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策略發展委員會
管治及政治發展委員會

就立法會普選可能模式的
進一步討論

引言

正如在「有關行政長官普選模式、路線圖及時間表的討論」的文件中(文件 CSD/GC/3/2007)所述，特區政府計劃於今年年中，歸納委員會的討論，並以此為基礎，發表「政制發展綠皮書」，及進行為期三個月的公眾諮詢。

2. 本文件旨在綜合委員過去就立法會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。
3. 不同團體和人士向當局及立法會提供有關立法會普選模式的意見撮要，分別載於附件一及附件二。本委員會秘書處收到個別委員提供的相關書面意見撮要，則載於附件三。

立法會普選可能模式的討論進展

4. 有關立法會的普選模式，於去年 11 月的會議上，委員同意暫時不再繼續討論兩院制作為普選模式的方案，主要原因包括：
 - (a) 要推行兩院制，涉及的過程複雜，除須修改《基本法》附件二，更可能須修訂主體條文；

- (b) 如有兩層議會架構，政府提出的法案和議案須同時獲兩院通過，會進一步增加通過法案/議案的難度，對政府整體運作和公共行政效率未必有幫助；及
- (c) 若這只是一個過渡安排，政治上不值得花太多精力，但若這是一個最終模式，卻又未必符合普選的原則。

5. 不過，委員就以下議題仍未形成主流意見：

- (a) 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；及
- (b) 應否在達至最終普選前，先作過渡安排。若認為應先作過渡安排，應採取何種模式。

立法會普選的可能模式

6. 委員就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，有詳盡的討論，但仍然存在重大分歧。委員目前主要討論以下三種方案：

- (a) 全面取消功能界別議席；
- (b) 以某種形式保留功能界別議席，但在選舉制度作改變，以符合「普及」與「平等」選舉的原則；及
- (c) 分階段達至立法會最終以普選產生。

全面取消功能界別議席

7. 有委員認為，在達至立法會最終普選時，應全面取消功能界別議席。就此，委員提出的具體建議包括：

- (a) 全部議席由地區直選產生，一半議席透過分區單議席單票制選出，另一半透過全港一個大選區以比例代表制選出，即每名選民「一人兩票」選出立法會議員；及
- (b) 以「一人一票」產生全部議席，不同政黨可按得票比例取得相對的議席數目。

8. 此外，21名立法會議員於3月27日提交的2012年政制方案，提出2012年的立法會，採用混合選舉模式，一半議席按分區單議席單票以簡單多數制產生；另一半議席由全港單一選區按比例代表制產生，每名選民可投兩票¹。

9. 而陳方安生女士及其核心小組於3月5日向委員會提交的建議，提出在2012年立即取消所有功能界別。有關建議亦提出，在2008年立法會選舉重新界定公司票的定義，以及將現有功能界別整合為10個新組別。若在2012年不能推行普選，提議將在2008年所組成的10個組別重組為不多於三大組別，而功能界別議席數目減少至15個。在功能界別騰空出來的15個議席，將轉為地方選區議席，為2016年全面取消功能界別議席作準備。

¹ 梁家傑議員在參選行政長官選舉期間，提出了有關立法會普選模式的建議：一次過廢除所有功能界別議席；部分議席由小選區單議席單票制產生，部分則由大選區比例代表制產生，即每名選民有兩票。

10. 然而，部分委員對取消全部功能界別議席的方案有保留，主要原因是在《基本法》附件層面改變選舉制度，須取得立法會全體議員三分之二多數通過，取消所有功能界別議席的建議在現階段是不可能立法會獲得足夠支持。反之，他們認為值得保留功能界別議席，原因包括：

- (a) 功能界別在立法會及社會上均發揮重要作用，尤其能把工商界和專業界的聲音帶進立法會，並運用他們的專業知識，協助立法會有關立法及監察政府的工作。功能界別議員對社會是有貢獻的；
- (b) 功能界別能兼顧社會不同階層利益，符合「均衡參與」的原則；及
- (c) 若要全面取消功能界別，社會不同界別必然會有反對聲音，難以達成共識。

