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Subcommittee on Package of Proposals for the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012

Background brief prepared by Legislative Council Secretariat

Purpose

This paper provides background information on the review of constitutional development of the Hong Kong Special Administrative Region ("HKSAR"). This paper also summarizes the major issues raised by Members of the Legislative Council ("LegCo") on the Consultation Document on the Methods for Selecting the Chief Executive ("CE") and for Forming LegCo in 2012 ("the Consultation Document") in paragraphs 33 to 59.

Background

Existing methods for selecting CE and forming LegCo

2. At present, in accordance with the provisions of Annex I to the Basic Law ("BL"), CE is elected by a broadly representative Election Committee and appointed by the Central People's Government ("CPG"). The Election Committee ("EC") is composed of 800 members from four sectors made up of 38 subsectors.
3. Currently, there are 60 seats in LegCo, half of them returned by geographical constituencies ("GCs") through direct elections, and the other half by functional constituencies ("FCs"). For direct elections in GCs, 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. For FC elections, 30 seats are returned from 28 FCs.

Methods for selecting CE and LegCo by universal suffrage

4. Under BL 45, CE of HKSAR shall be selected by election or through consultations held locally and be appointed by CPG. The method for selecting CE shall be specified in the light of the actual situation in 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.
5. 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 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.

6. The specific methods for selecting CE and forming LegCo (the "two electoral methods") are specified in Annex I and Annex II to BL 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 entitled "The development of the political system of HKSAR" published by the Panel on Constitutional Affairs ("the CA Panel")

7. In June 2000, the CA Panel published a report entitled "The development of the political system of HKSAR" after having received views from the public and reviewed various aspects of the development of political system. The Panel recommended, among other things, that a review on the development of the HKSAR's political system should be undertaken by the Government which must devise a realistic timetable for the review. A motion calling upon the Government to consider the views expressed by Members on the report was passed at the Council meeting on 14 June 2000.

8. In his reply, the then Secretary for Constitutional Affairs explained that BL had set down a mechanism determining the direction and steps for the political development of HKSAR after 2007, and the future political system of HKSAR must develop on the incremental basis laid down therein. Following the LegCo Elections in September 2000, the Administration would give thoughts to a specific schedule on reviewing the political system and consider how best to make the whole community reach a consensus on the issue of political development.

Establishment of the Constitutional Development Task Force

9. On 7 January 2004, CE announced in his Policy Address the establishment of the Constitutional Development Task Force ("the Task Force") led by the Chief Secretary for Administration ("CS"). Its tasks were to examine in depth the relevant issues of principle and legislative process in BL 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.

Task Force's First Report and NPCSC Interpretation on 6 April 2004

10. On 30 March 2004, the Task Force published the First Report on issues of legislative process in BL relating to constitutional development. On 6 April 2004, NPCSC adopted the "Interpretation of Article 7 of Annex I and Article III of Annex II

to BL". Clause 3 of the Interpretation states that CE of HKSAR shall make a report to NPCSC as regards whether there is a need to amend the methods for selecting CE and for forming LegCo under Annex I and Annex II respectively and its procedures for voting on bills and motions, and NPCSC shall, in accordance with the provisions of 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.

Second, Third and Fourth Reports of the Task Force and the NPCSC Decision on 26 April 2004

11. On 15 April 2004, the Task Force published its Second Report on the issues of principle in BL relating to constitutional development. The Task Force recommended that CE should, in accordance with the NPCSC Interpretation on 6 April 2004, submit a report to NPCSC, recommending that the two electoral methods for 2007 and 2008 be amended, and requesting NPCSC to make a determination to that effect in accordance with the relevant provisions and principles in BL. CE endorsed the recommendations of the Task Force and submitted a report to NPCSC on 15 April 2004.

12. NPCSC examined the report submitted by CE, and adopted the "Decision of NPCSC on issues relating to the methods for selecting CE of HKSAR in the year 2007 and for forming LegCo of HKSAR in the year 2008" on 26 April 2004 ("the 2004 NPCSC Decision"). The Decision is summarized as follows -

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

13. On 11 May 2004, the Task Force published its Third Report which set out a number of areas to be considered for amendment in respect of the two electoral methods for 2007 and 2008. The Fourth Report published on 15 December 2004 set out and summarized the views and proposals collected from the community on the two electoral methods.

