

**Legislative Council Panel on Constitutional Affairs**

**Consultation Document on the  
Methods for Selecting the Chief Executive in 2017  
and for Forming the Legislative Council in 2016**

The Government published the Consultation Document on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016 (the “Consultation Document”) on 4 December 2013 to formally commence a five-month public consultation exercise. The Chief Secretary for Administration also made a statement at the Legislative Council meeting on the same day.

2. The consultation period will end on 3 May 2014. The Government adopts an open mind in listening to the views on the two electoral methods from different sectors of the community.

3. The Consultation Document and the statement by the Chief Secretary for Administration on the Consultation Document at the Council meeting on 4 December 2013 are hereby attached for reference. Both documents can also be downloaded at [www.2017.gov.hk](http://www.2017.gov.hk).

Constitutional and Mainland Affairs Bureau  
December 2013



**Let's talk  
and achieve  
universal suffrage**

**Methods for Selecting the Chief Executive in 2017 and  
for Forming the Legislative Council in 2016**

**Consultation Document**



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## **Chapter One: Introduction**

### **Background**

- 1.01 The Government of the People's Republic of China ("PRC") resumed the exercise of sovereignty over Hong Kong on 1 July 1997. The Preamble of The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Basic Law"), adopted at the Third Session of the Seventh National People's Congress ("NPC") on 4 April 1990, states that "Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, and that under the principle of 'one country, two systems', the socialist system and policies will not be practised in Hong Kong. The basic policies of the People's Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration."
- 1.02 The Elaboration by the Government of the People's Republic of China of its Basic Policies Regarding Hong Kong as set out in the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong ("the Sino-British Joint Declaration") states that:
- (i) the Chief Executive ("CE") of the Hong Kong Special Administration Region ("HKSAR") shall be selected by election or through consultations held locally and be appointed by the Central People's Government ("CPG"); and
  - (ii) the legislature of the HKSAR shall be constituted by elections.
- 1.03 After the signing of the Sino-British Joint Declaration, and through extensive consultations, the NPC decided to establish the HKSAR pursuant to Article 31 and paragraph 13 of Article 62 of the Constitution of the People's Republic of China ("the

Constitution”), and to enact the Basic Law to prescribe the systems to be practised in the HKSAR, in order to ensure the implementation of the PRC’s basic policies towards Hong Kong.

- 1.04 The Basic Law prescribes the systems to be implemented in the HKSAR, including the methods for selecting the CE and for forming the Legislative Council (“LegCo”), and provides for the attainment of the ultimate aims of selecting the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures, and of electing all the members of the LegCo by universal suffrage, in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress.

### **Constitutional Development of the HKSAR**

- 1.05 Acting in accordance with the Basic Law, the Central Authorities and the HKSAR Government have all along been firmly committed to gradually promoting the democratic development of Hong Kong, and to taking forward the constitutional development of Hong Kong towards the ultimate aim of universal suffrage.

- 1.06 Since the establishment of the HKSAR, the political structure of Hong Kong has been developing towards the ultimate aim of universal suffrage in a gradual and orderly manner in accordance with the Basic Law. Before the PRC resumed the exercise of sovereignty, the Governors of Hong Kong were appointed by the British Government, and Hong Kong was under colonial rule. After the PRC resumed the exercise of sovereignty in accordance with the principles of “One Country, Two Systems”, “Hong Kong people ruling Hong Kong” and a high degree of autonomy, and the relevant provisions of the Basic Law, the office of the CE is filled by Chinese citizens who are permanent residents of the HKSAR. Elections have been held for four terms of the CE; the first term CE being nominated and elected by a Selection Committee, and the second to fourth terms CE being nominated and elected by the Election Committee (“EC”). The size of the Selection Committee and the EC has gradually expanded from 400 members in 1996, to 800 in 2002 and 1 200 in 2012.

- 1.07 Moreover, the first and second terms of the LegCo were composed of Members returned by the functional constituencies (“FCs”), the EC and the geographical constituencies (“GCs”).

Since the third term LegCo, Members returned by FCs and Members returned by GCs each account for half of all seats in the LegCo. The number of LegCo seats returned by direct GC elections increased from 20 in 1998 to 24 in 2000, 30 in 2004 and 35 in 2012. In addition, the five new FC seats created in 2012 returned members through election, on the basis of one-person-one-vote, by some 3.2 million registered voters who previously did not have a vote in the traditional FCs.

- 1.08 Since 2004, there have been extensive and detailed discussions in the community of Hong Kong on how to amend the methods for selecting the CE and for forming the LegCo, and on issues relating to universal suffrage.
- 1.09 In November 2005, the HKSAR Government initiated discussions on the models, roadmap and timetable for implementing universal suffrage in Hong Kong through the Commission on Strategic Development (“CSD”). With members drawn from different sectors of the community, including professionals, academics, businessmen, personalities of different political parties, LegCo Members, personalities of the labour and media sectors and others, the CSD provided an open platform for discussion.
- 1.10 Subsequently, the third term HKSAR Government published the Green Paper on Constitutional Development (“the Green Paper”) in July 2007 to consult the public on the options, roadmap and timetable for implementing universal suffrage for the CE and the LegCo. In December of the same year, the CE submitted a report to the Standing Committee of the National People’s Congress (“NPCSC”), faithfully reflecting the views expressed by different sectors of the society regarding universal suffrage collected during the consultation.
- 1.11 After considering the report made by the CE, the NPCSC adopted the 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 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage (“the Decision”) on 29 December 2007. Since then, Hong Kong has a clear timetable for universal suffrage. The Decision provides:

“The election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage.”

Full text of the Decision of the NPCSC is at [Annex I](#).

- 1.12 The package of proposals for the methods for selecting the Chief Executive and for forming the Legislative Council in 2012 (“the 2012 package of proposals”) put forth by the HKSAR Government was passed by a two-thirds majority of all LegCo Members, received the consent of the CE and was approved and recorded by the NPCSC in the summer of 2010. The successful implementation of the 2012 package of proposals had greatly enhanced the democratic element of the two electoral methods. In respect of the CE election, the number of members of the EC had increased from 800 to 1 200, while the number of seats for elected District Council members in the fourth sector had substantially increased to 117, thereby enhancing the democratic element. In respect of the LegCo Election, the numbers of Members returned by the GC and FC elections had both increased from 30 to 35, whereas the five new FC seats returned Members through election, on the basis of one-person-one-vote, by some 3.2 million registered voters who previously did not have a vote in the traditional FCs. Thus, nearly 60% of the LegCo seats had an electorate base of more than 3 million voters. In the 2012 LegCo Election, each registered voter could have two votes – one for GC and one for FC. The turnout of the GC elections of the 2012 LegCo Election hit a record high with more than 1.83 million registered voters casting their votes. The increase in the number of registered voters and also the turnout reflected the public’s aspiration for active participation in elections.

### **Procedure for Amending the Methods for Selecting the CE and for Forming the LegCo**

- 1.13 According to The Interpretation by the Standing Committee of the National People’s Congress of 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 (“the



Interpretation”) adopted on 6 April 2004, “the Chief Executive of the Hong Kong Special Administrative Region shall make a report to the Standing Committee of the National People’s Congress as to whether or not there is a need to make an amendment” to the method for selecting the Chief Executive or the method for forming the Legislative Council, “and the Standing Committee of the National People’s Congress shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, make a determination in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The bills on the amendments to the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region into the Legislative Council.”

Full text of the Interpretation of the NPCSC is at [Annex II](#).

1.14 Therefore, according to the Basic Law and the Interpretation of NPCSC in 2004, amendments to the two methods have to go through the “Five-step Process” –

First Step: the CE to make a report to the NPCSC, so as to invite the NPCSC to decide whether it is necessary to amend the method of selection / formation;

Second Step: the NPCSC to make a determination on whether any amendment to the method of selection / formation may be made;

Third Step: if the NPCSC determines that amendments to the method of selection / formation may be made, the HKSAR Government to introduce to the LegCo a resolution on the amendments to the method for selecting the CE / method for forming the LegCo, to be passed by a two-thirds majority of all LegCo Members;

Fourth Step: the CE to consent to the resolution as passed by the LegCo; and

Fifth Step: the CE to lodge the relevant bill to the NPCSC for approval or for the record.

### **Work of the Fourth Term HKSAR Government**

1.15 It has been 16 years since the PRC resumed the exercise of sovereignty over Hong Kong. The society in general is eagerly looking forward to the attainment of the aim of universal suffrage in accordance with the Basic Law. It is the common aspiration of the Central Authorities, the HKSAR Government and the Hong Kong general public to implement the election of the CE by way of universal suffrage in 2017 and to properly handle the work relating to the method for forming the LegCo in 2016, strictly in accordance with the Basic Law and the Interpretation of the NPCSC in 2004 and the Decision of the NPCSC in 2007. It is also the constitutional responsibility and an important policy objective of the current term HKSAR Government.

1.16 The CE has made it clear in his Manifesto and his first Policy Address after assuming office that he will, strictly in accordance with the provisions of the Basic Law and relevant Decisions of the NPCSC, strive to secure the support of the Central Authorities and Members of the LegCo, and to forge consensus with the aim of achieving universal suffrage. Since his assumption of office, the CE and his team have been maintaining communications and dialogues with various sectors of the community on issues concerning constitutional development, so as to strive for a smooth implementation of universal suffrage for the CE election in 2017, and to properly handle the work concerning the LegCo electoral method in 2016.

1.17 The NPCSC 2007 Decision clearly stipulates that at an appropriate time prior to the selection of the CE by universal suffrage, the CE should submit a report to the NPCSC as regards the issue of amending the method for selecting the CE in accordance with the relevant provisions of the Basic Law and the Interpretation of the NPCSC adopted in 2004, for determination by the NPCSC. In other words, in order to implement universal suffrage for the election of the CE in 2017, the above-mentioned “Five-step Process” has to be followed.

