

**The Administration's response to issues raised by
Members of Panel on Constitutional Affairs relating to
the Fifth Report of the Constitutional Development Task Force**

Follow up to special meeting on 21 October 2005

- (a) **Regarding the statement that “the Amendments appended to the motions are the bills referred to in the Interpretation of the NPCSC on 6 April 2004” (paragraph 7.02 of the Fifth Report refers), to explain the use of motions rather than a bill to effect the amendments to Annexes I and II to the Basic Law.**

The procedures for amending the provisions of Annex I and Annex II of the Basic Law are set out in Article 7 of Annex I and Article III of Annex II.

2. According to Clause 3 of the Interpretation of the Standing Committee of the National People's Congress (“NPCSC”) on 6 April 2004 (“the Interpretation”), after the NPCSC has made a determination on whether there is a need for change, the bills (法案) on the amendments to the methods for selecting the Chief Executive (“CE”) and for forming the Legislative Council (“LegCo”) shall be introduced by the SAR Government into LegCo. Likewise, any proposed amendments to the bills (修正案) shall be introduced by the SAR Government.

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

4. There are two stages regarding the procedures for amending the provisions of Annex I and Annex II to the Basic Law. The first stage (i.e. endorsement of a two-thirds majority of all the Members of the LegCo and consent of the CE) will be undertaken in Hong Kong. The second stage (i.e. NPCSC approving or acceptance for the record the amendments proposed by Hong Kong) will be undertaken by the Central Authorities. Indeed, Clause 3 of the

Interpretation makes it clear that the amendments may take effect only after they have gone through the above process.

5. Thus, it is clear that the amendments do not yet have legal effect, when they are passed by a two-thirds majority of all the Members of the LegCo and have received the consent of the CE. They are given legislative effect only after approval or acceptance for the record has been given or made by the NPCSC. It is, therefore, inappropriate for them to be introduced into the LegCo or promulgated by way of local bills (條例草案), because the purpose of a local bill (條例草案) is to codify or change the legal position in local legislation. As a corollary, the normal LegCo process for scrutiny of local bills (條例草案) is not applicable to any proposed amendments to the two Annexes, since they are not local legislation.

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

- (b) To clarify the remark made by the Chief Secretary for Administration that there is no room for amendment to the main elements of the proposals, and advise, e.g. whether the proposal that candidates for the office of CE may be nominated jointly by not less than 200 members of the Election Committee could be amended.**

7. The Government believes that the package of proposals put forth by the Constitutional Development Task Force ("Task Force") can take forward Hong Kong's constitutional development substantively towards the ultimate aim of universal suffrage. It has also struck the right balance amidst the various views submitted by different sectors of the community, and has responded to the aspirations of the community on constitutional development. All the main elements of the package, including the threshold required for nominating candidates for the office of the CE, have been set out in the Task Force's Fifth Report.

8. The Government hopes that the package of proposals will have the support of the community and the LegCo, so that legislative work may proceed on the basis of the package. As regards the threshold required for nominating candidates for the office of the CE, the Government considers that the purpose of setting a threshold is to ensure that candidates have a certain level of support. We therefore propose that, at this stage, the threshold be maintained at the existing level, i.e. one-eighth of the total membership of the Election Committee.

- (c) To explain why the provision to provide for the term of office of a CE elected in the situation under Article 53(2) of the Basic Law is proposed to be dealt with by way of amendment to Annex I to the Basic Law (draft motion at Annex B to the Fifth Report refers).**

9. According to the Interpretation of the second paragraph of Article 53 of the Basic Law of the HKSAR of the People's Republic of China, adopted by the NPCSC on 27 April 2005, when the CE is selected by an Election Committee with a five-year term of office, the term of office of a new CE elected in a situation pursuant to Article 53(2) of the Basic Law shall be the remainder of the previous CE. The (five-year) term of office of the Election Committee is stipulated in Annex I to the Basic Law. It is, therefore, appropriate to place the provision regarding the "remainder term" in Annex I to the Basic Law alongside the provision on the term of office of the Election Committee.

- (d) Having regard to the remark made by the Secretary for Justice at the press conference on 19 October 2005, to clarify whether the two draft motions in Annexes B and C to the Fifth Report will be presented to LegCo as two separate motions or one motion, and in the case of the former, whether separate votes are proposed to be taken on the two motions.**

10. The (Draft) Amendments to Annex I and Annex II to the Basic Law concern, respectively, the methods for selecting the CE in 2007 and for forming LegCo in 2008. They are presented as two sets of (Draft) Amendments because amendments to Annexes I and II to the Basic Law entail different procedures (i.e. approval by the NPCSC in respect of Annex I, recording by NPCSC in respect of Annex II).

11. At the same time, the two (Draft) Amendments are both related to the overall development of the electoral systems of the HKSAR. Furthermore, there is a common element in the proposals on the two electoral methods i.e. broadening the democratic representation of the two electoral methods through enhancing the role of members of the District Councils in the electoral process. Thus, it is Government's intention to present the two (Draft) Amendments to LegCo for endorsement as one single package at the same time.

- (e) **To advise the parties responsible for the design of the questionnaire for the independent opinion poll commissioned by the Central Policy Unit, and the auditing work of the results of the poll.**

12. The execution of the public opinion poll, including sample selection, fieldwork, data analysis etc, was carried out professionally and independently by the Centre for Social Policy Studies (CSPS) of the Department of Applied Social Science of the Hong Kong Polytechnic University. The Task Force and the Central Policy Unit (CPU) played no part in the process.

13. Regarding the design of the questionnaire, it was mainly the responsibility of the Task Force and CPU. In the process, we had endeavoured to ensure objectivity. CSPS, as the contractor of CPU, could provide advice on the questionnaire design, such as whether the questions were logical, objective and accurate, and whether respondents would be able to understand the questions, etc.

- (f) **Having regard to a member's comment that it will take 22 years for Hong Kong to achieve universal suffrage, if implemented in 2012, after promulgation of the Basic Law which provides for the ultimate aim of universal suffrage, to advise what countries or places, which have committed to implement universal suffrage, have taken such a long time to achieve the goal.**

14. Universal suffrage is achieved and implemented in different jurisdictions through different means, approaches and pace. The route adopted by each jurisdiction is usually shaped by the particular circumstances of the community concerned. In the case of the HKSAR, the blueprint for its political structure is prescribed in the Basic Law.

15. The Basic Law provides that 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 Basic Law also provides that 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.

16. It is clear from these provisions that, in moving towards the ultimate aim of universal suffrage, regard must be given to the principle of gradual and orderly progress and the actual situation in the HKSAR. Since the establishment of the HKSAR on 1 July 1997, we have been making steady progress towards universal suffrage. The package of proposals for the 2007/08 elections, if implemented, will enable Hong Kong to move forward substantively towards the ultimate aim of universal suffrage in accordance with the Basic Law.

17. Given the consideration mentioned in paragraph 14 above, experience in other jurisdictions may not be of direct relevance to Hong Kong.

Constitutional Affairs Bureau
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