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策略發展委員會
管治及政治發展委員會

就行政長官普選可能模式的
進一步討論

引言

委員於去年七月開展了有關行政長官普選可能模式的討論(文件 CSD/GC/7/2006)，並於去年十一月的會議上，進一步探討有關議題(文件 CSD/GC/9/2006)。本文件旨在綜合委員過去就行政長官普選可能模式提出的意見，讓委員能更聚焦地作深入探討，進一步收窄分歧。

2. 為方便委員參考，我們更新了不同團體和人士向當局及立法會提供有關行政長官普選模式的意見撮要，分別載於附件一及附件二。本委員會秘書處過往及最近收到個別委員提供的相關書面意見撮要，則載於附件三。

重點討論議題

3. 委員在過往會議及工作坊中，討論了以下三項有關行政長官普選可能模式的重點議題：

- (a) 提名委員會的組成及人數；
- (b) 提名方式；及
- (c) 提名後，如何以普選方式產生行政長官。

4. 下文第 5-22 段綜合了委員過往就上述議題提出的意見，及就接下來討論有關議題的方向，作出建議。

提名委員會的組成

5. 有關提名委員會的組成，委員過去主要集中在討論以下兩個方案：

(i) 以選舉委員會組成作為一個基礎，以考慮提名委員會的組成(但委員人數及界別組成和劃分，可有別於選舉委員會)；及

(ii) 由 60 名立法會議員組成提名委員會。

6. 亦有委員提出其他模式，例如由政黨/政團或一定數目的登記選民向提名委員會推薦參選人，而有關推薦必須獲提名委員會確認，該名參選人正式成為候選人。

7. 近日，有個別立法會議員建議，行政長官候選人除了可由提名委員會提名外，取得 5% 登記選民提名的人士，亦可成為候選人。不過，委員已認同按照《基本法》第四十五條，行政長官的普選模式，必須是由提名委員會提名行政長官候選人，隨即由市民以普選方式產生行政長官。任何沒有建議由提名委員會提名候選人(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)，或單由普選產生行政長官的方案(即不設立提名委員會)，都不符合《基本法》的規定。

8. 綜合過去的討論，委員傾向支持以選舉委員會組成作為一個基礎，以考慮提名委員會的組成，而不少委員對由 60 名立法會議員組成提名委員會的建議有保留。

9. 較多委員支持以選舉委員會組成作為基礎，以考慮提名委員會的組成，主要原因包括：

(i) 《基本法》第四十五條及附件一分別規定提名委員會及選舉委員會同樣須具“廣泛代表性”。若以選舉委員會的組成作基礎，可能引起的爭

議應該較少，有助社會就提名委員會的組成達成共識；

- (ii) 選舉委員會的組成符合“兼顧社會各階層的利益”及“有利資本主義經濟的發展”等原則。參照選舉委員會的組成能確保提名委員會符合這些原則；及
- (iii) 選舉委員會以四個界別為綱的組成值得參考，而且以選舉委員會作基礎，對確保提名委員會運作暢順較有把握。

10. 不過，有委員表示對提名委員會的組成參照選舉委員會的建議有保留，認為選舉委員會的組成方式並不符合普及而平等的原則，而選民的提名權亦不平等。

11. 至於有關由 60 名立法會議員組成提名委員會的建議，提出的委員認為立法會議員的選民基礎最廣及最具代表性。不過，不少委員對有關建議有保留，原因包括：

- (i) 《基本法》已清楚訂明立法會的職能，當中並無賦予立法會議員提名行政長官的權力。由立法會提名行政長官不符《基本法》的設計；
- (ii) 根據《基本法》，行政機關與立法機關之間的關係是互相制衡。由立法會提名行政長官，並不符合《基本法》立法原意，超越了立法會的職權範圍；
- (iii) 在起草《基本法》時已排除了以立法會提名行政長官這方案，因為這並不符合“行政主導”的原則；及
- (iv) 市民投票選立法會議員時，並無授權他們代為提名行政長官。

12. 《基本法》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行政長官的目標。鑑於委員傾向支持以選舉委員會組成作為一個基礎，以考慮提名委員會的組成，我們建議委員進一步考慮以下的有關議題，並決定應否繼續討論其他模式：