- 1.18 Before formally initiating the “First Step”, the HKSAR Government would like to launch consultation on issues relating to the methods for selecting the CE in 2017 and for forming the LegCo in 2016, in order to collect views from different sectors of the community extensively. To this end, the Constitutional and Mainland Affairs Bureau has prepared this Consultation Document to commence a five-month public consultation.
- 1.19 There are views from the public requesting the current term Government to handle the electoral methods for the LegCo in 2016, the CE in 2017 and the LegCo in 2020 simultaneously. However, according to the Decision of the NPCSC in 2007, election of all Members of LegCo by universal suffrage may be implemented only after the CE is selected by universal suffrage. The selection of the CE by universal suffrage is accordingly a pre-condition for the election of all Members of the LegCo by universal suffrage. Therefore, it is appropriate and pragmatic for the current term Government to focus on the electoral methods of the CE in 2017 and the LegCo in 2016. The work relating to the election of LegCo by universal suffrage will be handled by the CE returned by universal suffrage in 2017 and the Administration under his leadership.
- 1.20 In preparing this Consultation Document, we have made reference to views and suggestions collected during discussions and public consultations on constitutional development initiated by the HKSAR Government since 2004, including –
- (i) views expressed at discussions of the Committee on Governance and Political Development under the CSD during 2005 to 2007 on the possible models for the election of the CE by universal suffrage;
  - (ii) views relating to the universal suffrage of the CE collected during the public consultation held in the third quarter of 2007 by the third term HKSAR Government on the models, roadmap and timetable for selecting the CE and forming the LegCo;
  - (iii) views relating the election of the CE by universal suffrage collected during the public consultation held during the end of 2009 to the beginning of 2010 on the two electoral methods in 2012 by the third term HKSAR Government; and

- (iv) recent preliminary exchanges of views between certain groups and individuals and the Administration at meetings prior to this public consultation.

- 1.21 We would emphasise that the HKSAR Government is yet to have any position regarding the methods for selecting the CE in 2017 and for forming the LegCo in 2016. Our aim is, through this round of public consultation, to listen extensively to the views of the public, groups and individuals from different sectors and of the LegCo as to how the two electoral methods may be amended. The CE would then submit a report to the NPCSC, faithfully reflecting the views received during the public consultation period and seeking the NPCSC's determination on whether any amendment to the methods for selecting the CE and for forming the LegCo may be made.
- 1.22 Chapters Two, Three and Four of this Consultation Document set out respectively the constitutional basis of the constitutional development and the design principles of the political structure of the HKSAR, as well as the major issues and related questions to be considered in relation to the methods for selecting the CE in 2017 and for forming the LegCo in 2016. Some of these issues require amendments to Annex I and Annex II to the Basic Law, while others may involve amendments to local legislation. We hope that the public could discuss the relevant issues upon the constitutional basis of the relevant provisions of the Basic Law, the 2004 Interpretation and the relevant Decisions of the NPCSC.
- 1.23 Chapters Three and Four of this Consultation Document contain anonymous references to recent views and suggestions on the methods for selecting the CE in 2017 and for forming the LegCo in 2016 raised by certain groups and individuals by way of illustrations so as to assist the public in understanding and discussing the relevant issues. The views and suggestions so mentioned do not represent the position of the HKSAR Government, nor should it be taken that the HKSAR Government agrees that such views or suggestions are in conformity with the Basic Law and the 2004 Interpretation and relevant Decisions of the NPCSC. Due to limited space, this document cannot exhaustively set out all the views and suggestions which have been raised by groups and individuals on the relevant issues.

## **Chapter Two: Constitutional Basis of the Constitutional Development and the Design Principles of the Political Structure of the Hong Kong Special Administration Region**

### **Constitutional and Legal Status of the HKSAR**

2.01 The constitutional basis of the HKSAR lies in the Constitution of the PRC and the Basic Law. The Constitution provides the ultimate basis for the Basic Law. The HKSAR was established by the decision of the NPC made pursuant to the provisions of Article 31 and paragraph 13 of Article 62 of the Constitution, and the Basic Law was enacted pursuant to the Constitution to prescribe the systems to be implemented in the HKSAR.

2.02 As to the constitutional status of the HKSAR, Article 1 of the Basic Law clearly stipulates that:

“The Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China.”

2.03 Article 12 of the Basic Law clearly stipulates that:

“The Hong Kong Special Administrative Region shall be a local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government.”

### **Constitutional Powers of the Central Authorities on the HKSAR**

2.04 The PRC is a unitary, multi-ethnic state. Under the unitary state structure, all administrative regions are established by the CPG according to the needs, and are local administrative regions. The systems to be implemented in the administrative regions are prescribed by the Constitution and by national laws, and all powers exercised by local administrative regions are derived by way of authorisation by the Central Authorities, which is distinctly different from the system of federal states under which local governments hand over certain powers to the federal government and retain “residual powers”. The Basic Law provides that the HKSAR comes directly under the CPG, with no intermediate layers in between.

2.05 Given the above-mentioned constitutional status of the HKSAR, the Central Authorities have the constitutional powers and responsibilities to determine the systems to be implemented in the HKSAR, including the model of political structure of the HKSAR. The role of the Central Authorities in this regard is reflected in the enactment and implementation of, and amendments to the Basic Law, for example:

- (i) according to the Interpretation adopted by the NPCSC in 2004, the CE should make a report to the NPCSC for determination as to whether there is a need to make an amendment to the methods for selecting the CE and for forming the LegCo for the terms subsequent to the year 2007 as stipulated in Annexes I and II to the Basic Law. The relevant amendment, after being endorsed by the LegCo and having received the consent of the CE, will still require the approval of or recording by the NPCSC before it may take effect. This reflects the constitutional power of the Central Authorities in amending the two methods, i.e. the ultimate power of the Central Authorities to determine the constitutional development of the HKSAR, including the timetable for attaining universal suffrage and the model and design of the universal suffrage system. As a local administrative region directly under the CPG, the HKSAR cannot decide its political structure on its own;
  
- (ii) Article 43 of the Basic Law provides that the CE shall be the head of the HKSAR and shall represent the Region and be accountable to the CPG and the HKSAR. Article 45 of the Basic Law provides that the CE shall be selected by election or through consultation held locally and be appointed by the CPG. The appointment by the CPG is a substantive power and not a mere formality. In other words, the CPG may make the appointment or it may not. This arrangement reflects the constitutional power of the Central Authorities in the actual implementation of the political structure of the HKSAR. The CE, irrespective of how he is selected, including ultimately by universal suffrage, is to be appointed by the CPG through the exercise of a substantive power of appointment before assuming office;

- (iii) Article 48 of the Basic Law provides that the CE shall lead the Government of the HKSAR, implement the directives issued by the CPG in respect of the relevant matters provided for in the Basic Law, as well as conduct, on behalf of the Government of the HKSAR, external affairs and other affairs as authorised by the Central Authorities, etc.; and
- (iv) Article 104 of the Basic Law requires the CE to swear to uphold the Basic Law and swear allegiance to the HKSAR of the PRC.

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

- 2.06 The design of the political structure of the HKSAR relates to the exercise of sovereignty by the State over Hong Kong as well as the full implementation of “One Country, Two Systems” and the basic policies of the Central Authorities towards Hong Kong. The HKSAR does not have the power to unilaterally alter the system prescribed by the Central Authorities. The universal suffrage electoral method is an integral part of the political structure. Therefore, any proposals on universal suffrage must comply with the design and principles of the political structure as prescribed in the Basic Law.
- 2.07 In the course of attaining the ultimate aim of universal suffrage and in devising a model for implementing universal suffrage, we must ensure that they are consistent with the basic policies of the State regarding Hong Kong and the four major principles on constitutional development under the Basic Law<sup>1</sup>:

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<sup>1</sup> In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, the Chairman of the Drafting Committee for the Basic Law, Mr Ji Pengfei, explained as follows:

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

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

- (I) Meeting the Interests of Different Sectors of the Society;
- (II) Facilitating the Development of the Capitalist Economy;
- (III) Gradual and Orderly Progress; and
- (IV) Appropriate to the Actual Situation in the HKSAR.

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

2.08 As illustrated by the history of Hong Kong's development, the sustainability of the long-term economic prosperity of Hong Kong depends on the joint endeavours of all sectors of the society, people from all walks of life, including the industrial and commercial sectors, the middle class, professionals, and the working class, who work together to perform their functions industriously regardless of their positions. To maintain our long-term prosperity and stability, due regard must be given to the interests of different sectors of society.

2.09 The 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 the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008 adopted on 26 April 2004, apart from pointing out that the two methods shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress, with universal suffrage as the ultimate aim, also states that any change relating to the two methods "shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong."

Full text of the Decision of the NPCSC in 2004 is at [Annex III](#).

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

2.10 In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, the



Chairman of the Drafting Committee for the Basic Law, Mr Ji Pengfei, pointed out in his explanations that Chapter V of the Basic Law contains stipulations on the economic systems and policies of the HKSAR. These stipulations are indispensable to ensuring the normal operation of Hong Kong's capitalist economy and maintaining its status as an international financial centre and a free port. The relevant principles are implemented through Article 5 of the Basic Law and other relevant provisions.<sup>2</sup>

- 2.11 The political structure of the HKSAR should facilitate the development of the capitalist economy. This is to ensure the prosperity and stability of Hong Kong. The method for selecting the CE by universal suffrage and the method for forming the LegCo should ensure that the HKSAR can develop its economy and the livelihood of the people can be improved under "One Country, Two Systems".

### **(III) Gradual and Orderly Progress**

- 2.12 "Gradual and orderly progress" is generally understood to mean proceeding forward in different steps or stages in an orderly fashion. It involves a step by step transition and different stages of evolution over time. With regard to attaining the ultimate aims of electing the CE and all the Members of LegCo by universal suffrage, the evolutionary process could not be taken forward too rapidly, but should proceed in a gradual and orderly manner and in the light of the actual situation in the HKSAR, in order to preserve its prosperity and stability.

### **(IV) Appropriate to the Actual Situation in the HKSAR**

- 2.13 The "actual situation" in the HKSAR as referred to in the Basic Law includes the political, economic, and social conditions, as well as the evolution and current status of the electoral methods for the CE and the LegCo.
- 2.14 Since the establishment of the HKSAR, the political system of Hong Kong has been developing in a gradual and orderly manner in accordance with the provisions of the Basic Law. In considering the further development of the political structure, the current actual situation of Hong Kong must be examined. Hong

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<sup>2</sup> See Chapter V of the Basic Law.

Kong is an open economy, a cosmopolitan city, a financial centre, shipping and logistics centre, information centre as well as commercial centre. Our per capita Gross Domestic Product in 2012 already exceeded US\$36,500. The level of economic development in Hong Kong ranks among the highest in the world. The rule of law is the cornerstone and core value of Hong Kong. Hong Kong has a clean and dedicated civil service. There is a high degree of social mobility in Hong Kong. Our people are generally diligent and pragmatic, and are keen to enhance their educational and professional standards through continuous learning. In Hong Kong, there is free flow of information. The mass media is free and multi-faceted. The public in general take interest in public affairs and in their community.

