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策略發展委員會
管治及政治發展委員會

行政長官普選的可能模式

引言

委員於上一次會議上，已就有關普選原則和概念的討論作總結(文件 CSD/GC/6A/2006)。根據有關總結，在討論行政長官及立法會普選的可能模式時，提出的方案須能符合：

- (一) 國家對香港的基本方針政策；
- (二) 政制發展的四項原則，包括：兼顧社會各階層利益、有利於資本主義經濟的發展、循序漸進及適合香港實際情況；
- (三) 行政主導的原則；及
- (四) “普及”和“平等”選舉的原則。

2. 委員在以往的會議上，曾初步探討有關達致最終普選時行政長官產生辦法的可能模式。有關討論的撮要見文件 CSD/GC/6A/2006 第 29-33 段。本文件旨在提供背景資料，讓委員進一步探討在符合《基本法》及有關普選原則和概念下，行政長官普選的可能模式。

《基本法》的規定

3. 《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，最終達致由一個具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。”按此規定，當行政長官產生辦法實行普選方式時，行政長官的產生及任命涉及三個步驟：

- (a) 由有廣泛代表性的提名委員會按民主程序提名；
- (b) 提名後，候選人以普選方式產生；及
- (c) 由中央人民政府作出任命。

4. 根據《基本法》第四十五條規定，提名委員會的組成須具廣泛代表性，而提名須按民主程序。不過，《基本法》並未就提名委員會的具體組成，及如何按民主程序提名作出規定。

重點考慮議題

5. 在討論行政長官普選的可能模式時，我們認為應考慮以下四項重點議題：

- (一) 提名委員會的組成；
- (二) 提名方式；
- (三) 提名後，如何以普選方式產生行政長官；及
- (四) 提名委員會組成的籌備及新選舉制度與原有制度的銜接。

6. 政制發展專責小組(專責小組)就 07/08 兩個選舉辦法進行公眾諮詢時，就行政長官普選模式收到一些相關意見。但由於全國人大常委會於 2004 年 4 月通過的《決定》規定了 2007 年不實行普選行政長官，故此有關行政長官普選模式的意見不屬專責小組公眾諮詢工作的範圍。不過，為完整反映收到的公眾意見，專責小組在得到提交意見書的人士/團體同意後，已把有關的意見書一併載列於其報告的附錄內。這些意見的撮要現載於附件一供委員參考。

7. 此外，根據立法會秘書處於 2006 年 6 月向立法會政制事務委員會提供的文件，立法會曾收到一些有關普選行政長官的書面意見。這些意見撮要現載於附件二供委員一併參考。

8. 本委員會秘書處過往數月收到個別委員提供的相關書面意見撮要載於附件三。

提名委員會的組成

9. 在考慮提名委員會的組成時，除了須研究如何確保符合《基本法》訂明“有廣泛代表性”的規定，委員於上一次會議上普遍認同亦須考慮“兼顧社會各階層的利益”及“有利於資本主義經濟的發展”等原則。

10. 在收到的意見書中，有關提名委員會組成的意見，大致可分為以下幾方面：

- (一) 以《基本法》附件一規定的選舉委員會的組成¹，作為提名委員會的組成的藍本。

¹ 選舉委員會是由四個界別內的 38 個界別分組組成。現時，除了全國人民代表大會界別分組、立法會界別分組和宗教界界別分組外，其餘 35 個界別分組的委員按獲配予的數目由選舉產生。

至於提名委員會人數方面，有意見認為可參照目前選舉委員會的人數，即維持 800 人。也有意見認為應增加委員人數，例如增至 1000、1200、1600 或 5000 人。

- (二) 由 60 名立法會議員²組成提名委員會。也有意見認為可由提名委員會授權立法會提名任何獲得 5 位立法會議員簽名支持的候選人。
- (三) 提名委員會委員須透過直接或間接選舉產生，例如，最少半數委員應循地方選區普選產生。

11. 與此同時，有意見認為毋須設立提名委員會，例如，候選人先由一定數目的登記選民提名，然後由市民一人一票選出行政長官。不過，這建議明顯與《基本法》第四十五條有關由“一個具廣泛代表性的提名委員會按民主程序提名後普選產生”的規定不符。

提名方式

候選人所需提名數目

12. 有關提名委員會提名行政長官候選人的方式，當中一個重要議題，是候選人須取得的委員提名數目。在決定提名門檻的水平時，我們認為應考慮以下因素：

- (一) 須符合《基本法》訂明“按民主程序提名”的規定；

² 目前，立法會是由 30 名地區直選及 30 名功能界別產生的議員組成。

- (二) 須確保候選人有廣泛支持和足夠認受性；及
- (三) 能讓有志之士有機會被提名。

13. 目前，《基本法》附件一規定不少於 100 名選舉委員會委員可聯合提名行政長官候選人(即 12.5%)。每名委員只可提名一名候選人。若以目前的行政長官提名門檻為基礎，在所收到的意見書中，大致可分為以下幾項建議：

