

(Translation)

Explanations on the Draft Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016

At the Tenth Session of the Standing Committee of the Twelfth National People's Congress on 27 August 2014

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The Standing Committee of the National People's Congress,

At the request of the Chairmen's Council, I hereby provide Explanations on the *Draft Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016*.

In accordance with the provisions of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereinafter referred to as the "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*, Leung Chun-ying, Chief Executive of the Hong Kong Special Administrative Region, submitted the *Report on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2017 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2016* (hereinafter referred to as the "Report by the Chief Executive") to the NPC Standing Committee on 15 July 2014. On 18 August, the Chairmen's Council decided to include the consideration of the Report by

the Chief Executive in the agenda of the Tenth Session of the Standing Committee of the Twelfth NPC, and entrusted the responsible officials of the relevant departments of the central authorities to listen to the views of the NPC deputies and members of the Chinese People's Political Consultative Conference from the Hong Kong Special Administrative Region, the Hong Kong members of the Hong Kong Special Administrative Region Basic Law Committee under the NPC Standing Committee, and people from various sectors of the Hong Kong community. Opinions of the Hong Kong and Macao Affairs Office of the State Council were also solicited. On 26 August, the NPC Standing Committee held group discussions on the Report by the Chief Executive.

The members of the NPC Standing Committee pointed out that, as stipulated in Paragraph 2 of Article 45 of the *Hong Kong Basic Law*, “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 *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* adopted on 29 December 2007 expressly states, “that 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 *Decision* also reaffirms the relevant provisions of the *Hong Kong Basic Law* and its *Interpretation* that at an appropriate time prior to the selection of the Chief Executive of the Hong Kong Special Administrative Region by universal suffrage, the Chief Executive shall make a report to the NPC Standing Committee as regards the issue of amending the method for selecting the Chief Executive, and a determination thereon shall be made by the NPC Standing Committee. The members of the NPC Standing Committee believe that since the year 2017 is approaching, it is now necessary to make a decision on issues relating to the methods for selecting the Chief Executive in 2017 and for forming the Legislative Council in 2016. The Report submitted by the Chief Executive to the NPC Standing Committee is necessary and timely.

The Report reflects in a comprehensive and objective manner the views and wishes of the Hong Kong community regarding the methods for selecting the Chief Executive by universal suffrage and for forming the Legislative Council in 2016, which include both consensus and differences. It is a positive, responsible and pragmatic report.

The members of the Standing Committee are of the view that implementing universal suffrage for the selection of the Chief Executive of the Hong Kong Special Administrative Region represents a historic progress in Hong Kong's democratic development and a significant change in the political structure of the Hong Kong Special Administrative Region. Since the long-term prosperity and stability of Hong Kong and the sovereignty, security and development interests of the country are at stake, there is a need to proceed in a prudent and steady manner, so as to prevent all sorts of possible risks that may arise therefrom. Since the selection of the Chief Executive of the Hong Kong Special Administrative Region by universal suffrage has its origin in the provisions of the *Hong Kong Basic Law*, the formulation of the method for selecting the Chief Executive by universal suffrage must strictly comply with the relevant provisions of the *Hong Kong Basic Law*, accord with the principle of "one country, two systems", and befit the legal status of the Hong Kong Special Administrative Region. It must meet the interests of different sectors of the society, achieve balanced participation, and be conducive to the development of the capitalist economy, with a view to making gradual and orderly progress in developing a democratic system that suits the actual situation in Hong Kong. **The members of the Standing Committee take the view** that when formulating the basic policies on Hong Kong, the central authorities have already clearly defined the scope and criteria for the principle of "Hong Kong people administering Hong Kong", that is, Hong Kong must be administered by the Hong Kong people, with patriots being the mainstay. According to the *Hong Kong Basic Law*, the Chief Executive of the Hong Kong Special Administrative Region is the head of both the Hong Kong Special Administrative Region and the Hong Kong Special Administrative Region Government, and shall be accountable to both the Hong Kong Special Administrative Region and the Central People's Government. The Chief Executive must swear to uphold the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China. Therefore, the Chief Executive of the Hong Kong Special Administrative Region must be a person who loves the country and loves Hong Kong. This is a basic requirement of the policy of "one country, two systems". It is determined by the legal status

and important functions and duties of the Chief Executive as stipulated in the *Hong Kong Basic Law*, and called for by the actual need to maintain long-term prosperity and stability of Hong Kong and uphold the sovereignty, security and development interests of the country. The method for selecting the Chief Executive by universal suffrage should provide corresponding institutional safeguards for this purpose.