改變功能界別議席選舉模式

11. 部分委員提出，立法會在實行普選時也應以某種形式保留功能界別議席，但可在選舉制度作改變，以符合「普及」與「平等」選舉的原則。委員就在達至普選時如何以某種形式保留功能界別議席，討論了不同具體建議：

- (a) 把目前在功能界別選舉無投票權的選民納入功能界別，即每名選民「一人兩票」，一票選地區直選議員，另一票選功能界別議員。

支持此方案的委員認為，只要每名選民都有資格選出功能界別議員，便應能符合「普及」和「平等」的選舉原則。

然而，有委員認為按這類建議，不同功能界別的選民數目相差將很大，以致每張選票的「票值」並不平等。但也有委員認為，以地區選舉為基礎的普選，也不可能每張選票的「票值」是均等的。

- (b) 由功能界別提名候選人，然後由全港選民「一人多票」，即一票選地區直選議員，多票選功能界別議員。

支持此建議的委員認為，這可確保候選人不會只顧及界別利益，而會同時爭取市民支持，這符合普選及「均衡參與」兩項原則，有利保持香港長期繁榮穩定。

不過，部分委員認為這建議須進一步研究，例如，若每名選民可在分區直選投一票，以及就三十個功能界別議席投票，即一人可投三十一票，投票制度對選民來說可能會太過複雜。此外，建議會限制選民的提名權，不算是符合「普及」而「平等」選舉的原則。

- (c) 把一半議席改為「職能直選」議席，即這些議席的參選資格以職業劃分，然後以普選產生。

12. 不過，支持盡快廢除功能界別的委員認為，任何給予功能界別特別的提名權或投票權的選舉制度，都不符合普選的原則。

分階段達至立法會最終普選

13. 儘管委員對立法會普選模式持不同意見，但都認同要推動香港政制發展，必須正視一個政治現實，就是立法會六十

個議席中，有三十席是由功能界別所產生的。由於立法會選舉辦法的任何修改，須得到立法會全體議員三分之二多數通過，即實際上須同時得到功能界別和地區直選產生的議員的認同和支持。

14. 在上述的前提下，委員積極探討了應否分階段達至立法會最終以普選產生。有委員提出，要就分階段達至立法會最終普選的建議進行討論，先決條件是要訂立一個過渡時間表。亦有委員認為值得研究分階段達至立法會普選，但過渡時間不能太長，尤其是若先實行行政長官普選的話，這會影響立法會的認受性，從而減低其對行政機關的制衡能力。

15. 委員就過渡安排提出的具體建議包括：

- (a) 在全面取消功能界別前，先引入改革，包括擴大功能界別的選民基礎，將公司/團體票改為董事/個人票，及取消或合併一些現有界別；
- (b) 議席除了由分區直選產生外，部分議席可由功能界別提名候選人，再經市民一人一票選舉產生；
- (c) 分階段取消功能界別議席。不過，部分委員認為，就應先取消哪些界別議席的問題，將會引起爭議，不易解決，亦因此有關建議未必能取得立法會三分之二多數通過；及
- (d) 增加地區議席相對功能界別議席數目的比例，例如，有委員提出可考慮增加地方直選議席數目，而同時增加由區議會議員互選產生的立法會議席數目。

立法會普選的路線圖及時間表

16. 全國人大常委員會於 2004 年 4 月 26 日所作的《決定》，規定 2008 年香港特別行政區第四屆立法會的選舉，不實行全部議員由普選產生的辦法，但《決定》並不涉及 2012 年第五屆立法會選舉的安排。

