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Panel on Constitutional Affairs
Background brief for special meeting on 21 October 2005

Constitutional development after 2007

Purpose

This brief summarises the discussions held by Members on the constitutional development of the Hong Kong Special Administrative Region (HKSAR) and related issues since the first term of the Legislative Council (LegCo) and prior to the release of the Fifth Report of the Constitutional Development Task Force on 19 October 2005.

Relevant Basic Law provisions

2. Under Article 45 of the Basic Law (BL 45), 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). The method for selecting 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 CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

3. Under BL 68, LegCo 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 LegCo Members by universal suffrage.

4. The specific methods for selecting CE and forming LegCo (the "electoral methods") are specified in Annex I and Annex II to the Basic Law respectively. If there is a need to amend the method for selecting CE for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all LegCo Members and the consent of CE and be reported to the Standing Committee of the National People's Congress (NPCSC) for approval. Any amendments made to the method for forming LegCo after 2007 must be made with the endorsement of a two-thirds majority of all LegCo Members and the consent of CE and be reported to NPCSC for the record.

Report on “The development of the political system of the Hong Kong Special Administrative Region”

5. Following the passage of the motion moved by Hon Emily LAU urging the Administration to conduct public consultation as soon as possible on, inter alia, the ministerial system and the election of CE and LegCo by universal and equal suffrage at the Council meeting on 12 January 2000, the Panel on Constitutional Affairs (CA Panel) held a number of meetings to discuss and receive views from the public on the development of the political system of the HKSAR.

6. Having considered the views received and deliberated in detail the relevant issues, the CA Panel tabled a report entitled “The development of the political system of the Hong Kong Special Administrative Region” in Council. A debate on the motion calling upon the Government to consider the views expressed by Members on the report was held at the Council meeting on 14 June 2000. The motion was passed by the Council.

7. The Administration’s position at that time was that the Basic Law provided the HKSAR with 10 years during which its foundation of political structure could be strengthened. There were two milestones in the constitutional development between 2000 and 2007, namely the 2002 CE election and 2004 LegCo election. The Administration would review the experience of these two elections before deciding on the way forward.

Implementation of the accountability system for principal officials

8. In his 2000 Policy Address, CE announced that the Administration would study how the accountability of principal officials at Secretaries and Directors of Bureaux rank for their respective policy portfolios could be enhanced.

9. To gauge public views on a system of accountability for principal officials, the CA Panel conducted a public consultation exercise in March 2001. A delegation of the CA Panel visited France, Germany and the United Kingdom from 13 to 24 June 2001, to study their systems of executive accountability.

10. CE announced the framework of the accountability system for principal officials at the Council meeting on 17 April 2002. A subcommittee was formed under the House Committee to study the proposed accountability system and related issues. The new accountability system was implemented on 1 July 2002.

11. The CA Panel held a number of meetings in the 2002-2003 session to discuss the various issues relating to the accountability system. To assist Members in considering the six-month report and 12-month report on the implementation of the accountability system prepared by the Administration, the LegCo Secretariat has prepared two background briefs summarising the

developments subsequent to the implementation of the accountability system and discussions of Members on the relevant issues. These two briefs were issued under LC Paper Nos. CB(2)930/02-03(01) dated January 2003 and 2864/02-03(02) dated 18 July 2003 respectively.

Establishment of the Constitutional Development Task Force

12. On 7 January 2004, CE announced in his Policy Address the establishment of the Constitutional Development Task Force. The Task Force is headed by the Chief Secretary for Administration (CS), with the Secretary for Justice (SJ) and the Secretary for Constitutional Affairs (SCA) as members. Its tasks are to examine in depth the relevant issues of legislative process and principle in the Basic Law relating to constitutional development; to consult the relevant departments of the Central Authorities; and to gather the views of the public on the relevant issues.

13. The Task Force made a visit to Beijing from 8 to 10 February 2004 to meet the Hong Kong and Macao Affairs Office of the State Council and the Legislative Affairs Commission of NPCSC to exchange views on the issues of principles and legislative process relating to constitutional development in the Basic Law. The Task Force also held discussions with Mainland legal experts.

14. On 11 February 2004, CS made a statement on the visit in Council. CS said, among other things, that the relevant departments of the Central Authorities stated that Hong Kong's political structure was established by NPC through the Basic Law in accordance with the Constitution. Hong Kong's constitutional development involved the relationship between the Central Authorities and the HKSAR, and was related to the systems used to implement "One Country, Two Systems" and the Basic Law. Therefore, the Central Authorities had powers and responsibilities on matters relating to Hong Kong's constitutional development.

15. Since its establishment, the Task Force has published four reports relating to constitutional development. The Task Force has briefed the CA Panel on its work progress on a regular basis. CS made statements in Council on the visit of the Task Force to Beijing in February 2004, and the Fourth Report of the Task Force. CS also responded to questions raised by Members relating to constitutional development at the special meetings of the House Committee in February and July 2004. In addition, CE responded to questions relating to constitutional development at the CE's Question and Answer Sessions on 28 April and 27 June 2005.

16. Details of the four reports and the intervening developments, i.e. the interpretation of NPCSC on 6 April 2004 and the decision of NPCSC on 26 April 2004, are discussed in paragraphs 17 to 58 below.

The “First Report on Issues of Legislative Process in the Basic Law Relating to Constitutional Development” and the NPCSC Interpretation on 6 April 2004

Issues of legislative process and NPCSC Interpretation

17. The First Report of the Task Force was published on 30 March 2004. The Report set out the views of the Task Force on the following five issues of legislative process relating to constitutional development –

- (a) what legislative process should be used for amending the “electoral methods”;
- (b) whether there is no need to invoke BL 159 if the amendment procedures as prescribed in Annex I and Annex II are used;
- (c) how amendments relating to the “electoral methods” should be initiated;
- (d) whether the method for forming the third term LegCo as prescribed in Annex II may apply to the fourth and subsequent terms of LegCo; and
- (e) how the phrase “subsequent to the year 2007” should be understood.

