

2017

SEIZE THE OPPORTUNITY

Method for Selecting the Chief Executive by Universal Suffrage Consultation Document

January 2015



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Foreword

The second round public consultation on constitutional development is a stage of the public consultation conducted in accordance with the “Five-step Process” laid down in 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 in 2004, and the usual practice of the Government of the Hong Kong Special Administrative Region (“HKSAR”) in handling issues concerning constitutional development.

2. Following the Decision of the Standing Committee of the National People’s Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 (“Decision”) adopted by the Standing Committee of the National People’s Congress (“NPCSC”) on 31 August 2014, a series of events relating to constitutional development took place in the community. In view of this, the Task Force on Constitutional Development finds it necessary, before discussing the substantive issues in this consultation document, to candidly explain to the entire community the broad political environment this public consultation faces, as well as the impact which this consultation process and its results may have on the constitutional development and the current critical situation faced by Hong Kong.

3. At present, public opinions regarding constitutional development are becoming polarised. One group of views advocates the implementation of universal suffrage for the Chief Executive (“CE”) election in the HKSAR in accordance with the law in 2017, so that Hong Kong’s constitutional development can take a big step forward, and insists that there should not be an impasse. This group considers that the Decision of the NPCSC should be respected, and that we should make the best use of the room within the Decision to achieve maximum consensus when designing the specific method for selecting the CE by universal suffrage. Another group of views refuses to accept the Decision of the NPCSC, and thereby negate the first two completed steps of the “Five-step Process”. They demand, as a prerequisite for further discussion, a restart of the entire process, or the acceptance of “civic nomination” which is inconsistent with the Basic Law, or the abolition of

functional constituency elections for the Legislative Council (“LegCo”) before implementation of universal suffrage for the CE election in 2017.

4. Regardless of which view you hold, we would like to state at the commencement of the consultation, the following three points concerning the HKSAR Government’s position and views:

- (i) as we have repeatedly stressed, constitutional development must be built on the basis of the Basic Law and the Decision of the NPCSC, otherwise it would only be futile and impractical, and the aim of universal suffrage for the CE election would only become a “castle in the air”;
- (ii) it is the common aspiration of the Central Authorities, the HKSAR Government, and the general public in Hong Kong to implement universal suffrage for the CE election in 2017. The determination and sincerity of the Central Authorities and the HKSAR Government to take forward universal suffrage is beyond doubt. Whether or not universal suffrage for the CE election could be implemented as intended in 2017, however, would depend on whether the community agrees to complete the “Five-step Process” within the framework of the Basic Law and the Decision of the NPCSC. We appeal to the whole community to take full advantage of the opportunity in the second round consultation to express clearly the aspiration to implement universal suffrage for the CE election in 2017, as well as to explore possible room and to forge consensus within the framework of the Decision; and
- (iii) the package of proposals for universal suffrage of the CE election has to be endorsed by a two-thirds majority of all the Members of the LegCo. This is a crucial step, and the most difficult step in the “Five-step Process”. We believe that, as representatives of the public, LegCo Members would ultimately cast their votes in accordance with the overall aspiration of the community irrespective of their political affiliation or their own political stance.

5. The HKSAR Government has to clearly point out that the recent large-scale illegal activities that took place in the community have not only undermined the rule of law, but are also not conducive to taking forward constitutional development. Instead, they have provoked people of different opinions to attack each other and have eroded mutual

respect and trust. The Government has the responsibility to clearly explain, as is the general consensus of the community, that universal suffrage for the CE election would only be possible if the Basic Law and the relevant Interpretation and Decisions of the NPCSC are complied with.

6. Implementing universal suffrage for the CE election is politically the most difficult task since the return of Hong Kong to the Motherland 17 years ago. Not only does it concern Hong Kong's constitutional development, it is also a challenge for the entire Hong Kong as to whether we can restore our community which is divided and full of quarrels, back to a community with political morals and culture which seeks to build common ground whilst respecting differences, and which is rational and inclusive; and at the same time maintains the mutual trust between the Central Authorities and the HKSAR under the principle of "One Country, Two Systems". At this critical juncture, we hope that the community could display mutual understanding and acceptance in a rational manner, and commence discussion having regard to the overall situation and the need to forge consensus.

Task Force on Constitutional Development

Chapter One: Introduction

- 1.01 Article 45 of and Annex I to the Basic Law prescribe the method for selecting the Chief Executive (“CE”) and further prescribe the ultimate aim of selecting the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures, in the light of the actual situation in the Hong Kong Special Administrative Region (“HKSAR”) and in accordance with the principle of gradual and orderly progress.
- 1.02 On 29 December 2007, the Standing Committee of the National People’s Congress (“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 (“2007 Decision”), thereby setting the timetable for universal suffrage. According to the 2007 Decision, the election of the fifth CE of the HKSAR in the year 2017 may be implemented by the method of universal suffrage. The full text of the 2007 Decision is at [Annex I](#).
- 1.03 Besides, the 2007 Decision also provides that at an appropriate time prior to the selection of the CE of the HKSAR by universal suffrage, the CE shall make 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 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 (“2004 Interpretation”); a determination thereon shall be made by the NPCSC. The bills on the amendments to the method for selecting the CE and the proposed amendments to such bills shall be introduced by the Government of the HKSAR to the Legislative Council (“LegCo”); such amendments must be made with the endorsement of a two-thirds majority of all the Members of the LegCo and the consent of the CE and they shall be reported to the NPCSC for approval. The full text of the 2004 Interpretation is at [Annex II](#).

- 1.04 It is the common aspiration of the Central Authorities, the HKSAR Government and the general public of Hong Kong to implement universal suffrage for the CE election in 2017 in strict compliance with the Basic Law and the relevant Interpretation and Decisions of the NPCSC. For the purpose of taking forward this important task, the HKSAR Government announced on 17 October 2013 the establishment of the Task Force on Constitutional Development (“Task Force”), which is headed by the Chief Secretary for Administration and with the Secretary for Justice and the Secretary for Constitutional and Mainland Affairs as members. The Task Force thereafter published the Consultation Document on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016 on 4 December 2013 and launched a five-month consultation to collect views widely from different sectors of the community.
- 1.05 Subsequently, the HKSAR Government published on 15 July 2014 the Report on the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016 to provide a detailed account of the views received during the consultation period on the methods for selecting the CE in 2017 and for forming the LegCo in 2016. On the same day, the CE submitted his report to the NPCSC to invite the NPCSC to make a determination on whether there is a need to amend the methods for selecting the CE in 2017 and for forming the LegCo in 2016.
- 1.06 Having considered the report submitted by the CE and having extensively listened to views and opinions from different sectors of the Hong Kong community, the NPCSC adopted the Decision of the Standing Committee of the National People’s Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 (“2014 Decision”). The full text of NPCSC’s 2014 Decision and the Explanations on the Draft Decision of the Standing Committee of the National People’s Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 (“Explanations on the Draft Decision”) are at Annex III and Annex IV respectively.

- 1.07 The NPCSC's 2014 Decision formally determines that starting from 2017, the selection of the CE may be implemented by the method of universal suffrage. It also sets out a clear framework for the specific method for selecting the CE by universal suffrage.
- 1.08 To take forward the democratic development of Hong Kong and to achieve universal suffrage for the CE election in 2017 under the framework of the Basic Law and the 2014 Decision of the NPCSC, the HKSAR Government has prepared this Consultation Document on the Method for Selecting the Chief Executive by Universal Suffrage ("Consultation Document") to commence a two-month public consultation on the method for selecting the CE by universal suffrage.
- 1.09 For the purpose of this public consultation, we will widely consult different sectors of the community on amending Annex I to the Basic Law in relation to the method for selecting the CE by universal suffrage, as well as related issues concerning local legislation.
- 1.10 Chapters Three to Six of this Consultation Document set out the issues which may be considered in relation to the specific method for selecting the CE by universal suffrage. We hope that members of the public and different sectors of the community would conduct focused discussions on the basis of the Basic Law and the relevant Interpretation and Decisions of the NPCSC, forge an early consensus, so that the method for selecting the CE by universal suffrage may secure majority support in the community, the LegCo, and the Central Authorities so as to allow the five million eligible voters to elect the next CE through "one person, one vote" in 2017.

Chapter Two: Principles on the Method for Selecting the Chief Executive by Universal Suffrage

2.01 Article 26 of the Basic Law provides that:

“Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.”