Fifth Report of the Task Force

14. At the Council meeting on 19 October 2005, CS made a statement on the Fifth Report of the Task Force published on the same day. The Fifth Report set out a

package of proposals for the methods of selecting CE in 2007 and for forming LegCo in 2008 ("the 2005 proposed package"). The 2005 proposed package was proposed to be effected by way of two motions to amend Annexes I and II to BL. The main thrust of the 2005 proposed package was the enhanced level of participation of District Council ("DC") members in EC and LegCo. The package proposed that half of the newly added members of EC and all the newly added LegCo seats would basically be elected directly or indirectly by over three million voters, for the purpose of enhancing the democratic representation in the two electoral methods.

15. On 21 October 2005, the House Committee ("HC") formed a subcommittee to study the 2005 proposed package and related issues. The issue of DC appointed membership and their involvement in the two electoral processes was one of the main concerns raised by some members of the subcommittee. The Administration subsequently briefed the CA Panel on 19 December 2005 on the following adjustments which would be made to the 2005 proposed package on the condition that the two motions were endorsed by LegCo on 21 December 2005 -

- (a) the maximum number of appointed DC seats be reduced from the existing 102 to 68 when the new term of DC commenced in January 2008; and
- (b) the Government would decide before the end of 2011 whether the maximum number of appointed DC seats should be further reduced to zero in January 2012, or to 34 in January 2012 and then to zero in January 2016.

16. Some Members considered the proposed adjustments retrogressive and unacceptable. They requested the Administration to put forth a revised proposal to include the abolition of all appointed DC seats and a timetable for universal suffrage. Some Members, however, supported the proposal to abolish appointed DC seats by phases, with a view to facilitating LegCo to reach a consensus on the two motions.

17. According to the Administration, the 2005 proposed package contained the highest possible degree of democratic elements within the framework laid down by BL and the 2004 NPCSC Decision. In the event that the package was not endorsed, and there was no consensus on making any amendments to the two electoral methods, the 2007 CE election and the 2008 LegCo election would be held on the basis of the existing arrangements, i.e. no progress would be made on constitutional development.

18. On 21 December 2005, the Administration presented to LegCo for endorsement two motions to, respectively, amend Annexes I and II to BL regarding the two electoral methods for 2007 and 2008. As the motions did not receive the two-thirds majority support of all the LegCo Members as stipulated in Annexes I and II to BL, the motions could not be processed further.

Discussions of the Commission on Strategic Development

19. Despite the two motions on the 2005 proposed package having been negated, some Members considered that the Administration should take forward constitutional development by providing a timetable for universal suffrage. In December 2005, the Administration tasked the Committee on Governance and Political Development under the Commission on Strategic Development to study ways to implement universal suffrage in accordance with the provisions and principles of BL, with a view to concluding discussions by early 2007. The CA Panel had monitored the progress of the discussions of the Commission on Strategic Development. The Panel also received views and held discussions on implementation of universal suffrage for CE and LegCo. At the request of HC, discussion papers prepared for the committees under the Commission on Strategic Development were provided to Members for reference.

Green Paper on Constitutional Development

20. At the Council meeting on 11 July 2007, CS made a statement on the Green Paper on Constitutional Development ("the Green Paper") which summarized the different views put forth by the Commission on Strategic Development and the community on the models, roadmap and timetable for implementing universal suffrage, and presented the relevant views in the form of options to facilitate public discussion.

21. Regarding the models for electing CE by universal suffrage, the Green Paper set out three key issues that had to be considered, namely: (a) composition and size of the nominating committee; (b) method of nomination; and (c) method for selecting CE by universal suffrage following nomination. The Green Paper provided three options each for the composition and size of the nominating committee, and the method of nomination. It also covered other related issues such as whether an upper limit should be set on the number of subscribers which a CE candidate could obtain, and whether a candidate should be required to obtain a certain number of nominations from each sector or from some specified sectors of the nominating committee.