- (一) 把提名門檻維持於 12.5%(即候選人不多於 8 人)；
- (二) 把提名門檻降低，例如降至 5%(即候選人不多於 20 人)；及
- (三) 把提名門檻提高，例如增至 25%(即候選人不多於 4 人)。

14. 在收到有關的意見書中，均認為每名委員只可提名一名候選人。

提名後的普選方式

15. 本文件附件一和附件二所提及的意見書中，都是建議候選人獲提名後，由全港市民以一人一票方式選出行政長官。至於具體細節，則相對較少意見提出，例如有建議候選人須取得一半以上有效選票方可當選。

提名委員會組成的籌備及新選舉制度與原有制度的銜接

16. 目前行政長官選舉的安排，是根據《基本法》附件一訂明由一個具有廣泛代表性的選舉委員會選出。而《基本法》第四十五條則訂明，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。

17. 當實行普選時，不論採用何種方式組成提名委員會，都必須確保由選舉委員會選出行政長官這個原有制度，轉為由提名委員會提名後進行普選的新制度時，兩者能順利銜接，例如，須考慮選舉委員會與提名委員會的任期如何連接，避免出現真空期。

18. 在決定提名委員會如何組成後，我們須預留充分時間做籌備工作，例如修改《基本法》附件一及本地法例，以及為提名委員會的產生作法律規定。

總結

19. 政府就上文第 9-18 段所述的議題並未有任何既定立場。我們樂意聽取委員的意見。

政制事務局
2006 年 7 月

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

**Possible Models for Selecting the Chief Executive
by Universal Suffrage**

Introduction

At the last meeting of the Committee, Members concluded discussions on the concepts and principles relating to universal suffrage (Paper CSD/GC/6A/2006). According to the conclusions, in discussing possible models for electing the Chief Executive (“CE”) and the Legislative Council (“LegCo”) by universal suffrage, any proposal put forward should comply with:

- (1) the basic policies of the State regarding Hong Kong;
- (2) the four principles on constitutional development, namely, meeting the interests of different sectors of society, facilitating the development of the capitalist economy, gradual and orderly progress and being appropriate to the actual situation in Hong Kong;
- (3) the principle of an executive-led system; and
- (4) the principles of universal and equal suffrage.

2. At previous meetings, Members have explored on a preliminary basis possible models for selecting the CE when the ultimate aim of universal suffrage is attained. A summary of the discussions has been provided in paragraphs 29-33 of Paper CSD/GC/6A/2006. This paper provides background information to facilitate Members’ further discussion of possible models for selecting the CE by universal suffrage in accordance with the Basic Law and the concepts and principles relating to universal suffrage.

Provisions in the Basic Law

3. Article 45 of the Basic Law provides that “the CE of the Hong Kong Special Administrative Region (“HKSAR”) shall be selected by election or through consultations held locally and be appointed by the Central People’s Government (“CPG”). The method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.” According to this provision, the selection and appointment of the CE involves three steps when universal suffrage is attained:

- (a) nomination by a broadly representative nominating committee in accordance with democratic procedures;
- (b) selection by universal suffrage following nomination; and
- (c) appointment by the CPG.

4. According to Article 45 of the Basic Law, the composition of the nominating committee should be broadly representative and nominations should be made in accordance with democratic procedures. However, the Basic Law has not stipulated the specific composition of the nominating committee, or the method of nomination in accordance with democratic procedures.

Key issues to be considered

5. In discussing possible models for selecting the CE by universal suffrage, we suggest that the following four key issues should be considered:

- (1) composition of the nominating committee;
- (2) method of nomination;
- (3) method for selecting the CE by universal suffrage following nomination; and

- (4) preparation for forming the nominating committee and smooth transition from the original electoral system to the new system.

6. When consulting the public on the two electoral methods for 2007/08, the Constitutional Development Task Force received some views on models for selecting the CE by universal suffrage. In accordance with the Decision of the Standing Committee of the National People's Congress of April 2004, the CE election in 2007 shall not be by means of universal suffrage. Hence, views on models for selecting the CE by universal suffrage did not fall within the scope of the public consultation undertaken by the Task Force. However, to fully reflect the public views received, the Task Force had, with the consent of the concerned individuals/organizations, included the relevant submissions in the appendixes to the Reports. These views are summarized at Annex I for Members' reference.

