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策略發展委員會  
管治及政治發展委員會

《基本法》中有關“普選”條文的憲制基礎

引言

《基本法》第四章與及附件一和附件二規定了香港特別行政區的政治體制。

2. 《基本法》第四十五條規定：

“香港特別行政區行政長官在當地通過選舉或協商產生，由中央人民政府任命。

行政長官的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至由一個有廣泛代表性的提名委員會按民主程序提名後普選產生的目標。

行政長官產生的具體辦法由附件一《香港特別行政區行政長官的產生辦法》規定。”

3. 《基本法》第六十八條規定：

“香港特別行政區立法會由選舉產生。

立法會的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至全部議員由普選產生的目標。

立法會產生的具體辦法和法案、議案的表決程序由附件二《香港特別行政區立法會的產生辦法和表決程序》規定。”

4. 上述條文清楚規定，最終目標是達至行政長官和全部立法會議員由普選產生。

5. 要理解《基本法》中有關“普選”的含義，必須從香港特別行政區的憲制地位和特區政治體制的設計原則出發。

#### 香港特別行政區的憲制地位

6. 為了維護國家的統一和領土完整，保持香港的繁榮和穩定，並考慮到香港的歷史和現實情況，國家決定在對香港恢復行使主權時，根據《憲法》第三十一條的規定，設立香港特別行政區，並按照「一國兩制」的方針，不在香港實行社會主義的制度和政策。根據《憲法》，全國人民代表大會特制定香港特別行政區《基本法》，規定香港特別行政區實行的制度，以保障國家對香港的基本方針政策的實施。

7. 《基本法》第十二條明確規定：

“香港特別行政區是中華人民共和國的一個享有高度自治權的地方行政區域，直轄於中央人民政府。”

8. 中華人民共和國實行單一制國家結構形式，而香港特別行政區是單一制國家結構形式下的一個地方行政區域。

香港特別行政區所享有的高度自治權是由全國人民代表大會通過法律授予的。換言之，特區行使的各種權力都是來自中央的授權，特區沒有「剩餘權力」。此外，《基本法》亦訂明香港特別行政區直轄於中央人民政府，兩者之間沒有任何中間層次。

9. 按上述有關香港特別行政區的憲制地位，中央有憲制權責制定特區政治體制的模式。中央在這方面的角色亦在《基本法》有關政治體制的條文中體現出來。例如：

- (i) 根據二零零四年四月六日全國人大常委會的《解釋》，《基本法》附件一和附件二所規定有關二零零七年以後行政長官和立法會產生辦法是否需要進行修改，行政長官應向全國人大常委會提出報告，交由全國人大常委會確定。根據《解釋》，有關修改經立法會通過及行政長官同意後，最後仍須由全國人大常委會批准或備案，方可生效。這體現了中央在特區政制發展上，包括達致最終普選的時間與及普選的模式及設計，擁有最終決定權力。與主權國家不一樣，香港特別行政區不能自行決定其政治體制。
- (ii) 《基本法》第四十五條規定，行政長官在當地通過選舉或協商產生，由中央人民政府任命。《基本法》第四十三條規定行政長官對中央人民政府和特區負責。中央人民政府的任命是實質性而非形式性的，可以任命，也可以不任命。這項安排是體現國家是一個單一制國家，香港特別行政區是國家不可分離並獲授權實行高度自治而直轄於中央人民政府的一個地方行政區域這樣的憲制地位。因此，行政長官無論是怎樣產生，包括最終由

普選產生，都不能脫離在選舉當選的候選人須通過中央人民政府實質任命的憲制要求，方可就任。

## 特區政治體制的設計原則

10. 姬鵬飛主任在一九九零年三月二十八日第七屆全國人民代表大會第三次會議上提交《基本法》草案及有關文件時，就特區的政治體制作了如下說明：

“香港特別行政區的政治體制，要符合「一國兩制」的原則，要從香港的法律地位和實際情況出發，以保障香港的穩定繁榮為目的。為此，必須兼顧社會各階層的利益，有利於資本主義經濟的發展；既保持原政治體制中行之有效的部分，又要循序漸進地逐步發展適合香港情況的民主制度。”

11. 從姬主任對政治體制的說明，與及《基本法》第四十五條及第六十八條的規定中，可以歸納到下列四項有關政制發展的原則：

- (i) 兼顧社會各階層利益；
- (ii) 有利於資本主義經濟的發展；
- (iii) 循序漸進；
- (iv) 適合香港實際情況。

12. 我們在上次會議所提交的文件「特區政治體制綜覽」(CSD/GC/1/2005)中已闡述了上述四項原則的考慮。

## 總結

13. 委員會可依據本文所提及的憲制基礎及政治體制

設計原則，進一步討論《基本法》中有關“普選”的條文。

政制事務局  
2006年1月

**Commission on Strategic Development  
Committee on Governance and Political Development**

**Constitutional Basis of  
Basic Law Provisions Regarding "Universal Suffrage"**

**Introduction**

The political structure of the Hong Kong Special Administrative Region ("HKSAR") is prescribed in Chapter IV of the Basic Law and Annexes I and II.