22. Regarding the model for implementing universal suffrage for LegCo, the key issue was how the existing FCs should be dealt with. The Green Paper categorized the views received relating to the models for implementing universal suffrage for LegCo under three types of options, namely: (a) to replace FC seats with district-based seats returned through direct election; (b) to retain FC seats by changing the electoral method; (c) and to increase the number of seats representing DCs in LegCo, and all LegCo seats would then be returned either through direct or indirect elections.

23. Regarding the roadmap and timetable for implementing universal suffrage, the Green Paper provided three options each for the CE election and the LegCo election. The Green Paper also covered the aspect of whether universal suffrage for CE should precede that for LegCo.

24. The CA Panel held a total of seven meetings to discuss the Green Paper and receive views from the public before the end of the public consultation exercise on 10 October 2007. The Administration published the Report on Public Consultation on the Green Paper on Constitutional Development in December 2007 ("the Green Paper Report").

The NPCSC Decision on 29 December 2007

25. On 12 December 2007, CE submitted the "Report on the Public Consultation on Constitutional Development and on whether there is a need to amend the methods for selecting CE of HKSAR and for forming LegCo of HKSAR in 2012" ("the CE Report") to NPCSC together with the Green Paper Report. CS made a statement on the CE Report at the Council meeting on the same day.

26. After considering the CE Report, NPCSC made a decision on 29 December 2007 on issues relating to the methods for selecting CE and for forming LegCo in the year 2012 and on issues relating to universal suffrage ("the 2007 NPCSC Decision"). The 2007 NPCSC Decision is summarized below -

- (a) universal suffrage for electing CE and for election of all the Members of LegCo by universal suffrage may respectively take place in 2017 and thereafter;
- (b) the election of the fourth term CE in 2012 and the fifth LegCo in 2012 shall not be by means of universal suffrage;
- (c) the 50:50 ratio for Members returned by FCs and Members returned by GCs through direct elections shall remain unchanged for the fifth LegCo;
- (d) the procedures of voting on bills and motions in LegCo shall remain unchanged; and
- (e) 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 BL, the two electoral methods for 2012 may be appropriately amended.

Task Group on Constitutional Development under the Commission on Strategic Development

27. CE had appointed the Task Group on Constitutional Development under the Commission on Strategic Development ("the Task Group") to discuss specifically the two electoral methods for 2012 within the framework set out in the 2007 NPCSC Decision. The CA Panel was briefed on relevant deliberations of the Task Group on a number of occasions.

28. The Administration advised that options for amending the two electoral methods for 2012 would be consolidated in the fourth quarter of 2008 for conducting another round of public consultation as early as possible.

Work plan on constitutional development

29. At the meeting of the CA Panel on 21 January 2008, the Administration advised that it aimed to attain universal suffrage by three stages in the next 10 to 12 years -

- (a) Stage 1 from 2008 to 2012 - with the focus of discussion on how to amend the two electoral methods for 2012;
- (b) Stage 2 from 2012 to 2017 - with the focus of discussion on how to attain universal suffrage for CE in 2017 and how to further democratize the electoral method for LegCo in 2016; and
- (c) Stage 3 from 2017 to 2020 - with the focus of discussion on how to attain universal suffrage for LegCo.

The Administration advised that each stage of work was interrelated and the public was free to give views on models for universal suffrage at any of the stages. The aim of the HKSAR Government was to settle the two electoral methods for 2012 within the tenure of the current-term Government. This could lay a solid foundation for attaining universal suffrage for CE in 2017, and for LegCo in 2020.

Working timetable for the public consultation and the legislative process

30. During the CE's Question and Answer Session at the Council meeting on 15 January 2009, CE announced that the public consultation on the two electoral methods for 2012 would be deferred to the fourth quarter of 2009 so that the Government could focus on dealing with the economic and livelihood issues arising from the financial tsunami. At the meeting of the CA Panel on 16 February 2009, the Administration briefed members on the working timetable for the public consultation and legislative process for the two electoral methods as follows -

- (a) the public consultation on the two electoral methods to commence in the fourth quarter of 2009 would last about three months;
- (b) the draft motions concerning amendments to the methods for the selection of CE and for the formation of LegCo in 2012 would be presented to LegCo for voting by no later than the fourth quarter of 2010;
- (c) upon CE's consent to the amendments endorsed by LegCo and reporting to NPCSC for approval/the record, the CE Election (Amendment) Bill and the LegCo (Amendment) Bill would be introduced into LegCo in early 2011; and

- (d) relevant subsidiary legislation would be made by the Electoral Affairs Commission in mid 2011.