18. On 26 March 2004, the HKSAR Government was notified formally by the Central Authorities that interpretation of Article 7 of Annex I and Article III of Annex II to the Basic Law would be considered at the meeting of NPCSC between 2 April and 6 April 2004.

19. On 6 April 2004, NPCSC promulgated its interpretation (the NPCSC Interpretation), which is summarised below –

- (a) the phrases “subsequent to the year 2007” and “after 2007” in Annex I and Annex II include the year 2007;
- (b) the provisions in Annex I and Annex II that “if there is a need” to amend the “electoral methods” mean that they may be amended or remain unamended;
- (c) any amendment to the “electoral methods” must be made with the endorsement of a two-thirds majority of all LegCo Members and the consent of CE and shall be reported to NPCSC for approval or for the record in accordance with the Basic Law before it could take effect ;
- (d) CE shall make a report to NPCSC as regards whether there is a need to make an amendment, and NPCSC shall, in accordance with BL 45

and BL 68, make a determination in the light of the actual situation in HKSAR and in accordance with the principle of gradual and orderly progress. The bills on the amendments to the “electoral methods” and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government of the HKSAR into LegCo; and

- (e) if no amendment is made to the “electoral methods” and LegCo's procedures for voting on bills and motions as stipulated in Annex I and Annex II, the existing provisions in the two Annexes will still be applicable.

20. Some members agreed with the Task Force that it was legal and constitutional for NPCSC to exercise its power under the Constitution and the Basic Law to give an interpretation on the relevant provisions of the Basic Law.

21. Some other members questioned the need and appropriateness for NPCSC to interpret the Basic Law since the community had broad consensus on the legislative issues. They pointed out that under BL 158, NPCSC had authorised the courts of the HKSAR to interpret on their own, in adjudicating cases, the provisions of the Basic Law which were within the limits of the autonomy of the HKSAR. In addition, under the common law system practised in Hong Kong, the power to interpret laws was vested in the courts, and not the legislative organ.

Need to invoke BL 159

22. According to the First Report and the NPCSC Interpretation, the “electoral methods” can be amended in accordance with the special procedures in Annex I and Annex II to the Basic Law. As long as the relevant amendments are not inconsistent with the provisions of the main text of the Basic Law, such as BL 45 and BL 68, the amendment procedures in BL 159 need not be invoked.

Initiation of the legislative process

23. The Task Force had advised the CA Panel that amendments to the “electoral methods” should be made at two levels, as follows –

- (a) first, in accordance with the provisions in Annex I and Annex II to the Basic Law and the NPCSC Interpretation, the proposed amendments introduced by the HKSAR Government must be made with the endorsement of a two-thirds majority of LegCo Members and the consent of CE, and must be reported to NPCSC for approval and for the record respectively before they could take effect; and
- (b) on completion of the procedure in (a) above, local electoral laws should be amended to prescribe the detailed arrangements. The relevant amendment ordinance would be reported to NPCSC for the

record in accordance with BL 17. This reporting arrangement should not affect the entry into force of law.

If no amendment was made to the “electoral methods” and the procedures for LegCo to vote on bills and motions as stipulated in Annex I and Annex II to the Basic Law, the existing provisions in the two Annexes would still be applicable.

24. According to the Task Force, bills relating to the political structure should only be introduced by the HKSAR Government under BL 74. As amendments to the “electoral methods” were related to the political structure, the power to introduce the proposed amendments at both levels should rest with the HKSAR Government. Unless a political consensus had been reached by the three parties, i.e. a two-thirds majority of LegCo Members, CE and NPCSC, on the amendments to the “electoral methods”, the HKSAR Government would not initiate the legislative process.

25. The Task Force had also advised the CA Panel that under Annex I, NPCSC could refuse to approve the proposed amendments for any reasons including political reasons. Under Annex II, NPCSC could refuse to put the proposed amendments for the record if the amendments contravened the relevant provisions of the Basic Law. The power of NPCSC under Annex II was a substantive one.

26. Some members expressed utmost dissatisfaction with the stance of the Task Force. They did not agree that the prior consent of the Central Authorities should be required for the HKSAR to initiate the legislative process, as this was not stipulated in the Basic Law. The requirement for a three-party consensus would mean that the Central Authorities had a “veto power” on whether the amendment mechanism in Annex I and Annex II to the Basic Law could be triggered. These members pointed out that in any event, NPCSC would have the final say on the amendments, as they would be reported to NPCSC for approval or for the record, as stipulated in Annex I and Annex II respectively.

27. Some other members considered that it was clear from the provisions of the Basic Law that a three-party consensus was required for initiating amendments to the “electoral methods”.

28. The Task Force had explained to the CA Panel that the establishment of the HKSAR and its systems had been determined by the Central Authorities in accordance with the Constitutional and through the Basic Law. As the Central Authorities had constitutional powers and responsibilities to oversee and determine the constitutional development in the HKSAR, any changes to the political structure were subject to the consent of the Central Authorities. Constitutional development was neither a matter for Hong Kong to decide unilaterally nor within its ambit of a high degree of autonomy. While the power to introduce bills to amend the “electoral methods” rested with the HKSAR Government, this power should not be exercised lightly without regard to political reality.

29. A member considered that amendments to local legislation (i.e. the second level) should be introduced in the form of bills; hence BL 74 would apply. As regards amendments to Annex I and Annex II to the Basic Law (i.e. the first level), they could be initiated by LegCo Members in the form of a motion and subject to the endorsement of a two-thirds majority of LegCo Members. The member pointed out that on two occasions in the past, the President of LegCo had allowed Hon LEUNG Yiu-chung to move motions to amend the Basic Law in accordance with BL 159.