- 2.15 Since the State resumed the exercise of sovereignty over Hong Kong, successive terms of the CE and the Administration under their leadership have been exercising executive powers as authorised by the Basic Law, and have been governing Hong Kong strictly in accordance with the provisions of the Basic Law. Over the past 16 years, the economy of Hong Kong has been undergoing a process of restructuring. Despite the challenges, the HKSAR Government has been devising economic policies and measures in light of the rising trend of globalisation, and taking full advantage of the development of our country. With years of hard work, we are gradually seeing the benefits of these strategies.
- 2.16 In addition, with closer links between the Mainland and Hong Kong, the Hong Kong public's identification with the country and their sense of belonging is enhancing by the day. With the safeguards of the Basic Law, the Hong Kong public continue to enjoy all the rights associated with a free and open society. They have high expectations of the HKSAR Government, and actively participate in public affairs and convey their demands through different channels. The HKSAR Government understands the expectations and demands of the Hong Kong public. Further enhancing and improving the quality of governance has all along been one of the major policy agendas of the HKSAR Government.
- 2.17 Against this background, different sectors of the community are eagerly looking forward to the smooth implementation of universal suffrage for the CE election in 2017, so that the CE-elect may be elected through one-person-one-vote.

## **Procedure to be Followed in Amending the Political Structure of the HKSAR**

2.18 According to the Basic Law and the Interpretation of the NPCSC in 2004, the “Five-step Process” must be followed in amending the methods for selecting the CE and for forming the LegCo. The making of a report by the CE to the NPCSC; the determination by the NPCSC whether to make amendments to the electoral methods; the decision by all Members of the LegCo whether to pass the Government’s resolution to amend the electoral methods; the consent by the CE or otherwise to the resolution passed by the LegCo; and the decision of the NPCSC to approve or record, or otherwise, the relevant amendments, are all necessary steps in the constitutional process. In handling issues relating to constitutional development, the Central Authorities, the CE, the HKSAR Government, the LegCo, and indeed all sectors of the community, must strictly follow the law. This is also the core value of Hong Kong.

### **Relevant Provisions of the Basic Law**

2.19 Article 11 of the Basic Law provides that the systems and policies practiced in the HKSAR shall be based on the provisions of the Basic Law. The political structure of the HKSAR is prescribed in Chapter IV of the Basic Law and Annexes I and II to the Basic Law.

2.20 Article 45 of the Basic Law provides that:

“The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People’s Government.

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

The specific method for selecting the Chief Executive is prescribed in Annex I: ‘Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region’.”

2.21 Article 68 of the Basic Law provides that:

“The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: ‘Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures’.”

2.22 The above provisions of the Basic Law clearly stipulate the methods for selecting the CE and for forming the LegCo. In order to understand the background and meaning of relevant provisions of the Basic Law, we must take the constitutional status of the HKSAR and the principles of design of its political structure as the starting point.

### **Conclusion on the Design Principles of the Electoral Methods**

2.23 When discussing the methods for selecting the CE by universal suffrage, we should also take into account the constitutional status of the HKSAR and that of the CE, the constitutional powers of the Central Authorities as regards the HKSAR, the design principles of the political structure of the HKSAR, as well as the necessary steps to amend the political structure of the HKSAR. In dealing with the methods for selecting the CE in 2017 and for forming the LegCo in 2016, due regard has to be paid to the following three aspects:

- (i) the proposal should be strictly in accordance with the Basic Law and the Interpretation of the NPCSC in 2004 and relevant Decisions of the NPCSC;
- (ii) the proposal should stand a reasonable chance of gaining majority support of the Hong Kong community, securing passage by a two-thirds majority in the LegCo, and receiving the approval or record by the NPCSC; and

- (iii) in terms of actual operation, the electoral procedures under the proposal should be practical and practicable, simple and easy to understand, convenient to voters in exercising their voting rights, and conducive to maintaining an open, fair and honest electoral system.

## **Chapter Three: Method for Selecting the Chief Executive in 2017 – Issues to be Considered**

### **Constitutional and Legal Status of the CE**

3.01 Article 43 of the Basic Law provides that:

“The Chief Executive of the Hong Kong Special Administrative Region shall be the head of the Hong Kong Special Administrative Region and shall represent the Region. The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People’s Government and the Hong Kong Special Administrative Region in accordance with the provisions of this Law.”

Article 48 of the Basic Law also provides that the CE shall lead the Government of the HKSAR; shall be responsible for the implementation of the Basic Law and other laws which, in accordance with the Basic Law, apply in the HKSAR; shall implement the directives issued by the CPG in respect of relevant matters provided for in the Basic Law; as well as conduct, on behalf of the Government of the HKSAR, external affairs and other affairs as authorised by the Central Authorities, etc.

3.02 The HKSAR is a special administrative region of the State established in accordance with Article 31 of the Constitution. The CE, apart from being the head of the executive authorities of the HKSAR, is also the head of the HKSAR and represents the HKSAR, and plays an important role in the relationship between the Central Authorities and the HKSAR. Under the constitutional order, the CE being the head of a special administrative region of our country, apart from being accountable to the HKSAR, has to be accountable to the CPG as well. Under “One Country, Two Systems”, the constitutional status of the CE is special and important.

### **Method for Selecting the CE**

3.03 Article 45 of the Basic Law provides that:

“The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People’s Government.

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

The specific method for selecting the Chief Executive is prescribed in Annex I: ‘Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region’.

As can be seen from Article 45 of the Basic Law, the process for selecting the CE by universal suffrage involves three main steps, namely “nomination”, “election by universal suffrage” and “appointment”.

3.04 According to the Decision of the NPCSC in 2007:

“the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage.”

“in selecting the Chief Executive of the Hong Kong Special Administrative Region by the method of universal suffrage, a broadly representative nominating committee shall be formed. The nominating committee may be formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law. The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region, and to be appointed by the Central People’s Government.”

3.05 The Interpretation of the NPCSC in 2004 and the Decision in 2007 also stipulate that if no amendment is made to the method for selecting the CE in accordance with the legal procedures, the method for selecting the CE used for the preceding term shall continue to apply.

## Composition and Nominating Procedures of the Existing Election Committee

3.06 As mentioned in paragraph 3.04 above, the Decision of the NPCSC in 2007 stipulates that “the nominating committee may be formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law.”

3.07 According to the Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region approved at the Sixteenth Session of the Standing Committee of the Eleventh NPC on 28 August 2010, the EC to elect the fourth term CE in 2012 shall be composed of 1 200 members from the following four sectors:

Industrial, commercial and financial sectors	300
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The professions	300
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Labour, social services, religious and other sectors	300
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Members of the Legislative Council, representatives of members of the District Councils, representatives of the Heung Yee Kuk, 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	300
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3.08 In accordance with the provisions of Annex I to the Basic Law and the above Amendment, the Chief Executive Election Ordinance (Cap. 569) (“CEEO”) prescribes the detailed statutory requirements and procedures for the election of the CE, including the composition of the EC. The four sectors of the EC are constituted by 38 subsectors. The details are set out in Annex IV.

3.09 As regards the voting system, among the 38 existing subsectors of the EC, members of 35 subsectors are returned by the first-past-the-post voting method. As to the remaining three subsectors, the members of the religious subsector (60 members) are nominated by the six designated religious bodies; whereas the



Hong Kong deputies to the NPC and LegCo Members are ex-officio members.

- 3.10 According to the Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region approved at the Sixteenth Session of the Standing Committee of the Eleventh NPC on 28 August 2010, candidates for the office of the CE may be nominated jointly by not less than 150 members (i.e. one-eighth) of the EC, and there is no cap on the number of candidates to be nominated. Each member may nominate only one candidate.

### **Issues to be Considered**

- 3.11 According to Article 45 of the Basic Law, the process for selecting the CE by universal suffrage involves three main steps, namely "nomination", "election by universal suffrage" and "appointment". Subject to conformity with the Basic Law and the Decision of the NPCSC in 2007, in discussing the method for selecting the CE in 2017, we may consider the following key issues:

- (I) Size and Composition of the Nominating Committee;
- (II) Electorate Base of the Nominating Committee;
- (III) Method for Forming the Nominating Committee;
- (IV) Procedures for the Nominating Committee to Nominate CE Candidates;
- (V) Voting Arrangements for Electing the CE by Universal Suffrage;
- (VI) Procedures for Appointing the CE and the Linkage with Local Legislation; and
- (VII) Political Affiliation of the CE.

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

- 3.12 According to Article 45 of the Basic Law, the method for selecting the CE by universal suffrage shall consist of nomination of CE candidates by a “broadly representative nominating committee”, followed by election through universal suffrage. At present, pursuant to Annex I to the Basic Law, the CE is to be elected by a “broadly representative Election Committee”. This is in line and consistent with the principles which the “broadly representative” nominating committee (“NC”) in Article 45 of the Basic Law shall follow. The two references to “broadly representative” should have the same meaning. Since the composition of the NC shall comply with the requirement of “broadly representative”, the “broadly representative” composition of the EC as provided in Annex I to the Basic Law is of important reference value.
- 3.13 The Decision of the NPCSC in 2007 further stipulates that the NC may be formed with reference to<sup>3</sup> the current provisions regarding the EC in Annex I to the Basic Law. Although the EC had 800 members (consisting of 200 members in each of the four sectors) at the time the Decision was adopted by the NPCSC in December 2007, with passage of the proposal of the method for selecting the CE in 2012 put forward by the HKSAR Government in 2010, the number of members of the EC in 2012 has increased from 800 to 1 200 (the number of members in each of the four sectors having increased from 200 to 300 respectively).
- 3.14 On the size and composition of the NC, we may consider:

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<sup>3</sup> Mr Qiao Xiaoyang, Deputy Secretary-General of the NPCSC, discussed the legal meaning of “with reference to” at a constitutional development forum on 29 December 2007. In 230 pieces of legislation then in force in the PRC, there were a total of 85 usages of “with reference to” in 56 pieces of legislation. Amongst the 85 usages of “with reference to”, the most common meaning, in colloquial language, is that the law has made specific provisions for a certain situation, but has not made specific provisions for another similar situation. In such cases, the law would usually provide for reference to be made as appropriate. Therefore, the term “with reference to” is binding while at the same time allowing appropriate adjustment to be made in light of the actual situation. The Decision of the NPCSC expressly provides that the NC may be formed with reference to the composition of the EC. The purpose is to maintain, on the one hand, the basic components of the four sectors which compose the EC, while at the same time enabling the actual formation and size of the NC to be further discussed, with appropriate room for adjustment.

