



# Green Paper on Constitutional Development

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## **Chapter One: Background**

- 1.01 To resolve the problem left over from history, the State formulated the basic policies of “One Country, Two Systems”, “Hong Kong people ruling Hong Kong” and “a high degree of autonomy” to prepare for Hong Kong’s reunification. The Joint Declaration signed in 1984 set out the basic policies of the State regarding Hong Kong and prescribed that, upon resumption of the exercise of sovereignty over Hong Kong in 1997, the current systems in Hong Kong would remain unchanged.
- 1.02 The drafting of the Basic Law then commenced in 1985. The Constitution of the People’s Republic of China (“the Constitution”) provides the basis for the Basic Law. In accordance with Articles 31 and 62 of the Constitution, the National People’s Congress (“NPC”) decided that the Hong Kong Special Administrative Region (“HKSAR”) should be established, and prescribed the systems to be practised in the HKSAR through the Basic Law.
- 1.03 The Basic Law is enacted on the basis of the Constitution. The purpose is to implement the basic policies of the State regarding Hong Kong. The people of Hong Kong and the community support the implementation of “One Country, Two Systems”, “Hong Kong people ruling Hong Kong” and “a high degree of autonomy” under the framework of the Basic Law, and support Hong Kong’s return to the motherland on this basis.
- 1.04 Regarding the electoral systems in Hong Kong, the Joint Declaration provides:
- (i) that the Chief Executive (“CE”) of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People’s Government (“CPG”); and
  - (ii) that the legislature of the HKSAR shall be constituted by elections.
- 1.05 Articles 45 and 68 of the Basic Law (coupled with Annexes I and II) have prescribed the method for electing the CE and for forming the Legislative Council (“LegCo”). The Basic Law further prescribes

the ultimate aim of selecting the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures, and of electing all the members of LegCo, by universal suffrage in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The requirements regarding the method for electing the CE and for forming LegCo of the Basic Law were made following extensive consultation and discussion within Hong Kong; this represented the consensus achieved within the community.

- 1.06 Taking forward the HKSAR's democratic development is the common aspiration shared by the Central Authorities, the HKSAR Government and Hong Kong people. The ultimate aim of electing the CE and forming LegCo by universal suffrage is prescribed by the Basic Law and must be attained. The aspects on which the community has yet to reach consensus cover how and when the ultimate aim of universal suffrage can be attained in accordance with the Basic Law.
- 1.07 Since the establishment of the HKSAR, Hong Kong's political structure has been developing in accordance with the provisions of the Basic Law, and has been making progress towards the ultimate aim of universal suffrage in a gradual and orderly manner. Prior to the handover, Governors of Hong Kong were appointed by the British Government for the implementation of colonial rule in Hong Kong. After the handover, in accordance with the principle of "Hong Kong people ruling Hong Kong" and the relevant provisions of the Basic Law, the CE should be a Chinese citizen who is a permanent resident of the HKSAR, and is nominated and elected by the Election Committee.
- 1.08 Moreover, the number of LegCo seats returned by direct geographical elections increased from 20 in 1998 to 24 in 2000, and to 30 in 2004. The proportion of seats returned by direct geographical elections has been increased by 50% in the seven years since reunification, and accounts for half of all 60 seats in LegCo.
- 1.09 The HKSAR Government is firmly committed to promoting democratic development in Hong Kong gradually in accordance

with the Basic Law. In taking forward Hong Kong's constitutional development towards the ultimate aim of universal suffrage, the HKSAR Government put forth, in October 2005, a package of proposals for amending the electoral methods for the 2007 CE election and the 2008 LegCo election. The proposed package would have enhanced the democratic elements in the two electoral methods through including District Council ("DC") members in the Election Committee, enabling them to elect among themselves more representatives to LegCo, and increasing the number of district-based seats returned by direct elections.

- 1.10 At the same time, the CE initiated in November 2005, for the first time in Hong Kong, wide-ranging and substantive discussions through the Commission on Strategic Development ("the Commission") about the models, roadmap and timetable for implementing universal suffrage. Members of the Commission are drawn from a broad cross-section of the community, including professionals, academics, businessmen, representatives of different political parties, LegCo Members, and prominent labour and media personalities, etc. The Commission provides an open and public platform for the discussion to be taken forward.
- 1.11 Although the package received the support of the majority of the public<sup>1</sup> and more than half of all LegCo Members, when the proposed package was put to vote at LegCo in December 2005, it was not endorsed by a two-thirds majority of all LegCo Members as required by Annexes I and II to the Basic Law. In accordance with the Interpretation made by the Standing Committee of the National People's Congress ("NPCSC") on 6 April 2004, if no amendment is made to the methods for selecting the CE and for forming LegCo as stipulated in Annexes I and II to the Basic Law, the provisions relating to the two electoral methods in Annexes I and II to the Basic Law will still be applicable. Hence, the existing electoral arrangements continue to apply to the 2007 CE election and the 2008 LegCo election.
- 1.12 Notwithstanding that, the HKSAR Government is fully alive to the community's aspirations for universal suffrage and considers that

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<sup>1</sup> Before the package was put to vote at LegCo in 2005, according to different opinion polls, around 60% of the population supported the package.

the work to study the issue of universal suffrage should not be brought to a halt. Hence, the HKSAR Government has continued to explore actively the models and roadmap for implementing universal suffrage for the CE and LegCo through discussion at the Commission, hoping that this could help promote discussion within the community, with a view to narrowing differences and forging broad consensus.

- 1.13 In the past 20 months, the Commission has held 10 meetings and five workshops to discuss the issue of universal suffrage. The Commission has drawn conclusions on the principles and concepts about universal suffrage that, in implementing universal suffrage, we should comply with the principle of gradual and orderly progress, meet the actual situation in Hong Kong, facilitate the development of the capitalist economy and address the interests of different sectors of society.
- 1.14 The Commission commenced substantive discussions on the models, roadmap and timetable for implementing universal suffrage for the CE and LegCo in July last year. Members have examined in detail various specific proposals and have been narrowing differences. This has provided a basis for the community to have further discussion on the issue of universal suffrage. The relevant discussion papers and summary of views of the Commission are provided at Appendix II.
- 1.15 During his election campaign earlier this year, the CE has already made it clear that he would endeavour to forge consensus within the community on the issue of universal suffrage within his new term, so that universal suffrage could be implemented as soon as possible. He has undertaken to publish a green paper on constitutional development (“the Green Paper”) in mid-2007, after the third term HKSAR Government has been formed in July, for consulting the public on the options, roadmap and timetable for implementing universal suffrage for the CE and LegCo.
- 1.16 In this regard, the Constitutional and Mainland Affairs Bureau has prepared this Green Paper for conducting a three-month public consultation to widely collect views on the options, roadmap and timetable for implementing universal suffrage for CE and LegCo

from different sectors of the community.

- 1.17 This Green Paper is prepared on the basis of the discussions of the Commission and the proposals provided by different political parties and groups, as well as individuals and organisations from the community. To facilitate public discussion, we have presented three types of options on the models, roadmap and timetable for implementing universal suffrage for CE and LegCo respectively. The full text of all relevant proposals received from various political parties and groups, organisations and individuals are included Appendix I to Green Paper for reference.
- 1.18 To facilitate public discussion, we have also set out in Chapter Two of the Green Paper the principles and considerations that need to be taken into account when designing the universal suffrage models in accordance with the provisions of the Basic Law.
- 1.19 Following the end of the public consultation period in October this year, the HKSAR Government will submit a report to the Central Authorities to reflect faithfully any mainstream views formed during the public consultation period and other views expressed.

## **Chapter Two: Constitutional Basis of Constitutional Development and Principles of Design of the Political Structure**

2.01 The political structure of the HKSAR is prescribed in Chapter IV of the Basic Law and Annexes I and II.

2.02 Article 45 of the Basic Law provides that:

“The CE of the HKSAR shall be selected by election or through consultations held locally and be appointed by the CPG.

The method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

The specific method for selecting the CE is prescribed in Annex I: ‘Method for the Selection of the CE of the HKSAR’.”

2.03 Article 68 of the Basic Law provides that:

“The LegCo of the HKSAR shall be constituted by election.

The method for forming LegCo shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of LegCo by universal suffrage.

The specific method for forming LegCo and its procedures for voting on bills and motions are prescribed in Annex II: ‘Method for the Formation of LegCo of the HKSAR and Its Voting Procedures’.”

2.04 The above provisions of the Basic Law clearly stipulate that the ultimate aim is the election of the CE and all the members of LegCo by universal suffrage. In order to understand the meaning of “universal suffrage” in the Basic Law, we must take the constitutional status of the HKSAR and the principles of design of its political structure as the starting point.



## **The Constitutional Status of the HKSAR**

- 2.05 The Constitution and the Basic Law form the constitutional basis of the political structure of the HKSAR. It is stated in the Preamble to the Basic Law that upholding national unity and territorial integrity, preserving the prosperity and stability of Hong Kong, and taking account of its history and realities, the State decided that, upon its resumption of the exercise of sovereignty over Hong Kong, the HKSAR shall be established in accordance with the provisions of Article 31 of the Constitution, and that under the principle of “One Country, Two Systems”, the socialist system and policies shall not be practised in Hong Kong. In accordance with the Constitution, the NPC enacted the Basic Law, prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong.
- 2.06 Regarding the constitutional status of the HKSAR, Article 12 of the Basic Law explicitly provides that:
- “The HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the CPG.”
- 2.07 The PRC is a unitary state, and the HKSAR is a local administrative region under such a system. The systems practised in the HKSAR are prescribed by the NPC through the Basic Law, and the high degree of autonomy enjoyed by the HKSAR is conferred by the NPC in accordance with the Basic Law. In other words, all powers exercised by the SAR are derived by way of authorisation by the Central Authorities, and there are no “residual powers” on the part of the SAR. Furthermore, the Basic Law also provides that the HKSAR comes directly under the CPG, with no intermediate layer in between.
- 2.08 Given the above-mentioned constitutional status of the HKSAR, the Central Authorities have the constitutional powers and responsibilities to determine the model of political structure of the HKSAR. The role played by the Central Authorities in this regard is also realised in the Basic Law provisions relating to political structure. For example:

- (i) according to the Interpretation by the NPCSC on 6 April 2004, as regards whether there is a need to make an amendment to the method for the selection of the CE and that for the formation of LegCo for the terms subsequent to the year 2007 as stipulated in Annexes I and II to the Basic Law, the CE shall make a report to the NPCSC for it to make a determination. According to the Interpretation, after an amendment has been endorsed by LegCo and has received the consent of the CE, it will still require the approval or acceptance for the record by the NPCSC before it may take effect. This realises the ultimate power of the Central Authorities to determine the constitutional development of the HKSAR, including the timetable for attaining universal suffrage and the model and design of the universal suffrage system. Unlike sovereign states, the HKSAR cannot decide the political structure on its own; and
- (ii) Article 45 of the Basic Law provides that the CE shall be selected by election or through consultation conducted locally and be appointed by the CPG. Article 43 of the Basic Law provides that the CE shall be accountable to the CPG and the HKSAR. The appointment made by the CPG is substantive and not a formality. It may make the appointment or it may not. This arrangement realises the fact that the State is a unitary state, and that the HKSAR is an integral part of the PRC with the constitutional status of a local administrative region which comes directly under the CPG and which enjoys a high degree of autonomy through authorisation. Thus, irrespective as to how the CE is selected, including by means of universal suffrage ultimately, there can be no deviation from the constitutional requirement that a candidate winning an election must be appointed, in a substantive manner, by the CPG before assuming office.

