
INFORMATION NOTE

Views on Political Party Law in Hong Kong

1. Introduction

1.1 The Panel on Constitutional Affairs, at its meeting on 18 October 2004, requested the Research and Library Services Division to collect views expressed in research studies and public discussion regarding political party law in Hong Kong. This information note provides a brief summary of such views.

1.2 Research on political party law in Hong Kong has been very limited, and only recently does discussion on this topic start to grow.¹ For example, in November 2004, local and international participants in an academic conference, Strengthening Political Parties in Hong Kong, were actively involved in contributing their views on political party law in Hong Kong and overseas.²

2. Existing legal framework

2.1 During the drafting process of the *Basic Law of the Hong Kong Special Administrative Region (Basic Law)*, there were discussions regarding how the issue of political parties should be dealt with in the *Basic Law*. The definition of party politics, the influence of party politics on society and the various arguments for and against party politics were presented in the Final Report on the Legislature prepared by the Special Group on Political Structure of the Special Administrative Region in 1987.³

¹ Two detailed research reports have been published in 2004. They are: Legislative Council Secretariat, *The Regulatory Framework of Political Parties in Germany, the United Kingdom, New Zealand and Singapore*, April 2004, available at <http://www.legco.gov.hk/yr03-04/english/sec/library/0304rp05e.pdf>. and Richard Cullen, *Political Party Development: Improving the Regulatory Infrastructure*, HK: Civic Exchange, August 2004, available at <http://www.civic-exchange.org/publications/2004/politicalpartydev%20-%20E.pdf>.

² For further information about the conference, see <http://www.hku.hk/socsc/crdd/5th/>.

³ The Special Group was under the Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region. See The Special Group on Political Structure of the Special Administrative Region, *Final Report on the Legislature*, HK: the Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region, 12 June 1987, section 9.2.

2.2 In a later report published by the Special Group on Political Structure of the Special Administrative Region in 1987, the provisions regarding political parties under the *Basic Law* were elaborated.⁴ In spite of all these discussions, the *Basic Law* does not contain any provisions specifically regarding political parties.

2.3 In the legal system of the Hong Kong Special Administrative Region (HKSAR), there are only a handful of legal provisions in relation to political parties.⁵ The freedom of association is expressly guaranteed under Articles 27 and 39 of the *Basic Law*.⁶ Article 23 of the *Basic Law* prohibits foreign political organizations or bodies from conducting political activities in the HKSAR and local political organizations or bodies from establishing ties with foreign political organizations or bodies.⁷

3. Development of party politics

3.1 Party politics began to flourish after the 1991 Legislative Council (LegCo) election. However, as pointed out in a research paper, owing to the China factor, structural constraints and limited public support, political parties in Hong Kong could only play a limited role in the political system before 1997.⁸

3.2 Changes of the electoral system are considered by some commentators to be an important factor affecting party development in Hong Kong. The electoral system in Hong Kong changed from a "double-seat, double-vote system" to a "single-member plurality system" in 1995 and a "proportional representation system" in 1998. Before the change in 1998, it was considered by some academics that the party system in Hong Kong had evolved from a relatively pluralistic system to a polarized system.⁹ With the adoption of the proportional representation system, some scholars opined that the party system would become more fragmented, which could further weaken political parties' role and bargaining position in the political system.¹⁰

⁴ The Special Group on Political Structure of the Special Administrative Region, *Report on the Study of Political Party*, HK: the Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region, 4 November 1987.

⁵ For detailed information, see LegCo Secretariat (note 1 above), chapter 6.

⁶ Article 27 provides that Hong Kong residents "*shall have ... freedom of association....*" Article 39 provides that "*[t]he provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law.*"

⁷ Article 23 provides that the HKSAR "*shall enact law on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.*"

⁸ Jermain T. M. Lam, "Party politics in Hong Kong during the Political Transition," *The American Asian Review*, 1997, Vol. 15, No. 4, pp. 71-95.

⁹ Ma Ngok & Choy Chi-keung, "The Evolution of the Electoral System and Party Politics in Hong Kong," *Issues and Studies*, 1999, Vol. 35, No. 1, pp. 167-94.

¹⁰ Ibid.