30. Another member was of the view that any amendments to the Basic Law which had legal effect or were related to public expenditure or political structure should only be proposed by the HKSAR Government. If the two motions moved by Hon LEUNG Yiu-chung had been passed by a two-thirds majority of LegCo Members, they might have been subject to legal challenge that they contravened BL 74.

31. The Task Force reiterated its position that the amendments proposed under the two Annexes to the Basic Law should be introduced by the HKSAR Government. The interpretation promulgated by NPCSC on 6 April 2004 had stated that bills on the amendments to the “electoral methods” should be introduced by the HKSAR Government (paragraph 19(d) refers). The amendments to Annexes I and II to the Basic Law might be introduced in the form of a special bill, but the Administration would advise Members after consultation with the Department of Justice.

The “Second Report on Issues of Principle in the Basic Law Relating to Constitutional Development” and CE’s Report to NPCSC

32. In its Second Report published on 15 April 2004, the Task Force recommended that CE should, in accordance with the NPCSC Interpretation made on 6 April 2004, submit a report to NPCSC. Such a report should recommend that the “electoral methods” be amended. On the same day, CE submitted a report to NPCSC and requested NPCSC to make a determination to that effect in accordance with the relevant provisions and principles in the Basic Law (CE’s Report). Both the Second Report and CE’s Report set out nine factors which should be considered in determining how the “electoral methods” could be amended. The nine factors are detailed in **Appendix I**.

33. Some members did not accept CE’s Report. These members pointed out that the NPCSC Interpretation only required CE to make a report as regards whether there was a need to amend the “electoral methods”. It was unnecessary for CE to propose the nine factors which were tantamount to setting up barricades hindering the implementation of universal suffrage in Hong Kong and hampering the development of democracy. In addition, the nine factors gave very little weight to public opinions, and some of the factors were not stipulated in the Basic Law.

34. Some other members expressed support for CE submitting a report in accordance with the NPCSC Interpretation. They also considered the nine factors acceptable, as some of these factors were principles stipulated in the Basic Law, and other factors reflected the views collected by the Task Force.

35. The Task Force had explained to the CA Panel that the nine factors were underpinned by provisions in the Basic Law and the principle of “One Country, Two Systems”. The nine factors had been derived by the Task Force after considering the views of different sectors in Hong Kong and the Central Authorities. It was the view of the Task Force that the closer a proposal was to these nine factors, the easier it would be to achieve consensus among the three parties, i.e. a two-thirds majority of LegCo Members, CE and NPCSC.

36. At the meeting of the CA Panel on 16 April 2004, Dr Hon YEUNG Sum moved a motion calling upon CE to consult the people of Hong Kong immediately and submit a supplementary report to reflect public opinions to NPCSC. The motion was negated.

The NPCSC Decision on 26 April 2004

37. At its meeting on 25 and 26 April 2004, NPCSC deliberated on CE's Report. The decision promulgated by NPCSC on 26 April 2004 (the NPCSC Decision) is summarised below –

- (a) the election of the third term CE in 2007 and LegCo in the fourth term in 2008 should not be by means of universal suffrage;
- (b) the 50:50 ratio for Members returned by functional constituencies (FCs) and Members returned by geographical constituencies (GCs) through direct elections should remain unchanged for the fourth term LegCo;
- (c) the procedures of voting on bills and motions in LegCo were to remain unchanged; and
- (d) subject to the above not being contravened and consistent with BL 45 and BL 68, and the provisions of Annex I and Annex II to the Basic Law, the “electoral methods” could be appropriately amended.

38. Some members supported the NPCSC Decision. They considered that the Decision set out the parameters for further discussions on options to amend the “electoral methods” and would allow the democratic system of Hong Kong to progress in a gradual and orderly manner. As the NPCSC Decision only dealt with the “electoral methods” in 2007 and 2008, these members also considered that a timetable should be set for the future development of Hong Kong’s political structure.

39. Some other members expressed great disappointment at NPCSC ruling out universal suffrage in 2007 and 2008. They considered that very little room was left for changing the “electoral methods”. They pointed out that the previous consultation conducted by the Task Force on the issues of legislative process and principle did not cover specific options for amending the “electoral methods”, and universal suffrage had been ruled out by NPCSC before the Hong Kong community was consulted. These members were of the view that the NPCSC Decision had completely ignored public aspirations for democracy. They also considered that the NPCSC Decision was a violation of the principles of “One Country, Two Systems” and “a high degree of autonomy”, as well as the provisions in Annex I and Annex II to the Basic Law.

40. A few members pointed out that the NPCSC Decision to maintain the 50:50 ratio between Members returned by GCs and FCs respectively in 2008 did not accord with the principle of “gradual and orderly progress” in achieving the ultimate goal of universal suffrage.

41. The Task Force had responded that there was a lack of consensus in the community as to whether universal suffrage for the elections of CE in 2007 and LegCo Members in 2008 should be implemented. The NPCSC Decision had removed the uncertainties as to the scope of amendments to the “electoral methods”. Specific areas which could be considered for amendment in respect of the “electoral methods” would be set out in the Third Report of the Task Force.

42. At the Council meeting on 5 May 2004, Hon Frederick FUNG moved a motion requesting CE to submit a supplementary report to NPCSC. The motion was negated.

43. At the Council meeting on 19 May 2004, Hon Albert HO moved a motion on “Regretting the decision of the NPCSC to rule out universal suffrage in the years 2007 and 2008”. The motion was negated.