## **Principles of Design of the Political Structure of the HKSAR**

2.09 The design of the political structure of the SAR is relevant to giving effect to the exercise of sovereignty, as well as the full implementation of “One Country, Two Systems” and the basic policies of the Central Authorities. The HKSAR does not have any right to change unilaterally the systems prescribed by the Central

Authorities. Thus, any proposed amendments must comply with the provisions of the Basic Law. Amendments to the design and principles of the political structure prescribed in the Basic Law must not be contemplated lightly.

2.10 In the process of attaining the ultimate aim of universal suffrage and in designing a model for implementing universal suffrage, we must ensure that the basic policies of the State regarding Hong Kong and the four principles on constitutional development under the Basic Law could be fully implemented<sup>2</sup>:

- (i) meeting the interests of different sectors of society;
- (ii) facilitating the development of the capitalist economy;
- (iii) gradual and orderly progress; and
- (iv) appropriate to the actual situation in the HKSAR.

(i) *Meeting the Interests of Different Sectors of Society*

2.11 As could be seen from the history of Hong Kong's economic development, economic prosperity is largely dependent on the joint efforts of the industrial and business sectors, the middle-class, the professionals, the working class, and other sectors of society. To achieve the aim of preserving prosperity and stability, we must ensure properly that the interests of different sectors of society can be met.

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<sup>2</sup> In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, the Chairman of the Drafting Committee for the Basic Law Mr Ji Peng-fei made the following explanations:

“The political structure of the HKSAR should accord with the principle of ‘One Country, Two Systems’ and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong’s reality should gradually be introduced.”

The four principles on constitutional development can be derived from the above explanations of Director Ji on political structure and the provisions in Articles 45 and 68 of the Basic Law.

2.12 In accordance with the Decision of the NPCSC of 26 April 2004 on the methods for selecting the CE in 2007 and for forming LegCo in 2008, the two methods shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress, with universal suffrage as the ultimate aim. The Decision also states that any change relating to the two methods “shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong.”

(ii) *Facilitating the Development of the Capitalist Economy*

2.13 In his explanation, Director Ji pointed out that Chapter V of the Basic Law contains provisions on the economic systems and policies of the HKSAR. These provisions are indispensable to ensuring normal operation of Hong Kong’s capitalist economy and maintaining its status as an international financial centre and a free port. This is to preserve the prosperity and stability of Hong Kong. The relevant principles are prescribed in Article 5 of the Basic Law and other relevant provisions<sup>3</sup>. For example, Article 107 of the Basic Law stipulates that “(t)he HKSAR shall follow the principle of keeping the expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product.” This provision is based on Hong Kong’s successful experience in the past, and aims at maintaining the long-term prosperity and stability of the HKSAR.

2.14 Moreover, in accordance with Article 108 of the Basic Law, “(t)he HKSAR shall practise an independent taxation system. The HKSAR shall, taking the low tax policy previously pursued in Hong Kong as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation.” This provision has regard to the fact that the relatively low tax system adopted by Hong Kong has helped attract overseas

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<sup>3</sup> See Chapter V of the Basic Law.

and local investments, and has contributed to Hong Kong's continuous stability and prosperity.

- 2.15 As a major international trade and financial centre, in order to maintain Hong Kong's prosperity, it is necessary for Hong Kong to ensure that the principle of "facilitating the development of the capitalist economy" could be fully implemented, and to preserve the previous capitalist system and way of life. This is an important principle underlying the concept of "One Country, Two Systems". Hence, in the process of attaining universal suffrage and in designing a model for universal suffrage, we must take into account the implications of the relevant arrangements on Hong Kong's economic development and fiscal position.<sup>4</sup>

(iii) *Gradual and Orderly Progress*

- 2.16 It is generally understood that "gradual and orderly progress" means proceeding step by step in an orderly fashion to move forward. It involves a step by step transition, and different stages of evolution over time. With regard to arriving at the ultimate aim of selecting the CE and electing all members of LegCo by universal suffrage, the evolutionary process could not be taken forward too rapidly, and should proceed in a gradual and orderly manner and in the light of the actual situation in the SAR, in order to preserve its prosperity and stability.

(iv) *Appropriate to the Actual Situation in the HKSAR*

- 2.17 The "actual situation" of the HKSAR referred to in the Basic Law includes political, economic, and social conditions.

### **Concepts and Principles of Universal Suffrage**

- 2.18 Article 39 of the Basic Law provides that the provisions of the International Covenant on Civil and Political Rights ("the Covenant") as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

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<sup>4</sup> Please refer to Appendix II for the Commission's discussions on the provisions of the Basic Law concerning the capitalist economy.

2.19 Article 25 of the Covenant stipulates that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2<sup>5</sup> and without unreasonable restrictions:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) 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;”.

2.20 Upon ratification of the Covenant in 1976, a reservation was made reserving the right not to apply sub-paragraph (b) of Article 25. After the establishment of the HKSAR, in accordance with the CPG’s notification to the United Nations (“UN”) Secretary-General in June 1996 and Article 39 of the Basic Law, this reservation continues to apply to the HKSAR. Hence, the ultimate aim of universal suffrage for Hong Kong’s constitutional development originates from the Basic Law, and not the Covenant.

2.21 In a 1994 UN publication entitled “Human Rights and Elections, A Handbook on the Legal, Technical and Human Rights Aspects of Elections”, it is stated that:

“UN human rights standards relating to elections are broad in nature and thus may be achieved through a variety of political systems. UN electoral assistance does not seek to impose any given political model. Rather, it is based upon a realisation that there is no single political system or electoral methodology which is appropriate for all peoples and states. While comparative examples provide useful guidance for the construction of democratic institutions that both respond to domestic concerns and conform to international human

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<sup>5</sup> Article 2(1) of the Covenant states that each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

rights norms, the best formulation for each jurisdiction will ultimately be shaped by the particular needs, aspirations and historical realities of the people involved, taken within the framework of international standards.”<sup>6</sup>

- 2.22 To further elaborate on the implementation of Article 25 of the Covenant, the UN Human Rights Committee has endorsed General Comments No. 25 in 1996. Although the document has not clearly defined “universal and equal” suffrage, it states that “no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (paragraph 3). The General Comments also point out that it is unreasonable to restrict “the right to vote on the ground of physical disability or to impose literacy, educational or property requirements” (paragraph 10).
- 2.23 As pointed out by the UN Human Rights Committee in its General Comments on Article 25, the Covenant does not seek to impose any specific electoral system. The Handbook of the UN has also stated that the system for each jurisdiction should be shaped by the particular needs, aspirations and historical realities of the people involved.
- 2.24 Having regard to the constitutional basis and principles of design of Hong Kong’s political structure, as well as the concept of “universal suffrage” as generally understood internationally, the concept of universal suffrage should include the principles of “universal” and “equal” suffrage. Universal suffrage system commonly adopted in overseas jurisdictions is a one-person-one-vote system which can take the form of direct or indirect election.
- 2.25 The general principle of equality of voting power does not necessarily require precise arithmetic equality in the power of each vote. For example, in geographical constituency elections, there can be reasonable variations amongst the constituencies in respect of the ratio between the number of seats and the size of population. In the

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<sup>6</sup> Office of the High Commissioner for Human Rights, United Nations, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, paragraph 17.

case of Hong Kong, there can be a variation of 15% in the ratio of the number of seats returned through geographical constituencies to the size of population.

- 2.26 The first District Board elections were held in 1982. In 1991, direct elections returning LegCo Members through geographical constituencies were introduced. The number of registered voters of geographical constituencies was 1.92 million and the turnout rate was 39.1% at the time.
- 2.27 Since the establishment of the HKSAR, the constitutional arrangements of Hong Kong have become more open and embody more democratic elements. At present, half of the LegCo seats are returned from the geographical constituencies through direct election. In the 2004 LegCo election, the number of registered voters of geographical constituencies increased to 3.21 million electors, and the turnout rate increased to 55.6%. The increase in the number of registered voters and the rise of the voter turnout rate reflects the fact that the public have aspiration for greater participation in the area of elections.
- 2.28 However, there is no single electoral system that suits all places, and that one should not seek to impose any particular political model or electoral system on any place. As far as an individual jurisdiction is concerned, while conforming to the general international understanding of universal suffrage, it can also develop its electoral system having regard to the particular needs and aspirations of its people, the uniqueness of its socio-economic situation, and its historical realities.

### **Conclusions on Principles of Design of the Universal Suffrage Options**

- 2.29 To conclude, in discussing the options for implementing universal suffrage for electing the CE and for forming LegCo, we must consider, in accordance with the relevant provisions and principles, whether the relevant options can comply with:
- (i) the basic policies of the State regarding Hong Kong (paragraph 2.10 above);



(ii) the four principles on constitutional development, namely, meeting the interests of different sectors of society, facilitating the development of the capitalist economy, gradual and orderly progress, and being appropriate to the actual situation in Hong Kong (paragraphs 2.10-2.17 above); and

(iii) the principles of “universal” and “equal” suffrage (paragraph 2.24 above).

2.30 According to Annexes I and II to the Basic Law, any changes to the two electoral methods require the endorsement of a two-thirds majority of all the members of LegCo and the consent of the CE, and they shall be reported to the NPCSC for approval or for the record.

2.31 Hence, in order to secure for the best possible chance of attaining universal suffrage, we have to take into account the following factors when considering different options for implementing universal suffrage:

(i) the option should be consistent with the principles of design of the political structure of the SAR of the Basic Law and the relevant provisions. It should not require any amendments to the main provisions of the Basic Law;

(ii) the option should attract majority support among Hong Kong people;

(iii) the option should stand a reasonable chance of securing two-thirds majority in LegCo; and

(iv) the option should stand a good chance of being accepted by the CPG.

2.32 Chapters Three and Four of this Green Paper cover different types of options for electing the CE and for forming LegCo by universal suffrage respectively. We hope that the public can discuss the relevant issues on the basis that the relevant provisions and principles of the Basic Law can be complied with (paragraph 2.29

above), and that the criteria set out in paragraph 2.31 above can be fulfilled.

### **Chapter Three: Models for Electing the Chief Executive by Universal Suffrage**

- 3.01 Regarding the models for electing the CE by universal suffrage, various political parties, organisations and individuals from the community have put forth different proposals. Members of the Commission had made reference to these proposals when discussing the relevant issues. To facilitate public discussion, the paragraphs below set out and summarize the views of members of the community and members of the Commission on the models for electing the CE by universal suffrage.
- 3.02 Please refer to Appendix I of this Green Paper for all the proposals which we have received.