3.3 Some academics argue that the development of political parties in Hong Kong has been in decline after 1997. Reasons for the decline include Beijing's antipathy attitude towards party politics in Hong Kong, social fragmentation and the lack of incentives for business elites to form political parties.¹¹ It is argued that the stunted party system has produced serious adverse impacts for the governance of Hong Kong, representation of interests, public attitudes towards the political class and the further democratization of Hong Kong.¹²

3.4 On the other hand, a commentator opines that the development of political parties may hinder further democratization in Hong Kong.¹³ He reasons that party development has drawn the scarce resources of leadership and activists from civil society, with the result of weakening the pro-democratic force in Hong Kong.¹⁴

3.5 Recently, there have been some discussions among political parties on whether political parties should play an active role in governing Hong Kong, including affecting the election of the next Chief Executive. At a recent City Forum on the outlook for 2005, leaders of political parties discussed the issue of governance in Hong Kong and there was an opinion that good governance required a Chief Executive with sufficient party support in LegCo.¹⁵ However, a local newspaper reported that a LegCo Member expressed the concern that the central government is still skeptical about the existence of a ruling party in Hong Kong.¹⁶

4. The need for political party law

4.1 On 30 October 2001, the then Secretary for Constitutional Affairs, Mr Michael Suen, stated that the Government was "*studying the feasibility and desirability of introducing a political party law*" so as "*to increase the transparency of political parties and facilitate their healthy development*".¹⁷ However, the Secretary for Constitutional Affairs, Mr Stephen Lam, announced in December 2002 that the Government considered that "*now is not the time to introduce a political party law*".¹⁸

¹¹ Lau Siu-kai & Kuan Hsin-chi, "Hong Kong's Stunted Political Party System," *The China Quarterly*, 2002, pp. 1011-28.

¹² Ibid, pp. 1025-8.

¹³ Ming Sing, "Governing Elites, External Events and Pro-democratic Opposition in Hong Kong (1986-2002)," *Government and Opposition*, 2003, pp. 456-78.

¹⁴ Ibid, p. 477.

¹⁵ See Hong Kong Economic Journal, 3 January 2005, p. 5.

¹⁶ See Hong Kong Economic Journal, 28 December 2004, p. 4.

¹⁷ See <http://www.info.gov.hk/gia/general/200110/30/1030164.htm>.

¹⁸ See <http://www.info.gov.hk/gia/general/200212/10/1210167.htm>.

4.2 In the Second Report of the Constitutional Development Task Force,¹⁹ political groups were described as bodies focusing more on issues of the day and individual political episodes. The report also stated that the public was not certain whether political groups were able to look after the interests of different sectors of society, as well as the long-term interests of the HKSAR.²⁰

4.3 In a press conference on the Second Report of the Constitutional Development Task Force in April 2004, the Chief Secretary for Administration, Mr Donald Tsang, explained his understanding that political party law was to regulate the development of political parties and not necessarily to facilitate such development. He further said that it was not the responsibility of a government to facilitate the development of political parties in an open society.²¹

4.4 There are discussions in the community about whether or not there should be political party law. Some academics and political commentators suggest that the existing legal framework should be revised in order to facilitate political party development.²² Among those who are in favour of this suggestion, there are different opinions on whether Hong Kong needs a separate legislation on political parties²³ or whether amendments to existing legislation would suffice.²⁴ At the "Strengthening Political Parties in Hong Kong" conference, some participants raised the concern that the enactment of political party legislation would simply give the Government an excuse to develop more legal controls.²⁵

¹⁹ The task force is set up by the Government to study the future constitutional development in Hong Kong. The Task Force is headed by the Chief Secretary for Administration, with the Secretary for Justice and the Secretary for Constitutional Affairs as members.

²⁰ The Second Report of the Constitutional Development Task Force, *Issues of Principle in the Basic Law Relating to Constitutional Development*, April 2004, p. 19.

²¹ See <http://www.info.gov.hk/gia/general/200404/15/0415001.htm>.