- (i) should the existing composition framework of the four sectors in the EC be followed when designing the composition of the NC?<sup>4, 5</sup>
- (ii) should the total number of NC members remain at 1 200, the same as the current EC, or should it be increased / decreased?<sup>6</sup>

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<sup>4</sup> Recently, there are views that the four sectors should be retained, while consideration may be given to increasing their electorate bases and public recognition. There are other views suggesting the abolition of some subsectors with a relatively small electorate base or reducing the number of seats in such subsectors and distributing the seats to new subsector(s) to be created. There are also views suggesting a complete abolition of all the four sectors, and that the NC should compose solely of all District Council members and / or LegCo Members.

<sup>5</sup> According to paragraph 3.12 of the Green Paper on Constitutional Development issued in July 2007, there were views at the time that the NC should not be constituted by LegCo Members solely. The major reasons include:

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

<sup>6</sup> From 2005 to 2007 during the discussions of the Committee on Governance and Political Development established under the CSD on possible models of universal suffrage of the CE, some of the members suggested that the composition of the NC could make reference to the EC, but the number of members should be increased to 1 500. In 2005, when considering the method for selecting the CE in 2007, the then Commission on Strategic Development suggested that the number of members of the EC in 2007 should be increased from 800 to 1 600, and should include all members of the District Council. Recently, some groups and individuals consider that the total number of members of the NC should remain at the existing level, i.e.

- (iii) should the NC be composed of the 38 subsectors of the existing EC, or should there be an increase or decrease of the number of subsectors?
- (iv) if the total number of NC members is to be increased, how should the newly added seats be distributed among the four sectors?<sup>7</sup>
- (v) if the total number of NC members is not to be increased, should the distribution of seats among the four sectors remain unchanged?

## **(II) Electorate Base of the Nominating Committee**

3.15 If the composition of the NC makes reference to the composition of the current EC, we may consider whether the electorate base of the existing subsectors should be maintained without the need for major changes. If it is considered that the electorate base of the existing EC should be further enlarged, we may consider how to enlarge the electorate base of the NC.<sup>8</sup>

## **(III) Method for Forming the Nominating Committee**

3.16 As mentioned in paragraph 3.09 above, among the existing 38 subsectors, members of 35 subsectors are returned by the first-past-the-post voting method, whereas members of the religious subsector are returned through nomination, and the Hong Kong deputies to the NPC and LegCo Members are ex-officio members.

3.17 If the NC is to be composed with reference to the composition of

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1 200. There are also other suggestions that the membership size be increased to 1 500, 1 600, 2 000 or more. On the other hand, there are also suggestions that the size and formation of the NC can be substantially reduced.

<sup>7</sup> Recently, there are suggestions that all elected District Council members should be included in the NC. There are also views suggesting that, based on the four sectors, new sectors or subsectors should be added.

<sup>8</sup> Recently, there are views suggesting that “corporate votes” should be replaced by “director / executive / affiliated organisation / individual votes”. There are views that certain subsectors should include all practitioners / work personnel of the subsectors, and that the voting members should be replaced by all members for some subsectors. There are also views that “corporate votes” should be completely abolished.

the current EC, for the subsector elections of the NC in 2017, we may consider:

- (i) should the existing voting, nomination and ex-officio arrangements of the subsectors be maintained?
- (ii) if new sub-sector(s) is / are to be added, what kind of system should be adopted by the subsector(s) to return its / their members?

#### **(IV) Procedures for the Nominating Committee to Nominate CE Candidates**

3.18 Article 45 of the Basic Law stipulates that “the method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures”. The Decision of the NPCSC in 2007 further provides that “the nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive”.

3.19 It is clear from Article 45 of the Basic Law that the power to nominate CE candidates is vested in the NC only, and that the power is a substantive one. Any proposal which bypasses the nomination procedures of the NC, or undermines the substantive power of the NC to nominate candidates, might be considered not conforming with Article 45 of the Basic Law.

3.20 Furthermore, Article 45 of the Basic Law and the Decision of the NPCSC in 2007 provide for CE candidates to be nominated by the NC in accordance with democratic procedures (i.e. the so-called “organisational nomination”<sup>9, 10</sup> or “collective nomination”), as

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<sup>9</sup> As stated in paragraph 3.12 of the Report on Public Consultation on Green Paper on Constitutional Development published in December 2007, the NC will play a crucial role in ensuring that CE candidates nominated shall be accountable to the CPG and the HKSAR. Hence, when considering the method for nominating CE candidates by the NC, we should ensure that the NC, as a nominating organ, will be able to perform its role.

distinct from the current model of election by the EC whereby individual EC members may jointly nominate candidates.

- 3.21 As to the number of the CE candidates to be nominated by the NC, the Decision of the NPCSC in 2007 mentions that the NC shall “nominate a certain number of candidates for the office of the Chief Executive”. In considering this issue, we have to consider also whether a candidate has sufficient public acceptance, whether a fair chance is given to people who are interested in running for election, and whether to ensure the competitiveness of the election. During the consultation on the models of universal suffrage for the CE election in 2007, there were relatively more views that it would be appropriate to have two to four CE candidates.
- 3.22 Issues to be considered regarding the procedures of nominating the CE candidates include:
- (i) how should the NC nominate CE candidates in accordance with “democratic procedures”?<sup>11</sup>

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<sup>10</sup> Mr Qiao Xiaoyang, Chairman of the Law Committee of the National People’s Congress, mentioned in his speech on 24 March 2013 that “the nominating committee is in fact an organisation. The nomination of CE candidates by the nominating committee is a form of organisational nomination.”

<sup>11</sup> Recently, there are suggestions that to formally become a candidate, one must obtain the support of more than half or a certain number of NC members. There are other suggestions that to become a candidate, one has to obtain a certain proportion of support from each sector. There are also suggestions that one could first obtain nomination from a certain number of NC members, or recommendation from a certain number of registered voters, to become an “applicant”; and then formally become a nominated candidate through a voting procedure by the NC. Among these suggestions, some are of the view that support can be obtained from individual NC members, similar to the existing nomination arrangement for the EC; while others have suggested that a secret ballot may be adopted and, in such case, those candidates who obtain the highest number of votes could formally become nominated candidates. Besides, there are suggestions of introducing “for and against votes”; to become a candidate, a person’s “for” votes must outnumber the “against” votes. There are also suggestions that any eligible member of the public, as long as he or she could obtain nominations from a certain number of eligible voters, could directly become candidates and participate in the one-person-one-vote universal suffrage. There are also suggestions that nominations could be made through political parties. Recently, there are also suggestions that reference be made to the one-eighth nomination threshold as in the existing CE Election. There are also views that the threshold should be relaxed to one-tenth, or that a certain number of persons obtaining the highest support by NC members and at the same time passing a certain threshold could become candidates.

(ii) how could the “democratic procedures” reflect the requirement of “organisational nomination”?

(iii) how many CE candidates should the NC nominate?<sup>12</sup>

**(V) Voting Arrangements for Electing the CE by Universal Suffrage**

3.23 At present, under the Basic Law, the CE is elected by an EC composed of 1 200 members. Under the CEEO:

(i) where there is only one candidate, election is still required to be held. The candidate has to obtain more than 600 support votes to be elected as the CE;

(ii) if it is a contested election (with two or more validly nominated candidates), a candidate must obtain more than 600 valid votes to be elected as the CE;

(iii) if it is a contested election, and in case no candidate is returned after the first round of polling, only the two candidates obtaining the highest number of votes can enter into the second round polling. Other candidates will be eliminated. If at the end of the second round of polling no candidate obtains more than 600 votes, the election would be terminated.

3.24 According to the Decision of the NPCSC in 2007, “the nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region, and to be appointed by the Central People’s Government”. If the CE Election in 2017 is in the form of universal suffrage, the electorate base would be expanded to all eligible voters in Hong Kong. As such, we have to consider:

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There are views that a nomination cap should apply.

<sup>12</sup> There are suggestions that the “certain number” of candidates should be 2 to 4. Some are of the view that there should be at least 3 candidates. Some consider that there should be 5, while some consider that the number should be pegged to the nomination threshold, or no restriction should be imposed at all.

- (i) should only one round of election be held (for example, the candidate with the highest number of votes is to be elected, without having to obtain more than half of the total number of valid votes)?
- (ii) should we require a candidate to obtain more than half of the total number of valid votes in order to be elected (for example, if no candidate could obtain more than half of the total number of valid votes in the first round election, two candidates with the highest number of votes would proceed to the second round election, and the candidate with the highest number of votes in the second round would be elected)?
- (iii) should other voting methods, such as preferential elimination system or instant runoff system be considered?<sup>13, 14</sup>
- (iv) should an election be required to be held if there is only one candidate?

**(VI) Procedures for Appointing the CE and the Linkage with Local Legislation**

3.25 Article 15 of the Basic Law stipulates that:

“The Central People’s Government shall appoint the Chief Executive and the principal officials of the executive authorities of the Hong Kong Special Administrative Region in accordance with the provisions of Chapter IV of this Law.”

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<sup>13</sup> Preferential elimination system or instant runoff system: in the case of more than two candidates, a voter may rank the candidates on the ballot paper in the order of preference. During counting of votes, the number of first preference votes a candidate obtains would be counted first, and the candidate with the fewest first preference votes will be eliminated, and his / her votes would be transferred to other candidates according to the second preferences marked on the ballot papers. The remaining candidates are again arranged in the order of the number of votes obtained, and the candidate with the least number of votes will be eliminated, and his / her votes transferred to other remaining candidates, and so on, until one candidate obtains more than half of the total number of votes.

<sup>14</sup> There are suggestions of adopting “for” and “against” votes, so that a candidate must obtain more “for” votes than “against” votes in order to be elected.