#### **Models for Electing the Chief Executive by Universal Suffrage: Three Types of Options**

- 3.03 Article 45 of the Basic Law provides that:

“The CE of the HKSAR shall be selected by election or through consultations held locally and be appointed by the CPG.

The method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.”

- 3.04 According to this provision, the selection and appointment of the CE involves four steps when universal suffrage is attained:
- (i) formation of a broadly representative nominating committee;
  - (ii) nomination by the nominating committee in accordance with democratic procedures;
  - (iii) selection by universal suffrage following nomination; and

(iv) appointment by the CPG.

3.05 In discussing the models for electing the CE by universal suffrage, we should consider the following three key issues:

(I) composition and size of the nominating committee;

(II) method of nomination; and

(III) method for selecting the CE by universal suffrage following nomination.

**(I) Composition and Size of the Nominating Committee**

3.06 In accordance with Article 45 of the Basic Law, the election of the CE by universal suffrage should be preceded by the nomination of candidates by a broadly representative nominating committee. Hence, when considering the composition of the nominating committee, we need to take into account whether the requirement of “broadly representative” can be complied with.

3.07 At present, in accordance with the provisions of Annex I to the Basic Law, the CE shall be elected by a broadly representative Election Committee in accordance with the Basic Law and appointed by the CPG.

3.08 The Election Committee is composed of 800 members from the following four sectors<sup>7</sup>:

- Industrial, commercial and financial sectors 200
- The professions 200
- Labour, social services, religious and other sectors 200
- Members of LegCo, representatives of district-based organisations, Hong Kong deputies to the NPC, and representatives of Hong Kong members of the National Committee of the Chinese People’s Political Consultative Conference (“CPPCC”) 200

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<sup>7</sup> The four sectors of the Election Committee are composed of 38 subsectors; please refer to Annex I for details.

3.09 Regarding the composition and size of the nominating committee, the relevant proposals can be categorised broadly as the following three types of options:

First type of options: forming the nominating committee by less than 800 members;

Second type of options: forming the nominating committee by 800 members; and

Third type of options: forming the nominating committee by more than 800 members.

3.10 Any proposals which do not involve the nomination of candidates by a nominating committee (e.g. election of the CE by universal suffrage only) would not be consistent with the provisions of Article 45 of the Basic Law. Therefore, we have not included such proposals in the three types of options.<sup>8</sup>

First type of options: forming the nominating committee by less than 800 members

3.11 The option of forming the nominating committee by less than 800 members involves the proposal to form the nominating committee by 60 LegCo Members<sup>9</sup>. The major reasons include:

(i) LegCo Members have the broadest electorate base and are the most representative;

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<sup>8</sup> For example, the League of Social Democrats has proposed that any eligible citizen can become a CE candidate and take part in the election by one-person-one-vote, provided that he or she is nominated by a specified number of eligible voters. This proposal has not recommended setting up a nominating committee to nominate the candidates, and is not consistent with the provisions of the Basic Law. This proposal and other relevant proposals are included in Appendix I (GPA258) for reference.

<sup>9</sup> For example, the Democratic Party and the Hong Kong Association for Democracy and People's Livelihood have put forth this proposal; please refer to Appendix I (GPA007 and GPA170) for details.

- (ii) if LegCo plays a leading role in the nomination of CE candidates, it would be conducive to improving the relationship between the executive authorities and the legislature; and
- (iii) it will be simpler to form the nominating committee by LegCo Members. It will also be understood more easily by the public.

3.12 However, there are views that the nominating committee should not be constituted by LegCo members solely. The major reasons include:

- (i) the Basic Law has already prescribed clearly the functions of LegCo, and has not empowered LegCo Members to nominate CE candidates. The proposal of allowing LegCo to nominate CE candidates will not be consistent with the Basic Law;
- (ii) according to the Basic Law, the relationship between the executive authorities and the legislature is one of mutual regulation. If CE candidates are nominated by LegCo, this will undermine the function of the executive authorities and the legislature to operate with due checks and balances. This will also not be consistent with the legislative intent of the Basic Law;
- (iii) it is prescribed in the Basic Law that the nominating committee should be broadly representative. This is to realise the principle of “balanced participation”<sup>10</sup>. It may not be consistent with the legislative intent of the Basic Law, if the nominating committee is composed of LegCo Members solely; and
- (iv) during the drafting of the Basic Law, the option of nominating CE candidates by LegCo had already been ruled out, because this was not consistent with the principle of an “executive-led” system.

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<sup>10</sup> From a certain perspective, the range of sectors covered by the Election Committee is broader than that of LegCo, for example, the religious subsector and the Chinese medicine subsector are represented in the Election Committee, but not in LegCo.

### Second type of options: forming the nominating committee by 800 members

- 3.13 Regarding the option of forming the nominating committee by 800 members, most relevant proposals suggest using the composition of the existing Election Committee by four sectors as a reference point.<sup>11</sup>
- 3.14 For the option of using the composition of the Election Committee as a basis to consider that of the nominating committee, the major reasons include:
- (i) Article 45 and Annex I to the Basic Law stipulate respectively that the nominating committee and the Election Committee should be “broadly representative”. If the composition of the Election Committee is used as a basis, this should give rise to fewer disputes and should be conducive to forging consensus within the community on the composition of the nominating committee;
  - (ii) the composition of the Election Committee complies with such principles as “meeting the interests of the different sectors of society” and “facilitating the development of the capitalist economy”. By making reference to the composition of the Election Committee, we can ensure that the formation of the nominating committee will comply with these principles; and
  - (iii) using the Election Committee as a basis can help ensure the smooth operation of the nominating committee.
- 3.15 As for the proposal to set the size of the nominating committee at 800 members by modelling on that of the Election Committee, the major reason is that the existing Election Committee already has broad representation, and that too large a membership will cause operational difficulties for the nominating committee.
- 3.16 In the relevant proposals, there are views that, when forming the nominating committee, the composition and delineation of the sectors or the electorate base of the existing Election Committee can

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<sup>11</sup> For example, the Democratic Alliance for the Betterment and Progress of Hong Kong has put forth a relevant proposal; please refer to Appendix I (GPA323) for details.

be changed, for example:

- (i) to increase the number of seats returned by members of DCs electing among themselves in the fourth sector (i.e. the political sector)<sup>12</sup>; and
- (ii) to enlarge the electorate base of the nominating committee.<sup>13</sup>

Third type of options: forming the nominating committee by more than 800 members

3.17 Regarding the option of forming the nominating committee by more than 800 members, most relevant proposals have suggested forming the nominating committee by modelling on the existing Election Committee, but with the membership expanded to 1200 to 1600 members, thereby enhancing the representativeness of the nominating committee. There is also a proposal that the size of the nominating committee should be set at 3200 members.<sup>14</sup>

3.18 As for the allocation of the additional seats, specific proposals include:

- (i) forming the nominating committee by about 1200 members, i.e. by adding about 400 elected DC members to 800 members of the Election Committee<sup>15</sup>;
- (ii) enlarging the size of the nominating committee to 1200-1600 members. The number of seats for each of the existing four

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<sup>12</sup> For example, the Business and Professionals Federation of Hong Kong has put forth a relevant proposal; please refer to Appendix I (GPA173) for details.

<sup>13</sup> For example, Mrs Anson Chan and her Core Group (the Core Group) has proposed to redefine corporate voting to include all members of the boards of directors, executive and/or management committees of those companies, associations and organisations which currently nominate just one eligible voter; please refer to Appendix I (GPA229) for details.

<sup>14</sup> For example, the Hong Kong Association for Democracy and People's Livelihood has put forth a relevant proposal; please refer to Appendix I (GPA170) for details.

<sup>15</sup> For example, 22 LegCo members have put forth a relevant proposal; please refer to Appendix I (GPA239) for details.



sectors should be increased evenly<sup>16</sup>;

- (iii) enlarging the size of the nominating committee to 1200 or 1600. Based on the current composition of the Election Committee, corresponding adjustments should be made to the relative proportion of the four sectors in the nominating committee. For example, the percentage of members from the industrial, commercial and financial sectors should be increased to 35%<sup>17</sup>; and
- (iv) forming a nominating committee of 1600 members by modelling on the existing 800-member Election Committee, with additional seats allocated to all DC members, all Hong Kong members of CPPCC, and sectors which are currently not represented in the Election Committee.<sup>18</sup>

### **Electorate Base of the Nominating Committee**

- 3.19 Regarding the electorate base of the nominating committee, there are views that the existing 800-member strong Election Committee already has broad representation. If the nominating committee is formed by modelling on the composition of the Election Committee, it can be relied on to elect a candidate with broad support.
- 3.20 There are also views that, if the composition of the nominating committee is to be based on that of the Election Committee, the electorate base of the nominating committee should be expanded, for example, replacing “corporate votes” with “director’s votes” or “individual votes”. Furthermore, there are views that while maintaining the four sectors, new subsectors should be added, such as women and youth subsectors, in order to balance the interests of different strata of society.

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<sup>16</sup> For example, the Liberal Party has put forth a relevant proposal; please refer to Appendix I (GPA288) for details.

<sup>17</sup> For example, Hon Abraham Shek Lai-him has put forth a relevant proposal; please refer to Appendix I (GPA177 and GPA252) for details.

<sup>18</sup> For example, Mr Lie-A-Cheong Tai-chong, David, a member of the Commission, has put forth a relevant proposal; please refer to Appendix I (GPA220) for details.

3.21 At present, members of most of the subsectors under the Election Committee are returned by elections, except that the Hong Kong deputies to the NPC and LegCo Members are ex-official members, and that members of the religious subsector are nominated to the Election Committee by the six designated religious bodies of that subsector.

3.22 Hence, in respect of how the nominating committee should be formed, most relevant proposals suggest making reference to the existing method for forming the Election Committee, i.e. representatives from most of the sectors should be returned by elections.

## **(II) Method of Nomination**

3.23 As stated in paragraph 3.04, in accordance with Article 45 of the Basic Law, in electing the CE by universal suffrage, the nominations of CE candidates should be made by a broadly representative nominating committee in accordance with democratic procedures, i.e. a CE candidate will be required to gain the support from representatives of different sectors and strata; selection of the CE shall be by universal suffrage upon nomination, i.e. a CE candidate will be required to gain the support of the public through “one-person-one-vote”; and the CE elected from universal suffrage shall be appointed by the CPG.

3.24 This shows that the nominating committee will play a crucial role in ensuring that the CE candidates nominated will be responsible to the CPG and the HKSAR. Hence, when considering the method for nominating CE candidates by the nominating committee, we should ensure that the nominating committee, as a nominating organ, will be able to perform its role.

3.25 Besides, we also have to take into account the following factors:

- (i) compliance with the requirement of “nomination in accordance with democratic procedures” as stipulated in the Basic Law;
- (ii) ensuring that candidates have wide support and sufficient legitimacy; and

(iii) providing aspiring individuals with the fair opportunity to be nominated.