31. In his 2009-2010 Policy Address, CE announced that the public would be consulted in November 2009 on the two electoral methods for 2012.

32. For the past discussions held by the CA Panel on the review of constitutional development, interested Members may refer to the background brief on "Constitutional Development" prepared by the LegCo Secretariat [issued vide LC Paper No. CB(2)349/09-10(01) on 24 November 2009]. The 2007 NPCSC Decision and the explanation given by Mr QIAO Xiaoyang, Deputy Secretary-General of NPCSC on the draft Decision are in Appendices V and VI to that background brief respectively.

Consultation Document on the Methods for Selecting CE and for Forming LegCo in 2012

33. At the Council meeting on 18 November 2009, CS made a statement on the Consultation Document and announced the commencement of a three-month public consultation exercise ending by 19 February 2010. It is stipulated in paragraph 1.03 of the Consultation Document that in accordance with BL and the NPCSC Interpretation of April 2004, it is necessary to go through a "five-step mechanism" for amending the two electoral methods -

Step One: CE shall make a report to NPCSC as to whether there is a need to amend the two electoral methods;

Step Two: A determination shall be made by NPCSC that the two electoral methods may be amended;

Step Three: The motions on the amendments to the two electoral methods shall be introduced by the HKSAR Government to LegCo, and be endorsed by a two-thirds majority of all the Members of LegCo;

Step Four: Consent shall be given by CE to the motions endorsed by LegCo; and

Step Five: The relevant bill shall be reported by CE to NPCSC for approval or for the record.

34. According to the Administration, after summarizing the views received during the public consultation exercise, the Administration would present to LegCo for consideration a proposed package for the two electoral methods and the draft motions concerning the amendments to Annexes I and II to BL. If the above two steps could be completed before the summer of 2010, drafting of the CE Election (Amendment) Bill and the LegCo (Amendment) Bill would commence in the fourth quarter of 2010.

35. The key elements of the preliminary package of proposals relating to the two electoral methods for 2012 put forward in the Consultation Document include -

For the election of CE

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

For the election of LegCo

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

Panel's discussion on the Consultation Document

36. The CA Panel held a special meeting on 26 November 2009 to discuss the Consultation Document. The Panel also received views from 156 deputations/ individuals at three special meetings held on 5 December 2009, 9 and 12 January 2010 respectively. The major issues raised by members at these meetings are summarized in the following paragraphs.

Democratic elements of the preliminary package of proposals

37. Some members were of the view that the preliminary package of proposals put forward in the Consultation Document was retrogressive on the grounds that it failed to address a number of issues which included providing a roadmap and a direction for the implementation of universal suffrage, abolishing appointed DC seats, broadening the electorate base of FCs, and conflicting roles to be played by DC FC Members. They were disappointed that the preliminary package of proposals was merely a rehash of the 2005 proposed package.

38. Some other members expressed support for the preliminary package of proposals. They considered that the preliminary package of proposals was an improvement over the 2005 proposed package in that a timetable for universal suffrage had already been secured and appointed DC members were excluded from returning all DC seats in EC and LegCo. These members stressed that it was important for constitutional development to move forward rather than being stalled. They urged the Administration to take proactive action to explain in detail to the public the preliminary package of proposals in the Consultation Document and the importance to take a step forward.

39. The Administration stressed that apart from securing a timetable for implementing universal suffrage from NPCSC since the introduction of the 2005 proposed package, the Administration had strived for maximum room to enhance the democratic elements in the two electoral methods in 2012 by putting forward the preliminary package of proposals in the Consultation Document. The Administration explained that allocating most of the newly added 100 EC seats to elected DC members would enhance the democratic elements of the EC election. Increasing the number of LegCo seats from 60 to 70 would broaden the scope of political participation, and adding five FC seats to be returned through election among elected DC members would broaden the electorate base of FCs to cover 3.3 million voters.