The members of the NPC Standing Committee take the view that although 17 years have passed since the return of Hong Kong to the motherland, there is still a small number of people in the Hong Kong community who do not properly understand the policy of “one country, two systems”, do not abide by the *Hong Kong Basic Law* or acknowledge the Central Government’s governing power over Hong Kong. On the issue of universal suffrage for the Chief Executive, there are divergent views within the Hong Kong community. A small number of people have even raised views that are contrary to the *Hong Kong Basic Law* and openly advocated illegal activities. Such developments will inevitably undermine the rule of law of the Hong Kong Special Administrative Region, the interests of Hong Kong residents and foreign investors and the long-term prosperity and stability of Hong Kong, and hence merit close attention. **The members of the NPC Standing Committee take the view** that given its constitutional responsibility for the proper implementation of the *Hong Kong Basic Law* and for making decision on the method for selecting the Chief Executive, it is necessary for the NPC Standing Committee to make provisions on certain core issues concerning the method of universal suffrage for the selection of the Chief Executive, so as to facilitate the building of consensus within the Hong Kong community and ensure that the selection of the Chief Executive by universal suffrage will proceed on the right track as laid down by the *Hong Kong Basic Law* and the relevant *Decisions* of the NPC Standing Committee.

The Hong Kong and Macao Affairs Office of the State Council takes the view that although the views are quite divergent in the Hong Kong community with regard to the specific method of universal suffrage for the selection of the Chief Executive, various sectors of the Hong Kong community generally hope to see the selection of the Chief Executive by universal suffrage in 2017. Therefore, in accordance with the relevant *Decision* of the NPC Standing Committee adopted on 29 December 2007, the implementation of the selection of the Chief Executive of the Hong Kong Special Administrative Region by universal suffrage in 2017 may be approved. At the same time, it is necessary to make provisions on the core issues concerning the method of universal

suffrage for selecting the Chief Executive, which will be conducive to building further consensus in the Hong Kong community. The method for forming the Legislative Council in 2016 may remain unchanged.

Acting in accordance with the provisions of the *Hong Kong Basic Law* and the views of the members of the NPC Standing Committee on the Report by the Chief Executive, and having taken into full account the views of the Hong Kong and Macao Affairs Office of the State Council and the views of the Report by the Chief Executive, the Chairmen's Council has introduced the *Draft Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016* (Draft Decision). I will now provide Explanations on the *Draft Decision* as follows.

1. On the selection of the Chief Executive by universal suffrage starting from 2017

In accordance with the *Hong Kong Basic Law*, the relevant *Decision* of the NPC Standing Committee on 29 December 2007 and the views of the members of the NPC Standing Committee, Article I of the *Draft Decision* provides that: "Starting from 2017, the selection of the Chief Executive of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage." The major considerations with regard to this provision are:

First, the wording in the *Draft Decision* is "Starting from 2017, the selection of the Chief Executive of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage", meaning that the selection of the fifth Chief Executive in 2017 and all the Chief Executives thereafter may be implemented by the method of universal suffrage.

Second, Article 45 of the *Hong Kong Basic Law* provides that the ultimate aim is the selection of the Chief Executive by universal suffrage. The relevant *Decision* of the NPC Standing Committee on 29 December 2007 further provides that "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". Article I of the *Draft Decision* has made it clear that the selection of the Chief Executive in 2017 and of all the Chief Executives thereafter may be implemented by

the method of universal suffrage, which accords with the *Hong Kong Basic Law* and the above-mentioned *Decision* of the NPC Standing Committee.