- (i) 若由 60 名立法會議員組成提名委員會，能否符合提名委員會須具廣泛代表性的規定；
- (ii) 《基本法》所訂明的立法會職能，當中並無賦予立法會議員提名行政長官的權力。在《基本法》的現有框架下，能否落實由立法會議員組成提名委員會的建議；及
- (iii) 由政黨/政團或一定數目的登記選民向提名委員會推薦參選人的建議，是否符合《基本法》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的規定。

13. 若委員認為接下來的討論，應集中研究以選舉委員會組成作為基礎，以考慮提名委員會的組成，委員可在此基礎上，繼續探討提名委員會應如何組成及提名委員會的人數，委員曾提及的相關建議包括：

- (i) 應否參照目前 800 人的選舉委員會，或把人數增至 1200 或 1600 人；
- (ii) 具體應如何規範提名委員會的組成及界別劃分，委員提出了不同建議：
 - (a) 把新增的議席給予現時未被納入選舉委員會的界別；
 - (b) 把新增的席位分配給區議員；不過，有委員不贊同這建議；

- (c) 全體港區全國政協委員及港區全國人大代表成為當然委員，以體現“一國”在香港憲制上的地位；
 - (d) 增設“特區建制”界別，包括行政長官、行政會議和立法會全部成員，及所有常設諮詢組織的主席，以體現特區建制的政治地位；及
 - (e) 適當地增加商界委員人數，例如把工商、金融界由目前選舉委員會中的 25% 增至 35%，以反映商界對香港的貢獻。不過，有委員則認為目前選舉委員會的組成，已側重工商和專業階層。
- (iii) 近日，有意見認為可以政府於 2005 年提出的 2007/08 建議方案為基礎，把全體區議員納入提名委員會。委員可討論這方案能否透過增強民意代表的參與，確保提名委員會是具廣泛代表性。

提名方式

14. 有關提名委員會提名行政長官候選人的方式，委員過去主要集中討論以下的相關課題：

- (i) 行政長官候選人所需的提名數目。委員傾向支持在實行普選初期，提名門檻不應太低。
- (ii) 應否設立其他提名規定，包括訂立提名上限、規定候選人須在每個界別取得一定數目的提名。
- (iii) 應否先訂出一個相對較高的門檻，在推行普選後再逐步演變。

- (iv) 每名提名委員會委員可否提名多於一名候選人。

15. 就行政長官候選人所需的提名數目這課題，委員有相對清晰的取向：較多委員提出把提名門檻訂於提名委員會委員總數的八分之一至四分之一。至於在這個幅度內的具體提名門檻水平，則須進一步討論。而與提名門檻相關的候選人數目，大部分委員認為不宜過多，較多委員建議把候選人數目限於4或8名。不過，就其他的課題，委員仍持不同意見，須繼續探討。

16. 此外，委員認同任何有關提名機制的建議，都必須在《基本法》的框架下提出。根據《基本法》第四十五條¹，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：

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

按照《基本法》的有關條文，提名行政長官候選人的職責在於提名委員會。

提名後的普選方式

17. 委員認同候選人獲提名後，應由全港市民以一人一票方式選出行政長官。

18. 委員須進一步討論的議題包括：

¹《基本法》第四十五條訂明：“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。”

- (i) 是否應只舉行一輪選舉，而毋須要求候選人須取得過半數有效票；或是要求候選人須取得過半數有效票方可當選，並在有需要時舉行多於一輪選舉；
- (ii) 在只有一名候選人的情況下，是否仍須進行投票（例如候選人須取得過半數支持票方能當選）。

特首先行、立法會普選隨後

19. 在過去的討論，委員普遍認同，相對立法會普選模式，行政長官普選模式的複雜程度相對較低，加上《基本法》已提供相對清晰的框架，社會對有關發展路向達成共識的機會較大，因此可以先探討這項議題。再者，由普選產生的行政長官會有更強民意基礎，這樣將有助加強管治，長遠而言，有利於體現行政主導的原則。

20. 目前，委員就行政長官普選模式的討論已較為聚焦，正具體研究提名委員會的組成及提名機制。相對而言，委員就立法會普選模式的討論，特別是功能界別應如何演變，仍存在重大分歧（例如應否全面取消功能界別議席，或是以某種形式保留功能界別；詳情見文件 CSD/GC/2/2007）。若然如是，委員就行政長官普選模式應較有機會先達成共識。