Election of CE in 2012

40. Mr Ronny TONG expressed dissatisfaction with the Administration's proposal to enhance the democratic elements of EC through the participation of DC members, given that it was merely a form of indirect election and the number of EC members returned through direct election would still be less than 200. He explained that the proposal of pan-democratic Members to include all the 405 elected DC members in EC would increase the number of EC members returned through direct election to nearly 600, i.e. almost half of its total membership. Mr TONG further expressed concern that with less than 200 EC members returned through direct election, the overall effect of the proposed increase of the number of EC members for nominating candidates for the office of CE to 150 would reduce the democratic elements of the CE election.

41. The Administration explained that the four sectors of the existing EC already had broad representation. In order to maintain the principle of balanced participation, the proportion of the four sectors of EC should remain unchanged. The number of EC members returned by direct election in the second, third and fourth sectors at present were 200, 50 and 30 respectively. According to the Administration's proposal, the number of EC members in the second sector who were elected on a "one-person-one-vote" basis would be increased to 300. The Administration considered that its proposal would enhance the representativeness of EC, which would help transform EC into the nominating committee when universal suffrage for CE was implemented in 2017. However, it would be a matter for the CE elected in 2012 and the Fifth LegCo to determine the arrangement for implementing universal suffrage for the 2017 CE election.

42. In response to Mr LEE Wing-tat's request for the Administration's assurance that the CE election in 2017 would be a contested one, the Administration advised that according to the 2007 NPCSC Decision, the nominating committee could be formed with reference to the current provisions regarding EC in Annex I to BL. The nominating committee should nominate in accordance with democratic procedures a certain number of candidates for the office of CE, who was to be elected through universal suffrage by all registered voters of HKSAR. Given that the 2007 NPCSC Decision had made it clear that the election of CE in 2017 would be implemented by universal suffrage under the one-person-one-vote system, members could discuss how EC for 2012 should be formed, and whether and how it should be transformed as the nominating committee in 2017. If consensus could be reached on these issues, the only outstanding issue would be the nomination procedure.

43. In response to Mr Jeffrey LAM's enquiry as to how the principle of balanced participation could be maintained in the election of CE, the Administration explained that its proposal to expand the membership of EC and to maintain the proportion of members of the four sectors would be able to achieve balanced participation. Balanced participation would be maintained if the nominating committee would be transformed from EC in the CE election in 2017.

Election of LegCo in 2012

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

44. Some members including Mr LEE Cheuk-yan and Ms Cyd HO were of the view that the Administration's proposal to allocate the five additional FC seats to DC Members was a retrograde step. They considered that the Administration should have considered broadening the electorate base of FCs to cover 3.3 million electors. These members queried whether it was the intention of the Administration to turn all the 35 FC seats into DC FC seats in 2020 and denied voters of the right to elect the 35 LegCo Members directly.

45. The Administration advised that the proposal to allocate a total of six FC seats to DC members would broaden substantially the electorate base of FCs to more than three million, thereby enhancing its representativeness. The 2007 NPCSC Decision had already made it clear that universal suffrage could be implemented for the LegCo election in 2020. From the present until 2020, there would be two LegCo elections to be held in 2012 and 2016. Incumbent Members, if returned in these two elections, would continue to be involved in the discussion and decision on the models for implementing universal suffrage for forming LegCo. The current-term Government, which was only authorized to determine the two electoral methods in 2012, had not formulated any proposals for the LegCo election in 2020. The Administration also considered that the proposal to broaden the electorate base of the 28 FCs to 3.3 million in 2012, which was tantamount to implementing universal suffrage for forming LegCo in 2012, was not consistent with the 2007 NPCSC Decision.

46. Some members expressed reservations about the Administration's proposal to allocate five additional FC seats to DC members on the grounds that as some DC members were returned from a constituency area with a small electorate or returned uncontested, some of them would often focus on the interests of their districts only. They were also concerned that DC members who wished to become DC FC Members might try to bring up more issues relating to LegCo business for discussion in DCs, resulting in a dilution of the functions of DCs.