17. 根據《基本法》附件二，要修改立法會的產生辦法，須經立法會全體議員三分之二多數通過、行政長官同意，並報全國人大常委會備案。

18. 按照「先圖後表」的工作方向，若社會各界能就立法會普選模式及路線圖達成共識，普選時間表便會自然浮現²，但委員會目前就立法會普選的模式仍存在重大分歧。落實立法會普選的路線圖及時間表須視乎社會各界：

- (a) 是否就「特首先行，立法會普選隨後」達成共識；及
- (b) 是否認同立法會應分階段達至最終以普選產生。

總結

19. 總的而言，有關立法會普選可能模式，委員普遍認同在達至普選時，功能界別議席不能繼續按照現有的選舉方式產生，否則將與《基本法》普選目標相違背。

² 例如，有委員提議可分三屆立法會選舉逐步取代現有 30 個功能界別議席。

20. 為進一步收窄分歧，我們建議委員總結過去的討論，並繼續探討以下的議題：

- (a) 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，及具體的普選模式；及
- (b) 應否在達至最終普選前，先作過渡安排。若認為應先作過渡安排，應採取何種模式。

政制事務局
2007年4月

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

**Further Discussion on Possible Models for
Forming the Legislative Council by Universal Suffrage**

Introduction

As stated in the paper “Discussion on models, roadmap and timetable for selecting the Chief Executive by universal suffrage” (Paper No: CSD/GC/3/2007), the HKSAR Government plans to summarize the discussions of the Commission in mid-2007, and publish a Green Paper on constitutional development on the basis of the discussions. A public consultation for three months will be launched.

2. This paper summarizes members’ views on possible models for forming LegCo by universal suffrage, in order to facilitate member’s discussion on the subject in focus and to further narrow differences.

3. The summary of views of various organizations and individuals on possible models for forming LegCo received by the Administration and the LegCo are appended at Annex I and Annex II respectively. A summary of written submissions received from individual members by the Commission Secretariat is at Annex III.

Discussion progress on possible models for forming LegCo by universal suffrage

4. Regarding possible models for forming LegCo by universal suffrage, at the meeting last November, members agreed to set aside for the time being any further discussions on a bicameral system as an option for implementing universal suffrage. The main reasons included:

- (a) the implementation of a bicameral system would entail complicated procedures. Not only would it involve amendments to Annex II to the Basic Law, the principal provisions of the Basic Law might also need to be

amended;

- (b) if there were two chambers, the bills and motions introduced by the Government would need to be passed by both. This would add to the difficulties in getting bills and motions passed, and would not necessarily be conducive to effective governance and administrative efficiency; and
- (c) if the proposal was meant to be only a transitional arrangement, it would not be worth the major political effort involved. If it was meant to be the ultimate model, it might not be consistent with the principle of universal suffrage.

5. However, members had yet to form a mainstream view on the following issues:

- (a) whether FC seats should be abolished altogether or retained in some form; and
- (b) whether transitional arrangements should be put in place before attaining the ultimate aim of universal suffrage, and if so, the model to be adopted.

Possible models for forming the LegCo by universal suffrage

6. Members had discussed in detail whether FC seats should be abolished altogether or retained in some form. However, they still had significant differences on the issue. Members have focused the discussion on the following three main types of options:

- (a) abolishing all FC seats;
- (b) retaining the FC seats in some form, but changes could be made to the electoral system so as to make the arrangements consistent with the principles of universal and equal suffrage; and
- (c) attaining universal suffrage for LegCo in phases.

Abolishing all FC seats

7. Some members considered that all FC seats should be abolished when universal suffrage was implemented. In this regard, specific proposals put forth by members included:

- (a) all seats to be returned by GCs through direct elections, with half of the seats returned by a “single-seat-single-vote” system on a district basis, and the other half by a proportional representation system, under which the whole of Hong Kong would form a single constituency i.e. “one-person-two-votes”; and
- (b) all seats to be returned by “one-person-one-vote”, such that the number of seats allocated to different political parties would be proportional to the respective number of votes they received.