The “Third Report on Areas which may be Considered for Amendment in respect of the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008”

44. On 11 May 2004, the Third Report was published by the Task Force. The Third Report set out the following nine areas in respect of the “electoral methods” which could be considered for amendment –

- (a) the number of members of the Election Committee;
- (b) the composition of the Election Committee;

- (c) the number of members of the Election Committee required for nominating candidates for the office of CE;
- (d) the delineation and size of the electorate of the Election Committee;
- (e) the number of seats in LegCo;
- (f) the number of seats returned by GCs through direct elections;
- (g) the number of seats returned by FCs;
- (h) the delineation and size of electorate of FCs; and
- (i) provisions regarding nationality of LegCo Members.

Further details on the nine areas are in **Appendix II**.

45. The public was given until 31 August 2004 to formulate and put forward their views and specific proposals in respect of the “electoral methods”. The consultation period was extended to 30 September 2004, and further extended to 15 October 2004.

46. The CA Panel was advised in October 2004 that 12 discussion sessions on the Third Report had been held and attended by some 870 participants from different sectors of the community. Based on the views collected at these discussion sessions, the Task Force would draw up more specific proposals for further consultation. Thereafter, local legislation could be enacted in 2005-2006 to implement the new electoral arrangements in 2007.

47. Some members sought clarification whether proposals on areas which were not set out in the Third Report would be considered by the Task Force, such as the voting system for GC election. The CA Panel was advised that the nine areas which could be considered for amendment in respect of the “electoral methods” set out in the Third Report were not exhaustive. The public was welcome to put forward views or specific proposals on other areas regarding the “electoral methods”, in accordance with the relevant provisions of the Basic Law, as well as the Interpretation and Decision of NPCSC.

48. A member had enquired whether the proposal that the election of members of the Election Committee by “one person, one vote” fell within the parameters of the NPCSC Decision. The Task Force responded that an election involving all the registered electors was tantamount to implementing universal suffrage which had been overruled by the NPCSC Decision. The proposal that members of the Election Committee be elected by “one person, one vote” contravened the NPCSC Decision.

49. Some members considered that the views collected by the Task Force were not representative, and that a referendum was the best way to gauge public opinion on the electoral arrangements for 2007 and 2008. At the meeting of the CA Panel on 18 October 2004, Dr Hon Fernando CHEUNG moved a motion urging the Administration to conduct a referendum on the constitutional reform proposals for 2007 and 2008, including direct election by universal suffrage. The Administration considered that the motion was inappropriate, and inconsistent with the established legal procedures, as well as impractical and misleading to the public. It would not consider any suggestion on constitutional development that departed from the Basic Law and the NPCSC Decision on 26 April 2004 concerning the “electoral methods”. The motion was negated.

The "Fourth Report on Views and Proposals of Members of the Community on the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008"

50. On 15 December 2004, the Fourth Report was published for public consultation until end of March 2005. The consultation period was subsequently extended to end of May 2005. The spectrum of views collected by the Task Force on the areas which may be considered for amendment in respect of the “electoral methods” are summarised in the Fourth Report.

51. The Task Force had advised the CA Panel that any proposals that were inconsistent with the provisions of the Basic law or the NPCSC Decision of 26 April 2004 would not be processed further. The Task Force would focus its future work on the “electoral methods” as the NPCSC Decision had determined that appropriate amendments should be made to the “electoral methods”. The Task Force would collect further views from different sectors of the community and formulate a comprehensive package which stands the best chance of achieving consensus among the various parties. The package would be put forth in the Fifth Report of the Task Force for further discussion by LegCo and the public.

52. The Task Force had also advised the CA Panel that a number of views were received on issues outside the scope of the “electoral methods” during the consultation period. These issues included setting of a timetable for elections by universal suffrage, review of the roles of FCs and their future development, and exploration of different forms of universal suffrage. The Task Force considered that these were complex and long term issues which deserve further discussion by the community, and would not be dealt with at present.

53. Some members expressed disappointment that the Fourth Report did not address public aspirations for universal suffrage in 2007 and 2008, or provided a roadmap for constitutional development for the purpose of achieving the ultimate aim of universal suffrage. Some other members queried the need for the Administration to explore different forms of universal suffrage, and examine

long-term future of FCs, given that the retention of FCs contravened the ultimate goal of universal suffrage as prescribed in BL 68.

54. The Task Force's response was that under BL 45, the selection of CE by universal suffrage was by way of nomination by a broadly representative nominating committee. For the election of LegCo Members, BL 68 stipulated that the ultimate aim was the election of all LegCo Members by universal suffrage, but the Basic Law was silent on how universal suffrage should be achieved. It was therefore necessary to explore the different forms of universal suffrage before forming a view. In the view of the Task Force, the retention of FCs would not necessarily be inconsistent with the ultimate goal of universal suffrage.

55. At the meeting of the CA Panel on 20 December 2004, Hon KWOK Ka-ki moved a motion urging the Administration to conduct an opinion poll on the Fourth Report of the Task Force, and also urging the Task Force to consult the public on the specific proposals for amending the "electoral methods" and a timetable for universal suffrage. The motion was negated.

56. At the Council meeting on 5 January 2005, Hon Albert JINGHAN CHENG's motion expressing regret about the Fourth Report of the Task Force, and urging the Government to expeditiously present to the Council a constitutional reform proposal to facilitate discussion by the public and the Council was negated. During the debate on the motion, SJ said, *inter alia*, that there was no single political system or electoral methodology which was appropriate for all peoples and all States. Other election methods of "one man, one vote" including indirect elections could achieve the ultimate aim of universal suffrage. The ultimate aim of universal suffrage did not necessarily mean that the selection of CE and election of all LegCo Members would ultimately have to be by "one man, one vote" by direct election. In the view of SJ, indirect elections could lawfully be retained consistently with the ultimate aim of universal suffrage. While assigning constituencies according to the geographical area in which the elector resided was only one way of delineating constituencies, FCs provided an alternative means of grouping together individual electors with common interests. Should all eligible electors be able to vote in FC elections in the future, this could be one of the models for universal suffrage.