47. The Administration explained that although some DC members were returned from a constituency area with a small electorate, the six DC members who wished to become LegCo Members would have to seek support from the 405 elected DC members who had a public mandate. The DC FC Members so elected therefore were expected to have a broader perspective. While DC members might bring district matters into LegCo, they had to pay regard to the well-being of Hong Kong people as a whole when dealing with territory-wide issues. As it had been the Administration's established practice to consult DCs on major policy issues, there was no question of the functions of DC being diluted as a result of the addition of five DC FC seats.

48. Mrs Regina IP enquired about the method for elected DC members to elect among themselves the members to return as LegCo Members and whether the electoral method for forming LegCo in 2016 would be further democratized in the same manner. The Administration advised that at present, the DC FC Member was returned by the first-past-the-post system. The issue of the electoral method to return the six DC FC Members would be dealt with when the relevant subsidiary legislation were made after the proposals for the two electoral methods for 2012 had been approved by LegCo. The Administration also maintained that the CE returned in 2012 would have to work with the Fifth LegCo to deal with the electoral methods for forming LegCo in 2016.

The electorate base of existing FCs

49. Mr CHEUNG Man-kwong expressed dissatisfaction with the Administration's refusal to replace corporate votes with individual votes. He considered that for the purpose of implementing universal suffrage for forming LegCo, the Administration should have followed the principle of gradual and orderly progress by broadening the electorate base of FCs in 2012. Mr CHEUNG suggested that the six DC FC Members, instead of being elected from among elected DC members themselves, should be elected by 3.3 million registered voters of the 18 DCs. The candidates running in the election for the six DC FC seats should be nominated by DC members, and the electorate of three DCs with 550 000 voters would each elect one DC FC Member.

50. The Administration explained that the process of replacing corporate votes with "director's/executive's/association's/individual votes" was complex. The proposal to replace one corporate vote with six directors' votes, for example, would likely attract different reactions from various sectors and individuals. It would not

be easy for the community to reach consensus on the matter. Although each constituency area of DCs had a population of only 17 000 residents, the total electorate of the 405 constituency areas was 3.3 million. The proposal would therefore enhance the democratic elements of the LegCo election. Mr Paul TSE reckoned that the Administration could consider creating a FC for women not in employment for the purpose of broadening the electorate base.

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

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

Retention or abolition of FCs

53. Some members including Dr Margaret NG, Mr LEE Wing-tat and Mr LEUNG Kwok-hung expressed dissatisfaction that while CS had admitted that the existing FC system did not comply with the principles of universality and equality, the Administration had suggested in the Consultation Document adding five new FC seats, which they considered would only pose further hurdles for consensus to be reached for the ultimate abolition of all FC seats. They pointed out that while the 2007 NPCSC Decision stipulated that the 50:50 ratio for Members returned by FCs and GCs shall remain unchanged for 2012, it had not stated that the number of FCs could not be reduced. These members considered that the FC system should be abolished and CE should give an undertaking on behalf of the current-term Government that all FC seats would be abolished for the implementation of universal suffrage for forming LegCo in 2020.

54. The Administration explained that increasing the number of LegCo seats from 60 to 70 would broaden the scope of political participation and adding five FC seats to be returned through election among elected DC members would broaden the electorate base of FCs to cover 3.3 million voters. The 2007 NPCSC Decision had made it clear that FC seats would not be abolished in 2012. Any proposal to abolish FCs would require support from incumbent FC Members and it would be very difficult to reach consensus on the matter at this stage. However, there was ample time between the present and 2020 for the community to discuss the specific model for implementing universal suffrage for LegCo in accordance with the principles of universality and equality.

55. Some other members were of the view that the FC system had its value for Hong Kong and should be retained, albeit in some other form with changes to its

electoral method, when universal suffrage was implemented for forming LegCo. They did not consider that retention of the FC system was necessarily incompatible with the principles of universality and equality for the implementation of universal suffrage. These members further queried whether the creation of 5 DC FC seats in LegCo was inconsistent with the principle of balanced participation, given that DC FC Members would account for one-sixth of FC Members.