3.26 At present, Annex I to the Basic Law provides that candidates for the office of the CE may be nominated jointly by not less than 100 members (i.e. 12.5% of the size of the Committee; or not more than eight candidates) of the Election Committee. Each member may nominate only one candidate.

3.27 As stated in paragraph 3.25(i), when considering the method of nomination by the nominating committee, we should ensure that any relevant option must comply with the requirement of “nomination by the nominating committee in accordance with democratic procedures” as stipulated in Article 45 of the Basic Law. In this regard, the nominations of CE candidates should be made by the nominating committee. Moreover, there are suggestions that the nomination procedures should be open and fair, and hence, all contenders should have the opportunity to introduce their platform to all members of the nominating committee. The nominating committee should then nominate the candidates for universal suffrage through one-person-one-vote.<sup>19</sup>

3.28 Regarding the nomination method, we should consider the following two key issues:

(i) the number of subscribers required for nominating a candidate (i.e. the nomination threshold), and the number of candidates available for election by the public; and

(ii) whether other nomination requirements should be adopted.

#### *Nomination threshold and number of candidates*

3.29 In the relevant proposals, there are views that, at the early stage of implementing universal suffrage, the nomination threshold should not be too low and there should not be too many candidates. The major reasons include:

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<sup>19</sup> For example, the Basic Law Institute has put forth a relevant proposal; please refer to Appendix I (GPA251, GPA 295 and GPA322) for details.

- (i) the nomination threshold should not be too low to avoid having too many candidates of mixed quality standing for election. This can also ensure that only capable contenders with public support will get nominated, and will, thus, enable the public to discuss the platform of the candidates in focus;
- (ii) a relatively higher nomination threshold should first be set to help forge consensus among different sectors. The system can evolve gradually after universal suffrage has been implemented; and
- (iii) even if a relatively higher nomination threshold is set, the candidates will still have to face the public, because they will need to gain the votes of the public in the process of universal suffrage.

3.30 However, there are also views that the nomination threshold should not be too high to enable candidates from different sectors and with different political backgrounds to take part in the election. There are also suggestions that the number of candidates should not be limited to ensure that the election will have sufficient competition.

3.31 Under the current system of Election Committee, there can be eight candidates at most taking part in the CE election. Based on the number of candidates available for election by the public after nominations by the nominating committee, the relevant proposals can be broadly categorised as the following three types of options:

First type of options: 10 candidates or more;

Second type of options: eight candidates at most; and

Third type of options: two to four candidates at most.

First type of options: 10 candidates or more

3.32 In the relevant proposals, there are suggestions that the nomination threshold should be set at a level lower than 12.5% of the size of the nominating committee, so that there can be 10, 12 or even 24 candidates at most to stand for election. For example:

- (i) if the size of the nominating committee remains at 800, the contenders are required to obtain at least 80 nominations (i.e. a nomination threshold of 10%; 10 candidates at most)<sup>20</sup>;
- (ii) if the nominating committee is formed by the 60 LegCo Members, five LegCo Members can jointly nominate a candidate (i.e. a nomination threshold of about 8%; 12 candidates at most)<sup>21</sup>; and
- (iii) if the nominating committee is composed of 1200 members; a CE candidate can be nominated by 50 members from any sectors (i.e. a nomination threshold of 4%; 24 candidates at most).<sup>22</sup>

Second type of options: eight candidates at most

- 3.33 In the relevant proposals, there are suggestions that the nomination threshold should be set at 12.5% of the size of the nominating committee, i.e. there can be eight candidates at most. This is consistent with the existing nominating threshold.

Third type of options: two to four candidates at most

- 3.34 In the relevant proposals, there are suggestions that the nomination threshold should be set at 25% of the size of the nominating committee, so that there can be four candidates at most.<sup>23</sup>

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<sup>20</sup> For example, the Core Group put forth a relevant proposal; please refer to Appendix I (GPA229) for details.

The Hong Kong Association for Democracy and People's Livelihood has suggested setting an upper limit on the number of candidates at 10. The candidates will be ranked according to the number of subscriptions they have received; please refer to Appendix I (GPA170) for details.

<sup>21</sup> For example, the Democratic Party has put forth a relevant proposal; please refer to Appendix I (GPA007) for details.

<sup>22</sup> For example, 22 LegCo Members have put forth a relevant proposal; please refer to Appendix I (GPA239) for details.

<sup>23</sup> For example, Hon Rita Fan Hsu Lai-tai has proposed that the nominating committee should be composed of 1600 members, and that contenders should be required to obtain not less than 400 nominations from members of the nominating committee to become candidates; please refer to Appendix I (GPA009) for details.

3.35 There are also suggestions that the number of candidates should be limited to two to four at most through the nomination mechanism, for example:

- (i) the two to four contenders who have obtained the greatest support from members of the nominating committee to become candidates<sup>24</sup>; and
- (ii) candidates should be required to secure nominations from at least one-fourth of all Members of LegCo and one-fourth of all Hong Kong deputies to the NPC, and thus, there can be four candidates at most.<sup>25</sup>

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Hon Abraham Shek Lai-him has suggested raising the nomination threshold from the current 12.5% to 25%; please refer to Appendix I (GPA177 and GPA252) for details.

<sup>24</sup> For example, the Democratic Alliance for the Betterment and Progress of Hong Kong has suggested that aspiring individuals will become official contenders if they are able to secure not less than 50 nominations from members of the nominating committee. The nominating committee should then nominate not less than two CE candidates from among the contenders in accordance with democratic procedures for election by one-person-one-vote; please refer to Appendix I (GPA323) for details.

The Basic Law Institute has suggested that, after a preliminary round of nomination, the nominated contenders will then be nominated by the nominating committee in accordance with democratic procedures, i.e. each member may nominate candidates on the basis of one-person-one-vote. The two to three candidates who have obtained the highest number of votes from members of the nominating committee will become candidates to stand for election by universal suffrage; please refer to Appendix I (GPA251 and GPA322) for details.

Mr Kennedy Wong Ying-ho, a member of the Commission, has proposed that the aspiring contenders should obtain at least 100 nominations from members of the nominating committee, with at least 25 nominations from each of the four sectors. The 800-member nominating committee may then elect three candidates at most by voting; please refer to Appendix I (GPA203) for details.

Mr George Ng Sze-fuk, a member of the Commission, has proposed that assuming that the nominating committee is composed of 800 members, contenders should first obtain 100 nominations from the nominating committee. Members of the nominating committee may then cast a maximum of four votes by secret ballot and elect those four contenders receiving the highest number of votes as CE candidates; please refer to Appendix I (GPA176) for details.

<sup>25</sup> For example, Ms Maria Tam Wai-chu, a member of the Commission, has put forth a relevant proposal; please refer to Appendix I (GPA249) for details.

- 3.36 As stated in paragraph 3.27, any option relating to the method of nomination must comply with the requirement of “nomination by a nominating committee in accordance with democratic procedures” as stipulated in Article 45 of the Basic Law.

*Other nomination requirements*

- 3.37 In the relevant proposals, there are suggestions that consideration should be made as to whether other nomination requirements should be adopted:

- (i) setting an upper limit on the number of subscribers which a candidate can obtain. This will enable more aspiring individuals to have a chance to get nominated.<sup>26</sup>

However, there are views that no upper limit on the number of subscribers should be set. It is considered that the number of candidates taking part in an election is related to the political environment at the time. Therefore, even if an upper limit on the number of subscribers is set, there will be no guarantee that more candidates will stand for elections; and

- (ii) requiring a candidate to obtain a certain number of nominations from each sector of the nominating committee. This is to ensure that the candidates will have a certain level of support from different sectors and strata<sup>27</sup>. There are also proposals that a candidate should obtain a certain number of nominations from the specified sectors.<sup>28</sup>

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<sup>26</sup> For example, Mr Bunny Chan Chung-bun, a member of the Commission, has proposed that, assuming that the nominating committee is composed of 1200 members, the upper limit on the number of subscribers each candidate can obtain should be set at 600 (i.e. 50%); please refer to Appendix I (GPA302) for details.

<sup>27</sup> For example, the Liberal Party has proposed that candidates should secure nominations from all four sectors, so as to realise the principle of balanced participation as provided in the Basic Law; please refer to Appendix I (GPA288) for details.

The New Century Forum has proposed that candidates should obtain nominations from at least 20% and at most 25% from each of the four sectors; please refer to Appendix I (GPA255) for details.

<sup>28</sup> For example, Ms Maria Tam Wai-chu, a member of the Commission, has suggested that

However, there are contrasting views which consider that this will amount to giving members of specified sectors of the nominating committee a power of veto.

### **(III) Method of Universal Suffrage Election after Nomination**

3.38 In the relevant proposals, it is generally agreed that, after the nomination of candidates, the CE should be elected by universal suffrage on the basis of one-person-one-vote.

3.39 Regarding the method of universal suffrage election after nomination, we should consider the following related issues:

*(i) Whether one or more rounds of election should be held after nomination*

There are suggestions that more than one round of election should be held until a candidate is returned by receiving more than half of the valid votes cast. This can ensure the CE elected will have sufficient legitimacy.<sup>29</sup>

However, there are suggestions that only one round of universal suffrage should be held, and that a simple majority voting system should be adopted. The candidate who has received the highest number of valid votes cast will be elected<sup>30</sup>. This can obviate the need to invest an enormous amount of resources of

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candidates should get nominations from 25% of all members of the nominating committee (i.e. 200 members), with 50 nominations from each of the four sectors. The relevant nominations should include those from at least one-fourth of all Members of LegCo and one-fourth of all Hong Kong deputies to the NPC; please refer to Appendix I (GPA249) for details.

<sup>29</sup> For example, the New Century Forum has proposed that if no candidate has received more than half of the valid votes cast in the first round of voting, a second round of voting should be held until a candidate has received more than half of the valid votes cast; please refer to Appendix I (GPA255) for details.

<sup>30</sup> For example, the Hong Kong Association for Democracy and People's Livelihood, Hon Abraham Shek Lai-him and the Business and Professionals Federation of Hong Kong have proposed that only one round of voting should be held, and that it will not be necessary to require a candidate to receive more than half of the valid votes cast to get elected; please refer to Appendix I (GPA170, GPA252 and GPA173) for details.



the community to arrange for another round of voting by all registered voters, and avoid causing inconvenience to voters (and thus dampen their interest in voting); and

(ii) *Whether the election proceedings should continue if there is only one candidate*

Members of the community and the Commission have not put forth many views on this issue<sup>31</sup>. In the discussions of the Commission, there are diverse views on this issue. Further discussion by the community will be necessary.