2.02 Article 44 of the Basic Law provides that:

“The Chief Executive of the Hong Kong Special Administrative Region shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.”

2.03 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’.”

2.04 The 2014 Decision of the NPCSC provides that:

“I. Starting from 2017, the selection of the Chief Executive of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage.

II. When the selection of the Chief Executive of the Hong Kong Special Administrative Region is implemented by the method of

universal suffrage:

- (1) A broadly representative nominating committee shall be formed. The provisions for the number of members, composition and formation method of the nominating committee shall be made in accordance with the number of members, composition and formation method of the Election Committee for the Fourth Chief Executive.
- (2) The nominating committee shall nominate two to three candidates for the office of Chief Executive in accordance with democratic procedures. Each candidate must have the endorsement of more than half of all the members of the nominating committee.
- (3) All eligible electors of the Hong Kong Special Administrative Region have the right to vote in the election of the Chief Executive and elect one of the candidates for the office of Chief Executive in accordance with law.
- (4) The Chief Executive-elect, after being selected through universal suffrage, will have to be appointed by the Central People's Government."

2.05 Therefore, according to the relevant provisions of the Basic Law and the 2014 Decision of the NPCSC, the following principles must be adhered to in discussing the method for selecting the CE by universal suffrage in 2017:

- (i) when the CE is selected by the method of universal suffrage, a broadly representative Nominating Committee ("NC") shall be formed. The number of members of the NC shall be 1 200, composed of four sectors with 300 members each. The formation method for the NC shall follow the existing requirements as prescribed in Annex I to the Basic Law without any change;
- (ii) any person who meets the requirements of Article 44 of the Basic Law, i.e., a Chinese citizen of not less than 40 years of age who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years, and meets the relevant statutory requirements,

could seek nomination by the NC, and enjoys an equal right to be elected;

- (iii) the NC shall nominate two to three candidates in accordance with democratic procedures. Each candidate must have the endorsement of more than half of all the members of the NC;
- (iv) all eligible electors of the HKSAR enjoy the right to vote in the election of the CE and may elect one of the candidates for the office of CE in accordance with law. All eligible electors enjoy an equal right to vote; and
- (v) the CE-elect, after being selected through universal suffrage, will have to be appointed by the Central People's Government ("CPG").

2.06 The election of the CE of the HKSAR is an election of the head of a local administrative region within a country. The Basic Law and the 2014 Decision of the NPCSC set out a clear framework for the method of selecting the CE by universal suffrage, which befits the legal status of the HKSAR, takes into account the actual situation of the HKSAR, and sufficiently protects that the permanent residents of the HKSAR shall enjoy the right to vote and the right to be elected in accordance with the law. The draft amendment bill to Annex I to the Basic Law and relevant amendments to the local legislation must comply with the above framework and principles; and through rational and pragmatic discussions, different sectors of the community could forge consensus and formulate the specific arrangements to establish an open, fair, and just regime for selecting the CE by universal suffrage.

2.07 Subject to the overriding premise that there must be strict conformity with the Basic Law, the design principles of the political structure of the HKSAR as prescribed in the Basic Law, and the 2014 Decision of the NPCSC, we may consider the following key issues when discussing the method for selecting the CE by universal suffrage in 2017:

- (i) composition and formation method of the NC;
- (ii) procedures for the NC to nominate CE candidates;

- (iii) voting arrangements for selecting the CE by universal suffrage; and
- (iv) other related issues for the selection of the CE by universal suffrage.

2.08 Discussions on the above issues are set out in Chapters Three to Six of this Consultation Document.

Chapter Three: Composition and Formation Method of the Nominating Committee

Constitutional Basis and Framework

3.01 According to the 2014 Decision of the NPCSC:

“II. When the selection of the Chief Executive of the Hong Kong Special Administrative Region is implemented by the method of universal suffrage:

(1) A broadly representative nominating committee shall be formed. The provisions for the number of members, composition and formation method of the nominating committee shall be made in accordance with the number of members, composition and formation method of the Election Committee for the Fourth Chief Executive.”

3.02 The Explanations on the Draft Decision further points out that:

“According to this provision, the nominating committee to be defined by amendments to Annex I to the Hong Kong Basic Law shall follow the current composition of the Election Committee, which consists of 1 200 members from four major sectors in equal proportions, and keep the existing method for selecting the members as provided for by Annex I to the Hong Kong Basic Law.”

3.03 The Explanations on the Draft Decision further provides that the expression “broadly representative” in the context of “a broadly representative nominating committee”, as provided in Paragraph 2 of Article 45 of the Basic Law, carries the same meaning as that in “a broadly representative Election Committee”, as provided in Annex I to the Basic Law. That is, the committee shall be composed of members from four sectors in equal proportions, the delimitation of the various sectors, the organisations in each sector eligible to return members and the number of such members to be returned by each of these organisations shall be prescribed by the electoral law enacted by the HKSAR, and the committee members shall be elected by corporate bodies in various sectors on their own in accordance with the number of seats allocated and the election method as prescribed by law.

Existing Arrangements

3.04 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 National People's Congress on 28 August 2010, the Election Committee ("EC") to elect the fourth term CE in 2012 shall be composed of 1 200 members from the following sectors:

Industrial, commercial and financial sectors	300
The professions	300
Labour, social services, religious and other sectors	300
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

3.05 In accordance with the provisions of Annex I to the Basic Law and the above Amendment, the Chief Executive Election Ordinance (Cap. 569) 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 V.

3.06 As regards the method for forming the NC, 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 National People's Congress (36 members) and LegCo Members (70 members) are ex-officio members.

Considerations

- 3.07 As the 2014 Decision of the NPCSC stipulates that the provisions concerning the number of members, composition and formation method of the NC shall be made in accordance with the number of members, composition and formation method of the EC for the fourth CE, i.e., the number of members of the NC shall be 1 200, composed of 300 members in each of the four sectors, and maintain the existing method for selecting the members as provided for in Annex I to the Basic Law, depending on whether there is sufficient support, appropriate adjustments to the composition of subsectors under the four sectors of the NC, the number of members of each subsector, and the electorate base of such subsectors may be made during the stage of enacting local legislation.
- 3.08 In considering the aforesaid question, we should also consider whether such adjustments are practicable, whether the NC would remain broadly representative, materialise balanced participation of various sectors, conducive to maintaining the capitalist system, and facilitate subsectors to elect persons who could genuinely represent their subsectors; besides, the wish of each subsector should be respected and widespread support from the relevant subsectors should be obtained, otherwise politically it would be difficult to forge consensus.

Recommendations

- 3.09 In view of the above considerations, we suggest the following may be considered:

Subsectors

- (i) the NC shall be composed in accordance with the 38 subsectors in four sectors of the existing EC. On such basis, whether the subsectors of the NC should follow the relevant arrangements of the existing EC and remain unchanged, so as to forge an early consensus; or
- (ii) provided that there is sufficient support, introduce new subsectors in the NC to increase the representativeness of those groups which are not sufficiently represented in the existing 38 subsectors;

Number of members of each subsector

- (iii) if the number of subsectors is not to be increased, whether the number of members in each subsector of the NC should follow the number of members in each subsector of the existing EC and remain unchanged; or
- (iv) if new subsectors are to be added, how should the distribution of seats in the existing subsectors be adjusted; and

Electorate base

- (v) the electorate base of all subsectors should remain unchanged; or
- (vi) make appropriate adjustments to the electorate base of certain subsectors, provided that there is sufficient support and that such adjustments are practical and practicable, are conducive to electing persons who could genuinely represent respective subsectors, and that the wishes of such subsectors are respected.

Chapter Four: Procedures for the Nominating Committee to Nominate Chief Executive Candidates

Constitutional Basis and Framework

4.01 According to the 2014 Decision of the NPCSC:

“The nominating committee shall nominate two to three candidates for the office of Chief Executive in accordance with democratic procedures. Each candidate must have the endorsement of more than half of all the members of the nominating committee.”

4.02 The Explanations on the Draft Decision points out that the NC collectively exercises the power to nominate CE candidates as an institution, and must therefore reflect the collective will of the institution. The “democratic procedures” stipulated in Paragraph 2 of Article 45 of the Basic Law should follow the democratic principle of majority rule so as to reflect the requirement that the NC exercises power in a collective manner. The NC shall comprise members from the four sectors in equal proportions. The stipulation that persons who seek nomination as CE candidates must obtain the support of more than half of the members of the NC means that candidates need to obtain a certain extent of support from each sector of the NC. This will help fulfil the principle of balanced participation and meet the interests of various sectors of the Hong Kong community.