²² See Ray Yep, "Political Reform and Political Parties", in Christine Loh & Civic Exchange eds., *Building Democracy: Creating Good Government for Hong Kong*, HK: Hong Kong University Press, 2003, pp. 61-70 and Paul Yi, "A dream of a new Hongkonger of the Special Administrative Region of China — How to achieve universal suffrage (in Chinese)," May 2004, available at <http://www.hkpri.org.hk>.

²³ See Anthony B. L. Cheung, *What Next in Constitutional Reform? Enhancing Representation and Ensuring Effective Governance*, HK: SynergyNet, January 2004, available at <http://www.synergynet.org.hk/>.

²⁴ Richard Cullen, "The Law Governing Political Parties in Hong Kong", a paper presented in the conference of Strengthening Political Parties in Hong Kong, November 2004, available at <http://www.hku.hk/socsc/crdd/5th/materials/paper/cullen.pdf>.

²⁵ See Frank Ching, "Waiting for a Mature Response", *South China Morning Post*, 30 November 2004.

5. Registration

5.1 At present, most of the major political parties are registered as companies under the *Companies Ordinance*. In addition, some societies registered under the *Societies Ordinance (SO)* have fielded candidates for the general election or by-election in either the Legislative Council or District Councils. There is no definition of the term "political party" under *SO*. According to *SO*, a political body means a political party or an organization that purports to be a political party; or an organization whose principal function or main object is to promote or prepare a candidate for election.

5.2 A prescribed body is also allowed to register its name and emblem with the Electoral Affairs Commission so that such information can be printed on ballot papers.²⁶ A prescribed body means a prescribed political body²⁷ or a prescribed non-political body.

5.3 A commentator argues that the lack of a legal definition of what constitutes a political party "gives rise to unnecessary confusion, reinforces popular misunderstandings and may enable administrative abuses, such as suppression of political activity."²⁸

5.4 A recent study report published by Civic Exchange suggests that Hong Kong should seriously consider creating a full political party registration system, modelled on the system adopted in Australia²⁹. The registration system is proposed to be enacted under the *Electoral Affairs Commission Ordinance* and administered by the Electoral Affairs Commission. In addition, registration for political parties should not be mandatory and the registration system should not be used as the basis for providing legal status to political parties.

6. The Chief Executive Election Ordinance

6.1 Under Section 31(1) of the *Chief Executive Election Ordinance*, the winning candidate at a Chief Executive election must (a) make a declaration that he or she is not a member of any political party; and (b) undertake that he or she will not, if appointed as the Chief Executive, become a member of any political party, or do any act that has the effect of subjecting himself/herself to the discipline of any political party.

²⁶ *The Particulars Relating To Candidates On Ballot Papers (Legislative Council) Regulation*.

²⁷ A prescribed political body means a body or an organization operating in the HKSAR that is a political party, purports to be a political party, or has the principal function or main object to prepare a candidate for election. See section 2, *Ibid*.

²⁸ Ray Yep, (note 22 above), p. 67.

²⁹ Richard Cullen, (note 1 above), pp. 31-2. Since 1984, the Electoral Act in Australia has provided a voluntary registration system for political parties. Registered parties enjoy certain benefits, including public funding based on the number of votes received.

6.2 The restriction on the political party membership of the Chief Executive is not stipulated in the Basic Law. During the deliberation of the Chief Executive Election Bill in 2001, the Government argued that such restriction was consistent with the requirements of freedom of association guaranteed under Article 27 of the *Basic Law* and Article 22 of the *International Covenant on Civil and Political Rights*.³⁰ Nonetheless, political parties in LegCo had different opinions on this issue.³¹

6.3 There have been discussions of whether the restriction on the political party membership of the Chief Executive should be lifted in view of the future constitutional development. There are views that party affiliation may actually help facilitate the linkage of the Chief Executive with political parties in LegCo.³²

7. Funding of political party

7.1 The HKSAR does not provide any financial assistance for political parties to run election campaigns or to perform their LegCo or District Council work. A study suggests that the implementation of the proportional representation electoral system has caused a surge in election expenses and there is a need for public subsidies of such expenses.³³ A financial assistance scheme was introduced for candidates in the 2004 LegCo election,³⁴ but its operation was not based on the political party background of candidates.