### **Substantive Appointment of the Chief Executive by the Central Authorities**

- 3.40 In accordance with Article 45 of the Basic Law, the CE of the HKSAR shall be selected by election or through consultations held locally and be appointed by the CPG. The power of appointment of the CE by the Central Authorities is substantive.
- 3.41 Under “One Country, Two Systems”, the CE shall be accountable to both the CPG and the HKSAR. The method for selecting the CE is also designed on the basis of this principle.
- 3.42 According to the current established practice, after the election results of the CE election is announced, the CE will report to the CPG as soon as possible to facilitate the CPG’s consideration of the appointment of the new term CE.
- 3.43 When universal suffrage for the CE is attained, this will not change the constitutional requirement that the Central Authorities’ power of appointment of the candidate elected in the election by universal suffrage should be substantive.
- 3.44 Regarding the issues relating to the models for electing the CE by universal suffrage which require further consideration, please refer

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<sup>31</sup> For example, Hon Abraham Shek Lai-him and the New Central Forum have suggested that election proceedings should continue even if there is only one candidate; please refer to Appendix I (GPA252 and GPA255) for details.

to the summary provided in Chapter 6 (paragraphs 6.08 to 6.11) of this Green Paper.

## **Chapter Four: Models for Forming the Legislative Council by Universal Suffrage**

- 4.01 Regarding the models for forming LegCo by universal suffrage, various political parties, organisations and individuals from the community have put forth different proposals. Members of the Commission had made reference to these proposals when discussing the relevant issues. To facilitate public discussion, the paragraphs below set out and summarize the views of members of the community and members of the Commission on the models for forming LegCo by universal suffrage.
- 4.02 Please refer to Appendix I of this Green Paper for all the proposals which we have received.

### **Models for Forming the Legislative Council by Universal Suffrage**

- 4.03 Article 68 of the Basic Law provides that:

“The LegCo of the HKSAR shall be constituted by election.

The method for forming LegCo shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of LegCo by universal suffrage.”

- 4.04 Currently, there are 60 seats in LegCo, half of them returned by geographical constituencies (“GCs”) through direct elections, and the other half returned by functional constituencies (“FCs”).
- 4.05 For direct elections in GCs, the current arrangement is that the 30 seats are returned from five GCs by adopting the list system operating under the largest remainder formula, which is a form of proportional representation voting system.
- 4.06 For FC elections, the current arrangement is that the 30 seats are returned from 28 FCs.<sup>32</sup>

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<sup>32</sup> For details of the 28 LegCo FCs, please refer to Annex II.

- 4.07 Regarding the model for forming LegCo by universal suffrage, one key issue is how the existing FCs should be dealt with when universal suffrage is attained, i.e. whether FC seats should be abolished or whether changes should be made to the electoral method so as to retain the FC seats in some form.
- 4.08 In considering the model for forming LegCo by universal suffrage, we have to take into account the political reality that 30 out of the 60 LegCo seats are returned by FCs. As any amendment to the electoral method for LegCo requires the endorsement of a two-thirds majority of all the members of LegCo, in practice, this means that the endorsement and support of members returned by FCs as well as those returned by GCs through direct elections will be required.

### **Model for Forming the Legislative Council by Universal Suffrage: Three Types of Options**

- 4.09 Regarding the model for forming LegCo by universal suffrage, the relevant proposals can be broadly categorised as the following three types of options<sup>33</sup>:
- First type of options: replacing FC seats with district-based seats returned through direct election;
- Second type of options: retaining FC seats, but changing the electoral method; and
- Third type of options: increasing the number of seats representing DCs in LegCo.

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<sup>33</sup> There has been suggestion that a bicameral system can be an option for implementing universal suffrage for LegCo. The Commission has examined the option in detail and concludes that further discussion on this option should be set aside for the time being. Hence, the proposal of implementing a bicameral system has not been included in any one type of options presented in this Green Paper. The proposals on implementing a bicameral system put forth by individuals and organisations from the community are provided at Appendix I for reference.

First type of options: replacing FC seats with district-based seats returned through direct election

- 4.10 In the relevant proposals, there are suggestions that FC seats should be replaced with district-based seats returned through direct elections. The reason put forth is that a system with FC seats will not be consistent with the principle of equal political right, and hence, FC seats should be abolished and universal suffrage for LegCo should be attained as soon as possible. Any electoral system which confers special rights on FCs to nominate candidates or to vote will not be consistent with the principle of universal suffrage.
- 4.11 Regarding the electoral method for LegCo seats after the FC seats have been replaced by district-based seats returned through direct election, specific proposals include<sup>34</sup>:
- (i) all seats to be returned by GCs through direct elections, with half of the seats returned by a “single-seat-single-vote” system on a district basis, and the other half by a proportional representation system, under which the whole of Hong Kong will form a single constituency, i.e. each voter will elect LegCo Members on the basis of “one-person-two-votes”<sup>35</sup>; and
  - (ii) all seats to be returned by “one-person-one-vote”, such that the number of seats allocated to different political parties will be proportional to the respective number of votes they received.<sup>36</sup>

Second type of options: retaining FC seats, but changing the electoral method

- 4.12 In the relevant proposals, there are views that it is worthwhile to retain the FC seats when universal suffrage for forming LegCo is

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<sup>34</sup> The League of Social Democrats has proposed abolishing all FCs and increasing the number of LegCo seats to 70. It is open-minded about the electoral method.

<sup>35</sup> For example, Democratic Party and 22 LegCo Members have submitted relevant proposals, please refer to Appendix I (GPA286 and GPA239).

<sup>36</sup> For example, Hon Lee Cheuk-yan has put forth a relevant suggestion at the meeting of the Commission.

attained. The major reasons include:

- (i) FCs have been playing an important role in LegCo and in society. In particular, they have brought the voices of the business and professional sectors into LegCo and have, through their expertise, assisted LegCo in carrying out its legislative function and in monitoring the Government's work. FC members have made contributions to the community;
- (ii) FCs can meet the interests of different sectors of society, which is consistent with the principle of "balanced participation"; and
- (iii) abolition of FCs altogether is bound to meet with objections from among different sectors of the community and their representatives in LegCo, and it will be difficult to reach consensus on the issue.

4.13 There are views that, when universal suffrage for forming LegCo is implemented, the FC seats should be retained in some form, but changes can be made to the electoral system, for example, to make every voter eligible to vote for the FC Members, so as to make the arrangements consistent with the principles of "universal" and "equal" suffrage. In this regard, specific proposals include:

- (i) allowing FCs to nominate candidates for election by all voters through "one-person-multiple-votes", i.e. one vote to return directly elected GC Members, and multiple votes to return FC Members<sup>37</sup>; and

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<sup>37</sup> For example, Hon Rita Fan Hsu Lai-tai has proposed that the electoral method for FC Members can be changed in three phases, so that candidates will be required to be nominated by FC voters for election by universal suffrage. Candidates should be required to obtain the nominations from one-third of the electors in their respective FCs before they can stand for election by universal suffrage; please refer to Appendix I (GPA009) for details.

Hon Abraham Shek Lai-him has proposed that candidates should be nominated by voters of FCs for election by universal suffrage. Candidates should be required to obtain support from at least 30% of the voters in the relevant FCs to become eligible for standing for election; please refer to Appendix I (GPA207) for details.

- (ii) including voters who are currently not entitled to vote at FCs. In other words, each voter will elect LegCo Members on the basis of “one-person-two-votes”: one vote to return directly elected GC Members, and the other to return FC Members.<sup>38</sup>

### Third type of options: increasing the number of seats representing DCs in LegCo

- 4.14 In the relevant proposals, there are suggestions that, when implementing universal suffrage for LegCo, FC seats can be replaced with seats returned by members of DCs electing among themselves, so that the democratic element of the LegCo election can be enhanced. All LegCo seats will then be district-based seats returned either through direct or indirect elections, so as to attain the ultimate aim of universal suffrage.<sup>39</sup>

### Attaining universal suffrage for LegCo in phases

- 4.15 In the relevant proposals, there are suggestions that transitional arrangements can first be put in place and that universal suffrage for LegCo can be attained in phases. Hence, members of some sectors will find such arrangements more acceptable. Specific proposals include:

- (i) expanding the electorate base of FCs, for example, replacing “corporate votes” with “director’s/individual votes”<sup>40</sup>. However,

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<sup>38</sup> For example, Mr Bunny Chan Chung-bun, a member of the Commission, pointed out that many people have not yet been included in any FCs. There is a need to work out feasible arrangements to enable these people to also have two votes; please refer to Appendix I (GPA164) for details.

<sup>39</sup> For example, Mr Bunny Chan Chung-bun, a member of the Commission, has put forth a relevant proposal; please refer to Appendix I (GPA164) for details.

<sup>40</sup> For example, the Liberal Party has proposed extending the “corporate votes” of the FCs by adding “director’s votes” and “senior executive’s votes”. While the proposal can enhance the legitimacy of FCs, it should not be regarded as “new nine FCs”; please refer to Appendix I (GPA288) for details.

Hon Lee Cheuk-yan has suggested replacing corporate votes with individual votes, for example, to expand the electorate base of the Labour FC to cover all members of the registered trade unions; please refer to Appendix I (GPA138) for details.

there are also views objecting to abolishing corporate votes<sup>41</sup>;

- (ii) abolishing or merging some of the existing FCs<sup>42</sup>;
- (iii) including voters who are currently not entitled to vote at FCs, so that each voter will have a vote to return directly elected GC Members, and the other to return FC Members<sup>43</sup>;
- (iv) returning directly elected Members from GCs and, at the same time, allowing FCs to nominate candidates for election by universal suffrage<sup>44</sup>;
- (v) abolishing the FC seats in phases<sup>45</sup>. However, there are views

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<sup>41</sup> For example, Hon Abraham Shek Lai-him has put forth his view that the implementation of corporate voting represents the legitimacy of the related sectors. Abolishing corporate voting will strangle the speaking right of those reputable voices in the sectors; please refer to Appendix I (GPA207) for details.

<sup>42</sup> For example, the Hong Kong Civic Association has proposed that, in the 2012 LegCo election, the existing relatively narrow-based FCs can be combined to no more than 15 as far as practicable, and that the number of seats of District Council FC can be increased by five, which will be elected by DC members from among themselves in the five LegCo GCs; please refer to Appendix I (GPA248, GPA266 and GPA278) for details.

<sup>43</sup> For example, Dr Priscilla Leung Mei-fun and Professor Leonard Cheng Kwok-hon, members of the Commission, together with Dr Chang Chak-yan and Professor Wang Gui-guo have put forth a relevant proposal; please refer to Appendix I (GPA209) for details.

<sup>44</sup> For example, Hon Rita Fan Hsu Lai-tai has proposed that candidates standing for FC elections should be nominated by FCs for election by universal suffrage. This can be done in three phases; please refer to Appendix I (GPA009) for details.

The Basic Law Institute has proposed that, in 2012, for one-third of the FC seats, candidates should be nominated by constituents of the respective FCs for election on the basis of one-person-one-vote. In 2016, candidates running for another 10 seats should be nominated in the same way for election on the basis of one-person-one-vote. Finally, in 2020, candidates running for the remaining 10 seats should be nominated in the same way for election on the basis of one-person-one-vote; please refer to Appendix I (GPA251) for details.