2. Article 45 of the Basic Law provides :

"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'."

3. Article 68 of the Basic Law provides :

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

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of

gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

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

4. The above provisions clearly stipulate that the ultimate aim is the election of the Chief Executive ("CE") and all the members of the Legislative Council ("LegCo") by universal suffrage.

5. In order to understand the meaning of "universal suffrage" in the Basic Law, we must take the constitutional status of the HKSAR and the principles of design of its political structure as the starting point.

#### **The Constitutional Status of the HKSAR**

6. Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the State had decided that, upon its resumption of the exercise of sovereignty over Hong Kong, the HKSAR shall be established in accordance with the provisions of Article 31 of the Constitution. Under the principle of "One Country, Two Systems", the socialist system and policies will not be practised in Hong Kong. In accordance with the Constitution, the National People's Congress has enacted the Basic Law, prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong.

7. Article 12 of the Basic Law explicitly provides :

"The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government ("CPG")."

8. The People's Republic of China is a unitary state, and the HKSAR is a local administrative region under such a system. The high degree of autonomy enjoyed by the HKSAR is conferred by the NPC in accordance with the law. In other words, all powers exercised by the SAR are derived by way of authorization by the Central Authorities, and there are no "residual powers" on the part of the SAR. Furthermore, the Basic Law also provides that the HKSAR comes directly under the CPG, with no intermediate layer in between.

9. Given the above-mentioned constitutional status of the HKSAR, the Central Authorities have the constitutional powers and responsibilities to determine the model of political structure of the HKSAR. The role played by the Central Authorities in this regard is also realized in the Basic Law provisions relating to political structure. For example :

- (i) According to the Interpretation by the Standing Committee of the National People's Congress ("NPCSC") on 6 April 2004, as regards whether there is a need to make an amendment to the method for the selection of the CE and that for the formation of the LegCo for the terms subsequent to the year 2007 as stipulated in Annexes I and II to the Basic Law, the CE shall make a report to the NPCSC for it to make a determination. According to the Interpretation, after an amendment has been endorsed by the LegCo and has received the consent of the CE, it will still require the approval or acceptance for the record by the NPCSC before it may take effect. This realizes the ultimate power of the Central Authorities to determine the constitutional development of the HKSAR, including the timetable for attaining universal suffrage and the model and design of the universal suffrage system. Unlike sovereign states, the HKSAR cannot decide the political structure on its own.
- (ii) Article 45 of the Basic Law provides that the CE shall be selected by election or through consultation conducted locally and be appointed by the CPG. Article 43 provides that the CE shall be accountable to the CPG and the HKSAR. The appointment made by the CPG is substantive and not a formality. It may make the appointment or it may not. This arrangement realizes the fact that the State is a unitary state, and that the HKSAR is an integral part of the State with the constitutional status of a local administrative region which comes directly under the CPG and which enjoys a high degree of autonomy through authorization. Thus, irrespective as to how the CE is selected, including by means of universal suffrage ultimately, there can be no deviation from the constitutional requirement that a candidate winning an election must be appointed, in a substantive manner, by the CPG before assuming office.



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

10. When submitting the draft Basic Law and related documents at the Third Session of the Seventh NPC on 28 March 1990, Director Ji Pengfei made the following explanations on the political structure of the HKSAR :

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

11. From the above Explanations of Director Ji on political structure and the provisions in Article 45 and Article 68 of the Basic Law, four principles on constitutional development can be summarized :

- (i) meeting the interests of different sectors of society;
- (ii) facilitating the development of the capitalist economy;
- (iii) gradual and orderly progress; and
- (iv) appropriate to the actual situation in the HKSAR.

12. The considerations of four principles above have been elaborated in the paper entitled “An Overview of the Political Structure of the Hong Kong Special Administrative Region” (CSD/GC/1/2005) submitted at the last meeting.

### **Conclusion**

13. Having regard to the constitutional basis and the principles of design of the political structure mentioned in this paper, members may further discuss the Basic Law provisions relating to universal suffrage.

Constitutional Affairs Bureau  
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