21. 考慮到上文第 19-20 段所述委員的意見，我們建議委員討論應否循「特首先行、立法會隨後」的方向推動下一步工作。

總結

22. 總結上文，我們建議委員進一步討論以下議題：

- (i) 就提名委員會的組成，應否集中研究以選舉委員會組成作為一個基礎，以考慮提名委員會的組成；

- (ii) 提名委員會應如何組成及提名委員會的人數；
- (iii) 提名門檻的具體水平；
- (iv) 其他提名規定，包括應否訂立提名上限、規定候選人須在每個界別取得一定數目的提名；應否先訂出一個相對較高的門檻，在推行普選後再逐步演變；及每名提名委員會委員可否提名多於一名候選人；
- (v) 應否只舉行一輪選舉，而毋須要求候選人須取得過半數有效票，或是要求候選人須取得過半數有效票方可當選，並在有需要時舉行多於一輪選舉；
- (vi) 在只有一名候選人的情況下，是否仍須進行投票；及
- (vii) 應否循「特首先行、立法會隨後」的方向推動下一步工作。

政制事務局
2007年1月

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

**Further Discussion on Possible Models for
Selecting the Chief Executive by Universal Suffrage**

Introduction

Members commenced discussion on possible models for selecting the Chief Executive (“the CE”) by universal suffrage last July (Paper No: CSD/GC/7/2006), and further discussed the issue in detail at the meeting last November (Paper No: CSD/GC/9/2006). This paper summarizes members’ views on possible models for selecting the CE by universal suffrage, in order to facilitate members’ discussion on the subject in focus and to further narrow differences.

2. For members’ easy reference, we have updated the summary of views of various organizations and individuals on possible models for selecting the CE received by the Administration and the LegCo, as appended at Annex I and Annex II respectively. A summary of written submissions received from individual members in the past and recently by The Commission Secretariat is at Annex III.

Key issues discussed

3. In the previous meetings and workshops, members discussed the following three key issues relating to possible models for selecting the CE by universal suffrage :

- (i) composition and size of the nominating committee;
- (ii) method of nomination; and
- (iii) method for selecting the CE by universal suffrage following nomination.

4. Paragraphs 5-22 summarize members' views on the above-mentioned issues, and propose the direction for further discussion on these issues.

Composition of the nominating committee

5. Regarding the composition of the nominating committee, members previously focused on discussing the following two options:

- (i) to use the composition of the Election Committee as a basis to consider that of the nominating committee (but the size of the nominating committee, and the composition and delineation of the sectors could be different from those of the Election Committee); and
- (ii) to form the nominating committee by 60 Legislative Council ("LegCo") Members.

6. Also, some members made other proposals, for example, to allow political parties/groups or a certain number of registered voters to recommend a contender to the nominating committee. A contender so recommended could formally become a candidate only upon endorsement by the nominating committee.

7. Recently, a LegCo Member proposed that, apart from being nominated by the nominating committee, a CE candidate could be nominated by 5% of the registered voters. However, members had already agreed that, in accordance with Article 45 of the Basic Law, the selection of the CE by universal suffrage should be preceded by the nomination of CE candidates by a nominating committee. Any proposals which did not suggest the nomination of candidates by a nominating committee (e.g. a CE candidate would first be nominated by a certain number of registered voters, and then elected by universal suffrage on the basis of "one-person-one-vote") or which suggested the selection of the CE only by universal suffrage (i.e. without forming a nominating committee), would not be consistent with the Basic Law requirement.

8. Summarizing the previous discussions, members were inclined to support using the composition of the Election Committee as a basis to consider that of the nominating committee. Quite a number of members

had reservations about the proposal of forming the nominating committee by 60 LegCo Members.

9. More members supported using the composition of the Election Committee as a basis to consider that of nominating committee. The main reasons included:

- (i) Article 45 and Annex I of the Basic Law stipulated respectively that the nominating committee and the Election Committee should be “broadly representative”. If the composition of the Election Committee was used as a basis, this should give rise to fewer disputes and should be conducive to forging consensus within the community on the composition of the nominating committee;
- (ii) the composition of the Election Committee complied with such principles as “meeting the interests of the different sectors of society” and “facilitating the development of the capitalist economy”. Making reference to the composition of the Election Committee could ensure that the formation of the nominating committee would comply with these principles; and
- (iii) the formation of the Election Committee by four sectors was a good reference. Also, using the Election Committee as a basis could help ensure the smooth operation of the nominating committee.