<sup>45</sup> For example, the Liberal Party has suggested phasing out the FC seats in three LegCo terms starting from 2016. The number of FC seats can be reduced from 30 to 20 in the first phase, and further reduced to 10 in the second phase. Finally, all seats will be returned by universal suffrage. Since traditional FCs, which have the expertise in economic policies (e.g. commercial, industrial and professional FCs), will need more time to adapt to such changes, it is proposed that they should be abolished only in the last phase; please refer to Appendix I (GPA288) for details.



that this will lead to dispute on which FCs should be abolished first, and that the problem cannot be resolved easily; and

(vi) increasing the proportion of district-based seats to FC seats.<sup>46</sup>

- 4.16 However, there are views that universal suffrage should not be attained in phases because, in accordance with the basic principles of democracy, a semi-democratic system should not be accepted. There are also views that attaining universal suffrage in phases will only prolong the existing problems (for example, the long term future of the FCs).
- 4.17 Regarding the issues relating to the models for forming LegCo by universal suffrage which require further consideration, please refer to the summary provided in Chapter 6 (paragraph 6.12) of this Green Paper.

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<sup>46</sup> For example, the Core Group has proposed that, if universal suffrage will not be introduced in 2012, the 10 electoral groupings formed in 2008 should be further combined to form no more than three large groups for voting purpose, and that the number of FC seats should be reduced to 15. The balance of 15 seats, vacated by FC Members would be converted into directly elected GC seats thus paving the way for the complete phasing out of FCs in 2016; please refer to Appendix I (GPA229) for details.

The New Century Forum has suggested abolishing FC seats gradually: in 2008, the number of LegCo seats should be increased to 70 - five additional seats to be returned by GCs through direct election and another five to be returned by FCs. All five new FC seats will be allocated to the District Council FC. In 2012, the number of LegCo seats should be increased to 80 - five additional seats to be returned by GCs through direct election and another five to be returned by FCs. All five new FC seats will be allocated to the District Council FC (i.e. the number of District Council FC seats will be increased to 11). The bicameral voting arrangement at LegCo should be abolished. In 2016, all FC seats in LegCo should be abolished, with the number of seats to be maintained at 80. All LegCo seats should be returned by direct election through GCs; please refer to Appendix I (GPA255) for details.

## **Chapter Five: Roadmap and Timetable for Implementing Universal Suffrage for Electing the Chief Executive and for Forming the Legislative Council**

- 5.01 In the Decision of the NPCSC made on 26 April 2004, it was promulgated that the election of the third term CE of the HKSAR to be held in 2007 and the election of the fourth term LegCo of the HKSAR in 2008 should not be by means of universal suffrage. However, the Decision did not cover the electoral arrangements for the fourth term CE election and the fifth term LegCo election in 2012.
- 5.02 Regarding the roadmap and timetable for implementing universal suffrage for electing the CE and for forming LegCo, in the relevant proposals, there are views that universal suffrage should not be attained in one go. The major reasons include:
- (i) any universal suffrage option should comply with the principle of gradual and orderly progress, so as to strive for support from LegCo Members of different political parties and groups, as well as those representing different sectors. Only by so doing would there be a reasonable chance to secure the endorsement by a two-thirds majority of LegCo Members;
  - (ii) the direction of constitutional development should be framed in the light of the political environment and the socio-economic development. The timetable for implementing universal suffrage should be drawn up in accordance with the actual situation; and
  - (iii) as the proposed package for the 2007/08 electoral methods put forth by the Government in 2005 was not passed by LegCo, we have missed the chance to take forward the constitutional development. According to the principle of gradual and orderly progress, universal suffrage should not be attained in one go.
- 5.03 However, there are also suggestions that “dual universal suffrage” should be implemented in Hong Kong as soon as possible. The major reasons include:

- (i) elections have been held in Hong Kong for more than 20 years. Hong Kong's constitutional development has been progressing in an orderly manner towards democracy;
- (ii) Hong Kong possesses the conditions which most democratic societies have, including the rule of law, freedom, clean Government and educated citizens. Hence, Hong Kong is already endowed with the conditions to implement universal suffrage for the CE and LegCo; and
- (iii) various opinion polls have shown that near 60% of the public hope that "dual universal suffrage" can be implemented as soon as possible.

5.04 In discussing the roadmap and timetable for implementing universal suffrage for electing the CE and for forming LegCo, we must give due consideration to the actual situation in Hong Kong (paragraph 2.17 above refers).

5.05 After the establishment of the HKSAR, we faced the daunting challenge of the Asian financial crisis and underwent a difficult process of economic restructuring. Fortunately, in accordance with the Basic Law, the HKSAR Government set appropriate monetary and financial policies to help facilitate economic restructuring in a timely manner. Through years of effort and the support of the Central Authorities, over time the co-operation between the Mainland and the HKSAR has become closer, for example, the signing of the Closer Economic Partnership Arrangement between Hong Kong and the Mainland ("CEPA") with the Central Authorities, Individual Visit Scheme, liberalisation of renminbi business, co-operation within the Pan-Pearl River Delta region, etc. These measures have facilitated economic recovery and restructuring, and Hong Kong has developed further.

5.06 With the protection of the Basic Law, Hong Kong is one of the freest places in the world and is one which has the utmost respect for the rule of law. The public have been participating in social affairs more actively and have been expressing their views through different channels.

- 5.07 Regarding democratic development, the HKSAR Government has been opening up the electoral system in accordance with the Basic Law, with a view to advancing democratic progress in Hong Kong. The Basic Law provides Hong Kong people with the unprecedented democratic rights. After the establishment of the HKSAR, the CE is elected by the Election Committee. The result of the third term CE election reflects that of the polls conducted by various universities. This demonstrates that the Election Committee is indeed broadly representative and can fully reflect community preference. In respect of the legislature, the number of directly elected seats has increased from one-third in the first term to half in the third term.
- 5.08 At the same time, to tie in with the progressive development of a more democratic political system, the HKSAR Government will further develop the political appointment system and create two more tiers of political appointments (Under-Secretaries and Political Assistants). This will help enhance the governance of the HKSAR and groom political talents.
- 5.09 However, it will take time and a relatively long process to recruit and groom sufficient political talents. As a matter of fact, although political groups in Hong Kong have been participating in the DCs and LegCo over the years, members of the general public still show limited interest in joining political groups. The membership of various political groups is still relatively small.
- 5.10 According to the design laid down in the Basic Law, the political system in Hong Kong is executive-led and headed by the CE. The executive authorities and the legislature are constituted through different means. There are no concomitant and necessary correlation between the political background of the CE, the Principal Officials and Members of LegCo. Therefore, it cannot be taken for granted that we would gain support from LegCo on government policies, legislation and the budget. Unlike Governors before the handover, the CE cannot appoint any Members to LegCo. This is a fundamental change to the political and constitutional arrangements.
- 5.11 In overall terms, since the establishment of the HKSAR, the executive authorities have received the support of LegCo. Most of

the bills and appropriation bills proposed by the executive authorities were passed by LegCo. However, we do face challenges. We have to promote the further development of Hong Kong's democratic system while ensuring full implementation of "One Country, Two Systems" and an "executive-led" system, and bridging political differences in the community.<sup>47</sup>

- 5.12 As for constitutional development, the universal suffrage model to be adopted in future must comply with the provisions of the Basic Law, attract public support, and meet the requirement of the Basic Law of securing tri-partite consensus (i.e. endorsement by two-thirds majority of LegCo Members, consent of the CE, and approval of or recording by the NPCSC). To attain universal suffrage, we must recognise this political reality. Hence, different political parties and groups, organisations and individuals must build on common ground and accommodate mutual differences, so as to achieve consensus on the issue of universal suffrage.

### **Roadmap and Timetable for Implementing Universal Suffrage for Electing the Chief Executive**

- 5.13 In accordance with Article 45 of the Basic Law, the method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. The relevant provisions set out a relatively clear framework on the model, roadmap and timetable for electing the CE by universal suffrage:

- (i) regarding the model for electing the CE by universal suffrage, it should be the one which CE candidates to be nominated by a broadly representative nominating committee in accordance with democratic procedures, followed by the election of universal suffrage; and

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<sup>47</sup> Please refer to the speech of the CE at the "Seminar in Commemoration of the 10th Anniversary of the Implementation of the Basic Law" on 6 June 2007.

- (ii) regarding the roadmap and timetable for implementing universal suffrage for electing the CE, it should be in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress.

5.14 Chapter Three of this Green Paper has outlined the issues that need to be considered in the discussion on the model for electing the CE by universal suffrage. As for the roadmap and timetable for implementing universal suffrage for electing the CE, the most important issue is whether the existing electoral model (i.e. an 800-member Election Committee):

- (i) should be transformed to universal suffrage in one go by forming the nominating committee directly; or
- (ii) should be transformed to universal suffrage by first going through a transitional phase.

5.15 Regarding the roadmap and timetable for implementing universal suffrage for electing the CE, the relevant proposals can be broadly categorised as the following three types of options:

- (i) forming the nominating committee directly in 2012 to attain universal suffrage<sup>48</sup>. The major reasons include:
  - (a) the community has almost reached consensus on transforming the Election Committee into the nominating

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<sup>48</sup> For example, 22 LegCo Members have proposed setting up the nominating committee in 2012 by including about 400 elected DC members to the existing 800-member Election Committee; please refer to Appendix I (GPA239) for details.

The Liberal Party considers that, if the relevant conditions have ripened into maturity (i.e. after a broadly representative nominating committee has been formed for nominating CE candidates, and the relationship between the executive authorities and the legislature has been rationalized), the election of CE by universal suffrage can be implemented hopefully by 2012; please refer to Appendix I (GPA288) for details.

The Core Group took the view that, given the wide measure of consensus already exists within the community in relation to the principle of converting the current Election Committee into the future nominating committee, there seems to be no fundamental reason why universal suffrage for the CE election should not be introduced at the first permissible date, namely in 2012; please refer to Appendix I (GPA229) for details.

committee. Hence, universal suffrage for electing the CE can be implemented as early as 2012;

(b) Hong Kong already possesses the conditions for implementing universal suffrage, and hence, universal suffrage should be implemented as early as possible;

(ii) going through a transitional phase and attaining universal suffrage in 2017. The major reason is that following the principle of gradual and orderly progress, as democratic development in 2007/08 remains at a standstill, the CE election in 2012 should first go through a transitional phase, with a view to pursuing universal suffrage in 2017<sup>49</sup>; and

(iii) going through a transitional phase and attaining universal suffrage after 2017.<sup>50</sup>

### **Roadmap and Timetable for Implementing Universal Suffrage for Forming the Legislative Council**

5.16 In considering the roadmap and timetable for implementing universal suffrage for forming LegCo, the major considerations will be whether:

(i) universal suffrage for LegCo should be attained in one go; or

(ii) universal suffrage for LegCo should be attained in phases.