57. The Administration's position on universal suffrage was further elaborated in the reply given by SCA to the oral question concerning FC elections raised by Hon Frederick FUNG at the Council meeting on 26 January 2005. SCA said that the ultimate aim of universal suffrage to elect all LegCo Members should be attained in the light of Hong Kong's actual situation and in accordance with the principle of gradual and orderly progress. BL 68 did not stipulate any further requirements on the pace or form in moving towards universal suffrage. Geographical direct elections through "one man, one vote" represented a form of universal suffrage. Other forms of "one man, one vote" elections, including indirect elections, which met the electoral principles of "universal" and "equal"

suffrage and could cater for the needs of Hong Kong, could also be possible models of universal suffrage.

58. SCA further advised the Council that among the opinions collected by the Task Force on the Fourth Report, there were suggestions that members of the public could return representatives of the relevant industries by “one man, one vote”, after the organisations in FCs had nominated a certain number of candidates. There were also suggestions that a bicameral model could be adopted to retain the voices of FCs in the legislature.

Fifth Report to be published by the Task Force

59. Questions on issues relating to constitutional development were raised at the CE’s Question and Answer Sessions held on 28 April 2005 and 27 June 2005. CE advised Members that while the ultimate aim is the election of CE and all LegCo Members by universal suffrage under the Basic Law, any proposals to amend the “electoral methods” must be formulated on the basis of a consensus of the three parties, i.e. a two-thirds majority of LegCo Members, CE and NPCSC. The Task Force would put forward a comprehensive package in the Fifth Report to be published. As the NPCSC Decision had ruled out universal suffrage for the two elections in 2007 and 2008, he did not raise the subject with the Central Authorities during his trip to Beijing for the purpose of taking oath to assume the office of CE.

60. In scrutinising the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill, members of the Bills Committee had raised a number of issues and concerns. They included –

- (a) the meaning of the "term of office" of CE referred to in BL 46 and BL 50;
- (b) the anomalous consequences arising from the “remainder of the term” requirement;
- (c) the circumstances under which a by-election should or should not be held;
- (d) whether the number of subscribers required for nominating candidates for the office of CE should be capped;
- (e) whether a poll should be conducted in an uncontested election; and
- (f) whether the requirement for a winning candidate to declare he is not a member of any political party should be removed.

The Administration agreed to address these issues and concerns in the Fifth Report to be published by the Task Force.

61. At the Panel meeting on 17 October 2005, some members expressed concern on whether the legislative proposal to amend the "electoral methods" would be classified as an "important bill", with the result that BL 50 might be invoked in the event that the bill was not passed by LegCo. SCA advised that the concept of "important bill" would only apply to local legislation, and not amendments to Annexes I and II to the Basic Law which was a constitutional document.

Outline work plan of the Task Force

62. At the CA Panel meeting on 20 December 2004, the Task Force briefed members on the following work plan which had been drawn up on the basis of the position at that time –

- (a) middle of 2005 – the Task Force would issue the Fifth Report and put forward the mainstream proposal for discussion by the public and LegCo if a consensus will emerge from the community;
- (b) second half of 2005 – the legislative process relating to amending Annex I and Annex II to the Basic Law can commence if a consensus among all the relevant parties is reached;
- (c) first half of 2006 – a Chief Executive Election (Amendment) Bill can be introduced into LegCo. After the amendment bill has been endorsed by LegCo, the relevant subsidiary legislation could be introduced into LegCo;
- (d) second half of 2006 – the electoral arrangement for the Election Committee subsector elections can be put in place and the formation of the Election Committee can be implemented;
- (e) first quarter of 2007 – the nomination and election process for the third term CE will commence and be completed;
- (f) 2007 – a Legislative Council (Amendment) Bill can be introduced into LegCo. After the amendments have been endorsed by LegCo, the relevant subsidiary legislation will be introduced into LegCo;
- (g) 2008 – the nomination and election process for the fourth term LegCo will commence in the middle of 2008 and be completed in the third quarter of 2008.

Motion debates in Council

63. A list of the relevant motions moved for debate in Council is in **Appendix III** for Members' reference.

Questions in Council

64. A list of the relevant questions raised in Council is in **Appendix IV** for Members' reference.

Relevant papers

65. A list of the relevant papers is in **Appendix V**. These papers are available on the LegCo website.

Council Business Division 2
Legislative Council Secretariat
20 October 2005

**The nine factors which should be considered in determining
how the "electoral methods" could be amended
(An extract from the Second Report on Issues of Principle in the Basic
Law Relating to Constitutional Development)**

- (1) The Central Authorities have constitutional powers and responsibilities to oversee and determine constitutional development in the Hong Kong Special Administrative Region (HKSAR), in order to ensure the implementation of the basic policies of the State regarding Hong Kong. The HKSAR, in examining the direction and pace of its constitutional development, must pay heed to the views of the Central Authorities, and must also confirm with the Standing Committee of the National People's Congress (NPCSC) first as to the need for change. In any case, according to the Basic Law, any amendments can only be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive (CE), and they shall be reported to the NPCSC for approval or for the record;
- (2) Any proposed amendments must comply with the provisions of the Basic Law. Amendments to the design and principle of the political structure prescribed in the Basic Law must not be lightly contemplated;
- (3) The appointment of CE by the Central Authorities is substantive. No proposed amendments shall affect the substantive power of appointment of the Central Authorities;
- (4) Any proposed amendments must aim at consolidating the executive-led system headed by CE and must not deviate from this principle of design. They should aim at perfecting the executive-led system, and should not lead to a deterioration of the co-ordination problem of the current relationship between the executive authorities and the legislature;
- (5) Development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner step by step. The pace should not be too fast. The progress should accord with the actual situation in the HKSAR, in order to preserve its prosperity and stability;
- (6) When considering the actual situation, public opinions, as well as other factors, including the legal status of the HKSAR, the present stage of constitutional development, economic development, social conditions, the understanding on the part of the public of "One Country, Two Systems" and the Basic Law, public awareness on political participation, the maturity of political talent and political groups, as well as the relationship between the executive authorities and the legislature, must be taken into account;