4.03 The Explanations on the Draft Decision also mentions that the stipulation that there should be two to three candidates for the office of the CE is to ensure a truly competitive election and that voters would be presented with real choices. It could also serve to avoid problems such as complicated electoral procedures and high election costs caused by having too many candidates. Since the return of Hong Kong to the Motherland, almost all CE elections were conducted each with a candidacy of two to three. It fits relatively well with the experience gained from previous elections in Hong Kong to set the number of candidates at two to three.

Existing Arrangements

- 4.04 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 National People's Congress on 28 August 2010, candidates for the office of CE may be nominated jointly by not less than 150 members of the EC. Each member may nominate only one candidate.

Considerations

- 4.05 When the selection of the CE by universal suffrage is implemented, the NC will nominate CE candidates as an institution and in accordance with democratic procedures, which will be different from the current arrangement of the CE candidates being nominated jointly by members of the EC.
- 4.06 In designing the nominating procedures, we have to ensure that each NC member shall have equal right, and that persons meeting the statutory eligibility requirements shall enjoy an equal right to seek nomination by the NC.
- 4.07 In designing the specific nominating procedures, we also have to consider whether to divide the procedures for the NC to nominate CE candidates into the stage of "members recommendation" and the stage of "committee nomination"; as well as to adopt a threshold which is lower than the current one, and highly transparent nominating procedures, so as to make the nominating procedures more competitive.
- 4.08 According to the 2014 Decision of the NPCSC, the NC shall nominate two to three candidates for the office of CE in accordance with democratic procedures; and all eligible electors of Hong Kong have the right to vote in the election of the CE and elect one of the candidates for the office of CE in accordance with law. Hence, the operation of the NC should be transparent, and we should consider how to provide an appropriate platform for persons seeking nomination so that they would have equal and adequate opportunities to explain their manifestoes and missions

to all the members of the NC or even the public in order to seek their support.

Recommendations

4.09 In view of the considerations above, we suggest to consider the following:

Stages of nomination and threshold

- (i) whether the nominating procedures of the NC shall be divided into two stages, namely the stage of “members recommendation” and the stage of “committee nomination”;
- (ii) if the nominating procedures are to be divided into two stages, considering that the existing arrangement of named nominations jointly by 150 members of the EC¹ is simple, easy to understand and has been proved to be effective, whether persons who have obtained recommendation from 150 NC members shall be allowed to seek nomination at the stage of “members recommendation”; or whether the requirement should be appropriately lowered to 100 NC members;
- (iii) at present, CE candidates may be nominated by EC members, and each EC member may nominate only one candidate, but there is no limit to the number of nominations a candidate could receive. To provide sufficient choices for the NC to consider, whether there should be a limit for recommendations, i.e., each NC member shall only recommend one person who seeks nomination; and depending on whether the recommendation threshold is 100 or 150, whether there should be a cap on the recommendation each person seeking nomination could obtain;

¹ According to sections 16(2)(a) and 18(1) of the Chief Executive Election Ordinance (Cap. 569), a nomination of a candidate shall be made by not less than 150 members of the EC, and the Returning Officer shall, by notice published in the Gazette, declare the names of all candidates who are validly nominated; and together with the name of each of such candidates, the names of those members of the EC nominating him.

Transparency of the nominating procedures

- (iv) since the NC will act as an institution when exercising its power to nominate CE candidates, whether there is a need to convene any plenary meeting of the NC so as to conduct nomination of candidates, and to provide an appropriate platform for persons seeking nomination to have equal and adequate opportunities to explain their manifestoes and missions to all the members of the NC or even the public in order to seek their support;

Specific nominating procedures

- (v) whether the number of CE candidates could be either two or three, i.e., the three persons seeking nomination and obtain the highest number of endorsement of more than half of all the NC members could formally become candidates; if only two of the persons seeking nomination could obtain endorsement of more than half of all the NC members, such two persons will formally become candidates, and there will be no nomination of a third candidate;
- (vi) the existing EC adopts a secret ballot in electing the CE-elect. If the NC adopts the method of voting to nominate CE candidates, whether open or secret ballot should be adopted;
- (vii) to facilitate the NC to nominate at least two but no more than three candidates who are able to obtain endorsement of more than half of all the members of the NC from the persons seeking nomination, whether the NC should adopt the “one person, three votes”, “one person, two to three votes”, “one person, maximum three votes”, “voting on each person seeking nomination”, or other procedures to select two to three candidates (details of the above voting procedures are at Annex VI); and
- (viii) how to handle the situation if no person seeking nomination can obtain endorsement of more than half of all the NC members, or only one such person is able to obtain endorsement of more than half of all the NC members.

Chapter Five: Voting Arrangements for Selecting the Chief Executive by Universal Suffrage

Constitutional Basis and Framework

5.01 Article 26 of the Basic Law stipulates that:

“Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.”

5.02 According to the 2014 Decision of the NPCSC:

“All eligible electors of the Hong Kong Special Administrative Region have the right to vote in the election of the Chief Executive and elect one of the candidates for the office of Chief Executive in accordance with law.”

5.03 The Explanations on the Draft Decision points out that:

“According to this provision, each and every eligible elector shall have the right to directly participate in electing the Chief Executive. It fulfils the principle of universal and equal electoral right and marks a historic step forward in Hong Kong’s democratic development.”

Existing Voting Arrangements of the Election Committee

5.04 According to the stipulations of the Basic Law, the CE is currently elected by an EC composed of 1 200 members. According to the stipulations of the Chief Executive Election Ordinance (Cap. 569):

- (i) where there is only one candidate, it is still necessary to hold an election. The candidate has to obtain more than 600 support votes in order 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; and
- (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.

- 5.05 According to the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) and the existing Guidelines on Election-related Activities in respect of the Chief Executive Elections, a ballot paper shall not be valid and the vote recorded on the ballot paper shall not be counted if there is any writing or mark by which the elector can possibly be identified, is substantially mutilated, is unmarked, is not marked in accordance with the Electoral Procedure (Chief Executive Election) Regulation, or void for uncertainty.

Recommendations

- 5.06 When universal suffrage for the selection of the CE is implemented, the existing specific arrangements of the EC for electing the CE will no longer be applicable. Based on the above constitutional basis and framework, when the CE is elected by universal suffrage, all eligible electors of Hong Kong could elect the CE-elect by “one person, one vote” from the two to three candidates nominated by the NC. We may consider the following voting systems:

“First-past-the-post”

- (i) to adopt the voting arrangement commonly adopted in other public elections, i.e., the “first-past-the-post” system, only a single round of voting will be held. The candidate with the highest number of valid votes would be treated as elected, without having to obtain more than half of the total number of votes. This system is the simplest and easiest to understand; besides, as only a single round of voting will be held, resources required (including resources for the election, publicity and education) are relatively less. However, as this system would allow candidates to be elected without obtaining more than half of the total number of valid votes, there are views which consider that this system could not necessarily ensure the legitimacy of the CE-elect; or

Two-round voting

- (ii) to adopt a two-round voting system, i.e., if no candidate could obtain more than half of the total number of valid votes in the first round voting, the two candidates with the highest number of votes would proceed to the second round voting, and the candidate with the highest number of votes in the second round would be returned. As there may be a need to hold two rounds of voting under this system, the resources required (including resources for the election, publicity and education) would be relatively higher than those of the “first-past-the-post” system. However, there are views which consider that this system could ensure a sufficient legitimacy of the CE-elect in the community, and hence conducive to policy implementation by the Government;

Other voting systems

- (iii) in the past, other voting systems have been suggested when the CE is to be selected by way of universal suffrage, such as:
 - (a) Instant runoff system (or preferential elimination system): according to this system, 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. There are views which consider that the advantage of this system is to allow voters to express their preferences on one single ballot paper, saving the need of voting for a second time while ensuring the

candidate returned could obtain support from the majority of voters. However, this voting system is more complex, and among public elections in Hong Kong, only four constituencies (the Heung Yee Kuk functional constituency (“FC”), the Agriculture and Fisheries FC, the Insurance FC, and the Transport FC) adopt this system, but there is little experience in its actual operation; hence it is unfamiliar to most voters in Hong Kong; and

- (b) Supplementary vote system: the voting procedure for this system is similar to that of the instant runoff system, but voters only need to put down their most preferred candidate or the two most-preferred candidates. For example, in the election for the mayor of London, voters express their first and second preferences. Each ballot paper consists of two columns. Each voter marks an “X” in one column to indicate his or her first choice of candidate and another “X” in a second column to indicate his or her second choice of candidate. If a voter has no preferred second choice candidate, there is no need to choose a second choice candidate. In the first round of counting, only first preferences are tallied. If a candidate obtains more than half of the votes at this stage, he / she is declared elected. If no candidate could obtain more than half of all valid votes, all candidates except the two with most first preferences are eliminated and the count proceeds to a second round. In the second round, any voter whose first preference has been eliminated but his / her second preference has not been eliminated, his / her vote will be transferred to the candidate of his / her second preference. The candidate with the most votes is then declared elected. This system is simpler than the instant runoff system, but has never been adopted in public elections in Hong Kong, therefore it is also unfamiliar to voters in Hong Kong.