10. However, a Member had reservation about the proposal of using the composition of the Election Committee as a basis for forming the nominating committee because the composition of the Election Committee did not comply with the principles of universal and equal suffrage. Also, voters’ right of nomination was not equal.

11. As for the proposal of forming the nominating committee by 60 LegCo Members, the member who made the proposal considered that LegCo Members had the broadest electorate base and were the most representative. However, quite a number of members had reservation about this proposal for the following reasons:

- (i) the Basic Law had already clearly prescribed the functions of LegCo, and had not empowered LegCo Members to nominate

CE candidates. The proposal of allowing LegCo to nominate CE candidates was not consistent with the Basic Law;

- (ii) according to the Basic Law, the relationship between the executive authorities and the legislature was one of mutual regulation. The proposal of allowing LegCo to nominate CE candidates was not consistent with the legislative intent of the Basic Law and went beyond the powers and functions of LegCo;
- (iii) during the drafting of the Basic Law, the option of nominating CE candidates by LegCo had already been ruled out because this was not consistent with the “executive-led” principle; and
- (iv) when giving their votes to LegCo Members, voters had not authorized them to nominate CE candidates on their behalf.

12. As prescribed in the Basic Law, 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. Given that members are inclined to support using the Election Committee as a basis to consider that of the nominating committee, we suggest members further consider the following issues, and decide whether to continue with discussion on other models:

- (i) if the nominating committee is composed of 60 LegCo Members, whether it would be consistent with the requirement of being “broadly representative”;
- (ii) the powers and functions of LegCo, as prescribed by the Basic Law, do not include allowing LegCo Members to nominate CE candidates. Under the framework of the Basic Law, whether the proposal of allowing LegCo members to nominate CE candidates could be implemented; and
- (iii) regarding the proposal of allowing political parties/groups or a certain number of registered voters to recommend a contender to the nominating committee, whether that would be consistent with the requirement of nomination by a broadly representative nominating committee in accordance

with democratic procedures, as set out in the Basic Law.

13. If members take the view that the forthcoming discussion should focus on the proposal of using the composition of the Election Committee as a basis to consider that of the nominating committee, they may, on this basis, further consider the composition and size of the nominating committee. In this regard, members had put forth various proposals, including:

- (i) whether the nominating committee should be formed by reference to the existing 800-member Election Committee, or by expanding it to 1200 or 1600 members;
- (ii) regarding the composition of the nominating committee and delineation of the sectors, members had put forth different proposals:
 - (a) to allocate the additional seats to sectors which were currently not represented in the Election Committee;
 - (b) to allocate the additional seats to District Council members; however a member did not agree to this;
 - (c) to allow all Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) and Hong Kong deputies to the National People's Congress (NPC) to become ex-officio members, thereby realizing the status of "One Country" under Hong Kong's constitutional system;
 - (d) to establish a new sector "the establishment of the HKSAR", which would include the CE, all members of the Executive Council and LegCo, and all chairpersons of standing consultative bodies. This was to reflect the political status of the HKSAR establishment; and
 - (e) to suitably increase the number of members from the business sector, for example, by raising the percentage of members from the industrial, commercial and financial sectors in the Election Committee from 25% to 35% to reflect the contribution of the business sector to Hong

Kong. However, a member considered that the composition of the current Election Committee was already slanted towards the industrial, commercial and professional sectors.

- (iii) Recently, there was suggestion that using the 2007/08 proposal put forth by the Government in 2005 as a basis, all District Council members could be included in the nominating committee. Members may discuss whether this proposal could, through wider participation of the representatives of the public, ensure that the nominating committee is broadly representative.