Third, as a result of years of discussion on the issue of universal suffrage for selecting the Chief Executive, the Hong Kong community has reached consensus on four points, i.e., the Hong Kong community generally hopes to see the implementation of universal suffrage for the selection of the Chief Executive in 2017; it generally agrees that the method of universal suffrage for the Chief Executive should be formulated in accordance with the *Hong Kong Basic Law* and the relevant *Interpretation* and *Decisions* of the NPC Standing Committee; it generally agrees that the successful implementation of universal suffrage for the selection of the Chief Executive will bring about positive impact on the sustained development and the long-term prosperity and stability of Hong Kong; and it generally agrees that Chief Executive candidates should be persons who love the country and love Hong Kong. The implementation of the election of the Chief Executive by the method of universal suffrage as of 2017 meets the common aspiration of the Hong Kong community.

2. On the provisions on the core issues of universal suffrage for the Chief Executive

Article 45 of the *Hong Kong Basic Law* has already set out quite clear provisions on universal suffrage for selecting the Chief Executive. In accordance with the *Hong Kong Basic Law*, the views of the members of the NPC Standing Committee and those from others, Article II of the *Draft Decision* has made the following provisions on the core issues of universal suffrage for the Chief Executive:

(1) On the composition of the nominating committee

Paragraph (1) of Article II of the *Draft Decision* provides that: “The provisions for the number of members, composition and formation method of the nominating committee shall be made in accordance with the number of members, composition and formation method of the Election Committee for the Fourth Chief Executive.” According to this provision, the nominating committee to be defined by amendments to Annex I to the *Hong Kong Basic Law* shall follow the current composition of the Election Committee, which consists of 1,200 members from four major sectors in equal proportions, and keep the existing method for selecting the members as provided for by Annex I to the *Hong*

Kong Basic Law. The major considerations with regard to this provision are:

First, considering the legislative intent of the *Hong Kong Basic Law*, the expression “broadly representative” in the context of “a broadly representative nominating committee”, as provided in Paragraph 2 of Article 45 of the *Hong Kong Basic Law*, carries the same meaning as that in “a broadly representative Election Committee”, as provided in Annex I to the *Hong Kong Basic Law*. That is, the committee shall be composed of members from four sectors in equal proportions, the delimitation of the various sectors, the organizations in each sector eligible to return members and the number of such members to be returned by each of these organizations shall be prescribed by the electoral law enacted by the Hong Kong Special Administrative Region, and the committee members shall be elected by corporate bodies in various sectors on their own in accordance with the number of seats allocated and the election method as prescribed by law. The provision in the relevant *Decision* of the NPC Standing Committee on 29 December 2007 that “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*”, indicates clearly the common theme between the nominating committee and the Election Committee as regards formation. Since there remains different understanding in the Hong Kong community on this issue, it is necessary to make further clarifications with a view to properly implementing the provisions of the *Hong Kong Basic Law*.

Second, the method for forming the Election Committee to elect the Chief Executive was based on the consensus forged during the extensive consultations and discussions when drafting the *Hong Kong Basic Law*. Past elections for the Chief Executive since the return of Hong Kong have proven that the Election Committee has covered representative figures from all sectors of the Hong Kong community and achieved balanced participation of all sectors, and is therefore in conformity with the actual situation of Hong Kong. Composing the nominating committee in line with the formation of the current Election Committee meets the requirements of both the relevant provisions of the *Hong Kong Basic Law* and the objective need to ensure balanced participation and fend off various risks during election of the Chief Executive by universal suffrage.

Third, there are relatively more views in the Hong Kong community that the composition of the nominating committee should be decided with reference to the existing method for forming the Election Committee. There are considerable views that the number of members, composition

and formation method of the nominating committee should be determined by following the existing provisions of the Election Committee. Bearing in mind that the provisions regarding the Election Committee for the fourth Chief Executive were made in 2010 alongside amendments to the method for selecting the Chief Executive and approved by the NPC Standing Committee, and that the total number of seats of the Election Committee was increased from 800 to 1,200, with such increase being made in equal proportions for all four sectors, and with the endorsement and support from all sides, it is relatively appropriate to provide for the nominating committee to have the same number of members, composition and formation method as the Election Committee.