8. Moreover, on 27 March, 21 LegCo Members put forth a proposal on constitutional development in 2012. The proposal suggested adopting a mixed system i.e. half of the LegCo seats would be returned by a simple majority system on the basis of “single-seat-single-vote”, and the other half would be returned by a proportional representation system where the whole of Hong Kong will form a single constituency. Each voter would have two votes¹.

9. Mrs Anson Chan and her core group submitted a proposal to the Commission on 5 March, which suggested phasing out all functional constituencies (FCs) in one go in 2012. It also suggested that the concept of corporate voting be redefined, and that the existing FCs be organized into 10 groups. If it was decided not to introduce universal suffrage in 2012, it was proposed that the 10 electoral groups, introduced in 2008, be further combined in 2012 to form no more than three large groups for voting purposes and that the total number of FC seats be reduced to 15. The balance of 15 seats, vacated by FC members, would be converted into

¹ When running for the Chief Executive election, Hon Alan Leong put forth a proposal for forming LegCo by universal suffrage: abolishing all FC seats altogether in one go; some seats to be returned by the “single-seat-single-vote” system in small constituencies, while some by a proportional representation system in large constituencies. Each voter would have two votes.

directly elected geographical seats, thus paving the way for the complete phasing out of FCs in 2016.

10. However, some members had reservations about the proposal of abolishing all FC seats. The main reason was that, given that any amendment to the electoral methods specified in the Annexes to the Basic Law would require the endorsement of a two-thirds majority of all the members of LegCo, it would not be possible, at this stage, to secure sufficient support in LegCo for a proposal of abolishing all FC seats. On the contrary, they considered it worthwhile to retain the FC seats for reasons including:

- (a) FCs had been playing an important role in LegCo and in society. In particular, they had brought the voices of the business and professional sectors into LegCo and had, through their expertise, assisted LegCo in carrying out legislative function and in monitoring the Government's work. FC members had made contributions to the community;
- (b) FCs could meet the interests of different sectors of society, which was consistent with the principle of "balanced participation"; and
- (c) abolishing FCs altogether was bound to meet with objections from among different sectors of the community, and it would be difficult to reach consensus on the issue.

Changing the electoral method for FC seats

11. Some members proposed that, when universal suffrage was implemented for LegCo, the FC seats should be retained in some form. However, changes could be made to the electoral system, so as to make the arrangements consistent with the principles of universal and equal suffrage. Members discussed various options as to how FC seats could be retained in some form when universal suffrage was implemented:

- (a) Enable voters who were currently not included in FCs to vote in FCs. In other words, each voter would elect LegCo Members on the basis of "one-person-two-votes": one vote to return directly elected GC Members, and the

other to return FC Members.

Those members who supported this proposal considered that, as long as every voter would be entitled to vote for FC Members, the principles of universal and equal suffrage would be complied with.

However, some members considered that under this kind of proposals, there would be very significant disparity in the number of voters among different FCs, leading to inequality in the “value” of each vote. However, other members pointed out that even for universal suffrage which was implemented on the basis of GC elections, it would not be possible for each vote to carry the same “value”.

- (b) Allow FCs to nominate candidates for election by all voters through “one-person-multiple-votes” i.e. one vote to return directly elected GC Members, and multiple votes to return FC Members.

Those members who supported the proposal considered that this could help ensure the candidates would not only look after the interests of individual sectors, but would also strive to gain the support of the community at large. This would be consistent with the principles of universal suffrage and “balanced participation”, and would be conducive to maintaining the long-term prosperity and stability of Hong Kong.

However, some members pointed out that this proposal would require further consideration. For example, if each voter could cast one vote to return directly elected GC members and multiple votes to return 30 FC Members, this would mean that each voter would have 31 votes. The voting system might be too complicated for voters. Moreover, the proposal would restrict voters’ right to nominate, which could not be regarded as being consistent with the principles of “universal” and “equal” suffrage.

- (c) Return half of the seats by “occupational constituencies” through direct elections i.e. eligibility for candidature for these seats would be defined by occupation, and the seats would be returned by universal suffrage.