7. Moreover, according to a paper provided by the LegCo Secretariat to the LegCo Panel on Constitutional Affairs in June 2006, the LegCo had received some written submissions relating to the selection of CE by universal suffrage. These views are summarized at Annex II for Members' reference.

8. The relevant written submissions received from individual Members by the Committee Secretariat in the past few months are summarized at Annex III.

Composition of the Nominating Committee

9. In examining the composition of the nominating committee, apart from considering how to ensure that the requirement of "broadly representative" as stipulated in the Basic Law can be complied with, Members generally agreed at the last meeting that consideration should be given to the principles of "meeting the interests of different sectors of society", "facilitating the development of the capitalist economy", etc.

10. In the submissions received, views on the composition of the nominating committee can be broadly divided into the following categories:

- (1) To use the composition of the Election Committee¹ prescribed in Annex I to the Basic Law as a blueprint for that of the nominating committee.

As for the number of members of the nominating committee, there are views that reference can be made to that of the existing Election Committee, i.e. to remain at 800. There are also views that it should be increased, for example, to 1 000, 1 200, 1 600 or 5 000.

- (2) To form the nominating committee by the 60 LegCo Members². There are also views that the nominating committee could authorize the LegCo to nominate candidates with subscription from five LegCo Members.
- (3) To form the nominating committee by direct or indirect elections. For example, at least half of its members should be elected by universal suffrage in geographical constituencies.

11. At the same time, there are views that it is not necessary to set up a nominating committee. For example, a CE candidate should first be nominated by a certain number of registered voters, and then elected by universal suffrage on the basis of “one-person-one-vote”. However, this proposal is obviously inconsistent with the requirement under Article 45 of the Basic Law that the selection of the CE should be “by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures”.

¹ The Election Committee (“EC”) is composed of members from 4 sectors, which are further divided into 38 subsectors. Except for the National People’s Congress, Legislative Council and religious subsectors, the EC members from the remaining 35 subsectors are returned by elections in accordance with the number of seats allocated to each subsector.

² Currently, the Legislative Council is composed of 30 members returned by geographical constituencies through direct election and 30 members by functional constituencies.

Method of Nomination

Number of subscribers for nominating candidates

12. Regarding the method of nominating a CE candidate by the nominating committee, one of the key issues to be considered is the number of subscribers required for nominating a candidate. In deciding the nomination threshold, we consider that the following factors should be taken into account:

- (1) complying with the requirement of “nomination in accordance with democratic procedures” as stipulated in the Basic Law;
- (2) ensuring that candidates have wide support and sufficient legitimacy; and
- (3) providing aspiring individuals with the opportunity to be nominated.

13. At present, Annex I to the Basic Law provides that candidates for the office of the CE may be nominated jointly by not less than 100 members (i.e. 12.5%) of the Election Committee. Each member may nominate only one candidate. Taking the present nomination threshold for CE candidacy as the basis, suggestions in the submissions received can be broadly categorized as follows:

- (1) maintaining the nomination threshold at 12.5% (i.e. the maximum number of candidates will be 8);
- (2) lowering the nomination threshold, for example, to 5% (i.e. the maximum number of candidates will be 20); and
- (3) raising the nomination threshold, for example, to 25% (i.e. the maximum number of candidates will be 4).

14. It is proposed in all the relevant submissions received that one member should nominate only one candidate.

Method of Universal Suffrage after Nomination

15. It is proposed in all the submissions as provided in Annexes I and II to this paper that, after the nomination of candidates, the CE should be elected by universal suffrage on the basis of “one-person-one-vote”. As for specific details for the election, there are relatively fewer views. It has been proposed that a candidate should obtain more than half of the valid votes cast to be elected).

Preparation for forming the nominating committee and smooth transition from the original to the new electoral system

16. Currently, the CE is elected by a broadly representative Election Committee in accordance with Annex I to the Basic Law. Article 45 of the Basic Law stipulates that the ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

17. When implementing universal suffrage, regardless of which method for forming the nominating committee is to be adopted, we must ensure that there is a smooth transition from the original system of selecting the CE by the Election Committee to a new system of selecting the CE by universal suffrage upon nomination by the nominating committee. For example, we must consider how the terms of the Election Committee and the nominating committee can tie in so as to avoid a time gap.

18. After deciding on the composition of the nominating committee, we must allow adequate time for carrying out the necessary preparation work, for example, to amend Annex I to the Basic Law and local legislation in order to provide the legal framework for the nomination committee to be formed.

Conclusion

19. The Government does not have any established position on the issues set out in paragraphs 9 - 18 above, and is prepared to listen to Members' views.

Constitutional Affairs Bureau
July 2006