- 3.26 Article 45 of the Basic Law stipulates that:
- “The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People’s Government.”
- 3.27 Section 4 of the CEEO provides that the office of the CE becomes vacant in the following circumstances:
- (i) on the expiry of the term of office of the Chief Executive;
  - (ii) if the Chief Executive dies; or
  - (iii) if the Central People’s Government removes the Chief Executive from office in accordance with the Basic Law.
- 3.28 A candidate returned by election can become the CE only after being appointed by the CPG, and this is a mandatory procedure prescribed by law. The HKSAR is a local administrative region coming directly under the CPG, and the CE must be appointed by the CPG. This power of appointment reflects the sovereignty of the State. The appointment of the CE by the CPG under the law is not a mere formality, but a substantive appointment. The CPG has the power to appoint or not to appoint.
- 3.29 At present, Section 11 of the CEEO provides that a new polling date shall be fixed for a by-election of the CE to be held in certain circumstances. Section 11(3) of the CEEO only provides for a by-election to be held on the 120<sup>th</sup> day after the expiry of the term of office of the serving CE (or the Sunday immediately following that day) where a CE candidate returned at an election cannot assume the office of the CE on 1<sup>st</sup> July. However, the current CEEO does not have any provision which deals with the situation where the CPG declines to appoint the elected candidate before 1<sup>st</sup> July. In view of the above constitutional arrangements, we have to consider whether the existing CEEO should be amended to provide for a re-election if such situation were to take place.

#### **(VII) Political Affiliation of the CE**

- 3.30 At present, the CEEO allows members of political parties to run for the office of CE. However, candidates have to declare that they are running for the election in a personal capacity. If a

member of a political party is elected, the person is required to publicly make a statutory declaration within seven working days after being elected to the effect that he / she is not a member of any political party, and provide a written undertaking to the effect that he / she will not become a member of any political party or be subject to the discipline of any political party during his / her term of office.

- 3.31 During the public consultation on the method for selecting the CE in 2012 held by the third term HKSAR Government from the end of 2009 to early 2010, more than half of the members of the public who were polled took the view that the requirement of the CE not to have any political affiliation should be maintained. Separately, of the views received in writing, there was a clear majority of views that such requirement should be maintained. However, most parties and then Members of the LegCo who had submitted views on the issue had suggested that the existing requirement should be abolished.
- 3.32 Subsequently, the HKSAR Government decided not to make any changes to relevant provisions for the CE Election in 2012, but agreed that the issue might be reviewed in the long run.
- 3.33 Since the requirement for the CE not to belong to any political parties is set out in local legislation, we may consider whether to maintain such requirement when we conduct the consultation on the amendments to the CEEO.

## **Chapter Four: Method for Forming the Legislative Council in 2016 – Issues to be Considered**

### **Background**

4.01 Article 68 of the Basic Law stipulates that:

“The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: ‘Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures’.”

4.02 According to the Decision of the NPCSC in 2007, after the CE is selected by universal suffrage, the election of the LegCo may be implemented by the method of electing all the members by universal suffrage. Therefore, election of all members by universal suffrage would not be implemented in the 2016 LegCo Election. On the other hand, effective from the new term of the LegCo in 2012, the number of Members each returned by the GC and FC elections has increased from 30 to 35 respectively. Five new FC seats have been created and return members through election, on the basis of one-person-one-vote, by some 3.2 million registered voters who previously did not have a vote in the traditional FCs, and thus nearly 60% of the LegCo seats have an electorate base of more than 3 million voters.

### **Current Composition of the LegCo**

4.03 According to the Amendment to Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China Concerning the Method for the Formation of the Legislative Council of the Hong Kong Special Administrative

Region and Its Voting Procedures recorded at the Sixteenth Session of the Standing Committee of the Eleventh NPC on 28 August 2010, the fifth term LegCo in the year 2012 shall be composed of 70 members, the number of Members returned each by the GC and FC elections is 35 respectively.

4.04 In accordance with the provisions of Annex II to the Basic Law and the above Amendment, the Legislative Council Ordinance (Cap. 542) (“LCO”) contains detailed provisions regarding the delineation of GCs and the voting method for direct GC elections; and the delineation of FCs, their seat distribution and election methods, etc.

4.05 As regards direct GC elections, the LCO stipulates that there should be five GCs. In general, the 35 seats to be returned by GCs through direct elections are distributed among the constituencies in accordance with their population distribution. Details are as follows:

<b>Geographical Constituency</b>	<b>Number of Seats</b>
Hong Kong Island	7
Kowloon East	5
Kowloon West	5
New Territories East	9
New Territories West	9

4.06 For direct GC elections, the list voting system operating under the largest remainder formula, which is a form of proportional representation voting system, is adopted. Under this system, candidates contest the election in the form of lists. Each list may consist of any number of candidates up to the number of seats in the relevant constituency. An elector is entitled to vote for one list. Seats are distributed among the lists according to the number of votes obtained by the respective lists.

4.07 For FC elections, the 35 seats are returned from 29 FCs (see Annex V). Among the 29 FCs, the District Council (Second) Functional Constituency (“DC (Second) FC”) returns five LegCo Members, and the Labour FC returns three Members. The remaining 27 FCs return one Member each.

4.08 As regards the voting system, the DC (Second) FC takes the entire HKSAR as a single constituency, and adopts the list voting system under the proportional representation voting system, and operates under the largest remainder formula to come up with the election results. Separately, four FCs (namely the Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport) adopt the preferential elimination system. The remaining 24 FCs adopt the first-past-the-post voting system.

### **Issues to be Considered**

4.09 Subject to conformity with the Basic Law and the Interpretation of the NPCSC in 2004 and the Decision in 2007, the implementation of universal suffrage for the LegCo would be taken forward by the CE returned by universal suffrage in 2017 and the Administration under his leadership. When discussing the method for forming the LegCo in 2016, we may consider the following key issues:

- (I) Number of Seats and Composition of the LegCo;
- (II) Composition and Electorate Base of Functional Constituencies; and
- (III) Number of Geographical Constituencies and Number of Seats in Each Geographical Constituency.

#### **(I) Number of Seats and Composition of the LegCo**

4.10 During the public consultation held by the third term HKSAR Government from the end of 2009 to early 2010 on the method for forming the LegCo in 2012, the majority of views received supported the increase of the number of LegCo seats from 60 to 70, but there were also views that the number should be maintained at 60, or increased to 80. Subsequently, the third term HKSAR Government suggested increasing the number of seats of the fifth term LegCo commencing in 2012 from 60 to 70, and the proposal was eventually passed. The composition of the LegCo was enlarged, thereby enhancing the democratic element in the LegCo.

- 4.11 As for the sixth term LegCo commencing in 2016, we may consider whether the number of LegCo seats be capped at 70 without major changes or, subject to conformity with the principles of the Basic Law (see paragraph 2.07 above), to further increase the number of LegCo seats.
- 4.12 If the number of LegCo seats is to remain at 70 without any change<sup>15</sup>:
- (i) should the half-and-half ratio between Members returned by FCs and Members returned by GCs remain unchanged?
  - (ii) if the ratio is to be adjusted, what level should it be adjusted to?<sup>16</sup>
- 4.13 If the number of LegCo seats is to be increased:
- (i) what should be the total number of seats?<sup>17</sup>
  - (ii) how should the new seats be distributed?
    - (a) should the half-and-half ratio of Members from GCs and FCs be maintained and the new seats be distributed evenly?
    - (b) if the half-and-half ratio of Members from GCs and FCs is not maintained, should more of the new seats be allocated to FCs (such as the DC (Second) FC) or GCs?<sup>18</sup>

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<sup>15</sup> Recently, there are views that there is no need to increase the number of LegCo seats in 2016.

<sup>16</sup> Recently, there are views that the proportion of Members returned from direct GC elections should be adjusted upward to 60%. There are also other views that the number of FC seats should be reduced in 2016, or that the number of traditional FC seats should be maintained at 30 while the remaining seats should be returned through direct elections.

<sup>17</sup> Recently, there are views that the number of LegCo seats in 2016 should be increased to 80. There are also views that it should be increased to 90 or 100.

<sup>18</sup> Recently, there are views that the new seats could be allocated to the DC (Second) FC. There are also views that the new seats should all be allocated to direct

## **(II) Composition and Electorate Base of Functional Constituencies**

- 4.14 According to the 2013 Final Register, there are about 238 000 registered electors for the 28 traditional FCs, including 16 000 corporate bodies and some 222 000 individuals.
- 4.15 During the public consultation held by the third term HKSAR Government from the end of 2009 to early 2010 on the method for forming the LegCo in 2012, there were more views that the electorate base of FCs should be broadened. As to how the electorate base of FCs could be broadened, the majority of views supported increasing the number of District Council members, whose electorate base is wide, in the LegCo to enhance the representativeness of the LegCo election. Besides, there were also views that new FCs should be added, or that “corporate / organisation’s votes” of existing FCs should be replaced with “director’s votes” or “individual’s votes”. Subsequently, the third term HKSAR Government suggested that candidates for the five new FC seats should be nominated by elected District Council members, and returned through election, on the basis of one-person-one-vote, by registered voters who previously did not have a vote in the traditional FCs, thereby enhancing the democratic element in the LegCo election. This proposal was passed.
- 4.16 For the sixth term LegCo in 2016, we may consider whether to enlarge the electoral base of the FCs.<sup>19</sup>

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elections. Besides, there are also views that a new category of seats with the “entire Hong Kong as a single constituency” should be established, and its seats be returned using the proportional representation voting system, or returned by the districts using the “single-seat, single-vote” system, and abolish the DC (Second) FC.

<sup>19</sup> Recently, there are views that the “corporate votes” should be abolished and be replaced by votes of the executives or staff members of such corporations. There are also views that the electorate base of FCs should be enlarged by covering as far as possible electors with relevant professional qualifications and work experience. Besides, there are also views that candidates could be nominated by the relevant sectors, but returned through “one-person-one-vote” by all eligible electors in Hong Kong. There are also views that FCs could be reorganised into a few larger sectors, so that each candidate would have to face a larger number of electors and electors from a wider range of background.

### **(III) Number of Geographical Constituencies and Number of Seats in Each Geographical Constituency**

- 4.17 As mentioned in paragraph 4.05 above, there are currently five GCs, returning a total of 35 Members. Each GC has to return at least 5 and no more than 9 Members.
- 4.18 Regardless of whether the number of LegCo seats in 2016 would be increased, we may consider:
- (i) should the existing number of GCs be adjusted?<sup>20</sup>
  - (ii) should the upper and lower limits of seats returned by each GC be adjusted?

### **Procedures for Voting on Bills and Motions in the LegCo**

- 4.19 Pursuant to Annex II to the Basic Law, the LegCo of the HKSAR is to adopt the following procedures for voting on bills and motions:

“The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee.”