5.17 In the relevant proposals, there are suggestions that universal suffrage for LegCo should be attained in one go. The major reason is that the development of the Hong Kong community has reached a

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<sup>49</sup> For example, the Democratic Alliance for the Betterment and Progress of Hong Kong has proposed that 2017 is an appropriate time to implement universal suffrage for the CE, and that during the transitional period in 2012, the electorate base of the Election Committee can be expanded (e.g. to transform “corporate votes” into “director’s votes”) and to lower the number of subscribers required to not less than 50 members; please refer to Appendix I (GPA323) for details.

<sup>50</sup> The Hong Kong New Territories Commercial and Industrial General Association has suggested implementing universal suffrage for the CE in 2022 in the light of Hong Kong’s actual situation; please refer to Appendix I (GPA320) for details.

mature stage which can enable Hong Kong to implement universal suffrage for LegCo smoothly in 2012.

5.18 There are also suggestions that universal suffrage for LegCo should be attained in phases after 2012. The major reasons include:

(i) following the principle of gradual and orderly progress, universal suffrage for LegCo should be attained gradually;

(ii) different sectors of the community still have significant differences on how the FC seats should be dealt with. It will be difficult to reach consensus on attaining universal suffrage for LegCo in one go; and

(iii) if universal suffrage for the CE is to be implemented first, there will be significant changes to the political structure of the HKSAR. Hence, it will not be appropriate also to implement universal suffrage for LegCo at the same time in 2012, as this may introduce elements of uncertainty to the structure of both the executive authorities and the legislature of the HKSAR.

5.19 Regarding the roadmap and timetable for implementing universal suffrage for LegCo, the relevant proposals can be categorized broadly as the following three types of options:

(i) attaining universal suffrage in one go in 2012<sup>51</sup>;

(ii) attaining universal suffrage in phases in 2016<sup>52</sup>; and

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<sup>51</sup> For example, 22 LegCo Members has proposed abolishing all FC seats in LegCo in 2012; please refer to Appendix I (GPA239) for details.

<sup>52</sup> For example, the Core Group has proposed that if universal suffrage cannot be attained in 2012, the 10 electoral groupings formed in 2008 should be further combined to form no more than three large groups for voting purpose, and that the number of FC seats should be reduced to 15. The balance of 15 seats, vacated by FC members would be converted into directly elected GC seats thus paving the way for the complete phasing out of FCs in 2016; please refer to Appendix I (GPA229) for details.

The New Century Forum has proposed abolishing FC seats in eight years gradually from 2008 onwards, and the vacant seats can then be returned by GCs through direct election; please refer to Appendix I (GPA255) for details.



(iii) attaining universal suffrage in phases after 2016.<sup>53</sup>

## **Universal Suffrage for the Chief Executive Preceding that for the Legislative Council**

5.20 In discussing the roadmap and timetable for implementing universal suffrage for the CE and LegCo, we also need to consider whether “universal suffrage for the CE should precede that for LegCo”.

5.21 In the relevant proposals, there are suggestions that universal suffrage for the CE should be implemented first<sup>54</sup>. The major reasons include:

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<sup>53</sup> For example, Hon Rita Fan Hsu Lai-tai has proposed that, from 2012 onwards, candidates running for FC seats should be nominated by the constituents of the respective FCs for election by universal suffrage. This should be done in three phases i.e. all FC members will be returned through election by universal suffrage in 2020; please refer to Appendix I (GPA009) for details.

The Liberal Party has proposed phasing out the 30 FC seats in three LegCo terms starting from 2016, and attaining universal suffrage for LegCo in 2024; please refer to Appendix I (GPA288) for details.

The Basic Law Institute has proposed that, in three phases starting 2012, candidates running for all FC seats should be nominated by the constituents of the respective FCs for election by universal suffrage. When the actual situation permits (i.e. when the operation of local political groups has become mature), there should no longer be any distinction between directly elected GC seats and FC seats. The ultimate aim of electing all members of LegCo by universal suffrage can then be attained; please refer to Appendix I (GPA251) for details.

<sup>54</sup> For example, the Democratic Alliance for the Betterment and Progress of Hong Kong has proposed adopting the approach of “resolving the simple issues before the difficult ones”, i.e. universal suffrage for the CE can first be implemented; thereafter, according to the actual situation, the existing method for forming LegCo and the LegCo procedures of voting can be reformed in two or three stages, and finally universal suffrage for LegCo can be implemented; please refer to Appendix I (GPA188 and GPA 323) for details.

The Liberal Party considers that, if the relevant conditions have ripened into maturity, the election of the CE by universal suffrage can be implemented hopefully by 2012. If universal suffrage for CE is to be implemented in 2012, the FC seats can be phased out in three stages starting in the following term (i.e. 2016) and universal suffrage can be attained in 2024; please refer to Appendix I (GPA288) for details.

Hon Abraham Shek Lai-him has proposed that, if consensus can be reached on universal suffrage for the CE, universal suffrage for LegCo should be implemented as least two terms after universal suffrage for CE has been implemented; please refer to Appendix I (GPA252) for details.

- (i) it will not be easy for the community to reach consensus on the model for forming LegCo by universal suffrage, particularly on how the FC seats should be dealt with. Relatively speaking, the model for electing the CE by universal suffrage is less complicated. As the Basic Law has already provided a relatively clear framework, there is a higher chance of the community reaching consensus on the model for electing the CE by universal suffrage. Hence, the direction of “resolving the simple issues before the difficult ones” should be followed in taking forward constitutional development and universal suffrage for electing the CE should be implemented first;
  
- (ii) the design of Hong Kong’s universal suffrage system must comply with the principle of an executive-led system<sup>55</sup>. On this

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<sup>55</sup> Implementing an executive-led system is also an important principle underlying the political structure of the HKSAR. The principle of an executive-led system is mainly realised in the following provisions in the Basic Law:

- (a) the CE shall be the head of the HKSAR and shall represent the Region (Article 43 of the Basic Law);
- (b) the CE is at the same time the head of the HKSAR Government (that is, the executive authorities) (Article 60 of the Basic Law);
- (c) in accordance with Article 48 of the Basic Law, the CE is responsible for the implementation of the Basic Law;
- (d) in accordance with Article 48 of the Basic Law, the CE leads the government of the Region, decides on government policies, nominates and reports to the CPG for appointment the principal officials and recommends to the CPG the removal of them, to conduct, on behalf of the HKSAR, external affairs and other affairs as authorized by the Central Authorities;
- (e) according to Article 62 of the Basic Law, the CE leads the HKSAR Government to exercise relevant powers and functions, including drawing up and introducing budgets, and drafting and introducing bills, motions and subordinate legislation;
- (f) the CE plays an important role in the legislative process, including the signing of bills and the promulgation of laws (Articles 48 and 76 of the Basic Law), as well as other relevant provisions (Articles 49, 50 and 51 of the Basic Law);
- (g) according to Article 74 of the Basic Law, Members of LegCo may not introduce bills relating to public expenditure or political structure or the operation of the government. The written consent of the CE shall be required before bills relating to government policies are introduced by members;
- (h) independent organisations, such as the Independent Commission Against Corruption and the Commission of Audit, shall be accountable to the CE (Articles 57 and 58 of the Basic Law); and
- (i) the CE also plays an important role in relation to the judiciary, for instance, by appointing judges of the courts at all levels (Article 48 of the Basic Law); as well as other relevant provisions (Articles 90 and 19 of the Basic Law etc.).

The CE is responsible for implementing the Basic Law, ensuring that the principle of “One Country, Two Systems” is fully implemented in Hong Kong, and developing and implementing the systems and policies of the HKSAR. To meet these requirements, an executive-led system must be implemented. Hong Kong’s constitutional development should not deviate from the principle of an executive-led system.

premise, universal suffrage for forming LegCo should only be dealt with after universal suffrage for electing the CE has been implemented. Otherwise, it will affect effective governance by the executive authorities; and

(iii) a CE returned by universal suffrage will have a stronger public mandate, which can enhance effective governance. In the long run, this will be conducive to realising the principle of an executive-led system.

5.22 However, there are suggestions that “dual universal suffrage” should be implemented in Hong Kong as early as possible (paragraph 5.03 above refers). Hence, the proposal of “implementing universal suffrage for the CE first” is not supported by some.

5.23 Regarding the issues relating to the roadmap and timetable for implementing universal suffrage for the CE and LegCo which require further consideration, please refer to the summary provided in Chapter 6 (paragraphs 6.13 to 6.17) of this Green Paper.

## **Chapter Six: Models, Roadmap and Timetable for Implementing Universal Suffrage for the Chief Executive and the Legislative Council: Key Issues to be Considered**

- 6.01 The previous chapters have stated and summarised the views of the members of the community and of the Commission on the models, roadmap and timetable for implementing universal suffrage for the CE and LegCo.
- 6.02 We propose that members of the public should focus on the following key issues when engaging in further discussions. We hope that a mainstream view will emerge. The scope of community discussion is by no means confined to these issues.

### **Principles of Design of the Universal Suffrage Models**

- 6.03 In overall terms, Hong Kong's universal suffrage system should be consistent with the concept of "universal suffrage" as generally understood internationally. That aside, should the system be designed having regard to Hong Kong's unique circumstances?
- 6.04 How can a universal suffrage model be designed to comply with the principle of "meeting the interests of different sectors of society", so as to attain the aim of preserving prosperity and stability?
- 6.05 In the process of attaining universal suffrage and in designing a model for implementing universal suffrage, how can the principle of "facilitating the development of the capitalist economy" be complied with (for example, should consideration be given to the implications of the relevant arrangements on Hong Kong's economic development and fiscal position)?
- 6.06 In the process of attaining universal suffrage, how can we ensure that the principle of gradual and orderly progress will be complied with and that the electoral method will be specified in the light of the actual situation in the HKSAR, so as to preserve prosperity and stability?
- 6.07 What are the actual situations to which due consideration should be given when taking forward Hong Kong's constitutional

development for example, whether Hong Kong people have adequate understanding of the concept of “One Country, Two Systems” and the Basic Law, and whether the current relationship between the executive authorities and the legislature is conducive to the implementation of an “executive-led” system?

## **Models for Electing the Chief Executive by Universal Suffrage**

### **(I) Composition and size of the nominating committee**

6.08 In accordance with the provisions of the Basic Law, the composition of the nominating committee must be “broadly representative”. There are more views in the community that the composition of the nominating committee should make reference to the formation of the Election Committee by four sectors. Regarding the composition and size of the nominating committee, we should consider the following issues:

- (i) Regarding the option of forming the nominating committee by 60 LegCo Members, the political party which put forth this option has recently indicated publicly that they support forming the nominating committee by modelling on the composition of the Election Committee. Moreover, the Commission and members of the public generally have reservation about this proposal. Should we set aside discussion of this option as a possible model for forming the nominating committee for the time being?
- (ii) If the nominating committee is formed by modelling on the composition of the Election Committee:
  - (a) can this comply with the requirement of being “broadly representative”?
  - (b) according to paragraphs 3.11-3.18, how many members should there be in the nominating committee?
- (iii) Each of the existing four sectors of the Election Committee has 200 members. If the size of the nominating committee is to be maintained at 800 members, should we maintain or change:

- (a) the delineation of the four sectors; and
  - (b) the relative proportion of members of the four sectors?
- (iv) If the size of the nominating committee is to be expanded to more than 800 members, which sectors should be allocated with the additional seats (for example all District Council members, elected District Council members), or should the number of seats for each of the sector be increased evenly?
- (v) If the nominating committee is to be formed by modelling on the Election Committee, should we enlarge the electorate base, for example:
- (a) replacing “corporate votes” with “director’s/individual votes”; or
  - (b) adding new subsectors, for example, women, youth, etc.?
- (vi) In what way should the nominating committee be formed, for example, whether the electoral method should be modelled on that of the existing Election Committee, i.e. representatives of most of the sectors to be returned by elections?