Chapter Six: Other Related Issues for the Selection of the Chief Executive by Universal Suffrage

(I) Term of Office of the Nominating Committee

Constitutional Basis and Existing Arrangements

- 6.01 According to Annex I to the Basic Law, the term of office of the existing EC shall be five years.
- 6.02 According to Article 46 of the Basic Law, the term of office of the CE shall be five years. He or she may serve for not more than two consecutive terms.
- 6.03 According to Article 53 of the Basic Law, in the event that the office of the CE becomes vacant, a new CE shall be selected within six months in accordance with the provisions of Article 45 of the Basic Law.
- 6.04 Besides, according to the Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress adopted on 27 April 2005 ("2005 Interpretation"), in the event that the office of CE becomes vacant as he (she) fails to serve the full term of office of five years as prescribed by Article 46 of the Basic Law, the term of office of the new CE shall be the remainder of the previous CE. The full text of the 2005 Interpretation is at Annex VII.
- 6.05 Under the existing arrangement, except in the event of vacancy as described in Article 53 of the Basic Law, both the election for the EC and the election for the CE are held once every five years, thus allowing the timing for the two closely related elections to be aligned, and the total terms of office of the CEs elected by the same-term EC would not exceed the expiry of power of that EC (i.e. five years). Also, in the event that the office of the CE becomes vacant, such arrangement is conducive to selecting the new CE within the shortest period of time and in accordance with Article 53 of the Basic Law; avoiding a prolonged vacancy of the office of the CE due to the time required to arrange elections for the EC subsectors for the formation of a new EC, thus affecting the policy implementation and operations of the HKSAR Government.

Recommendations

6.06 We suggest considering whether the term of office of the NC shall follow the existing arrangement of the EC, i.e., a five-year tenure; or the term of office of the NC shall terminate upon the swearing in of the CE it has nominated.

(II) Re-election Arrangements if the CE-elect were Not Appointed

Constitutional Basis and Framework

6.07 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.”

6.08 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.”

6.09 According to the 2014 Decision of the NPCSC:

“The Chief Executive-elect, after being selected through universal suffrage, will have to be appointed by the Central People’s Government.”

6.10 According to the Explanations to the Draft Decision:

“The central authorities, in formulating the basic policies with respect to Hong Kong and the Hong Kong Basic Law, already clearly pointed out that the power of the Central People’s Government to appoint the Chief Executive of the Hong Kong Special Administrative Region is a substantive one. The Central People’s Government has the right to make the final decision on whether to appoint or not to appoint the Chief Executive returned by election held locally in Hong Kong.”

6.11 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 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.

Existing Arrangements

6.12 At present, Section 4 of the Chief Executive Election Ordinance (Cap. 569) (“CEEEO”) provides that the office of the Chief Executive becomes vacant:

- (a) on the expiry of the term of office of the Chief Executive;
- (b) if the Chief Executive dies; or
- (c) if the Central People’s Government removes the Chief Executive from office in accordance with the Basic Law.

6.13 Section 11 of the CEEEO 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 CEEEO only provides for a by-election to be held on the 120th 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 July. However, the current CEEEO does not have any provision which deals with the situation where the elected candidate is not appointed by the CPG before 1 July.

Recommendations

6.14 In view of the above constitutional requirements and existing arrangements, we suggest that the existing CEEEO should include provisions to deal with the situation where a CE-elect returned by universal suffrage is not appointed by the CPG.

(III) Political Affiliation of the Chief Executive

Existing Arrangements

- 6.15 At present, the CEEO allows members of political parties to run for the office of the 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.

Recommendations

- 6.16 Since there is currently no law on political parties in Hong Kong, and different sectors of the community have yet to arrive at a clear consensus on the subject, we suggest that, for the CE election in 2017, the requirement under the existing CEEO that the CE should not have any political affiliation should be maintained.

Chapter Seven: Views Sought

7.01 For the method for selecting the CE by universal suffrage, the recommendations of the HKSAR Government and directions which may be considered are as below.

(I) Composition and Formation Method of the Nominating Committee

7.02 For the composition and formation method of the NC, we suggest the following may be considered:

Subsectors

- (i) the NC shall be composed in accordance with the 38 subsectors in four sectors of the existing EC. On such basis, whether the subsectors of the NC should follow the relevant arrangements of the existing EC and remain unchanged, so as to forge an early consensus; or
- (ii) provided that there is sufficient support, introduce new subsectors in the NC to increase the representativeness of those groups which are not sufficiently represented in the existing 38 subsectors;

Number of members of each subsector

- (iii) if the number of subsectors is not to be increased, whether the number of members in each subsector of the NC should follow the number of members in each subsector of the existing EC and remain unchanged; or
- (iv) if new subsectors are to be added, how should the distribution of seats in the existing subsectors be adjusted; and

Electorate base

- (v) the electorate base of all subsectors should remain unchanged; or
- (vi) make appropriate adjustments to the electorate base of certain subsectors, provided that there is sufficient support

and that such adjustments are practical and practicable, are conducive to electing persons who could genuinely represent respective subsectors, and that the wishes of such subsectors are respected.

(II) Procedures for the Nominating Committee to Nominate Chief Executive Candidates

7.03 For the procedures for the NC to nominate CE candidates, we suggest to consider the following:

Stages of nomination and threshold

- (i) whether the nominating procedures of the NC shall be divided into two stages, namely the stage of “members recommendation” and the stage of “committee nomination”;
- (ii) if the nominating procedures are to be divided into two stages, considering that the existing arrangement of named nominations jointly by 150 members of the EC is simple, easy to understand and has been proved to be effective, whether persons who have obtained recommendation from 150 NC members shall be allowed to seek nomination at the stage of “members recommendation”; or whether the requirement be appropriately lowered to 100 NC members;
- (iii) at present, CE candidates may be nominated by EC members, and each EC member may nominate only one candidate, but there is no limit to the number of nominations a candidate could receive. To provide sufficient choices for the NC to consider, whether there should be a limit for recommendations, i.e., each NC member shall only recommend one person who seeks nomination; and depending on whether the recommendation threshold is 100 or 150, whether there should be a cap on the recommendation each person seeking nomination could obtain;

Transparency of the nominating procedure

- (iv) since the NC will act as an institution when exercising its power to nominate CE candidates, whether there is a need to convene any plenary meeting of the NC so as to conduct nomination of candidates, and to provide an appropriate platform for persons seeking nomination to have equal and adequate opportunities to explain their manifestoes and missions to all the members of the NC or even the public in order to seek their support;

Specific nominating procedures

- (v) whether the number of CE candidates could be either two or three, i.e., the three persons seeking nomination and obtain the highest number of endorsement of more than half of all the NC members could formally become candidates; if only two of the persons seeking nomination could obtain endorsement of more than half of all the NC members, such two persons will formally become candidates, and there will be no nomination of a third candidate;
- (vi) the existing EC adopts a secret ballot in electing the CE-elect. If the NC adopts the method of voting to nominate CE candidates, whether open or secret ballot should be adopted;
- (vii) to facilitate the NC to nominate at least two but no more than three candidates who are able to obtain endorsement of more than half of all the members of the NC from the persons seeking nomination, whether the NC should adopt the “one person, three votes”, “one person, two to three votes”, “one person, maximum three votes”, “voting on each person seeking nomination”, or other procedures to select two to three candidates; and
- (viii) how to handle the situation if no person seeking nomination can obtain endorsement of more than half of all the NC members, or only one such person is able to obtain endorsement of more than half of all the NC members.