- 4.20 In submitting the Basic Law (Draft) and related documents to the Third Session of the Seventh NPC on 28 March 1990, Mr Ji Pengfei, Chairman of the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China made the following explanation in respect of the voting procedures of the LegCo in the Annex II to the Basic Law:

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<sup>20</sup> Recently, there are views that the number of GCs should be increased to 6 to 9, and that through realignment of GCs, the number of seats in each GC can even out. There are also views suggesting that certain seats may be returned from smaller constituencies.



“Annex II also stipulates that different voting procedures shall be adopted by the Legislative Council in handling bills introduced by the government and motions and bills introduced by individual members of the Legislative Council. The passage of bills introduced by the government requires a simple majority vote of the members of the Legislative Council present. The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council requires at least a simple majority vote by each of the two groups of members present, i.e., members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee. Such provisions take into consideration the interests of all social strata and will prevent endless debates over government bills, thus helping the government work with efficiency.”

- 4.21 In accordance with the Decisions of the NPCSC in 2004 and 2007, the elections of the LegCo in the fourth and fifth terms in the years 2008 and 2012 were not implemented by the method of electing all the members by universal suffrage. The ratio between members returned by FCs and members returned by GCs through direct elections remained unchanged. The procedures for voting on bills and motions in the LegCo were to remain unchanged. At an appropriate time prior to the election of all the members of the LegCo by universal suffrage, the CE shall make a report to the NPCSC as regards the issue of amending the method for forming the LegCo and the procedures for voting on bills and motions in the LegCo in accordance with the relevant provisions of the Basic Law and the Interpretation of the NPCSC in 2004, and a determination thereon shall be made by the NPCSC.

## **Chapter Five: Views Sought**

### **Method for Selecting the CE in 2017**

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

5.01 The current EC is formed by 1 200 members from four sectors. As regards the size and composition of the NC, we may consider:

- (i) should the existing composition framework of the four sectors in the EC be followed when designing the composition of the NC?
- (ii) should the total number of NC members remain at 1 200, the same as the current EC, or should it be increased / decreased?
- (iii) should the NC be composed of the 38 subsectors of the existing EC, or should there be an increase or decrease of the number of subsectors?
- (iv) if the total number of NC members is to be increased, how should the newly added seats be distributed among the four sectors?
- (v) if the total number of NC members is not to be increased, should the distribution of seats among the four sectors remain unchanged?

#### **(II) Electorate Base of the Nominating Committee**

5.02 If the composition of the NC makes reference to the composition of the current EC, should the electorate base of the existing subsectors be maintained without the need for major changes? If the electorate base of the existing EC is to be further enlarged, how to enlarge the electorate base of the NC?

### **(III) Method for Forming the Nominating Committee**

5.03 If the NC is to be composed with reference to the composition of the current EC, for the subsector elections of the NC in 2017, we may consider:

- (i) should the existing voting, nomination and ex-officio arrangements of the subsectors be maintained?
- (ii) if new subsector(s) is / are to be added, what kind of system should be adopted by the subsector(s) to return its / their members?

### **(IV) Procedures for the Nominating Committee to Nominate CE Candidates**

5.04 Article 45 of the Basic Law and the Decision of the NPCSC in 2007 provide for CE candidates to be nominated by the NC in accordance with democratic procedures (i.e. the so-called “organisational nomination” or “collective nomination”), as distinct from the current model of election by the EC whereby individual EC members may jointly nominate candidates.

5.05 Issues to be considered regarding the procedures of nominating CE candidates include:

- (i) how should the NC nominate CE candidates in accordance with “democratic procedures”?
- (ii) how could the “democratic procedures” reflect the requirement of “organisational nomination”?
- (iii) how many CE candidates should the NC nominate?

### **(V) Voting Arrangements for Electing the CE by Universal Suffrage**

5.06 As regards the method of universal suffrage after the nominating procedures, we have to consider:

- (i) should only one round of election be held (for example, the candidate with the highest number of votes is to be elected, without having to obtain more than half of the total number of valid votes)?
- (ii) should we require a candidate to obtain more than half of the total number of valid votes in order to be elected (for example, if no candidate could obtain more than half of the total number of valid votes in the first round election, two candidates with the highest number of votes would proceed to the second round election, and the candidate with the highest number of votes in the second round would be elected)?
- (iii) should other voting methods, such as preferential elimination system or instant runoff system be considered?
- (iv) should an election be required to be held if there is only one candidate?

**(VI) Procedures for Appointing the CE and the Linkage with Local Legislation**

5.07 To take account of a situation whereby the elected CE candidate were not appointed by the Central Authorities before 1<sup>st</sup> July, should we amend the existing CEE0 to provide for a mechanism for re-election?

**Method for Forming the LegCo in 2016**

**(I) Number of Seats and Composition of the LegCo**

5.08 Should the number of LegCo seats be capped at 70 without major changes or, subject to conformity with the principles of the Basic Law, should the number of LegCo seats be further increased?

5.09 If the number of LegCo seats is to remain at 70 without any change:

- (i) should the half-and-half ratio between Members returned by FCs and Members returned by GCs remain unchanged?
- (ii) if the ratio is to be adjusted, what level should it be adjusted to?

5.10 If the number of LegCo seats is to be increased:

- (i) what should be the total number of seats?
- (ii) how should the new seats be distributed?
  - (a) should the half-and-half ratio of Members from GCs and FCs be maintained and the new seats be distributed evenly?
  - (b) if the half-and-half ratio of Members from GCs and FCs is not maintained, should more of the new seats be allocated to FCs (such as the DC (Second) FC) or GCs?

## **(II) Composition and Electorate Base of Functional Constituencies**

5.11 Should the electorate base of FCs be enlarged?

## **(III) Number of Geographical Constituencies and Number of Seats in Each Geographical Constituency**

5.12 Regardless of whether the number of LegCo seats in 2016 would be increased, we may consider:

- (i) should the existing number of GCs be adjusted?
- (ii) should the upper and lower limits of seats returned by each GC be adjusted?

## **Chapter Six: Ways of Providing Views or Suggestions**

6.01 We welcome your views by mail, facsimile or email on or before 3 May 2014:

Address: Constitutional and Mainland Affairs Bureau  
12/F, East Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar, Hong Kong

Fax number: 2563 9292

E-mail address: [views@2017.gov.hk](mailto:views@2017.gov.hk)

Website: [www.2017.gov.hk](http://www.2017.gov.hk)

6.02 It is optional for any member of the public to supply his / her personal data in providing views on this Consultation Document. Any personal data provided with a submission may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise. The Government bureaux and departments receiving the data are bound by such purposes in their subsequent use of such data.

6.03 The names and views of individuals and organisations which put forth submissions in response to this Consultation Document (“senders”) may be published for public viewing after conclusion of the public consultation exercise. This Bureau may, either in discussion with others (whether privately or publicly), or in any subsequent report, attribute comments submitted in response to this Consultation Document.

6.04 To safeguard senders’ data privacy, we will remove senders’ relevant data (if provided), such as residential / return addresses, email addresses, identity card numbers, telephone numbers, facsimile numbers and signatures, where provided, when publishing their submissions.

6.05 We will respect the wishes of senders to remain anonymous and / or keep the views confidential in part or in whole. If the senders request anonymity in the submissions, their names will be removed when publishing their views. If the senders request confidentiality of their views, their submissions will not be published.

- 6.06 If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.
- 6.07 Any sender providing personal data to this Bureau in the submission will have rights of access and correction with respect to such personal data. Requests for data access and correction of personal data should be made in writing to:

Address: Assistant Secretary (3B)  
Constitutional and Mainland Affairs Bureau  
12/F, East Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar, Hong Kong

Fax number: 2563 9292

E-mail address: [views@2017.gov.hk](mailto:views@2017.gov.hk)

Constitutional and Mainland Affairs Bureau  
December 2013

(This is an English translation of the original instrument in Chinese)

**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 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage**

(Adopted by the Standing Committee of the Tenth National People's Congress at its Thirty-first Session on 29 December 2007)

The Standing Committee of the Tenth National People's Congress considered at its Thirty-first Session the "Report on the Public Consultation on Constitutional Development and on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2012" submitted by Tsang Yam-kuen, the Chief Executive of the Hong Kong Special Administrative Region, on 12 December 2007. The Session is of the view that appropriate amendments may be made to the specific method for selecting the fourth Chief Executive and the specific method for forming the fifth term Legislative Council of the Hong Kong Special Administrative Region in the year 2012; that the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage. Pursuant to the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and "The Interpretation by the Standing Committee of the National People's Congress of 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", the Standing Committee of the National People's Congress hereby makes the following decision:

1. The election of the fourth Chief Executive of the Hong Kong Special Administrative Region in the year 2012 shall not be implemented by the method of universal suffrage. The election of



the fifth term Legislative Council of the Hong Kong Special Administrative Region in the year 2012 shall not be implemented by the method of electing all the members by universal suffrage. The half-and-half ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections shall remain unchanged. The procedures for voting on bills and motions in the Legislative Council shall remain unchanged. Subject to the aforementioned, appropriate amendments conforming to the principle of gradual and orderly progress may be made to the specific method for selecting the fourth Chief Executive of the Hong Kong Special Administrative Region in the year 2012 and the specific method for forming the fifth term Legislative Council of the Hong Kong Special Administrative Region in the year 2012 in accordance with the provisions of Articles 45 and 68, and those of 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.

2. At an appropriate time prior to the selection of the Chief Executive of the Hong Kong Special Administrative Region by universal suffrage, the Chief Executive shall make a report to the Standing Committee of the National People's Congress as regards the issue of amending the method for selecting the Chief Executive in accordance with the relevant provisions of the Hong Kong Basic Law and "The Interpretation by the Standing Committee of the National People's Congress of 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"; a determination thereon shall be made by the Standing Committee of the National People's Congress. The bills on the amendments to the method for selecting the Chief Executive and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region to the Legislative Council; such amendments must 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 and they shall be reported to the Standing Committee of the National People's Congress for approval.
3. At an appropriate time prior to the election of all the members of the Legislative Council of the Hong Kong Special Administrative Region by universal suffrage, the Chief Executive shall make a

report to the Standing Committee of the National People's Congress as regards the issue of amending the method for forming the Legislative Council and the issue of whether any corresponding amendment should be made to the procedures for voting on bills and motions in the Legislative Council in accordance with the relevant provisions of the Hong Kong Basic Law and "The Interpretation by the Standing Committee of the National People's Congress of 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"; a determination thereon shall be made by the Standing Committee of the National People's Congress. The bills on the amendments to the method for forming the Legislative Council and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region to the Legislative Council; such amendments must 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 and they shall be reported to the Standing Committee of the National People's Congress for the record.

