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The Explanations on the Draft 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

At the Thirty-first Session of the Standing Committee of the Tenth National People’s Congress in the Afternoon of 26 December 2007

Deputy Secretary-General of the Standing Committee of the National People's Congress, Mr Qiao Xiaoyang

Chairman, Vice-Chairmen, Secretary-General, Members,

I am now entrusted by the meeting of Chairmen to provide explanations for “The Draft 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”.

Pursuant to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (hereinafter referred to as “Hong Kong Basic Law”) 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” (hereinafter referred to as “The Interpretation”), on 12 December, Tsang Yam-kuen, the Chief Executive of the Hong Kong Special Administrative Region submitted to the Standing Committee of the National People’s Congress 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” (hereinafter referred to as “the Chief Executive’s Report”). On 17 December, the meeting of Chairmen decided to include the Chief Executive’s Report in the agenda of the Thirty-first Session of the Standing Committee of the Tenth National

People's Congress, and sent the Chief Executive's Report to the State Council to seek its advice. On 24 December, the Standing Committee of the National People's Congress held group consideration of the Chief Executive's Report.

The unanimous view of the members of the Standing Committee of the National People's Congress is that, since Hong Kong has returned to the motherland for more than ten years, Hong Kong's constitutional development has kept on progressing, in accordance with the provisions of the Hong Kong Basic Law, in a gradual and orderly manner, and Hong Kong compatriots have enjoyed democratic rights that they have never had before. The issue of advancing the constitutional development of Hong Kong further concerns the comprehensive implementation of the basic policy of the "One Country, Two Systems" principle and the Hong Kong Basic Law, the relationship between the Central Authorities and the Hong Kong Special Administrative Region, the interests of various strata, sectors and the general public of Hong Kong, as well as the long term stability and prosperity of Hong Kong; it is an important issue that should be handled with great care. The members of the Standing Committee of the National People's Congress are of the view that the Chief Executive's Report quite comprehensively reflects the views and aspirations expressed by the Hong Kong community on the issue of constitutional development. The Report is proactive, responsible and pragmatic. It reflects the general views and aspirations within the Hong Kong community that "the universal suffrage timetable should be determined at an early date"; that "universal suffrage for the Chief Executive can precede that for the Legislative Council"; that "implementing universal suffrage for the Chief Executive first by no later than 2017 will stand a better chance of being accepted by the majority in the community"; that "the formation of the nominating committee for nominating Chief Executive candidates may make reference to the existing Election Committee for electing the Chief Executive"; that "it would be appropriate to have two to four Chief Executive candidates at most"; that "as for the models, roadmap and timetable for implementing universal suffrage for the Legislative Council, the Legislative Council, various sectors of the community and the public hold diverse views, and no mainstream view can be formed at this stage", etc. The views contained in the Report are objective and reflective of the actual situation. The majority view expressed during the consideration is that constitutional development has become a focal issue attracting public attention and caused some conflicts within the Hong Kong community in recent years. With a view to enabling the Hong Kong community to concentrate its efforts on developing the economy and improving

livelihood, to make a decision on the issue of constitutional development now, to make clear that appropriate amendments may be made to the methods for the selection of the Chief Executive and the formation of the Legislative Council in the year 2012, and to make clear the timetable for the selection of the Chief Executive and the election of all the members of the Legislative Council by universal suffrage, are necessary, practicable, and justified on ample legal basis. The Hong Kong and Macao Affairs Office of the State Council is of the view that, since the Hong Kong community has shown a keen interest in the issue of constitutional development and the issue has been under discussion for many years, appropriate amendments may be made, in accordance with the principles stipulated in the Decision adopted by the Standing Committee of the National People's Congress on 26 April 2004, to the methods for selecting the Chief Executive and for forming the Legislative Council in the year 2012; that in the year 2017 the fifth Chief Executive may be elected by universal suffrage, and thereafter, all the members of the Legislative Council may be elected by universal suffrage.

Acting in accordance with the provisions of the Hong Kong Basic Law and the views of the members of the Standing Committee of the National People's Congress, and having taken into full account the views of the Hong Kong and Macao Affairs Office of the State Council and the Chief Executive's Report, the meeting of Chairmen introduced "The Draft 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". I now provide an explanation on the Draft Decision as follows.