- (7) Any proposed amendments must enable different sectors of society to be represented in the political structure, and to participate in politics through various channels;
- (8) Any proposed amendments should ensure that consideration would continue to be given to the interests of different sectors of society; and
- (9) Any proposed amendments must not bring about adverse effect on the systems of economy, monetary affairs, public finance and others as prescribed in the Basic Law.

**Nine areas in respect of the “electoral methods”
which could be considered for amendment**

(An extract from the Third Report on Areas which may be Considered for Amendment in respect of the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008)

- (I) Areas which may be considered for amendment in respect of the method for selecting the Chief Executive in 2007

Areas which may be Considered for Amendment	Existing Provisions
The Number of Members of the Election Committee	The Election Committee shall be composed of 800 members.
The Composition of the Election Committee	<p>The Election Committee shall be composed of members from the following four sectors :</p> <ul style="list-style-type: none"> • 200 members from the industrial, commercial and financial sectors • 200 members from the professions • 200 members from the labour, social services, religious and other sectors • 200 members from members of the Legislative Council, representatives of district- based organizations, 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 <p>The above four sectors are constituted by a total of 38 subsectors.</p>

Areas which may be Considered for Amendment	Existing Provisions
The Number of Members of the Election Committee Required for Nominating Candidates for the Office of Chief Executive	Candidates for the office of Chief Executive may be nominated jointly by not less than 100 members of the Election Committee. Each member may nominate only one candidate.
The Delineation and Size of the Electorate of the Election Committee	<p>The four sectors of the Election Committee are constituted by a total of 38 subsectors. The relevant compositions are specified in the Chief Executive Election Ordinance.</p> <p>At present, the Election Committee is constituted by election by about 163 500 voters.</p>

(II) Areas which may be considered for amendment in respect of the method for forming the Legislative Council in 2008

Areas which may be Considered for Amendment	Existing Provisions
The Number of Seats in the Legislative Council	The Legislative Council shall be composed of 60 members in each term.
The Number of Seats Returned by Geographical Constituencies through Direct Elections	<p>For the third term Legislative Council, 30 seats are to be returned by geographical constituencies through direct elections, and there are to be five geographical constituencies. In general, the 30 seats are distributed among the constituencies in accordance with their population distribution. Details are as follows :</p> <p>(a) the Hong Kong Island geographical constituency to return 6 members;</p>

<p>Areas which may be Considered for Amendment</p>	<p>Existing Provisions</p>
	<p>(b) the Kowloon East geographical constituency to return 5 members;</p> <p>(c) the Kowloon West geographical constituency to return 4 members;</p> <p>(d) the New Territories East geographical constituency to return 7 members; and</p> <p>(e) the New Territories West geographical constituency to return 8 members.</p> <p>(According to the Decision, if the number of seats returned by geographical constituencies through direct elections is changed, the number of functional constituency seats must also be changed at the same time, so as to meet the requirement that these two categories of seat shall be equal in number.)</p>
<p>The Number of Seats Returned by Functional Constituencies</p>	<p>For the third term Legislative Council, 30 seats are to be returned through functional constituency elections.</p> <p>(According to the Decision, if the number of functional constituency seats is changed, the number of seats returned by geographical constituencies through direct elections must also be changed at the same time, so as to meet the requirement that these two categories of seat shall be equal in number.)</p>
<p>The Delineation and Size of the Electorate of Legislative Council Functional Constituencies</p>	<p>The Legislative Council Ordinance provides for the establishment of the following 28 functional constituencies :</p>

<p style="text-align: center;">Areas which may be Considered for Amendment</p>	<p style="text-align: center;">Existing Provisions</p>
	<p>(1) Heung Yee Kuk (2) Agriculture and Fisheries (3) Insurance (4) Transport (5) Education (6) Legal (7) Accountancy (8) Medical (9) Health Services (10) Engineering (11) Architectural, Surveying and Planning (12) Labour (13) Social Welfare (14) Real Estate and Construction (15) Tourism (16) Commercial (First) (17) Commercial (Second) (18) Industrial (First) (19) Industrial (Second) (20) Finance (21) Financial Services (22) Sports, Performing Arts, Culture and Publication (23) Import and Export (24) Textiles and Garment (25) Wholesale and Retail (26) Information Technology (27) Catering (28) District Council</p> <p>Except for the labour functional constituency which returns three members, all functional constituencies return one Legislative Council Member each.</p> <p>At present, there are about 160,000 electors for functional constituencies.</p>

Areas which may be Considered for Amendment	Existing Provisions
<p>Provisions regarding Nationality of Legislative Council Members ^{Note}</p>	<p>In connection with the provisions of the Basic Law, the Legislative Council Ordinance allows Hong Kong permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries to participate in the Legislative Council elections through the following 12 functional constituencies (which constitute 20 percent of the Legislative Council seats) :</p> <ol style="list-style-type: none"> (1) the legal functional constituency; (2) the accountancy functional constituency; (3) the engineering functional constituency; (4) the architectural, surveying and planning functional constituency; (5) the real estate and construction functional constituency; (6) the tourism functional constituency; (7) the commercial (first) functional constituency; (8) the industrial (first) functional constituency; (9) the finance functional constituency; (10) the financial services functional constituency; (11) the import and export functional constituency; (12) the insurance functional constituency.