7.2 There have been discussions of whether public funds should be used to support political parties. A commentator argues that political parties relying entirely on private funding may create the problem of political inequality. In other words, political parties representing underprivileged groups may be unable to compete on equal footing with parties representing business interests.³⁵

³⁰ For detailed information, see Report of Bills Committee on Chief Executive Election Bill, LegCo Paper: CB(2)1989/00-01, paragraphs 71-76 and Administration's Responses to Points raised on 31 May 2001 by members of the Bills Committee on the Chief Executive Election Bill, LegCo Paper: CB(2)1774/00-01(01).

³¹ For details, see Official Record of Proceedings of the Legislative Council, 11 July 2001, p. 7653-7676.

³² The Fourth Report of the Constitutional Development Task Force, *Views and Proposals of Members of the Community on the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008*, December 2004, paragraph 3.19.

³³ Ma Ngok & Choy Chi-keung, *Political Consequences of Electoral Systems — the Hong Kong Propositional Representation System*, HK: City University of Hong Kong Press, 2003, chapter 10.

³⁴ Detailed implementation procedures for the scheme are provided in the *Electoral Affairs Commission (Financial Assistance for Legislative Council Elections)(Application and Payment Procedure) Regulation*.

³⁵ Ray Yep, (note 22 above), p. 67.

7.3 The report published by Civic Exchange suggests that public funding should be provided for political parties based on the number of votes received in election.³⁶ There are also suggestions that tax exemption should be provided for donations to political parties.³⁷

7.4 At the "Strengthening Political Parties in Hong Kong" conference, there was a suggestion that political parties should produce quality performance and develop sound marketing plans to generate private donations.³⁸

8. Financial Transparency

8.1 There is currently no regulation on donations to political parties. Financial transparency of political parties has been a contentious issue in Hong Kong³⁹, especially during election periods. Local political groups have been criticized for accepting foreign subsidies⁴⁰, misusing public funds⁴¹ and unaccountable to the public about their funding sources.⁴²

8.2 There have been suggestions that proper regulations should be in place to enhance the financial transparency of political parties. One view is that a public reporting system should be set up for political parties with formal registration and the system would be monitored by the Electoral Affairs Commission.⁴³

8.3 There is another suggestion that a loophole in the current candidate reporting requirements under section 37 of the *Elections (Corrupt and Illegal Conduct) Ordinance*⁴⁴ needs to be closed.⁴⁵ It is suggested that candidates should be required to reveal the substantive person behind any donation received to the Electoral Affairs Commission, rather than simply report the name of an organization or a political party.

³⁶ Richard Cullen, (note 1 above), p. 35.

³⁷ Ray Yep, (note 22 above), p. 68 and Richard Cullen, (note 1 above), p. 34.

³⁸ Christine Lok & Yan Yan Yip, "Political Office Funding and Fundraising in Hong Kong," available at <http://www.hku.hk/socsc/crdd/5th/presentation.htm>.

³⁹ See Klaudia Lee, "Parties Coy about Where Funds Come From", South China Morning Post, 25 August 2003.

⁴⁰ See Sing Tao Daily's report on local political groups receiving subsidies from American organizations, 6 September 2004.

⁴¹ Daniel Fung, "Hold the Parties Accountable", South China Morning Post, 20 September 2004.

⁴² Ibid.

⁴³ Richard Cullen, (note 1 above), p. 36.

⁴⁴ Section 37 requires that a candidate must keep an accurate account of all election expenses incurred and donations received, and submit to the Chief Electoral Officer a return and declaration of election expenses and donations in a specified form not later than 60 days after the gazetteal of the result of the election.

⁴⁵ Richard Cullen, (note 1 above), p. 36.

Prepared by CHAU Pak kwan
10 January 2005
Tel: 2869 9593

Information notes are compiled for Members and Committees of the Legislative Council. They are not legal or other professional advice and shall not be relied on as such. Information notes are subject to copyright owned by the Legislative Council Commission (the Commission). The Commission permits accurate reproduction of the information notes for non-commercial use in a manner not adversely affecting the Legislative Council, provided that acknowledgement is made stating the Research and Library Services Division of the Legislative Council Secretariat as the source and one copy of the reproduction is sent to the Legislative Council Library.