(2) On the number of Chief Executive candidates

Paragraph (2) of Article II of the *Draft Decision* stipulates that “The nominating committee shall nominate two to three candidates for the office of Chief Executive in accordance with democratic procedures”. The major considerations with regard to this provision are:

First, the stipulation to have two to three candidates for the office of the Chief Executive is made to ensure a truly competitive election and present voters with real choices. It could also serve to avoid problems such as complicated electoral procedures and high election costs caused by having too many candidates.

Second, since the return of Hong Kong, almost all elections for the Chief Executive were conducted each with a candidacy of two to three. It fits relatively well with the experience gained from previous elections in Hong Kong to set the number of candidates at two to three.

(3) On the need of a Chief Executive candidate to have the endorsement of more than half of the members of the nominating committee

Paragraph (2) of Article II of the *Draft Decision* stipulates that “Each candidate must have the endorsement of more than half of all the members of the nominating committee”. The major considerations with regard to this provision are:

First, the nominating committee as provided for by the *Hong Kong Basic Law* is a specialized institution for nomination. It collectively exercises the power to nominate Chief Executive candidates as an institution, and must therefore reflect the collective will of the institution. The “democratic procedures” stipulated in Paragraph 2 of Article 45 of the *Hong Kong Basic Law* should follow the democratic principle of

majority rule so as to reflect the requirement that the nominating committee exercises power in a collective manner. Hence, it is appropriate to stipulate that a person contending for nomination as the Chief Executive candidate must obtain the support of more than half of the members of the nominating committee.

Second, the nominating committee will comprise members from the four sectors in equal proportions. The stipulation that contenders for nomination as the Chief Executive candidates must obtain the support of more than half of the members of the nominating committee means that candidates need to obtain a certain extent of support from each sector of the nominating committee. This will help fulfill the principle of balanced participation and meet the interests of various sectors of the Hong Kong community.

Third, the Report by the Chief Executive indicates considerable views of the Hong Kong community that a person contending for nomination as the Chief Executive candidate has to obtain support from a certain proportion of members of the nominating committee. Among the views heard by the General Office of the NPC Standing Committee, quite a number of people called for the proportion to be specified. Therefore, the further clarification that a person contending for nomination as the Chief Executive candidate must obtain the endorsement of more than half of the members of the nominating committee, is consistent with the provisions of the *Hong Kong Basic Law*, and will facilitate consensus building in the Hong Kong community.

(4) On the method for voting in the election for the Chief Executive

Article 26 of the *Hong Kong Basic Law* stipulates that “Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law”. On that basis, Paragraph (3) of Article II of the *Draft Decision* stipulates that “All eligible electors of the Hong Kong Special Administrative Region have the right to vote in the election of the Chief Executive and elect one of the candidates for the office of Chief Executive in accordance with law”. According to this provision, each and every eligible elector shall have the right to directly participate in electing the Chief Executive. It fulfills the principle of universal and equal electoral right and marks a historic step forward in Hong Kong’s democratic development.

(5) On appointment of the Chief Executive

Paragraph 1 of Article 45 of the *Hong Kong Basic Law* provides 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.” Based on this provision, Paragraph (4) of Article II of the *Draft Decision* stipulates that “The Chief Executive-elect, after being selected through universal suffrage, will have to be appointed by the Central People’s Government”. The central authorities, in formulating the basic policies with respect to Hong Kong and the *Hong Kong Basic Law*, already clearly pointed out that the power of the Central People’s Government to appoint the Chief Executive of the Hong Kong Special Administrative Region is a substantive one. The Central People’s Government has the right to make the final decision on whether to appoint or not to appoint the Chief Executive returned by election held locally in Hong Kong.