(III) Voting Arrangements for Selecting the Chief Executive by Universal Suffrage

7.04 When the CE is elected by universal suffrage, all eligible electors of Hong Kong could elect the CE-elect by “one person, one vote” from the two to three candidates nominated by the NC. We may consider the following voting arrangements:

- (i) to adopt the voting arrangement commonly adopted in other public elections, i.e., the “first-past-the-post” system, only a single round of voting will be held; or
- (ii) to adopt a two-round voting system, i.e., if no candidate could obtain more than half of the total number of valid votes in the first round voting, the two candidates with the highest number of votes would proceed to the second round voting, and the candidate with the highest number of votes in the second round would be returned; or
- (iii) to adopt other voting systems, such as the instant runoff system or supplementary vote system.

(IV) Other Related Issues for the Selection of the Chief Executive by Universal Suffrage

7.05 We suggest considering whether the term of office of the NC shall follow the existing arrangement of the EC, i.e., a five-year tenure; or the term of office of the NC shall terminate upon the swearing in of the CE it has nominated.

7.06 In considering the re-election arrangements if the CE-elect returned by universal suffrage were not appointed by the CPG, we suggest that the existing Chief Executive Election Ordinance (“CEEEO”) should include provisions for a re-election in such circumstances.

7.07 For the political affiliation of the CE, since there is currently no law on political parties in Hong Kong, and different sectors of the community have yet to arrive at a clear consensus on the subject, we suggest that, for the CE election in 2017, the requirement under the existing CEEEO that the CE should not have any political affiliation should be maintained.

Chapter Eight: Ways of Providing Views or Suggestions

8.01 We welcome your views by mail, facsimile or email on or before 7 March 2015:

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

8.02 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 relevant Government bureaux and departments receiving the data are bound by such purposes in their subsequent use of such data.

8.03 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.

8.04 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.

8.05 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.

- 8.06 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.
- 8.07 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

Constitutional and Mainland Affairs Bureau
January 2015

(Translation)

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.

(Translation)

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.

(Translation)

**Decision of the Standing Committee of the
National People's Congress on Issues Relating to the Selection of the
Chief Executive of the Hong Kong Special Administrative Region by
Universal Suffrage and on the Method for Forming the Legislative
Council of the Hong Kong Special Administrative Region
in the Year 2016**

(Adopted at the Tenth Session of the Standing Committee of the Twelfth
National People's Congress on 31 August 2014)

The Standing Committee of the Twelfth National People's Congress considered at its Tenth 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 2017 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2016* submitted by Leung Chun-ying, the Chief Executive of the Hong Kong Special Administrative Region, on 15 July 2014. In the course of deliberation, the relevant views and suggestions of the Hong Kong community were given full consideration.

The Session points out that according to 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* adopted by the Standing Committee of the Tenth National People's Congress at its Thirty-first Session on 29 December 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; 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*, and a determination thereon shall be made by the Standing Committee of the National People's

Congress. From 4 December 2013 to 3 May 2014, the Government of the Hong Kong Special Administrative Region conducted an extensive and in-depth public consultation on the methods for selecting the Chief Executive in 2017 and for forming the Legislative Council in 2016. In the course of consultation, the Hong Kong community generally expressed the hope to see the selection of the Chief Executive by universal suffrage in 2017, and broad consensus was reached on important principles such as: the method for selecting the Chief Executive by universal suffrage shall comply with the *Hong Kong Basic Law* and the relevant *Decisions* of the Standing Committee of the National People's Congress and the Chief Executive shall be a person who loves the country and loves Hong Kong. With respect to the methods for selecting the Chief Executive by universal suffrage in 2017 and for forming the Legislative Council in 2016, the Hong Kong community put forward various views and suggestions. It was on this basis that the Chief Executive of the Hong Kong Special Administrative Region made a report to the Standing Committee of the National People's Congress on issues relating to amending the methods for selecting the Chief Executive in 2017 and for forming the Legislative Council in 2016. The Session is of the view that the report complies with the requirements of the *Hong Kong Basic Law*, 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 Hong Kong Basic Law* and the relevant *Decisions* of the Standing Committee of the National People's Congress, and reflects comprehensively and objectively the views collected during the public consultation; and is thus a positive, responsible and pragmatic report.

The Session is of the view that implementing universal suffrage for the selection of the Chief Executive represents a historic progress in Hong Kong's democratic development and a significant change in the political structure of the Hong Kong Special Administrative Region. Since the long-term prosperity and stability of Hong Kong and the sovereignty, security and development interests of the country are at stake, there is a need to proceed in a prudent and steady manner. The selection of the Chief Executive of the Hong Kong Special Administrative Region by universal suffrage has its origin in Paragraph 2 of Article 45 of the *Hong Kong Basic Law*: "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 formulation of the method for selecting the Chief

Executive by universal suffrage must strictly comply with the relevant provisions of the *Hong Kong Basic Law*, accord with the principle of “one country, two systems”, and befit the legal status of the Hong Kong Special Administrative Region. It must meet the interests of different sectors of the society, achieve balanced participation, be conducive to the development of the capitalist economy, and make gradual and orderly progress in developing a democratic system that suits the actual situation in Hong Kong. Given the divergent views within the Hong Kong community on how to implement the *Hong Kong Basic Law* provisions on universal suffrage for selecting the Chief Executive, and in light of the constitutional responsibility of the Standing Committee of the National People’s Congress for the proper implementation of the *Hong Kong Basic Law* and for deciding on the method for the selection of the Chief Executive, the Standing Committee of the National People’s Congress finds it necessary to make provisions on certain core issues concerning the method for selecting the Chief Executive by universal suffrage, so as to facilitate the building of consensus within the Hong Kong community and the attainment of universal suffrage for the selection of the Chief Executive smoothly and in accordance with law.

The Session is of the view that since the Chief Executive of the Hong Kong Special Administrative Region shall be accountable to both the Hong Kong Special Administrative Region and the Central People’s Government in accordance with the provisions of the *Hong Kong Basic Law*, the principle that the Chief Executive has to be a person who loves the country and loves Hong Kong must be upheld. This is a basic requirement of the policy of “one country, two systems”. It is determined by the legal status as well as important functions and duties of the Chief Executive, and is called for by the actual need to maintain long-term prosperity and stability of Hong Kong and uphold the sovereignty, security and development interests of the country. The method for selecting the Chief Executive by universal suffrage must provide corresponding institutional safeguards for this purpose.

The Session is of the view that the amendments made to the method for forming the fifth term Legislative Council in 2012 represented major strides towards the direction of enhancing democracy. The existing formation method and voting procedures for the Legislative Council as prescribed in Annex II to the *Hong Kong Basic Law* will not be amended, and will continue to apply in respect of the sixth term Legislative Council in 2016. This is consistent with the principle of gradual and orderly progress in developing a democratic system that suits Hong Kong’s actual situation and conforms to the majority view in the Hong Kong

community. It also helps the various sectors of the Hong Kong community to focus their efforts on addressing the issues concerning universal suffrage for selecting the Chief Executive first, thus creating the conditions for attaining the aim of electing all the members of the Legislative Council by universal suffrage after the implementation of universal suffrage for the selection of the Chief Executive.

Accordingly, pursuant to the relevant provisions of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, 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* and 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 Standing Committee of the National People's Congress makes the following decision:

I. Starting from 2017, the selection of the Chief Executive of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage.

II. When the selection of the Chief Executive of the Hong Kong Special Administrative Region is implemented by the method of universal suffrage:

(1) A broadly representative nominating committee shall be formed. The provisions for the number of members, composition and formation method of the nominating committee shall be made in accordance with the number of members, composition and formation method of the Election Committee for the Fourth Chief Executive.

(2) The nominating committee shall nominate two to three candidates for the office of Chief Executive in accordance with democratic procedures. Each candidate must have the endorsement of more than half of all the members of the nominating committee.

(3) All eligible electors of the Hong Kong Special Administrative Region have the right to vote in the election of the Chief Executive and elect one of the candidates for the office of Chief Executive in accordance with law.

(4) The Chief Executive-elect, after being selected through universal suffrage, will have to be appointed by the Central People's Government.