4. If no amendment is made to the method for selecting the Chief Executive, the method for forming the Legislative Council or its procedures for voting on bills and motions in accordance with the legal procedures, the method for selecting the Chief Executive used for the preceding term shall continue to apply, and the method for forming the Legislative Council and the procedures for voting on bills and motions used for the preceding term shall continue to apply.

The Session is of the view that in accordance with the provisions of Article 45 of the Hong Kong Basic Law, in selecting the Chief Executive of the Hong Kong Special Administrative Region by the method of universal suffrage, a broadly representative nominating committee shall be formed. The nominating committee may be formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law. The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region, and to be appointed by the Central People's Government.

The Session is of the view that with the joint efforts of the Government of the Hong Kong Special Administrative Region and the people of Hong Kong, the democratic system of the Hong Kong Special Administrative Region will definitely make progress continuously, and that the aim of the selection of the Chief Executive and the election of all the members of the Legislative Council by universal suffrage will be realized in accordance with the Hong Kong Basic Law and this Decision.

(This is an English translation of the original instrument in Chinese)

**The Interpretation by the Standing Committee of the National People's Congress of 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**

(Adopted at the Eighth Session of the Standing Committee of the Tenth National People's Congress on 6 April 2004.)

The Standing Committee of the Tenth National People's Congress examined at its Eighth Session the motion regarding the request for examination of "The Draft Interpretation of 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" submitted by the Council of Chairmen. Having consulted the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, the Standing Committee of the National People's Congress has decided to make, under the provisions of Article 67(4) of the Constitution of the People's Republic of China and Article 158(1) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, an interpretation of the provisions of Article 7 of Annex I "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region" to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China regarding "If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must 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, and they shall be reported to the Standing Committee of the National People's Congress for approval" and the provisions of Article III of Annex II "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures" regarding "With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing

Committee of the National People's Congress for the record" as follows:

1. The phrases "subsequent to the year 2007" and "after 2007" stipulated in the two above-mentioned Annexes include the year 2007.
2. The provisions in the two above-mentioned Annexes that "if there is a need" to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007 or the method for forming the Legislative Council and its procedures for voting on bills and motions after 2007 mean they may be amended or remain unamended.
3. The provisions in the two above-mentioned Annexes that any amendment must 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 and shall be reported to the Standing Committee of the National People's Congress for approval or for the record mean the requisite legislative process through which the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions are amended. Such an amendment may take effect only if it has gone through the said process, including the approval or recording ultimately given or made by the Standing Committee of the National People's Congress in accordance with law. The Chief Executive of the Hong Kong Special Administrative Region shall make a report to the Standing Committee of the National People's Congress as regards whether there is a need to make an amendment; and the Standing Committee of the National People's Congress shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, make a determination in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The bills on the amendments to the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region into the Legislative Council.

4. If no amendment is made to the method for selecting the Chief Executive, the method for forming the Legislative Council and its procedures for voting on bills and motions as stipulated in the two above-mentioned Annexes, the provisions relating to the method for selecting the Chief Executive in Annex I will still be applicable to the method for selecting the Chief Executive, and the provisions relating to the method for forming the third term of the Legislative Council in Annex II and the provisions relating to its procedures for voting on bills and motions in Annex II will still be applicable to the method for forming the Legislative Council and its procedures for voting on bills and motions.

This Interpretation is hereby proclaimed.

(This is an English translation of the original instrument in Chinese)

**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 the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008**

(Adopted at the Ninth Session of the Standing Committee of the Tenth National People's Congress on 26 April 2004.)

The Standing Committee of the Tenth National People's Congress examined at its Ninth Session the "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" submitted by Tung Chee-hwa, the Chief Executive of the Hong Kong Special Administrative Region, on 15 April 2004 and, before the Session, had consulted the Hong Kong deputies to the National People's Congress, the Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, different sectors of Hong Kong, the Hong Kong members of the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, and the Constitutional Development Task Force of the Government of the Hong Kong Special Administrative Region, and had also sought the views of the Hong Kong and Macao Affairs Office of the State Council. The Standing Committee of the National People's Congress was, in the course of the examination, fully aware of the recent concerns of the Hong Kong society about the methods for selecting the Chief Executive and for forming the Legislative Council after the year 2007, including the views of some bodies and people that they wish to see the selection of the Chief Executive by universal suffrage in the year 2007 and the election of all the members of the Legislative Council by universal suffrage in the year 2008.

The Session is of the view that Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "Hong Kong Basic Law") already expressly provide that the methods for selecting the Chief

Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress, and that the ultimate aims are the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures and the election of all the members of the Legislative Council by universal suffrage. The methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to the above principles and provisions of the Hong Kong Basic Law. Any change relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong.

The Session is of the view that since the establishment of the Hong Kong Special Administrative Region, Hong Kong residents have enjoyed democratic rights that they have never had before. The first Chief Executive was elected by the Selection Committee, which was composed of 400 members. The second Chief Executive was elected by the Election Committee, which was composed of 800 members. Out of the 60 members of the Legislative Council, the number of members returned by geographical constituencies through direct elections increased from 20 in the Legislative Council in the first term to 24 in the Legislative Council in the second term and will reach 30 in the Legislative Council in the third term to be formed this September. Hong Kong does not have a long history of practising democratic elections. Until now, Hong Kong residents have exercised the democratic right to participate in the selection of the Chief Executive of the Special Administrative Region for less than 7 years. Since the reunification of Hong Kong with the motherland, the number of members of the Legislative Council returned by geographical constituencies through direct elections has already substantially increased. When the set-up is such that half of the members are returned by geographical constituencies through direct elections and half of the members are returned by functional constituencies, the impact on the operation of the Hong Kong society as a



whole, especially the impact on the executive-led system, remains to be examined through practice. Further, at present, different sectors of the Hong Kong society still have considerable differences on how to determine the methods for selecting the Chief Executive and for forming the Legislative Council after the year 2007 and have not come to a broad consensus. In the circumstances, conditions do not exist for the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures as provided for in Article 45 of the Hong Kong Basic Law and the election of all the members of the Legislative Council by universal suffrage as provided for in Article 68 of the Hong Kong Basic Law.

In the light of the above and pursuant to the relevant provisions of the Hong Kong Basic Law and “The Interpretation by the Standing Committee of the National People’s Congress of 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”, the Standing Committee of the National People’s Congress makes the following decision on the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2008:

1. The election of the third Chief Executive of the Hong Kong Special Administrative Region to be held in the year 2007 shall not be by means of universal suffrage. The election of the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 shall not be by means of an election of all the members by universal suffrage. The ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged. The procedures for voting on bills and motions in the Legislative Council are to remain unchanged.
2. Subject to Article 1 of this Decision not being contravened, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the specific method for selecting the third Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and the specific method for forming the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008

according to the provisions of Articles 45 and 68 of the Hong Kong Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Hong Kong Basic Law.

The Session is of the view that developing democracy in the Hong Kong Special Administrative Region in the light of the actual situation and in a gradual and orderly manner according to the provisions of the Hong Kong Basic Law has all along been the resolute and firm stance of the Central Authorities. With the development and progress in all aspects of the Hong Kong society and through the joint endeavours of the Government of the Hong Kong Special Administrative Region and Hong Kong residents, the democratic system of the Hong Kong Special Administrative Region will certainly be able to progress forward incessantly, and ultimately attain the aims of selecting the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures and electing all the members of the Legislative Council by universal suffrage provided for in the Hong Kong Basic Law.

**Composition of the Election Committee**

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

	<u>Subsector</u>	<u>Number of members</u>
1.	Catering	17
2.	Commercial (First)	18
3.	Commercial (Second)	18
4.	Employers' Federation of Hong Kong	16
5.	Finance	18
6.	Financial Services	18
7.	Hong Kong Chinese Enterprises Association	16
8.	Hotel	17
9.	Import and Export	18
10.	Industrial (First)	18
11.	Industrial (Second)	18
12.	Insurance	18
13.	Real Estate and Construction	18
14.	Textiles and Garment	18
15.	Tourism	18
16.	Transport	18
17.	Wholesale and Retail	18

**Second Sector (The professions)**

	<u>Subsector</u>	<u>Number of members</u>
18.	Accountancy	30
19.	Architectural, Surveying and Planning	30
20.	Chinese Medicine	30
21.	Education	30
22.	Engineering	30
23.	Health Services	30
24.	Higher Education	30
25.	Information Technology	30
26.	Legal	30
27.	Medical	30

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

	<u>Subsector</u>	<u>Number of members</u>
28.	Agriculture and Fisheries	60
29.	Labour	60
30.	Religious*	60
31.	Social Welfare	60
32.	Sports, Performing Arts, Culture and Publication	60

### **Fourth Sector (Members of the Legislative Council, representatives of members of the District Councils, representatives of the Heung Yee Kuk, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference)**

	<u>Subsector</u>	<u>Number of members</u>
33.	National People's Congress	36
34.	Legislative Council	70
35.	Chinese People's Political Consultative Conference	51
36.	Heung Yee Kuk	26
37.	Hong Kong and Kowloon District Councils	57
38.	New Territories District Councils	60

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

	<u>Number of members</u>	
1.	Catholic Diocese of Hong Kong	10
2.	Chinese Muslim Cultural and Fraternal Association	10
3.	Hong Kong Christian Council	10
4.	The Hong Kong Taoist Association	10
5.	The Confucian Academy	10
6.	The Hong Kong Buddhist Association	10

**Functional Constituencies of the Legislative Council**

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



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**Statement by the Chief Secretary for Administration  
on the Consultation Document on the  
Methods for Selecting the Chief Executive in 2017 and  
for Forming the Legislative Council in 2016  
at the Legislative Council Sitting on 4 December 2013**

Mr President,

Today, the Hong Kong Special Administrative Region (“HKSAR”) Government publishes the “Consultation Document on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016” (“Consultation Document”) to formally commence a five-month public consultation exercise. To show our respect and sincerity towards the Legislative Council (“LegCo”), I take this very first opportunity to attend the LegCo to make the following Statement.