56. The Administration advised that it had not formed any view on the future of FCs when universal suffrage for LegCo was implemented in 2020. There were views among the community that FCs should be abolished, but there were also views that FCs should be retained. Although one-sixth of FC seats would be taken by DC members under the preliminary package of proposals in the Consultation Document, broadening its electorate base would pave the way for the implementation of universal suffrage.

57. Some members asked whether the principle of balanced participation could be maintained in the 2020 LegCo election when universal suffrage was implemented. The Administration explained that it would require the concerted effort of the relevant parties concerned. There were views that the FC seats should be abolished in one go and replaced by district-based seats returned by universal suffrage, i.e. the "one-person-one-vote" model. There were also views that the FC seats should be retained, but the electoral model should be changed, for example, by allowing FCs to nominate candidates for election by all voters of Hong Kong, i.e. the "one-person-two-votes" model whereby each voter could cast one vote in the GC election, and the other in the FC election. For the "one-person-31-votes" model, each voter could cast one vote in the GC election, and 30 votes in the FC election. However, there was concern as to whether the FC system on the basis of one-person-multi-votes would comply with the principles of universality and equality if there was restriction on the right to be nominated, i.e. a requirement for the candidates to have to come from a particular sector. These issues were open to discussion.

58. Mr Abraham SHEK queried whether there was any provision in BL which stated that the existing FC system did not comply with the principles of universality and equality, and whether balanced participation was inconsistent with these principles. The Administration advised that -

- (a) while BL 45 and BL 68 stipulated clearly that Hong Kong shall attain the ultimate aim of selecting CE and forming LegCo by universal suffrage, the provisions had not elaborated on the principles of universality and equality;
- (b) the Green Paper had covered the concepts and principles of universal suffrage. The concept of "universal suffrage", as generally understood internationally, should include the principles of universality and equality. As far as individual jurisdiction was concerned, while conforming to the general international understanding of universal suffrage, it could also develop its electoral system having regard to the particular needs

and aspiration of its people, the uniqueness of its socio-economic situation, and its historical realities; and

- (c) in the process of attaining the ultimate aim of universal suffrage and in designing a model for implementing universal suffrage, the following principles on constitutional development under BL had to be adhered to -
- (i) balanced participation of different sectors of the community;
 - (ii) facilitating the development of the capitalist economy;
 - (iii) gradual and orderly progress; and
 - (iv) appropriate to the actual situation in HKSAR.

"Five-step mechanism"

59. In response to Ms Emily LAU's query as to why the "three-step mechanism" for amending the two electoral methods as prescribed in BL had become the "five-step mechanism" referred to in paragraph 1.03 of the Consultation Document, the Administration explained that the "five-step mechanism" for amending the two electoral methods was based on the NPCSC Interpretation made on 6 April 2004. In accordance with the Constitution of PRC, NPC enacted BL, prescribing the systems to be practised in HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong. As NPCSC was empowered to interpret BL under BL 158, the "five-step mechanism" was legally binding.

Relevant motions and questions since the issuance of the Consultation Document

60. Hon Alan LEONG moved a motion on "Roadmap for universal suffrage" for debate at the Council meeting on 2 December 2009. Hon WONG Yuk-man moved a motion on "Resignation en masse of Members returned from five GCs as a referendum" for debate at the Council meeting on 9 December 2009. Both motions were negatived.

61. Hon WONG Sing-chi raised an oral question on "Retention or otherwise of FCs of LegCo" at the Council meeting on 2 December 2009. Hon Audrey EU raised an oral question on "Abolition of FCs of LegCo" at the Council meeting on 6 January 2010. Dr Hon LEUNG Ka-lau raised an oral question on "Procedures for voting on motions and bills in LegCo" at the Council meeting on 3 March 2010. Hon Paul TSE raised an oral question on "LegCo FCs" at the Council meeting on 10 March 2010.

62. For other motions moved for debate and questions raised in Council relevant to constitutional development, interested Members may wish to refer to Appendices VIII and IX to LC Paper No. CB(2)349/09-10(01) for details.

Latest development

63. At the Council meeting on 14 April 2010, CS made a statement on a package of proposals for the methods for selecting CE and for forming LegCo in 2012 published on the same day. On 16 April 2010, HC formed a subcommittee to study the package of proposals.

Council Business Division 2
Legislative Council Secretariat
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