III. The specific method of universal suffrage for selecting the Chief Executive shall be prescribed in accordance with legal procedures through amending Annex I to the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China: The Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region*. The bill on the amendments and the proposed amendments to such bill shall be introduced by the Hong Kong Special Administrative Region Government to the Legislative Council of the Hong Kong Special Administrative Region in accordance with the *Hong Kong Basic Law* and the provisions of this *Decision*. Such amendments shall obtain the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive before being submitted to the Standing Committee of the National People's Congress for approval.

IV. If the specific method of universal suffrage for selecting the Chief Executive is not adopted in accordance with legal procedures, the method used for selecting the Chief Executive for the preceding term shall continue to apply.

V. The existing formation method and voting procedures for the Legislative Council as prescribed in Annex II to the *Hong Kong Basic Law* will not be amended. The formation method and procedures for voting on bills and motions of the fifth term Legislative Council will continue to apply to the sixth term Legislative Council of the Hong Kong Special Administrative Region in 2016. After the election of the Chief Executive by universal suffrage, the election of all the members of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage. At an appropriate time prior to the election of the Legislative Council by universal suffrage, the Chief Executive elected by universal suffrage shall submit a report to the Standing Committee of the National People's Congress 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* as regards the issue of amending the method for forming the Legislative Council. A determination thereon shall be made by the Standing Committee of the National People's Congress.

The Session stresses that it is the consistent position of the central authorities to implement resolutely and firmly the principles of “one country, two systems”, “Hong Kong people administering Hong Kong” and a high degree of autonomy, strictly adhere to the *Hong Kong Basic Law* and steadily take forward the selection of the Chief Executive by universal suffrage in 2017. It is hoped that the Hong Kong Special Administrative Region Government and all sectors of the Hong Kong community will act in accordance with the provisions of the *Hong Kong Basic Law* and this *Decision* and jointly work towards the attainment of the aim of selecting the Chief Executive by universal suffrage.

(Translation)

Explanations on the Draft Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016

At the Tenth Session of the Standing Committee of the Twelfth National People's Congress on 27 August 2014

Li Fei
Deputy Secretary General of
The Standing Committee of the National People's Congress

The Standing Committee of the National People's Congress,

At the request of the Chairmen's Council, I hereby provide Explanations on the *Draft Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016*.

In accordance with the provisions of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereinafter referred to as 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*, Leung Chun-ying, Chief Executive of the Hong Kong Special Administrative Region, submitted 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 2017 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2016* (hereinafter referred to as the "Report by the Chief Executive") to the NPC Standing Committee on 15 July 2014. On 18 August, the

Chairmen's Council decided to include the consideration of the Report by the Chief Executive in the agenda of the Tenth Session of the Standing Committee of the Twelfth NPC, and entrusted the responsible officials of the relevant departments of the central authorities to listen to the views of the NPC deputies and members of the Chinese People's Political Consultative Conference from the Hong Kong Special Administrative Region, the Hong Kong members of the Hong Kong Special Administrative Region Basic Law Committee under the NPC Standing Committee, and people from various sectors of the Hong Kong community. Opinions of the Hong Kong and Macao Affairs Office of the State Council were also solicited. On 26 August, the NPC Standing Committee held group discussions on the Report by the Chief Executive.

The members of the NPC Standing Committee pointed out that, as stipulated in Paragraph 2 of Article 45 of the *Hong Kong Basic Law*, "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 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 on 29 December 2007 expressly states, "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." The *Decision* also reaffirms the relevant provisions of the *Hong Kong Basic Law* and its *Interpretation* that 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 NPC Standing Committee as regards the issue of amending the method for selecting the Chief Executive, and a determination thereon shall be made by the NPC Standing Committee. The members of the NPC Standing Committee believe that since the year 2017 is approaching, it is now necessary to make a decision on issues relating to the methods for selecting the Chief Executive in 2017 and for forming the Legislative Council in 2016. The Report submitted by the

Chief Executive to the NPC Standing Committee is necessary and timely.

The Report reflects in a comprehensive and objective manner the views and wishes of the Hong Kong community regarding the methods for selecting the Chief Executive by universal suffrage and for forming the Legislative Council in 2016, which include both consensus and differences. It is a positive, responsible and pragmatic report.

The members of the Standing Committee are of the view that implementing universal suffrage for the selection of the Chief Executive of the Hong Kong Special Administrative Region represents a historic progress in Hong Kong's democratic development and a significant change in the political structure of the Hong Kong Special Administrative Region. Since the long-term prosperity and stability of Hong Kong and the sovereignty, security and development interests of the country are at stake, there is a need to proceed in a prudent and steady manner, so as to prevent all sorts of possible risks that may arise therefrom. Since the selection of the Chief Executive of the Hong Kong Special Administrative Region by universal suffrage has its origin in the provisions of the *Hong Kong Basic Law*, the formulation of the method for selecting the Chief Executive by universal suffrage must strictly comply with the relevant provisions of the *Hong Kong Basic Law*, accord with the principle of "one country, two systems", and befit the legal status of the Hong Kong Special Administrative Region. It must meet the interests of different sectors of the society, achieve balanced participation, and be conducive to the development of the capitalist economy, with a view to making gradual and orderly progress in developing a democratic system that suits the actual situation in Hong Kong. **The members of the Standing Committee take the view** that when formulating the basic policies on Hong Kong, the central authorities have already clearly defined the scope and criteria for the principle of "Hong Kong people administering Hong Kong", that is, Hong Kong must be administered by the Hong Kong people, with patriots being the mainstay. According to the *Hong Kong Basic Law*, the Chief Executive of the Hong Kong Special Administrative Region is the head of both the Hong Kong Special Administrative Region and the Hong Kong Special Administrative Region Government, and shall be accountable to both the Hong Kong Special Administrative Region and the Central People's Government. The Chief Executive must swear to uphold the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China. Therefore, the Chief Executive of the Hong Kong Special Administrative Region must be a person who loves

the country and loves Hong Kong. This is a basic requirement of the policy of “one country, two systems”. It is determined by the legal status and important functions and duties of the Chief Executive as stipulated in the *Hong Kong Basic Law*, and called for by the actual need to maintain long-term prosperity and stability of Hong Kong and uphold the sovereignty, security and development interests of the country. The method for selecting the Chief Executive by universal suffrage should provide corresponding institutional safeguards for this purpose.

The members of the NPC Standing Committee take the view that although 17 years have passed since the return of Hong Kong to the motherland, there is still a small number of people in the Hong Kong community who do not properly understand the policy of “one country, two systems”, do not abide by the *Hong Kong Basic Law* or acknowledge the Central Government’s governing power over Hong Kong. On the issue of universal suffrage for the Chief Executive, there are divergent views within the Hong Kong community. A small number of people have even raised views that are contrary to the *Hong Kong Basic Law* and openly advocated illegal activities. Such developments will inevitably undermine the rule of law of the Hong Kong Special Administrative Region, the interests of Hong Kong residents and foreign investors and the long-term prosperity and stability of Hong Kong, and hence merit close attention. **The members of the NPC Standing Committee take the view** that given its constitutional responsibility for the proper implementation of the *Hong Kong Basic Law* and for making decision on the method for selecting the Chief Executive, it is necessary for the NPC Standing Committee to make provisions on certain core issues concerning the method of universal suffrage for the selection of the Chief Executive, so as to facilitate the building of consensus within the Hong Kong community and ensure that the selection of the Chief Executive by universal suffrage will proceed on the right track as laid down by the *Hong Kong Basic Law* and the relevant *Decisions* of the NPC Standing Committee.

The Hong Kong and Macao Affairs Office of the State Council takes the view that although the views are quite divergent in the Hong Kong community with regard to the specific method of universal suffrage for the selection of the Chief Executive, various sectors of the Hong Kong community generally hope to see the selection of the Chief Executive by universal suffrage in 2017. Therefore, in accordance with the relevant *Decision* of the NPC Standing Committee adopted on 29 December 2007, the implementation of the selection of the Chief Executive of the Hong Kong Special Administrative Region by universal

suffrage in 2017 may be approved. At the same time, it is necessary to make provisions on the core issues concerning the method of universal suffrage for selecting the Chief Executive, which will be conducive to building further consensus in the Hong Kong community. The method for forming the Legislative Council in 2016 may remain unchanged.

Acting in accordance with the provisions of the *Hong Kong Basic Law* and the views of the members of the NPC Standing Committee on the Report by the Chief Executive, and having taken into full account the views of the Hong Kong and Macao Affairs Office of the State Council and the views of the Report by the Chief Executive, the Chairmen's Council has introduced the *Draft Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016* (Draft Decision). I will now provide Explanations on the *Draft Decision* as follows.