12. However, members who supported abolishing FCs as soon as possible considered that any electoral system conferring special rights on FCs to nominate candidates or to vote would not be consistent with the principle of universal suffrage.

Attaining universal suffrage for LegCo in phases

13. Although members held diverse views on models for forming LegCo by universal suffrage, they agreed that, in taking forward Hong Kong’s constitutional development, we would have to face the political reality that 30 out of the 60 LegCo seats were returned by FCs. As any amendment to the electoral method for forming LegCo would require the endorsement of a two-thirds majority of all the members of LegCo, in practice, this meant that the endorsement and support of members returned by FCs as well as those returned by GCs through direct elections would be required.

14. On the premise set out above, members considered carefully whether universal suffrage for LegCo should be implemented in phases. A member considered that a transition timetable must be formulated first before discussing the proposals of implementing universal suffrage for LegCo in phases. Also, a member considered that it was worthwhile to examine the proposal of implementing universal suffrage for LegCo in phases, but that the transitional period should not be too long. Particularly, if when universal suffrage for CE were implemented first, the legitimacy of LegCo would be affected. In turn, this would undermine its role to perform checks and balances on the executive authorities.

15. Members put forth the following specific proposals regarding the transitional arrangement:

- (a) to introduce reforms before abolishing the FCs, including expansion of the electorate base of FCs, replacing corporate voting by individual voting, and abolishing or merging some of the existing FCs;

- (b) to return directly elected Members by GCs and, at the same time, to allow FCs to nominate candidates for election by universal suffrage;
- (c) to abolish the FC seats in phases. However, some members considered that this would lead to disputes on which FCs should be abolished first. The problem would not be easy to resolve and the proposal might not receive two-thirds majority support from LegCo; and
- (d) to increase the proportion of district-based seats to FC seats. For example, some members suggested that consideration could be given to increasing the number of GC seats, and at the same time also increase the number of LegCo seats returned by members of District Councils electing amongst themselves.

Roadmap and timetable for forming LegCo by universal suffrage

16. In the Decision of the Standing Committee of the National People's Congress (NPCSC) made on 26 April 2004, it was promulgated that the election of the fourth term LegCo of the HKSAR in 2008 should not be by means of universal suffrage. However, the Decision did not cover the electoral arrangements for the fifth term LegCo election in 2012.

17. In accordance with Annex II to the Basic Law, any amendments to the method of forming LegCo would require the endorsement by a two-thirds majority of all the members of LegCo, the consent of the CE, and they shall be reported to NPCSC for the record.

18. With the approach of "formulating a roadmap before a timetable", if different sectors of the community could reach consensus on the model and roadmap for forming LegCo by universal suffrage, the timetable for universal suffrage would fall into place naturally². However, the Commission still has significant differences on the model for forming LegCo by universal suffrage. To determine the roadmap and timetable for universal suffrage, it would depend on whether different sectors of the community:

² For example, a member suggested that the existing 30 FC seats could be phased out in three LegCo terms.

- (a) would agree with the direction that “universal suffrage for the CE should precede that for LegCo”; and
- (b) would agree that universal suffrage for LegCo could be attained in phases.

Conclusion

19. To conclude, regarding possible models for implementing universal suffrage for LegCo, members generally agreed that, when universal suffrage was attained, the FC seats could not continue to be returned by the existing electoral method. Otherwise, it would not be consistent with the ultimate aim of universal suffrage as provided for in the Basic Law.

20. In order to further narrow differences, we suggest that members should endeavour to draw conclusions from the previous discussions and, in particular, examine the following issues:

- (a) whether FC seats should be abolished altogether or retained in some form, and the specific models for implementing universal suffrage; and
- (b) whether transitional arrangements should be put in place before attaining the ultimate aim of universal suffrage, and if so, the model to be adopted.

Constitutional Affairs Bureau
April 2007