^{Note} If the total number of Legislative Council seats is increased, the seats available for those with right of abode in foreign countries to stand may also be increased correspondingly in connection with the 20% provision in Article 67 of the Basic Law.

Relevant motions moved for debate in Council
(since first term)

<u>Date of Council meeting</u>	<u>Motion</u>
15 July 1998	Hon Andrew CHENG Kar-foo moved a motion on “Direct elections” for debate in Council. The motion was negated.
12 January 2000	Hon Emily LAU Wai-hing moved a motion on “Political reform” for debate in Council. The motion was passed.
14 June 2000	Dr Hon LEONG Che-hung moved a motion on “Development of the Hong Kong Special Administrative Region’s Political System” for debate in Council. The motion was passed.
13 March 2002	Hon Emily LAU Wai-hing moved a motion on “The Second Chief Executive Election” for debate in Council. The motion was negated.
19 February 2003	Hon Emily LAU Wai-hing moved a motion on “Public consultation on constitutional reforms” for debate in Council. The motion was negated.
21 May 2003	Hon Albert HO Chun-yan moved a motion on “Expediently implementing the election of the Chief Executive and All Members of the Legislative Council by universal suffrage” for debate in Council. The motion was negated.
8 October 2003	Hon Emily LAU Wai-hing moved a motion on “Calling on the Chief Executive Mr TUNG Chee-hwa to step down” for debate in Council. The motion was negated.
12 November 2003	Hon James TO Kun-sun moved a motion on “Election of the Chief Executive and all Members of the Legislative Council by universal suffrage” for debate in the Council. The motion was negated.
25 February 2004	Hon Andrew CHENG Kar-foo moved a motion on “Immediately consulting the public on election by universal suffrage” for debate in Council. The motion was negated.

**Date of
Council meeting**

Motion

- 17 March 2004 Hon James TO Kun-sun moved a motion on “Respecting and complying with the principles prescribed in the Basic Law” for debate in Council. The motion was negatived.
- 22 April 2004 Hon Frederick FUNG Kin-kee moved a motion to adjourn the Council for the purpose of debating the Report by the Chief Executive of the Hong Kong Special Administrative Region to the Standing Committee of the National People’s Congress on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008. The motion was negatived.
- 5 May 2004 Hon Frederick FUNG Kin-kee moved a motion on “Requesting the Chief Executive to submit a supplementary report to the Standing Committee of the National People’s Congress” for debate in Council. The motion was negatived.
- 19 May 2004 Hon Albert HO Chun-yan moved a motion on “Regretting the decision of the Standing Committee of the National People’s Congress to rule out universal suffrage in the years 2007 and 2008” for debate in Council. The motion was negatived.
- 9 June 2004 Hon LEE Cheuk-yan moved a motion on “Demonstrating the people’s power on 1 July” for debate in Council. The motion was negatived.
- 10 November 2004 Hon Ronny TONG Ka-wah moved a motion on “Constitutional development” for debate in Council. The motion was negatived.
- 5 January 2005 Hon Albert Jinghan CHENG moved a motion on “The Fourth Report of the Constitutional Task Force” for debate in Council. The motion was negatived.
- 9 March 2005 Hon Ronny TONG Ka-wah moved a motion on “Shortcomings of Functional Constituencies” for debate in Council. The motion was negatived.

Appendix IV

Relevant questions raised in Council (since first term)

<u>Date of Council meeting</u>	<u>Question</u>
8 December 1999	Hon Emily LAU Wai-hing raised an oral question on “Modifying the electoral systems”.
13 June 2001	Hon Martin LEE Chu-ming raised a written question on “Improvement on method of forming the Legislative Council”.
13 November 2002	Hon Emily LAU Wai-hing raised a written question on “Arrangements for the Legislative Council functional constituencies elections”.
8 October 2003	Dr Hon YEUNG Sum raised a written question on “Timetable for review on political system”.
18 February 2004	Hon Michael MAK Kwok-fung raised a written question on “Constitutional development of Hong Kong”.
2 June 2004	Hon Martin LEE Chu-ming raised a written question on “Interpretation of the Basic Law and decision on issues relating to the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008 by the Standing Committee of the National People’s Congress”.
9 June 2004	Hon SZETO Wah raised a written question on “The report submitted by the Chief Executive to the Standing Committee of the National People's Congress”.
9 June 2004	Hon Audrey EU Yuet-mee raised a written question on “Registered voters of the functional constituencies”.
10 November 2004	Dr Hon YEUNG Sum raised an oral question on “Constitutional development”.
26 January 2005	Hon Frederick FUNG Kin-kee raised an oral question on “Returning of some LegCo Members by functional constituencies”.
8 June 2005	Hon Emily LAU Wai-hing raised a written question on “Measures to groom political talents”.
19 October 2005	Dr Hon YEUNG Sum raised an oral question on “Political reform”.