1. On the selection of the Chief Executive by universal suffrage starting from 2017

In accordance with the *Hong Kong Basic Law*, the relevant *Decision* of the NPC Standing Committee on 29 December 2007 and the views of the members of the NPC Standing Committee, Article I of the *Draft Decision* provides that: "Starting from 2017, the selection of the Chief Executive of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage." The major considerations with regard to this provision are:

First, the wording in the *Draft Decision* is "Starting from 2017, the selection of the Chief Executive of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage", meaning that the selection of the fifth Chief Executive in 2017 and all the Chief Executives thereafter may be implemented by the method of universal suffrage.

Second, Article 45 of the *Hong Kong Basic Law* provides that the ultimate aim is the selection of the Chief Executive by universal suffrage. The relevant *Decision* of the NPC Standing Committee on 29 December 2007 further provides 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". Article I of the

Draft Decision has made it clear that the selection of the Chief Executive in 2017 and of all the Chief Executives thereafter may be implemented by the method of universal suffrage, which accords with the *Hong Kong Basic Law* and the above-mentioned *Decision* of the NPC Standing Committee.

Third, as a result of years of discussion on the issue of universal suffrage for selecting the Chief Executive, the Hong Kong community has reached consensus on four points, i.e., the Hong Kong community generally hopes to see the implementation of universal suffrage for the selection of the Chief Executive in 2017; it generally agrees that the method of universal suffrage for the Chief Executive should be formulated in accordance with the *Hong Kong Basic Law* and the relevant *Interpretation* and *Decisions* of the NPC Standing Committee; it generally agrees that the successful implementation of universal suffrage for the selection of the Chief Executive will bring about positive impact on the sustained development and the long-term prosperity and stability of Hong Kong; and it generally agrees that Chief Executive candidates should be persons who love the country and love Hong Kong. The implementation of the election of the Chief Executive by the method of universal suffrage as of 2017 meets the common aspiration of the Hong Kong community.

2. On the provisions on the core issues of universal suffrage for the Chief Executive

Article 45 of the *Hong Kong Basic Law* has already set out quite clear provisions on universal suffrage for selecting the Chief Executive. In accordance with the *Hong Kong Basic Law*, the views of the members of the NPC Standing Committee and those from others, Article II of the *Draft Decision* has made the following provisions on the core issues of universal suffrage for the Chief Executive:

(1) On the composition of the nominating committee

Paragraph (1) of Article II of the *Draft Decision* provides that: “The provisions for the number of members, composition and formation method of the nominating committee shall be made in accordance with the number of members, composition and formation method of the Election Committee for the Fourth Chief Executive.” According to this provision, the nominating committee to be defined by amendments to Annex I to the *Hong Kong Basic Law* shall follow the current composition of the Election Committee, which consists of 1,200 members from four major sectors in equal proportions, and keep the existing

method for selecting the members as provided for by Annex I to the *Hong Kong Basic Law*. The major considerations with regard to this provision are:

First, considering the legislative intent of the *Hong Kong Basic Law*, the expression “broadly representative” in the context of “a broadly representative nominating committee”, as provided in Paragraph 2 of Article 45 of the *Hong Kong Basic Law*, carries the same meaning as that in “a broadly representative Election Committee”, as provided in Annex I to the *Hong Kong Basic Law*. That is, the committee shall be composed of members from four sectors in equal proportions, the delimitation of the various sectors, the organizations in each sector eligible to return members and the number of such members to be returned by each of these organizations shall be prescribed by the electoral law enacted by the Hong Kong Special Administrative Region, and the committee members shall be elected by corporate bodies in various sectors on their own in accordance with the number of seats allocated and the election method as prescribed by law. The provision in the relevant *Decision* of the NPC Standing Committee on 29 December 2007 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*”, indicates clearly the common theme between the nominating committee and the Election Committee as regards formation. Since there remains different understanding in the Hong Kong community on this issue, it is necessary to make further clarifications with a view to properly implementing the provisions of the *Hong Kong Basic Law*.

Second, the method for forming the Election Committee to elect the Chief Executive was based on the consensus forged during the extensive consultations and discussions when drafting the *Hong Kong Basic Law*. Past elections for the Chief Executive since the return of Hong Kong have proven that the Election Committee has covered representative figures from all sectors of the Hong Kong community and achieved balanced participation of all sectors, and is therefore in conformity with the actual situation of Hong Kong. Composing the nominating committee in line with the formation of the current Election Committee meets the requirements of both the relevant provisions of the *Hong Kong Basic Law* and the objective need to ensure balanced participation and fend off various risks during election of the Chief Executive by universal suffrage.

Third, there are relatively more views in the Hong Kong community that the composition of the nominating committee should be decided with reference to the existing method for forming the Election Committee.

There are considerable views that the number of members, composition and formation method of the nominating committee should be determined by following the existing provisions of the Election Committee. Bearing in mind that the provisions regarding the Election Committee for the fourth Chief Executive were made in 2010 alongside amendments to the method for selecting the Chief Executive and approved by the NPC Standing Committee, and that the total number of seats of the Election Committee was increased from 800 to 1,200, with such increase being made in equal proportions for all four sectors, and with the endorsement and support from all sides, it is relatively appropriate to provide for the nominating committee to have the same number of members, composition and formation method as the Election Committee.

(2) On the number of Chief Executive candidates

Paragraph (2) of Article II of the *Draft Decision* stipulates that “The nominating committee shall nominate two to three candidates for the office of Chief Executive in accordance with democratic procedures”. The major considerations with regard to this provision are:

First, the stipulation to have two to three candidates for the office of the Chief Executive is made to ensure a truly competitive election and present voters with real choices. It could also serve to avoid problems such as complicated electoral procedures and high election costs caused by having too many candidates.

Second, since the return of Hong Kong, almost all elections for the Chief Executive were conducted each with a candidacy of two to three. It fits relatively well with the experience gained from previous elections in Hong Kong to set the number of candidates at two to three.

(3) On the need of a Chief Executive candidate to have the endorsement of more than half of the members of the nominating committee

Paragraph (2) of Article II of the *Draft Decision* stipulates that “Each candidate must have the endorsement of more than half of all the members of the nominating committee”. The major considerations with regard to this provision are:

First, the nominating committee as provided for by the *Hong Kong Basic Law* is a specialized institution for nomination. It collectively exercises the power to nominate Chief Executive candidates as an institution, and must therefore reflect the collective will of the institution. The “democratic procedures” stipulated in Paragraph 2 of Article 45 of

the *Hong Kong Basic Law* should follow the democratic principle of majority rule so as to reflect the requirement that the nominating committee exercises power in a collective manner. Hence, it is appropriate to stipulate that a person contending for nomination as the Chief Executive candidate must obtain the support of more than half of the members of the nominating committee.

Second, the nominating committee will comprise members from the four sectors in equal proportions. The stipulation that contenders for nomination as the Chief Executive candidates must obtain the support of more than half of the members of the nominating committee means that candidates need to obtain a certain extent of support from each sector of the nominating committee. This will help fulfill the principle of balanced participation and meet the interests of various sectors of the Hong Kong community.

Third, the Report by the Chief Executive indicates considerable views of the Hong Kong community that a person contending for nomination as the Chief Executive candidate has to obtain support from a certain proportion of members of the nominating committee. Among the views heard by the General Office of the NPC Standing Committee, quite a number of people called for the proportion to be specified. Therefore, the further clarification that a person contending for nomination as the Chief Executive candidate must obtain the endorsement of more than half of the members of the nominating committee, is consistent with the provisions of the *Hong Kong Basic Law*, and will facilitate consensus building in the Hong Kong community.

(4) On the method for voting in the election for the Chief Executive

Article 26 of the *Hong Kong Basic Law* stipulates that “Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law”. On that basis, Paragraph (3) of Article II of the *Draft Decision* stipulates that “All eligible electors of the Hong Kong Special Administrative Region have the right to vote in the election of the Chief Executive and elect one of the candidates for the office of Chief Executive in accordance with law”. According to this provision, each and every eligible elector shall have the right to directly participate in electing the Chief Executive. It fulfills the principle of universal and equal electoral right and marks a historic step forward in Hong Kong’s democratic development.