**Recapitulating History, Respecting Constitutional Order**

2. First of all, the design and establishment of any political structure have to have regard to the historical background of the relevant place, and with the constitutional basis and the characteristics of that place as the foundation. Therefore, when we discuss the methods for selecting the Chief Executive (“CE”) by universal suffrage in 2017 and for forming the LegCo in 2016, we have to consider the historical background of the establishment of the HKSAR, understand the unique constitutional status of the HKSAR, and comprehend the legal framework based on the Basic Law and the relevant Interpretation and Decisions of the Standing Committee of the National People’s Congress (“NPCSC”).

3. After the signing of the Sino-British Joint Declaration, the State established the HKSAR pursuant to the Constitution of the People’s Republic of China, and enacted the Basic Law after extensive consultations so as to prescribe the systems to be implemented in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong. The overall objective is to maintain the long-term prosperity and stability of Hong Kong.

4. The Basic Law prescribes the various systems to be implemented in the HKSAR, including the methods for selecting the CE and for forming the LegCo. Article 45 and Article 68 of the Basic Law stipulate respectively that 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 to achieve the selection of the CE by universal suffrage

upon nomination by a broadly representative nominating committee in accordance with democratic procedures, and the election of all the Members of the LegCo by universal suffrage.

5. As a matter of fact, since the establishment of the HKSAR, the political structure of Hong Kong has been developing towards the ultimate aim of universal suffrage in accordance with the Basic Law. As stipulated by the Basic Law, the office of the CE is filled by a Chinese citizen who is a permanent resident of the HKSAR, and there have since been four elections. The size of the Election Committee has also expanded from 400 members of the Selection Committee in 1996, gradually to 800 of the Election Committee in 2002 and 1 200 in 2012. As regards the LegCo, the number of seats returned by direct geographical constituency (GC) elections has gradually increased from 20 in 1998 to 35 in 2012. In addition, the five new functional constituency (FC) seats created in 2012 returned Members through election, on the basis of one-person-one-vote, by some 3.2 million registered voters who previously did not have a vote in the traditional FCs.

6. Since 2004, there have been extensive and specific discussions in the community of Hong Kong on how to amend the methods for selecting the CE and for forming the LegCo, and on issues relating to universal suffrage. According to the Basic Law and the 2004 NPCSC Interpretation, amendments to the method of selection / formation have to go through the “Five-step Process” according to the law:

First Step – the CE to make a report to the NPCSC, so as to invite the NPCSC to decide whether it is necessary to amend the method of selection / formation;

Second Step – the NPCSC to make a determination on whether any amendment to the method of selection / formation may be made;

Third Step – if the NPCSC determines that amendments to the method of selection / formation may be made, the HKSAR Government to introduce to the LegCo a resolution on the amendments to the method for selecting the CE / method for forming the LegCo, to be passed by a two-thirds majority of all LegCo Members;

Fourth Step – the CE to consent to the resolution as passed by the LegCo; and



Fifth Step – the CE to lodge the relevant bill to the NPCSC for approval or for the record.

Therefore, to successfully implement universal suffrage for the CE in 2017, the Central Authorities, the HKSAR Government, the LegCo, as well as the Hong Kong general public, all have their respective important roles to play.

7. In December 2007, the NPCSC adopted a Decision that clearly provides a timetable for universal suffrage in Hong Kong, i.e., the election of the CE in the year 2017 may be implemented by the method of universal suffrage; and after the CE is selected by universal suffrage, the election of the LegCo may be implemented by the method of electing all the Members by universal suffrage.

8. This part of the historical account, from the enactment of the Basic Law stipulating the ultimate aim of universal suffrage and up to the Decision adopted by the NPCSC in 2007 providing for a timetable for universal suffrage, fully demonstrates the determination and commitment of the Central Authorities towards the implementation of universal suffrage in the HKSAR.

9. Mr President, the 2007 NPCSC Decision is an important milestone in the constitutional development of Hong Kong; it is also an important step towards universal suffrage for Hong Kong. I can still recall that when I, as the then Secretary for Development, attended a briefing session at the Government House together with colleagues, and heard Mr Qiao Xiaoyang, the then Deputy Secretary General of the NPCSC, saying that Hong Kong had her own timetable for universal suffrage, I was very excited and looked forward to its fruition. The year 2017 would be the first time that the CE of the HKSAR is to be returned by the method of universal suffrage. The ultimate aim of universal suffrage for the CE, as stipulated in the Basic Law, is just round the corner.

10. In the course of attaining the ultimate aim of universal suffrage and in devising a model for implementing universal suffrage, we must ensure that the relevant selection / formation methods are consistent with the basic policies of the State regarding Hong Kong and the four key principles on constitutional development under the Basic Law are conformed to, i.e.:

(a) meeting the interests of different sectors of the society;

- (b) facilitating the development of the capitalist economy;
- (c) gradual and orderly progress; and
- (d) appropriate to the actual situation in the HKSAR.

11. According to the Basic Law and the 2004 NPCSC Interpretation, the “Five-step Process” must be followed in amending the methods for selecting the CE and for forming the LegCo. They are the necessary constitutional procedure that we need to go through. In handling issues relating to constitutional development, the Central Authorities, the CE, the HKSAR Government, the LegCo, and indeed all sectors of the community, must strictly follow the law.

### **Launching the Public Consultation, Listening to Views of the Public**

12. The HKSAR Government is devoted and determined to successfully implement the universal suffrage for the CE in 2017. In his Manifesto and his first Policy Address after taking office, the CE had clearly pointed out that, acting strictly in accordance with the Basic Law and relevant Decisions of the NPCSC, he would strive to secure support from the Central Authorities and Members of the LegCo, and to forge consensus and take forward the accomplishment of the aim of universal suffrage. Since taking office, the CE and his team have been maintaining communications and dialogues with various sectors of the community to understand their positions and listen to their views, in order to lay a good foundation for the consultation on constitutional development.

13. In October this year, the CE announced the establishment of the Task Force on Constitutional Development led by me, to prepare for the launch of the public consultation on constitutional development. As the Chief Secretary for Administration, I am delighted to take up this important task to achieve our shared vision of universal suffrage with the people of Hong Kong. Today, the Government publishes the Consultation Document to formally commence the preparation for the constitutional procedure, as the first step to take forward the amendments of the method of selection / formation.

14. The period of consultation is a full five months, which is slightly longer than other public consultation exercises. Constitutional development is an important issue, as well as an issue of great concern of the entire community. Therefore, we deliberately reserve adequate time for the community to have full discussions with a view to forging consensus.

15. The Consultation Document sets out the background and principles of constitutional development in Hong Kong, as well as certain key issues relating to the method of selection / formation under the framework of the Basic Law and the relevant NPCSC Interpretation and Decisions to consult the public. The key issues relating to the method for selecting the CE include:

- (a) size and composition of the Nominating Committee (“NC”);
- (b) electorate base of the NC;
- (c) method for forming the NC;
- (d) procedure for the NC to nominate CE candidates;
- (e) voting arrangements for electing the CE by universal suffrage;
- (f) procedure for appointing the CE and the linkage with local legislation; and
- (g) political affiliation of the CE.

16. The key issues relating to the method for forming the LegCo include:

- (a) number of seats and composition of the LegCo;
- (b) composition and electorate base of FCs; and
- (c) number of GCs and number of seats in each GC.

17. During the five-month period of public consultation, we welcome the people of Hong Kong and different sectors of the community to have focused discussions on issues relating to the method of selection / formation. We will extensively collect views and suggestions from members of the community, and after the consultation period, faithfully summarise and consolidate the views and suggestions so received, so as to assist the CE to make a report to the NPCSC to commence the constitutional procedures on the constitutional development of Hong Kong. During this period, the three members of the Task Force on Constitutional Development, as well as the entire team of Politically Appointed Officials and relevant civil service colleagues will have exchange with and directly listen to views from people and organisations from different sectors of the community.

## **Forging Consensus and Moving Forward Together**

18. Mr President, the public consultation launched today is the preparatory work to commence the “Five-step Process”. To successfully implement universal suffrage for the CE, we have to complete all the steps in accordance with the legal procedure, of which the most crucial step is to secure the passage by a two-thirds majority of all the Members of the LegCo. In 2005, the proposal put forward by the then HKSAR Government, though supported by a majority of the public, did not ultimately obtain enough votes in the LegCo, resulting in an impasse in the constitutional development of Hong Kong. With a pragmatic and accommodating approach adopted by all of us, the 2010 constitutional development proposals were passed by more than two-thirds of all Members of the LegCo, obtained the consent of the CE, and received the approval or record by the NPCSC respectively; and the “Five-step Process” was historically completed.

19. Today, we have formally stepped onto the straight road of welcoming universal suffrage. According to the 2007 NPCSC Decision, the selection of the CE by universal suffrage is a pre-condition for the election of all Members of the LegCo by universal suffrage. We need all Members here, people across the political spectrum, as well as various sectors of the community to work together to forge consensus. I would like to take this opportunity to urge all Members here, all political parties, as well as the public at large, to adopt an accommodating, rational and pragmatic approach, as well as an inclusive attitude to seek common ground, and with the deepest sincerity to forge the biggest consensus, so that the universal suffrage for the CE in 2017, a common aspiration for all, could be implemented successfully.

## **Conclusion**

20. Mr President, Leaders of the State have repeatedly stressed that it is the sincere wish of the Central Authorities that Hong Kong could implement universal suffrage for the CE in 2017 in accordance with the Basic Law and Decisions of the NPCSC. This is also the constitutional responsibility of the HKSAR Government and a common aspiration of the people of Hong Kong. As to how it could be implemented on the basis of the Basic Law and the Decisions of the NPCSC, I hope that different sectors of the community and the public at large could give us your views.

21. We understand that constitutional development has always been a controversial and extremely complicated issue. We will not underestimate the difficulties of this task, nor will we evade them. As

the CE has said the other day, the year 2017 will be a historic moment for Hong Kong to have a chance to achieve universal suffrage for the CE; faced with such a duty, any political figure, including himself, would do his utmost to carry out the task. The HKSAR Government would do all it can to carry out the consultation exercise and all the subsequent works.

22. With the concerted efforts by all of us, differences can be narrowed step by step and consensus forged bit by bit. Today, the HKSAR Government, through the publication of the Consultation Document and the commencement of the consultation exercise, is taking the first step. The future is in our hands. For the purpose of achieving universal suffrage and for the future of Hong Kong, I sincerely hope that people of Hong Kong, especially all Members here, could work together to forge consensus through rational and pragmatic discussions, and with an open and accommodating mind.

23. Thank you, Mr President.

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