1. The amendments to the methods for selecting the Chief Executive and for forming the Legislative Council in the year 2012

Annex I and Annex II to the Hong Kong Basic Law provide that, if there is a need, amendments may be made to the methods for selecting the Chief Executive and for forming the Legislative Council after the year 2007, and have prescribed the process through which amendments are made. In order to move Hong Kong's constitutional development forward, the Standing Committee of the Tenth National People's Congress at its Ninth Session in April 2004, adopted, on the basis of the Chief Executive's Report, "The Decision on Issues Relating to the Methods for

Selecting the Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008”. Pursuant to the Decision and having extensively consulted various sectors of the Hong Kong community, the Government of the Hong Kong Special Administrative Region introduced in October 2005 a bill on the amendments to the methods for selecting the Chief Executive in the year 2007 and for forming the Legislative Council in the year 2008. However, the bill on the amendments was not endorsed by a two-thirds majority of all the members of the Legislative Council. Thereafter, the Government of the Hong Kong Special Administrative Region, through the Commission on Strategic Development, continued to promote wide-ranging discussions about the issue of Hong Kong’s constitutional development. On this basis, it published the Green Paper on Constitutional Development in July this year and conducted a three-month public consultation exercise. On the basis of the public consultation exercise, the Chief Executive submitted a report to the Standing Committee of the National People’s Congress, requesting it to confirm that the methods for selecting the Chief Executive and for forming the Legislative Council in the year 2012 may be amended.

In accordance with the provisions of the Hong Kong Basic Law, the views of the members of the Standing Committee of the National People’s Congress and other views, the first Article of the Draft Decision provides that: “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.” The major considerations with regard to this provision in the Draft Decision are:

First, in accordance with the provisions of the Hong Kong Basic Law, the methods for selecting the Chief Executive and for forming the Legislative Council are 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, so as to attain the ultimate aim of selecting the Chief Executive and electing all the members of the Legislative Council by universal suffrage. There is general expectation within the Hong Kong community that progress can be made to the methods for selecting the Chief Executive and for forming the Legislative Council in the year 2012. Under the circumstances that the bill on the amendments to the methods for selecting the Chief Executive in the year 2007 and for forming the Legislative Council in the year 2008 was not endorsed by the Legislative Council of the Hong Kong Special Administrative Region, in accordance with the aforementioned provisions under the Hong Kong Basic Law, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the methods for selecting the Chief Executive and for forming the Legislative Council in the year 2012. This may serve as a midway station en route to universal suffrage, which will be conducive to a stable transition to universal suffrage. Therefore, the Draft Decision provides that 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; that 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. Subject to the aforementioned, appropriate amendments conforming to the principle of gradual and orderly progress may be made.

Second, the public consultation shows that in the Legislative Council, less than half of the members support the implementation of “dual universal suffrage” in the year 2012, half of the members support that universal suffrage for the Chief Executive should be implemented first by no later than 2017, in 2017 or after 2017, and that universal suffrage for the Legislative Council should follow thereafter. In the 18 District Councils, motions have been passed in more than two-thirds of all District Councils, supporting that universal suffrage for the Chief Executive should be implemented first by no later than 2017 or in 2017, and that universal suffrage for the Legislative Council should follow thereafter. Opinion polls have indicated that, although more than half of

the respondents support implementation of universal suffrage for the Chief Executive and the Legislative Council in 2012, at the same time, about 60% of the respondents accept the implementation of universal suffrage for the Chief Executive in 2017, if this cannot be attained in 2012; more than half of the respondents accept the implementation of universal suffrage for the Legislative Council in 2016 or thereafter, if this cannot be attained in 2012. More than 150000 signatures received from the public have indicated support for implementing universal suffrage for the Chief Executive by no later than 2017, in 2017 or after 2017; and among these signatures, more than 130000 have indicated support that universal suffrage for the Chief Executive should precede that for the Legislative Council. In summarizing the results of the consultation in his report, the Chief Executive concluded: “implementing universal suffrage for the CE first by no later than 2017 will stand a better chance of being accepted by the majority in our community”. With this in mind, the members of the Standing Committee of the National People’s Congress are generally of the view that “dual universal suffrage” for selecting the Chief Executive and for forming the Legislative Council, or “single universal suffrage” for either one, shall not be implemented in the year 2012, and that making amendments in a gradual and orderly manner has public support and is appropriate.