(5) On appointment of the Chief Executive

Paragraph 1 of Article 45 of the *Hong Kong 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.” Based on this provision, Paragraph (4) of Article II of the *Draft Decision* stipulates that “The Chief Executive-elect, after being selected through universal suffrage, will have to be appointed by the Central People’s Government”. The central authorities, in formulating the basic policies with respect to Hong Kong and the *Hong Kong Basic Law*, already clearly pointed out that the power of the Central People’s Government to appoint the Chief Executive of the Hong Kong Special Administrative Region is a substantive one. The Central People’s Government has the right to make the final decision on whether to appoint or not to appoint the Chief Executive returned by election held locally in Hong Kong.

3. On proposing amendments to the method for selecting the Chief Executive

The specific method for selecting the Chief Executive is stipulated in Annex I to the *Hong Kong Basic Law*. To amend the method for selecting the Chief Executive, a bill on amending the method for selecting the Chief Executive as well as relevant amendments to such bill shall be proposed by the Government of the Hong Kong Special Administrative Region in accordance with the relevant *Decisions* of the NPC Standing Committee. Accordingly, Article III of the *Draft Decision* stipulates that “The specific method of universal suffrage for the Chief Executive shall be prescribed in accordance with legal procedures through amending Annex I to the *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China: The Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region*. The bill on the amendments and the proposed amendments to such bill shall be introduced by the Hong Kong Special Administrative Region Government to the Legislative Council of the Hong Kong Special Administrative Region in accordance with the *Hong Kong Basic Law* and the provisions of this *Decision*. Such amendments shall obtain the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive before being submitted to the Standing Committee of the National People’s Congress for approval.”

4. On continued application of existing provisions relating to the method for selecting the Chief Executive if no amendment is made to the method

Pursuant to the *Interpretation* made by the NPC Standing Committee in 2004, if no amendment is made to the method, existing provisions relating to the method for selecting the Chief Executive, the method for forming the Legislative Council and the procedures for voting on bills and motions will remain applicable. In 2007, the NPC Standing Committee reaffirmed the above position in its *Decision on Issues Relating to the Methods for Selecting the Chief Executive and Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage*. In the premises, Article IV of the *Draft Decision* stipulates that “If the specific method of universal suffrage for selecting the Chief Executive is not adopted in accordance with legal procedures, the method used for selecting the Chief Executive for the preceding term shall continue to apply.”

5. On the issue of amending the method for forming the Legislative Council in 2016

As pointed out by the Report by the Chief Executive, the Hong Kong community generally agrees that efforts should now be focused on the proper handling of the election of the Chief Executive by universal suffrage; and that as relatively substantial amendments were made to the method for forming the Legislative Council in 2012, there is no need to amend Annex II to the *Hong Kong Basic Law* regarding the method for forming the Legislative Council in 2016. Upon deliberation, the members of the NPC Standing Committee are of the view that the amended method for forming the fifth term Legislative Council of the Hong Kong Special Administrative Region in 2012 already marked a major step towards greater democracy, and no amendment shall be made to the existing method for forming the Legislative Council and to the procedures for voting as prescribed in Annex II to the *Hong Kong Basic Law*, which is to say that the current formation method and procedures for voting will continue to apply to the sixth term Legislative Council in 2016. This is consistent with the principle of gradual and orderly progress in developing a democratic system that suits the actual situation of Hong Kong, in conformity with the majority view in the Hong Kong community, and conducive to the efforts of all sectors of the community to first focus on properly handling the selection of the Chief Executive by universal suffrage, and it will create conditions for the attainment of the aim of electing all members of the Legislative Council by universal

suffrage after the implementation of universal suffrage for the selection of the Chief Executive. In accordance with the deliberations of the members of the NPC Standing Committee and the views of various sides, Article V of the *Draft Decision* stipulates that “The existing formation method and voting procedures for the Legislative Council as prescribed in Annex II to the *Hong Kong Basic Law* will not be amended. The formation method and procedures for voting on bills and motions of the fifth term Legislative Council will continue to apply to the sixth term Legislative Council of the Hong Kong Special Administrative Region in 2016.” To reflect the consistent position of the central authorities to resolutely and firmly develop the democratic system in Hong Kong, and to push for the attainment of the aim of electing all the members of the Legislative Council by universal suffrage, this article further stipulates that “After the election of the Chief Executive by universal suffrage, the election of all the members of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage. At an appropriate time prior to the election of the Legislative Council by universal suffrage, the Chief Executive elected by universal suffrage shall submit a report to the Standing Committee of the National People’s Congress 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* as regards the issue of amending the method for forming the Legislative Council. A determination thereon shall be made by the Standing Committee of the National People’s Congress.”

You are kindly requested to consider whether the *Draft Decision of the Standing Committee of the National People’s Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016* and the above Explanations are in order.

Composition of the Existing 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

**Different Voting Procedures
at the Nominating Committee Nomination Stage to be Considered**

At the committee nomination stage, the Nominating Committee (“NC”) has to nominate two to three candidates from the list of persons seeking for nomination. Meanwhile the two to three candidates have to obtain endorsement of more than half of all the members of the NC.

Since the simplest “one person, one vote” voting method, if adopted, may not produce two to three candidates who obtain endorsement of more than half of all the members of the NC, the Government hereby puts forward the following four kinds of voting procedures for consideration so that the chances of having two to three candidates are enhanced.

I. “One Person, Three Votes”

Under the “One Person, Three Votes” (or “block vote system”) procedure, each NC member must choose three different persons from the list of persons seeking nomination (choose two if there are only two persons seeking nomination). Each NC member could not choose the same person more than once, or choose less than three persons (or less than two if there are only two such persons); otherwise it would be considered as abstention. The two to three persons who obtain the highest number of votes and more than half of the votes of all the NC members shall formally become candidates for the Chief Executive (“CE”) election.

II. “One Person, Two to Three Votes”

Under the “One Person, Two to Three Votes” procedure, each NC member must choose two to three different persons from the list of persons seeking nomination (choose two if there are only two persons). Each NC member could not choose the same person more than once, or choose more than three or less than two persons; otherwise it would be considered as abstention. The two to three persons who obtain the highest number of votes and more than half of the votes of all the NC members shall formally become candidates for the CE election.

III. “One Person, Maximum Three Votes”

Under the “One Person, Maximum Three Votes” procedure (or “multiple vote system”), each NC member may choose one to three persons from the list of persons seeking nomination (choose one to two if there are only two such persons). Each NC member may not choose the same person more than once. The two to three persons who obtain the highest number of votes and more than half of the votes of all the NC members shall formally become candidates for the CE election.

IV. “Voting on Each Person Seeking Nomination”

Under the “Voting on Each Person Seeking Nomination” procedure, each NC member could support or not support any such person. In other words, a NC member could decide to support all such persons; or not to support any person; or support only some of the persons. Among the persons who could obtain support from more than half of all the NC members, the two to three persons with the highest number of votes shall formally become candidates for the CE election.

(Translation)

Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress

(Adopted at the Fifteenth Session of the Standing Committee of the Tenth National People's Congress on 27 April 2005.)

The Standing Committee of the Tenth National People's Congress at its 15th session deliberated the State Council's Proposal on Requesting Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. In accordance with Item 4, Article 67 of the Constitution of the People's Republic of China and Paragraph 1, Article 158 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, and after consulting the Committee for the Basic Law of the HKSAR under the NPC Standing Committee, the Standing Committee of the National People's Congress hereby makes the following interpretation on Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

Paragraph 2, Article 53 of the Basic Law stipulates, "In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law." The phrase "a new Chief Executive shall be selected ... in accordance with the provisions of Article 45 of this Law" implies that both the method of selecting and the term of office of the new Chief Executive shall be as prescribed and determined by the said Article.

Paragraph 3, Article 45 of the Basic Law stipulates, "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'." Clause 1 of Annex I stipulates, "The Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People's Government." Clause 2 of Annex I stipulates, "The term of office of the Election Committee shall be five years." Clause 7 of Annex I stipulates, "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." These provisions make it clear that prior to the year 2007, when the Chief Executive is selected by the Election Committee with a five-year term of office, in the event that the office of Chief Executive becomes vacant as he (she) fails to serve the full term of office of five years as prescribed by Article 46 of the Basic Law, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive; and that after 2007, the above-mentioned method for selecting the Chief Executives could be amended, and should the office of the Chief Executive then become vacant, the term of office of the new Chief Executive shall be determined in accordance with the amended method for the selection of the Chief Executive.

This Interpretation is hereby announced.

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