(II) Method of nomination

6.09 At present, the nomination threshold is set at the level of 12.5% of size of the Election Committee, i.e. there can be eight candidates at most. Regarding the method of nomination, Article 45 of the Basic Law stipulates the requirement of “nomination by the nominating committee in accordance with democratic procedures”. On the basis that the relevant provisions must be complied with, we should consider the following issues:

- (i) At the early stage of implementing universal suffrage, should we:
  - (a) limit the number of candidates at the range of two to four to avoid having too many candidates and to facilitate the

public in making their choices; or

- (b) maintain the number of candidates at eight, or even increase it to 10 to 24, so as to ensure the election has sufficient competition?
- (ii) At what level should the nomination threshold be set so as to ensure that the aspiring individuals can be nominated more easily, and at the same time, ensure that candidates will have broad support and sufficient legitimacy?
- (iii) Should we first set a relatively higher nomination threshold to help strive for consensus among different sectors on implementing universal suffrage as soon as possible, and lower the threshold gradually in the light of Hong Kong's actual situation after universal suffrage has been implemented?

6.10 Should we adopt any other nomination requirements, for example,

- (i) should there be an upper limit on the number of subscribers which a candidate can obtain to ensure that more aspiring individuals can take part in the election, thereby enhancing the competitiveness of the election?
- (ii) should candidates be required to obtain a certain number of nominations in each sector or in some specific sectors?

(III) Method of universal suffrage after nomination

6.11 Regarding the method of universal suffrage after nomination, we should consider the following issues:

- (i) The Basic Law provides that, when universal suffrage is implemented, the CE is selected by universal suffrage upon nomination by the nominating committee. Does universal suffrage mean selecting the CE by "one-person-one-vote"?
- (ii) Should only one round of election be held and the candidate who receives the highest number of votes be elected? This can avoid having to invest an enormous amount of community

resources to arrange for another round of voting by all registered voters;

- (iii) Or should more than one round of election be held, requiring that a candidate should receive more than half of the valid votes cast to get elected, so as to ensure that the CE elected has sufficient legitimacy?
- (iv) Should the election proceedings continue if there is only one candidate?

### **Models for Forming the Legislative Council by Universal Suffrage**

6.12 Regarding the model for forming LegCo by universal suffrage, we should consider the following issues:

- (i) Whether LegCo FC Members have made contributions to the work of LegCo? Can they meet the interests of different sectors of society and fulfil the principle of balanced participation?
- (ii) Should FC seats be abolished when universal suffrage for LegCo is attained?
- (iii) Or should the FC seats be retained in some form, but changes could be made to the electoral system (for example, making every voter eligible for electing FC members)? Will this be consistent with the principles of universal suffrage?
- (iv) If the seats representing the District Council FC are to replace other FC seats, all LegCo seats would then be returned by either direct or indirect election. Would it be consistent with the principle of universal suffrage?
- (v) If FC seats are to be abolished when universal suffrage for LegCo is implemented, should we:
  - (a) abolish all these seats in one go; or
  - (b) abolish them in phases?



- (vi) If FC seats are to be abolished in phases:
  - (a) which sectors should be abolished first; and
  - (b) will there be any chance that different sectors can reach consensus on this aspect?

### **Roadmap and Timetable for Implementing Universal Suffrage for Electing the Chief Executive and Forming the Legislative Council**

- 6.13 Regarding the roadmap for implementing universal suffrage for electing the CE, we should consider whether the existing electoral model (i.e. an 800-member Election Committee):
  - (i) should be transformed to universal suffrage in one go by forming the nominating committee directly; or
  - (ii) should be transformed to universal suffrage by first going through a transitional phase?
- 6.14 Regarding the roadmap for implementing universal suffrage for forming LegCo, should we:
  - (i) attain universal suffrage for LegCo in one go; or
  - (ii) attain universal suffrage for LegCo gradually in phases?
- 6.15 If the community is able to reach consensus on the model for implementing universal suffrage for electing the CE first, should we:
  - (i) implement universal suffrage for the CE first, to be followed by that for LegCo; or
  - (ii) implement “dual universal suffrage” only when the community has reached consensus on both electoral methods?
- 6.16 Regarding the timetable for implementing universal suffrage for electing the CE, according to paragraph 5.15, when should universal suffrage be attained?

- 6.17 Regarding the timetable for implementing universal suffrage for forming LegCo, according to paragraph 5.19, when should universal suffrage be attained?

**Please send us your views by post, facsimile or e-mail on or before 10 October 2007:**

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**Composition of the Election Committee**

**First Sector (Industrial, commercial and financial sectors)**

	<u>Subsector</u>	<u>Number of members</u>
1.	Catering	11
2.	Commercial (First)	12
3.	Commercial (Second)	12
4.	Employers' Federation of Hong Kong	11
5.	Finance	12
6.	Financial Services	12
7.	Hong Kong Chinese Enterprises Association	11
8.	Hotel	11
9.	Import and Export	12
10.	Industrial (First)	12
11.	Industrial (Second)	12
12.	Insurance	12
13.	Real Estate and Construction	12
14.	Textiles and Garment	12
15.	Tourism	12
16.	Transport	12
17.	Wholesale and Retail	12

**Second Sector (The professions)**

	<u>Subsector</u>	<u>Number of members</u>
18.	Accountancy	20
19.	Architectural, Surveying and Planning	20
20.	Chinese medicine	20
21.	Education	20
22.	Engineering	20
23.	Health Services	20
24.	Higher Education	20
25.	Information Technology	20
26.	Legal	20
27.	Medical	20

### **Third Sector (Labour, social services, religious and other sectors)**

	<u>Subsector</u>	<u>Number of members</u>
28.	Agriculture and Fisheries	40
29.	Labour	40
30.	Religious*	40
31.	Social Welfare	40
32.	Sports, Performing Arts, Culture and Publication	40

### **Fourth Sector (Members of the Legislative Council, representatives of district-based organisations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference)**

	<u>Subsector</u>	<u>Number of members</u>
33.	National People's Congress	36
34.	Legislative Council	60
35.	Chinese People's Political Consultative Conference	41
36.	Heung Yee Kuk	21
37.	Hong Kong and Kowloon District Councils	21
38.	New Territories District Councils	21

\* The number of members to be nominated by each of the six designated bodies of the religious subsector are as follows:

	<u>Number of members</u>
Catholic Diocese of Hong Kong	7
Chinese Muslim Cultural and Fraternal Association	6
Hong Kong Christian Council	7
The Hong Kong Taoist Association	6
The Confucian Academy	7
The Hong Kong Buddhist Association	7

**Functional Constituencies of the Legislative Council**

	<u>Functional constituency</u>	<u>Number of members to be returned</u>
1.	Heung Yee Kuk	1
2.	Agriculture & Fisheries	1
3.	Insurance	1
4.	Transport	1
5.	Education	1
6.	Legal	1
7.	Accountancy	1
8.	Medical	1
9.	Health Services	1
10.	Engineering	1
11.	Architectural, Surveying & Planning	1
12.	Labour	3
13.	Social Welfare	1
14.	Real Estate and Construction	1
15.	Tourism	1
16.	Commercial (First)	1
17.	Commercial (Second)	1
18.	Industrial (First)	1
19.	Industrial (Second)	1
20.	Finance	1
21.	Financial Services	1
22.	Sports, Performing Arts, Culture & Publication	1
23.	Import and Export	1
24.	Textiles and Garment	1
25.	Wholesale and Retail	1
26.	Information Technology	1
27.	Catering	1
28.	District Council	1



# Green Paper on Constitutional Development

## Highlights

July 2007

### Background

The ultimate aim of electing the Chief Executive (CE) and for forming the Legislative Council (LegCo) by universal suffrage is prescribed by the Basic Law. Since the establishment of the HKSAR, Hong Kong's political structure has been developing in accordance with the provisions of the Basic Law, and has been making progress towards the ultimate aim of universal suffrage in a gradual and orderly manner.

The HKSAR Government has published the Green Paper on Constitutional Development for consulting the public on the options, roadmap and timetable for implementing universal suffrage for the CE and LegCo.

### Principles

In the process of attaining the ultimate aim of universal suffrage and in designing a model for implementing universal suffrage, we must ensure that the following can be complied with:

- (i) the basic policies of the State regarding Hong Kong;
- (ii) the four principles on constitutional development under the Basic Law, namely, meeting the interests of different sectors of society, facilitating the development of the capitalist economy, gradual and orderly progress, and developments being appropriate to the actual situation in the HKSAR; and
- (iii) the principles of universal and equal suffrage.

### Options for electing the CE by universal suffrage

Any option must comply with the requirement of Article 45 of the Basic Law that "the CE shall be selected by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures".

#### **Composition and size of the nominating committee:**

- First type of options: constituted by less than 800 members
- Second type of options: constituted by 800 members
- Third type of options: constituted by more than 800 members, e.g. expanding the membership to 1200-1600

#### **Method of nomination - number of candidates:**

- First type of options: 10 candidates or more

- Second type of options: eight candidates at most
- Third type of options: two to four candidates at most

#### **Method of universal suffrage election after nomination:**

One-person-one-vote by all registered voters

#### **Roadmap and timetable:**

- First type of options: forming the nominating committee directly in 2012 to attain universal suffrage
- Second type of options: going through a transitional phase and attaining universal suffrage in 2017
- Third type of options: going through a transitional phase and attaining universal suffrage after 2017

### Options for forming LegCo by universal suffrage

- First type of options: replacing functional constituency (FC) seats with district-based seats returned through direct election
- Second type of options: retaining FC seats, but changing the electoral method, e.g. candidates to be nominated by FCs, but elected by registered voters
- Third type of options: increasing the number of seats representing District Councils in LegCo
- Attaining universal suffrage for LegCo in phases

#### **Roadmap and timetable:**

- First type of options: attaining universal suffrage in one go in 2012
- Second type of options: attaining universal suffrage in phases in 2016
- Third type of options: attaining universal suffrage in phases after 2016

Copies of the Green Paper are available at District Offices. The Green Paper has also been uploaded onto the website. Please send us your views by post, facsimile or e-mail on or before 10 October 2007:

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