Third, the relevant provisions of the Hong Kong Basic Law on the electoral method of the functional constituencies of the Legislative Council are a system put in place in the light of the actual situation of Hong Kong. It has been functioning smoothly, and experience has demonstrated that it is conducive to the balanced participation of various strata and sectors of Hong Kong and the development of the capitalist economy. As there are diverse views on how to improve on the electoral system of the functional constituencies within the Hong Kong community, rendering it difficult to form any mainstream view, it would not be appropriate to change the concerned electoral arrangements at this stage. Hence, the Draft Decision has provided that 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, as provided for in Annex II to the Hong Kong Basic Law, are in keeping with the electoral system of the functional constituencies. Hence, the Draft Decision has provided that the procedures for voting on bills and motions in the Legislative Council are to remain unchanged.

2. The timetable for implementing universal suffrage for the Chief Executive and Legislative Council

Paragraph 2 of Article 45 of the Hong Kong Basic Law provides: “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”. Paragraph 2 of Article 68 provides: “The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.” In the last few years, the Hong Kong public have shown a keen interest in the timeframe for implementing universal suffrage for the selection of the Chief Executive and for returning all the members of the Legislative Council. They have also expressed the hope that the timetable for universal suffrage be made clear. The public consultation conducted by the Hong Kong Special Administrative Region Government also indicates that differences of opinion on this issue are being narrowed. In accordance with the provisions of the Basic Law and the views of the members of the Standing Committee of the National People’s Congress and other parties, the Draft Decision proposes a timetable concerning Hong Kong’s constitutional development, that is “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 major considerations with regard to the timetable arrangement as put forth in the Draft Decision are:

First, the ultimate aim of selecting the Chief Executive and electing all the members of the Legislative Council by universal suffrage is provided for in the Hong Kong Basic Law. This is a solemn commitment given by the Central Government. By making clear the timeframe for realizing this aim at an appropriate time, this is in line with the consistent position of the Central Government in supporting the democratic development of Hong Kong – not only is this a sincere response to the relevant expectation of the Hong Kong community, but it is also an

important step to realize the implementation of the basic policy of “One Country, Two Systems” and the Hong Kong Basic Law.

Second, the public consultation shows that there is an overall expectation among the Hong Kong community for the universal suffrage timetable to be determined at an early date. In summarizing the results of the consultation in his report, the Chief Executive concluded: “Having considered the views of the Legislative Council, District Councils, organizations and individuals from various sectors, as well as members of the public in totality and, after thorough deliberation, I have come to the view that the community generally hopes that the universal suffrage timetable can be determined early, so as to set the course for Hong Kong’s constitutional development.” By making clear the universal suffrage timetable and clarifying the way forward for Hong Kong’s constitutional development, we will enable all parties concerned to work towards this ultimate aim collectively, reduce contentions within the Hong Kong community, focus energies on furthering economic development, improve livelihood and promote the long term prosperity and stability of Hong Kong.

Third, as “dual universal suffrage” will not be implemented for electing the Chief Executive and Legislative Council in 2012, 2017 is the earliest possible date for commencing the implementation of universal suffrage. By 2017, Hong Kong will have returned to the motherland for twenty years. The timeframe provided in the Hong Kong Basic Law that “the previous capitalist system and way of life shall remain unchanged for 50 years” in the Hong Kong Special Administrative Region will have entered its median phase. By that time, quite a number of elections for the Chief Executive and the Legislative Council will have been held, and much valuable experience will have been gained through gradual and orderly progress. The decision that universal suffrage for selecting the Chief Executive and for the election of all the members of the Legislative Council by universal suffrage may respectively take place in 2017 and thereafter, is consistent with the principle of gradual and orderly progress and in keeping with the actual situation in Hong Kong. This is a very progressive arrangement.

Fourth, the Draft Decision provides that universal suffrage for electing the Chief Executive may be implemented first in 2017, and that the election of all the members of the Legislative Council by universal suffrage may follow thereafter; this is based on two considerations: first, this takes into account the fact that the Basic Law has already provided a framework for universal suffrage for the Chief Executive, that is: “the

selection of the Chief Executive by a broadly representative nominating committee in accordance with democratic procedures”; the Hong Kong community also has considerable consensus in this regard. As to how all the members of the Legislative Council are to be elected through universal suffrage, the Hong Kong Basic Law has not laid down specific provisions; the Hong Kong community also have relatively divergent views on this, and more time is required for discussions and deliberations. Second, the selection of the Chief Executive and the election of all the members of the Legislative Council by universal suffrage is an important constitutional development reform. If both were implemented at the same time, this would give rise to major ramifications and would not be conducive to proper implementation of constitutional reform and maintenance of social stability. The Hong Kong Basic Law provides an executive-led political structure for the Hong Kong Special Administrative Region. By implementing universal suffrage for the Chief Executive first, this will be conducive to preservation of the executive-led system and the better management of executive-legislature relations.