Method of Nomination

14. Regarding the method of nominating CE candidates by the nominating committee, members focused on the following issues in the previous discussions:

- (i) the number of subscribers required for nominating a candidate. Members were inclined to support that, at the early stage of implementing universal suffrage, the nomination threshold should not be too low;
- (ii) whether it was necessary to impose additional nomination requirements, including setting an upper limit on the number of subscribers or requiring candidates to obtain a certain number of nominations in each sector;
- (iii) whether a relatively high nomination threshold should first be set, and allow evolution of the electoral system after implementation of universal suffrage; and
- (iv) whether each member of the nominating committee could nominate more than one candidate.

15. As for the number of subscribers required for nominating CE candidates, members had a relatively clear inclination: more members proposed to set the nomination threshold in the range of one-eighth to one-quarter of the size of the nominating committee. Further discussion would be needed to work out the specific nomination threshold within this

range. Regarding the number of candidates, which was related to the nomination threshold, most members considered that it should not be too large. More members suggested limiting the number of candidates to four or eight. However, regarding other issues, members still held diverse views and further discussion would be needed.

16. Moreover, members agreed that any proposals regarding the nomination mechanism should be made under the framework of the Basic Law. According to Article 45¹ of the Basic Law, the selection and appointment of the CE involves three steps when universal suffrage is attained:

- (i) nomination by a broadly representative nominating committee in accordance with democratic procedures;
- (ii) selection by universal suffrage following nomination; and
- (iii) appointment by the Central People's Government.

In accordance with the relevant provisions of the Basic Law, the responsibility of nominating CE candidates should rest with the nominating committee.

Method of Universal Suffrage after Nomination

17. Members agreed that, after the nomination of candidates, the CE should be elected by universal suffrage on the basis of "one-person-one-vote".

18. Members should further discuss the following issues:

- (i) whether the CE should be elected through one round of election without the requirement that a candidate should receive more than half of the valid votes to be elected, or whether there should be a requirement that a candidate should

¹ Article 45 of the Basic Law prescribes 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."

receive more than half of the valid votes to get elected, and thus more than one round of election would be held if necessary;

- (ii) if there is only one candidate, whether the election proceedings should continue (e.g. the candidate should receive more than half of the valid votes to get elected).

Universal suffrage for the CE preceding that for LegCo

19. In the previous discussions, members generally agreed that the model for selecting the CE by universal suffrage was relatively less complicated as compared with that for LegCo. Since the Basic Law had already provided a relatively clear framework, there was a higher chance of the community reaching consensus on the way forward for selecting the CE by universal suffrage, and hence, the issue could be first explored. Moreover, a CE returned by universal suffrage would have a stronger public mandate, which could enhance effective governance. In the long run, this would be conducive to realizing the principle of an executive-led system.

20. Currently, members' discussion on models for selecting the CE by universal suffrage is more focused. Members are studying specifically the composition of the nominating committee and the nomination mechanism. Relatively speaking, there are still grave differences among members on models for forming LegCo by universal suffrage, particularly on how the functional constituencies (FCs) should evolve (e.g. whether FC seats should be abolished altogether or be retained in some form; please refer to Paper CSD/GC/2/2007 for details). If that is the case, there should be a higher chance that members could first reach consensus on the model for selecting the CE by universal suffrage.

21. Having regard to members' views set out in paragraphs 19-20 above, we propose that members should consider whether our work should be taken forward based on the direction of "universal suffrage for the CE preceding that for LegCo".

Conclusion

22. To conclude, we propose that members should further discuss the following issues:

- (i) regarding the composition of the nominating committee, whether to focus on examining the proposal of using the composition of the Election Committee as a basis to consider that of the nominating committee;
- (ii) the composition and size of the nominating committee;
- (iii) the specific nomination threshold;
- (iv) other nomination requirements, including whether there should be an upper limit on the number of subscribers or a requirement for candidates to obtain a certain number of nominations in each sector; whether a relatively high nomination threshold should first be set, and allow evolution of the electoral system after implementation of universal suffrage; and whether each member of the nominating committee could nominate more than one candidate;
- (v) whether the CE should be elected through one round of election without the requirement that a candidate should receive more than half of the valid votes to be elected, or whether there should be a requirement that a candidate should receive more than half of the valid votes to get elected, and thus more than one round of election would be held if necessary;
- (vi) if there is only one candidate, whether the election proceedings should continue; and
- (vii) whether our work should be taken forward based on the direction of “universal suffrage for the CE preceding that for LegCo”.

Constitutional Affairs Bureau
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