3. On proposing amendments to the method for selecting the Chief Executive

The specific method for selecting the Chief Executive is stipulated in Annex I to the *Hong Kong Basic Law*. To amend the method for selecting the Chief Executive, a bill on amending the method for selecting the Chief Executive as well as relevant amendments to such bill shall be proposed by the Government of the Hong Kong Special Administrative Region in accordance with the relevant *Decisions* of the NPC Standing Committee. Accordingly, Article III of the *Draft Decision* stipulates that “The specific method of universal suffrage for the Chief Executive shall be prescribed in accordance with legal procedures through amending Annex I to the *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China: The Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region*. The bill on the amendments and the proposed amendments to such bill shall be introduced by the Hong Kong Special Administrative Region Government to the Legislative Council of the Hong Kong Special Administrative Region in accordance with the *Hong Kong Basic Law* and the provisions of this *Decision*. Such amendments shall obtain the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive before being submitted to the Standing Committee of the National People’s Congress for approval.”

4. On continued application of existing provisions relating to the method for selecting the Chief Executive if no amendment is made to the method

Pursuant to the *Interpretation* made by the NPC Standing Committee in 2004, if no amendment is made to the method, existing provisions relating to the method for selecting the Chief Executive, the method for forming the Legislative Council and the procedures for voting on bills and motions will remain applicable. In 2007, the NPC Standing Committee reaffirmed the above position in its *Decision on Issues Relating to the Methods for Selecting the Chief Executive and Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage*. In the premises, Article IV of the *Draft Decision* stipulates that “If the specific method of universal suffrage for selecting the Chief Executive is not adopted in accordance with legal procedures, the method used for selecting the Chief Executive for the preceding term shall continue to apply.”

5. On the issue of amending the method for forming the Legislative Council in 2016

As pointed out by the Report by the Chief Executive, the Hong Kong community generally agrees that efforts should now be focused on the proper handling of the election of the Chief Executive by universal suffrage; and that as relatively substantial amendments were made to the method for forming the Legislative Council in 2012, there is no need to amend Annex II to the *Hong Kong Basic Law* regarding the method for forming the Legislative Council in 2016. Upon deliberation, the members of the NPC Standing Committee are of the view that the amended method for forming the fifth term Legislative Council of the Hong Kong Special Administrative Region in 2012 already marked a major step towards greater democracy, and no amendment shall be made to the existing method for forming the Legislative Council and to the procedures for voting as prescribed in Annex II to the *Hong Kong Basic Law*, which is to say that the current formation method and procedures for voting will continue to apply to the sixth term Legislative Council in 2016. This is consistent with the principle of gradual and orderly progress in developing a democratic system that suits the actual situation of Hong Kong, in conformity with the majority view in the Hong Kong community, and conducive to the efforts of all sectors of the community to first focus on properly handling the selection of the Chief Executive by universal suffrage, and it will create conditions for the attainment of the aim of electing all members of the Legislative Council by universal suffrage after the implementation of universal suffrage for the selection of the Chief Executive. In accordance with the deliberations of the members of the NPC Standing Committee and the views of various sides, Article V

of the *Draft Decision* stipulates that “The existing formation method and voting procedures for the Legislative Council as prescribed in Annex II to the *Hong Kong Basic Law* will not be amended. The formation method and procedures for voting on bills and motions of the fifth term Legislative Council will continue to apply to the sixth term Legislative Council of the Hong Kong Special Administrative Region in 2016.” To reflect the consistent position of the central authorities to resolutely and firmly develop the democratic system in Hong Kong, and to push for the attainment of the aim of electing all the members of the Legislative Council by universal suffrage, this article further stipulates that “After the election of the Chief Executive by universal suffrage, the election of all the members of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of universal suffrage. At an appropriate time prior to the election of the Legislative Council by universal suffrage, the Chief Executive elected by universal suffrage shall submit a report to the Standing Committee of the National People’s Congress in accordance with the relevant provisions of the *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* as regards the issue of amending the method for forming the Legislative Council. A determination thereon shall be made by the Standing Committee of the National People’s Congress.”

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 Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016* and the above Explanations are in order.