3. The legal procedures for amending the method for the selection of the Chief Executive and the formation of the Legislative Council by universal suffrage

According to the provisions of Annex I and Annex II to the Hong Kong Basic Law and the interpretation thereof, the amendments to both the method for selecting the Chief Executive and the method for forming the Legislative Council should go through five steps each time: first, the Chief Executive shall make a report to the Standing Committee of the National People’s Congress; second, the Standing Committee of the National People’s Congress shall make a determination as to whether there is a need to make an amendment; third, the bills on the amendments to the method for selecting the Chief Executive and the method for forming the Legislative Council shall be introduced by the Government of the Hong Kong Special Administrative Region and shall be made with the endorsement of a two-thirds majority of all the members of the Legislative Council; fourth, the Chief Executive should consent to the amendments made by the Legislative Council for selecting the Chief Executive and for forming the Legislative Council; fifth, the Chief Executive should report the amendments to the Standing Committee of the National People’s Congress for the Standing Committee to approve or to record. After this Decision is made, the first two of the five steps for making amendments to the method for selecting the Chief Executive and the Legislative Council in the year 2012 will have been completed. In future, when universal suffrage is implemented for the Chief Executive

and the Legislative Council, the amendments to the two electoral methods will also have to be taken forward according to the above-mentioned five steps. Thus, Article 2 and Article 3 of the Draft Decision provide that at an appropriate time prior to the selection of the Chief Executive by universal suffrage and the election of all the members of the Legislative Council by universal suffrage, the Chief Executive shall make a report to the Standing Committee of the National People's Congress in accordance with the Hong Kong Basic Law and the interpretation thereof, for the Standing Committee of the National People's Congress to make a determination. The bills and the proposed amendments to such bills to amend the methods for selecting the Chief Executive and for forming the Legislative Council and the procedures for voting on bills and motions shall be introduced by the Government of the Hong Kong Special Administrative Region to the Legislative Council; the amendments shall 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.

4. The continued application of current provisions if the methods for selecting the Chief Executive and for forming the Legislative Council are not amended

It is a general principle of law that the original legal provisions will continue to apply where new provisions have not been passed. The Interpretation of 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 in 2004 provides that 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, the original two electoral methods and the procedures for voting on bills and motions will still be applicable. Article 4 of the Draft Decision reiterates the relevant part of the above Interpretation of the Standing Committee of the National People's Congress in 2004 and provides that "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".

5. The formation of the nominating committee when the Chief Executive is selected by universal suffrage

According to Paragraph 2 of Article 45 of the Hong Kong Basic Law, when the Chief Executive is selected by universal suffrage, candidates shall be nominated by a broadly representative nominating committee in accordance with democratic procedures. As to how the nominating committee should be formed, it is stated in the Chief Executive's Report that "there are relatively more views that the formation of the nominating committee for nominating CE candidates may make reference to the existing Election Committee for electing the CE"; "there are relatively more views that it would be appropriate to have two to four CE candidates at most."

Based on the views of the members of the Standing Committee of the National People's Congress and other parties, the Draft Decision has provided 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 major considerations with regard to the Draft Decision making clear this particular aspect are: first, making it clear that the nominating committee may be formed with reference to the current provisions regarding the Election Committee is based on the fact that the formation of the Election Committee for electing the Chief Executive was the consensus achieved after wide consultation and discussion during the drafting process of the Hong Kong Basic Law, and this had consolidated wisdom from all sides, and had considerable public support and acceptance. Second, since Hong Kong's reunification with the motherland, election of the Chief Executive by the Election Committee has taken place three times and the operation has been smooth. Experience has demonstrated that the kind of composition of the Election Committee has enabled balanced participation of various strata and sectors to be achieved, and is broadly representative. Third, there are relatively more views within the Hong Kong community that the formation of the nominating committee may make reference to that of the

Election Committee; making it clear that the nominating committee may make specific reference to the Election Committee will be conducive to forging consensus within the community on the method for selecting the Chief Executive by universal suffrage. Fourth, with regard to the appropriate number of Chief Executive candidates, this can be further discussed within the Hong Kong community. Hence, the Draft Decision only puts forth, in principle, that the nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive.

In view of the fact that the Hong Kong community still hold diverse views on how the Legislative Council should be formed by universal suffrage, this has to be further discussed. Hence, the Draft Decision does not cover this issue.

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 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” and the above Explanations are in order.