election even though the Member would stand for the by-election. She said that the policy to allow resigned Members to run in by-elections should be reviewed to prevent any abuse. She considered that the resignation plan was a waste of public money and she would not support the funding proposal.

63. SCMA said that the funding arrangements for conducting by-elections arising from the resignation plan would be controversial. The Government, however, had the constitutional responsibility to conduct by-elections when there were vacancies in the membership of in LegCo. He drew Members' attention to BL 26 which stated that permanent residents of HKSAR should have the right to vote and the right to stand for election. Members who wished to amend LCO should ensure that any proposal to do so would comply with BL.

64. Mr LEUNG Kwok-hung said that the resignation plan sought to give an opportunity to Hong Kong people to express their view about implementation of universal suffrage. The remark that it was a waste of money was an insult to the people of Hong Kong.

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65. Mr WONG Yuk-man said that he was not interested in commenting on the preliminary package of proposals in the Consultation Document which was a "class" project for the capitalist class to dominate over the under-privileged. The constitutional reform proposals contained therein which continued to make the vast majority of the general public a "third-class citizen" only sought to serve the interests of the capitalists. Mr WONG expressed strong dissatisfaction that under the existing and the proposed electoral systems, some voters had more votes than the others. He envisaged that the Administration would make concession by modifying its proposals in order to seek the support of some Members. However, it might not be necessary to do so because the motions to amend the two electoral methods were expected to be passed by LegCo, irrespective of whether the resignation plan would be proceeded with.

66. The meeting ended at 4:48 pm.

Council Business Division 2
Legislative Council Secretariat
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