Constitutional development after 2007

Relevant Papers

Legislative Council

<u>Date of Council meeting</u>	<u>Paper</u>
14 June 2000	Report of the Panel on Constitutional Affairs on the development of the political system of the Hong Kong Special Administrative Region

House Committee

<u>Date of House Committee meeting</u>	<u>Papers</u>
5 October 2001	Report of the Panel on Constitutional Affairs on duty visit to study the systems of executive accountability in the United Kingdom, France and Germany (LC Paper No. CB(2) 2290/00-01)
27 February 2004	Background brief prepared by the Legislative Council (LegCo) Secretariat on “Review on constitutional development after 2007” (LC Paper No. CB(2) 1445/03-04)
	Paper provided by the Constitutional Development Task Force Secretariat on “Work Progress of the Constitutional Development Task Force” (LC Paper No. CB(2) 1459/03-04(03))

Panel on Constitutional Affairs

<u>Date of Panel meeting</u>	<u>Papers</u>
12 June and 9 July 2001	Background brief prepared by the LegCo Secretariat on “Development of the Hong Kong Special Administrative Region's Political System” (LC Paper No. CB(2) 1767/00-01(01))

<u>Date of Panel meeting</u>	<u>Papers</u>
	Paper provided by the Administration on “Development of the political system of the Hong Kong Special Administrative Region” (LC Paper No. CB(2) 1763/00-01(05))
20 October 2003	Paper provided by the Administration on “Review and Public Consultation on Constitutional Development after 2007” (LC Paper No. CB(2) 119/03-04(02))
17 November 2003	Paper provided by the Administration on “Review of and Public Consultation on Constitutional Development after 2007 – Preparatory Work” (LC Paper No. CB(2) 337/03-04(01))
15 January 2004	Paper provided by the Administration on “Task Force on Constitutional Development” (LC Paper No. CB(2) 1003/03-04(01))
28 January 2004	Administration’s response to Hon Emily LAU’s request for clarification of the origin of the viewpoint that Article 159 of the Basic Law should apply to any amendments to the methods prescribed in Annexes I and II of the Basic Law (LC Paper No. CB(2) 1093/03-04(01))
	Information Note provided by the Administration on “Progress made in meeting the public by the Constitutional Development Task Force” (LC Paper No. CB(2) 1107/03-04(01))
16 February 2004	Paper provided by the Administration on “Constitutional Development Task Force – Progress of Work” (LC Paper No. CB(2) 1347/03-04(01))
15 March 2004	Paper provided by the Administration on “Constitutional Development Task Force – Progress of Work” (LC Paper No. CB(2) 1686/03-04(03))

<u>Date of Panel meeting</u>	<u>Papers</u>
31 March 2004	<p>The First Report of the Constitutional Development Task Force : Issues of Legislative Process in the Basic Law Relating to Constitutional Development</p> <p>Annexes 1, 2 and 3 to the First Report of the Constitutional Development Task Force and Addendum to Annexes 1 and 2</p> <p>Paper provided by the Administration on “The First Report of the Constitutional Development Task Force : Issues of Legislative Process in the Basic Law Relating to Constitutional Development” (LC Paper No. CB(2) 1902/03-04(01))</p>
16 April 2004	<p>The Report by the Chief Executive of the Hong Kong Special Administrative Region to the Standing Committee of the National People’s Congress on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008</p> <p>The Second Report of the Constitutional Development Task Force : Issues of Principle in the Basic Law Relating to Constitutional Development</p> <p>Annexes 1, 2 and 3 to the Second Report of the Constitutional Development Task Force and Addendum to Annex 3</p> <p>Paper provided by the Administration on “Report by the Chief Executive to the Standing Committee of the National People’s Congress and the Second Report of the Constitutional Development Task Force” (LC Paper No. CB(2) 2029/03-04(01))</p>

<u>Date of Panel meeting</u>	<u>Papers</u>
19 April 2004	<p>Gazette copy of the Interpretation adopted by the Standing Committee of the National People's Congress on Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China on 6 April 2004 (LC Paper No. CB(2) 1973/03-04(01))</p>
4 May 2004	<p>Paper provided by the Administration on Decision of the Standing Committee of the National People's Congress on the Chief Executive's Report on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008 (LC Paper No. CB(2) 2174/03-04(01))</p> <p>Decision of the Standing Committee of the National People's Congress on issues relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008 (LC Paper No. CB(2) 2212/03-04(01))</p>
17 May 2004	<p>The Third Report of the Constitutional Development Task Force : Areas which may be Considered for Amendment in respect of the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008</p> <p>Paper provided by the Administration on "The Third Report of the Constitutional Development Task Force : Areas which may be Considered for Amendment in respect of the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008" (LC Paper No. CB(2) 2333/03-04(03))</p>

<u>Date of Panel meeting</u>	<u>Papers</u>
21 June 2004	Paper provided by the Administration on “Constitutional Development Task Force – Progress of Work” (LC Paper No. CB(2) 2857/03-04(02))
18 October 2004	Background brief prepared by the LegCo Secretariat on “Review on constitutional development after 2007” (LC Paper No. CB(2) 49/04-05(02)) Paper provided by the Administration on “Constitutional Development Task Force – Progress of Work” (LC Paper No. CB(2) 51/04-05(01)) A set of the summaries of the 12 discussion sessions held on the Third Report of the Task Force between May and August 2004 (LC Paper No. CB(2) 57/04-05(01))
15 and 29 November 2004	Wording of the motion proposed by Dr Hon Fernando CHEUNG Chiu-hung (LC Paper No. CB(2) 137/04-05(01)) Paper provided by the Administration entitled “Method for selecting the Chief Executive in 2007 and forming the Legislative Council in 2008 : Outline Work Plan” (LC Paper No. CB(2) 215/04-05(01))
20 December 2004	The Fourth Report of the Constitutional Development Task Force : Views and Proposals of Members of the Community on the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008 Appendices I and II to the Fourth Report of the Constitutional Development Task Force

Date of
Panel meeting

Papers

Paper provided by Constitutional Affairs Bureau on
“The Fourth Report of the Constitutional
Development Task Force : Views and Proposals of
Members of the Community on the Methods for
Selecting the Chief Executive in 2007 and for
Forming the Legislative Council in 2008”
(LC Paper No. CB(2) 448/04-05(03))

Wording of the motion proposed by Dr Hon KWOK
Ka-ki
(LC Paper No. CB(2) 607/04-05(02))